

**IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
(THROUGH VIRTUAL COURT)**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 221/ALLD/2016
Assessment Year: 2011-12

Suresh Chandra Purwar(HUF) 68, Zero Road, Allahabad, U.P.	v.	The Assistant Commissioner of Income Tax, Central Circle-1 Allahabad , U.P.
PAN:AALHS3075E		
(Appellant)		(Respondent)

Appellant by:	Shri Ashish Bansal, Advocate
Respondent by:	Shri Shantanu Dhamija , CIT, DR
Date of hearing:	27. 07. 2021
Date of pronouncement:	31.08. 2021

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by the assessee has arisen from the appellate order dated 29.09.2016 passed by Ld. Commissioner of Income Tax(Appeals)-II, Lucknow(hereinafter called "the CIT(A)") , for assessment year(ay) 2011-12, the appellate proceedings had arisen before learned CIT(A) from consequential order dated 21.10.2015 passed by ld. Assessing Officer (hereinafter called " the AO") to

give effect to the order dated 23.09.2015 passed by Settlement Commission u/s 245D(4) of the Income-tax Act, 1961 (hereinafter called “ the AO”) . We have heard both the parties through video conferencing mode through Virtual Court.

2. The grounds of appeal raised by assessee in memo of appeal filed with Income-Tax Appellate Tribunal, Allahabad Bench , Allahabad(hereinafter called “ the tribunal”) , reads as under:

“1. BECAUSE the “CIT(A)” has erred in law and on facts in upholding the demand that had been raised against the “appellant”, in terms of order dated 23.10.2015 passed by the Asstt. CIT, Central Circle, Allahabad under section 143(3) read with section 245D(4).

2. BECAUSE the demand so raised against the “appellant”, which was made up of

	<i>(Rs.)</i>
<i>(a) Tax Payable</i>	<i>89,20,544</i>
<i>(b) Interest under section 234A</i>	<i>1,05,785</i>
<i>(c) Interest under section 234B</i>	<i>57,12,930</i>

was erroneous at the very face of it, as the same has been arrived at without giving full credit to “taxes paid”, which had a bearing on computation of interest under sections 234A & 234B also.

3. BECAUSE in any case, while giving direction to the Assessing Officer “to allow credit for taxes paid after due verification” the “CIT(A)” should have held that due and corresponding corrections in the quantum of interest levied under section 234B and 234C should also be allowed.

4. BECAUSE interest under section 234B could not have been levied in the instant case as gross demand of Rs. 1,07,09,544/- (before levy of interest in different sections) stood overwhelmingly covered by cash aggregating Rs. 4,73,56,500/- as was under seizure as per particulars given below:-

Sl. No.	Panchnama dated	Amount (Rs.)
<i>(i)</i>	<i>25.02.2011</i>	<i>26,50,000</i>
<i>(ii)</i>	<i>26.02.2011</i>	<i>4,13,07,500</i>
<i>(iii)</i>	<i>07.03.2011</i>	<i>22,49,000</i>
<i>(iv)</i>	<i>09.03.2011</i>	<i>11,50,000</i>

5. *BECAUSE in view of large number of case laws (which provide for adjustment of seized cash) the "CIT(A)" should have held that interest under section 234B was not leviable in the instant case.*
6. *BECAUSE the "CIT(A)" has erred in law and on facts in holding that in view of Explanation (2) below section 132B as had been inserted by the Finance Act 2013 w.e.f. 1.6.2013 was applicable and cash under seizure could not have been treated as payment of advance tax.*
7. *BECAUSE the said Explanation had no bearing, on the facts of the present case and view taken by the "CIT(A)", so as to deny the appellant's claim for cancellation of interest amounting to Rs. 57,12,930/- (under section 234B) is wholly erroneous.*
8. *BECAUSE the order appealed against is contrary to facts, law and principles of natural justice."*

3. The short question(s) which has arisen in this appeal filed by the assessee is with respect to interest levied by Revenue u/s 234A and 234B of the 1961 Act. We have heard in details both the rival parties through videoconferencing through Virtual mode. The brief facts of the case are that the assessee is HUF and Shri Suresh Chandra Purwar is claimed to be karta of the assessee. The search and seizure operations u/s 132(1) of the 1961 Act was carried out by Revenue against Shri Suresh Chandra Purwar and his family members and entities in the group, on 25.02.2011. The consequential order in this case was passed by AO on 21.10.2015 , to give effect to the order dated 23.09.2015 passed by Settlement Commission u/s 245D(4) of the 1961 Act . The appeal filed by the assessee before Id. CIT(A) was dismissed by Id. CIT(A), vide appellate order dated 29.09.2016 which order of Id. CIT(A) is an impugned order challenged before us. Cash amounting in aggregate to Rs. 4,73,56,000/- was seized by Revenue from different tax-payers with in the group during the course of search and seizure operations conducted by Revenue u/s 132(1). The claim of the assessee is that it made offer before Revenue for

adjustment of cash seized during the course of search and seizure operations against the tax-liability determined on assessment , and hence no interest be leviable u/s 234B of the 1961 Act. The interest u/s 234B amounting to Rs. 57,12,930/- was levied by the AO vide orders dated 21.10.2015 , which was later confirmed by ld. CIT(A) vide appellate order dated 29.09.2016, wherein contentions raised by assessee were rejected by ld. CIT(A) . Aggrieved , the assessee has filed an appeal with tribunal. The assessee was issued notice u/s 153A by the AO on 28.02.2013 directing assessee to file return of income for ay: 2011-12 , by 15.03.2013. The assessee did not file return of income for ay: 2011-12 in pursuance to notice dated 28.02.2013 issued by the AO. Thereafter , the AO issued another notice dated 15.07.2013 u/s 153A directing assessee to file return of income for ay: 2011-12 , by 22.07.2013. The assessee did not file return of income by 22.07.2013, in pursuance to notice issued by AO dated 15.07.2013 u/s 153A of the 1961 Act. The assessee , however, filed its return of income for ay: 2011-12 on 17.09.2013. The assessee has claimed that Revenue did not supplied the copies of seized material and statements recorded during the course of search despite request made by the assessee and hence no fault could be attributable to assessee , thus the assessee is claiming that it cannot be said that there is a delay on the part of the assessee in filing of return of income and hence consequentially no interest u/s 234A of the 1961 Act can be levied against the assessee. The AO levied interest of Rs. 1,05,795/- u/s 234A of the 1961 Act for ay: 2011-12 , vide consequential order dated 21.10.2015 passed by AO to give effect to order dated 23.09.2015 passed by Settlement Commission under Section 245D(4) of the 1961 Act. The ld. CIT(A) later confirmed the aforesaid order passed by the AO by dismissing appeal filed by the assessee. Aggrieved , the assessee has filed an appeal with tribunal. The assessee declared taxable income of Rs.59,27,677/- in the return of income filed on 17.09.2013 for ay: 2011-12, which included income of Rs. 50,33,000/- which is purported to be towards income declared owing to high denomination currency

notes of Rs. 1000/- each which as per assessee's letter dated 17.09.2013 (this letter is claimed by assessee to have accompanied return of income), remained unexplained , which was part of cash amounting to Rs. 4,13,07,500/- seized on 25.02.2011 from residential premises situated 68, Zero Road, Allahabad, U.P. (Rs. 50,33,000/- high denomination currency notes of Rs. 1000/- each seized from first floor of residential premises at 68, Zero Road, Allahabad, U.P. occupied by Shri Suresh Chandra Purwar and his wife for their residence) . The name of the assessee being a separate tax unit -HUF is not appearing in inventory of cash found and seized from the residential premises at 68, Zero Road, Allahabad, U.P. on 25.02.2011 The assessee has claimed that Shri Suresh Chandra Purwar is the karta of the assessee HUF.The amount of tax and interest aggregating to Rs. 19,15,050/- remained unpaid by the assessee in the return of income filed on 17.09.2013. It is pertinent to mention that the assessee computed aggregate interest of Rs. 3,75,496/- which the assessee computed in return of income filed with Revenue was payable by it (although the assessee did not bifurcated the amount of interest payable under different provisions of the 1961 Act viz. 234A, 234B , 234C etc.) in the return of income filed on 17.09.2013. In the letter dated 17.09.2013 claimed by assessee to be accompanying this return of income filed by assessee on 17.09.2013, the assessee sought adjustment of the cash seized during search operations , against the liability computed to be payable by assessee itself towards tax and interest computed in the return of income filed with Revenue on 17.09.2013 , for the impugned ay:2011-12 as well other ay's 2006-07 to 2010-11. The assessee , thereafter, initiated proceedings before Settlement Commission by filing an application on 19/20.03.2014 . The assessee filed revised computation of income before Settlement Commission declaring income of Rs. 85,82,279/- , which included additional income declared before Settlement Commission in SOF to the tune of Rs. 26,54,601/-. The proceedings before Settlement Commission culminated into an order dated 23.09.2015 passed by Settlement Commission u/s 254D(4) of the 1961

Act, wherein the income of the assessee was settled at Rs. 3,51,45,385/- for impugned ay: 2011-12. It is pertinent to mention that the income as per return of income filed by the assessee with AO, was Rs.59,27,677/-, while the additional income offered by assessee in the SOF filed before Settlement Commission was Rs. 26,54,601/- and further additions were made by Settlement Commission during proceedings u/s 245D(4) was to the tune of Rs.2,65,63,107/. While making additions to the income of the assessee during proceedings u/s 245D(4), the Settlement Commission made , inter-alia, additions to the tune of Rs. 2,60,49,000/- as undisclosed income in the hands of the assessee for ay: 2011-12 towards unexplained cash found from residence premises and lockers, rejecting the contentions of the assessee. There were certain further additions to the income of the assessee for ay: 2011-12 made by Settlement Commission vide order dated 23.09.2015 passed u/s 245D(4). The AO then passed an consequential order dated 21.10.2015 to give effect to the order dated 23.09.2015 passed by Settlement Commission u/s 245D(4) of the 1961 Act, computing a sum of Rs. 1,47,39,270/- being further payable by assessee towards tax and interest u/s 234A and 234B of the 1961 Act. The assessee filed rectification petition u/s 154 of the 1961 Act on 13.11.2015 with AO against the order dated 21.10.2015 passed by AO raising challenge to leviability of interest u/s 234A and 234B of the 1961 Act , which rectification petition u/s 154 stood dismissed by AO vide orders dated 17.11.2015. The assessee then filed an appeal with Id. CIT(A) on 15.12.2015 against the consequential order dated 21.10.2015 passed by the AO to give effect to the order dated 23.09.2015 passed by Settlement Commission u/s 245D(4), which appeal stood dismissed by Id. CIT(A) vide appellate orders dated 29.09.2016. The assessee has claimed that it filed letter dated 17.09.2013 along with return of income filed on 17.09.2013, which is placed in paper book at page number 57-63 . The assessee is also relying on the letter dated 06.04.2011 which was claimed to be filed by Shri Suresh Chandra Purwar before the Director of the Income-tax(Investigation) ,

Kanpur, in which it is claimed that offer to adjust cash seized during search operations against the tax liability was made (page 64-75/paper book). Shri Suresh Chandra Purwar is claimed to be karta of the assessee, as well said Shri Suresh Chandra Purwar is separately assessed in the capacity of individual. On the strength of these two aforesaid letters, the assessee is claiming that no interest be charged under the provisions of Section 234B of the 1961 Act, while it is also prayed that it is the department who failed to provide seized documents and statements recorded during the search operations in timely manner, despite request made by assessee, which led to delay in filing of return of income and no fault can be attributed to assessee, thus it cannot be said that the assessee delayed the filing of return of income and consequently Revenue cannot penalize assessee by charging interest u/s 234A of the 1961 Act. We have carefully gone through the entire material placed before the tribunal. It is observed from perusal of the para 8 of the said letter dated 06.04.2011 claimed to have been filed by Shri Suresh Chandra Purwar before the Director of Income-tax(inv.), Kanpur wherein it was claimed by Shri Suresh Chandra Purwar that the said cash of high denomination currency notes of Rs. 1,000/- each aggregating to Rs. 50,33,000/- found and seized belonged to him. It was claimed that the said sum was received over a period of years under various heads and on a number of occasions. It was claimed by Shri Suresh Chandra Purwar that the said amount of Rs. 50,33,000/- did not attract taxation, looking to the period of requisition as well as nature thereof. It was also claimed in para 12 of the aforesaid letter dated 06.04.2011 that the said cash seized was from realizations from business activities which had been discontinued after the death of father in 1996 and realizations on account of sale of agricultural land/land under cultivation of his father during his life time and sale of agricultural land as inherited by assessee's wife after death of his mother. But later it appeared that the assessee declared the said amount as additional income in the return of income filed with Revenue, on 17.09.2013, although initially claim was made by Shri Suresh Chandra

Purwar before Director of Income-tax(Inv.), Kanpur vide letter dated 06.04.2011 that said amount is not taxable. Similarly, for remaining cash of Rs. 3,62,74,500/- , it was claimed in the aforesaid letter dated 06.04.2011 that the said cash belonged to parents of Shri Suresh Chandra Purwar, while Settlement Commission rejected all contentions of the assessee and held that Rs. 2,60,49,000/- cash found and seized from residence and lockers to be income of the assessee for ay: 2011-12 , in the order passed u/s 245D(4) of the 1961 Act. Shri Suresh Chandra Purwar in the said letter dated 06.04.2011 at para 16 stated that as soon as he is provided with the copies of seized material and statements, he shall make a fair and binding estimate of his income and then after adjustment of cash seized against tax liability, the balance cash should be returned to him . Thus, the offer was made by Shri Suresh Chandra Purwar to adjust the cash seized against the tax liability arising out of the correct and binding estimate of the tax liability made by him and other taxpayers in the group . It is also observed that in para 20 of the said letter dated 06.04.2011, Shri Suresh Chandra Purwar stated that the assessee Suresh Chandra Purwar(HUF) is a separate taxable entity engaged in the business of dealing in 'compounds' and 'grinded masala' . It is claimed that the assessee namely Suresh Chandra Purwar(HUF) was never searched by Revenue on 25.02.2011 , as there was no warrant of authorization issued by Revenue against this assessee. However, it is also stated in the said letter dated 06.04.2011 that some of the warrant of authorization did have the name 'Hari Sons(India) Products , which is a name given to business entity of 'Suresh Chandra Purwar(HUF), and it is claimed that said Hari Sons(India) Products cannot be called as a person as defined u/s 2(31) of the 1961 Act. Now, coming to letter dated 17.09.2013 which is claimed to have been filed by assessee before the AO along with the return of income filed on 17.09.2013, it is claimed that there is no warrant of authorization issued by the Revenue in the name of the assessee viz. Suresh Chandra Purwar, HUF, which it is claimed is a separate taxable entity. Thus, it is claimed that the assessee was never subjected to search and

seizure operations conducted by Revenue , u/s 132(1) of the 1961 Act. Thus, legal challenge was made to notice issued by AO u/s 153A of the 1961 Act , to be not enforceable in the eyes of law. Thereafter, the assessee submitted, without prejudice, that there was a delay in providing of seized material and statements to the assessee by Revenue which material was provided in parts and the process continued till June 2013 , which has led to delay in analyzing the said documents/statements to arrive at income, and hence it could not be said that return of income filed in pursuant to notice u/s 153A are delayed returns. It was also claimed that the karta of the assessee Shri Suresh Chandra Purwar is suffering from serious disease, for which he was operated upon which also led to delay in analyzing of the seized material and statements, hence delay in filing of returns. It is claimed in this letter dated 17.09.2013 claimed to be filed by assessee along with return of income, that out of cash seized of Rs. 4,73,63,050/- , the necessary explanations were given with regard to cash of Rs. 4,23,30,050/- , while only unsubstantiated cash was to the tune of Rs. 50,33,000/- , which was offered to taxation by assessee as additional income in the return of income filed for ay: 2011-12. However, even Settlement Commission rejected the contentions of the assessee and brought to tax cash seized of Rs. 2,60,49,000/- from residence and lockers as additional income of the assessee for the impugned ay: 2011-12, vide order passed u/s 245D(4). The assessee, in this letter dated 17.09.2013, stated that the tax and interest liability to the tune of Rs. 38,67,145/- arising out of tax and interest payable, for ay: 2006-07 to 2011-12 be adjusted against the cash seized during search operations , while request was made to refund the amount of excess cash seized of Rs. 4,34,89,355/-. It was also submitted that no interest be levied under various provisions of Income-tax Act, 1961 , as the cash was seized since 2011. Under these circumstances and after considering entire material on record, we are of the considered view , that the assessee is not entitled for complete relief on the interest payable u/s 234B of the 1961 Act , as first of all the assessee was disputing

the search conducted by Revenue u/s 132(1) of the 1961 Act against it and secondly, as per material before us, there is no material to suggest that any estimate of income was filed by the assessee before the competent authorities immediately after search operations , even including the high denomination currency notes of Rs. 1000/- each aggregating to Rs. 50,33,000/- as its undisclosed income, rather , Shri Suresh Chandra Purwar was justifying even the aforesaid high currency notes as not been taxable , in letter dated 06.04.2011(para 8 and 12) wherein it was claimed that the said sum was received over a period of years under various heads and on a number of occasions. It was claimed by Shri Suresh Chandra Purwar that the said amount of Rs. 50,33,000/- did not attract taxation , looking to the period of requisition as well as nature thereof. It was also claimed in para 12 of the aforesaid letter dated 06.04.2011 that the said cash seized was from realizations from business activities which had been discontinued after the death of father in 1996 and realizations on account of sale of agricultural land/land under cultivation of his father during his life time and sale of agricultural land as inherited by assessee's wife after death of his mother. Thirdly, the assessee did not file declaration of true income , rather the Settlement Commission rejected all the contentions of the assessee and further brought to tax, inter-alia, cash seized from residence and lockers aggregating to Rs. 2,60,49,000/- in the hands of the assessee. Our view is further strengthened wherein the assessee while filing return of income on 17.09.2013, computed interest of Rs. 3,75,496/- payable by it. However, at this stage it offered for adjustment of tax and interest liability of Rs. 38,67,145/- against cash seized during search operations. Thus, as late as on 17.09.2013 , when the assessee filed its return of income on 17.09.2013, the assessee has owned up cash seized of Rs. 50,33,000/- being high denomination currency notes of Rs. 1000/- each as its additional income for ay: 2011-12 , and the assessee sought adjustment of cash seized against its liability to tax and interest , to the tune of Rs. 38,67,145/- for ay: 2006-07 to 2011-12, thus, so far the liability to this effect and corresponding

quantum relevant to ay:2011-12 is concerned , no interest u/s 234B can be levied beyond this point viz. 17.09.2013, as there was sufficient cash lying with Revenue on account of cash seized during search operations to be adjusted against liability so determined towards tax and interest as computed in return of income filed on 17.09.2013 . However, the assessee shall be liable to pay interest u/s 234B on tax so computed on the income so declared in return of income filed on 17.09.2013, till the date of filing of return of income on 17.09.2013. The AO is directed to compute liability of interest u/s 234B to this effect. Now proceeding further, the assessee while filing application with Settlement Commission on 19/20th March 2014 offered additional income of Rs. 26,54,601/- , and the assessee has claimed that it discharged its entire tax and interest liability , aggregating to Rs. 40,09,000/- , by making payments towards tax and interest on 18.03.2014. The assessee has claimed that it was not given appropriate credit for payment of taxes , and form no 26AS/challans are produced before tribunal, the AO shall verify and give credit of payment of appropriate taxes claimed to be so paid by assessee on 18.03.2014, after due verification. Then, obviously if taxes stood paid on this date viz. 18.03.2014 as claimed by assessee even on additional income offered in SOF filed with Settlement Commission , no further liability u/s 234B can be fastened beyond this point of time viz. 18.03.2014 to the extent the taxes stood paid(which is subject to verification by AO). However, the assessee shall be liable to pay interest u/s 234B on tax so computed on the additional income so declared in SOF filed with Settlement Commission on 19/20.03.2014, till the date of payment of tax on 18.03.2014. Reference is drawn to provisions of Section 234B(2A)(a) of the 1961 Act .The AO is directed to compute liability of interest u/s 234B to this effect. Now proceeding further, thereafter, the Settlement Commission passed an order u/s 245D(4), dated 23.09.2015 bringing to tax additional income , as declaration made by assessee of its income before Settlement Commission ,was found by Settlement Commission to be not correct and additional income was brought to tax by Settlement Commission ,

and since this liability was fastened in September 2015, the assessee will be liable to pay interest u/s 234B till the order was passed by Settlement Commission in September 2015 bringing to tax additional income, owing to untrue declaration of income filed by assessee before Settlement Commission. Reference is drawn to provisions of Section 234B(2A)(b) of the 1961 Act. The AO is directed to compute liability of interest u/s 234B to this effect . So far as the contentions of the Revenue that there was amendment by Finance Act, 2013 , w.e.f. 01.06.2013 wherein Explanation 2 to Section 132B was inserted and cash seized could not have been adjusted against advance tax liability , the said amendment is held to be prospective in nature and not applicable to cases prior to 01.06.2013. The SLP filed by Department against judgment of Hon'ble Punjab and Haryana High Court in the case of CIT v. Cosmos Builders and Promoters Limited((2016)76 taxmann.com 374(P&H)) and Hon'ble Allahabad High Court in the case of Sunil Chandra Gupta (2016) 76 taxmann.com 372(Alld) , have been dismissed by Hon'ble Supreme Court ((2016) 76 taxmann.com 377(SC) ; (2016) 76 taxmann.com 372(SC)) , which is itself accepted by Revenue vide CBDT Circular No. 20/2017 in F.No. 279/Misc/140/2015/ITJ , dated 12.06.2017 . Presently, we are concerned with ay: 2011-12 and search and seizure operations were conducted by Revenue u/s 132(1) of the 1961 Act, on 25.02.2011. This contention of Revenue to hold Explanation 2 to Section 132B of the Act, which was inserted by Finance Act, 2013 w.e.f. 01.06.2013, to be retrospective is rejected and we hold that said amendment is prospective. So, far as chargeability to interest u/s 234A is concerned, clearly the assessee has not filed return of income in time rather the assessee was disputing the search carried on by the Revenue itself , the onus is on the assessee to keep and maintain its record of income as it is the assessee who is in know of its own affairs and the assessee cannot blame Revenue for its own faults in not keeping proper and true record of its own income. The onus and burden is on the assessee to file its return of income in time , which the assessee cannot shift to Revenue merely because an intervening

event by way of search and seizure operations have taken place u/s 132(1) of the 1961 Act. Thus, we are not inclined to interfere with the orders passed by lower authorities so far as chargeability of interest u/s 234A is concerned, which we uphold. Thus, the appeal of the assessee is partly allowed. We order accordingly.

4. In the result, appeal filed by the assessee with tribunal in ITA No. 221/Alld./2016 for ay: 2011-12 is partly allowed

Order pronounced on 31 /08/2021 at Allahabad.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 31/08/2021

Copy forwarded to:

1. Appellant –Suresh Chandra Purwar, HUF, 68, Zero Road, Allahabad
2. Respondent –The Assistant Commissioner of Income-tax, Central Circle-1, Allahabad, U.P.
3. CIT(A) --II, Lucknow,U.P.
4. CIT, Allahabad, U.P.
5. DR –The CIT(DR) , Allahabad, U.P.

By order
Assistant Registrar