

IT officer can't take away your tax refund and adjust against outstanding demand without notice

The Bombay High Court has in a recent case set aside the adjustment of tax refund against the tax demand, and instructed the tax authorities to streamline their internal process.

As per the Income Tax Act, income tax officials need to serve a valid notice of demand to the concerned taxpayer before doing any adjustment against the demand. A valid notice means a notice which is served within the time-frame specified under the respective sections of the Income Tax Act. Thus, if you are one of those taxpayers who have not got a valid notice of tax demand, then you need not worry about the refund as that can't be adjusted against the outstanding demand. Here's what you need to know about a recent ruling of the Bombay High Court.

What's the HC ruling?

In a recent case, outstanding tax demands were determined by the I-T Officials for A.Y 1995-96, 2003-2004, 2009-10 and 2012-13 for a taxpayer. The I-T Officers then adjusted the refund due to that taxpayer against the outstanding demands. However, as per the taxpayer, he didn't receive any order pertaining to such demands. He, therefore, argued that the adjustment done against his refund was invalid.

“The case went to the Bombay High Court where it was observed that without first ensuring that a valid notice of demand was served on the taxpayer, the I-T officer adjusted the refund. Therefore, the court directed the I-T department to grant the refund due to the taxpayer with applicable interest. Also, Rs 1.5 lakh will be recovered from the income tax officer by the I-T department. Further, disciplinary action would also be taken against the officer as per the instructions of the HC,” says CA Abhishek Soni, Founder, tax2win.in.

The Court said that it is present to adjudicate on questions of law and not to settle the routine issues of administration. Accordingly, such kind of errors made by the I-T officers would not be considered lightly as form the part of litigation and ultimately the court's judicial time is wasted.

What does the tax law say?

The income tax law provides that a refund due to any person may, in lieu of payment of the refund, be set off against any outstanding tax demand. However, this can be done only after following the prescribed procedure, including giving a written intimation to the taxpayer of the action proposed to be taken.

“In the instant case, the High Court has set aside the adjustment of tax refund against the tax demand and instructed the tax authorities to streamline their internal process. While tax collections are the focus of the revenue authorities, it should be ensured that tax payers are provided a just and fair opportunity to present their perspective. Further, the endeavor should be to cut down on unnecessary disputes and litigation especially on the procedural matters,” says Vikas Vasal, National Leader Tax – Grant Thornton India LLP.

As per the income tax law, in fact, it is the duty of every IT officer to ensure that along with the serving of notice, all the procedural requirements are complied with. “A proof of service of demand is necessary before adjusting any refund due to the taxpayer against the outstanding demand. Further, with the advancement of technology now it is easy enough for the IT officers to provide a proof of service and also comply with other requirements of law,” informs Soni.

Conclusion

Thus, without serving a valid notice of demand, the I-T officials cannot adjust refund of the amount due against the outstanding demand. If they do so, then a cost would be imposed upon them. According to tax experts, this is a highly-appreciated move of the High Court where the interest of the honest taxpayer has been upheld.

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