

PROCEDURE OF FILING DELAYED REFUND CLAIM

As you are aware that where an assessee has submitted any return and refund of tax is due , such refund shall be granted by the Assessing Officer of its own. If you have filed your return of income in any previous years and paid the taxes accordingly and afterward in checking or scrutiny it is found that the taxes you have paid are more than taxes assessed and payable , then the Assessing Officer himself after scrutinising your filed return proceed for payment of refund. The assessee is not required to file any claim for such refund. In same way if any refund arises due to an order of appeal, rectification, change in provisions of the tax, revisions by CIT(Appeal), Tribunal and High Court, the refund shall be granted by the Assessing Officer himself.

In case of TDS/TCS for claiming refund you have to file your return of income within due date as prescribed under provisions of Section 139 of the IT Act, 1961.

You have to file your return on the basis of details shown in your Form 26AS as well as **AIS (Annual Information Statement)**. If you have failed to claim or claimed lessor refund as shown in the Form 26AS, even though you are liable to file revised return and claim balance amount of taxes as refund.

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 behalf for any assessment year exceeds the amount which he is properly chargeable under the Income tax Act for that year, he shall be entitled to a refund of the excess.

SECTION 238– provides that only an assessee is entitled to claim refund of taxes paid but below mentioned cases a person other than an assessee is entitled to claim refund ;

- i) Where income of one person is clubbed in the total income of any other person according to the provisions or included in the total income of any other person , then such other person is entitled to claim refund on taxes paid;
- ii) Where due to death , incapacity, insolvency , liquidation or other cause , a person is unable to claim or receive any refund due to him, his legal representatives 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.

SECTION 239 READ WITH RULE 41– provides that the claim for refund must be filed within a period of one year of the last date of relevant assessment year. Suppose your TDS has deducted for FY 2020-21 relevant to AY 2021-22, then you have to file your claim for refund on or before 31/02/2023.

The Assessing Officer has power to condone delay in filing of refund claim in certain circumstances based on merits.

Beta Cashew & Allied Products (P) Ltd. Vs. CIT (2016) 242 Taxman 373(Ker)- it was held that delay in application for refund should be condoned where it is demonstrated that assessee incurred huge losses and if amount is not refunded , its losses would be much more than already computed.

SECTION 240- provides that where as a result of any order passed in appeal or other proceedings under this act, refund of any amount becomes due to the assessee, the AO shall ,refund the same to the assessee, without he having to make any claim in that behalf.

Provides that where, by the order aforesaid-

a) An assessment is set aside or cancelled and a order of fresh assesement is directed to be made, the refund if any , shall become due only on making of such fresh assesement;

b) The assessment is annulled , the refund become due only of the amount if any, of the tax paid in excess of the tax chargeable on th total income returned by the assessee.

K. Nagesh Vs. ACIT (2015) 57 taxman.com 439(Ker)- Assessee has filed his return and paid taxes plus interest on total admitted tax. Thereafter , assessee filed revised retrun and paid a sum of Rs. 2,75 Lakhs including interest on admitted tax. Declaration of Income furnished by assessee under revised return was declared invalid, hence, assessee claimed refund of tax and interest paid on revised return under Section 240. On appeal it was held that on examination of Section 240(b) , it is axiomatic that, “return” contemplated in said section has to be valid return and since tax and interest offered by the assessee was based on invalid return (revised return), and that return itself was not est in eye of laws, then there was no basis for authorities to withhold said tax collected. Hence authorities were to refund said amount considering original return as return furnished and amount whatever was paid in excess under Original Return have to be refunded subsequent to annulment of assessment by Authorities.

SECTION 245-SET OFF REFUND AGAINST TAX/DEMAND OUTSTANDING; provides that where under any of thee provisions of the Income Tax Act, a refund is found to be due to any person, the AO , CIT(Appeal) or Principal Chief Commissioner or Chief Commissioner etc., as the case may be , in lieu of payment of refund , set off the amount to be refunded or any part thereof ,against the sum, if any ,remaining payable under the Income Tax act person to whom refund is due , after giving an intimation in writing to such person of the action proposed to be taken.

PLEASE NOTE THAT- no such adjustment will be allowed unless an intimation to be given to the assessee in writing and giving an opportunity of assessee to agree or disagree with the decision of the tax authorities.

Revenue cannot make adjustments contrary to procedures prescribed under Section 245 based on wrong data uploaded by the AO. Once amount is correctly and rightly reflected in Form 26AS , small or technical mismatch in return should not be made a ground to deny credit of amount paid. In cases TDS data reflected in Form 26AS requires ratification , notice should be issued to the assessee to revise or correct mistake and only if necessary rectification or correction is not made , an order under Section 143(1) should be passed and demand should be raised. [Court of its own Motion vs. CIT(2012)210 Taxman 452(Del)]

If notice has been given to the assessee and on the same date the adjustment has been done ,without giving any opportunity to the assessee to submit his accent /decent

with the adjustment , then any such order should be set aside and court may compel the AO for giving an opportunity to the assessee to present his case.[Oriental Insurance Co. Ltd. Vs. CIT(2013) 218 taxman 107(All)(mag.)]

PLEASE NOTE THAT- an assessee is not entitled to refund of prepaid taxes when assessment order declared to be void. Where an assessment order made by the AO was held to be void and no fresh order was made, it does not entitle the assessee to claim refund of Advance Tax, TDS and tax paid on Self Assessment as to the extent the assessee has admitted his liability to pay tax according to the provisions of IT Act, 1961. Whoever it the tax paid by the assessee is in excess off tax liability as may be determined then he can claim refund of excess amount paid.[CIT vs. Shelly Products (2003)261 ITR 367(SC)]

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The CBDT has issued **Circular No. 9/2015 dated 9th June, 2015** containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters.

1. Principal commissioner or Commissioner vested with the power of acceptance /rejection of delayed application of refund provided that claim is not more than Rs. 10 Lakhs for any Assessment Year;
2. Principal chief Commissioner or Chief Commissioner vested with the power of acceptance/rejection of delayed application of refund provided the claim is more than Rs. 10.00 Lakhs but does not exceed Rs. 50.00 Lakhs for any Assessment Year;
3. Claim of refund exceeding Rs. 50.00 Lakhs the application/claim for refund amount exceeding Rs. 50.00 Lakhs shall be considered by the Board;

Monetary Limit Authority

Where the amount of claim is not more than Rs. 10 lacs The Principal Commissioners of Income Tax/ Commissioners of Income Tax (Pr.CITs/CITs)

Where the amount of claim is more than Rs. 10 lacs but less than Rs. 50 lacs The Principal Chief Commissioners of Income Tax/ Chief Commissioners of Income Tax (Pr.CCITs/CCITs)

Where the amount of claim is more than Rs. 50 lacs Central Board of Taxes

4. Application for condonation of delay in making refund claim cannot be entertained beyond a period of 6 years- no condonation application for claim of refund shall be entertained beyond six years from the end of assessment year for which such application is made. This limit of six years shall be applicable to all authorities having power to condone the delay as per the above prescribed monetary limit, including the Board;
5. Time limit for disposal of condonation application of refund- the condonation application should be disposed within a period of 6 (six) months from the month in which application /claim for refund is filed;

6. Exclusion of certain period while calculating period of 6(six) years- in case where refund claim has arisen consequent of 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 six 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;

Note: If any refund is given to any person on the basis of any such relief by the court, then the period for which court case was pending will not be considered for calculating 6 years of time. This period is ignored only where an application has been filed within 6 months from the end of the month of the court's order or end of the relevant financial year – whichever is later.

7. Conditions for acceptance/rejection of application-the powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCs IT/CcsIT/Pr. CS IT/CsIT in case of such claim will be subject to following conditions;

i) At the Tim of considering the case under Section 119(2)(b) , it shall be ensured that the income/loss declared and or/refund claimed is correct and genuine and also that the case is of genuine hardship on merits;

ii) The concerned authorities dealing with the case shall be empowered to direct the jurisdictional AO to make necessary inquiries or scrutinise the case in accordance with thee provisions of the IT Act, to ascertain correctness of the claim.

8. Belated application for supplementary claim of refund- a belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions referred above are fulfilled;

9. Additional conditions applicable for claim/refund supplementary of refund-the powers of acceptance/rejection within the monetary limits delegated to the Pr.CCs IT/CcsIT/Pr. CS IT/CsIT in case returns claiming refund and supplementary claim of refund would be subject to the following further conditions;

i) The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act;

ii) No interest will be admissible on belated claim of refunds;

iii) The refund has arisen as a result of excess tax deducted/collected at source/or excess advance tax payment and /or excess payment of Self Assesement tax as per provisions of IT Act, 1961.

10. Time limit of 6(six) years for making refund claim not applicable in case of interest from 8% Saving Taxable Bonds,2003 if accounted on mercantile basis;

Section 119(2)(b) in The Income- Tax Act, 1995

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise 8 any income- tax authority, not being a Deputy Commissioner (Appeals) or Commissioner

(Appeals)] to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.

Section 119 empowers the Central Board of Taxes (CBDT) to issue instructions to lower level of authorities. In addition, section 119(2)(b) empowers CBDT to direct income tax authorities to allow any claim for exemption, deduction, refund and any other relief under the income tax act even after the expiry of the time limit to make such claim. However, such claims will only be allowed by the income tax authority provided, making such a claim within the prescribed due date was genuinely out of the control of the taxpayer.

CONCLUSION; refund of taxes paid in excess of tax liability or tax admitted is the right of every assessee above provisions should be kept in mind, while claiming refund of any amount paid. Please note that you have to claim for refund within a period of one year from the end of last date of relevant assessment year and if you fail to claim refund during that period then you have time of 6 years from the end of Assessment Year relevant to the previous year for which refund is related. The CBDT has laid down a procedure for claiming refund and fixed monetary limits for different income tax officials. The refund application /claim may be entertained by above authorities in genuine cases.

Source : Taxguru