IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.4.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1358 of 2015

1.Income Tax Officer,
City Circle IV, Chennai 6.

2.Commissioner of Income Tax,
Chennai 600 034

3.Income Tax Officer,
Ward 3(A), Kanpur ... Appellants

versus

1.Radhey Kishan Dwivedi
2.Sahuwala Flour Mills,
56, Namiah Maistry Street,
Chennai 600 081 ... Respondents

Appeal filed against the order passed by this Court dated 26.3.1998 passed in W.P.No.1378 of 1989.

W.P.No.1378 of 1989:

Petition under Article 226 of the constitution of India, praying that in the circumstances stated therein and in the affidavit file there with the High Court will be pleased to issue a Writ of Certiorarified Mandamus calling for the records relating to the order dated 26.03.1984 in proceedings No. GIR. No. 1323/S on the file of the 1st Respondent herein quash the same in so far as it relates to the petitioners cash amounting to Rs. 70000 consisting of gold weighting 783 grams and silver weighting 2.41 Kgs, and the papers relating to the petitioner and valuable and direct the 2nd Respondent to transfer the petitioner's cash and value above to the 3rd Respondent herein.

For appellants : Mrs.Hema Muralikrishnan
For Respondents : Mr.N.S.Sivakumar

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The Writ Petition filed by the first respondent challenging the order dated 26 March 1984 on the file of the Income Tax Officer, City Circle IV, Chennai, under Section 132(5) of the

I.T. Act was set aside by the learned Single Judge on the ground that in the related income tax assessment, the Income Tax Officer, Kanpur, included the valuables seized from the premises of the fourth respondent in his account and an order was passed on 31 March 1986. The order is under challenge at the instance of the Income Tax Department, primarily on the ground that except taking a contention that the cash, gold and silver articles seized by the Income Tax Officer belong to the first respondent, no evidence was produced to prove the said fact in the Writ Petition.

2. We have heard the learned counsel for the parties.

3. The Income Tax Officer completed the assessment in the case of the second respondent by including the seized amount, gold and silver articles. The order was upheld by the Appellate Authority.

4. The first respondent claimed that cash and valuables belonged to him and it was accounted in the return submitted before the Income Tax Officer, Kanpur. The contention taken by the first respondent that the assessment order dated 31 March 1986 on the file of the Income Tax Officer, Kanpur, clearly proved that cash and valuables belong to him was accepted by the writ court. Since the Writ Petition was allowed on the ground that in view of the assessment order dated 31 March 1986 on the file of the Income Tax Officer, Kanpur, the Income Tax Officer, Chennai, City Circle IV, was not correct in treating the seized gold and articles as the property of the second respondent, we directed the learned counsel for the first respondent to produce the assessment order.

5. The learned Standing counsel for the Income Tax Department, produced a copy of the assessment order dated 31 December 1985 and the order dated 1 September 1987, confirming the said order by the Commissioner, Income Tax (Appeals). The assessment was subsequently upheld by the Income Tax Appellate Tribunal, by order dated 10 July 1986.

6. The learned counsel for the first respondent pleaded his inability to produce the copy of the Assessment Order stated to have been passed by the Income Tax Officer, Kanpur.

7. The Writ Petition was allowed solely on the ground that the Income Tax Officer, Kanpur, included the cash and other articles in the account of the second respondent. There is no evidence before this Court to show that such an assessment was made. Moreover, the assessment order which is now challenged herein has already been upheld by the Appellate Authority at the instance of the second respondent. In fact, the order was upheld

even before the disposal of the Writ Petition in W.P.No.1378 of 1989. We are therefore of the view that the learned Single Judge was not correct in setting aside the order dated 26 March 1984.

8. The order dated 26 March 1998 is set aside. The Writ Petition in W.P.No.1378 of 1989 is dismissed.

9. The intra court appeal is allowed, without any liability to pay costs. Consequently, M.P.No.1 of 2015 and C.M.P.No.6816 of 2018 are closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To
1. The Income Tax Officer,
City Circle IV, Chennai 6.

2.The Commissioner of Income Tax,
Chennai 600 034

3.The Income Tax Officer,
Ward 3(A), Kanpur

+1 CC to Mrs. Hema Muralikrishnan, Advocate sr 30129.
+1 CC to Mr.N.S. Sivakumar, advocate sr 29932.

W.A.No.1358 of 2015

NA(CO)
SP(23/05/2018)