

	<h1 style="text-align: center; color: red;">INCOME TAX GAZETTED OFFICERS ASSOCIATION</h1>	
	<p style="text-align: center;">President PANKAJ MEHTA 09013853358 paankajmehta@gmail.com</p>	<p style="text-align: center;">Secretary General RAVI SHANKAR 09969233322 itgoa.chq.20.22@gmail.com</p>

F.No. ITGOA/CHQ/JAO/2020-22/07

Date: 19.07.2021

To
The Chairman,
Central Board of Direct Taxes,
New Delhi -110001.

Respected Sir,

Sub: Request for issuing Clarifications wrt Time Barring date for Completion of the Transfer Pricing Proceedings for AY 2018-19- **reg.**

Ref. OM vide F No. 370142/24/2021 dt. 28th June, 2021 by TPL-IV, CBDT on the above subject.

Kindly refer to the above.

2. In this connection, we would like to bring to your kind notice that the TPL-IV, CBDT has clarified, vide an OM under reference, that the limitation date for Transfer Pricing proceedings in cases pertaining to AY 2018-19 has not been extended beyond 31st July, 2021, although the time limit to pass an order u/s 143(3) of the Act has been extended up to 30th September, 2021. Further, as per the said CBDT's OM dated 28/6/2021, TOLA had extended time limit for the actions which were getting barred between 20/3/2020 to 31/12/2020 and this was done so without amending section 153 of Income Tax Act. In this regard, we put forth before your good-self that this interpretation is not correct and would lead to the following legal as well as practical hurdles in the completion of the pending scrutiny assessments. In this connection we submit as under:-

3. Firstly, your kind attention is drawn to the relevant portions of Section 153(1) and Section 153(4) of the Income Tax Act and Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, which is being re-produced as under:-

Time limit for completion of assessment, reassessment and re-computation,
(as per Income-Tax Act, 1961):-

S. 153.(1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:
Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:

Provided further that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted:

6[Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "nine months" had been substituted.]

*S. 153(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), where a reference under sub-section (1) of section 92CA is made *during the course of the proceeding for the assessment or reassessment,* the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections (1), (2) and (3) shall be extended by twelve months.*

*S. 92CA(3A) Where a reference was made under sub-section (1) before the 1st day of June, 2007 but the order under sub-section (3) has not been made by the Transfer Pricing Officer before the said date, or a reference under sub-section (1) is made on or after the 1st day of June, 2007, *an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation referred to in section 153*, or as the case may be, in section 153B for making the order of assessment or reassessment or re-computation or fresh assessment, as the case may be, expires:.....*

****TOLA****

****TAXATION AND OTHER LAWS* *(RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS)* *ACT, 2020****

[38 of 2020]

AN ACT to provide for relaxation and amendment of provisions of certain Acts and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

- (a) "notification" means the notification published in the Official Gazette;*
- (b) "specified Act" means—(i) the Wealth-tax Act, 1957 (27 of 1957);*
- (ii) the Income-tax Act, 1961 (43 of 1961);*
- (iii) the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988);*
- (iv) Chapter VII of the Finance (No. 2) Act, 2004 (22 of 2004);(v) Chapter VII of the Finance Act, 2013 (17 of 2013);*
- (vi) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015);(vii) Chapter VIII of the Finance Act, 2016 (28 of 2016); or*
- (viii) the Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020).*

(2) The words and expressions used herein and not defined, but defined in the specified Act, the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962), the Customs Tariff Act, 1975 (51 of 1975) or the Finance Act, 1994 (32 of 1994), as the case may be, shall have the same meaning respectively assigned to them in that Act.

CHAPTER

RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT

Relaxation of certain provisions of specified Act.

II

*3. (1) Where, *any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020,* as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as—*

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the

provisions of the specified Act; or

and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 31st day of March, 2021, or such other date after the 31st day of March, 2021, as the Central Government may, by notification, specify in this behalf:

3(a) Thus, it is evident that for AY 2018-19, the time barring date was 18 months from the expiry of the assessment year i.e. 31.03.2019, clearly meant that the assessment was required to be completed by 30.09.2020. However the same now stands extended up to 30.09.2021- then how is it possible without amending/considering the provisions of section 153 of I T Act ?

3(b) Further, since the time limit for completion of the assessment proceedings for AY 2018-19 is 30.09.2021 instead of 30.09.2020, therefore, an AO could make reference u/s 92CA(1) upto 30.09.2021. Whereas as per OM, any reference made after 30.09.2020 is illegal and bad in law because time limit mentioned in OM for passing order of TP i.e. 31.07.2021, which is with reference to the time limit of completion of scrutiny assessment up to 30.09.2020. Similar situation arise for references made after 31.07.2021 till 30.09.2021. Hence, the pertinent question is that how an AO could be debarred to execute the provisions of sub-section 4 of section 153 wherein the AO can make reference u/s 92CA(1) during the course of the proceedings for assessment or reassessment?

3(c) It is also pertinent to note that if there is amendment made by TOLA in Section 153 of the Act, then how could the assessment for AY 2018-19 (where reference was not made) got time barred on 30.09.2020?

3(d) Further, if we interpret that the time barring date as per Sec. 153(4) of the I T Act is 30.9.2021 (with TP reference) and the time barring date as per Sec. 153(1) of the I T Act also falls on the same date 30.9.2021 (without TP reference), which is against the scheme of the Act. In other words, the TB date u/s 153(1) and 153(4) could not fall on the same date.


3(e) Further, the TPOs are receiving references even now. As per section 92D(3), it is mandatory on the part of TPO to give 30 days time for the assessee to respond. However, the Officers do not have the statutory 30 days time to comply the afore-said provisions of the law, in all the references which has been received in this month.

4. In view of the above, it is evident that if 31.7.21 is taken as the Time Barring date for completion of the TP proceedings for AY 2018-19, it would lead to lot of legal as well as practical hurdles. Accordingly, we request your good-self that the aforesaid OM may be examined once again and necessary clarifications may be issued forthwith.

Looking forward to your benign indulgence.

Thanking You,

Yours Sincerely,


**(Ravi Shankar),
Secretary General**

Copy forwarded for informations & n/a to:

1. The Member (Legislation & Systems), CBDT, North Block, New Delhi.