

(2021) 08 DEL CK 0176

In the Delhi High Court

Case No : Civil Writ Petition No. 2203 Of 2021, Civil Miscellaneous Application
No. 6410 Of 2021

Kamlesh Gupta

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 26-08-2021

Acts Referred:

Income Tax Act, 1961 — Section 132, 132B, 132B(1)(i), 271AAC, 271(1)(c)

Citation : (2021) 08 DEL CK 0176

Hon'ble Judges : Rajiv Shakdher, J; Talwant Singh, J

Bench : Division Bench

Advocate : Manish Vashisht, Urvi Kapoor, Sanjana Nangia, Arnav Kumar, Zoheb Hossain, Pivul Agarwal, Parth Semwal

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. The substantive prayers made in the writ petition are as follows: -

"(i) Pass and issue an appropriate writ in the nature of Mandamus or any other appropriate writ, order or direction directing the Respondents to release the jewellery and cash seized by the Respondents from the Locker on 03.01.2018;

(ii) Pass and issue an appropriate writ in the nature of Mandamus or any other appropriate writ, order or direction directing the Respondents and Income Tax Department to decide the appeals in a time-bound manner and expeditiously;"

2. On the previous date i.e., 13.08.2021, we had, after hearing the learned counsel for the parties, at great length, captured the contours of the dispute, which arose for consideration, in the instant matter.

2.1. In order to avoid prolixity, and for the sake of convenience, the relevant part of the order dated 13.08.2021 is set forth hereafter: -

"2. Apart from anything else, one of the principal arguments raised by Mr. Manish Vashisht, learned senior counsel, who appears on behalf of the petitioner, is that, once an application for release of jewellery was made, an order had to be passed qua the same, within 120 days from the date on which the last authorisation for search was executed under Section 132 of the Income Tax Act, 1961 (in short "the Act").

2.1. This argument is pivoted on the provisions of Section 132B of the Act. In particular, qua the aforementioned argument, Mr. Vashisht lays stress on the provisos appended to clause (i) of sub-section (1) the said provision.

2.2. It is not in dispute that, the search qua the petitioner was triggered on 22.11.2017. It is also not in dispute that, the search memo was drawn up on 03.01.2018.

2.3 Admittedly, the petitioner preferred an application for release of jewellery and cash seized during the course of search and seizure operation, on 09.02.2018; a document which is appended on page 129 of the case file. This application was addressed to the Principal Director of Income Tax (Investigation) -1. Copy of the said representation was marked to 3 officers:

(i) The Additional Director of Income Tax (Inv.)-Unit-1, Jhandewalan, Delhi

(ii) The Deputy Director of Income Tax (Inv.) Unit-1(1), Jhandewalan, Delhi

(iii) The Deputy Commissioner of Income Tax, Circle-14(1), Delhi 2.4. As indicated above, admittedly, out of the aforementioned 3 officers to whom the representation dated 09.02.2018 was marked; one of them was The Deputy Commissioner of Income Tax, Circle-14(1), Delhi. It is pertinent to mention herein that the Assessing Officer (in short "AO?"), in the instant case, was Assistant Commissioner of Income Tax, Circle - 14(1). Pertinently, the AO was deployed in the same circle, as the Deputy Commissioner of Income Tax, who was one among the three recipients, who had been sent copies of the application dated 09.02.2018.

2.5. Concededly, the aforementioned application for release, preferred by the petitioner, has not been actioned by the respondents/revenue. Therefore, according to Mr. Vashisht, the right to claim the release of entire jewellery which is in the custody of the respondents/revenue, has emerged in favour of the petitioner.

2.6. On the other hand, Mr. Zoheb Hossain, who appears on behalf of the respondents/revenue, says that, the two provisos appended to Section 132B(1) (i) of the Act, have to be read literally, i.e., the application had to be made to the AO, who had to then satisfy himself, as regards the extent of existing liability, and only, thereafter, could an order have been passed one way or the other.

2.7. In other words, it is Mr. Hossain?s submission that, since the application dated 09.02.2018 was addressed to the Principal Director of Income Tax

(Investigation) -1, the application was not viable in law, and therefore, no right whatsoever could be said to have emerged in the favour of the petitioner based on the second proviso to the said Section, i.e., Section 132B(1)(i) of the Act.

2.8. It is relevant to note that, Mr. Vashisht, in support of his submissions, has relied upon the following judgments:

(i) *Mul Chand Malu (HUF) v. Assistant/Deputy Commissioner of Income-tax*, [2016] 69 taxmann.com 437 (Gauhati).

(ii) *Nadim Dilip Bhai Panjvani v. Income Tax Officer, Ward no. 3*, [2016] 66 taxmann.com 124 (Gujarat).

2.9. Likewise, insofar as Mr. Hossain is concerned, he relied upon a judgement of the Division Bench of the Gujarat High Court rendered in *Jinkal Dineshbhai Virvadiya v. Assistant Commissioner of Income Tax*, [2014] 367 ITR 713 (Gujarat) for the proposition that, the "satisfaction" of the AO attains critical significance, in the context of the first proviso to Section 132B of the Act.

3. For the sake of convenience, the relevant provisions of Section 132B of the Act are extracted hereafter:

"132B. (1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:- (i) 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 [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner, to the person from whose custody the assets were seized: Provided further that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed;"

3.1. It may also be pertinent to note that, apart from the aforesaid submissions, Mr. Vashisht has also adverted to Central Board of Direct Taxes (CBDT) Instruction no. 1916, dated 11.05.1994, which, inter alia, states that, in case, during the course of the search operations carried out under Section 132 of the Act, gold jewellery and ornaments are seized, and the assessee is not assessed to wealth tax, then such gold jewellery and ornaments, to the extent of 500 grams per married lady, should not be seized.

3.2. In other words, the argument, which Mr. Vashisht has advanced, is that, the respondents/revenue, in any case, are required to release at least 500 grams of jewellery to the petitioner; she being a married lady.

3.3. The total weight of the jewellery, that has been seized, according to the respondents/revenue, is 1936.06 grams. To be noted, the petitioner claims that the weight of the jewellery seized is 1950.47 grams. [See Annexure P-20, which is appended on page 129 of the paper book.] Thus, as is evident, as far as the weight of the jewellery is concerned, the difference is small.

4. Given the aforesaid circumstances, we are of the view that, there is weight in the submission of Mr. Vashisht that the provisions of Section 132B of the Act get triggered, once the period of 120 days from the date of the last of the authorisation for search under Section 132 of the Act expired. In this case, though the application was made by the petitioner for the release of her jewellery, which was seized, within the stipulated timeframe, it was directed to the Principal Director of Income Tax (Investigation)-1, with a copy to, amongst others, the Deputy Commissioner of Income Tax, Circle-14(1), who was deployed in the same circle [i.e. circle 14] where the AO was positioned.

4.1. In this context, the submission of Mr. Hossain, as noticed above, is that, the application, dated 09.02.2018, was not addressed to the AO, and hence, was not viable in law. In our view, in the facts and circumstances of this case, this submission cannot be sustained for the following reasons:

i. The application for release of jewellery was served on a senior officer, who could have done one of the two things:

a) first, responded to the application and said he was not the concerned officer; and

b) second, he could have had the application placed before the concerned officer i.e. the AO. He did neither. What made it worse, is that, the Deputy Commissioner of Income Tax, who had received a copy of the application, and was deployed in the same circle i.e. Circle-14(1), Delhi, as the AO, also took no steps in the matter.

4.2. The failure on the part of the officers, to act in furtherance of the law, and adopt a citizen centric approach, has resulted in the matter, concerning release of jewellery, hanging fire since February 2018.

4.3. The dictum that, ignorance of law is no excuse, has a different connotation and application. There is no presumption that everyone knows the law. [See *Motilal Padampat Sugar Mills Co. Ltd. vs. State of U.P.*, (1979) 2 SCC 409.] As is evident, in this case, those who, one could have presumed, knew the law [i.e., the officers], did nothing. The maze that the Income Tax statute is, often confounds the most astute and seasoned practitioners of this branch of the law. To expect a taxpayer to find the right path, is to make light of the challenge, that even the most experienced face.

"6. ... Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement: there is no such maxim known to the

law. Over a hundred and thirty years ago, Maule, J., pointed out in *Martindale v. Falkner* [(1846)

2 CB 706 : 135 ER 1124] :

"There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so." Scrutton, L.J., also once said:

"It is impossible to know all the statutory law, and not very possible to know all the common law."

But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in *Evans v. Bartlam* [(1937) AC 473, 479 : (1937) 2 All ER 646] :

"... the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application."

4.4. To our minds, the petitioners application cannot be brushed aside, merely on the ground, that it was not addressed to the AO. 4.5. Therefore, if the provisions of Section 132B were to be triggered, the entire jewellery, which was seized, will have to be released to the petitioner.

5. That being said, we are cognisant of the fact that, there are outstanding demands against the petitioner for at least two assessment years (AYs), i.e., AY 2018-2019 and AY 2015-2016.

5.1. The demand raised qua AY 2018-2019 is Rs. 3,74,85,215/-, while that which is raised qua AY 2015-2016 is Rs. 1,22,38,696/-. The total demand for the said AYs, according to the respondents/revenue, is Rs. 4,97, 23,911/. This amount, according to the respondents/revenue, does not include the levy of penalty under Section 271AAC and under Section 271(1)(c) of the Act.

5.2. According to the respondents/revenue, if penalty is included in the outstanding demand, as noted above, the total demand would scale up to Rs. 7,53,55,008/-. The value of the security, according to the respondents/revenue [which includes jewellery worth of Rs. 6, 51,49,568/- and cash amounting to Rs. 54,74,000/-], is Rs. 7,06,23,568/-.

5.3. It is pertinent to note that, the petitioner i.e., the assessee has preferred appeals in respect of the assessment orders passed vis-a-vis AYs 2018-2019 and 2015-2016. These appeals, we are told, are pending adjudication before the Commissioner of Income Tax (Appeals).

5.4. Given the fact that the respondents/revenue had enough in the form of security, it did not deem it necessary to seek recovery of the aforementioned outstanding demand, although, the application for stay moved by the petitioner was rejected. [See Annexures P-39 and P-40, which are appended on pages 178

and 190 of the case file.]

6. Thus, having regard to the aforesaid, we are of the view that, the offer made by Mr. Vashisht to furnish security in the form of unencumbered immovable property and cash, accompanied by an undertaking of the petitioner that she would not part or create third party rights in the jewellery, [if released], to allay the apprehensions of the respondents/revenue that in case the petitioner were to finally lose, she would be in a position to pay the demand raised by the respondents/revenue, appears to be fair and reasonable.

6.1. More specifically, Mr. Vashisht has offered the following as security in lieu of release of jewellery:

(i) Immovable property, which, according to the petitioner, is worth, approximately, Rs. 6,65,00,000/-. It is stated that the petitioner will deposit the original title deeds concerning the subject property, with the respondents/revenue, along with an undertaking to the effect that no encumbrance will be created qua the same.

(ii) The petitioner will not seek release of cash, amounting to Rs. 54,7400/-, which is, presently, in the custody of the respondents/revenue.

(iii) The petitioner will deposit a further sum of Rs. 20,23,043/-, which is the difference between 20% of the principal demand, less Rs. 54,74,000/-; an amount, which is, already available with the respondents/revenue.

(iv) In case the jewellery is released, it will neither be parted with, sold/ transferred nor encumbered, till issue concerning the tax demand is finally resolved. These obligations will also bind the petitioner's legal representatives, who will preserve and use the same, if necessary, to defray any outstanding legal demand, concerning tax dues.

7. Before we proceed to pass a final order in the matter, we would like Mr. Hossain to seek instructions with regard to the offer made by Mr. Vashisht on behalf of the petitioner."

2.2. As would be evident upon reading of the extract set out hereinabove, of our order dated 13.08.2021, we had tried to balance the interest of the petitioner i.e., the assessee as well as the respondents/revenue.

2.3. On 13.08.2021, we had refrained from passing a final order, though the legal issue was considered and a view was taken, with the hope that, the respondents/revenue would agree with the proposed directions, which are contained in paragraph 6.1 of our order dated 13.08.2021.

3. Mr. Zoheb Hossain, who appears for the respondents/revenue, says that, his instructions are that, the respondents/revenue seem to be constrained by the language of Section 132B of the Income Tax Act, 1961 (in short "the Act").

3.1. In our view, such a stand is untenable, and the reasons for the same are set

forth in the order, dated 13.08.2021.

4. Therefore, this writ petition is disposed of, in terms of the directions contained in paragraph 6.1 (i) to (iv) of our order, dated 13.08.2021. Consequently, the pending application shall also stand closed.

5. Needles to add, the parties will act with due expedition, in terms of the directions contained in the order dated 13.08.2021, though, not later than six weeks from the date of the receipt of the copy of this order. Insofar as the pending appeals are concerned, it is expected that they will be disposed of, at the earliest, as this would be the interest of the petitioner/assessee, as well as the respondents/revenue.