(1995) 07 MP CK 0049

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1689 of 1991

Parasnath APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 31-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 102, 103
Income Tax Act, 1961 — Section 120(1), 132, 132(1), 132(1)(c), 132(5)

Citation : (1996) 87 TAXMAN 349

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : V. Bhargava, for the Appellant; R.D. Jain, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.—This order shall dispose of sixteen writ petitions, preferred under article 226 of the Constitution of India. These petitions have arisen under following circumstances:

The income tax authorities issued warrant of authorisation under sections 132 and 132A of the income tax Act, 1961 (''the Act'') Cash and ornaments were required to be delivered to the officer issuing the warrant. These warrants were issued on the happening of the different events in different petitions. Twelve petitions arise out of the happening. Two petitions pertain to another event. Whereas other two petitions deal with different, separate and distinct facts.

2. Facts in twelve petitions are as under:

On 9-6-1990, one Nirbay Kumar was found at Railway Station, Gwalior. He was traveling by Kerala Express. This train left the town of Salem and was on its way to Delhi. The Station Incharge of the Government Railway Police (Broad Gauge), Gwalior, found that the aforementioned Nirbay Kumar was in possession of silver ornaments weighing 304 kgs. A case was registered under sections 102 and 103 of the Code of Criminal Procedure, 1973 (the ''Code''). Simultaneously, the police sent information to the income tax authorities. After two days, a warrant of authorisation was issued u/s 132A. This directed the Station Incharge of Government Railway Police (Broad Gauge), Gwalior, to make available the silver ornaments to the officer who had signed the warrant of authorisation. As the second Additional Chief Judicial Magistrate, Gwalior, had taken cognizance of the case under sections 102 and 103 of the Code, an application was also moved before the aforementioned Court. A prayer was made that the aforementioned silver ornaments be given to the income tax authorities. This prayer was declined by the aforementioned judicial Magistrate. An order to this effect was passed on 20-7-1990. It is worthwhile to mention here that in the meantime, ten persons came forward and claimed ownership in the silver ornaments. Their case was that Nirbay Kumar was merely a carrier and the silver ornaments in fact belonged to them. The judicial Magistrate referred to above taking note of this contention of the persons claiming ownership directed that the silver ornaments be handed over to the persons laying claim of ownership of their executing a sapurdiginama. It is against this order, the Union of India preferred ten writ petitions under article 226. These are as under:

1.

1705/90

Union of India v . State of M.P

2.

1711/90

Union of India v . State of M.P

3.

1712/90

Union of India v . State of M.P

4.

1713/90

Union of India v . State of M.P

5.

1714/90

Union of India v . State of M.P

6.

1715/90

Union of India v . State of M.P

7.

1716/90

Union of India v . State of M.P

8.

1717/90

Union of India v . State of M.P

9.

1718/90

Union of India v . State of M.P

10.

1719/90

Union of India v . State of M.P

2.1 When this matter came up before the motion bench on 10-8-1990, an order was passed to the effect that the silver ornaments shall remain deposited at the Government Treasury at Gwalior. Since then, the silver ornaments seized by the police have so remained in the custody of the Government Treasury referred to above.

2.2 The persons claiming ownership of the ornaments have challenged the warrant of authorisation. They have filed two writ petitions in this regard. These are:

1.

1984/90

Murari Lai v . Union of India

2.

1853/91

Girish Chander v . Union of India

2.3 Another factor which requires to be taken note of is that the persons who had claimed ownership are assessees at Mathura in the State of Uttar Pradesh. Proceedings have been taken for finalisation of assessment. The order of assessment makes reference to the silver ornaments as well. The order of assessment passed by the Assessing Officer, Ward No. 1 Mathura, has been placed on the record of this petition on 17-7-1995. Relevant portion reads as under:

During the course of assessment proceedings, it was stated that the said silver ornaments were seized by G.R. Police authorities on 9-6-1990 while the same was in transit from Salem to Mathura through Sri Nirbhay Kumar, carrier of the assessee. Statement on oath of Sri Nirbhay Kumar was recorded on 30-12-1991, as placed on record, in this regard. The same silver was released by the aforesaid authorities through C.J.M, Gwalior on 20-7-1990, and the assessee has accounted for the said seized jewellery after release in his stock register on 21-7-1990 and the stock available on 21-7-1990 after taking into account the aforesaid silver jewellery was of 106.019G. However it is stated that the aforesaid silver ornaments have again been deposited with the Gwalior Treasury on 1-11-1990 in compliance with the directions of Higher Courts. However, since the matter is still sub judice before the higher authorities, no finding is being given on the silver jewellery seized.

It is accordingly argued that there was no justification to issue the warrant of authorisation or to continue with the retention of these seized material.

3. The Second set pertains to two writ petitions. These bear Nos. 2155 of 1990 and 2063 of 1990. The brief facts out of which these petitions have arisen, be noticed:

3.1 On 20-8-1990, a sum of Rs. 4,68,000 was seized by the police from the person of one Santosh Kumar Jain. At the same time the person in possession was arrested and the judicial Magistrate took cognizance of the matter. On the very date the police seized the money, a warrant of authorisation u/s 132A(1)(c) was issued in the name of Town Inspector, Indergunj, Gwalior. The police authorities did not comply with the warrant. Ultimately, it was found that no criminal offence was committed by the person in possession of the cash. This led to the filing of an application before the judicial Magistrate for seeking custody of the amount on the part of the officer who had issued the warrant u/s 132A(1)(c). The judicial Magistrate was of the view that the income tax authorities were not entitled to the physical possession of the cash amount. This order was passed on 4-9-1990. This led to the filing of a writ petition by the Union of India. This bears No. 2155 of 1990. The second petition bear No. 2603 of 1990. This has been preferred by a firm of jewellers who are carrying on business in the name and style of Firm of Jain Jewellers Sarafa Bazar, Gwalior. This firm is claiming ownership in the money seized from Santosh Kumar Jain An order was passed by the Motion Bench in writ petition No. 2063 of 1990 on 11-9-1990, that the money should remain with the Government Treasury, Gwalior.

3.2 Another factor which is required to be taken note of is that with regard to this very money proceedings were taken for regular assessment and the regular assessment orders have since been passed. The ITO passing the assessment order has come to the conclusion that the source of money has been property disclosed. It be seen that the assessment of all the partners who are partners of the firm in writ petition No. 2063 of 1990 have been finalised. The relevant assessment order reads as under:

The most important point is the sources of acquisition of the seized money. The partners were acquired to explain the sources of money seized by Police-from them. In this regard it is stated that it was firm''s money in which they are partner. They have withdrawn Rs. 4,68,000 on 16-8-1990 from firm''s book. In support copies of cash book from the beginning of the day i.e., 1-8-1990 to 19-8-1990. It is stated that in firm''s book there was sufficient opening balance of cash amounting to Rs. 4,72,010 on 16-8-1990 on the day when the withdrew the money. It is further stated that the money was withdrawn with the intention to purchase readymade silver ornaments. They went to Nagpur but could not settle the purchases as they were new in this line of trade. Therefore, the returned back to Gwalior. Police arrested and seized the money.

On going through the cash book it is noted that all the partners have contributed their share capital amounting to Rs. 1,50,000 each. This money have been deposited on 10th, 11th, 12th, 13th, and 15th August, 1990 Rs. 30,000 by each partner daily. They were required to explain the sources of money deposited in firm. They have filed their individual cash book pages showing the cash position. On going through the individuals cash it is seen that there are various deposits in various names. On query to this it is submitted that it is not loan deposits but it is repay back of money advanced to various peoples. In support the list of persons showing amount and date when the money was advanced have been identified. It is also stated that they are doing their separate business of brokerage of silver, interest income. Shri Santosh Kumar has also stated in his statement placed on record that he has Masala Mixer- Mill. It is also slated by them that they are already income tax payee from last many years and sources of income have been declared in their individual returns. In support copies of assessment orders have also been filed. On going through the submission made by assessee and supporting materials filed in connection with partners individual sources, share capital deposited in firm''s case-was apparently satisfactory.

Scrutiny of balance sheet it reveals that there are 3 loan creditors. On query it is gathered that they are brothers of partners. They are doing their separate business. In this regard confirmations have been filed. To ascertain the genuineness all the creditors namely Naginchand, Devendra Kumar & Arun Kumar were called for. Their statement have been recorded and placed on record. After verification to these persons worthiness of paying capacity found satisfactory.

In spite of the fact that the ITO has passed the final order of assessment, the money has not been returned to the partners of petitioner-firm, may be because of an order having been passed by this Court.

4. The facts in Writ Petition No. 1689 of 1991 are as under:

The petitioner is a registered firm. A search was conducted in terms of section 132(1). Cash and some ornaments were taken possession of. A panchanama was prepared. Copies of these panchanamas have been placed on record as

Annexures P-1/A to P-1/B. The search was made in December 1988. The present writ petition was filed challenging the proceedings taken u/s 132(1) by preferring this petition on 9-10-1991. Assessment has since been completed by the assessing authority.

5. The facts in writ petition which bears No. 1475 of 1990 are as under:

5.1 The petitioner is said to be a businessman at Sagar. According to him, he was travelling by Madhya Pradesh State Road Transport Corporation bus. He was said to be in possession of a suitcase. This contained cash amounting to Rs. 2,76,130. According to him, he got down out of the bus at a wayside hotel between Lalitpur-Talbhat for taking some refreshments. He felt sleepy and slept for a while. When he got up, the bus had left along with the suitcase. He perused the bus but by the time the bus reached Gwalior, the suitcase was handed over to the police station at Padav. The police authorities registered a case. The matter was taken up before the Court of Chief Judicial Magistrate, Gwalior. The petitioner made a prayer for the release of the suitcase. The income tax Department filed objections. A plea was taken that a warrant of authorisation has been issued u/s 132A(1)(c). A prayer was accordingly made that the money in question be not handed over to the petitioner. The Chief Judicial Magistrate passed an order to the effect that the petitioner is not entitled to the amount. This led to the filing of the present petition. The warrant of authorisation has been challenged. A plea has also been taken that the part of money which was seized belonged to one Pankaj Kumar. An explanation has also been given that part of the money was brought from Devendra Kumar of Bhandar.

6. In all the cases, the jurisdiction of the Officer who had issued the warrant of authorisation is being challenged on the ground that the officer who had issued the warrant had not applied his mind. According to the petitioners whose property is allegedly involved vis-a-vis the warrant submitted that there is nothing on the record to indicate that there was satisfaction on the part of the officer issuing the warrant which may fall within the scope of sections 132(1)(c) and 132A(1)(c). According to them, there is nothing on the record to indicate that the concerned officer had reason to believe that the property which was subject-matter of the warrant of authorisation represents either wholly or partly income or property which has not been or would not have been disclosed for the purposes of the Indian income tax Act, 1922 or the Act.

7. In twelve petitions referred to in the para 3 of the order above, the further plea which has been taken is that the officer who had issued the warrant had no jurisdiction to issue the same. It is contended that the officer who issued the warrant lacked the territorial jurisdiction. According to the counsel, Nirbay Kumar referred to above is not an assessee within the territorial limits of the Bhopal. It is also stated that he is not the owner and the owners are assessees at Mathura. It is accordingly argued that the officer who issued the warrant of authorisation from Bhopal had no jurisdiction in this regard.

8. The further argument raised in the petitions reference to in para 3 of this order is that an order of assessment has been passed by the ITO, Ward No. 1 Mathura on 25-3-1992. It is argued that in this situation there is no justification to proceed further in the matter and as per the order of the Adal Chand, Judicial Magistrate they are entitled to the return of the seized property. The same argument has been raised in Writ Petition No. 1853 of 1991-. According to the petitioners, as the assessments of all the partners have since been completed therefore, there is absolutely no necessity to continue with the retention of the property regarding which warrant of authorisation was issued.

9. According to the counsel appearing for the Union of India, the judicial Magistrate who took the cognizance of the matter in the case of Nirbay Kumar had no jurisdiction to return the amount to the persons who were claiming ownership. It is the further case of the Union of India that the order under sections 132(1)(c) and 132A(1)(c) was passed after there was due and proper satisfaction and an opinion was in fact formed in terms of sections 132(1)(c) and 132A(1)(c). It is pointed out that this satisfaction is reflected in the warrant which was so issued. With regard to territorial jurisdiction, the case is that as all the events took place at Gwalior, therefore, the concerned officer had the jurisdiction. It is submitted that even if there is lack of jurisdiction this shall not be fatal to the legality of the warrant of authorisation. It is argued that if ultimately it is found that the person who is claiming the property is an assessee at some other place then the custody of the seized property would be handed over to or made available or put under the custody of the assessing authority which has the jurisdiction. The further stand taken is that there is no final order of assessment by any assessing authority and no reliance can be placed on the orders of assessment placed on the record. According to him, these are not final orders. It is pointed out that the assessing authority passing the order at Mathura has not pronounced upon as to the nature of the trans-action on account of the fact that proceedings are pending in this Court.

9.1 Thus the issues involved in these petitions are:

(i) Whether the officer issuing the warrant of authorisation had applied his mind and had reason to believe that circumstances existed for issuing the warrant?

(ii) Whether the officer who issued the warrant had the territorial jurisdiction and if there is lack of jurisdiction what would be its effect?

(iii) What is the effect of the order of assessment having been passed by concerned assessing authorities?

(iv) Whether the judicial Magistrate could order the return of the goods on sapurdgi to persons claiming ownership ignoring the warrant of authorisation?

10. Before dealing with various contentions raised by both the sides, it would be apt to notice some of the statutory provisions. These are section 120(1), (2) and (3), section 132(1)(c), (5) and (9A), sections 132A(1)(c) and 226(4) of the Act.

These provisions read as under:

120. Jurisdiction of income tax authorities. -(1) income tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.

(2) The directions of the Board under sub-section (1) may authorise any other income tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income tax authority authorised by it may have regard to any one or more of the following criteria, namely:-

(a) territorial area;

(b) persons or classes of persons;

(c) incomes or classes of income; and

(d) cases or classes of cases.

132. Search and seizure. -(1) Where the Director General or Director or the Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as may be empowered in this behalf by the Board, in consequence of information in his possession, has reason to believe that-

(a) ****

(b) ****

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been or would not be, disclosed for the purposes of the Indian income tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

(2) to (4) (5) Where any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) is seized under sub-section (1) or sub-section (1 A), the income tax Officer, after affording a reasonable opportunity to the person concerned of being heard and making such inquiry as may be prescribed, shall, within one hundred and twenty days of the seizure, make an order, with the previous approval of the Deputy Commissioner,-

(i) estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him;

(ii) calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian income tax Act, 1922 (11 of 1922), or this Act;

(iii) determining the amount of interest payable and the amount of penalty imposable in accordance with the provisions of the Indian income tax Act, 1922(11 of 1922), or this Act, as if the order had been the order of regular assessment;

(iii) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (a) of sub-section (1) of section 230A in respect of which such person is in default or is deemed to in default,

and retain in his custody such assets or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (ii), (iia) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized:

Provided that if, after taking into account the materials available with him, the income tax Officer is of the view that it is not possible to ascertain to which particular previous year or years such income or any part, thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized and may also determine the interest or penalty, if any, payable or imposable accordingly:

Provided further that where a person has paid or made satisfactory arrangements for payment of all amounts referred to in clauses (ii), (iia) and (iii) or any part thereof, the income tax Officer may, with the previous approval of the Chief Commissioner or Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case.

(6) to (9) ****

(9A) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents or assets seized under that subsection shall be handed over by the authorised officer to the income tax Officer having jurisdiction over such person within a period of fifteen days of such seizure and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such income tax Officer."

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132A. Powers to requisition books of account, etc. -(1) Where the Director General or Director or the Chief Commissioner, or Commissioner, in consequence of information in his possession, has reason to believe that-

(a) ****

(b) ****

(c) any assets represent either wholly or partly income or property which has not been or would not have been, disclosed for the purposes of the Indian income tax Act, 1922 (11 of 1922) or this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force, then the Director General or Director or the Chief Commissioner or Commissioner may authorise any Deputy Director, Deputy Commissioner, Assistant Director, Assistant Commissioner or income tax Officer (hereafter in this section and in sub-section (2) of section 278D referred to as the requisitioning officer) to require the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer,

226. Other modes of recovery. -(1) Where no certificate has been drawn up u/s 222, the Assessing Officer may recover the tax by any one or more of the modes provided in this section.

(1A) ****

2. ****

3. ****

4. The Assessing Officer or Tax Recovery Officer may apply to the Court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

11. The salient facts be again recapitulated. In petitions referred to in para 3, these are:

(i) that, one Nirbay Kumar was found in possession of 304 kgs of silver ornaments. This has happened on 9th of June, 1990. The police took notice of it and proceedings were initiated under sections 102 and 103 of the Code;

(ii) that, income tax authorities have issued warrant of authorisation u/s 132A(1)(c) of the Act;

(iii) that, persons other than Nirbay Kumar are claiming ownership of the silver ornaments, and the Additional Chief Judicial Magistrate ordered the handing over silver ornaments to them;

(iv) that, on account of the order passed by this Court, silver ornaments are lying in Government Treasury at Gwalior;

(v) with regard to two writ petitions referred to in para 4 the factual position is also similar. In two matters namely W.P. No. 1689 of 1991 and W.P. No. 1475 of 1990, the judicial Magistrate refused to give the custody of the seized goods to the person claiming it.

(vi) Assessing authority has taken some assessment.

12. The first argument with regard to the power of the criminal court to order return of the property which is subject-matter of warrant of authorisation be examined. As a Division Bench of this Court has dealt with this matter in detail, it is not necessary to again examine this issue on first principles. This Court in Union of India v. Police Station 1990 JLJ , paras 8 & 9 are observed as under:

Shri R.D. Jain, who appears for respondent No. 3, has supported the impugned order and has strenuously urged that the warrant of authorisation issued as above referred, is illegal and void and as such it is not binding on the learned Magistrate. Counsel also cited decision in J.R. Malhotra v. Addl. S.J. Jullundar (1) and Mohd. Kunhi v. Mohd. Koya (2) to support the contention that his client was entitled to the money to be restored to him. In our view reliance on those decisions is wholly misconceived for short and simple reason to be stated at once hereinafter.

9. According to us, the police officer, who had seized the money from respondent No. 3, on being served with the order of the Income Tax Authority and Warrant of Authorisation, and for that matter, learned Magistrate also suffered statutory handicap to deal with the money in any other manner than as contemplated under the special law enacted as aforesaid. Be it noted in this connection that the police had not registered any crime against respondent No. 3 and the income tax department on being apprised of the seizure had laid claim to that money and to custody thereof in accordance with provisions aforequoted Neither. S.H.O, Janakganj Police Station, nor learned Magistrate, had any jurisdiction to enquire into the validity of the Warrant of Authorisation for delivery of that money, to the income tax Officer concerned namely, Shri Khanduja, nor of the competence of the Officer issuing that Warrant of Authorisation. Indeed we are further of the view that this Court also in this matter, is not at all concerned with the validity of the Warrant of Authorisation. We are simply concerned to see if the S.H.O. Police Station Janakganj or learned Magistrate, Shri Samadhiya, dealt with the sum of Rs. 3,15,000 recovered from respondent No. 3 in a manner not authorised by law.

As such the counsel for the Union of India is right in his submission that order passed by the Second Addl. Chief Judicial Magistrate in bunch of 10 petitions referred to in para 3 directing the return of silver ornaments to the persons claiming it cannot be sustained.

13. The argument with regard to absence of reasons before issuing warrant of authorisation be examined. R.M. Shai, J. (later Judge of the Supreme Court) while expressing the opinion of the Division Bench of Allahabad High Court in Ganga Prasad Maheshwari and Others Vs. Commissioner of Income Tax, dealt

with the concept of "Reason to believe and observed:

''Reason to believe'' is a common feature in taxing statutes. It has been considered to be the most salutary safeguard on the exercise of power by the officer concerned. It is made of two words ''reason'' and ''to believe''. The word ''reason'' means cause or justification and the word ''believe'' means to accept as true or to have faith in it. Before the officer has faith or accepts a fact to exist there must be a justification for it. The belief may not be open to scrutiny as it is the final conclusion arrived at by the officer concerned, as a result of mental exercise made by him on the information received. But, the reason due to which the decision is reached can always be examined. When it is said that reason to believe is not open to scrutiny what is meant is that the satisfaction arrived at by the officer concerned is immune from challenge but where the satisfaction is not based on any material or it cannot withstand the test of reason, which is an integral part of it, then it falls through and the Court is empowered to strike it down. Belief may be subjective but reason is objective....

14. In Vindhya Metal Corporation and Others Vs. Commissioner of Income Tax and Others,) expressed the view that reasons which lead to the issuing of the warrant are open to Judicial review. It was observed:

It is settled that the existence or otherwise of the condition precedent to exercise of power under these provisions is open to judicial scrutiny. The absence of the condition precedent would naturally have the effect of vitiating the authorisation made by the Commissioner in either of the two provisions and the proceedings consequent thereto. While the sufficiency or otherwise of the information cannot be examined by the Court, the existence of information and its relevance to the formation of the belief can undoubtedly be gone into. Also, whether on the material available with the Commissioner, any reasonable person could have arrived at the conclusion that a search, seizure or requisition should be authorised is a field open to judicial review....

15. I am of the view that the question as to whether there was due satisfaction or not is to be determined by taking into considerations, the circumstances which existed on the day the warrant is issued. This satisfaction is not to be judged by taking note of subsequent events and explanations which may be furnished. I am of the considered view that in all the cases Warrant of Authorisation was properly issued as the concerned officer had reason to believe that condition precedent for the exercise of power did exist.

16. Thus in petitions referred to in para 3 of this order the person found to be in possession is not an assessee. The persons claiming to be owner have yet to prove their ownership. The assessing authority at Mathura has not commented upon this. Even the Court of Second Additional Chief Judicial Magistrate chose to hand over the ornaments on sapurdgi. Nirbay Kumar has disclaimed ownership. The persons who have claimed ownership have not so far been declared owners. As such the apprehension of the officer who issued the warrant could not be said

to be ill founded.

17. Again in the two writ petitions dealing with currency worth Rs. 4,65,000, the position is no different. The only difference is that assessment has since been completed. The source of money has been explained. As such this aspect is not being commented upon.

18. In writ petition No. 1689 the assessment is complete and the liability which has been created is allegedly more than the assets which have been taken possession of.

19. In writ petition No. 1475 of 1990 the claim as to ownership is again doubtful. The story put forward with regard to loss of suitcase and later claim being made regarding ownership makes the claim of ownership doubtful.

20. Thus in all the cases on the basis of the information the opinion formed by the officer issuing the warrant cannot be said to be such opinion which falls outside the scope of sections 132(1)(c) and 132A(1)(c).

21. The argument with regard to lack of territorial jurisdiction as raised in writ petitions referred to in para 3 be examined. The person who was found in possession of the ornaments is not an assessee. Persons claiming ownership are at Mathura but they have failed to prove and sustain their plea of ownership so far. As such prima facie, it cannot be said warrant of authorisation was issued by an officer who lacked initial jurisdiction. In any case mere lack of jurisdiction would not render the warrant illegal. The only consequence of this would be that the seized property would be placed at the disposal of the authority or officer having jurisdiction. This course would now be adopted and appropriate orders would be passed in the manner indicated in the later portion of this order.

22. The effect of an order of assessment having been passed be now examined. The natural legal consequences which are to happen in these circumstances are visualised in a decision of the Supreme Court in K. Choyi Vs. Syed Abdulla Bafakky Thangal and Others, . Section 226(4) was being interpreted. It was observed:

...There can be no question of making a seizure u/s 132 of the IT Act and proceeding further under the provisions of that section, once an assessment is completed. Seizure u/s 132 relates to a pre- assessment stage. If an assessment is completed before the seizure is effected and while the assets are still in the custody of the Court, the appropriate remedy for the revenue is to make an application u/s 226(4) of the IT Act....

23. In writ petition referred to in para 4 order of assessment has been passed. The source of money has been explained. As such Warrant of Authorisation shall cease to operate with regard to cash subject-matter of the petition.

24. In W.P. 1853/1991 assessment has been completed. The ratio of the decision given in K. Choyi''s case (supra) would apply to the above case.

25. Thus I am of the view:

(i) Criminal Court had no authority to order handing over of property, i.e., jewellery or cash or to persons claiming it.

(ii) Satisfaction of the authority issuing the warrant is to be determined as per the situation existing on the date when the Warrant is issued and the requisite satisfaction satisfy the test of judicial review.

(iii) Lack of territorial jurisdiction is not fatal to the issuance of the Warrant.

(iv) Once an assessment is over the seized property is to be disposed of as per the determination made by the assessing authority.

(v) Where assessment is not complete the authority issuing the Warrant shall take further steps within the stipulated period as required u/s 132(5) of the Act.

26. Thus writ petition Nos. 1705, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, and 1719 of 1990 filed by the Union of India are allowed. The silver ornament shall be deemed to in the custody of the income tax Department (though in reality these shall remain in Government Treasury at Gwalior).

So far as writ petitions 1853 of 1991 and 1984 of 1990 are concerned, these are disposed of with a direction that further steps in terms of section 132(5) be taken and completed. Even the assessing authority at Mathura would be at liberty to proceed further. As a matter of fact it could have completed the proceedings pending before it. There was no prohibitory order in existence.

27. So far as writ petition No. 2155 of 1990 is concerned, the same is dismissed. Assessment order having been passed the custody of the cash in question is not required to be given to the officer issuing the Warrant. In writ petition No. 2063 of 1990 a direction is given to hand over the cash to the parties after clearance is given by the assessing authority that all the liabilities have been met.

28. Writ Petition No. 1689 of 1991 is dismissed. Assessing authority would be at liberty to apply the seized property to meet the demand raised by the assessing authority. So far as writ petition 1475 of 1990 is concerned, the same is disposed of with direction that officer issuing the Warrant would now complete the proceedings within the stipulated period in terms of section 132(5).

There would be no order as to costs.

