



CBDT lays down the guidelines for the applicability of Section 143(1)(a)(vi) of the Income-tax Act while processing the certain return of income

Background

The Finance Act, 2016 has introduced Section 143(1)(a)(vi) of the Income-tax Act, 1961 (the Act) with effect from 1 April 2017. It provides that while processing the return of income, the total income or loss shall be computed after making an adjustment for the addition of income appearing in Form 26AS or Form 16A or Form 16 which have not been included in computing the total income in the return of income.

While processing income-tax returns filed in Forms ITR-2, 3, 4, 5 and 6, doubts have arisen regarding the nature, extent, and scope of comparison of information as contained in the return of income with Form 26AS/16A/16 which might lead to the issuance of intimation proposing adjustments in the returned income. Further, some of the information so available in the ITRs is incomparable with information contained in Form 26AS/16A/16.

CBDT Instruction:

Recently, the Central Board of Direct Taxes (CBDT) in exercise of its powers under Section 119 of the Act has issued an Instruction¹ laying down the guidelines regarding applicability of Section 143(1)(a)(vi) of the Act while considering income-tax returns for processing ITR Forms 2, 3, 4, 5 and 6. These guidelines are as follows:

- For purposes of Section 143(1)(a)(vi) of the Act, only the information contained in Form 26AS/16A/16 specified therein would be taken into consideration.

- In returns of income filed in ITR-4 Form, information about a particular head² is only on a net basis and thus, complete data/information may not be available which may enable any comparison with the data/information as contained in Form 26AS/16A/16. Therefore, Section 143(1)(a)(vi) of the Act shall not be applicable in such instances. However, if the receipts under these heads are completely omitted from the return of income, then the provisions of Section 143(1)(a)(vi) shall be applicable.
- Further in ITR-4, wherever in the return Form, presumptive income under both Section 44AD³ and 44AE⁴ is disclosed, it will be difficult to correlate the receipts in the return of income with the information in Form 26AS/16A/16. Hence, any likely difference in the receipts under these items in the return of income with the receipts in Form 26AS/16A/16 under this scenario would be excluded from the purview of Section 143(1)(a)(vi) of the Act.
- Where the presumptive income from business either under Section 44AD or profession under Section 44ADA⁵ alone are reported in the return of income and the gross receipts from presumptive business or profession shown in the return of income is less than the gross receipts as per Form 26AS/16A/16, intimation proposing adjustment would be issued.

² i.e., under the heads 'salary', 'income from house property', or 'income from other sources'

³ Special provisions for computing profits and gains of business on presumptive basis, i.e. any business except the business of plying, hiring or leasing goods carriages referred to in Section 44AE of the Act; and whose total turnover or gross receipts in the previous year does not exceed an amount of two crore rupees.

⁴ Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages

⁵ Special provision for computing profits and gains of profession on presumptive basis whose gross receipts does not exceed INR 50 lakh

¹ CBDT Instruction No. 10/2017, dated 15 November 2017

- For income-tax returns in Forms ITR-2 and 3, as receipts/income under the heads 'salary' is comparable with information available in the Form 26AS/16A/16 on a gross basis, provisions of Section 143(1)(a)(vi) of the Act may be invoked in such cases wherever applicable.
- In ITRs 3, 5 and 6, in respect of income under the heads 'income from house property' or 'income from other sources', there may be difficulties in ascertaining whether the receipt being shown in Form 26AS/16A/16 is getting reflected under the head 'income from house property' or 'income from other sources' in the ITR Form or is being treated as business income under the head 'income from business or profession' by the concerned taxpayer. Under these circumstances, any likely difference⁶ as contained in ITRs 3, 5 and 6 with Form 26AS/16A/16, being difficult to verify under Section 143(1)(a)(vi) of the Act, would be excluded from the purview of intimations proposing adjustments. However, there are certain types of income which are only taxable under the head 'income from other sources', in such situations, in case of a mismatch at a gross level, adjustments under Section 143(1)(a)(vi) of the Act shall be proposed.
- In respect of income under the head 'income from house property' being shown in ITR-2, as receipts/income are comparable with information available in Form 26AS/16A/16 on a gross basis, provisions of Section 143(1)(a)(vi) of the Act may be invoked.
- In case of business receipts being taxable under the head 'income from business or profession' which are reported in ITRs 3, 5 and 6 Forms, comparison of such receipts in Form 26AS/16A/16 with data in ITR at gross level may not be possible as receipts shown in Form 26AS/16A/16 would get subsumed in the consolidated income in P&L account. Further, items in the P&L account such as commission, interest, etc. may be shown on a net basis whereas the details in Form 26AS/16A/16 are reported on a gross basis. Hence, any likely difference in business receipts as contained in ITRs 3, 5 and 6 with Form 26AS/16A/16 is excluded from the purview of intimations proposing adjustments under Section 143(1)(a)(vi) of the Act since they may not be comparable.
- In case of income under the head 'capital gains' being shown under any of the ITR Forms⁷, for purposes of Section 143(1)(a)(vi) of the Act, the information of payment, which may span multiple

years, being reflected in Form 26AS/16A/16 and the information being captured in the ITRs may not be comparable. Therefore, Section 143(1)(a)(vi) of the Act shall not be applicable in case of income under the head 'capital gains' being shown under any of the ITR Forms, i.e., 2, 3, 5 and 6. However, the credit for tax which is deducted at source and paid to the credit of the central government shall be governed by section 199 of the Act read with Rule 37BA of Income-tax Rules, 1962 (the Rules).

- Further, information in Form 26AS/16A/16 regarding Tax Deducted at Source (TDS) on immovable property in the case of persons engaged in real estate, etc. may be in the nature of business income, Section 143(1)(a)(vi) of the Act would not be applicable on them.

Our comments

As per news reports, while issuing intimations under Section 143(1), in a large number of cases, notices have been issued to taxpayers pointing out discrepancies in the income shown in the return of income. These notices are based on a reconciliation done by the Centralised Processing Centre (CPC) between Form 26AS, Form 16 (in case of salaried tax payers), 16A (other taxpayers) and the figures reflected in the ITR forms. In most cases, the notices state that the difference between the figure as per the ITR and the figure as per Form 16/16A/26AS represents under reported income or over reported deductions, and therefore adjustments will be made in the intimation to be issued under Section 143(1) of the Act.

It is pertinent to note that the adjustments proposed to the income based on such a comparison will only add to the problems faced by taxpayers. It seems that in genuine cases also, the income tax return has been treated as defective return under Section 139(9) of the Act to the extent of mismatch under the heads business income, salary, capital gains, other sources, etc. Thus, in such cases, while processing the return, non-existent defects are pointed out by the CPC, and the return is treated as defective. The receipt of notices of defective returns not only negate the stated objective of the government but also create challenges and hardship for the taxpayers.

The guidelines issued by CBDT regarding the applicability of Section 143(1)(a)(vi) of the Act is a welcome step. These guidelines will help in reducing the difficulties faced by taxpayers in such cases.

⁶ Difference in income shown under the head 'income from house property' or 'income from other sources'

⁷ i.e. 2, 3, 5 and 6

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