

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 12.03.2013

+ **W.P.(C) 7551/2012**

S. K. JAIN

.....Petitioner

versus

**COMMISSIONER OF INCOME TAX-XI,
NEW DELHI & ORS.**

.....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Mukesh Gupta, Advocate.
For the Respondent : Ms Suruchi Aggarwal, Sr. Standing Counsel for Revenue.
Ms Archana Gaur, Advocate.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

R.V.EASWAR, J

1. The writ petition is admitted to hearing and with the consent of the counsel for both sides the matter was heard finally for disposal.
2. The petitioner is assessed to income tax. On 16.02.2005 a search under section 132(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was conducted at his residential premises in the course of which cash amounting to ₹8,83,800/- was found. Out of the cash found an amount of ₹6,33,800/- was seized. The petitioner attempted to explain

the source of the cash found in his letters to the income tax authorities. The returns filed on 08.09.2006 for the assessment years 1999-2000 to 2004-05 were accepted and assessments were completed under section 153A of the Act. There was no tax liability pursuant to the assessments.

3. The petitioner again wrote to the assessing officer reminding him about the application filed earlier and sought release of the cash seized on the ground that it was disclosed to the income tax department. This reminder was rejected by the assessing officer by order dated 21.09.2006 in which he held that till the finalisation of the proceedings under section 153A of the Act, it was not possible to ascertain whether the cash seized was out of disclosed cash or otherwise.

4. On 30.10.2005 the petitioner filed his return of income for the assessment year 2005-06. An assessment was completed under section 143(3) on 26.12.2006 in which the cash of ₹8,83,800/- found during the search was held unexplained. Thereupon the petitioner wrote to the assessing officer/ CIT, New Delhi to adjust the cash seized against the existing tax liability as envisaged by the provisions of 132B of the Act. However, the request of the petitioner was not accepted.

5. The petitioner had filed an appeal to the CIT (Appeals) against the

assessment order for the assessment year 2005-06. By order dated 10.04.2008, the CIT (Appeals) confirmed the addition of the cash found. The petitioner preferred a further appeal to the Income Tax Appellate Tribunal. By order dated 21.03.2005 the Tribunal held that the cash found from the possession of the assessee actually belonged to M/s. S. K. Industries Pvt. Ltd. The assessing officer gave effect to the order of the Tribunal and revised the assessment which resulted in a nil tax demand.

6. After the aforesaid order passed by the assessing officer, the petitioner made further requests to the CIT seeking release of the cash seized since there was no demand outstanding against him. While these letters were pending, the appeal preferred by the revenue against the order of the Tribunal was dismissed by this Court by order dated 23.05.2011 passed in ITA No.79/2011.

7. It appears that on the very next day i.e. 24.05.2011, the seized amount of ₹6,33,800/- was released to the petitioner. Thereafter, the petitioner wrote letters to the CIT on various dates from May, 2011 to April, 2012 asking for interest on the seized cash as per law for the inordinate delay in releasing the amount under section 132B(3) of the Act. Since these requests have not borne fruit the petitioner has moved

the present writ petition seeking the following reliefs: -

“(i) Issue a writ of mandamus or any other writ/ direction or order to grant the interest for inordinate delay in releasing the amount amounting to ₹6,33,800/- u/s 132B(3) of the Act seized during the course of search u/s 132(1) of the Act on 17.2.2005 as per the provisions of Sec. 132B(4)(a)(b) & 244A(1)(b) or under any other relevant provisions of the law along with interest on interest due till the date of payment.

(ii) Pass such other order or orders, as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

8. The mainstay of the argument of the learned counsel for the petitioner is an order passed by a Division Bench of this Court on 28.08.2012 in W.P. (C) No.876/2012 in **G.L. Jain v. CIT & Ors.**, which is stated to be the case of the assessee’s brother. In that case, this Court, applying the ratio of the judgment of the Supreme Court in the case of **Sandvik Asia Ltd. v. CIT & Ors.**: (2002) 280 ITR 643 and the judgment of a Division Bench in **Ajay Gupta v. CIT**: (2008) 297 ITR 125, directed that it would be reasonable and equitable to order interest to be paid at the rate of 12% on the cash seized, in respect of the period beyond the date on which the assessment was completed.

9. Section 132B provides for the application of seized or requisitioned assets. Under sub-section (3), any assets or proceeds thereof which

remain after the liabilities of the assessee are discharged, shall have to be “forthwith made over or paid to the persons from whose custody the assets were seized”. Sub-section (4) provides for the payment of simple interest at the rate of half percent every month or part thereof on the amount by which the aggregate amount of money seized under section 132, as reduced by the amount of money released to the assessee and the amount of the proceeds, if any, of the assets towards the discharge of the existing liability of the assessee, exceeds the aggregate of the amount required to meet the liabilities of the assessee. The interest shall run from the date immediately following the expiry of the period of 120 days from the date on which the last of the authorisations for the search was executed, to the date of completion of the assessment under section 153A of the Act. This interest is to be paid to the assessee without any demand from him. In the petitioner’s case, there is no dispute that he is entitled to this interest. The dispute is only whether the petitioner is entitled to any interest on the seized cash of ₹6,63,800/- from the date on which the assessment was completed under section 153A of the Act i.e. 26.12.2006 till it was actually released to him on 24.05.2011, and if so, at what rate. It is common ground that in respect of this period, that is, from the day

next following the completion of the assessment till the cash was actually released to the petitioner, no interest has been provided under section 132B(4) of the Act.

10. In an identical situation, this Court in its order dated 28.08.2012 in W.P. (C) No.876/2012 (supra) has directed the revenue to grant interest @ 12%. In that case certain amounts had been returned to the petitioner (in that case) and accordingly adjustments were directed to be made in respect of those payments while quantifying the amount on which the interest was directed to be paid. However, so far as the period for which the interest was payable to the petitioner in that case is concerned, there is no dispute that the direction of this Court was that it should be paid from the day next following the day on which the assessment was completed till the amount was actually released to the petitioner. Interest was directed to be paid @ 12% in respect of this period on varying amounts as quantified in paragraph 19 of the order.

11. The only argument of the revenue was that the judgment of the Supreme Court in the course of *Sandvik Asia Ltd.* (supra) has been doubted in a later case before the Supreme Court in *CIT V. Gujarat Flouro Chemicals:* (SLP (C) No.11406/2008 decided on 23.08.2012) and

the matter has been directed to be placed before the Chief Justice of India on the administrative side for appropriate orders. A copy of the above order of the Supreme Court passed on 23.08.2012 was filed before us. However, the judgment of the Supreme Court in Sandvik Asia Ltd. (supra) holds the field as of now. It was this judgment which was applied by a Division Bench of this Court in the case of Ajay Gupta (supra) that was invoked by the Division Bench of this Court in the case of G.L. Jain (supra). We, therefore, do not see any reason to take a view different from the one taken by this Court in the case of G.L. Jain (supra).

12. In the result, we hold that the petitioner is entitled to be paid interest @ 12% in respect of the amount of ₹6,33,800/- for the period from 27.12.2006 to 24.05.2011 and a writ of mandamus directing the payment of the interest is accordingly issued. The respondent shall pay the interest within a period of six weeks from today. The writ petition is allowed in the above terms. No costs.

R.V.EASWAR, J

BADAR DURREZ AHMED, J

MARCH 12, 2013

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