

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

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**INCOME TAX APPEAL NO.3741 OF 2010**

Commissioner of Income Tax-Central-1,  
R No.1002, 10<sup>th</sup> Floor,  
Old CGO Building, Annexe,  
M K Road, Mumbai – 400 020.

.. Appellant

Vs.

Shri Jyotindra B. Mody,  
83, B & C, Sheth Govindrao Smruti,  
Dr. Annie Besant Road,  
Worli, Mumbai – 400 018.

.. Respondent.

Mr.Suresh Kumar for the Appellant.  
Mr.S.J. Mehta for the Respondent.

**CORAM : J.P. DEVADHAR & K.K. TATED, JJ.**  
**DATE : 21ST SEPTEMBER, 2011.**

**JUDGMENT: (PER J.P.DEVADHAR, J.)**

1 The Appeal is admitted on the following reframed question of law:

Whether the ITAT was justified in holding that the seized cash amounting to Rs. 18,00,000/- and the amount of Rs.1.98 Crores deposited by the Assessee on 31<sup>st</sup> January, 2007 could be adjusted against the Advance Tax liability while computing the interest under sections 234B and 234C of the Income Tax Act, 1961?

2 The Appeal is taken up for final hearing by consent of parties.

3 The Assessment Year involved herein is A.Y. 2007-2008.

4 On 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> January, 2007 search and seizure action was carried out at the premises of the Assessee wherein cash amounting to Rs.18,00,000/- was found and the same was seized. During the course of search the Assessee offered to tax the undisclosed income amounting to Rs.6,32,79,857/- including the amount of cash seized during the course of search. Thereafter, the Assessee paid a sum of Rs.1.98 Crores vide pay order dated 31<sup>st</sup> January, 2007 issued by the HDFC Bank Ltd. in favour of the Director of Income Tax (Inv.)-II, Mumbai. By a letter dated 14<sup>th</sup> March, 2007, the Assessee requested that the cash amounting to Rs.18,00,000/- and the pay order amounting to Rs.1.98 Crores paid by the Assessee be adjusted towards the advance tax payable on the additional income declared by the Assessee during the course of search. It is not in dispute that the additional income offered by the Assessee has been accepted and the assessment order has been passed accordingly. However, while computing interest under sections 234B and 234C of the Income Tax Act, 1961, the Assessing Officer declined to take into consideration the amount of Rs.18,00,000/- seized during the course of search and Rs.1.98 Crores paid by the Assessee towards the advance tax liability.

5 On Appeal filed by the Assessee, the CIT (A) directed the Assessing Officer to take in to account the amount of Rs.18,00,000/- and Rs.1.98 Crores towards the advance tax liability while computing the interest liability.

6 Challenging the aforesaid order, the Revenue filed the Appeal before the ITAT and the same was dismissed by the impugned order dated 9<sup>th</sup> December, 2009. Hence, the Revenue has filed the present Appeal.

7 The basic argument of the Revenue is that under section 132B(1)(i) of the Income Tax Act, 1961, the amount seized during the course of search can be dealt with for discharging the existing liability under the Acts set out therein. In the present case, the tax liability relating to the assessment year in question would get crystalised only after the assessment is completed and therefore, the request of the assessee for adjustment of the amounts in question towards the advance tax liability could not be entertained.

8 We see no merit in the above contention, because, once the assessee offers to tax the undisclosed income including the amount seized during the search, then the liability to pay advance tax in respect of that amount arises even before the completion of the assessment. Section 132B(1)(i) of the Act

does not prohibit utilization of the amount seized during the course of search towards the advance tax payable on the amount of undisclosed income declared during the course of search. In the present case, the assessee, prior to the last date for payment of last installment of advance tax, had in fact by his letter dated 14<sup>th</sup> March, 2007 requested the assessing officer to adjust the amounts towards the existing advance tax liability. Since advance tax liability is to be computed and paid in accordance with the provisions of the Act even before the completion of the assessment, no fault can be found with the decision of the ITAT in holding that in the facts of the present case, the amounts in question were liable to be adjusted towards the existing advance tax liability.

9 In the result, we answer the aforesaid question in favour of the assessee and against the revenue.

10 The appeal is disposed off accordingly with no order as to costs.

**(J.P. DEVADHAR, J.)**

**(K.K. TATED, J.)**