



# Standing Committee Report Summary

## Contravention of Constitutional Provisions by Ministry of Finance

The Public Accounts Committee (Chairperson: Mr. Murlu Manohar Joshi) submitted its 96<sup>th</sup> Report on the Contravention of Constitutional Provisions by Ministry of Finance: Expenditure Incurred on Interest on Refunds without Parliamentary Approval on February 6, 2014.

### Background:

- **Interest on refund:** Under the Income Tax Act, 1961, if the amount of tax *paid* by a person is higher than the tax *payable* by him, then the person is entitled to a tax refund. This tax refund will also bear an interest which is paid to the person along with the refund. Between 2006-07 and 2010-11, Rs 37,365 crore was paid as interest on refund.
- **Current accounting classification:** Currently, the expenditure incurred on interest on refund of taxes is deducted from the gross tax collection by the Ministry of Finance. It is not shown as a separate expenditure item.
- **Earlier report and recommendation:** In January 2013, in its 66<sup>th</sup> report on this subject, the Committee had declared this current accounting practice in contravention of Constitutional provisions. Any expenditure charged on the Consolidated Fund of India needs an Appropriation Bill which has to be approved by Parliament. It had recommended that the Ministry of Finance show the interest on refunds as expenditure and follow Constitutional provisions.
- **Follow-up report:** The Learned Attorney General (Ld. AG), in his deposition for the 66<sup>th</sup> report, had opined that Parliamentary approval is required for the interest paid on refund. After the submission of the 66<sup>th</sup> report, on a reference made by the Ministry of Finance, the Ld. AG gave a revised opinion. This revised opinion was contradictory to the earlier opinion he had tendered to the Committee. Thus, the Committee decided to review this entire matter.

### Observations and recommendations:

- **Re-iteration of earlier recommendation:** The Committee re-iterated its earlier recommendation that the Ministry of Finance has to classify the interest paid on tax refund as expenditure in the budget and has to take approval for the same from Parliament. It asked to be apprised on the action taken by the Ministry of Finance within six months of submission of this report.
- **Review of Attorney General's statement:** The Committee noted that the Ministry of Finance had moved the Ministry of Law and Justice for a review of the opinion of the Ld. AG. According to the Committee, this was done by the Ministry of Finance to strengthen their case for continuing with this irregular practice.
- **Final statement of Attorney General:** During his statement for the present report, in response to the Committee's questions, the Ld. AG conceded to the supremacy of the Parliament over authorisation of expenditures.
- **Constitutional provisions:** The Committee said that provisions of refund and interest payment in the Income Tax Act, upon which the Ministry of Finance relied to make its claims, cannot be the basis for disregarding the Constitutional provisions.
- **Interest payment:** Interest payment obligations form part of the revenue expenditure in the annual budget, and constitute 5-7% of total expenditure incurred by the central government. The Committee said that no exception will be made for interest on refund of taxes, and it should be shown as an expenditure item.
- **Revival of old practice:** The Committee noted that the ministry had classified interest on refunds as an expenditure item in the budget of 2001-02, but had discontinued this practice. The Committee suggested that this practice be revived.

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