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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 3935 of 2006

1. Shankar Lal Bothra, S/o Late Jugraj Bothra, aged about 80 years, residents of Sadar Bazar, Gandhi Chowk Durg (C.G.)

2. Rajmal Bothra, S/o Late Bhanwarlal Bothra, aged about 40 years, resident of Sadar Bazar, Gandhi Chowk, Durg (C.G.)

3. Sanjay Kumar Bothra, S/o Late Sunderlal Bothra, aged about 38 years, resident of Sadar Bazar Gandhi Chowk, Durg (C.G.)

4. Nirmal Kumr Bothra, S/o Late Bhanwarlal Bothra, aged about 53 years, resident of Sadar Bazar, Gandhi Chowk, Durg (C.G.)

----Petitioners

Versus

1. Central Board of Direct Taxes through Secretary, New Delhi

2. Chief Commission of Income Tax, Central Revenue Building, Raipur (C.G.)

3. Assistant Commissioner of Income Tax-2, 18/32 Bungalows Bhilai

---- Respondents

For Petitioners : Shri Neelabh Dubey,
For Respondents : None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/08/2018

1. The petitioner is Income Tax Assessee. In a search and seizure operation carried out on 16.02.2000 by the Income Tax Authority, cash of Rs.10,50,000/- was seized from the residence of the petitioner, which was deposited in Public Deposit Account by the said authority. Final assessment in this case was completed in February, 2002 and this amount was adjusted against the demand raised in the petitioners' cases but as a consequence of the order of the Commissioner, Appeals the amount of Rs. 10,50,000/- was finally refunded

on 18.02.2002 but the interest on the said amount as provided under Section 132 –B (4) of the Income Tax Act, 1961 (henceforth “Act of 1961”) was disallowed.

2. The petitioners’ representation was finally rejected by the Assistant Commissioner of Income Tax, Bhilai by order dated 07.02.2006 pursuant to the order dated 14.09.2005 passed in Writ Petition No.4348/2005 of this Court, against which, instant writ petition has been filed questioning the same.

3. Learned counsel appearing for the petitioners would submit that the petitioners are entitled for interest @ 15% per annnum as per Section 132 B (4) of the Act of 1961, which suffered amendment with effect from 01.6.2002.

4. None appeared on behalf of respondents, though served.

5. I have heard learned counsel appearing for the petitioners and perused the material available on record with utmost circumspection.

6. Section 132B (4) (a) and (b) of the Act of 1961 prior to amendment dated 1.6.2002 provides as under:-

> “132B: **Application of retained assets**........
>
> (4)(a) The Central Government shall pay simple interest at the rate of fifteen per cent per annum on the amount by which the aggregate of money retained u/s 132 and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause 3 of sub-section (5) of that section exceeds the aggregate of the amounts required to meet the liability referred to in clause (i) of Sub-section (1) of this section.
>
> (b) Such interest shall run from the date immediately following the expiry of the period of six months from the date of the order under Sub-Section 5 of section 132 to the date of the regular Assessment or reassessment referred to in Clause (i) of Sub-section (1) or, as the case may be, to the date of last of such assessments or re-assessments.”

7. The above-stated provision came up for consideration before the Supreme Court in the matter of **<u>Chironjilal Sharma HUF v. Union of India (UOI) and others</u>**[1] in which Their

1 (2014) AIR (SCW) 303

Lordships held as under:-

> "6. A close look at the above provisions and, particularly, clause (b) of Section 132B(4) of the Act clearly shows that where the aggregate of the amounts retained u/s 132 of the Act exceeds the amounts required to meet the liability u/s 132B(1)(i), the department is liable to pay simple interest at the rate of fifteen percent on expiry of six months from the date of the order u/s 132(5) of the Act to the date of the regular assessment or re-Assessment or the last of such assessments or reassessments, as the case may be. It is true that in the regular Assessment done by the Assessing Officer, the tax liability for the relevant period was found to be higher and, accordingly, the seized cash under Section 132 of the Act was appropriated against the assessee's tax liability but the fact of the matter is that the order of the Assessing Officer was over-turned by the Tribunal finally on 20.2.2004. As a matter of fact, the interest for the post assessment period i.e. from 4.3.1994 until refund on the excess amount has already been paid by the department to the assessee. The department denied the payment of interest to the assessee under Section 132B(4)(b), according to Mr. Arijit Prasad, learned counsel for the revenue on the ground that the refund of excess amount is governed by Section 240 of the Act and Section 132B(4)(b) of the Act has no application. But, in our view, Section 132B(4)(b) deals with pre-assessment period and there is no conflict between this provision and Section 240 or for that matter 244(A). The former deals with pre-assessment period in the matters of search and seizure and the later deals with post assessment period as per the order in appeal."

8. Admittedly, the amount seized was refunded pursuant to the order of the Commissioner, Appeal on 18.07.2002, but the interest on the said amount has not been given to the petitioners, which, in the opinion of this Court in view of the laid down by the Supreme Court in above stated judgment of the Supreme Court in the matter of **Chironjilal Sharma HUF** (supra) they are entitled @ 15% per annum as provided in Section 132 – B

(4) of the Act of 1961.

9. Thus, the respondents are directed to pay interest @ 15% per annum after adjusting the amount of interest already paid, if any, on the refunded amount of Rs.10,50,000/- to the petitioners.

10. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-