

CHAPTER XX

REFUNDS

5	431. If any person 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 tax year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.	Refunds.
10	432. (1) Where the income of one person is included in total income of any another person under any provision of this Act, the latter shall be eligible for a refund under this Part in respect of such income. (2) Where a person is unable to claim or receive a refund due to him on account of death, incapacity, insolvency, liquidation or other cause, his legal representative or the trustee or guardian or receiver, shall be entitled to claim or receive such refund for the benefit of such person or his estate.	Person entitled to claim refund in certain special cases.
15	433. Every claim for refund under this Part shall be made by furnishing return as per section 263.	Form of claim for refund and limitation.
20	434. (1) Where,— (a) under an agreement or other arrangement, in writing, the tax deductible on any income, other than interest in section 393(2) (Table: Sl. No. 17), is to be borne by the person by whom the income is payable; and (b) such person having paid such tax to the credit of the Central Government claims that no tax was required to be deducted on such income, he may, within thirty days from the date of payment of such tax, file an application before the Assessing Officer for refund of such tax in such form and such manner, as prescribed.	Refund for denying liability to deduct tax in certain cases.
25	(2) The Assessing Officer shall, by an order in writing, allow or reject the application. (3) No application under sub-section (1) shall be rejected unless an opportunity of being heard has been given to the applicant. (4) The Assessing Officer may, before passing an order under sub-section (2), make such inquiry as he considers necessary. (5) The order under sub-section (2) shall be passed within six months from the end of the month in which application under sub-section (1) is received.	
35	435. (1) Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf.	Refund on appeal, etc.
40	(2) Where, by the order as referred to in sub-section (1),— (a) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment; (b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.	
45	436. In a claim under this part, it shall not be open to the assessee to question the correctness of any assessment, or other matter decided which has become final and conclusive, or ask for a review of the aforesaid assessment or matter; and the assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess.	Correctness of assessment not to be questioned.

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Sl. No.	Circumstances	Period
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(5) For the purposes of sub-section (4)(b), in a case where proceedings for assessment or reassessment is pending, in computing the period for determining the additional interest payable, the period beginning from the date on which such refund is withheld by the Assessing Officer as per and subject to provisions of section 438(3) and ending with the date on which such assessment or reassessment is made, shall be excluded.

(6) Where refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XIX-B, such deductor shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of 0.5% for every month or part of a month comprised in the period, from the date on which—

(a) claim for refund is made in the form as prescribed; or

(b) tax is paid, where refund arises on account of giving effect to an order under section 359 or 363 or 365(10) or 368,

to the date on which the refund is granted.

(7) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee or the deductor, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable under this section.

(8) Where any question arises as to the period to be excluded under sub-section (7), it shall be decided by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner whose decision thereon shall be final.

(9) Where, as a result of an order under section 270(10) or 271 or 279 or 287 or 288 or 359 or 363 or 365(10) or 368 or 377 or 378, the amount on which interest was payable under sub-section (1) has been increased or reduced, the interest shall be increased or reduced accordingly.

(10) In a case where the interest is reduced under sub-section (9), the Assessing Officer shall serve on the assessee a notice of demand in the form as prescribed specifying the amount of the excess interest paid and requiring him to pay such amount.

(11) The notice of demand under sub-section (10) shall be deemed to be a notice under section 289 and the provisions of this Act shall apply accordingly.

438. (1) Where a refund becomes due or is found to be due to any person under this Act, the Assessing Officer or Commissioner or Principal Commissioner or Chief Commissioner or Principal Chief Commissioner, may instead of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by such person.

Set off and withholding of refunds in certain cases.

(2) Any action under sub-section (1) shall only be taken after giving intimation in writing to such person of the action proposed to be taken.

(3) Where,—

(a) a part of the refund is set off under sub-section (1); or

(b) no such amount is set off,

and refund becomes due to a person, and the Assessing Officer, having regard to the fact that proceedings for assessment or reassessment are pending in the case of the person, may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or the Commissioner, withhold the refund up to sixty days from the date on which such assessment or reassessment is made.

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CHAPTER XXI

PENALTIES

Penalty for under-reporting and misreporting of income.

439. (1) The Competent Authority may, during the course of any proceedings under this Act, impose penalty on any person who has under-reported his income and such penalty shall be payable in addition to tax, if any.

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(2) A person shall be deemed to have under-reported his income, if—

(a) the income assessed is greater than the income determined in the return processed under section 270(1)(a);

(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 280;

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(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;

(d) the amount of deemed total income assessed or reassessed as per section 206, is greater than the deemed total income determined in the return processed under section 270(1)(a);

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(e) the amount of deemed total income assessed as per section 206, is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 280;

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(f) the amount of deemed total income reassessed as per section 206, is greater than the total income assessed or reassessed under the said sections immediately before such reassessment;

(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

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(3) The amount of under-reported income shall be,—

(a) if income has been assessed for the first time,—

(i) Where return has been furnished, the difference between the amount of income assessed and the amount of income determined under section 270(1)(a);

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(ii) Where no return of income has been furnished or if return has been furnished for the first time under section 280,—

(A) the amount of income assessed, in the case of a company, firm or local authority; and

(B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);

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