

TaxWire



**Mismatch in year of taxation of Income & TDS Credit
- Form 71 to the relief**

21st September 2023

Background

The Income Tax Law in India requires that income from a particular assessment year be subjected to tax in that assessment year. The assessment year is a 12-month period beginning on 1st April and ending on 31st March. Furthermore, the Income Tax Law in India also has provisions relating to withholding tax [Tax Deduction at Source or TDS]. There are payments of multiple kinds that need TDS to be effected by the payer. Furthermore, in most cases, TDS is to be done on the accrual of such expenditure or payment, whichever is earlier.

On the other hand, due to accounting norms of accrual of income owing to the applicability of Accounting Standards, the income accrual (to the received) sometimes may precede/succeed the accrual of expense (for the payer). This would result in a scenario where the TDS could be effected in a different year and the income would be subjected to tax in a different year. Section 199 of the Income Tax read with Rule 37BA(3) mandates that credit of TDS is given to the receiver of money only in the year in which such income is subject to tax.

There was already a mechanism in the Income Tax Return (ITR) where a taxpayer could defer the TDS credit in case the TDS succeeded the accrual and taxation of income. However, in case if the income is subjected to tax in the preceding year and TDS credit is provided in a subsequent year, it used to result in a situation of impasse. This is predominantly because, unless the credit of the tax appears in Form 26AS (a cumulative statement of all the taxes withheld), it cannot be claimed in the Income Tax returns. This will result in a TDS mismatch and such a mismatch is beyond the control of the deductee as it is occurring as a result of different accounting principles or policies adopted by the diductor and deductee.

New Section 155(20)

In order to remove such difficulties and to provide a solution in the law, the Finance Act 2023, amended Section 155 and inserted 155(20) into the Income Tax Act. The new subsection provides that, in case the taxpayer declares income in ITR in a particular year and tax on such income is deducted in the subsequent year, the taxpayer can make a rectification application before the Assessing Officer within a period of two years from the end of the financial year in which such tax is deducted, allowing the TDS credit for the year in which such income is offered to tax. Based on such an application, the Tax Officer shall pass a rectification order. This section will be effective from 1st October 2023.

Rules and Form for application

The newly inserted section provided furnishing the request for rectification in a particular form. The Central Board of Direct Taxes (CBDT) has notified this vide notification 73/2023 dated 30.08.2023 by inserting Rule 134 into the Income Tax rules. Such rules have prescribed Form 71 to be the application made towards this. The rule and the form will come into effect from 1st October 2023.

The salient features of Form 71 are as follows:

- (i)** Form 71 shall be furnished electronically, either using a digital signature in the case the return is to be filed with a digital signature or through an electronic verification code in other cases.
- (ii)** The Form, apart from having basic details about the applicant, contains a table where the reconciliation of the income earlier offered, TDS deducted, etc; are to be furnished.

(iii) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or the person authorized by such officers shall also be responsible for specifying the procedures for filing Form 71 and shall also be responsible for formulating and evolving appropriate security, archival,

and retrieval policies relating to the filing of such Form.

(iv) Subsequently, the Principal Director General of Income-tax (Systems), the Director General of Income-tax (Systems) or the person authorized by such officers shall forward Form 71 to the Assessing Officer.

Advith's Comments

Section 155(20) is a very well-intended amendment that was made in the Finance Act 2023. This solves an absolutely prominent issue where income is offered to tax in an earlier year and TDS credit is given in a subsequent year. This particularly solves the problem for Government contractors, who will be offering income to tax on accrual while Government agencies and departments deduct taxes only on a payment basis.

Numerous cases were filed before the High Court on this matter through writ petitions to solve this problem. A few judgments favoring the taxpayers were also delivered by the High Courts in this matter. It is extremely welcoming to see Government looking into this matter and addressing the issue.

Taxpayers need to maintain complete information about such a mismatch before filing the application in Form 71. A proper SOP for TDS reconciliation and accounting will come in extremely handy in such situations.



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