IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2017

CORAM

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.35234 of 2016
and
W.M.P.No.30354 of 2016

K.Inbasagaran ... Petitioner

Vs.

1. The principal Commissioner of Income-tax-6,
Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

2. The Income-Tax Officer,
Corporate Ward-6(3),
Room No.706, 7th floor, Vanaparthy Block,
121, Mahatma Gandhi Road,
Chennai 600 034.

3. M/s.Silver Shoes Pvt.Ltd.,
T-62, Anna Nagar,
Chennai-600 040.

R-3 impleaded as per order dated 20.04.2017
in WMP.No.7972/2017 in W.P.No.35234/2016. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the impugned order dated 30.06.2016 passed by the second respondent in proceedings No.PAN:AAAPI3331C/2016-17 and quash the same and consequently direct the second respondent to re-issue the refund order as per law.

For Petitioner : Mrs.R.Maheswari

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel for RR1-2

: Mrs.D.Kalaiselvi for R3

O R D E R

Heard Mrs.R.Maheswari, learned counsel for the petitioner; Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for respondents 1 and 2 and Mrs.D.Kalaiselvi, learned counsel appearing for the third respondent.

2. The petitioner is aggrieved by a proceedings issued by the second respondent dated 30.06.2016, which is a proceeding given effect to the order passed by the Commissioner of Income Tax (Appeals) in I.T.A.No.794/2006-07, dated 20.12.2012. By the said order, the second respondent refused to effect the refund in the name of M/s.Silver Shoes Pvt. Ltd., as requested by the petitioner vide letter dated 27.01.2016.

3. The reason assigned by the respondent in the impugned proceedings, for taking such stand, is that for an adjustment, which took place in the year 1996-97, when there was real demands and upon deletion in the year 2012, the assessee in the year 2016, cannot claim that the assessment in the year 1996 was wrong and the Department ought to have adjusted the very same amounts three years ahead in another company. Further, it is submitted that so far as the criminal proceedings are concerned, the Income Tax Department was not a party and there was no direction from the Courts to the Department on the issue of assessment or issue of refund. Further, the petitioner has consented to adjust the refund arising in the individual case with the arrears of M/s.Silver Shoes Limited.

4. The case has had a chequered history leading to the petitioner's conviction in a criminal case, sequel to a search conducted by the respondent department in the residential premises of the petitioner. The criminal case ended in a conviction of the petitioner by the learned Special Judge I (XI Additional Judge, City Civil Court) in Spl.C.C.No.16 of 1997, by which, the petitioner was to under go one year Rigorous Imprisonment and also to pay a sum of Rs.5,000/-, in default, to under go Rigorous Imprisonment for three months. Aggrieved by such conviction, the petitioner preferred an appeal before this Court in Crl.A.No.231 of 2000. The appeal filed by the petitioner was allowed by judgment dated 11.07.2001 and the conviction was set aside.

5. On a perusal of the judgment, it is seen that on the basis of the raid conducted by the respondent department, the Director of Vigilance and Anti corruption registered a case against the petitioner and it ultimately led to a conviction, which conviction was set aside in appeal by this Court. The prosecution challenged the acquittal of the petitioner by preferring an appeal before the Honourable Supreme Court, which was dismissed. Thus the criminal proceedings had come to an end.

6. Parallely, the petitioner had been pursuing the appeal remedy against the order of assessment for the year 1994-95 dated 29.03.1996 and the appeal was heard by the Commissioner of Income Tax (Appeals) and an order was passed on 20.12.2012. After taking note of all the factual details, the decision of this Court in Crl.A.No.231 of 2000 and the decision of the Honourable Supreme Court in Crl.A.No.480 of 2002 confirming the said judgment, the Commissioner of Income Tax (Appeals) held that neither the investigating authorities nor the Assessing Officer have brought anything on record to prove that the assets found, during the course of search proceedings, actually belonged to the assessee. Ultimately the Commissioner of Income Tax (Appeals) held that the Assessing Officer is not justified in bringing the said assets, found during the course of search proceedings, to tax in the hands of the assessee. The said order passed by the Commissioner of Income Tax (Appeals) dated 20.12.2012 has attained finality.

7. The impugned order is an order purporting to give effect to the order passed by the Commissioner of Income Tax (Appeals). The second respondent by communication dated 13.01.2016 informed the petitioner that considering the tax adjustments, the refund arises in the individual case only and accordingly, the refund will be issued in the name of the petitioner. It was further stated that in case of any deviation in the normal practice with regard to issue of refund, the petitioner was requested to specifically state in writing in whose name the eligible refund has to be issued and the reasons for the same. On receipt of the said communication, the petitioner sent a reply dated 28.01.2016 stating that he is not eligible for any refund or interest on refund and on the other hand, M/s.Silver Shoes Pvt. Ltd., is eligible for the refund after adjustment of taxes from them and interest on the balance amount due to them. Therefore, the petitioner requested to recall the letter issued to him, recall the letter issued to M/s.Silver Shoes Pvt. Limited for payment of tax dues for the assessment years 1993-94 and 1994-95 along with the interest and the assets will be used to adjust the tax dues from the company and they should be paid interest. Further, it was pointed out that the proceedings is not a quasi judiciary proceedings and the letters have been issued by the second respondent due to gross misunderstanding of the relevance of seizure magazar. The company also addressed the Commissioner vide letter dated 28.01.2016, requesting that the letter issued to the petitioner offering the return of Rs.40,88,845/- should be recalled and to recall the letter issued to the company asking them to remit the tax dues for the assessment years 1993-94 and 1994-95. After receiving these letters, the impugned order has been passed. Therefore, this Court has to test as to whether the stand taken by the second respondent in the impugned order is proper and justified.

8. The learned counsel for the Revenue while seeking to sustain the order, placed reliance on Section 132-B (3) of the Income Tax Act, which states that any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub Section 1 of 132-B are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

9. By referring to the above provision, it is submitted that search was conducted in the residence of the petitioner on 13.09.1983 and cash of Rs.30 lakhs found therein was seized as evident from the panjanama prepared on that date, copy of which was served on the petitioner and the seized cash, adjusted against income tax liability of the petitioner has reached finality several years back and the petitioner cannot now raise the issue. Thus, it is submitted that the mater having attained finality in the year 1994 itself, the petitioner cannot now take a contrary stand at present. It is submitted that the petitioner is the person from whom the cash was seized by the Income Tax Department is entitled to receive it back from the Income Tax Department. Therefore, the impugned order is fully justified.

10. The case on hand is not a classical case, as normally arises under Section 132 B (3) of the Income Tax Act. As pointed out earlier the criminal prosecution emanated from a raid conducted by the Income Tax Department and during the course of search proceedings, there was certain seizures effected. The criminal prosecution initiated by the Director of Vigilance and Anti Corruption had ended in a conviction, which order was set aside in an appeal by judgment dated 11.07.2001. While setting aside the conviction, the Court recorded certain findings, which would be very relevant for the purpose of this case, as the subject matter of the criminal case was a sequel to the search and seizure operations conducted by the Income Tax Department. In the Criminal appeal, the learned judge held that on considering the whole evidence, he was of the view that the prosecution had not proved that the appellant (Writ Petitioner) was found in possession of the assets referred to by them and the prosecution has not brought home the guilt to the petitioner beyond all reasonable doubt. The State preferred an appeal against the said order of acquittal before the Honourable Supreme Court, by which, while confirming the judgment, it was held as follows:

> "The prosecution has not been able to lead evidence to establish that some of the money could be held in the hands of the accused. In the case of joint possession it is very difficult when one of the persons accepted the entire responsibility. The wife of the accused has not been prosecuted and it is only the husband who has been charged being a public servant. In view

> of the explanation given by the husband and when it has been substantiated by the evidence of the wife, the other witnesses who have been produced on behalf of the accused coupled with the fact that the entire money has been treated in the hands of the wife and she has owned it and she has been assessed by the Income Tax Department, it will not be proper to hold the accused guilty under the Prevention of Corruption Act as his explanation appears to be plausible and justifiable. The burden is on the accused to offer plausible explanation and in the present case, he has satisfactorily explained that the whole money which has been recovered from his house does not belong to him and it belonged to his wife. Therefore, he has satisfactorily accounted for the recovery of the unaccounted money. Since the crucial question in this case was of the possession and the premises in question was jointly shared by the wife and the husband and the wife having accepted the entire recovery at her hand, it will not be proper to hold husband guilty. Therefore, in these circumstances, we are of the opinion that the view taken by the High Court appears to be justified and there are no compelling circumstances to reverse the order of acquittal. Hence, we do not find any merit in this appeal and the same is dismissed."

11. The finding rendered by the Honourable Supreme Court referred to supra is of utmost significance for considering the nature of relief in this writ petition. The Honourable Supreme Court recorded that the prosecution has not been able to lead evidence to establish that some of the money could be held in the hands of the accused (writ petitioner). Further it was held that the entire money has been treated in the hands of the wife and she owned it and she has been assessed by the Income Tax Department, it will not be proper to hold the petitioner guilty. Thus, it was held that the petitioner has satisfactorily accounted for the recovery of the unaccounted money. Further it was held that this case was of the possession and the premises in question was jointly shared by the wife and the husband and the wife having accepted the entire recovery at her hand, it will not be proper to hold husband guilty. While on this issue, it is relevant to point out that the criminal prosecution was wholly founded upon the search and seizure operation conducted by the Income Tax Department and the prosecution had examined 53 witnesses and some of them are the officials of the Income Tax Department, such as P.W.51 S.Ganapathy Iyer, who was working as Assistant Commissioner of Income Tax Chennai Circle -1 (II), who is stated to have conducted an enquiry. Therefore, the Department cannot take a stand that the findings rendered by

this Court in the Criminal Appeal and by the Honourable Supreme Court has no effect on the proceedings initiated by them under the provisions of the Income Tax Act. In fact the Commissioner of Income Tax (Appeals) while passing the order dated 20.12.2012, has rightly considered the purports and impact of the judgment of this Court in the criminal appeal as well as the Honourable Supreme Court and observed as follows:

> "In view of the above discussion and the judgment of the Hon'ble Jurisdictional High Court, as confirmed by the Supreme Court, neither the investigation authorities nor the Assessing Officer have brought anything on record to prove that the above referred assets found during the course of search proceedings actually belonged to the assessee. Further, as mentioned above, the relevant source of income was already offered tot ax in the hands of the above two companies (M/s.Silver Shoes Pvt. Ltd. And M/s.Souther Rims Pvt. Ltd) and has reached finality.
>
> In view of the above, the Assessing Officer is not justified in bringing the above mentioned assets found during the course of search proceedings, to tax in the hands of the assessee. The additions of Rs.44,91,000/- made by the Assessing Officer, for the A.Y.1994-95, are, therefore, deleted."

12. Therefore any order passed by the second respondent by way of giving effect to the order passed by the Commissioner of Income Tax (Appeals) cannot take a contrary stand by relying upon the panjanama or a seizure magazar, which are the documents, came into being at the initial stage of prosecution. Therefore, the second respondent cannot state that the observations made by the Criminal Court and the Supreme Court would not bind the proceedings and if such stand is allowed to be taken, it would amount to sitting in appeal judgment over a decision of this Court as well as the Honourable Supreme Court, apart from being not by way of implementation or giving effect to the order passed by the Commissioner of Income Tax (Appeals). Thus, the proper interpretation to be given in the facts and circumstances of the present case is by interpreting the words "from whose custody the assets were seized" as found in Section 132-B (3) of the Income Tax Act should be interpreted bearing in mind the decision of this Court in Crl.A.No.231 of 2000 and the decision of the Honourable Supreme Court in Crl.A.No.48 of 2002, which pertain to the very same assets and a clear finding has been rendered that the assets, found during the course of such proceedings, did not belong to the petitioner. Thus, the observations contained in the order passed by the second respondent, contrary to the above, has to be necessarily held to be bad in law.

13. For all the above reasons, the writ petition is allowed and the impugned order is set aside and there will be a direction to the second respondent to pass orders in favour of the third respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsm

To

1. The principal Commissioner of Income-tax-6,
   Mahatma Gandhi Road, Nungambakkam,
   Chennai 600 034.

2. The Income-Tax Officer,
   Corporate Ward-6(3),
   Room No.706, 7th floor, Vanaparthy Block,
   121, Mahatma Gandhi Road,
   Chennai 600 034.

+1cc to Ms.R.Maheshwari, Advocate SR.No.49058
+1cc to Ms.D.Kalaiselvi, Advocate SR.No.49059
+1cc to Mr.A.P.Srinivas, Advocate SR.No.49210

W.P.No.35234 of 2016

SK(CO)
GN(08/08/2017)