

(2008) 11 P&H CK 0024
In the Punjab And Haryana At Chandigarh

Rajinder Kumar Verma

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Income Tax Act, 1961 — Section 132

Citation : (2009) 181 TAXMAN 215

Hon'ble Judges : L.N. Mittal, J;A.K. Goel, J

Bench : Division Bench

Judgement

1. This petition seeks a direction for releasing of 10 kgs. of silver jewellery, belonging to the petitioner but seized from his adoptive father on 20-11-1979 during search u/s 132 of the Income Tax Act, 1961 (for short, "the Act").

2. Case of the petitioner is that during search at the premises of Lachhman Das Verma, adoptive father of the petitioner with whom the petitioner shared the residence and business of goldsmith, jewellery weighing 53.63 kgs. of silver was seized. The said Lachhman Das Verma admitted that out of the jewellery seized, 10 kgs. of jewellery belonged to the petitioner.

On 31-3-1982, assessment order was passed. However, the said order was set-aside and after remand, fresh assessment order dated 29-10-1999 (Annexure P-1) was passed, wherein it was, inter alia, held:

...The benefit of disclosure made by Sh. Rajinder Kumar, therefore, cannot be denied to the assessee when the findings of the search action have been collectively reported at one point. Silver jewellery found is accordingly considered further explained to the extent of 10 kgs. as covered by the disclosure of Sh. Rajinder Kumar.

3. In view of this finding, the petitioner applied for return of the said jewellery. But vide letter dated 4-4-2007 (Annexure P-7), respondent No. 3 asked the petitioner to produce succession certificate as the jewellery could be returned only to the person from whom the same was seized u/s 132B(3) of the Act.

Lachhman Das Verma had died in the year 1992.

4. Contention raised is that requirement of producing the succession certificate could not apply where a finding has already been recorded that the seized items belonged to the petitioner.

5. In the reply filed, stand taken in letter (Annexure P-7) has been reiterated.

6. We have heard learned Counsel for the parties.

7. Section 132B(3) of the Act is reproduced below:

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 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:

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 authorizations 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 Assessing Officer 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 Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the Chief Commissioner or Commissioner under

Sub-section (5) of Section 226 and the Assessing Officer or, as the case may be, the Tax Recovery Officer 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.

8. There is no dispute that the seized articles belonged to the petitioner and in fact, in the order passed by the Income Tax Officer itself, this fact has been acknowledged. Even the person from whom the said articles were seized, took the same stand.

9. In such a situation, when there is no dispute about title of the petitioner to the seized goods, provisions of Section 132B(3) of the Act cannot be applied. A procedural provision cannot defeat the substantive rights of a person. The said provision is intended to apply in case of dispute of title or absence of title and not when title of a party is undisputed.

10. Accordingly, we allow this petition and direct respondent No. 3 to return 10 kgs. of silver jewellery of the petitioner within two months from the date of receipt of a copy of this order.

11. The petition is disposed of.