
(2014) 03 AHC CK 0200
In the Allahabad High Court
Case No : Writ Tax No. 189 of 2014

Hemant Kumar Sindhi

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 132, 132A, 132B, 132B(1), 153A

Citation : (2014) 272 CTR 166 : (2014) 364 ITR 555

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : Suyash Agarwal, Advocate for the Appellant; Ashok Kumar, Advocate for the Respondent

Judgement

1. The petitioners have sought to question the legality of an order dated January 1, 2014 passed by the Assistant Director of income tax (Investigation), Allahabad. By the order which is impugned in these proceedings, the request made by the petitioners for the sale of gold bars weighing 6 kilograms seized on December 10, 2013, for adjustment "towards the automatic tax liability" of the first petitioner has been rejected. The Assessing Officer, while rejecting the application, has observed that such action can be taken only after the assessment is completed and a demand has been quantified against the petitioners.

2. A search took place at the business and residential premises of the petitioners on December 5, 2013. Gold bars were seized from the locker of the second petitioner. According to the petitioners, the first petitioner has voluntarily disclosed an undisclosed income of Rs. 12.01 crores during the course of the search. The locker was opened on December 10, 2013, in continuation of the search proceedings when gold bars weighing about 6 kilograms were found. These gold bars, according to the petitioners, are of a value of Rs. 1.81 crores. The gold bars have been seized under a panchnama. The petitioners moved the

Assessing Officer on December 14, 2013, with an application for the sale of the gold bars and for adjustment of the proceeds against the tax liability. The case of the petitioners is that once they have disclosed an undisclosed income of Rs. 12.01 crores, the tax liability would work out to Rs. 3.60 crores being 30 per cent, of the surrender amount and after adjusting the value of the gold bars a balance of Rs. 1.78 crores would be the balance and payable to the Revenue towards tax and undisclosed income. According to the petitioners, the sale of the gold bars would obviate their liability to pay interest u/s 234B and section 234C of the income tax Act.

3. The Assessing Officer, by his communication dated January 1, 2014, has dismissed the application. According to the Assessing Officer, the tax liability can be determined only after the block assessment is completed. Hence, it is only when the assessment is completed and a demand is crystallised that the recovery can be initiated by the sale of the gold bars.

4. Learned counsel appearing on behalf of the petitioners has submitted that under the first proviso to section 132B of the income tax Act, 1961, the petitioners are entitled to the release of the asset and since, according to them, the nature and source of acquisition of the asset has been explained, the existing liability can be recovered out of the asset. Consequently, it has been submitted that the Assessing Officer was in error in dismissing the application.

5. Section 132B deals with the application of seized and requisitioned assets. For convenience of reference, it would be appropriate to extract Clause (i) of sub-section (1) of section 132B on which the controversy turns and the same is as follows:

132B. Application of seized or requisitioned assets.--(1) The assets seized u/s 132 or requisitioned u/s 132A may be dealt with in the following manner, namely:--

(i) the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958) and the interest-tax Act, 1974 (45 of 1974), and the amount of the liability determined on completion of the assessment u/s 153A 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, may be recovered out of such assets:

Provided that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for release of asset and the nature and source of acquisition of any such asset is explained to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and

the remaining portion, if any, of the asset may be released, with the prior approval of the Chief Commissioner or Commissioner, to the person from whose custody the assets were seized.

6. Under clause (i) of sub-section (1) of section 132B, assets which are seized u/s 132 or requisitioned u/s 132A can be dealt with towards the amount of any existing liability under the income tax Act, 1961 (and other stated legislations) and the amount of liability determined on completion of the assessment u/s 153A and the assessment of the year relevant to the previous year in which the search is initiated or the amount of liability determined on completion of the assessment under Chapter XIV-B for the block period including penalty or interest. The crucial words which are used in clause (i) are "the amount of any existing liability" and "the amount of the liability determined". The words "existing liability" postulates a liability that is crystallised by adjudication. Similarly, a liability is determined on completion of the assessment or, as the case may be, the block assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized. The first proviso to clause (i) states that the assessee may make an application to the Assessing Officer for release of the asset which has been seized. However, the assessee has to explain the nature and source of acquisition of the asset to the satisfaction of the Assessing Officer. In other words, it is not the ipse dixit of the assessee but the satisfaction of the Assessing Officer on the basis of the explanation tendered by the assessee which is material. Moreover, in such a case the amount of an existing liability can be recovered from out of such asset; such asset being the asset which is referred to in the substantive part of clause (i).

7. In the present case, the conditions, which are specified in the first proviso, are clearly not attracted. The Assessing Officer was justified in his conclusion that it is only when the liability is determined on the completion of the assessment that it would stand crystallised and in pursuance of which a demand would be raised and recovery can be initiated.

8. Consequently, the application which was filed by the assessee was thoroughly misconceived and unsustainable with reference to the provisions of section 132B(1) of the income tax Act 1961.

9. In the alternative, learned counsel for the petitioners appearing on behalf of the assessee submitted that the asset may be sold and the sale proceeds may be kept in fixed deposit. In this regard, he relied upon a judgment of a Division Bench of this court consisting of the hon'ble the Chief Justice Ferdino Inacio Rebello and the hon'ble Amreshwar Pratap Sahi J. in *Kesarwani Zarda Bhandar v. Union of India* (Writ Tax No. 1078 of 2010, decided on August 11, 2010).

10. That was a case where during the course of a search and seizure operation cash had been recovered. The Division Bench directed that the amount of cash which had been seized and recovered should be invested in a fixed deposit till the assessment proceedings are completed.

11. Any action which the court may direct in respect of an asset, which has been seized, has to be strictly in compliance of section 132B of the income tax Act. Where a case has not been made out within the four corners of section 132B, the court would not be justified in passing a general order of a nature that is sought, beyond the scope and purview of the statutory provision. The jurisdiction under article 226 of the Constitution, it is well settled, has to be exercised in accordance with law and where there is a governing statutory provision, in accordance with that provision and subject to the conditions and limitations prescribed by the statute.

12. For these reasons, we find no reason to interfere with the impugned order. The writ petition is, accordingly, dismissed.