

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.791/KOL/2025
(Assessment Year: 2021-22)
IT(SS)A No. 50/KOL/2025
(Assessment Year: 2020-21)**

Sanjay Kumar Gupta
Jamuria Hat, Jamuria Thana
More, Bypass Road,
Jamurai, Burdwan,
West Bengal-713336

(Appellant)

PAN No. ACZPG4735H

ACIT, CC 2(1)
110, Shantipally, E.M. Bypass,
Vs. Kolkata-700107, West Bengal

(Respondent)

Assessee by : Shri S.K. Tulsiyan &
Ms. Sonam Bajoria, ARs
Revenue by : Shri S.B. Chakraborty, DR

Date of hearing: 13.08.2025
Date of pronouncement: 11.11.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income-tax (Appeals), Kolkata-26 (hereinafter referred to as the "Ld. CIT(A)") dated 11.03.2025 for the AY 2020-21 & 2021-22.

02. The facts in brief are that a search u/s 132 of the Act was carried out on the assessee on 05.11.2020. Accordingly, the notices were issued u/s 153A of the Act for the six assessment years prior to the year of search from A.Y. 2015-16 to A.Y. 2020-21. The assessee is engaged in the business of transportation business. The assessee has regularly

been filing the return of income for A.Y. 2015-16 to 2019-20, corroborating the fact that the assessee is engaged in the business of transportation. The Id. AO accepted the returns of income for A.Y. 2015-16 to 2019-20 by passing the order u/s 143(3)/ 153A of the Act. Pertinent to state that during the course of search on the assessee at Jamuria Thana More, Bye Pass Road near HDFC Bank, Jamuria 713336, cash amounting to ₹1,35,29,300/-, was seized vide Panchnama dated 05.11.2020. No incriminating material was found during the course of search. The assessee filed the return of income declaring income of ₹48,41,969/-, for A.Y. 2020-21 and ₹91,63,502/- for A.Y. 2021-22 thereby disclosing income in aggregate of ₹1,40,05,471/- in these two assessment years. Accordingly, the income tax liability was computed on the said income which worked out to ₹18,12,600/- for A.Y. 2020-21 and ₹35,27,960/- for A.Y. 2021-22. The assessee claimed the cash seized to be the entire wealth of the assessee and that the seizure of such cash of the assessee had not left any income/ money in his hand. The assessee also requested the Id. PCIT, Central-1, Kolkata by way three letters to allow the appropriation of the said cash seized against self-assessment tax determined by the assessee for assessment year 2020-21 and 2022-23. These request letters addressed to the PCIT were dated 01.03.2022, 09.03.2022 and 17.03.2022. However, the said cash seized was not appropriated against the self-tax liability and consequently the assessee could not file the returns of income online for both the assessment years. Thereafter, the assessee physically filed these returns of income on 16.03.2022 disclosing the income of ₹48,41,969/- for A.Y. 2020-21 and ₹91,63,502/- for A.Y. 2021-22 along with the a letter before the Id. ACIT, Central Circle 2(1) Kolkata. The Id. AO in the assessment order in para no.2 noted the

fact that the assessee vide letter dated 09.03.2022, stated that he wishes to file the return of income u/s 153A of the Act for A.Y. 2015-16 to A.Y. 2020-21 and also AY 2021-22. The Id. AO also noted that the assessee stated in the said letter that he wishes to disclose 48,41,969/- and ₹91,53,500/- for A.Y. 2020-21 and 2021-22 respectively. It was also noted by the Id. AO that assessee requested the Id. PCIT, Central Circle-1, Kolkata vide various communications to allow the appropriation of seized cash against the self-assessment tax determined by the assessee. In para no.3, the Id. AO noted that the cases of the assessee were picked up for compulsory scrutiny. The Id. AO noted that the assessee has not filed the return of income online and therefore, notice u/s 142(1) of the Act dated 17.03.2022, was issued and served upon the assessee to furnish the return of income for A.Y. 2021-22 and 2021-22. According to the Id. AO, however on CPC portal, no returns of income as filed by the assessee were found. Therefore, the Id. AO noted that the returns of income as given by the assessee in the manual form were not maintainable. Accordingly, the Id. AO issued show cause notice along with questionnaire which were duly served upon the assessee. In reply to the said show cause notice, the assessee furnished the written submission which was duly considered by the Id. AO and extracted from page no.3 to 4. The Id. AO noted that the assessee has furnished the explanation qua the cash seized during the course of search by claiming that he earned the said income from the business of transportation etc. The Id. AO noted that the assessee has claimed to have earned income of ₹48,41,969/- for A.Y. 2020-21 and ₹91,53,500/- for A.Y. 2021-22. According to the assessee he was doing most of the transport business in cash. Thereafter, the Id. AO rejected the returns filed along with computations of income as not maintainable and

thereafter the Id. AO noted that the summons u/s 131 of the Act were not complied with. Finally, the assessment was made by the Id. AO assessing the total income at ₹1,40,87,000/- by making addition of Rs.1,40,87,000/- as unexplained money u/s 69A read with section 115BBE of the Act by passing the order u/s 144 of the Act dated 29.03.2022, which was affirmed by the Id. CIT (A).

03. With the above factual matrix of the case, the various grounds raised by the assessee in A.Y. 2020-21 and 2021-22 are being adjudicated in the following paras:-

A.Y. 2021-22

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- i. Ground nos.1 and 2 are not pressed by the assessee and therefore, no adjudication is required. Hence, the ground nos.1 and 2 are dismissed as not pressed.
- ii. The issue raised in ground no.3 is against the order of Id. CIT (A) upholding the assessment order wherein the income has been taken at ₹1,40,87,000/- by ignoring the fact that out of the said income ₹50,22,990/- was already disclosed in A.Y. 2020-21 and has been accepted by the Id. AO vide order dated 17.03.2022.
- iii. After hearing the rival contentions and perusing the materials available on record, we find that the Id. AO has assessed the income u/s 69A of the Act at ₹1,40,87,000/- as unexplained money which is according to the Id. AO was the cash seized during the course of search whereas the Id. AO, in assessment framed the assessment for A.Y. 2020-21, vide order dated 17.03.2022, passed u/s 153A read with section 144 of the Act, has already assessed the income at ₹50,22,9900/-. Therefore, the additions made by the Id. AO again in

A.Y. 2021-22 is nothing but double addition of the same income, which is already offered to tax by the assessee. Therefore, we find merit in the contention of the assessee that the income which was already offered to tax in the return filed by the assessee in A.Y. 2020-21 and assessed by the Id. AO vide assessment order dated 17.03.2022, is required to be excluded. Accordingly, we set aside the order of Id. CIT (A) on this issue and direct the Id. AO to exclude the said income from the income assessed. Accordingly, the Id. AO is directed to take the income at ₹90,64,010/-. The ground no. 3 is allowed.

- iv. The issue raised in ground no.4 is against the order of Id. CIT (A) upholding the order of the Id. AO wherein the income disclosed in the return of income had been subjected to tax @ 60% by applying the provisions of Section 115BBE of the Act, which is completely illegal and void ab initio.
- v. We have heard the rival submissions and perused the materials available on record, we note that the income declared by the assessee in the return of income was treated as unexplained money u/s 69A of the Act. We observe that though, the cash was found during the course of search on the premises of the assessee but the same was claimed by the assessee to be on account of income earned from business of the assessee from transportation and others. Therefore, the source of income stood explained at the very threshold. Therefore, applying the rate of tax at 60% by invoking the provisions of Section 115BBE of the Act is incorrect and against the provisions of the Act. In our opinion, since the source of income stood explained, therefore provisions of 69A of the Act is not applicable and so is provisions of section 115BBE of the Act. We have

perused the provisions of Section 115BBE of the Act and observed that the same are applicable where the income assessee includes (a) any income referred to Section 68, 69A, 69B, 69C, 69D of the Act. We have also perused provisions of sections 68,69,69A to 69D of the Act and find that these are not applicable to the assessee's case as returns of income were filed u/s 139(1) of the Act for A.Y. 2020-21 and 2021-22, declaring income of ₹48,41,969/- and ₹91,63,502/- for both the assessment years as earned from the business of the assessee. Therefore, the assessee has fully disclosed the source of earning of the said income in the return of income, which is in respect of cash seized during the course of search of ₹1,40,87,000/-. In other words the assessee fully disclosed the income from business in the returns filed u/s 139(1) of the Act for the above assessment years disclosing the source of income of the assessee. Therefore, we are inclined to hold that ₹1,40,05,147/- is not from unexplained sources but from the business income and consequently provisions of Section 115BBE of the Act are not applicable. The case of the assessee find support from the decision of Bajaj Sons Ltd. Vs. DCIT, Central Circle-III, Ludhiana, (2021) 128 taxmann.com 406 (Chandigarh-Trib), as under:-

"Where director of assessee-company surrendered a certain sum during search, and Assessing Officer treated said sum as income from unexplained sources and invoked provisions of section 115BBE and charged tax at a higher rate, since Assessing Officer had not pointed out any unexplained credit in books of account, provisions of sections 68, 69, 69A, 69B, 69C and 69D were not attracted on surrendered amount and aforesaid surrender not being covered under provisions of sections 68, 69, 69A, 69B, 69C and 69D. provisions of section 115BBE were not attracted"

- vi. Accordingly, we direct the Id. AO to apply normal rate of tax as applicable to the business/ other source of income. Needless to state that the income assessed in A.Y. 2020-21 shall be excluded from

- the current year income as assessed by the Id. AO. Accordingly, ground no.4 is allowed.
- vii. The issue raised in ground no.5 is against the order of Id. CIT (A) upholding the assessment order where the Id. AO has failed to adjust the seized cash against the self-tax liability, which is in violation of provisions of Section 132B of the Act.
- viii. The facts qua this ground have been narrated at page no.1 as noted above that the assessee wrote to the PCIT, CC-1, Kolkata by way of three communications dated 01.03.2022, 09.03.2022 and 17.03.2022, allowing the appropriation of cash seized against the self-tax liability as per the return of income filed by the assessee. However, the Id. AO has not adjusted the said cash seized though the said facts were mentioned by the Id. AO in the assessment order.
- ix. The Id. AR vehemently submitted before us that the Id. AO as well as the Id. CIT (A) has gravely erred in not considering the request of the assessee in not adjusting the seized cash against the self-tax liability which is against the Provisions of Section 132B of the Act which deals with the application of seized/ requisition assets. The Id. AR submitted that as per the Provisions of Section 132B of the Act, adjustment of seized assets/ requisition assets, the Explanation 2 inserted with effect from 01.06.2013 by Finance Act, 2013, to Section 132B of the Act specifically provides that the existing tax liability does not include advance tax payable in accordance with the provisions of Section part C of Chapter XVII. The Id. AR submitted that but the self-assessment liability has not been excluded from the term of existing liability. The Id. AR submitted that self-assessment tax was covered under chapter XIV and therefore argued that the adjustment of cash seized during the search is allowed against the

self-assessment tax. The Id. AR submitted that the advance tax and the self-assessment tax are dealt with in separate chapters in the Act. The Id. AR submitted that provisions as regards self-assessment tax are contained in chapter XIV u/s 140A of the Act while the provisions regarding payment of advance tax are contained in part 3 of Chapter XVII. Therefore, the Id. AR prayed before the Bench that the Id. AO may be directed to adjust the cash seized against the self-assessment liability. In defense of his argument the Id. AR relied on the decision of Assistant Commissioner of Income-tax vs. Narendra N. Thacker [2017] 82 taxmann.com 64 (Kolkata - Trib.)/[2016] 45 ITR(T) 188 (Kolkata - Trib.)[28-09-2015]. The Id. AR also relied on the decision of Commissioner of Income-tax vs. Ashok Kumar [2011] 334 ITR 355 (Punjab & Haryana) vide order dated 30-09-2010. The Id. DR on the other hand relied heavily on the authorities below.

- x. We have examined the facts of the case in the light of the decision of the co-ordinate bench of this Tribunal in the case of Assistant Commissioner of Income-tax vs. Narendra N. Thacker (supra), wherein the Hon'ble Bench has held as under:-

"Pursuant to the search, a notice under section 153A was issued on the assessee and in response to the same, the assessee filed his return of income for the assessment year 2006-07 declaring certain taxable income. During the course of search, cash to the extent of Rs. 20,00,000 was found from a locker with the Canara Bank belonging to the assessee and the same was seized by the department. The assessment was completed under section 153A determining taxable income raising a demand. Originally the Assessing Officer gave credit for seized cash towards self assessment tax which was later rectified under section 154 by the Assessing Officer by revoking the credit for seized cash as according to the Assessing Officer, there was no existing liability, and consequentially charged interest under sections 234B and 234C.

Held that the subsequent action of the Assessing Officer in revoking the credit given for seized cash towards existing tax liability under proceedings under section 154 is illegal. The provisions of section 132B 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 the 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. 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 as admittedly self assessment tax payable becomes 'existing liability' on the part of the assessee to settle. With regard to charging of interest under sections 234B and 234C for non-payment and short payment of advance tax is concerned, the amendment in section 132B is held to be prospective in operation from 1-6-2013 and accordingly not applicable for the assessment year 2006-07. Hence, no interest under sections 234B and 234C shall be charged by the Assessing Officer from the date of seizure of cash to the date of completion of assessment in respect of seized cash."

xi. Similarly, in the case of Commissioner of Income-tax vs. Ashok Kumar (supra) , the Hon'ble High has held as under:-

"3. We have heard learned counsel for the parties.

4. It is not in dispute that the assessee had made a request vide letter dated August 28, 1989 and reminder dated September 12, 1989 for adjustment out of the seized amount towards advance tax liability in respect of the assessment year in question, i.e., 1990-91.

5. In CIT v. Arun Kapoor-I. T. A. No. 149 of 2003, decided on July 22, 2010, [2011] 334 ITR 351 (P&H), this court had occasion to consider a similar issue where it has been held that the assessee is entitled to adjustment of seized amount towards advance tax liability from the date of making the application in that regard. In the present case, the assessee had made request for adjustment of the advance tax liability of Rs. 3,14,312 against the seized amount of Rs. 5,90,000 on August 28, 1989. Since the first instalment of advance tax was payable on September 15, 1989 and the request for adjustment having been made on August 28, 1989 and reminder on September 12, 1989, no interest was exigible under sections 234A and 234B of the Act. The Tribunal has rightly held that the assessee was entitled to adjustment of the said amount and no interest could be charged on that basis. Therefore, no fault could be found with the approach adopted by the Tribunal.

6. Accordingly, the substantial question of law is answered in favour of the assessee and against the Revenue.

7. Consequently, the appeal is dismissed."

xii. Considering the above facts of the assessee in the light of the aforesaid decisions, we are inclined to hold that the cash seized by the department during search needs to be adjusted against the self-tax liability. Accordingly, we direct the Id. AO to adjust the same. The ground no. 5 is allowed.

xiii. The issue raised in ground no.6 is against the order of Id. CIT (A) as well as the Id. AO failing to appreciate that provisions of section 234B of the Act were not applicable when the cash seized was already with the department. The above issue raised is consequential to ground no.5, wherein we already held that the assessee is entitled to get the seized cash adjusted against the self-tax liability. We note that the cash was lying with the department from 05.11.2020 and accordingly, the Id. AO is directed to charge the interest u/s 234B of the Act after adjusting the cash seized on 05.11.2020. The ground no. 6 is allowed.

A.Y. 2020-21

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xiv. The issue raised in the assessee's appeal are similar to one as decided by us in ITA No. 791/KOL/2025. Therefore, our decision on various grounds would mutatis mutandis, apply to this appeal of assessee in ITA No. 50/KOL/2025 for A.Y. 2020-21. Hence, the appeal of the assessee is allowed.

xv. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 11.11.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 11.11.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

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

True Copy//

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata