



CHALLENGES
AVENUES
ACTION

Chartered Accountants Association, Ahmedabad

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Date:- 28/09/2017

To,
The Pr. Chief Commissioner of Income tax,
Gujarat,
Ahmedabad

Respected Sir,

Ref:- No. PCCIT/ABD/HQ-Coord./Inser. Rule 39A / 2017-18, dated 20/09/2017

Sub:- Comments and Suggestions – Draft Notification for insertion of new rule 39A in the Income tax Rules, 1962.

Brief Background

We refer to the notification (F.No. 370142/27/2017-TPL) dated 19/09/2017 seeking comments and suggestions from the public on the proposed Rule 39A. We write to you for and on behalf of our members in this regards.

Comments on the insertion of the new Rule 39A

In our opinion, the insertion of the new Rule 39A is not justified or befitted on the following grounds:

1. Increased unnecessary compliance burden

In our considered opinion, it appears that the proposal for introduction of a new Rule 39A in the Income-tax Rules, 1962 is not found to be fair. The implementation of the new rule will further increase the already existing heavy compliance burden on tax payers. Even the Form effectively requires periodic computation of income and expects tax payers to give reasons for less payment of advance tax compared to the earlier year

Apart from the above, interestingly, this rule is sought to be made applicable to assessee covered by any of the Clauses of Sec 44AB. Accordingly, will apply to small assessee also if they do not declare income on presumptive basis as provided in Sec.44BB, 44AD, 44ADA etc. Again, it seems that all foreign companies, being assessee, may also get covered by the proposed Rule 39A(1).

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2. Tax payers are already aware of their obligations

Tax Payers in our country are already aware of the provisions of the Advance Tax and even the Department has been pro-active in this regards by sending timely notices as well as communicating over the call reminding the assesses about their obligations for payment of advance taxes. Introduction of a new rule may affect the tax payers since it would amount to commencement of the assessment proceedings even before the furnishing of the return of income.

3. Might be used as a tool for high handedness

Though the requirement looks simple and straight forward, it might become a handy tool for those few bureaucrats who may misuse their powers to harass the tax paying community

It also ignores the very object of the scheme of advance tax introduced from A.Y. 1988-89. Such a rule, in practice, is likely to become a source of arm twisting exercise and harassment for meeting unrealistic collection targets, more so for tax compliant community of assesseees, as is evident from recent newspapers reports.

4. Taxpayers already paying interest for deferment of advance tax

The moot question is whether a businessman who is already suffering because of the current economic slowdown and a lot of compliance, should keep on explaining his misery to the taxmen during the year or should he be allowed/encouraged to concentrate on improving the performance? No prudent tax payer would like to defer payment of advance tax at the huge cost of interest that is levied u/s. 234B and 234C of the Act.

It should also be appreciated that ultimately, it is a question of making estimate of current business profit which will be based on so many uncertain factors and the perception of businessman which will vary from person to person, business to business and case to case. How can Government expect a businessman to earn every year minimum 90% of profit compared to the earlier year or otherwise, explain his misery to Taxman during the year itself?

5. The rule seems to be impracticable

The rule proposed to be inserted also seems to be impracticable since it would require the assesseees to draw up their books of accounts on a regular basis, provide for depreciation, account for other statutory adjustments etc. This exercise at regular intervals puts up unwarranted compliance burden on the tax payers.

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6. Difference between the action and words of the Government's principles

We strongly believe that the present government is committed to reduce corruption and eliminate tax-terrorism. However, the proposal for introducing Rule 39A is diametrically opposite to this commitment. The long-term impact of such a provision, in the context of the existing environment in our tax-administration should be openly and publicly discussed and debated before conceiving such a provision for achieving a short-term goal of collecting some extra advance-tax, which in any case needs to be refunded with interest in later years.

Recently the Hon. Prime Minister had mentioned, while addressing senior tax-officials, that a major part of the tax collection is received by the Government by way of advance tax and TDS and enactment of such a rule will serve as a punishment for the tax payers of the country in light of the huge voluntary compliance burden. In fact, in the same address, the PM also pointed out the existing wide gap of trust deficit between the tax-payers and the tax-department. Such a move is only going to further widen this gap.

6. Punish the evaders and not the honest taxpayers

Tax evaders, in any case, do not pay advance tax and such community should be dealt with differently in the strictest possible manner, but all assesseees cannot and should not be placed in such category.

Conclusion

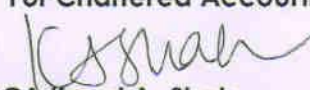
Therefore, on behalf of the tax paying community and on behalf of the tax professionals who assist the tax payers in honestly complying with the tax laws of the country, we strongly urge you to drop the proposal of introducing Rule 39A into the Income-tax Rules, 1962

Assuring you and the Government of India our fullest support in the massive nation building exercise that is in progress.

Thanking you,

Yours sincerely

For Chartered Accountants' Association, Ahmedabad


CA Kunal A. Shah
President


CA Rajni M. Shah
Chairman- Legal & Representation Committee of Direct Tax

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