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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CONT.CAS(C) 242/2018

DINESH KUMAR .....Petitioner

Through: Mr. Anoop Sharma & Mr. Sahil Shamra, Advs.

versus

R K YADAV DIRECTOR OF INCOME - TAX (INV) -II & ORS .....Respondents

Through: Mr. Shlok Chandra, Sr. Standing Counsel with Ms. Naincy Jain, Jr. Standing Counsel and MS. Madhavi Shukla, Jr. Standing Counsel for ITD

**CORAM:**
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**O R D E R**

**%** **14.02.2025**

**CM APPL. 72096/2024**

1. This application has been moved on behalf of the applicant/respondent/contemnor, pursuant to the order dated 25.10.2024 passed by this Court.

2. The stand taken by learned counsel for the applicant/respondent/contemnor is that the amount which was attached by the respondent has been erroneously directed to be refunded to the petitioner along with payment of interest @ 6% p.a. from the date of seizure till its realization within six weeks thereof.

3. Learned counsel for the applicant/respondent/contemnor has invited the attention of this Court to the provision of Section 132B of the Income

Tax Act, 1961, which reads as follows:-

"**[132B]. Application of seized or requisitioned assets**.—(1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:—

*(i)* the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958) and the Interest-tax Act, 1974 (45 of 1974), and the amount of the liability determined on completion of the assessment [under section 153A and the assessment of the year relevant to the previous year in which search is initiated or requisition is made, or the amount of liability determined on completion of the assessment under Chapter XIV-B for the block period, as the case may be] (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is [deemed to be in default, or the amount of liability arising on an application made before the Settlement Commission under sub-section (1) of section 245C, may be recovered out of such assets]:

Provided that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for release of asset and the nature and source of acquisition of any such asset is explained] to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner], to the person from whose custody the assets were seized:

Provided further that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed:

*(ii)* if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied;

*(iii)* the assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains

undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] under sub-section (5) of section 226 and the Assessing Officer or, as the case may be, the Tax Recovery Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of subsection (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (a) The Central Government shall pay simple interest at the rate of 3 [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 4 [under section 153A or under Chapter XIVB].

[*Explanation 1*.]—In this section,—

*(i)* "block period" shall have the meaning assigned to it in clause (a) of section 158B;

*(ii)* "execution of an authorisation for search or requisition" shall have the same meaning as assigned to it in Explanation 2 to section 158BE.]

[*Explanation* 2.—For the removal of doubts, it is hereby declared that the "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII.]"

4. On a careful perusal of the aforesaid provision, it is evident that the

interest would be payable after the expiry of the initial 120 days from the date on which the authorization under section 132 of the Income Tax Act or the requisition under section 132A of the Income Tax Act was executed.

5. Thus, pursuant to the notice issued to the non-applicant/petitioner, today a cheque bearing No. 053498 dated 13.02.2025 containing the income tax refund order for a sum of Rs. 45,44,490/- has been handed over to learned counsel for the petitioner, towards the interest which has been calculated in terms of the aforesaid discussion. The same is accepted unconditionally. The copy of the said cheque is taken on record.

6. The petitioner shall be at liberty to approach the worthy Registrar General, Delhi High Court for refund of the principal amount which already stands deposited with this Court.

7. The present application is disposed of accordingly.

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8. In view of the aforesaid, the contempt petition is disposed of as satisfied.

**DHARMESH SHARMA, J**

**FEBRUARY 14, 2025**/sp