

Instruction No. 7/2013

F. No.312/54/2013-OT
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 15th July, 2013

To

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

Subject: Payment of interest u/s 244A of Income Tax Act 1961 when assessee is not at fault - 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 payment of interest u/s 244A of Income Tax Act 1961 when the assessee is not at fault.

2. On this issue, the Hon'ble Court has observed as under:

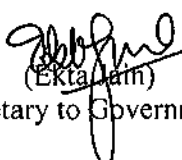
"31. In the affidavit filed on 29th January, 2013, the respondents have stated as under:-

'Where an assessee makes a mistake in the claim of TDS in the e-return and the return is processed and a demand is raised and subsequently, the assessee rectifies the mistake in the claim and files an online rectification application, the same is processed and on any excess TDS is refunded, the interest under section 244A is granted as per the I.T. Act after excluding the period of delay attributable to the assessee in terms of sub-section 2 of section 244A of the Income Tax Act, 1961.'

32. An assessee can be certainly denied interest if delay is attributable to him in terms of sub-section (2) to Section 244A. However, when the delay is not attributable to the assessee but due to the fault of the Revenue, then interest should be paid under the said Section. False or wrong uploading of past arrears and failure to follow the mandate before adjustment is made under Section 245 of the Act, cannot be attributed and treated as fault of the assessee. These are lapses on the part of the Assessing Officer i.e. the Revenue. Interest cannot be denied to the assessee when the twin conditions are satisfied and in favour of the assessee. However, even in such cases Assessing Officer may deny interest for reasons to be recorded in writing if the assessee was in fault and responsible for the delay. This is the fourth mandamus which we have issued."

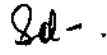
3. In view of the direction of the Hon'ble Court, I am directed to convey that in no case should interest u/s 244A of the Act be denied to the assessee where the assessee is not at fault. The observation of the Hon'ble High Court in Para 32 above be strictly kept in mind while dealing with such matters.

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.


(Ekta Jain) 15/07/2013
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.
- (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) Data Base Cell- for uploading on irs officers website
- (14) Guard File


(Ekta Jain)
Deputy Secretary to Government of India