(1998) 08 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 214 of 1998

Sunder Mal Kedia APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 12-08-1998

Acts Referred:

Income Tax Act, 1961 — Section 113, 132, 132(5), 132(5)(i), 132B

Citation : (1999) 2 RLW 1230 : (2000) 110 TAXMAN 166

Hon'ble Judges : Gyan Sudha Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mrs. Gyan Sudha Misra, J.—In view of section 132B(3) of the income tax Act, 1961 (''the Act''), whether the income tax authorities/respondents herein could retain the excess assets belonging to the petitioner which had been seized in course of an income tax raid and can be retained during pendency of an appeal even after the discharge of the tax liabilities of the petitioner, is a question which falls for consideration in this writ petition. The facts insofar as relevant for the purpose of determination of the question are rather simple and lie in strait-jacket, as they are not disputed.

2. A search was conducted on 18-2-1996 u/s 132 of the Act, in the residential house of the petitioner which lay in the joint occupation of his sons and himself. In course of the search, large quantity of assets were seized from the petitioner''s bed room and the seizure list was prepared which disclosed that a cash amount of Rs. 18,50,000 was seized and jewellery including gold and silver worth Rs. 5 lakhs approximately as also documents regarding the petitioner''s investments worth Rs. 71,000 were also seized. Accordingly, a notice u/s 152(2) [132(5)] under the Act was issued on 31-1-1997 which was served on the petitioner on 6-2-1997. Thereafter, returns were filed by the petitioner on 27-8-1997 and an assessment of the tax liability of the petitioner towards undisclosed income for the period of 1-4-1986 to 18-9-1996 was assessed at Rs.

29,89,151 due to which 60 per cent tax was assessed u/s 113 of the Act, and, hence, a sum of Rs. 17,93,490 was held payable by the petitioner as per the order of the Deputy Commissioner (Assessment) at Jaipur on 30-9-1997. The order in categorical terms states order was passed with the prior approval of the Commissioner, Bikaner Headquarter at Jaipur.

3. A notice of demand was, therefore, issued to the petitioner for Rs. 17,93,490 by respondent No. 4, the Deputy Commissioner, Special Range-2, Assessment, at Jaipur, in response to which notice, an application was submitted on behalf of the petitioner on 6-10-1997 before respondent No. 4 who had issued the demand notice informing him that the cash seized in the search may be appropriated and adjusted towards the tax liability of Rs. 17,93,490 out of the seized cash amount of Rs. 18,50,000 which amount was lying in the custody of the respondent in P.D. Account. The petitioner therein also requested respondent No. 3, the Commissioner, to transfer the balance amount of seized cash of Rs. 56,510 after adjusting his tax liability and thereafter release the seized ornaments of gold and silver and Indira Vikas Patra of the value of Rs. 71,000, which has not been done till date as a result of which the petitioner had to move this Court for release of his cash, ornament and document on the plea that once the petitioner discharged his tax liability which included penalty adjusted, there is no reason to allow his property under confiscation, as the authorities are statutorily bound to release the seized goods once the order of assessment is passed on 30-9-1997 and the petitioner discharged his liability.

4. The learned counsel for the petitioner has submitted that the income tax authorities/respondents were legally bound to make the adjustment, as prayed by the petitioner, out of the cash amount seized from the petitioner and according to the petitioner''s case, they have also already made such adjustment and appropriation and once they have done it, they have no justification whatsoever to retain the balance assets referred to hereinabove, as an undue retention of the petitioner''s property which the respondents had seized as a public authority, tantamounts to a breach of trust. The respondents, according to him, however, are unauthorisedly retaining the excess assets of the petitioner without any legal justification, subjecting the petitioner to further harassment by compelling him to move this Court by filing this writ petition. In support of his submission, the learned counsel has relied on several authorities reported in income tax Report.

Prima facie a sustainable case having been made out in favour of the petitioner, a show-cause notice was issued to the respondents/income tax authorities and although at the outset the respondents advocate Shri Anand Kasliwal did not object to the release of the excess assets, after deducting the petitioner''s tax liability, yet he submitted that it should be recorded as to whether the cash which was seized belonged to the petitioner or his firm and only after recording such statement on his behalf, the goods be ordered to be released since the petitioner has filed the appeal before the Tribunal disputing the correctness of the assessment order dated 30-9-1997 passed by the Deputy Commissioner, respondent No. 4. According to the learned counsel for the respondents, this is a cause weighty enough, not to release the excess assets of the petitioner since the petitioner has not come out with a clear and specific case as to whether the seized cash belonged to him or the firm. in this regard the respondents have urged that the petitioner has not come out with clear stand that the entire assets seized from his bed-room belonged to him exclusively and none-else although in course of the assessment proceedings the petitioner did not raise the plea of cash belonging to the firm, but the aforesaid plea has been taken by him in the appeal. It has been further averred by respondents Nos. 3 and 4 that although they were in the process of releasing the petitioner''s excess assets seized, they suddenly came across a ground taken in the appeal preferred by the petitioner before the Tribunal that the assets did not belong to him but to the firm and, hence, was justified in retaining his cash and other assets even though he has discharged his liabilities towards arrears of tax.

From the averments of the respondents it is quite evident that the respondents have attempted to justify their action of not releasing the excess assets of the petitioner, as they want to elicit a categorical stand from the petitioner regarding the confiscated goods and cash in order to confront him in the appeal and, therefore, it is clearly apparent that the goods have not been released as a pressure tactics on the petitioner so that he may give up his stand in the appeal.

5. The respondent authorities, however, seem to have completely missed that once an assessment order had been passed determining the liability of the petitioner, they were legally and statutorily bound to release the seized goods in excess of his liability towards payment of tax in terms of the mandatory direction given out u/s 132B itself and if the petitioner had shifted his stand regarding ownership of seized articles in his memo of appeal pending before the Tribunal, he can be duly and legally confronted by the income tax authorities objecting such resilience and change of his plea the benefits of which can be availed of by the income tax authorities. But, this in any view cannot be treated as a sufficient reason to retain the assets of the petitioner or to use this as a method which is clearly coercive to elicit or procure statement against himself by hook or by crook. The legal position that the income tax authorities are bound to release the goods after an assessment order is made is not under any confusion or ambiguity and there are also several pronouncements on the point that the income tax authorities are legally bound to release the goods once an assessment order is made which has been cited in support of the petitioner''s case.

I deem it appropriate to mention only two judgments, which are exactly identical to the facts and legal question involved herein. The first citation relates to the case of Anil Kumar D. Gajjar v. CIT [1996] 220 ITR 740/ 84 Taxman 85 which is a Division Bench judgment of the Gujarat High Court. In this matter the residential premises of the petitioner was searched by the income tax authorities in exercise of the powers u/s 132 and a cash amount of Rs. 51,000 was seized and although a major part of it was released after deducting the amount of tax which was liable to be paid by the petitioner therein, a part of it was not released and, hence, the petitioner had requested refund of the amount of Rs. 7,750. The respondent Commissioner thereafter, refunded the said amount but no interest was paid and the petitioner moved the High Court by filing a writ petition claiming interest. The petitioner was allowed and it was held that the petitioner was entitled to interest in accordance with the provisions of section 132B(4) read with section 243 of the Act for retention of Rs. 7,750 and he was held entitled to interest at the rate of 15 per cent on the amount which was referred from the date of fling the petitioner till the date of payment. From this an obvious inference can be drawn that retention of the amount was held illegal which justified payment of interest.

6. Another case is similar to the case of the petitioner is P.P. Kanniah Vs. Income Tax Officer, Central Circle I, Madras and Another, wherein the income tax authorities has refused to deliver the seized assets to the petitioner therein as they had retained it for the purpose of meeting the aggregate of the tax liability of the petitioner after he had disclosed income under the voluntary Disclosure of Income and Wealth Ordinance, 1975. The Collector of Central Excise, Madras, wrote to the ITO not to hand over to him the gold jewellery and diamond jewellery on the ground that the petitioner had committed an offence u/s 8(1) of the Gold (Control) Act, 1968, and a case had been registered against him due to which the jewellery was refused to be handed over to the petitioner whose property had been seized. It was held therein that section 132(5) cannot be read to mean that once the ITO passed an order under that section to the effect that he was retaining in his hands part of the seized assets or the whole thereof for the purpose of meeting the aggregate of the tax liability as estimated u/s 132(5) (i) or (ii), the property in the assets immediately passes to the ITO. The section can only mean that it will be open to the ITO to appropriate the sale proceeds of the assets against the liability of the person concerned unless it be that the entire assets are in the form of cash.

7. The true import of section 132(5) has been interpreted from time to time in a series of decision from the ratio of which it can clearly be inferred that the income tax authorities cannot retain the confiscated property once the liability of tax is discharged by deducting the amount seized and no situation justifies retention of the property after discharge of the liability whose property was seized in the raid.

8. In view of the aforesaid legal position as clearly envisaged u/s 132B I find no merit in the submission urged on behalf of the respondents that they had valid reasons to retain the amount of cash of the petitioner since the petitioner had filed an appeal where the petitioner is required to make a clear-cut statement as to whom the seized property belongs as that can very well be contested by the parties before the appropriate forum and, hence, the continuance of seizure of

the amount of the petitioner for the reasons cannot be allowed to continue as section 132(5) clearly directs release of the amount after settling the liability of the amount of tax payable by the assessee.

9. The writ petition, therefore, deserves to be allowed and, hence, the respondents are directed to release the cash amount, which has been seized during the raid as also the jewellery and Indira Vikas Patra after deducting the amount of Rs. 17,93,490 which had been assessed u/s 132. The writ petition, thus, stands allowed without costs.

