

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 21.10.2016

+ **W.P.(C) 7620/2011**

SUSHILA DEVI

.....Petitioner

Through: Sh. N.P. Sahni, Advocate

Versus

COMMISSIONER OF INCOME TAX-XII

.....Respondent

Through: Sh. Ashok. K. Manchanda, Sr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

%

1. The writ petitioner in these proceedings under Article 226 of the Constitution is aggrieved by the refusal - by the respondents i.e. the income tax authorities -to release the jewellery - approximately 319. 98 g, seized by them in the course of search proceedings under Section 132 of the Income Tax Act, 1961 (hereafter "the Act").

2. On 10th August, 2000, the income tax authorities conducted search and seizure proceedings in respect of the petitioner's husband's premises and seized several documents and other materials. On 21st March 2001 a consequential action by way of search of a locker in the Indian Overseas Bank (IOB) was conducted. The bank locker contained jewellery. That jewellery is the subject matter of these proceedings. On 18th June, 2001, the petitioner's husband requested income tax authorities to release the jewellery and stated that it belonged to his wife, i.e. the petitioner. On 24th March, 2002 and 4th April, 2002, the petitioner requested the income tax authorities for release of the jewellery stating that it belonged to her as it was her

stridhan. The petitioner stated that her daughter too owned the jewellery. It was further stated in another letter that the jewellery was needed for religious and family occasions; the petitioner relied upon the contents of guidelines issued by the Central Board of Direct Taxes to say that the retention of the jewellery was contrary to the instructions. On 29th August, 2002, the Assessing Officer (AO) completed his proceedings in respect of the petitioner's husband and demanded about ₹1.22 crores as tax towards undisclosed income. In this order the assessing authority accepted that the jewellery found in the locker actually belonged to the petitioner as she claimed.

3. The petitioner relies upon the observations in the assessment order of the AO. She renewed her request for release of the jewellery but to no avail. Eventually she even approached the Finance Minister on 30th January, 2008 requesting him to intercede in the matter. Once again, on 16th July, 2008, a request was made to the concerned Income Tax Officer for the release of jewellery. In the meanwhile, the petitioner's husband had approached the Income Tax Appellate Tribunal (ITAT)- aggrieved by the order of the AO. The ITAT set aside the assessment order and directed the AO to conclude the proceedings *de novo*.

4. On 31st December, 2009, the AO once again made an order whereby the petitioner's husband was held liable for tax evasion in respect of undisclosed income to the extent of ₹1.79 crores and the corresponding tax effect was made, through a demand. All the while the petitioner continued to request the income tax authorities for release of her jewellery. Finding the respondents' approach unrelenting she has approached the court.

5. It is argued by Mr. N.P. Sahni, learned counsel for the petitioner that the retention of her jewellery is contrary to law. Learned counsel points out that the first assessment order categorically accepted her submission – that the jewellery belonged to her and that she had right to that moveable property. In fact it was not the income tax department which was aggrieved by the order but rather the Petitioner's husband. This led to his approaching the tribunal which set aside the assessment order for the block period. The ITAT directed the AO to conduct proceedings *de novo*. In these proceedings there is not of a whisper about the jewellery or the contention that it was her property rather than that of her husband. Arguing that the continued retention of the jewellery constituted the deprivation of her property without authority of law, learned counsel highlighted that were there any demand on account of the valuation of jewellery – like in the earlier assessment, one could have understood that there were some doubts with respect to the ownership of the property. However neither the AO returned any finding on that aspect nor did the income tax authorities urge anything in that regard. In these circumstances the findings recorded earlier have not in effect been removed and should be given effect. It is contended that the petitioner has been not subjected to any assessment on the ground that she had concealed the valuation of jewellery or that the amounts were not her property.

6. The respondents' counter affidavit - and the argument of their counsel, Shri. Manchanda, is that even though the first assessment order had virtually accepted the petitioner's contention that the property belonged to her, nevertheless the fact remains that there is nothing to substantiate her claim for ownership. It is contended next that the findings in the first assessment cannot be relied upon because they were set aside and the AO was directed

to conduct proceedings *de novo*. In the circumstances in the absence of a positive finding either with respect to ownership or as to the facts that the jewellery was not concealed as undisclosed income or property of her husband, till the tax demands were satisfied, the jewellery could be validly detained.

7. The facts are undisputed, as is evident from the above factual discussion. The search of the petitioner's husband's premises and property led to a follow-up search in Ranchi; his bank locker with the IOB too was searched. This contained the jewellery in question. Concededly, the jewellery is 398 gms and of gold. The assessee relies on circulars of 1985 and 1994 to say that when such small quantities are recovered, no follow-up action is necessary and that in any case, the jewellery is her *stridhan*. The respondent counters by saying that though in the first round of litigation, the assessee's contentions were accepted, that AO's order was set aside and a fresh *de novo* proceeding led to addition of a greater quantum. It is further submitted that till tax demands are satisfied, the property can be validly retained.

8. This court is of opinion that the respondent's recalcitrance is not mere inaction; it is one of deliberate harassment. Unarguably, the first round of assessment proceedings culminated in no addition of the jewellery or its value in the hands of the petitioner's husband. The matter ought to have rested there, because the further proceedings were at the behest of the petitioner's husband who was aggrieved by the additions made (and *not aggrieved by the decision on issues in his favour*). The ITAT's decision to proceed *de novo*, nevertheless strengthened the respondents' obduracy and hardened their resolve not to release the jewellery. The *de novo* order did not

result in any addition on that aspect at all; still the respondents cling to another ingenious argument- that till the petitioners' husband's tax demands are satisfied, they can detain the jewellery.

9. The respondents' *rationale* or justification is entirely insubstantial. The petitioner says that she was married in mid 1960s and her daughters were born in 1967- she was 70 when these proceedings were started. The respondents do not deny this. In the circumstances, the further explanation that the jewellery belonged to her and represented accumulation of gifts received from family members over a period of time, and also acquired during the subsistence of her marriage is reasonable and logical. The nature of ownership of a woman's *Stridhan* is explained by the Supreme Court in its decision *Pratibha Rani vs. Suraj Kumar* 1985 (2) SCC 70 in the following terms:

“a Hindu married woman is the absolute owner of her Streedhan property and can deal with it in any manner she likes and, even if it is placed in the custody of her husband or her in-laws they would be deemed to be trustees and bound to return the same if and when demanded by her”.

In *Ashok Chaddha v Income Tax Officer* [2012] 20 taxmann.com 387 (Delhi) a Division Bench of this Court held as follows:

"After considering the aforesaid submissions we are of the view that addition made is totally arbitrary and is not founded on any cogent basis or evidence. We have to keep in mind that the assessee was married for more than 25-30 years. The jewellery in question is not very substantial. The learned counsel for the appellant/assessee is correct in her submission that it is a normal custom for woman to receive jewellery in the form of "stree dhan" or on other occasions such as birth of a child etc.

Collecting jewellery of 906.900 grams by a woman in a married life of 25-30 years is not abnormal. Furthermore, there was no valid and/or proper yardstick adopted by the Assessing Officer to treat only 400 grams as "reasonable allowance" and treat the other as "unexplained". Matter would have been different if the quantum and value of the jewellery found was substantial.

4. We are, therefore, of the opinion that the findings of the Tribunal are totally perverse and far from the realities of life. In the peculiar facts of this case we answer the question in favour of the assessee and against the revenue thereby deleting the aforesaid addition of Rs.3,87,364/-."

10. The petitioner's explanation is justified and reasonable. Like in *Ashok Chadha (supra)*, her contention that the gold jewellery was acquired through gifts made by relatives and other family members over a long period of time, is in keeping with prevailing customs and habits. The obdurate refusal of the respondents to release the jewellery constitutes deprivation of property without lawful authority and is contrary to Article 300-A of the Constitution of India. The petition has to succeed; a direction is issued to the respondents to release the jewellery within two weeks and in that regard intimate to the petitioner the time and place where she (or her representative) can receive it. The respondents shall also pay costs quantified at ₹30,000/- to the petitioner, within four weeks, directly. The writ petition is allowed in terms of these directions.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

OCTOBER 21, 2016