(1994) 12 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 12836 of 1994

Subodhchandra and Co. APPELLANT

Vs

Income Tax Officer and Others RESPONDENT

Date of Decision : 30-12-1994

Acts Referred:
Constitution of India, 1950 — Article 226(2)
Income Tax Act, 1961 — Section 132, 132(5)

Citation : (1995) 125 CTR 396 : (1995) 215 ITR 95 : (1995) 80 TAXMAN 621

Hon'ble Judges : N.N. Mathur, J;M.B. Shah, J

Bench : Division Bench

Advocate : J.P. Shah, for the Appellant; M.J. Thakkore, for the Respondent

Judgement

1. Rule returnable on January 23, 1995.

2. Before any interim relief could be granted, learned counsel appearing for the parties have argued the matter at length on the question of jurisdiction. On the question of interim relief, it has been submitted by learned counsel for the petitioner that the petitioner would suffer irreparable loss in the international market if, pending hearing and disposal of this petition, the gold ornaments seized by the respondents are not released. He submitted that the purpose of seizure and inquiry would at the most be to find out whether the ornaments were purchased from undisclosed income, and if it is held that the same were purchased from undisclosed income, then the value of the said ornaments is required to be included in the income, and the assessee is required to be taxed as provided u/s 132(5) of the Income Tax Act, 1961 ("the Act"). He, therefore, submitted that, in the interest of justice and to see that the petitioner does not suffer a huge loss, the gold ornaments may be released after taking appropriate bank guarantees for the value of the gold ornaments seized.

3. This submission of learned counsel for the petitioner was opposed by Mr. M. J. Thakore, learned counsel for respondents Nos. 1 to 3, by raising the contention that this court would have no jurisdiction to entertain this petition. Hence, before

discussing the contentions raised by learned counsel for the parties, some facts of the case are required to be stated, which are as under :

This petition is filed by Subodhchandra and Co., Ahmedabad, wherein it is prayed that the order of seizure of the petitioner''s gold ornaments weighing 2,881.750 gms. as described in annexure ''C1'' be quashed and set aside: It is also prayed that the respondents be directed to return the ornaments forthwith to the petitioner. It is further prayed that pending hearing and disposal of the petition, the ornaments be handed over to the petitioner on the terms and conditions which may be laid down by this court.

4. It is the say of the petitioner that the petitioner is a partnership-firm being assessed to Income Tax for the last more than 20 years in Ahmedabad. It has also a branch office at Bombay of the same name and style and respondent No. 1, Income Tax Officer, Ahmedabad, is an Assessing Officer who has the jurisdiction to assess the income of the petitioner under the Act. It is the further say of the petitioner that the Assistant Director of Income Tax (Investigation), Madras, has seized the gold ornaments belonging to the petitioner from the custody of respondent No. 4. It is also stated that respondent No. 3, Assistant Commissioner, Bombay, is the officer who is at present in charge of the proceedings u/s 132, on the ground that respondent No. 4 is assessed to Income Tax at Bombay.

5. It is pointed out by the petitioner that the petitioner is exporting gold ornaments under what has come to be known as "Replenishment Scheme" framed by the Government of India. The petitioner is an exporter of gold ornaments of a large magnitude, by getting the same manufactured through its own paid workers at different places in India, such as Rajkot, Ahmedabad, Coimbatore, Belgaum, Hyderabad, Delhi, Calcutta. Paddhari, Morve, Bombay, etc. For manufacturing the ornaments, the petitioner-firm is required to send raw gold to different places either by post or through angadia or with some employee or deputy of the manufacturer. The petitioner is keeping absolutely fool proof and exhaustive records of the receipt and delivery of raw gold and gold ornaments, so that at any point of time, accounting of the gold received from the Government, delivery to the manufacturers, receipt back as gold ornaments, the balance remaining with the manufacturers and the balance remaining with the petitioner, can be found out.

6. It is also pointed out that one of the manufacturing establishments named Priyadarshini Jewellers is at Coimbatore. It is the say of the petitioner that one Ashit M. Shah, who is an employee of one Mulchand R. Shah, Bombay, had gone to Madras and was to come back to Bombay immediately. That fact was known to the proprietor of Priyadarshini Jewellers, who had manufactured ornaments of the petitioner. He, therefore, sent one of his staff members, Mr. Jothi, with the following ornaments to Madras :

-- Description No. of

Purity Gross weight Net weight pieces (Ct.) (Grms.) (Grms.) -- Spring chain 4 22 399.650 399.650 Necklace H. S. (23x3) 69 " 1,080.400 1,079.150 Ear rings 218 prs. 436 1,401.700 1,395.700 -- 509 22 2,881.750 2,874.500 --

7. It is stated that the said ornaments were handed over to Ashit M. Shah. When he was boarding the plane from Madras to go to Bombay, on September 30, 1994, he was intercepted and searched by the officers of the Income Tax Department, and the said gold ornaments were seized from him. When Ashit M. Shah was examined and interrogated, he informed the officers of the Income=tax Department that approximately 2,900 gms. of gold ornaments belonged to Subodhchandra and Co., Dhanji Street, Bombay, and he was carrying the said ornaments on the instruction from the proprietor of Priyadarshini Jewellers. It is to be noted that the statement of Ashit M. Shah was recorded on the spot on the date of the seizure.

8. It is also stated in the petition that from Ashit M. Shah necessary vouchers given by the firm, Priyadarshini Jewellers, were also seized. The said vouchers clearly revealed that the gold ornaments were of the petitioner. In the petition, the petitioner has further averred that after the seizure, the survey team from the Income Tax Department came to the office of the petitioner and tallied cash, raw gold and gold ornaments with the records. The copy of the report in this connection is produced at annexure F to the petition.

9. The petitioner has contended that in spite of the above clinching and clear evidence, the respondents are not handing over possession of the said gold ornaments to the petitioner, and that because of this, the petitioner who is an exporter would suffer irreparable damage in the international market, because the petitioner would not be in a position to deliver the gold ornaments within the stipulated time of contract.

10. At the time of hearing of this matter, learned counsel for the petitioner submitted that because of the clinching evidence which the petitioner is having with it, to prove that the gold ornaments belong to it, and in view of the fact that respondent No. 4 from whom the gold ornaments were seized has specifically stated before the authority at the time of seizure that the ornaments belong to the petitioner and the documentary evidence which is seized by the concerned authority, it is apparent that there was no reason to seize the said gold ornaments, and yet, for reasons best known to the authority, they have seized the gold ornaments and kept the same in their custody.

11. In the alternative, he has contended that even if the respondent-authorities are contemplating any inquiry u/s 132, at the most the value of the seized articles can be added to the income of the petitioner or of respondent No. 4 and till the said inquiry is finalised, respondents Nos. 1 to 3 be directed to hand over

possession of the said gold ornaments to the petitioner, after taking the necessary bank guarantees from the petitioner and the necessary undertaking from respondent No. 4 and the petitioner.

12. Mr. Shah, learned counsel for the petitioner, has categorically stated before the court that Ashit M. Shah, from whom the gold ornaments were seized, would file the necessary affidavit before respondent No. 2 stating that the gold ornaments in question belong to the petitioner and that he has brought the same from Madras on behalf of the petitioner. He stated that the partner of the petitioner-firm would also file an affidavit to that effect. He further submitted that even if the value of the said gold ornaments is included in the income of the petitioner or in the income of respondent No. 4, the petitioner would furnish the bank guarantee to respondent No. 3, for the amount of Rs. 13,66,000, which is the value of the gold ornaments belonging to the petitioner, as per the seizure, panchnama. He, therefore, submitted that no prejudice would be caused to the respondents if the gold ornaments are released. He pointed out that by not releasing the gold ornaments, the petitioner is likely to suffer irreparable loss of his credit in the international market, and that no purpose of the respondents would be served by keeping the gold ornaments in the strong room.

13. As against this, Mr. M. J. Thakore; learned counsel for the respondents, submitted that because the cause of action has arisen outside the territorial jurisdiction of this court,. i.e., outside Gujarat, this court would have no jurisdiction to hear and decide the petition. For this purpose, he relied upon the provisions of article 226(2) of the Constitution of India.

14. Considering the facts of the present case, the dispute between the parties and the provisions of section 132, the question of jurisdiction of this court to hear this petition is required to be decided at the stage of final hearing of this petition. Prima facie, from the provisions of article 226(2) of the Constitution, it is apparent that, notwithstanding the fact that the office of respondent No. 3 is situated at Bombay, this court would have jurisdiction to hear this petition, if the cause of action wholly ar in part arises within the territory of the State of Gujarat.

15. In the present ease, (i) the petitioner-firm is assessed to Income Tax at Ahmedabad. Therefore, considering the provisions of section 132, the petitioner''s Assessing Officer would be the Income Tax Officer at Ahmedabad; (ii) it is the say of the petitioner that the seized gold ornaments belong to it; (iii) it is the say of respondent No. 4 from whom gold ornaments were seized that the said gold ornaments belong to the petitioner; and (iv) it is not disputed that at the time of seizure of the gold ornaments from the possession of respondent No. 4, bills and other documents going to indicate that the gold ornaments belong to the petitioner, were also seized.

16. As provided under sub-section (5) of section 132, the ultimate purpose of seizure of the gold ornaments would be to include the value of the said articles in the income of the person from whom the gold ornaments were seized or of its

real owner, if the said ornaments are purchased through the undisclosed income.

17. Considering the aforesaid facts, prima facie, it appears that this court would have jurisdiction to deal with the contentions raised in this petition. However, Mr. Thakore, learned counsel appearing for the respondents Nos. 1 to 3, submitted that the gold ornaments were seized at Madras, and respondent No. 4 is assessed at Bombay. Therefore, the authority at Bombay would have the jurisdiction to decide the proceedings u/s 132 and, hence, this court. would have no jurisdiction to hear and decide this petition.

18. In our view, this contention is raised on the assumption that respondent No. 4 is the owner of the seized gold ornaments. The said presumption, as the record shows, is without any basis, because, at the initial stage, when the gold ornaments were seized, respondent No. 4 had categorically stated that the gold ornaments. weighing about 2,900 gms. were of the petitioner. From him, the necessary documents including vouchers and bills were also seized; which also reveal that about 2,900 gms. of seized gold ornaments belong to the petitioner.

19. Apart from the aforesaid facts, considering the provisions of the various sub-sections of section 132, and the facts of the present case, at the admission stage of this petition, it would not be possible to arrive at the conclusion that this court would have no jurisdiction to decide this matter. This would be clear from sub-sections (1), (4), (5), (7) and (9A) of section 132.

20. Sub-section (1) of section 132 empowers search and seizure by the "Authorised Officer" on the basis of information. Clause (c) of sub-section (1) of section 132 reads as under :

"(c) any person is in possession of any money, bullion, jewellery, or other valuable article or thing and such money, bullion, jewellery ar 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 Income Tax, then the authorised officer shall seize such bullion, jewellery, etc."

21. Sub-section (4) of section 132 further provides that the authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may there after be used in evidence in any proceeding under the Act.

22. Admittedly, in this case, when the statement of Ashit M. Shah was recorded by the authorised officer at Madras, respondent No. 4 has specifically stated that gold ornaments weighing roughly 2,900 gms. belonged to the petitioner. While seizing the gold ornaments, the relevant documents including bills indicating that the gold ornaments were of the petitioner were also seized.

23. Sub-section (5) of section 132, inter alia, provides that where any money, bullion, jewellery or other valuable article or thing is seized under sub-section (1)

or sub-section (1A), the Assessing Officer, after affording a reasonable opportunity to the person concerned of being heard and making such enquiry as may be prescribed, shall, within 120 days of the seizure, make an order, calculating the amount of tax on the income so estimated in accordance with the provisions of the Act, with interest, and retain in his custody such assets or part thereof as are, in his opinion, sufficient to satisfy the aggregate of the amounts which would be determined as per clauses (ii), (iia) and (iii) and forthwith release the remaining portion of the assets to the person from whose custody they were seized.

24. Considering the aforesaid provisions, it is apparent that the Assessing Officer is authorised to retain in his custody the seized assets or part thereof an are in his opinion sufficient to satisfy the aggregate amount of tax and interest.

25. Further, sub-section (7) of section 132 specifically provides that if the Assessing Officer is satisfied that the seized assets or any part thereof were held by such person for or on behalf of any other person, the. Assessing Officer may proceed under sub-section (5) against such other person.

26. In the present case, it is not disputed by respondent No. 3 that Ashit M. Shah has specifically stated at the time of seizure of the gold ornaments that the said gold ornaments belong to the petitioner. In such a situation, it was the duty of respondent No. 3 to consider the provisions of sub-section (7) and deal with the proceedings in accordance with the law. If respondent No. 3 had applied his mind to the aforesaid facts, then immediately he was required to proceed against the petitioner. In that case, as the petitioner is assessed to Income Tax at Ahmedabad, this court would have jurisdiction to entertain this petition wherein the petitioner has challenged the seizure of the gold ornaments belonging to it.

27. Further, sub-section (9A) of section 132 provides that 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 sub-section shall be handed over by the authorised officer to the Assessing 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 Assessing Officer. Considering the aforesaid provisions of section 132 and as, prima facie, it is clear -

(i) from the documents seized at the time of seizure of the gold ornaments; and

(ii) from the statement of respondent No. 4 recorded on the spot at the time of seizure;

that the seized gold ornaments belonged to the petitioner, though the same were seized at Madras, it cannot be said that this court would not have jurisdiction to entertain this petition.

28. Further even assuming that respondent No. 3 who is the Assessing Officer at

Bombay would pass an order that the value of the said gold ornaments is required to be added to the income of the petitioner or of respondent No. 4, then also the interests of the Revenue would be fully protected, if the petitioner is directed to furnish bank guarantee for the value of the said articles to respondent No. 3.

29. Hence, pending hearing and disposal of the petition, the respondent-authorities are directed to release the gold ornaments weighing 2,881.750 gms. as described in annexure ''C-1'' to the petition and hand over the same to the petitioner, within seven days from the receipt of the bank guarantee, affidavits and undertaking as stated below :

(A) The petitioner shall furnish a bank guarantee for the value of the seized gold ornaments, i.e., Rs. 13,66,000 to respondent No. 3 with a condition that the said bank guarantee would be encashable by respondent No. 1 or respondent No. 3, if respondent No. 1 or respondent No. 3 arrives at the conclusion that the seized gold ornaments were purchased by either the petitioner or respondent No. 4 with the aid of undisclosed income;

(B) The petitioner shall file necessary undertaking before this court as well as before respondent No. 3 to the effect that the petitioner would pay Income Tax, if required to be paid on the value of the said gold ornaments, if it is added to the income of the petitioner or respondent No. 4; and

(C) The petitioner and respondent No. 4 shall file affidavits before respondent No. 3 stating that the seized gold ornaments belong to the petitioner:

Learned counsel for the petitioner states that the petitioner and respondent No. 4 would file affidavits before respondent No. 3 on or before January 3, 1995, stating that the seized gold ornaments belong to the petitioner.

30. Mr. Thakore, learned counsel, submits that the operation of the impugned order be stayed for a period of ten days. However, considering the fact that the interests of the Revenue is fully protected by the bank guarantee encashable by the respondent-authorities, this request is rejected.

