



CHAPTER 5

Accuracy of advice

Refunds have been adjusted without proper determination of outstanding demands of the assessee. Inaccuracy in refund determination has led to undercharge of tax of Rs. 135.8 crore.

5.1 We found 21 cases⁵³ where refunds of Rs. 33.8 crore granted at summary stage were not considered in scrutiny assessments/subsequent revisions etc. made later leading to excess refunds. In some cases interest levied on the amount adjusted under Section 220(2) was less than due or was not levied⁵⁴. Arrears in demands were either set-off against refunds without intimating the assessee⁵⁵ or were not considered during determination of refund claim⁵⁶. In one case the refund was set off without ascertaining the correct demand thereby leading to avoidable loss of interest. This not only violated the provisions of the Act and the principles of natural justice, but in some cases, led to erroneous set-offs against demands of other assessee.

Refunds not adjusted

Charge: CIT-I Chennai, Tamil Nadu, AY: 2006-07

Refund of Rs. 10.7 crore granted to the Tamil Nadu Urban Finance and Infrastructure Development Corporation Ltd. in March 2008 during summary assessment was not considered while computing tax under scrutiny assessment in November 2008.

Charge: CIT-II Mumbai, Maharashtra, AY: 2005-06

Tax demand of Rs. 425.5 crore was raised in December 2007 in scrutiny assessment of Bank of India, without adjusting refund of Rs. 3.9 crore issued in March 2007, leading to short demand of Rs. 4.1 crore including interest of Rs. 19.6 lakh.

⁵³ in Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu and West Bengal charges

⁵⁴ Section 220(2) provides that if the tax is not deposited within the prescribed period against a demand, the assessee is liable for payment of interest. We found 20 cases in Bihar, Jharkhand, Haryana, Karnataka, Orissa, Madhya Pradesh and Maharashtra, where interest amounting to Rs. 6.9 crore was not levied or levied short of due.

⁵⁵ In 93 cases of refund of Rs. 608.1 crore in Andhra Pradesh, Assam, Bihar, Chattisgarh, Delhi, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and West Bengal charges

⁵⁶ In one case in Orissa of Rs. 13.1 crore

Charge: CIT-III Chennai, Tamil Nadu, A.Y.: 1998-99

The assessment of Shriram Financial Services Holdings (P) Ltd. was revised in December 2007 to determine income of Rs.2 crore. We found that Rs.2.8 crore collected from the assessee by way of adjustment of past refunds was not considered during revision in December 2007, leading to excess demand of tax of Rs. 3.9 crore including interest.

Interest on refunds set-off against arrear demands

Charge: CIT-II Mumbai, Maharashtra, A.Y. : 2003-04

A demand of Rs. 95.1 crore against Larsen & Toubro Ltd. raised in scrutiny assessment (January 2006) was revised (December 2008) to raise an additional demand of Rs. 44.5 crore. The demand of Rs. 95.1 crore, which was not deposited by the assessee, was adjusted against refund for AY 2004-05, 2005-06 and 2006-07 on various dates. We found that the amount adjusted was less than what was due by Rs. 4.9 crore on account of short levy of interest⁵⁷.

Arrears in demands not adjusted

Charge: CIT Sambalpur, Orissa, A.Y.: 2006-07

In the assessment of Mahanadi Coalfields Ltd., a demand of Rs. 13.1 crore was raised in March 2008. We found that refund of Rs. 62.1 crore relating to AY 1999-2000 to 2001-02 was made⁵⁸ in April 2008 without adjusting the outstanding arrear demand of Rs. 13.1 crore.

Set-off of refunds without ascertaining the correct demand

Charge: CIT-II Kolkata, West Bengal, A.Y.: 2003-04

West Bengal Infrastructure Development Finance Corporation Ltd. deposited tax (April 2006) of Rs. 128.1 crore following a demand raised in scrutiny assessment. Yet, the demand was adjusted (May 2006) against a refund of Rs. 20.8 crore pertaining to the AY 2005-06. Due to this error, the amount had to be refunded later (February 2008) with an interest of 2.2 crore under section 244A.

⁵⁷ interest was levied at Rs. 7.48 crore for the period from March 2006 to December 2007 instead of Rs. 12.41 crore for the period from February 2006 to January 2008.

⁵⁸ while giving effect to appellate order under section 251/254

Admissibility of interest on refunds

5.2 Section 244A provides that where a refund is due to an assessee, he will receive interest at the rate of half a *per cent* per month for every month till the grant of refund. The conditions that govern the payment of interest are:

- ❑ No interest is payable if the amount of refund is less than ten *per cent* of the tax determined in assessment.
- ❑ No interest is payable for the period of delay in proceedings that is attributable to the assessee; the decision with regard to the period will be at the discretion of the Chief Commissioner whose decision thereon shall be final.
- ❑ Assessee is liable to pay interest on any amount refunded in excess of due.
- ❑ Interest received by the assessee on refunds is an income, taxable under the head 'Income from other sources'.

5.3 Our findings on interest payments and excess/short payment of refunds are tabulated below. Details are at Appendix III.

Sl. no.	Issue: Interest/Refunds	Rs. in crore	
		No. of cases	Amount
(i)	Charged on excess refunds	57	11.6
(ii)	Paid although the amount refunded was less than 10% of assessed tax	10	3.4
(iii)	Allowed for periods of delay attributable to the assessee	18	3.0
(iv)	Was wrongly computed leading to excess levy	56	17.1
(v)	Was wrongly computed leading to short levy	32	25.0
(vi)	Income not offered to tax	06	4.8

Few cases are illustrated below:

Charge: CIT-I Delhi, AY: 2004-05

Airports Authority of India Ltd. was allowed a refund of Rs. 34.0 crore in summary assessment in April 2005. In scrutiny assessment in May 2006, a demand of Rs. 133.0 crore including interest of Rs. 4.4 crore levied under section 234D was raised. We found that interest was charged in excess by Rs. 2.0 crore.

Charge: CIT Sambalpur, Orissa, AY: 2005-06

In the scrutiny assessment of Mahanadi Coalfields Ltd., interest of Rs. 1.1 crore was paid on the refund of Rs. 15.6 crore although the refund amount was less than 10 *per cent* of

the tax determined (Rs. 632.6 crore). This was in contravention of provisions of the Act.

Charge: CIT-II Ludhiana, Punjab, A. Y. 2006-07

The summary assessment of Bahadur Chand Investment Private Ltd. was processed in December 2007 at an income of Rs. 2.8 crore, by which refund of Rs. 15.4 lakh was granted. Out of the refund, Rs. 6.1 lakh was adjusted against the tax demand of earlier years and balance refund of Rs. 9.3 lakh was issued in March 2008. We found that the returned income of Rs. 2.8 crore included special rate income of Rs. 2.1 crore but the entire income was taxed at special rate of 10 per cent. Thus, incorrect application of rate of tax resulted in excess refund of Rs. 15.4 lakh.

Charge: CIT-I Kolkata, West Bengal, AY: 2003-04

In the case of Garden Reach Shipbuilders & Engineers Ltd., a refund of Rs. 14.2 crore including interest of Rs. 77.9 lakh was processed in July 2004. The assessment completed in February 2006, was revised in November 2007 allowing further refund of Rs. 4.3 crore including interest of Rs. 17.8 lakh. We found that while computing refund in November 2007, the interest payable on Rs. 14.2 crore for the period from April 2003 to July 2004 (date of issue of first refund) was not considered. The mistake resulted in short payment of refund of Rs. 1.26 crore.

Charge: CIT-II Thane, Maharashtra, AY: 2008-09

Jawaharlal Nehru Port Trust received interest of Rs. 13.9 crore on refunds for AY 2006-07 and 2007-08, which was not offered to tax in AY 2008-09, resulting in short levy of tax of Rs. 4.7 crore. Department issued notice (April 2009) to the assessee for selection for scrutiny after it was pointed out by audit to examine the matter during the course of the regular assessment.

5.4 Recommendations

- ❑ *The different mechanisms and controls offered by the ITD applications towards reconciliation of the demands should be properly utilised during processing of the refunds.*

The Ministry stated (March 2010) during the exit conference that the Department was working towards it.

 *Responsibility of the staff members may be clearly fixed⁵⁹, in case of material arithmetical error. This will help in reducing such avoidable errors.*

The Ministry stated (March 2010) during the exit conference that full scale automation would reduce the possibility of occurrence of such errors.

New Delhi
Dated

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⁵⁹ As emphasized in paragraph 7.4 of Board's Instruction no. 9 of 2006