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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.7345 of 2011

M/s Sunita Finlease Limited through its Director, Rakesh Gupta G.E. Road, Opposite Rajkumar College, Raipur (CG)

---- Petitioner

Versus

1. Commissioner of Income Tax Ministry of Finance Department of Revenue, Central Revenue Building, Civil Lines, Raipur (CG)]
2. Assistant Commissioner of Income Tax Circle (II) Ministry of Finance Department of Revenue, Central Revenue Building, Civil Lines, Raipur (CG)

---- Respondents

For Petitioner:	Mr.N.K.Vyas, Advocate
For Respondents:	Mr.Amit Choudhary, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/04/2018

1. The petitioner is Income Tax Assessee. In a search conducted in the office of the petitioner company on 21.7.1999 by the Income Tax Authority, an amount of ₹ 2,00,000/- was seized from the petitioner and was kept in Public Deposit Account by the said authority and thereafter issued notice under Section 158BC(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act of 1961") and pursuant to which, the petitioner submitted block assessment in the prescribed form showing undisclosed income as Nil. The Assessing Officer passed the order dated 31.7.2001 holding undisclosed income of the petitioner as ₹ 18,47,000/-, which was challenged by the petitioner before the Commissioner of Income Tax Appeal. The said authority by its order dated 28.12.2001 deleted the addition of

₹ 18,47,000/- as undisclosed income. The said order was assailed by the Department in appeal before the Income Tax Appellate Tribunal, Nagpur Bench at Raipur. The Tribunal dismissed the appeal of the Department. Thereafter, the petitioner claimed refund of the amount seized and ultimately, on 15.9.2010, an amount of ₹ 60,613/- was refunded to the petitioner. Thereafter, the petitioner claimed interest on the said amount. By order dated 6.6.2011, an amount of ₹ 8000/- was paid to the petitioner under Section 132B (4) of the Act of 1961. This writ petition has been filed by the petitioner stating inter-alia that the petitioner is entitled for interest at the rate of 15% per annum as amount of interest has been reduced w.e.f. 1.6.2002, whereas the petitioner case relates to prior to amendment, therefore, he is entitled for interest at the rate of 15% per annum on the said amount.

2. Return has been filed by the respondents opposing the said prayer.

3. Mr.N.K.Vyas, learned counsel appearing for the petitioner, would submit that though 8% interest has been awarded to the petitioner, but he is entitled for interest at the rate of 15% per annum as Section 132 B (4) of the Act of 1961 suffered amendment w.e.f. 1.6.2002.

4. On the other hand, Mr.Amit Choudhary, learned counsel for the respondents opposes the submissions.

5. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also gone through the records 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 **Chironjilal Sharma HUF v. Union of India (UOI) and others**[1] in which Their 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

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> 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. In the instant case, search was made on 21.7.1999 and amount of ₹2,00,000/- was seized and tax was assessed on 31.7.2001 adding ₹18,47,000/- which was deleted by the Commissioner of Income Tax Appeal on 28.12.2001 i.e. prior to amendment in Section 132B (1) of the Act of 1961 w.e.f. 1.6.2002, therefore, the petitioner will be entitled for interest on the said amount at the rate of 15% per annum.

9. Accordingly, the respondents are directed to pay the difference of interest at the rate of 15% per annum till the date of payment of interest adjusting the amount already paid. However, the petitioner is not entitled for any compensation or interest as per provisions contained in Section 244A of the Act of 1961.

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

Sd/-

(Sanjay K. Agrawal)
Judge

B/-