(2019) 04 MP CK 0066

In the Madhya Pradesh High Court

Case No : Writ Petition No. 23680 Of 2018

Sumedha Dutta & Another APPELLANT

Vs

Union Of India & Another RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Income Tax Rules, 1962 — Rule 112(1)
Income Tax Act, 1961 — Section 132

Citation : (2019) 04 MP CK 0066

Hon'ble Judges : S.C. Sharma, J;S.K. Awasthi, J

Bench : Division Bench

Advocate : Vivek Dalal, Veena Mandlik

Final Decision : Dismissed

Judgement

1. The petitioners before this Court have filed this present petition being aggrieved by the order dated 27.07.2017 passed by the Deputy Director, Income Tax Department, Indore. The petitioners' contention is that a search and seizure operation was carried out by respondent No.5 in violation of Section 132 of the Income Tax Act, 1961.

2. It has been stated that there was no warrant of authorization in the name of the petitioners nor there was any reason to believe that undisclosed income was maintained or kept in the locker of petitioners No.1 and 2, which was seized by respondent No.5.

3. The petitioners have also stated that the entire search and seizure operation was contrary to the law laid down by Hon'ble the Apex Court in the case of ITO v/s Lakhmani Mewal Das reported in 1976 (103) ITR 437. Petitioners No.1 and 2 both are the income tax assessee and they have enclosed the search warrant which is subject matter of the petition. The petitioners have prayed for following reliefs:-

(A) Issue a writ in nature of mandamus / certiorari quashing or setting aside the search and seizure operation dated 27.07.2017 against the petitioners.

(B) Issue a writ in nature of mandamus / certiorari directing the absolute release of jewellery seized from the account / locker of petitioners No.1 and 2 seized during the search.

(C) Award compensation in favour of the petitioners in the form of interest at the rate of 8% per annum against the respondents for retaining the seized jewellery illegally.

(D) Such other relief / reliefs this Hon'ble Court deems fit.

4. A reply has been filed on behalf of the respondent / Income Tax Department and it has been stated that the income tax authority has followed the procedure for conducting search and seizure action as per the Income Tax Act, 1961, and accordingly, the warrant for search and seizure under Section 132 of the Income Tax Act, 1961 was issued by the competent authority for conducting the search at the premises situated at 94/1 Chandralok Colony, Indore where Shri Kovid Dutta resides with his parents.

5. It has been further stated that as per the return of income tax of Shri Kovid Dutta, his company address is Indore, however, as per bank details available on record, he has given address as Allahabad Bank Embassy Tower, New Palasia, Indore. The jewellery, which is subject matter of the petition was seized during the search and seizure operation conducted in case of locker No.612 ICICI Bank, Indore which is in the name of Smt. Sumedha Dutta and Shri Sunil Dutta. A separate warrant was issued by the competent authority.

6. The respondents have further stated that search and seizure operation was carried out as per the provisions as contained under Section 132 of the Income Tax Act, 1961. The respondents have further stated that search and seizure was carried in the case of Shriji Polymer (India) Limited, Ujjain i.e. (Anand Bangur Group). M/s Betarstep, wherein Shri Kovid Dutta, son of the petitioners is one of the Director of the Company and he is closely associated with Shri Anand Bangur. Hence, on the basis of information and bank details, a discrete inquiry was conducted and the residential premises of Shri Kovid Dutta situated at 94/1 Chandralok Colony, Indore was covered under Section 132 of the Income Tax Act, 1961. A proper search warrant was issued in the matter, and thereafter, the search was carried out. A prayer has been made by the respondents for dismissal of the writ petition.

7. This Court has carefully gone through the writ petition and reply as well as the rejoinder filed by the parties. It is nobody's case that no search warrant was issued and without there being a search warrant, search was carried out. The warrant of authorization under Section 132 of the Income Tax Act, 1961 r/w Rule 112 (1) of the Income Tax Rules, 1962 is on record.

8. The premises of Shri Kovid Dutta was subjected to search and seizure and keys of two lockers were found from the premises and Shri Sunil Dutta vide

letter dated 9. 09.2017 in paragraph - 3 himself accepted that the lockers contain jewellery belonging to his son Shri Kovid Dutta also. However, the fact remains that there was proper authorization and the petitioners have not been able to make out any case for quashment of entire search and seizure operation.

9. The Hon'ble Apex Court in the case of Director General of Income Tax (Investigation) & Others v/s Spacewood Furnishers Pvt. Ltd & Others reported in 2015 (374) ITR 595 (SC) has dealt with the scope of interference by the High Court in the matter of search and seizure. The Apex Court has held that findings with regard to satisfaction touching upon sufficiency and adequacy of reasons and authenticity and acceptability of information on which satisfaction reached, is not permissible in writ jurisdiction. The scope of interference has been dealt with in depth by the Apex Court.

10. The Apex Court in the case of Dr. Pratap Singh & Another v/s Director of Enforcement & Others reported in AIR 1985 SC 989 has held that illegality, if any, does not vitiate the evidence collected during the search.

11. The Orissa High Court in the case of Aditya Narayan Mahasupakar v/s Chief Commissioner of Income Tax & Others reported in 2017 (392) ITR 131 (Orissa) was dealing with the issue of search and seizure with specific reference to warrant of authorization and it has been held that the High Court should not go into the sufficiency and insufficiency of the ground, which induce the Income Tax Officer to arrive at a conclusion to carry out search and seizure operation.

12. The scope of interference at this stage is very limited and the Income Tax Act, 1961 provides a complete mechanism, which has been followed after the search and seizure operation has been carried out. Even if it is presumed for a moment that warrant relating to search and seizure was not proper and there was some defect in it, the material collected during the search and seizure cannot be brushed aside on this count alone. The Income Tax Act, 1961 provides for a detailed procedure that has to be followed and this Court, in the present writ petition, does not find any reason to quash the entire search and seizure operation as prayed by the petitioners in the relief clause.

Accordingly, the present writ petition stands dismissed.

Certified copy, as per rules.

