

**INCOME TAX GAZETTED OFFICERS' ASSOCIATION
WEST BENGAL UNIT**

Aayakar Bhawan, 6th floor, Room No.28, P-7, Chowringhee Square, Kolkata-700069

President : Mrinal Kanti Chanda
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Date: 01-11-2013

To
The Chief Commissioner of Income Tax (CCA), Kolkata,
Aaykar Bhawan,
P-7, Chowringhee Square,
Kolkata 700 069.

Sir,

Sub.: TDS mismatch- CBDT's Instruction No. 5/2013

Kindly refer to the instruction no 5/2013 dated 08-07-2013 which has been recently issued resulting in a lot of confusion amongst the assessing officers.

On perusal of the above instruction it is not clear whether the earlier instructions of the CBDT on the issue of TDS mismatch in respect of A.Ys. 2008-09 to 2010-11 are still valid and has raised question regarding how to issue refund or adjust demands in those cases involving TDS mismatch.

As a result of this confusion the work of adjustment of arrear demands and issuing of pending refund has come to a standstill. If this situation is allowed to continue then the following complications may occur.

1. The assesseees would suffer for no fault of theirs
2. The department would be flooded with grievance petition
3. Every charge will continue to remain overburdened with infructuous demands

We are of the view that the department should ask all the Assessing Officers to adopt uniform actions in this matter. In order to arrive at a uniform stand we shall have to consider all the prior instructions on the subject and find out their relevance.

The concept of 26AS was introduced from the A.Y. 2008-09 which mean from A.Y. 2008-09 the assesseees will get credit of TDS only if such TDS is reflected in the 26AS.

TDS mismatch

1. In the initial years maximum number of deductors either did not file e-TDS return or filed e-TDS return with wrong data. This was truer when the deductors were offices of state and central government consisting of largest deductors.
2. This caused creation of huge number of infructuous demands across Tax India.
3. To circumvent this problem CBDT first came up with an instruction for A.Y. 2008-09 and later followed it up with separate instructions for A.Ys. from 2009-10 to 2011-12. In these instructions CBDT directed the Assessing Officers to give suo-moto credit to the TDS claimed by the assessee within a band despite the credit not being shown in 26AS. No submission was required from the end of the assessee if the case falls within the band. The band varied from year to year.
4. Now instruction no 5 of 2013 is being wrongly interpreted in various charges with many interpreting that the earlier instructions are no more valid. The various instructions in this regard are illustrated in the table below.:

Table A

A.Y.	Instruction no & Date	Applicable to ITR No.	Matter
2008-09	01/2010 dtd 25-02-2010	ITR 1 & 2	Credit should be given without matching, if 1. Aggregate TDS claim up to Rs. 4,00,000/- 2. Refund up to Rs. 25,000/-
		All other	Credit should be given without matching, if 1. Aggregate TDS claim up to Rs. 4,00,000/- 2. Refund up to Rs. 25,000/- 3. At least 70% TDS claim matched
		In all remaining cases TDS credit shall be given after <i>due verification</i>	
2009-10	05/2010 dtd 21-07-2010		Withdrawn
	07/2010 dtd 16-08-2010	ITR 1 & 2	Credit should be given without matching, if 1. Aggregate TDS claim up to Rs. 3,00,000/- 2. Refund up to Rs. 25,000/- (<i>zero match excluded</i>)
		All other	Credit should be given without matching, if 1. Aggregate TDS claim up to Rs. 3,00,000/- 2. Refund up to Rs. 25,000/- 3. At least 10% TDS claim matched
		In all remaining cases TDS credit shall be given after <i>due verification</i>	
	09/2010 dtd 09-12-2010		1. For ITR 1 & 2 the limit of Aggregate TDS claim is enhanced up to Rs. 4,00,000/- 2. For NIL matching in ITR 1 & 2 credit is to be given after <i>due verification</i> 3. <i>Due verification</i> may be done in the same manner as was being done in earlier years
2010-11	02/2011 dtd 09-02-2011	ITR 1 to 6	Credit should be given without matching, if 1. TDS claim – Matching is up to Rs. 1,00,000/- 2. For ITR 1 & 2 in case of zero matching TDS credit shall be given up to Rs. 5,000/-

			3. In other returns, in case of zero matching TDS credit shall be given after <i>due verification</i> 4. TDS credit not be allowed with invalid TAN
		In all other cases TDS credit shall be given after <i>due verification</i>	
2011-12	01/2012 dtd 02-02-2012	ITR 1 to 6	Withdrawn
	04/2012 dtd 25-05-2012	ITR 1 to 6	Credit should be given without matching, if 1. TDS claim – Matching is up to Rs. 5,000/- 2. In case of zero matching TDS credit shall be given after <i>due verification</i> 4. TDS credit not be allowed with invalid TAN
		In all other cases TDS credit shall be given after <i>due verification</i>	

5. However, the problem arises when the TDS mismatch that is beyond the band. Each instruction says that in such case the credit will be given after *due verification*. Same *due verification* is also required for zero matching cases of A.Ys. 2010-11 & 2011-12. Now, Para 2 of the instruction no 9/2010 dated 09-12-2010 clarifies that *due verification* means - *in the same manner as was being done in earlier years*. In earlier years i.e. before A.Y. 2008-09 credit of TDS used to be given on the basis of TDS certificates i.e. F-16 or F-16A. So it was clearly interpreted, in several charges, that *due verification* means checking the original TDS certificate before giving credit. But confusion runs high among the Assessing Officers as well as among the supervisory officers, who, gave contradictory instructions on both the premises i.e. within the band or beyond the band. A clear instruction in this matter is required for uniform action.

6. On careful reading of instruction number 5/2013 dated 08-07-2013 reveals that it **did not set aside** the instructions mentioned in Table A. Those instructions are still valid, but instruction No. 5/2013 has also created confusion as it extends the term "*due verification*" so as to include the followings as one of the methods of *due verification*:

- i. Verification from AO TDS
- ii. Write to the deductor to file correction statement
- iii. Verification from deductors.

For this point Para 2 of instruction no 5/2013 dated 08-07-2013 states

.... when an assessee approaches the AO with requisite details and particulars in the form of TDS certificate as an evidence against any mismatched amount of the TDS the said AO will verify whether or not the deductor has made payment of TDS in the government account and if the payment is made, credit of the same should be given to the assessee.

7. The instruction no 5/2013 dated 08-07-2013 does not debar the AO from giving credit on mismatch amount on the basis of TDS certificates. If TDS certificates are furnished then there

is no need to get confirmation from deductor. Further if the AO has to get confirmation from the deductor then it does not remain *one of the methods* – it virtually boils down to the only method. In that case the accepted explanation of *due verification* no more holds well. This is very confusing as only a couple of years back it was stated that TDS certificate would suffice. So before implementing this *verification from deductors* we request that there should be clear guide line as what constitutes *verification from deductors*. Whether a letter of confirmation from the deductor is sufficient as it was in respect of A.Ys. prior to 2008-09 or the AO is required to collect more evidences, if so, then what kind of evidences?

8. Further we fail to understand what fruitful result will be achieved by referring the matters of TDS mismatch to AO (TDS). Whatever data the deductor has uploaded is available to both the Assessing Officer and the AO (TDS). The only thing AO (TDS) can do is to impose fee u/s 234E where no TDS returns have been filed from A.Y. 2012-13. Hence, we are of the view that the assessing officers may be instructed not to refer these cases to AO(TDS) as the exercise would merely leads to wastage of time and stationery.

Conclusion

In view of above discussion it is evident that we need a clear clarification from the CCIT level in these areas. Till such clarification is issued we are of the view that the assessing officers may be instructed to follow the standard operating procedure (SOP) as under:

1. For periods before A.Y. 2008-09

- a. Allow credit on the basis of original TDS certificates, if returns are available. The AO, if he/she thinks it is necessary in a particular case, then may verify the TDS from the deductor. A letter of confirmation from the deductor would suffice.
- b. If the returns are not available then the assessee will not be able to file the original TDS certificates as during those periods the original TDS certificates were submitted along with the return. In these cases
 - i. Get an indemnity bond from assessee in refund cases **AND**
 - ii. Make verification from the deductor (irrespective of refund case or not). A letter of confirmation from the deductor would suffice.

2. From A.Y. 2008-09 to 2011-12

- a. Issue refund, reduce demand suo-moto or on the basis of assessee's application if mismatch is within the bands prescribed in the instructions mentioned in Table A.

- b. For A.Ys. 2010-11 & 2011-12 no credit will be given under any circumstance in cases involving invalid TAN.
- c. Beyond the band no action to be taken
 - i. Till the time the credit is reflected in 26AS
 - ii. Or the CCIT/CIT comes up with a clear instruction with the meaning of *due verification*
 - a. Whether the AO can give credit on the basis of original TDS certificate and if so to what extent **OR**
 - b. In each case the AO has to verify from the deductor
 - c. If so, what are the documents that is to be collected from deductor (if this option is chosen then it may kindly be noted that a long time will be required to get confirmation especially from the government offices, the largest defaulter in the matter of uploading of e-TDS returns)

3. For A.Y. 2012-13

- a. In case of mismatch no credit is to be given in case of any kind of mismatch till the correct data is available in 26AS.

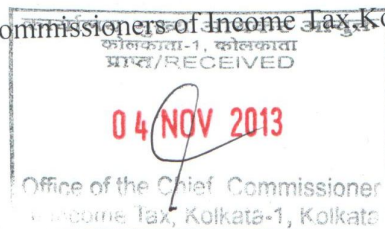
We would like to request you to kindly adopt a uniform SOP for the entire charge. Right now there are wide divergences of action/opinion among the field officers on this issue. Supervisory officers have given instructions that are not only contradictory to each other but in some cases against the instruction of the CBDT. For example in several charges AOs have been directed not to issue refund / reduce demand unless the credit is seen in the 26AS – **irrespective of the amount of TDS or refund** (i.e. not even in cases falling within the band as discussed in Table A). Unfortunately all these instructions were verbal direction and obeying such direction would land the assessing officers in great trouble.

We therefore request you to kindly issue a SOP on this matter at the earliest.

Yours faithfully,

Bhaskar
 (Bhaskar Bhattacharya)
 General Secretary

Copy to: All Chief Commissioners of Income Tax, Kolkata for kind information & necessary action.



(Bhaskar Bhattacharya)
 General Secretary

TDS mismatch