IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.326 OF 2019

Tome Hilitor Silvester De Oliveira & Ors. … Petitioners

Versus

The Union of India & Ors. …. Respondents

Mr. Parag S. Rao, Advocate for the Petitioners.

Ms. Amira Razaq, Standing Counsel for Respondent Nos.2 to 5.

Coram : R. D. Dhanuka &
Prithviraj K. Chavan, JJ.

Date : 11th April, 2019

P.C.

Heard the learned counsel for the parties at length.

2. By this petition, the Petitioners seek a writ of mandamus directing the Respondents to transfer/refund/repatriate the entire amount of Rs.20,45,76,678/- from the account of the Respondent No.2 to the respective accounts of the Petitioners.

3. The Respondents had issued a notice under Section 131 of the Income Tax Act, 1961 on 10th October, 2018, to the Petitioners. There was a search at the bungalow of the Petitioner No.1 by six officials of the Respondents on 17th October, 2018. The Respondents attached the books of account and documents of the Petitioners and took inventory of cash of Rs.39,600/- lying at the residence of Petitioner No.1. The Respondent No.5 issued an order under Section 132(3) of the Income Tax Act, 1961 against the Bank Manager of Indian Overseas Bank directing him not to remove, part with or otherwise deal with the contents of all types of accounts including saving bank account, recurring deposit account, fixed deposit accounts, current accounts etc., maintained by the Petitioner No.1, his wife and the partnership firms.

4. On 19th October, 2018, the Indian Overseas Bank informed the Petitioner No.1 about passing of the order dated 17th October, 2018 by the Respondent No.5 under Section 132(3) of the Income Tax Act, 1961. The summons was already issued to the Petitioner No.1 to submit various documents on various dates. The statement of the Petitioner No.1 has been recorded. The Respondents have transferred a sum of Rs.17,79,49,301/- from

various FDs of the Petitioners to the PD Account of Respondent No.2. This action on the part of the Respondents is impugned by the Petitioners in this petition.

5. Mr. Rao, learned counsel for the Petitioners invited our attention to the various documents annexed to the petition and also placed reliance on the judgment of Patna High Court in the case of ***Smt. Bimla Singh and another Vs Chief Commissioner of Income Tax***[1] and the judgment of the Hon'ble Supreme Court in the case of ***KCC Software Limited and others Vs Director of Income Tax (Investigation) and others***[2] and would submit that the Respondents though have attached and seized the FDs of the Petitioners, the Respondents could not have converted the amount lying in those FDs into cash and transfer such amount to the PD Account of the Respondent No.2. He submits that this action on the part of the Respondents is contrary to the principles laid down by the Supreme Court in ***KCC Software*** (supra) and the judgment of the Patna High Court in ***Smt. Bimla Singh*** (supra).

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1 1998 230 ITR 349 Patna

2(2008) 5 SCC 201

6. It is submitted by the learned counsel that though the Petitioners have agreed to invoke the provisions of Settlement Commission under Section 245-C of the Income Tax Act, 1961, the Respondents are delaying the proceedings under Section 153-A of the Income Tax Act, 1961. He submits that the amounts which are wrongly encashed by the Respondents from the FDs of the Petitioners and transferred to the PD Account of the Respondent No.2 does not carry any interest. If the Respondents succeed ultimately in the pending proceedings, the Petitioners would lose the substantial amount of interest which would have earned on the FDs of the Petitioners. He submits that the amount encashed by the Respondents from such FDs thus may be directed to be invested in the fixed deposit which would carry interest. He submits that for the period during which the amount is wrongly transferred to the PD Account of the Respondent No.2, the right of the Petitioners to claim interest be kept open.

7. Ms. Amira Razaq, the learned counsel for the Revenue on the other hand, invited our attention to the various statements made by the Petitioner No.1 in the statement recorded by the Respondents while conducting investigation under Section 132 read

with Section 131 of the Income Tax Act, 1961 and would submit that the Petitioners have made a categorical statement that the Petitioners did not have explanation to explain the source of income in so far as the amount covered by those FDs are concerned and have also agreed for adjustment of those amount towards the dues of the Petitioners, if any.

8. It is submitted by the learned counsel for the Revenue that the Respondents may ultimately have to recover the larger sum than the amount encashed from the FDs of the Petitioners.

9. The learned counsel submits that the powers exercised by the Respondents for encashment of FDs and to transfer such amount to the PD Account of Respondent No.2 are valid and legal and in compliance with Section 132(iii) of the Income Tax Act, 1961.

10. Without going into the larger issue raised by the Petitioners in this petition, a perusal of the judgment of the Hon'ble Supreme Court in the case of ***KCC Software*** (supra) indicates that the Hon'ble Supreme Court has held that it is impermissible to

convert the assets to cash and thereafter impound the same. The Hon'ble Supreme Court in the said judgment has accordingly directed that it would be in the interests of the assessee and the Revenue if the amount transferred to the PD Account of the Commissioner is kept in interest bearing fixed deposit as ultimately in the event the assessee succeeds, he would be entitled to interest as provided in the statute. The Hon'ble Supreme Court in that judgment directed that the assessment has to be completed on or before the time statutorily provided.

11. In our view, the principles laid down by the Hon'ble Supreme Court in the case of ***KCC Software*** (supra) apply to the facts of this case. We are respectfully bound by the said judgment. In our view, the judgment of the Patna High Court in the case of ***Smt. Bimla Singh*** (supra) also assists the case of the Petitioners. In so far as the effect of the statement made by the Petitioner No.1 before the Authority under Section 132 read with Section 131 of the Income Tax Act, 1961 is concerned, the evidentiary value of such statement can be considered by the Respondents at the appropriate stage. We accordingly direct the Respondents to invest the amount

realised from those FDs and transferred to the PD Account of the Respondent No.2, in a fixed deposit of a Nationalized bank initially for a period of one year and for like period after obtaining further orders from this Court.

12. The statement made by the learned counsel for the Petitioners that the Petitioners would invoke the provisions of Section 245-C of the Income Tax Act, 1961, after the proceedings are initiated under Section 153-A of the Income Tax Act, 1961 is accepted. It is made clear that if it is found that the amount encashed by the Respondents from the FDs are more than the tax liability of the Petitioners, the right of the Petitioners would be in accordance with the provisions of law including the provisions under the Income Tax Act, 1961. The amount shall be transferred to the fixed deposit within two weeks from the date of communication of this order. The amount which is directed to be invested by the Respondents in a fixed deposit, such fixed deposit shall be in the name of the concerned Respondent and shall not be encashed without leave of this Court.

13. The writ petition is disposed of on the aforesaid terms. No order as to costs.

14. All parties to act on the authenticated copy of this order.

Prithviraj K. Chavan, J. ***R. D. Dhanuka, J.***

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