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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P. (C) No. 1867/2017**

DR. D. C. AGARWAL .....Petitioner
Through: Mr. Vishal Mittal, Ms. Anu Goel and Mr. Suraj Prakash, Advocates along with Petitioner in person

versus

THE UNION OF INDIA & ORS. .....Respondents
Through: Mr. Piyush Gaur, Advocate for UOI/R-1
Mr. Zoheb Hossain, Senior Standing Counsel for the Revenue

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R
% **09.08.2017**

1. The Petitioner, Dr. D. C. Agarwal, has filed this petition under Article 226 of the Constitution of India in relation to return of amount seized from the Assessee, Mrs. Veer Bala Agarwal, pursuant to a search undertaken under Section 132 (1) of the Income Tax Act, 1961 ('Act') at her residential premises at Delhi and Ghaziabad and lockers held in different banks.

2. The aforementioned searches took place on 4th October, 2004 and an amount of Rs. 98.90 lakhs was seized. On 8th December 2006, the assessment under Section 153A read with Section 143(3) of the Act was completed for Assessment Years ('AY') 1999-00 to 2005-06 and a sum of Rs. 48.90 lakhs was adjusted against the demand. The balance of Rs. 50

lakhs was kept in the Provisional Deposit ('PD') Account of the Principal Commissioner of Income Tax ('PCIT').

3. On 10th December, 2006, the Central Board of Direct Taxes ('CBDT') directed the Assessing Officer ('AO') to release the excess cash deposited in the PD Account within one month of the complaint of the Assessee. In June, 2007, a demand for the AY 2006-07 to the tune of Rs. 2,46,359/- was raised. The Assessee requested the AO by a letter dated 12th July, 2007 to adjust the said demand out of the sum of Rs. 50 lakhs deposited in the PD Account. The Petitioner then made several attempts between 17th September, 2007 to 15th November, 2013 through repeated letters requesting return of the balance after adjusting Rs. 2,46,359/- towards demand raised for AY 2006-07 from the Rs. 50 lakhs deposited in the PD Account.

4. In the meantime, the assessment order dated 8th December, 2006 was set aside and restored to the file of the AO who passed a fresh assessment order under Section 254 read with Sections 143(3) and 153A on 30th March, 2015 raising demands of Rs. 72,020/- for AY 2003-04 and Rs. 62,660/- for AY 2005-06. Only on 17th March, 2016, after adjustment of the demand raised for AY 2006-07, was the earlier seized amount of Rs. 47,53,500/- released to the Assessee. Another sum of Rs.5,25,000/- was released by the department to the Petitioner in two instalments, i.e. for Rs.2,56,469/- in June, 2016 and Rs.2,68,531/- on 7th April, 2017.

5. It is in the above context that the following prayers have been made in the

present petition:

> "(a) Issue writ of Mandamus or any other appropriate writ, order or direction, directing the Respondent to hold that interest is payable at the rate of 8% instead of 6% u/s 132B(4) of the Act from March, 2005 till November 2006 on Rs.50 lacs.
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> (b) Issue writ of mandamus or any other appropriate writ, order or direction, to waive off the interest amounting to Rs.2,68,539/- levied upon the Petitioner under section 220(2) of the Act on the alleged delay in payment of demand for A.Y. 2005-06.
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> (c) Issue writ of Mandamus or any other appropriate writ, order or direction, directing the Respondent to grant the interest at the rate of 15% for inordinate delay in releasing the amount of Rs.47,53,500/- under section 132B(3) of the Act for the period of December 2006 to March 2016 (i.e. 112 months) as per the provision of Section 132B(4)(a)(b) & 244A(l)(b) of the Act or under any other relevant provisions of the law.
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> (d) Issue writ of Mandamus or any other appropriate writ, order or direction, directing the Respondent to grant interest on amount to be paid in compliance of prayer clause (a) and (c) from the date it is due till the date of actual realisation.
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> (e) To award the costs throughout to the Petitioner for going through the mental agony due to inaction and callous attitude of the Respondent department."

6. Of the aforementioned prayers, what is pressed before the Court today is prayer (c), namely the claim for interest @ 15% for the inordinate delay in releasing the sum or Rs. 47,53,500/- under Section 132B of the Act for the period from December, 2006 till March, 2016.

7. Under Section 132B (4) of the Act, interest @ 6% p.a. is payable on a sum due to the Assessee after making all adjustments and such interest is to run from the expiry of 120 days after the date of the last authorization for search. This interest is payable up to the date of completion of the assessment under Section 153A or Chapter 14B of the Act.

8. In the present case, it is not in dispute that the interest began to run from March, 2005. Clearly the interest is payable up to the date on which assessment under Section 254 read with Sections 153A and 143(3) was completed, i.e. 30th March, 2015.

9. It is seen that the calculation of interest of Rs. 5,25,000/- was made by the Revenue for a period from March, 2005 only up to November, 2006. There is no justification for limiting the interest amount only to the above period when, admittedly, the final assessment order was finally passed only on 30th March, 2015. Consequently, the interest in terms of Section 132 B (4) of the Act @ 6% per annum is payable for a period from March, 2005 up to 30th March, 2015

10. Learned Counsel for the Petitioner urged that, even for this period, this Court should award interest at 12% per annum i.e. in excess of 6% provided under Section 132B (4) of the Act.

11. The Court is unable to accept this plea. The authorities below, as well as this Court, are bound by what is permissible under the Act and cannot award interest beyond what is provided under Section 132B (4) of the Act.

12. However, for the further period, i.e. the period beyond 30th March, 2015 up to the actual date of the payment of the said amount, the Petitioner is entitled to interest. In this connection, learned counsel for the Petitioner has placed reliance on the judgment dated 12th March, 2013 passed by this Court in ***S. K. Jain v. Commissioner of Income Tax-XI, New Delhi (2013) 354 ITR 84 (Del)*** where the interest was directed to be paid @ 12% in respect of the period beyond the period of assessment up to the date of the actual payment.

13. Following the decision in ***S. K. Jain*** *(supra)*, this Court directs that the Petitioner will be paid interest @ 12% per annum on the sum due under Section 132 B of the Act, after adjusting the sum already paid, from 30th March 2015 up to the date of its actual payment which, in any event, shall not be beyond 30th September, 2017.

14. A disconcerting feature of the present case is that the Petitioner's wife, who was waiting throughout for the return of the seized cash after adjustment of the demands, expired on 22nd April, 2014 without being granted the relief she was seeking. The Petitioner and, after her death, her husband, who himself is a disabled/handicapped and who has a child who is mentally handicapped, have had to literally chase the Department and have finally been able to get the relief only after they approached this Court. Further, it is required to be noticed that the Petitioner has been following up the case despite himself being not in a physically fit condition. He has been coming to the Court in a wheelchair, anxious that the case should come to an

end.

15. In the circumstances, the Court considers it appropriate to direct that the Respondent shall pay the Petitioner an additional sum of Rs. 2 lakhs as costs. If the sums required to be paid by the Respondent to the Petitioner in terms of this order are not paid and within the time stipulated, it would be open to the Petitioner to approach the Court for directions.

16. The writ petition is disposed of in aforesaid terms.

17. *Dasti* under the signatures of the Court Master to the parties.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 09, 2017
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