

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER AND  
SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER**

**ITA No.290/Agra/2013  
Assessment Year: 2010-11**

Asstt. Commissioner of Income Tax, Central Circle, Agra.  (Appellant)	Vs.	Shri Sunil Chand Gupta, Prop. M/s Travel Bureau, 88, Sector-3, Vibhav Nagar, Agra. (PAN –ABPPG 1076 N). (Respondent)
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Appellant by	:	Shri Anirudh Kumar, CIT (D.R.)
Respondent by	:	Shri Deependra Mohan, C.A. & Miss. Prarthana Jalan, C.A.

Date of hearing	:	24.02.2014
Date of pronouncement	:	28.02.2014

**ORDER**

**PER PRAMOD KUMAR, ACCOUNTANT MEMBER:**

1. By way of this appeal, the Assessing Officer has challenged correctness of learned CIT(A)'s order dated 20<sup>th</sup> May, 2013, in the matter of assessment u/s. 143(3) of the Income Tax Act 1961, for the Assessment Year 2010-2011.
2. In the first ground of appeal the appellant has raised the following grievance:-

*“1. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,70,233/- made out of disallowances in various heads of expenditure without appreciating the facts brought on record.”*

3. So far as this grievance of the assessee is concerned, relevant material facts are like this. The assessee was subjected to search and seizure operation. During the course of resultant assessment proceedings, the Assessing Officer noted that while the assessee has produced books of accounts, and bills and vouchers in support of various expenses, “on examination of bills and vouchers, it is seen that some of the vouchers are handmade, and, therefore, considering a fair and reasonable view, 10% of the above expenses, i.e. Rs.1,70,223/-, is disallowed and added in the income of the assessee”. Aggrieved, *inter alia*, by this disallowance, assessee carried the matter in appeal before the CIT(A) who deleted the disallowance and, while doing so, observed as follows:-

*“2.3 I have carefully considered the assessment order as well as the written submission of the appellant along with the remand report and the rejoinder. The AO has made the adhoc addition on the ground that some of the vouchers were hand made but he has not pointed out any specific instance or specific expenditures of non verifiable nature. The AO has also not pointed out any specific instance where any of the expenditure were not incurred wholly and exclusively for the purpose of the business of the appellant. It is also seen that no addition has been made on the basis of any incriminating documents found during the course of Search and Seizure Operation. Therefore in this background the adhoc disallowance of 10% of aforesaid expenditures is not called for and the addition is accordingly directed to be deleted.”*

4. The Assessing Officer is aggrieved of the relief so granted by the CIT(A) and is in appeal before us.

5. Having heard the rival contentions and having perused the material on record, we are not inclined to interfere in very well reasoned finding of the learned CIT(A). As he rightly observed, in the absence of Assessing Officer having pointed out any specific cases of non verifiable expenses or any specific cases where such expenses are not incurred for the purpose of business, the disallowance is indeed unsustainable in law. We approve learned CIT(A)'s order on this issue.

6. Ground No.1 is thus dismissed.

7. In Ground no.2, the Assessing Officer has raised the following grievance:-

*“2. That the Ld. CIT(A) has erred in law and on facts in directing the assessing officer to appropriate the cash seized during the course of search against the advance tax liability and in consequence thereto delete the statutory interests charged u/s 234A, 234B & 234C amounting to Rs.30,90,449/-, Rs.64,89,943/- and Rs.11,34,025/- respectively ignoring the legal provisions as contained in section 132B read with Explanation-2 as appearing there under”.*

8. To adjudicate on this ground, it is sufficient to take note of the fact that during the search and seizure operation on 10.03.2010, cash of Rs.4,31,36,000/- was seized and deposited in the PD account, out of which, adjustment was sought

by the assessee towards, *inter alia*, his advance tax liability in respect of his income for the year 2010-11, for which return was filed on 30.06.2010. The Assessing Officer did not make the adjustment so requested by the assessee, nor did he inform the assessee as to why such an adjustment cannot be made. When the matter was carried in appeal before the CIT(A), learned CIT(A) upheld the grievance of the assessee and observed as follows:-

*“3.4 I have carefully considered the assessment order as well as the written submission of the appellant, Remand report and the rejoinder on this issue remand report and the rejoinder. In this case Search and Seizure Operation was carried out in the premises of Shri Sunil Chand Gupta on 10.03.2010 wherein cash amounting to Rs.4,31,36,000/- was seized from the residence and locker and was deposited by the department in the PD account on 10.03.2010 and 19.03.2010. During the course of search the assessee’s statement was recorded u/s 134 of the I.T. Act wherein the assessee offered to pay tax on an income of Rs.10 crore for the F.Y. 2009-2010. The estimated tax liability on an income of Rs.10 crore worked out to about Rs.3 crore approx. Since the liability to pay tax had arisen and the cash being seized by the department, the appellant requested the department to adjust Rs.3 crore out of the Rs.4,31,36,000/- seized and deposited in the PD account. It is seen that the assessee made a written request on 29.03.2010 to the Chief Commissioner of Income Tax which was duly received and also to the Additional Director of Income Tax Investigation, Agra. It also seen that similar request for adjustment letters were written to the DCIT Circle-1, Agra on 29.03.2010 which was duly received in the office on the same day. Further, another letter was written to the CIT-1 on 21.03.2010. Letter dated 05/07/2010 was also written to the DCIT Central Circle stating that return of income for A.Y. 2010-11 had been filed on 30/6/10 with tax payable of Rs.2,92,25,240/- and therefore requesting the AO once again for adjustment of tax liability with the cash lying in the PD account. In the circumstances, the assessee had done all it could do so as to ensure that cash lying in the PD account would be adjusted towards the advance tax liability. However, it seen that no action was*

*taken on the assessee's petition by any of the authorities before whom the assessee has filed the petition. To my mind, it is an apparent injustice to the appellant to hold on the cash belonging in the assessee in the Government Account and at the same time charge interest for non-payment of advance tax on the due dates. It is clear that the appellant's application for adjustment has been submitted before the various authorities, the seized cash should have been either been adjusted as requested by the assessee to meet the advance tax obligations or the Assessee should have been informed the reasons why the request made by the assessee cannot be acceded to. The Hon'ble Bombay High Court in the case of **CIT Vs. Shri Jyotindra B. Modi in order dated 21.09.2011** has clearly held that once the assessee officers to tax the undisclosed income including the amount seized during search, than the liability to pay advance tax in respect of that amount arises even before completion of the assessment. The Hon'ble High Court further held that section 132B(1) of the Act, thus not prohibit the utilization of amount seized during the course of search towards the advance tax liability. The Hon'ble High Court of Punjab & Haryana in the case of **CIT Vs. Ashok Kumar reported in 334 ITR 355** has also held on similar facts that the assessee was entitled to adjustment of seized cash against advance tax liability and therefore, no interest could be charged u/s 234A & 234B in the event of the department no responding to assessee's request for adjustment of cash seized against advance tax liability. In view of the following judgments, the action of the AO in charging interest under 234A, 234B & 234C is not justified and hence, directed to be deleted."*

9. The Assessing Officer is aggrieved of the relief so granted by the CIT(A) and is in appeal before us.

10. Having heard the rival contentions and having perused the material on record, we are inclined to confirm and approve very well reasoned conclusions arrived at by the CIT(A). This issue, as rightly observed by the learned CIT(A), is now covered in favour of the assessee by a series of judicial precedents, including,

such as in the cases of CIT Vs. Ashok Kumar (334 ITR 355), and CIT Vs. Kesar Kimam Karyalaya (278 ITR 596). It is also important to bear in mind that Explanation-2 to Section 132B of the Act, which restricts the scope of existing liability to liabilities other than tax payable, is specifically enacted with effect from 1<sup>st</sup> June, 2013, whereas at present dealing with Assessment Year 2010-11. Learned Assessing Officer's reliance on Explanation-2 to Section 132B of the Act, as made out in the ground of appeal, is, therefore, ill-conceived. This provision was not in force at the relevant point of time. On this view of the matter, as also bearing in mind entirety of the case, we approve the stand of learned CIT(A) and decline to interfere in the matter.

11. Ground no.2 is also dismissed.

12. In the result, the appeal is dismissed.

(Order pronounced in the open Court on 28<sup>th</sup> February, 2014)

**Sd/-**  
**(BHAVNESH SAINI)**  
Judicial Member

**Sd/-**  
**(PRAMOD KUMAR)**  
Accountant Member

Date: 28<sup>th</sup> February, 2014

PBN/\*

Copy of the order forwarded to :-

Appellant/Respondent/CIT (Appeals) concerned/CIT concerned/  
D.R., ITAT, Agra Bench, Agra/Guard File.

By Order

Sr. Private Secretary  
Income Tax Appellate Tribunal, Agra  
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