POINTS FOR MEETING WITH SHRI PRABHASH SHANKAR,IRS, MEMBER, CENTRAL BOARD OF DIRECT TAXES ON 12TH FEBRUARY, 2020 AT PATNA

1. **REGARDING "THE DIRECT TAX VIVAD SE VISVAS BILL, 2020" (BILL NO.-29 OF 2020)**

(i) It is a provision in the bill that to avail the scheme a "Specified Date" is provided i.e. 31st of January, 2020 on which date tax litigation should be pending before any appellate forum.The Income Tax Act provides for statutory time limits for filing of appeals before various appellate forums i.e. for

- Commissioner of Income Tax (Appeals)-30 Days;
- Income Tax Appellate Tribunal-60 Days and for
- High Court-120 Days.

Your honour would appreciate that such tax payers in whose case the statutory time limit for filing the appeal has not expired on the specific date (i.e. 31 January , 2020)will be debarred form such facilities.

Considering the time limits in the statute for filing of appeals before various Appellate Forums, it is earnestly requested that the "Specified Date" of 31st day of January, 2020 may kindly be modified to **31st day of March, 2020** so that any taxpayer who wishes to avail the scheme can file the statutory appeal strictly within stipulated time prescribed in the statute between the period 1st day of February, 2020 to 31st day of March, 2020, the last day of filing the declaration.

It is, therefore, earnestly requested that in view of above submission, the 'Specified Date' may kindly be modified to **31st day of March, 2020.**

(ii) There are instances where the tax payers, instead of filing appeal before Commissioner (Appeals), have filed revision u/s 264 before the Commissioner of Income Tax or Principal Commissioner of Income Tax and are disputing the income assessed and consequently the tax liability. Since the "Appellate Forum" defined u/s 2(1)(b) does not include the cases pending before Commissioner of Income Tax u/s 264, such cases will be out of purview of this Scheme. It would be appropriate to mention that the benefit of KarVivaadSamadhan Scheme of 1998 was extended even to cases pending u/s 264 before the Commissioner of Income Tax. Similar benefit may be extended in the present Scheme.It is, therefore, requested that Section 2(1)(b) of the Scheme may be amended so as to include 'Revision u/s 264'.

(iii) That the cases relating to assessments made under Section 153A or Section 153C has specifically been excluded in view of stipulation in Section 9(a)(i). The objects and reasons for introducing this scheme are locking up of disputed direct tax arrears of Rs.9.32 trillion. The statistics will prove beyond all reasonable doubt that the major

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Direct Tax Arrear relate to assessments completed u/s 153A/153C. The KarVivadSamadhan Scheme, 1998 was also brought for achieving similar object of resolution of pending tax disputes. Section-95 of the said scheme provides for non-applicability of the scheme to certain class of cases. It does not include cases relating to search assessment and such cases were covered under KVSS, 1998. It is already on record that KVSS, 1998 has been a great success in so far as settlement of direct tax disputes is concerned. It would be appropriate if assessments made u/s 153A or 153C are also covered under the present Scheme.

It is, therefore, requested that Clause (i) of Sub-section (a) of Section 9 is omitted from the present scheme. This omission will be a step towards achieving the purpose for which the scheme is being introduced.

The suggestions, as above, may kindly be considered and necessary modification may be made so that the major revenue locked up in appeal are collected and the taxpayer can utilize their time, energy and resources towards building the nation a Five Trillion Economy. Needless to mention that Section-11 of the Bill empowers the Central Government to remove the difficulties.

2. **SECTION 115 BBE / SECTION 47 / SECTION 144**

Section 115 BBE of Income Tax Act amended on 15.12.2016 with retrospective effect from 01.04.2016 is causing genuine hardships to taxpayers.

The said provision was introduced for the purpose of penalizing tax evaders, which attracts very high tax rate of 60% and surcharge, cess thereon. As the provisions suggests, if an assessee has not disclosed his income properly and also if source of his income is not established, in such cases, income are to be taxed under section 68, 69 and 69A to 69D of the Income Tax Act. We understand that these sections must be invoked only in the rarest cases, after through scrutiny and proper investigation by the assessing officers.

But now a days, it has been witnessed that assessing officers in most of the cases, pass assessment order under these sections, which results in high pitch assessments. Recently huge numbers of assessment orders were passed invoking provisions of abovementioned sections which resulted in disputed tax demand of approx. Rs. 300 crores in the state alone.

These demands have been raised after making addition of SBN as well as non-SBN currencies deposited during the demonetization period. Additions have also been made in cases of exempted category of tax payers also such as Petrol pumps, Medicine shops, Mobile recharge coupons who were authorized to accept SBN during demonetization period by various orders issued by the Government and RBI. In few cases, additions have been made on the entire cash deposits during the year. Most of the cases have been assessed u/s 144 of the Income Tax Act, accordingly many small assesses received orders of huge tax demands and they do not have sufficient funds to pay even 20% of this demand and now afraid of probable coercive actions by the Income Tax Officials.

We are afraid that any coercive action for recovery of demand will adversely affect the business and therefore we request you not to press for the tax demand and stay it till disposal of the first appeal.

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3. **ASSESSMENTS IN CASE OF JOINT DEVELOPMENT AGREEMENT**

There are several cases of disputed tax demand in case of Joint Development Agreements entered between land owners and Developers. We all know that development of any real estate project takes long time and share of land owners are handed over after the completion of project. Therefore. Land owner can generate the revenue at the time of sales of handed over properties after completion of the project generally. Earlier, under the provisions of income tax act, one interpretation suggested payment of tax liability in such cases, in the year of signing of development agreement, but it was difficult for land owners to pay his tax liability due to non availability of funds. This genuine hardship due to possible misinterpretation was also felt by the legislatures and accordingly section 45(5A) of the Income Tax was inserted with effect from 01/04/2018 clarifying that in such cases liability to tax will arise in the year in which the land owner gets his share in the property and not in the year of execution of Development Agreement.

In spite of this curative amendment of the act by the legislature, department raised demand in many such cases. We suggest that a lenient view must be taken by your good office in all genuine cases and no coercive action should be taken for recovery of tax demand.

4. **ENQUIRY SHOULD BE LIMITED IN CASE OF LIMITED SCRUTINY**

It has been seen that in cases of limited scrutiny, a detailed questionnaire is asked to reply by the AO and scope of examination do not remain confine to the ground of scrutiny.

It's suggested that limited scrutiny should be dealt only to the specific points on the basis of which the particular return has been selected for scrutiny and should be enlarged the area of examination under CBDT guideline only.

5. **ISSUES RELATED TO CPC**

Return processing system has been completely automated for last few years. This has wonderfully reduced the processing time of returns and also is very helpful in timely refund of excess taxes paid by the tax payer. But this automation has also lead to certain practical difficulties, which need to be addressed to avoid unnecessary litigations and disputes between department and tax payers. **Few such difficulties,** which need immediate attention are as under :

– **Notice of defective returns:**

A system generated notices u/s139(9) are issued to tax payers on the basis of data submitted in the return. Many times, it is seen that due to minor error in the return or due to some interpretational issues, returns are marked defective and there is no system for para wise online corrections of the return. Even the reply submitted by the tax payers where they disagree with the defects are not discussed with proper reasons, but the return is marked defective again and 15 days windows are given to correct the defect. This has lead to many practical difficulties, therefore, we request you, if

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considered proper, a suggestion in this regard may be forwarded from your good office to the CBDT or technical section to provide the facility to correct the defect online of the relevant portion of the return and also to provide sufficient reasons in detail, where tax payers does not agree with the defect before holding the return invalid.

- Correction time of 15 days, as mentioned above is not sufficient, particularly when the notices are sent only online and most of the tax payers are not conversant with the system therefore it remains unnoticed on several occasions, also it is not possible to check the status on daily basis. Therefore, we suggest that a system should be implemented where all the notices of defects during a particular month are to be corrected/responded by the tax payer by the end of next month.

- Corrections of defects submitted by the taxpayers are not attended by the CPC and is kept pending for long time. Some time it is seen that these corrections are marked defective again near to year end or after expiry of time limit to revise/file the return. In such situation, taxpayers are left with no option and return filed them are treated as invalid. Therefore, we request you that a timeline must be fixed for processing the compliance made by the taxpayers.

- There are several reasons for which returns are marked defective, the most common one is, matching of data available in 26AS with the credit shown in profit and loss account. Sir, we would like to draw your kind attention on the relevant provisions of the law, more particularly the explanations (a) to (f) of Section 139(9), where such comparison is not mentioned as any of the criteria for holding a return invalid. Further, there may be accounting policies, where unbilled revenues are recognized as income of a particular year by the suppliers, but recipient records the transactions once the conditions attached to the contract is fulfilled and deduct tax at source as per law at the time of recording such transactions. Both these event may fall in different tax period, therefore, any attempt to compare the credit of profit and loss account with the income as reflected in 26AS for holding the return invalid is not correct and require immediate attention of the competent authority We request your good office to bring this to the notice of the board/competent authorities to consider our submissions.

- Additions made on the basis of tax audit reports – It is also seen that while processing the return, tax demand is raised on account of additions on account of delay deposit of ESI/EPF etc, after due dates fixed under respective statutes but before due date of filing of Income Tax Returns. Therefore, we suggest, that before making any disallowance on this ground, a proper opportunity of being heard/submit explanation must be given to the tax payers.

- In case of Society or Trust, if the 4th letter of PAN is " A " then basic exemption of Income i.e.2,50,000/- is given whereas 30% tax is imposed in case of 4th letter of PAN is " T " even in respect of Charitable or Other Society.

- In case of ITR 7, if Form 10B is filed after filing of Return then all expenditure is disallowed and Tax @ 30% (MMR) is imposed without considering any expenditure i.e. on Gross Receipts. Further even in case of Educational Trust in A/Y 2016-17,claim of 10 (23C) (iiiad) not considered and processed with Tax @ 30% on Gross Receipts.

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6. **PAID DEMANDS STILL ON DEPARTMENT'S REGISTER**

There are instances where notice u/s 221(1) of the Income Tax Act is received by the tax payers even after making payment of the tax/interest as demanded. Moreover, the same is also shown as unpaid on the portal. Therefore, we request you to suggest for suitable changes in the system to give credit of payment against such demand on daily basis along with a confirmation letter to the tax payer indicating that demand is settled/paid.

LAW RELATED ISSUES

7. **SIMPLIFICATION OF TDS / TCS PROVISION**

In past few years, it has been the government aim to bring more & more transactions under ambit of TDS/ TCS to minimize evasion of taxes.

Tax deducted is to be paid on monthly basis while return is to be filed on quarterly basis. In the event of delay in making payment by the due date, interest @1.5% per month and Late fees of Rs.200 per day for delay in filing return is levied.

In this connection, we wish to suggest as under:-

- **Delay Interest**:
  The provision of delay Interest @1.5% per month even for a single day delay is not all justified. Further, a single day delay in making payment attract interest for two months i.e. 3%, which is not reasonable.. The due date to pay TDS for any month is 7th of the next month, which is not a much long time and the deductormay missed to pay and in such scenario, it's painful to pay 3% interest.

  It's requested to look upon to make it more practical and reasonable.

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- **Frequency of return and its software**
  TDS return is to be filed on quarterly basis, which increases a lot of task to the stakeholders while the credit of such deduction is to be availed at the time of filing annual income tax return.

  The government provided software is also not friendly to use and so most of the returns are filed through private software. The procedure of filing is also quite complex. Presently, there is so much hardship that even to download the TDS certificate, timeline has been framed out.

  It is suggested to change the frequency of TDS return on half yearly basis / annual basis (payment should be continued on monthly basis) to reduce the task of the stakeholders. The TDS return software & procedure should also be simplified so that the small taxpayers could file their return at their own.

8. **DISALLOWANCE U/S 36(1)(VA)**

It is seen that while processing the return, tax demand is raised on account of additions on account of delay deposit of ESI/EPF etc, after due dates fixed under respective statutes but before due date of filing of Income Tax Returns. Therefore, we suggest, that before making any disallowance on this ground, a proper opportunity of being heard/submit explanation must be given to the tax payers.

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9. **DISALLOWANCE U/S 43B**

As per section 43B, some expenses like contribution to any provident fund, Interest on loan, Taxes etc are not allowed if not paid in the financial year as well as not paid before due date of filing income tax return. The said amount is allowed in the year in which actually the same is paid.

It's suggested to allow the same if paid before the filing of the annual return and not due date of return.

10. **SECTION 56(2)(X) & 50C :**

As per the said provisions, stamp value exceeding 105% of the transaction value is being assessed for tax. In the present scenario, the government has increased the circle rate to its peak and many of the cases, it exceeds the transaction value or market value and both buyer and seller are liable to pay tax unnecessarily.

The provision need relaxation no addition should be made on the ground of difference upto minimum of 30%.

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