

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI
+ WRIT PETITION No.25470 of 2017**

% Date: 11-10-2017

#Between:

M/s. Jaya Balajee Real Media Pvt. Ltd.,
Corporate Office: H.No.8-3-224/D/I/G-113,
Madhura Nagar, Hyderabad-38,
Rep. by its Director Ramesh Tandra

... Petitioner

Vs.

\$ 1. The Prl. Commissioner of Income Tax (Central),
7th Floor, Aayakar Bhavan, Basheer Bagh,
Hyderabad-04

2. The Asst. Director of Income Tax (Inv.),
Unit-II(1), Aayakar Bhavan, Basheer Bagh,
Hyderabad-04

... Respondents

! Counsel for Petitioner: Dr. C.P. Ramaswami

Counsel for Respondents 1&2: Mr. J.V. Prasad,
Senior Standing Counsel

< Gist:

> Head Note:

? Cases referred:

1. (2008) 298 ITR 1 (SC)

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI**

WRIT PETITION No.25470 of 2017

ORDER: (per V.Ramasubramanian, J.)

The petitioner has come up with the above writ petition challenging the action of the 2nd respondent viz., the Assistant Director of Income Tax in effecting the seizure of a sum of Rs.20 Crores lying in the current account of the petitioner in Canara Bank and also seeking a direction to the 1st respondent to release an amount of Rs.5 Crores from out of the seized amount and to confer all the benefits of the scheme known as "Pradhan Mantri Garib Kalyan Yojana Scheme, 2016".

2. We have heard Dr. C.P. Ramaswami, learned counsel appearing for the petitioner and Mr. J.V. Prasad, learned Senior Standing Counsel appearing for the respondents.

3. The petitioner is a producer of feature films in Telugu and Tamil languages. According to the petitioner, he deposited a sum aggregating to Rs.40 Crores during the period from 23-12-2016 to 27-12-2016 into their current account with Canara Bank, after the Government of India notified the demonetisation of certain currencies. Thereafter, Warrants of Authorisation were issued on 30-12-2016, followed by a Prohibitory Order dated 31-12-2016 under Section 132(3) of the Income Tax Act, 1961. Searches were conducted at various places in Chennai and Hyderabad and

a sworn statement was recorded from the Director of petitioner-company on 02-01-2017 and 03-01-2017. Thereafter, a sum of Rs.22.99 Crores was ordered to be seized on 04-01-2017 followed by an order for seizure of another amount of Rs.13.98 Crores, both of which were lying in the current account of the petitioner.

4. After more than 50 days of the seizure of the aforesaid amounts, the petitioner gave a sworn statement expressing willingness to disclose an amount of Rs.20 Crores under the scheme known as “Pradhan Mantri Garib Kalyan Yojana Scheme, 2016”, hereinafter referred to as “PMGKY Scheme”. Actually the said scheme viz., PMGKY Scheme, introduced under the Taxation Laws (Second Amendment) Act, 2016 mandated two conditions to be satisfied before a declaration in Form-I could be accepted from a person willing to come under the scheme. These conditions are – (i) payment of 30% of the income disclosed under the Act towards tax, payment of 10% of the undisclosed income as penalty and payment of 33% of the tax towards surcharge and (ii) the deposit of 25% of the declared income in RBI Bonds.

5. Section 199M of the Income Tax Act, introduced by the said amendment, made it clear that a declaration filed under the scheme without payment of tax and surcharge under Section 199D or without payment of penalty under

Section 199E or without depositing 25% in RBI Bonds as per Section 199F, shall be void.

6. Since the entire amount available to the credit of the petitioner in their current account, totalling to Rs.36.97 Crores had been seized by the Department and also taken away by them, the petitioner was left with no funds to make payment under Sections 199D, 199E and 199F. Finding themselves in a fix, the petitioner came up with a writ petition in W.P.No.9262 of 2017, challenging one portion of a Circular bearing No.2/2017, dated 18-01-2017, in and by which the Board disabled a person from seeking adjustment of the cash seized by the Department and deposited into the public deposit account, towards payment of tax, surcharge and penalty under the PMGKY Scheme.

7. Pending the writ petition W.P.No.9262 of 2017, the petitioner sought an interim prayer to direct the 2nd respondent to release a sum of Rs.20 Crores – (i) for payment of tax, surcharge and penalty and (ii) for depositing 25% of the declared income in RBI Bonds, so as to enable the petitioner to file a valid declaration under the scheme.

8. The said writ petition W.P.No.9262 of 2017 came up for the first time for orders as to admission, on 16-3-2017. Since the deadline for filing a declaration under the scheme was closing on 31-3-2017, we ordered on 16-3-2017, notice returnable by one week. To the credit of the Department, the Department filed a counter affidavit on 23-3-2017 itself.

9. In the counter affidavit, the Department itself conceded that the Department has no objection to appropriate, out of the seized amount, an amount sufficient for payment of tax, surcharge and penalty under the PMGKY Scheme, which worked out to Rs.9.98 Crores. But the Department objected to the interim prayer for keeping Rs.5 Crores out of the seized amount, in RBI Bonds, in terms of Section 199F, on the ground that the same may tantamount to releasing the amount from out of the clutches of the Department.

10. After hearing the arguments on both sides, this Court passed an interim order on 23-3-2017 to the following effect:

“8. Therefore, we are of the considered view that by an act of balancing the rights of both sides, this application could be disposed of with the following directions:

1) the 2nd respondent, without prejudice to the contentions to be raised, shall keep out of the seized cash, a sum of Rs.5.00 crores in RBI Bonds, but to keep the bonds with the 2nd respondent himself in safe custody, without releasing the same to the petitioner;

2) the 2nd respondent shall issue a letter to the effect that the amount has been kept in RBI bonds to enable the petitioner to file a declaration;

3) the petitioner shall file a declaration under Section 199-C, in the form prescribed, on or before 31-3-2017;

4) the declaration so submitted shall be treated as validly made, at least insofar as the twin conditions are concerned. If there are non-compliance with any other conditions, which are not the subject matter of the writ petition, the same may have to be addressed to the petitioner.”

11. Pursuant to the said order, the Department kept in RBI Bonds, a sum of Rs.5 Crores, from out of the seized amount (representing 25% of the declared income) in terms of Section 199F of the Act. Thereafter, the petitioner filed Form-I Declaration on 28-3-2017, declaring an undisclosed income of Rs.20 Crores under the PMGKY Scheme.

12. Thereafter, the petitioner gave a letter to the respondents on 06-4-2017 to release the balance amount of Rs.5 Crores (out of the declared income of Rs.20 Crores), on the ground that there can be no claim by the Department on the said amount, as whatever had to be done with the declared income of Rs.20 Crores, had already been done. Since the claim of the petitioner for the release of an amount of Rs.5 Crores, could be understood much better in terms of numbers than in terms of prose, we shall present their contention as follows:

- (i) Amount seized from the current
account of the petitioner = Rs.36.97 Crores
- (ii) Amount that the petitioner
wanted to declare under
PMGKY Scheme, 2016 = Rs.20 Crores
- (iii) The amount of tax, penalty
and surcharge payable under
Sections 199D and 199E,
appropriated by the Department
itself towards the scheme, from
out of the seized cash = Rs.9.98 Crores
- (iv) The amount kept in RBI Bonds
in terms of Section 199F by the
Department pursuant to the
interim order of this Court = Rs.5 Crores
- (v) The amount, which the petitioner
is seeking release of = Rs.5 Crores

(Rs.20 Crores - Rs.9.98 Crores - Rs.5 Crores)

13. The request made by the petitioner in their letter dated 06-4-2017 for the release of Rs.5 Crores from out of the seized amount, was rejected by the Principal Commissioner of Income Tax, who is the 1st respondent herein, by an order dated 27-7-2017. Aggrieved by the said order of the 1st respondent dated 27-7-2017, the petitioner has come up with the above writ petition.

14. The main prayer of the petitioner in the Writ Petition comprises of three parts, viz., (a) to declare as illegal the seizure effected by the 2nd Respondent on 04.01.2017 and 05.01.2017, of the amount lying in Canara bank to the extent of Rs.20 Crores; (b) to quash the letter dated 27.07.2017 issued by the 1st respondent refusing to release an amount of Rs.5 Crores from out of the seized amount; and (c) to direct the 1st respondent to confer all consequential benefits under the PMGKY Scheme including the release of Rs.5 Crores.

15. A careful look at all the three components of the prayer made in the writ petition would show that the main object of the petitioner is to have a direction to the respondents to accept his declaration of undisclosed income of Rs.20 Crores under the PMGKY Scheme. Once this relief is granted, a sum of Rs.5 Crores representing 25% of the disclosed income would come back to the petitioner automatically as a consequence.

16. Though the first component of the prayer made in the main writ petition is to declare the seizure of cash to the tune of Rs.20 Crores as illegal, the said prayer may become redundant once the seized amount of Rs.20 Crores is treated as an income declared under the PMGKY Scheme. In fact the total amount seized from the bank accounts of the petitioner was Rs.36.97 Crores. The petitioner is not seeking a declaration that the seizure of the entire amount of Rs.36.97 Crores is illegal. The petitioner has limited his prayer only in respect of a part of the seized amount namely Rs.20 Crores, which he had declared under the PMGKY Scheme.

17. As we have pointed out earlier, all the pre-conditions to be satisfied by a person to come under the PMGKY Scheme have been satisfied by the petitioner in the following manner:

1. By the department themselves appropriating Rs.9.98 Crores out of the seized amounts towards tax, surcharge and penalty in terms of Sections 199D and 199E.
2. The department converting a sum of Rs.5 Crores into RBI bonds as required by Section 199F, pursuant to the interim orders passed in W.P.No.9262 of 2017.
3. The petitioner filing a declaration in Form-I on 28.03.2017 as stipulated by Section 199C.

18. But it must be pointed out that only the first out of the aforesaid three pre-conditions, was fulfilled by the petitioner with the consent of the department as the department had no objection to appropriate out of the seized amount, a sum of Rs.9.98 Crores towards tax, surcharge and penalty. The other two pre-conditions for accepting the petitioner under the PMGKY Scheme were satisfied by the petitioner pursuant to the interim orders passed by this court in W.P.No.9262 of 2017. Therefore the entitlement of the petitioner to come under the PMGKY Scheme in respect of the disclosed income of Rs.20 Crores, is subject to the outcome of W.P.No.9262 of 2017. When the question of entitlement of the petitioner to come under the PMGKY Scheme in respect of Rs.20 Crores has not reached finality, but is subject to the outcome of W.P.No.9262 of 2017, the petitioner is not entitled to come up with the 2nd Writ Petition.

19. As we have pointed out earlier, the second and third pre-conditions for the acceptance of the declaration of the petitioner under the PMGKY Scheme were fulfilled pursuant to the interim orders passed in W.P.No.9262 of 2017. In case the said W.P.No.9262 of 2017 is allowed eventually, the petitioner will be entitled automatically to the balance amount of Rs.5 Crores, which represents the 25% of income declared under the PMGKY Scheme.

20. Therefore the petitioner ought not to have come up with the above writ petition as rightly contended by Mr. J.V.

Prasad, learned Senior Standing Counsel for the department. But at the same time, the petitioner could have come up with a miscellaneous petition in the previous writ petition itself, for a direction to release an amount of Rs.5 Crores. After all the petitioner came up with a miscellaneous petition in the previous writ petition for the release of Rs.5 Crores for being deposited into RBI bonds, for compliance with Section 199F. Therefore, the petitioner could have come up with another miscellaneous petition in the very same writ petition.

21. However, we do not wish to dismiss this writ petition on the sole ground that the petitioner could not have converted into a fresh writ petition, what could have been filed as a miscellaneous petition in a previous writ petition. If we dismiss this writ petition on this sole ground, the petitioner can come up with a miscellaneous petition in the previous writ petition and the same will only be a multiplication. Therefore, we shall decide here and now, whether the petitioner is entitled to the reliefs prayed for.

22. As we have indicated earlier, the prayer of the petitioner in this writ petition comprises of three parts, the first part challenging the seizure of the amount to the extent of Rs.20 Crores, the second part challenging the rejection of the request for release of Rs.5 Crores, and the third part seeking a direction to release the amount of Rs.5 Crores. The first part of the prayer will lose its meaning and significance, if we grant the substantial relief of release of Rs.5 Crores to

the petitioner, since out of the sum of Rs.20, Crores declared by the petitioner under the PMGKY Scheme, a portion equivalent to 75% has already appropriated by the Government towards tax, surcharge, penalty and investment in RBI Bonds. Therefore, the only significant question that we have to address ourselves in this writ petition is, as to whether the petitioner will be entitled to release of Rs.5 Crores.

23. Before we find an answer to the above question, we should settle a small area of dispute between the petitioner and the respondents. As we have pointed out earlier, the total amount seized from the current account of the petitioner was Rs.36.97 Crores, out of which a sum of Rs.20 Crores is sought to be brought under the PMGKY Scheme. Therefore, the claim of the petitioner is that a sum of Rs.16.97 Crores is available with the department, over and above the amount of Rs.5 Crores liable to be refunded to them under the PMGKY Scheme. In other words, the claim of the petitioner is that if the amount of Rs.5 Crores forming part of the amount of Rs.20 Crores declared under the Scheme is released to them, the department will still be left with Rs.16.97 crores, to take care of any contingency that may arise in future.

24. But the department filed a counter affidavit to the rejoinder filed by the petitioner, claiming that a sum of Rs.8.61 Crores has been adjusted towards the demand in relation to the assessment year 2012-2013, leaving only a

balance of Rs.13.39 Crores, and a sum of Rs.2.95 Crores may become payable by the petitioner as per the returns filed under Section 153A, as self assessment tax. This will leave only a sum of Rs.10.44 Crores available with the department, as per the counter to the rejoinder filed by the department.

25. In other words, the claim of the petitioner is that even after releasing a sum of Rs.5 Crores forming part of the disclosed income of Rs.20 Crores, the department will be left with Rs.16.97 Crores. But according to the department, they will be left only with a sum of Rs.10.44 Crores, inclusive of the amount of Rs.5 Crores now sought to be released.

26. We do not think that we need to go into the dispute with regard to the above issues. Even if we go by the counter filed by the department to the rejoinder filed by the petitioner, the department has a surplus amount of Rs.10.44 Crores, which is twice the amount now sought by the petitioner to be released. Therefore, the department will still have a sum of Rs.5.44 Crores, which is not adjustable (1) either towards any disputes under the PMGKY Scheme; (2) or towards any other dues payable by the petitioner. Keeping this fundamental fact in mind, let us now go to the contentions raised. The refusal of the department to release the amount of Rs.5 Crores sought for by the petitioner, is on account of the fact that the seizure was effected under Section 132B of the Income Tax Act. It is stated by the respondents in their counter affidavits that after the Government of India notified demonetisation of

certain currencies, the petitioner started depositing cash into the current account and also started effecting withdrawals and diversions. A huge amount of Rs.40 Crores came to be deposited by the petitioner on two dates, viz., 23.12.2016 and 27.12.2016, forcing the department to issue a prohibitory order under Section 132(3). It is further claimed by the department that the Director of the petitioner gave a sworn statement under Section 132(4) on 02.01.2017 to disclose an income of Rs.40 Crores. But after receiving advice from seasoned (?) professionals, the petitioner sought to declare only a sum of Rs.20 Crores under the Scheme. Therefore, the contention of Mr. J.V. Prasad, learned Senior Standing Counsel for the petitioner is that in view of Section 132B, the petitioner is not entitled to the release of the amount of Rs.5 Crores, especially when the declaration under the PMGKY Scheme was made after the seizure was effected. The learned Senior Standing Counsel also drew our attention to Section 199-I, under which the amount of undisclosed income declared in accordance with Section 199C shall not be included in the total income of the declarant for any assessment year. According to the respondents, the petitioner did not file returns of income for the assessment years 2014-2015, 2015-2016 and 2016-2017. Therefore, it is contended by Mr. J.V. Prasad, learned Senior Standing Counsel that the petitioner is not entitled to the release of the aforesaid amount.

27. In response to the above contentions, it was argued by Mr. C.P. Ramaswamy learned counsel for the petitioner that as per the decision of the Supreme Court in **K.C.C Software Ltd., v. Director of Income Tax**¹, cash in bank is conceptually different from cash in hand and that it is not permissible to convert assets to cash and thereafter impound the same. More over, PMGKY Scheme does not allow all provisions of the Income Tax Act to come into play. Under Section 199N, the provisions of Chapter-XV of the Income Tax Act relating to liability in special cases and of Sections 119, 138 and 189 of the Act, so far as may be, shall apply in relation to proceedings under the Scheme as they apply in relation to proceedings under the Income Tax Act. Therefore, it is contended by Mr. C.P. Ramaswamy learned counsel for the petitioner that Section 132B would have no application.

28. But the contentions of Mr. C.P. Ramaswamy, learned counsel for the petitioner do not merit acceptance. As rightly pointed out by Mr. J.V. Prasad, learned Senior Standing Counsel for the department, demonetisation was notified on 08.11.2016. The petitioner started depositing huge amounts of cash into their current account. Within a couple of days from 23.12.2016 to 27.12.2016, the petitioner deposited an amount of nearly Rs.40 Crores. The Taxation Laws (Second Amendment) Act, 2016 was notified in Government Gazette on 15.12.2016. But the petitioner did

¹ (2008) 298 ITR 1 (SC)

not make use of the same. Therefore, the department issued warrant of authorisation on 30.12.2016, followed by a prohibitory order under Section 132(3) on 31.12.2016. A sworn statement was recorded under Section 132(4) on 02.01.2017, in and by which the petitioner agreed to disclose Rs.40 Crores under the PMGKY Scheme. A search was conducted on 04.01.2017 and the amounts lying in bank were seized on 04.01.2017 and 05.01.2017. The first writ petition was filed in March, 2017.

29. Therefore, in the timeline of events, the seizure was effected first and the petitioner's offer to come under the Scheme came later. Hence, the petitioner cannot fall back upon Section 199N to contend that the provisions of Section 132B will not apply to a case covered by Chapter IX-A.

30. Section 132B (1) deals with assets seized under Section 132 or requisitioned under Section 132A. We do not know how the amount lying in the current account of a person, on a particular day, would not constitute an asset. Let us take a hypothetical case where a person is in enjoyment of overdraft facility. The amounts withdrawn by the person under the overdraft facility will surely be shown as a liability by that person. As a corollary the amount standing to his credit in the books of accounts will also be shown as an asset.

31. The reliance placed upon the decision of the Supreme Court in *KCC Software* does not appeal to us. In

that case the contention of the assessee was that the bank accounts, which were disclosed in the regular books of account, were seized by the department and the money lying therein to the credit of the assessee were withdrawn. In other words, the Supreme Court was dealing in *KCC Software*, an amount which was accounted for in the books of accounts. In this case what was seized by the department from the petitioner's current account was unaccounted money. Therefore, the decision in *KCC Software* would have no application to the case on hand.

32. Apart from the legal arguments, the learned counsel for the petitioner also appealed for mercy on the ground that since the entire account has been dried up, the petitioner is not even in a position to pay salaries to their employees and the release of feature films was also stuck. Therefore, the learned counsel for the petitioner pleaded that even if everything goes against the petitioner, the department will be left with a surplus amount far greater than Rs.5 Crores and that therefore, the release of the same to the petitioner, while saving the petitioner from bankruptcy, would not prejudice the case of the department in any manner.

33. As we have pointed out earlier, the amount taken away from the current account of the petitioner was Rs.36.98 Crores. Out of the said amount, a sum of Rs.20 Crores has been disclosed under the PMGKY Scheme. If the declaration filed by the petitioner under Section 199C is accepted by the

department, the department will have to do two things, viz., (a) to release the amount of Rs.5 Crores; and (b) to allow the petitioner to encash the amount of Rs.5 Crores invested in RBI bonds under Section 199F. In other words if the declaration under PMGKY Scheme is accepted by the department, the petitioner will get release of Rs.5 Crores.

34. Let us take a hypothetical case where the declaration under PMGKY Scheme is rejected. Even in such a case, the petitioner may lose, may be about 70% of the total amount seized. Still the petitioner will get back 30%.

35. Though according to the petitioner the department will be left with a surplus of Rs.16.97 Crores, even after the release of Rs.5 Crores, the case of the department is that they left only with a sum of Rs.5 Crores after releasing a sum of Rs.5 Crores, after adjusting the amount payable under all heads for all these years. Therefore, we are of the considered view that the release of Rs.5 Crores will not hamper either any investigation or further proceedings on the part of the department.

36. There is also one more aspect. If the declaration under PMGKY Scheme is accepted by the department, the petitioner will not only get immediate release of Rs.5 Crores, but will get RBI bonds encashable after four years to the total value of Rs.5 Crores together with interest. The amount lying in RBI bonds, if allowed to be retained as security for any eventuality, till the conclusion of all the proceedings, the

department's interest will be more safeguarded, even if they release the amount of Rs.5 Crores.

37. Therefore, in fine, the writ petition is disposed of directing the respondents to release an amount of Rs.5 Crores to the petitioner within two weeks. The amount of Rs.5 Crores lying in RBI bonds, shall be kept by the department as security for the release of the amount hereby ordered, until the conclusion of any proceedings pending or to be initiated by the department. If the declaration under PMGKY Scheme is finally accepted, the RBI bonds may also be released to the petitioner, provided no other dues are found payable by the petitioner.

38. As a sequel, miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

V.RAMASUBRAMANIAN, J.

T.RAJANI, J.

11th October, 2017.
Ak/Js.

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**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI**

WRIT PETITION No.25470 of 2017
(per VRS, J.)



11th October, 2017.

Ak/Js.