

Tax Insights

30 September 2022

CBDT notifies new Rule along with Forms for recomputation of income without allowing the claim for deduction of surcharge or cess

In brief

The Finance Act, 2022, had overturned various High Court decisions¹ on the allowability of surcharge and/ or education cess by making a retrospective amendment under section 40(a)(ii) of the Income-tax Act, 1961 (the Act). To give effect to this amendment, the Central Board of Direct Taxes (CBDT) has inserted Rule 132 in the Income-tax Rules, 1962 (the Rules), and prescribed Forms through a Notification² to provide the procedure required to be followed by the taxpayers and Tax Officers (TOs) to recompute income under sub-section (18) of section 155 of the Act.

In detail

Background

The Finance Act, 2022, with retrospective effect (assessment year 2005–2006 and onwards), has introduced an Explanation to section 40(a)(ii) of the Act to bring in a clarification that the term 'tax' includes and will always deemed to have included any surcharge and cess, by whatever name called, on such tax. In effect, the claim of surcharge or cess will be considered income-tax and should not be allowed as a deduction while computing the income chargeable under the heads 'profits and gains of business or profession'.

Sub-section (18) has been inserted in section 155 of the Act, providing that –

- The deduction in respect of any surcharge or cess, claimed and allowed in case of a taxpayer in any previous year, will be deemed to be under-reported income for the purpose of section 270A(3) of the Act irrespective of section 270A(6) of the Act, except in case where application is being filed by the taxpayer for recomputation of total income in the prescribed form and within the prescribed time;
- The TO is required to recompute the total income of the taxpayer for such previous year by making necessary amendments; and
- The provisions of section 154(7) of the Act with regard to the time limit of four years will be reckoned from

¹ Sesa Goa Limited v. JCIT [2020] 117 taxmann.com (Bombay High Court); Chambal Fertilizers & Chemicals Limited v. JCIT (ITA No. 52/2018)

² Notification No. 111/2022 dated 28 September 2022

the end of the previous year commencing on the first day of April 2021.

Mechanism provided by CBDT

To implement the aforesaid provisions, the CBDT has notified rule 132 along with various Forms, providing the mechanism for withdrawal of surcharge or cess, subsequent recomputation of income and payment of taxes (if any). Key aspects of the CBDT notification are as follows:

1. Taxpayer to file an application requesting recomputation of total income of the relevant previous year without allowing the claim of deduction of surcharge or cess in Form 69 electronically on or before 31 March 2023;
2. TO, on receipt of such application, will recompute the total income by amending the relevant order and issue notice under section 156 of the Act for the relevant years specifying the time period for payment of tax if any, and for the subsequent years if the order for such year results in variation in carry forward of loss or allowance for unabsorbed depreciation or credit for tax under sections 115JAA or 115JD of the Act; and
3. The taxpayer will furnish the details of payment of taxes in Form No. 70 to the TO within a period of 30 days from the date of making the payment.

The takeaways

The notification issued by the CBDT will put to rest the uncertainties faced by the taxpayers around the filing of application for recomputation of the total income of the year without allowing the claim for deduction of surcharge or cess.

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