

Interest u/s. 244A on 'Additional Claims' Refund - Looking Through the Kaleidoscope..

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1. Under the provisions of Income Tax Act, 1961 ('the Act'), a taxpayer is required to pay interest to the Government when it delays either payment of tax or filing of return. Similarly, interest is also granted to the taxpayer where any amount is refundable to the taxpayer for the period mentioned in the Act. Such interest whether payable or receivable by the taxpayer is automatic.
2. When a taxpayer files the Return of Income, income is determined and tax is computed alongwith interest payable, if any. Where the tax paid is more than tax payable, the excess amount is determined as refund, which is granted to the taxpayer at a later date alongwith interest under Section 244A of the Act, subject to fulfillment of certain conditions.
3. Under the provisions of the Act, a taxpayer could raise an additional claim at assessment or appellate stage which may not have been lodged in the Return/Revised Return due to inadvertent error or may have come to the notice of the taxpayer at a later point of time on account of a judicial decision by a Court and/or Tribunal in case of another taxpayer. The said additional ground may first have to be admitted by the authority where the grounds are filed and then adjudicated on merits. In case an additional claim is allowed to the taxpayer, refund may arise which needs to be paid to the taxpayer alongwith interest under Section 244A. A question arises on determining the period for which interest under Section 244A is to be granted on the refund pertaining to the additional claim allowed - whether the interest should be granted from date of application for additional claim or from 1st day of Assessment Year or from date of allowability of claim/refund.
4. At the outset, it is important to refer to the relevant provisions of Section 244A of the Act. Sub-section (1), inter alia, provides that where refund becomes due to the taxpayer, he shall be entitled to interest on such refund arising out of pre-paid taxes (TDS and advance tax) pertaining to the concerned financial year from the first date of Assessment Year. Sub-section (2) provides that where the proceedings resulting in the refund are delayed for reasons attributable to the taxpayer, the period of such delay shall be excluded from the period for which interest is payable. However, such cases should be decided by the Principal Chief Commissioner or Principal Commissioner. Sub-section (3) provides that where in assessment or a proceeding for giving effect to order of appellate authorities, the amount on which interest has been granted earlier is increased or reduced, the interest under Section 244A shall be consequentially increased or reduced.
5. From reading of the above, it is clear that where refund is arising on account of claims lodged in the Return/Revised Return, the taxpayer is entitled to interest from the first day of Assessment Year. In a case where any additional claim is lodged at assessment or appellate stage and allowed in favour of the taxpayer, the claim needs to be considered as lodged in the Return of Income and full interest from beginning of Assessment Year should be granted under the provisions of Section 244A of the Act since interest payment is mandatory and automatic. The Act nowhere provides a restriction that interest on refunds arising on account of additional claims need not be paid for the period when the claim was not brought to the notice of the Assessing Officer ('AO') by the taxpayer. The Supreme Court in **Union of India v Tata Chemicals Ltd. (2014) 363 ITR 568 (SC)** clarified the reasons for granting interest by observing that refund due and payable to the assessee is a debt owed and payable by the Revenue. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest.
6. Sub-section (2) of Section 244A implies a situation where the proceedings are delayed for reasons attributable to the taxpayer, the period for such delay cannot be considered while granting interest under Section 244A. Such situation cannot be considered at par with a case where a claim has been lodged by the

taxpayer in a later proceeding under the Act. Where in a refund proceeding, the AO has requested the taxpayer to submit certain details and documents which is relevant to ascertain the amount of tax and interest under Section 244A and the taxpayer has not produced the same on time, the delay is attributable to the taxpayer, which will be a sufficient reason for non-grant of interest during the period of delay. However, delay in making the claim or filing a refund application would not amount to delay in the proceedings. Rather, it follows as a natural corollary to the taxpayer's right to receive refund. The rationale underlying the provisions of Section 244A is to compensate the taxpayer in lieu of the deprivation of their property right by virtue of unlawful collection of tax.

7. The Gujarat High Court in the case of **Ajanta Manufacturing Limited v DCIT (Special Civil Application No. 6830 of 2016 (decision dated 27-07-2016)** / [\[TS-5925-HC-2016\(GUJARAT\)-O\]](#) has held that the act of revising a return or raising a claim during the course of assessment proceedings cannot be said to be the reason for delaying the proceedings which can be attributed to the taxpayer and hence, interest under section 244A is to be allowed from first day of Assessment Year.

8. In another case, the Kerala High Court in case of **CIT v South Indian Bank Limited (2012) 340 ITR 574 (Ker)** / [\[TS-5750-HC-2010\(KERALA\)-O\]](#) has held that a new claim made by the taxpayer for the first time before completion of assessment which was eventually allowed by the CIT(Appeals) and led to refund cannot justify denial of interest which was otherwise allowable under Section 244A for the period upto the date of making claim of such deduction. Sub-section (2) shall have application in cases where the delay is attributable to the taxpayer. In this case, the AO had not established that the taxpayer has caused any delay in issuing the refund order.

9. The issue stands fairly settled now in view of recent decision of the Bombay High Court in the case of Pr. **CIT v State Bank of India (ITA No. 1218 of 2016) (decision dated 04 January 2019)**. In this case, the taxpayer offered to tax "interest accrued but not due on securities" in the Return of Income and claimed the same later in assessment stage. The claim was rejected by the AO but was allowed by the Commissioner (Appeals) in appellate proceedings. While giving effect to such order, refund was determined without granting interest on such additional claim stating that there was delay on part of the taxpayer. On appeal, the Tribunal allowed the interest under Section 244A from the beginning of Assessment Year relying on the decision of the Kerala High Court in **South India Bank** (Supra). The High Court affirmed the order of the Tribunal. Following the said decision of Hon'ble Bombay High Court, in a similar matter, interest has been allowed to the same assessee in the case of Pr. **CIT v State Bank of India (ITA No. 1180 of 2016) (decision dated 21 January 2019)**.

10. Sub-section (3), as discussed above, provides for increase or decrease in quantum of interest paid to the taxpayer under sub-section (1), but not the period for which the interest is to be paid. For instance, in a case, a particular claim not allowed by the AO in assessment is allowed by the CIT(Appeals) in appellate stage, the interest under Section 244A shall be granted on the increase amount of refund considering the claim allowed by the CIT(Appeals). The AO is required to increase the quantum of interest based on appellate order but has no power under sub-section (3) to modify or re-determine the period for which the interest is to be granted. The view finds support from the decision of Mumbai Tribunal in the case of **Addl. CIT v ACC Limited (ITA Nos. 6262 & 6263/Mum/2010) (decision dated 21-12-2011)**, wherein the additional claims were lodged for the first time before the Tribunal and interest was allowed on consequential refund from 1st day of Assessment Year.

11. The issue is adversely decided by an earlier decision rendered by the Punjab & Haryana High Court in the case of **National Horticulture Board v Union of India (2002) 253 ITR 12 (P&H)** / [\[TS-5472-HC-2000\(PUNJAB\)-O\]](#). In this case, post an exemption granted by the CBDT under Section 10(23C)(iv) of the Act in Feb 1999, the taxpayer filed an application for refund on 9 April 1999 which was allowed by the Revenue vide order dated 23 April 1999 alongwith interest under Section 244A from the date of passing of such order. The High Court denied interest to the taxpayer from Feb 1999 to April 1999 stating that delay in filing of application was attributable to the taxpayer. However, it agreed with the contention of the taxpayer for entitlement of interest from date of application and not from date of order allowing the claim. The said decision can be distinguished from the peculiar facts in this case where an exemption was granted by the CBDT, which is not the case where an additional claim is lodged.

12. Relying on the aforesaid decision of the P&H High Court, the Gauhati High Court in **CIT v Assam Roofing Ltd. (2011) 330 ITR 87 (Gau)** / [\[TS-5643-HC-2010\(GAUHATI\)-O\]](#) has decided the issue against the taxpayer by holding that interest will be granted only from date of assessment order against which the taxpayer had filed appeal before the CIT(Appeals) and raised the additional claim for the first time in such appeal. Though this decision is not mentioned in the recent order of the Bombay High Court [in State Bank] discussed above, the same was relied upon by the Revenue authorities and distinguished in the Mumbai Tribunal decision in that very case (**decision dated 31-08-2015**) and also in case of **ACC Limited**

(Supra).

13. Though recently, decisions have been passed by Court and Tribunals in favour of the taxpayer, it will be interesting to see the fate of the claim for interest under Section 244A from beginning of Assessment Year when the law is clarified by way of amendment in statute or Supreme Court decision or a CBDT Circular.