

K.Devaraj vs The Commissioner Of Income Tax

ID: F2J-C-2670 **Court:** Madras High Court
Case: W.P.No.4234 of 2002 **Date:** 2010-04-13

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[Cites 17, Cited by 0]

Madras High Court K.Devaraj vs The Commissioner Of Income Tax on 13 April, 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.4.2010

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THE HON'BLE MR.JUSTICE M.JEYAPPAUL

W.P.No.4234 of 2002 and W.P.M.P.Nos.5975 and 5976 of 2002

K.Devaraj Petitioner

vs.

The Commissioner of Income Tax, No.4, Williams Road, Cantonment, Tiruchirapalli. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the impugned order No.C.No.6097B(33)/1998-99 dated 15.6.2001 passed by the respondent and quash the same and direct the respondent to consider the petitioner's plea for the grant of interest on the refunded amount.

For petitioner : Mr.S.Jayakumar

For respondent : Mr.Ravikumar ORDER

The petitioner was assessed to Income Tax on the file of the Assessing Officer falling within the jurisdiction of the respondent. There was a search conducted in the petitioner's residential/business premises on 4.12.1998. A sum of Rs.17,50,000/= was seized from him. It was kept in the Commissioner's Personal Deposit Account for being adjusted towards the tax liability of the petitioner. The block assessment for the period 1989-90 to 1999-2000 was completed under section 158BC of the Income Tax Act, 1961 on 22.12.2000. A sum of Rs.12,87,660/= was determined as amount of tax payable by the petitioner. The said tax liability was adjusted from and out of the monies seized from the petitioner. The balance of Rs.4,62,340/= was refunded to the petitioner on 4.4.2001. The petitioner prayed for interest vide his representation dated 17.4.2001 invoking the provision under section 132B of the Income Tax Act. The respondent passed the impugned order dated 16.6.2001 rejecting the claim of interest made by the petitioner. It is submitted by the petitioner that as the Department had the benefit of the money of Rs.4,62,340/= for two long years, the petitioner is entitled to interest on the said amount. Under general law also, the petitioner is entitled to interest for the amount held in excess by the respondent, it is contended.

2. The respondent would contend in the counter that the petitioner is not entitled to any interest under section 132B(4) of the Income Tax Act as the search was conducted on 4.12.1998 well beyond the deadline viz., 1st July 1995 fixed under the aforesaid provision of law. Section 244A of the Income Tax Act would apply in a case of return of the excess prepaid Tax amount. Therefore, the respondent would contend that the impugned order was passed rightly by the respondent.

3. Learned counsel appearing for the petitioner would submit that the respondent never considered the provision under section 158BH of the Income Tax Act which states "save as otherwise provided in this Chapter all other provisions of this Act, shall apply to assessment made under this Chapter". The respondent should have also adverted to the provision under section 158BC(d) which says that the provisions under section 132B shall be applied to deal with the assets seized under section 132 of the Act. Even otherwise, the petitioner is entitled to interest under general law, he argues.

4. Learned counsel appearing for the respondent would contend that the provisions under section 132B(4)(a) and (b) which contemplate payment of simple interest by the Central Government would arise only when the respondent had to deal with the money seized in the search which was held prior to 1st July 1995. As the search was held on 4.2.1998 under section 132 of the Income Tax Act in the residential and business premises of the petitioner, the question of payment of interest as adumbrated under section 132B(4)(a) and (b) would not arise. It is his further submission that the provision under section 158BC(d) stipulates that the assets seized under section 132 shall be dealt with in accordance with the provisions of section 132B. The provision under section 132BH speaks about the application of other provisions of the Income Tax Act with respect to the assessment made under Chapter XIV-B except as otherwise provided in the said chapter. Inasmuch as the search was conducted well after the 1st of July 1995, the cut off date referred to in section 132(5) of the Income Tax Act, the petitioner is not entitled to invoke the provision under section 132(5) of the Income Tax Act and claim interest. When the Act specifically provides for payment of interest only with respect to the money seized as on a particular cut off date, this court cannot direct payment of interest under the general law, he submits.

5. The search was conducted under section 132 of the Income Tax Act in the residential and business premises of the petitioner on 4.12.1998 and a cash amount of Rs.17,50,000/= was seized at the time of search. The respondent passed an order of assessment under section 158BC read with section 143(3) on 22.12.2000. The total tax payable by the petitioner was assessed at Rs.12,87,660/= for the block period 1989-90 to 1999-2000. The respondent issued a refund cheque on 4.4.2001 for a sum of Rs.4,62,340/= after deducting a sum of Rs.12,87,660/= from the amounts seized and kept in the Commissioner's Personal Deposit Account.

6. The cumulative reading of section 132(5) read with section 132B(4)(a) and (b) would disclose that the Central Government is bound to pay simple interest on the excess amount seized and retained by the respondent as a result of a search initiated before the 1st day of July 1995. The said cut off date was not at all extended by the legislature in spite of many an amendment later on introduced to the Income Tax Act, 1961. Admittedly, the search in the residential and business premises of the petitioner was conducted under section 132 of the Income Tax Act on 4.12.1998. It is true that the

respondents retained an excess amount till the order of assessment was passed under section 158BC read with section 143(3) of the Income Tax Act.

7. A new Chapter viz., XIV-B to deal with the procedure for assessment of search cases was inserted by the legislature by the Finance Act, 1995 with effect from 1.7.1995. Section 158BA (1) would read that where a search is initiated under section 132 after the 30th July 1995, the Assessing Officer shall proceed to assess the undisclosed income in accordance with the provisions of Chapter XIV-B. Section 158BC(d) mandates the Assessing Authority to deal with the money or assets seized under section 132 subject to such modifications as may be necessary. The saving provision under section 158BH which figures in the very same Chapter reads that all other provisions of the Income Tax Act shall apply to the assessment made under Chapter XIVB except as otherwise provided in the said Chapter.

8. As per the aforesaid provision of law found in Chapter XIV-B, the Assessing Authority is bound to deal with the assets seized during search under section 132 of the Income Tax Act, applying the provision under section 132B, subject to such modifications as may be necessary. But, the payment of interest as contemplated under section 132B(4)(a) of the Act would arise only when the money was seized in the search initiated before 1st July 1995 as per section 132(5) of the Income Tax Act.

9. As rightly submitted by the learned counsel appearing for the respondent, when the legislature intended not to make any provision for payment of interest by the Central Government for the money seized during the course of search conducted under section 132 of the Income Tax Act after 1st July 1995, this court cannot direct the respondent to pay any interest for the amount seized during search after the assessment was made for the block period concerned in the guise of applying the general law.

10. Further, it is not a case where there was no tax liability found during the block period after the search and seizure was made under section 132 of the Income Tax Act. The major part of the amount seized during the search by the authority of the Income Tax Department was adjusted towards the tax liability of the petitioner. A small portion viz., a sum of Rs.4,62,340/= was refunded to the petitioner after making adjustment of the major portion of the amount seized by the Department from the petitioner. Therefore, the question of applying the general law for payment of interest on the amount excessively retained by the Department beyond the cut off date viz., 1.7.1995 contemplated under the provision of section 132(5) of the Income Tax Act does not arise for consideration.

11. The learned counsel appearing for the petitioner refers to an unreported decision of this court in B.PANMAL BAFNA AND 5 OTHERS v. THE COMMISSIONER OF INCOME Tax AND TWO OTHERS (W.P.No.8041 of 1994 dated 5.9.2001). In the said case, a search was conducted on 13.11.1994 and some assets were seized by the Income Tax Department. Inasmuch as the search was initiated prior to 1.7.1995 as contemplated under section 132(5) of the Income Tax Act and the amount retained in excess by the Department was not paid with interest in accordance with section 132B(4)(a) of the Income Tax Act, the petitioner therein sought for a direction to the Income Tax Department to pay interest on the amount retained by them. The aforesaid decision will not apply to the case on hand as the search was made on 4.12.1998 well beyond the cut off date, 1.7.1995.

12. The ratio laid down by the Supreme Court in SANDVIK ASIA LTD. v. COMMISSIONER OF INCOME Tax AND OTHERS ((2006) 280 ITR 643 (SC)) was relied upon by the learned counsel appearing for the petitioner. That was a case where the prepaid tax in excess of the tax liability was retained by the Income Tax Department for about 17 long years. Though the petitioner therein was entitled to interest on the property tax under section 214 and 244 of the Income Tax Act, without any justification the prepaid tax amount in excess of the tax liability was retained by the Department. But, in the instant case, interest is claimed for the excess amount seized in the search conducted by the Department long after 1st July 1995. Therefore, the aforesaid ratio also will not apply to the facts and circumstances of this case.

13. In view of the above facts and circumstances, I hold that the petitioner is not entitled to any interest on the excess amount seized in the search conducted under section 132 of the Income Tax Act, as the search was made well beyond the cut off date referred to under section 132(5) of the Act. The respondent has rightly rejected the plea for interest made by the petitioner. While passing the impugned order, the respondent has rightly applied the relevant provisions of law and dismissed the plea for interest on the amount seized in the search conducted and refunded after assessment was made.

14. Therefore, the writ petition stands dismissed. There is no order as to costs. The connected W.P.M.Ps also stand dismissed. 13.4.2010. Index: Yes. Internet: Yes. ssk. To The Commissioner of Income Tax, No.4, Williams Road, Cantonment, Tiruchirapalli. M.JEYAPPAUL, J. Ssk. P.D. ORDER IN W.P.No.4234 of 2002 Delivered on 13.4.2010.