

**(2022) 04 BOM CK 0097**

**In the Bombay High Court**

**Case No : Writ Petition No.4402 Of 2021**

Sanjeevkumar And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

**Date of Decision : 22-04-2022**

**Acts Referred:**

Constitution Of India, 1950 — Article 226

Income Tax Act, 1961 — Section 80O, 132, 132A, 132(B), 132(B)(1)(i), 132(B)(4)(a), 132B(3), 132B(4), 132(B)(4)(b), 143(3), 147, 153A, 214, 240, 244, 244(1), 244A, 244A(1)(b)

**Citation : (2022) 04 BOM CK 0097**

**Hon'ble Judges : R. D. Dhanuka, J;S. G. Mehare, J**

**Bench : Division Bench**

**Advocate : Raviraj R. Chandak, D. B. Gaikwad, D. B. Gaikwad**

**Final Decision : Allowed**

## Judgement

R. D. Dhanuka, J

1. Rule. Rule is made returnable forthwith. Mr. Gaikwad, learned A.S.G. for respondent no.1 waives notice. Mr. Sharma, learned standing counsel for respondent nos.2 to 10 waives notice.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seek order and directions against respondent no.3 to release the remaining cash amount of Rs.24,29,000/-as shown in the order dated 17.11.2020 passed by respondent no.3. The petitioners also seek order and direction to pay the interest at the rate of 6% p.a. from 03.03.2018 to 23.12.2019 with compensatory interest at the rate of 12% p.a. from 24.12.2019 till 01.12.2020 on the amount of cash released of Rs.14,36,000/- by order dated 17.11.2020 passed by respondent no.3.

3. The petitioners seek an order and direction against respondents to pay interest at the rate of 12% p.a. from 01.11.2017 to 01.12.2020 on cash amount

of Rs.9,35,000/- and interest at the rate of 12% p.a. from 01.11.2017 till its final realization of the amount of Rs.24,29,000/-.

4. On 31.10.2017 a search was conducted at the residence of petitioner nos.1 to 4 under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as 'Act, 1961') and amount of Rs.48,00,000/- alongwith gold jewellery were seized by the respondents. On 01.11.2017 a panchanama regarding seizure of cash had been made as per Section 132(B) of the Act, 1961. On 29.11.2017 the petitioners filed their explanation explaining the source of the said cash and jewellery. The petitioners applied for release of the assets on 29.11.2017 as per proviso to Section 132(B)(1)(i) of the Act, 1961.

5. On 23.12.2019 and 26.12.2019, the respondents accepted the return of income filed by the petitioners for passing an assessment order under Section 143(3) of the Act, 1961 in the case of petitioner nos.1 to 4 and 10 and assessed the income at Rs.nil.

6. Between 07.02.2020 to 03.09.2020 the petitioners requested respondents to release the seized cash of Rs.48,00,000/-. On 17.11.2021, the respondent no.3 partly released the cash of Rs.23,71,000/- without there being payment of any statutory interest as per Section 132(B)(4)(a & b) of the Act, 1961. It is the case of the petitioners that, remaining amount of Rs.24,29,000/- was retained by respondents unlawfully.

7. On 26.02.2021, the petitioners filed this petition inter alia praying for various reliefs. During the pendency of this petition, respondents partly released cash amount of Rs.23,71,000/-.

8. Mr. Chandak, learned counsel for petitioners invited our attention to the various documents annexed to the petition and also the assessment order referred to above and would submit that, as per Section 132(B)(4)(a & b) of the Act, 1961, the petitioners are entitled for payment of interest as 120 days had already expired on 02.03.2018. He submits that, respondents are liable to pay interest at the rate of 6% p.a., which shall run from the date immediately following the expiry of the period of 120 days from the date on which the last of the authorizations for search was executed to the date of completion of the assessment under Section 153-A or under Chapter XIV-B of the Act, 1961.

9. It is submitted that, since the authority has not passed assessment order under Section 153-A or under Chapter XIV-B of the Act, 1961, the respondents could not have retained the cash amount of the petitioners at all. It is submitted by the learned counsel for the petitioners that, there is no provision in the Income Tax Act regarding the payment of interest as well as compensatory interest after the passing of the assessment order dated 23.12.2019 and 26.12.2019. The respondents, however, cannot deliberately delay the payment of the amount due and payable with interest from the date of the assessment order on the ground that there is no provision for payment of interest after the date of passing of the assessment order.

10. Learned counsel for the petitioners relied upon the chart tendered across the bar showing the amount seized by the respondents, interest payable for the period from 01.03.2018 to 07.12.2020, interest paid from the period 01.03.2018 to 13.12.2019 and the balance amount to be paid by respondents to the petitioner. The petitioners have also shown the interest payable from 01.11.2017 to 31.12.2021 i.e. for a period of 50 months or till the date of actual release of cash.

11. The learned counsel for the petitioners invited our attention to the stand taken by respondents in the affidavit-in-reply and would submit that, in the present case on the basis of the assessment outcome, the Pr. CIT Nagpur vide order dated 17.01.2020 released the seized cash of Rs.23,71,000/-. However, in respect of the M/s. Harshit S. Kabra (HUF) and M/s. Lashika Motors, the proceedings have been initiated under Section 147 of the Act, 1961 for reopening of the assessment which is pending for finalization.

12. It is submitted by the learned counsel that, in paragraph no.5 of the affidavit-in-reply it is stated by respondents that, the proposal for the payment of interest under Section 132-B (4) had been submitted to the Chief Commissioner of Income Tax, Pune vide letter dated 26.02.2021. On receipt of the approval, the interest on the cash released would be paid to the assessee. He submits that, the respondents cannot withhold the amount payable to the petitioners for alleged future liability. The liability must be existing as per Section 132-B (1) (i) of the Act, 1961.

13. Learned counsel relied upon Section 132-B (3) and would submit that, under the said provision any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-Section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized. In this case, neither there was any existing liability nor any liability had been fixed after passing the assessment order dated 23.12.2019 and 26.12.2019. The respondents thus could not have withheld any amount payable to the petitioners. He submits that, the respondents have accepted the claim of the petitioners regarding payment of interest, but has not released the payment.

14. The learned counsel for the petitioners invited our attention to the order dated 01.12.2021 recording that, the Income Tax Department desired to pay the interest till December 2019 whereas, the grievance of the petitioners was that, it should calculate the interest till the amount is actually paid. The first installment was paid on 17.11.2020 and the remainin amount was yet to be paid.

15. The learned counsel for the petitioners invited our attention to the order dated 30.03.2022 passed by this Court and submits that, the petitioners are entitled to larger reliefs, the petitioners have restricted the claim for payment of interest for the period from 03.03.2018 to 23.12.2019 as per Section 132-B (4) or Section 244-A(1)(b) of the Act, 1961 with compensatory interest at the rate of 6% p.a. totaling to Rs.5,99,780/-after giving credit of the interest already paid

by the revenue for the period from 01.03.2018 to 13.12.2019 in the sum of Rs.2,06,360/-.

16. The learned counsel for the petitioners placed reliance on the judgment of the Delhi High Court in a case of Ajay Gupta Vs. Commissioner of Income Tax reported in Laws (DLH)-2007-4-62 and would submit that, Delhi High Court has awarded claim for interest in view of the delay on the part of the revenue to pay cash amounts seized after the date of assessment order till the payment was released after considering the provision of Section 132-B (4) (b) of the Act, 1961.

17. Learned counsel for the petitioners placed reliance on the judgment of the Delhi High Court in a case of G. L. Jain Vs. Commissioner of Income Tax – XI & Ors. delivered on 28.08.2012 in Writ Petition (C) No.876/2012 and in particular paragraph no.10. He submits that, after construing the provision of Section 132-B(4) and after adverting to the judgment of the Hon'ble Supreme Court in a case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-1, Pune reported in ITR-2006-280-643 Delhi High Court has held that, absence of an express provision does not absolve the liability; it only reinforces the restitutionary principle which Courts under Article 226 of the Constitution of India are bound to enforce. The Delhi High Court accordingly directed the revenue to pay interest at the rate of 12% p.a. on the balance amount payable from the date of assessment order till the payment.

18. Learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Supreme Court in a case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-1, Pune (supra) and would submit that, Hon'ble Supreme Court in the said judgment has clearly held that, person should only be taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without authority of law the revenue must compensate the assessee.

19. Mr. Sharma, learned counsel for the respondent nos.2 to 10 on the other hand submits that, as per the provisions of Section 132-B (1) (i) the cash can be retained till the completion of the assessment, penalty proceeding and Appellate proceedings and till the full discharge of the liability of the assessee. In this Case, on the basis of the outcome of the assessment order, the Pr. CIT, Nagpur vide order dated 17.01.2020 released the seized cash of Rs.23,71,000/-. However, in respect of the M/s. Harshit S. Kabra (HUF) and M/s. Lashika Motors, the proceedings were initiated under Section 147 of the Act, 1961 for reopening of the assessment. He submits that, proposal for payment of interest under Section 132-B (4) had been submitted to the Chief Commissioner of Income Tax, Pune vide letter dated 26.02.2021 and on receipt of the approval the interest on the cash released would be paid to the petitioners.

20. The learned counsel for the revenue placed reliance on Section 132-B (4) (b) and would submit that, liability of payment of interest of the revenue is only upto the date of passing of assessment order under the said provision and not upto

the date of payment. Learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of Commissioner of Customs (Import) Vs. M/s. Dilip Kumar and Company and Ors. reported in (2018) TaxCorp(IDT) 114975 (SC) and would submit that, the Constitution Bench of the Supreme Court has clearly held that, when the words in the statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences.

21. It is submitted that, if the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes.

22. It is submitted that, the petitioners cannot be awarded payment of interest or compensation amount from the date of assessment order on the ground of hardship or inconvenience alleged to have been suffered by the petitioners.

He placed reliance on the judgment of the Hon'ble Supreme Court of India in a case of Ramnath and Co. Vs. Commissioner of Income Tax reported in Laws(SC)-2020-6-32 and would submit that, the Hon'ble Supreme Court has taken the similar view while interpreting Section 80-O, Explanation (iii) of the Act, 1961.

23. The learned counsel for the revenue sought to distinguish the judgment relied by the petitioners on the ground that, the facts before the Delhi High Court and before the Hon'ble Supreme Court of India in those judgments were totally different. He submits that, Delhi High Court had granted compensation from the date of assessment order in view of the gross delay on the part of the revenue in releasing the amount seized after the date of assessment order. In this case the interest is paid upto the date of assessment order by the respondents to the petitioners.

24. So far as judgment of the Hon'ble Supreme Court of India in a case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-1, Pune (supra) relied upon by the petitioners is concerned, it is clear that the Hon'ble Supreme Court has not considered Section 132-B (4) of the Act, 1961 in the said judgment, but had considered Section 214, 240, 244, 244(1) and Section 244(1A) of the Act, 1961. The petitioners had not challenged the vires of the provisions of Section 132-B(4) in this petition and thus no additional interest or compensation can be awarded by this Court in favour of the petitioners.

25. Mr. Chandak, learned counsel for the petitioners in rejoinder submits that, interest under Section 240 and 244-A is provided if assessment orders passed is in case of regular assessment whereas under Section 132-B, the interest would

start after expiry of 120 days from the date of search and seizure upto the date of assessment order.

26. It is submitted by the learned counsel for the petitioners that, Hon'ble Supreme Court of India in a case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-1, Pune (supra) has clearly held that, if the claim of the respondent-authority is found unsustainable by Court of law, the compensation to such aggrieved party has to be awarded. Even today no assessment order is passed by the respondents in respect of petitioner nos.5 to 9 and 11.

27. Section 132(B)(4)(a & b) of the Act, 1961 are reproduced as under:

4(a). The Central Government shall pay simple interest at the rate of on-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.

#### REASONS AND CONCLUSIONS

28. It is not in dispute in this case that, the search at the residence of the petitioner nos.1 to 4 was conducted by the respondents on 31.10.2017 and amount of Rs.48,00,000/- alongwith gold Jewellery were seized. The last authorization of a search was done on 01.11.2017. The petitioners applied for release of the assets on 29.11.2017 as per proviso to Section 132(B)(1)(i) of the Act, 1961. Assessing Officer passed assessment order under Section 143(3) of the Act, 1961 in the case of petitioner nos.1 to 4 and 10 vide assessment order dated 23.12.2019 and 26.12.2019 and assessed the income as Rs.nil. The petitioners accordingly applied for release of the seized cash of Rs.48,00,000/- by various letters during the period between 07.02.2020 to 03.09.2020.

29. Admittedly, the respondent no.3 only released cash of Rs.23,71,000/- out of Rs.48,00,000/- without payment of any statutory interest as per Section 132(B) (4)(a & b) of the Act, 1961 on 17.11.2021. The period of 120 days come to an end on 02.03.2018. The claim for payment of interest or compensation from the date of assessment order till payment is opposed by the revenue on the ground that under the said Section 132-B(4)(a & b), interest is provided only upto the date of assessment order and not beyond the said period.

30. The learned counsel for the revenue could not dispute that, there was delay

in releasing the cash amount of the petitioners seized by the respondents and such payment was not made within a period of 120 days from the date on which the last authorization for search under Section 132 was executed to the date of completion of assessment under Section 153-A or under Chapter XIV-B of the Act, 1961.

31. The question that arises for consideration of this Court is whether this Court can award interest or compensation having found delay on the part of the revenue in releasing the cash amount seized by the revenue from the petitioners while carrying out the assessment, though delay was attributed on the part of the respondents and not on the petitioners from the date of assessment order till payment or not.

32. There is no doubt that the said Section 132-B (4) (b) provides that, 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. In our view the said provision does not indicate any bar from awarding payment of interest or compensation in a situation where Court finds any delay on the part of the revenue in releasing the amount within time specifically prescribed under the provisions of law for no fault of the assessee.

33. The Hon'ble Supreme Court in a case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-1, Pune (supra) while dealing with the claim for payment of interest under Section 214 of the Act, 1961 made by the petitioner whether there was gross delay on the part of the revenue ranging from 12 to 17 years held that, there is no question of the delay being 'justifiable' as is argued and in any event if the revenue takes an erroneous view of the law, that cannot mean that the withholding of monies is 'justifiable' or 'not wrongful'.

34. The Hon'ble Supreme Court considered the issue that, this Act provided for payment of compensation for delayed payment of amounts due to an assessee in a case where these amounts include interest? It is held that, the Act recognizes the principle that a person should only be taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without authority of law the revenue must compensate the assessee. The Hon'ble Supreme Court in that matter directed the revenue to pay interest at the rate of 9% p.a. from the date it became payable till the date it was actually paid holding the revenue solely responsible for the delayed payment.

35. Mr. Sharma, learned counsel for the revenue strongly relied upon the observations made by the Hon'ble Supreme Court in paragraph no.26 of the said judgment and would submit that, the award of interest on the refunded amount is as per the statutory provisions of law. When a specific provision has been made under the statute, such provision has to govern the field.

36. In our view the principles laid down by the Hon'ble Supreme Court of India in a case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-1, Pune (supra) would apply to the facts of this case. The respondents were solely responsible for the gross delay in not releasing the cash amount of the petitioners under Section 132-B (4) (b) of the Act, 1961 and thus cannot refuse the payment of compensation to the petitioners for wrongfully withholding the said amount from the date of assessment order till payment.

37. Delhi High Court in a case of Ajay Gupta Vs. Commissioner of Income Tax (supra) has held that, since the payment was made after the outer limit of the period prescribed under section 132B(4)(b) of the Act, 1961, the Petitioner would be entitled to compensation on account of delay for the subsequent period. The Delhi High Court followed the judgment of the Hon'ble Supreme Court in a case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-1, Pune (supra) and directed the revenue to pay compensation/damages to the assessee on the balance sum for the subsequent period at the rate of 9% p.a. In our view, the principles laid down by the Delhi High Court in a case of Ajay Gupta Vs. Commissioner of Income Tax (supra) after adverting to the judgment of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-1, Pune (supra) applies to the facts of this case. We are in respectful agreement with the view expressed by the Delhi High Court in the said judgment.

38. The Delhi High Court in a case of G. L. Jain Vs. Commissioner of Income Tax – XI & Ors. (supra) after adverting to its earlier judgment in case of Ajay Gupta Vs. Commissioner of Income Tax (supra) and judgment of the Hon'ble Supreme Court in case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-1, Pune (supra) has held that there is no justification in refusing to pay compensation/damages for the delay caused by the respondents revenue in releasing the payment within the time prescribed due and payable to the petitioners and such interpretation cannot be accepted which would devoid the rights of the assessee. The Delhi High Court accordingly directed the revenue to pay interest at the rate of 12% p.a. on the balance amount for the subsequent period i.e. from the date of assessment order till the payment. In our view, the said judgment also would apply to the facts of this case. We are in respectful agreement with the view expressed by the Delhi High Court in a case of G. L. Jain Vs. Commissioner of Income Tax – XI & Ors. (supra).

39. In so far as judgment of the Hon'ble Supreme court in a case of Commissioner of Customs (Import) Vs. M/s. Dilip Kumar and Company and Ors. (supra) relied upon by the learned counsel for the revenue is concerned, the Hon'ble Supreme Court in the said judgment had considered the question as to what interpretative rule to be applied while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied. In paragraph no.19 of the said judgment it is held by the Hon'ble Supreme Court that, when the words in statute are clear, plain and unambiguous and only one

meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense.

40. In this case, it is not the case of interpretation of Section 132-B(4)(b) of the Act, 1961 or under the said provision, the Courts would restrict obligation and liability of the revenue to pay interest or compensation upto the date of payment. The question for consideration of this Court raised by the petitioners is whether the respondents can refuse to compensate the petitioners for wrongfully withholding the cash amount of the petitioners though by the assessment order the liabilities of the petitioners were declared as nil beyond the date of assessment order. The judgment of the Hon'ble Supreme Court in a case of Commissioner of Customs (Import) Vs. M/s. Dilip Kumar and Company and Ors. (supra) thus would not advance the case of the revenue.

41. In so far as judgment of the Hon'ble Supreme Court in a case of Ramnath and Co. Vs. Commissioner of Income Tax (supra) relied upon by the learned counsel for the revenue is concerned, the Hon'ble Supreme Court in the said judgment while dealing with the Section 80-O of the Act, 1961 has held that, taxing statutes are subject to the rule of strict interpretation. There is no dispute about the preposition of law laid down by the Hon'ble Supreme Court in the said judgment. We do not propose to expand the scope of Section 132-B(4) of the Act, 1961 in this matter. The Hon'ble Supreme Court and the Delhi High Court have already held that, the assessee who is deprived of refund of their amount in view of wrongful withholding of their amount by the authority cannot be refused to compensate for such wrongful deprivation of their amount lying with the authority for no fault of the assessees.

42. Though in this case the petitioners have prayed for interest at the rate of 12% p.a. from 01.11.2017 to 01.12.2020 on cash amount of Rs.9,35,000/- and compensatory interest at the same rate from 24.12.2019 till 01.12.2020 on the amount of cash released of Rs.14,36,000/-, the petitioners have restricted their prayer for compensatory interest at the rate of 6% p.a. on these two amounts and also on Rs.24,29,000/-. In our view, though Delhi High court had awarded interest at the rate of 9% p.a. towards compensation/damages for the delayed period, since the petitioners in this case have restricted their claim for compensation/damages at the rate of 6% p.a. for the delayed period, we are inclined to allow the claim for the interest by way of compensation/damages at the rate of 6% p.a. for delayed period already quantified in the chart submitted by the petitioners.

43. We accordingly pass the following order:

A. The respondents are directed to pay interest by way of compensation/damages for the period from 03.03.2018 to 23.12.2019 as prayed under Section 132-B(4) of the Act, 1961 at the rate of 6% p.a. totaling to Rs.5,99,780/- after

giving credit of the interest already paid by the revenue for the period from 01.03.2018 to 13.12.2019 in the sum of Rs.2,06,360/- within a period of four weeks from the date of this order.

44. Writ Petition is allowed in the aforesaid terms. Rule is made absolute accordingly. No Order as to costs.

45. Parties to act on authenticate copy of this order.