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**EXPENDITURE INCURRED ON  
INTEREST ON REFUNDS OF TAXES**

**MINISTRY OF FINANCE  
(Department of Revenue)**

**PUBLIC ACCOUNTS  
COMMITTEE  
2012-2013**

**SIXTY-SIXTH REPORT**

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**FIFTEENTH LOK SABHA**



**LOK SABHA SECRETARIAT  
NEW DELHI**

SIXTY-SIXTH REPORT

PUBLIC ACCOUNTS COMMITTEE  
(2012-2013)

(FIFTEENTH LOK SABHA)

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INTEREST ON REFUNDS OF  
TAXES

MINISTRY OF FINANCE  
(Department of Revenue)

*Presented to Hon'ble Speaker on : 16 January, 2013*  
*Presented to Lok Sabha on .....*  
*Laid in Rajya Sabha on .....*



LOK SABHA SECRETARIAT  
NEW DELHI  
*January, 2013/Pausa, 1934 (Saka)*

**PAC No. 1993**

*Price: ₹ 25.00*

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and Printed by the General Manager, Government of India Press, Minto Road, New Delhi-110 002.

## CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2012-2013) .....	(iii)
INTRODUCTION .....	(v)
REPORT	
PART I	
I. Introductory .....	1
II. Audit Findings .....	2
III. Constitutional Provisions and Relevant Rules .....	3
IV. Accounting Procedure by Ministry .....	3
PART II	
Observations/Recommendations .....	11
APPENDICES	
I. Minutes of the Eleventh Sitting of the Public Accounts Committee (2012-13) held on 30th August, 2012 .....	13
II. Minutes of the Twentieth Sitting of Public Accounts Committee (2012-13) held on 28th December, 2012 .....	16

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE  
(2012-2013)

Dr. Murli Manohar Joshi — *Chairman*

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22. Prof. Saif-ud-Din Soz

SECRETARIAT

- |                        |   |                         |
|------------------------|---|-------------------------|
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| 2. Shri Abhijit Kumar  | — | <i>Director</i>         |
| 3. Smt. A. Jyothirmayi | — | <i>Deputy Secretary</i> |
| 4. Smt. Anju Kukreja   | — | <i>Under Secretary</i>  |

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\*Elected *w.e.f.* 6th December, 2012 *vice* Shri Sarvey Sathyanarayana appointed as Minister on 28th October, 2012.

†Elected *w.e.f.* 6th December, 2012 *vice* Dr. Shashi Tharoor appointed as Minister on 28th October, 2012.

## INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee, do present this Sixty-sixth Report (Fifteenth Lok Sabha) on 'Expenditure incurred on interest on Refunds of Taxes' based on C&AG Report No. 1 of 2011-12 Union Government—Accounts of the Union Government relating to the Ministry of Finance (Department of Revenue).

2. The Report of Comptroller and Auditor General of India for the year ended March, 2011 was laid on the Table of the House on 24th April, 2012.

3. The Committee took evidence of the representatives of the Ministry of Finance (Department of Revenue) on the subject at their sitting held on 30th August, 2012. The Committee considered and adopted this Report at their sitting held on 28th December, 2012. Minutes of the Sitzings form Appendices to the Report.

4. The Committee have unanimously recommended that the Ministry of Finance cannot make departure from the established financial procedure as enshrined in the Constitution. In their considered view, reporting of interest liability to Parliament would bring greater transparency in financial administration of the country, uphold the spirit of the Constitution and help reduce interest burden, bring more efficiency in tax administration and reinforce Constitutional morality. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in thick type in the body of the Report.

5. The Committee would like to express their thanks to the representatives of the Ministry of Finance (Department of Revenue) for tendering evidence before them and furnishing the requisite information to the Committee in connection with the examination of the subject.

6. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

NEW DELHI;  
28 December, 2012  
07 Pausa, 1934 (Saka)

DR. MURLI MANOHAR JOSHI  
*Chairman,*  
*Public Accounts Committee.*

## REPORT

### PART I

#### I. INTRODUCTORY

This Report is based on para 4.1.1 of Report No. 1 of the Comptroller and Auditor General of India for the year 2011-12, Union Government—Accounts of the Union Government relating to 'Expenditure incurred on interest on refunds of taxes'.

2. One of the important features of tax administration is the issue of Refunds. Refunds arise in cases wherein the assessee satisfies the Assessing Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under the Income Tax Act for that year. In cases where the aggregate of Advance Tax, Regular Tax, Tax Deducted at Source etc. so collected exceeds that tax determined on completion of the assessment or as amended after giving effect to the appellate orders, then the assessee is entitled for refunds. Where refund of any amount becomes due to the assessee under the Act, he shall, subject to the provisions of Section 244A of Income Tax Act 1961, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the prescribed manner. Further, no claim is required for interest on refunds.

3. Section 244A of Income Tax Act, 1961 deals with 'Interest on refunds'. The said Section reads as follows:

"Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:—

- (a) where the refund is out of any tax [paid under section 115WJ or] [collected at source under section 206C or] paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of [one-half per cent] for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined [under sub-section (1) of section 115WE or sub-section (1) of section 143 or] on regular assessment;

- (b) in any other case, such interest shall be calculated at the rate of [one-half per cent] for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted".

## II. AUDIT FINDINGS

4. Audit observed that the Department of Revenue/Central Board of Direct Taxes was classifying the interest on refunds of excess tax as reduction in revenue and this incorrect practice had been commented upon in the last two years CAG's Report on Union Accounts as well as in CAG's Report on Direct Taxes for the year 2008 and in earlier years also, but no corrective action was taken by the Department.

The expenditure on interest on refunds of taxes for the last five years is as follows:

Years	Expenditure on interest on refunds of taxes (₹ in crore)
2006-07	3693
2007-08	4444
2008-09	5778
2009-10	12951
2010-11	10499
<b>Total</b>	<b>37365</b>

5. Audit scrutiny revealed, that as in the past, no budget provision for interest on refunds was made in the Budget Estimates for the financial year 2010-11 and an expenditure on interest on refunds amounting to ₹ 10,499 crore was incurred by the Department, in contravention of Article 114 (3) of the Constitution. Expenditure of the order of ₹ 37,365 crore on interest payments had been incurred over a period of the last five years without obtaining approval of the Parliament through the necessary appropriations as ordained by the Constitution.

6. The Ministry of Finance (Department of Revenue) in its reply to the above-said Audit observation (March, 2012) stated that they sought to continue with the existing practice of treating interest payments on the refunds as a reduction from gross tax collection owing to the fact that providing for such expenditure through the budget would be administratively burdensome, apart from the fact that the amounts to be paid as interest is of a highly variable nature leading to inaccuracies in estimation. It has further been stated that interest on refunds, being a statutory obligation, is not an operational expenditure like salary, office expenses, etc.

7. According to Audit, the classification of transactions relating to expenditure as laid down in the Delegation of Financial Powers Rules, 1978 clearly defines interest as an item of expenditure. Audit also noted that in the Budget of 2001-02, under the Demand No. 34—Direct Taxes, a provision of ₹ 92 crore was obtained under the head 'Interest on refunds of excess tax'.



### III. CONSTITUTIONAL PROVISIONS AND RELEVANT RULES

8. Article 114 of the Constitution dealing with Appropriation Bills states as:

"(1) As soon as may be after the grants under Article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—

- (a) the grants so made by the House of the People; and
- (b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of Articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this Article."

9. According to Article 266 all revenues received by the Government of India, all loans raised by the Government, and all moneys received by the Government of India form part of one consolidated fund called 'the Consolidated Fund of India'. The Consolidated Fund of India has to be distinguished from the public account of India.

10. Further as per Article 283:

"the custody of the Consolidated Fund and the withdrawal of moneys therefrom and all other matters connected therewith shall be regulated by law made by Parliament and until such provision is made by rules made by the President".

11. Rule 8 of Delegation of Financial Powers Rules, 1978, enumerates categories of expenditure. Along with salaries, wages, medical treatment, etc. interest has also been classified as expenditure (primary unit of appropriation).

12. There exists a separate Appropriation for 'Interest Payments' and each year, expenditure on interest payment is authorized, based on the approvals obtained from Parliament through the Appropriation Act.

### IV. ACCOUNTING PROCEDURE BY MINISTRY

13. While furnishing its comments on the Audit observation, the Ministry of Finance in its written information submitted as follows:—

"The policy matter was subjected to detailed deliberations in the year 2001 and with the approval of the then Finance Minister a decision was taken that 'interest on refunds would continue to be treated as an outgo from the gross tax collection and is not to be shown as expenditure for collection'. The said practice has since been followed in the Department.

However, the matter was continued to be agitated by Audit and therefore, an in-depth examination of the matter was again undertaken recently in 2011. With the approval of the then Finance Minister, it has been decided that the existing practice to treat Interest payment on refunds as 'reduction from gross tax collection' and part of 'Deduct-Refund' sub head shall continue."

14. Elaborating on the issue, the Chairperson, CBDT in her deposition before the Committee stated during evidence as follows:—

"Section 244 (A) of the Income Tax Act makes no distinction between the refund and the interest on it. The interest is simply calculated by us at a particular rate at no discretion. We have no discretion from the first day of April following the financial year till the date we have calculated it becomes par. So, the refund which is being given to a person, we do not indicate that this is refund and this is part as also interest of it. It is just a whole quantum which does include the interest part. But there is no distinction. It is just a refund of tax plus interest. But there is no distinction separately. It is later in accounting that we consolidate. In fact, for the past financial year and even till date we have not actually got the calculations or what was the interest on the amount of refund.

That is yet under calculation out of the total. So, when we pay out of the Consolidated Fund of India the refunds which as per GFR Rule 270(4) is not to be treated as expenditure or appropriation. So, interest is part of that and that has gone out. There is no separate accounting."

15. Having observed that the then Finance Ministers decided to continue with this existing practice, the Committee during evidence desired to know that 'whether the Executive have the decision-making power on this aspect or Legislature should have a role in it'. In response, Chairperson CBDT, deposed before the Committee that 'it is the Legislature's power and the Executive certainly is not the final authority at all'.

16. On being asked as to whether at any point of time this matter was discussed in the Cabinet or it was an individual decision of two separate Finance Ministers, Chairperson, CBDT deposing before the Committee submitted that:

"It was the decision of the Finance Ministers only. It never went to the Executive or the Cabinet to decide it all. This was the interpretation of the Department as understood always and the Finance Ministers agreed to it."

17. When asked as to why interest payments on refunds had been treated as a reduction from gross tax collection while Delegation of Financial Power Rules 1978 clearly defined that such interest was an item of expenditure, the Ministry in its written reply stated as under:

"Interest on refunds being statutory obligation is not a part of operational expenditure like salary, office expenses etc. and cannot be treated as a part of cost of collection. Cost of collection essentially represents administrative costs which mean the direct costs for running of the particular organisation—predominantly the cost of running the Department. The interest payment on refund has no correlation with the earning of revenue and, therefore, it cannot be related in any way with the performance of revenue.

Moreover, the amount of excess tax is retained in the Consolidated Fund and not by the Income Tax Department and, therefore, the interest outgo on such refunds can neither be an expenditure of the Income Tax Department nor a part of cost of collection."

18. Audit pointed out that in the Budget of 2001-02, under the Demand No. 34— Direct Taxes, a provision of ₹ 92 crore was obtained under the head 'interest on refunds of excess tax'. To a query of the Committee as to why this practice was discontinued from the year 2002-03 onwards, the Ministry in its written replies submitted as follows:—

"Genesis of the issue can be traced back to CBDT Instruction dtd. 13/10/1988 issued *vide* F.No. 380/24/86-IT(B) wherein CBDT directed the field offices to classify payment of interest on delayed refund of disputed tax under the "minor head 108 Interest Paid on Delayed refund of disputed tax" below the Major Head 2020.

This instruction was issued at the time when refunds were required to be claimed through separate applications and interest was paid in accordance with the then applicable provisions of the Act. This interest had following components:

- (i) Section 214, relating to payment of interest to the assessee on the excess amount paid as advance tax.
- (ii) Section 243, relating to payment of interest to the assessee for delay in granting the refund after a claim for refund was made or after the refund was determined.
- (iii) Section 244, relating to payment of interest to the assessee for delay in granting refund as a result of appeal etc.

Clearly the components of interest u/s 243 and 244 were on account of delay in granting the refunds as per the statute. In fact the heading of Section 243 was 'Interest on Delayed Refunds'. The provisions of sections 214, 243 and 244 were withdrawn from AY 1989-90 onwards. These were replaced by a new Section 244A. As per the new provision of law passed by the Parliament, there is no concept of delay of refund and the previous concept was done away with. Thus, instruction dated 13/10/1988, the basis of CAG observation was rendered un-operational and superfluous. Thus AY 1989-90 onwards there was a paradigm shift in the way/manner interest on refunds was paid to the taxpayers.

In fact, it is to be noted that the said instruction dated 13/10/1988 was not implemented by the field offices due to change of law and administrative difficulties. *Vide* letter dated 19/03/1996 issued through F.No. 380/8/90-IT(B) it was again informed to the Chief Controller of Accounts that as interest on refunds is paid under Section 244A of the IT Act 1961 alongwith the refund, it is decided not to treat this as an expenditure.

However the matter continued to be agitated upon by the audit. The issue was dealt at length within the Ministry of Finance during the period 1999 to 2003. Department of Economic Affairs provided, for ₹ 92 crores under the head interest

payment on refund of excess tax for BE 2001-02. This was a solitary instance. The said policy matter was subjected to detailed deliberations in July 2001 and with the approval of the then Finance Minister a decision was taken that "interest on refunds would continue to be treated as an outgo from the gross tax collection and is not to be shown as expenditure for collection". The said practice has since been followed in the Department. The matter was deliberated once again in great detail and with the approval of Finance Minister on 19/09/2011, it was again decided that the existing practice to treat Interest payment on refunds as "Reduction from gross tax collection" and part of "Deduct-Refund" sub-head shall continue."

19. With regard to Ministry's reply that a provision for such expenditure through the Budget would be administratively burdensome', the Committee further desired to know the administrative constraints faced by the Department in doing so. The Ministry in its reply stated as follows:

"If the recommendation of CAG is accepted then it would imply that such expenditure would have to be through budgetary grants sanctioned by the Integrated Finance Unit (IFU) to the Budgetary Authorities. The extent of administrative burden it will raise can be foreseen from the fact that there are around 300 Budgetary Authorities (CsIT), each with at least 15 Assessing Officers scattered in about 730 offices located around the country. During FY 2011-12 refunds have been issued in more than one crore cases. It must be appreciated that in view of the highly variable nature of the amounts to be refunded, the period for which it has been retained etc., no mathematical model either exists or can be devised to predict accurately the amount of the Interest required to be paid u/s 244A in a particular Financial Year by more than 4000 Assessing Officers.

Even if an attempt to make some estimate for interest payment by each AO is made, it will be highly subjective, without any logic or basis and accordingly, it is imperative that such an exercise will result into inaccurate estimates being given to the IFUs. The natural corollary would be that whenever there is shortfall of estimation of interest outgo in a particular Circle/Ward, the processing of refunds will come to a grinding halt till further expense under this head is allocated. Delay in allocation of funds will unnecessarily result in further enhancing the amount of interest u/s 244A to be paid in the cases that would remain pending due to shortage of funds. Thus, routing the interest through the budgetary mechanism will inevitably cause administrative quagmire that will adversely affect early processing of refund returns, increasing the outgo of interest u/s 244A, poor tax payer services and harassment of tax payers and thereby rise in tax payer grievances. This will be insurmountable and seriously undermine the efforts of the CBDT of the past several years to provide better tax payer services.

In case, the interest outgo is considered separately as a charged expenditure, due to the absence of any firm/verifiable data available in advance at the stage of Budget Estimates (BE) about the likely refund outgo on:

- (a) processing of pending returns and interest payable thereupon,

- (b) the likely refund outgo on processing of the returns of income to be filed in the next year and interest payable thereupon, and
- (c) the likely refund outgo on account of the appellate orders (the number and outcome on the issues not known in advance) which are decided in the next year coupled with the amount already recovered through recovery strategies etc.

The entire exercise will be susceptible to conjectures. Moreover, with the increased bilateral and multi-lateral economic activity with several countries, any delay in adhering to the improved services will be detrimental to the image of the Indian Tax Administration.

Hence as stated above, the payment of interest on refunds being highly variable no mathematical model either exists or can be devised to predict accurately the amount of the Interest required to be paid u/s 244A in a particular Financial Year."

20. Elaborating further on the issue of administrative difficulties, Chairperson CBDT testified before the Committee as under:

"Separate accounting of interest on refunds as an item of expenditure and providing for the separate Budget head will lead to very serious administrative difficulties as correct estimation of provision will not be possible. I would submit once again that this is a payment by the public of India as per their own estimate as to what they judge their taxes to be due. We have no say in it in the sense that the Ministry of Finance has no say. Therefore, for us to judge how much extra tax has been paid by somebody, how much refund will be due from the Consolidated Fund of India is not at all possible to estimate in a Budget Estimate for a year because returns necessarily are not filed on a particular date. They are filed across the year. People file them all the 12 months of the year. They are due for salary at the end of July. We extended the date to August but the returns have not been filed. Those who are business people are getting it audited and then file it by September-October. Returns are not yet coming. Some have started filing the returns in April itself. So, we have no control. The Ministry of Finance, the CBDT and the field offices have no control on the filing of the returns or payment of taxes by assesseees which is *suo motu*. That is part of their democratic right. If we try and estimate, we have no manner of estimating it. We can only estimate once all the returns have been filed."

21. On being asked whether the Ministry had analysed the reasons for inaccuracies in estimation, the Ministry in its written reply stated as under:—

"It is humanly impossible to estimate the likely interest outgo by each assessing officer who are scattered in about 730 offices located around the country. If the task is to be done for more than one crore number of refund cases, the estimation of likely interest outgo will definitely suffer owing to the lack of advance knowledge or information about:

- the claims which may be made in the returns of income in the ensuing year,

- the decisions which the appellate authorities may take in the ensuing year,
- the decision on rectification applications etc. taken at various levels in the ensuing year.

Therefore, it is reiterated that no mathematical model either exists or can be devised to predict accurately the amount of the Interest required to be paid u/s 244A in a particular financial year by aggregating the needs of Assessing Officers scattered throughout the country in 730 offices.

It is, therefore, evident that Department cannot take any steps whatsoever to make accurate estimation of the interest outgo by each assessing officer."

22. Audit pointed out that this incorrect practice has been commented upon in the last two years C&AG's Report on Union Accounts as well as in C&AG's Report on Direct Taxes for the year 2008 and in earlier years also. When asked whether any action has since been taken by the Department in this regard, the Ministry in its written submission stated as under:

"The said policy matter has been clarified by the Department time and again as under:

- (i) In the budget of 2001-02, the interest on refund of excess tax was shown under major head '2020' and a provision of ₹ 92 crore was made. However, looking to the appropriate facts and circumstances of the matter, deliberations were initiated soon thereafter in the Ministry of Finance. In a meeting held by Finance Secretary on 10th July, 2001 with Secretary (Revenue), Secretary (Expenditure) and Chairman CBDT, a decision was taken that "interest on refunds would continue to be treated as an outgo from the gross tax collection and is not to be shown as expenditure for collection". The said decision was thereafter approved by the Finance Minister on 17/07/2001.
- (ii) The above decision was communicated to the Budget Division of DEA for further action and accordingly, in the budget of 2002-03, the interest on refund of excess tax was reduced to nil for the RE of 2001-02 and no BE was given for the year 2002-03. The practice of not putting "interest on refund of excess tax" under any head continued thereafter in the Budget of 2003-04 onwards.
- (iii) The Budget Division of DEA *vide* their letter dated 10/05/2002 informed the Dy. Director General of Accounts, O/o CGA that a decision has been taken with the approval of the Finance Secretary that interest on refunds of excess tax would be treated as refund of revenue as was the practice earlier by the CBDT.
- (iv) O/o the C&AG *vide* letter dated 28/11/2003 sought if the issue has been re-examined. Reply was made *vide* F. No. 385/06/2001-ITB dated 31/08/2004 addressed to the Dy. C&AG, after seeking prior approval of Revenue Secretary, stating that as the matter has already

been examined and approval of the Finance Minister taken to treat interest on refund as an outgo from revenue, no review of the well-established procedure for accounting of interest on refunds is presently considered necessary.

- (v) Reply to the O/o C&AG was made *vide* F.No. 385/41/2008-IT(B) dated 19/01/2009 reiterating the earlier position.
- (vi) The issue was again raised by Audit in C&AG report No. 26 of 2010 and therefore, an in-depth examination of the matter was again undertaken. It was again decided with the approval of Hon'ble Finance Minister on 19/09/2011 that the existing practice to treat Interest payment on refunds as "Reduction from gross tax collection" and part of "Deduct-Refund" sub-head shall continue. It was communicated to Director General of Audit giving detailed reasons for the same by Chairman CBDT *vide* his DO letter dated 13/03/2012."

23. To Audit's observation that treating interest on refunds as 'reduction in revenue' is a breach of Article 114(3) of the Constitution, the Ministry in its written reply has stated as follows:

"The taxes collected by the Union Government are credited into the Consolidated Fund of India (CFI). Apart from the due tax on the income, the taxes so collected include the excess tax paid than due on the correct income and the interest payable by the taxpayer on delayed payment of taxes due [such as interest u/s 234A, 234B, 234C, 220(2), 201(1A) etc.]. In other words, the refund payable to a tax-payer is the amount due to it in accordance with the provisions of the Income Tax Act.

A comparative chart of Interest received u/s 234A/234B/234C & 220(2) for the past four years *vis-a-vis* interest paid u/s 244A etc. is given hereunder:

Financial Year	Interest received u/s 234A, 234B, 234C & 220(2) of the IT Act (in ₹ cr.)	Interest paid on Refunds u/s 244A (in ₹ cr.)
2007-08	4394	4410
2008-09	6344	5800
2009-10	16795	6876
2010-11	15978	10195

As interest received is part of Gross tax collection logically speaking, interest paid should be part of outgo from Gross tax collection. Moreover, refund of such excess money to the tax payer and consequent payment of interest thereupon will consequently be payable out of the gross tax revenues and not out of the appropriation separately. The payment on both these accounts has the sanction of the Parliament in the form of the enabling provisions under the Income Tax Act, 1961.

Moreover, the outgo of interest u/s 244A is regularly monitored at the macro level by the Parliament through Standing Committee on Finance, Public Accounts Committee and Parliamentary Questions asked in both the Houses of the Parliament. Parliamentary Committees have been regularly guiding the Department on this aspect. CBDT believes that the best way to handle this matter is through administrative changes that include technological interventions and Business Process Re-engineering especially in the way Returns of Income are processed. The Department has already taken giant strides in recent years to improve the time taken to process returns especially refund returns. This would not have been possible without the watchful eyes and guidance of the Parliament."

24. When asked whether the opinion of the Ministry of Law was obtained on the matter, the Ministry in its written submission as well as during evidence replied in the negative.

25. To the suggestion of the Committee that the Ministry should first consult the Attorney General and the Ministry of Law on the subject and then have a discussion with the Comptroller and Auditor General on this subject, the Revenue Secretary assured the Committee during evidence that:

"You have kindly shown us the way as to how to take this forward. Obviously it has not been the intention of the Department anyway to bypass the Constitution. The Constitution is supreme. There is no doubt about it and no amount of administrative difficulty can be cited in order to say that we will not follow the Constitution. That has not been the idea. It will never be the idea of the Ministry to do so. We would certainly look into this how the constitutional provisions are satisfied and yet, we find a way in which we satisfied the CAG. This hon. Committee should be satisfied. I think that is what we have to do so that we do not have the difficulties which we encountered in 2001 when we made it. If we cannot do anything, it leads to chaos in refunds. At the same time, you have rightly said that constitutional provisions have to be followed. We will consult and we will come back to the Committee with what is constitutionally correct, legally correct and also administratively feasible."

26. In the meanwhile, the Committee sought the views of Ministry of Law and Justice on the subject, who referred the matter to Attorney General for India for his considered opinion. Lt. Attorney General dwelling on the provisions of the Constitution relating to Appropriation Bill, the Consolidated Fund of India and the Custody of the Consolidated Fund as contained in Articles 114, 266 and 283 of the Constitution opined that:

"The objection taken by the Comptroller and Auditor General with regard to the practice followed in relation to payment of interest on refunds of excess tax is completely justified. The proper procedure would be to clearly indicate the tax collection as a receipt and estimate the interest payable on refund of taxes as an expenditure. I agree with the view of the C&AG that the reason given with regard to administrative difficulties is not tenable."



## PART II

### OBSERVATIONS/RECOMMENDATIONS

The Committee note that the Department of Revenue incurred an expenditure of ₹ 37,365 crore on interest on refunds alone during 2006-07 to 2010-11. When the amount of tax paid exceeds the amount of tax payable, the assessee is entitled to a refund of the excess amount. Simple interest at the prescribed rate is payable on the amount of such refund. Refund of any amount as a result of any order passed in appeal or other proceedings is also admissible along with simple interest at the prescribed rate. The Department has been classifying interest on refunds of taxes as 'reduction in revenue' instead of treating it as an item of expenditure by netting off interest on refunds from tax receipts rather than including this expenditure item in the Budget Estimates. The Ministry/Department bypassed Parliament and contravened the Constitutional provisions. The Committee note that under Article 110(e), the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or increasing of any such expenditure comes within the scope of Money Bill. A charge on the Consolidated Fund of India is payable only after having been authorized under the due appropriation made by law passed in accordance with Article 114(3) of the Constitution which clearly stipulates that no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law.

2. The Committee note that the Financial Powers vested under Delegation of Financial Powers Rules, 1978 clearly describes "interest" as an item of expenditure. Asked to explain why the interest payments on refunds was being treated as a reduction from gross tax collection rather than the same being incorporated in the Budget Estimate, the Ministry submitted that the interest payment on refunds has no co-relation with the Revenue earnings and therefore, it cannot be co-related with the performance of revenue. The Ministry further contended that the amount of excess tax is retained in the Consolidated Fund of India and not with the Income Tax Department and, therefore, the interest outgo on such refunds is not to be treated as an expenditure of the Income Tax Department nor a part of cost of its collections. The Committee are of the considered view that interest payment, as specified, is an item of expenditure under Delegation of Financial Powers Rules and there is also a separate appropriation which clearly provides for interest payments of Union Government and therefore, the Department cannot claim an exception with regard to interest on refunds. The Committee wish to remind the Ministry that during the year 2001-02, under Demand No. 34— Direct Taxes, a provision of ₹ 92 crore was made under the Head 'Interest on Refunds of Excess Tax', a practice which needs revival. Moreover, as admitted by the Department the tax collected is deposited in the Consolidated Fund of India and not retained by the Department and therefore in terms of Article 266 of the Constitution, the Department has no legal authority to withdraw the "interest" on excess tax collected/refunds without recourse to Appropriation law passed by Parliament.

3. The Committee are concerned to note that an expenditure to the tune of ₹ 37,365 crore on interest payments on refunds had been incurred over a period of last five years in blatant disregard to Constitutional provision. The Chairperson, CBDT conceded before the Committee that regularization of expenditure incurred on interest on refunds is a matter of Legislative power to be exercised by Parliament. Mindful of the mandatory Constitutional provisions governing the financial procedure, the Committee reiterate that a mandatory Constitutional provision requiring specific parliamentary approval cannot be disregarded with Ministerial approval on ground of administrative constraint or difficulty. The Committee wish to remind the Department that Article 114(3) clearly mandates that no money shall be withdrawn from Consolidated Fund of India except under 'Appropriation' made by the Legislature. The Committee therefore, call upon the Ministry to work out a proper accounting procedure in conformity with Constitutional provisions and financial rules.

4. The Committee are surprised to note that the Ministry of Finance did not consider it expedient or necessary to seek the opinion of the Ministry of Law in the matter. On a reference being made by the Committee, the Ministry of Law and Justice furnished the opinion of the Lt. Attorney General. According to Lt. Attorney General the objection taken by the Comptroller and Auditor General with regard to the practice followed in relation to payment of interest on refunds of excess tax is completely justified. The proper procedure would be to clearly indicate the tax collection as a receipt and estimate the interest payable on refund of taxes as an expenditure. The Lt. Attorney General concurred with the view of the C&AG that the reason given with regard to administrative difficulties is not tenable. Further, the Revenue Secretary conceded before the Committee that the Constitutional provisions have to be followed and assured to report back to the Committee to devise a procedure which is Constitutionally correct and administratively feasible. The Committee would like to be apprised of the corrective action taken by the Government to ensure that a suitable administrative procedure is devised in accordance with the Constitution and the Financial Rules within three months of the presentation of this Report.

5. Having regard to the fact that the Annual Budget is prepared *ex-ante* based on sound principles of estimation, the Committee find no valid ground as to why the Department cannot make broad estimates of interest liability on tax refunds based on the studied trends of the past. Moreover, the Constitution and the financial procedure provides for additional or supplementary grants and finally, in case the expenditure exceeds Parliamentary authorization, the excess expenditure is reported to Parliament annually by the C&AG and regularized, through appropriation (Excess) Act, on the recommendation of the PAC. In their considered view reporting of interest liability to Parliament would bring greater transparency in financial administration of the country, uphold the Constitution, help reduce interest burden and bring efficiency in tax administration.

NEW DELHI;  
28 December, 2012  
07 Pausa, 1934 (Saka)

DR. MURLI MANOHAR JOSHI  
Chairman,  
Public Accounts Committee.

## APPENDIX I

### MINUTES OF THE ELEVENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2012-13) HELD ON 30TH AUGUST, 2012

The Public Accounts Committee sat on Thursday, the 30th August, 2012 from 1500 hrs. to 1630 hrs. in Committee Room 'A', Parliament House Annexe, New Delhi.

#### PRESENT

Dr. Murli Manohar Joshi — *Chairman*

#### MEMBERS

##### *Lok Sabha*

2. Dr. M. Thambidurai
3. Shri T.K.S. Elangovan
4. Shri Bhartruhari Mahtab
5. Shri Sanjay Nirupam
6. Shri Shripad Yesso Naik
7. Dr. Shashi Tharoor
8. Dr. Girija Vyas

##### *Rajya Sabha*

9. Shri Prasanta Chatterjee
10. Shri Prakash Javadekar
11. Shri Satish Chandra Misra
12. Shri Sukhendu Sekhar Roy
13. Shri J.D. Seelam
14. Shri N.K. Singh
15. Prof. Saif-ud-Din Soz

#### SECRETARIAT

1. Shri Devender Singh — *Joint Secretary*
2. Shri Abhijit Kumar — *Director*
3. Smt. A. Jyothirmayi — *Deputy Secretary*

#### **Representatives of the Office of the Comptroller and Auditor General of India**

1. Ms. Malashri Prasad — Deputy CAG
2. Shri R.S. Mathrani — DG (Central Expenditure)
3. Shri Jayant Sinha — Pr. Director (Report Central)

4. Shri Manish Kumar — Pr. Director (Direct Taxes-I)
5. Shri B. Basantia — Pr. Director (Direct Taxes-II)

**Representatives of the Ministry of Finance  
(Departments of Revenue and Expenditure)**

1. Shri R.S. Gujral — Finance Secretary & Secretary Expenditure
2. Shri Sumit Bose — Revenue Secretary
3. Dr. Poonam Kishore Saxena — Chairperson, CBDT
4. Shri S.C. Jaini — Member (R) CBDT
5. Ms. Ranisingh Nair — DGIT (Systems)
6. Ms. Anjuly Chib Duggal — Addl. Secretary (Exp.)
7. Shri Jawahar Thakur — CGA
8. Shri Rajat Bhargava — JS (Budget)

2. At the outset, the Chairman welcomed the Members and the Audit Officers to the sitting of the Committee. The Chairman, then, apprised the Members that the Sitting was convened to take oral evidence of the representatives of the Ministry of Finance (Departments of Revenue and Expenditure) on the subject 'Expenditure incurred on interest on refunds of Taxes', based on para 4.1.1 of the C&AG Report No. 1 of 2011-12, Union Government, Accounts of the Union Government. Thereafter, the officers of the C&AG of India briefed the Committee on the issue contained in the Audit para.

3. Then, the representatives of the Ministry of Finance (Departments of Revenue and Expenditure) were called in. Before commencing the examination, the Chairman made it clear that the deliberations of the Committee were confidential and were not to be divulged to any outsider until the Report on the subject was presented to the Parliament. The Committee then proceeded with the examination of the subject.

4. The Revenue Secretary, after introducing his colleagues to the Committee explained the factual position on the issue contained in the Audit para. The Members then sought reasons for payment of ₹ 37,365 crore as interest on excess tax paid by the taxpayers over a period of five years without obtaining necessary approval of the Parliament as stipulated by Article 114(3) of the Constitution. Further, reasons were also sought for not providing interest on refunds as an item of expenditure when payment of interest was treated as an item of expenditure according to the Delegation of Financial Power Rules 1978. The Committee also wanted to know whether the matter was placed before the Cabinet and whether the Ministry of Law and Justice was consulted in the matter before taking such a decision. The representatives of the Ministry of Finance replied in the negative. Then, the Committee asked the Ministry to outline the administrative constraints for not complying with the discipline of Parliamentary Financial Control and the action taken by the Ministry to overcome such constraints. The representatives of the Ministry of Finance (Department of Revenue) and the Central Board of Direct Taxes replied to the various queries of the

Members. The Ministry was advised to devise ways and means of accounting in consultation with C&AG in order to comply with the constitutional provisions. The Chairman also directed the representatives to consult the Ministry of Law and Justice in the matter and if necessary, the Committee may send for them again.

5. At the end, the Chairman thanked the representatives of the Ministry of Finance (Departments of Revenue and Expenditure). The Chairman also thanked the representatives of the Office of the C&AG of India for providing valuable assistance to the Committee in the examination of the subject.

*The witnesses, then, withdrew.*

A copy of the verbatim proceedings of the sitting was kept on record.

*The Committee, then, adjourned.*

## APPENDIX II

### MINUTES OF THE TWENTIETH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (2012-13) HELD ON 28TH DECEMBER, 2012

The Committee sat on Friday, the 28th December, 2012 from 1500 hrs. to 1610 hrs.  
in Room No. '62', Parliament House, New Delhi.

#### PRESENT

Dr. Murlī Manohar Joshi — *Chairman*

#### MEMBERS

##### *Lok Sabha*

2. Shri Anandrao Vithoba Adsul
3. Dr. Baliram
4. Shri Bhartruhari Mahtab
5. Shri Shripad Yesso Naik
6. Shri Abhijit Mukherjee

##### *Rajya Sabha*

7. Shri Prasanta Chatterjee
8. Shri Satish Chandra Misra
9. Shri Sukhendu Sekhar Roy
10. Shri J.D. Seelam
11. Shri N.K. Singh
12. Prof. Saif-ud-Din Soz

#### SECRETARIAT

1. Shri Devender Singh — *Joint Secretary*
2. Shri Abhijit Kumar — *Director*
3. Ms. Miranda Ingudam — *Under Secretary*
4. Shri A.K. Yadav — *Under Secretary*

#### **Representatives of the Office of the Comptroller and Auditor General of India**

1. Shri P. Sesh Kumar — Director General (C)
2. Shri Nand Keyolar S. — Director General
3. Ms. R. Rajalakshmi — Director General
4. Ms. Divya Malhotra — Director General

5. Shri Jayant Sinha — Principal Director (RC)  
 6. Ms. Geetali Tare — Principal Director  
 7. Shri Maneesh Kumar — Principal Director

2. At the outset, the Chairman welcomed the Members and the representatives of the Office of the Comptroller and Auditor General of India to the sitting of the Committee. The Chairman, then apprised that the meeting was convened to consider and adopt the six Draft Reports circulated to them by the Secretariat.

3. The Committee then took-up the following Draft Reports one by one for consideration:

(i) \*\*\* \*\*

(ii) \*\*\* \*\*

(iii) Draft Report on "Expenditure Incurred on Interest on Refunds of Taxes" based on C&AG Report No. 1 of 2011-12;

(iv) \*\*\* \*\*

(v) \*\*\* \*\*

(vi) \*\*\* \*\*

4. \*\*\* \*\*

5. During the further course of consideration, some Members suggested minor modifications in the draft Original Reports. After some discussions and deliberations, the Committee adopted all the Draft Reports and authorized the Chairman to finalise these Reports in light of the factual verifications received from the Audit, if any, and present the same to the Hon'ble Speaker on a date convenient to him.

6. The Chairman thanked the Members for their valuable suggestions on the Draft Reports and active participation in the consideration and adoption of the Reports.

*The Committee, then, adjourned.*

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\*\*\* Matter not related to this report.