

CIRCULAR

Section 44AB of the Income-tax Act, 1961 - Tax Audit - Deferment of Clauses 30C (GAAR) and 44 (GST) of Form No. 3CD

CIRCULAR NO.6/2018 [F.NO.370142/9/2018-TPL], DATED 17-8-2018

Section 44AB of the Income-tax Act, 1961 ('the Act') read with rule 6G of the Income-tax Rules, 1962 ('the Rules') requires prescribed persons to furnish the Tax Audit Report along with the prescribed particulars in Form No. 3CD. The existing Form No. 3CD was amended *vide* notification No. GSR 666(E), dated 20th July, 2018 with effect from 20th August, 2018.

Representations have been received by the Board that the implementation of reporting requirements under the proposed clause 30C (pertaining to General Anti-Avoidance Rules (GAAR)) and proposed clause 44 (pertaining to Goods and Services Tax (GST) compliance) of the Form No. 3CD may be deferred.

The matter has been examined and it has been decided by the Board that reporting under the proposed clause 30C and proposed clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2019. Therefore, for Tax Audit Reports to be furnished on or after 20th August, 2018 but before 1st April, 2019, the tax auditors will not be required to furnish details called for under the said clause 30C and clause 44 of the Tax Audit Report.



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Section 270AA, read with section 271(1)(c), of the Income-tax Act, 1961 - Under-reporting and Mis-reporting - Penalty for - Clarification on immunity provided under section 270AA

CIRCULAR NO.5/2018 [F.NO.370149/155/2018-TPL], DATED 16-8-2018

Section 270AA of the Income-tax Act, 1961 (the Act) *inter alia* provides that w.e.f. 1st April, 2017, the Assessing Officer, on an application made by an assessee, may grant immunity from imposition of penalty under section 270A (not being penalty for misreporting) and initiation of proceedings under section 276C or section 276CC, subject to the conditions specified therein.

2. Apprehensions have been raised that where an assessee makes an application seeking immunity under section 270AA of the Act, and in the earlier year(s) penalty under section 271(1)(c) of the Act has been initiated on the same issue, the Income-tax Authority may contend that the assessee has acquiesced on the issue in such earlier year(s), by seeking immunity under section 270AA of the Act and therefore, take an adverse view in the proceedings for penalty under section 271(1)(c) of the Act.

3. In this matter, it is hereby clarified that where an assessee makes an application seeking immunity under section 270AA of the Act, it shall not preclude such assessee from contesting the same issue in any earlier assessment year. Further, the Income-tax Authority, shall not take an adverse view in the proceedings for penalty under section 271(1)(c) of the Act in earlier assessment years merely on the ground that the assessee has acquiesced on the issue in any later assessment year by preferring an immunity on such issue under section 270AA of the Act.

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Section 10A of the Income-tax Act, 1961 - Free Trade Zone - Computation of admissible deduction under section 10A

CIRCULAR NO. 4/2018 [F.NO.279/MISC./140/2015/ITJ], DATED 14-8-2018

As per the provisions of sub-section (4) of section 10A of the Income-tax Act, 1961 (the 'Act'), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.

2. Further as per clause (iv) to *Explanation 2* to section 10A of the Act, "export turnover" means the consideration in respect of export by the undertaking of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India.

3. The issue whether freight, telecommunication charges and insurance expenses are to be excluded from both "export turnover" and "total turnover" while working out deduction admissible under section 10A of the Act on the ground that they are attributable to delivery of articles or things or computer software outside India has been highly contentious. Similarly, the issue whether charges for providing technical services outside India are to be excluded both from "export turnover" and "total turnover" while computing deduction admissible under section 10A of the Act on the ground that such charges are relatable towards expenses incurred in convertible foreign exchange in providing technical services outside India has also been highly contentious.

4. The controversy has been finally settled by the Hon'ble Supreme Court vide its judgment dated 24-4-2018 in the case of *CIT, Central-III v. M/s. HCL*