

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
AND SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No.3300 & 3298/Mum/2023  
Assessment Years: 2010-11 & 2013-14**

ACIT, Central Circle-1(4), Mumbai	Vs.	Shubhendu Amitabh  551, Abhinav Apartment Vasundhar Enclave, Delhi- 110096.  PAN: AAJPA 8770 A
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Rajiv Khandelwal, CA & Shri Akash Kumar  
Revenue by : Shri B. Laxmi Kanth, Sr. DR

Date of Hearing : 10.07.2024

Date of Pronouncement : 30.07.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

Both these appeals of the revenue for the assessment year 2010-11 & 2013-14 are directed against different orders passed by the ld. CIT(A), NFAC, Delhi. Since common issue and identical facts involved in these appeals therefore both these appeals are adjudicated together by taking ITA No. 3300/Mum/2023 as lead case and its finding will be applied mutatis mutandis to the other appeal filed vide ITA No. 3298/Mum/2023 wherever it is applicable.

**ITA No. 3300/Mum/2023**

2. The revenue has raised the following grounds of appeal:

*"i. Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) is justified in allowing claim of the assessee with regard to*

*the interest calculation u/s 234B from the 1st day of the assessment year till the date of ownership of the cash seized without going into merits of the case.*

*ii. Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) is justified in allowing the appeal of the assessee without considering the significant provisions of interest calculation provided in section 234B(2A) of the Income Tax Act in case of an application u/s 245C.”*

3. Fact in brief is that in the case of the assessee, a search and seizure action was carried out on Aditya Birla Group on 15.10.2013 and cash amounting to Rs. 25,13,41,100/- was found and seized from the possession / premises of the assessee. The assessee during the course of search vide letter dated 02.10.2013 requested the Assistant Director of Investigation Unit-V(3) to appropriate the seized cash against the tax determined against him. Subsequently, the assessee filed a case before the Hon'ble Settlement Commission and also vide letter dated 05.03.2014 requested the Assistant Commissioner of Income-tax, Central Circle-2, Mumbai furnishing the year-wise breakup of the income offered before the Hon'ble Settlement Commission and the tax liability arising out of the total additional income and requested the Assessing Officer to adjust cash seized during the search against the tax liability. The Settlement Commission has passed order u/s 245D(4) of the Income-tax Act accepting the disclosure of additional income offered by the assessee. However, the Assessing Officer after giving effect to the order of Hon'ble Settlement Commission also calculated interest u/s 234B of the Act from the date of furnishing of return of income u/s 139(1) of the Act till the date of passing of the order u/s 245D(4) of the Act. Therefore, the assessee filed application u/s 154 of the Act

requesting the Assessing Officer to consider the date when he had offered the cash seized during the search to tax i.e. 02.12.2013 for calculating the interest u/s 234B of the Act. However, the Assessing Officer has rejected the application of the assessee stating that the period for calculating interest u/s 234B has rightly been calculated till the date of passing of order u/s 245D(4) of the Act.

4. Aggrieved assessee filed appeal before the ld. CIT(A) against the order passed by the Assessing Officer u/s 154 of the Act. The ld. CIT(A) against the order passed by the Assessing Officer u/s 154 of the Act held that the interest u/s 234B of the Act should be restricted to 02.12.2013 i.e. on the date the assessee had owned up the cash seized as his income and had given consent and authority to the Assistant Director of Income-tax (Investigation), Unit-V(3), New Delhi to adjust the tax liability.

5. During the course of appellate proceedings before us, the ld. DR has supported the order of the Assessing Officer passed u/s 154 of the Act and also submitted that interest u/s 234B has been charged correctly. On the other hand, ld. Counsel referred para 5 of the order of the ld. CIT(A) pertaining to submission made by the assessee on 15.06.2023 wherein assessee had submitted that a letter dated December 2, 2013 was filed before the Investigation Wing requesting to adjust the seized cash against the tax determined on income disclosed by him in the statement recorded u/s 132(4) of the Act. The ld. Counsel submitted that interest u/s 234B could be charged only for the period upto end of the month in which the request to adjust the cash was made. The ld. Counsel

has also placed reliance on the decision of Hon'ble Supreme Court in the case of CIT vs Pranoy Roy 179 Taxman 53 (SC).

6. During the course of appellate proceedings before us, the Id. Counsel has also filed paper book comprising copies of letter dated 02.12.2013 and 05.03.2014 addressed to Investigation Wing and the Assessing Officer requesting for adjustment of the seized cash against the tax liability.

7. Heard both the sides and perused the material on record. Without reiterating the fact as elaborated supra in this order, the assessee has accepted the seized cash vide letter dated 02.12.2013 filed before the Investigation Wing and requested that the seized cash being adjusted against the tax determined on income disclosed by him in the statement recorded u/s 132(4) of the Act. Thereafter, the assessee has categorically requested the Assessing Officer vide letter dated 05.03.2014 to adjust the cash seized against self-assessment tax liability. However, the Assessing Officer has computed the interest u/s 234B from the 1<sup>st</sup> day of assessment order i.e. 01.04.2013 to the date of order of the Income-tax Settlement Commission. The assessee has filed an application u/s 154 dated 28.12.2017 pointed out that cash seized ought to have been adjusted against self-assessment tax on or about 05.03.2014 being date of letter requesting to adjust cash against tax liability. It is evident from the copies of aforesaid letter filed that assessee has categorically requested the Investigation Wing and the Assessing Officer to adjust the tax liability out of the seized cash.

8. The Id. CIT(A) in his finding has also considered the decision of Hon'ble Jurisdictional Bombay High Court in the case of CIT vs Shri Jyotindra B. Mody wherein it is held that section 132B(1) of the Act does not prohibit utilization of amounts seized during the course of search towards the advance tax liability. The relevant extract of the decision of Id. CIT(A) is reproduced as under:

*"7. I have carefully perused the facts of the appellant case the submission of the appellant and the order of the Assessing Officer. A search and seizure action under section 132 of the Income Tax Act, 1961 was conducted on 15.10.2013 in the case of Aditya Birla Management Corporation Private Limited. The residential premises of the appellant, being group executive president, were also covered under section 132 of the Act.*

*7.1. After the search action, return u/s.153A of the I.T. Act was filed on 28.01.2016 and subsequently the appellant preferred his case before the Hon'ble Settlement Commission.*

*7.2. During the course of search proceedings cash was found and seized from appellant's residence and bank lockers as under:*

<i>Sl. No.</i>	<i>Premises from which the cash was seized</i>	<i>Amount (Rs.)</i>
<i>1</i>	<i>UCO Bank Building, 4<sup>th</sup> Floor, Parliament Street, New Delhi</i>	<i>25,01,41,100</i>
<i>2</i>	<i>C8, Sector 14, Noida 201301</i>	<i>12,00,000</i>
	<i>Total</i>	<i>25,13,41,100</i>

*7.3. During the post search proceedings, the appellant vide letter dated 02.12.2013 addressed to the Asstt. Director of Income Tax (Investigation), Unit V (3), New Delhi, accepted and confirmed the ownership of the above cash seized and also had requested to appropriate the seized cash against the tax determined against him.*

*7.4. The appellant after filing his application before the Hon'ble Settlement Commission, again vide letter dated 05.03.2014 to the Asstt. Commissioner of Income Tax Central Circle 2 Mumbai, furnished year wise breakup of the income offered before the Hon'ble Settlement Commission and the tax liability arising out of the total additional income and requested to adjust the cash seized during the search against the tax liability. The breakup of the additional income and tax liability offered before the Hon'ble Settlement Commission is as below;*

A.Y.	Additional income offered	Income tax including surcharge	Interest u/s 234B & 234C	Total tax
2008-09	65,000,000	22,035,717	15,579,239	37,614,956
2009-10	102,1035,000	34,608,052	20,162,621	54,770,673
2010-11	97,889,104	30,148,853	14,079,489	44,228,342
2011-12	104,017,974	31,991,174	11,100,912	43,092,086
2012-13	176,688,285	54,444,240	12,358,831	66,803,071
2013-14	7,758,932	2,222,409	237,795	2,460,204
2014-15	3,890,095	1,026,939		1,026,939
Total	557,379,390	176,477,383	73,518,887	249,996,270

7.5. Thus, the appellant had duly requested the department for adjustments of cash seized against the tax liability vide letter dated 02.12.2013 and 05.03.2014. It was also seen that the cash seized was higher than the tax liability of the appellant.

7.6. The orders giving effect to the order of the Hon'ble Settlement Commission, dated 16.10.2017 was passed by adjusting liability u/s. 234B till the date of the order u/s.24SD(4) of the Act, passed by the Hon'ble Settlement Commission and not as on the date of the first letter of the appellant to the Asstt. Director of Income Tax (Investigation) Unit-V (3), New Delhi, dated 02.12.2013 accepting the ownership of the cash seized and requesting for adjusting the cash seized against his tax liability.

7.7. The request of the appellant to adjust the tax against the cash seized during the search vide letter dated 02.12.2013 to the Asstt. Director of Income Tax (Investigation) unit V(3), New Delhi was not considered by the AO.

7.8. In this regards it would be pertinent to state that the Hon'ble Settlement Commission has accepted the additional income offered by the appellant in its order u/s. 245D(4) of the I.T. Act, and when the appellant vide his letter dated 02.12.2013 had owned the cash seized and offered it to tax and where the tax paid by the appellant vide letter dated 02.12.2013 covered the entire amount of tax assessed, there is no question of charging interest beyond the date the tax was offered by the appellant.

7.9. In this regard, reliance is placed on the Hon'ble Supreme court decision in the case of *Shashikant Laxnan Kale v UOI* [185 ITR 105] wherein the Hon'ble Supreme court held that interest cannot be charged when no tax is outstanding

7.10. Hence the interest u/s. 234B cannot be charged till 10.03.2016 i.e., passing of order giving effect to the order of the Hon'ble Settlement

*Commission dated 16.10.2017. In this regards reference is placed to the first proviso to section 132B(1) of the Income Tax Act which states that provided that where the nature and source of acquisition of any such asset is explained to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Chief Commissioner or Commissioner, to the person from whose custody the assets were seized:*

*7.11. Reliance is placed on the Hon'ble Bombay High Court in the case of CIT VS. Shri Jyotindra B. Mody wherein it is held that once assessee offers to tax undisclosed income including the amounts seized during search, the liability to pay advance tax in respect of that amount arises even before completion of the assessment. The Hon'ble High Court further held that section 132B (1) of the Act does not prohibit utilization of amounts seized during the course of search towards the advance tax liability.*

*7.12. Further, it is also provided that section 234B(2A) of the IT. Act, provides for interest at the rate of 1% for every month or part thereof for the period commencing from the 1<sup>st</sup> April of the assessment year and ending on the date of making the application [234B(2A) (a)] or ending on the date of order u/s. 245D(4) [234B(2A)b].*

*7.13. It is seen from the facts of the appellant's case that the appellant had already offered to pay taxes by giving his consent vide letter dated 02.12.2013 to adjust the tax liability form cash seized.*

*7.14. It is also a fact that the cash seized was not only greater than the original tax liability but also additional tax liability at the time of making application u/s.245C(1) and the order u/s. 245D(4) of the Act, and was sufficient to cover the amount of tax and interest chargeable.*

*7.15. Considering the above facts, I am of the considered view that the interest u/s 234B of the I.T. Act should be restricted to 02.12.2013 i.e., on the date the appellant had owned up the cash seized as his income and had given the consent and authority to the Asstt. Director of Income Tax (investigation) Unit V(3), New Delhi to adjust the tax liability. The appeal of the appellant is accordingly allowed.”*

9. We have also perused the copies of document placed in the paper book filed by the assessee. It is noticed that vide letter dated 02.12.2013 addressed to the Assistant Director of Investigation

Unit-V(3) New Delhi the assessee had categorically confirmed that the cash seized of Rs. 25,03,95,701/- was entirely belonged to him and also requested to appropriate the seized cash against the tax determined as due and payable by him on his income disclosed in the statement recorded u/s 132(4) of the Act. Further, the assessee has addressed a letter dated 02.12.2013 the relevant extract of the letter is reproduced as under:

To  
 The Asst. Director of Income Tax (Investigation)  
 Unit V(3)  
 Room No. 258, 2<sup>nd</sup> Floor, E-2, Jhandewalan Extn.  
 New Delhi.

December 2, 2013

Sub: Explanation on seized cash of Rs. 25,03,95,701/-

Respected Madam,

During the course of my deposition u/s 132(4), I was called upon to explain the cash found from the office premises at UCO Bank Building, 4<sup>th</sup> Floor, Parliament Street, New Delhi and at my residential premises at C8, Sector 14, Noida 201301.

This is to confirm that the seized cash balance of Rs. 25,03,95,701/- found from the above stated premises belongs entirely to me and I am the sole owner of the same.

Sl. No.	Premises from which the cash was seized	Amount (Rs.)
1	UCO Bank Building, 4 <sup>th</sup> Floor, Parliament Street, New Delhi	25,01,41,100
2	C8, Sector 14, Noida 201301	12,00,000
	Total	25,13,41,100

I have to request you to kindly appropriate the seized cash against the tax determined as due and payable by me on my income disclosed in the statement recorded u/s 132(4). I have to request you to kindly take this letter on record and oblige. If any additional details or particulars are required, the same would be furnished forthwith.

Thanking you

Yours faithfully,

(Shubhendu Amitabh)

10. Further vide letter dated 05.03.2014, the assessee has categorically requested the Assessing Officer, ACIT, Central Circle-2, Mumbai to adjust cash seized against the tax liability including the interest charged u/s 234B & 234C of the Act. The relevant extract of the letter addressed by the assessee is as under:

To  
The Asst. Commissioner of Income Tax  
Central Circle- 2, 9<sup>th</sup> Floor, CGO Building,  
M.K. Road,  
Mumbai-400020.

5<sup>th</sup> March, 2014

*Sub: Adjustment of cash seized Rs. 25,13,41,100/- during search & seizure action u/s 132 of Income Tax Act 1961 in case of Aditya Birla Management Corporation Pvt. Ltd. and myself.*

Dear Sir,,

*With reference to the above, I have to inform you that total amount of Rs. 25,13,41,100/- was seized during the search proceedings conducted on 16.10.2013.*

1. *I have offered addition income of Rs. 55,73,79,390/- during post search proceedings.*
2. *The approximate tax and interest due on the said additional income is Rs. 249,996,270/- as follows:*

A.Y.	Additional income offered	Income tax including surcharge	Interest u/s 234B & 234C	Total tax
2008-09	65,000,000	22,035,717	15,579,239	37,614,956
2009-10	102,1035,000	34,608,052	20,162,621	54,770,673
2010-11	97,889,104	30,148,853	14,079,489	44,228,342
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2013-14	7,758,932	2,222,409	237,795	2,460,204
2014-15	3,890,095	1,026,939		1,026,939
<b>Total</b>	<b>557,379,390</b>	<b>176,477,383</b>	<b>73,518,887</b>	<b>249,996,270</b>

3. *I request you to kindly adjust cash seized of Rs. 249,996,270/- against above tax liability.*

Thanking you

Yours faithfully,

(Shubhendu Amitabh)

11. We have also perused decision of Hon'ble Supreme Court in the case of CIT vs Pranoy Roy 309 ITR 231 (SC) wherein held that since tax due has already been paid which was not less than tax payable on returned income which was accepted, question of levy of interest did not arise. In the submission, the assessee has also referred the decision of Hon'ble Jurisdictional Bombay High Court in the case of Apar Industries Ltd. 323 ITR 411 wherein the Hon'ble High Court held that interest u/s 234B of the being compensatory in nature and cannot be charged if the taxes are already paid by the assessee.

12. Looking to the above facts and findings, we consider that the Assessing Officer has ignored the request of the assessee without specifying any reason therefore, we do not find any reason to interfere in the decision of Id. CIT(A). Therefore, both the grounds of appeal of the revenue are dismissed. In the result the appeal of the revenue is dismissed.

ITA No. 3298/Mum/2023

*“i. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) is justified in allowing claim of the assessee with regard to the interest calculation u/s 234B from the 1st day of the assessment year till the date of ownership of the cash seized without going into merits of the case.*

*ii. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) is justified in allowing the appeal of the assessee without considering the significant provisions of interest calculation provided in section 234B(2A) of the Income Tax Act in case of an application u/s 245C.”*

13. On similar issue on identical fact, we have dismissed the appeal of the revenue vide ITA No. 3300/Mum/2023 as supra in this order therefore applying the finding of ITA No. 3300/Mum/2023 mutatis mutandis. This appeal of the revenue is also stand dismissed.

14. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 30.07.2024.

**Sd/-**  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai