

A CHIRONJILAL SHARMA HUF
v.
UNION OF INDIA AND ORS.
(Civil Appeal No. 10601 of 2013)

B NOVEMBER 26, 2013

[R.M. LODHA, MADAN B. LOKUR AND
KURIAN JOSEPH, JJ.]

C *Income Tax Act, 1961 – s.132B(4)(b) – Payment of*
interest on delayed assessment – Search conducted in house
of appellant – Cash amount of Rs. 2,35,000/- recovered –
Order passed u/s.132(5) on 31.5.1990 – Assessing Officer
(A.O.) calculated tax liability and cash seized in search from
appellant's house appropriated – Order of A.O. set-aside by
D *Tribunal – Revenue accepted the order of Tribunal –*
Appellant got refund of Rs.2,35,000/- alongwith interest from
4.3.1994 (date of last of the regular assessments by A.O.)
until the date of refund – Claim of appellant-assessee for
E *interest u/s.132B(4)(b) for the period from expiry of period of*
six months from the date of order under s.132(5) to the date
of regular assessment order – Held: Order u/s.132(5) having
been passed on 31.5.1990, six months expired on 30.11.1990
and the last of the regular assessments was done on
F *s.132B(4)(b) from 1.12.1990 to 4.3.1994 at the rate of 15%*
per annum.

In the search conducted in the house of the appellant
on 31.1.1990, a cash amount of Rs. 2,35,000/- was
recovered. On 31.5.1990, an order under Section 132(5)
G of the Income Tax Act, 1961 came to be passed. The
Assessing Officer calculated the tax liability and the cash
seized in the search from the appellant's house was
appropriated. However, the order of the Assessing Officer
was finally set-aside by the Income Tax Appellate Tribunal.

The revenue accepted the order of the Tribunal. Consequently, the appellant was refunded the amount of Rs. 2,35,000/- along with interest from 4.3.1994 (date of last of the regular assessments by the Assessing Officer) until the date of refund. A

In the instant appeal, the appellant (assessee) claimed entitlement to interest under Section 132B(4)(b) of the Act which was holding the field at the relevant time for the period from expiry of period of six months from the date of order under Section 132(5) to the date of regular assessment order. The order under Section 132(5) of the Act having been passed on 31.5.1990, six months expired on 30.11.1990 and the last of the regular assessments was done on 4.3.1994, the assessee claimed interest under Section 132B(4)(b) of the Act from 1.12.1990 to 4.3.1994. B C D

Allowing the appeal, the Court

HELD: 1. A close look at the provisions of Section 132B(4)(a) and (b) of the Income Tax Act, 1961 clearly shows that where the aggregate of the amounts retained under Section 132 of the Act exceeds the amounts required to meet the liability under Section 132B(1)(i), the department is liable to pay simple interest at the rate of fifteen percent on expiry of six months from the date of the order under Section 132(5) of the Act to the date of the regular assessment or re-assessment or the last of such assessments or reassessments, as the case may be. In the instant case, it is true that in the regular assessment done by the Assessing Officer, the tax liability for the relevant period was found to be higher and, accordingly, the seized cash under Section 132 of the Act was appropriated against the assessee's tax liability but the fact of the matter is that the order of the Assessing Officer was over-turned by the Tribunal finally on 20.2.2004. As a matter of fact, the interest for the post E F G H

A assessment period i.e. from 4.3.1994 until refund on the
 excess amount has already been paid by the department
 to the assessee. The department denied the payment of
 interest to the assessee under Section 132B(4)(b) on the
 ground that the refund of excess amount is governed by
 B Section 240 of the Act and Section 132B(4)(b) of the Act
 has no application. But, Section 132B(4)(b) deals with pre-
 assessment period and there is no conflict between this
 provision and Section 240 or for that matter 244(A). The
 former deals with pre-assessment period in the matters
 C of search and seizure and the later deals with post
 assessment period as per the order in appeal. The view
 of the department is not right on the plain reading of
 Section 132B(4)(b) of the Act. The appellant is entitled to
 the simple interest at the rate of fifteen percent per annum
 under Section 132B(4)(b) of the Act from 1.12.1990 to
 D 4.3.1994. The revenue shall calculate the interest payable
 to the assessee as above and pay the same to the
 appellant (assessee) within two months. [Paras 5, 7, 8 &
 9] [672-B-H; 673-A-B]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No.
 10601 of 2013.

F From the Judgment and Order dated 16.08.2011 of the
 High Court of Madhya Pradesh at Jabalpur, Bench at Gwalior
 in W.P. No. 5531 of 2005.

Gaurav Agrawal for the Appellant.

R.P. Bhatt, Arijit Prasad, Shalini Kumar, Anil Katiyar for the
 Respondents.

G The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted.

H 2. The brief facts necessary for consideration of the issue

raised in the appeal are these: In the search conducted in the house of the appellant on 31.1.1990, a cash amount of Rs. 2,35,000/- was recovered. On 31.5.1990, an order under Section 132(5) of the Income Tax Act, 1961 (for short "the Act") came to be passed. The Assessing Officer calculated the tax liability and the cash seized in the search from the appellant's house was appropriated. However, the order of the Assessing Officer was finally set-aside by the Income Tax Appellate Tribunal (for short "the Tribunal") on 20.2.2004. The revenue accepted the order of the Tribunal. Consequently, the appellant has been refunded the amount of Rs. 2,35,000/- along with interest from 4.3.1994 (date of last of the regular assessments by the Assessing Officer) until the date of refund.

3. The appellant (assessee) claims that he is entitled to interest under Section 132B(4)(b) of the Act which was holding the field at the relevant time for the period from expiry of period of six month's from the date of order under Section 132(5) to the date of regular assessment order. In other words, the order under Section 132(5) of the Act having been passed on 31.5.1990, six months expired on 30.11.1990 and the last of the regular assessments was done on 4.3.1994, the assessee claims interest under Section 132B(4)(b) of the Act from 1.12.1990 to 4.3.1994.

4. Section 132 of the Act deals with search and seizure. Sub-section (5) thereof, which is relevant for the purposes of the present appeal, reads as under:

(5): Where any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) is seized under sub-section (1) or sub-section (1A), as a result of a search initiated or requisition made before the 1st day of July, 1995, the Income-tax Officer, after affording a reasonable opportunity to the person concerned of being heard and

A making such enquiry as may be prescribed, shall, within one hundred and twenty days of the seizure, make an order, with the previous approval of the Joint Commissioner)-

B (i) estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him;

C (ii) calculating the amount of tax on the income so estimated in accordance with the provisions of the Income Tax Act, 1922 (11 of 1922), or this Act;

D (iia) determining the amount of interest payable and the amount of penalty imposable in accordance with the provisions of the Indian Income-Tax Act, 1922 (11 of 1922), or this Act, as if the order had been the order of regular assessment;

E (iii) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (a) of sub-section (1) of section 230A in respect of which such person is in default or is deemed to be in default,

F
G and retain in his custody such assets/or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (ii), (iia) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized:

H Provided that if, after taking into account the materials available with him, the Income Tax Officer is of the view that it is not possible to ascertain to which particular

previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total amount chargeable to tax at the rates in force in the financial year in which the assets were seized and may also determine the interest or penalty, if any, payable or impossible accordingly:

Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clauses (ii), (iia) and (iii) or any part thereof, the Income-Tax Officer may, with the previous approval of the Chief Commissioner or Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case."

5. Section 132B deals with the payment of interest on delayed assessment. Omitting the unnecessary part, the relevant provisions of Section 132B(4)(a) and(b) of the Act read as under:

132B: Application of retained assets.....

(4)(a) The Central Government shall pay simple interest at the rate of fifteen per cent per annum on the amount by which the aggregate of money retained under Section 132 and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause 3 of sub-section (5) of that section exceeds the aggregate of the amounts required to meet the liability referred to in clause (i) of sub—section (1) of this section.

(b) Such interest shall run from the date immediately following the expiry of the period of six months from the date of the order under sub-section 5 of section 132 to the date of the regular assessment or reassessment referred to in clause (i) of sub-section (1) or, as the case may be,

A to the date of last of such assessments or re-assessments. 3

5. A close look at the above provisions and, particularly, clause (b) of Section 132B(4) of the Act clearly shows that where the aggregate of the amounts retained under Section 132 of the Act exceeds the amounts required to meet the liability under Section 132B(1)(i), the department is liable to pay simple interest at the rate of fifteen percent on expiry of six months from the date of the order under Section 132(5) of the Act to the date of the regular assessment or re-assessment or the last of such assessments or reassessments, as the case may be. It is true that in the regular assessment done by the Assessing Officer, the tax liability for the relevant period was found to be higher and, accordingly, the seized cash under Section 132 of the Act was appropriated against the assessee's tax liability but the fact of the matter is that the order of the Assessing Officer was over-turned by the Tribunal finally on 20.2.2004. As a matter of fact, the interest for the post assessment period i.e. from 4.3.1994 until refund on the excess amount has already been paid by the department to the assessee. The department denied the payment of interest to the assessee under Section 132B(4)(b), according to Mr. Arijit Prasad, learned counsel for the revenue on the ground that the refund of excess amount is governed by Section 240 of the Act and Section 132B(4)(b) of the Act has no application. But, in our view, Section 132B(4)(b) deals with pre-assessment period and there is no conflict between this provision and Section 240 or for that matter 244(A). The former deals with pre-assessment period in the matters of search and seizure and the later deals with post assessment period as per the order in appeal.

7. The view of the department is not right on the plain reading of Section 132B(4)(b) of the Act as indicated above.

8. We, accordingly, allow the appeal and set-aside the impugned order and hold that the appellant is entitled to the

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simple interest at the rate of fifteen percent per annum under Section 132B(4)(b) of the Act from 1.12.1990 to 4.3.1994. A

9. The revenue shall calculate the interest payable to the assessee as above and pay the same to the appellant (assessee) within two months from today. No costs. B

B.B.B.

Appeal allowed.