



INSTRUCTIONS TO SUBORDINATE AUTHORITIES - AUTHORISATION REGARDING CONDONATION OF DELAY IN FILING REFUND CLAIM

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ORDER [F. NO. 225/208/93-IT(A-II)], DATED 26-10-1993

Section 119(2)(b) of the Income-tax Act, 1961 - Central Board of Direct Taxes - Instructions to subordinate authorities - Authorisation regarding condonation of delay in filing refund claim

1. I am directed to enclose a copy of the order under section 119(2)(b) from file of even number dated 12-10-1993 (see **Annex One**) and also the Circular No. 670 (**Annex Three**) of even date from the same file.
2. In this context, I have been directed to draw your attention to Instruction No. 1867, dated 30-11-1990 (see **Annex Two**) and to inform you that paras 2, 3 and 4 of the said Instruction shall continue to be applicable. The Chief Commissioner/Director General/Commissioner of Income-tax/Director of Income-tax should not only see that the conditions laid down by the various Circulars of the Board are satisfied, but should also look further into the facts of the case and examine other aspects such as the source of income, whether the income returned is reasonable considering the extent of profits disclosed, whether books of account had been maintained and whether there was any manipulation of accounts in the course of the delayed filing of the claim of refund, etc., for deciding the genuineness of the claims.
3. The powers delegated under section 119(2)(b) should be invoked only in suitable cases after scrutiny as suggested above and the claim should not be disposed of in a routine manner.

ANNEX ONE

ORDER [F. NO. 225/208/93-IT(A-II)], DATED 12-10-1993

1. In continuation of earlier orders dated 5-2-1988 and 17-8-1988 issued from F. No. 225/201/87-IT(A-II), the Central Board of Direct Taxes, in exercise of the powers conferred by clause (b) of sub-section (2) of section 119 of the Income-tax Act, 1961, hereby order that, in all cases where an otherwise valid refund claim under section 237 of the Income-tax Act, 1961, is filed by an assessee after the expiry of the statutory time limit prescribed under section 239 of the Act, the Assessing Officer, having jurisdiction over the case, may admit the said refund claim and dispose of the same on merits and in accordance with law provided the following conditions are satisfied :

- (i) the refund arises as a result of excess tax deducted at source, collected at source and payments of advance tax under the provisions of Chapters XVII-B, XVII-BB and XVII-C respectively and the amount of refund does not exceed Rs. 1 lakh for any assessment year;
- (ii) the returned income is not a loss where the assessee claims the benefit of carry forward of the loss;
- (iii) the refund claimed is not supplementary in nature, i.e., claim for additional amount of refund after the completion of the original assessment for the same assessment year; and
- (iv) the income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.

This order will be effective from 1-11-1993.

ANNEX TWO

INSTRUCTION NO. 1867, DATED 30-11-1990

1. Reference is invited to the earlier instructions/circulars issued by the Board regarding condonation of delays in claiming refunds, etc., by invoking the provisions of section 119(2)(b) of the Income-tax Act, specifically the following :

- (i) Instruction No. 1795, dated 17th August, 1988 and Letter No. 225/263/88-IT(A-II), dated 23rd January, 1989 stating that the Assessing Officer shall, before entertaining a belated refund claim, obtain the prior approval of the Commissioner of Income-tax where the refund claim does not exceed Rs. 1,000 and of the Chief Commissioner of Income-tax/Director General of Income-tax where the refund exceeds Rs. 1,000 but does not exceed Rs. 10,000; and
- (ii) Order No. 225/201/87-IT(A-II), dated 5-12-1988 clarifying that the Board has delegated the power to condone the delay in case the refund does not exceed Rs. 10,000, provided the Chief Commissioner of Income-tax/Director General of Income-tax or the Commissioner of Income-tax as the case may be, is satisfied that the conditions laid down in the various instructions/circulars on the subject are satisfied. However, such delegation was restricted to condonation of delay and not rejection thereof.

2. Some Chief Commissioners have recommended the cases of contractors and other persons engaged in business, who had made applications under section 119(2)(b) of the Income-tax Act for the purpose of claiming refunds of income-tax deducted at source from contract receipts, etc., for rejection as they were not satisfied that the income returned by the said persons was full and true or even reasonable considering the extent of profit disclosed. It was also noticed that such persons were not maintaining any books of account and, therefore, the possibility of purposely delaying the filing of the returns so as to avoid scrutiny by the Department could not be ruled out. Needless to say that such cases were not found to be of genuine hardship.

3. The Board has been accepting such recommendations as it would be against public policy to condone such delays thereby giving an extended time to such assesseees to manipulate their accounts so as to evade taxes.

4. The Board now desire that the Chief Commissioners/Directors General/Commissioners should not only see that the conditions laid down by the various Board's circulars are satisfied, but also look further into the facts of the case and examine the source of income, whether the income has been reflected in other years or not whether there is any scope for manipulation of accounts due to the delay in filing the claim of refund, etc., before applying the provision of section



119(2)(b) of the Income-tax Act. It is desired that only genuine cases should be considered for the purpose of applying the provisions of section 119(2)(b) of the Act and the applications should not be disposed of in a routine manner.

ANNEX THREE

CIRCULAR NO. 670, DATED 26-10-1993

1. I am directed to forward herewith the order contained in F. No. 225/208/93-IT(A-II), dated 12th October, 1993, passed by the CBDT in exercise of the powers conferred on it under section 119(2)(b) of the Income-tax Act. By virtue of this order the Assessing Officers can admit belated refund claims under section 237 of the Income-tax Act in cases where refunds may arise as a result of tax deducted/collected at source and advance tax payments where the amount of such refund does not exceed Rs. 1 lakh for any assessment year.
2. Board have also decided that in such cases—
 - (i) where the refund does not exceed Rs. 10,000 for any assessment year the Assessing Officer shall obtain the prior approval of the CIT before entertaining a belated refund claim; and
 - (ii) where the refund exceeds Rs. 10,000 but does not exceed Rs. 1,00,000 for any assessment year the Assessing Officer shall obtain the prior approval of CCIT or DGIT before entertaining a belated refund claim.
3. The CCIT/DGIT/CIT, as the case may be, shall ensure that the conditions laid down under Board's order under section 119(2)(b) referred to above are fulfilled.
4. Where a Chief Commissioner of Income-tax/Director General of Income-tax/Commissioner of Income-tax/Director of Income-tax finds that the four conditions laid down in the order under section 119(2)(b), dated 12-10-1993 are satisfied but still it is not a case of "genuine hardship", he should refer the belated refund application to the Board for final decision.
5. This order is effective from 1-11-1993 and will apply to all claims of refund pending as on that date and also in respect of all refund claims filed on or after that date.

CLARIFICATION

1. The procedure for dealing with the applications for condonation of delay in filing returns and claiming refund is presently governed by the Board's earlier orders/circulars issued under section 119(2)(b) of the Income-tax Act, 1961, namely, F. No. 225/208/93-ITA-II, dated 12-10-1993 read with Board's Circular No. 670, dated 26-10-1993 issued from F. No. 225/208/93-ITA-II and also Circular No. 8/2001, dated 16-5-2001 issued from F. No. 212/35/99-ITA-II. As per the existing procedure laid down by the aforesaid orders/circulars, the powers of condonation of delay are exercisable by Commissioners of Income-tax if the claim is below Rs. 10,000, and by the Chief Commissioners of Income-tax if it is above Rs. 10,000 and up to Rs. 1,00,000. In respect of cases where amount involved is more than Rs. 1,00,000, the applications/requests are dealt with and decided by the Board in accordance with the powers vested in the Board.
2. The matter regarding delegation of powers for acceptance/rejection of applications, requests for condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 has been receiving the attention of the Board. In modification of the aforesaid orders/circulars, the Board has decided to vest the CCIT with the powers of acceptance/rejection of such applications requests involving refund claims upto Rs. 5,00,000, and the decision of the CCIT would be final. The CIT will have the powers of acceptance/rejection in cases involving refund claims up to Rs. 1,00,000. However, cases involving refund claims exceeding Rs. 5,00,000 would continue to be processed by the Central Board of Direct Taxes, both for acceptance and rejection.
3. It has also been decided that cases where delayed claims of refunds are being considered would be taken up for scrutiny.
4. The powers of acceptance/rejection within the monetary limits delegated to the CCIT as above would be subject to the following conditions :
 - (i) the refund has arisen as a result of excess tax deducted/collected at source and payments of advance tax under the provisions of Chapters XVIIIB, XVIIIBB and XVIIC, respectively and the amount of refund does not exceed Rs. 5,00,000 for any one assessment year;
 - (ii) the income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act;
 - (iii) no interest will be admissible on the belated refund claims;
 - (iv) if the refund arises from the return of income filed for the first time, then the CCIT will be empowered to direct the Assessing Officer to make a regular assessment under section 143(3) and then issue the refund, if any;
 - (v) no claims under this provision will be entertained where a period of more than 6 assessment years prior to the current assessment year has elapsed;
 - (vi) these instructions will cover the requests for condonation of delay under section 119(2)(b) where such requests have been filed in the Board, or have been forwarded to the Board by CCIT/DGIT.

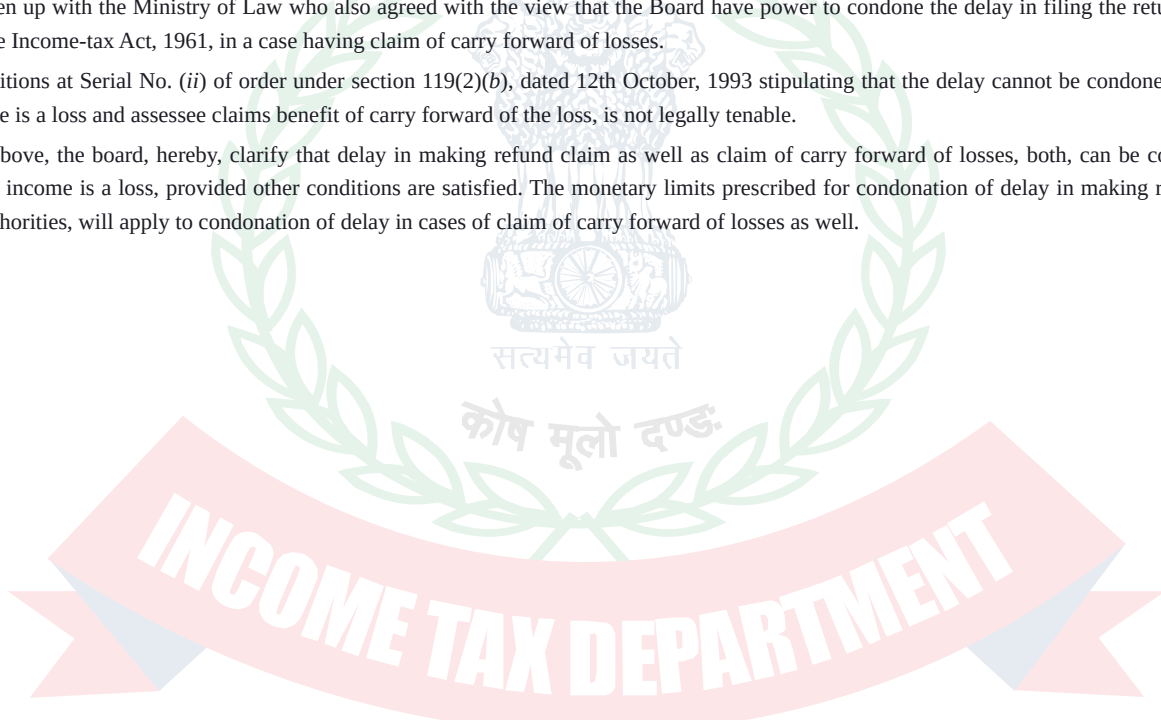
These instructions would, however, not cover cases prior to assessment year 1996-97.

Instruction : No. 12/2003, dated 30-10-2003.



CIRCULAR NO. 8/2001, DATED 16-5-2001

1. The Board's order under section 119(2)(b), dated 12th October, 1993 and Circular No. 670, dated 26th October, 1993 [F. No. 225/208/93/IT(A-II)] lay down procedure for condonation of delay in belated claims of refunds. These provide that CIT has power to condone delay in case of genuine hardship of refund claims upto Rs. 10,000 and CCIT upto Rs. 1,00,000. The power of condonation in cases of refund claims of more than Rs. 1,00,000 as well as power of rejection in all cases lie with the Board.
2. Under the existing circular, apart from the conditions prescribed under earlier orders dated 5-2-1988 and 17-8-1988, issued from [F. No. 225/201/87/IT(A-II)], the following additional conditions are required to be fulfilled before the condonation of delay in filing belated refund claims can be considered :
 - (i) the refund arises as a result of excess tax deducted at source, collected at source and payments of advance tax under the provisions of Chapters XVII-B, XVII-BB and XVII-C, respectively and the amount of refund does not exceed Rs. 1 lakh for any assessment year;
 - (ii) the returned income is not a loss where the assessee claims the benefit of carry forward of the loss;
 - (iii) the refund claimed is not supplementary in nature, i.e., claim for additional amount of refund is made after the completion of the original assessment for the same assessment year; and
 - (iv) the income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.
3. Subsequently the Karnataka High Court in the case of *Associated Electro Ceramics v. Chairman, CBDT* [1993] 201 ITR 501 held that the Board have power to condone the delay in cases having claim of carry forward of losses. The department did not file special leave petition against this order. Subsequently the matter was taken up with the Ministry of Law who also agreed with the view that the Board have power to condone the delay in filing the return under section 119(2)(b) of the Income-tax Act, 1961, in a case having claim of carry forward of losses.
4. Hence, conditions at Serial No. (ii) of order under section 119(2)(b), dated 12th October, 1993 stipulating that the delay cannot be condoned in cases where returned income is a loss and assessee claims benefit of carry forward of the loss, is not legally tenable.
5. In view of above, the board, hereby, clarify that delay in making refund claim as well as claim of carry forward of losses, both, can be condoned in cases where returned income is a loss, provided other conditions are satisfied. The monetary limits prescribed for condonation of delay in making refund claims, by different IT authorities, will apply to condonation of delay in cases of claim of carry forward of losses as well.





CIRCULAR NO. 773, DATED 15-2-1999

Modification of procedure regarding discharge by payee in case of income-tax refund orders

1. At present the payee is required to put his signature in the space provided for "Claimants signature" on the reverse of the refund order. The responsibility of the collecting bank in dealing with "account payee" instruments is well-defined under the Negotiable Instruments Act. No specific purpose is served by obtaining this additional discharge on the reverse of this cheque. On the other hand, it sometimes happens that in the absence of the discharge of the payee, the refund order is returned unpaid, entailing additional workload on the part of the banks.
2. The Board has, therefore, decided to do away with the discharge of the payee on the reverse of the account payee Income-tax Refund Order as it does not serve any specific purpose. This relaxation will be applicable only where the Income-tax Refund Orders are issued in the form of a cheque after introduction of the Magnetic Ink Character Recognition (MICR) Technology for mechanised processing of cheques for clearance (which is presently prevalent in the four metropolitan cities of Calcutta, Chennai, Delhi and Mumbai). However, in cases where Refund Orders are issued in the old conventional form, the prevailing system of discharge of payee will continue.





INSTRUCTION NO. 15/2003, DATED 6-11-2003

Procedure for Issue of Income-tax Refund Orders simplified

1. Reference is invited to the following Circulars/Instructions issued by DOMS from time to time wherein the procedure for issue of Refund Orders was detailed :

1. DOMS Circular No. 39, dated 15-7-1980
2. DOMS Circular No. 54, dated 16-12-1987
3. DOMS Instruction No. 58, dated 8-2-1988

2. With a view to improve taxpayer services, the Board have decided to simplify the procedure for issue of refunds by discontinuing the system of sending advice Note to the Bank separately in cases of refunds up to Rs. 9,999. In present procedure for issue of refunds up to Rs. 999 has been extended to refunds up to Rs. 9,999. Further, there would be no separate refund books for refunds up to Rs. 9,999 and refunds of Rs. 10,000 and above. The revised Refund Book in 1+3 form will be used for all refunds irrespective of the monetary limits.

3A. Procedure for issue of Refunds up to Rs. 9,999 (MICR)

The procedure for issue of refunds up to Rs. 9,999 is identical to the existing procedure for issue of refunds up to Rs. 999. The same is reiterated below :

The revised Refund Order Book consists of four foils (i) Refund Order (ii) Advice of Refund (iii) Advice of Refund and (iv) Counterfoil of Refund Order and Advice. The "Refund Order" and "Advice of Refund" *i.e.*, two foils will be sent by the Issuing Officer to the assessee who will present both foils to the Bank for encashment. The third foil "Advice of Refund" will be left blank and shall remain in the Refund Order Book. The fourth foil *i.e.*, the "Counterfoil of Refund Order and Advice" will serve as office copy.

B. Procedure for issue of Refunds of Rs. 10,000 and above (MICR)

The existing procedure for issue of refunds amounting to Rs. 10,000 and above will continue without any change. The same is reiterated below :

The revised Refund Order book consists of four foils - (i) Refund Order (ii) Advice of Refund (iii) Advice of Refund and (iv) Counterfoil of Refund Order and Advice. Only the first foil, "Refund Order" will be sent to the assessee for presenting the same to the Bank for encashment. Simultaneously, two foils (second and third) of the "Advice of Refund" will be sent by the Issuing Officer directly to the Bank. Unlike in the case of Refund Order up to Rs. 9,999 mentioned in para 3A above, "Advice of Refund" (both the foils) in this case will be sent only to the Bank and not to the assessee. The fourth foil, *i.e.*, Counterfoil of Refund Order and Advice will remain in the Refund Order Book and will serve as office copy.

C. Procedure for issue of refunds up to Rs. 9,999 (Non-MICR)

The conventional Refund Order Book presently in use for non-MICR refunds has been replaced by Refund Order Book in cheque book format (similar to MICR refunds). The procedure for issue of refunds, would be the same as has been explained in Para 3A above.

D. Procedure for issue of Refunds of Rs. 10,000 and above (Non-MICR)

The conventional Refund Order Book and Advice Book presently in use of non-MICR refunds has been replaced by Refund Order Book in cheque book format (similar to MICR refunds). The procedure for issue of refunds would be same as has been explained in Para 3B above. No separate Advice Book has been provided under this system.

4. In Ranges where refunds are to be prepared on Pre-printed Continuous Computer Stationery (PPCCS), the procedure for issue of refunds will be the same as explained above. However, for refunds upto Rs. 9,999, third foil, *i.e.*, 'Advice of Refund Order' printed through computer will remain with the Assessing Officer unused, along with the fourth foil.

5. All earlier Instructions issued on this subject stand amended to the extent indicated above. The security measures and other instructions mentioned in the earlier circulars will however, continue to be followed scrupulously.

6. The revised procedure will come into force immediately. These instructions may be brought to the notice of all officers working in your Region for strict compliance.



INSTRUCTION NO. 1/2005, DATED 18-3-2005

Reference is invited to the following Circulars/Instructions issued by DOMS/CBDT from time to time wherein the procedure for issue of Refund Orders was detailed:—

- (i) DOMS Circular No. 39, dated 15-7-1980.
- (ii) DOMS Circular No. 54, dated 16-12-1987.
- (iii) DOMS Instruction No. 58, dated 8-2-1988.
- (iv) CBDT Instruction No. 15/2003, dated 6-11-2003.

2. With a view to improve Taxpayers Service, the Board has decided to discontinue the system of sending Advice Notes to the bank separately in cases of refunds up to Rs. 24,999. Under the new system, no Advice Note would be generated for refund orders up to an amount of Rs. 24,999. For refund orders of Rs. 25,000 and above, one Advice Note would be made, which would be sent to the Main Branch of State Bank of India. One counterfoil of the refund cheque would continue to be retained by the Assessing Officer for all refunds issued by him regardless of the amount of refund. All refunds of Rs. 25,000 and above will now be drawn on only the Main Branch of State Bank of India. The other branches in any station will handle refunds only up to Rs. 24,999.

3. The above changes in refund procedure will involve the following steps:—

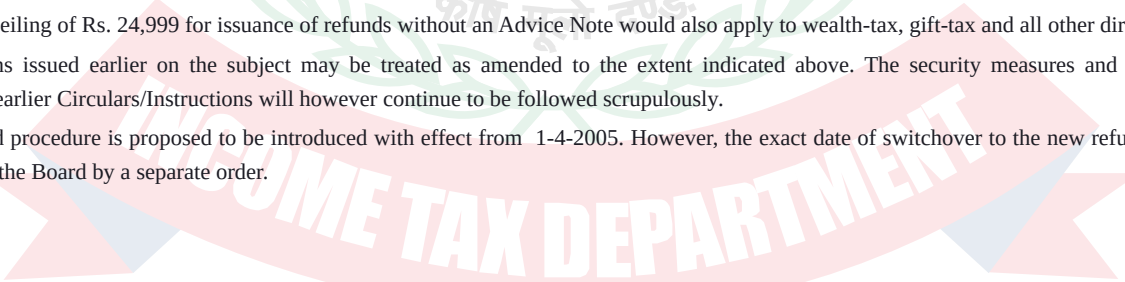
- (a) Issue of fresh refund stationery for different direct taxes with cheques drawn on various branches of State Bank of India with their respective MICR codes.
- (b) Issue of new types of refunds stationery for different direct taxes :
 - (i) for refunds up to Rs. 24,999 (one refund cheque for assessee and one counterfoil to be retained by the Assessing Officer).
 - (ii) for refunds of Rs. 25,000 and above (one refund cheque for assessee, one advice note to be sent to the Main Branch of State Bank of India and one counterfoil to be retained by Assessing Officer).
- (c) Distribution of the new refund stationery to all Assessing Officers. Each Assessing Officer would receive one set of refund stationery for refunds up to Rs. 24,999 for Corporation Tax and Income-tax and another set of refund stationery for refunds of Rs. 25,000 and above for Corporation Tax and Income-tax. Similarly, separate refund stationery for wealth-tax and other direct taxes would also be distributed.
- (d) Surrender of unused old refund stationery by all Assessing Officers to DIT(RSP & PR) after the new stationery is introduced.

4. Steps in this regard have already been initiated by the Directorate of System and Directorate of RSP & PR and the new refund stationery shall be made available at all field stations before the date of switchover to the new system. Necessary steps for distribution of new refund stationery, surrender of unused old stationery and informing the Assessing Officer of the new procedure of issuing refund orders have to be taken by the Chief Commissioners/Directors General.

5. The monetary ceiling of Rs. 24,999 for issuance of refunds without an Advice Note would also apply to wealth-tax, gift-tax and all other direct taxes.

6. The instructions issued earlier on the subject may be treated as amended to the extent indicated above. The security measures and other instructions mentioned in the earlier Circulars/Instructions will however continue to be followed scrupulously.

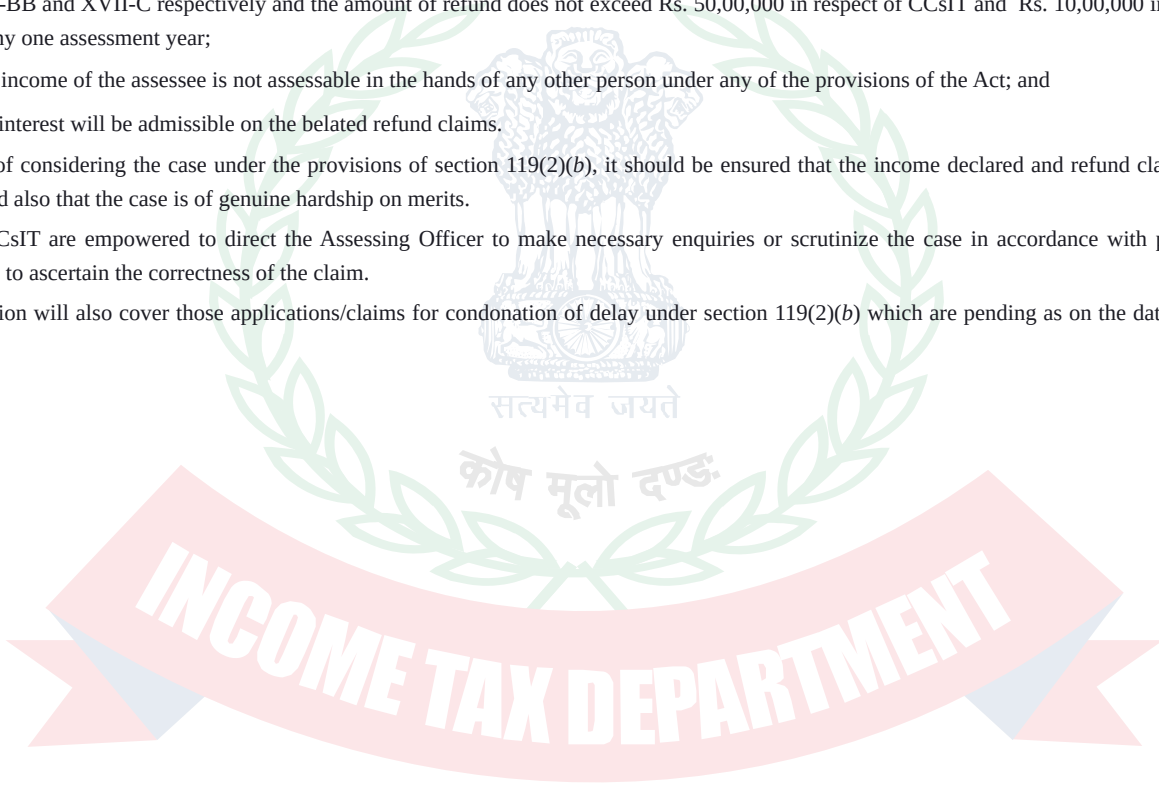
7. The new refund procedure is proposed to be introduced with effect from 1-4-2005. However, the exact date of switchover to the new refund system will be communicated to the Board by a separate order.





INSTRUCTION NO. 13/2006, DATED 22-12-2006

1. The procedure for dealing with the applications for condonation of delay in filing returns and claiming refund is presently governed by the Board's earlier Orders/Circulars issued under section 119(2)(b) of the Income-tax Act, 1961, namely, F. No. 225/208/93-ITA-II, dated 12-10-1993, read with Board's Circular No. 670, dated 26-10-1993 issued from F. No. 225/208/93-ITA-II, Circular No. 8/2001, dated 16-5-2001 issued from F. No. 212/35/99-ITA-II and also Instruction No. 12/2003, dated 30-10-2003 issued from F. No. 212/338/2002-ITA-II.
2. In modification to earlier Instructions/Circulars, this Instruction vests the Chief Commissioners of Income-tax (CCsIT) with powers for acceptance/rejection of applications/claims under section 119(2)(b) for condonation of delay in filing return involving refund claims above Rs. 10,00,000 and up to Rs. 50,00,000. It also vests the Commissioners of Income-tax (CsIT) with powers of acceptance/rejection of applications/claims under section 119(2)(b) for condonation of delay in filing return involving refund claims up to Rs. 10,00,000.
3. The applications/claims under section 119(2)(b) for condonation of delay involving refund claims exceeding Rs. 50,00,000 would continue to be processed by Central Board of Direct Taxes, both for acceptance and rejection.
4. No fresh application for claim of refund will be entertained beyond six years from the end of the assessment year for which the application/claim is made.
5. The powers of acceptance/rejection within the monetary limits delegated to the CCsIT/CsIT would be subject to the following conditions:—
 - (a) The refund has arisen as a result of excess tax deducted/collected at source and payments of advance tax under the provisions of Chapters XVII-B, XVII-BB and XVII-C respectively and the amount of refund does not exceed Rs. 50,00,000 in respect of CCsIT and Rs. 10,00,000 in respect of CsIT for any one assessment year;
 - (b) The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act; and
 - (c) No interest will be admissible on the belated refund claims.
6. At the time of considering the case under the provisions of section 119(2)(b), it should be ensured that the income declared and refund claimed are correct and genuine and also that the case is of genuine hardship on merits.
7. The CCsIT/CsIT are empowered to direct the Assessing Officer to make necessary enquiries or scrutinize the case in accordance with provisions of the Income-tax Act to ascertain the correctness of the claim.
8. This instruction will also cover those applications/claims for condonation of delay under section 119(2)(b) which are pending as on the date of issue of this instruction.





PRESS RELEASE, DATED 3-11-2006

CBDT tightens procedure for issue of refunds

The Income-tax Department have taken action against persons involved in the recent refund scam in Delhi. The scam itself was detected by the efforts of an officer of the Department, who alerted the bank and the accused persons were detained by the bank and later arrested by the police. The accused have been further remanded on judicial custody. The matter is under investigation by the police and also by the Income-tax Department.

The Central Board of Direct Taxes (CBDT) have taken several steps from time to time to prevent fraudulent encashment of refunds. The possibility of issue of refunds through a refund banker is also being worked out. A pilot project in this regard is being launched to test its viability.

The steps recently taken to prevent fraudulent encashment of refunds, apart from guidelines issued from time to time, include—

- u Introduction of issue of refunds directly to the bank account of the taxpayer through the Electronic Clearance Scheme (ECS). This scheme was implemented in 13 cities in 2004, and has been further extended to 12 cities in 2006.
- u Mandatory quoting of bank account details on the refund vouchers with effect from 1-1-2006.
- u Cross-verification of high value refunds by the clearing bank from the issuing officer in the Income-tax Department.

Although every effort is being made by the department to prevent frauds relating to refunds, the taxpaying public is also expected to co-operate with the department. Many returns are still received without bank account details or with incomplete details. Taxpayers must quote their bank account details correctly in their tax returns so that they get their refunds quickly and safely.

