

Unit created due to expansion constitutes a new business; tax holiday period begins from initial AY of that unit

Summary – The Mumbai ITAT in a recent case of Rajashekhar Swaminathan Iyer, (the Assessee) held that Even when refund determined was less than 10 per cent of gross tax, assessee would be entitled to interest under section 244A on amount of refund for period of delay

Facts

- The assessee claimed interest under section 244A.
- The Assessing Officer held that, since the refund determined was less than 10 per of gross tax, no interest would be payable to the assessee under section 244A and thus, he rejected the rectification application.
- On appeal, the Commissioner (Appeals) affirmed the order of the Assessing Officer.
- On second appeal before the Tribunal:

Held

- It is noted that the provisions of the Act have been drafted in such a manner that assessee is obliged to pay tax through various channels viz: i. Tax deducted/collected at source, ii. Advance Tax and Self Assessment Tax etc.
- The provisions with regard to deduction of tax at source by the payers are quite stringent. The payers are bound to deduct the tax at source from the payments made to the payees irrespective of the facts whether any amount of tax would be payable by the payee on its income or not. Further, it is very difficult to estimate the exact amount of taxable income in view of uncertainties in life and business coupled with complex provisions of law and various deductions and exemptions as may be available to an assessee, and therefore, assessee is at times required to pay advance tax purely on estimate basis. Under these circumstances, the assessee under stringent provisions of the law ends up in paying more amounts of tax than he is liable to pay in a particular assessment year. On the top of that, there is no provision under the income tax law which permits an assessee to set off the extra amount of tax paid by an assessee in a particular year against the amount payable in the subsequent year at the time of filing of return for subsequent year. Under these circumstances, the revenue is expected and obliged under the law to return the excess amount collected from the assessee as per the earliest occasion while framing order/intimation under section 143(1). The state is not expected to enjoy unjust enrichment at the cost of the tax payers. Article 265 of Constitution of India clearly says that no tax can be collected except with the authority of law. Under these circumstances, various courts have time and again issued strict instructions and guidance to the revenue authorities

to refund the amount of excess tax collected from the assessee on its earlier convenience. It is further noted that the Central Board of Direct Taxes had also come out with various instruction to avoid undue hardship to the tax payers.

- Delhi High Court in case of *Court on its Own Motion v. CIT* [[2013](#)] [352 ITR 273/214 Taxman 335/31 taxmann.com 31](#) issued writ of *Mandamus* for necessary action by the Income Tax Department, for payment of interest under section 244A of the Income-tax Act 1961, especially when the assessee is not at fault. Subsequent to the above decision, the CBDT came out with instruction No.7/2013 on the subject of payment of interest under section 244A Act when assessee is not at fault.
- In the matter of *Union of India v. Tata Chemicals Ltd.* [[2014](#)] [363 ITR 658/43 taxmann.com 240/222 Taxman 225 \(Mag.\) \(SC\)](#) the Supreme Court has elucidated and clarified that the 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. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course interest is a kind of compensation for use and retention of money collected unauthorisedly by the department. A general right exists in the state to retain any tax collected for its purpose, and a corresponding obligation exists to refund to individuals any sum paid by them as taxes which are found to have been wrongfully extracted or are believed to be, for any reason, inequitable. That the statutory obligation to refund carries with it the right to interest also. It was finally held that when the collection is illegal, there is a corresponding obligation on the revenue to refund such amount with interest in as much as it had retained and enjoyed the money deposited.
- There was no proper justification on the part of the revenue to withhold the amount of refund beyond the date of issuance of intimation/order under section 143(1). Upto the date of passing order/intimation under section 143(1), no interest shall be payable by the department to the assessee because of clear provisions of law on the statute in this regard, but for the period of delay in issuing the refund after the date of passing of the order under section 143(1), the assessee is entitled for interest and revenue is liable to pay it to the assessee. Thus, the Assessing Officer is directed grant the interest under section 244A for the period falling between the date of passing of order under section 143(1) and actual date of granting of refund, at the rate of interest as would have been applicable if the refund amount would have been for an amount more than 10 per cent of the gross tax.