IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.23989 of 2018

Padam J.Challani ... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Central Circle 3(4),
New No.46, Mahatma Gandhi Road,
Chennai - 600034. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondent to forthwith release the Jewellery which were seized during the course of search and recorded in Panchanama dated 19th April, 2012 to the petitioner.

For Petitioner : Mr.K.Ravi
For Respondent : Mr.A.P. Srinivas
Senior Standing Counsel

O R D E R

This writ petition is filed for a Mandamus directing the respondent to forthwith release the Jewellery which were seized during the course of search and recorded in Panchanama dated 19th April, 2012 to the petitioner.

2. The case of the petitioner in short is as follows :-

He is an assessee on the file of the respondent. Search operation under Section 132A of the Income Tax Act, 1961 was conducted in his premises on 19.04.2012 and completed on 13.06.2012. Gold, diamond jewellery and ornaments were seized on 19.04.2012. Panchanama was prepared on 19.04.2012. Consequent to the search, assessments were made under Section 153A read with Section 143(3) of the Income Tax Act, 1961, making an addition based on seized jewellery. As a result of appeals filed by the petitioner before the Income Tax Appellate Tribunal, the assessments were set aside and restored to the file of the Assessing Officer for re-adjudication afresh. The order of the Tribunal was put to challenge by the Revenue before this Court in T.C.A.Nos.158 to 163 of 2017 and it is stated that subsequently, those appeals were withdrawn by the Revenue on the ground that the low tax effect is involved in this case. Accordingly, those appeals were dismissed on the ground of low tax effect, by order dated

07.06.2019. The petitioner made a request on 13.11.2017 and again on 28.11.2017 for return of the jewels. The Assessing Officer issued a notice under Section 142(1) of the Income Tax Act, 1961 dated 09.02.2018. The respondent Assessing Officer passed orders of assessment for the Assessment Years 2007-08 to 2012-13, in pursuant to the remand made by the Tribunal, on 29.06.2018. For the Assessment Year 2007-08, a notice of demand under Section 156 of the Income Tax Act, 1961 dated 29.06.2018 was issued for Rs.4,85,735/-, without considering self-assessment tax paid under Section 140A on 18.06.2008 by Challan serial No.00003 for an amount of Rs.2,52,297/-. The petitioner through letter dated 12.07.2018 informed that if credit is given for the said tax payment, there shall be no further demand for the said Assessment Year. For the Assessment Year 2009-10, a notice of demand under Section 156 of the Income Tax Act, 1961 dated 29.06.2018 was issued for Rs.1,46,440/- which was paid subsequently through internet banking on 25.07.2018. For the Assessment Year 2012-13, a notice of demand under Section 156 of the Income Tax Act, 1961 dated 29.06.2018 was issued for Rs.75 which was paid subsequently on 30.07.2018.

3. A counter affidavit is filed by the respondent, wherein, it is stated that pending demand against the petitioner for the Assessment Year 2009-10 is Rs.1,46,440/-. It is specifically stated in the counter in respect of other Assessment Years viz., 2007-08, 2008-09, 2010-11, 2011-12 and 2012-13, the demand is NIL. It is further stated that the Assessment Year 2013-14 is pending for completion.

4. When the matter was taken up for hearing on 21.10.2019, it is submitted by the learned counsel for the petitioner that the amount of tax referable to the Assessment Year 2009-10 viz., Rs.1,46,440/- has already been paid and therefore, as on date there is no tax due from the petitioner. Therefore, this Court, directed the learned counsel for the respondent to verify, as to whether any tax due is pending from the petitioner, as it is stated by him that already a sum of Rs.1,46,440/- has been paid. Accordingly, the matter is listed today for further hearing.

5. Mr.A.P.Srinivas, learned counsel appearing for the respondent produced the communication dated 30.10.2019 issued by the Deputy Commissioner of Income Tax, Central Circle to the standing counsel informing that the petitioner has settled his tax due of Rs.1,46,440/- for the Assessment Year 2009-10 vide Challan dated 25.07.2018. After saying so, the learned counsel submitted that even though, as on date, there is no tax due from the petitioner, since the assessment proceedings is pending in respect of Assessment Year 2013-14, the assets retained by th Revenue need not be returned to the petitioner by applying Section 132B of the Income Tax Act.

6. Heard both sides and perused the materials placed before this Court.

7. The point for consideration in this writ petition is as to whether the petitioner is entitled for issue of Mandamus, as sought for in this writ petition. From the above stated facts and circumstances, it is evident that as on date, there is no tax arrears payable by the petitioner. However, the revenue seeks to rely upon Section 132B for retaining the seized assets.

8. Perusal of Section 132B indicates that the same is applicable only in the case where an amount of any existing liability is arrived by the Revenue. It is also to be noted that sub-section (i) of Section 132B(1) also reads that such existing liability can be derived only on completion of the assessment under Section 153A.

9. In this case, it is an admitted fact that the assessment has not been completed in respect of Assessment Year 2013-14. Therefore, in my considered view the Revenue is not justified in relying upon Section 132B to retain the asset, when admittedly, as on date there are no arrears of tax due from the petitioner and that the assessment for 2013-14 is not yet completed and the liability is arrived. In such view of the matter, this Court finds that the petitioner is entitled for return of the jewels retained by the Revenue. Accordingly, this writ petition is allowed and the respondent is directed to return the jewellery, which were seized from the petitioner under the Panchanama dated 19.04.2012. Such exercise shall be done by the respondent within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(Insp Cell)

//True Copy//

Sub Assistant Registrar

sni

To

The Assistant Commissioner of Income Tax,
Central Circle 3(4),
New No.46, Mahatma Gandhi Road,
Chennai - 600034.

+1cc to Mr.K.Ravi, Advocate, S.R.No. 91446
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No. 91194

W.P.No.23989 of 2018

EV(CO)
GN(05/12/2019)