

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA No. 2615/Del/2022
Assessment Year: 2019-20**

Arun Bansal, 77, Shivam
Apartment, Sector-15, Rohini,
Delhi.

PAN: AAGPB3126N
(Appellant)

Versus ACIT, Central Circle-20,
Delhi.

(Respondent)

Assessee by: Sh. Somil Aggarwal, Advocate &
Sh. Om Prakash Bansal.

Revenue by: Ms. Sapna Bhatia, CIT-DR

Date of hearing : 23.05.2023

Date of pronouncement : 29.05.2023

ORDER

PER SAKTIJIT DEY, J.M.:

This is an appeal by the assessee against order dated 20.10.2022 of learned Commissioner of Income-tax (Appeals)-27 for the assessment year 2019-20.

2. The dispute in present appeal is confined to levy of interest u/s. 234B of the Income-tax Act, 1961.

3. Briefly, the facts relating to this issue are, the assessee is a resident individual. On 01.12.2018, a search and seizure operation u/s. 132 of the Act was conducted in case of Faquir Chand Lockers and Vaults Pvt. Ltd. In course of search and seizure operation, Investigation Wing found locker No. 168 in the name of the assessee. On opening of the said locker, cash amounting to Rs.1,07,00,000/- was found. When the assessee was called upon to explain the nature and source of cash found, the assessee could not explain the same and the assessee offered the amount as income. The cash found in the locker was seized by the Department. Subsequently, the assessee filed his return of income on 07.07.2019 declaring income of Rs.4,71,290/-. In course of assessment proceedings, when the Assessing Officer called upon the assessee to explain the nature and source of cash found in the locker, the assessee again offered it as income. However, he explained that he could not offer the amount in the return of income since, the return of income was not accepted without payment of tax. Be that as it may, the assessee again issued a letter to the Assessing Officer offering the cash seized from the locker as income and requested the Assessing Officer to adjust the tax liability from the cash seized by the Department. The Assessing Officer ultimately completed the assessment vide order dated 10.03.2021 adding back the

cash seized of Rs.1,07,00,000/-. However, while computing the tax liability of the assessee, the Assessing Officer levied interest u/s. 234B of the Act alleging non-payment of advance tax. Though, the assessee challenged the levy of interest before the first appellate authority, however, he refused to interfere, firstly, on the ground that the assessee did not voluntarily declare the unexplained cash seized as income and secondly, payment of advance tax cannot be treated to be an existing liability u/s. 132B of the Act for adjustment of seized cash. Accordingly, he upheld the levy of interest.

4. Before us, learned counsel appearing for the assessee submitted that at the time of search and seizure operation in respect of Faquir Chand Lockers and Vaults Pvt. Ltd., the assessee has offered the cash as income. He submitted, on the date of search itself, the cash was seized by the department. He submitted, in the return of income filed for the impugned assessment year, the assessee could not include the amount of cash seized as income, as the departmental system did not accept the return without payment of self assessment tax. He submitted, since, the assessee did not have liquidity to discharge the tax liability, he communicated to the Assessing Officer offering the said cash seized as income and requested the Assessing Officer to adjust the tax due from

the cash seized. He submitted, since the cash seized was in the custody of the department from the date of search on 01.12.2018 and the assessee had offered the cash seized as income, the Assessing Officer should have adjusted the self assessment tax payable from the cash seized in terms with section 132B of the Act. In that case, interest under section 234B would not have been levied. Further, he submitted, under identical facts and circumstances, in case of the assessee's own brother, interest charged u/s. 234B of the Act has been deleted by the Tribunal. In this context, he drew our attention to the order of the Tribunal placed in the paper book.

5. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

6. We have considered rival submissions and perused materials on record. In so far as the factual aspect of the issue is concerned, there is no dispute that at the time of search and seizure operation conducted in the case of a third party, a locker standing in the name of the assessee was found, wherein, cash amounting to Rs.1,07,00,000/- was found and seized. At the time of search and seizure operation itself, the assessee has declared the cash found as income. However, in the return of income, the

assessee could not offer the amount as income, as the assessee did not have the liquidity to discharge the tax liability and the system of the department was not accepting the return of income without payment of self assessment tax. Even, in course of assessment proceedings, the assessee had communicated to the Assessing Officer offering the amount of cash found in the locker as income and had requested the Assessing Officer to adjust the tax liability from the cash seized. However, as appears from the copy of Form-26AS furnished before us at the time of hearing, the tax due was adjusted from the cash seized only on 09.07.2021.

7. Undisputedly, the cash seized was in the possession of the department from the date of search itself, i.e., 01.12.2018. It is a fact that the assessee has also requested the Assessing Officer to adjust the self assessment tax liability on the income declared of Rs.1,07,00,000/- from the seized amount. However, assessee's request was never accepted. On a reading of section 132B of the Act, though it transpires that the assets seized can be adjusted against any existing liability under the Act and advance tax may not be an existing liability, however, in our view, self assessment tax is certainly an existing liability created on 1st April once the financial year ends. Therefore, the Assessing Officer should have

adjusted the tax liability relating to the undisclosed income declared by the assessee by way of self assessment tax on 1st April, 2019. In that eventuality, there could not have been levy of interest u/s. 234B of the Act, as interest u/s. 234B of the Act has to be computed from first day of April following the financial year, for which, advance tax was required to be paid. At this stage, we must observe, in a dispute of identical nature arising in case of assessee's brother, the Tribunal while deciding the issue in ITA No. 300 & 2748/Del/2022 dated 11.01.2023 has deleted levy of interest u/s. 234B of the Act by observing that the cash seized should have been adjusted against self assessment tax payable with the return of income. Thus, considering the totality of facts and circumstances of the case, we hold that interest charged u/s. 234B of the Act in the peculiar facts and circumstances of the present case, deserves to be deleted. We, accordingly, delete the addition.

8. In the result, appeal is allowed.

Order pronounced in the open court on 29/05/2023.

Sd/-

(G.S. PANNU)
PRESIDENT

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 29.05.2023

*aks/-