

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
&
SHRI P. MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 1115/Del/2015
(Assessment Year: 2012-13)**

Suryanarayan Gopi Krishna 33-B, First Floor, DDA Flats, Ber Sarai, Near JNU New Delhi. PAN No. AKNPK2809G	vs	ACIT Central Circle 17, New Delhi.
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Assessee by	Sh. R. Dureja, Adv.
Revenue by	Shri K. Tewari, Sr. DR

Date of Hearing	03.07.2018
Date of Pronouncement	01.10.2018

ORDER

PER PRASHANT MAHARISHI, ACCOUNTANT MEMBER:

This appeal is filed by the assessee passed the order of Ld. CIT(Appeals)-XXVI, New Delhi dated 30.12.2014 for AY 2012-13. The assessee has raised in all five grounds of appeal, however, the only grievance which respect to the adjustment of seized cash of Rs. 1.70 crores not adjusted by the Assessing Officer as tax deposited – advance tax and thereby charging interest u/s 234A, B & C of the Act.

2. The brief facts of the case that assessee is an individual. Search u/s 132 of the Act was carried out on 17.01.2012 at the residential premises of the assessee. During the course of search, Rs. 1.75 crores cash was found out of which Rs. 1.70 crores was seized. The assessee filed his return on 02.12.2013 for Rs. 1,65,35,333/-. The assessment u/s 143(3) of the Act was made on 26.03.2014 at Rs. 1,78,87,607/-. The Ld. Assessing Officer while working out the tax demand has not considered the prepaid tax of cash seized of Rs. 1.70 crores. Therefore, the assessee was aggrieved and filed appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal of the assessee holding that cash seized can only be adjusted against the existing tax liability but not towards the advance tax. Therefore, assessee aggrieved is in appeal before us.

3. The Ld. AR submitted that now the issue is squarely covered in favour of the assessee by Circular No. 20/2017 issued by the CBDT on 12.06.2017. The Ld. DR supported the order of the Ld. CIT(A) and Assessing Officer.

4. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The issue is now squarely covered in favour of the assessee by Circular No. 20/2017 which says that Explanation II to Section 132B inserted w.e.f. 01.06.2013 is prospective in nature. Therefore, prior to 01.06.2013 it is apparent that cash seized can be adjusted against advance tax liability of the assessee. Such

view is also taken by the coordinate bench in Happy Home Developers vs. ACIT 87 taxmann.com 10 (Pune). In view of the Circular of CBDT and the decision of the coordinate bench the issue is squarely covered in favour of the assessee. Accordingly, we direct the Ld. Assessing Officer to treat Rs. 1.70 crores cash seized as advance tax and adjust interest u/s 234A, B & C considering it as tax paid.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 01.10.2018

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(P. MAHARISHI)
ACCOUNTANT MEMBER

Dated: 01.10.2018

**Kavita Arora*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	

