

Instruction No. 06/2013

F. No. 312/53/2013-OT
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

....
New Delhi, the 10th July, 2013

To

**All Chief-Commissioners of Income Tax
All Director General of Income Tax**

**Subject: Past adjustment of refunds against the arrears where procedure u/s 245 of
Income Tax Act was not followed- regarding.**

Sir/Madam,

Hon'ble Delhi High Court vide its judgement in case of Court On Its Own Motion Vs. UOI and Others in W.P.(C) 2659/2012 dated 14.03.2013 has issued seven Mandamus for necessary action by the Income Tax Department. One Mandamus is on past adjustments of refunds against the arrears; in particular, where procedure prescribed under Section 245 of the Income Tax Act, 1961 has not been followed.

2. On the above issue, the Hon'ble Court has noted in Para 25 of its order that the problem relating to 'past adjustment' of refunds persists and hence needs to be addressed. The Hon'ble Court has observed as under:

"26. In spite of the opportunity given to the Revenue to take steps, prescribe, adopt a just procedure, to correct the records, etc., nothing has been done and they have not taken any decision or steps. The affidavits filed subsequently after 31st August, 2012, are silent on this specific point. In these circumstances, we direct and issue the third mandamus and direction which will be applicable only to cases where returns have been processed by the CPC, Bengaluru and refunds have been fully or partly adjusted against the past arrears while passing or communicating the order under Section 143(1) of the Act, without following the procedure under Section 245 of the Act. In such cases, it is directed that:-

- A. All such cases will be transferred to the Assessing Officers;
- B. The Assessing Officers will issue notice to the assessee which will be served as per the procedure prescribed under the Act.
- C. The assesseees will be entitled to file response/reply to the notice seeking adjustment of refund;
- D. After considering the reply, if any, the Assessing Officers will pass an order under Section 245 of the Act permitting or allowing the refund.
- E. The Board will fix time limit and schedule for completing the said process.

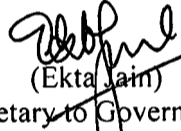
27. There are three reasons why we have issued the said direction. Firstly, the respondents accept and admit the position that wrong and incorrect demands have been uploaded in the CPC, Bengaluru. Secondly, the respondents have not followed the mandate and requirement of Section 245 of the Act before making the adjustment. The two stage process with the opportunity and right of the assessee to submit a reply before the adjustment is made, has been denied. CPC, Bengaluru did not entertain or accept

any application of the assessee questioning past arrears uploaded in their system as they are not custodian of past records. CPC, Bengaluru entertain on-line applications but do not entertain physical or hard copy applications. Assessing Officer similarly did not entertain any application by the assessee on the ground that the order under Section 143(1) was passed by the CPC, Bengaluru and they do not have the files/return with them. Thus, the problem was created and caused by the respondents who did not realize the effect and impact of incorrect and wrong arrears being uploaded in CPC, Bengaluru and did not follow the statutory requirements of Section 245 of the Act.

28. We clarify that the aforesaid directions are only applicable to cases where two stage procedure under Section 245 of the Act has not been followed and not to cases where procedure under Section 245 of the Act was followed."

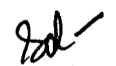
3. In view of the direction of the Hon'ble Court, I am directed to convey that the exercise desired by the Hon'ble High Court as listed in Para 26 A, B, C & D above in respect of cases where returns have been processed by the CPC, Bengaluru and refunds have been fully or partly adjusted against the past arrears while passing or communicating the order under Section 143(1) of the Act, without following the procedure under Section 245 of the Act, be carried out by **31st August, 2013 positively.**

4. I am further directed to state that the above be brought to the notice of all officers working under your jurisdiction for necessary and strict compliance within the time frame prescribed above.


(Ekta Jain) 10/10/2013
Deputy Secretary to Government of India

Copy to:

- (1) Chairperson, CBDT
- (2) All Members, CBDT with the request to kindly instruct the respective CCIT/DGIT under their Zonal jurisdiction that the directions of the Court as mentioned above are complied with by the afore-said time limit.
- (3) All other Officers of CBDT of the rank of Under Secretary and above.
- (4) DIT(PR,PP & OL), Mayur Bhawan, N. Delhi for printing in the quarterly tax bulletin and for circulation as per usual mailing list.
- (5) The Comptroller and Auditor-General of India
- (6) The DGIT(Vigilance), N. Delhi
- (7) The Joint Secretary and Legal Advisor, Ministry of Law and Justice, N. Delhi
- (8) All Directors of Income Tax, N. Delhi
- (9) The DGIT(NADT), Nagpur
- (10) ITCC Division of CBDT(3 copies)
- (11) The DGIT(Systems), N. Delhi
- (12) NIC, M/o Fin – for uploading on the Department's website.
- (13) Guard File


(Ekta Jain)
Deputy Secretary to Government of India