(2012) 11 MP CK 0019

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6094 of 2008

Om Prakash Agrawal		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:
Income Tax Act, 1961 — Section 132, 132A, 132B, 132B(4)(a), 132B(4)(b)

Citation : (2013) 255 CTR 445 : (2012) ILR (MP) 2979

Hon'ble Judges : Vimla Jain, J;Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Sapan Usrethe, for the Appellant; Sanjay Lal, for the Respondent

Final Decision : Disposed Off

Judgement

1. Petitioner has sought following reliefs:

A. The Hon''ble Court may be pleased to direct the respondent to release the cash of Rs. 60,000 which was seized during the course of search on 13th Dec., 2002 along with interest as provided under s. 132B of the IT Act.

B. Any other relief, which this Hon''ble Court deems fit, may also be granted.

C. Costs of the petition.

Facts of the case are:

1. That a search was conducted in the premises of the petitioner on 12th Dec., 2002 under the warrant of authorisation dt. 12th Dec., 2002. During the search, a cash amount of Rs. 60,000 was seized from the premises of the petitioner on 13th Dec., 2002. The assessment proceedings took place and ultimately on 27th Dec., 2004, an assessment order was passed by the respondent No. 3 by which it was found that the petitioner was liable to make payment of tax: to a tune of Rs. 1,77,749. An appeal against this order was filed, which was allowed by the CIT(A), Jabalpur on 15th Dec., 2005, by which all the additions which were made by the respondent No. 3 were deleted and no liability on the petitioner was

found. Meaning thereby that immediately after 15th Dec., 2005, the petitioner was entitled for refund of the amount which was seized during search and seizure.

2. Thereafter, petitioner moved various applications to the respondents for refund of the amount along with interest. On 6th Sept., 2006, an order was passed by the Asstt. CIT, Circle-1(1), Jabalpur by which the appellate order was to be given effect to.

3. As no action was taken by the respondents for refund of the aforesaid amount, the petitioner filed this petition on 13th May, 2008 claiming aforesaid relief and during pendency of this petition, the seized amount of Rs. 60,000 has been refunded to the petitioner on 31st July, 2008. Now only question remains in respect of payment of interest on the seized amount as per provisions of s. 132B(4)(a)/(b) of the IT Act 1961.

2. The learned counsel for petitioner submitted that petitioner is entitled for statutory interest from the date of seizure till the date the aforesaid amount was refunded. As per statement made by the respondents, a cheque has been issued by the respondents. The petitioner submitted that the aforesaid cheque has not been received by the petitioner till this time. It is submitted that the petitioner is entitled for the statutory interest on the aforesaid amount from the date of seizure till its payment to the petitioner. The petitioner also prays for interest on the amount of interest which fell due on 31st July, 2008 from the respondents.

3. Shri Sanjay Lal, learned counsel appearing for Department opposed the aforesaid contentions and submitted that as per provisions of s. 132B(4)(a)/(b) of the Act, petitioner was entitled for interest Immediately after 120 days till date of assessment order and not thereafter which amount has been calculated and paid to the petitioner. That after payment of Rs. 6,300, the Department is not liable to make any further amount to the petitioner. This contention is opposed by the petitioner who has submitted that not only aforesaid amount but also interest till 31st July, 2008 and thereafter Interest on the amount of interest, petitioner is entitled as per aforesaid provisions.

4. To appreciate aforesaid contentions, we have perused the relevant provisions. For ready reference, sub-s. (4) of s. 132B of the IT Act, 1961 is referred which reads thus:

Sec. 132B. Application of seized or requisitioned assets.--...........

(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 s. 132 or requisitioned under s. 132A, as reduced by the amount of money, if any, released under the first proviso to cl. (1) of sub-s. (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in cl. (i) of sub-s. (1), exceeds the aggregate of the amount required to meet the liabilities referred to in cl. (i) of sub-s. (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 last of the authorisations for search under s. 132 or requisition under s. 132A was executed to the date of completion of the assessment under s. 153A or under Chapter XIV-B.

5. From the perusal of the aforesaid provisions, it is apparent that after the assessment order is passed, the assessee is entitled not only for the refund but also simple interest on the amount as has been provided under sub-s. 4(a) and (b) of the Act, Sub-s. 4(b) provides that 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 s. 132 was executed to the date of completion of the assessment. The assessment proceedings were completed by an order passed by the CIT(A) in appeal on 15th Dec., 2005; the petitioner was entitled for refund of aforesaid amount along with interest forthwith, but it appears that aforesaid amount was not paid and the petitioner was compelled to file a writ petition before this Court and during pendency of the petition, the amount was paid on 31st July, 2008 and the interest has been directed to be paid to the petitioner. But when the amount was due to be refunded on 15th Dec., 2005 and it was not refunded to the petitioner within a reasonable period, petitioner was entitled for interest on the aforesaid amount. As per provisions as are contained in sub-s. (4) of s. 132B of the Act, it was liability of the authority to give effect to the order and to make payment of aforesaid amount forthwith. There is no provision in the Act requiring the petitioner to move an application to the authority for giving effect to the order. When the order was passed in appeal and in absence of any challenge to the order, the competent authority was under an obligation to give effect to the order. A citizen cannot be deprived of his money when he is not liable to pay the revenue and if the money of a citizen/assessee has been retained by the Department, the Department/Central Government is liable to make payment of interest as is provided under sub-s. (4) of s. 132B of the Act. In view of aforesaid, this petition is finally disposed of with following directions:

(1) Respondents are directed to calculate the statutory interest on the amount of Rs. 60,000 immediately after 120 days from the date of seizure i.e., 13th Dec., 2002 till its refund to the petitioner and the aforesaid amount be paid to the petitioner within a period of 60 days from today. In case any amount towards interest has been refunded to the petitioner, that amount; shall be deducted from the aforesaid amount. In case, aforesaid amount is not paid within a period of 60 days, petitioner thereafter shall be entitled for interest on the aforesaid amount also @ 6 per cent per annum till its actual payment to the petitioner.

(2) Considering the fact that in. spite of request by the petitioner to the respondent authorities, neither the petitioner was refunded the amount nor interest was paid, and during pendency of this petition, aforesaid amount has

been paid, we direct the respondents to pay costs of this petition, which we quantify to Rs. 10,000 payable by the respondents to the petitioner.

