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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ **W.P. (C) No. 6491/2016, CM No.26592/2016**

LATIKA DATT ABBOTT Petitioner
Through: Mr. Ved Kumar Jain, Mr. Pranjal
Srivastava, Mrs. Rano Jain, Advocates

versus

DIRECTOR OF INCOME TAX
INVESTIGATION UNIT-II & ORS. Respondents
Through: Mr. Asheesh Jain, Sr. Standing
Counsel for the Revenue

AND

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+ **W.P. (C) No. 6588/2016, CM No.27043/2016**

CHARU DATT BHATIA Petitioner
Through: Mr. Ved Kumar Jain, Mr. Pranjal
Srivastava, Mrs. Rano Jain, Advocates

versus

DIRECTOR OF INCOME TAX
INVESTIGATION UNIT-II & ORS. Respondent
Through: Mr. Asheesh Jain, Sr. Standing
Counsel for the Revenue

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

ORDER
22.08.2017

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1. The question that arises in both these petitions is whether the Respondent Income Tax Department ('Department') is obliged to give the Petitioners the benefit of adjustment of the cash seized during a search operation against the

advance tax payment that was due from the Petitioners (hereafter 'Assessees')?

2. The facts in brief leading to the filing of the present petitions are that, during the course of a search carried out under Section 132B of the Income Tax Act, 1961 ('Act') on 27th September 2011, cash was found in the premises of both the Assessees. As far as Ms. Latika Datt Abbott (the Petitioner in W.P. (C) 6491 of 2016) is concerned, the cash seized was to the extent of Rs.1.18 Crores. In the case of Ms. Charu Datt Bhatia (the Petitioner in W.P. (C) 6588 of 2016), the cash seized was Rs.96,50,000/- in the aggregate.

3. Ms. Abbott offered an additional income of Rs.1,25,00,000/- for AY 2012-13 the year under consideration. She filed a letter dated 13th December 2011 praying for adjustment of cash of Rs.1,18,00,000/- found and seized towards the advance tax liability for AY 2012-13. Thereafter Ms. Abbott filed her return on 29th March 2013 declaring an income of Rs.5,13,29,582. In the said return, the additional income of Rs. 1,25,00,000/- was included and credit of Rs.1,18,00,000/- was claimed as payment of tax on 15th December 2011 in view of the letter dated 13th December 2011 submitted to the Department. Accordingly, the computation of interest under Section 234A, 234B and 234C of Act was made taking credit of Rs.1,18,00,000/- as tax deposited on 15th December 2011.

4. The return filed by Ms. Abbott was processed and an intimation dated 25th November 2013 was sent. It revealed that the declared income of Rs. 5,13,29,582/- had been accepted. However, the credit of Rs. 1,18,00,000/-

was not given and accordingly a demand of Rs. 1,48,54,900/- was credited which included levy of interest of Rs. 33,51,110/- as against Rs. 38,524/- computed by Ms. Abbott in the return filed. Thereafter assessment under Section 143 (3) was also completed by order dated 31st March 2014 at the same income of Rs. 5,13,29,580/- as declared by Ms. Abbott.

5. As far as Ms. Bhatia is concerned, she too offered an additional income of Rs. 1,50,00,000/- for AY 2012-13 and filed a letter dated 13th December 2011 praying for adjustment of cash of Rs. 96,50,000/- found and seized towards the advance tax liability for AY 2012-13. Thereafter Ms. Bhatia filed her return on 30th March 2013 declaring an income of Rs. 5,25,56,564/-. In the said return the additional income of Rs. 1,50,00,000/- was included and credit of Rs. 96,50,000/- was claimed as payment of tax on 15th December 2011 in view of the letter dated 13th December 2011 submitted to the Department. Accordingly, the computation of interest under Section 234A, 234B and 234C was made taking credit of Rs. 96,50,000/- as tax deposited on 15th December 2011.

6. The return filed by Ms. Bhatia was processed by an intimation dated 3rd July 2013 where the declared income of Rs. 5,25,56,564/- was accepted. However, the credit of Rs. 96,50,000/- was not given. Accordingly, a demand of Rs. 1,21,22,630/- was raised which included levy of interest of Rs. 25,31,946/- as against Rs.59,319/- computed by the petitioner in the return filed. Thereafter the assessment under Section 143 (3) of the Act was also completed by order dated 31st March 2014 at the income of Rs. 5,30,82,964 as against Rs. 5,25,56,564/- declared by Ms. Bhatia.

7. Letters were sent by both the Assesseees to the Department requesting that cash seized may be treated as their respective advance tax payment for AY 2012-13. The request was first made on 13th December 2011 by Ms. Abbott and the same was repeated on 8th July 2014 and 16th October 2014, i.e. after completion of the assessment. Ms. Bhatia also conveyed a similar request in writing on 13th December 2011 and later reiterated the same by letters dated 8th July 2014 and 14th July 2014. On 7th April 2015, by separate letters addressed to the Department, both Assesseees requested that the seized cash be adjusted against the advance tax payment. However, without prejudice to the above contention, the Assesseees stated that if their request was not acceptable, the seized cash may be adjusted against the demand raised as per the order passed under Section 143(1) of the Act for the AY 2012-13.

8. It appears that the Department, acting on the above requests, adjusted the seized cash against the tax demand in terms of the assessment order passed *qua* each of the Assesseees for AY 2012-13. The net result was that each of the Assesseees were made liable to pay interest under Section 234A, 234B and 234C of the Act for the period from the date on which the advance tax was due till the date of the above adjustment.

9. The case of the Assesseees is that the Department ought to have adjusted the cash seized towards the advance tax liability and since this request was made soon after cash was seized, there was no justification in requiring the Assesseees to pay interest on account of failure to pay advance tax.

10. During the pendency of these petitions, the Central Board of Direct

Taxes ('CBDT') has come out with Circular No. 20/2017 dated 12th June 2017. This Circular clarifies that Explanation 2 to Section 132B of the Act, inserted with effect from 1st June 2013 and which states that "existing liability does not include advance tax payable in accordance with the provisions of Part-C of Chapter XVII of the Act", shall have prospective application.

11. The question which then arises is what should happen to all those cases where request had been made by Assessee, prior to 1st June 2013, for adjustment of seized cash against advance tax payment that was due. It is in this context that the above Circular No. 20/2017 clarifies that "insertion of Explanation 2 to Section 132B of the Act shall have a prospective application." It was further stated that the Department would withdraw or not press those appeals that were filed in cases where such adjustments against advance tax have been allowed by the various High Courts.

12. Mr. Ved Kumar Jain, learned counsel appearing for the Assesseees, urges that, in view of the above Circular, the prayers in both these petitions should be allowed. Mr. Asheesh Jain, learned Senior Standing Counsel appearing for the Department, on the other hand, points out that it was on their own request that the adjustments were made against the Assesseees' tax liability determined as per the intimation under Section 143(1) of the Act *qua* the returns filed by the Assesseees for AY 2012-13. The Department cannot now be made to adjust the cash seized against the advance tax payment. According to him, the Circular No. 20/2017 would apply to those cases where the Assessee had contested the failure of the Department to make

adjustments against the advance tax payment and not the cases where, on the requests of the Assessee themselves, the adjustment is made against the determined tax liability.

13. The Court is unable to accept the above submission of learned counsel for the Department. Circular No. 20/2017 makes clear the intention of the Department not to contest those cases where the Assessee had been given the benefit of adjustment of seized cash against the advance tax liability. There cannot be a situation where for those Assessee who have continued to remain in default of payment of advance tax the benefit of Circular No. 20/2017 is extended but not to those defaulting Assessee whose request made prior thereto for adjustment of the seized cash against advance tax dues is refused and adjustment is made against the tax demand prior to the date of the above Circular. This discrimination vis-a-vis two sets of defaulting Assessee cannot be legally countenanced, particularly since the stand of the Department, as made explicit by Circular No. 20/2017, is to grant the benefit of adjustment of seized cash against advance tax liability to all Assessee in default of payment of advance tax.

14. The Court, therefore, sees no justification in the Department not granting the benefit of the Circular No. 20/2017 to these two Assessee, notwithstanding that the Department may have adjusted the seized cash against their respective determined tax liability.

15. Consequently, a direction is issued to the Department to give the benefit of Circular No.20/2017 to both Assessee which in effect would mean that their requests for adjustment of the seized cash against their respective

advance tax liability would stand allowed with effect from the date of the first request made by the Assesseees, i.e. 13th December, 2011.

16. The petitions stand allowed in the above terms but without any order as to costs. All pending applications shall also stand disposed of.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 22, 2017

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