

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**CWP No. 23680 of 2019**  
**Date of decision: 21.1.2020**

**Jiwan Kumar**

**.. Petitioner**

**v.**

**Principal Commissioner of Income Tax, Bathinda and others**  
**.. Respondents**

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI  
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. K. L. Goyal, Senior Advocate with  
Mr. Avneet Singh, Advocate for the petitioner.

Mr. Vivek Sethi, Senior Standing Counsel with  
Mr. Varun Issar, Junior Standing Counsel for the respondents.

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**AVNEESH JHINGAN, J.**

The writ petition has been filed seeking quashing of order dated 12.6.2019 whereby interest on the seized amount has been restricted till the date of assessment. Further prayer is for direction to the respondents to pay interest on the seized amount for the period from 21.1.2014 to 4.7.2017.

The facts are that cash of ₹15,02,530/- was seized by the Investigation Wing of Income Tax Department from the petitioner on 6.1.2012, while he was travelling from Patiala to Mansa. The cash was impounded vide intimation dated 12.1.2012. The petitioner filed return declaring total income of ₹2,04,330/-. The assessment for the year 2012-13 was framed vide order dated 21.1.2014 whereby addition of ₹50,000/- was

made. Aggrieved of the assessment order, an appeal was filed and addition

of ₹50,000/- was reduced to ₹35,000/- by the 1<sup>st</sup> Appellate Authority, the appeal was partly allowed on 27.8.2014. Thereafter, proceedings under Section 263 of the Income Tax Act, 1961 (for short, 'the Act') were undertaken and the order dated 21.1.2014 passed by the Assessing Officer was set aside. The Assessing Officer was directed to decide the matter afresh after giving opportunity of hearing to the assessee and examining the evidence. An appeal was preferred against the revisional order, the Tribunal allowed the appeal on 26.8.2016 allowed the appeal and order of revision was quashed. The order of the Tribunal was accepted by the revenue. In spite of various requests, the amount seized was refunded to the petitioner only on 4.7.2017. As the amount was kept for almost 5 years, the petitioner approached the respondents for grant of interest. When no action was taken, CWP No. 7536 of 2019 was filed, the petition was disposed of on 19.3.2019 directing the respondents to pass a speaking order. The application was considered, order dated 12.6.2019 was passed under Section 132B(4) of the Act and interest for the period from 5.5.2012 to 21.1.2014 amounting to ₹1,57,765/- was paid after 21.1.2014.

The issue involved in narrow circumference is that there was no demand against the petitioner justifying retention of the seized amount, yet no interest was paid.

The stand taken by the respondents in the written statement is that interest as per the provisions of Section 132B(4) of the Act has been paid and there is no provision for payment of interest. Reliance is placed upon the decision of Madhya Pradesh High Court in Manohar Lal v. Commissioner of Income Tax and others, (2001) 249 ITR 1.

It would be pertinent to note here that the respondents have not

controverted the factual position that there was no demand pending against the petitioner for the said period. There is no plausible reason put forth justifying non-refund of amount even after finalisation of the assessment and the fact that the order of the Tribunal setting aside the revisional order was accepted by the revenue.

The provisions of Sections 132B(4) and 244A of the Act and Article 300A of the Constitution of India are quoted below:

“Sections 132(B) and 244A of the Act

**Application of seized or requisitioned assets.**

**132B.** (1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:-

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(4)(a) The Central Government shall pay simple interest at the rate of one-half per cent for every month or part of a month on the amount by which the aggregate amount of money seized under section 132 or requisitioned under section 132A, as reduced by the amount of money, if any, released under the first proviso to clause (i) of sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (i) of sub-section (1), exceeds the aggregate of the amount required to meet the liabilities 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 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 under Section 153A or under Chapter XIV-B.

**Interest on refunds where no claim is needed.**

**244A.** (1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:-

(a) where the refund is out of any tax collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period,--

(i) from the 1<sup>st</sup> day of April of the assessment year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under sub-section (1) of Section 139; or

(ii) from the date of furnishing of return of income to the date on which the refund is granted, in a case not covered under sub-clause (i);

(aa) where the refund is out of any tax paid under section

140A, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted:

**Provided** that no interest under clause (a) or clause (aa) shall be payable, if the amount of refund is less than ten per cent of the tax as determined under subsection (1) of section 143 or on regular assessment;

(b) in any other case, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Article 300-A of the Constitution

**300-A. Persons not to be deprived of property save by authority of law,-** No person shall be deprived of his property save by authority of law.]”

It may be noted at this stage that clause (a) of Section 244A of the Act was amended w.e.f. 1.6.2016 and it is the amended provision which is reproduced above, however, the same would not affect the decision in the present case as for the reasons mentioned below would be covered under clause (b) of Section 244A of the Act and same was not amended.

The stand of the revenue that the amount was requisitioned under Section 132A of the Act and hence interest only as per provision

under Section 132B(4) of the Act can be granted is not acceptable.

Depriving of individual of its property without authority of law violates Article 300-A of the Constitution of India. In the absence of any legal backing for not refunding the seized amount to the petitioner entitles him to interest even under general law. Be that as it may, the provision of interest on delayed refund is there in Section 244A of the Act.

There is no quibble with the proposition that Section 132B(4) of the Act deals with interest to be paid after 120 days of the date of last authorisation till the date of completion of assessment under Section 153A or Chapter XIV-B of the Act. The said provision cannot be read in isolation especially in the facts of the present case where inspite of completion of assessment on 21.1.2014, the amount was not refunded till 4.7.2017.

The area of operation of Section 132B(4) of the Act ends with the completion of assessment. If there is delay thereafter in refunding the amount, Section 244A of the Act takes such a case within its ambit, it deals with payment of simple interest where refund becomes due to the assessee under the Act. Clause (b) of Section 244A of the Act talks of all other cases than mentioned in clause (a) and (aa) for giving interest from the date of payment to the date on which the refund is granted. The refund of amount became due to the petitioner under the Act after finalisation of the assessment i.e. 21.1.2014 and the same was refunded on 4.7.2017, in such circumstances, the case is covered under clause (b) of Section 244A of the Act.

Sections 132B and 244A of the Act are independent provisions and are not over-lapping. Rather, Section 132B(4) of the Act deals with interest for the period from seizing of the amount till finalisation of the

assessment and Section 244A of the Act operates for the period after the refund has become due under the Act.

Madhya Pradesh High Court in Manohar Lal's case (supra) took a view that Section 132B of the Act is a self contained code, the assets seized have to be dealt with under Section 132(6) of the Act and payment of interest is to be made under Section 132B(4) of the Act and Section 244 of the Act had no application. With utmost respect, we are not in agreement with the view taken by Madhya Pradesh High Court for the reasons mentioned above.

The writ petition is allowed. The petitioner shall be entitled to interest under Section 244A of the Act for the period from 22.1.2014 till the date of payment.

**(AVNEESH JHINGAN)**  
**JUDGE**

**(AJAY TEWARI)**  
**JUDGE**

21.1.2020  
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| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |