



The Institute of Chartered Accountants of India

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NEWS LETTER

THE ANANTAPUR BRANCH OF SIRC OF ICAI

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EDITORIAL

It is commonly heard that **money makes many things and also money makes man mad**. The whole economy is based on money and for any service or goods the consideration is by way of money. Though earning money by a right means is the right of every person/organization, unfortunately it is a known fact that earning money by illegal and foul means has become art/ order of the day though the Government stipulates and monitors the whole financial activities to be carried on in a right manner. Unfortunately there are black sheep in all walks of life who are accustomed to carry on unrecorded transactions which result in **"Black Money"**.

The most common areas for generation/accumulation of Black money are basically:-

1. Suppression of value of property at the time of registration and actual consideration received over and above the registered value. Here, the purchaser is paying more amounts beyond the registered value out of his unaccounted amount and the seller is accepting the additional amount beyond the registered value which is becoming black money in his hands. This is happening in purchase of plots, lands, buildings and so on and so forth.
2. Offering money for getting a favor from Government officials by the beneficiary which is again paid from out of the black money which is again giving scope for the worst affected social disease/stigma known as corruption/Bribe.
3. Another area of generation of black money is in case of appointments in Governments, getting seats in educational institutions especially in engineering colleges and more so in medical colleges by way of donations/capitation fee.
4. It is quite often seen in News papers and experienced by many business concerns where most of the transactions i.e., purchases and sales are not recorded which in turn these transactions are resulted in accumulation of unaccounted money, known as black money.
5. Investment in gold and other valuable ornaments without accounting the same.
6. Deposits with foreign banks through tax havens.

These are the few examples which are the cause for creation of black money and accumulation of the same.

Unfortunately, Indians are the largest depositors in Banks abroad with an estimated 500 billion USD (nearly `24.5 Lakh Crores) of illegal money stashed by them in Tax havens and this information is shared by CBI.

We Chartered Accountants in profession should definitely arrest this type of transactions in a holistic manner for better and bright future of our country.

CA.Dr.D.HARISCHANDRA RAMA
Chairman,
News letter committee,

CHAIRMAN SPEAKS,

My Dear Professional Colleagues,

Congratulations to all the members on the first anniversary of our branch (Opened on 27.04.2014). I hope that all of our professional colleagues have completed the Bank audit assignment in time and with utmost Professional satisfaction. I hope that all our professional colleagues are back to their offices after enjoying summer vacation and completion of Bank Audit assignments. Hope many of our colleagues started attending to pending works of 2014-15 and making a beginning for the works related to the year 2015-16. As expected the Finance Act, 2015 has come out successfully from the parliament with minor tinkering to the finance bill and we the members of the profession should be very cautious in implementation of the new provisions of Finance Act,2015 with specific reference to applicability of the new issues in the Service Tax. Further the much awaited Goods & Service Tax Act has got the consent in the Parliament which will come into effect from 01.04.2016. I am glad to share with you that I have attended a orientation programme for Branch Chairmen & Secretaries which was held on 26th and 27th at Pondicherry where the President and Vice-president of the Institute have addressed the delegates. The main thrust given to the delegates is in the direction of improving activities of the branch both for students and the members.

I am very glad that all the arrangements for conducting the IPCC and FINAL exams smoothly for May 2015 batch and our anantapur examination centre is very well equipped with all the basic requirements.

I invite all the members to engage in the activities of the branch actively by participating in the web seminars and by contributing articles to the monthly News Letter of our Branch.

With best Wishes,

Yours friend in Profession
CA.B.Srinivasa Kumar,
Chairman,
Anantapur Branch of SIRC of ICAI

PROCEDURE FOR RENEWAL OF FCRA REGISTRATION

LIMITED VALIDITY OF FCRA REGISTRATION & RENEWAL

1.1.1 The new FCRA 2010 has limited the validity of the registration certificate for a period of 5 years. It may be noted that in the old law FCRA registration was virtually permanent in nature unless it was revoked. FCRA 2010 provides for renewal of registration of organizations after every 5 years. The provision of section 16 of FCRA 2010 on renewal of registration is as under :

“16. Renewal of Registration :

(1) Every person who has been granted a certificate under section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate.

(2) The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.

(3) The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years:

Provided that in case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefore to the applicant.

Provided further that the Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or rules made thereunder.”

WILL THE EXISTING ORGANISATIONS HAVE TO APPLY FOR RENEWAL IMMEDIATELY

1.2.1 No. The Act has provided relief of renewal to all the existing organisations for the first 5 years from the date of FCRA 2010 coming into force. In other words, all existing organisations have to renew their registration at the end of the period of 5 years from the date when of FCRA 2010 came into force, i.e., 1st May, 2011. This implies that the renewal of registration of all the existing organisations will become due on 1st May 2016.

PROCEDURE FOR APPLYING FOR RENEWAL

1.3.1 Rule 12 of FCRR, 2011 provides the procedure for renewal of registration. All organisations have to apply in Form FC-5 six months before the due date. Therefore, all the existing organisations have to file their application in FC-5 form for renewal on or before 1st November 2015. The Rule further provides that organizations implementing ongoing multi-year projects shall be eligible to apply for renewal twelve months before the date of expiry of the certificate of registration. The prescribed FC-5 form for submission of application for renewal of registration is available at MHA website <http://mha.nic.in/fcra/forms/fc-5.pdf>. The procedure for renewal, as provided in Rule 12 of FCRR, 2011, is as under :

“12. Renewal of registration certificate. –

(1) Every certificate of registration issued to a person shall be liable to be renewed after the expiry of five

years from the date of its issue on proper application.

(2) Every person shall apply to the Central Government in Form FC-5, six months before the date of expiry of the certificate of registration, for its renewal.

(3) A person implementing an ongoing multi-year project shall apply for renewal twelve months before the date of expiry of the certificate of registration.

(4) An application made for renewal of the certificate of registration shall be accompanied by a fee of ` 500/- (Five Hundred only).

(5) The fee for renewal of the certificate of registration shall be remitted by demand draft or banker's cheque in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

(6) In case no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration of such person shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of registration.

Illustration.-

A certificate of registration granted on the 1st January, 2012 shall be valid till the 31st December, 2016. A request for renewal of the registration certificate shall reach the Central Government, accompanied by the requisite fee, by the 30th June, 2016. If no application is received or is not accompanied by the renewal fee, the validity of the registration certificate issued on the 1st January 2012 shall be deemed to have lapsed with effect from the close of the day on 31st December, 2016.

(7) If the validity of the certificate of registration of a person has ceased in accordance with the provisions of these rules, a fresh request for the grant of a certificate of registration may be made by the person to the Central Government as per the provisions of rule 9.

(8) In case a person provides sufficient grounds, in writing, explaining the reasons for not submitting the certificate of registration for renewal within the stipulated time, his application may be accepted for consideration along with the requisite fee, but not later than four months after the expiry of the original certificate of registration."

DIFFERENT TIME LIMIT FOR APPLICATION FOR RENEWAL FOR ORGANISATIONS IMPLEMENTING MULTI-YEAR PROJECTS

1.4.1 Rule 12(3) provides that a person implementing an ongoing multi-year project shall apply for renewal twelve months before the date of expiry of the certificate of registration. In other words, those organisations which are having incomplete projects shall have to apply for renewal one year prior to the date of expiry of the registration.

For example, the certificate of registration granted on the 1st May, 2011 shall be valid till the 30th April, 2016. A request for renewal of the registration certificate shall reach the Ministry of Home Affairs, accompanied by the requisite fee, by 30th October, 2015. In case of normal organisations and in the case of organisations, which are having multi-year projects, the application for renewal should be submitted on or before 30th April 2015.

HOW MUCH FEE TO BE SENT WITH APPLICATION FOR RENEWAL

1.5.1 An application made for renewal of the certificate of registration shall be accompanied by a fee of ` 500/- (Five Hundred only). The fee for renewal of the certificate of registration shall be remitted by

demand draft or banker's cheque in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

WHAT HAPPENS IF NO RENEWAL APPLICATION IS MADE

1.6.1 Rule 12(6) provides that in case no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration of such person shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of registration. For example, if no application is received or is not accompanied by the renewal fee, the validity of the registration certificate valid/issued on the 1st May 2011 shall be deemed to have lapsed with effect from the close of the day on 30th April, 2016.

WHAT HAPPENS IF THERE IS A DELAY IN MAKING RENEWAL APPLICATION

1.7.1 In case an organisation fails to apply for renewal within the due date, its registration shall become invalid. However, the Central Government may condone the delay if satisfactory reasons for not submitting the renewal application are provided. Such delay should not be later than 4 months after the expiry of the original certificate of registration.

WHAT HAPPENS IF THE REGISTRATION CERTIFICATE LAPSES FOR FAILURE TO APPLY FOR RENEWAL

1.8.1 In case an organisations fails to apply for renewal within the due date or fails to make a delayed application as discussed above, its registration shall become invalid. In such circumstances the organisation cannot apply for renewal. However, it can apply for normal registration under FCRA 2010 as per Rule 9 of FCRR, 2011.

WHAT IS THE TIME LIMIT FOR GRANT OF RENEWAL

1.9.1 The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of registration subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years. In case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefor to the applicant. Further the Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or Rules made thereunder.

WHAT ARE THE INFORMATION AND DOCUMENT TO BE FILED WITH FORM FC-5

1.10.1 Form FC-5 (*see Annexure 1*) requires, apart from the basic data, the following :

- Details of the names and addresses of the members of the executive committee/governing council.
- The nature of activity.
- Details of the existing registration and PAN.
- Details of the foreign contribution received during all the years since its registration with yearly break up.

- Details of utilisation of funds.
- Declaration that all the provisions of FCRA 2010 were complied.
- Reasons for seeking renewal.
- Details of information, if any, regarding the organisation if it had been blacklisted/ debarred from receiving any aid and/or assistance by any other Ministry/Department of Central and/or State Government or any Statutory Authority.
- A copy of the registration certificate.

RECOMMENDATION OF DISTRICT MAGISTRATE IS NOT NECESSARY

1.11.1 It may be noted that the recommendation of District Magistrate is not necessary at the time of renewal. It may be noted that at the time of registration the recommendation of District Magistrate is required under Form FC-3, such requirement has been exempted at the time of renewal.

PROVIDING FC INFORMATION SINCE INCEPTION

1.12.1 The Form FC-5 requires information pertaining to receipt of foreign contribution in yearly break up since inception. This provision may create problem to many old organisation who may not be possessing the information since 1976. In this context it may be noted that the information to the extent available should be provided. It may be noted that under Rule 17(7), the NPOs are required to preserve financial information for a period of 6 years only and therefore, if the information of earlier years is not available then it may not be treated as the violation of the FCRA laws.

CA.Dr.A.G.VENUGOPAL REDDY
M.Com. ,LL.B.,F.C.A,DISA (ICAI) Ph.D.,
Chartered Accountant

SOME ISSUES REGARDING SECTION 271(1)© OF INCOME TAX ACT,1961

HOW VALID THE PROVISIONS UNDER SECTION 271(1)© OF INCOME TAX ACT, 1961 IN CASE OF CONCEALMENT OF INCOME?

Introduction

To ensure proper compliance of the provisions of income tax the Income tax Act has prescribed various penalties. The Assessing officer or the Commissioner of Income Tax (Appeals) has the power to levy penalty, if during the course of any proceeding he finds that any assessee has concealed his particulars of his income or furnished inaccurate particulars of such income. However, no penalty can be imposed without giving an opportunity to the assessee. The most burdensome is penalty for concealment of income, which can be to the extent of 3 times of the amount of tax payable in respect of such concealed income.

WHEN PENALTY WILL BE LEVIED UNDER SECTION 271(1)©:-

Penalty may be levied under section 271(1)© if any person has

- (a) Concealed the particulars of income or
- (b) Furnished inaccurate particulars of his income.

THE AMOUNT OF PENALTY:-

The amount of penalty shall be

- (a) Atleast the amount of tax sought to be evaded by reason of concealment of particulars of income
- (b) Maximum to the extent of three times of tax on concealed income

Section 271 of the Income Tax Act related to failure to furnish returns, comply with notice concealment of income etc., satisfaction of the assessing officer is required if assessment order contains a direction for initiation of penalty. It is disputed that whether the assessing officer's satisfaction is required to be recorded **either at the time of levy of penalty or at the time of initiation of penalty**. However, in many cases it is confirmed that satisfaction of the assessing officer is to be recorded at the time of initiation of penalty proceedings.

Judicial pronouncements:-

- If the assessee has a reasonable cause, can the assessing officer drop the penalty?

The expression "Reasonable" has no clear and precise definition. However, in law the prima-facie meaning of reasonable with regard to those circumstances of which the actor, called on to act reasonable, knows or to know.

Reasonable cause can be reasonably said to be a cause **which prevents a man of ordinary prudence and average intelligence**, acting under normal circumstances, without negligence or inaction or want of bonafides.

The Assessing Officer can drop the penalty if the Assessee proves that there was reasonable cause for failure and if the Assessing Officer is not satisfied with the explanation of the Assessee and imposes the penalty, the Assessee may prefer an appeal. In this context, reference may be made to the following cases.

1. Supreme Court UOI Vs Azdi Bachao Andolan (2003)132 Taxmann 373(SC).
2. Madras High Court in the case of Kalakrithi Vs ITO (2002) 253 ITR 754 (Mad.)

➤ Whether ignorance of Law can be considered as reasonable Cause?

The general principle is that ignorance of Law is no excuse for non-compliance of any provisions of the Act. Recently Supreme Court was held that whether the ignorance of law is a reasonable cause or not for canceling a penalty is a question of law and allowed the reference on the point which had been rejected by the High Court-CIT Vs Lloyds Insulation (1)(P) Ltd. (2000) 164 CTR (SC) 196.

In some cases the court may consider **“Inadvertent mistake, unintentional defaults and ignorance of law as excuse if grounds are convincing”**.

➤ Under what circumstances one can escape from penalty for concealment U/s 271(1)(c) and in what circumstances such penalty is not leviable?

The burden of proof is on the tax payer and a few important points in this regard are:

- a) The initial burden of discharging the onus of rebuttal is on the Assessee. Once this onus is discharged, it would be for the revenue to prove that the Assessee had concealed his income or furnished inaccurate particulars deliberately.
- b) The Finance Act, 2007 has inserted “Sec 292 C w.r.e.f 1.10.1975” which states that the ‘presumption U/s 132(4A)’ In cases of search and seizure applies to all proceedings under the Income Tax Act. However the courts have held that the said presumption is rebuttable.
- c) The degree of proof in penalty case is the same as required in civil case i.e., preponderance of probability.
- d) “Assessment and penalty proceedings are independent- New evidence can be submitted in penalty proceedings. Non-consideration of such evidence and the penalty order relying on the facts in assessment order alone is liable to be cancelled.

➤ Whether penalty U/s 271(1)(c) can be imposed where Assessee in the case of search proceedings issued a statement that seized cash is his undisclosed income but does not specify the manner in which the said income was derived?

It may be noted that explanation 5 to sec 271(1)(c) does not apply for the search conducted on or after 01.06.2007

Some judicial decisions on penalty u/s 271(1)(c):

1. Agreement for an addition to buy peace and avoid litigation will not attract penalty –CIT v.Punjab Tyres [1986] 162 ITR 517 (MP); Sonu Liquor Traders v. DCIT [2006] 284 ITR (AT) 123 (Nag.). However, contrary view has been expressed in the case of Kamal Chand Jain v. ITO [2005] 277 ITR 429 (Del.).
2. Where the **assessee filed revised return** showing higher income after search and notice for reopening of assessment, to purchase peace and avoid litigation and Department simply rested its conclusion on the act of voluntary surrender done by the assessee in good faith, High Court was justified in holding that no penalty could be levied- CIT v. Suresh Chandra Mittal [2001] 251ITR9 : 119Taxmann 433 (SC).

CIT v.Rajiv Gaarg [2009] 313 ITR 256(P&H) ;Addl. CIT v. B.China Krishnamurthy 121 ITR 326 (AP); ITO v. Fashionways [2002] 77 TTJ (Asr.)59

However contrary view has been expressed in the case of CIT v. La Medica [1992] 198 ITR 327(Del.)

3. If the officer is changed and the new officer passes the order **without giving an opportunity** to the assessee, the order can be cancelled by virtue of section 129. It is however advisable that the assessee should write to the Assessing Officer for fresh hearing, if he so desires in case of change of Officer.
4. The only circumstances relied upon by the revenue, viz, that the **assessee agreed to higher assessment** than the returned income is not sufficient for levy of penalty- CIT v. C.V.C. Mining Co. 102ITR 830 (AP).
5. **The penalty can be levied if losses have been falsely claimed with a view to set them off against the profits** – Kedarnath Sanwal Dass v. CIT [1978] 111 ITR 440 (P&H).
6. No penalty u/s271(1)(c) is impossible on **estimated basis** because factum of either concealment of particulars of income or furnishing inaccurate particulars of income, is not proved- Hari Om Kumar Umesh Chand v. ITO [2002] 124 Taxmann 213 (Agra) (Mag.).
7. No penalty can be justified on the basis of addition on account of **low household expenses** shown by the assessee – Jumbhai Premchand.HUF v. CIT [2000]243 ITR812(Guj.).
8. Where the assessee's explanation was found to be bonafides – CIT v.T.Abdul Majeed [1998]232ITR50(Ker.).
9. Mere disallowance of expenses is not concealment.
10. Penalty on account of a **difference between the cost of construction disclosed by assessee and the cost estimated by departmental valuer**. Ramalingam (T.P.K.) v. CIT 211 ITR 250 (Mad.); CIT v.K.R. Chinna Krishna Chetty [2000] 246 ITR 121 (Mad.); Hotel and Allied Traders P.Ltd. v. CIT 221 ITR 619 (Ker.).
11. Penalty on the basis of **figures stated to the bank for getting more loan from the bank**- CIT v. Bharat Minerals Sales Corporation 253ITR419 (Cal.); CIT v. Pioneer Breeding farms [2007] 295ITR78 (Mad.).
12. Where a receipt is not disclosed by the assessee on the basis of a **bonafides belief** that the same is not taxable – CIT v. Dhoolie Tea Co. Ltd.231 ITR65 (Cal.); CIT v. A.G.Abraham 239 ITR835(Mad).

CA.Dr.D.HARISCHANDRA RAMA
Chartered Accountant

Appeal

I request all the members to contribute articles of importance to our monthly news letter for the benefit of the members. Ensure that the articles are emailed to the following address by 5th of every month. (dasarihr@yahoo.co.in & anantapurnewslettericai@gmail.com)

Flash...Flash...Flash...

Dear Members

WARM GREETINGS FROM ANANTAPUR BRANCH OF SIRC

We are pleased to inform you that Anantapur Branch of SIRC celebrating 1st Anniversary on 24th May 2015 at Branch Premises. We request all the Members to attend the 1st Anniversary of the Branch.

Now it is time to act upon and implement the Companies Act 2013 with updated knowledge and gain acumen ship. Needless to say Members have to be fully equipped to handle the situation.

We are conducting on the same date Training Programme on the implementation of Companies Act 2013. The speaker for the Meeting is CA MOHAN R LAVI, from Bangalore who will enlighten on the changes in Companies Act 2013. The material received from the Speaker is here with attached.

We are eagerly awaiting to welcome you for the 1st Anniversary Function.

AGENDA:

10AM TO 1 PM Training Programme on Implementation of Companies Act 2013

01PAM TO 2 PM Ist. Anniversary Celebrations of the Anantapur Branch of SIRC

Lunch follows

With regards

B SREENIVASA KUMAR

CHAIRMAN

ANANTAPUR BRANCH OF SIRC

Press Release

Subject: Prime Minister's award for excellence in public administration to the Income Tax Department.

The Income Tax Department has been awarded 'Prime Minister's Award for Excellence in Public Administration' for e-enabled tax payer services through Non-Intrusive Tax administration system (NITAS) . The award was presented on 21st April, 2015 at Vignan Bhawan, New Delhi by the honourable Prime Minister on Civil Services day.

The award has been conferred to the Income Tax Department for setting up and for successful implementation of end to end solution of core services. The NITAS includes integrated e-governance initiatives viz. Tax Information Network (TIN), e-filing portal, Centralised processing Cell (CPC-TDS) for processing of Income Tax returns and the Refund Banker. The solution architecture and the reconciliation processes are one of the best in the world.

The projects have been conceptualized based on principles of USAGE- Uniform interpretation of tax laws, Simplification of forms, Easy Accessibility of services, Good tax governance and Empowerment of taxpayer with information. More USAGE prompts more voluntary Compliance.

Presently, over 4.5 Crore taxpayers and 15 Lac deductor are using various e-enabled online taxpayer friendly end to end services viz. e-payment of taxes, e-filing of tax returns and TDS statements, tax credit statements in Form 26AS, digital TDS certificates in Form 16/16A and issuance of refunds.

In the financial year 2014-15, more than 94% of the tax returns have been filed online, while more than 80% of the direct tax revenue is being received online. Besides, about 99% of the TDS statements are being filed electronically. While the TDS statements are processed within a week, the tax returns are being processed within an average period of 30 days. A large number of tax refunds are being directly credited to the bank accounts of the taxpayers.

NITAS is the culmination of sustained efforts of officers of the Income Tax Department. Four of the five projects, under the aegis of NITAS, have also been conferred National e-governance awards at regular intervals.

The 'Prime Minister award for excellence in public administration' and the four National e-governance awards to the Income Tax Department demonstrate the commitment of the Department towards achieved 'minimum government and maximum governance' in tax administration and to move towards a non-adversarial and tax-payer friendly regime.

Quotations for the month

1. If you succeed in cheating someone, don't think that, that person is a fool. Please realize that person has trusted you much more than you deserved.
2. Success also hurts when you don't have a loved one to wish us.... Failure also looks beautiful when we have a loved one to support us.
3. If you don't clear your misunderstanding in time, it becomes the reason for differences and distance forever.
4. Think thousand times before taking a decision but never go back even if you get thousand difficulties after taking a decision.

Appeal

I request all the members to contribute articles of importance to our monthly news letter for the benefit of the members. Ensure that the articles are emailed to the following address by 5th of every month. (dasarihr@yahoo.co.in)

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