

³²[CHAPTER VIIA

REFUNDS

Refunds.

34A. (1) Where, as a result of any order passed in appeal or other proceeding (including a rectification proceeding) under this Act, refund of any amount becomes due to the assessee, the ³³[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:

³⁴**Provided** that where, by the order aforesaid,—

- (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 ³⁵[net wealth] returned by the assessee.]

³⁶[(2) Where refund of any amount becomes due to the assessee as a result of an order under this Act or under the provisions of sub-section (1) of section 16 after a return has been made under section 14 or section 15 or in response to a notice under clause (i) of sub-section (4) of section 16 and the Assessing Officer is of the opinion, having regard to the fact that—

- (i) a notice has been issued, or is likely to be issued, under sub-section (2) of section 16 in respect of the said return; or
- (ii) the order is the subject-matter of an appeal or further proceeding; or
- (iii) any other proceeding under this Act is pending,

that the grant of the refund is likely to adversely affect the revenue, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund till such time as the Chief Commissioner or Commissioner may determine.]

(3) Where a refund is due to the assessee in pursuance of an order referred to in sub-section (1) and the ³⁷[Assessing Officer] does not grant the refund within a period of six months from the date of such order, the Central Government shall pay to the assessee simple interest at ³⁸[six per cent] per annum on the amount of refund due from the date immediately following the expiry of the period of six months aforesaid to the date on which the refund is granted.

³⁹[(3A) Where the whole or any part of the refund referred to in sub-section (3) is due to the assessee as a result of any amount having been paid by him after the 31st day of March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceeding under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessee simple interest at the rate specified in sub-section (3) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted:

Provided that, where the amount so found to be in excess was paid in instalments, such interest shall be payable on the amount of each such instalment or any part of such instalment, which was in excess, from the date on which such instalment was paid to the date on which the refund is granted:

Provided further that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appeal or other proceeding:

Provided also that, where any interest is payable to an assessee under this sub-section, no interest under sub-section (3) shall be payable to him in respect of the amount so found to be in excess.]

(4) Where a refund is withheld under the provisions of sub-section (2), the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceeding for the period commencing after the expiry of six months from the date of the order referred to in that sub-section to the date the refund is granted.

⁴⁰[(4A) The provisions of sub-sections (3), (3A) and (4) shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989, or any subsequent assessment year.

(4B) (a) ⁴¹[Where refund of any amount becomes due to the assessee under this Act], he shall, subject to the provisions of this sub-section, be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of ⁴²[one-half] ⁴³[***] 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.

Explanation.—For the purposes of this clause, "date of payment of the tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 30 is paid in excess of such demand.

(b) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, period of the delay so attributable to him shall be excluded from the period for which interest is payable and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(c) Where as a result of an order under ⁴⁴[sub-section (3) or sub-section (5) of section 16 or] section 17 or section 23 ⁴⁵[or section 23A] or section 24 or section 25 or section 27 or section 29 or section 35 or any order of the Wealth-tax Settlement Commission under sub-section (4) of section 22D, the amount on which interest was payable under clause (a) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly and, in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 30 and the provisions of this Act shall apply accordingly.

(d) The provisions of this sub-section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.]

(5) Where under any of the provisions of this Act, a refund is found to be due to any person, the ⁴⁶[Assessing Officer], ⁴⁷[Deputy Commissioner (Appeals)], ⁴⁸[Commissioner (Appeals)] or ⁴⁹[Chief Commissioner or Commissioner], as the case may be, may, in lieu 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 the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.]