

No adjustment of refund without giving an opportunity to the Assessee to file response or reply: -

SECTION 245 OF THE INCOME-TAX ACT, 1961 – REFUNDS – SET OFF OF REFUNDS AGAINST TAX REMAINING PAYABLE – STRICT COMPLIANCE OF SECTION 245 BEFORE MAKING ANY ADJUSTMENT OF REFUND

INSTRUCTION NO. 12/2013 – DATED 9-9-2013

Hon'ble Delhi High Court vide its judgment in case Court On Its Own Motion v. UOI in W.P.(C) 2659/2012, dated 14.3.2013 has issued seven Mandamus for action by the Income Tax Department. One Mandamus is on compliance of section 245 of the Income-tax Act, 1961.

2. The Hon'ble High Court in this context had issued interim directions vide its order dated 31-8-2012 as under:

“13. We issue interim direction to the respondents that they shall in future follow the procedure prescribed under section 245 before making any adjustment of refund payable by the CPC at Bengaluru. The assessee must be given an opportunity to file response or reply and the reply will be considered and examined by the Assessing Officer before any direction for adjustment is made. The process of issue of prior intimation and service thereof on the assessee will be as per the law. The assessee will be entitled to file their response before the Assessing Officer mentioned in the prior intimation. The Assessing Officer will thereafter examine the reply and communicate his finding, to the CPC, Bengaluru, who will then process the refund and adjust the demand, if any payable. CBDT can fix a time limit for communication of findings by the Assessing Officer. The final adjustment will also be communicated to the assessee.”

3. In compliance with the above directions of the Hon'ble Court, CPC Instruction No. 1 dated 27.11.2012 was issued explaining the step by step procedure for adjustment of refunds to be followed by Assessing Officers and CPC, followed by the DIT(Systems)-III letter dated 30.1.2013.

4. Vide its final order in the Writ Petition dated 14.3.2013, the Hon'ble High Court in para 24 has confirmed its interim order and issued Second Mandamus as under:

“24. The said interim order is confirmed. We notice that the respondents have taken remedial steps to ensure compliance of section 245 of the Act as they now give an option to the assessee to approach the Assessing Officer. This is the second mandamus which we have issued. As noticed above, the interim order passed in the writ petition dated 31st August, 2012 has been implemented.”

5. In view of the above directions of the Hon'ble High Court, I am directed to convey that the provisions of section 245 of the IT Act be strictly adhered to before making any adjustment of refund. In respect of adjustment of refund payable by the CPC at Bengaluru, the procedure detailed in Para 2 above may be complied with. The Assessing Officer, in this regard, should respond to CPC within 45 days from the date of communication of issuance of notice u/s 245 by the CPC to the Assessing Officer.

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

[F. NO. 312/55/2013-OT]