

Tele Fax: 033-2213-6417

INCOME TAX GAZETTED OFFICERS' ASSOCIATION - WB UNIT

Aayakar Bhavan, 6th Floor, Room No. 28, P - 7, Chowringhee Square, Kolkata - 700 069

President : Sudipta Guha

General Secretary : Sayantan Banerjee

(Mobile No. 8902196555)

(Mobile No. 8902197979)

Date: 16.03.2018

To
The Principal Chief Commissioner of Income Tax,
West Bengal & Sikkim,
Kolkata

Madam,

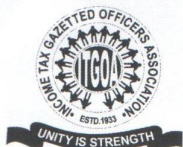
Sub: Dissemination of information and subsequent remedial actions – matter regarding

Kindly refer to the above.

"Come March Everything right gonna be horribly wrong"- incorporating little changes in the lines from a famous song of Natalie Imbruglia will perfectly describe the condition of the assessing officers in Income Tax Department during this particular part of the year. The assessing officers, who already had to bear the brunt of achieving the steep targets on several counts are flooded with time barring actions, on account of disseminated information, primarily received from the Investigation Wing. In all these cases the remedial actions will get time barred on 31.03.2018. We have all along tried to impress upon the top functionaries of Investigation Wing to prepare an internal Action Plan for dissemination of information and set a deadline for sending the same to the assessment wing. Interestingly, we have always been assured of following a time bound plan for dissemination for the next F.Y., but it seems such commitment would never be honoured. We appreciate the initiative taken by your office this time, requesting the DGIT (Inv.), WB, Sikkim & NER to complete the process for the current F.Y., latest by 28.02.2018. Unfortunately the request seems to be fallen on deaf ears, as such information is still pouring in to all of the assessing officers, mostly from Investigation Wing and this menace will surely continue upto 31.03.2018.

As it is said that troubles don't come alone, this year the situation has been made really complicated by CBDT issuing a SOP on 10.01.2018 (though officially circulated much later) for recording satisfaction u/s 147. We have no hesitation in accepting that we have never heard of a *reason to believe* running to eight paragraphs or more, as suggested in the SOP, let alone doing it for ourselves. The logic behind suggesting such exhaustive recording of reasons is very simple, as it appears from the SOP, that the same could withstand the test of appeal or legal challenge. But there should be a reality check. When the assessing officers are being suggested to record reasons in a manner as exhaustive as possible, the information being received, the one and only foundation of the entire proceeding is found to be as inadequate as possible. The information received is incomplete or deficient on many counts and just simply branding them as suspicious transactions.

It will be worthwhile to mention that the newly inserted clause (ca) to explanation 2 to sec. 147 rws. 133C(2) states *"... that the income of the assessee exceeds the maximum amount not chargeable to tax or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return"* had laid an operatively convenient route for the AO to reopen cases on information received from the Directorate, but the problem has been compounded by the above mentioned instruction wherein the AO is to take note of the case in light of the provision within inverted commas above, coupled with the requirements of the instructions, viz. (para iv): *AO has to conduct enquiries on the information received (and in most cases after prior approval of PCIT), (para vii); AO has to give detail and instances along with corroborative material to prove that there has not been true and full disclosure.*



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Two wings of Income Tax Department namely Investigation Wing and I&CI Wing have categorical jurisdictions over preliminary verification of all the information received and they are supposed to provide verified information with prima facie analysis to the Assessment Wing for remedial actions. But the quality of the information being received clearly makes it difficult for the assessing officers to straightway form the beliefs for reopening, unless some serious enquiries are conducted. Even the SOP has clearly suggested for lot of preliminary actions, basically resorting to all sorts of enquiries to collect enough evidence for recording the reason of reopening. If assessing officers have to conduct all sorts of enquiries, then why should the Department at all need its Investigation Wing or I&CI Wing? The actions suggested in the SOP are quite impressive on papers, but almost impossible to implement on fields. In the last fortnight of the Financial Year, none of the assessing officers can think about conducting enquiries u/s 131 or 133(6) after obtaining due approval from the Competent Authority, let alone doing so. Other options like analysis of ITBA information, 360° profiling, MCA website (paid service) etc. will be hardly of any help in real terms.

There are plethora of court cases, which have laid down the basic requirements for the note recording the reason to believe. But such exhaustive enquiry and marshalling facts have never been considered as prerequisites. Rather the Court has always upheld prima facie beliefs of the assessing officers, distinguishing it from the need for enquiries and analysis of collected facts during the scrutiny proceedings to sustain the additions. Even if the Board has felt it necessary to record the reasons after such exhaustive actions, it should have first sensitized or rather trained the personnel posted at Investigation Wing or I&CI Wing to disseminate only select information, which could be the starting point for such elaborate enquiries. Clearly it is a case of putting the cart before the horse.

Under the circumstances, this is to inform that our members will not be able to follow the SOP for the information being received at this fag end of the financial year, if the case has to be reopened. This is further to inform that our members can't be held responsible for any lapse in taking remedial action on the basis of the information received after 28.02.2018, deadline set by your office only.

It is requested to your good self to kindly take up the matter with the DGIT (Inv) to immediately stop such mindless dissemination, at this moment. Needles to say that the quality of investigation is hardly upto the mark and as sample, we are enclosing a few for your perusal. It is further requested to kindly take up the issue of the SOP with the Board to get it rectified, impressing upon the unfeasibility of following it in letter and spirit.

Yours faithfully,

(SAYANTAN BANERJEE)

General Secretary, ITGOA, WB Unit

Encl.As above.

