

**F. No. 279/Misc./140/2015/ITJ
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes**

New Delhi, Dated 12th June, 2017

**Subject: Applicability of Explanation 2 to Section 132B of the I.T. Act,
1961- reg. -**

Section 132B of the Income Tax Act 1961, provides for adjustment of seized assets/requisitioned assets against the amount of any existing liability under the Income Tax Act, 1961, (the Act), the Wealth-tax Act, 1957, the Expenditure-tax Act, 1987, the Gift-tax Act, 1958 and the Interest-tax Act, 1974, and the amount of the liability determined on completion of the assessment under section 153A of the Act 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 of the Act.

2. Dispute arose between the Department and the assessee with regard to adjustment of such seized/requisitioned cash against advance tax liability etc. Several Courts held that on an application made by the assessee, the seized money is to be adjusted against the advance tax liability of the assessee. Subsequently, Explanation 2 to Section 132B of the Act was inserted by the Finance Act, 2013 w.e.f. 01-06-2013, clarifying that "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII of the Act. However, the dispute continued on the issue as to whether the amendment was clarificatory in nature having retrospective applicability or it has only prospective applicability.

3. Several Courts have held that the insertion of Explanation 2 to section 132B of the Act, is prospective in nature and not applicable to cases prior to 01.06.2013. The SLPs filed by the Department against the judgement of the Hon'ble Punjab and Haryana High Court in the case of Cosmos Builders and

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Promoters Ltd.¹ and the Hon'ble Allahabad High Court in the case of Sunil Chandra Gupta², have been dismissed. Subsequently, the CBDT has also accepted the judgment of the Hon'ble Punjab & Haryana High Court in the case of Spaze Towers Pvt. Ltd.³ dated 17.11.2016, wherein it was held that the Explanation 2 to Section 132B of the Act is prospective in nature.

4. Accordingly, it has now been settled that insertion of Explanation 2 to Section 132B of the Act shall have a prospective application and so, appeals may not be filed by the Department on this issue for the cases prior to 01.06.2013 and those already filed may be withdrawn/ not pressed upon.

5. The above may be brought to the notice of all concerned.

6. Hindi version follows.

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12/06/17
(Neetika Bansal)

Deputy Secretary to Government of India

Copy to:

1. The Chairperson, Members and officers of the CBDT of the rank of Under Secretary and above.
2. OSD to Revenue Secretary.
3. All Pr. Chief Commissioners of Income-Tax & All Directors General of Income-Tax with a request to bring to the attention of all officers.
4. The Comptroller and Auditor General of India.
5. The Pr. Director General of Income-Tax, NADT, Nagpur.
6. The Pr. DGIT (Systems), ARA Centre, Jhandewalan Extension, New Delhi.
7. The Pr. DGIT (Vigilance), New Delhi.
8. The ADG (PR. PP & OL) for circulation as per usual mailing list.
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11. njrs_support@nsdl.co.in for uploading on NJRS.
12. Hindi section for Hindi translation
13. Guard File

¹ NJRS 2015-LL-0714-2, Order dated 14.07.2015 in ITA No. 425 of 2014 (P&H)

² NJRS 2015-LL-0311-25, Order dated 11.03.2015 in ITA No. 182 of 2014 (Allid.)

³ NJRS 2016-LL-1117-5, ITA No. 40 of 2015