(1995) 04 MP CK 0028

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 653 and 654 of 1991

Harbanslal Gupta APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 06-04-1995

Acts Referred:

Income Tax Act, 1961 — Section 132, 132(5), 132(6), 132B, 226

Citation : (1997) 224 ITR 721 : (1995) 82 TAXMAN 250

Hon'ble Judges : Fakhruddin, J;D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : C.S. Aggarwal, for the Appellant; N.P. Mittal and S.R. Sharma, for the Respondent

Judgement

D.M. Dharmadhikari, J.—The order passed in this case shall also decide Writ Petition No. 654 of 1991 (Smt. Sudarshan Gupta v. Union of India) which is filed by the members of the family of the petitioner in relation to the orders of the authorities under the Income Tax Act and the Central Excise Act pursuant to the search and seizure conducted in the residential-cum-commercial premises of the petitioner.

2. The facts, briefly, are that the petitioner''s office-cum-residence at Gwalior was searched with the aid of the police by the Income Tax Department and Central Excise Department on March 22, 1974. In the course of the search, certain cash, gold and silver including" hundi khokas were seized and the panchanama for the same was prepared, a copy of which is on record as exhibit P-1. In those seized items, there were articles and valuables which, according to the petitioner, belonged to his mother, Bachandevi, and the wife, Smt. Sudarshan Gupta.

3. After issuing a show-cause notice, the Customs Department passed an order on September 20, 1976, directing release of gold ornaments of Smt. Bachandevi only on payment of penalty of Rs. 10,000. Similar orders were passed in the case of Smt. Sudarshan Gupta. While the proceedings were pending in the Central

Excise Department, the Income Tax Department issued a prohibitory order u/s 226(3) of the Income Tax Act, 1961 (for short "the Act"), on October 24, 1976, directing the Assistant Collector, Central Excise, Gwalior, to deliver the cash belonging to Harbans-lal Gupta to the Income Tax Department pending proceedings under the Income Tax Act. As a result of the above prohibitory order, the Excise Department refused to hand over the seized valuables to the petitioner and the petitioners filed Misc. Petition No. 654 of 1991.

4. Thereafter, the Income Tax Department passed assessment order in case of Smt. Bachandevi and Smt. Sudarshan Gupta. The assessee went in appeal. The Commissioner of Income Tax (Appeals) reduced the assessable amount from Rs. 6,41,310 to Rs. 2,64,063.

5. The Department went up in appeal to the Income Tax Appellate Tribunal. The assessees also went in appeal in respect of part of his rejected claim. The appeals were decided by a common order. The appeals preferred by the petitioners were allowed and those filed by the Department were dismissed. It was held that the items seized could not be added to the income of Harbanslal Gupta. It was held that Smt. Sudarshan Gupta was not the benamidar of Harbanslal Gupta. The applications for reference of certain questions of law u/s 256(1) of the Act were filed in the Tribunal which were also rejected. The Department went up to the High Court seeking a reference u/s 256(2) of the Act which we have rejected by our orders passed in M. C. C. No. 222 of 1991 Commissioner of Income Tax Vs. Harbanslal Gupta,) decided today along with the other M. C. C. Nos. 220, 221, 192 to 199 and 280, all of 1991. As a result of the orders of rejection passed in those reference applications, the orders passed by the Income Tax Appellate Tribunal have attained finality, in respect of all the petitioners in these two petitions and in relation to different assessment periods in question. On the above facts, the petitioners in these cases claim a writ for quashing the prohibitory order, issued by the Income Tax Department to the Central Excise authorities u/s 226(3) of the Act and return of all their seized valuables, cash and hundis as per order passed by the Income Tax Appellate Tribunal.

6. The Income Tax Department had opposed the two petitions on grounds, amongst others, that the order of the Income Tax Appellate Tribunal had not attained finality as the applications seeking references on questions posed u/s 256(2) of the Act were pending in this court. In the course of hearing, certain legal objections were raised before this court in support of the prohibitory order and non-return of the valuables, cash and hundis to the petitioner. In the cases for references u/s 256(2) mentioned above, we have already discussed all the legal questions raised on behalf of the Department. We have rejected the applications for reference on questions of law to this court. We do not find that there is any impediment now in our directing the two Departments of Income Tax and Central Excise to return such seized valuable items and hundis to the assessees which they cannot retain pursuant to the order of the Income Tax

Appellate Tribunal.

7. Learned counsel for the assessee rightly points out that cancellation of the prohibitory order u/s 226(3) and return of all his valuables and hundis is his legal right under Sections 132(5), 132(6) and 132B of the Act. Consequently, we allow both these petitions and direct the respondents to return to the assessees the seized valuables, cash and hundis to which they are entitled pursuant to the order passed in their Income Tax cases by the Income Tax Appellate Tribunal. We direct that the prohibitory order issued u/s 226(3) of the Act, for that purpose, shall not remain in operation. However, we make no order as to costs. The amount of security deposit, if any, be returned to the petitioners.