

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No. 5382/Del/2018
(Assessment Year: 2012-13)**

M/s. Jainco Developers (P) Ltd, 8, New Rajdhani Enclave, Vikas Marg, New Delhi (Appellant) PAN:AABCJ6893J	Vs. ACIT, Circle-13(1), New Delhi (Respondent)
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Assessee by :	Shri Saurav Rohtagi, CA
Revenue by:	Shri Sandip Kumar Mishra, Sr. DR

Date of Hearing	14/05/2024
Date of pronouncement	17/05/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 5382/Del/2018 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)-5, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. DEL/CIT(A)-5/2017-18 dated 28.06.2016 against the order of assessment passed u/s 154/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 04.07.2017 by the Assessing Officer, ACIT, Circle-13 (2), New Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal before us:-

"1. That under the facts and circumstances, the application U/s.154 dated 06.04.2015 since, was mandated to be disposed off on or before 31.10.2015, however disposed off vide order dated 03./04-07-2017, thus impugned order barred by limitation and unsustainable in law, consequently, the application dated 06.04.2015 should be deemed to have been accepted and accordingly interests U/s.234A & 234B should be correctly calculated by deeming the payment of Rs.74,44,694/- being made on 11.04.2012.

2. That under the facts, the payment of tax of Rs.74,44,694/- should have been deemed to be paid on 11.04.2012 therefore the credit of Rs.74,44,694/- should be given assuming payment made on 11.04.2012, therefore interest U/s.234A & 234B should be calculated accordingly.

3. That under the facts and circumstances of the case, both the lower authorities erred in law as well as on merits in rejecting the application filed U/s.154 of the I.T. Act."

3. We have heard the rival submissions and perused the material available on record. A search and seizure operation was carried out on 19.10.2011 at the premises of M/s Aggarwal Associates and Jainco Group of cases, which included the assessee company also. During the search, fixed deposit receipts to the extent of ₹71,36,097/- and ₹20,38,885/- were seized. The assessee vide letter dated 11.04.2012 requested the Income Tax Department to adjust the fixed deposit receipts against the advance tax liability for AY 2012-13. **Later, the assessee filed its return of income belatedly on 26.03.2013 within the time limit prescribed u/s 139(4) of the Act declaring total income of ₹2,12,72,940/- wherein it was specifically requested to adjust the fixed deposits receipts towards the self assessment tax payable by the assessee.** This is evident from the computation of total income of the assessee. The Id AO completed the assessment proceedings u/s 143(3) of the Act on 31.03.2015 accepting the return of income but did not give credit for self assessment tax by way of adjustment of seized fixed deposits as claimed by the assessee in the return of income and proceeded to raise a demand on the assessee charging interest u/s 234B of the Act till 31.03.2015. The assessee filed rectification petition u/s 154 of the Act before the Id AO on 06.04.2015, which was disposed of beyond the time limit prescribed u/s 154(8) of the Act on 04.07.2017, rejecting the claim of the assessee on the following two grounds: –

a. the return of income was filed by the assessee belatedly u/s 139(4) of the Act and hence, the assessee's claim cannot be accepted.

b. the assessee vide letter dated 11.04.2012 had sought adjustment of seized fixed deposits with the advance tax liability of the assessee and since the financial year itself had ended on 31.03.2012 and accordingly the advance tax obligation also ended for the assessee, therefore, the plea of the assessee cannot be accepted.

4. **It is pertinent to note that the no finding whatsoever was given by the Id AO in its order with regard to assessee's claim, seeking adjustment of seized fixed deposits with the self assessment tax of the assessee.** This action of the Id AO was upheld by the Id CIT(A).

5. The short issue that arise for our consideration in this appeal is whether the assessee is entitled for seeking credit of appropriation of seized fixed deposits as self assessment tax liability of the assessee. The Id DR before us vehemently argued that self assessment tax is the tax payable by the assessee at the time of filing of income tax return and advance tax payable by the assessee for AY 2012-13 expired on 31.03.2012 and that in the instant case, assessee had made the first request for adjustment of seized assets only on 11.04.2012. In these circumstances, the same does not fall within the ambit of adjustment of advance tax. Similarly, the request for adjustment of seized assets was made on 11.04.2012, but the assessee had filed return belatedly only on 26.03.2013 and hence the same would also not fall within the ambit of adjustment towards self assessment tax.

6. We are unable to comprehend ourselves to accept to this proposition of the Id DR in view of the fact that any tax that is paid or sought to be paid by the assessee after the expiry of the financial year could only be construed as advance payment of self assessment tax. In the instant case, the assessee had made a request for adjustment of seized fixed deposits towards the tax liability in terms of section 132B of the Act on 11.04.2012 itself. Obviously, that request had to be construed only towards payment of self assessment tax liability, de hors the actual date of filing of return of income. The most

excruciating fact in this appeal is that the assessee though had made a request while filing the belated return of income on 26.03.2013 had indeed sought for adjustment of seized fixed deposits with the self assessment tax liability, the entire orders of the lower authorities are completely silent on this issue, in as much as absolutely the lower authorities had conveniently ignored by not giving any finding to that effect. Since the issue is already decided by the coordinate bench of this tribunal in favour of the assessee in the case of Manish Uppal (legal heir of Bhushan Kumar Uppal) Vs. ACIT in ITA No. 1986/Del/2018 for AY 2015-16 dated 24.04.2023, we do not deem it fit to restore this issue to the file of Id AO and the issue is decided here itself. The relevant operative portion of the said tribunal decision is as under:-

"5. We find that the assessee had filed his regular return for the Assessment Year 2015-16 on 31.08.2015 declaring total income of Rs. 11,33,54,239/- and the tax liability thereon was arrived at Rs. 3,83,25,170/-. Against this tax liability of Rs. 3,83,25,170/-, the assessee was eligible for tax credit of Rs. 2,09,11,356/- comprising of TDS of Rs. 1,61,71,260/-, advance tax of Rs. 35,00,000/- and self assessment tax of Rs. 12.40.096/-. The assessee requested for adjustment of the seized cash of Rs. 1.76 crores towards self assessment tax payable by the assessee. This claim was made by the assessee in the return of income filed on 31.08.2015 itself. The Id AO while completing the assessment u/s 143(3) of the Act (being the year of search) on 31.03.2016 made a small addition of Rs. 1,83,500/- and determined the total income of the assessee at Rs. 11,35,37,740/-. In the said assessment, the Id AO did not give credit for tax in the form of seized cash of Rs. 1.76 crores and accordingly raised a demand of Rs. 2,09,68,576/- which includes interest u/s 234B of Rs. 22,46,633/-. The assessee filed a rectification application u/s 154 of the Act wherein, the assessee made a request to treat the seized cash of Rs. 1.76 crores as advance tax payable for AY 2015-16 and accordingly requested for recalculating the interest u/s 234B of the Act. This rectification application is enclosed at page No. 24 of the paper book. The Id AO disposed off the rectification application filed u/s 154 of the Act against assessee by applying the provisions of Explanation 2 to section 132B of the Act. For the sake of convenience, the said provision is reproduced herein below:-

"Application of seized or requisitioned assets.

132B. (1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:—

*.....
Explanation 2.—For the removal of doubts, it is hereby declared that the "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII."*

6. *The seized cash of Rs. 1.76 crores was not given credit by the Id AO in this rectification order u/s 154 of the Act.*

7. *Aggrieved, the assessee preferred an appeal before the Id CIT(A), who upheld the action of the Id AO stating that the existing liability does not include advance tax payable and observed that by applying the provisions of Explanation 2 to section 132B of the Act, the assessee's plea has been rightly rejected by the Id AO.*

8. *We are unable to comprehend ourselves to accept to the action of the lower authorities in the instant case. No doubt, in the rectification application made by the assessee u/s 154 of the Act, the assessee had erroneously requested the Id AO to treat the seized cash of Rs. 1.76 crores to be adjusted towards advance tax payable. This is infact not in consonance with provisions of Explanation 2 to section 132B of the Act. However, this rectification application arose from the order u/s 143(3) of the Act dated 31.03.2016 passed by the Id AO wherein, the Id AO had failed to give credit for treatment of seized cash of Rs. 1.76 crores as self assessment tax. In other words, seized cash of Rs. 1.76 crores was not given credit by the Id AO in the assessment framed u/s 143(3) of the Act dated 31.03.2016. It is not in dispute that the assessee had indeed made a claim for adjustment of seized cash of Rs. 1.76 crores with his self assessment tax payable by the assessee along with return of income on 31.08.2015 itself. This was conveniently ignored by the lower authorities. From the bare reading of provisions of section 132B of the Act together with Explanation 2 thereon, there is no prohibition to adjust the seized cash with self assessment tax. What is prohibited is only adjustment of seized cash with the advance tax. Hence, we hold that the assessee is entitled for adjustment of seized cash of Rs. 1.76 crores with self assessment tax payable by the assessee in the return of income. Our view is further fortified by the decision of the coordinate bench of Kolkata Tribunal in the case of ACIT Vs. Narendra N. Thacker reported in 82 taxmann.com 64 and the decision of the Hon'ble Punjab and Haryana High Court in case of Spaze Towers (P) Ltd Vs. DCIT reported in 76 taxmann.com 371.*

9. *In view of the aforesaid observations and respectfully following the judicial precedents relied upon herein above, the ground No. 2 raised by the assessee is hereby allowed."*

7. We find that the seized fixed deposit receipts ultimately had been adjusted against the regular tax arrears for AY 2012-13 by the Income Tax Department at a later period. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we direct the Id AO to adjust the fixed deposit receipts towards self assessment tax payable by the assessee w.e.f. 11.04.2012 and recompute the interest u/s 234B of the Act accordingly. Since the seized fixed deposit receipts are now

directed to be adjusted against the self assessment tax payable, the adjustment already made by the Id AO towards the regular tax need to be removed. The Id AO is directed accordingly. This in our considered opinion, would meet the ends of justice.

8. Since, the relief is granted to the assessee on merits, the ground No. 1 raised by the assessee stating that the rectification order passed u/s 154 of the Act on 04.07.2017 is barred by limitation, need not be gone into and the same is hereby left open.

9. With these directions, the grounds raised on merits by the assessee are hereby allowed for statistical purposes.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17/05/2024.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:17/05/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi