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

\# **CNR No. DLHC010383542026**

\+ ITA 671/2026

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1 .....Appellant

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kr., JSC, Mr. Rishabh Nangia, JSC, Mr. Nikhil Jain & Ms. Nancy Jain, Advs.

versus

KAPOOR INDUSTRIES LIMITED .....Respondent

Through: Mr. Sachit Jolly, Sr. Adv. with Ms. Mansha Anand, Mr. Sohum Dua, Mr. Abhyudaya Shankar Bajpai & Ms. Saloni Ray, Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% **19.08.2026**

CM APPL. 55209/2026 ***[Condonation of delay]***

1. Instant application has been filed under Section 260A(2A) of the Income Tax Act, 1961 read with Section 5 of the Limitation Act, 1963 seeking condonation of delay of 92 days in filing the appeal.

2. For the reasons stated in the application, the delay of 92 days in filing the appeal is condoned.

3. Application stands disposed of.

CM APPL. 55364/2026 ***[Stay]***

4. Mr. Puneet Rai, learned Senior Standing Counsel for the appellant

argued that the assessee/Kapoor Industries had wrongly claimed the amount of Rs.17,66,50,000/- (which was seized from lockers of Shakun Tamang and Ashish Kapoor) as self assessment tax on its behalf for AY 2024-25, as the assessment proceeding of searched person was pending and as per the provisions of Section 132B of the Income Tax Act, 1961 *(hereinafter referred to as 'the Act of 1961')*, until the assessments of searched person(s) are complete, the Department or the Assessing Officer *(hereinafter referred to as 'AO')* can retain the seized amount to be adjusted against the demand.

5. He argued that neither the seized amount could be claimed as self-assessment tax nor any adjustment could be claimed as a matter of right in case of person other then the person from whose possession, it was seized.

6. In this regard, he submitted that the amount of cash seized during the course of search can be adjusted against the existing tax liability or the liability which is the likely to be determined against such person, but since on the date of filing the return by the respondent-assessee (on 28.10.2024), the assessment of the searched person, namely, Ashish Kapoor was pending, regardless of the fact that Ashish Kapoor had written a letter to consider the cash seized as income of Kapoor Industries-respondent, said amount could not have been treated to be a self-assessment tax.

7. Mr. Puneet Rai, as an additional fact submitted that reassessment proceedings under Section 148 of the Act of 1961 have been initiated against the respondent-assessee on 18.06.2026 and thus, the amount can be retained by Department by virtue of provisions of Section 132B of the Act of 1961.

8. Mr. Sachit Jolly, learned Senior Counsel for the respondent, on the other hand, submitted that even before filing the return, Ashish Kapoor, from whose locker the cash was seized had written a letter to the AO, who

incidentally was the AO of the both the assessees (namely, Ashish Kapoor and Kapoor Industries), which letter stated that the disputed cash belonged to Kapoor Industries and that such cash lying seized be treated to be self-assessment tax of Kapoor Industries. And it was only, thereafter, the respondent-assessee had claimed it to be self-assessment tax, while furnishing the return on 28.10.2024.

9. He submitted that it is interesting to note that the assessee's assessment under Section 143(1)(a) had been made and the amount of Rs.17,66,50,000/- which was offered as income by Kapoor Industries as cash sale had been accepted as claimed and vehemently argued that since the AO did not dispute the factual position that the cash of Rs.17,66,50,000/- did belong to Kapoor Industries, there was no valid reason to refuse to consider the amount of Rs.17,66,50,000/- as self-assessment tax.

10. He alternatively argued that even if the argument of Mr. Puneet Rai is presumed to be correct, then also, the amount of Rs.17,66,50,000/- which was lying with the Department should have been adjusted against the purported liability of Rs.3,74,28,230/- and the remaining amount ought to have been refunded, which is precisely the order of the Tribunal.

11. In relation to Mr. Puneet Rai's contention that the Department has initiated proceedings under Section 148 of the Act of 1961, against the assessee, Mr. Sachit Jolly argued with all vehemence at his command that those proceedings apart from being illegal and without jurisdiction are arbitrary as well. He added that the same have been triggered only to frustrate the order of the Tribunal and ensure that the assessee does not get the fruits of the Tribunal's order. He highlighted that the Tribunal's order under consideration was passed on 31.10.2025, whereas the notice under Section

148 of the Act of 1961 came to be issued on 18.06.2026. Even the present appeal is also an afterthought and has been filed once the respondent assessee has pursued the Department for compliance of the order of the Tribunal and approached this Court for seeking direction by way of *W.P.(C) 9138/2026*.

12. He submitted that the respondent-assessee, at this juncture, is not much concerned as to whether the amount ought to have been considered as self-assessment tax or should have been adjusted after assessee's assessment under Section 143(1)(a) of the Act of 1961 was made and after adjusting the liability of Rs.3,74,28,230/-. He argued that the appeal be rejected and the appellant be directed to refund the amount forthwith alongwith applicable interest.

13. Heard learned counsel for the parties.

14. The argument of Mr. Rai, learned Senior Standing Counsel that Section 132B of the Act of 1961 gives power to retain the seized amount does not come to the aid of the Department because it has to be taken into consideration that the notice under Section 148 of the Act of 1961 to the respondent (who was not a searched person) was issued on 18.06.2026, which is approximately 8 months of passing of the order of the Tribunal. The moment assessment of searched person was made (27.03.2026) the charge over the cash by virtue of Section 132B of the Act of 1961 stood extinguished. Once the charge got over, the Income Tax Department cannot withhold the amount by subsequent proceedings initiated against Kapoor Industries, *qua* whom even warrant of authorization was not issued.

15. The AO has accepted the return filed by the assessee, wherein the cash of Rs.17,66,50,000/- was shown as cash sale and in the return of income such amount was claimed as self-assessment tax. The return was processed under

Section 143(1) on 07.11.2024. The AO may be justified in not considering this amount as self-assessment tax, but in any case once assessment of searched person-Ashish Kapoor has been made and no demand qua this amount was raised and his plea was accepted that this amount belonged to Kapoor Industries, after 27.03.2026, there remained no doubt that said amount belonged to Kapoor Industries. As such, we do not find any reason to grant stay as prayed by the appellant.

16. We, therefore, reject the stay application and direct the AO to pay the amount of Rs.17,66,50,000/- after adjusting the so called tax liability of Rs.3,74,28,230/- within a period of 30 days from today. The AO is directed to calculate the applicable amount of interest and communicate the same to the assessee. The amount so calculated shall not be paid to the assessee, as we are told that the issue, as to whether an assessee is entitled to get interest on excess payment of self-assessment tax is pending consideration of the Larger Bench.

17. The amount of interest so calculated shall be remitted to the Registrar General of this Court within two months from today, who shall get an auto renewable interest bearing FDR prepared in the name of respondent-assessee and keep it with him. In case the issue is decided in favour of the assessee by the Larger Bench, the said amount of interest shall be paid to the assessee on an application moved by it in this regard.

18. Stay application stands disposed of.

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19. The appeal is, however, admitted on the following questions:

(i) Whether in the facts and circumstances of the case, the assessee could have claimed adjustment of the amount seized from the

locker belonging to Shakun Tamang and Ashish Kapoor (searched person) as its self-assessment Tax for Assessment Year 2024-25?

(ii) Whether the Income Tax Appellate Tribunal was legally justified in directing the Assessing Officer to give credit of the amount of Rs.17,66,50,000/- and give refund of the remaining amount to the assessee, when the AO had not accepted (expressly or impliedly) searched person's request of treating the seized cash as income of the respondent assessee by the time return was filed?

20. List this case in due course.

DINESH MEHTA, J.

RAJNEESH KUMAR GUPTA, J.

AUGUST 19, 2026/*sid*