
(2015) 03 AHC CK 0016
In the Allahabad High Court
Case No : Income Tax Appeal No. 182 of 2014

Commissioner of Income Tax

APPELLANT

Vs

Sunil Chandra Gupta

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Income Tax Act, 1961 — Section 132, 132A, 132B, 132B(1), 134

Citation : (2015) 03 AHC CK 0016

Hon'ble Judges : Satish Chandra, J.; Tarun Agarwala, J.

Bench : Division Bench

Advocate : Shambhu Chopra, S.C., for the Appellant; Rahul Agarwal, Advocates for the Respondent

Judgement

Dr. Satish Chandra, J.—The present appeal is filed by the department against the impugned order dated 28.02.2004, passed by the Income Tax Appellate Tribunal, Agra in I.T.A. No. 290/Agra/2013 for the assessment year 2010-2011.

2. The brief facts of the case are that on 10.03.2010, a search and seizure operation was conducted at the residence and business premises of the assessee. The bank lockers were also searched. During the search, a sum of Rs. 4,31,36,000/- was found in cash and seized. The same was deposited by the department in its P.D. Account. The assessee has written a number of letters on 21.03.2010, 29.03.2010 and 05.07.2010 to all the authorities of department to adjust the cash seized against the advance tax for the assessment year 2010-11. When the return for the assessment year under consideration was filed on 30.06.2010 then once again, the assessee made a request the A.O. to adjust the cash lying in the P.D. account against the advance tax, but the A.O. charged the interest under Section-234A, 234B and 234C of the Act. The said interest was deleted by the first appellate authority by observing that the cash was available with the department before filing the return and the same could have been adjusted against the demand of the advance tax. The Tribunal has confirmed the same by observing that the cash belongs to the assessee was already in the

government account so there is no question to charge the interest and to this effect the Tribunal has discussed number of case laws to this effect. Still being not satisfied, the department has filed the present appeal.

3. With this background, heard Sri Shambhoo Chopra, learned counsel for the appellant-department, who has justified the order passed by the A.O. and submits that the Tribunal has not considered the provision of Section-132B of the Act which deals with the matter relating to the appropriation of seized assets. He read out Section-132B(1) which is reproduced as under:--

"132B(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, 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 Chief Commissioner or Commissioner, to the person from whose custody the assets were seized.

[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.]

In view of the above legal provisions, it is apparent that the cash seized in the course of search, can only be appropriated against the amount of any existing liability, which in term of explanation 2 do not include advance tax".

4. The learned counsel for the department also submitted that the cash seized can only be appropriated against the amount of any existing liability which does not include the advance tax. Accordingly, the cash seized during the course of search cannot be appropriated against the advance tax.

5. On the other hand, Sri S.D. Singh, learned Senior Counsel assisted by the Sri Rahul Agarwal, learned counsel for the assessee-respondent had justified the impugned order passed by the Tribunal. At the strength of written submission,

learned counsel for the assessee submitted that the cash was seized during the course of search. The return was filed on or before the due date, so the liability to deposit the advance tax could have been adjusted against the seized amount. The advance tax liability in respect of the assessment year 2010-11, for which the return was filed on 30.06.2010, the cash was already available in the P.D. account maintained by the department. The A.O. as well as other authorities have not accepted the request made by the assessee for the adjustment of advance tax. The liability of the tax was about Rs. 3 Crore, out of which a sum of Rs. 4,31,36,000/- was seized and deposited by the department in the P.D. account controlled by the department. At least on the 03 occasions, requests were made for the adjustment but the department neither replied nor adjusted the amount. It is injustice to the assessee to hold on to the cash belonging to the assessee in the government account and, at the same time, charge interest for non payment of advance tax on the due date. It is clear that the assessee's application was never adjudicated by the authorities. No reasons were supplied to the assessee to support his arguments. He relied on the ratio laid down by Hon"ble Bombay High Court in the case of CIT v. Shri Jyotindra B. Modi dated 21.09.2011, where it was observed that the liability to pay the advance tax in respect of an amount arises before completion of the assessment. Section-132B(1) never prohibits the utilization of amount seized during the course of search towards the advance tax liability. Lastly, he made a request to uphold the order passed by the Tribunal.

6. We heard both the parties at length and carefully gone through the materials available on records from which it appears that, during the search, a huge cash was recovered. The assessee, while making statement under Section-134 of the Income Tax Act, offered to pay the tax on an undisclosed income of Rs. 10 Crore for which the tax would come to approve Rs. 3 Crore but the cash amount of Rs. 4,31,36,000/- was already available with the department which was deposited in the P.D. account. The assessee made a number of request from time to time for the adjustment of the cash seized against the liability of the advance tax, but the department neither replied nor adjusted the said amount. No doubt that before the due date, the cash was available with the department. The same could have been adjusted against the advance tax. The return was filed on or before the due date so the interest for default in furnishing the return of income under Section-234A was not desirable. Similarly, the interest for default in payment of advance tax is also not leviable under Section-234B for the reason that assessee had already made a request for adjustment of the amount against the advance tax which was already in the custody of the department. Similarly, Section-234C is not attracted as there was no deferment.

7. It may be mentioned that Hon"ble Punjab and Haryana High Court, in the case of Commissioner of Income Tax Vs. Ashok Kumar, observed that the assessee was entitled to adjustment of seized cash against the advance tax liability and therefore, no interest could be charged under Section-234A, B, C especially when the department had not responded to the assessee's request for the adjustment

of the cash seized against the advance tax liability.

8. Similar view was also expressed in the case of Commissioner of Income Tax Vs. Kesr Kimam Karyalaya, .

9. In view of above discussion and by considering the totality of the facts and circumstances of the case, we do not find any reason to interfere with the impugned order passed by the Tribunal. The same is hereby sustained alongwith the reasons mentioned hereinabove.

10. No substantial question of law is emerging from the impugned order.

11. In the result, the appeal filed by the department is dismissed at the admission stage.