

CBDT clarifies that interest can't be denied on refund of excess TDS deposited under Sec. 195

Summary – The Delhi ITAT in a recent case of Raj Jain., (the Assessee) held that where status of assessee was a non-resident, fact that assessee was already employed before leaving India should not effect his residential status

**SECTION 244A, READ WITH SECTION 195, OF THE INCOME-TAX ACT, 1961 - REFUNDS - INTEREST ON - PAYMENT OF INTEREST ON REFUND OF EXCESS TDS DEPOSITED UNDER SECTION 195
CIRCULAR NO.11/2016 [F.NO.279/MISC./M-140/2015-ITJ], DATED 26-4-2016**

The procedure for refund of tax deducted at source under section 195 of the Income tax Act, 1961, to the person deducting the tax is delineated in CBDT [Circular No. 7/2007 dated 23-10-2007](#). [Circular No. 7/2007](#) states that no interest under section 244A of the Act, is admissible on refunds to be granted in accordance with the circular or on the refunds already granted in accordance with Circular No. 769 or Circular 790 dated 20.4.2000.

2. The issue of eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy and litigation. The Hon'ble Supreme Court of India in the case of Tata Chemical Limited¹, Civil Appeal No. 6301 of 2011 *vide* order dated 26-2-2014, held that, "Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. 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. "

3. In view of the above judgment of the Apex Court it is settled that if a resident deductor is entitled for the refund of tax deposited under section 195 of the Act, then it has to be refunded with interest under section 244A of the Act, from the date of payment of such tax.

4. Accordingly, it is advised that no appeals may henceforth be filed on this ground by the officers of the department and appeals already filed on this issue may not be pressed upon.

5. This may be brought to the notice of all concerned.