

# P.R. GUPTA & CO.

## CHARTERED ACCOUNTANTS

October 27, 2020

### ‘AMBIGUITIES DUE TO EXTENDED DUE DATE FOR ITR’

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*“CBDT has further extended due date of filing income tax return to 31<sup>st</sup> December 2020 in Non-Audit cases and to 31<sup>st</sup> January 2021 for Audit cases. However some contentious issue arises which have been discussed in this Article”*

#### **I. Preamble:**

CBDT vide Press Release dated 24<sup>th</sup> October, 2020 has further extended due date of filing income tax return to 31<sup>st</sup> December 2020 in Non-Audit cases and to 31<sup>st</sup> January 2021 for Audit cases. The due date for furnishing various audit reports under Income Tax Act, 1961 have also been extended. The due date for payment of self-assessment tax has also been extended to give relief to small and medium tax-payers. However some contentious issue arises which have been discussed in this Article”

#### **II. Ambiguity in the case of extension applicable to Foreign Company :**

Due dates for filing income tax returns are prescribed in the statute itself.

Basically there are four categories as under:

- i) Transfer Pricing Report is applicable.....30<sup>th</sup> November;
- ii) In the case of company.....31<sup>st</sup> October

- iii) in the case of an assessee, other than (i) and (ii) above, whose accounts are required to be audited under this Act or under any other law for the time being in force or a partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force.....31st day of October ;
- iv) in the case of all other assessee.....31st day of July

Now as per first extension, due date was extended till 30<sup>th</sup> November 2020 in all cases. However Press release dated 24<sup>th</sup> October by CBDT has created some confusion as to Foreign companies while further extending due dates for various entities.

It is quite clear that date stands extended to 31<sup>st</sup> January,2021 in the case of entities who are subjected to audit under Income Tax Act or any other law for the time being in force and Transfer Pricing cases. This will include Indian companies and other entities who are required to get audit done. Here audit does not mean Tax Audit alone. For all other cases it stands extended to 31<sup>st</sup> December 2020.

However from the Press release, it is not clear that a foreign company who is not subjected to any audit in India will fall in which category. Press release mentions only three categories and does not include a case of 'Foreign Company'. As per section 2, company includes, foreign company. But press



release does not mention specifically 'Company'. Further a foreign company is also not covered as an entity liable to audit under any other law for time being in force unless they are subjected to some audit in India.

### **III. Anomoly due to Tax audit date being earlier than ITR due date :**

The new Tax Audit due date is specified as 31<sup>st</sup> December,2020. However in such cases, due date for filing ITR is 31<sup>st</sup> January,2021.

As per section 40(a), various expenses are allowed if TDS paid till due date of filing the return. Further as per section 43B, various payments are allowed as deduction if payment made before the due date filing the return. Also as per Delhi High court decision, the contributions received from employees under section 36(1)(va) can be paid before the due date of Return.

All these amounts paid till due date of return are to be reported in Tax Audit Report and are allowed by Department based on this report only. Now where an assessee has paid these amounts during January,2021, the same will not be reported in Tax Audit Report. Therefore assessee will face a challenge claiming these amounts.

### **IV. Interest under section 234A of the Act:**

Interest under 234 A is charged when the return is not filed within the due date. Once the return is filed beyond the due date, it is calculated on the



amount payable at the time of filing the return as reduced by tax paid as advance tax or tax deducted at source.

It is strange that the Income Tax department Utility, where self-assessment tax is more than Rs. One Lakh, is calculating interest u/s 234A even after payment of taxes. The meter stops only when the return is filed. That is to say if an assessee who was required to file by 31<sup>st</sup> July (Original Date), has paid self assessment tax in full in Aug itself but files return in November, he will have to pay interest u/s 234A for Aug to Nov.

This is contrary to correct position in Law which is explained as under:

1) Supreme Court in CIT vs Pranoy Roy (309 ITR 231) Dated- 17 September 2008 upheld the ruling of the High Court by holding .

*The High Court, while accepting the writ petition and setting aside the interest charged under Section 234A of the Act, has come to the conclusion that interest is not a penalty and that the interest is levied by way of compensation to compensate the revenue in order to avoid it from being deprived of the payment of tax on the due date. The High Court also held that interest would be payable in a case, where tax has not been deposited prior to the due date of filing of the income-tax return.*



- 2) Circular 2/2015 dated 10th February,2015 issued by CBDT clearly specify that no interest u/s 234A shall be charged on the amount of self-assessment tax paid by the taxpayer before the due date of filing the income tax return.
- 3) Rajasthan High Court in Rajasthan Tax Consultants Association Vs. Union Of India Appeal Number : D. B. Civil Writ (P.I.L.) Petition No. 21774/2018 Date of Judgement/Order : 01/10/2018 Related Assessment Year : 2018-19 held as follows:

*Having regard to the submissions aforesaid as also cited judgments, orders and taking into consideration the fact that CBDT has already extended the date for filing TARs and ITRs by those assesseees whose accounts are not required to be audited for a month without levy of any interest, we deem it appropriate to direct Respondent No. 2, CBDT to consider the representation of the petitioner-Association and take a decision on both the aspects i.e. extension of date by another 15 days and extension of due for the purpose of Explanation 1 to Section 234A of the Act for waiver of interest and decide the same by passing speaking order preferably before 10.10.2018.*



**V. Conclusion:**

The CBDT should clarify all these aspects at the earliest possible.

**ABOUT AUTHOR:**

Author is a Fellow Member of the Institute of Chartered Accountants of India (ICAI) and also Fellow Member of The Institute of Company Secretaries of India (ICSI). Author is doing CA practice and has more than 40 years of experience. He is a former Senior Vice-President of Noida Management Association, Former Chairman of Noida Chapter of the ICSI and Former Secretary of Noida Branch of ICAI.

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