

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7587 of 2016

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1. Fatema Hussain Wife of Zakir Hussain, resident of 68, South Gandhi Nagar, Boring Road, P.S.- Srikrishnapuri, Patna- 800001
 2. Zakir Hussain, Son of Late Wazir Hussain Khan, resident of 68, South Gandhi Nagar, Boring Road, P.S.- Srikrishnapuri, Patna- 800001

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, North Block, New Delhi
2. Department of Income Tax, Government of India, through the Commissioner of Income Tax, Central Revenue Building, Patna
3. The Commissioner of Income Tax, Central Revenue Building, Patna
4. The Deputy Director of Income Tax (Investigation), Unit-I (3), E-2, A.R.A. Centre, Jhandewala Extension, New Delhi
5. The Income Tax Officer (Investigation), Unit-I (1), E-2, A.R.A. Centre, Jhandewala Extension, New Delhi
6. The Deputy Commissioner of Income Tax, Central Revenue Building, Patna
7. The Assistant Commissioner of Income Tax, Central Revenue Building, Patna

.... Respondent/s

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Appearance :

For the Petitioners	:	Mr. A.K. Rastogi, Advocate Mr. Suraj Samdarshi, Advocate Mr. Sushil Kr. Singh, Advocate
For the Income Tax	:	Mr. Rishi Raj Sinha, Sr. Standing Counsel Mrs. Archana Prasad, Jr. Standing Counsel

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-05-2017

Facts on record go to show that on 21.03.2014 when the



petitioners were carrying a sum of Rs.30 lacs in New Delhi purportedly having received it as certain sale proceeds, the authorities of the income tax department at New Delhi seized the amount and thereafter when the amount was not released and no action was taken for a period of about two years, this writ petition has been filed.

In the meanwhile, the petitioners were issued with summons vide Annexure-5 on 24.03.2014 and immediately on 12.05.2014 the petitioners appeared before the authority in pursuance to the said notice and it is stated that the documents and explanation with regard to the amount was submitted. Thereafter, when nothing was done, the petitioners filed this writ petition and sought for release of the amount in question.

On notice being issued the Department authorities have filed a counter affidavit and that only justification for retaining the amount is the one, contained in para 8 of the counter affidavit, which for the sake of convenience is reproduced herein under :

“8. That it is stated that the demand is pending against the assessee amounting to Rs.21,755/- for A.Y. 2002-03, Rs.62,860/- for A.Y. 2003-04 and Rs.17,111/- for A.Y. 2004-05. Further, assessment is pending for A.Y. 2015-16. The amount will be released after adjustment of due tax.”

Except for contending that the aforesaid liabilities are to be discharged by the petitioners and the assessment for the year 2015-



2016 is pending, there is no explanation from the Department for retaining the amount. Even if the entire liability as indicated for the year 2002-2003 and 2003-2004 are taken note of, it would not be beyond 85,000/- rupees. The statutory provision under the Income Tax Act of 1961 for dealing with the issue in question is under sub-section (1) to Section 132B, which provides that when an asset like the one is seized under Section 132B, the procedure for dealing with it is contained in sub-section (i) of the aforesaid Section, which reads as under :

“(i) the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958), and the Interest-tax Act, 1974 (45 of 1974), and the amount of the liability determined on completion of the assessment [under section 153A and the assessment of the year relevant to the previous year in which search is initiated or requisition is made, or the amount of liability determined on completion of the assessment under Chapter XIVB for the block period, as the case may be] (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is deemed to be in default, may be recovered out of such assets.”

On analyzing the aforesaid provision, it is clear that the amount seized under Section 132 can be utilized for the purpose of discharging the liability already determined on completion of the



assessment proceedings and if that be the position then at best the amount that could be retained for discharging the liability will only be with regard to the assessment made in this particular case for the assessment year 2002-2003, 2003-2004 and 2004-2005 as admitted by the petitioners in the rejoinder to the counter affidavit. Apart from the aforesaid, merely because assessment for the year 2015-2016 is pending, no statutory right is available to the Department to retain any amount on this count.

On going through the statutory provisions, as are detailed hereinabove, it is crystal clear that the amount seized can only be utilized for the purpose of discharge of liability with regard to tax liability already determined and not paid by the assessee and for nothing more. In this case, the Department is only entitled to retain the amount of tax determined, as contained in para 8 of the counter affidavit, i.e. the tax liability for the assessment year 2004-2005 as admitted by the petitioners. Apart from the aforesaid, no further amount can be retained by the petitioners as the provisions to sub section (3) of Section 132B clearly indicates what we have been stated hereinabove, which reads as under :

“(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.”



That being the position, we are of the considered view that with regard to the amount in question, at best the respondents can retain the amount so far as it pertains to discharge of tax liability of the petitioners for the year 2002-2003. 2003-2004 and 2004-2005, out of which according to petitioners showing for the assessment year 2002-2003 and for the year 2004-2005 certain amount has already been paid by them as is detailed in para 5 of their rejoinder along with documents Annexures 8/A and 8/B.

In view of the aforesaid, we are very clear in our mind that the amount of Rs.30 lacs retained by the Department cannot be permitted any further. They are liable to return the same after adjusting the liability for the years 2002-2003 and 2004-2005 that also after causing an enquiry with regard to the amount already paid by the petitioners as detailed in para 5 of the rejoinder. The remaining amount should be returned back to the petitioners after causing an enquiry with regard to the averments made in para 5 of the rejoinder within a period of one month from the date of receipt of a copy of this order. That apart for the amount to be released to the petitioners after such detention the respondents shall also pay interest to the petitioners as provided under sub section 4A of Section 132B to be calculated in accordance with law. The amount of interest shall be paid within a period of two months from the date the entire amount is refunded. The



amount be refunded to the petitioners within a period of 30 days from the date of presentation of a copy of this order.

With the aforesaid, the writ petition stands allowed and disposed of.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Narendra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	24.05.2017
Transmission Date	

