RESERVED

Case :- WRIT TAX No. - 1357 of 2012

Petitioner :- Vijay Prakash Agrawal And Others
Respondent :- Commissioner Of Income Tax (Central) And Another
Petitioner Counsel :- Parv Agrawal,Shubham Agrawal
Respondent Counsel :- C.S.C., It,Govind Krishna,R.K.Upadhyay

Hon'ble Prakash Krishna,J.
Hon'ble Ram Surat Ram (Maurya),J.

(Delivered by Prakash Krishna, J.)

Three brothers namely Sri Vijai Prakash Agrawal, Satya Prakash Agrawal and Jai Prakash Agrawal with a partnership firm M/s. Agrawal Chemical Company and Jewellers have jointly filed the present writ petition claiming a writ of mandamus for direction to the Deputy Commissioner, Income Tax (Central), Circle-II, Kanpur to return/release the cash seized during the search operation dated 17th of October, 2006 to the respective petitioners and also give interest on the said amount as per section 132 B of the Income Tax Act.

It has been stated that the petitioner nos. 1, 2 and 3 are residing in property No. 59/44, Birhana Road, Kanpur on the ground floor. The petitioner no.4, a partnership firm wherein the petitioner no.1 and son of the petitioner no.2 are partners, are running a wholesale jewellery business in one room on the first floor of the said property. One Jeevan Kumar Agrawal with which none of the petitioners have any concern is also residing on the ground floor and has a shop on the ground floor of the said building. The Income Tax Department issued a search warrant in the name of Sri Jeewan Kumar Agrawal and Banarasi Misthan Bhandar (P) Limited including the names of the petitioner nos. 1 and 2 namely Vijay Prakash Agrawal and Satya Prakash Agrawal. In pursuance thereof, a search and seizure operation was carried on by the respondents on 17th October, 2006. There was no warrant of authorization either in the name of the petitioner no.3 or 4. However, the search party searched the residential accommodations of all the four petitioners and seized cash belonging to them from their respective rooms. The particulars thereof are as follows:-

A. Viajy Prakash Agrawal	Rs.17,10,000/-
B. Satya Prakash Agrawal	Rs. 50000/-
C. Jai Prakash Agrawal	Rs. 2,50000/-
D. M/s. Agrawal Chemical Company and Jewellers	Rs. 4,90000/-
Total	**Rs.25 Lakhs.**

The proceedings for block assessment for the Assessment Years 2001-2002 to 2007-2008 were initiated. The returned income except for the Assessment Year 2007-2008 has been accepted. The Assessing Authority made certain additions in the returned income of the petitioners by framing separate assessment orders for the Assessment Year 2007-2008 under section 143(3) of

the Income Tax Act. Those orders were challenged successfully separately in four appeals before the Appellate Authority. All the appeals were allowed. In the light of the Appellate Orders, the Assessing Authority revised the assessment orders in the case of all the petitioners by the separate order dated 30th of August, 2011. The amount of taxes which were deposited in pursuance of the assessment orders have been refunded with interest. They are not in dispute in the present writ petitions.

After completion of all these proceedings, the petitioners applied for realizing/return of the cash amount seized by the department in the search operation. The reminders were given but of no avail. Hence, the present writ petition has been filed for return of the seized cash amounting to Rs.25 Lakhs along with interest in the light of sections 132 B(4) (b) and 244A of the Income Tax Act.

In reply, Sri Sushil Chand Srivastava, Income Tax Inspector in the office of the respondent no.2 has filed a counter affidavit wherein the facts as stated above, have not been disputed. The only defence which has been set up is that "substantial demands have been raised against M/s. Banarasi Misthan Bhandar (P) Limited and Jeevan Kumar Agrawal. Therefore, the seized cash cannot be released as claimed."

In the writ petition as well as in the rejoinder affidavit, the stand of the petitioners is that they have no concern with the demands pending against Jeevan Kumar Agrawal as there is no common business interest or commercial relation between them. They are distinct and different parties and as such, the cash seized from the possession of the petitioners cannot be retained on the aforesaid premises.

Heard Sri Subham Agrawal, learned counsel for the petitioner and Sri R.K. Upadhyay, learned counsel for the respondents. The only surviving dispute is with regard to the return of Rs.25 Lakhs seized in the search operation and interest thereupon. The material and essential facts are not in dispute. It is not disputed in the counter affidavit nor it was argued by the respondents that any kind of dues is outstanding against any petitioner. The only defence is that Sri Jeewan Kumar Agrawal and Banarasi Misthan Bhandar (P) Limited are in the arrears of tax. The question which falls for consideration is whether this is a valid defence to negate the claim of the petitioner for return of the cash amount seized from the possession of the petitioner.

Section 132 B of the Act deals with the application of seized or requisitioned assets. Its sub-section (1) provides the manner of their disposal. A reading of section 132 B would show that the seized assets shall be applied for payment of liability of the assesee under the Income Tax Act, Wealth Tax Act, the Expenditure Tax Act, Gift Tax Act and Interest Tax Act. It can be applied towards the existing liability of the assessee as well as towards the liability determined on the completion of the assessment under section 153 A and assessment year relevant to the previous year in which the search is initiated or requisition is made. After discharging the liabilities, the manner of disposal of surplus money seized in the search operation has been provided for under sub-sections (3) and (4) of Section 132B of the Act. Sub-section (3) provides that any asset or proceeds which remain after the liabilities are discharge shall be forthwith met over or paid to the person from whose custody the assets were seized. Sub-section (4) creates liability of the Central Government to pay interest (We were

informed that rate of interest has been varied from time to time it was at the rate of six per cent at the relevant time), by which the surplus money exceeds the aggregate of the amount required to meet the liability referred to in clause (i) of sub-section (1) of section 132B. The interest shall run from the date of immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment.

Coming to the facts of the case, the search took place on 17.10.2006. In the said search it is not in dispute that the amount of Rs. 25 Lakhs as claimed by the petitioners were seized from the petitioners from their respective possession. In view of section 132 B(4) (b) of the Act, the Central Government is liable to pay interest at the rate as provided thereon after the expiry of the period of 120 days to the date of completion of the assessment. The one hundred twenty days under section 132B shall expire on 16th of February, 2007. The assessments were finally completed after giving effect to the appellate order on 30th of August, 2011. Therefore, the petitioners are entitled to get the interest at the rate as was prevalent at that time on Rs. 25 Lakhs, thereunder.

For the sake of convenience, a chart giving particulars of each petitioners , submitted by the learned counsel for the petitioner which was not disputed by the respondents, is reproduced below:-

Sl. No.	Particulars	Vijai Prakash Agarwal	Satya Prakash Agrawal	Jai Prakash Agrawal	Agarwal Chemical Co. & Jewellers
1	Returned Income	88780	36680	169130	15020
2	Assessed Income	274320	142930	672680	75562
3	Date of order (Assessment)	31.12.2008	31.12.2008	31.12.2008	31.12.2008
4	Tax paid (Admitted)	NIL	NIL	9970	5590
5	Additions made by AO	185540	106250	503550	60542
6	Disputed Tax paid	40061	4379	176325	23418
7	Date of tax paid	26.03.2009	26.03.2009	26.03.2009	26.03.2009
8	Relief by CIT(A)	185540	106250	503550	60542
9	Date of Order CIT(A)	18.05.2011	30.03.2011	18.05.2011	04.03.2011
10	Revised order by A.O.	88780	36680	169130	15020
11	Date of order (revised by AO)	30.08.2011	30.08.2011	30.08.2011	30.08.2011
12	Refund of disputed tax	45661	4481	201011	26693
13	Date of Refund	30.08.2011	30.08.2011	30.08.2011	30.08.2011

The only point urged by Sri R.K. Upadhyay, learned counsel for the department is that the petitioners are not entitled either to get the refund of Rs.25 Lakhs or any interest thereupon in view of the fact that Jeewan Kumar Agrawal and Banarasi Misthan Bhandar (P) Limited are in arrears of tax. It was stated that a joint warrant of authorisation was drawn against the petitioner nos. 1 and 2 and Jeewan Kumar Agrawal and M/s. Banarasi Misthan Bhandar(P) Limited as also a joint Panchnama. Therefore, the petitioner nos. 1 and 2 are related and connected with Jeewan Kumar Agrawal and Banarasi Misthan Bhandar (P) Limited. The said argument is wholly misconceived and untenable. It is necessary to have a look to the pleadings of the parties in this regard first. The petitioners have come out with the specific case that none of them have any business link or nexus or transaction or interest or investment or share or connection in any manner whatsoever with Banarasi Misthan Bhandar and with Sri Jeewan Kumar Agrawal vide para 10 of the writ petition. For the sake of convenience paragraph-10 is reproduced below:-

"That none of the petitioners have any business link or nexus or transaction or interest or investment or share or any commercial concern or connection in any manner whatsoever with Banarsi Mishthan Bhandar (P) Ltd. or with Sri Jeewan Kumar Agrawal."

The contents of paragraph-10 have been dealt with in para 9 of the counter affidavit. For the sake of convenience, paragraph-9 of the counter affidavit is reproduced below:-

"That the deponent submits that the averments contained in paragraphs 9 and 10 of the writ petition are not properly stated. The search was in respect of the entire premises and the *Panchnama* (Annexure-1 of the petition) indicates that the petitioners as well as others found at the premises were connected with each other."

Similar averments have been reiterated in paragraph-15 of the counter affidavit.

Having regard to the pleadings of the parties, it is quite evident that the denial contained in the counter affidavit is for the sake of denial. The reply is evasive and vague as well.

It is true that a joint Panchnama was drawn but it overlooks the facts that separate assessment orders were passed by the Assessing Authority in respect of the four petitioners on 31st December, 2008. The matter was carried in four appeals which were heard and decided by passing separate orders. Merely because a joint Panchnama has been drawn is of little consequence. We may at this juncture notice section 292 CC of the Income Tax Act. For the sake of convenience, the said section is reproduced below:-

“292CC.Authorisation and assessment in case of search or requisition.–(1)Notwithstanding anything contained in this Act,-

(i) it shall not be necessary to issue an authorisation under section 132 or make a requisition under section 132A separately in the name of each person;

(ii) where an authorisation under section 132 has been issued or requisition under

section 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons.

(2) Notwithstanding that an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation or requisition."

The aforesaid section has been inserted by the Finance Act, 2012 but has been given a retrospective effect w.e.f. 1st of April, 1976. The object and purpose of introduction of the aforesaid section to validate the joint authorisation as it was held by this Court with a joint authorisation for search is invalid. To overcome the said difficulty, section 292 CC was introduced with retrospective effect. It in no uncertain terms provides that the mention of names of more than one person on such authorisation under section 132 shall not be deemed to construe that it was issued in the name of association or persons or body of individuals consisting of such persons. The aforesaid section has put the things beyond pale of doubt that the mention of names more than one in the warrant of authorisation will not make it in the name of association or persons or body of individuals will not adversely affect an assessee. Meaning thereby, the status of the assessee will not in any manner be changed as the result of joint warrant of authorisation. Coming to the facts of the case indisputably, the department respondent has treated the petitioner nos. 1, 2 and 3 as individuals and petitioner no.4 as a partnership firm and assessed them accordingly, and separately. Not only that as a result of original assessment order making addition, the demand was paid by the petitioners and refund after the order of the Appellate Court have been granted to the petitioners individually. To put it differently, the stand of the department that as in the warrant of authorisation, the names of the petitioners were also included along with Jeewan Kumar Agrawal and Banarasi Misthan Bhandar (P) Limited is wholly irrelevant so far as assessment and refund of asset or cash is concerned. Except that the department could not point out any connection whatsoever of the petitioners with Jeewan Kumar Agrawal and Banarasi Misthan Bhandar (P) Limited. The irresistible conclusion is that there is no justification for not refunding the seized cash during the search operation or not paying the interest thereon.

Sri R.K. Upadhyaya, Advocate for the respondents, who also happens to be Ex Chief Commissioner of Income Tax, could not refer any statutory provision to support the above stand of the department even for a moment.

Proceeding further, we find that the Income Tax Act contemplates the payment of interest for the pre-assessment period as also for post assessment period. In the case of search, section 134 B (4) takes care of payment of interest for pre-assessment period. On the other hand, section 244A of the Act deals with interest of refunds after assessment. In **Bhagwan Prasad Agrawal Versus Commissioner of Income Tax, (2006) 282 ITR 189,** one of us has held as follows:-

"We find sufficient force in the argument of the learned counsel for the petitioner that Section 132B(4) of the Act and Section 244 operate in different field, in as much as they relate to the payment of interest for different period. There is

no overlapping. To put it differently Section 132B(4) deals with the liability of the Central Government to pay interest up to the date prior to the framing of the assessment or reassessment order, Section 244 of the Act deals with the liability of the Central Government to pay interest for the subsequent stage which comes into existence after the completion of the assessment/reassessment order. At this stage, the learned Standing Counsel has placed reliance upon Section 240 of the Act and submitted that in view of words "except as otherwise provided in this Act" disentitles the petitioner to claim interest under Chapter XIX which deals with 'refunds'. Elaborating the argument it was submitted that the provisions relating to search and seizure as contained in Chapter XIII-C contains special provision dealing with the matter relating to search and seizure. The legislators have made necessary provisions for grant of interest on the amount of refund, where ever they have thought fit. Chapter XIX relating to 'refund' contains provisions of refund relating to refund and as such the special provision shall exclude the general provision. The said argument is misconceived. Chapter XIII does not contain the provisions relating to assessment and refund of the excess amount found as consequence of the assessment order. The heading and sub heading of Chapter XIII suggests the appointment and control of the income tax authorities, their jurisdiction and powers, the whole gamut for assessment has been provided for in Chapter XIV inclusive of search and seizure case for which the assessment order has to be framed under the aforesaid Chapter. In the case in hand the assessment order was framed under Section 143(3) of the Act as at that time there was no provision for making block assessment which came into force w.e.f. 1st July, 1995 through which Chapter XIV-B special procedure for assessment of search cases was inserted by the Finance Act, 1995. The phrase "existed as otherwise provided in this Act" in Section 240, therefore, contemplates a situation that there may be cases where the assessing authority shall not refund the amount to the assessee without his having to make any claim in that behalf. Moreover, the heading of Section 240 suggests its applicability in the case of refund on the basis of appellate order or other proceeding under the Act etc. The phrase other proceedings would also means assessment order or revisional order etc. It is not necessary to dwell Upon section 240 any more as in the case in hand (i) the amount has been refunded to the petitioner and (ii) the assessment order was passed Under Section 143(3) i.e. under Chapter relating to assessment. There is no dispute that the department has refunded the excess amount to the petitioner after completing the assessment proceedings but with delay, therefore, the present case is covered by Section 237 read with Section 240 of the Act. Section 243 of the Act creates statutory liability of the Central Government to pay interest on delayed refunds. It provides under Section 243(1)(b) of the Act that if the assessing authority does not grant refund within three months from the end of the month in which the claim for refund is made under this Chapter, the Central Government shall pay the assessee the simple interest at the specified rate, The rate Of interest was 12% per annum prior to 1st October, 1984, which has been substituted by words 15% w.e.f. 1st October, 1984. The procedure for calculating the Interest is prescribed in Rule 119-A of the Income Tax Rules. A conjoint reading of Section 243 and 244 clearly shows the liability of the Central Government to pay interest in the present case at the rate of 12% per annum for the period after three months of the end of the month in which the total income is determined under the Act. The assessment order was framed on 31st January, 1977, the liability of interest would start running after three months i.e. from April, 1978 till the date of payment. We, therefore, hold that the petitioner is entitled and the respondents are liable to pay interest under Section 244 of the Act on a sum of Rs. 31,060/- for the period commencing from 1.4.1978 to the date of actual payment of excess/refund amount."

Having regard what has been said above, it may be noted that in pursuance of the order passed by the Commissioner of Income Tax (Appeals), revised assessment order was passed by the Assessing Authority on 30th of August, 2011 in all the cases of the petitioners. Excluding a period of three months, the department is liable to pay interest w.e.f. 1st of January, 2009 to the date of actual payment at the rate of 18 per cent per annum on a sum of Rs.25 Lakhs in all to the petitioners till the date of actual payment as per seizure order.

The learned counsel for the petitioners submitted that in view of the decision of the Apex Court in the case of **Sandvik Asia Ltd. Versus Commissioner of Income Tax, (2006) 2 SCC 508,** they are entitled to get interest upon interest amount. Reliance was also placed on a subsequent decision of Division Bench of this Court in Writ Petition No.102 of 2012: Prayag Udyog Pvt. Limited Allahabad versus Union of India and others decided on 31st of May, 2012. In reply, our attention was drawn to **CIT Versus Gujrat Flouro Chemicals (2012) 348 ITR 319** wherein the Supreme Court has doubted its earlier decision in the case of **Sandvik Asia Ltd.** (supra) and the matter has been referred for reconsideration. The matter is engaging attention of the Apex Court and therefore, we leave the matter as it is by providing that if the respondents return the seized amount along with accrued interest within a period of one month to the petitioners, they would not be liable to pay interest upon interest amount. It is true that the matter is engaging attention of the Apex Court but it is also true that the relied upon judgment in the case of **Sandvik Asia Ltd.** (supra) is still operating and only its correctness has been doubted. If the department fails to return the seized cash amount along with interest as stipulated within stipulated time, the respondent also be liable to pay the interest upon interest amount @ 6% per annum from today to the date of actual refund.

Having regard to the facts of the case, it is but evident that the respondents have failed to discharge their legal obligation in not refunding the seized amount immediately or shortly after the completion of the assessment proceedings finally at least. We also do not appreciate the argument of the respondent counsel that unless a direction is issued, the respondents shall not pass any speaking order on the application/representation filed by the petitioner for refund of the amount due to him. This shows that the officers of the Income Tax Department are shirking their responsibilities.

Speedy and affordable justice is the requirement of the day. But it cannot be achieved until the executive including tax-man discharge their duties faithfully honestly within the four corners of law. As seen above, it is clear that the revenue official failed to take any decision right or wrong on the refund application filed by the petitioners and passed on the buck on the Court. Time has come for the heads of the departments to keep a strict vigil on such shirkers and to fix their responsibility. While it is no doubt true that collection of revenue is a serious matter for the State -and the bounden duty of the authorities functioning under the Act is to implement the provisions of the Act, there should be safety and assurance to an honest tax-payer. An honest tax-payer should not be subjected to unnecessary harassment and an action not warranted in law, which can be of very serious consequence to the tax-payer if is allowed to remain without correction, such harassment and browbeating of an honest tax-payer will otherwise drive even such honest tax-payers to become cynical and lead to a situation where tax-payers will get a feeling that paying taxes honestly is not a worthwhile exercise; that the tax authorities are a menace to the society rather than simply being

representatives of the State for enforcing the tax provisions. [(See ***Raghavendra Sherrigar Versus Assistant Commissioner of Commercial Taxes, (2005) 1425 STC 153***)]

The Apex Court in the case of **Sandvik Asia Ltd.** (supra) by the following paragraph has recorded their displeasure for this kind of attitude of the department. For the sake of convenience, the said paragraph is reproduced below:-

"49. The decision of the Delhi High Court in Goodyear's case [2001] 249 ITR 527 was on the assumption that the term "any amount" in Section 240 would include all amounts payable to the assessee, including interest, and therefore, the assessee was held to be entitled for interest on interest. For the reasons stated above and with respect, it is difficult to agree with the said proposition. In any case, the facts of the matter also disclose that the interest which was included in the amount due as refund was the one payable in terms of Section 214. This is clear from the observation in the judgment that (page 532) : "Merely because this was inclusive of an amount which ,was payable under Section 214 of the Act, that would not make the position any different" and the arguments canvassed on behalf of the Revenue were to the effect that (page 530) : "In a sense it was submitted that such a refund of the amount paid by the assessee or on its behalf under Section 240 as well as Section 244 are relatable to such amount only and not to any interest payable under Section 214 of the Act".

The petitioners have been unnecessarily driven to this Court to file the present writ petition and the respondents have purposely put a defence for the sake of defence. They are liable to pay cost of this writ petition assessed at Rs.15,000/-.

In the result, the writ petition succeeds and is allowed. The respondents are directed to refund in all Rs.25 Lakhs seized from the petitioners on 17th of October, 2006 along with interest at the prevalent rate as provided for under section 132 B(4) for the period 16.12.2007 to 31.12.2008 and simple interest under section 244A on the said amount of Rs.25 Lakhs from 1st of January, 2009 to the date of actual payment at the rate of 18 per cent per annum within a period of two months, failing which they shall also be liable to pay the interest on interest amount @ 6 % per annum, as indicated above.

The writ petition is allowed with cost of Rs.15,000/- payable by respondent nos.1 and 2 to the petitioners within a period of one month.

(R.S.Ram (Maurya), J.) (Prakash Krishna, J.)

Order Date :- 17.4.2013
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