(1997) 09 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5792 of 1997

Darshan Kumar APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 09-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 132

Citation : (1999) 236 ITR 429

Hon'ble Judges : N.K. Sodhi, J;N.K. Agrawal, J

Bench : Division Bench

Advocate : Satish Jain, for the Appellant; R.P. Sawhney, Senior Advocate and S.K. Sharma, for the Respondent

Judgement

N.K. Sodhi, J.—During the course of a search conducted at the residential and commercial premises of the petitioner on February 24/25, 1989, jewellery worth Rs. 1,71,570 was seized by the Department. The value of the jewellery was treated as the income of the assessee and a reassessment was framed by the Assessing Officer accordingly. Another addition of Rs. 55,897 was made on account of some papers which were found during the course of search. Feeling aggrieved against the order of reassessment, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Shimla, which was allowed on March 5, 1997, and it was held that the jewellery belonged to the ladies of the family which was their stridhan. As regards the addition of Rs. 55,897 the same was deleted and the order set aside and the case remanded to the Assessing Officer to redecide the matter afresh after affording an opportunity of hearing to the petitioner.

2. The prayer now made in this petition filed under Article 226 of the Constitution is that since the order of reassessment as framed by the Assessing Officer was set aside in appeal, there is no liability existing as on date against the assessee and, therefore, the Assessing Officer be directed to return the jewellery seized

during the course of the search.

3. In the written statement filed on behalf of the Department it is stated that the appeal is pending before the Tribunal and in case it succeeds it will be difficult to recover the said amount from the petitioner-assessee.

4. Having heard counsel for the parties and after going through their pleadings, we direct the Assessing Officer to return the jewellery to the petitioner on his furnishing adequate security for its return to his satisfaction. The petitioner will furnish security within a period of one month and the Assessing Officer after accepting the same will return the jewellery within two weeks thereafter. The writ petition stands disposed of accordingly.

