

---

**[2025] 180 taxmann.com 473 (Article)**

---

**[2025] 180 taxmann.com 473 (Article)<sup>©</sup>**

Date of Publishing: November 17, 2025

**Interest on Foreign Tax Credit (FTC) Refunds: A Discriminatory Gap in Indian Tax Law****GOPAL NATHANI**

FCA

**FTC in Canon Case**

Cross-border income flows are a defining feature of the modern economy. To mitigate double taxation, India provides relief through section 90 (treaty-based FTC) and section 91 (unilateral relief). When FTC exceeds the domestic tax liability, the excess is refundable to the taxpayer. Before the Delhi Bench of the Income Tax Appellate Tribunal in *Canon India (P) Ltd. v. Dy. CIT* [2025] 180 taxmann.com 306 (Delhi - Trib.) a following ground was raised by the assessee by way of the cross objection (CO):

"That on the facts and in the circumstances of the case and in law, the Respondent should be allowed interest u/s 244A of the Act on refund and while computing such interest, the foreign tax credit should be kept at par with the prepaid taxes and the Respondent is eligible for interest from first day of assessment year till date of grant of refund."

In this case the assessee claimed FTC amounting to Rs.4,47,81,650/- for taxes withheld abroad, resulting in a refund under section 90. The Assessing Officer admitted the refund but declined to grant interest under section 244A. In dismissing the cross objection of the assessee, the Tribunal held that while refund of Foreign Tax Credit (FTC) under section 90 is admissible, no interest under section 244A is payable because such tax is not "paid into the Indian Treasury." This adverse decision trigger a deeper debate on discrimination between domestic and foreign taxes and the role of India's FTC regime in a globalized fiscal order.

**Section 244A and the Purpose of Refund Interest**

Section 244A mandates interest on refunds due to excess tax paid or collected and essentially speaking compensates for the time value of money lost, not the procedural origin of payment. The provision is compensatory and not penal in character. It was enacted following the Supreme Court's jurisprudence that the Government should not unjustly enrich itself by retaining taxpayer money without compensation.

The Tribunal's restrictive interpretation thus raises two fundamental questions:

1. Does the phrase "tax paid" in section necessarily require payment into the Indian treasury?
2. Is the legislative purpose frustrated when FTC refunds—even though not paid domestically—represent taxpayer funds withheld involuntarily?

A literal reading, as adopted by the Tribunal in this case, may not align with the wider statutory mandate of fairness and neutrality.

### **Discriminatory Effect: Domestic vs. Foreign Tax Refunds**

This ruling creates two classes of taxpayers, violating neutrality. This differential treatment is arbitrary because taxpayers have no control over foreign withholding regimes. The Indian tax system thus discriminates based solely on geography of tax collection, not on the economic substance of the over-taxation.

### **Economic Reality in a Globalized Environment**

Modern multinational operations involve multiple withholding points, differing tax cycles and varying administrative timelines. Taxpayers cannot control timing, quantum or procedures of foreign withholding. Denying interest effectively penalizes them for circumstances beyond their control, a result incompatible with the policy vision of India's cross-border tax regime.

### **Need for Legislative Reforms**

To address this systemic inequity, the following reforms may be urgently needed:

#### **a. Amendment to Section 244A**

A new clause may be introduced desiring that interest shall be payable on refunds arising on account of foreign tax credit allowed under section 90, 90A or 91.

#### **b. Treaty Amendment**

Through MLI or bilateral negotiations, India may include a standard article granting compensatory interest on delayed FTC refunds.

#### **c. CBDT Circular**

CBDT may issue an administrative circular recognizing FTC refunds as equivalent to refunds arising from taxes directly paid in India.

### **Conclusion**

FTC refunds often involve significant sums; denial of interest imposes a direct working capital cost. The location where taxes are withheld bears no rational connection to the objective of compensating taxpayers for undue retention of funds. In a globalized economy, tax paid abroad is no less real than tax paid domestically; both represent involuntary depletion of taxpayer resources. The Canon India ruling by Delhi ITAT is inconsistent with economic realities and exposes a structural gap and anomaly in the Indian tax framework. While FTC refunds acknowledge taxpayers' entitlement to relief from double taxation, denial of interest under section 244A results in economic discrimination, treaty inconsistency and constitutional imbalance. Such inconsistency may adversely affect India's reputation as a reliable treaty partner. India's restrictive approach thus places its taxpayers at a competitive disadvantage globally. Rectifying this anomaly will ensure that taxpayers are not disadvantaged merely due to the geographical location of tax collection—a factor entirely outside their control.

■ ■