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REFUND OF EXCESS TAX PAID BY THE TAXPAYER

Many times it may happen that the taxpayer has paid excess tax as against the tax required to be paid by him. In such a case he is granted refund of the excess tax paid by him. In this part you can gain knowledge about various provisions relating to claim of refund of excess tax paid by the taxpayer.

Basic provisions

When the tax paid by the taxpayer (could be in the form of advance tax or tax deducted/collected at source or self-assessment tax or payment of tax on regular assessment) is more than the required amount, he will be eligible to claim refund of the excess tax paid by him. Sections 237 to 245 deal with the provisions relating to refund of tax.

When does the refund arise?

As per section 237, if any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any year exceeds the amount of tax payable by him, he shall be entitled to a refund of the excess tax paid by him.

Person entitled to claim refund

In the normal course, the person who has paid the tax is entitled to claim the refund of excess tax paid by him. There are certain special cases in which the refund is to be claimed by a person other than the payer. The provisions relating to person entitled to claim refund in certain special cases are given in section 238. As per section 238, following persons are entitled to claim refund of tax:

Where the income of one person is included in the total income of another person under any provision of the Act (i.e., as per the clubbing provisions, e.g., income of minor child clubbed with the income of parent), the latter shall be entitled to a refund in respect of the

- clubbed income.

Where through death, incapacity, insolvency, liquidation or other cause, a person is unable to claim or receive any refund due to him, his legal representative or the trustee or guardian or receiver (as the case may be), shall be entitled to claim or receive such refund

- for the benefit of such person or his estate.

How to claim refund?

If the taxpayer has to make a claim of refund, then the claim should be made in Form No. 30. However, w.e.f., 01-09-2019, the Finance (No. 2) Act, 2019 has amended this provision to provide that the refund can be claimed only through filing of return of income within the time limit prescribed under Section 139.

CIRCULAR NO. 11/2024 [F. NO. 312/63/2023-OT], dated 1-10-2024 is issued by the Central Board of Direct Taxes (CBDT) for dealing the matters relating to applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof. This Circular is issued in supersession of all earlier Instructions/Circulars/Guidelines issued by the CBDT relating to above discussed matter of condonation. The Circular containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters. The details in this regard (as given in said Circular) are as follows:

1. The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr.CsIT/CsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than Rs.1 crore for any one assessment year. The Chief Commissioners of Income-tax (CCsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs.1 crore but is not more than Rs.3 crores for any one assessment year. The applications/claims for amount exceeding Rs.3 crores shall be considered by the Principal Chief Commissioners of Income-tax (Pr.CCsIT) .
2. No condonation application for claim of refund/loss shall be entertained beyond five years from the end of the assessment year for which such application/claim is made. This limit of five years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the CBDT. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.
3. In a case where refund claim has arisen consequent to a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of five years, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year whichever is later.
4. The powers of acceptance/rejection of the application within the monetary limits delegated to the authorities in case of such claims will be subject to following conditions:
 - a) At the time of considering the case, it shall be ensured that assessee was prevented by reasonable cause from filing the return of income within the due date and that the case is of genuine hardship on merits.
 - b) The authorities dealing with the case shall be empowered to direct the jurisdictional Assessing Officer to make necessary inquiries in accordance with the provisions of the Act to ensure that the application is dealt on merits in accordance with law.
5. A belated application for a supplementary refund (i.e., additional refund after assessment for the same year) may be condoned if other prescribed conditions are met. The authority to accept or reject such claims, within specified monetary limits, lies with the Pr.CCsIT/CCsIT/Pr.CsIT/CsIT, subject to the following conditions:
 - a) The income is not assessable in another person's hands under the Act.
 - b) No interest shall be paid on the delayed refund claim.

- c) The refund arises from excess TDS/TCS, advance tax, or self-assessment tax paid under the Act.

Refund on appeal

As per section 240, in a case where the refund becomes due as a result of any order passed in appeal or other proceeding under the Act, the Assessing Officer shall, except as otherwise provided in the Act, refund the amount to the taxpayer without his having to make any claim in that behalf.

However, where –

an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment.

an assessment is annulled, the refund shall become due only of the amount of the tax paid in excess of the tax chargeable on the total income returned by the taxpayer.

Interest on delayed refund

Many times the taxpayer does not get the refund in due time, in such a case he is granted interest on delayed refund. The provisions in this regard are given in section 244A. The provisions in this regard are as follows:

Where the refund arising to the taxpayer is out of any tax deducted/collected at source or tax paid by way of advance tax, then the taxpayer shall be entitled to interest calculated at the rate of one-half percent for every month or part of a month. Interest in such a case shall be allowed for a period commencing from the 1st day of April of the assessment year to the date on which the refund is granted if the return of income is furnished on or before the due date of filing of return specified under section 139(1) otherwise interest shall be allowed from the date of furnishing of return of income to the date on which the refund is granted

- Where the refund arising to the taxpayer is out of tax paid by way of self-assessment tax then the taxpayer shall be entitled to interest calculated at the rate of one-half percent for every month or part of a month. Interest in such a case shall be allowed for a period commencing from the date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted. However, no interest shall be payable if the amount of refund is less than 10% of the tax as determined under section 143(1) or tax determined under regular assessment.
- Where the refund is arising as a result of an order passed by the AO in consequence of an application made by the assessee under Section 155(20). Such interest shall be calculated at the rate of 0.5% for every month or part of a month comprised in the period from the date of such application to the date on which the refund is granted. [Inserted by Finance Act 2023 w.e.f. Assessment Year 2023-24]
- In any other case (i.e., a case in which refund is due to reasons other than those stated above), interest shall be calculated at the rate of one-half percent for every month or part of a month. Interest in such a case shall be allowed for a period commencing from the date/dates (as the case may be) of payment of the tax or penalty to the date on which the

refund is granted. The expression "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

Interest on refund which arises out of appeal effect

Where a refund, arises as a result of giving effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264, is delayed beyond the time prescribed under section 153(5)(i.e., 3 months from the end of the month in which such order is received by CIT), the assessee shall be entitled to receive an additional interest the rate of 3% per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted.

Further, the period for which the refund is withheld by the AO under section 245(2) shall be excluded while computing interest on the refund.

In computing the period for determining the additional interest, the period beginning from the date on which the refund is withheld by the AO under Section 245(2) and ending with the date on which the assessment or reassessment is made shall be excluded. However, w.e.f. 01-10-2024, AO can withhold refund till 60 days from the date of assessment or reassessment is made.

Interest on refund of TDS to deductor

Where refund of any amount becomes due to the deductor in respect of TDS/TCS paid to the credit of the Central Government, such deductor shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date on which—

- (a) claim for refund is made in the prescribed form; or
- (b) tax is paid, where refund arises on account of giving effect to an order under section 250 or section 254 or section 260 or section 262, to the date on which the refund is granted.

Withholding of refund in certain cases

Where, notice under section 143(2) has been issued to assessee and Assessing Officer is of opinion that grant of refund is likely to adversely affect the revenue, he may after taking prior approval of Principal Commissioner or Commissioner withhold the refund up to the date on which the assessment is made.

Further, in computing the period for determining the additional interest, the period beginning from the date on which the refund is withheld by the AO under Section 245(2) and ending with the date on which the assessment or reassessment is made shall be excluded. However, w.e.f. 01-10-2024, AO can withhold refund till 60 days from the date of assessment or reassessment is made.

No interest in certain cases

The taxpayer will not be entitled to any interest on refund, if the proceedings resulting in the refund are delayed for the reasons attributable to the taxpayer or the deductor (whether wholly or in part). In such a case, the period of the delay so attributable to him shall be excluded from the period for which interest is payable.

Where any question arises as to the period to be excluded, it shall be decided by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner whose decision thereon shall be final.

Variation in the amount of refund

Where, as a result of an order under section 143(3) or section 144 or section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under section 245D(4), the amount on which interest was payable has been increased or reduced (as the case may be), then the interest shall be increased or reduced accordingly.

In a case where the interest is reduced, the Assessing Officer shall serve on the taxpayer a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to repay such amount.

Power of tax authorities to set-off the refund

At times, it may happen that, refund may be due to the taxpayer for some assessment year(s) and there may be some tax demand remaining payable by the taxpayer. In such a case, section 245 empowers the tax authorities to set-off the refund due to the taxpayer against the amount due from him.

As per section 245, where a refund is found to be due to any person, the tax authorities authorised in this regard, may, in lieu of payment of the refund to the taxpayer, set off the amount to be refunded or any part of that amount against the sum, if any, remaining payable by the person to whom the refund is due. However, such an action can be done only after giving an intimation in writing to such person of the action proposed to be taken.

Also, in computing the period for determining the additional interest, the period beginning from the date on which the refund is withheld by the AO under Section 245(2) and ending with the date on which the assessment or reassessment is made shall be excluded. However, w.e.f. 01-10-2024, AO can withhold refund till 60 days from the date of assessment or reassessment is made.

MCQ on refund of excess tax paid by the taxpayer

Q1. As per section 240, in a case where the refund becomes due as a result of any order passed in appeal or other proceeding under the Act, the Assessing Officer shall, except as otherwise provided in the Act, refund the amount to the taxpayer, if the taxpayer makes the claim for the said amount.

- (a) True (b) False

Correct answer: (b)

Justification of correct answer :

As per section 240, in a case where the refund becomes due as a result of any order passed in appeal or other proceeding under the Act, the tax authorities shall, except as otherwise provided in the Act, refund the amount to the taxpayer without his having to make any claim in that behalf (as given in Circular 9/2015 [F.NO.312/22/2015-OT], dated 9-6-2015). Thus, the statement given in the question is false and hence, option (b) is the correct option.

Q2. The provisions relating to interest on delay in payment of refund are given in section

- (a) 234A — (b) 234B
(c) 244A (d) 244B

Correct answer : (c)

Justification of correct answer :

Many times the taxpayer does not get the refund in due time, in such a case he is granted interest on delayed refund. The provisions in this regard are given in section 244A.

Thus, option (c) is the correct option.

Q3. Interest for delay in payment of refund arising due to any tax deducted/collected at source or tax paid by way of advance tax is granted @ _____% for every month or part of a month.

- (a) 1.5 (b) 1
(c) .75 (d) ½

Correct answer: (d)

Justification of correct answer:

Where the refund arising to the taxpayer is out of any tax deducted/collected at source or tax paid by way of advance tax, then the taxpayer shall be entitled to interest calculated at the rate of one-half percent for every month or part of a month. Interest in such a case shall be allowed for a period commencing from the 1st day of April of the assessment year to the date on which the refund is granted if the return of income is furnished on or before the due date of filing of return



specified under section 139(1) otherwise interest shall be allowed from the date of furnishing of return of income to the date on which the refund is granted.

However, no interest shall be payable if the amount of refund is less than 10% of the tax as determined under section 143(1) or tax determined under regular assessment.

Thus, option (d) is the correct option.

Q4. Interest for delay in payment of refund arising due to tax paid by way of self-assessment tax is granted @ % for every month or part of a month.

- | | |
|---------|---------|
| (a) 1.5 | (b) 1 |
| (c) 1/2 | (d) .75 |

Correct answer: (c)

Justification of correct answer:

Where the refund arising to the taxpayer is out of tax paid by way of self-assessment tax then the taxpayer shall be entitled to interest calculated at the rate of one-half percent for every month or part of a month. Interest in such a case shall be allowed for a period commencing from the date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted.

However, no interest shall be payable if the amount of refund is less than 10% of the tax as determined under section 143(1) or tax determined under regular assessment.

Thus, option (c) is the correct option.

Q5. Interest for delay in payment of refund of any amount becomes due to the deductor in respect of TDS/TCS paid to the credit of the Central Government is granted @ % for every month or part of a month.

- | | |
|-------|---------|
| (a) 2 | (b) 1/2 |
| (c) 1 | (d) 3 |

Correct answer: (b)

Justification of correct answer: (b)

Where refund of any amount becomes due to the deductor in respect of TDS/TCS paid to the credit of the Central Government, such deductor shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date on which—

- a) claim for refund is made in the prescribed form; or
- b) tax is paid, where refund arises on account of giving effect to an order under section 250 or section 254 or section 260 or section 262, to the date on which the refund is granted. Thus, option

(b) is the correct option.

Q6. In case of delay in payment of refund arising due to result of giving effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264, additional interest is allowed for a period commencing from the date of such order to the date on which the refund is granted.

(a) True

(b) False

Correct answer: (b)

Justification of correct answer:

Where a refund, arises as a result of giving effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264, is delayed beyond the time prescribed under section 153(5) (i.e., 3 months from the end of the month in which such order is received by CIT), the assessee shall be entitled to receive an additional interest the rate of 3% per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted.

Thus, the statement given in the question is false and hence, option (b) is the correct option.