
(1987) 03 AHC CK 0049

In the Allahabad High Court

Case No : Income-tax Writ Petition No. 303 of 1986

Harinder Singh

APPELLANT

Vs

Income Tax Officer, Central Circle (III) and Another

RESPONDENT

Date of Decision : 25-03-1987

Acts Referred:

Gold (Control) Act, 1968 — Section 105, 111, 64, 71, 8
Income Tax Act, 1961 — Section 132, 132(5), 132B, 132B(1), 132B(2)
Income Tax Rules, 1962 — Rule 112A

Citation : (1987) 63 CTR 36 : (1987) 12 ECR 417 : (1987) 32 ELT 329 : (1987) 166 ITR 763 : (1987) 32 TAXMAN 163

Hon'ble Judges : K.J. Shetty, C.J.; V.K. Khanna, J

Bench : Division Bench

Advocate : V. Gulati and Tarun Agrawal, for the Appellant; Bharatji Agrawal, for the Respondent

Judgement

V.K. Khanna, J.—On July 16, 1981, a search was carried out by the Income Tax Authorities at the residential premises of the petitioner at New Delhi and his locker at Punjab and Sind Bank in New Delhi. From the residential premises, cash amounting to Rs. 72,500 was seized and from the locker three gold bricks valued at Rs. 15,00,000 were seized. This was followed by a notice issued by the Income Tax Officer under Rule 112A of the Income Tax Rules, 1962, read with Section 132(5) of the Income Tax Act, 1961, on September 15, 1981. The petitioner came forward with an estimate of his income for the assessment year 1982-83. The petitioner estimated his income for the purposes of paying advance tax at Rs. 16,97,000 on which, according to him, the advance tax payable was Rs. 10,97,140. A request was made to the Department that the said advance tax liability of Rs. 10,97,140 may be treated as fully paid and adjusted by appropriating an equal amount from out of the cash and gold already in the possession of the Department in respect of which there were proceedings u/s 132 of the Act.

2. The Income Tax Officer passed an order u/s 132(5) of the Act and estimated

the tax liability at Rs. 15,64,561. In the order, it was mentioned that all the assets seized valued at Rs. 15,60,000 are to be retained in order to meet the above liability. The Income Tax Officer thereafter proceeded to make regular assessment for the assessment years mentioned in the order u/s 132(5) including the assessment year 1982-83. A notice of demand was issued u/s 156 of the Income Tax Act. The petitioner then again repeated his request to adjust the movable assets totalling Rs. 15,60,000 towards payment of tax liability. This was also not accepted. The Income Tax Officer issued recovery certificate to recover the tax through the Tax Recovery Officer (Central), Kanpur, and attached the house property of the petitioner, house No. 113/27 Swaroop Nagar, Kanpur, on January 8, 1986, and the Tax Recovery Officer issued a sale proclamation fixing the sale on February 13, 1986. The petitioner approached this court challenging the action of the Income Tax Authorities and praying for the quashing of the recovery certificates and the sale proclamation issued by them.

3. Since the parties have exchanged their pleadings even at the stage of admission, this writ petition is being disposed of finally in accordance with the provisions of the rules of the court.

4. A counter-affidavit has been filed in this case by respondent No. 1, inter alia, contending as follows :

That the primary gold seized could not be adjusted towards the tax liability of the petitioner, since the petitioner had committed an offence under the Gold (Control) Act and the Central Excise Authorities had intimated that they would be taking action against the petitioner under the Gold (Control) Act. The petitioner was accordingly informed on September 22, 1985 (vide annexure I to the counter-affidavit), that it was not possible to dispose of the primary gold in the possession of the Department as the same may have to be handed over to the Central Excise Department to enable them to take appropriate action under the Gold (Control) Act. On April 14, 1985, the Additional Collector, Central Excise, Kanpur, wrote to the Income Tax Department that the gold may be made available for taking action under Gold (Control) Act as the entire quantity is liable to be confiscated. Another letter was also received from the Assistant Collector, Central Excise, Kanpur, that the entire gold was liable to confiscation u/s 71 of the Gold (Control) Act and the Department was requested not to dispose of any quantity of gold seized. On these and other facts, the Income Tax Officer has taken up a stand that the primary gold which was seized from the petitioner's locker was not liable to be adjusted towards the Income Tax demand raised against him.

5. Learned counsel for the petitioner has challenged the action of the Income Tax Authorities relying on the provisions of Section 132B(1) of the Act. He urged that there was no discretion left with the Income Tax Officer not to adjust the seized assets towards the tax liability since the assets have been retained under Sub-section (5) of Section 132 of the Act. It has also been urged that the Income Tax Authorities could not hand over the seized gold kept in their possession to the

authorities under the Gold (Control) Act as the Department had accepted to appropriate the aforesaid assets for the purposes of adjustment of the tax demand against the petitioner.

6. The first question which requires determination in this case is whether the authorities under the Gold (Control) Act are entitled to take action in respect of gold which has been seized by the Income Tax Authorities under the Income Tax Act, although it has been retained u/s 132(5) of the Income Tax Act. It has not been disputed that the three bricks of gold which had been seized are primary gold. u/s 8 of the Gold (Control) Act, there is a restriction on the possession of primary gold without following the procedure laid down in the Act. It has not been shown to us that the petitioner could validly hold those bricks of primary gold under the Gold (Control) Act. If that be so, prima facie, the petitioner would be deemed to have contravened the provisions of the Gold (Control) Act and the Gold Control Authorities could take action against him.

7. However, as the primary gold has not been seized by the authorities under the Gold (Control) Act, the question that further arises for consideration is whether they could ask the Income Tax Authorities not to sell the gold for satisfaction of the Income Tax demand and produce the same before them. In this connection, the provisions of Section 111 of the Gold (Control) Act may be looked into. It provides that the provisions of the Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment. Section 105 of the Gold (Control) Act provides as follows :

"Officers required to assist Gold Control Officer.--All officers of police and all officers of Government engaged in the collection, or prevention of evasion, of revenue are hereby required and empowered to assist the Gold (Control) Officers in the execution of the provisions of this Act or of any rule or order made thereunder."

8. The Income Tax Authorities, who would be deemed to be officers under the said section, are required and empowered to assist the Gold Control Officers in the execution of the provisions of this Act. Section 64(b) confers power on the Gold (Control) Authorities to ask any person, which will include an Income Tax Officer to produce before him, the primary gold which has been seized by him. It is, therefore, clear that under the provisions of the Gold (Control) Act, the officer under that Act was within his jurisdiction to have asked the Income Tax Officer not to dispose of the gold but produce the same before him for taking action under the Gold (Control) Act in case the petitioner was still its owner.

9. But it was vehemently urged for the petitioner that when once the gold had been retained by the Income Tax Authorities u/s 132(5) of the Act, it was incumbent upon them to have adjusted the same for the purposes of clearance of the tax demand against the petitioner. The contention, in our opinion, appears to be not correct inasmuch as Section 132B(2), specifically provides that notwithstanding the provisions of Section 132B(1), the Income Tax Officer may

follow other modes for recovering the outstanding demand. A part from that, since the petitioner remains the owner of the gold, the Income Tax Officer cannot be prevented from handing over the same to the excise authorities.

10. A similar question came up for consideration before the Madras High Court in P.P. Kanniah Vs. Income Tax Officer, Central Circle I, Madras and Another, . It was held therein that till the sale takes place, the ownership of the property will continue to remain in the hands of the petitioner, but under distraint by the Income Tax Officer, and the Income Tax Officer cannot be prohibited from handing over the seized article to the excise authorities for the purposes of taking action under the Gold (Control) Act, 1968.

11. The question can also be looked at from another angle. Under the Income Tax Act, the authorities are not concerned only with whether the activities of the petitioner are legal or illegal. An assessee may be earning income by indulging in illegal activities like smuggling. The Income Tax Authorities have got no power to stop the activity of such an assessee and the only power which they have is to levy Income Tax on the income which such an assessee may be earning from even such an illegal activity. Similar is the case here. The possession of the primary gold was prohibited under the Gold (Control) Act and the petitioner has committed an offence thereunder. However, the purpose of seizure by the Income Tax Authorities was not to punish the petitioner for his illegal activity of possession of primary gold but was for the purposes of assessing his tax liability. Sections 132 and 132B of the Act confer power on the Income Tax Authorities for realising the Income Tax dues from the seized assets. However, if the seized asset is the subject-matter of any case and liable to confiscation, the Income Tax Authorities cannot be forced to appropriate the tax demand from the sale of the seized primary gold. The Income Tax Authorities are bound to assist the Gold Control Authorities and are also liable to produce the gold before the Gold Control Authorities. The steps taken by the Income Tax Officer to recover the tax from the petitioner by attachment and sale of the house property cannot, therefore, be illegal or unauthorised.

12. For the reasons stated above, the petition fails and is dismissed with costs. The stay order granted by this court on February 27, 1986, stands discharged.

13. Counsel seeks a certificate for appeal to the Supreme Court. We do not think, that the case involves any substantial question of law which needs to be decided by the Supreme Court.

14. The certificate prayed for is, therefore, refused.