

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Waseem Ahmed, Accountant Member and
Shri Soundararajan K., Judicial Member

ITA No. 46/Coch/2024
(Assessment Year: 2018-19)

Vengali Abdul Khader Vilayur West, Poottapalam Pattambi 679309 [PAN: AFUPA3774J]	vs.	ACIT, Central Circle Aayakr Bahvan, S.T. Nagar Shaktanthampural Nagar Thrissur - 680001
(Appellant)		(Respondent)

Appellant by:	Shri Shaji Paulose, CA
Respondent by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	01.10.2024
Date of Pronouncement:	03.10.2024

ORDER

Per Bench

This appeal filed by the assessee is directed against the order of the CIT(A)-3, Kochi dated 30.11.2023 for Assessment Year (AY) 2018-19.

2. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the levy of interest under section 234B of the Act.

3. The facts in brief are that the assessee in the present case is an individual and engaged in the business of wholesale trading of chicken feed and also running hatchery through proprietary concern in the name and style of M/s Vengali Poultry Farm and M/s VPF Hatcheries. The assessee was subject to search proceedings under section 132 of the Act dated 25th September 2017 wherein cash amounting to Rs. 4,39,66,780/-was found and

seized by the department. The assessee in the statement recorded as on 21st November 2017 admitted offering the income on account cash seized during search which was finally declared in the return filed for the year under consideration under section 139 of the Act dated 16th January 2019.

4. The AO in the assessment order dated 23rd December 2019 accepted the returned income. However, the AO while computing the tax liability, levied the interest under section 234A, 234B, 234C and 234F of the Act for Rs. 67,26,298/-which was adjusted against the seized cash.

5. The aggrieved assessee preferred an appeal before the learned CIT(A) and contended that no liability of interest arises if tax liability is adjusted w.e.f. the date on which cash was seized.

6. The contention of the assessee was rejected by the learned CIT(A) by holding that as per the provision of section 132B of the Act, the cash seized during the search will be adjusted against the existing tax liability whereas the tax liability arises in the hands of the assessee only after conclusion of assessment proceedings. Therefore, no liability was existing as on the date of seizure of cash. Thus, the learned CIT(A) confirmed the levy of interest under section 234A, 234B and 234C of the Act.

7. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

8. The learned AR for the assessee before us contended that the amount seized during the search proceedings should be adjusted against the tax liability of the assessee.

9. On the other hand, the learned CIT-DR before us vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. The fact of the case on hand have been elaborated in the preceding paragraph, therefore we are not inclined to repeat the same for the sake of brevity and convenience. The only question before us is whether the advance tax/tax liability of the assessee for the year under consideration shall be adjusted against the cash seized w.e.f. the date on which such seizure was made. The question has been answered in favour of the assessee by the coordinate bench of Delhi Tribunal in the case of Arun Bansal vs. ACIT bearing ITA No. 2614/Del/2022 where the Tribunal vide order dated 29th May 2023 held as under:

11. *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.*

12. *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.

13. We further note that an identical view was also taken by Kolkata Tribunal in the case of Shri Nitin Kumar vs. ACIT bearing ITA No. 1457/Kol/2017 vide order dated 4th April 2018. The relevant finding is extracted as under:

5. We have heard the rival submissions. We find that the assessee had to pay tax on the undisclosed income declared by him in the return of income. Admittedly, the assessee had not made any payment towards self-assessment tax but had only pleaded to appropriate the same out of seized cash available with the Department from 23.04.2011 onwards. According to the assessee, once the seized cash is adjusted towards taxes payable by the assessee on the assessed income, there will be no tax that will be left, in order to be eligible to be charged with interest u/s 234A and 234B of the Act. We find that the assessee had already made 132(4) disclosure statement before the DDIT(Inv.) vide letter dated 13.07.2011 filed on 14.07.2011 giving his Nitin Kumar A.Yr. 2011-12 acceptance for offering of Rs. 66,80,000/- as undisclosed income and giving his consent for appropriation of the said seized cash towards the tax liability for the Assessment year 2011-12. We find that the interest u/s 234A of the Act is chargeable only for the period of delay in filing the return of income. The due date of filing return of income for the assessment year 2011-12 u/s 139(1) of the Act in this case falls on 31.07.2011. The assessee had filed his return of income on 21.03.2013 in response to 153A notice. The cash was seized from the possession of the assessee on 23.04.2011. Hence, it could be safely concluded that the income tax department was in possession of the seized cash of Rs. 66,80,000/- from 23.04.2011 onwards for adjustment towards existing liability of the assessee. Hence, the tax payable by the assessee on the returned income is eligible for appropriation from the seized cash. Once the same is appropriated, there will be no resultant tax liability. Hence, there could be no charging of

interest s 234A of the Act. Accordingly, we direct the ld. AO to delete the charging of interest s 234A of the Act.

5.1. It could be seen from the facts narrated above, that the seized cash was available with the possession of the income tax department only from 23.04.2011 onwards. The interest s 234B of the Act is chargeable from the first day of the assessment year i.e. from 01.04.2011 onwards. Hence, we hold that the interest s 234B of the Act would be eligible to be charged on the assessee for the month of April, 2011 only i.e. for one month on the tax finally assessed by the ld. AO. When the seized cash of Rs. 66,80,000/- is in the possession of the income tax department from 23.04.2011 onwards, it would be unfair and unjust to charge interest on the assessee s 234B of the Act, merely because, the seized cash was given credit on a later date by the ld. AO. It would be just and fair to conclude that the assessee could not be fastened with interest liability for the delayed adjustment of seized cash by the ld. AO. Hence, we direct the ld. AO to charge interest s 234B of the Act on the tax payable on the assessed income for one month only i.e. for April, 2011.

5.2. With regard to interest s 234C of the Act , it is levied for deferment of payment of advance tax for the period of 01.04.2010 to 31.03.2011. In the instant case, since, the cash was seized after the expiry of the previous year i.e. after 31.03.2011, the assessee cannot claim non-chargeability of interest s 234C on that account. Hence, interest s 234C of the Act is leviable in this case.

14. In view of the above and respectfully following the view taken by the coordinate bench of the Tribunal in the above-mentioned cases, we hold that in the given facts and circumstances, the assessee should be allowed to adjust the cash seized during search against the existing liability of self-assessment tax/advance tax w.e.f. date on which the cash was in the possession of department. The cash seized was more than the amount of final tax liability and the same was available with the department before the end of the previous year relevant to assessment year under consideration. Therefore, there was no reason for denying the adjustment of cash seized against the tax liability in the hands of the assessee. Accordingly, we are of the view that no interest was leviable on the assessee under section 234A, 234B and 234C of the Act in the given facts. Thus, we hereby direct the AO to delete the interest levied by him. Hence, the ground of appeal of the assessee is hereby allowed.

15. In the result, the appeal of the assessee is allowed.

Order pronounced on 03rd October, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Soundararajan K.)
Judicial Member

Sd/-
(Waseem Ahmed)
Accountant Member

Cochin, Dated: 03rd October, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

Assistant Registrar
ITAT, Cochin