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214 (2)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) ITA-20-2012 (O&M)
Reserved on : 17.07.2024
Date of Pronouncement:30.08.2024

KAMLA MEHTA Appellant

Versus

COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE,
LUDHIANA & ANR. Respondents

2) ITA-21-2012 (O&M)

SHELLY MEHTAAppellant

Versus

COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE,
LUDHIANA & ANR.Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Ms. Radhika Suri, Sr. Advocate with
Mr. Parnika Singla, Advocate and
Mr. Abhinav Narang, Advocate
for the appellant(s).

Mr. Saurabh Kapoor, Sr. Standing Counsel
for the respondents.

JAGMOHAN BANSAL, J.

1. By this common order ITA-20-2012 and ITA-21-2012 are disposed of since issues involved in the captioned appeals and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from ITA-20-2012.



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2. The appellant through instant appeal under Section 260-A of the Income Tax Act is seeking setting aside of order dated 16.12.2011 (Annexure A-9) passed by the Income Tax Appellate Tribunal in ITA No.57/ASR/2010 for the assessment year 2007-08.

3. Brief facts, shorn of unnecessary, are that respondent-Revenue on 17.07.2007 conducted search at different premises of both the appellants as well as one person namely Sarup Chand. During the course of search, it was found that Sarup Chand is maintaining two saving accounts with Standard Chartered Bank wherein a sum of Rs.43,78,272/-is lying deposited. The Revenue recorded statement of Sunil Mehta under Section 132(4) of the Income Tax Act, 1961 (for short 1961 Act) wherein he admitted that amount lying in the account of Sarup Chand belonged to his family members. The said amount was sale proceeds of a house in Amritsar. The said house was owned by Smt. Kamla Mehta and Smt. Shelly Mehta (both the appellants herein). Sarup Chand at the time of search was away to his native village. The Revenue seized aforesaid amount lying in the bank account of Sarup Chand. The said amount was transferred in the account of Revenue. Saurp Chand furnished an affidavit dated 03.08.2007 disclosing that amount lying in his account belonged to family members of Sunil Mehta. The said affidavit was followed by letter dated 15.02.2008, requesting the Revenue to adjust seized amount against tax liability of Smt. Shelly Mehta and Smt. Kamla Mehta.

4. The appellant filed her return for the assessment year 2007-08 on 18.02.2008. The said return was filed pursuant to notice issued



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under Section 153A of 1961 Act. The appellant disclosed undisclosed income of Rs.77,25,000/- as short term capital gain arising on account of sale of a residential property. The surrendered income included cash seized from the bank account of Sarup Chand.

5. The Assessing Officer vide order dated 28.04.2009 framed assessment for the assessment year 2007-08 *qua* both the appellants herein. The assessment order was also passed with respect to tax liability of Sarup Chand. No tax liability was found of Sarup Chand though a sum of Rs.43,73,136/- was found in his bank account. The said amount was claimed by appellants as their capital gain arising out of sale proceeds of house, thus, Assessing Officer requested Commissioner of Income Tax for adjustment of seized amount towards the tax liability of appellants. The Commissioner of Income Tax, Amritsar vide letter dated 26.06.2009 permitted Assessing Officer to adjust seized cash against tax liability of appellants. The Assessing Officer, accordingly, adjusted seized cash against the tax liability of appellants, however, Assessing Officer charged interest under Section 234B from both the appellants.

6. The appellants pleaded that amount recovered from the possession of Sarup Chand should be adjusted against self-assessed tax due under Section 140A read with Section 132B of 1961 Act and interest should not be charged under Section 234B. As Assessing Officer charged interest under Section 234B of 1961 Act, the appellants preferred appeals before CIT (A) who dismissed their appeals holding that cash seized from the possession of Sarup Chand could not be adjusted against tax liability of appellants as advance tax.



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7. The appellants preferred further appeals before Tribunal which came up for consideration before a Division Bench which vide impugned order dated 16.12.2011 (Annexure A-9) dismissed appeals of both the appellants. The relevant extracts of findings recorded by Tribunal are reproduced as below:

“12. We have heard both the parties and carefully considered their oral as well as written submissions including the authorities referred to by them. The short issue is whether the cash seized from the bank account of Shri Sarup Chand can at all be adjusted against the self assessment tax due u/s 140A in the cases of both the assesseees, namely, Smt. Kamla Mehta and Smt. Shelly Mehta u/s 132B even without ascertaining the tax liability of Sarup Chand upon assessment. It is not in dispute that all the three persons are income-tax assesseees and that they have been assessed individually to tax in the assessment year under appeal. It is also not in dispute that the cash was seized from the bank account of Shri Sarup Chand and not from the possession or the premises of either of the assesseees before us. The claim of both the assesseees is that they have filed affidavit in which it has been claimed that the cash seized from the bank account of Shri Sarup Chand belongs to both the assesseees and therefore they should be adjusted against the self assessment due from both the assesseees. In our view, the mere filing of affidavit is not sufficient to establish the ownership of cash. Apparent is considered to be real unless proved otherwise. In the present case, the cash was seized from the bank account of Shri Sarup Chand. Filing of mere affidavit of Shri Sarup Chand does not by itself establish that the cash seized from his bank account belonged to both the assesseees and not to the person from whose possession it



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was seized. The affidavits so filed before the AO was the subject matter of enquiry by the AO and it was only when the assessment order was passed that the cash seized from the bank account of Shri sarup Chand was not assessed in his hand and thereafter the cash so seized was adjusted against the demand due from both the assessees. It cannot therefore be said that the cash seized from the bank account of Shri Sarup Chand belonged to both the assessees till a decision was taken by the AO in this behalf in the assessment order passed in the case of Shri Sarup Chand on 28.4.2009. Since the assessment order in the case of Shri Sarup Chand was passed on 28.4.2009, the AO has rightly adjusted the cash seized from the bank account of Shri Sarup Chand against the liability of both the assessees after 28.4.2009.

13. The claim of the assessee that cash seized from the bank account of Shri Sarup Chand should have been adjusted by the AO against self assessment tax due u/s 140A from both the assessees in terms of section 132B has no legs to stand. Section 132B permits adjustment of seized assets Including cash against the existing liability of the person from whom it is seized and not against the existing liability of others. In the present case, cash was seized from the bank account of Shri Sarup Chand and not from the possession or premises of either Kamla Mehta or Shelly Mehta. Therefore neither Kamla Mehta nor Shelly Mehta was entitled to seek adjustment of cash seized from the bank account of Shri Sarup Chand against their liabilities u/s 132B on the basis of mere affidavit of Sarup Chand. In fact, such types of claims/adjustments are completely outside the scope of section 132B. Till the assessment in the case of Sarup was completed, the AO was not in a position to know as to whether there would be any liability against Sarup Chand for the satisfaction of which the seized cash would be



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required. It is only after the assessment in the case of Shri Sarup Chand was completed that the AO could know that the seized cash was not required to be applied to satisfy any demand due from Sarup Chand as there was no demand found due against him upon the assessment. It was therefore not open to the AO to adjust the cash seized from the bank account of Sarup Chand against the self assessment tax due u/s 140A from both the assesseees without completing the assessment in the case of Shri Sarup Chand. It was only after the assessment of Shri Sarup Chand was completed by the AO that the AO could know that the cash seized from him would not be required in his case and therefore adjusted the cash so seized from him against the demand due from both the assesseees. In this view of the matter, the AO, in our considered view, has rightly adjusted the amount of cash seized against the demands due from both the assesseees after completing the assessment in the case of Sarup Chand.”

8. Ms. Radhika Suri, Sr. Advocate submits that during the course of search as well as at the first available opportunity, the appellants and Sarup Chand categorically disclosed that money lying in the account of Sarup Chand belonged to appellants, thus, said amount was required to be treated as cash belonging to appellants and seized from their custody. The Revenue was bound to adjust the said amount against tax liability in terms of Section 132B and 140A read with Section 153A and interest under Section 234B of 1961 Act could not be charged. The cash was seized on 17.07.2007 and assessment order was passed on 28.04.2009. The interest of the intervening period could not be charged because adjustment of cash made in the year 2009 related back to year 2007.



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9. The appellants have raised following questions of law for the consideration of this Court:

“SUBSTANTIAL QUESTIONS OF LAW

4. That the following substantial question of law arise for the kind consideration of this Hon'ble Court.

i) Whether in facts and circumstances of the case the Income Tax Appellate Tribunal had failed to consider that while passing the Assessment order dated 28th April, 2009, the Assessing Officer had accepted that the amount lying in the account of Sarup Chand in Standard Chartered bank belonged to the Appellant and hence, the same was liable to be adjusted towards the self assessment tax under Section 140-A in terms of the letter and affidavit dated 3.8.2007 followed by letter dated 2.2.2008 by Sarup Chand and the note given by the Appellant in the return of income filed in pursuance to the notice under Section 153-A of the Income Tax Act contrary to the ratio of this Court in 334 ITR page 355?.

ii) Whether in facts and circumstances of the case, the Income Tax Appellate Tribunal had failed to consider that adjudication of the assessing officer on 28th April, 2009 based on the affidavit and letter dated 3.8.2007 to the effect that the seized cash belonged to the assessee and not to Sarup Chand would relate back to the date of search and the amount seized which was assessed as undisclosed income of the Appellant would be deemed to be tax recovered from the assessee liable to be adjusted as such?

iii) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal has failed to consider that the Assessing Officer has not granted benefit of interest on funds seized on 28th July, 2007. Even though the same were retained by the revenue for a period of two years



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contrary to provisions of Section 132B(4)(a) of the Act?”

10. We have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

11. The appellants claim that cash seized from the possession of Sarup Chand should be treated as cash seized from the possession of appellants and it should be adjusted against their tax liability under Section 140A read with Section 153A of 1961 Act. Section 132B provides for application of seized or requisitioned assets. It provides that assets seized under Section 132 or requisitioned under Section 132A shall be dealt with in the manner prescribed therein. Relevant extracts of Section 132B are reproduced as below:

“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:



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(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 sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

xxxx xxxx xxxx xxxx

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.”

[Emphasis Supplied]

12. From the perusal of aforesaid provision, it is evident that assets seized by Revenue are utilized towards tax liability arising under Income Tax Act, Wealth Tax Act, Expenditure Tax Act, Gift Tax Act, Interest Tax Act; liability determined on completion of assessment under Section 153A; liability determined on completion of assessment of the year relevant to the previous year in which search took place; the liability determined on assessment for the block period or liability of penalty or interest.

13. The Revenue during the course of search recovered cash which falls within the definition of assets. As per Section 132B, cash seized is required to be adjusted against tax liability. In the case in hand, cash was seized from the possession of Sarup Chand. The appellants as well as Sarup Chand during the course of search and thereafter claimed that cash belonged to appellants and it was sale proceeds of a house. Both



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the appellants claimed equal share in the seized cash. The Assessing Officer framed assessment in 2009. The said assessment was framed within stipulated limitation period. As per appellants, seized cash must be adjusted against their tax liability even prior to the date of framing of assessment. Till the date of framing assessment of appellants as well as Sarup Chand, despite their affidavits/statements, cash belonged to Sarup Chand. It is a matter of chance that no tax liability arose against Sarup Chand. Had some tax liability arisen against Sarup Chand, the Revenue was bound to adjust seized cash against his tax liability. Seized cash could not be adjusted against tax liability of appellants. The question of adjustment of cash matured on the date of framing assessment of appellants as well as Sarup Chand. As soon as, it was found that there is no tax liability of Sarup Chand and Revenue was having cash seized from the possession of Sarup Chand, the question of adjustment of said cash arose. The department, at this stage, adjusted seized cash against tax liability of appellants, however, charged interest for the delayed payment of tax. Till the date of framing of assessment of parties, the Revenue had no authority to treat cash seized from the possession of one person as cash belonging to another person. Sarup Chand was not holding cash on behalf of the appellants. It is not a case of constructive possession of cash by appellants. The cash was actually in the possession of Sarup Chand, thus, till the date of framing assessment, he was owner of said cash and it could not be adjusted against tax liability of appellants.

14. Section 132B (3) provides that assets or proceeds thereof which remain after the liabilities are discharged shall be paid to the



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persons from whose custody the assets were seized. Explanation 2 which was inserted w.e.f. 01.06.2013 provides that existing liability does not include advance tax payable. From sub-section (3) of Section 132B, it is evident that person from whose custody assets are seized is entitled to adjustment thereof against the tax liability. As per explanation, existing liability does not include advance tax, thus, contention of appellants that amount seized from the possession of another person should be treated as advance tax paid by appellants is misconceived. The Court is not oblivious of the fact that explanation 2 was inserted w.e.f. 01.06.2013 and assessment year in question is 2007-2008.

15. The respondent has charged interest under Section 234B and interest under said section is payable on delayed payment of advance tax. Section 234B further provides that assessment framed under Section 153A is a regular assessment and interest in case of regular assessment is payable from the first day of April next following such financial year to the date of regular assessment. The relevant extracts of Section 234B are reproduced as below:

“234B. Interest for defaults in payment of advance tax.—
(1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent. of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one percent. for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of determination of



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total income under sub-section (1) of section 143 and where a regular assessment is made, to the date of such regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.

Explanation 1.—In this section, “assessed tax” means the tax on the total income determined under sub-section (1) of section 143 and where a regular assessment is made, the tax on the total income determined under such regular assessment as reduced by the amount of,—

(i) any tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;

(ii) any relief of tax allowed under section 90 on account of tax paid in a country outside India;

(iii) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;

(iv) any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and

(v) any tax credit allowed to be set off in accordance with the provisions of section 115JAA or section 115JD.

Explanation 2.—Where, in relation to an assessment year, an assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section.”

16. From the conjoint reading of Sections 140A, 132B and 234B, it is evident that while determining tax liability, the tax deducted or collected at source as well as advance tax is deducted from the total liability. The appellants have not paid advance tax and they are wrongly



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claiming that in view of Section 132B the amount recovered from the possession of Sarup Chand should be treated as advance tax payable by them. The alleged amount was concededly lying deposited in the bank account of Sarup Chand and till the determination of liability of all the parties, there was no question of adjustment of seized cash against the liability of appellants. They were liable to pay interest in terms of Section 234B on account of delayed payment on advance tax.

17. In the wake of above discussion and findings, we are of the considered opinion that amount seized from the possession of Sarup Chand could not be treated as cash belonging to appellants from the date of seizure and it could not be adjusted on the said date against their tax liability. The Revenue has correctly adjusted seized cash from the date of framing of assessment and charged interest under Section 234B on delayed payment of advance tax.

18. All the questions raised in the instant appeals are answered in favour of Revenue.

19. Both the appeals stand dismissed.

20. Pending misc. application (s), if any, shall also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

30.08.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>