

I-T dept restrains officials from taking intrusive action

CBDT issues new guidelines

OUR BUREAU

New Delhi, October 16

The Income Tax Department on Friday issued new guidelines to restrict intrusive or coercive action for recovery of tax demand by Assessing Officer (AO)/Tax Recovery Officer (TRO). The new guidelines have come into effect immediately.

The new guidelines have been issued by the Central Board of Direct Taxes (CBDT) keeping in mind provisions under the 'Taxation and other Laws (Relaxation and Amendments of Certain Provisions) Act,' which has recently replaced an ordinance.

According to the guidelines, AOs/TROs are allowed to take coercive/intrusive measures only after exhaustion of other means of recovery. Recovery surveys to the non-responsive/non-traceable taxpayers will be restricted as new law amends section 133A of the Income Tax Act to allow survey only by Investigation and TDS wings.

Under the new arrange-

ment, there will be two members collegium comprising of Principal Chief Commissioner of Income-Tax/Chief Commissioner of Income tax rank for the screening of survey for cases other than TDS (Tax deducted at sources). It mandates Pr.CCIT/CIT for monitoring of survey to ensure that it's restricted to the scope approved by the collegium.

The new guidelines exclude AOs/TROs from surveys. The survey team will prepare a report and share with Income Tax Business Application (ITBA) and concerned AO/TRO. New guidelines press for strict compliance with Second Schedule, Survey Manual, and Guidelines for attachment of movable/immovable properties.

Commenting on new guidelines, Shallesh Kumar, Partner at Nangia & Co LLPs said that providing stringent conditions for tax recovery proceedings by Income Tax authorities are much welcome, as it will reduce the arbitrariness/subjectivity and permit authorities to take coercive action only after following the due procedure under the law.

Delhi HC admits petition challenging Faceless Income Tax Appeal Scheme

Petitioner seeks direction to I-T Dept to give an opportunity to hear all assesseees

SHISHIR SINHA

New Delhi, October 18

Within three weeks of its launch, the Faceless Income Tax Appeal Scheme is under judicial scrutiny with a petition in the Delhi High Court challenging it.

The Court has issued notice to the Government. The matter will now be heard on December 15.

Clearing cases

On September 25, the Centre launched the 'Faceless Income Tax Appeal' to further ease compliance and reduce physical interface between assessee and the I-Tax Department.

It was envisaged that out of the 4.6 lakh appeals pending before the Commissioners (Appeals), 4.05 lakh (88 per cent) will be handled under the new mechanism. Almost 85 per cent of the present strength of Commissioners (Appeals) will be utilised for disposing of cases under the faceless appeal mechanism.

The petition filed by one Lakshya Budhiraja says the right of being heard, even through the video conferencing mode will be subject to the approval of the Chief Commissioner or the Dir-



Arguments

- Discretionary power against assessee
- Right to provide hearing
- No person should be judged without a fair hearing
- Not giving fair hearing against Article 14 of Constitution

ector General and therefore discretionary. It was also said that the right to provide or not to provide a hearing in the matter is also against the principle of *audi alteram partem*, meaning "no person should be judged without a fair hearing".

The petitioner sought a direction to the tax department to grant an opportunity of hearing to all taxpayers/assessee and to hold that the same is not at the discretion of the Chief Commissioner or the Director General as proposed in the scheme.

He prayed for a declaration that the scheme is discriminatory, arbitrary and illegal to the extent it provides a virtual hearing as per the circumstances to be approved by the administrative authorities under the Income Tax Act, 1961.

Experts' take

According to Shallesh Kumar, Partner at Nangia & Co LLP, since its introduction, taxpayers have been apprehensive about the efficacy of this system, as income tax appeals often involve complex issues that may not be sufficiently explained based on written submissions alone and a personal explanation may be required before the appellate authority.

Awaiting decision

However, an opportunity to make personal representation through video conferencing would require prior permission of the Principal Chief Commissioner/ Director General and involves an element of discretion.

"Taxpayers will be eagerly awaiting the final decision of the Delhi High Court in this writ petition challenging certain provisions of the Faceless Appeals scheme and any decision of the High Court will be very important for successful implementation of the Faceless Appeals scheme," he said.