

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

**BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.130/Del/2023
[Assessment Year: 2019-20]**

Sanjeev Kumar Garg, 229/1, Katra Peran, Tilak Bazar, Delhi-110006	Vs	Deputy Commissioner of Income Tax, Central Circle-20, E-2, ARA Centre, Jhandewalan Ext. New Delhi-110055
PAN-AAAPG3875H		
Assessee		Revenue

Assessee by	Shri Lokesh Gupta, CA
Revenue by	Ms. Jaya Chaudhary, CIT(DR)

Date of Hearing	27.02.2025
Date of Pronouncement	27.05.2025

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-27, New Delhi dated 20.12.2022, arising out of assessment order passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), dated 21.04.2021 for Assessment Year 2019-20.

2. Ground of appeal raised by the assessee are as under:-

1. *Assessment of income of Rs.3080000/- u/s 69A of the I.T. Act Rs.1848000/- is wrong, illegal and unjustified and the same should have been assessed as the normal income of the*

assessee since section 69A is not applicable to the facts and circumstances of the case and the law applicable thereto.

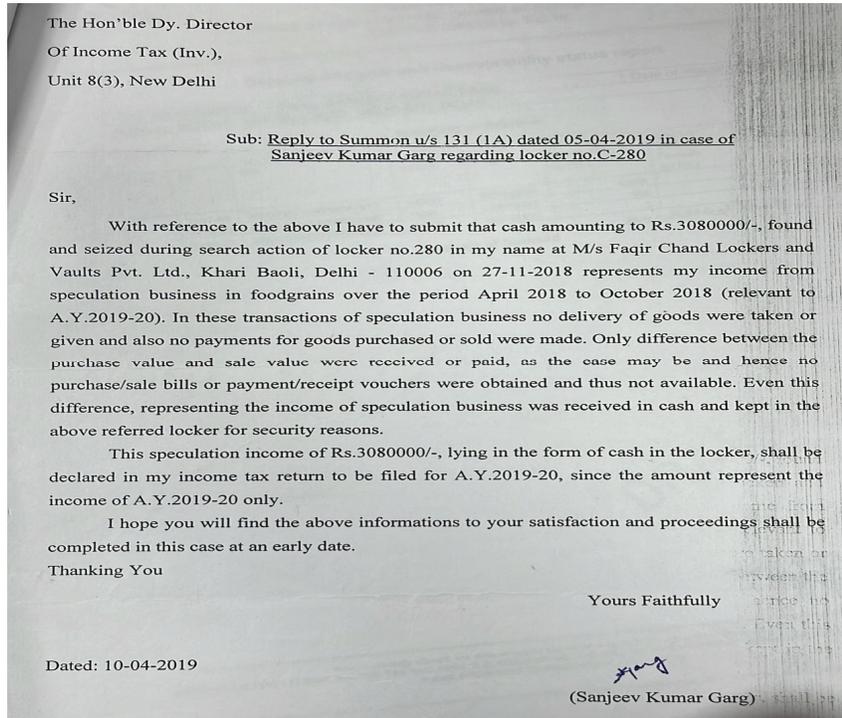
2. That the application of Section 115BBE is wrong and Rs.555024/- unjustified since assessment was made at the returned income and section 69A is not applicable in our case.

3. That interest charged in the assessment order including interest Rs.663589/-w/s 234B is wrong and illegal since there is no default in payment of self assessment tax and the tax was paid by adjustment of seized cash.

4. That application of section 153A is wrong and illegal as there is no reason or basis for invoking such provision.

5. That initiation of penalty proceedings u/s 271AAB(1A) is wrong and unjustified.

3. Brief facts of the case:- A search was conducted by the Department on 27-11-2018 in Fakir Chand Lockers and Vaults Pvt. Ltd. , Khari Baoli, Delhi-110006. The assessee's locker no.280 at the said vault was also covered and searched on 27.11.2018 and cash of Rs.30,80,000/- was seized from the said locker. The assessee filed his return of income on 31.10.2019 declaring total income of Rs.35,95,460/- which *inter alia* included income representing cash amounting to Rs.30,80,000/- seized from the said locker. In his reply to the DDIT(Inv.), Unit-8(3), New Delhi, dated 10.04.2019, to the summons u/s 131(1A) of the Act, dated 05.04.2019, the assessee stated that the seized cash of Rs.30,80,000/- represented his income from speculation business in food grains for the period April, 2018 to October, 2018 (relevant to AY 2019-20) and the same shall be declared in his return of income to be filed for AY 2019-20, since, the amount represented the income for AY 2019-20 only. The relevant extract of the said letter placed at page no.11 of the paper book, is reproduced as under:-



3.1. Further, the assessee vide his letter dated 25.09.2019 (placed at page no.21 of the paper book) requested for adjustment of the tax payable of Rs.9,24,000/- on the disclosed income of Rs.30,80,000/- or any other amount payable for be adjusted as advance tax/self assessment tax payable for the year out of the amount of Rs.30,80,000/- seized by the department on 27.11.2018.

3.2. The Assessing Officer completed the assessment at the returned income of Rs.3595460/- under section 143(3) on 21.04.2021, but assessed Rs.30,80,000/- u/s 69A of the Income Tax Act and Rs.5,15,460/- under the normal income. In the assessment order, the AO did not accept the claim of the assessee that the amount of the seized cash of Rs.30,80,000/- represented his speculative business from food grains as declared by the assessee in his return of income. The AO was not satisfied with the explanation of the assessee that the entire speculative business was done in

cash and no evidence was available for the same and considered it to be a concocted story and issued a show-cause notice dated 25.03.2021. In absence of any reply from the assessee, the AO treated the seized cash of Rs.30,80,000/- as unexplained money u/s 69A of the Act read with section 115BBE of the Act. The relevant discussion in the assessment order is as under:-

4.1 The submission of the assessee was duly perused and it was observed that assessee vide submission dated 10.02.2021 stated that the source of cash seized was disclosed as income from speculation transactions in food grains over the period April, 2018 to October 2018, relevant to A.Y. 2019-20. Further, the assessee mentioned that in speculation transactions, no actual delivery of goods were taken or given and also no payments for value of goods purchased or sold were made or received. Only difference between the purchase rate and sale rate was received or paid. Hence, no purchase or sale bills are involved. The difference representing the income of speculation transactions was received in cash only and was kept in locker for security reasons.

4.2. The assessee has no documentary evidences in support of his claim submitted that in the income tax return filed by the assessee for A.Y. 2019-20, he has declared an income of Rs. 35,95,460/- which includes cash seized amounting to Rs. 30,80,000/- under the head "Income from Other sources".

Assessee's response was not found satisfactory. Mere declaration that the cash seized was generated from the speculative trade of food grains, without any documentary evidence for the same doesn't lend any credibility to assessee's argument and is just based on concocted story with the main purpose to evade tax. As the assessee's reply to the questionnaire was not satisfactory, a show cause notice dated 25.03.2021 was issued to the assessee

"On the perusal of Income tax return filed by you on 30.10.2019, it is observed that you have declared the seized amount of Rs. 30,80,000/- under the head income from other sources. However, you have not provided supplementary evidences with respect to the speculative income.

Hence, keeping in view the principals of natural justice, you are hereby asked once again to explain the source of cash found and seized from the locker Nos. 280 at Faquir Chand Locker and Vaults Ltd. and show-caused as to why the cash found amounting to Rs. 30,80,000/- found in locker No. 280 shall not be taxed as unexplained money u/s 69A r.w.s. 115BBE of the IT

Act, 1961 as it has been disclosed by you in your books of account and source of it also remains unexplainable.

Please Specify the manner in which income is derived and also substantiate the manner in which income is derived."

4.3 No reply has been filed by the assessee. In absence of any reply from the assessee, it is fairly relevant to conclude that cash amounting to Rs 30,80,000/- seized from the locker is the unexplained money of the assessee which was not declared by the assessee in his books of accounts and source of its generation remains Therefore, assessee's declaration of Rs. 30,80,000/ of cash seized as "income from other sources" is hereby rejected.

5. In light of above discussion, Sum of Rs 30,80,000 seized from Locker No. 280 at 6704A, Khari Baoli, Delhi - 110006, is added in the hands of Sh. Sanjeev Kumar Garg as unexplained money under Section 69 A of the IT act, 1961 as it was neither declared by assessee in the books of account nor the source and nature of its generation is explained

6. As per the provisions of Section 69A of the Income Tax Act "Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

7. In the instant case, Sh. Sanjeev Kumar Garg, has been found to be the owner of cash of Rs. 30,80,000/- seized from the locker No 280 owned by him in his personal capacity and thus the cash amounting to Rs. 30,80,000/- represents his unexplained income as per provisions of Section 69A r.w.s. 115BBE of the IT Act, 1961.

4. Against the said order, the assessee filed an appeal before the Ld. CIT(A). The ld. CIT(A) in para-6.5 of his order did not accept the plea of the assessee that the disclosed amount of Rs.30,80,000/- represented 'income from other sources' on account speculation transaction in food grains business. The ld. CIT(A) noted the explanation of the assessee submitted during the assessment proceedings in para-6.3 of his order which is reproduced as under:-

6.3 On perusal of ITR filed by the appellant, it is observed that the appellant has disclosed amount of Rs. 30,80,000/- under the head income from other sources. During the assessment proceedings, the source of cash explained by the appellant is as under:

"...the source of cash seized was disclosed as income from speculation transactions in food grains over the period April 2018 to October 2018 relevant to A.Y. 2019-20. Further, the assessee mentioned that in speculation transaction no actual delivery of goods were taken or given and also nopayments for value of goods purchased or sold were made or received. Only difference between the purchase rate and sale rate was received or paid. Hence, no purchase or sale bills are involved. The difference representing the income of speculation transactions was received in cash only and was kept in locker for security reasons."

5. Thereafter, the ld. CIT(A) reproduced the response of the AO in para

6.4, which is again reproduced as under:-

6.4 After consideration of the reply of the appellant, the AO in asstt. order observed as under and made the addition of Rs.30,80,000/- u/s 69A r.w.s. 115BBE of the Act:

"Assessee's response was not found satisfactory. Mere declaration that the cash seized was generated from the speculative trade of food grain, without any documentary evidence for the same doesn't lend any credibility to assessee's argument and is just based on concocted story with main purpose to evade tax. ..."

6. The ld. CIT(A) rejected the explanation of the assessee and held that to speculate in commodity market including food grains market, one is required to maintain demat & trading account and such transaction are settled through any recognised commodity exchange in India like Multi Commodity Exchange (MCX), National Commodity and Derivate Exchange (NCDEX). Thereafter, the ld. CIT(A) gave reasons apart from the above for

rejecting the claim of the assessee in para no.6.5 and 6.6 of his order which are reproduced as under:-

6.5. To speculate in commodity market including food grain market, one is required to maintain demat & trading account and such transaction are settled through any recognised commodity exchange in India like Multi Commodity Exchange of India (MCX), National Commodity and Derivative Exchange (NCDEX) etc. However, during the appellate proceedings:

- i. the appellant has not furnished details of platform and interface through which such speculation transaction in food grain market were carried out.*
- ii. the appellant has not furnished details of speculation transactions executed i.e. details & quantity of item purchased & sold, purchase and sale price, date of transaction etc.*
- iii. the appellant has not furnished copy of any demat account, trading account and ledgers thereof.*
- iv. the appellant has not furnished any documentary evidence of Commodity Transaction Tax paid on execution of such speculative transactions.*
- v. the appellant contended that these speculation transactions were carried out in cash only and difference representing the income was received in cash only, but any documentary evidence to substantiate this contention has not been furnished by the appellant.*
- vi. the appellant has neither filed any documentary evidence to rebut the view taken by the AO nor furnished any details to substantiate his claim of speculation transaction in food grains.*
- vii. the appellant also not produced any details or evidence that this speculation transactions were also carried out by the appellant before April, 2018. Without any documentary evidence, it is hard to believe that appellant in April, 2018 started speculation trading and earned Rs. 30,80,000/- in just 7 months and then left. If appellant was so good in it, why such activity was not carried out after search action.*

6.6 In view of above discussion, I do not find any reason to interfere with the view taken by the Assessing and therefore, it is held that the appellant has failed to substantiate his claim that source of cash found was out of speculation transactions in food grain market. Therefore, in totality, the appellant has

failed to explain nature and source of cash found and seized of Rs. 30,80,000/-

7. Against the order of the Ld. CIT(A), the assessee is in appeal before us.
8. During the hearing before us, the ld. Counsel for the assessee relied upon the written submission filed by him and stated that since speculative transactions were done in cash, it was not possible to create documentary evidence and therefore, the findings of the AO as well as the ld. CIT(A) is not correct. The relevant extract of the submissions in para-3 of the written submission of the assessee is reproduced hereunder:-

3. That section 69A of Income Tax Act is not applicable to our case and order to treat this amount of Rs.30,80,000/- as undisclosed income itself is wrong and illegal, since this amount was duly disclosed during the course of search operation and the same was also disclosed correctly in the return filed for this year and which has actually formed the basis of assessment.

Section 69A of Income Tax Act, 1961 deals with unexplained money and provides that "Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery, or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article or the explanation offered is not, in the opinion of the AO, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year." The source of cash found in the locker was disclosed as income from speculation transactions in foodgrains over the period April 2018 to October 2018, relevant to A.Y.2019-20. It was also explained that the farmers/small traders come with bags of foodgrains in foodgrain market at Naya Bazar, Delhi - 110006 for sale of the foodgrain bags in the market. The assessee used to contact such farmers/small traders and make business deal for the material at a certain price and similarly make deal with the foodgrain dealers for a slightly higher price, retaining small margin of profit for himself. He used to receive such margin of profit in cash. Delivery of material from supplier to the buyer and payment by the purchaser to the supplier was made directly, though he acted as a facilitator. The transaction of cash received as margin money was duly recorded in the cash

book maintained for this income. Cash accumulated from these transactions was kept in his locker for security reasons.

In view of the nature of transactions and other facts stated hereinabove the provisions of section 69A is not attracted in our case. Since we have complied with the conditions of that section i.e., the transaction of income stands recorded in the books of account, maintained by assessee for this source of income and further explanation was offered about the nature and source of acquisition of cash of Rs.30,80,000/-recovered from the locker to the satisfaction of the Assessing Officer. This amount of Rs.30,80,000/- was duly declared as income in the return filed for A.Y.2019-20 and has formed the basis of assessment. The rejection of our explanation by the Assessing Officer that there is no documentary evidence in support of our claim is not in accordance with law since in cash transaction deal in speculative transactions it is not possible to create documentary evidence. Hence the change in section from 'Income from other source' to income from section 69A for this income of Rs.30,80,000/- is wrong and unjustified and is not in accordance with law.

In our case since the source of income was declared even before its seizure and also in the return of income filed, the explanation regarding source of income of Rs.30,80,000/- was correctly furnished. There is no basis for the AO not to accept the same and assess the same u/s 69A of the Income Tax Act. The reasons assigned for assessment of income Rs.30,80,000/- u/s 69A are not based on facts and law. The rejection of our explanation is based on presumptions only and without assigning any reasons for rejecting our explanation in this regard. In view of the above the assessment of income u/s 69A is wrong, illegal and unjustified.”

9. We have heard both the parties and perused the materials available on the record. Thus, the issue in this case is whether the income of Rs.30,80,000/- declared under the head 'Income from other sources' on account of the seized cash from the bank locker no.280 at Faquir Chand Locker and Vaults Ltd. represents income from speculation business from food grains business for the period April, 2018 to October, 2018 relevant to AY 2019-20 as claimed by the assessee or it represents his unexplained income as per provisions of section 69A r.w.s. 115BE as assessed by the Assessing Officer in absence of any supporting evidence in support of his

claim of doing speculative business in food grains business as held by the AO. In this regard, the assessee earns his regular income from his proprietorship concern M/s Gadodia Chemicals, which is engaged in the business of trading of chemical. The statement of the assessee was recorded a day prior to the date of search i.e. on 26.11.2018 u/s 131(1A) of the Act. In reply, to question no.8, he did not state that the cash lying in the seized locker no.280 represented his income from speculation business from food grains as stated in his letter dated 10.04.2019 to the DDIT(Inv.), Delhi, as reproduced earlier in this order and subsequently in his return of income filed on 31.10.2019 for AY 2019-20. The relevant question and the answer of the assessee in reply to question no.8 is reproduced as under:-

Q.No. 8	Please specify the source with evidence of cash kept in locker No. _____ type _____ at Faqir Chand Locker and Vaults Pvt. Ltd. , basement of 6704/A Khari Baoli, New Delhi and also specify whether the amount of Rs. _____ is disclosed in your books of account or not with complete evidences.
	<p>कृपया) आपके लॉकर नं. 280/1 में रखे लगभग 20 लाख रुपये की गन्दी के स्टॉक के बारे में विस्तार से बताते और उसका सबूत भी दें।</p> <p>मे 30 की कमाई का सौरभ वापस करे विस्तार से नहीं है</p>

9.1. However, the assessee in his written submission before us (as reproduced earlier in this order) has claimed that he had disclosed the seized cash of Rs.30,80,000/- during the course of search and the transaction of cash received as margin money was duly recorded in the cash book maintained for this income and cash accumulated from these transactions was kept in locker for security reasons. The said claim of the assessee has been duly highlighted in the written submission of the assessee as reproduced earlier in para no.8 of this order. However, neither the assessee has furnished any evidence in support of his claim as to how

the income was disclosed during the course of search as speculative business from food grains nor the said cash book in which this transaction was recorded has been placed before us. The AO has not mentioned anything about the above two claims of the assessee and the Id. CIT(A) has also not dealt with it. However, the claim has been made by the assessee and, therefore, the onus is on him to satisfy the AO with his claim that the seized cash of Rs.30,80,000/- represented his income from speculative business in food grains business for the period April, 2018 to October, 2018. Therefore, in the given facts of the case, the addition of Rs.30,80,000/- u/s 69 r.w.s. 115BE of the Act made by the AO and confirmed by the Ld. CIT(A) cannot be sustained. However, since the above explanation of the assessee and the relevant cash book of the assessee was not examined by the AO and further the details of statement recorded, if any of the assessee during the course of search on 27.11.2018 in which, it has been claimed by the assessee that such income of speculative business in food grains business was declared, has not been examined by the lower authorities, we deem it fit to set-aside the order of the AO and the Id. CIT(A) and remit this matter i.e. the treatment of the seized cash of Rs.30,80,000/- to the file of the AO to examine the issue afresh and to consider the above explanation of the assessee and also keeping in view our above observations after giving reasonable opportunity of being heard to the assessee and as per law. Ground no.1 and 2 are allowed for statistical purposes.

10. Ground no.3 relates to charging of interest u/s 234A (Rs.23,765/- and 234B (Rs.5,93,875/-) of the Act. The assessee submitted that interest u/s 234A of the Act amounting to Rs.23,761/- was wrong and unjustified

since the return of income for AY 2019-20 was filed on the due date i.e. 31.10.2019. Further, it was submitted that interest u/s 234B was wrongly charged in this case for the reasons that the cash amount of Rs.30,80,000/- seized on 27.11.2018 was in the custody of the Department and the payment of taxes of the existing liability on the returned income became due when the assessee filed his return of income on 31.10.2019 declaring gross total income of Rs.37,62,301/- consisting of business income of Rs.5,38,126/- and income from other sources of Rs.32,24,175/- which inter alia included income of Rs.30,80,000/- represented by cash seized by the Department from the locker and therefore, the same should have been adjusted by the AO on 21.04.2021, when he passed the assessment order and no interest u/s 234B should have been charged. In this regard, the assessee relied upon following case laws:-

- i. ACIT vs Narendra N. Thacker (IT(SS)A No.01/Kol/2012)
- ii. Nitin Kumar vs ACIT (ITA No.1457/Kol/2016)
- iii. ACIT vs Sajjan Singh (ITA No.6640/Del/2016)
- iv. Sushil Bansal vs ACIT (ITA No.300 & 2748/Del/2022)

10.1. The written submission of the assessee in para no.5 to 6 of another written submission is reproduced as under:-

B) Charging of interest u/s 234A and 234B

5. That the Assessing Officer has erred in not allowing credit as self assessment tax paid for Rs.3080000/- seized by the Department inspite of the letter dated 25-09-2019 and filed with the Department on 26-09-2019, that the seized amount be utilized towards the self assessment tax. Again the similar request was made vide our letter dated 23-05-2022, filed on 27-05-2022 with the Department. This request is also evident from

the return of income filed for A.Y.2019-20, wherein this amount was also declared as income.

The CIT(A) erred in not giving us relief on this account by referring to the first proviso to section 132B(1) since the proviso is applicable only to cases where assessee requests for release of assets and not where the asset seized is to be adjusted against the existing liability.

6. The Hon'ble Income Tax Appellate Tribunal in case of Narendra N Thakker Vs Department of Income Tax in IT(SS)A No.01/Kol/2012 it was held it is beyond doubt that the terms 'Advance Tax' and 'Self Assessment Tax' are distinct and separate.

The Income Tax Appellate Tribunal, D Bench, Kolkata in case of Nitin Kumar Vs ACIT in ITA No.1457/Kol/2016 has held that when the seized cash was available with the Income Tax Department onwards it would be unfair and unjust to charge interest on the assessee u/s 234B of the Act, merely because, the seized cash was given credit on a later date by the Ld. AO.

Again the Income Tax Appellate Tribunal Bench B in case of ACIT, Central Circle 17 Vs Sh. Sajjan Singh in ITA No.6640/Del/2016 it was held that we hold that action of the assessee in seeking to adjust the seized cash with Self Assessment Tax payable with the return of income is in order and in accordance with section 132 of the Act, as admitted self assessment tax payable become existing liability on the part of the assessee to settle

The Hon'ble ITAT G Bench, Delhi Benches in Sushil Bansal Vs. ACIT, Central Circle 20 in ITA No.300/Del/2022 in order pronounced on 11-01-2023 in the identical case where issue of interest was only contested has held "In our considered opinion once the assessee has repeatedly asked the revenue to adjust the tax liability against the cash seized on 01-12-2018 the AO should have adjusted the tax liability immediately on framing the assessment order. In our understanding of law the cash seized by the Department should have been adjusted with self-assessment tax payable with the return of income in accordance with section 132B of the Act. On these peculiar facts of the case we do not find any merit in charging the interest u/s 234B of the Act. The AO is accordingly directed to delete the interest charged u/s 234B of the Act."

In our case since the tax was duly paid by way of seizure of cash by the Department on 27-11-2018, i.e., before 01-04-2019 no interest is chargeable u/s 234B. This is supported by the decision of the Hon'ble Tribunal of Delhi and Kolkata, as cited hereinabove.

11. We have heard both the parties and considered the materials on record. In the case of Narendra N. Thacker(supra) , the issue before the Tribunal was as under:-

“3. The only issue to be decided in this issue is as to whether the Learned CIT(A) is justified in allowing the adjustment of seized cash against self assessment tax liability though the Act does not provide for adjustment of seized cash before determination of tax liability.”

12. The Kolkata Tribunal held that admittedly self assessment tax becomes “existing liability” on the part of the assessee when it filed the return of income and therefore it was covered by the provisions of section 132B(1)(i) of the Act. In the cited case a search was conducted on Thacker Group on 27.07.2006, wherein, cash to the extent of Rs.20 lakhs was found from locker no.646 with Canara Bank, Vasi Branch, Mumbai, belonging to the assessee and the same was seized by the Department. The assessment was completed u/s 153A of the Act on 01.07.2008 determining taxable income at Rs.60,12,240/- raising a demand of Rs.24,02,249/-. Originally, the AO gave credit for seized cash of Rs 20,00,000/- towards self assessment tax which was later rectified u/s 154 of the Act by the AO on 2.3.2010 by revoking the credit for seized cash of Rs 20,00,000/- as according to the AO, there was no existing liability on the date of adjustment of the seized cash, and consequentially charged interest u/s 234B and 234C of the Act. This action was not confirmed by the Ld. CIT(A) and the Revenue was in appeal before the Tribunal on the following grounds of appeal:-

“1. That in the facts and circumstances of the case and in law, the Learned CIT(A) has erred in allowing the adjustment of seized cash against self assessment tax liability though Income Tax Act does not provide for adjustment of seized cash before determination of tax liability.”

13. The relevant finding of the Tribunal holding that the action of the AO in withdrawing the credit of self-assessment tax was not correct and the self-assessment tax becomes payable becomes 'existing liability' on the part of the assessee when the return of income was filed by the assessee. The relevant para-7 is reproduced as under:-

"7. We find that the subsequent action of Learned AO in revoking the credit given for seized cash towards existing tax liability under proceedings u/s 154 of the Act is illegal. The provisions of section 132B of the Act makes it clear that the terms 'existing liability' does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII. But this amendment was brought in the statute by Finance Act 2013 with effect from 1.6.2013 only. Hence it can be safely concluded that what is precluded in the statute is adjustment of seized cash towards advance tax liability only and not self assessment tax or regular tax and that too only with effect from 1.6.2013. We hold that the action of the assessee in seeking to adjust the seized cash with 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 becomes 'existing liability' on the part of the assessee to settle. Similarly we hold that the action of the Learned AO in adjusting the seized cash towards the tax liability determined pursuant to completion of section 153A assessment also is in order and is in accordance with the provisions of section 132B of the Act.

14. The facts in the case of the present assessee is similar to the facts of the cited case as noted above. In the case of the assessee, the search was conducted on 27.11.2018 and the return of income declaring total income of Rs.37,62,307/- including the cash seized of Rs.30,80,000/- was filed on 31.10.2019 and the assessee vide letter dated 25.09.2019 had requested for the adjustment of its tax liability towards advance/self assessment tax on the declared speculation income of Rs.30,80,000/- being the seized cash. Therefore, respectfully following the above order of the Tribunal, it is held that the assessee had correctly requested the AO to give credit of the seized cash towards the tax liability of the assessee upon filing of his return of

income on 31.10.2019. In this regard, the assessee had made request for adjustment said cash towards existing tax liability first on 25.09.2019 and 23.05.2022. The ld. CIT(A) was not correct in holding that as per provision of section 132B(1) of the Act since no application for adjustment of seized cash towards any existing liability was filed by the assessee within 30 days from the end of the month in which cash was seized is not correct proposition of the law in the given facts of the case. The said proviso relates to a situation, wherein, the nature and source of acquisition of the seized assets is explained by the assessee to the satisfaction of the Assessing Officer and the assessee requests for release of the said seized assets after adjustment of any existing liability, whereas in the present case, the assessee has invoked the provisions of section 132B(1)(i) of the Act to adjust the cash seized of Rs.30,80,000/- with the existing liability of the assessee of the tax payable on the return of income filed by the assessee. Therefore, respectfully following the decision of the Kolkata Bench of the Tribunal in the cited case, we hold that the decision of the ld. CIT(A) is not correct and the Assessing Officer is directed to allow the credit of the seized cash of Rs.30,80,000/- towards self assessment tax being the existing liability of the assessee in respect of return of income filed by the assessee for Assessment Year 2019-20 on 31.10.2019 towards the tax liability determined by the AO after re-framing the assessment on the issue of the seized cash of Rs.30,80,000/- as directed by us in para no.9.1 of this order. Ground no.3 of the appeal is allowed.

15. Ground no.4 is against the action of the Assessing Officer for invoking the provisions of section 153A of the Act. No submission in this regard was made by the assessee before us and therefore the same is dismissed.

16. Ground no.8 of the appeal is against the initiation of penalty u/s 271AAB(1A) of the Act. The same is premature and the same is dismissed.

17. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 27th May, 2025.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Dated 27.05.2025

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Shekhar

Copy forwarded to:

1. Assessee
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
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