

Further Claims on Extension of Due Date

CA Uma Kothari*

Introduction:

The Assessee is required to file the return by the due date to avail certain benefits conferred as well as to avoid certain disadvantages which are attracted in case of delayed filing of return of income and return of loss. Many certificates and reports are also to be filed to claim certain exemptions and deductions. The requirement is to file them with the return/or within due date, and delayed filing prompts assessing authorities to deny the benefit and the Assessee need to indulge in litigation to get the relief and become dependent on view the appellate authorities and/or court may ultimately take. Thus, filing of return and other documents within due date is always advisable. Some times to avoid difficulties and hardship the CBDT extends due date. In case of extended due date the compliance can be made within the extended due date and consequential benefits can be availed. In case a return has been filed, one can file a revised return within the extended due date to take benefits of consequential relief.

Section 139 and due date of filing of return:

Due date for filing of return of income is specified in Section 139 of the Income Tax Act, 1961. The Assessee is required to file the return by the due date to avail certain benefits conferred as well as to avoid certain disadvantages which are attracted in case of delayed filing of return of income and return of loss. Many certificates and reports are also to be filed to claim certain exemptions and deductions. The requirement is to file them with the return/or within due date, and delayed filing prompts assessing authorities to deny the benefit and the Assessee need to indulge in litigation to get the relief.

Extension of due date for assessment year 2010-11:

Earlier due date for individuals, HUF, BOI, etc. who did not have requirement of tax audit was extended from 31st July 2010 to 4th August 2010.

Recently we find two orders from CBDT for extension of due date. In the following table in the first one extension (first column) is for the area of state of Jammu and Kashmir and the second one (second column) is for entire India. In the third column, remarks are made for analysis purposes:

* The author is qualified as a Chartered Accountant, a Cost Accountant and a Company Secretary.

For J & K	For all India (other than J & K).	Remarks
Order/Instruction – Income tax due date for filing of Income-tax returns for A.Y. 2010-11 Order [F.No.225/72/2010/ITA-II] Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes dated 23rd September, 2010	Order/Instruction – Income tax due date of filing of Income-tax returns for A.Y. 2010-11, F.No. 225/72/2010-ITA.II, Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes dated 27th September, 2010	The second circular is just after four days from the first one.
On consideration of the reports of disturbance of general life caused due to the law and order problem in the State of Jammu and Kashmir,	On consideration of the reports of disturbance of general life caused due to floods and heavy rains,	The reasons for extension are given
the Central Board of Direct Taxes, in exercise of powers conferred under Section 119 of the Income Tax Act, 1961,	the Central Board of Direct Taxes, in exercise of powers conferred under Section 119 of the Income Tax Act, 1961,	The reference to enabling provisions is given
hereby extends the due date of filing of returns of income for the Assessment Year 2010-11 for all category of cases in the State of Jammu & Kashmir to 30th November 2010.	hereby extends the due date of filing of returns of income for the Assessment Year 2010-11 from 30.09.2010 to 15th October 2010.	In the first circular dated 23rd September, 2010 for J & K extension is “for all category of cases” that means it is for all type of Assesseees including those who were required to file return of income (or loss) by 31st July, 2010. This will also cover those cases in which due date is 31st October, 2010. Thus in case of Assesseees in the state of Jammu & Kashmir the due date is 30th November, 2010.

		<p>Considering the reason for extension it sound logical also. Therefore, we find that an extension is granted even after lapse of the due date on 31st July, 2010.</p> <p>In case of second circular dated 27th September, 10 (for rest of India) the extension is only for Assesseees in whose case due date was 30th September, 2010. Therefore, there is no extension for Assesseees for whom due date lapsed on 31st July, 2010.</p>
Accordingly the date for obtaining and furnishing Tax Audit report under Section 44AB of the Income Tax Act is also extended to 30th November, 2010.	Accordingly the due date for Tax Audit report under Section 44AB of the Income Tax Act is also extended to 15th October, 2010.	The specified date for obtaining and furnishing the Tax Audit Report has also been extended.

Empowering and some other provisions:

We find provisions empowering the CBDT to issue such instruction in Section 119 of the Income Tax Act. There are some other provisions which are affected as a consequence of extension of due date. The relevant portion of which is reproduced below with highlights for analysis:

“119. Instructions to subordinate authorities. (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :

xx xx xx

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorize any income-tax

authority, not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law;”

The authority to extend the due date is derived from the above provisions as the extension is to remove difficulties.

Amounts not deductible in case of delay beyond due date:

We find provisions of Sections 40 and 43B, which concerned deductions based on relevant action on part of Assessee on or before due date. Section 40 is about deposit of TDS before due date, to be entitled to get deduction of specified sums. The relevant portion of this section reads as follows:

‘40. Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

(ia) any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139],—’

Observations:

Disallowance for non-deposit of TDS can be avoided as extra time is available to deposit the TDS which has not been deposited within original due date. This will be helpful for seasonal industries who manufacture goods in a very short duration and the same are sold over a long period of time. Fro example, in the case sugar is manufactured during November to February and sold over whole year and sometimes even after one year. Thus, the Assesseees get longer time to make cash available for payment of TDS and statutory dues.

Provisions relating to audit of accounts:

The provisions relating to audit of accounts of certain persons carrying on business or profession are as follows:

‘44AB. Audit of accounts of certain persons carrying on business or profession. Every person,—

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds sixty lakh rupees in any previous year; or

. . . get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the 30th day of September of the assessment year.'

For this purpose the circulars specifically extend the specified date. This means that Tax audit report is to be filed even when e-return is filed.

"43B. Certain deductions to be only on actual payment. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

. . . shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:

Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return."

Observations:

Assessee will get further time to deposit sums covered by Section 43B within extended due date to get a deduction of sums which he could not deposit/pay by the due date. There can be major sums in different circumstances. However, excise duty in case of seasonal industry like sugar industry, gratuity fund in case of a newly set-up fund, interest to banks and FIs in case of defaults or disputes can be major areas in which efforts can be made to pay the sums to get deductions. In case return has been filed, the same can be revised claiming deduction of payments made before revised due date.

Consequential advantages:

As discussed above as a consequence of extension of 'due date' for filing of return, besides advantage of no interest payable till extended date for delay in filing of return, getting interest under Section 244A without break of period in case of delayed filing of return Assessee can also take advantage of allowable deductions by depositing amount of TDS latest by the extended due date and by depositing specified sums covered under Section 43B by such extended date. There are some other procedural provisions for filing of reports, declarations, evidences etc. by due date, the Assessee can make compliance within extended date, if not made by original due date.

In case original return has been filed on or before 30th September, 2010, the Assessee can file revised return to claim payments made till extended due date.