

**REFUNDS UNDER THE
INCOME TAX ACT, 1961**

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**PUBLIC ACCOUNTS
COMMITTEE
2003-2004**

FIFTY-FIFTH REPORT

THIRTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

FIFTY-FIFTH REPORT

PUBLIC ACCOUNTS COMMITTEE

(2003-2004)

(THIRTEENTH LOK SABHA)

REFUNDS UNDER THE INCOME TAX

ACT, 1961

MINISTRY OF FINANCE



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LOK SABHA SECRETARIAT
NEW DELHI

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COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE
(2003-2004)

Sardar Buta Singh

— *Chairman*

MEMBERS

Lok Sabha

- *2. Shri Haribhai Chaudhary
- 3. Shri Priya Ranjan Dasmunsi
- 4. Shri M.O.H. Farook
- 5. Dr. Madan Prasad Jaiswal
- 6. Shri Raghunath Jha
- 7. Dr. K. Malaisamy
- 8. Dr. M.V.V.S. Murthi
- 9. Shri Rupchand Pal
- 10. Shri Mohan Rawale
- 11. Dr. Nitish Sengupta
- 12. Shri Raghuraj Singh Shakya
- 13. Shri Brij Bhushan Sharan Singh
- 14. Shri Kirit Somaiya

**15. Shri Bhartruhari Mahtab

Rajya Sabha

- 16. Shri Santosh Bagrodia
- 17. Shri Prasanta Chatterjee
- 18. Shri K. Rahman Khan
- 19. Shri Bachani Lekhraj
- 20. Dr. Alladi P. Rajkumar

***21. Vacant

22. Prof. Ram Gopal Yadav

SECRETARIAT

- | | | |
|----------------------------|---|----------------------|
| 1. Shri P.D.T. Achary | — | Additional Secretary |
| 2. Shri S.K. Sharma | — | Joint Secretary |
| 3. Shri Raj Shekhar Sharma | — | Deputy Secretary |
| 4. Smt. Anita B. Panda | — | Assistant Director |

* Shri Haribhai Chaudhary, MP resigned w.e.f. 9th May, 2003 and re-elected w.e.f. 30th July, 2003.

** Shri Bhartruhari Mahtab, MP elected w.e.f. 30th July, 2003 vice Shri Chinmayanand Swami, MP ceased to be a Member on his appointment as Minister w.e.f. 24th May, 2003.

*** Shri C.P. Thirunavukkarasu, MP retired w.e.f. 6th October, 2003.

INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee, do present on their behalf, this Fifty-Fifth Report (13th Lok Sabha) on "Refunds under the Income Tax Act, 1961" based on Chapter-5 of the Comptroller and Auditor General Report No. 12A of 2002.

2. The C&AG Report No. 12A of 2002 for the year ended March, 2001 Union Government (Direct Taxes—System Appraisals) was laid on the Table of the House on 15th March, 2002.

3. The Committee (2002-2003) took oral evidence of the representatives of the Ministry of Finance at their sitting held on 23rd October, 2002. The Committee (2003-2004) considered and finalised this report at their sitting held on 8 December, 2003. Minutes of the sitting form Part-II of the Report.

4. 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 and have also been reproduced in a consolidated form in the Annexures to the Report.

5. The Committee would like to express their thanks to the officers of the Ministry of Finance for the cooperation extended by them in furnishing information and tendering evidence before the Committee.

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;
11 December, 2003
20 Agrahayana, 1925 (Saka)

SARDAR BUTA SINGH,
Chairman,
Public Accounts Committee.

REPORT

Introductory

One of the important features of tax administration, *i.e.* the issuance of Refund, is basically a consequence of payment of Taxes by the assessee or others on their behalf through the mechanism of Advance Tax, Regular tax, Tax Deducted at Source etc. Refund arises where the aggregate of previously mentioned taxes so collected exceeds the tax determined on completion of the assessment or as amended after giving effect to the appellate orders. Under the Income Tax Act, 1961, when the tax paid by an assessee in any assessment year exceeds the amount correctly payable by him, he is entitled to a refund of the excess amount paid. Refund may arise in any of the following circumstances:—

1. Where tax deducted at source from salary, interest on securities, etc. is at a higher rate than the rate applicable or where total income having fallen below the taxable limit, no tax is payable at all by the assessee.
2. Where advance tax paid or self-assessment tax paid exceeds the tax payable as determined at the time of final assessment.
3. Where on appeal or revision, any higher appellate authority or Commissioner reduces the income determined by assessing officers.
4. Where the tax originally determined gets reduced on account of rectification of a mistake.
5. When due to double taxation of income, the assessee is entitled to relief.

Audit Appraisal

2. This Report is based on Chapter-5 of Audit Report (Direct Taxes — System Appraisals) for the year ended 31st March, 2001 (No. 12A of 2002) relating to the review of C&AG on refunds under the Income Tax Act, 1961.* Refunds due and paid during the Financial Years 1997-98 to 1999-2000 in respect of assessments pertaining to Annual Year 1992-93 onwards were covered under the audit review in which 63,535 cases pertaining to 808 units of different assessment ranges/circles/wards under the charge of various Commissioners of Income Tax and Director (Exemption) were test checked. The objectives of the audit review were as follows:

1. To evaluate the degree of compliance by the department with the law and procedural requirements in the matter of granting refund.
2. To ensure that the internal procedures adequately provide for and secure the collection and utilisation of information necessary for determination and computation of refund.

* For the text of the Chapter, please refer to Chapter-5 of C&AG Report No. 12A of 2002 (Direct Taxes) pp. 135—175.

3. To confirm the existence of proper safeguards to ensure that the refund claims were properly pursued and promptly issued and not abandoned or reduced except with adequate justification and with the approval of proper authority.
4. To examine the checks imposed by department to ensure prompt detection and investigation of irregularities, double refunds, fraudulent or forged refund vouchers or other cases of loss of revenue through fraud, error or willful omission.
5. To see whether outflow of government revenue in the form of interest paid to the assessee was justified under the circumstances.
6. To highlight lacunae in the existing law and procedure applicable to refund.

3. The Audit paragraph reported that during the period of review *i.e.* from Financial Year 1997-98 to 1999-2000, the gross collection of Direct Taxes, the total refunds made and the percentage of refunds made to the gross collection, (given below) showed that nearly 1/4th of the gross collections were refunded to the assessee:—

STATISTICAL DATA ON REFUNDS

Financial Year	Gross collections (Rs. in crore)	Refunds made (Rs. in crore)	Percentage of refunds to gross collections
1	2	3	4
1997-98	26,414.79	6398.79	24.22
1998-99	32,612.40	8083.53	24.78
1999-2000	39,151.09	8458.80	21.60

4. As regards the percentage of refunds in respect of various charges, the audit reviewed state-wise details of refunds and concluded that the percentage of refunds to gross collections during the period 1997-98 to 1999-2000 had ranged from 5.3 to 43.4 per cent of gross collections.

5. The Audit appraisal had also indicated cases of excess refunds due to mistakes in computation, double payment of refunds, refunds granted after completion of scrutiny assessment, non-adjustment of refunds granted in earlier assessments, inadmissible refunds due to incorrect allowance of TDS credit, irregular set-off of refunds, set-off of refunds against demands of other direct taxes or vice versa, delay in issue of refunds, non-issue of refunds, avoidable payment of interest due to delay in completion of assessment, irregular withholding of refunds, delay in allowing refunds in appeal cases, interest on refunds less than 10% of assessed tax, non-maintenance of refund register, demand and collection register, cheque register and several procedural irregularities.

6. Overall, the audit review revealed that while adequate procedures and safeguards had been laid down regarding issue of and proper accounting of refunds, these were not being adhered to by the Department. There was laxity in the issue of granting

refunds and further, information necessary for determination of refunds was either not available or were not utilized by the assessing officers as a result of which considerable amount of revenue in the shape of interest paid to the assesseees was foregone which could have been avoided had the Department paid greater attention in the matter and taken prompt action. The review also revealed lacuna in the law allowing assesseees to derive unintended benefits. The Audit had ultimately observed that there was a need for better tax administration, as prompt issue of refunds would not only save revenues for the Government but would also instill greater confidence in the assesseees, particularly in the case of taxpayers in the lower income range, which would lead to greater compliance on their part in discharging their tax liabilities.

7. The Committee's examination of important aspects of the process of granting refunds by the Income Tax Authorities and its implications are dealt with in the succeeding paragraphs.

Refunds —Procedural Aspects

8. Chapter-XIX of the Income Tax Act, 1961 pertains to the law and procedure regarding refunds. Sections 237 to 245 prescribe the various modes of refunds and provide for mandatory issue of refunds in certain cases, levy of interest on delayed refunds and set off of refunds against outstanding demand.

9. According to Section 237, if any person satisfies the Assessing Officer (A.O.) that the amount of tax paid by him or on his behalf or treated as paid by him on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of that excess. Section 240 deals with refund on appeal, etc. According to the Section, 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 A.O. shall refund the amount to the assessee provided that (a) where 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) where 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. Section 241 had empowered the A.O. to withhold the refund under certain conditions till such time as the Chief Commissioner or Commissioner might determine, was omitted by the Finance Act, 2001 w.e.f. 1st June, 2001. Article 242 states that it shall not be open to the assessee to question the correctness of any assessment or other matter decided or ask for a review of the same and the assessee shall not be entitled to any relief except refund of tax wrongly paid or paid in excess. Section 244 of the Act relates to the interest on refund where no claim is needed. It provides that where a refund is due to the assessee and the A.O. 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 twelve 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.

10. When asked so, the Ministry of Finance and Company Affairs made available to the Committee instructions issued by them to the Assessing Officers prescribing a specific procedure to be followed before the issue of refunds*. The instructions included, the following:—

1. The A.O. shall carefully check and satisfy himself that the refund amount has been correctly calculated after taking into account all relevant factors viz. taxes paid by the assessee, the amount of refunds, if any, issued to the assessee for the same Annual Year etc.;
2. He shall ensure that all outstanding demands are first adjusted against the refund and the amount actually refunded is only after all such adjustments;
3. He shall examine the records carefully and satisfy himself that there are no reasons to withhold the refunds in terms of section 241 of the I.T. Act #; and
4. As regards refunds arising u/s 143 (1)(a), he shall ensure that all *prima facie* adjustments have been made in cases where approval is required, the A.O. [not being a Joint Commissioner of Income Tax (JCIT)] shall refer the case to the JCIT concerned after recording his satisfaction for issue of refund. As regards such refunds arising u/s 143(1)(a), he shall refer the file to the JCIT before the intimation of refund is signed by him.

Justification for granting refunds and interest thereon in excess advance tax cases

11. When enquired on the overall refund position, the Ministry of Finance informed the Committee that direct tax collections and refunds *w.e.f.* 1996-97 to 2002-2003 were as follows:—

(Rs. in crores)

Financial Year	Total collection (A)	Total Refunds (B)	Actual collection (A/B)
1996-97	36801	9466	27335
1997-98	37117	8622	28495
1998-99	44769	10243	34526
1999-2000	56347	11084	45263
2000-2001	67490	12370	55120
2001-2002	68613	17304	51309
2002-2003	82013	22676	59337
	393150	91765	301385

* The Fourteen steps for issue of Refunds — Annexure-I.

The power to withhold refunds has been removed as per the Provisions of the Finance Act, 2001.

2. During the local visit of the Committee to the Income Tax Office in Delhi, the I.T. Department had informed that in the Delhi region alone, the Department had to refund Rs. 2097 crores against the net taxes of Rs. 10047 crores, while during 2001-2002, the Department had refunded Rs. 3820 crores as against the net tax collection worth Rs. 11030 crores. When questioned on the growing trend towards payments of huge refunds, the representatives of the Ministry of Finance (Central Board of Direct Taxes), stated that refunds were not related to the quality of assessment as more than 97% of the cases were not selected for scrutiny assessment. The returns filed by the assesseees were processed and refunds were issued wherever these were due. The Ministry further informed that large refunds arise mainly because of payment of advance tax and tax deducted at source in excess of the liability of the assessee to be determined later.

13. During their course of examination, the Committee desired the CBDT, Ministry of Finance to clarify as to why the Government paid interest on refunds in excess advance tax cases. In a written note, the Ministry stated that the scheme of Advance Tax was based on the principle of "Pay taxes as you earn" under which tax on the current year's income was to be paid during the year itself rather than at the end of the year. The Ministry further informed that the Advance tax was paid in four instalments, annually in the months of June, September, December and March. The assessee was expected to make a fair estimate of its income for the current year on the basis of its income in earlier years and the expected profits from the current year's profits was apprehended by the Company during the course of the year.

14. However, according to the Ministry, despite the best of efforts, there was bound to be difference between the estimated income and the actual income at the end of the year. Since tax was payable at the time of the instalments of advance tax falling due, interest was charged on any shortfall in or deferment of advance tax. Similarly, if advance tax had been paid more than the tax due, the Government paid interest to the Assessee.

15. It was however, noticed in the Audit that the Department had not given due importance to the returns claiming refund so that the same could be processed within the relevant assessment year and refund granted promptly so as to avoid payment. In an illustrative case, the Audit noticed that in Delhi CIT II charge, the assessment of M/s NTPC for the Assessment Year 1998-99 processed in Summary manner in May, 1999 was finalised after scrutiny in March, 2001. The Audit scrutiny revealed that the assessee was allowed refund of Rs. 22530.43 lakh alongwith interest of Rs. 3379.56 lakh for 15 months. The Audit observed that had the return been processed within March, 1999, payment of interest of Rs. 675.91 lakh could have been avoided. Another case of M/s Bharat Aluminium Company Limited falling under Delhi CIT III charge was noticed in the Audit Review. In the case, the Audit noted that the Company had filed their return for the Assessment Year 1996-97 in November, 1996 which was revised in October, 1997. The Department did not process the original return and assessed the revised return at nil income in summary manner in July 1998 allowing a refund at nil income in summary manner in July 1998 allowing a refund of Rs. 3623.39 lakh and interest of Rs. 1014.55 lakh for 28 months (1.4.1996 to

31.7.1998). Due to delay in granting refund, an avoidable interest of Rs. 579.74 lakh beyond March 1997 was paid to the assessee.

16. Another reason for granting interest, according to the Ministry, was that there generally was a time-gap between the beginning of the Assessment Year and the actual date of completion of assessment. For this period, the Government had used the excess amount of advance tax paid by the assessee, whereas the assessee had been deprived of his money for none of his fault. Therefore, as per the Ministry, for this period too, interest was allowable to the assessee.

17. When enquired so by the Committee, the Ministry clarified that the outflow of revenue towards interest payment on delayed refunds could be minimized but it could not be eliminated altogether for the following reasons:—

- (i) Most of the returns of income were received during the fortnight preceding the due date of filing of refunds. These were being processed in the subsequent months giving rise to interest payments on account of delayed refunds;
- (ii) It was physically impossible to process all the cases of refund within the month in which the return was filed;
- (iii) Even if the refunds were issued on the same day on which the return was filed, there would still be interest payable under Section 244(1)(a) for the period from 1st day of April of the assessment year to the date on which the refund was granted;
- (iv) Sometimes verification of TDS certificates was required to be done prior to issue of refunds to rule out fraudulent refund claims; and
- (v) In such cases involving large amount of refunds, prior approval of Joint/ Addl. CIT was required as per CBDT Instruction no. 1969 dated 20.8.1999.

18. The Ministry of Finance further clarified that charging of interest by the Government was not with a view to earn revenue. The Committee were informed that similarly when the Government paid interest to the assessee, there was no loss of interest and that the interest charged or received was only compensatory in nature. According to the Ministry, grant of interest on Refund of excess advance tax was a part of the bigger scheme under which interest was charged or paid by the Government to compensate itself or the Assessee for the loss in the value of money between the due date and the date of actual payment.

19. The Ministry of Finance further contended that the liability to pay advance tax had been imposed by Sections 207 and 208 of the Income Tax Act and it was calculated on the basis of the income computed in the latest previous assessment and adjusted in the manner laid down in Section 209. Besides various categories of income earned by an assessee suffered deduction of tax at source. Later, self-assessment tax was paid by the assessee while filing return of income. The Ministry stated that all different streams of payment lose their character on completion of regular assessment and become income tax paid in respect of the income of the relevant assessment year.

20. During the oral evidence of the representatives of the Ministry, the Committee observed that the Public Sector Undertakings were major claimants for refunds as they habitually paid more advance tax. In a note, however, the Ministry of Finance informed the Committee that there was no statutory bar on assesseees for paying advance tax and there was no penalty prescribed even if the assessee habitually resorts to paying excess advance tax. The Ministry also stated that it was noticed in some Banks/Financial Institutions cases that the advance tax was paid on the issues in favour of the assessment appellate level to avoid the interest burden for non-payment of advance tax. Also, in many high income cases as precautionary measure, assesseees pay higher advance tax in order to avoid chargeability of interest u/s 234B & 234C of the I.T. Act, 1961. In this connection, the Committee were informed that corporate assesseees resorted to paying taxes on the basis of their book profits whereas several adjustments and legally admissible claims were made in the statement of total income which was normally prepared at the time of filing of return of income. The Ministry stated that due to this, in many cases TDS/Advance Tax collected by the Department was more than the requirement of payment of taxes by the assesseees which result in refunds.

21. When enquired by the Committee whether any mechanism was available with the Department of Revenue to ensure that excess advance tax payments were not habitually resorted to by some tax payers, the Ministry, in their written note, took the stand that anticipation and estimation of total income and the advance tax liability thereupon were computed by the tax payers and there was no departmental mechanism for this purpose. The Ministry denied having any mechanism available to ensure that some tax payers did not habitually resort to excess advance tax payment. The Committee nonetheless were informed that over the years, the rate of interest on refunds under Section 244A of the Income Tax Act had been progressively reduced to dissuade tax payers from making payment of excess advance tax so the Finance Act, 2002 mandated interest on refunds under Section 244A at the rate of 8% per annum *w.e.f.* 1.6.2002. The Ministry further elaborated that such interest was chargeable to tax and after excluding the tax, the net interest rate in the cases of big corporate houses would come down to about 5.6% (8% - 2.4%). The Ministry stated that now onwards the interest rate on parking of funds by the big corporate houses was not going to be as lucrative as it was made out to be. The Ministry further stated that as a deterrent, the cases of habitual excess advance tax payers could be selected for scrutiny under section 143(3) to examine the reasons as to why the excess amount was deposited. In case the excess advance tax paid was not in accordance with relevant provisions of law, further action including investigation and examination of books of accounts could be taken by the jurisdictional assessing officers at the time of scrutiny assessment.

Delays/Irregularities in Granting Refunds

22. The Committee noted with concern the revelation following the Audit scrutiny that while adequate procedures and safeguards had been laid down by the Department regarding issuance and proper accounting of refunds, those were not being adhered to by the field formations. There was laxity in the Department in granting refunds and

the information necessary for determination of refunds was either not available in records or was not utilized by the Assessing Officers. Consequently, considerable amount of revenue in the shape of interest paid to the assessee was foregone which could have been avoided had the Department paid greater attention. The percentage of refund during the period 1997-98 to 1999-2002 ranged from 5.3. to 43.4 percent of gross collections. Audit also noticed mistakes in calculation of tax and interest on refunds, incorrect adoption of tax rates, rules etc. resulting in excess refund of Rs. 6947.04 lakh. The Audit Report also pointed out 1255 cases wherein setoff of refunds worth Rs. 46,843.00 lakh were made against outstanding demand without prior intimation to the assessee. Specific instances of issue of refunds without approval of competent authority and mistakes in computation leading to over payment/short payment/non-payment of interest were also noticed in the Audit Review.

23. Major observations of the Audit during their review of refund cases, as noticed by the Committee during their course of examination, were as follows:—

- (i) In 229 cases, there were excess refunds due to various mistakes in computation such as incorrect calculation of tax and interest on refunds, incorrect adoption of tax rates, etc. resulting in excess refund of Rs. 6947.04 lakh. Eight cases of double payment of refund of Rs. 81.93 were noticed.

(Para No. 5.6.1.1 & 5.6.1.2)

- (ii) In 407 cases, the Department allowed refunds only after completion of scrutiny assessment though the refunds had already been decided on the date of completion of summary assessment which was in contravention of the provisions of the Act and resulted in grant of refund of Rs. 3774.24 lakh.

(Para No. 5.6.1.3)

- (iii) In 1255 cases, set off of refunds of Rs. 46843.02 lakh were made against outstanding demand without prior intimation to the assessee. In 44 cases refunds of Rs. 1768.47 lakh of income tax were set off against demands of wealth tax/interest tax/gift tax or vice versa. In 28 cases refund of Rs. 111.11 lakh due to the assessee was incorrectly set-off against the demands outstanding in respect of other assesseees.

(Para No. 5.6.1.6)

- (iv) In 239 cases, administrative approval of the CIT was not obtained prior to issue of refund totalling Rs. 6680.37 lakh.

(Para No. 5.6.1.9)

- (v) Mistakes in computation led to overpayment of interest of Rs. 163.02 lakh in 33 cases, short payment of interest of Rs. 861.04 lakh in 770 cases and non-payment of Rs. 512.27 lakh in 24 cases.

(Para No. 5.6.2.1)

- (vi) Due to delay in granting refunds beyond the relevant assessment year, there was avoidable payment of interest of Rs. 11,397.61 lakh in 1881 cases. There was avoidable payment of interest of Rs. 144.98 lakh due to withholding of refunds without valid grounds in 24 cases. Further, there was avoidable payment of interest of Rs. 2133.87 lakh due to delay in allowing refund in 138 appeal cases.

(Para No. 5.6.2.5 to 5.6.2.7)

- (vii) Non-levy of interest of Rs. 7566.08 lakh on the outstanding demand collected by way of adjustment against refund was noticed in 379 cases in 978 cases interest of Rs. 1351.94 lakh on account of TDS credited to Government account beyond the financial year was paid irregularly. Irregular payment of interest of Rs. 373.36 lakh was made on self-assessment tax in 56 cases.

(Para No. 5.6.2.11 to 5.6.2.13)

- (viii) Payment of excessive amounts of advance tax in the month of March resulted in an extra burden of interest of Rs. 7539.17 lakh to the Government in 294 cases. Interest income receipts under Section 244A of Rs. 246.82 lakh were not offered to tax in subsequent assessment years resulting in a short levy of tax of Rs. 120.30 lakh in 30 cases.

(Para No. 5.6.4.3 to 5.6.4.4)

- (ix) The review revealed delays of upto 50 months in issuing refunds. Prescribed procedures were not followed and necessary registers were either not maintained or were improperly maintained.

(Para No. 5.6.3)

24. The Committee further noted with concern the following constraints faced by the Audit during the course of review of refund cases in various charges:—

- (i) In Delhi charge, only 79 out of 115 assessing officers under thirteen Commissionerates and the Directorate of Exemption supplied the records of refund cases and that too, not completely in many cases. Further out of 10345 cases requisitioned, only 2636 cases (25 percent) were produced to audit. Certain vital records like Daily Refund Registers, Arrear Demand and Collection Registers, Appeal and Rectification Registers, Bank scrolls, Quarterly Verification Registers, Book of Refunds Voucher Forms and Advice Notes, Register of refund applications received and other connected records relating to issue of refund vouchers required to be maintained in compliance of provisions of the Act were not submitted to audit.
- (ii) In Rajasthan charge, out of 3471 selected refund cases, 942 cases could not be checked due to transfer of cases to other units and due to non-production of assessment records.
- (iii) In West Bengal charge, out of 5937 selected refund cases, 92 cases were not produced to audit.

- (iv) In Uttar Pradesh charge, out of 2290 cases of refunds selected for examination, 1883 cases were not produced to audit.

25. The Committee further noted that the C&AG, in their report, had pointed out several cases of excess/double refunds due to mistakes in computation and other procedural irregularities. On being asked to comment upon the fact that these mistakes escaped the scrutiny by the Internal Audit mechanism of the Department, the Ministry took the plea that until November, 2001, the Internal audit was not covering the procedural irregularities as it had an acute shortage of staff, lack of manpower and heavy workload of auditable cases that existed in the erstwhile internal audit mechanism. The Committee were also informed by the Ministry that sometimes the assessment files were on movement to various authorities like CITs, CIT (Appeals), Income tax Appellate Tribunal and to Revenue Audit Parties who required the same assessment folder for various types of audit including system reviews, regular revenue audit, audit on companies in select sectors etc.

26. When asked to comment upon the audit findings, the Ministry stated that the reasons for delay in granting refund could vary from case to case and charge to charge. However, according to the Ministry, the main reason for delay in granting refund was that the A.O.s were overburdened with many responsibilities, which they had to discharge and they were expected to prioritise their work. The Committee were also informed that the main reasons for delay in issue of refunds were as follows:—

- (a) Heavy workload and paucity of manpower—The number of assessees was increasing every year at a very fast pace and there was no corresponding increase in manpower and infrastructure of the department resulting in heavy workload on officials of the department.
- (b) Shortage of refund vouchers—Sometimes there was a shortage of refund voucher books resulting in delays in issue of refunds.
- (c) Verification of TDS certificates—Before giving credit of Tax on the basis of TDS certificates, verification was done in some cases to prevent fraudulent refunds, which took little more time.
- (d) Deficiency in returns of income—sometimes the return of income was not legible or was incomplete, which also resulted in delay in issue of refunds.
- (e) Deficiency in Challans—sometimes the payments were made in wrong challans or the particulars such as name of assessee, address, jurisdiction were not correctly mentioned.
- (f) Problems of verification—The changes in jurisdiction also sometimes led to delay in verification of payments. Besides, mistakes had also been noticed in the Bank scrolls.

27. With regard to delay in appeal cases, the Committee noted that although the CBDT had directed in January 1977 that refunds should be granted within a month of date of appellate orders and while rectifying the assessment for giving effect to

appellate orders, the amount refundable should be determined after adjustment of refund granted earlier, the audit review had revealed that delay ranging from 1 to 111 months against admissible period of one month in allowing refund in appeal cases had resulted in avoidable payment of interest of Rs. 2133.87 lakh in 138 cases. To quote few instances, in Uttar Pradesh charge, in 11 cases the delay upto 111 months had resulted in avoidable payment of interest of Rs. 785.57 lakh while in Tamil Nadu Charge, delay upto 81 months in 18 cases had resulted in avoidable payment amounting to Rs. 171.75 lakh.

28. The Committee enquired from the Ministry whether a system was in place to watch the implementation in giving effect to appellate order promptly as per Board's instructions. The Ministry replied in their written note that every effort was being made by them towards proper issuance of refunds arising from appellate orders as control registers were maintained for monitoring appeal effects. An important reason for delay in giving appeal effects earlier was that many assessments used to be set aside for the assessing officers for fresh enquiries, fresh opportunity to the assessee and a reconsideration of the evidence and the facts of the case. As per the Ministry, such proceedings were responsible for delay in issue of refunds for which the department was legally bound to give interest to the assessee and a reconsideration of the evidence and facts of the case. However, w.e.f. 1.6.2001, the Finance Act 2001 had removed the powers of the CIT (Appeals) to set aside the cases. Further, the Ministry expressed the hope that the appellate process would be faster and consequently, issue of interest in such cases would be considerably lower.

29. During the oral evidence of the representatives of the Ministry, when the Committee sought their clarifications on mistakes in refunds, the Revenue Secretary stated as follows:—

“....The (audit) report has rightly pointed out a large number of mistakes in the implementation of the refund systems. I have no hesitation in accepting the fact that these are specific cases which they have pointed out and they should not have occurred.....the important point I feel is that steps are taken to see that such cases do not occur or at least occur to the minimum possible in future.”

30. Replying to a query by the Committee on remedial action taken over the cases pointed out by the Audit, he added:—

“.....in all these cases which have been pointed out (by Audit), the remedial action has been taken in all of them. In fact, in most of the cases, the revenue has been adjusted and the officers concerned, whoever was responsible, have been called to explain their conduct. Administrative action is being taken against them.....”

31. On being asked to apprise the Committee on fixation of responsibility, for these cases, the Revenue Secretary informed the Committee, *Inter alia*:—

“....We have set up a fact-finding Committee with the Director of Vigilance and other senior officers. The Director of Income Tax Vigilance, the

Commissioner of Income Tax Audit and the Director of Income Tax Audit will report to the Chairman by 16th December (2002) after they go into each of these matters and fix responsibility and then recommend vigilance and administrative action against the people responsible.....”

32. On further enquiry from the Committee, the Revenue Secretary referred to the restructuring of Income Tax Department, following which internal audit chains were set up, to detect various irregularities including mistakes in grant of refunds. He stated as follows:—

“.....because of the restructuring of the Income Tax cadre, the span of control down the line has been reduced so that there is closer supervision of the senior supervisory officers.....With the increasing computerization..... there will be much less chance of arithmetic and calculation errors and the speed of the calculation as also wherever refunds are required to be given, all these calculations will be possible in a much shorter timeframe We have also issued a compendium of mistakes which have been detected in the audit again and again.....to bring out the kinds of mistakes which occur frequently.....”

33. On legislative action to check huge revenue loss consequent to refunds, the Revenue Secretary *inter alia* stated:—

“.....Earlier there was a power with the authorities in the Income Tax Department to hold back refunds. That has been removed w.e.f. 1.6.2001.....”

On the lowering down of the rate of interest on refunds, the Secretary further informed the Committee, *viz.*:—

“.....Earlier it was 12 per cent. It has been coming down over the years. Now the interest on refund is also liable to be taxed. Therefore, practically the benefit of interest that he gets is a little over 5 per cent and not the full 8 percent”.

Existing Mechanism and Initiatives to check delays/irregularities in granting refunds

34. In this connection, the Committee wanted to know about the safeguards being followed to ensure that the refund claims were properly pursued and promptly issued and not abandoned or reduced in violation of provisions of law, the Department informed the Committee that the Central Action Plan for 2002-2003 specifically mentioned it as the key area of compliance. The Action Plan target in this regard was stated to be as:—

- (i) Processing of returns involving refunds must be done within three months and for other returns within six months from the end of the month in which the return is received.
- (ii) The issue and dispatch of refunds alongwith advice must be done within seven days of determination of the refund.

35. On yet another occasion, the Ministry stated that an important reason for the delay in payment of refund was due to the delay in the credit of taxes paid. With a view to tackle the problem, the Department informed that the Government was in the process of establishing Tax Information Network (TIN) which will get connected to all the Banks and accept payments on behalf of Income Tax Department. The Committee noted that the report of the Task force on Direct Taxes headed by Dr. Vijay Kelkar had also highlighted the need for putting in place a sound and efficient information technology based system for disposal of refund cases and has highlighted that a TIN may be established by the Government on a build, operate and transfer basis. The Task Force had recommended that TIN would comprise of a world-class (Common carrier) network system and have access to state-of-the-art IT infrastructure. The Task Force had envisaged TIN to be a repository of information, with a database of all tax payments and refunds.

36. The Committee also specifically noted the following recommendation of the Task Force:

“The existing cumbersome and manually-operated procedures for issue of refunds must be replaced by a more efficient IT-based system. Under the new-system, the department will prepare a separate file of all refunds daily which will be downloaded by a payment intermediary *i.e.* a designated bank. The designated bank will be authorized to issue computerized refunds as is the current practice for issuing dividend and interest warrants by companies. The designated bank will be required to transmit the information relating to the issue of refunds to the TIN, which will also allow a taxpayer to verify the status of his/her refund claim through a secure and confidential PAN-based identification system.”

37. Pending the implementation of the recommendation of the Task Force, the Committee enquired about the existing mechanism in the system to prevent mistakes and ensure that refund claims were properly pursued and settled by the Department. In a written note, the Ministry informed that though it was reported by the CCITs that the A.Os remained under pressure and due to large number of pending scrutiny cases, rectifications, appeal effects and less number of competent staff, mistakes escaped the notice of the A.Os, still following safeguards were meant to ensure that the refund claims were properly pursued and promptly issued and not abandoned or reduced in violation of provisions of law:—

- (i) All returns in which refunds were payable to the assesseees were processed on priority;
- (ii) Information regarding pendency of refunds was being reported monthly by the A.Os in the prescribed proforma; and
- (iii) As per Citizen's Charter, Department was committed to issue the refunds within one month of quantification of refund. Refunds, entered in the D&CR Registers, were inspected by the Addl. CsIT, Range and by the CsIT to ensure proper and timely issue of refund;

- (iv) Instructions has been issued by the CBDT from time to time regarding timely issue of refunds from the date when the refunds becomes due.

38. On being specifically asked about mechanism devised by the department to check totalling and such apparent mistakes before release of refund orders, the Ministry stated that the calculations were checked by two different officials at two different levels of hierarchy to ensure that there were no calculation mistakes before the release of refund orders. It was also informed that refund above specific amounts were issued only after prior approval of the Additional/Jt. Commissioner of Income Tax was obtained. As per the Ministry, this approval also acted as a check against calculation mistakes. Secondly directions had been issued by the Ministry to all A.Os to process the returns only through AST by using the Computer. The Committee were also informed that a detailed mechanism had been devised for writing the amount etc. in refund vouchers with a view to leave no scope for manipulations.

39. The Committee further desired to be apprised of the checks imposed by the Department to ensure prompt detection and investigation of irregularities, double refunds, fraudulent or forged refund vouchers or other cases of loss of revenue through fraud, error or willful omission. The Ministry, in a written note, specified that the following checks were used by their officials in this regard:

- (i) Caging on the original return form at the time of issue of refund;
- (ii) Caging in the demand and collection register against the entry giving rise to the refund;
- (iii) Calculation of amount of refund to checked by two different officials before putting up the refund voucher for signatures of A.Os;
- (iv) Intimation to the RBI regarding refund voucher book in use;
- (v) Putting the stamp of RBI code number alongwith the signatures of the A.O. on the refund voucher;
- (vi) Issue of refunds above specific amounts only after prior approval of the Additional/Joint Commissioner of Income Tax in Charge of the range;
- (viii) CBDT instruction No. 1891 dated 31.12.1991 reported in Tax Bulletin Vol. No. 18, p. 180 emphasising upon maintenance of proper record of issue and utilization of refund voucher books as well as instruction to the supervisory officer to ensure that whenever there was a change of the officer authorized to sign the refund vouchers due to transfer, retirement or any other reason, immediate action was taken by the incoming officer to cancel the earlier authorization with the Bank.

40. The Minister informed further in their written note that from time to time the CBDT were issuing instructions laying down administrative procedures and the compliance with such instructions and adherence to administrative procedures laid down by the CBDT was the responsibility of the respective range officers/Chief Commissioners of Income Tax. It was further informed that the internal audit system had been revamped involving all JCIT/Addl. CITs (Ranges) and also all A.Os in

internal audit work which meant making available more personnel to handle internal audit work. However, the Ministry informed the Committee that the internal audit of the cases was conducted on certain percentage of the cases having total income disclosed/assessed, and that 100% internal audit of the cases was not being conducted. Meanwhile, it was intimated that instructions were already issued by the jurisdictional CCITs to all A.Os in their respective charges to scrupulously follow the instructions on the subject and maintain all prescribed registers and records in order to avoid improper issue of refunds and to prevent refunds and to prevent refund irregularities.

41. The Committee were also informed that the Department had introduced computerization of challans thereby computerizing and verifying all challans based on the PAN which was then correlated to the account so that any refund above Rs. 1 lakh could be detected. Moreover, each A.O. was also required to maintain the refund issue register which, in turn, was periodically inspected by the higher authority/CITs/CCITs.

42. To a query regarding remedial measures to prevent recurrence of irregularities in the issue of refunds, the Ministry also informed the Committee that a detailed check list covering all the points where mistakes were detected by C&AG had been prepared and circulated to all CCIT and DGITs for wide circulation among the A.Os so that the A.Os were aware of such mistakes while granting refund and auditing the refund cases. A Compendium of Common Mistakes committed by the A.Os during the courses of assessment and detected by the internal audit as well as by the Revenue Audit had also been widely circulated among the field officers. When enquired by the Committee on the action taken by the Department in case the prescribed procedures laid down by the Board were not followed, the Ministry stated that wherever, inadvertently, some officers overlooked the existing guidelines, explanations had been called for by their supervisory officers. Also, in deserving cases, warnings had been issued by their controlling officers/jurisdictional Commissioners of Income Tax.

Maintenance of Records

43. The Committee were informed by the Ministry in a written note that the following procedures were being followed in maintaining records of all refund cases:—

- (i) The relevant entry in the Demand and collection register was caged at the time of issue of refund;
- (ii) Caging was also done on the original return form at the time of issue of refund;
- (iii) Counterfoils of all refund vouchers containing complete details was kept;
- (iv) The advices of refunds were sent to the RBI through a forwarding letter. Office copies of the forwarding letter were being maintained in a folder.

44. However, the Committee had noted that during the review of the subject under examination, the Audit noticed the following deficiencies in maintenance of records/documents regarding refunds:—

- (i) The Daily Register showing datewise details of refund granted, date of encashment on receipt of paid vouchers etc. was not maintained properly in

Haryana, Rajasthan, U.P., M.P., Bihar, Assam, Orissa, Tamil Nadu, Chandigarh, Gujarat, Karnataka, Maharashtra and Kerala charges.

- (ii) The Demand and Collection Register, required to be maintained to record necessary entries once the Refund voucher was issued, was noticed to have missed entries in Tamil Nadu and Maharashtra charges.
- (iii) A Register of Refund Applications, to be maintained in the prescribed form by the A.O. to ensure prompt disposal of refund applications, was not produced for audit scrutiny in Mumbai city charge.
- (iv) Cheque Register for the number of refund orders issued, cancelled etc. was not being maintained in Rajasthan, Tamil Nadu, Chandigarh, Gujarat, Orissa, Karnataka and Haryana charges.

45. The Committee, while examining the instructions issued by the Board, found that the Board itself had noted with concern that cases of fraudulent encashment of refund vouchers had occurred primarily because the procedure set out for safe keeping of refund voucher books etc. was not being adhered to. The Committee enquired from the Ministry reasons for such negligence on part of their field charges. Though the Ministry could not furnish a tenable reply, in their written note, the Ministry intimated the Committee that the observation of the audit as regards non-maintenance or proper maintenance of daily refund register, demand and collection register, register of refund applications and cheque registers have been taken in good spirit. It was also informed that jurisdictional CCITs were issuing instructions to all assessing officers in their respective charges to scrupulously follow the instructions on the subject and maintain all prescribed registers and records in order to avoid improper issue of refunds and to prevent refund irregularities.

Observations and Recommendations

46. The Committee note that an assessee is entitled to a refund of the excess amount when the tax paid by him in any assessed year exceeds the amount correctly payable by him. Refund may arise in many circumstances, as for instance, where the tax deducted at source is at a higher rate than the rate applicable or where total income having fallen below the taxable limit and no tax is payable at all by the Assessee, or where the advance tax paid or self-assessment tax paid exceeds the tax payable as determined at the time of final assessment or as a consequence to appeal, revision, rectification of mistakes, the tax originally determined gets reduced. The Committee's examination of the Audit review on "Refunds under the Income Tax Act", has revealed several lacunae in the existing law and procedures regarding issue of refunds which are commented upon in the succeeding paragraphs.

47. The Committee are constrained to note that the percentage of refunds during the period 1997-98 to 1999-2002 ranged from 5.3 to 43.4 per cent of gross revenue collection. They also find that during Financial Year 1997-98 to 1999-2000, refunds constituted, on an average, 23.53% of gross collections in company cases and 10.5% in non-company cases. The Committee are further

dismayed to find that mistakes in computation have led to overpayment, short-payment and non-payment of interest in 827 cases detected during audit scrutiny. Considering the large number of such cases, they feel that such a situation could have been avoided had the Department paid greater attention to prevent mistakes in computation and other procedural irregularities through a stringent scrutiny by their internal audit mechanism. In this regard, the Committee are not convinced with the stand taken by the Ministry that due to shortage of staff, heavy workload and movement of assessment files to various authorities, several irregularities/mistakes failed to get detected by their internal audit. Though the Department has claimed to have revamped their audit mechanism, the number of computational mistakes have yet to show any decline. From the foregoing, it is amply clear to the Committee that hardly any interest has been shown by the Department to detect avoidable errors and mistakes which have a major role to play in the heavy outflow of government revenue in the form of interest on refund paid to the assessee.

48. Another disquieting feature about issue of refunds as noted by the Committee have been the inordinate delays of upto 50 months in the issue of refunds. In this connection, the Audit scrutiny had revealed that due to delay in granting refunds beyond the relevant assessment year, there was avoidable payment of interest of Rs. 11,397.61 lakh in 1881 cases and Rs. 2133.87 lakh in 138 appeal cases. During the course of examination by the Committee, the Ministry have attributed the same to heavy workload on the Assessing Officers, shortage of refund vouchers, delay in verification of TDS certificates and deficiencies in the forms of returns of Income/Challans/Banks scrolls. On further inquiry by the Committee, the Ministry informed that a Fact Finding Committee was set up to fix responsibility in respect of cases involving inordinate delays in issue of refunds. It has also been informed that the power with the Income Tax authorities to hold back refunds has been removed *w.e.f.* 1.6.2001. The Committee further note that under Central Action Plan 2002-2003, targets have been fixed to process returns involving refunds within three months as well as issue and despatch of refunds alongwith advice within seven days of determination of refund. While hoping that the optimism of the Ministry to speed up refunds under the Central Action Plan will bear fruit, the Committee desire that on completion, the report of the Fact Finding Committee of the Ministry may be placed before them for their perusal. The Committee further desire that the Ministry should spare no efforts to ensure that their internal procedures are strengthened in the best possible manner to ensure prompt detection of delays and irregularities in handling cases of refund.

49. The Committee note that another highlight of the audit findings following their review of refund cases was improper maintenance of the records of refunds in various field formations. Although the Department informed that necessary records of cases involving refunds are maintained for six years from the end of the Financial Year, however, vital records pertaining to refund applications, vouchers and cheques, TDS certificates etc. were either not submitted to audit or else if submitted, were found to be ill-maintained. The Committee's examination

further revealed that though the Department have issued instructions regarding maintenance of refund records, same was not being monitored at appropriate levels leaving a lot to be desired. The Committee, therefore, recommend that Government should seriously address this issue and take appropriate measures with a view to ensuring that their instructions regarding maintenance of necessary records are followed scrupulously and diligently with supervision by senior level officers in all the field formations so that those could be properly utilised for *bona-fide* purposes as well as produced promptly whenever required.

50. The Committee are perturbed to note that many Public Sector Undertakings are claimants for refunds as they were paying excess advance tax to bypass their responsibility. Therefore, they feel that the Department should conduct a study on the trends in advance tax payment system and other factors giving rise to huge refunds in order to ascertain as to who are major claimants for refunds and rationalize further the procedure for advance tax payments. In this connection, the Committee desire that the cases of habitual excess advance tax payers may be selected for scrutiny assessment under Section 143(3) as a deterrent. With regard to individual assesseees, the Committee note the Ministry's view that most of the returns are received during the fortnight preceding the due date of filing of refunds. In this context, they suggest that the fixed deadlines for filing I.T. returns each year may be made suitably flexible as in the last-minute rush, the possibility of receiving incorrect returns tends to increase, thus leading to further rise in refund claims. The Committee therefore, feel that providing more time to the assesseees for self-assessment of income would encourage a positive response to file correct returns and thus, put less pressure/workload on the Department in processing refund claims.

51. The Committee note that as a sequel to the deposition by the representatives of the Ministry of Finance before the Public Accounts Committee, the Union Minister of Finance informed Parliament, while presenting the Annual Budget for 2003-2004, that the Government was due to initiate "direct crediting of all refunds to the bank accounts of the tax payers, through electronic clearance system, but obviously only if the tax payers furnish a bank account number". The Committee are optimistic that such an initiative would go a long way in bringing about tax administration reforms, decreasing the workload of the department and minimising harassment to the tax payers. In this regard, the Committee would also like to know the steps taken to further streamline the procedure.

APPENDIX I

THE FOURTEEN STEPS FOR ISSUE OF REFUNDS

1. Form of refund claim

Income limit	Form of claim
(A) Exceeds non-taxable limit	Return u/s 139(1). Form 30 not necessary
(B) Dose not exceed non-taxable limit & not covered b 1/6 scheme	Form 30. Accompanied with a return
(C) Covered by one by six scheme	Return in Form 2C. Form 30 not necessary

Don't issue the refund in (B) above, without geting the Form 30

2. Rejection of returns at receipt stage itself

If a return has any one or more of the following deficiencies and if they are not rectified on the spot, the return receipt clerk should return it to the person tendering it after attaching a unsigned, printed Rejection slip. The relevant serial number should be tick-marked. (Para 25 & 26—Page 34 & 35—MOP).

Form for Rejection Slip (Page 74)

1. The veritification in the return has not been signed.
2. The name of the assessee has not been noted in the return.
3. The status of the assessee has not been mentioned.
4. The Assessment year to which the returns pertains has not been indicated in the return.
5. Enclosures as listed not attached.

3. Types of invalid returns

Refunds should not be issued on invalid returns. The following are invalid returns:

- (a) Defective returns u/s 139(9), if not rectified within the time allowed.
- (b) R/I not signed by the person stipulated u/s 140.
- (c) R/I filed belatedly [Sec. 139(4), or Form 30 filed belatedly (Sec. 239(2))].
- (d) R/I signed by P.O.A. holder but valid p.o.a. not enclosed—Proiviso to Sec. 140 (a)(iv).
- (e) The income shown must be in specific figures and therefore a return would be invalid if the mere word "loss" or estimated income, say Rs. X is entered in it. (Cl. 49 P. 41 MOP).

EXCEPTIONS-SEC. 44AD, 44AE

4. Verification of enclosures

Check whether—

- (a) All enclosures are available.
- (b) Challans/TDS certificates (including Form 16) are—not cancelled, in original, relates to the P.Y. and relates to assessee.
- (c) Challans are 4th counterfoils (Department's copy).

These checks are to be made before receipt of returns; if not made, at least before putting up to the Assessing Officer (A.O.) The A.O. has to check these before determining refund u/s 143(1).

5. Entry in Return Receipt Register (RRR)

The returns will be entered in the RRR simultaneously. The RRR will be upto the A.O. at the end of each day along with the returns received during the day. The A.O. will sign the RRR indicating & the number of returns received on that day. The A.O. will mark the returns to the appropriate dealing assistants (DA). The returns should be distributed to the DAs on the immediately following working day after receipt the DAs shall deal with the returns received in chronological order unless there are exceptional circumstances in the opinion of the A.O. The A.O. will, at this stage, also examined whether any of the returns suffer from infirmities mentioned in Sec. 139(9) and take remedial action wherever necessary. (New procedure for receipt and processing as per Chairman's D.O. No. 48/2/89-AP--DOMS dt. 5.5.89) THE RETURNS SHOULD NOT BE RECEIVED BY THE A.O. UNLESS ENTERED IN THE RRR NON-ENTRY OR DELAY IN ENTRY MAY GIVE ROOM FOR MISCHIEFS. IN CASE OF DELAY, INTIMATE THE AC. (ADMN.)/JCIT/CIT IN WRITING. DON'T TAKE THE NUMBER OF UNENTERED RETURNS FOR THE PURPOSE OF C.R. IN CAP-II, INCLUDE THE NUMBER OF UNENTERED RETURNS ALSO SO THAT THE ACTUAL PENDENCY IS NOT REDUCED. SHOW THESE FIGURES SEPARATELY.

6. Entry in Blue Book (BB)

ENTRY IN BB IS A MUST TO DETECT FILING OF MORE THAN ONE RETURN FOR SAME A.Y. BY THE SAME ASSESSEE. FOR THE SAME REASON, RETURNS MARKED AS 'NEW CASES' SHOULD NOT BE ENTERED IN BB/GIR ROUTINELY. PREVIOUS ENTRIES SHOULD BE THOROUGHLY CHECKED TO AVOID DOUBLE NUMBERING. Without entry, R/I should not be put up to A.O. Note the Serial No. & Page of BB in the order sheet/return. THIS WILL HELP TO ROUND OFF THE ENTRY, ON COMPLETION, EASILY. A.O's should not determine refund u/s 143(1) unless the Sl. No. is noted in the order sheet/return.

7. Giving credit for A.T./140/Regular challans

See if the challan is original, not cancelled, relates to the assessee and the P.Y., and 4th counterfoil (Dept.'s copy). Verify the Daily Collection Register (DCR). Enter the Sl. No. & Page of the DCR in the challan. ROUNDED OFF THE RELEVANT

ENTRY IN THE DCR WITH INITIALS AND DATE THIS WILL PREVENT RE-VERIFICATION OF THE SAME ENTRY BY, THE SAME CHALLAN FILED SUBSEQUENTLY/FILING ASSESSEES COPY/BOGUS CHALLAN. If not reflected in DRC, send a letter (use cyclostyled/printed forms) to CTU for confirmation. Give credit only to such amounts represented by the Confirmed/verified challans.

8. Giving credit for TDS (including Form 16) certificates

See if the Certificate is—original, not cancelled, relates to the assessee and P.Y., and complete in all respects. The amount in words and figures should tally. The date of payment should be mentioned. In case of book adjustment, the date of adjustment should be mentioned. THE SIGNATURE SHOULD NOT BE IN FASCIMIL. Unless a written order from the CCIT/CIT exists (e.g. erstwhile contractors' circule C(7), Chennai), all the TDS certificates, irrespective of the amount, may be got verified from the TDS wing. CBDT's Ins. No. 1856 dt. 14.9.90, read with Ins. No. 1797 dt. 19.9.88 stipulates that a small percentage of forms 16s shall be verified with reference to the records of the concerned ITO (TDS) before giving credit for such TDS. No such percentage appears to have been fixed by the CCIT, Chennai, so far. Till the percentage and monetary limits, if any, are fixed by the CCIT, all the Form 16s may be verified with concerned TDS Officer.

CAUTION: ONLY AFTER GETTING THE AT/140A/REGULAR CHALLANS/ TDS (INCL. FORM 16) CERTIFICATES VERIFIED, PROCESS THE RETURN. DON'T GIVE CREDIT BEFORE VERIFICATION, DON'T QUANTIFY THE REFUND AMOUNT BEFORE VERIFICATION DON'T ENTER IN THE D & C REGISTER BEFORE VERIFICATION. DELAY IN ISSUE OF REFUNDS (WITH REFERENCE TO CITIZENS CHARTER. ETC.) AND CONSEQUENTIAL ACTION WILL ACCRUE ONLY WITH REFERENCE TO THE DATE OF FINALISATION OF THE AMOUNT DUE U/S 143(1) SO MAKE ALL THE VERIFICATION BEFORE DETERMINING THE RE'UND U/S 143(1). BUT MAKE IT AS EARLY AS POSSIBLE AS SOON AS A REFUND RETURN IS RECEIVED SEND LETTERS CALLING FOR CONFIRMATION OF TDS (& FORM 16) CERTIFICATES IN CASE OF CHALLANS SEND LETTERS IF NOT REFLECTED IN CASE OF CHALLANS, SEND LETTERS IF NOT REFLECTED IN DCR.

9. Calculation of Tax/Refund

- (a) RESPONSIBILITY FOR MINISTERIAL STAFF (Para 43 (b)-Page 663-MOP):—

The staff must make an arithmetical check of computation of income and ensure that correct tax has been charged. Calculation of tax/refund made by one UDC/TA must be checked by other UDC/TA and signed in full. For refund above Rs. 1000/- income above Rs. 20,000/- Wealth over 3 lakhs and gifts over Rs. 30,000/-, Head Clerk (HC) or supervisor (S) will re-check calculation. Before signing R.O./demand notice, A.O. Should ensure this. This work should be done by HC/S before processing u/s 143(1).

(b) RESPONSIBILITY FOR ASSESSING OFFICERS PM' 43(O) Page 663-MOP):—

The A.O. is responsible for accuracy in computation of total income/loss and will be personally responsible for rechecking the calculation of tax/refund in all cases of total income over Rs. 1 lakhs and refund over Rs. 10,000/- lakhs/refund direct taxes, the A.O. is to recheck all cases where net wealth is over Rs. 10 lakh/refund exceed Rs. 5000/-.

Final computation of income/loss must be written in words and figures.
[p. 663—cl. 43(a)]

10. Entry in Demand & Collection Register (D&CR) (Para 27 Page 82 MOP)

The entries in all the columns in the demand portion of the Register should be made by the A.O. in big charges; in order smaller charges, the entries only in the demand columns are to be made by the ITOs and the rest will be made by the TA/UDCs. But while making entry for the demand, A.O. should ensure that the name, address, PAN, etc., of the assessee have been correctly and fully shown in the respective columns. The entries in the columns for collection are to be made by the TA/UDC, and the HC/S is to check the entries made with reference to transfer memos from DCU/LTU. Both of them should initial the entries. Overwriting of figures should be avoided. Any correction should be initialled by the A.O. Demands and collections are written in black ink. While refunds written in red ink.

11. Issue of refunds

I. OTHER THAN CHENNAI

The following procedure, to take effect from 1.1.1980, it was circulated *vide* DOMS Circular No. 39 in F.No. 22/24/76-AP/DOMS, dated 15.7.1980(!) (Tax bulletin—Vol. 18—P. 181—186).

“A Procedure for refund upto Rs. 999/-

1. Each R.O. book has to be stamped with the stamp of the office of issue.
2. The month and date of issue of the book is to be written in words and not in figures.
3. The following instructions shall be observed with regard to the writing of refund vouchers:—
 - (i) The blank spaces in the Vouchers should be filled in ink and any correction attested with full signature of the A.O. (IT IS ADVISABLE TO CANCEL THE R.O. IN CASE OF ANY MISTAKE IN AMOUNT)
 - (ii) While writing the amount is figures as well as in words, care should be taken to leave no space for interpolation.
 - (iii) The word "only" should be added at the end of the amount in words.
 - (iv) The spaces which still remain blank after making entries regarding name and amount should be scored out by a straight line intercepted by cross-marks as illustrated below:—

- (v) In the space provided for writing the amount (which is a combined space for writing the amount in figures as well as in words) first the amount in figures should be written and thereafter within small brackets, the amount in words which should again be pre-fixed by the word "Rupees". As a further safeguard, a bar should be inserted between every two words of the amount written in words as illustrated below:—

"Please pay to Shri.

the some of Rupees 945/- (Rupees/nine/hundred/fifty/five/only) on account of refund due to him.

- (vi) A note to the effect the amount of the refund voucher (RV) is below a specified amount expressed in whole rupees which is in excess of the amount of refund vouchers by rupees one should be recorded prominently at the top of the vouchers in red ink. (e.g. If the RBV is for Rs. 900/-, then the note shall be "Under rupees nine hundred and one only". This note should be written by the A.O. in his own hand before putting his signature.
- (vii) After the RV is written by a UDC/TA, it will be checked by a HC/S before the same will put up to the A.O. for final check and signature. The person who writes the RV and the one who checks the same will put their signatures (with name in brackets) in the office copies of the RVs and advice notes.

(B) PROCEDURE FOR REFUND OF RS. 1000/- OR MORE

1. Each book is to be stamped with the stamp of the officer of issue.
2. The month and date of issue of the book is to be written in words and not in figures.
3. Instruction contained in Para 3 above for writing refund vouchers upto Rs. 999/- shall be observed for writing refund vouchers for higher amount also.
4. The A.O. has to take care that the advice Note (AN) for a particular Refund bears the same number as that of the corresponding RV.
5. Particular, such as the date of issue, name of payee, amount of refund etc. should be correctly noted in the A.N. While writing the amount in words in the A.N. the word "only" should be inserted at the end and care should be taken to leave no space for interpolation.
6. The classification head to which the refund amount has to be debited must also be noted in the AN.
7. In order to ensure correct encashment of the R.V. the A.N. must be sent direct to the Bank. The book of RVs both for refunds upto Rs. 999/- and for refunds of Rs. 1000/- or more, as the ANs will remain in the personal custody of the A.O. who will intimate to the RBI/SBI or its subsidiary, as the case may be, the book which is using. A R.V. is like a cheque payable to order. It is for this reason that the books of R.Vs should be kept in the personal custody of the A.O. also be noted in the AN.

(C) PROCEDURE FOR ISSUE OF UNCROSSED VOUCHERS ON REQUEST FROM THE ASSESSEE

(NEED NOT BE FOLLOWED—HENCE NOT PRINTED)

"The JCITs should, in the course of periodical inspections, check that the system of issuing refunds and the various check prescribed are being strictly adhered to."

II. IN CHENNAI (MICR REFUND CHEQUES) (W.E.F. 1.4.87) (AS PER TA/UDC REFRESHER COURSE MATERIAL OF DTRTI, BANGALORE) (CBDT'S CIR NO. 54 DT. 16.12.87)

The following instructions should be strictly, adhered to:

- (i) All the foils of R.Os. should be written individually and not by carbon copy process.
- (ii) The particular filed in the R.O. and the other copies should be the same.
- (iii) No rubber stamp or other identification mark, etc., should be affixed below the signature of the A.O.
- (iv) A small size rubber stamp indicating District/Ward/Officer. etc. be affixed in the box provided for the purpose on the left hand top corner of the foils.
- (v) The date of issue of the R.O. should be written only in the space provided for the purpose.
- (vi) The advice (of Rs. 1000/- and above) should be sent to Bank on the date of issue of R.O. The actual date of sending the advice to Bank should be noted in the Office copy (OC) in the space provided for the purpose. The certificate of credit printed on reverse of the OC should also be signed by the A.O. before issue of R.O.
- (vii) The TA/UDC (who prepare the R.O.) and HC/S (who checks) should put their initials on the OC.
- (viii) IT IS PREFERABLE TO CANCEL THE R.O. IN CASE OF MISTAKES IN AMOUNT RATHER THAN CORRECTING IT UNDER SIGNATURE OF THE A.O.

OTHER COMMON AND IMPORTANT INSTRUCTION FOR ALL AMOUNT IN ALL PLACES:

Send intimation to bank whenever a R.O. book is brought to use.

Record the issue of R.O in file & form 16 certificates and all challans while preparing R.O. All certificates of tax deductions should be marked "considered" as signed by the A.O. (I.T.D. organisation & Procedure — 1989-p 121)

USE 'CHEQUES SAVER STICKERS'

12. Verification of encashment of refund vouchers

On receipt of Refund Scroll, the following has to be done:

1. The amount paid should be tallied with the amount mentioned in the O.C. of R.O.
2. The date of encashment should be noted in the space provided in the O.C.
3. Entries of the amounts paid will be made under proper classification in the Register of Daily Refunds.
4. A note of the amount paid will be made in the collation part of the D & C Register in red ink.

The entries will be made by the UDC/TA in case of all refunds below Rs. 1000/- in case of refunds of Rs. 1000/- and above, the A.O. himself will have to make them. THIS EXERCISE CAN BE DONE FIRST BY THE TA/UDC IN RESPECT OF BELOW RS. 1000/- ENTRIES IN THE REFUND SCROLL AND THEY WILL ROUND OFF THE RELEVANT ENTRIES WITH THEIR INITIALS AND DATE. THIS ROUNDING-OFF WILL ENABLE THE A.O.S. TO CONCENTRATE ON THE BALANCE ENTRIES ONLY AND ALSO TO PREVENT SECOND VERIFICATION.

13. Quarterly verification of Counterfoils of R.Os

As per the DOMS circular supra, the checks prescribed in para 12 above, will help in detecting the encashment of bogus refunds, if any. As a further check, it provides that the A.O. will make a quarterly verification from the office copies of the RVs as well as that relevant entries in the D & C R to find out the cases where the payment details have not been received upto 6 months from the date of issue of R.O. In such cases, the A.O. will consult the records of the CTU/DCU/LTU/ZAO and if necessary will approach the concerned bank to ascertain the position about the encashment of the relevant R.O.S., particularly to ensure that there has been no fraudulent payment.

14. Other Instructions

- a. Issue of Refund upto Rs. 5000/- (CNDT's Ins. No. 1919 dt. 29.9.94-Tax Bulletin-vol. 29-P.51): Refunds of Rs. 5000/- (including for consolidated refund for several a.y.s.) or less shall be issued without prior verification of the records for any outstanding demand. After issue of the refund, however, a verification shall be made and steps will be taken to realise the outstanding demands of any. Also a record of such instances where arrears were found to be outstanding to refunds have been issued may be maintained to that the impact of this instruction may be studied at a later date.
- b. Issue of refunds exceeding Rs. 1 lakh: (CBDT's Ins. No. 1910 dt. 2.9.93-T.B.-Vol. 25-Pg. 143) The A.O. (other than a JCIT) shall seek the approval of the JCIT in cases where the amount of refund exceeds Rs. 1 lakh. Where the A.O. is JCIT, he himself will be responsible for ensuring the correctness of the refund

and he should follow the procedure laid down in para 2 of instruction No. 1889 dt. 30.9.91

- c. Check to be made before issuing refunds (CBDT's Ins. No. 1889 dt. 30.9.91-TB-Vol. 17-Pg. 19): it has now been decided that the following procedure should be followed before the issue of refunds:

- (i) The A.O. shall carefully check and satisfy himself that the refund amount has been correctly calculated after taking into account all relevant factors, such as taxes paid by the assessee, the amount of refunds, if any, issued to the assessee for the same A.Y., etc.
- (ii) He shall ensure that all outstanding demands are first adjusted against the refund and the amount actually refunded is only after all such adjustments.
- (iii) He shall examine the records carefully and satisfy himself that there are no reasons to withhold the refunds in terms of Sec. 241 of the I.T. Act.; and
- (iv) As regards refunds arising u/s 143(1)(a), he shall ensure that all *prima facie* adjustments have been made in cases where approval is required, the A.O. (not being a JCIT) shall refer the case to the JCIT concerned after recording his satisfaction for issue of refund. As regards such refunds arising u/s 143(1)(a), he shall refer to the file to the JCIT before the intimation is signed by him.

- d. To Avoid Frauds (CBDT's Ins No. 1891 dt. 31.12.91-T.B.-Vol. 17-Pg. 180):-

The board have noted with concern that some cases of fraudulent encashment of refund vouchers, have occurred in few Commissioners' charges, primarily because the procedure set out for issue of refund vouchers, security and safe keeping of refund vouchers books, and for quarterly verification of refunds set out in circular 39 (F.No. 22/24/76-AP (DOMS) of 15 July, 1980 and the Manual of office Procedure (Vol. II Part A) 1982 has not been adhered to. The Board except that supervisory officers will ensure that these instructions are strictly complied with. The Board would also like to emphasise that proper record issue and utilisation of refund vouchers books should be maintained and that the supervisory officer should ensure that whenever there is a change of the officer authorised to sign the refund vouchers (due to transfer, retirement or any other reasons), immediate action is taken by the incoming officer to cancel the earlier authorisation with the Bank.

- e. Despatch of Refund Orders:

All refund Orders irrespective of value should be sent by PRAD only within 15 days of issue.

- f. Issue of Duplicate Refund Order:—

If the assessee fails to encash it within the period of 3 months, they can send it to the A.O. who will cancel it under his signature and issue a fresh R.V. The cancelled R.V. will be attached to its counterfoil. Necessary cross reference

will be made in both the counterfoils (& ALSO IN THE FILES). Refunds Vouchers should not be revalidated after the expiry of the period of currency. Instead, duplicate R.V. should be issued/ when duplicate voucher is asked for on the ground that the original has been lost, the duplicate will not be issued until the period of validity of the original vouchers has been expired and until the A.O. has satisfied himself that the original has not been cashed and the payment has been stopped indemnity bond should also be obtained.

g. To avoid double issue to refunds in a single return:

Place a rubber stamp impression "R.O. Issued" on the first page of the R/I once R.O. is put up.

NEW DELHI;

11 December, 2003

20 Agrahayana, 1925 (Saka)

SARDAR BUTA SINGH

Chairman,

Public Accounts Committee

APPENDIX II

STATEMENT OF CONCLUSIONS AND RECOMMENDATIONS

Sl. No.	Para No.	Ministry/ Department	Conclusions & Recommendations
1	2	3	4
1.	46	Finance	The Committee note that an assessee is entitled to a refund of the excess amount when the tax paid by him in any assessed year exceeds the amount correctly payable by him. Refund may arise in many circumstances, as for instance, where the tax deducted at source is at a higher rate than the rate applicable or where total income having fallen below the taxable limit and no tax is payable at all by the assessee, or where the advance tax paid or self-assessment tax paid exceeds the tax payable as determined at the time of final assessment or as a consequence to appeal, revision, rectification of mistakes, the tax originally determined gets reduced. The Committee's examination of the Audit review on "Refunds under the Income Tax Act", has revealed several lacunae in the existing law and procedures regarding issue of refunds which are commented upon in the succeeding paragraphs.
2.	47	-do-	The Committee are constrained to note that the percentage of refunds during the period 1997-98 to 1999-2002 ranged from 5.3 to 43.4 percent of gross revenue collection. They also find that during Financial Year 1997-98 to 1999-2000, refunds constituted, on an average, 23.53% of gross collections in company cases and 10.5% in non-company cases. The Committee are further dismayed to find that mistakes in computation have led to overpayment, short-payment and non-payment of interest in 827 cases detected during audit scrutiny. Considering the large number of such cases, they feel that such a situation could have been avoided had the Department paid greater attention to prevent mistakes in

1	2	3	4
			<p>computation and other procedural irregularities through a stringent scrutiny by their internal audit mechanism. In this regard, the Committee are not convinced with the stand taken by the Ministry that due to shortage of staff, heavy workload and movement of assessment files to various authorities, several irregularities/mistakes failed to get detected by their internal audit. Though the Department has claimed to have revamped their audit mechanism, the number of computational mistakes have yet to show any decline. From the foregoing, it is amply clear to the Committee that hardly any interest has been shown by the Department to detect avoidable errors and mistakes which have a major role to play in the heavy outflow of government revenue in the form of interest on refund paid to the assessee.</p>
3.	48	Finance	<p>Another disquieting feature about issue of refunds as noted by the Committee have been the inordinate delays of upto 50 months in the issue of refunds. In this connection, the Audit scrutiny had revealed that due to delay in granting refunds beyond the relevant assessment year, there was avoidable payment of interest of Rs. 11,397.61 lakh in 1881 cases and Rs. 2133.87 lakh in 138 appeal cases. During the course of examination by the Committee, the Ministry have attributed the same to heavy workload on the Assessing Officers, shortage of refund vouchers, delay in verification of TDS certificates and deficiencies in the forms of returns of income/Challans/Bank scrolls. On further inquiry by the Committee, the Ministry informed that a Fact Finding Committee was set up to fix responsibility in respect of cases involving inordinate delays in issue of refunds. It has also been informed that the power with the Income Tax authorities to hold back refunds has been removed <i>w.e.f.</i> 1.6.2001. The Committee further note that under Central Action Plan 2002-2003, targets have been fixed to process returns involving refunds with three months as well as issue and despatch of refunds alongwith advice within seven days of determination of refund.</p>

1	2	3	4
			<p>While hoping that the optimism of the Ministry to speed up refunds under the Central Action Plan will bear fruit, the Committee desire that on completion, the report of the Fact Finding Committee of the Ministry may be placed before them for their perusal. The Committee further desire that the Ministry should spare no efforts to ensure that their internal procedures are strengthened in the best possible manner to ensure prompt detection of delays and irregularities in handling cases of refund.</p>
4.	49	Finance	<p>The Committee note that another highlight of the audit findings following their review of refund cases was improper maintenance of the records of refunds in various field formations. Although the Department informed that necessary records of cases involving refunds are maintained for six years from the end of the financial Year, however, vital records pertaining to refund applications, vouchers and cheques, TDS certificates etc. were either not submitted to audit or else if submitted, were found to be ill-maintained. The Committee's examination further revealed that though the Department have issued instructions regarding maintenance of refund records, same was not being monitored at appropriate levels leaving a lot to be desired. The Committee, therefore, recommend that Government should seriously address this issue and take appropriate measures with a view to ensuring that their instructions regarding maintenance of necessary records are followed scrupulously and diligently with supervision by senior level officers in all the field formations so that those could be properly utilized for <i>bonafide</i> purposes as well as produced promptly whenever required.</p>
5.	50	Finance	<p>The Committee are perturbed to note that many Public Sector Undertakings are claimants for refunds as they were paying excess advance tax to bypass their responsibility. Therefore, they feel that the Department should conduct a study on the trends in advance tax payment system and other factors giving rise to huge refunds in order</p>

1	2	3	4
			<p>to ascertain as to who are major claimants for refunds and rationalize further the procedure for advance tax payments. In this connection, the Committee desire that the cases of habitual excess advance tax payers may be selected for scrutiny assessment under Section 143(3) as a deterrent. With regard to individual assesseees, the Committee note the ministry's view that most of the returns are received during the fortnight preceding the due date of filing of refunds. In this context they suggest that the fixed deadlines for filing I.T. returns each year may be made suitably flexible as in the last-minute rush, the possibility of receiving incorrect returns tends to increase, thus leading to further rise in refund claims. The Committee therefore, feel that providing more time to the assesseees for self-assessment of income would encourage a positive response to file correct returns and thus, put less pressure/workload on the Department in processing refund claims.</p>
6.	51	Finance	<p>The Committee note that as a sequel to the deposition by the representatives of the Ministry of Finance before the Public Accounts Committee, the Union Minister of Finance informed Parliament, while presenting the Annual Budget for 2003-2004, that the Government was due to initiate "direct crediting of all refunds to the bank accounts of the tax payer, through electronic clearance system, but obviously only if the tax payers furnish a bank account number." The Committee are optimistic that such an initiative would go a long way in bringing about tax administration reforms, decreasing the workload of the department and minimising, harassment to the tax payers. In this regard, the Committee would also like to know the steps taken to further streamline the procedure.</p>

MINUTES OF THE THIRTEENTH SITTING OF THE PUBLIC ACCOUNTS
COMMITTEE (2003-2004) HELD ON 8 DECEMBER, 2003

The Committee sat from 1500 hrs. to 1522 hrs. on 8th December, 2003 in Committee Room "B", Parliament House Annexe, New Delhi.

PRESENT

Shri Rup Chand Pal — *in the Chair*

MEMBERS

Lok Sabha

2. Shri Haribhai Chaudhary
3. Shri Raghunath Jha
4. Dr. Nitish Sengupta
5. Shri Brij Bhushan Sharan Singh
6. Shri Kirit Somaiya
7. Shri Bhartruhari Mahtab

Rajya Sabha

8. Shri Santosh Bagrodia
9. Shri Prasanta Chatterjee
10. Shri K. Rahman Khan

OFFICE OF THE COMPTROLLER & AUDITOR GENERAL

1. Shri P. Sesh Kumar — *Pr. Director*
2. Shri Minakshi Ghosh — *Pr. Director*

LOK SABHA SECRETARIAT

1. Shri P.D.T. Achary — *Additional Secretary*
2. Shri Raj Shekhar Sharma — *Deputy Secretary*
3. Shri B.S. Dahiya — *Under Secretary*

2. In the absence of Chairman, the Committee chose Shri Rup Chand Pal to act as Chairman for the sitting under Rule 258(3) of Rules of Procedure and Conduct of Business in the House.

3. The Committee then took up for consideration Memorandum No. 2 on issues relating to:—

- (i) Short levy due to incorrect classification of beddings, mattresses etc., as featuring in para 4.1 of Audit Report No. 10 of 2003; and
- (ii) Alleged financial indiscipline by the Union Government.

After some deliberations the Committee decided to take the oral evidence of the Ministry of Finance on the matter referred to as (i) above on 22nd December, 2003.

4. On the issue at (ii) above, the Committee were of the opinion that as the matter was sub-judice, no action was pending at the level of the Committee and thus, no further discussion was required.

5. The Committee then took up for consideration the following draft Reports:—

(i) Draft Report on Chapter 5 of Audit Report No. 12A of 2002 (Direct Taxes-System Appraisals) relating to "Refunds under the Income Tax Act, 1961."

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

(iii) *** *** ***

6. While commending the draft reports, the Committee adopted those without any modifications and amendments.

7. The Committee authorised the Chairman to finalise the draft Reports in the light of changes, if any, arising out of factual verification by Audit and present the same to the Houses in the current session of Parliament.

The Committee then adjourned.