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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON: 28.08.2012

\+ WP (C) 876/2012

G.L. JAIN ..... Petitioner
Through:

versus

COMMISSIONER OF INCOME TAX-XI
& ORS. ..... Respondents
Through: Mr. Deepak Chopra, Sr. Standing Counsel for Income Tax Deptt. with Mr. Harpreet Singh Ajmani, Advocate.
Mr. M.P. Singh, Advocate for UOI.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% ADMIT.

2. With consent of counsel for the parties, matter was heard finally for disposal.

3. The petitioner seeks a writ or direction to the respondents to allow interest to the tune of Rs.22,85,842/- for the alleged inordinate delay in releasing the amount of Rs.92,82,700/- under Section 132-B (3) of the Income Tax Act.

4. The brief facts of the case are that a search and seizure action was conducted on 16.02.2005, and cash amount of Rs.96,14,700/- was found out of which Rs.92,82,700/- was seized under a memo. This was subsequently remitted to the CIT for the purpose of depositing it in to its deposit account. The petitioner represented for release of the amount on 28.03.2005. Subsequently, upon receipt of the notice under Section-153A, the writ petitioner filed a return of income tax for assessment of block years 1999-2000 to 2004-2005 on 19.09.2006. The assessment was completed on 27.12.2006 for this year resulting in NIL tax demand. Apparently, the writ petitioner kept on representing to the AO as well as CIT by various letters dated 2.1.2007, 9.1.2007, 29.1.2007, 2.12.2010 and 16.3.2011 to release the cash amount but to no avail.

5. In the meanwhile, a sum of Rs.33,72,907/- was adjusted against the demand outstanding against the petitioner's brother vide letter dated 23.02.2007. Eventually, on 9.3.2011, Rs.54,09,793/- was released to the petitioner; balance of Rs.5 Lac was released on 5.4.2011. After these events, the petitioner made a series of representation on 11.4.2011, 3.5.2011, 6.5.2011 and 1.12.2011 for grant of interest in respect of the amount which has been withheld for about 6 years.

6. It is submitted that by virtue of the provisions under Section-132B (4) read with Section 244A, the writ petitioner is entitled to interest for the entire period on the sum of Rs.92,82,700/- which was illegally withheld. Learned counsel also urged that the adjustment

made by order dated 23.2.2007 of the sum of Rs.33,72,907/- is unauthorized and could not have been done in terms of Section-132 B (1).

7. After notice was issued, learned counsel for the respondents sought instructions. In the meanwhile, on 11.5.2012, a sum of Rs.4,72,783/- was paid to the petitioner towards interest under Section-132 B (4) for a period of 16 months i.e. on expiry of 120 days from the last date of authorization for search (2.5.2005) which came to 2.9.2005 till the date of assessment i.e. 26.12.2006. The calculation and reasons in support of the interest paid by the respondents was furnished to the Court through counsel. It reads as follows: -

"XXX XXX XXX

(ii) Section 132B (4) (a)/(b) provides for granting interest at the rate of 1/2 % for every month or part of a month from date of immediately following the expiry of the period of 120 days from the date on which the last of the authorization for the search under section 132 or requisition 132A was executed to the date of completion of assessment. The interest shall be provided on the amount of money seized u/s 132, as reduced by the amount of money, if any, released under the first proviso to the clause (i) of sub section (1) of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (i) of sub section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in clause (i) of sub section (1) of section 132. The existing liability as per clause (i) of sub section 91) includes the liability determined on completion of the assessment (under section 153A and the assessment of the year relevant to previous year in which the search is initiated). The last of the authorization in this case was executed on 2.5.2005 and assessment u/s 153Awas completed on 22.12.2006. Accordingly, the assessee was

allowed interest on amount of Rs.59,09,793/- after adjusting demand of Rs.33,72,907/-. The computation of interest is as under: -

Interest claimed by the assessee

Seized amount:	*Rs.92,82,700/-*
Interest @ ½ % per month for 16 month	*Rs.7,42,616/-*

Interest allowed by the department

Seized amount	*Rs.92,82,700/-*
Less: adjusted against the demand	
u/s 132B (1) (i)	*Rs.33,72,907/-*

Balance	*Rs.59,09,793/-*
Interest on the balance amount	
@ 1/2 % per month for 16 month	*Rs.4,72,783/-*

2. Further the issue of interest claimed by the assessee u/s 244A has also been discussed in the counter affidavit submitted by this office. The claim of assessee regarding interest under section 244A (1) (a) is not maintainable because the provisions provide that interest may be granted on refund, wherein the refund is out of any tax paid or tax deducted 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. IT is also relevant to mention that the proviso in the section also provides that no interest shall be payable if the amount of refund is less than 10% of tax as determine under sub section 91) of section 143 or on regular assessment. It is also highlighted that the section is silent about the interest on money seized during search and seizure. Thus interest u/s 244A is applicable only in cases where tax is either paid or deducted/collected at source and not

in any other case. Thus, it is clear that the provision of section 244A are not applicable in the instant case."

8. Learned counsel for respondents argues that the petitioner cannot claim interest on the entire sum of Rs.92,82,700/- since on 23.2.2007 itself a sum of Rs.33,72,907/- was adjusted towards his brother's liability. It was submitted that the Income Tax Department is liable to pay interest only in terms of Section-132 B(4) which works out – after deducting the sum of Rs.33,72,907/- from the initial amount of Rs.92,82,700/- seized – to Rs.4.72 Lacs which was actually paid on 11.5.2012.

9. The petitioner had during the course of submissions made to the Court relied upon the ruling of the Division Bench of this Court in *Ajay Gupta v. CIT*, 297 ITR 125 as well as judgment of the Supreme Court in *Sandvik Asia Ltd. v. CIT & Ors.*, 280 ITR 643. Counsel for the respondents, however, argued that the ratio of neither of these decisions is applicable in the facts of this case since the Court in these cases was concerned with refund of tax amount in the course of regular assessment. In this case, however, the cash amount was seized as a result of search proceedings and the Court should adopt a different approach.

10. This Court has considered the submissions of the parties. Section-132 B (4) provides that the Central Government is obliged to pay simple interest @ ½ % for every month or part thereof – on the amount of which aggregate sum of money seized under Section-132 as reduced by the amount of money, if released, under the first proviso to

Section-132 B1 (i) and proceeds, if any, of the assets sold towards discharge of interest liability exceeds aggregate amount required to made the liability referred in that provision. Clause-(b) to sub-Section (4) enacts that interest shall be calculated from the "day immediately following the expiry of the period of 120 days from the date on which the last of the authorization for search under Section-132……. was executed to the date of completion of assessment under Section-153A". In this case, there is no dispute about the fact that the last date of authorization was 2.5.2005; consequently, 120 days period ended on 2.9.2005 i.e. the commencement of the period for purposes of calculation in terms of Section-132 B (4) (b). The terminus *quo* for this period is the date of completion of assessment; in this case it was 26.12.2006. At this stage, it would also be essential to notice that Section-132B (2) significantly states that nothing contained in sub-section (1) "*shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act*".

11. As far as the petitioner's relying upon Section-244A is concerned, that provision clearly does not come into play since it expressly alludes to amounts payable as refund of tax etc. In this case, the amount seized was in the course of search proceedings.

12. As to what should be the correct approach in the absence of an express provision enabling interest for period beyond the one stipulated in Section-132 B (4) was a subject matter of discussion in *Ajay Gupta's* case. The Court in that decision held as follows: -

"7. XXX XXX XXX

it is Section 132B(4)(b) that is at the fulcrum of the conundrum. It clarifies that “interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment under section 153A or under Chapter XIV-B”. The period of 120 days (90 days upto 30-9-1984) was previously stipulated in Section 132(5) of the IT Act until its omission by the Finance Act 2002 with effect from 1.6.2002. Section 132(5) also prescribed that the remaining portion of the assets must be 'forthwith released' to the person from whose custody they were seized after satisfaction of the tax liability existing against such person. At that time, i.e. prior to the amendments brought about by the Finance Act 2002, Section 132B(4)(b) envisaged payment of simple interest at the rate of 15 per cent per annum on the retained money computed “from the date immediately following the expiry of six months from the Order under sub- section (5) of Section 132.” It is also worth emphasizing that seized assets for which a valid explanation has been furnished and which therefore do not partake of the nature of undisclosed income or assets cannot be retained even if there are outstanding tax-dues.

8. Since the Search was conducted on 2.7.2002, the Petitioner has claimed interest commencing from the expiry of a period of 120 days thereof, i.e., 1.11.2002. It is noteworthy that the relevant provisions, i.e. Section 132B (4) make no reference to Section 244A on which reliance has been placed by learned counsel for the Respondent in the course of his final arguments. We must take note of the fact that the Department has tendered interest of the sum of Rs.2,09,753/- calculated for the period 1.11.2002 to 30.7.2004, i.e. the date of the Assessment Order for the Block Period starting from 1.4.1996 to 1.7.2002. However, it has failed to pay interest from 1.8.2004 to 27.9.2004, for no justifiable reasons. Predicated on the said Assessment Order dated 30.7.2004, after deducting the income-tax and penalty from the seized sum of Rs. 33 lakhs, there was no further justification not to release the balance sum of Rs.17,33,529/- forthwith. In the event, this sum was actually released after some delay under cover of the Department's letter dated 27.9.2004. As has been noted above, interest at the rate of 0.66 per cent per month was tendered for the period 1-11-

2002 upto 31-08-2003. It appears to us that this may have been for the reason that by virtue of the Taxation Laws (Amendment) Ordinance, 2003, subsequently cemented by the Taxation Laws (Amendment) Act, 2003, the rate of interest stood reduced to 0.5 per cent per month with effect from 8-9-2003. Accordingly, interest at the higher rate should have been calculated upto 8-9-2003. However, since this point had not been urged by the Petitioner, we leave the matter to rest.

9. In our opinion the purpose of stipulating the period of 120 days cannot be over-emphasised. What the statute expects is that where a Seizure has taken place consequent upon a Search, the decision declining to release or return the amount to the Assessee must be taken with extreme expedition. This is evidently how the Department understood the provisions of the IT Act since it has itself computed interest commencing from the expiry of the said period of 120 days, that is, 1.11.2002. Perhaps it would have been logical for Parliament to clarify that if a decision to hold or withhold monies/assets discovered during a Search is not taken with the prescribed period of 120 days, interest would start to run from the date of the Seizure itself. Otherwise, granting a blanket moratorium for the period of 120 days loses logicality. This question has not been raised on behalf of the Assessee and therefore we need not enter into an exercise of jural engineering to impart what, prima facie, appears to be a proper interpretation of the Section.

10. Section 132B(4)(a) imposes on the Central Government the liability to pay simple interest at a rate that has been varied from time to time, on the amounts which have been duly accounted for, together with the surplus amount for which no valid explanation is forthcoming after deduction or reduction of outstanding tax dues. Thereafter, Section 132 B(4)(b) specifies that interest under “Chapter C – Powers”, being Sections 131 to 136, shall be payable for the period commencing from the 121st day after the last authorisation for the Search upto the date of completion of the assessment relating to the Search. In the present case, since the Petitioner has claimed interest only from the date on which the Search was conducted, we shall assume that that was also the day on which the last authorisation for the Search was recorded. The following Table will elucidate that the rate of interest payable in Search cases was not always the same

as interest payable on delayed Refunds under Section 244A, to which our attention has been drawn by learned counsel for the Revenue:

	S.132B(4)(a)	**S.244A**
1989	15% p.a	1.5% p.m
1991	15% p.a	1% p.m
2001	15% p.a	0.75% p.m
2002	8% p.a	0.66% p.m
8-9-2003	6% p.a	0.5% p.m
2006	6% p.a	0.5% p.m

11. Even though the rate of interest payable under Section 132B (4) (a) and Section 244A is the same since 2002 there was a difference prior thereto. This was obviously for the reason that Parliament considered Search proceedings to be distinct from ordinary assessment proceedings. We have already observed that carrying out a Search is an invasion of the privacy of a citizen. It is for good reason that the IT Act imposes stringent safeguards and restrictions on the conduct of Searches. For these very reasons Parliament was mindful of setting down a comparatively short period of 120 days within which it expected summary proceedings relating to Searches to be completed. In fact this period has been successively reduced by Parliament, since Section 132B as originally inserted into the Act by Income Tax (Amendment) Act, 1965 specified the period to be six months. This period was thereafter reduced to 120 days by virtue of Finance Act, 2002. Obviously, Parliament is mindful of the fact that where assets and money belonging to a citizen are taken into custody by the Department consequent upon a Search, a decision should be taken promptly as to what portion thereof is to be retained.

12. At first blush, therefore, in our understanding, it must logically be expected that the rate of interest payable under Section 132B(4) should be higher than that prescribed in other provisions, with the expectation that the component of interest would act as a deterrent to dilatory decision by the Department in the context of Searches. On further consideration, it is equally unacceptable for the Revenue to drag its feet or create obstacles or delays for refunding

> monies to assessees. In fact, in Union of India through Commissioner of Customs (Import & General) -vs- Honda Siel Cars India Ltd, MANU/DE/0258/2007, we have taken serious note of this deleterious and objectionable practice which has become rampant in the Department. Perhaps for this reason the Legislature has made the same rate of interest applicable to both eventualities. However, in this process the period separately carved out under Section 132B (4) has lost most of its significance. After careful cogitation it appears to us that it would be expedient to prescribe a higher rate of interest under Section 132B (4) than that prevailing for Refunds under Section 244A. Further, Section 153B prescribes a period of two years for completion of assessment or reassessment by the Assessing Officer which vide the Finance Act, 2006 has been further reduced to a period of 21 months in those cases where the last of the authorisations for Search under Section 132 was executed during the financial year commencing on the 1st day of April, 2004 or any subsequent financial year. This goes to show, yet again, the intent of the Legislature to impress upon the Department the need to deal with all Search and Seizure matters expeditiously."

13. In *Sandvik Asia's* matter *(supra)* too the Supreme Court was dealing with the situation of payment of interest in a statutory vacuum as it were. The statute in this case i.e. the Section-132 B (4) and 244A visualizes only two or three limited situation where the Central Government through the Income Tax Department is made liable to pay interest on specified amount for specified period. That, however, does not mean that a citizen whose property or asset which may include cash are subject to seizure which ultimately turns out to be unjustified is penalized in the sense that he is disentitled to any such claim.

14. In *Sandvik Asia's* matter, the restitutionary principle was recognized and the Court mandated that in such circumstances, 18% interest is payable.

15. Turning to the facts of this case, the position of the respondents in adjusting Rs.33,72,907/- even for the purpose of payment of interest liability is clearly unwarranted. As noticed in the earlier part of this order, the assessment was completed on 26.12.2006. Therefore, while calculating the interest, the respondents were clearly alive to this specific fact and in fact it worked out to a sum of Rs.7,42,616/-. In these circumstances, the Court sees no justification in reducing that amount on the basis of the later event i.e. the adjustment under Section-132B (i) – made on 23.02.2007. The liability as on 26.12.2006 was in respect of the whole amount of Rs.92,82,700/-. This Court, therefore, holds that the petitioner was entitled to the entire interest calculable for the said period, i.e., 7,42,616/-. The balance payable after making an adjustment of Rs.4,72,783/- would, therefore, have to be made over to the writ petitioner.

16. As far as the main claim with regard to the interest for the period after assessment is concerned, this Court is of the opinion that the calculation made out and the submissions of the income tax authorities in the course of these proceedings do not indicate any justification at all. Section-132 B (4) cannot be construed or interpreted in a manner as to defeat the rights of the assessee/writ petitioner to the property itself. The fact that it limits the liability to the point of time when assessment is completed would mean that

authorities have to be alive of this fact and release the amount within reasonable time. The statute clearly did not envision the situation where the authority would cling on to a substantial amount. This after being asked to refund was without payment of interest. It is clear that the absence of an express provision does not absolve the liability; it only reinforces the restitutionary principle which Courts under Article-226 of the Constitution of India are bound to enforce.

17. As far as adjustment of liability of Rs.33,72,907/- is concerned, this Court is of the opinion that the correctness of such action should be again gone into; the writ petitioner should be specifically given right of hearing and given further opportunity in this regard. The concerned AO shall, therefore, look into this matter and after hearing the writ petitioner, pass a speaking order as to the correctness of the tenability of the adjustment with regard to the amount of Rs.33,72,907/- which was made on 23.2.2007.

18. Having regard to the facts of this case and having considered the ratio of *Sandvik Asia* and *Ajay Gupta's* matters, this Court is of the opinion that the reasonable and equitable rate of interest having regard to the circumstances would be 12%.

19. In the light of the above discussion, the following directions are issued: -

(i) The petitioner is entitled to interest for the period of 16 months on the total amount of Rs.92,82,700/- which works out to Rs.7,42,616/- after adjusting the sum of

Rs.4,72,783/- paid on 11.5.2012. The balance shall be paid over to the writ petitioner within a period of four weeks.

(ii) The petitioner is entitled to interest @ 12 % p.a. on the balance sum of Rs.59,09,793/- for the period 1.3.2007 till 1.3.2011. These amounts shall be paid over to the petitioner within six weeks from today.

(iii) The concerned AO/Commissioner shall give a hearing to the petitioner with regard to the adjustment made under Section-132 B (1) (i) in respect of the sum of Rs.33,72,907/- by order dated 23.02.2007 and make a speaking order within two months from today.

20. The Writ Petition is allowed in the above terms.

Order ***dasti***.

S. RAVINDRA BHAT, J

AUGUST 28, 2012 **R.V. EASWAR, J**