(1990) 05 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1351 of 1988

Rameshwar Prasad APPELLANT

Vs

Assistant Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 14-05-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 132, 132(5)

Citation : (1990) 87 CTR 161 : (1990) 186 ITR 534 : (1991) 54 TAXMAN 94

Hon'ble Judges : B.P. Jeevan Reddy, C.J;Om Prakash, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

B.P. Jeevan Reedy, C.J.—On October 6, 1982, a raid was conducted on the premises of the petitioner u/s 132 of the Income Tax Act, 1961. Cash of Rs. 2,50,000 and jewellery worth more than Rs. 1,32,000 were seized. It appears that no summary assessment order was made u/s 132(5) of the Act within the prescribed period, but a regular order of assessment was made on March 24, 1986. According to this order of assessment, the total amount of tax, etc., payable by the petitioner came to Rs. 73,316. Thereupon, says the petitioner, cash of Rs. 95,000 and jewellery of the amount of Rs. 44,880 were retained and the balance of cash and jewellery were returned to the petitioner. Against this order of assessment, the petitioner filed an appeal and the Commissioner of Income Tax (Appeals), according to the petitioner, allowed the appeal almost in its totality. According to the petitioner, the tax payable according to the appellate order is practically nil. The petitioner says that since the appellate order was passed and it was found that the tax, etc., payable by him was almost nil, the entire cash and jewellery, still being retained by the Department, ought to have been returned to the petitioner-assessee. Reliance is placed upon the provisions of Section 132B of the Income Tax Act. When the said return was not effected, the present writ petition was riled.

2. Notice was given to the Income Tax Department and a counter-affidavit and a supplementary counter-affidavit have been filed. The main defence of the Department is Section 241 of the Act. It is brought to our notice that, against the order of the Commissioner of Income Tax (Appeals), the Department has preferred an appeal to the Income Tax Appellate Tribunal. It is stated that the prior approval of the Commissioner has also been obtained for retaining the said articles within the meaning of Section 241 of the Act.

3. Counsel for the petitioner, however, contends that Section 241 of the Act has no application to the facts and circumstances of this case.

4. We do not, however, propose to express any opinion on the applicability of Section 241 of the Act. Since the appeal before the Tribunal was preferred by the Department far back, it ought to be disposed of soon. We are of the opinion further and do hereby direct that the cash and gold jewellery, still being retained by the Department, shall be returned to the petitioner on condition that the petitioner furnishes bank guarantee in a sum of Rs. 75,000 to the satisfaction of respondent No. 2. This order shall, however, be subject to the final order that may be passed in the appeal pending before the Income Tax Appellate Tribunal.

5. The writ petition is disposed of with the above directions.

6. The Appellate Tribunal may dispose of the Department''s appeal as early as possible. A copy of this order may be given to learned counsel for the parties, on payment of usual charges, within three days.