



THE

NEWSLETTER

Bulletin of the Income Tax Gazetted Officers' Association, WB Unit
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EDITORIAL

Dear Friends,

As I sit down beside my writing desk preparing the editorial for the third edition of this series of newsletter I can see cotton-like white clouds floating on the azure background, heralding the annual visit of mother goddess to her paternal abode. Durga Puja, the much awaited festival of this region is round the corner, but alas!, there is no complementary good news for the taxmen on the horizon.

The mandarins in Central Board of Direct Taxes are still claiming to be burning midnight oil over calculation of vacancy position in the cadre of ACsIT. It is strange why this effort in finalising a figure is taking so long when the entire process should have taken few days. By this time we have come to realise that the shadow boxing exercise was nothing but an attempt in stone walling the promotion of the Income Tax Officers who are now in their fifteenth year of waiting.

On the collection front the government is unlikely to meet the direct tax collection target for the third year running and the finance minister's plan to expand the tax base by a crore will also not be met because the department is severely short staffed with almost 30% of the sanctioned posts lying vacant. The target for 2015-16 is Rs 7,97,995 Crore. The collection till September 21 was Rs 2,86,766 Crore which clearly indicates that, if no urgent measures are undertaken to revamp the abysmal infrastructural condition and mitigate acute staff shortage, we will reach nowhere near the ambitious target set in the Central Action Plan.

In the last MC meeting held at Chandigarh in July'15 the CHQ was given the mandate to embark on the path of agitation after taking our counterpart in JCA in confidence, if the CBDT does not act positively within a time frame. Accordingly the Central JCA met in Ghaziabad and chalked out a program of action over a five point charter of demand. The agitation which has started on 09.09.15 has gathered momentum with each passing day and would culminate into a one-day strike on 08.09.15 if the CBDT refuses to see reason. So far the attitude of the CBDT has been doling out mere assurances rather than delivering on its promises, as was witnessed in the last meeting with Central JCA held on 16.09.15. I am confident we will be able to force the CBDT on its knees through our concerted action and rock-solid unity.

At the local level some change in the situation has been witnessed with the resumption of charge by the permanent Pr. CCIT. Thanks to the constant effort of the members of JCA, the work on N R Parmar related matter has gathered steam and 34 promotions to the Grade of ITOs could be effected after relentless persuasion. A few promotions to grade of A.O., Gr-II, A.O., Grade-III and P.S could also be ensured. We congratulate and welcome all the new entrants to our organisation. The transfer postings have finally been completed for all cadres at the state level to the satisfaction of our members in spite of all efforts of the authorities to adopt partisan stands. The rehabilitation of CIT-5 charge to Aayakar Poorva is finally over, though problems relating to AST nodes still persist. We are trying our best to mitigate this problem at the earliest. Meanwhile the issue of diversion of 1,633 posts out of West Bengal charge has again assumed serious proportion following the reconstitution of the 3rd committee to deliberate on the issue, after its first two incarnations lapsed into oblivion without producing any fruitful result. This has forced the local JCA to launch an agitation to ensure that the posts are not siphoned off at any cost. Simultaneously we have approached all the quarters with statistics to stall this ill-conceived move on the part of CBDT.

At the national stage, ITGOA joined hands with other employees and workers in making the All India strike on 2nd September a grand success. The massive participation of the workers, employees, teachers, professors should drive home the message to the NDA regime that if it persists with its anti-people policies the general people will not accept it.

I therefore close this letter with greetings for Eid Mubarak, Sarodiya, Vijaya Dasami and Dipavali in advance, along with an appeal for forging unity of all workers and employees for "If we all stand together we are a force that can shake the whole world".

Sayantana Banerjee
(General Secretary)

REGIONAL

Promotion from ITI to ITO and posting order: After a long waiting period the coveted promotion to the grade of Income Tax Officer has materialised. The said order finally saw the light of the day on 07.08.2015. Altogether 34 IsIT have been promoted to the post of ITO. The promotion was overdue and could not be given because of litigation before the Central Administrative Tribunal, Kolkata. With this promotion and finalisation of NRP with respect to the case before the CAT – the case has finally disposed of. All the 34 newly promoted ITOs were invited in the Association Room at Aayakar Bhawan to welcome them to the fold of ITGOA. All the office bearers and other senior EC members were also present and interacted with the newly promoted ITOs. Within a week of the promotion, posting order was passed on 13.08.2015 and all the officers have taken over their first charge as Income Tax Officer.

Shifting from Poddar Court: It was decided in the meeting of the JCA, WB with the Pr.CCIT in the month of March that office of the CIT-5, Kolkata would be shifted to Aayakar Bhawan Poorva in this F.Y. At that point of time, we alerted the Administration about taking full preparation well in advance of the final date for vacating the Building. The shifting order was issued on 11.05.2015 fixing 30.06.2015 as final date for vacating Poddar Court. But unfortunately, the shifting could not be effected within the given time frame and we had to approach the administration for extension of date and it was decided to extend the deadline by another month to 31.07.2015. We were given categorical assurance that everything had been planned. But in reality, there has been another show of poor planning and poorer execution. There has really been no planning for shifting worth a mention. Things started moving in the month of July after the intervention of the JCA. Finally the shifting of the offices of Poddar Court building to Aayakar Bhawan Poorva was completed in the month of July, 2015. But again there were lapses on the part of administration because of lack of proper planning for accommodating the officers and staff members in the Aayakar Bhawan Poorva. Again ITGOA had to take initiative to sort out the problem.

1,633 post phase out agitation: It may be recalled that as per the annexure 'N' of scheme of distribution of posts in the CRC '2013 it was proposed to phase out 1,633 posts from West Bengal & Sikkim charge in four years starting from 2015. Following intense agitation by the JCA West Bengal, the CBDT was forced to put on hold the phase-out scheme and formed a review committee, which was asked to examine the issues thoroughly and submit its report. However this committee became defunct even before submitting its report. Another committee was formed which also failed to submit any report. Recently a third committee under the chairmanship of Ms. Vismita Tej, ADG (HRD)-2 has been formed on 21.08.2015 to oversee the same mater. This committee held its first meeting on 26.08.2015 and its final meeting was scheduled to be held on 10.09. 2015. This committee was expected to submit its report thereafter. The JCA representatives Com. Rupak Sarkar, Secretary General ITEF (CHQ), and Com. Ajay Goyal, President ITGOA (CHQ) had strongly argued against this ill motivated move of phasing out of 1,633 posts from our charge. Apprehending that a section of CBDT is still trying to alienate West Bengal from rest of the country, the JCA West Bengal took a resolution in its meeting on 28.08.2015. The meeting decided to launch an intense agitation which may eventually stop the regular office work of this region, if the CBDT fails to deliver justice to this region. Accordingly, a sit-in dharna was held in front of the Pr. CCIT's Chamber from 07.09.2015 to 10.09.2015 and members from all the buildings of Kolkata spontaneously participated in this dharna programme. The dharna programme was suspended on 10.09.2015 as the meeting of the review committee scheduled to be held on 10.09.2015 was postponed.

JCA agitation on 5 point charter of demand: At the call of central JCA, the JCA West Bengal also started taking part actively in the agitational programme on five point charter of demands.

We organised a lunch-hour demonstration and gate meeting at Aayakar Bhawan on 28.08.2015 in support of the call given by the central JCA. All the members of JCA in our region wore Black Badges on 30.08.2015 as part of the call. On 9th September 2015 the local unit of JCA after lunch hour demonstration in front of the Chamber of Pr. CCIT, served notice to Pr. CCIT, West Bengal & Sikkim, for agitational programme which includes half day walk out on 01.10.2015 and one day strike action on 08.10.2015. On 15th September 2015 day-long dharna was organised in front of Pr. CCIT's office and in mofussil stations in front of respective Pr. CIT's office.

Meeting with Pr.CIT, Durgapur: Our members at Durgapur were not happy with the attitude of the Pr. CIT of Durgapur and they requested to send a JCA delegation from Kolkata to meet the Pr. CIT. Accordingly, a JCA delegation went to Durgapur and held a meeting with the members first. Then the delegation had a long meeting with the Pr. CIT and the grievances of our members were pointed out to the Pr.CIT. The JCA delegation categorically stated that no misbehaviour on the part of the Pr. CIT can or will be tolerated.

Press conference: As part of our agitational programme on five point charter of demands, JCA West Bengal held a press conference at Press Club Kolkata on 23.09.2015. In this press conference all the leading print and electronic media were invited. Almost all the leading print media and a few electronic media attended the press conference. The press conference was addressed by the Secretary General of ITEF (CHQ) Com. Rupak Sarkar, President ITGOA, WB Unit, Com. Mrinal Kanti Chanda, General Secretary, ITGOA, WB Unit, Com. Sayantan Banerjee, General Secretary, ITEF, Gr.C, Bengal Circle, Com. Sumit Bose. All of them briefed the press on the charter of demands as well as the attitude of CBDT and future course of action the JCA is going to undertake. Press conferences were also organised in Asansol, Burdwan and Siliguri on the same day, and most of the print media published this news with due importance.

Workshop of corporate ITOs: The workshop sub-committee, ITGOA, WB Unit headed by Com. Subhomoy Dutta conducted a workshop at Multipurpose Hall, Aayakar Bhawan on 25.08.2015 on assessment of corporate assessee. It was meant for the ITOs posted in corporate charges for the first time. The course was formulated by Com. Biplab Gangopadhyay in such a fashion, that almost all the common practical issues encountered in the field of corporate charges could be taken care of through interactive sessions. Senior officers of the department having vast knowledge in Income Tax Provisions and experience of working in the field were chosen to impart their field experience to the participants also—who could explain the nitty-gritty of income tax provisions and how to apply them in the field. Around 30 officers, newly posted in corporate charges, participated in this workshop and their participation was spontaneous. The course ran from 02:00 PM to 07:00 PM. The speakers, Shri Prakash Nath Barnwal, JCIT, Shri Nilay Baran Som, JCIT and Shri Dinabandhu Naskar, JCIT, discussed the problems usually faced in the corporate charges. They also responded to all the queries raised by the participants through issue based discussion in detail along with the references to the latest case laws. The participants at the end of the course expressed their satisfaction that this course would help them a lot in handling the issues related to assessment in the corporate charges. The cooperation from both the participants as well as the speakers was really overwhelming – without which this workshop would not have seen the light of the day.

Phalguni Mukherjee - Rajarshi Dasgupta Memorial Lecture: Organised on 17.09.2013, Phalguni Mukherjee - Rajarshi Dasgupta Memorial Lecture was a gathering of over 600 members and guests at the Kala Mandir auditorium. Prof. Haragopal spoke on State of Human Rights in Contemporary India. Prof. Sobhan Lal Dutta Gupta deliberated on Neoliberalism and Indian Democracy : The Cultural Effect. Both the lectures were lively and had the audience

spellbound. Both of them were followed by plethora of questions from the audience. The lecture is an attempt of the association to give our members a closer perspective of some of the contemporary issues involving the nation as a whole, and an occasion to interact with the brightest minds in the nation. This is also to assimilate and thereby re-assert the unity of the Income Tax Gazetted Officers.

BGM of North Bengal unit: The Biennial meeting of the members of ITGOA, North Bengal Branch was convened on 17.07.2015 at Aayakar Bhawan. This meeting was conducted by Com. Mrinal Kanti Chanda, President of the ITGOA, WB Unit, Com. Sayantan Banerjee, the General Secretary, Com. Sumit Roy, Vice President and Com. Sanmoy Das Ghosh, Joint Secretary of the state unit. The following members were selected by the members as office bearers and members of executive committee for the term 2015-2017:

1	President	Com. Khedup Bhutia
2	General Secretary	Com. Dhiraj Singha
3	Treasurer	Com. Niren Singha
4	Vice President	Com. Norbu Bhutia
5	Vice President	Com. R. N. Roy
6	Joint secretary	Com. Bhupesh Gautam
7	Joint secretary	Com. Rani Lama
8	Exec. Member, Jalpaiguri	Com. Bibhas Ghosh
9	Exec. Member, Siliguri	Com. P.T. Sherpa
10	Exec. Member, Jalpaiguri (A.O/P.S)	Com. Amulya Toppo

11	Exec. Member, Siliguri	Com. S. K. Khati
12	Exec. Member Malda	Com. Raj Kishore Gupta
13	Exec. Member Cooch Behar	Com. Biplab Basak
14	Exec. Member Alipurduar	Com. Chandan Bharti
15	Exec. Member Balurghat	Com. B. P. Saha
16	Exec. Member Raiganj	Com. T. Dutta
17	Exec. Member Darjeeling	Com. S. Khambachay
18	Exec. Member Kalimpong	Com. R. L. Sherpa
19	Exec. Member Gangtok	Com. L. D. Lepcha

EC Meetings: After the publication of April-June, 2015 issue of Newsletter, two EC meetings were held in two different buildings. One EC meeting was held at Aayakar Bhawan Uttar (Uldadanga) on 22.07.2015 at 4:00 PM. All the general members of the Aayakar Bhawan Uttar building participated in this meeting and a lot of issues were discussed with the active participation of the general members. As no EC members could be posted in this building a committee was formed to look after the issues of the general members under the convenorship of Com. Jiban Krishna Saha who will be assisted by Com. Subhendu Biswas and Com. Subir Pal. Another EC meeting was held at Aayakar Bhawan Poorva on 10.08.2015 at 4:00PM. In this meeting also, most of the general members of the building participated. Secretary General ITGOA(CHQ), Com. Bhaskar Bhattacharya also attended the meeting and spoke on various issues raised by the general members.

NATIONAL

Managing Committee Meeting: Last MCM of ITGOA was held at Chandigarh on 26-27th July, 2015. The meeting was attended by the CHQ members, secretariat members, delegates from all the units. The member (P&V), CBDT was present in the inaugural session. In his address, the member(P&V) discussed the up-to-date status and the CBDT's stand on different pending issues. He also answered the questions raised by the members present. Whatever may be his replies to those queries, one thing is for sure that he could feel the level of frustration and anguish prevailing among the members of ITGOA. Com. Ashok Kanojia, President, ITEF CHQ, also attended the meeting on the second day. In his speech, Com. Kanojia expressed the solidarity for unified struggle under the banner of JCA to settle the long pending issues bothering the JCA members.

In the business session, the Secretary General first briefed the house regarding the decisions taken in the earlier MCM held at Indore, action taken by the CHQ so far, developments taken place and proposed future course of actions. He requested the members present to discuss the issues extensively and direct the CHQ in clear terms regarding the next course of action for the ensuing six months. Intense deliberation took place over the next two days. The decisions taken on important issues are as under:

Promotion to the Grade of ACIT: Restriction of promotee quota to the number of DR intake is not acceptable; form of agitation to be finalised in Central JCA meeting to be held after CWC meeting of ITEF at Gurgaon; charter of demands should be restricted to select few; notice of agitation to be issued thereafter; agitation to be initiated with non-cooperation programme; agitation to be stepped up gradually, as a prolonged agitation is expected.

NRP Implementation: Units are requested to file documents in support, if amendment in existing advisories for any particular examination year is required; however implementation to be carried out on the basis of existing advisories without waiting for any further amendment; no decision taken on the claim of the Units already completed the entire exercise for revision in All India Seniority List. Initially Examination years 1991, 1993, 1995, 1996 & 1999 were

identified, for which CHQ would circulate draft letter to be issued to the Board asking for amendment in existing advisories. It was desired that all the regions should come out with final seniority lists along with the principles followed in order to ensure uniformity in implementation across the regions.

7th CPC: As decided in the earlier MCM, CHQ met the 7th CPC separately, as well as a part of the CCGGOO delegation and pursued the demands placed through the memorandum already submitted.

IRS Recruitment Rules: The desired corrections/amendments could mostly be brought in the IRS Recruitment Rules and the interest of the members was substantively protected. IRS Recruitment Rules was finally notified on 29.04.2015.

Pentafurcation Issue: CHQ met the authorities at all possible level to pursue the issue, though the meeting with the FM couldn't be arranged. As two years had already passed on the one hand, and the complexities involved had created bottlenecks, as well as the ad-hocism practised earlier in vacancy calculation had played havoc, the issue of pentafurcation had lost its relevance to some extent. However, the CBDT has committed to pursue the issue of revival of 398 posts in AC/DC cadre, which had been arbitrarily discarded during finalisation of CRC proposal, once the ACIT promotion would be completed.

AO-PS Grade Pay: It was decided that the CHQ would bear the cost of the case filed by Zameer Ahmed Khan. The CHQ was hopeful that the pending case in the Principal Bench would be fully heard during the next hearing, though the case hadn't been taken up for hearing in the last several occasions. It was further decided that the possibility of changing the nomenclature of the posts in AO-PS cadres would be examined in order to break away from the 'common cadre' tag.

AO-PS Commensurate Posts: CHQ had put the draft note on their website. As no amendment/suggestion had been proposed, the same was sent to the Board, and the same is being examined by the HRD.

Laptops: The proposal for renewal of old laptops/ new one for ITOs promoted after 2008 was being considered by Department of Expenditure and is expected to be cleared soon. The proposal for AO –PS cadres had once again been rejected. The draft note as asked for by the CBDT had been put on the website. As no amendment/ suggestion had been proposed, the same was sent to the Board, which is being examined by the DG (Logistic).

Group B & C Recruitment Rule: The Recruitment Rules proposed by the Board to the DOPT differed on certain points from what had been suggested by the Sub-committee or discussed with the JCA. Central JCA had already registered its objection and asked the Board to take the stakeholders into confidence to suitably amend the proposal. Central JCA has been asked to submit a note, which would be submitted soon.

AGT 2015: From the discussion, it appeared that the AGT, 2015 had been quite satisfactory barring some cases. A meeting of the representatives of TN & Pondicherry Unit could be arranged with the Member (P&V) during his visit to the MCM to discuss the transfer of certain ACIT members of that region to places not mentioned in their options. NER Unit also reported that its members had been transferred out despite being a severely deficient zone. CHQ requested all the units to report such cases immediately for persuasion. It was further decided that the CHQ would pursue to implement AGT to AGT principle in JCIT/Addl. CIT grade the way it had been followed in the ACIT/DCIT grade.

Staff Shortage: Some units raised the issue of acute shortage of staff members. They demanded for immediate filling up of the vacant posts or asking the ITEF counterpart for allowing outsourcing as one time relaxation. CHQ informed that the issue would be discussed in the next Central JCA meeting.

Infrastructure: CHQ reported that they hadn't received any list of pending proposal from any of the units as per the decision taken in Indore MCM. CHQ appealed to all the units to send the list. However, WB unit had already submitted the list just before the Chandigarh MCM.

01.01.96 –Court Case: Mumbai Unit suggested to engage some big name to ensure hearing of the case, which had not been taken up for last several occasions, despite being listed. Mumbai Unit was authorised to examine the matter and appoint any such advocate accordingly. The professional charges would be borne by the CHQ.

On-going Agitation: It was decided in Chandigarh MCM that the attempt of the CBDT to restrict the number of promotional vacancy in ACIT to that of DR intake couldn't be accepted and CHQ was authorised to launch agitational programme, as and when required. However, the Board maintained its rigid stand on that issue. Hence the matter was discussed in Central JCA meeting and the charter of demands as well as agitation programme to be launched was finalised. As all the attempts to settle the issue has failed, Central JCA launched the agitation programme w.e.f. 09.09.2015 for settlement of its five point charter of demands:

(i) Immediate promotions to the grade of ACIT (ii) Adequate Infrastructure for all Officers & Officials (iii) Immediate filling up of all vacant posts (iv) Regularization of DPLs against MTS posts and (v) Immediate finalisation of Group B & C cadres' Recruitment Rules.

The agitational programme was finalised considering the need for stepping up in future and initially conceived in the following manner:

(i) Wearing Black-Badge on 31-08-2015 (ii) Lunch Hour Demonstration on 09-09-2015 in the o/o the Pr. CCIT and all other CCsIT/Pr. CsIT (iii) Service of notice on 09-09-2015 for one-day strike (iv) Non-cooperation movement from 09-09-2015:

(a) Stoppage of work in respect of widening of tax base (b) No work relating to I&CI (c) Non adherence to artificial deadlines (d) Black-Flag demonstration before the visiting Chairperson and the members of CBDT (e) Day Long Dharna on 15-09-2015 in front of the o/o the Pr. CCIT and all other CCsIT/Pr. CsIT (f) Half-day Walk Out from 2:00 PM on 24-09-2015 (g) One Day Strike Action on 08-10-2015. Later non-submission of report except CAG & Parliament Report was included in the non co-operation programme w.e.f. 15.09.2015. The date of Half Day walkout has also been deferred to 01.10.2015. Later the Member (P&V) met the Central JCA leadership to discuss the demands on 16.09.2015. However, the steps taken by the Board, as reported, were found to be far from satisfactory. Hence, it has been decided to continue with the scheduled programme. So far, 100% participation has been observed in agitation programme. The attitude of the CBDT suggests that it is going to be a long struggle, but all the demands will definitely be clinched.

Participation in All India Strike on 02.09.2015: It was decided in Chandigarh MCM that ITGOA would follow the decision of CCGGOO regarding participation in the strike on 02.09.2015, called by 12 Central Trade Unions and various Service Associations including CCGE&W, in which ITEF is a constituent member, against the unemployment, for revision of minimum wages, for job security, against contractarization & labour reforms etc. However, CCGGOO leadership supported the strike but left the decision to its constituent members as to whether to directly participate in the strike or support it in other ways. ITGOA CHQ took a bold step by deciding to participate in the strike to pursue the 12 points charter of demands of CCGE&W responding to the call of unified struggle of the working class. Though the decision of participation was taken very late, still the participation of our members in the strike action was 100%.

All India Promotions: 67 DCsIT (mostly of 2006 Batch) were promoted to the grade of JCIT on Ad-hoc basis on 13.08.2015 vide the Board's Order No. 140 of 2015. All of them have been retained in their respective regions. 5 officers of WB region were promoted vide the above said order. 29 Ad-hoc Principal CsIT were regularized on 01.09.2015 vide the Board's Order No. 152 of 2015. Further, 171 Addl. CsIT (1992, 1993 & 1994 Batches) were promoted to the grade of CIT on 16.09.2015 vide the Board's Order No. 171 of 2015. 6 officers of WB region were promoted vide the above said order.

All India T&P Orders: Some of the JCsIT, who had completed cooling off period normally, were ignored during the AGT, 2015. The said omission have been rectified by the Board in its order dated 24.07.2015. As a result two JCsIT, whose case had been ignored during the AGT, 2015 were returned back to West Bengal.

T&P Guidelines: A committee was constituted by the Board to examine the All India T&P Guidelines, 2010, and propose suggestion to amend it as well as for T&P at Pr. CCIT Level/ Local Placement Committee level. The Secretary General and the Additional Secretary General of ITGOA (CHQ) were nominated as the members to the said committee by the CHQ. A few meetings of the said committee have already taken place. The CHQ have asked all the units to send detail of sanction strength vis-a-vis working strength in the grades of ACIT/DCIT and JCIT/Addl. CIT and break up of posting (Corporate, Non-corporate business, Investigation, Central, Hqrs. etc.) on DR-PR basis to establish the biased posting pattern in favour of DRs. The Report of WB region has already been sent.

Relaxation in Residency Period: CHQ asked all the units to send details of its AO members (date of promotion and service left) so as to suggest the relaxation in residency period required to fill up the vacant higher grades in AO cadre. The desired report of WB region has already been sent.

Collection of Arrear Demand

The basic principle in respect of collection of demands by assessing officers are laid down in (i) Circular no. 530 dated 06-03-1989 (ii) Circular no. 589 dated 16-01-1991 (which is a clarificatory circular of circular no. 530) and (iii) Instruction no. 1914 dated 02-12-1993. All our members are well aware of these circulars and the instruction. These circulars and the instruction speak in unison in respect of the collection of demands in arrear.

However, it is seen that in many cases the Instruction no. 96 (in some places it has been mentioned as instruction no. 95) dated 21-8-1969 is relied upon by the assesseees to show that stay of demand has to be granted if the assessed income is more than two times of returned income. They also rely on various case laws of different Hon'ble High Courts that had upheld the validity of Instruction no. 96 of 1969.

In this connection members are requested to take note of the following while disposing of the stay petition based on Instruction no. 96 of 1969 and the case laws that upheld its validity:

- a. The instruction no. 1914 of 1993 says "This Instruction is accordingly being issued in supersession of all earlier Instructions on the subject and reiterates the existing Circulars (530 of 1989 and 589 of 1991) on the subject."
- b. Vide Letter [F. No. 404/10/2009-ITCC], dated 01-12-2009 the CBDT has again specifically stated "It is, therefore, clarified that there is no separate existence of the Instruction number 95, dated 21-8-1969all subsequent Instructions on the issue also ceased to exist the day Instruction number 1914 came into operation, i.e., 02-12-1993. The Instruction number 1914 holds the field currently."
- c. In the case of Dunlop India Ltd. (No. 1) vs. Assistant Commissioner reported in 183 ITR 528 [1990] [Cal] the Hon'ble Kolkata High Court had upheld the CBDT circular no. 530 of 1989 & 589 of 1991 and the Instruction no. 1914 of 1993. It has been upheld that instruction no. 96 of 1969 has ceased to exist.

Proviso to Section 68 vis-à-vis Section 56(viib)

Both these insertions have been made w.e.f. A.Y. 2013-14. Before the two provisions are distinguished there needs to be a short discussion on section 68. It was seen that the assesseees who had accumulated huge amounts of unaccounted money, regularly attempt to plough it back to its books as accounted-for money in the garb of capital receipts like gift, donation, exempt income and share capital or share premium. Usually this routing of black money is done through several layers of captive files and commonly known as chain transactions. To treat such bogus capital receipts as deemed income section 68 was brought in the 1961 Act. As far as the end-beneficiary is an individual there has never been any dispute in respect of applicability of section 68. For partnership firms also there was not major dispute as the interest of the firm is synonymous with the interest of the partners. In these cases there cannot be any doubt that it is the end-beneficiary's unaccounted money that has been ploughed back to his own file through chain transaction in form of non taxable capital receipt.

However, in case of companies, where theoretically the share holder's stake is limited to the value of shares he holds – it is difficult to pin point as to whose unaccounted money is channelised to the company. It is also true for public limited companies. But the private limited companies in our country are nothing but extension of proprietorship concerns. Here the promoters' unaccounted money is channelised to their companies in form of share application money. There has been plethora of case laws on applicability of section 68 in the case of share application money received by companies – both

closely held and widely held. There are case laws in favour of the revenue like CIT Vs Nivedan Vanijya Niyojan Ltd [263 ITR 623 (Kol)], CIT Vs Nova Promoters & Finlease P Ltd [342 ITR 169], CIT Vs Rathi Finlease P Ltd [215 CTR 429 (MP)], CIT Vs Nipun Builders and Developers [350 ITR 407], CIT Vs NR Portfolio P Ltd, Globus Securities and Finance Pvt Limited [41 taxmann.com 465]. It has been observed in these cases that PAN is only for tracking transactions and this is not an evidence of identity as PANs are issued on the basis of the application of the applicant, without making any verification. The identification of a person should basically include the place of work, the staff, the fact that it was actually carrying on business and recognition of the company in the eyes of the public in the immediate vicinity. It was also observed that mere fact of investing through cheque does not confer any sanctity to a transaction unless the entity making investments have its own profit building apparatus. Accordingly, the cases have to be decided based on the factual matrix of each case and the judgment of Lovely Exports which was a limited company cannot be applied everywhere blindly. Even otherwise the ratio of Lovely Exports has been often misinterpreted. While discussing the ratio of Lovely Exports [299 ITR 268], Hon'ble Justice Khanna has observed that "in our understanding, the ratio is attracted to a case where it is simple question of whether the assessee has discharged the burden placed upon him u/s 68 to prove and establish the identity and creditworthiness of the share applicant and the genuineness of the transaction. In such case the assessing officer cannot sit back with folded hands till the assessee exhausts all the evidence or material in his possession and then come forward to merely reject the same, without carrying out any verification or enquiry into the material placed before him."

In some of the judgments [like Commissioner of Income Tax vs Divine Leasing and Finance Ltd. reported in 299 ITR 268 (Del)], the Hon'ble Courts have also observed that in case of bogus shareholders the department is free to take action against the shareholders making the task of the Department more onerous.

However, this debate has been put to rest through insertion of proviso to section 68 w.e.f. A.Y. 2013-14 and the burden of proof has been made more stringent where a closely held company receives share application money. As per the new provisions these closely held companies will now have to explain the nature and source of the amounts in the hands of the shareholders also, and that too, to the satisfaction of the A.O. Failure to do so will result in the addition of entire amount received as share application money including premium u/s 68.

Section 57(iiiib) is akin to section 50C, 56(vii), 43CA. By virtue of this section, if the face value plus premium charged on shares (of course for a private limited company) is more than the FMV of the share on the day of receipt of such money then the difference becomes income from other sources u/s 57(iiiib), in the hands of the recipient company. Here no investigation is required to be caused by the AO. It's a deeming provision to deal with the cases where inquiry to establish the applicability of section 68 could not be made.

In conclusion, section 57(iiiib) may be used to add the difference between the FMV of the share and consideration received without causing any inquiry. Proviso to section 68 is to be used to add the entire amount of receipt after making necessary inquiry.

ITD UPDATES

I. Procedure for issue of notice u/s. 143(2) through system where notice u/s. 148 is generated through system

Situation 1: Assessee electronically furnished return in response to notice u/s. 148

ITD >AST>Processing>F7>Put PAN/AY>F8> Open the return filed u/s. 148>Review it>Go to AST>Asmt>Notices u/s. 148>Current Notice>F7>Put PAN/AY>F8>Put service date of notice>Save>Close>Again go to Asmt>Assessment Proceedings >Current Order>F7>Put PAN/AY > F8 > Initiate Proceedings (click pop-up menu beside r/w & click 147 read with 143(3) from the generated list)>Save>notice u/s 143(2) will be automatically generated in the top of the screen>Click on Generate notice>Put date of attendance & time>Yes>Save>Print notice.

Situation 2 : Assessee filed manual return in response to notice u/s. 148

ITD>AST>Processing>Returns>Enter the return details > Save > Review then follow the rest of the path as mentioned above

II. Unblocking of refund:

In the previous Newsletter [April-June Issue] we gave the path for blocking refunds to facilitate the migration of PAN. When PAN

has been migrated to the jurisdictional AO, this blocked refund can then be unblocked by AO through AST>Processing>Approval Workflow>Refund Unblocking>Refund blocked by AO>Send Requests to unblock>Submit Request to Unblock Refund and take the approval for the same.

III. Issuance of manual refunds by AOs

From July, 2015 manual refund can be issued after following the procedure laid down in AST Instruction no. 136 dated 10-07-2015. Approval from higher authority must be taken before issuing manual refund. For refunds up to Rs. 1 lakh approval is to be taken from the range head. For greater amount approval from CIT is mandatory. Further such manual refund has to be entered in the system within 10 days of issue of the refund voucher. The cheque date cannot be greater than approval date. A separate ITD Functionality/screen is being rolled out vide Instruction No.136 to capture important details for manual refunds issued by the AOs. AOs should mandatorily fill these details before issuance of any manual refund from the date of issue of the said Instruction. The path of this functionality is as under:

“ ITD=>AST=>Others>Manual Refund Details”

AOs can download the User Manual (Version.0) from i-taxnet.

SERVICE MATTER

LOKPAL Deadline: Vide the notification dated 27.04.2015, DOPT extended the last date of furnishing information and annual return of assets and liabilities to 15.10.2015. As the deadline has been extended few occasions in the past, it is not sure whether the deadline will be extended once more or not. CBDT is yet to come out with clear cut direction on filing of information – like to whom the return is to be furnished, basic exemption limit for asset declaration etc. However, the members are requested to be prepared with the return. The proforma, both in word and excel format are available in Utility segment of our website. For FAQ on Lokpal issue, members may visit our website (Utility Segment) or DOPT’s website.

Verification of Service: Vide the OM dated 16.09.2015, the Department of Pension and Pensioners Welfare has once again drawn the attention of all the ministries to the amended Rule 32 of CCS Pension Rules for compulsory verification of qualifying service by the HOD after completion of 18 years of service and 5 years before the date of retirement of an employee, which is to be treated as final. This has been issued for strict compliance in order to avoid harassment and delay at the time of superannuation. Members may get their services verified as per CCS Pension Rules. The OM is available in the website of the DOP&PW and Utility segment of our website.

Representation from Government Servants on service matter: Vide its OM dated 31.08.2015, DOPT has once again sensitised the Government employees not to bypass the normal official channel or bring in outside influence in connection with any issue relating to his service right or service condition.

Leaving Hqrs.: CBDT has sensitised all the officers and officials to follow the proper procedure while leaving the Headquarters and strictly adhere to the office timings vide the O.M. dated 07.08.2015.

List of AMAs: CGEWCC, Kolkata has issued the fresh lists of AMAs vide its circulars dated 15.07.2015 for the treatment of Central Government Employees and their family members, residing or posted at places outside the jurisdiction of CGHS. The lists of AMAs are effective for the period from 01.08.2015 to 31.07.2016 and are available in “Medical” segment of our website.

Writing of APAR: CBDT has issued an OM on 10.09.2015, which has highlighted the deficiencies detected in writing /reporting of APARs and discussed the remedies. All members are requested to go through the OM available in our website (Organization Communication from CBDT).

NJRS Registration: CBDT has launched a computerized repository (NJRS) of all judgments and pending appeals related to Direct Tax cases at ITAT, HCs and SC. It will have intelligent search facilities and workflows for officers of the ITD engaged in litigation work to enable ITD to closely monitor appeals as well as carry out research and analysis on various issues. The soft-launch version of NJRS can be accessed at <https://njrs-itd.gov.in>. All members are requested to register in NJRS by providing basic information like Full Name, Designation, Employee ID, Place of Posting, official e-mail ID & Mobile No. through e-mail to njrs-user@nsdl.co.in from the individual name based e-mail account issued by the Department.

Strengthening of Administration: Series of activities have been observed on the part of the DOPT during the last month, in the name of strengthening of Administration. A couple of OMs have been issued for periodical review under Rules 56(j) and 48 of CCS (Pension) Rules. The theory of the necessity to chop off dead wood has once again been invoked. We are keeping a close watch on this sinister development.

OUTGOING COMRADES

NAME	DESIG.	DATE	NAME	DESIG.	DATE
Partha Dutta	ITO	31.07.2015	A H Khan	DCIT	30.09.2015
Dulal Chandra Saha	Sr. PS	31.07.2015	Madan Mohan Sarkar	ACIT	30.09.2015
Susanta Dasgupta	PS	31.07.2015	Pradip Barari	Sr. PS	30.09.2015
Ajit Kumar Sarkar	ITO	31.07.2015	Susanta Das	AO	30.09.2015
Prabhas Basu	PS	31.07.2015	Uma Roy (Hazra)	AO	30.09.2015
Mrinal Kanti Roychowdhury	AO	31.08.2015			