
(2004) 01 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10605 of 2003

Naresh Kumar Kohli

APPELLANT

Vs

Commissioner of Income Tax and Another

RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:

Income Tax Act, 1961 — Section 132B , 132B(1), 132B(3)

Citation : (2004) 187 CTR 140 : (2004) 266 ITR 553

Hon'ble Judges : N.K. Sud, J;J.S. Narang, J

Bench : Division Bench

Advocate : Salil Kapoor, for the Appellant; N.L. Sharda, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sud, J. :

1. This writ petition has been filed for issuance of a writ in the nature of mandamus directing the respondents to release the jewellery which had been seized during the search of the two lockers of the petitioner on 17th Sept., 1996 and 24th Sept., 1996.

2. The residential and business premises of the petitioner were raided on 11th Sept., 1996. His locker No. 39 with Canara Bank, Dalhousie Road, Pathankot, was searched on 17th Sept., 1996 and a Panchnama was prepared, a copy of which has been annexed as Annex, P-1. The entire jewellery of the value of Rs. 8,29,986 contained in the said locker was seized. Another locker of the petitioner i.e., locker No. 72 with the State Bank of Patiala, Chakki Bank, Pathankot, was also searched on 24th Sept., 1996 and a Panchnama was prepared, a copy of which has been annexed as Annex, P-4. The entire jewellery of the value of Rs. 9,76,010 found in the said locker was also seized.

3. The assessment for the block period u/s 158BC of the IT Act, 1961 (for short "the Act"), was completed on 29th Sept., 1997 and the total undisclosed income was assessed at Rs. 3,01,01,078 which Included the value of the entire jewellery

found in the aforesaid two lockers, and the assessee was required to pay a further tax of Rs. 1,78,98,002.

4. Petitioner filed, an appeal before the Tribunal, Amritsar Bench, Amritsar (for short "the Tribunal"), which was disposed of vide order dt. 18th Nov., 1999 giving substantial relief to the petitioner. Additions made by the AO to the extent of Rs. 2,88,34,909 were deleted. The AO passed, the consequential order on 17th Dec., 1999, giving effect to the relief granted by the Tribunal. The undisclosed income assessed stood revised to Rs. 12,66,170, tax on which worked out to Rs. 7,59,702. After allowing adjustment of Rs. 36,039 on account of tax already deposited, the petitioner was required to pay the balance demand of Rs. 7,23,663. This amount was paid by the petitioner as under:

Rs. 3,85,000 on 31st Jan., 2000 Rs. 3,38,663 on 29th Feb., 2000 Since, there was delay in deposit of tax on the part of the petitioner, he was also required to deposit interest u/s 220(2) of the Act which was determined at Rs. 45,582. The said amount was also deposited on 29th Feb., 2000.

5. Since the entire demand created in respect of the block assessment stood fully paid on 29th Feb., 2000 and there was no other demand pending against him, the petitioner filed an application before respondent No. 1 on 2nd Jan., 2002 for release of the jewellery, which had been seized from his lockers. Receiving no response, another application dt. 4th Sept., 2002 with the same prayer was moved. When no action was taken on the second application also, the petitioner filed another letter dt. 24th March, 2003 before respondent No. 2 which also evoked no response. Petitioner also claims to have met the respondents personally for release of the jewellery but without any success. Having no other alternative, the petitioner has approached this Court by way of the present writ petition.

6. On notice, written statement on behalf of the respondents has been filed in which it has been stated that the Department has not accepted the order of the Tribunal and had filed an appeal before the High Court on 21st July, 2000. Thus, it has been claimed that the liability of the petitioner has not been finally determined. It is claimed that since the proceedings are pending before this Court, the seized jewellery cannot be released. In support of this averment, reliance has been placed on the decision of the Supreme Court in Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd., and that of the Bombay High Court in Commissioner of Income Tax Vs. Sharda Sugar Industries Ltd., . It has also been pointed out that a demand of Rs. 6,21,279 is outstanding in the case of late Shri Suresh Kumar Kohli, father of the petitioner, for the block period 1987-88 to 1997-98, It is submitted that the petitioner being the legal representative of Shri Suresh Kumar Kohli, is liable to pay the aforesaid demand but has not taken the responsibility for making the payment. Thus, it is contended that on this ground also, the jewellery recovered from the lockers of the petitioner could not be released, It is, however, admitted that the entire demand in the case of the petitioner stands

paid and there is no amount outstanding against him.

7. Petitioner filed a rejoinder in which the provisions of Section 132B of the Act have been relied upon to show that the Department could not retain the assets after the liability referred to in Clause (i) of Sub-section (1) of Section 132B of the Act has been discharged. Reliance was also placed on the judgment of the apex Court in *J. R. Malhotra v. Additional Sessions Judge, Jullundur*, (1976) 2 SCR 993 , to contend that the Revenue could not retain the assets on the plea that some demand was likely to be created in future.

8. When this matter had come up for hearing before us on 15th Dec., 2003, counsel for the Revenue had resisted the prayer of release of jewellery mainly on the ground that a demand of Rs. 6,21,279 was pending against late Shri Suresh Kumar Kohli, father of the petitioner. Counsel for the petitioner had pointed out that the release of assets seized from the petitioner could not be denied on this ground. However, to put an end to this litigation, he had offered to furnish security to the extent of Rs. 6,21,279. Thereupon, counsel for the Revenue had sought an adjournment to seek necessary instructions. The matter was, accordingly, adjourned to 12th Jan., 2004. On 12th Jan., 2004, we were informed that the counsel had received no instructions as the letter written to the concerned AO (respondent No. 2) had evoked no response. The case was adjourned to 20th Jan., 2004 and respondent No, 1 was directed to be present in Court.

9. In compliance to our order, Mr. A.V. Singh, respondent No. 1, appeared and reiterated the stand taken in the written statement. On a specific query from the Bench, he failed to refer to any provision of law under which the jewellery recovered and seized from the petitioner could be retained in the absence of any demand against him. He merely stated that as per the practice of the Department, goods were released only after the matter was finally decided. He also could not explain as to why there was no response to the various applications made by the petitioner for release of jewellery.

10. We have heard the counsel for the parties and perused the relevant material on record. Section 132B of the Act deals with the application of seized or requisitioned assets. It reads as under:

"132B. (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 WT 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 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 AO 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 AO, 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 CIT or CIT, 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 u/s 132 or for requisition u/s 132A, as the case may be, was executed.

(ii) If the assets consist solely of money, or partly of money and partly of other assets, the AO may apply such money in the discharge of the liabilities referred to in Clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied :

(iii) the assets other than money may also be applied for the discharge of any such liability referred to in Clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the AO or, as the case may be, the TRO under authorisation from the Chief CIT or CIT under Sub-section (5) of Section 226 and the AO or, as the case may be, the TRO may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in Sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in Clause (i) of Sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4)(a) The Central Government shall pay simple interest at the rate of eight per cent per annum on the amount by which the aggregate amount of money seized u/s 132 or requisitioned u/s 132A, as reduced by the amount of money, if any, released under the first proviso to Clause (i) of Sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in Clause (i) of Sub-section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in Clause (i) of Sub-section (1) of this section.

(b) Such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search u/s 132 or requisition u/s 132A was executed to the

date of completion of the assessment u/s 153A or under Chapter XIV-B.

Explanation : In this section,--

(i) "block period" shall have the meaning assigned to it in Clause (a) of Section 158B;

(ii) "execution of an authorisation for search or requisition" shall have the same meaning as assigned to it in Expln. 2 to Section 158BE."

Sub-s. (3) of Section 132B of the Act clearly indicates that the seized assets or proceeds thereof which remain after the liabilities referred to in Clause (i) of Sub-section (1) have been discharged, have to be forthwith made over or paid to the persons from whose custody the assets were seized. It is the admitted case of the parties that there are no existing liabilities in respect of any kind of demand referred to in Clause (i) of Sub-section (1) of Section 132B of the Act. It is also not in dispute that the jewellery was recovered and seized from the custody of the petitioner. There is, thus, no manner of doubt that the respondents are liable to make over the jewellery to the petitioner in terms of provisions of Sub-section (3) of Section 132B of the Act. No provision of law has been brought to our notice under which the respondents can retain the possession of the seized jewellery during the pendency of appeal filed by the Revenue before the High Court.

11. The judgment of the Supreme Court in the case of Hindustan Housing & Land Development Trust Ltd. (supra) has no application in the present case. The point at issue in the said judgment was in respect of accrual of income. In that case, it was held that since the additional compensation granted by the arbitrator was being disputed by the Government, it could not be said to have accrued to the assessee and brought to tax until the dispute was finally settled. As already observed, counsel for the respondents has not been able to show any provision under which the respondents could keep the release of assets seized under Sub-section (3) of Section 132B of the Act, in abeyance during the pendency of an appeal, revision or reference filed by the Revenue.

12. We are, therefore, satisfied that the petition deserves to succeed and that the petitioner is entitled to receive back the jewellery seized from his two lockers. However, since the petitioner had very fairly offered to furnish security against the demand pending in the case of his late father, we direct that the jewellery seized from the petitioner's lockers be released to him within seven days of his furnishing security to the extent of Rs. 6,21,279 to the satisfaction of respondent No. 1.

13. Since the respondents have not been able to justify their action under any provision of law and the assessee has been made to suffer the present litigation unnecessarily, he is entitled to costs which are assessed at Rs. 10,000.

The writ petition is allowed in the above terms.