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CONTRAVENTION OF CONSTITUTIONAL PROVISIONS BY MINISTRY OF FINANCE: EXPENDITURE INCURRED ON INTEREST ON REFUNDS WITHOUT PARLIAMENTARY APPROVAL

MINISTRY OF FINANCE
(Department of Revenue)

PUBLIC ACCOUNTS COMMITTEE 2013-2014

NINETY-SIXTH REPORT

FIFTEENTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

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(2013-14)

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MINISTRY OF FINANCE

(Department of Revenue)

Presented to Lok Sabha on 06.02.2014
Laid in Rajya Sabha on 06.02.2014

LOK SABHA SECRETARIAT
NEW DELHI

February, 2014/*Magha* 1935 *(Saka)*

PAC No. 2023

Price: ₹ 80.00

Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and Printed by the General Manager, Government of India Press, Minto Road, New Delhi-110 002.

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* Elected *w.e.f.* 14th August, 2013 *vice* Dr. Girija Vyas appointed as Minister of Housing, Urban Development and Poverty Alleviation *w.e.f.* 17th June, 2013.

† Elected *w.e.f.* 3rd September, 2013 *v*ice Dr. V. Maitreyan ceased to be a Member upon his retirement as a Member of Rajya Sabha *w.e.f.* 24th July, 2013.

‡ Elected *w.e.f.* 3rd September, 2013 *vice* Dr. E.M. Sudarsana Natchiappan appointed as Minister of State for Commerce and Industry *w.e.f.* 17th June, 2013.

INTRODUCTION

I, the Chairman, Public Accounts Committee, having been authorised by the Committee, do present this Ninety-sixth Report (Fifteenth Lok Sabha) on 'Contravention of Constitutional Provisions by Ministry of Finance: Expenditure incurred on Interest on Refunds without Parliamentary Approval' based on the action taken replies submitted by the Government on their 66th Report (15th Lok Sabha) on 'Expenditure incurred on interest on Refunds of Taxes' relating to the Ministry of Finance (Department of Revenue).

2. In their 66th Report (15th Lok Sabha) the Committee had unanimously recommended that the Ministry of Finance cannot make departure from the established financial procedure as enshrined in the Constitution. In their considered view, reporting of interest liability to Parliament would bring greater transparency in financial administration of the country, uphold the spirit of the Constitution and help reduce interest burden, bring in greater efficiency in tax administration and reinforce Constitutional morality.

3. Subsequently, at the request of the Ministry of Finance (Department of Revenue) the Ld. Attorney General tendered his opinion to the Ministry of Finance which was contrary to the opinion given by him earlier to the Public Accounts Committee. With regard to the contradiction in the two opinions given by the Ld. Attorney General on the same matter, the Committee took oral evidence of the representatives of the Ministry of Law and Justice (Department of Legal Affairs) on 26th July, 2013. Thereafter, the Committee took oral evidence of the representatives of the Ministry of Finance (Department of Revenue) on 2nd September, 2013 to examine the reasons that prompted the Ministry to seek another opinion of the Ld. Attorney General for India. The Committee also took evidence of the Ld. Attorney General for India on 2nd September, 2013 on the subject to ascertain the reasons for completely reversing the opinion tendered by him earlier to the Committee. The Ld. Attorney General conceded that Parliamentary supremacy in financial matters was the bedrock of our Constitution and ultimately, the Ministry of Finance could have to abide by the recommendation of the PAC. The Committee considered and adopted this Report at their sitting held on 30th January, 2014. Minutes of the Sittings form Appendices to the Report.

4. In this Report, the Committee have exhorted the Ministry of Finance (Department of Revenue) to scrupulously abide by Constitutional provisions and cautioned them to desist from taking precipitous action which even remotely tinkers with, dilutes or negates Parliamentary control over public purse in any manner. Further, having regard to the written testimony of the Ld. Attorney General, and his later deposition conceding that the provision of Article 114 is supreme and the Department had to follow the procedure prescribed by the PAC, the Committee have desired that the Department of Revenue seek *ex ante* or *ex post facto* Parliamentary approval for interest payments

on tax refunds as the Constitution leaves no doubt about the manner of authorization of expenditure or withdrawal of moneys from and out of the Consolidated Fund of India other than seeking *ex ante* approval under Article 114 and 115(1)(a) or seeking *ex post facto* approval of Parliament under Article 115(1)(b) of the Constitution.

5. The Committee would like to express their thanks to the representatives of the Ministry of Law and Justice (Department of Legal Affairs), Ministry of Finance (Department of Revenue) and Ld. Attorney General for India for tendering evidence before them and furnishing requisite information to the Committee in connection with the examination of the subject.

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;
31 *January,* 2014
11 *Magha,* 1935 (*Saka*)

DR. MURLI MANOHAR JOSHI
Chairman,
Public Accounts Committee.

REPORT

PART I

I. Introductory

This Report of the Committee is the follow-up Report on the action taken replies submitted by the Government on the Observations/Recommendations contained in their 66th Report (15th Lok Sabha) on 'Expenditure incurred on Interest on Refunds of Taxes' based on Para 4.1.1 of C&AG's Report No. 1 of 2011-12 Union Government — Accounts of the Union Government relating to the Ministry of Finance (Department of Revenue).

2. The 66th Report which was presented to Lok Sabha/Laid in Rajya Sabha on 26th February, 2013 contained five Observations/Recommendations. The Action Taken Notes in respect of all the five Observations/ Recommendations contained in the 66th Report have been received from the Ministry of Finance (Department of Revenue— CBDT) and the same alongwith the vetted comments of Audit thereon are reproduced at **Annexure I.**

3. The Public Accounts Committee (2012-13) had selected Para No. 4.1.1 of the C&AG Report No. 1 for the year 2011-12, Union Government, Accounts of the Union Government, relating to "Expenditure incurred on Interest on Refunds of taxes" for detailed examination during the year 2012-13. The Audit had pointed out that expenditure on interest on refunds of taxes amounting to ₹ 10,499 crore was incurred by the Central Board of Direct Taxes in the year 2010-11 without the authorization of Parliament. A total expenditure of ₹ 37,365 crore on interest payments was incurred over a period of five years between 2006-07 to 2010-11 without obtaining the approval of Parliament through necessary appropriations. Since Audit was of the view that the expenditure on interest payment on refunds of taxes was in contravention of Article 114(3) of the Constitution of India, the views of the Ministry of Law and Justice were sought. However, the Ministry of Law and Justice referred the matter to Attorney General for India for his considered opinion.

4. During the sitting of the Committee on 30th August, 2012 for examination of the representatives of the Ministry of Finance (Department of Revenue) on the subject, when asked whether the Department of Revenue had consulted the Ministry of Law and Justice in the matter, the Chairperson CBDT replied in the negative. It was also conceded that **'expenditure incurred on interest on refunds is the Legislature's power and the Executive certainly is not the final authority at all'.**

5. Further, Secretary Revenue had testified before the Committee that : —

> "….. obviously it has not been the intention of the Department any way to bypass the Constitution. The Constitution is supreme. There is no doubt

about it and no amount of administrative difficulty can be cited in order to say that we will not follow the Constitution…. ….. We would certainly look into this how the Constitutional provisions are satisfied and yet, we find a way in which we satisfied the CAG. This hon. Committee should be satisfied. I think that is what we have to do so that we do not have the difficulties which we encountered in 2001 when we made it. If we cannot do anything, it leads to chaos in refunds. At the same time, you have rightly said that Constitutional provisions have to be followed. We will consult and we will come back to the Committee with what is Constitutionally correct, legally correct and also administratively feasible."

6. The PAC Secretariat had also made a reference on to the Ministry of Law and Justice for their considered opinion in the matter who referred the matter to Ld. AG. The Secretariat received the opinion of the Ld. Attorney General through the Ministry of Law and Justice on 25th September, 2012. The Ld. Attorney General after due consideration of the provisions of the Constitution relating to Appropriation Bill, the Consolidated Fund of India and the custody of the Consolidated Fund, as contained in Articles 114, 266 and 283 of the Constitution, had opined on 25th September, 2012 that: —

"The objection taken by the Comptroller and Auditor General with regard to the practice followed in relation to payment of interest on refunds of excess tax is completely justified. The proper procedure would be to clearly indicate the tax collection as a receipt and estimate the interest payable on refund of taxes as an expenditure. I agree with the view of the C&AG that the reason given with regard to administrative difficulties is not tenable."

The full text of the opinion tendered by the Ld. Attorney General *vide* his note dated 25.9.12 is reproduced at **Annexure - II.**

7. Based on the observations of the Audit, deposition made by the representatives of the Ministry of Finance (Department of Revenue) before the Committee and the opinion received from Ld. Attorney General, the Committee presented their Report [66th Report (15th LS)] on the subject to the Parliament on 26.2.2013. In this Report the Committee had unanimously recommended that the Ministry of Finance cannot make departure from the established financial procedure as enshrined in the Constitution. In their considered view, reporting of interest liability to Parliament would bring greater transparency in financial administration of the country, uphold the Constitution, help reduce interest burden and bring greater efficiency in tax administration.

II. Constitutional Provisions and Relevant Rules

8. Article 114 of the Constitution dealing with Appropriation Bills states as: —

"(1) As soon as may be after the grants under Article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the

appropriation out of the Consolidated Fund of India of all moneys required to meet —

(a) the grants so made by the House of the People; and

(b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of Articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this Article.''

9. According to Article 266, all revenues received by the Government of India, all loans raised by the Government and all moneys received by the Government of India form one consolidated fund called 'the Consolidated Fund of India'. The Consolidated Fund of India has to be distinguished from the Public Account of India.

Clause (3) of the Article 266 ordains that: —

''No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.''

10. Further as per Article 283: —

"the custody of the Consolidated Fund and the withdrawal of moneys therefrom and all other matters connected therewith shall be regulated by law made by Parliament and until such provision is made by rules made by the President.''

11. Rule 8 of Delegation of Financial Powers Rules, 1978, enumerates categories of expenditure. Along with salaries, wages, medical treatment, etc. interest has also been classified as expenditure (primary unit of appropriation).

12. There exists a separate Appropriation for 'Interest Payments' and each year, expenditure on interest payment is authorized, based on the approvals obtained from Parliament through the Appropriation Act.

13. However, subsequently the Committee were apprised that the Ld. AG had revised his opinion after the Department of Revenue sought the opinion of Ministry of Law and Justice and the Attorney General on applicability of Article 114(3) of the Constitution of India in relation to the accounting of payment of 'interest on excess tax'. The Department of Revenue had requested the Ministry of Law and Justice to refer the matter to Ld. AG to review his opinion well after the PAC Report had been

presented to Parliament. The chronology of events that occurred is given in the following table: —

Sl. No.	Particulars	Date
1.	First Opinion of Ld. Attorney General (At the instance of the PAC)	25 September, 2012
2.	Department of Revenue sought the opinion of MoL&J	17 October, 2012
3.	Date of presentation of 66th Report of the PAC to the Hon'ble Speaker.	16 January, 2013
4.	Date of issue of 66th Report of the PAC to the Secretary, Department of Revenue	28 January, 2013
5.	66th Report of the PAC presented to Parliament	26 February, 2013 in Lok Sabha 27 February, 2013 in Rajya Sabha
6.	Review of Opinion dated 25 September, 2013 of Ld. Attorney General sought by D/o Revenue	11 February, 2013
7.	Briefing to the Ld. Attorney General by the M/o Finance	18 March, 2013
8.	Review of Opinion dated 25 September, 2013 of Ld. Attorney General sought by D/o Revenue	22 March, 2013
9.	Revised Opinion of Ld. Attorney General	6 May, 2013

14. The statement of case as presented by the Department of Revenue to the Ministry of Law and Justice for onward transmission to the Ld. AG for reconsideration of his earlier opinion is given at **Annexure - III.**

15. Subsequently, at the request of the Ministry of Finance (Department of Revenue) the Ld. Attorney General had tendered his revised opinion **[Annexure - IV]** which was contrary to the opinion given by him earlier to the Public Accounts Committee. The last para of the revised opinion reads as under: —

> "Since the excess tax and interest to be paid on the refund is a statutory non-discretionary obligation of the Department, it cannot qualify as tax for the purposes of receipt under Article 266. It is only the tax duly chargeable which can form receipts for the purposes of Article 266 to which Article 114 applies. In view of the aforesaid, and having regard to the provisions of Articles 114, 265, 266 of the Constitution, sections 237 and 244A of the Income Tax Act, 1961, Rule 270(4) of the General Financial Rules as mentioned above, I reconsider my

earlier opinion dated 25th September, 2012. In view of the above, the following conclusions emerge: —

(i) Interest on refund of excess tax has to be included in refund under Rule 270(4).

(ii) Refund on excess tax is not an expenditure and such outgo cannot be considered with other operational expenses.

(iii) Interest on refund of excess tax is not an expenditure under Article 112(1)."

16. With regard to the contradiction in the two opinions given by Ld. Attorney General on the same matter, the Committee examined the representatives of the Ministry of Law and Justice (Department of Legal Affairs) on 26th July, 2013.

17. To the query of the Committee as to why the mutually contradictory opinions were tendered by Ld. Attorney General for India on the same subject, the Law Secretary during evidence submitted that the O&M instructions of the Department of Legal Affairs permitted reconsideration and revision of the opinion of the Department rendered earlier but under certain conditions like a change in the law or a decision of the Supreme Court or High Court which were not previously available or in cases where fresh facts were brought to light or when any new aspect relating to the matter is brought to notice for the first time.

18. The Committee then asked the Law Secretary which law or decision of the Supreme Court or High Court formed the basis of revision of opinion of Ld. Attorney General in the context of the OM cited. The Committee also wanted to know that when, Article 114(3) of the Constitution clearly stipulated that no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by Law, why this aspect was not taken into consideration while presenting the case before Ld. Attorney General for the second time. The Law Secretary could not give specific answer to the Committee.

The Committee further found that in the earlier statement of case presented to Ld. Attorney General, the Ministry of Law and Justice had dwelt upon the Articles 112 to 119, 114(3), 266, 267, 283 and 284 of the Constitution of India. Also, the Ministry had quoted the following statement of Dr. B.R. Ambedkar made in the Constitution Assembly debates: —

> "The only thing is that when there is a supplementary estimate the sanction is obtained without excess expenditure being incurred. In the case of excess grant, the excess expenditure has already been incurred and the executive comes before Parliament for sanctioning what has already been spent. Therefore, I think there is no difficulty; not only there is no difficulty but there is necessity, unless you go the length of providing that when any executive officer spends any money beyond what is sanctioned by the Appropriation Act, he shall be deemed to be a criminal and prosecuted, you shall have to adopt this procedure of excess grant."

In its revised note to Ld. Attorney General, the Ministry had only summarized the case of the Department of Revenue and posted the same for the opinion of Ld. Attorney General without making any specific recommendation of their own. Having asked as to

whether the Rules/sub-Rules could override the Constitutional provisions, **the Secretary, Department of Legal Affairs admitted during evidence that "the Constitution was supreme".**

19. The Law Secretary also deposed that the matter was referred by them to the Ld. Attorney General **'because the Ministry of Finance, at the level of the Finance Minister wanted reconsideration' of the opinion that had been tendered earlier.**

20. Thereafter, the Committee took evidence of the representatives of the Ministry of Finance (Department of Revenue) on 2nd September, 2013 to examine the reasons that prompted the Ministry to seek another opinion of the Ld. Attorney General for India.

21. While citing the reasons for seeking revision of opinion of Ld. Attorney General for India, Secretary Revenue deposed that the contention of the Department of Revenue had not been considered by the Ld. Attorney General while rendering his earlier opinion dated 25.09.2012 and, therefore, a note containing an analysis of the relevant provisions of the Income Tax Act/legal provisions and the administrative impediments that would arise if the appropriation for interest payment on refunds formed part of the annual Budget, was prepared and sent to the Ministry of Law and Justice with the request to refer the matter to the Ld. Attorney General to review his earlier opinion.

22. Explaining the reasons in detail for seeking a revision of opinion by Ld. Attorney General, especially after the presentation of the Report of PAC to the Parliament, the Department of Revenue in its written replies submitted as follows:—

> "During the course of evidence before the PAC on 30.08.2012, detailed submissions were made to explain the existing practice of classifying the interest on refund as reduction in revenue. The Hon'ble Committee during the oral evidence suggested that the Department of Revenue should consult the Ministry of Law & Justice (MoLJ) and the Attorney General (AG) on the same.
>
> Accordingly, a reference was made to MoLJ on 17.10.2012 soliciting opinion of MoLJ and Ld. AG on the subject, as per the directions of the PAC. MoLJ on 9.1.2013 informed that on a reference from Lok Sabha Secretariat dated 2.7.2012, the opinion of the Ld. AG was obtained on 25.09.2012 on the issue under consideration. They communicated the opinion of AG along with their note-sheet.
>
> The Department thereafter requested MoLJ on 10.01.2013 to provide a copy of the documents referred to by the AG in his opinion dated 25.09.2012. On receipt of the same from MoLJ on 11.01.2013, it was seen that the Statement of Case prepared by the MoLJ on the reference made by the Lok Sabha Secretariat did not incorporate the submissions of the Department of Revenue as made before the PAC on 30.08.2012. Therefore, a note dated 11.02.2013 was prepared which contained an analysis of the relevant provisions of the Income Tax Act, administrative impediments and chronology of events as were submitted before the PAC during oral evidence on 30.08.2012. This note was sent to MoLJ, with a request to refer the matter to Ld. AG to review his opinion in light of submissions of the Department of Revenue."

23. When the Committee sought to know whether the provisions of Income Tax Act, Rules/sub-Rules can override the Constitutional provisions, **the Secretary, Revenue conceded during evidence that the Constitutional provisions were supreme.**

24. The Committee also sought the reasons for not providing interest on refunds as an item of expenditure when payment of interest was treated as an item of expenditure under Delegation of Financial Power Rules, 1978. The Committee further enquired from the Ministry to outline the administrative constraints for not complying with the mandatory Constitutional provisions and the action taken by the Ministry to comply with the budgetary process enshrined in the Constitution. The Committee specifically asked from which fund the Department was paying interest on refunds. The representative of the Department of Revenue failed to reply to the satisfaction of the Committee.

25. On being asked whether the Report of the PAC on the subject [66th Report (15th Lok Sabha)] was studied before seeking revision of opinion by Ld. Attorney General, the Department of Revenue in its written note submitted that the entire exercise was done in conformity with the directions of the PAC given on 30.08.12.

26. The Committee thereafter took evidence of the Ld. Attorney General for India on 2nd September, 2013 on the subject and sought to know the reasons for completely reversing the opinion dated 25th September, 2012 tendered by him to the Committee.

27. While clarifying his stand in the matter, the Ld. Attorney General in his deposition before the Committee explained as under: —

> "I had extensive discussions with the officers of the Ministry of Finance and what weighed with me, was what they were saying that the appropriation would ultimately be reported to Parliament. But according to them, it was impossible for them to calculate the interest payable.
>
> They also referred to articles 265 and 266 of the Constitution; they referred to statutory provisions which provide for refund; they referred to Rule 270(4) of the General Financial Rule; and they very clearly said that it is not possible for them to calculate the interest.''

He further deposed that: —

> "I am very clear in my mind that ultimately nothing can be done without the sanction of Parliament and that everything has to be placed before Parliament. For me, it is a matter of faith that having regard to the historical development of Parliamentary powers, all spending has to be authorised by Parliament, all receipts have to be placed before Parliament and the only reason why I reconsidered it was because I felt that if ultimately the facts are going to be placed before Parliament, even the Income Tax Act has been made by Parliament, statutory refunds have been provided for in the Income Tax Act and interest on refunds is also provided for, I did not feel that there was anything which could be done without reference to Parliament. I would only say this."

The Ld. Attorney General also submitted that an opinion ultimately is an opinion and it is for the Committee to decide what the correct procedure is.

28. On being asked as to whether any difficulty by the bureaucracy can surpass or circumvent the provisions of the Constitution, the answer of Ld. Attorney General was a vehement 'No'.

He further added:

> "Now, if this can be got over and if it is possible for them to have an estimate of the interest which would require to be paid on some actuarial basis or any other basis instead of a mathematical procedure, I don't see any difficulty why they shouldn't do it."

29. To a suggestion that if the administrative problem of estimating interest on refund was insurmountable then the Government could consider amending to the Constitution, the Ld. Attorney General was categorical that he would not recommend any amendment to the Constitution in this regard.

30. While replying to the various questions of the Committee in this regard, the Ld. Attorney General enumerated the Articles of the Constitution such as Article 112(1), 114(3), 115, 117, 118(2),119 and at the end he admitted that: —

> "I feel that Article 114 is paramount and has to be complied with and nothing should be done which in any way dilutes the authority and supremacy of Parliament."

III. Action taken by the Department of Revenue on the recommendations contained in 66th Report of PAC (15th Lok Sabha)

31. In response to the Committee's Recommendation [No. 1 of 66th Report (15th Lok Sabha)], the Ministry stated that Taxes imposed by authority of law under Article 265 form receipts under the Consolidated Fund of India. However, the excess tax being an amount not chargeable to tax cannot qualify as a part of receipt under the Consolidated Fund of India under Article 265 read with Article 266. Consequently, the stipulation in Article 114 stating that no appropriation can be made out of CFI does not apply to the refund loaded with interest which is netted off from receipts and does not form part of the CFI. It therefore, does not qualify to be called an expenditure for the purposes of grants or appropriation to which Article 114 of the Constitution applies.

32. During the course of examination of this subject, by the Committee (2012-13), the Ministry was asked to explain the reasons for treating interest payments on refunds as a reduction from gross tax collection. To this, the Ministry in its written replies submitted as under:—

> "The interest payment on refund has no correlation with the earning of revenue and, therefore, it cannot be related in any way with the performance of revenue. Moreover, the amount of excess tax is retained in the Consolidated Fund and not by the Income Tax Department and, therefore, the interest outgo on such refunds can neither be an expenditure of the Income Tax Department nor a part of cost of collection."

33. In Action Taken Note on the Observations/Recommendations contained in 66th Report (15th Lok Sabha) on the subject, the Ministry stated that:—

> "Excess tax received by the Central Government which is required to be refunded along-with interest is netted off from receipts and only the balance is the tax as mentioned in Article 265 of the Constitution and only this tax is the receipt for the purposes of Article 266. Consequently, the stipulation in Article 114 stating that no appropriation can be made out of Consolidated Fund of India does not apply to the refund loaded with interest which is netted off from receipts and does not form part of the Consolidated Fund of India. It, therefore, does not qualify to be called an expenditure for the purposes of grants or appropriation to which Article 114 of the Constitution applies."

During evidence when the Committee confronted the representatives of Ministry of Finance to the diametrically opposite stand taken by them with their stand that the refunds were netted off from the receipts and did not form part of the Consolidated Fund of India, the representatives could not give any specific answer.

34. Further, Shri Jayaram Pangi, MP on 23rd August, 2013 had raised the unstarred Question No. 2414 in the Lok Sabha on the subject, which sought clarification as to whether any money had been appropriated out of the Consolidated Fund of India without the approval of Parliament in the recent past. In reply to the said question, the Minister of State, Ministry of Finance, Shri Namo Narain Meena had replied in the negative.

35. When asked during evidence about the contradiction in the statement of Minister of State, Ministry of Finance given in this regard in Parliament and the figures appeared in Para 4.1.1 of the C&AG's Report No. 1 of 2011-12 on the said subject, Secretary, Revenue testified before the Committee that:—

> "The Hon'ble Member of Parliament raised the issue of whether adjustment can be done on a running basis. Any adjustment can only be done after the assessment is completed. That happens at different points of time. The advance taxes are paid at different points of time. Indeed, if they have actually completed the assessment, some adjustment can be made there."

36. While submitting further justification on the reply given by Minister of State, Ministry of Finance, on this issue, the Ministry of Finance (Department of Economic Affairs-Budget Division) in its written note stated as follows:—

> "The opinion of Ld. Attorney General on applicability of Article 114(3) of the Constitution of India in relation to the accounting of payment of interest on excess tax was also sought. Ld. AG affirmed that the stipulation in Article 114 stating that no appropriation can be made out of CFI does not apply to the refund loaded with interest which is netted off from receipts and does not form part of the CFI. He observed that:—
>
> > "Since the excess tax and interest to be paid on the refund is a statutory non-discretionary obligation of the Department, it cannot qualify as tax for the purposes of receipt under Article 266. It is only the tax duly

chargeable which can form receipts for the purposes of Article 266 to which Article 114 applies".

It is further clarified that Government intends to contain its expenditure within the appropriation authorized by Parliament through Appropriation Act and in certain cases, expenditure occur in excess of the appropriation authorized by Parliament beyond its control due to factors like exigencies, incorrect assessment of expenditure, etc. However, these expenditure are regularized by Parliament through 'excess grant' on getting the recommendation of the Public Accounts Committee in terms of Article 115(1)(b) of the Constitution of India. The overall implication is that no money is appropriated out of the Consolidated Fund of India (CFI) without the approval of the Parliament.

In this backdrop, it is submitted that reply to Lok Sabha Unstarred Question No.2414 dated 23.8.2013 stating that no money has been appropriated out of the Consolidated Fund of India (CFI) without the approval of the Parliament in the recent past is in conformity with the provisions of the Constitution.''

37. Questioning further, the Ministry was asked that when excess collection of tax was not authorized by any Act of Parliament, the interest paid on excess tax refunded could not be treated on par with refund of taxes and it had to be treated like an expenditure and Parliamentary authorization thereof was mandatory under Article 114(3) of the Constitution. In response thereto, the Department of Revenue in its written submission stated as under: —

"Article 265 of the Constitution of India states that taxes cannot be imposed, save by the authority of law. In view of the same, the State is not authorized to collect "excess" tax. Refund under the provisions of the Income Tax Act constitutes "excess" tax paid by the taxpayer. The said amount being in excess of the tax liability duly computed under the provisions of the Income Tax Act is required to be refunded as per the procedure under Income Tax Act along with the interest arising thereon.

In CIT *vs* Shelly Products, (2003) 5 SCC 461, the Hon'ble Apex Court observed that the excess tax has to be refunded to the assessee since its retention may offend Article 265 of the Constitution. The Hon'ble Supreme Court had observed as under:

"35. …. In other words, the tax paid by the assessee must be accepted as it is, and in the event of the tax paid being in excess of the tax liability duly computed on the basis of return furnished and the rates applicable, the excess shall be refunded to the assessee, since its retention may offend Article 265 of the Constitution."

Therefore, it may not be correct to classify refund of excess tax as expenditure, and hence such refund does not call for appropriation under Article 114 of the Constitution.

The interest paid on refund is a statutory obligation which is non-discretionary in nature and is very much an integral part of the refund outgo to the tax payer.

The payment of interest on refund is as per the legislative provision as specified in Section 244A of the Income Tax Act. Hence the excess tax received by the Central Government which is required to be refunded along with interest is netted off from the receipts and only the balance is the tax as mentioned in Article 265 of the Constitution. This amount of tax is the receipt for the purposes of Article 266 of the Constitution. Refund of excess tax cannot be classified as expenditure. Accordingly, the stipulation in Article 114 does not apply to the refund along with the interest."

38. In response to the Recommendation No. 2 of the Committee that the Department was not legally authorised to withdraw the interest on excess tax collected without recourse to Appropriation Law passed by Parliament, the Ministry quoted the Rules 4(2) and 4(3) of the DFPR which enables a subordinate authority, *i.e.* the Department of the Central Government to sanction any expenditure

(a) if payment is authorized under provisions of law for the time being in force and does not involve introduction of a new principle or practice by the subordinate authority;

(b) if it involves introduction of new principle or practice in the context of the provision of any law, it can be done with the previous consent of the Finance Ministry.

39. On being asked whether it was legally correct that a subordinate authority, *i.e.* the Department of Central Government can bypass Parliament with regard to authorization of expenditure, the Department of Revenue in its written note submitted an emphatic "No".

40. When asked if the Rules 4(2) and 4(3) of DFPR were supreme to Constitutional provisions, the Department of Revenue categorically replied that 'Constitutional provisions are supreme'.

41. Further, with regard to the revival of the practice for making provisions under the Head 'Interest on refunds of excess taxes' as made during the year 2001-02, the Ministry has submitted that: —

"Only on one occasion *i.e.* in the budget of 2001-02, the interest on refund of excess tax was shown under major head '2020' and a provision of ₹ 92 crore was made. However, looking into the appropriate facts and circumstances of the matter soon thereafter in the budget of 2002-03, the interest on refund of excess tax was reduced to nil for the RE of 2001-02 and no BE was given for the year 2002-03. The practice of not putting "interest on refund of excess tax" under any head continued thereafter in the Budget of 2003-04 onwards."

42. To a specific query of the Committee about the reasons for discontinuing this practice from the year 2003-04 onwards and whether the Department of Revenue had considered revival of this practice as recommended by the Public Accounts Committee in para 2 of 66th Report, the Department in its written reply submitted as follows:

"(i) CBDT directed its assessing officers *vide* its Instruction dt. 13/10/1988 (F.No.380/24/86-IT(B)) that payment of interest on delayed refund on disputed tax be classified under the "minor head 108 Interest Paid on Delayed refund of disputed tax" below the Major Head 2020. This instruction was issued at the

time when refunds were required to be claimed through separate applications and interest was paid in accordance with the then existing provisions of the Income Tax Act. The interest on refunds therefore had the following components:

(a) Section 214, relating to payment of interest to the assessee on the excess amount paid as advance tax.

(b) Section 243, relating to payment of interest to the assessee for delay in granting the refund after a claim for refund was made or after the refund was determined.

(c) Section 244, relating to payment of interest to the assessee for delay in granting refund as a result of appeal etc.

The provisions of Sections 214, 243 and 244 were withdrawn with effect from AY 1989-90.

Later, a letter was issued on 19.03.1996 (F. No. 380/8/90-IT(B)) informing the Chief Controller of Accounts that interest on refunds paid under Section 244A of the IT Act 1961 alongwith the refund is not to be treated as an expenditure. The matter however continued to be agitated upon by the Revenue Audit. The issue was dealt with at length within the Ministry of Finance during the period FY 1999-00 to FY 2003-04. The Department of Economic Affairs provided for a sum of ₹ 92 crore under the head "Interest payment on refund of excess tax" in the Budget estimates for FY 2001-02. But after due deliberations within the Ministry of Finance, the said allocation for interest on refunds was withdrawn in the Revised Estimates for FY 2001-02, after due approval of the then Finance Minister on 17.07.2001. It was decided that the outgo on account of interest on refunds would not be shown as expenditure. The said practice has since been followed in the Department. No allocation was made in the budget for FY 2002-03 on account of interest on refunds.

(i) It is submitted that as per the directions of the Public Accounts Committee, the matter was referred to MoLJ for the opinion of MoLJ and Ld. AG. The Ld. AG after due consideration of the statement of facts gave the following opinion on 06.05.2013:

a. Interest on Refund on excess tax has to be included in refund under Rule 270(4).

b. Refund on excess tax is not expenditure and such outgo cannot be considered with other operational expenses.

c. Interest on refund of excess tax is not an expenditure under Article 112 (1).

The Department is yet to take any step on the subject, as it awaits the final recommendation of the Hon'ble PAC."

43. The Committee in Para 3 of Recommendations of their 66thReport had called upon the Ministry to work out a proper accounting procedure in conformity with Constitutional Provisions and Financial Rules within three months of the presentation of the PAC Report. However, the Action Taken Notes submitted by the Ministry thereon does not indicate any steps taken in this regard.

44. When the Committee asked about the action taken in this regard, the Department of Revenue replied the same as above that it is yet to take any step on the subject, *as it awaited the final recommendation of the Public Accounts Committee*.

45. Again, in Recommendation No. 4, the Committee had desired to be apprised of the corrective action taken by the Government to ensure that a suitable administrative procedure is devised in accordance with the provisions of the Constitution and the Financial Rules within three months of the presentation of the PAC Report. However, in its Action Taken Notes thereon the Ministry simply quoted the revised opinion of Ld. AG only. Action Taken Notes are completely silent about the action taken as desired by the Committee and the Department of Revenue repeated the reply that *it was awaiting the final recommendation of the Public Accounts Committee.*

46. Further, in response to the Committee's Recommendation No. 5 that the reporting of interest liability to Parliament would bring in greater transparency in financial administration of the country, uphold the Constitution, help reduce interest burden and bringing efficiency in tax administration, the Department has stated that the suggestion of treatment of interest paid on refunds as expenditure is not based on correct appreciation of statutory and machinery provisions of the Income Tax Act and will lead to unnecessary administrative burden on Field formations.

47. Regarding the steps that had been initiated to remove those administrative constraints to bring in transparency in financial administration of the country and bring in efficiency in tax administration, the Department of Revenue replied:—

"(i) It is not the case of the DoR that administrative constraint is the reason for not following the discipline of Parliamentary financial control. The case of the DoR is that interest on refund has not been provided for as expenditure.

(ii) The Department of Revenue awaits the *final recommendation of the Hon'ble Public Accounts Committee.*"

48. Interest payments are the second largest component of revenue expenditure. It provides for payment of interest on Public debt, both internal and external and other interest bearing liabilities of the Government which includes insurance and pension Funds, provident funds, reserve funds, deposits, interest on special securities issued to various Central Public Sector Enterprises and interest payment on borrowing under market stabilization scheme.

49. To a specific query that when all the above-said interest payments came under the ambit of revenue expenditure and formed part of Annual Budget and appropriated with the prior approval of Parliament, why then the interest payment on refunds did

not form part of the Budget Estimates and be passed by Parliament, Department of Revenue in its written replies submitted as follows:—

> "Interest payment on refunds is a statutory obligation which is non-discretionary in nature. It is an integral part of the refund to the tax payer and is according to the legislative provisions of Section 244A of the Income Tax Act. The interest is calculated at the rate of one-half per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted, and no interest is payable if the amount of refund is less than ten per cent of the tax determined. Further, if the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of delay so attributable to him is excluded from the period for which interest is payable. Accordingly, payment of interest on refund is not expenditure; rather it is a statutory obligation - a liability that needs to be discharged as per the provisions of the Income Tax Act."

50. The Committee also noticed that every year approximately 5-7% of the total expenditure is incurred on interest payments by the Government. The proportion of interest payments to total expenditure for the last six years is given as under: —

(₹ *in crore*)

Year	Interest Payment	% of interest payments to total expenditure
2006-07	154279.74	6.73
2007-08	179986.65	7.01
2008-09	201143.36	5.87
2009-10	223700.84	5.04
2010-11	244742.82	5.59
2011-12	287182.18	5.78

IV. Supplementary Grants

51. If the amount authorized by law made in accordance with the provisions of Article 114 of the Constitution, to be expended for a particular service for the current financial year, is found to be insufficient for the purpose of that year or when a need has arisen during the current financial year for the supplementary or additional expenditure upon some 'new service' not contemplated in the original budget for the year, Government is to obtain Supplementary Grants or Appropriations in accordance with the provision of Article 115(1) of the Constitution.

Procedure for sanctioning of Supplementary Grants

52. There are three Parliament sessions in each financial year *viz.,* Monsoon Session, Winter Session and Budget Session. Supplementary Demands for Grants is normally presented in each session of the Parliament, largely owing to the following circumstances:—

- When amount authorized during Current Financial Year is insufficient;
- Need has arisen during CFY for additional expenditure on existing service or expenditure on a new service not contemplated in the Annual financial Statement for that year; and

- For recouping Contingency Fund Advance.

(i) During the *Monsoon Session,* Supplementary Demands are called for the following purposes:-

- Cases where advances from Contingency Fund of India have been granted, which are required to be recouped to the Fund,
- Payment against court decree, which cannot be postponed, and
- Urgent cases of additional requirement of funds to be met by re-appropriation of savings in the Grant which attracts the limitation of New Service/New Instrument of Service.

(ii) During the *Winter Session,* Supplementary Demands are called for the following purposes:—

- Cases where advances from Contingency Fund of India have been granted, which are required to be recouped to the Fund,
- Payment against court decree, which cannot be postponed,
- Urgent cases of additional requirement of funds to be met by re-appropriation of savings in the Grant which attracts the limitation of New Service/New Instrument of Service, and
- Cases where Ministry of Finance has specifically advised moving of Supplementary Demand in the Winter Session.

(iii) During the *Budget Session*, Supplementary Demands are called for the following purposes:—

- Cases where advances from Contingency Fund of India have been granted, which are required to be recouped to the Fund,
- In cases where the approved Revised Estimates would result in excess over the sanctioned provision in the Grant. The excess is separately assessed for the Revenue expenditure, Capital expenditure, the Voted expenditure and the Charged expenditure included in the Grant. Thus the Supplementary Demands will be required in cases where additional provision is required over and above the original budget provision plus the additional provisions granted in the first and second batches of the Supplementary Demands for Grants plus the advances sanctioned from the Contingency Fund of India, if any,
- Payment against court decree, which cannot be postponed,
- Urgent cases of additional requirement of funds to be met by re-appropriation of savings in the Grant which attracts the limitation of New Service/New Instrument of Service, and
- Cases where Ministry of Finance has specifically advised moving of Supplementary Demand in the Budget Session.

Types of Supplementary Demands for Grants

53. On the basis of the Supplementary Demands for Grants received from various Ministries/Departments, Supplementary Demands can be classified into three categories, which are as follows:

(i) Cash Supplementary—

- This supplementary is over and above the original budget provisions and results in enhancement of the allocation for the Demand/Grant. For Example, if a sum of ₹ 1000 crore is sought for by a line Ministry for payment of Subsidy and the Ministry is unable to find any savings within the Demand/Grant, then the additional fund sought for, in case it is agreed to be provided, results in cash supplementary or enhancement of the overall allocation for the Demand/Grant.
- Cash Supplementary impacts the fiscal/revenue deficit.
- Cash supplementary should be obtained as a last resort and after proper due diligence.
- Cash supplementary is required to have specific approval of Secretary (Expenditure).

(ii) Technical Supplementary

- There are 4 Sections in each Demand *viz.,* Revenue-Voted, Revenue-Charged, Capital- Voted and Capital-Charged. When there is a saving in one of the Sections *e.g.* Revenue- Voted and the same is proposed to be utilized for another scheme under Capital-Voted section, the same can be done after obtaining approval of Parliament through 'Technical Supplementary'.
- There are three occasions when technical supplementary is sought *viz.,* (a) surrender from one of the 4 sections mentioned above and utilizing the same in other section within the Demand, (b) transfer of a scheme from one Demand to another Demand which will result in surrender of the amount from the Demand which has transferred the scheme and utilization of the same in the other Demand, where the scheme has been transferred, and (c) waivers/write offs.
- Technical Supplementary, if resorted between the Revenue and Capital sections of the Grant, has an impact on the revenue deficit position but does not change the fiscal deficit position.

(iii) Token Supplementary

- Token supplementary of ₹ 0.01 crore is obtained when due to NS/NIS limits, approval of Parliament is required for reappropriation towards utilizing the savings within the same section of the Demand. For example, if under revenue section there are savings under a major head which is proposed to be utilized in another major head but falls within the purview of NS/NIS limits for expenditure, the same can be made available for reappropriation after obtaining a token supplementary. Token supplementary does not alter revenue/fiscal deficit position.

54. Details of Supplementary Grants obtained during the last five years are given at **Annexure -V.**

V. Charged and Voted disbursements

55. Article 112 lays down the procedure for preparing the Annual Financial Statement drawing distinction between 'Voted' and 'Charged' expenditure as follows:—

(i) *Voted Grants:* Sum required to meet other expenditure for which vote of Parliament is required under Article 113(2) of the Constitution is called Voted Grant.

(ii) *Charged Appropriation:* Sum required to meet expenditure 'charged' on Consolidated Fund of India under Article 112(3) of the Constitution is called charged Appropriation.

56. It is seen from para 3.3 of C&AG's Report No. 1 of 2013 that during the years 2000-01 to 2011-12, 70 per cent to 81 per cent of the total disbursements for the Civil Ministries/Departments were charged on the Consolidated Fund of India and the charged disbursements increased by 948 per cent *i.e.* from ₹ 4,05,289 crore in 2000-01 to ₹ 38,40,960 crore in 2011-12. The details in this regard are given below: —

(₹ *in crore*)

Sl. No.	Year	Authorisation			Disbursements			Percentage of	
		Voted	Charged	Total	Voted	Charged	Total	Voted	Charged
1.	2000-01	173677	530530	704207	160753	405289	566042	28	72
2.	2001-02	218136	481679	699815	201574	473950	675524	30	70
3.	2002-03	230649	547152	777801	213833	504119	717952	30	70
4.	2003-04	254328	564275	818603	231100	599889	830989	28	72
5.	2004-05	278555	703835	982390	252254	724942	977196	26	74
6.	2005-06	330051	1193138	1523189	301269	1288817	1590086	19	81
7.	2006-07	449178	1635986	2085164	415785	1670413	2086198	20	80
8.	2007-08	551115	1894750	2445865	519214	1818879	2338093	22	78
9.	2008-09	780316	2440552	3220868	744116	2404957	3149073	24	76
10.	2009-10	830706	3525606	4356312	768458	3349254	4117712	19	81
11.	2010-11	986064	3697775	4683839	918675	3104657	4023332	23	77
12.	2011-12	1060295	3875262	4935557	921280	3840960	4762240	19	81

57. Moreover, the Committee have observed that the other charged appropriations for which there are also statutory provisions, like the salary and allowances, etc. of the President of India, Officers of Parliament, namely the Chairman Rajya Sabha, Dy. Chairman Rajya Sabha, the Speaker Lok Sabha and the Dy. Speaker Lok Sabha etc. are being withdrawn from the Consolidated Fund of India with the specific annual approval of Parliament.

58. The Committee further find that all receipt of taxes irrespective of what is due and what is excess collected by the Department of Revenue are credited to specific tax receipt heads which form part of the Consolidated Fund of India (*e.g.* to Major Heads 0020 for Corporation Tax, 0021 for Taxes on income other than Corporation Tax, 0037 for Customs, etc.) and the withdrawal or appropriation out of the Consolidated Fund of India can be made with the prior legislative approval that is through the Appropriation Act under Article 114 of the Constitution which is defined as Money Bill by the Constitution. Moreover, interest payment on tax refunds comes within the meaning of Money Bill as defined in Article 110 which also requires specific Parliamentary approval.

VI. Excess disbursement over Voted Grants/Charged Appropriations

59. The Committee further observe that Article 114(3) of the Constitution provides that no money be withdrawn from the Consolidated Fund of India except under appropriations made by law. Rule 52(3) of General Financial Rules, 2005 stipulates that no disbursements be made which might have the effect of exceeding the total Grant or Appropriation authorized by Parliament for a financial year except after obtaining a Supplementary Grant or through an advance from the Contingency Fund.

60. Any expenditure incurred by the Union Government in excess of the authorised Grants/Appropriations in a financial year requires regularisation by Parliament in terms of Article 115(1)(b) of the Constitution which stipulates that if any money had been spent on any service during a financial year in excess of the amount granted for that service and for that year, the President should cause to be presented to the House of People a demand for such excess.

VII. Recurring Excess Expenditure

61. The Committee's examination has revealed that incurring of excess expenditure by the various Ministries/Departments over and above the Original Grants/ Appropriations sanctioned by the Parliament is a recurring phenomenon in the Government budgetary exercise over the years. The following table indicates the position of the excess expenditure incurred by various Ministries/Departments during the last ten years:—

(₹ *in crore*)

Year	Excess expenditure incurred
2002-03	2188.12
2003-04	43364.62
2004-05	35978.56
2005-06	99527.64
2006-07	37669.53
2007-08	222.57
2008-09	1544.94
2009-10	14575.08
2010-11	11046.93
2011-12	8563.14

VIII. Provisions in the Budget Manual

62. The Budget Manual (September, 2010) brought out by the Ministry of Finance (Department of Economic Affairs) further reiterates the aforesaid financial procedure. The Manual also categorically states:—

> "In India the Parliamentary control over public finances becomes operative primarily through the approval of the Annual Budget. This enormous responsibility of spending public funds falls upon the Government as well as the Parliament. While the Government is responsible for planning how public money should be spent, the Parliament's duty as the people's representative body is, to observe and scrutinize the Government's proposals and policies. For such Legislative control over the financial procedures, Articles 265, 266 and 112 of the Indian Constitution clearly vests "the power over the purse in the hands of chosen representatives" by providing that "no tax shall be levied or collected except by authority of law, no expenditure can be incurred except with the authorization of the Legislature; and President shall, in respect of every financial year, cause to be laid before Parliament, "Annual Financial Statement". Thus, the Indian Government is accountable to the Parliament in its financial management. With the Constitutional supremacy of the bicameral Parliament, especially of Lok Sabha (House of People), every single financial act is processed and passed by the representatives of the people. However, proposals for the formulation of budget levying taxes, determining Government accounts and expenditures, are prepared by the Government's Ministries and consolidated in the Ministry of Finance."

63. Further, about the procedure for withdrawal of money from the Consolidated Fund of India, the Manual says: —

> ‘‘Voting of Grants by the Lok Sabha does not by itself authorize the issue of money out of the Consolidated Fund of India. The Constitution lays down that "no money shall be withdrawn from the Consolidated Fund of India except under Appropriation made by law". This Act is the sole authority for the appropriation of money from the Consolidated Fund.’’

PART II

OBSERVATIONS/RECOMMENDATIONS

Introductory: **The Public Accounts Committee (2012-13) in their 66th Report had disapproved withdrawal of moneys by the Ministry of Finance (Department of Revenue) out of the Consolidated Fund of India (CFI) for interest payments on income tax refunds without Parliamentary approval. An expenditure on interest on refunds amounting to ₹ 10,499 crore was incurred by the CBDT in the year 2010-11 and a total expenditure of ₹ 37,365 crore over a period of five years between 2006-07 to 2010-11 without obtaining approval of Parliament through necessary appropriations. The practice was viewed as contravention of Article 114(3) of the Constitution of India by the C&AG. On a reference by the PAC Secretariat to the Ministry of Law and Justice, the Ld. AG had opined that he was in complete agreement with the views of the C&AG. The Secretary, Revenue, Ministry of Finance had also assured the Committee that the Department would devise a procedure which is Constitutionally correct and administratively feasible. Thereafter, based on the observations of the Audit, depositions made by the representatives of the Ministry of Finance (Department of Revenue) and the opinion received from the Ld. AG, the Committee, in their Report [66th Report (15th Lok Sabha)] presented to Parliament on 26.02.2013, had observed that they found no valid ground as to why the Department could not make broad estimates of the interest liability on tax refunds based on the studied trends of the past and seek excess grants where estimation fell short of Parliamentary authorisation. The Committee had, therefore, recommended that the Ministry of Finance follow the prescribed procedure in accordance with the Constitution and the Financial Rules to avoid such a deviation. Subsequently, on a reference made by the Ministry of Finance (Department of Revenue), the Ld. AG tendered a revised opinion which was just opposite to the opinion given by him to the Committee on an earlier occasion. The Committee, therefore, decided to hear the Department of Revenue and the Ld. AG again in the matter.**

2. Reiteration that interest payments on tax refunds be shown in the AFS: **The Committee observe that according to Article 112(3) of the Constitution, expenditure charged on the CFI includes the debt charges for which the Government of India is liable to pay, including interest, sinking fund charges and redemption charges. Article 114(3) of the Constitution dealing with Appropriation Bills also stipulates that subject to the provisions of Articles 115 and 116, no money shall be withdrawn from the CFI except under Appropriation made by law passed in accordance with the provisions of this Article. Further, Article 266(3) of the Constitution ordains that no moneys out of the CFI shall be appropriated except in accordance with law and for the purposes and in the manner provided in the Constitution. Rule 8 of the Delegation of Financial Powers Rules, 1978, also enumerates categories of expenditure. Along with salaries, wages, medical treatment, etc., "interest" has also been classified as expenditure (Primary unit of appropriation). Notably, in the Demands for Grants of**

Ministry of Finance, there exists a separate appropriation to defray charges in respect of "Interest Payments" and each year expenditure on interest payment is authorised, based on the approvals obtained from Parliament through the Appropriation Act. During the year 2001-02, under Demand No. 34-Direct Taxes, a provision of ₹ 92 crore was made under the head "Interest on Refunds of Excess Tax". The Constitution and the Financial procedure also provide for additional or Supplementary Grants thrice a year and finally, in case the expenditure exceeds Parliamentary authorisation, the excess expenditure is reported to Parliament annually by the C&AG and regularised, through Appropriation (Excess) Act, on the recommendation of the PAC. It would be instructive to recall the words of Dr B.R. Ambedkar when he elucidated the import of excess expenditure in the Constituent Assembly thus:

> **"The only thing is that when there is a supplementary estimate the sanction is obtained without excess expenditure being incurred. In the case of Excess grant, the excess expenditure has already been incurred and the Executive comes before Parliament for sanctioning what has already been spent. Therefore, I think there is no difficulty; not only there is no difficulty but there is necessity, unless you go the length of providing that when any executive officer spends any money beyond what is sanctioned by the Appropriation Act, he shall be deemed to be a criminal and prosecuted, you shall have to adopt this procedure of excess grant."**

The Committee note with deep concern that despite the Constitution prohibiting withdrawals from CFI except under Appropriation made by the legislature, the Department of Revenue has been making payment of interest on refunds without the approval of Parliament. The Committee therefore reiterate their earlier recommendation that the Ministry devise a procedure in conformity with the Constitutional provisions and the Financial Rules so that interest payments on tax refunds are shown in the Annual Financial Statement (AFS) and Demand for Grants and receive Parliamentary approval as ordained by the Constitution.

3. ***No material evidence for change of opinion:*** **The Committee note that in order to strengthen their case for continuing with the irregular practice of payment of interest on refunds, the Department of Revenue moved the Ministry of Law and Justice for a review of the opinion of the Ld. AG rendered by him on 25 September, 2012. The Committee further find that in the earlier Statement of the Case presented to the Ld. AG, the Ministry of Law and Justice placed reliance on Articles 112 to 119, 114(3), 266, 267 and 284 of the Constitution whereas in the revised note for the Ld. AG, the Ministry merely summarised the case presented by the Department of Revenue. The Law Secretary also admitted before the Committee that the matter was referred by them to Ld. AG because the Ministry of Finance had desired reconsideration of the opinion tendered by him earlier. The Committee are of the considered view that the role of the Ministry of Law and Justice should not be limited merely to pass on the information in a routine manner from any Ministry to Ld. AG as had been done in this case. In view of the importance of the issue, the Ministry should have done comparative analysis of the earlier opinion of Ld. AG and the Statement of the Case put up to them by the Department of Revenue and after taking into consideration the supremacy of the Constitutional provisions, the case should have been presented before the Ld. AG.**

To a specific query of the Committee whether Acts/Rules/Sub-Rules, as quoted by the Department of Revenue in their Statement of the Case, could override the Constitutional provisions, the Secretary, Legal Affairs conceded that the Constitution was supreme. Queried about the mutually contradictory opinions tendered by Ld. AG, the Law Secretary submitted that O&M instruction of the Department of Legal Affairs permitted reconsideration and revision of an opinion under certain conditions like a change in the Law or decision of the Supreme Court or High Court which were not previously available or also in the light of fresh facts or any new aspect of the matter that is brought to notice for the first time. The Secretary, Law & Justice was, however, unable to share with the Committee any such change in the Law, or the judgment of the Supreme Court or the High Court. While taking a serious view of such a cavalier functioning, the Committee are dismayed to note that the Ministry of Law and Justice failed to live up to the responsibility cast on them. This is unfortunate to say the least.

4. ***Paramount Supremacy of Parliament over control of public purse:*** **The Committee note that on a reference made by the Public Accounts Committee, the Ld. AG had opined on 25th September, 2012 that the objection taken by the Comptroller and Auditor General of India with regard to the practice followed in relation to payment of interest on refunds of excess tax was completely justified. He had also concurred with the view of the C&AG that the reasons given with regard to administrative difficulties were not tenable. However, the Ld. AG in his revised opinion dated 6th May, 2013 opined *inter-alia,* as follows:**

- **(i) Interest on refund of excess tax has to be included in refund under Rule 270(4);**
- **(ii) Refund on excess tax is not an expenditure and such outgo cannot be considered with other operational expenses; and**
- **(iii) Interest on refund of excess tax is not an expenditure under Article 112(1).**

Asked to explain the mutually contradictory opinions rendered by him on the same subject, the Ld. AG testified, *inter-alia,* that "an opinion ultimately is an opinion and it is for the Committee to decide what the correct procedure is". Further, in response to various questions posed by the Committee with respect to the principles of Parliamentary control over public purse as enshrined in Articles 112(1), 114(3), 115, 117, 118(2), 119 and 266(3), the Ld. AG conceded:

> **"I feel that Article 114 is paramount and has to be complied with and nothing should be done which in any way dilutes the authority and supremacy of Parliament."**

The Committee, therefore, exhort the Ministry of Finance to scrupulously abide by Constitutional provisions and caution them to desist from taking precipitous action which even remotely tinkers with, dilutes or negates Parliamentary control over public purse in any manner.

5. ***No withdrawal from CFI without Parliamentary Approval:*** **The Committee note that no tax can be imposed or collected, save by the authority of law as proclaimed by Article 265. In view of the same, any excess payment received by the State after the tax assessment is made, has to be refunded to the assessees. The amount received in**

excess of the tax liability, duly computed under the provisions of the Income Tax Act, is required to be refunded as per the procedure under Income Tax Act along with the interest arising thereon. The Committee do not accept the specious argument of the Ministry that the interest payments on such refunds are reductions from gross receipts. Since interest on refund of taxes is paid out from and out of the CFI, the withdrawal of moneys from the CFI for payment of interest requires authorisation of Parliament under Article 114(3) read with Article 266(3) of the Constitution. The Committee further observe that while seeking revised opinion of the Ld. AG, the Department of Revenue mostly relied on the provisions of the Income Tax Act disregarding the Constitutional provisions which are supreme and override all Acts/ Rules/Sub-Rules inconsistent with the Constitution. The Committee wish to caution the Department that mere provision of refunds and interest payment on such refunds in the Income Tax Act cannot be a ground to override the mandatory Constitutional requirement. To wit, payment of salaries and allowances of the Chairman and the Deputy Chairman of the Rajya Sabha and Speaker and the Deputy Speaker of the Lok Sabha is governed by the Salaries and Allowances of Officers of Parliament Act, 1953. Likewise, Payment of Salaries and Allowances of the Judges of the Supreme Court of India is governed by the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958. Notwithstanding the fact that both the above cited Acts have been enacted by the Parliament, like the Income Tax Act, 1961, the withdrawal of moneys to meet all such charged expenses is effected only through the Appropriation Act. The Committee are repelled to note as to why the Income Tax Act, 1961 is being interpreted differently and on stand alone basis by the Department of Revenue in contravention of the Constitutional provision and the procedure followed by other Departments of the Government. This is not just acceptable to the Committee.

6. ***No departure can be allowed from established financial procedure:*** **The Committee note that interest payments are the second largest component of revenue expenditure. The interest payment include— payment of interest on Public Debt both internal and external, and other interest bearing liabilities of the Government which include insurance and Pension Funds, Provident Funds, Reserve Funds, deposits, interest on special securities issued to various Central Public Enterprises and interest payment on borrowing under market obligation scheme. The Committee note that all the aforesaid interest payments come under the purview of revenue expenditure and form part of the Annual Budget and are appropriated with the prior approval of Parliament. The Committee further find that every year approximately 5-7 per cent of the total expenditure is incurred on interest payments by the Government. The Ministry has failed to convince the Committee as to why any departure can be allowed from the Constitutionally ordained procedure only in the case of payment of interest on refunds. The Committee, however, note the subsequent assurance that it was yet to take any step on the subject as it awaits the final recommendation of the Committee. The Committee only wish to reiterate their earlier recommendation.**

7. ***An opinion is an opinion and correct procedure is laid down by PAC:*** **Further, in response to another recommendation of the Committee, the Ministry stated that the suggestion of treatment of interest paid on refunds as expenditure is not based on correct appreciation of statutory provisions of the Income Tax Act and would lead to**

unnecessary administrative burden on Field formations. The Department also tried to justify the procedure followed by them in the matter of payment of interest on refunds by quoting Rules 4(2) and 4 (3) of the DFPR which enable a subordinate authority *i.e.* the Department of Central Government to sanction any expenditure (a) of payments authorised under provisions of law for the time being in force and does not involve introduction of a new procedure by the subordinate authority and (b) if it involves introduction of new principle or practice in the context of the provisions of any law, it can be done with the previous consent of the Finance Ministry. To a query whether it is feasible that a subordinate authority *i.e.* the Department of Central Government can bypass Parliament with regard to authorisation of expenditure, the Department of Revenue categorically stated 'No'. Further, having asked if the Act/Rules/Sub-Rules could overrule the Constitutional provisions, the Secretary, Revenue conceded during evidence that the Constitution was supreme. When the Ld. AG was asked whether the constraints faced by bureaucracy could allow circumvention of the provisions of the Constitution, he outrightly said 'No'. Besides he added that "if this can be got over and if it is possible for them to have an estimate of the interest which would require to be paid on some actuarial basis or any other basis instead of a mathematical procedure. I don't see any difficulty why they should not do it". The Ld. AG was quite candid to further depose that "an opinion ultimately is an opinion and it is for the Committee to decide what the correct procedure is". When asked whether the administrative problem of estimating interest on refunds was insurmountable, the Government could resort to amending the Constitution, the Ld. AG was categorical that he would not recommend any amendment to the Constitution and conceded that Article 114 is supreme. The Ld. AG also conceded that the Rules of Procedure referred to in Article 118 of the Constitution dealt with the business rules to be made by each House of Parliament and the financial rules of the Government would have to conform to the Constitutional provisions. Therefore, the Committee reiterate that the Department of Revenue ensure that expenditure on interest on refunds is incurred in accordance with the Constitutional provisions requiring the specific Parliamentary approval.

8. *Let the Ministry follow the well-established and Constitutionally ordained financial procedure:* The Committee's examination also revealed that during the years 2000-01 to 2011-2012, 70 per cent to 81 per cent of the total disbursements for the Civil Ministries/Departments was charged on the CFI and the charged disbursements increased by 948 per cent *i.e.* from ₹ 4,05,289 crore in 2000-01 to ₹ 38,40,960 crore in 2011-12. Further, all receipts of taxes, irrespective of what is due and what is excess collected by the Department of Revenue, are credited to specific tax receipt heads which form part of the CFI (major heads 0020 for Corporation Tax, 0021 for taxes on income other than Corporation tax and 0037 for Customs, etc.) and the withdrawal out of the CFI can be made with the prior legislative approval under Article 114 of the Constitution. If such a large amount of expenditure can be charged on the CFI and withdrawn with the approval of Parliament, the Committee see no valid reason or difficulty as to why the Ministry of Finance (Department of Revenue) should not make suitable budgetary provisions for the expenditure on interest payment on refunds while submitting the Demands for Grants for approval by Parliament. In their earlier Report, the Committee had observed that on one occasion *i.e.* in the

budget of 2001-02, the interest on refund of excess tax was shown under major head 2020 and a provision of ₹92 crore was made. However, this practice was discontinued from the year 2003-04 onwards. While expressing their concern over discontinuance of this practice, the Committee in their 66th Report had recommended for revival of this practice. In its Action Taken Note, the Ministry stated that this practice was withdrawn after due approval of the then Finance Minister and the suggestion of treatment of interest paid on refunds as expenditure is not based on correct appreciation of statutory provisions of the Income Tax Act and will lead to unnecessary administrative burden on Field formations. This is not tenable since 'administrative difficulty', as also conceded by the Ld. AG, cannot be a ground for contravening the Constitution. The Government can obtain Supplementary/Excess Grants or Appropriations in accordance with the provision of Article 115(1) of the Constitution as Parliament meets at regular intervals in a year. Having regard to the written testimony of the Ld. AG , and his later deposition conceding that the provision of Article 114 is supreme and the Department had to follow the procedure prescribed by the PAC, the Committee find that the Department of Revenue has no option but to seek *ex ante* or *ex post facto* Parliamentary approval for interest payments on tax refunds. The Constitution leaves no doubt about the manner of authorization of expenditure or withdrawal of moneys from and out of the CFI other than seeking ex ante approval under Articles 114 and 115(1)(a) or seeking *ex post facto* approval of Parliament under Article 115(1)(b) of the Constitution. The Committee should like to be apprised of the corrective measures taken in this regard within six months of the presentation of this report.

NEW DELHI;
31 *January,* 2014
11 *Magha*, 1935 *(Saka)*

DR. MURLI MANOHAR JOSHI
Chairman,
Public Accounts Committee.

ANNEXURE I

ACTION TAKEN BY THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) ON THE RECOMMENDATIONS CONTAINED IN SIXTY-SIXTH REPORT (15TH LOK SABHA)

Recommendation (Para No. 1)

The Committee note that the Department of Revenue incurred an expenditure of ₹ 37,365 crore on interest on refunds alone during 2006-07 to 2010-11. When the amount of tax paid exceeds the amount of tax payable, the assessee is entitled to refund of the excess amount. Simple interest at the prescribed rate is payable on the amount of such refund. Refund of any amount as a result of any order passed in appeal or other proceedings is also admissible along with simple interest at the prescribed rate. The Department has been classifying interest on refunds of taxes as 'reduction in revenue' instead of treating as an item of expenditure by netting off interest on refunds from tax receipts rather than including this expenditure item in the Budget Estimates. The Ministry/Department bypassed Parliament and contravened the Constitutional provisions. The Committee note that under Article 110(e), the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or increasing of any such expenditure comes within the scope of Money Bill. A charge on the Consolidated Fund of India is payable only after having been authorized under the due appropriation made by law passed in accordance with Article 114(3) of the Constitution which clearly stipulates that no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law.

Action Taken by the Ministry of Finance (Department of Revenue)

Article 265 of the Constitution of India provides that **taxes cannot be imposed save by authority of law.** Refund under the provisions of Income Tax Act constitutes excess tax paid by the taxpayer. The said excess tax paid by the taxpayer is the amount which is received in excess of the tax which can be levied under law. The said amount being an excess of tax liability duly computed under the provisions of Income Tax Act is required to be refunded as per the procedure under the Income Tax Act along with the interest arising.

Taxes imposed by authority of law under article 265 form receipts under the Consolidated Fund of India. However, the excess tax being an amount not chargeable to tax cannot qualify as a part of receipt under the Consolidated Fund of India under Article 265 read with Article 266. The interest paid on refunds is a statutory obligation which is non-discretionary in nature and is very much an integral part of the refund/ outgo to the tax payers. Excess tax received by the Central Government which is required to be refunded along-with interest is netted off from receipts and only the balance is the tax as mentioned in Article 265 of the Constitution and only this tax is the receipt for the purposes of Article 266. Consequently, the stipulation in Article 114 stating that no appropriation can be made out of CFI does not apply to the refund loaded with interest which is netted off from receipts and does not form part of the CFI.

It, therefore, does not qualify to be called an expenditure for the purposes of grants or appropriation to which Article 114 of the Constitution applies.

Vetting Comments of Audit

The collection of tax is authorized under Article 265 of the Constitution of India. Excess collection of tax is not authorized by any Act of the Parliament. As such excess amount credited to the Consolidated Fund of India does not form part of tax dues and can correctly be refunded from the gross tax collection by way of deduction from receipt. However, the interest paid on excess tax refunded cannot be treated at par with refund of tax. Interest on refund of taxes is essentially an expenditure which is met out through withdrawal from the CFI and hence, parliamentary authorization under Article 114(3) was mandatory.

Counter Comments of the Ministry

The interest on excess tax on interest to be paid is a statutory and non-discretionary obligation and cannot qualify as expenditure. This position has been affirmed by the Attorney General of India in his note dated 06.05.2011. The stipulation in Article 114 which states that no appropriation can be made out of Consolidated Fund of India will not apply to the refund loaded with interest which is netted off from the receipts, as it does not form part of the Consolidated Fund of India. The interest on excess tax, therefore, does not qualify to be called an expenditure for which Parliamentary authorization is required.

Recommendation (Para No. 2)

The Committee note that the Financial Powers vested under Delegation of Financial Powers Rules, 1978 clearly describes 'Interest' as an item of expenditure. Asked to explain why the interest payments on refunds was being treated as a reduction from gross tax collection rather than the same being incorporated in the Budget Estimate, the Ministry submitted that the interest payment on refunds has no co-relation with the Revenue earnings and therefore, it cannot be co-related with the performance of revenue. The Ministry further contended that the amount of excess tax is retained in the Consolidated Fund of India and not with the Income Tax Department and, therefore, the interest outgo on such refunds is not to be treated as an expenditure of the Income Tax Department nor a part of cost of its collections. The Committee are of the considered view that interest payment, as specified, is an item of expenditure under Delegation of Financial Powers Rules and there is also a separate appropriation which clearly provided for interest payment of Union Government and therefore the Department cannot claim an exception with regard to interest on refunds. The Committee wish to remind the Ministry that during the year 2001-02, under Demand No. 34—Direct Taxes, a provision of ₹ 92 crore was made under the Head 'Interest on Refunds of Excess Tax', a practice which needs revival. Moreover, as admitted by the Department the tax collected is deposited in the Consolidated Funds of India and not retained by the Department has no legal authority to withdraw the 'interest' on excess tax collected/refunds without recourse to Appropriation law passed by Parliament.

Action Taken by the Ministry of Finance (Department of Revenue)

Rule 3 of the Delegation of Financial Powers Rules, 1978 (DFPR) provides certain definitions including that of expenditures under various heads. Rule 8 of DFPR lists the primary units of appropriation where 'interest' is shown separately. However, Rules 4(2) and 4(3) of the DFPR enable a subordinate authority *i.e.* the department of Central Govt. to sanction any expenditure as under:—

(i) if the payment is authorized under the provisions of any law for the time being enforced and does not involve introduction of a new principle or practice by the concerned subordinate authority, and

(ii) if it involves the introduction of a new principle or practice in the context of the provision of any law with the previous consent of the Finance Ministry.

As payment of interest is legislatively sanctioned under the Income Tax Act and the interest is directly payable/sanctionable by the Income Tax Department, Rule 3 read with Rule 8 of the DFPR are not violated.

It is submitted that only on one occasion *i.e.* in the budget of 2001-02, the interest on refund of excess tax was shown under major head '2020' and a provision of ₹ 92 crores was made. However, looking into to the appropriate facts and circumstances of the matter soon thereafter in the budget of 2002-03, the interest on refund of excess tax was reduced to nil for the RE of 2001-02 and no BE was given for the year 2002-03. The practice of not putting "interest on refund of excess tax" under any head continued thereafter in the Budget of 2003-04 onwards.

It is further submitted that the excess tax being an amount not chargeable to tax cannot qualify as a part of receipt under the Consolidated Fund of India under Article 265 read with Article 266. The interest paid on refunds is a statutory obligation which is non-discretionary in nature and is very much an integral part of the refund/ outgo to the tax payers. Excess tax received by the Central Government which is required to be refunded along-with interest is netted off from receipts and only the balance is the tax as mentioned in Article 265 of the Constitution and only this tax is the receipt for the purposes of Article 266. Hence, the stipulation in Article 114 stating that no appropriation can be made out of CFI does not apply to the refund loaded with interest which is netted off from receipts and does not form part of the CFI. It, therefore, does not qualify to be called an expenditure for the purposes of grants or appropriation.

Vetting Comments of Audit

In terms of Rule 4(2)(a) of DFPR 1978, a subordinate authority may sanction any expenditure or advances of public money in those cases only in which it is authorized to do so by the provision of any law for the time being in force.

For payment of interest on refund of excess tax there is enabling provision in the Income Tax Act entitling assessees to receive interest in addition to the amount of refund. This enabling provision cannot be equated as legislatively sanctioned.

For payment of interest out of Consolidated Fund of India, legislative authorization in terms of Article 114(3) of the Constitution of India is a priori mandatory.

Counter Comments of the Ministry

Interest on refund is an outgo which emanates out of excessive tax deposited by the taxpayers and need to be paid back by the virtue of operation of Article 265 of the Constitution of India.

Recommendation (Para No. 3)

The Committee are concerned to note that an expenditure to the tune of ₹ 37,365 crore on interest payments on refunds had been incurred over a period of last five years in blatant disregard to Constitutional provision. The Chairperson, CBDT conceded before the Committee that regularization of expenditure incurred on interest on refunds is a matter of Legislative power to be exercised by Parliament. Mindful of the mandatory Constitutional provisions governing the financial procedure, the Committee reiterate that a mandatory constitutional provision requiring specific Parliamentary approval cannot be disregarded with Ministerial approval on ground of administrative constraint or difficulty. The Committee wish to remind the Department that Article 114(3) clearly mandates that no money shall be withdrawn from Consolidated Fund of India except under 'Appropriation' made by the Legislature. The Committee therefore, call upon the Ministry to work out a proper accounting procedure in conformity with Constitutional provisions and financial rules.

Action Taken by the Ministry of Finance (Department of Revenue)

Section 244A of the Income Tax Act mandates payment of interest along-with the refund, where it becomes due in accordance with the interest calculations laid down in Section 244A. Payment of interest on refunds is a statutory non-discretionary obligation. As already stated in reply to the observation No. 1 of the Hon'ble Committee, it is again submitted that Article 265 of the Constitution of India provides that **taxes cannot be imposed save by authority of law** and such taxes imposed by authority of law under Article 265 form receipts under the Consolidated Fund of India. However, the excess tax being an amount not chargeable to tax cannot qualify as a part of receipt under the Consolidated Fund of India under Article 265 read with Article 266. Hence, the excess tax received by the Central Govt. which is required to be refunded along-with interest is netted off from receipts and only the balance is the tax as mentioned in Article 265 of the Constitution and only this tax is the receipt for the purposes of Article 266. Consequently, the stipulation in Article 114 stating that no appropriation can be made out of CFI does not apply to the refund loaded with interest which is netted off from receipts and does not form part of the CFI.

It is, hence submitted that classification of interest on refund of excess tax as reduction in revenue by the Ministry, is in conformity with the Constitutional provisions and financial rules.

Vetting Comments of Audit

Section 244A of the Income Tax Act entitles assessees to receive interest in addition to the amount of refund. This enabling provision of Income Tax Act cannot be equated

as interest having been legislatively sanctioned under the Constitution of India for withdrawal of money from the Consolidated Fund of India.

The collection of tax is authorized under Article 265 of the Constitution of India. Excess collection of tax is not authorised by any Act of the Parliament. As such excess amount credited to the Consolidated Fund of India does not form part of tax dues and can correctly be refunded from the gross tax collection by way of deduction from receipt. However, the interest paid on excess tax refunded cannot be treated at part with refund of tax. Interest on refund of taxes is an expenditure which is met out only through withdrawal from the CFI and hence, parliamentary authorization under Article 114(3) was mandatory.

Counter Comments of the Ministry

As per Article 265 of the Constitution of India, it is only the taxes imposed by the authority of law that would form receipts of Consolidated Fund of India. In other words, excess tax paid does not qualify as receipts to form part of Consolidated Fund of India under Article 265 read with Article 266. Thus, payment of refund along-with interest arising thereon as per the provisions of the Income Tax Act and the rates prescribed therein do not qualify to be called an appropriation to which Article 114(3) applies.

Recommendation (Para No. 4)

The Committee are surprise to note that the Ministry of Finance did not consider it expedient or necessary to seek the opinion of the Ministry of Law in the matter. On a reference being made by the Committee, the Ministry of Law and Justice furnished the opinion of the Ld. Attorney General. According to Ld. Attorney General the objection taken by the Comptroller and Auditor General with regard to the practice followed in relation to payment of interest on refunds of excess tax is completely justified. The proper procedure would be to clearly indicate the tax collection as a receipt and estimate the interest payable on refunds of taxes as an expenditure. The Ld. Attorney General concurred with the view of the C&AG that the reason given with regards to administrative difficulties is not tenable. Further, the Revenue Secretary conceded before the Committee that the Constitutional provisions have to be followed and assured to report back to the Committee to devise a procedure which is Constitutionally correct and administratively feasible. The Committee would like to be apprised of the corrective action taken by the Government to ensure that a suitable administrative procedure is devised in accordance with the Constitution and the Financial Rules within three month of the presentation of this Report.

Action Taken by the Ministry of Finance (Department of Revenue)

As per the directions of the Hon'ble Committee, opinion of MoL&J and Attorney General of India (AG) was solicited. However, Ld. AG on a reference from Lok Sabha Secretariat on the issue under consideration *vide* his opinion dated 25.09.2012 stated that the objection of CAG is justified and concurred with the view of CAG that proper procedure would be to clearly indicate tax collection as a receipt & estimate the interest

payable on refund of taxes as an expenditure. The matter was hence submitted for re-consideration of Ld. AG through MoLJ requesting therein to review his earlier opinion in light of the contentions of the CBDT/D/o Revenue as these were not considered while rendering his earlier opinion dated 25.09.2012.

2. In this context, MoLJ *vide* letter No. AG.5/2013-Adv.C, dated 17.05.2013 forwarded a copy of the opinion rendered by the Ld. AG dated 06.05.2013. The Ld. AG after perusing the matter in detail has reconsidered his earlier opinion dated 25.09.2012 and opined in concluding part of para 11 as under:—

(i) Interest on refund of excess tax has to be included in refund under Rule 270(4) of the General Financial Rules.

(ii) Refund of excess tax is not an expenditure and such outgo cannot be considered with other operational expenses.

(iii) Interest on refund of excess tax is not an expenditure under Article 112(1) of the Constitution.

3. It is, hence submitted that the accounting procedure followed by the Ministry for treatment of interest on refunds is in accordance with the Constitution and the Financial Rules.

Vetting Comments of Audit

No comments, as the Hon'ble Committee is seized of the matter.

Counter Comments of the Ministry

The learned AG in his opinion dated 06.05.2013 has stated that interest on refund of excess tax is not an expenditure under Article 112(1) of the Constitution. The audit has not commented on the opinion of the learned AG.

Recommendation (Para No. 5)

Having regard to the fact the Annual Budget is prepared *ex-ante* based on sound principles of estimation, the Committee find no valid ground as to why the Department cannot make broad estimates of interest liability on tax refunds based on the studied trends of the past. Moreover, the Constitution and the financial procedure provides for additional or supplementary grants and finally, in case the expenditure exceeds Parliamentary authorization, the excess expenditure is reported to Parliament annually by the C&AG and regularized, through Appropriation (Excess) Act, on the recommendation of the PAC. In their considered view reporting of interest liability to Parliament would bring greater transparency in financial administration of the country, uphold the Constitution, help reduce interest burden and bring efficiency in tax administration.

Action Taken by the Ministry of Finance (Department of Revenue)

As detailed in reply to observation 1, 2, 3 & 4 of the Hon'ble Committee, it is again submitted that classification of interest on refunds of excess tax as reduction in revenue

is very much in accordance with the dictate of the Constitution of India and abides to the Financial Rules as affirmed by Ld. AG. It is submitted that suggestion of treatment of Interest paid on refunds as expenditure is not based on correct appreciation of statutory and machinery provisions of the Income Tax Act and will lead to unnecessary administrative burden on Field formations, resulting in a cobweb entangling the entire efforts made by the Department to improve taxpayer service and having negative impact on tax collections. The suggested accounting policy will result in no revenue benefit. Considering the advances taken by the Department in handling Refund cases it is recommended that historical practice to treat Interest payment on Refunds as "Reduction from gross tax collection" or "Deduct- Refund" should continue.

Moreover, the outgo of interest u/s 244A is regularly monitored at the macro level by the Parliament through Standing Committee on Finance, Public Accounts Committee and Parliamentary Questions asked in both the Houses of the Parliament. Parliamentary Committees have been regularly guiding the Department on this aspect. Also the Tax Revenue statistics in Receipts Budget reflects net collection figures. As "interest on refunds of excess tax" is also an outgo, the collection figures given there depict the net collection after taking to account the outgo of such interest thereby abiding to the norms of transparency in financial administration.

Vetting Comments of Audit

It is reiterated that interest on refund of excess tax is an item of expenditure and cannot be treated as a reduction of revenue.

The issue at hand is not one of monitoring of interest but of authorization of interest payment by Parliament in terms of constitutional provisions.

Counter Comments of the Ministry

In response, it is reiterated that excess interest paid on refund of excess tax is a statutory non-discretionary obligation having sanction of legislature in form of Section 244A of the IT Act, 1961. Interest on refund is concomitant with the refund and is not an expenditure.

ANNEXURE II

OPINION OF LD. AG FURNISHED TO PAC

OFFICE OF SHRI G. E. VAHANVATI
ATTORNEY GENERAL FOR INDIA
[Min. of Law Dy No. AG/26/Adv.C - AG Dy. No. 224/12)

Subject:— Opinion on the issues whether expenditure incurred on refund of taxes as reduction of revenue by the Department of Revenue/CBDT is in contravention of the provision of Article 114(3) of the Constitution — reg.

1. I have gone through the Statement of Case. In order to 'appreciate the question which has been raised, one needs to refer to certain provisions of the Constitution. The primary Article is 114 which reads as follows:

   "**114. Appropriation Bills.** — (1) As soon as may be after the grants under article 113 have been made by the House of the People, there shal1 be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet —

   (a) the grants so made by the House of the People; and

   (b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

   (2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

   (3) Subject to the provisions of Articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article."

2. The Appropriation Bill under Article 114 has to provide for appropriation out of the Consolidated Fund of India of all moneys required to meet the grants made or expenditure charged on the Consolidated Fund of India. Article 114(3) goes further and states that no money can be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this Article.

3. Under Article 266 all revenues received by the Government of India, all loans raised by the Government, and all moneys received by the Government of India form part of one consolidated fund called "the Consolidated Fund of India". The Consolidated Fund of India has to be distinguished from the public account of India.

4. Therefore, when Article 114(3) requires that no money shall be withdrawn from the Consolidated Fund of India except under appropriation, made by law, it would follow that the moneys should first come into the Consolidated Fund of India and, thereafter, withdrawn under an appropriation made by law, passed in accordance with the provisions of Article 114 (3).

5. Further, under Article 283, the custody of the Consolidated Fund and the withdrawal of moneys therefrom and all other matters connected therewith is to be regulated by law made by Parliament and until such provision is made by rules made by the President, clear intent underlying Article 114, Article 266 and Article 283 is to preserve sanctity of the Consolidated Fund of India.

6. The Case for Opinion sets out the financial procedure in paragraphs 3.4, 3.5, 3.6 and 3.7 which I need not repeat.

7. The basic intent underlying the said Article 114 is to place all financial controls under the House of the People. No authority is required for this. The principle incorporated in Parliamentary Practice referred to in para 3.15 of the Statement of Case brings out the fundamental proposition.

8. In my opinion, the objection taken by the Comptroller and Auditor General with regard to the practice followed in relation to payment of interest on refunds of excess tax is completely justified. The proper procedure would be to clearly indicate the tax collection as a receipt and estimate the interest payable on refund of taxes as an expenditure. I agree with the view of the CAG that the reason given with regard to administrative difficulties is not tenable.

9. I have seen the opinion of the Dy. Legal Adviser dated 3rd August, 2012 in which para 5 refers to the object heads. I agree with the views expressed therein.

10. In the premises, I shall answer the Query.

Q. (i) Whether the expenditure incurred on interest on refund of taxes as reduction of revenue by the Department of Revenue/CBDT is in contravention of the provision of Article 114(3) of the Constitution?

Ans: Yes.

(ii) Generally.

Ans: I have nothing further to add.

Sd/-
(G.E. Vahanvati)
ATTORNEY GENERAL FOR INDIA
25.9.2012

NEW DELHI

STATEMENT OF CASE

AGI/26/2012

The Lok Sabha Secretariat has sought our views on Para No.4.1.1 of the C&AG Report No.1 for the year 2011-12 relating to "Expenditure incurred on interest on refund of taxes", for consideration of the Public Accounts Committee.

2. Before we examine the issue posed by Lok Sabha Secretariat, we may dwell upon the facts in brief. In the aforementioned para; the C&AG has viewed the expenditure on interest payment on refunds of taxes as contravention of Article 114 (3) of the Constitution.

2.1 Para No. 4.1.1 of the C&AG Report No.1 reads as under:—

> ''Article 114(3) of the Constitution stipulates that no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law. Payment of interest on refunds of excess tax is a charge on the Consolidated Fund of India and is, therefore, payable only after having been authorized under the due appropriation made by law. Rule 8 of the Delegation of Financial Powers Rules, 1978, describes 'Interest' as primary unit of appropriation for classification of interest expenditure.
>
> The Department of Revenue/Central Board of Direct Taxes has been classifying the interest on refunds of excess tax as reduction in revenue and this incorrect practice has been commented upon in the last two years' CAG's Report on Union Accounts as well as in CAG's Report on Direct Taxes for the year 2008 and in earlier years also, but no corrective action has been taken by the Department.
>
> The Department in their reply (March, 2012) have sought to continue with the existing practice of treating interest payments on the refunds as a reduction from gross tax collection. The reasons advanced by the Department are that providing for such expenditure through the budget would be administratively burdensome, apart from the fact that the amounts to be paid as interest is of a highly variable nature leading to inaccuracies in estimation. It has further stated that interest on refunds, being a statutory obligation, is not an operational expenditure like salary, office expenses, etc.
>
> The reply of the Department is not tenable in view of the fact that the classification of transactions relating to expenditure as laid down in the Delegation of Financial Powers Rules, 1978 dearly defines interest as an item of expenditure. It is also notable that the Budget of 2001-02, under the Demand No. 34-Direct Taxes, a provision of Rs.92 crore was obtained ,under the 'interest on refunds of excess tax'. The expenditure on this item has since increased to 114 times in the financial year 2010-11 to Rs. 10,499 crore."

2.2 Perusal of the Audit para reveals that perhaps the administrative Ministry is incurring expenditure on interest on refund of taxes without seeking authorization of the same from Parliament through Appropriation Act and by reducing revenue without accounting for the receipt in the Annual Financial Statement. There appears to be irregularity both in receipt side as well as on expenditure side. The field relating to

financial management of the Government is occupied mainly by the provisions of Articles 266, 267, 112 to 119, 283 and 284. We may dwell upon these provisions in the first instance.

3.1 All moneys received by or on behalf of the Government of India will be credited to either of two funds — the Consolidated Fund of India, or the 'Public Account' of India. Thus,

(a) Subject to the assignment of such taxes to the States, all revenues received by the Government of India, all loans raised by the Government and all moneys received by that Government in repayment of loans shall form one consolidated fund to be called ''the Consolidated Fund of India''.

(b) All other public moneys received by or on behalf of the Government of India shall be credited to the Public Account of India (Article 266), *e.g.* moneys received by an officer or Court in connection with affairs of the Union (Article 284). No moneys out of the Consolidated fund of India (or of a State) shall be appropriated except in accordance with a law and for the purpose and in the manner provided in the Constitution.

3.2 Article 267 of the Constitution empowers the Parliament and the Legislature of a State to create a 'Contingency Fund' for India or for a State as the case may be. The Contingency Fund of India has been constituted by the Contingency Fund of India Act, 1950. The Fund will be at the disposal of the executive to enable advances to be made, from time to time, for the purpose of meeting unforeseen expenditure, pending authorization of such expenditure by the Legislature by supplementaty, additional or excess grants. The amount of the Fund is subject to be regulated by the appropriate Legislature.

3.3 The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into, such funds, withdrawal of moneys therefrom, custody of public moneys other than those credited to such Funds, their payment into the public accounts of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by the law by Parliament, and until provision in that behalf is so made, shall be regulated by rules made by the President (Article 283). The Article 283 aims at placing the custody as well as expenditure of all public moneys under the control of the Parliament or the State Legislature of the case may be. These measures shall be regulated by law.

3.4 At the •beginning of every financial year, the President shall, in respect of the financial year, cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year. This is known as the "Annual Financial Statement" (*i.e.* the Budget) (Article 112). It also states the ways and means of meeting the estimated expenditure.

3.5 The estimates of expenditure embodied in the annual financial statement shall show separately:—

(a) The sums required to meet expenditure described by this Constitution as

expenditure charged upon the Consolidated Fund of India; and

(b) The sums required to meet other expenditure proposed to be made from the Consolidated Fund of India.

3.6 So much of the estimates as relate to other expenditure shall to be submitted in the form of demands for grants to the House of the People, and that House shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein. No demand for a grant shall however be made except on the recommendation of the President (Article 113).

3.7 No money can be withdrawn from the Consolidated Fund except under an Appropriation Act, passed as follows—

As soon as may be after the demands for grants have been made by the House of People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet — (a) the grants so made by the House of the People; and (b) the expenditure charged on the Consolidated Fund of India. This Bill will then be passed as a Money Bill, subject to this condition that no amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India (Article 114).

3.8 Article 115 reads as under:—

''115. (1) The President shall —

(a) If the amount authorised by any law made in accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found, to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) If any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year;

cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.

(2) The provisions of articles 112, 113 and 114 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant."

3.9 Grant from House of the People and appropriation by Act of Parliament are absolute requirements to authorise withdrawal. There can be no doubt that ‘‘in the manner provided in this Constitution" referred to in Clause 3 of Article 266 as the 3rd condition for appropriating money from the Consolidated Fund has reference to Article 114 of the Constitution which lays down that "no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article’’.

3.10 The provisions of Article 114 rest, as we shall see essentially on the assumption that in a democracy the Government must function both, in respect of determination of its policies and the administering of these polices, strictly under the control of the representatives of the people, freely and directly elected by them; and sitting as the Lower House of the Parliament. And for this control to be real and effective the Government must depend for the money needed for giving effect to its policies entirely on the Lower House or the popular House. In a democracy, no money collected from the tax payer is available to the Government for any purpose without a grant made by the popular House for that purpose, and no 'grant' is made by the Popular House unless the Government first places a 'demand' before the House specifying the purposes for which it plans to spend and the amounts of money it plans to spend on each of those purposes.

3.11 Therefore, when clause (3) of Article 114 declares that no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this Article, the effect is that no money can be withdrawn from the Consolidated Fund of India unless a grant has been made by the House of the People, except, of course, in the case of money required to meet the expenditure "charged on the Consolidated Fund of India". And, in the case of the "charged" expenditure also, no money can be withdrawn from the Consolidated Fund of India in excess of the amount shown in the "statement of estimates" as provided in Article 112. The bulk of the expenditure incurred by the Government is, in fact, the "other expenditure" and therefore obtaining the grants from the House of the People remains the key to the passage of the appropriation law and compliance with such law in turn is Made the inviolable condition for withdrawing any money from the Consolidated Fund of India.

3.12 It will also be seen that the words "subject to the provisions of Articles 115 and 116" at the beginning of clause (3) of Article 114 make no difference to the prohibition declared in that clause. These two Articles made provisions for passing appropriation laws in circumstances, and on occasions different from those in which the statement of estimates envisaged in Article 112 is laid before both the Houses of Parliament and the integrated process ending up with the passage of the appropriation law referred to in clauses (1) and (2) of Article 114 is set in motion. But each of these two Articles, namely Articles 115 and 116, expressly incorporates within itself all the provisions of Articles 112, 113 and 114 including the prohibition in clause (3) of Article 114.

3.13 The result is that no money can be withdrawn from the Consolidated Fund of India unless it is appropriated from the Consolidated Fund of India on the Authority of

an appropriation Act passed in accordance with the provisions of either Article 114 or 115 or 116; and no appropriation Act can be passed according to the provisions of any of these Articles unless (1) in the case of "other expenditure" each appropriation is based on a "grant" made by the House of the People and is precisely for the service mentioned in the grant, and precisely for the amount shown for that service in the grant; and unless (2) in the case of the expenditure charged on the Consolidated Fund of India, the appropriation is for an expenditure so shown in a financial statement presented before both the Houses of Parliament, and does not exceed the amount so shown in a statement "previously laid before Parliament".

3.14 The text of Articles 114, 115 and 116 is clear and categorical, and leaves no room for any other method or way of appropriating or withdrawing money out of the Consolidated Fund of India. The object of the provisions of Articles 114, 115 and 116 is to secure effective control of the peoples' elected representatives *i.e.* the House of the People, over the Government both in regard to the policies it undertakes and the manner of execution of those policies, thereby giving the people of India a truly, responsible Government and a real, functioning democratic system".

3.15 This is how May's Parliamentary Practice puts it:

> *"The financial control of the House of Commons is exercised at two different levels. So far as policy is concerned, it authorises the various objects of expenditure and the sums to be spent on each; it also authorises the levying of taxes. On the level of administration, it satisfies itself that the expenditure decisions have been duly carried out — in other words, that the sums it has granted, and no more have been spent for the purposes for which they were granted, and for no other purposes. For both sets of functions the House of Commons has partly through its own procedure and partly through legislation and administrative practice, devised adequate machinery."*

3.16 Article 266, which creates and institutionalised the 'Consolidated Fund of India' and provides that all the tax payer's money shall go to this Fund only reiterates the sanctity of withdrawals from the Fund when it directs that "no moneys out of the Consolidated Fund of India ..... shall be appropriated except...in the manner provided in this Constitution". As already seen, there is only one "manner provided in the Constitution" for an appropriation of money authorising withdrawals out of the Consolidated Fund of India, namely the manner laid down in Articles 112 to 114 of the Constitution. The text of clause (3) of Article 114 leaves no doubt that there is no other manner, when it says "no money, shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of the Article".

4. In the Constituent Assembly Debates, the Hon'ble Dr. B. R. Ambedkar, while referring to Manual of Procedure for the public business dwelt upon the possible excess expenditure, then granted by the Parliament. The relevant portion reads as under:—

> *"In fact, if I may say so, the passing of an excess grant is nothing else but an indemnity Act passed by Parliament to exonerate certain officers of the*

Government who have in good faith done something which is contrary to the law for the time being. There is nothing else in the idea of an excess grant and I would like to read to Members of the House paragraph 280 from the House of Commons — Manual of Procedure for the public business. This is what paragraph 280 says—

> *"An excess grant is needed when a department has by means of advances from the Civil Contingency Fund or the Treasury Chest Fund or out of funds derived from extra receipts or otherwise spent the money on any service during any financial year in excess of the amount granted for that service and for that year.*
>
> *Therefore, there is nothing very strange about it. The only thing is that when there is a supplementary estimate the sanction is obtained without excess expenditure being incurred. In the case of excess grant, the excess expenditure has already been incurred and the executive comes before Parliament for sanctioning what has already been spent, Therefore, I think there is no difficulty; not only there is no difficulty but there is necessity, unless you go the length of providing that when any executive officer spends any money beyond what is sanctioned by the Appropriation Act, he shall be deemed to be a criminal and prosecuted, you shall have adopt this procedure of excess grant."*

5. In view of the above, we may trouble the learned Attorney General for India and seek his opinion on the following issues:—

(i) Whether the expenditure incurred on interest on refund of taxes as reduction of revenue by the Department of Revenue/CBDT is in contravention of the provision of Article 114(3) of the Constitution?

(ii) Generally.

Sd/-
(Suresh Chandra)
Joint Secretary & Legal Adviser
30.8.2012

Shri G. E. Vahanvati,
Attorney General of India,
10, Moti Lal Nehru Marg,
New Delhi

ANNEXURE III

STATEMENT OF CASE PUT UP BY MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE) TO THE Ld. AG

F.No. 310/06/2012-OT
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Telephone: 24671572
Fax: 24101573

OT Section, Room No. 282,
Hotel Samrat, Kautilya Marg,
Chanakyapuri, New Delhi- 110 021

New Delhi, the 22 March, 2013

OFFICE MEMORANDUM

Subject: — Seeking opinion of Ministry of Law and Justice and the Attorney General on the applicability of Article 114(3) of the Constitution of India in relation to the accounting of payment of interest on excess tax.

Kind reference is invited to the reference made to the Secretary, Department of Legal Affairs by Ministry of Finance on 11.02.2013 *vide* F.No. 310/06/2012-OT(Part-II) seeking review of the Opinion of Ld. AG dated 25.09.2012 on the above noted subject.

2. In this context, it is to inform you that during the course of briefing of Ld. AG by the representatives of the Ministry of Finance on 18.03.2013, extensive discussion on the issue led to discovery of certain issues/legal provisions which do not find clear mention in the original reference moved by the Ministry of Finance to the Ministry of Law & Justice and the Ld. AG.

3. Accordingly, I am directed to enclose a Supplementary Brief Statement of case for onward transmission to the Ld. AG so as to put forth the complete submissions of the Income tax Department before the Ld. AG enabling him to take a holistic view into the matter.

End: Supplementary Brief
Statement of Case

Sd/-
(Ekta Jain)
Deputy Secretary(OT)

Shri D. Bhardwaj
Joint Secretary, & Legal Advisor
Department of Legal Affairs
Ministry of Law and Justice

SUPPLEMENTARY BRIEF STATEMENT OF CASE

Subject: — Seeking opinion of Ministry of Law & Justice and the Attorney General on the applicability of Article 114(3) of the Constitution of India in relation to the accounting of payment of 'interest on exccess tax'.

In continuation to the earlier reference made by Department of Revenue *vide* 310/06/2012-OT(Part-II) dated 11.02.2013 seeking review of the Opinion of Ld. AG dated 25.09.2012 on the above noted subject following further submissions may kindly be taken on record, considered and forwarded to the Ld. AG so as to enable him to take a holistic view into in the matter.

2. Article 265 of the Constitution of India states that taxes cannot be imposed save by authority of law. It provides that no tax shall be collected or levied except by authority of law. Hon'ble Supreme Court in the case of CIT *vs* Shelly Products (AIR 2003 SC 2532/261 ITR- 367) has held that the tax paid by the asessee must be accepted as it is and in the event of the tax paid being in excess of the tax liability duly computed according to the provisions of the Income Tax Act, 1961 and the rates applicable, the excess shall be refunded to the assessee, since its retention may offend Article 265 of the Constitution.

3. Article 266 of the Constitution provides that all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall from one consolidated fund to be entitled the Consolidated Fund of India (CFI).

4. Article 114 provides that no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.

5. Refund under the Income Tax Act, 1961 (hereinafter 'the Act') constitutes excess tax paid by the taxpayer, being in excess of the tax liability duly computed according to the provisions of the Act and the rates applicable, which is required to be refunded as per the provisions of the Act alongwith the interest arising thereon. Taxes imposed by authority of law as laid in Article 265 of the Constitution form receipts of CFI. In other words, excess tax paid does not qualify as receipts to form part of CFI under Article 265 read with Article 266.

Thus, any refund paid also does not qualitty to be called an appropriation to which Article 114 applies.

6. This position of law is also confirmed by Rule 270(4) of the General Financial Rules (GFR) which expressly excludes refunds for the purposes of grants or appropriation..C&AG has also not raised any objection regarding the receipt net of refunds being taken to CFI. The Act mandates payment of interest on refund under section 244A alongwith the amount of excess tax paid and these two components of

outgo to the taxpayer are inseparable. Thus the interest under section 244A of the Act is cohesively embedded in the outgo to the taxpayer towards excess tax paid and partake the same colour and nature as that of refund of excess tax paid.

7. In this perspective, it is humbly reiterated that the interest paid on refunds is a statutory obligation which is non-discretionary in nature and is very much an integral part of the refund/outgo to the taxpayer. Excess tax received by the Central Government which is required to be refunded alongwith interest is netted off from receipts and only the balance is the tax as mentioned in Article 265 of the Constitution and only this tax is the receipt for the purposes of Article 266. Consequently, the stipulation in Article 114 stating that no appropriation can be made out of CFI does not apply to the refund loaded with interest which is netted off from receipts and does not form part of the CFL. It, therefore, does not qualify to be called an expenditure for the purpose of grants or appropriation to which Article 114 of the Constitution applies.

114. Appropriation Bills—

(1) As soon as may be after the grants under article 113 have been made by the House of the People there shall be introduced a Bill to provide for the appropriation out of The Consolidated Fund of India of all moneys required to meet—

(a) the grants so made by the House of the People; and

(b) the expenditure charged on the Consolidated fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendenent shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except, under appropriation made by law passed in accordance with the provisions of this article.

265. Taxes not to be imposed save by authority of law.

No tax shall be leived or collected except by authority of law.

266. Consolidated Funds and public account of India and of the States—

(1) Subject to the provisions of Article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of cartain taxes and duties to States, all revenues received by the Government of India; all loans raised by that Government by the issue of treasury bilis, loans or Ways and means advances and all moneys received by that Government in repayment of loans shall form one Consolidated fund to be entitled “the Consolidated Fund of India” and all revenues received by the Government

of a State all loans raised by that Government by the issue of treasury bills, loans of ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled 'the Consolidated Fund of the State'.

(2) All other Public moneys received by or on behalf of the Government of India or the Government of a State shall be entitled to the public account of India or the public account of the State, as the case may be.

(3) No Moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

INCOME TAX ACT, 1961

CHAPTER XIX

REFUNDS

Refunds

237. If any person satisfies the [Assessing] Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any 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 the excess.

[Interest on refunds]

244A. (1) [Where refund of any amount becomes due to the assessee under this Act], he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:—

(a) where the refund is out of any tax. [paid under section 115WJ or] [collected at source under section 206C or] paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of [one-half per cent] for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined [under [sub-section (1) of section 115WE or] sub-section (1) of section 143 or] on regular assessment.

(b) in any other case, such interest shall be calculated at the rate of [one-half per cent] for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation.—For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

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

(3) Where, as a result of an order under [sub-section (3) of section 115WE or section 115WF or section 115WG or] [sub-section (3) of section 143 or section 144 or] section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the insterest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

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

[Provided that in respect of assessment of fringe benefits, the provisions of this sub-section shall have effect as if for the figures "1989" the figures "2006" had been substituted.]

(3) (i) A claim of a government servant which has been allowed to remain in abeyance for a period exceeding two years, should be investigated by the Head of the Department concerned, if the Head of Department is satisfied about the genuineness of the claim on the basis of the supporting documents and there are valid reasons for the delay in preferring the claims, the claims should be paid by the Drawing and Disbursing Officer or Accounts Officer, as the case may be, after usual checks.

(ii) A Head of Department may delegate the powers, conferred on him by sub-rule (i) above to the subordinate authority competent to appoint the Government servant by whom the claim is made.

Rule 265. Procedure for dealing with time barred claims:

(1) Even a time barred claim of a Government servant, shall be entertained by the concerned authority provided that the concerned authority is satisfied that the claimant was prevented from submitting his claim within the prescribed time limit on account of causes and circumstance beyond his control.

(2) A time barred claim referred to in Rule 265(1) shall be paid with the express sanction of the Government issued with the previous consent of the Internal Finance Wing of the Ministry or Department concerned.

Rule 266. Time barred claims of persons not in Government service: The provisions of Rule 258 to Rule 265 shall apply *mutatis mutandis* to arrear claims preferred against Government by persons not in Government service.

Rule 267. Retrospective sanctions: Retrospective effect shall not be given by competent authorities to sanctions relating to revision of pay or grant of concessions to Government servants, except in very special circumstances with the previous consent of the Finance Ministry.

Rule 268. Currency of sanction of Provident Fund advance/withdrawal : A sanction to an advance or a non-refundable part withdrawal from Provident Fund shall, unless it is specifically renewed, lapse on the expiry of a period of three months.

This will, however, not apply to withdrawals effected in instalments. In such cases the sanction accorded for non-refundable withdrawals from Provident Fund will remain valid up to a particular date to be specified by the sanctioning authority in the sanction order itself.

II. REFUND OF REVENUE

Rule 269. Sanctions of refunds of revenue: All sanctions to refunds of revenue, shall be regulated by the orders of an Administrator or of the departmental authority, as the case may be according to the provisions of the rules and orders contained in the departmental manuals etc.

Rule 270.

(1) Communication of refund sanctions to audit: The sanction to a refund of revenue may either be given on the bill itself or quoted therein and a certified copy of the same attached to the bill in the letter case.

(2) Suitable note of refund to be made in original Cash Book entry and other documents: Before a refund of revenue is made, the original demand or realization as the case may be, must be linked and a reference to the refund should be recorded against the original entry in the Cash Book or other documents so as to make the entertainment of a double or erroneous claim impossible.

(3) Remission of revenue before collection is not refund: Remission of revenue allowed before collection are to be treated as reduction of demands and not as refunds.

(4) Refunds not regarded as expenditure for allotment: Refunds of revenues are not regarded as expenditure for purposes of grants or appropriation.

(5) Competent authority in case of credits wrongly classified: In cases where revenue is credited to a wrong head of account or credited wrongly under some misapprehension, the authority competent to order refund of revenue

shall, in such cases, be the authority to whom the original receipts correctly pertain.

Rule 271. Compensation for accidental loss of property : No compensation for accidental loss of property shall be paid to an officer except with the approval of the Finance Ministry. Compensation will not ordinarily be granted to an officer for any loss to his property which is caused by floods, cyclone, earthquake or any other natural calamity or which is due to an ordinary accident, which may occur to any citizen, for example, loss by theft or as the result of a railway accident or fire, etc. The mere fact that at the time of the accident, the Government servent is technically on duty or is living in Government quarters in which he is forced to reside for the performance of his duties will not be considered as a sufficient ground for the grant of compensation.

III. DEBT AND MISCELLANEOUS OBLIGATIONS OF GOVERNMENT

Rule 272. Public Debt: The public debt raised by Government by issue of securities shall be managed by the Reserve Bank. The Reserve Bank shall also manage securities created and issued under any other law or rule having the force of law, provided such law or rule provides specifically for their management by the Reserve Bank.

Rule 273. Provident Funds: The procedure relating to the recovery of subscriptions to and withdrawals from, the Provident Funds established under the provisions of Provident Funds Act, 1925 shall be regulated strictly, in accordance.

F.No. 310/06/2012-OT(Part-II)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Subject: Seeking opinion of Ministry of Law and Justice and the Attorney General of India on the applicability of Article 114(3) of the Constitution of India in relation to the accounting of payment of 'interest on excess tax'.

A reference on the above noted subject was made to MoLJ by CBDT *vide* F.No. 310/06/2012-OT (Part) on 17.10.2012. In this context MoLJ *vide* its noting dated 09.01.2012 (F/X) has communicated that on a reference from Lok Sabha Secretariat opinion of Ld. Attorney General of India (AGI) was obtained on the subject under consideration and has enclosed a copy of the opinion of the AGI dated 25.09.2012 (F/Y). The earlier correspondence undertaken by the MoLJ on the reference made by CBDT is placed at F/Z.

2. The Ld. AGI in his opinion dated 25.09.2012 has concurred with the view of CAG that proper procedure would be to clearly indicate tax collection as a receipt and estimate the interest payable on refund of taxes as an expenditure. In the opinion of Ld. AGI the expenditure incurred on interest on refund of taxes as reduction of revenue by the CBDT/Department of Revenue is in contravention of the provision of Article 114(3) of the Constitution.

3. In this backdrop and, with the prior approval of the Minister of Finance, MoLJ is requested refer the matter back to the Ld. AGI to review his opinion dated 25.09.2012 in view of the submissions of the Department of Revenue. Moreover acceptance of the C&AG recommendation on the issue shall have cascading effect on the taxpayers resulting in a cobweb entangling the entire efforts made by the Department to improve taxpayer service and leading to negative impact on tax collections. The matter is submitted for reconsideration considering the fact that interest paid on refunds is a statutory obligation which is non-discretionary in nature and is very much an integral part of the refund.

4. Statement of case of the Department of Revenue in respect of the subject matter is as under:—

4.1 **Crux of C&AG Objection:**

C&AG in its report No. 1 for the year 2011-12 para 4.1.1 (pages 1&2 corr.) has commented that practice of classifying the interest on refunds of excess tax as reduction in revenue by the Department of Revenue is incorrect. The audit observation says that Article 114(3) of the Constitution stipulates that no money shall be withdrawn from the Consolidated Fund of India (CFI) except under appropriation made by law. Payment of interest on refunds is a charge on the CFI and therefore, payable only after having

being authorised under due appropriation made by law. Further, Rule 8 of Delegation of Financial Powers Rules, 1978 (hereinafter DFPR) (page 3-6/corr.) has been quoted which describes interest as a primary unit of appropriation for classification of interest.

4.2 Background and present positions:

The practice of classifying the interest on refunds as reduction in revenue has been consistently followed by the Department since the inception of the Act till date. However, in a solitary instance in the Budget Estimates for FY 2001-02 the interest on refund of excess tax was shown under major head '2020' and a provision of Rs. 92 crores was made (page 7/corr.). But subsequently, in the budget of 2002-03, the interest on refund of excess tax was reduced to nil for the RE of 2001-02 and no BE was given for the year 2002-03 and onwards. This practice has the approval of Finance Ministers on two different occasions in the year 2001 and in the year 2011 respectively.

4.3 Stand of the department on the said objection:

Treatment of interest on refunds as reduction in revenue as per the department does not appear to be in violation to Article 114(3) of the Constitution of India on account of the following reasons:—

4.3.1 The interest payable on refund is not an operational expenditure like salary, office expenses, etc. It is a statutory obligation which is non-discretionary in nature. The interest on refunds is granted u/s 244A of the Income Tax Act, 1961 (hereinafter the Act) which provides that where refund becomes due to the assessee, he shall be entitled to receive in addition to the said amount, interest at the prescribed rate and for the prescribed period. Thus, such interest is very much an integral part of the refund. Therefore Rule 8 of the DFPR does not appear to be applicable on this.

4.3.2 As per Rule 270(4) of the General Financial Rules (page 8/corr.) refunds of revenue are not regarded expenditure for the purposes of grants or appropriation. Therefore, the interest on refunds which is considered as a part of refund shall not be regarded as an expenditure for the purposes of grants or appropriation.

4.3.3 The department receives interest from the assessees under various provisions of the Act [Sections 234A, 234B, 234C, 220(2) etc.]. Even this interest received is included in the gross tax collection on the same lines as the interest paid on refunds is included in the refunds.

4.3.4 The Tax Revenue statistics in Receipts Budget reflects net collection figures. As ‘‘interest on refunds of excess tax" is also an outgo, the collection figures, given there depict the net collection after taking to account the outgo of such interest. A copy of the detailed analysis of tax and non-tax revenue receipts from the Receipts Budget 2010-11 is placed at page 9/corr.

4.3.5 Rule 3 of the DFPR gives certain definitions including that of expenditures under various heads. Rule 8 of the DFPR lists the primary units of appropriation where ‘interest’ is shown separately. However Rules 4(2) and 4(3) of the DFPR enable a

subordinate authority *i.e.* the Department of the Central Government to sanction any expenditure as under:

(i) if the payment is authorized under the provisions of any law for the time being in force and does not involve introduction of a new principle or practice— by the concerned subordinate authority, and

(ii) if it involves the introduction of a new principle or practice in the context of the provision of any law—with the previous consent of the Finance Ministry. As payment of interest is legislatively sanctioned under the Act and the interest is directly payable/sanctionable by the Income Tax Department there appears to be no violation of the said Rule 3 read with Rule 8 of the DFPR as well.

4.3.6 Besides the above-noted reasons, the department shall face serious administrative difficulties if separate accounting of interest on refunds as an item of expenditure for budget is done. The same in brief are enumerated as under:

(i) A realistic estimation of the provision for interest on refund is not feasible as no verifiable data is available in advance at the stage of Budget Estimates (BE) about the likely refund outgo and interest thereon on processing of pending returns, refunds claims in the returns to be filed in next year and the likely refund outgo on account of the appellate orders during the next financial year.

(ii) The returns of income are filed by the taxpayers over a period of time on which Department may not exercise control. Likewise taxes are paid by taxpayers on their own judgement and may be in excess of the tax leviable on their finally returned income.

(iii) In view of the highly variable nature of the amounts to be refunded, the period for which it has been retained etc. no mathematical model either exists or can be devised to predict accurately the amount of the Interest required to be paid u/s 244A in a particular Financial Year by more than 4000 Assessing Officers spread across the country.

(iv) If Budget grant is less than the interest part of refund, entire refund outgo will be held up leading to escalation in refund related public grievances.

(v) Inaccurate estimates thus being given to the Integrated Finance Units shall result in delay in issue of refunds leading to additional outgo as interest on delayed refunds from the Consolidated Fund of India.

A detailed note on the analysis of the relevant provisions of the Act administrative impediments, chronology of events and action taken is placed at pages 10-16/corr.

4.4 Points on which Opinion sought:

(i) Whether 'Interest on refund of excess tax' is to be included in 'Refund' under Rule 270(4) of General Financial Rules particularly in light of the fact that such interest has to be mandatorily paid together with the excess tax?

(ii) Whether 'Interest on refund of excess tax' paid under section 244A of Act is an 'expenditure' for the Income Tax Department? Whether such outgo can be considered at par with operational expenses such as the payments on account of salaries, office expenses, etc.?

(iii) Whether 'Interest on Refund of excess tax' is to be included in any of the categories of expenditure mentioned in Rule 3 of the Delegation of Financial Powers Rules (DFPR) namely contingent expenditure, miscellaneous expenditure, non-recurring expenditure and recurring expenditure or under any of the primary units of the appropriation under Rule 8 thereof? Please elaborate.

(iv) Whether outgo on account of the 'interest on refund of excess tax' (which is non-discretionary mandatory outgo) payable in terms of the Act is an expenditure in terms of Article 112(1) of the Constitution for the purposes of the "Annual Financial Statement"?

(v) Whether the view of CAG that the prevalent practice of treatment of 'interest on refund of excess tax' as reduction of revenue is in violation to Article 114(3) of the Constitution is correct, particularly in the light of the fact that neither the quantum of excess tax nor the quantum of 'interest on refund of excess tax' payable in the ensuing year (to the year in which budget estimates are made) can be predicted by any means whatsoever their quantum depends upon the claims to be made subsequently in the returns of income and the outcome of the decisions of the appellate authorities ? Please elucidate.

(vi) If Ministry of Law and Justice/the Attorney General of India still concur with the opinion of the CAG, kindly recommend the accounting procedure which can be followed keeping in view the fact that such outgo on 'interest on refund of excess tax' is not at all computable/predictable in advance?

5. In view of the above, Ministry of Law and Justice is requested to refer the matter to Ld. AGI to review his opinion dated 25.09.2012 in light of submissions of the Department of Revenue. It would be highly appreciated if a suitable date as per the convenience of Ld. AGI is intimated for briefing the Ld. AGI by the senior officers of the Department of Revenue. An early communication on the same is solicited.

Sd/-

(Ekta Jain)
Deputy Secretary (OT)

Dy. No. 394/2013/Adv. B
MINISTRY OF LAW AND JUSTICE
(DEPARTMENT OF LEGAL AFFAIRS)

Upon a reference from the Lok Sabha Secretariat & with the approval of the then Hon'ble MLJ opinion of the Ld. AG regarding the applicability of the provisions of Article 114 (3) of the Constitution of India in relation to the accounting of payment of interest on excess tax was obtained and the same was forwarded to the Lok Sabha Secretariat. When a reference on the same subject was received from the Department of Revenue, a copy of the opinion dated 25.9.2012 tendered by the Ld. AG was also sent to them *vide* our note dated 9.1.2013 *vide* Dy. No. 3297/2012/ Adv. B. (F/X), Department of Revenue has once again referred the matter requesting the Ld. Law Officer to review his opinion dated 25.9.2012 on the grounds mentioned by them.

2. With the approval of the Finance Minister we have been requested to refer the matter to the Ld. Attorney General for opinion on the following issues:

(a) Whether 'Interest on refund of excess tax' is to be included in 'Refund' under Rule 270(4) of General Financial Rules particularly in light of the fact that such interest has to be mandatorily paid together with the excess tax?

(b) Whether 'Interest on refund of excess tax' paid under section 244A of Act is an 'expenditure' for the Income Tax Department? Whether such outgo can be considered at par with operational expenses such as the payments on account of salaries, office expenses, etc.?

(c) Whether 'Interest on refund of excess tax' is to be included in any of the categories of expenditure mentioned in Rule 3 of the Delegation of Financial Powers Rules (DFPR) namely contingent expenditure, miscellaneous expenditure, non-recurring expenditure and recurring expenditure or under any of the primary units of the appropriation under Rule 8 thereof?

(d) Whether outgo on account of the 'Interest on refund of excess tax' (which is non-discretionary mandatory outgo) payable in terms of the Act is expenditure in terms of Article 112(1) of the Constitution for the purposes of the 'Annual Financial Statement'?

(e) Whether the view of CAG that the prevalent practice of treatment of 'Interest on refund of excess tax' as reduction of revenue is in violation to Article 114(3) of the Constitution is correct, particularly in the light of the fact that neither the quantum of excess tax nor the quantum of 'interest on refund of excess tax' payable in the ensuing year (to the year in which budget estimates are made) can be predicted by any means whatsoever, their quantum depends upon the claims to be made subsequently in the returns of income and the outcome of the decisions of the appellate authorities.

(f) If Ministry of Law & Justice/the Attorney General of India still concur with the opinion of the CAG, kindly recommend the accounting procedure which can be followed keeping in view the fact that such outgo on 'interest on refund of excess tax' is not at all computable/predictable in advance?

3. It is noticed from the file that the Ld. AG in his opinion dated 25.09.2012 has concurred with the view of CAG that proper procedure would be to clearly indicate tax collection as a receipt and estimate the interest payable on refund of Taxes as an expenditure. It was also opined by the AG that the expenditure incurred on interest on refund of taxes as reduction of revenue by the CBDT/Department of Revenue is in contravention of the provisions of Article 114(3) of the constitution. In this regard the Department is of the view that they are following the practice of classifying the interest on refunds as reduction in revenue consistently since the inception of the Act. They are also of the view that treatment of interest on refunds as reduction in revenue does not appear to be in violation to Article 114 (3) of the Constitution on account of the following reasons:—

(i) The interest payable on refund is not an operational expenditure like salary, office expenses etc. It is statutory obligation under the Income Tax Act ('the Act') which is non-discretionary in nature.

(ii) As per Rule 270(4) of the General Financial Rules (page 8/corr.) refunds of revenue are not regarded as expenditure for the purposes of grants or appropriation. Therefore, the interest on refunds which is considered as a part of refund shall not be regarded as expenditure for the purposes of grants or appropriation.

(iii) The department receives interest from the assesses under various provisions of the Act [Sections 234A, 234B, 234C, 220(2) etc]. Even this interest received is included in the gross tax collection on the same lines as the interest paid on refunds is included in the refunds.

(iv) The Tax Revenue statistics in Receipts Budget reflects net collection figures. As "interest on refunds of excess tax" is also an outgo the collection figures given there depict the net collection after taking into account the outgo of such interest.

(v) Rule 3 of the DFPR gives certain definitions including that of expenditure under various heads. Rule 8 of the DFPR lists the primary units of appropriation where 'interest' is shown separately. Rule 4(2) and 4(3) of the DFPR enables a subordinate authority *i.e.* that Department of the Central Government to sanction any expenditure.

4. In the light of the above if approved, we may request the Ld. Law Officer for reconsideration of his opinion dated 25.9.2012 in the light of submissions made by the Department of Revenue, with the approval of FM.

May kindly see.

Sd/-
(Dr. R.J.R. Kasibhatla)
Dy. Legal Adviser
Dated: 04.03.2013.

ANNEXURE IV

OPINION OF Ld. AG FURNISHED TO THE MINISTRY OF FINANCE
(Department of Revenue)

OFFICE OF GOOLAM E. VAHANVATI
ATTORNEY GENERAL FOR INDIA
[MLJ] Dy. No. AG-5/2013-Adv. 'C'
AG Dy. 280 / AG/ Opin:]

Subject: Seeking opinion of Ministry of Law & Justice and the Attorney General on applicability of Article 114(3) of the Constitution of India in relation to the accounting of payment of 'interest on excess tax'.

1. I have perused the Note of the Ministry of Finance, Department of Revenue, dated 11th February 2013, the Note of Dr. R.J.R Kasibhatla, Deputy Legal Advisor dated 4th March, 2013, the Office Memorandum dated 22nd March, 2013 including a supplementary brief statement of case and other relevant papers in the file.

2. I had earlier given an opinion on 25th September, 2012 on the issue of whether expenditure incurred on refund of taxes as reduction of revenue would be in contravention of article 114 (3) of the constitution. The Ministry of Finance has sought reconsideration of the said opinion dated 25th September, 2012.

3. In the note dated 110, February 2013, and the detailed note dated 22nd March, 2013 of Ms. Ekta Jain, Deputy Secretary (OT), reliance has been placed to the provisions of Article 265, Article 266, Rule 270(4) of the General Finance Rules, and Section 244A of the Income Tax Act.

4. Article 265 of the constitution, states that taxes cannot be imposed saved by authority of law. Article, 265 reads as follows: "265. No tax shall be levied or collected except by authority of law."

5. Article 266 of the Constitution provides that all revenues received by Government of India, all loans raised by the Government by issue of treasury bills, loans or ways or means and advances and all moneys received by the said Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India". Artcle 266 (3) provides that no Moneys out of the Consolidated Fund of India shall be appropriated except in accordance with law and for the purposes and in the Manner as provided in the Constitution of India, Article 266 reads as follows:

> "266. (1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills,

loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the Manner provided in this Constitution."

6. Article 114 provides that no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with Article 114. The said Article 114 of the Constiution reads as follows:

"114. (1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet —

(a) the grants so made by the House of the People; and

(b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article."

7. Section 237 deals with refunds and falls under chapter XIX of Income Tax Act, section 237 creates a legal entitlement in favour of an assessee of the amount of tax paid in excess of the amount for which he is properly chargeable under the Act for that year. Section 237 reads as follows:

"REFUNDS

237. If any person satisfies the [Assessing] Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any

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 the excess."

8. Section 244A of the Income tax Act, further mandates payment of interest, along with the refund; where it becomes due in accordance with the interest calculation laid down in section 244A. Sec-244 A is extracted hereunder for the sake of convenience.

"INTEREST ON REFUNDS

244A. (1) Where refund of any amount becomes due to the assessee under this Act 1963, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:—

(a) Where the refund is out of any tax collected at source under section 206C or 1964 paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one per cent for every month or part of a Month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 143 or on regular assessment;

(b) In any other case, such interest shall be calculated at the rate of one per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted:

Explanation: For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

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

(3) Where, as a result of an order under sub-section (3) of section 143 or section 144 or section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under subsection (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form

specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

(4) The provisions of this section, shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment year 1962.

[Provided that in respect of assessment of fringe benefits, the provisions of this sub-section shall have effect as if for the] figures "1989" the figures "2006" had been substituted."

Rule 270(4) of the General Financial Rules, also deals with the issue of the refund and states that refunds are not regarded as expenditure for allotment, Rule 270 (4) is extracted hereunder for convenience:

"Rule 270.

(1)...

(4) Refunds not regarded as expenditure for allotment: Refunds of revenues are not regarded as expenditure for purposes of grants or appropriation."

9. The note of Ms. Ekta Jain dt. llth February, 2013 also brings out the manner in which the interest on refund of excess tax are treated in the budget. It also brings out the provisions of Rule 3 of the DFPR. Paras 4.3.4 and 4.3.5 in this regard may be noted;

"4.3.4 The Tax Revenue statistics in Receipts Budget reflects net collection figures. As "interest on refunds of excess tax" is also an outgo, the collection figures given there depict the net collection after taking to account the outgo of such interest.

4.3.5 Rule 3 of the DFPR gives certain definitions including that of expenditures under various heads. Rule 8 of the DFPR lists the primary units of appropriation where 'interest' is shown separately. However, Rules 4(2) and 4 (3) of the DFPR enable a subordinate authority *i.e.* the Department of the Central Government to sanction any expenditure as under:

(i) if the payment is authorized under the provisions of any law for the time being in force and does not involve introduction of a new principle or practice by the concerned subordinate authority, and

(ii) if it involves the introduction of a new principle or practice in the context of the provision of any law—with the previous Consent of the Finance Ministry.

As payment of interest is legislatively sanctioned under the Act and the interest is directly payable/sanctionable by the Income Tax Department, there appears to be no violation of the said Rule 3 read with Rule 8 of the DFPR as well."

10. The administrative difficulty which the department would face if separate accounting on refunds as item for expenditure for budget is done, is outlined in para 42.6 of the note and is extracted hereunder for convenience:

"4.3.6.....

(i) A realistic estimation of the provision for interest on refund is not feasible as no verifiable data is available in advance at the stage of Budget Estimates (BE) about the likely refund outgo and interest thereon on processing of pending returns, refunds claims in the returns to be filed in next year and the likely refund outgo on account of appellate orders during the next financial year.

(ii) The returns of income are filed by the taxpayers over a period of time, on which Department may not exercise control. Likewise taxes are paid by taxpayers on their own judgement and may be in excess of the tax leviable on their finally returned income.

(iii) In view of the highly variable nature of the amounts to be refunded, the period for which it has been retained etc.; no mathematical model either exists or can be devised to predict accurately the amount of the Interest required to be paid u/s 244A in a particular Financial Year by more than 4000 Assessing Officers spread across the country.

(iv) If Budget grant is less than the interest part of refund, entire refund outgo will be held up leading to escalation in refund related public grievances.

(v) Inaccurate estimates thus being given to the Integrated Financial Units shall result in delay in issue of refunds leading to additional outgo as interest on delayed refunds from the Consolidated Fund of India.

11. With the aforesaid background, I would proceed to answer query no. (a), (b), (d) and (f) together, which are as follows:

(a) Whether 'Interest on refund of excess tax' is to be included in 'Refund' under Rule 270(4) of General Financial Rules particularly in the light of the fact that such interest has to be mandatorily paid together with the excess tax?

(b) Whether 'Interest on refund of excess tax' paid under section 244A of Act is an 'expenditure for the Income Tax Department'? Whether such outgo can be considered at par with operational expenses such as the payment on account of salaries, office expenses etc.?

(c) Whether the view of CAG that the prevalent practice of treatment of 'interest on refund of excess tax' as reduction of revenue is in violation to Article 114(3) of the Constitution is correct, particularly in the light of the fact that neither the quantum of excess tax nor the quantum of 'interest on refund of excess tax' payable in the ensuing year (to the year in which budget estimates are made) can be predicted by any 'means whatsoever; their quantum depends

upon the claims to be made subsequently in the returns of income and the outcome of the decisions of the appellate authorities ?

Ans. Article 265 is the source of the power under the Constitution for levy of tax and provides that taxes cannot be imposed saved by authority of law. Refund under the provisions of the Income Tax Act constitutes excess tax paid by the tax payer. The said excess tax paid by the taxpayer is the amount which is received in excess of the tax which can be levied under law. The said amount being an excess of tax liability duly computed under the provisions of the Income Tax Act is required to be refunded as per the procedure under income tax Act along with the interest arising.

In CIT vs Shelly Products, (2003) 5 SCC 461, the Hon'ble Apex court observed that the excess tax has to be refunded to the assessee since its retention may offend article 265 of the Constitution. The Hon'ble Supreme Court observed as follows:

> "35. ....In other words, the tax paid by the assessee must be accepted as it is, and in the event of the tax paid being in excess of the tax liability duly computed on the basis of return furnished and the rates applicable, the excess shall be refunded to the assessee, since its retention may offend Article 265 of the Constitution."

Taxes imposed by authority of law under article 265 form receipts under the Consolidated Fund of India. However, the excess tax being an amount not chargeable to tax cannot qualify as a part of receipt under the Consolidated Fund of India under Article 265 read with Article 266. Therefore any refund of excess tax does not call for appropriation under article 114. This position is further fortified by Rule 270 (4) of the General Financial Rules, which expressly excludes refund for the purposes of grant for appropriation. Para 7 of the note dated 22nd march 2013 of Ms. Ekta Jain in this regard observes as follows:

> "7. ....the interest paid on refunds is a statutory obligation which is non-discretionary in nature and is very much an integral part of the refund/ outgo to the taxpayer. Excess tax received by the Central Government which is required to be refunded along with interest is netted off from receipts and only the balance is the tax as mentioned in Article 265 of the Constitution and only this tax is the receipt for the purposes of Article 266. Consequently, the stipulation in Article 114 stating that no appropriation can be made out of CFI does not apply to the refund loaded with interest which is netted off from receipts and does not form part of the CFI. It, therefore, does not qualify to be called an expenditure for the purposes of grants or appropriation to which Article 114 of the Constitution applies."

There is considerable force in the view expressed above. Since the excess tax and interest to be paid on the refund is a statutory non-discretionary obligation of the department, it cannot qualify as tax for the purposes of receipt under Article 266. It is only the tax duly chargeable which can form receipts for the purposes of Article 266 to which Article 114 applies. In view of the aforesaid, and having regard to the provisions of Articles 114, 265, 266 of the Constitution.

section 237 and 244A of the Income Tax Act, 1961, Rule 270(4) of the General Financial Rules as mentioned above, I reconsider my earlier opinion dated 25th September, 2012 . In view of the above, the following conclusions emerge:

(i) Interest on refund of excess tax has to be included in refund under Rule 270(4).

(ii) Refund on excess tax is not an expenditure and such outgo cannot be considered with other operational expenses.

(iii) Interest on refund of excess tax is not an expenditure under Article 112(1).

Sd/-
(Goolam E. Vahanvati)
Attorney-General for India
6.05.2013

ANNEXURE V

DETAILS OF SUPPLEMENTARY GRANTS OBTAINED DURING THE LAST FIVE YEARS (EXCLUDING RAILWAYS)

Financial Year	Month of presentation	Cash outgo			Technical			Token			Total
		Plan	Non-Plan	Total	Plan	Non-Plan	Total	Plan	Non-Plan	Total	
2007-08											
First	Aug-07	2475.90	7952.32	10428.22	95.01	9888.61	9983.62	0.20	0.10	0.30	20412.14
Second	Nov-07	5888.91	5980.69	11869.60	1162.30	20258.52	21420.82	0.32	0.13	0.45	33290.87
Third	Mar-08	5581.09	37478.83	43059.92	12412.42	84905.74	97318.16	0.54	0.29	0.83	140378.91
Total		13945.90	51411.84	65357.74	13669.73	115052.87	128722.60	1.06	0.52	1.58	194081.92
2008-09											
First	Oct-08	17081.61	88531.77	105613.38	12482.22	119190.07	131672.29	0.11	0.06	0.17	237285.84
Second	Dec-08	26265.00	16215.10	42480.10	4000.00	9124.69	13124.69	0.04	0.00	0.04	55604.83
Third	Feb-09	542.57	10222.91	10765.48	4526.86	456425.03	460951.89	0.70	0.46	1.16	471718.53
Total		43889.18	114969.78	158858.96	21009.08	584739.79	605748.87	0.85	0.52	1.37	764609.20
2009-10											
First	Dec-09	5657.57	20067.65	25725.22	2277.74	2938.93	5216.67	0.35	0.38	0.73	30942.62
Second	Mar-10	156.73	31623.27	31780.00	27993.24	1383758.72	1411751.96	0.63	0.34	0.97	1443532.93
Total		5814.30	51690.92	57505.22	30270.98	1386697.65	1416968.63	0.98	0.72	1.70	1474475.55
2010-11											
First	Aug-10	25012.91	29575.72	54588.63	967.90	12737.19	13705.09	0.39	0.19	0.58	68294.30
Second	Dec-10	4202.00	15610.37	19812.37	753.77	24378.78	25132.55	0.46	0.14	0.60	44945.52
Third	Mar-11	6291.25	62627.36	68918.61	2930.83	7740.07	10670.90	0.58	0.40	0.98	79590.49
Total		35506.16	107813.45	143319.61	4652.50	44856.04	49508.54	1.43	0.73	2.16	192830.31

Financial Year	Month of presentation	Cash outgo			Technical			Token			Total
		Plan	Non-Plan	Total	Plan	Non-Plan	Total	Plan	Non-Plan	Total	
2011-12											
First	Aug-11	7325.33	1690.73	9016.06	9270.82	16437.02	25707.84	0.38	0.22	0.60	34724.50
Second	Nov-11	2895.52	53952.94	56848.46	1767.99	4562.89	6330.88	0.57	0.33	0.90	63180.24
Third	Mar-12	441.82	42163.96	42605.78	8249.69	379372.10	387621.79	0.64	0.43	1.07	430228.64
Total		10662.67	97807.63	108470.30	19288.50	400372.01	419660.51	1.59	0.98	2.57	528133.38
2012-13											
First	Dec-12	2079.46	28724.67	30804.13	195.42	1119.01	1314.43	0.54	0.40	0.94	32119.50
Second	Mar-13	459.56	40507.71	40967.27	113.58	8633.71	8747.29	0.58	0.40	0.98	49715.54
Total		2539.02	69232.38	71771.40	309.00	9752.72	10061.72	1.12	0.80	1.92	81835.04
2013-14											
First	Aug-13	100.14	27.00	127.14	4849.46	2522.79	7372.25	0.01	0.02	0.03	7499.42
Total		100.14	27.00	127.14	4849.46	2522.79	7372.25	0.01	0.02	0.03	7499.42

APPENDIX I

MINUTES OF THE EIGHTH SITTING OF PUBLIC ACCOUNTS COMMITTEE (2013-14) HELD ON 26TH JULY, 2013

The Public Accounts Committee sat on Friday, the 26th July, 2013 from 1500 hrs. to 1600 hrs. onwards in Room No 'G-074', Parliament Library Building, New Delhi.

PRESENT

Dr. Murli Manohar Joshi — *Chairman*

MEMBERS

Lok Sabha

2. Dr. Baliram
3. Shri Ramen Deka
4. Shri Jayaprakash Hegde
5. Shri Bhartruhari Mahtab
6. Shri Abhijit Mukherjee
7. Shri Sanjay Brijkishorlal Nirupam
8. Shri Ashok Tanwar

Rajya Sabha

9. Shri Satish Chandra Misra
10. Shri N.K. Singh
11. Smt. Ambika Soni

SECRETARIAT

1. Shri Devender Singh — *Joint Secretary*
2. Shri Abhijit Kumar — *Director*
3. Smt. A. Jyothirmayi — *Deputy Secretary*
4. Smt. Anju Kukreja — *Under Secretary*

Representatives of the Office of the Comptroller and Auditor General of India

1.	Shri Shashi Kant Sharma	—	CAG of India
2.	Shri A.K. Singh	—	Dy. CAG
3.	Shri C. Gopinathan	—	Director General of Audit (Central Revenues)
4.	Shri Jayant Sinha	—	Principal Director (RC)
5.	Shri Purushottam Tiwary	—	Principal Director (PAC)

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Representatives of the Ministry of Law and Justice
(Department of Legal Affairs)

1.	Dr. B. A. Agrawal	—	Law Secretary
2.	Shri Dinesh Bhardwaj	—	Joint Secretary and Legal Adviser
3.	Dr. R.J.R. Kasibhatla	—	Additional Legal Adviser

2. At the outset, the Chairman welcomed the Members, Comptroller and Auditor General of India and other Audit Officers to the sitting of the Committee. The Chairman, then apprised the Members that the sitting was convened to take oral evidence of the representatives of the Ministry of Law and Justice (Department of Legal Affairs) in connection with the mutually contradictory opinions tendered by Ld. Attorney General for India on Para No. 4.1.1 of the C&AG Report No. 1 for the year 2011-12, Union Government, Accounts of the Union Government relating to 'Expenditure incurred on interest on refunds of taxes'.

3. Thereafter, the Members desired to know the reasons which had prompted the Ministry of Finance (Department of Revenue) to seek further opinion of the Ld. Attorney General after the Report of Public Accounts Committee on the subject was presented to the Parliament, and it was then decided that the Revenue Secretary was to be called before the Committee. The Chairman also apprised the Members that during the sitting of the Public Accounts Committee (2012-13) held on 30th August, 2012 for examination of the representatives of the Ministry of Finance (Department of Revenue) on the subject the Committee had sought to know if, the Department of Revenue had consulted the Ministry of Law and Justice on this issue. The Chairperson, CBDT had then replied in the negative. Besides, Secretary Revenue had also submitted before the Committee that:

> "…. …. …. ….Obviously it has not been the intention of the Department anyway to bypass the Constitution. The Constitution is supreme. There is no doubt about it and no amount of administrative difficulty can be cited in order to say that we will not follow the Constitution. …. …. ….. We would certainly look into this how the constitutional provisions are satisfied and yet, we find a way in which we satisfy the CAG. This hon. Committee should be satisfied. I think that is what we have to do so that we do not have the difficulties which we encountered in 2001 when we made it. If we cannot do anything, it leads to chaos in refunds. At the same time, you have rightly said that constitutional provisions have to be followed. We will consult and we will come back to the Committee with what is constitutionally correct, legally correct and also administratively feasible."

4. To the query of the Members as to whether the Committee in their Report on the subject had recommended to the Ministry of Finance (Department of Revenue) to obtain the opinion of Ld. Attorney General, the Chairman apprised the Members that

the Secretariat had sought the considered opinion of the Ld. Attorney General which is contained in the following recommendation of the Committee (66th Report/ 15th Lok Sabha):

> "On a reference being made by the Committee, the Ministry of Law and Justice furnished the opinion of the Ld. Attorney General. According to Ld. Attorney General the objection taken by the Comptroller and Auditor General with regard to the practice followed in relation to payment of interest on refunds of excess tax is completely justified. The proper procedure would be to clearly indicate the tax collection as a receipt and estimate the interest payable on refund of taxes as an expenditure. The Ld. Attorney General concurred with the view of the C&AG that the reason given with regard to administrative difficulties is not tenable. Further, the Revenue Secretary conceded before the Committee that the constitutional provisions have to be followed and assured to report back to the Committee to devise a procedure which is constitutionally correct and administratively feasible. The Committee would like to be apprised of the corrective action taken by the Government to ensure that a suitable administrative procedure is devised in accordance with the Constitution and the Financial Rules within three months of the presentation of this Report."

5. After some deliberations, the representatives of the Ministry of Law and Justice (Department of Legal Affairs) were called in. Before commencing the examination, the Chairman made it clear that the deliberations of the Committee were confidential and were not to be divulged to any outsider particularly to the press. The Committee then proceeded with the examination of the subject.

6. The Law Secretary, after introducing his colleagues to the Committee submitted that the Attorney General had tendered his opinions on 25.09.2012 and 06.05.2013 on the same subject. He added that the earlier opinion was tendered by the Attorney General on receipt of a request from the Lok Sabha Secretariat whereas the second opinion was given on a request from the Department of Revenue, Ministry of Finance. He also submitted that the O&M instructions of the Department of Legal Affairs permitted reconsideration and revision of the opinion of the Department rendered earlier but under certain conditions like a change in the law or a decision of the Supreme Court or High Court which were not previously available or also in the light of fresh facts or any new aspect of the matter that is brought to notice for the first time. The Members then desired to know the basis on which the revised opinion of Ld. Attorney General was sought particularly in the context of the OM cited. The Committee also wanted to know that when, Article 114(3) of the Constitution clearly stipulated that no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by Law, why this aspect was not taken into consideration while presenting the case before Ld. Attorney General for the second time. The representative could not give specific answer.

7. The Committee found that in the earlier statement of case presented to Ld. Attorney General, the Ministry of Law and Justice had dwelt upon the Articles 112 to 119, 114(3), 266, 267, 283 and 284 of the Constitution of India and in its revised note to Ld. Attorney General, the Ministry had only summarized the case of the Department

of Revenue and posted the same for the opinion of Ld. Attorney General without making any specific recommendation of their own. Therefore, the Committee sought to know as to whether the Rules/sub-Rules were superior to overrule the constitutional provisions.The Secretary, Department of Legal Affairs conceded that the Constitution was supreme.

8. The Chairman quoted the following statement of Dr. B.R. Ambedkar made in the Constituent Assembly debates:

> "The only thing is that when there is a supplementary estimate the sanction is obtained without excess expenditure being incurred. In the case of excess grant, the excess expenditure has already been incurred and the executive comes before Parliament for sanctioning what has already been spent. Therefore, I think there is no difficulty; not only there is no difficulty but there is necessity, unless you go the length of providing that when any executive officer spends any money beyond what is sanctioned by the Appropriation Act, he shall be deemed to be a criminal and prosecuted, you shall have to adopt this procedure of excess grant."

9. The Law Secretary submitted that the matter was referred by them to Ld. Attorney General **'because the Ministry of Finance, at the level of the Finance Minister wanted reconsideration'** of the opinion tendered earlier.

10. The Chairman then thanked the representatives of the Ministry of Law and Justice (Department of Legal Affairs) and said that if necessary, the Committee may call them again. The Chairman also thanked the Comptroller and Auditor General of India and other Audit officers for providing valuable assistance to the Committee in the examination of the subject.

The witnesses, then, withdrew.

A copy of the verbatim proceedings of the sitting was kept on record.

The Committee, then, adjourned.

APPENDIX II

MINUTES OF THE NINTH SITTING OF PUBLIC ACCOUNTS COMMITTEE
(2013-14) HELD ON 2ND SEPTEMBER, 2013

The Public Accounts Committee sat on Monday, the 2nd September, 2013 from 1600 hrs. to 1830 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Dr. Murli Manohar Joshi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Anandrao Adsul
3. Shri Jayaprakash Hegde
4. Dr. Sanjay Jaiswal
5. Shri Bhartruhari Mahtab
6. Shri Abhijit Mukherjee
7. Shri Sanjay Brijkishorlal Nirupam
8. Shri Ashok Tanwar

Rajya Sabha

9. Shri Prasanta Chatterjee

SECRETARIAT

1. Shri Devender Singh	—	*Joint Secretary*
2. Shri Abhijit Kumar	—	*Director*
3. Smt. A. Jyothirmayi	—	*Deputy Secretary*
4. Smt. Anju Kukreja	—	*Under Secretary*

Representatives of the Office of the Comptroller and Auditor General of India

1.	Shri A.K. Singh	—	Dy. CAG
2.	Shri C. Gopinathan	—	Director General of Audit (Central Revenues)
3.	Shri Jayant Sinha	—	Principal Director (RC)
4.	Shri Purushottam Tiwary	—	Principal Director (PAC)

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Representatives who attended the Sitting

(I) Ministry of Finance (Department of Revenue)

1.	Shri Sumit Bose	—	Revenue Secretary
2.	Shri R.K. Tiwari	—	Member (R)
3.	Ms. Anita Kapur	—	Member (A&J)
4.	Shri Sanjay Kumar	—	CIT (IT&CT)
5.	Shri D.S. Chaudhry	—	CIT (A&J)

(II) Shri Goolam E. Vahanvati — Attorney General for India

(A) *Evidence of the representatives of Ministry of Finance (Department of Revenue)*

2. At the outset, the Chairman welcomed the Members and the representatives of the Office of the C&AG of India to the sitting of the Committee. The Chairman, then apprised the Members that the Sitting was convened to take oral evidence of the representatives of the Ministry of Finance (Department of Revenue) and the Ld. Attorney General for India in connection with the mutually contradictory opinions tendered by Ld. Attorney General for India on Para No. 4.1.1 of the C&AG Report No. 1 for the year 2011-12, Union Government, Accounts of the Union Government relating to 'Expenditure incurred on interest on refunds of taxes'.

3. Thereafter, the Chairman apprised the Members that the Revenue Secretary in his earlier deposition before the Committee (dated 30.08.2012) had admitted that:—

> "You have kindly shown us the way as the Committee how to take this matter forward. Obviously, it has not been the intention of the Department anyway to bypass the Constitution. The Constitution is supreme. There is no doubt about it and no amount of administrative difficulty can be cited in order to say that we will not follow the Constitution. That has not been the idea. It will never be the idea of the Ministry to do. We would certainly look into this how the Constitutional provisions are satisfied and yet we find a way in which we satisfy the C&AG. This hon. Committee should be satisfied. I think, that is what we have to do so that we do not have the difficulties which we encountered in 2001 when we made it. If we cannot do anything, it leads to chaos and refunds. At the same time, you have rightly said that Constitutional provisions have to be followed. We will consult and we will come back to the Committee with what is constitutionally correct, legally correct and also administratively feasible."

4. The Chairman recalled that the representatives of the Ministry of Finance had unambiguously and categorically acknowledged the supremacy of the Constitution and the financial control of Parliament over the executive but the Ministry still sought the opinion of the Ld. Attorney General for India and that too after the Committee had presented the Report to the Parliament which contained the considered advice of the Ld. Attorney General sought by the Lok Sabha Secretariat. He also stated that the Committee would first examine the representatives of the Ministry of Finance (Department of Revenue) in order to know the reasons that prompted the Ministry to

seek another opinion of the Ld. Attorney General. Further, he added that the Ld. Attorney General would be examined with regard to the reasons that led to revision of his earlier opinion tendered to the Committee.

5. After some deliberations, the representatives of the Ministry of Finance (Department of Revenue) were called in. Before commencing the examination, the Chairman made it clear that the deliberations of the Committee were confidential and were not to be divulged to any outsider particularly to the Press. The Committee then proceeded with the examination of the subject.

6. After introducing his colleagues to the Committee, the Revenue Secretary while citing the reasons for seeking revised opinion of Ld. Attorney General stated that the contention of the Department of Revenue had not been considered by the Ld. Attorney General while rendering his earlier opinion dated 25.09.2012 and therefore, a note, containing an analysis of the relevant provisions of the Income Tax Act/legal provisions and the administrative impediments that would arise if the appropriation for interest payment on refunds form part of the Annual Budget, was prepared and sent to the Ministry of Law and Justice with the request to refer the matter to the Ld. Attorney General to review his earlier opinion.

7. When the Committee sought to know whether the provisions of Income Tax Act, Rules/sub-Rules can overrule the Constitutional provisions, the Secretary Revenue conceded that the Constitutional provisions were supreme.

8. The Chairman also pointed out that in an earlier submission to the Committee, the Ministry had stated that the amount of excess tax was retained in the Consolidated Fund of India and not by the Income Tax Department. Therefore, the interest outgo on such refunds could neither be an expenditure of the Income Tax Department nor a part of the cost of collection. He then drew the attention of the representative of Ministry of Finance to the diametrically opposite stand taken by the Ministry stating in the Action Taken Notes on the recommendations contained in 66th Report of PAC (15th Lok Sabha), that the refunds were netted off from the receipts and did not form part of the Consolidated Fund of India.

9. Furthermore, the Chairman also desired to know why the interest payments on refunds of taxes should not form part of the Budget Estimates and passed by Parliament when all the other interest payments such as Small Savings, Deposit Certificates, Operational expenses, Pension Funds, Provident Funds, Reserve Funds, etc. were categorised as revenue expenditure, formed part of the Annual Budget and appropriated with the prior approval of Parliament.

10. Thereafter, the Members sought clarifications on the Subject from the representatives of the Ministry of Finance (Department of Revenue). Reasons were also sought for not providing interest on refunds as an item of expenditure when payment of interest was treated as an item of expenditure under Delegation of Financial Power Rules 1978. Then the Committee asked the Ministry to outline the administrative constraints for not complying with the mandatory Constitutional provisions and the action taken by the Ministry to comply with the budgetary process enshrined in the Constitution. Members specifically asked from which fund the Department was paying interest on refunds. The representative of the Department could not reply to the

satisfaction of the Committee.

11. The Chairman then thanked the representatives of the Ministry of Finance (Department of Revenue) for their deposition before the Committee.

The witnesses, then, withdrew.

The Committee then adjourned for tea break.

*** *** ***

The Committee reassembled after the tea break.

(B) *Evidence of the Ld. Attorney General*

1. On reassembling, the Chairman welcomed the Ld. Attorney General for India to the sitting of the Committee and made it clear that the proceedings of the Committee were confidential. Then, the Ld. Attorney General was asked to furnish reasons for the mutually contradictory opinions tendered by him on Para 4.1.1 of the C&AG Report No. 1 for the year 2011-12 relating to the 'Expenditure incurred on interest on refunds of taxes'.

2. Explaining the reasons for reconsideration of his earlier opinion, the Ld. Attorney General deposed that:—

> "I had extensive discussions with the officers of the Ministry of Finance and what weighed with me, Sir, was what they were saying that the appropriation would ultimately be reported to Parliament. But according to them, it was impossible for them to calculate the interest payable.
>
> Sir, they also referred to Articles 265 and 266 of the Constitution; they referred to statutory provisions which provide for refund; they referred to Rule 270(4) of the General Financial Rule; and they very clearly said that it is not possible for them to calculate the interest."

3. (i) He further added that:

> "I am very clear in my mind that ultimately nothing can be done without the sanction of Parliament and that everything has to be placed before Parliament. For me, it is a matter of faith that having regard to the historical development of Parliamentary powers, all spending has to be authorised by Parliament, all receipts have to be placed before Parliament and the only reason why I reconsidered it was because I felt that if ultimately the facts are going to be placed before Parliament, even the Income Tax Act has been made by Parliament, statutory refunds have been provided for in the Income Tax Act and interest on refunds is also provided for, I did not feel that there was anything which could be done without reference to Parliament. I would only say this."

(ii) The Ld. Attorney General further submitted that an opinion ultimately is an opinion and it is for the Committee to decide what the correct procedure is.

4. (i) On being asked as to whether any difficulty by the bureaucracy can surpass or circumvent the provisions of the Constitution, the answer of Ld. Attorney General was straight 'no'.

(ii) He further added:

> "Now, if this can be got over and if it is possible for them to have an estimate of the interest which would require to be paid on some actuarial basis or any other basis instead of a mathematical procedure, I don't see any difficulty why they shouldn't do it."

5. Asked if the administrative problem of estimating interest on refund was insurmountable the Government could consider amendment to the Constitution, the Ld. Attorney General was categorical that he would not recommend any amendment to the Constitution in this behalf.

6. The Members then posed several questions in this regard, to which the Ld. Attorney General replied comprehensively by enumerating the various Articles of the Constitution such as Article 112(1), 114(3), 115, 117, 118(2) and 119. At the end he admitted that:

> "I feel that Article 114 is paramount and has to be complied with and nothing should be done which in any way dilutes the authority and supremacy of Parliament."

7. The Chairman, then thanked the Attorney General for his deposition before the Committee. The Chairman also thanked the representatives of the office of the C&AG of India for providing valuable assistance to the Committee in the examination of the Subject.

The witness, then, withdrew.

A copy of the verbatim proceedings of the Sitting was kept on record.

The Committee, then, adjourned.

APPENDIX III

MINUTES OF THE SIXTEENTH SITTING OF PUBLIC ACCOUNTS COMMITTEE (2013-14) HELD ON 30TH JANUARY, 2014

The Public Accounts Committee sat on Thursday, the 30th January, 2014 from 1130 hrs. to 1400 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Dr. Murli Manohar Joshi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Anandrao Adsul
3. Dr. Baliram
4. Shri Sandeep Dikshit
5. Dr. M. Thambi Durai
6. Shri Bhartruhari Mahtab

Rajya Sabha

7. Shri Prasanta Chatterjee
8. Shri Prakash Javadekar
9. Dr. V. Maitreyan
10. Shri N.K. Singh
11. Smt. Ambika Soni

SECRETARIAT

1. Shri Devender Singh	—	*Joint Secretary*
2. Shri Jaya Kumar T.	—	*Additional Director*
3. Shri D.R. Mohanty	—	*Deputy Secretary*
4. Smt. A. Jyothirmayi	—	*Deputy Secretary*
5. Ms. Miranda Ingudam	—	*Under Secretary*
6. Shri A.K. Yadav	—	*Under Secretary*
7. Smt. Anju Kukreja	—	*Under Secretary*

Representatives of the Office of the Comptroller and Auditor General of India

1.	Shri A.K. Singh	—	Dy. C&AG
2.	Smt. Usha Sankar	—	Dy. C&AG
3.	Shri Gautam Guha	—	Director General of Audit
4.	Smt. Ila Singh	—	Director General of Audit

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5.	Shri C. Gopinathan	—	Director General of Audit
6.	Shri Jayant Sinha	—	Pr. Director of Audit
7.	Shri Purushottam Tiwari	—	Pr. Director of Audit
8.	Shri A.M. Bajaj	—	Pr. Director of Audit

2. At the outset, the Chairman welcomed the Members and the representatives of the Office of C&AG to the sitting of the Committee. The Chairman, then, apprised that the meeting was convened to consider and adopt nine Draft Reports (five Original and four Action Taken Reports) of the Committee. Thereafter, the Committee took up the following draft Reports one by one for consideration:

(i) **** **** **** ****;

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

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

(iv) **** **** **** ****;

(v) Draft Report on **'Contravention of Constitutional Provisions by Ministry of Finance: Expenditure incurred on Interest on Refunds without Parliamentary Approval';**

(vi) **** **** **** ****;

(vii) **** **** **** ****;

(viii) **** **** **** ****; and

(ix) **** **** **** ****.

3. After detailed deliberations, the draft Reports at Sl. Nos. (i), (ii) and (iii) were adopted with some modifications/amendments that are given at Annexure and the rest were adopted without any changes. The Committee also authorized the Chairman to finalise these Reports, in light of their suggestions and the factual verifications received from the Audit and present the same to the House on a date convenient to him.

4. The Chairman thanked the Members for their valuable suggestions on the consideration of the Draft Reports.

The Committee, then, adjourned.

**** Matter does not pertain to this Report.

GMGIPMRND—4378LS—19-06-2014.