RULE 132 UNDER INCOME TAX RULES,1962 AND ITS IMPACT ON TAXPAYERS.

Dear friends,

The Central Board of Direct Taxes (CBDT) has introduced Rule 132, which came into effect on October 1, 2022. Rule 132, deals with the re-computation of income under sub-section 18 of section 155 of the Income Tax Act, 1961, in the Income Tax Rules, 1962.

The new rule impacts individuals having income from business or profession and have availed deduction on cess/surcharge.

In this article, we take a look into all details you need to know about Rule 132.

"APPLICATION FOR RECOMPUTATION OF INCOME UNDER SUB-SECTION (18) OF SECTION 155.

132. (1) An application requesting for recomputation of total income of the previous year without allowing the claim for deduction of surcharge or cess, which has been claimed and allowed as deduction under section 40 in the said previous year, shall be made in Form No. 69 on or before the 31st day of March, 2023.

(2) Form No. 69 shall be furnished electronically to the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or the person authorized by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems).

(3) Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall lay down the procedures and standards for furnishing and verification of Form No. 69 and to forward the application received in Form No. 69 to the Assessing Officer.

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

(4) The Assessing Officer shall, on receipt of the application in Form No. 69, recompute the total income by amending the relevant order and issue notice under section 156 specifying the time period within which amount of tax payable, if any, is to be paid,- for the assessment year relevant to the previous year referred to in sub-rule (1); and for the assessment years subsequent to the assessment year referred to in clause (i), if the order for such assessment year results in variation in carry forward of loss or allowance for unabsorbed depreciation or credit for tax under section 115JAA or section 115JD.

(5) The assessee shall, after making the payment of the tax determined under sub-rule (4), furnish the details of payment of tax in Form No.70 to the Assessing Officer within thirty days from date of making the payment."

WHY HAS CBDT INTRODUCED RULE 132?

The new rule has been introduced in view of disputes over whether a cess or surcharge on income tax paid by businesses can be allowed as a deduction or not.

While calculating the net taxable profit of a business, the law had clarified that income tax paid by a business cannot be allowed as a deduction. However, the law had not specified whether a cess or surcharge on such income tax is allowable as a deduction or not.

Various businesses had been claiming deductions of such cess or surcharge in their tax calculations. These were disputed by the tax authorities but the courts in recent judgement had allowed the deduction for cess and surcharge.

In Finance Act 2022, the Government clarified that a deduction for such cess and surcharge on income tax is not an allowable deduction from the taxable profit. The clarification was made by way of amendment of the income tax act with retrospective effect from 2005.

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

However, the Government provided a one-time window, allowing those taxpayers who had claimed the cess or surcharges as a deduction from their taxable profits, to recompute their taxable profits after removing such cess or surcharge and deposit the tax on such income.

RULE 132 LAYS DOWN THE PROCEDURE FOR RECOMPUTING SUCH INCOME (as mentioned above).

"Any taxpayer who has claimed deduction of cess or surcharge can share the details of their taxable income, tax paid and the amount of cess/surcharge claimed as a deduction with the tax authorities. The information is to be submitted electronically on the income tax portal using Form 69. On receipt of Form 69, the tax officer will recompute the taxable income of the taxpayer and inform the additional tax to be payable by the taxpayer. The taxpayer can then make the payment of tax and inform the tax officer of the payment of tax in Form 70. No penalty would be leviable on such payment.

BENEFITS OF RULE 132

Rule 132 is a beneficial clause allowing assessees to comply with the provision of Section 155 which allowed Assessing Officers to re-compute the total income for such previous years in which the assessee would have claimed deduction of surcharge or cess subject to be disallowed u/s 40(a)(ii).

This recomputation invariably attracts provisions of section 270A (3) wherein this disallowed surcharge is treated as under-reported income and subject to taxes and importantly penalties.

As per the new Rule, an assessee can suo moto submit an application in the prescribed form for re-computation of income, without claiming a deduction for surcharge or cess and on payment of appropriate taxes (if any) in that case it would not be deemed as under-reported income hence no penalty will be levied under section 270A (3).

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

This application has to be moved in form 69 on or before the 31st day of March 2023 for the re-computation of income under the new Income Tax Section 155(18), as inserted by the Finance Act, 2022. Taxes payable post recomputation of income have to be separately reported in form 70.

RULE 132 VS REVISED RETURNS

Rule 132 differs greatly from a revised return. A Revised return can only be filed up to 31st December 2022 for ITR filed for FY 2021-22 (AY 2022-23).

However, an assessee can file for re-computation of income all the way from FY 2004-05 (AY 2005–06) in Form 69 up to 31st March 2023

WHAT THE FINANCE ACT 2022 SAID?

Finance Act 2022 inserted Section 155(18). Under this section, the Assessing Officer has the power to re-compute the total income of the assessee and accordingly amend the assessment order of previous years, with effect from 2005-2006, owing to the retrospective amendment to Section 40(a)(ii) of the Income Tax Act, 1961.

Section 40 deals with amounts that are not deductible while filing income tax returns by assessees.

The Finance Act, 2022 added Explanation 3 to Section 40 (a)(ii), wherein it states that the term tax includes and shall be deemed to have always included cess and surcharge, meaning thereby, that any amount paid by the assessee on account of cess/surcharge on the profits or gains of any business or profession shall not be covered as deductible amount while filing Income Tax Return.

This amount, towards cess/ surcharge, shall be calculated from the Financial Year 2005-2006 and subsequently, the Assessing Officer shall rectify his/her order passed for those years.

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

SECTION 40 OF INCOME TAX ACT, 1961 – AMOUNT NOT ALLOWED TO BE DEDUCTED

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", -

(a) in the case of any assessee-

(i) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable, -

(A) outside India; or
(B) in India to a non-resident, not being a company or to a foreign company, 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:

***Provided that** where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:*

***Provided further that** where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purposes of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.*

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

Explanation.-For the purposes of this sub-clause,-

(A) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;

(B) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

(ia) thirty per cent of any sum payable to a resident, 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:

***Provided that** where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:*

***Provided further that** where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.*

Explanation.-For the purposes of this sub-clause,-

(i) "commission or brokerage" shall have the same meaning as in clause (i) of the Explanation to section 194H;

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

(ii) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

(iii) "professional services" shall have the same meaning as in clause (a) of the Explanation to section 194J;

(iv) "work" shall have the same meaning as in Explanation III to section 194C;

(v) "rent" shall have the same meaning as in clause (i) to the Explanation to section 194-I;

(vi) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;

(ib) any consideration paid or payable to a non-resident for a specified service on which equalisation levy is deductible under the provisions of Chapter VIII of the Finance Act, 2016, and such levy 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 :

***Provided that** where in respect of any such consideration, the equalisation levy has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such levy has been paid;*

(ic) any sum paid on account of fringe benefit tax under Chapter XIIH;

(ii) any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains.

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

Explanation 1.-*For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, any sum paid on account of any rate or tax levied includes and shall be deemed always to have included any sum eligible for relief of tax under section 90 or, as the case may be, deduction from the Indian income-tax payable under section 91.*

Explanation 2.-*For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, any sum paid on account of any rate or tax levied includes any sum eligible for relief of tax under section 90A;*

(iia) any sum paid on account of wealth-tax.

Explanation 3.-*For the purposes of this sub-clause, "wealth-tax" means wealth-tax chargeable under the Wealth-tax Act, 1957 (27 of 1957), or any tax of a similar character chargeable under any law in force in any country outside India or any tax chargeable under such law with reference to the value of the assets of, or the capital employed in, a business or profession carried on by the assessee, whether or not the debts of the business or profession are allowed as a deduction in computing the amount with reference to which such tax is charged, but does not include any tax chargeable with reference to the value of any particular asset of the business or profession;*

(iib) any amount-

(A) paid by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, by whatever name called, which is levied exclusively on; or

(B) which is appropriated, directly or indirectly, from, a State Government undertaking by the State Government.

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

Explanation 4.*-For the purposes of this sub-clause, a State Government undertaking includes-*

(i) a corporation established by or under any Act of the State Government;

(ii) a company in which more than fifty per cent of the paid-up equity share capital is held by the State Government;

(iii) a company in which more than fifty per cent of the paid-up equity share capital is held by the entity referred to in clause (i) or clause (ii) (whether singly or taken together);

(iv) a company or corporation in which the State Government has the right to appoint the majority of the directors or to control the management or policy decisions, directly or indirectly, including by virtue of its shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

(v) an authority, a board or an institution or a body established or constituted by or under any Act of the State Government or owned or controlled by the State Government;

(iii) any payment which is chargeable under the head "Salaries", if it is payable-

(A) outside India; or

(B) to a non-resident ,and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B;

(iv) any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries".

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

(v) any tax actually paid by an employer referred to in clause (10CC) of section 10;

(b) in the case of any firm assessable as such, -

(i) any payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred to as "remuneration") to any partner who is not a working partner; or

(ii) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is not authorised by, or is not in accordance with, the terms of the partnership deed; or

(iii) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is authorised by, and is in accordance with, the terms of the partnership deed, but which relates to any period (falling prior to the date of such partnership deed) for which such payment was not authorised by, or is not in accordance with, any earlier partnership deed, so, however, that the period of authorisation for such payment by any earlier partnership deed does not cover any period prior to the date of such earlier partnership deed; or

(iv) any payment of interest to any partner which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as such amount exceeds the amount calculated at the rate of twelve per cent simple interest per annum; or

(v) any payment of remuneration to any partner who is a working partner, which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as the amount of such payment to all the partners during the previous year exceeds the aggregate amount computed as hereunder: -

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

(a) on the first Rs. 3,00,000 of the book-profit or in case of a loss Rs. 1,50,000 or at the rate of 90 per cent of the book-profit, whichever is more;

(b) on the balance of the book-profit at the rate of 60 per cent:

***Provided that** in relation to any payment under this clause to the partner during the previous year relevant to the assessment year commencing on the 1st day of April, 1993, the terms of the partnership deed may, at any time during the said previous year, provide for such payment.*

***Explanation 1**.-Where an individual is a partner in a firm on behalf, or for the benefit, of any other person (such partner and the other person being hereinafter referred to as "partner in a representative capacity" and "person so represented", respectively), -*

(i) interest paid by the firm to such individual otherwise than as partner in a representative capacity, shall not be taken into account for the purposes of this clause;

(ii) interest paid by the firm to such individual as partner in a representative capacity and interest paid by the firm to the person so represented shall be taken into account for the purposes of this clause

***Explanation 2.**-Where an individual is a partner in a firm otherwise than as partner in a representative capacity, interest paid by the firm to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person.*

***Explanation 3**.-For the purposes of this clause, "book-profit" means the net profit, as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such*

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

amount has been deducted while computing the net profit.

***Explanation 4**.-For the purposes of this clause, "working partner" means an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner;*

(ba) in the case of an association of persons or body of individuals [other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India], any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such association or body to a member of such association or body.

***Explanation 1**.-Where interest is paid by an association or body to any member thereof who has also paid interest to the association or body, the amount of interest to be disallowed under this clause shall be limited to the amount by which the payment of interest by the association or body to the member exceeds the payment of interest by the member to the association or body.*

***Explanation** 2.-Where an individual is a member of an association or body on behalf, or for the benefit, of any other person (such member and the other person being hereinafter referred to as "member in a representative capacity" and "person so represented", respectively),-*

(i) interest paid by the association or body to such individual or by such individual to the association or body otherwise than as member in a representative capacity, shall not be taken into account for the purposes of this clause;

(ii) interest paid by the association or body to such individual or by such individual to the association or body as member in a representative capacity and interest paid by the association or body to the person so represented or by the person so

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

represented to the association or body, shall be taken into account for the purposes of this clause.

***Explanation 3**.-Where an individual is a member of an association or body otherwise than as member in a representative capacity, interest paid by the association or body to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person.*

PLEASE NOTE THAT:

I) *An amended order of the Assessing Officer shall lead to a change in the computation of tax for the assessees and shall be deemed to be under-reported income as per Section 270A and shall attract the requisite penalty i.e., 50% of the amount of tax payable on under-reported income.*

II) *However, the assessees can avoid such a penalty by voluntarily moving an application, within the stipulated time i.e., 31st March 2023, with the Assessing Officer requesting re-computation of income for those years by disallowing deductions, claimed towards cess/surcharge paid on the profit/gain.*

III) *to the amendment to Section 155, the amount paid towards cess/surcharge was considered as an expenditure and thus, was claimed as a deduction by the assessees.*

IV) *The insertion of subsection 18 to section 155 disallowed this claim and with retrospective effect.*

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

WHAT ARE FORM 69 AND FORM 70?

I) *An application requesting for recomputation of total income of the previous year under sub-section (18) of section 155 without allowing the claim for deduction of surcharge or cess, which has been claimed and allowed as deduction under section 40 in the said previous year, shall be made in Form No. 69 on or before the 31stday of March 2023.*

II) *Accordingly, the AO shall modify the assessment order of past years on account of such retrospective disallowance of deduction for surcharge/ cess.*

III) *Further, new IT Form 70 is meant for intimating the AO about payment of tax on re-computed income u/s 155(18). A form 70 also has to be submitted regarding intimation to the Assessing Officer of the payment of tax on income recomputed under sub-section (18) of section 155.*

HOW TO APPLY FOR RECOMPUTATION UNDER RULE 132

According to Chopra, the process of moving an application under Rule 132 is as follows:

(a) The assessee shall make an application, in Form No. 69, requesting AO for recomputation of total income of the previous year without allowing the claim for deduction of surcharge or cess.

(b) The application shall be furnished electronically on or before 31-03-2023 to PDGIT (Systems) or other prescribed tax authorities.

(c) PDGIT (Systems) or the DGIT (Systems) shall lay down the procedures and standards for furnishing and verification of Form No. 69 and forward the application to AO.

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

(d) On receipt of the application, the AO shall recompute the total income by amending the relevant order. He shall issue a notice under section 156 specifying the time within which amount of tax payable (if any) is to be paid:
i. For AY in which assessee had claimed the deduction; and

ii. For the AYs subsequent to AY referred in (i), if the order of such AY results in variation in carry forward of loss or allowance for unabsorbed depreciation or credit for tax under sections 115JAA or 115JD.

The assessee shall furnish the details of payment of tax in Form No. 70 to AO within 30 days from the date of making the payment.

WHO WILL BE IMPACTED BY RULE 132?

I) Individuals with income from business or profession, who have claimed deduction of surcharge or cess in the previous years, will be impacted by this new Rule 132.

II) In case of all those assessees where the claim of education cess & surcharge has been made and allowed for any assessment year, they will be subjected to compulsory rectification proceeding by 31st March 2026; or such assessees can voluntarily apply for re-computation of their income with the Assessing Officer.

III) Individuals with income from business or profession, who have availed deduction on cess/surcharge are the ones who will be impacted by this new rule and may need to re-compute their income. Deductions shall not be permitted and therefore, the income will be higher which will be will be acknowledged as under-reported income. The taxpayer will be required to pay taxes on such income along with a penalty equal to 50 per cent of the tax due on such income.

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com

WHAT HAPPENS IF YOU DON'T FURNISH INFORMATION

The last date to furnish such information in Form 69 is March 31, 2023.

PLEASE NOTE *If the information is not furnished by such time, the taxpayer can be held to be in default. In such a case, he would become liable for interest and penalty along with the tax amount.*

CONCLUSION: *as you are ware that Income Tax Paid /payable is not allowed as deductible expenses under provisions of Section 40 of the Income Tax Act,1961. But surcharge and cess paid on the same though not allowed but claimed by many entities. The courts in various decision have allowed the same as deductions. But the notification of the Government has clarified that surcharge and cess paid on tax will not be deductible. The government has inserted Rule 132 in the Income Tax Rules, 1962 depicting the procedure to apply to the Income Tax Officers for recomputation of income of the assessee, who have claimed surcharge and cess as deduction in earlier years. The Finance Act, 2022 has also inserted Sub-section 18 in Section 155 of the Income Tax Act, 1961 in this regard.*

DISCLAIMER: *the article presented here is only for sharing information and knowledge with the readers. The views are personal and shall not be considered as professional advice. In case of necessity do consult with tax advisors for more clarity and understanding on subject matter.*

SOURCES:

1. ***www.financialexpress.com***
2. ***https://www.aaptaxlaw.com/income-tax-act/section-40-income-tax-act-amounts-not-deductible-sec-40-of-income-tax-act-1961.html***

FCS DEEPAK P. SINGH
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com