IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 4910/MUM/2024
Assessment Year: 2015-16

Kushal Narayan Patel, A/102, Sagar Garden, Chs Ltd. LBS Marg, Mulund West, S.O. Mumbai. Mumbai-400080. **PAN NO. ATDPP 3478 R** **Appellant**	**Vs.**	ITO Ward-26(2)(1), Kautilya Bhavan, G Block BKC, Bandra Kurla Complex, Bandra East, Mumbai-400051. **Respondent**

Assessee by	:	Mr. Bharat Kumar
Revenue by	:	Mr. Pravin Chavan, Sr. DR

Date of Hearing	:	04/11/2024
Date of pronouncement	:	22/11/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 05/08/2024 passed by the learned commissioner of Income-tax Act (Appeals)- 54, Mumbai [in short the Ld. CIT(A)], for assessment year 2015-16, raising following grounds:

1. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming stand of A.O. which is bad in Law.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming stand of A.O. for providing credit of Rs 10,83,260/- paid as Tax by the Appellant on 9 April 2014 as against allowed by the AO as paid only on 21 March 2018.

3. On the facts and circumstances of the case and in law, the AO erred in levying and computing interest under Section 234B and Section 234C of the Act;

4. On the facts and circumstances of the case and in law, It is prayed that interest levied under section 220 should be deleted as there was failure on the part of A.O. to give the credit of cash seized in system on time.

5. Without prejudice to above, It is prayed before your honours the date of deposited of tax should be treated from date of assessment order and consequence interest charged under section 234B, 234C and 220 should be deleted.

2. Briefly stated facts of the case are that assessee was engaged in the business of trading and exporting of textile materials. During parliamentary/legislative assembly election period, cash of ₹10,83,200/-was found from a vehicle occupied by the assessee by the static surveillance team of the election commission. As no satisfactory explanation was given by the assessee regarding source of cash found , the matter was referred to the Income-tax authorities, and consequently, a warrant of authorization for search action under section 132 of the Income-tax Act, 1961 (in short the Act), was executed on 05/04/2014. During the course of search proceeding, statement of the assessee was recorded under section 132(4) of the Act, but the assessee again failed to furnish source of the cash and hence cash found was seized by the Income tax authorities. Thereafter, proceedings under section 153A of the Act were initiated and the assessee was asked to file return of income. The assessee filed return of income under section 153A of the Act

on 22/07/2016 declaring a total income of ₹40,12,100/- but the said income did not include the cash of ₹10,83,260/- seized during the course of search action. During the course of assessment proceeding, the assessee accepted the cash seized of ₹10,83,260/- as his undisclosed income and requested vide letter dated 10/04/2015 and 10/02/2016 for adding the said sum to the total income and adjustment of cash seized against advanced tax liability. Accordingly, total income was computed at ₹50,95,360/- in the assessment order passed under section 153A/143(3) of the Act on 30/12/2016. A notice of demand under section 156 of the Act was issued along with the assessment order, wherein the assessee was allowed 30 days time for payment of the demand of ₹ 17, 01, 366/- including interest under section 234B/234C of the Act, but the Assessing Officer adjusted the cash seized against the tax liability only on 21/03/2018

3. In view of non-adjustment of the cash seized against the advance tax or self-assessment tax liability while passing the assessment order under section 153A of the Act and further charging of interest under section 220 of the Act, the assessee filed appeal before the Ld. CIT(A), but could not succeed. Aggrieved, the assessee is in appeal before the Tribunal, raising the grounds as reproduced above.

4. We have heard rival submission of the parties and perused the relevant material on record including the paperbook containing

pages 1to 72 filed by the learned counsel for the assessee. In the grounds raised, the assessee has raised multiple/ alternative prayers for adjustment of the cash seized against the tax liability, which include, ***firstly***, adjustment of cash seized against advance tax liability, ***secondly***, adjustment of cash seized against self assessment tax liability, and ***thirdly***, adjustment of seized cash against regular tax liability from the date of raising such demand at the time of assessment order. The Assessing Officer has charged interest under section 234B and 234C for non-payment of advance tax particularly in respect of cash of ₹ 10, 83, 260/- which amount has been admitted by the assessee during the course of the assessment proceeding as part of the total income. The contention of the assessee, that cash was seized on 09/04/2014 and therefore same should be firstly, adjusted against the advance tax liability of the assessee. The section 132B of the Act prescribes as how the cash seized should be adjusted against the tax liability including 'existing tax liability' and 'liability' determined on completion of the search assessments orders / penalty order etc i.e. regular tax demand. The learned counsel for assessee relied on the decision of the Hon'ble Punjab and Haryana High Court in the case of **CIT Vs Ashok Kumar reported in (2012) 20 taxmann.com 432 (Punjab and Haryana).** But, we find that, legislature has introduced specific amendment by way of Explanation- 2, inserted below section 132B, though Finance Act 2013, with effect from 01/06/2013, which states that for removal of doubts, it is hereby declared that the

'existing liability' does not include 'advanced tax' payable. Thus, the explanation has clearly put in place an embargo against adjustment of seized cash against the advance tax liability of the assessee being advance tax payable not included as an existing liability, hence the decision of the Hon'ble Punjab and Haryana High Court in the case of Ashok Kumar (supra) is not applicable. Furthermore, the Hon'ble Punjab and Haryana High Court in *Cosmos Builders and Promoters* (ITA No. 425 of 2014) has held that the insertion of Explanation 2 to Section 132B is prospective. Given that the search action in this case occurred in the financial year 2014—subsequent to the insertion of Explanation 2—its provisions are applicable to the facts of this case. Thus, the prayer of the assessee for adjustment of the seized case against advanced tax liability is not permissible and accordingly relevant prayer of the assessee is rejected.

4.1 The second prayer has been made by the assessee for adjusting the seized case against the self-assessment tax liability. The advance tax is payable against the estimated income, prior to filing of return of income but the self-assessment tax liability is computed upon computing the total income at the time of filing return of income and after reducing the tax deducted at source or advance tax paid and the remaining tax liability is determined by the assessee as self-assessment tax liability. The assessee has alternatively contended that the seized cash should be adjusted as self-assessment tax liability. The learned counsel for the assessee

has relied on the decision of the coordinate bench of the Tribunal in the case of **Arun Bansal in ITA No. 2615/Del/2022**, wherein the Tribunal held as under:

> *"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."*

4.2 Further, we find that Kolkata bench of the Tribunal in the case of **ACIT vs Narendra N Thacke (2017) 82 taxmann.com 64** has held that the action of the assessee in seeking to adjust the seized cash with the self-assessment tax payable along with the return of income is in order and in accordance with section 132B of the Act as admittedly self-assessment tax payable become existing liability on the part of the assessee. In our opinion, once the assessee accepts the asset in the form of cash as unexplained and offers the

same for tax, the revenue can't sit over his request and on the other hand charge interest for nonpayment of taxes. Until, the cash seized is adjusted against the taxes, the Revenue is mere custodian and required to adjust against the taxes as and when requested for adjustment and any delay on the part of the Revenue, the assessee should not be penalized.

4.3 In view of the precedents discussed above, it is evident that self assessment tax liability could be treated as part of the 'existing liability' , but in the instant case, the assessee has apparently not included the said amount of the cash seized as part of his total income and computed the self-assessment tax liability corresponding to said income. In the case of **Arun Bansal (supra),** the assessee demonstrated that in the return of income filed for the relevant 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. In said case, the assessee communicated to the Assessing Officer for offering of cash seized as income and requested for adjusting the tax due from the cash seized as the assessee did not have liquidity to discharge the tax liability. In the instant case before us, the learned counsel could not readily substantiate evidences in support of existence of identical circumstances, therefore, we feel it appropriate to set-aside the finding of the ld CIT(A) on issue in dispute and restore the matter back to the file of the Assessing

Officer for determining the issue of adjustment of self-assessment tax liability after verification of application filed by the assessee seeking such adjustment & other documentary evidences to support that circumstances identical to the case of Arun Banal (supra) existed in the case and then decide the issue in accordance with law .

4.4 Third alternative prayer is for deleting the interest charged under section 220 of the Act in respect of regular tax demand consequent to assessment order. The Assessing Officer has adjusted the seized cash against the tax liability only on 21/03/2018, whereas tax demand was raised on 30/12/2016, which was payable within 30 days from said date. As on the date cash seized was available for adjustment by the Assessing Officer, and the assessee made request for such adjustment even during the course of the assessment proceeding as well as in the post assessment period, however same was adjusted by the Assessing Officer only on 21/03/2018 and this delay cannot be attributed to the assessee. The assessee cannot be held as assessee in default for non-payment of the tax on time and no interest under section 220 can be charged from the assessee in such circumstances. Accordingly, we direct the Assessing Officer to adjust the seized cash against the tax liability raised in notice for demand dated 30/12/2016 as said cash was already available with the Department for adjustment within the period of 30 days provided

under said notice. We may clarify that this issue of adjustment against regular demand is to be considered by the Assessing Officer if the assessee does not get relief on the issue of adjustment of cash seized against self assessment tax while verification of the issue self-assessment tax liability adjudicated by us in preceding paragraphs.

4.5 Accordingly, the grounds of the appeal of the assessee are partly allowed for statistical purposes.

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

Order pronounced in the open Court on 22/11/2024.

Sd/-	**Sd/-**
(KAVITHA RAJAGOPAL)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 22/11/2024
Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai