

CONDONATION OF DELAY IN FILING REFUND CLAIM AND CLAIM OF CARRY FORWARD OF LOSSES



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Some times it may happen that due to un-avoidance circumstances we could not file income tax return within the time allowed for belated income tax return under section 139(4) and in such case system does not allow filing of income tax return of that period after the end of relevant assessment year. Suppose a person due to any reason could not file his income tax return of previous year 2019-20 on or before 31st March, 2021, then a big question arise whether the income tax return can be filed after 31st March, 2021? Can a person claim his refund of income tax after 31st March of relevant assessment year? Can a person having loss of income can file his income tax return after the expiry of the relevant assessment year to carry forward of losses and set-off?

Answer is yes subject to the permission by the appropriate competent authority of Income Tax. Any person who did not furnished his income tax return due to circumstances beyond his control, can file income tax return under the provision of section 119(2)(b). The Central Board of Direct Taxes as conferred by the section 119(1) may, if it consider or expedient so to do for avoiding genuine hardship in any case by general or special order, authorise the Income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Income Tax Act, 1961 after the expiry of the period specified in Income tax Act for furnishing of return and deal with the same on merits in accordance with law. It is clear from the wording of sub clause (b) of sub section 2 of section 119 that an application under this section cannot be accepted in case where no claim for refund of income tax or carry forward of loss.

The Central Board of Direct Taxes, in supersession of all earlier instruction/circulars/guidelines, issued Circular No. 9/2015, Dated:- 09-06-2015 to deal with the application for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof under section 119(2)(b). The present circular is being issued containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters.

1. A monetary limit is prescribed and power of acceptance or rejection of application under the above said section is vested accordingly to the higher rank income tax authorities.
 - i. In case where the claim of refund or carry forward of loss of any one assessment year is less than Rs. 10 lakhs, an application has to submit before the Principal Commissioner or Commissioner of Income Tax.
 - ii. In case where such claim of any one assessment year is between Rs. 10 lakhs to Rs. 50 lakhs, an application has to submit before the Principal Chief Commissioner or Chief Commissioner of Income Tax.
 - iii. In case where such claim of any one assessment year is more than Rs. 50 lakhs, an application has to submit before the Central Board of Direct Taxes.
2. A condonation application to claim for income tax refund/loss for any assessment year cannot be made after the expiry of Six years from the end of relevant assessment year.
3. This limit of Six years is applicable to all income tax authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board.
4. As per the above circular, the above authorities should dispose off a condonation application within Six months from the end of the month in which the application is received by the competent authority, as far as possible. This means there is no time bar; it may be disposed off even after the expiry of six months.
5. In case where refund claim has arisen consequent of a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of Six years. In this case a condonation application must be filed within six month from the end of the month

in which the Court order was issued or the end of financial year whichever is later.

6. The competent income tax authority who are empowered of acceptance/rejection of the application in case of such claims will be subject to the following conditions:
 - At the time of considering the case under section 119(2)(b), it shall be ensured that the income/loss declared and /or refund claimed is correct and genuine and also that the case is of genuine hardship on merits
 - The Principal Commissioner/Commissioner dealing with the case shall direct to the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the IT Act to ascertain the correctness of the claim.
7. A belated application for supplementary claim of refund i.e., claim of additional amount of refund after completion of assessment for the same year, can be admitted for condonation provided other conditions as referred above are fulfilled.
8. The acceptance or rejection of supplementary claim shall be subject to the following further conditions:
 - The income of the assessee is not assessable in the hands of any other person under any of the provisions of the IT Act.
 - No interest will be admissible on belated claim of refunds.
 - The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the IT Act.
8. In the case of an applicant who has made investment in 8% Savings Bonds, 2003 issued by the Government of India opting for scheme of cumulative interest on maturity but has accounted interest on mercantile basis and the intermediary banks at the time of maturity has deducted tax at source on the entire amount of interest paid without appropriating the accrued interest/TDS, over various financial years involved, the time limit of Six years for making such refund claims will not be applicable.
9. The Board reserves the power to examine any grievance arising out of an order passed or not passed by the competent authorities and issued suitable directions to them for proper implementation of this circular. However, no review of or appeal against the orders of such authorities would be entertained by the Board.