IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	07.02.2020
Pronounced On	12.02.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.24261 of 2017
and
W.M.P.No.9645 of 2019

1.Lalithaa Jewellery Mart (P) Ltd.,
Rep. by its General Manager / Authorised Signatory
Mr.Indermal Ramani,
123, Usman Road, Panagal Park,
T. Nagar, Chennai - 600 017.

2.BB Jewellers & Manufacturers,
Rep. by its Partner Mr.D.Padmanabhan,
No. 3-B, Kences, Sundar Flat, No.15/21,
Raghaviah Road, T.Nagar, Chennai - 600 017.

3.Chakraborty Jewellers,
Rep. by its Partner, Mr. Goutam Chakraborty,
No.16, Gopalchandra Bose Lane,
Kolkata - 700 050.

4.Goutam Chakraborty ... Petitioners

Vs.

1.Deputy Director of Income Tax (Investigation),
Unit - 3 (2), No. 108,
Nungambakkam High Road,
Chennai - 600 034.

2.Deputy Director of Income Tax (Investigation),
Unit - 1(3), Aayakar Bhawan Annexe,
P-13, Chowringhee Square,
Kolkata - 700 069.

3.The Income Tax Officer,
Central Circle - I (4),
Office of the Income Tax Department,
Ayakar Bhavan, M.G.Road,
Nungambakkam, Chennai - 600 034.

4.Mohanlal Jewellers (P) Ltd.,
Rep. by its Director Suresh Kumar Khatri,
No.139-141 (Old # 68-69),
N.S.C. Bose Road, Chennai - 600 001.

5.The Assistant Commissioner of
Income Tax,
Office of the Assistant Commissioner
of Income Tax,
ACIT / DCIT, Circle - 44, Kolkatta.

(R5 impleaded as per order dated 01.10.2019 in W.M.P.No.4596 of 2019)

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the purported search and seizer proceedings Warrant No.8609, dated 1st July 2016 and all purported proceedings initiated thereunder and/or relating thereto and/or in pursuance thereof and quash the same including the proceedings of the Office of the Assistant Commissioner of Income Tax, dated 31.12.2018 ACIT/DCIT/Circle-44, Kolkatta passed in Order No.ITBA/AST/S/143(3)/2018-19/1014678722(1) for the Assessment Year 2017-18 in the name 4th petitioner and quash the same in so far as it relates to the Bullion and Jewellery seized vide Panchanama 01.07.2016 by the 2nd respondent and consequently direct the 2nd respondent to release the gold bullion and jewellery seized vide Panchanama dated 01.07.2016 by the 2nd respondent to the custody of the 1st petitioner and also to pay interest in accordance with Section 132B of the Income Tax Act, 1961.

For Petitioners : Mr.N.Murali Kumaran for M/s.Mcgan Law Firm.

For R1 to R3 & R5 : Mr.A.P.Srinivas
Special Government Pleader
for R.Venkatraman, Sr.Counsel

For R4 : Mr.A.Sivakumar

O R D E R

Originally the present writ petition was filed for the following relief:-

> To call for the records pertaining to the purported search and seizure proceedings WARRANT No.8609 dated 1st July, 2016 and all the purported proceedings initiated thereunder and/or relating thereto and/or in pursuance thereof and quash the same and consequently direct the 2nd respondent to release the gold bullion and jewellery seized vide Panchanama dated 01.07.2016 by the 2nd respondent to the custody of the 1st petitioner and also to pay interest in accordance with Section 132B of the Income Tax Act, 1961.

2.Since the 5th respondent proceeded to pass an assessment order dated 31.12.2018 against the 4th petitioner during the pendency of the present Writ Petition, the petitioners amended the prayer in the above writ petition for the following relief after impleading the 5th respondent:-

> To call for the records pertaining to the purported search and seizer proceedings Warrant No.8609, dated 1st July 2016 and all purported proceedings initiated thereunder and/or relating thereto and/or in pursuance thereof and quash the same including the proceedings of the Office of the Assistant Commissioner of Income Tax, dated 31.12.2018 ACIT/DCIT/Circle-44, Kolkatta passed in Order No.ITBA/AST/S/143(3)/2018-19/1014678722(1) for the Assessment Year 2017-18 in the name 4th petitioner and quash the same in so far as it relates to the Bullion and Jewellery seized vide Panchanama 01.07.2016 by the 2nd respondent and consequently direct the 2nd respondent to release the gold bullion and jewellery seized vide Panchanama dated 01.07.2016 by the 2nd respondent to the custody of the 1st petitioner and also to pay interest in accordance with Section 132B of the Income Tax Act, 1961.

Brief facts of the case as follows:-

3.About 18043.960 g of fine gold (Bullion) and about 1765.45 g of used gold ornaments ostensibly meant for manufacturing repair and polishing were seized from the custody of the 4^{th} petitioner in the early hours of 01.07.2016, at the Netaji Subash Chandra Bose International Airport, Kolkata by the officers under the 2^{nd} respondent.

4.The aforesaid seizure took place when the 4^{th} petitioner disembarked from a flight from Chennai and was about to leave the airport. It appears that on receipt of specific intelligence from the officers of the 1^{st} respondent at the Chennai Kamaraj International Airport, the officers of the 2^{nd} respondent seized the aforesaid quantity of gold from the 4^{th} petitioner.

5.The aforesaid seizure was purportedly made by the officers under the 2^{nd} respondent under Section 132 of the Income Tax Act, 1961. Statement was also recorded from the 4^{th} petitioner by the 2^{nd} respondent on 01.07.2016. The 4^{th} petitioner stated that he was a partner of the 3^{rd} petitioner and that the seized gold in question were handed over to him by the 2^{nd} petitioner for manufacturing and polishing/repair purpose and that he had carried the gold on earlier occasions also for such purpose from the 2^{nd} petitioner.

6.Based on the statement recorded from the 4^{th} petitioner, the 1^{st} respondent also issued a summons dated 01.07.2016 and called upon the principal officer of the 2^{nd} petitioner to explain the position. On the same day, the 2^{nd} petitioner also explained the background and stated that the 2^{nd} petitioner was an exclusive manufacturer of gold jewellery for the 1^{st} petitioner and that seized quantity of gold was earlier handed over to the 2^{nd} petitioner on 30.6.2016 for manufacturing of jewellery items and for repair & polishing purpose by the 1^{st} petitioner and that work was sub-contracted to the 3^{rd} petitioner represented by its partner the 4^{th} petitioner.

7.As a follow-up, a summons dated 08.07.2016 was also issued to one Indermal Ramani, the Authorised Officer of the 1^{st} petitioner to appear and give statement. On the same day, another summons was also issued to the principal officer of the 2^{nd} petitioner. Thereafter, a notice under Section 131(1A) of the Income Tax Act, 1961 was issued to the 2^{nd} petitioner. The 2^{nd} petitioner once again explained the position reiterating what was explained earlier by their reply dated 22.08.2016.

8.Meanwhile, the 1^{st} and the 2^{nd} petitioners filed a separate declaration regarding the seized gold bars and jewellery on 01.02.2017 before the 2^{nd} respondent. The 4^{th} petitioner also filed a declaration regarding the seized gold with the 2^{nd} respondent on 28.02.2017 and stated that the 4^{th} respondent had purchased about 10 Kgs of gold bars (995) on 01.06.2016 and 10 Kgs of gold bars (995) on 30.06.2016 from the Bank of Nova Scotia.

9.It was further stated that out of the aforesaid quantity, the 4th respondent had sold 9 Kgs of gold bars to the 1st petitioner on 30.06.2016 and that 10 Kgs of gold were handed over to the 1st petitioner for manufacturing purpose on 30.06.2016.

10.It was further stated that the 1st petitioner in turn contracted the 2nd petitioner to manufacture jewellery wherein in turn had handed over 18043.960 g of gold bar for manufacturing purpose and 1765.450 g of gold jewellery for repair and polishing purpose. The 3rd petitioner represented by the 4th petitioner and therefore it cannot be treated as undisclosed income of the 4th petitioner.

11.In the course of the event, notice under Section 274 read with Section 271 AAB Of the Income Tax Act, 1961 was also issued to the 4th petitioner stating that pursuant to search that was conducted the said petitioner and that he was found to have undisclosed income and therefore 4th petitioner was called for a hearing on 30.1.2019 to show cause as to why an order imposing a penalty should not be made under Section 271 AAB of the Income Tax Act, 1961.

12.On 31.12.2018 an assessment order was passed by the 5th respondent for the Assessment Year 2017-18 assessing the 4th petitioner of undisclosed income of Rs.6,41,92,737/-. The 5th respondent has extracted the statements of the petitioners and the 4th respondent to conclude that the 4th respondent had purportedly issued a invoice dated 04.07.2016 whereas part of gold in question was seized from the possession of the 4th petitioner on 01.07.2016 and therefore the sale which has taken place on 04.07.2016 could not form part of the gold seized from the 4th petitioner.

13.It is further concluded that no regular books of accounts were submitted in the links of the chain of the event from which it could be verified as to who was the original purchaser and the source of purchase. The 5th respondent has not only disbelieved the 4th petitioner’s claim but also the claim of the 1st, 2nd petitioner and 4th respondent herein.

14. The 1st respondent has concluded that the information furnished by the petitioner was inaccurate leading to concealment of income. It has been concluded that as per Section 132 (4A) of theIncome Tax Act, 1961, any books of account or other documents, money, bullion, jewellery or other valuable

articles or thing which are found in possession or control of any person in the course of search is presumed to belong to such person.

15.It has been further concluded that as per Section 292C(1) of the Income Tax Act, 1961 also there is a presumption that any books of account, other documents, money, bullion, jewellery or other valuable articles or thing found in possession or control of any person in the course of search under Section 132 or Survey under Section 133A belongs to such person.

16.Accordingly the seized gold valued at Rs.6,41,92,737/- has been added as undisclosed income of the petitioner and therefore the 4th petitioner has been asked to pay a sum of Rs.6,00,69,834/- as the tax apart other amounts.

17.It is the contention of the petitioners that the seized gold belong to the 1st petitioner in view of subsequent adjustment between 1st petitioner and 4th respondent on account of seizure of gold. An affidavit of the parties have been filed. It is further submitted that the seized gold belong to the 1st petitioner and therefore the officers of the 2nd respondent ought to have returned the seized gold to the 1st petitioner particularly in the light of the fact that it has claimed ownership over the seized good.

18.It is further submitted that the 2nd respondent had no authority under the provisions of Section 132 of the Income Tax Act, 1961 to seize bullion and jewellery as they were stock in trade of the business of the petitioners. The 2nd respondent was merely bound to make a note or inventory of such stock in trade of the business and return the jewellery items.

19.It is submitted that before the actual seizure was effected despite information recorded from both the 1st and 2nd petitioners and furnishing of details which clearly established that the seized goods were handed over by the 1st petitioner to the 2nd petitioner who in turn sub-contracted the work to the 4th petitioner and was given the seized gold for the purpose of manufacture and polish/repair only.

20.It is therefore submitted that the 2nd respondent ought not to have effected seizure and the 5th respondent ought not to have treated the seized gold as formally part of undisclosed income of the 4th petitioner. It is submitted that even if the respondents had doubts about the claim of the 1st and 2nd petitioners, the seized gold ought to have been sent to the jurisdictional Income Tax Officers at Chennai within whose jurisdiction the 1st and the 2nd petitioners are assessees and their incomes were being regularly assessed.

21.Opposing the writ petition, the learned counsel for the respondents submits that the writ petition is without jurisdiction in as much as the entire cause of action has arisen Kolkata and therefore outside the jurisdiction of this court. He therefore submits that the writ petition ought to have been dismissed in limini.

22.In this connection, the learned counsel for the 1st to 3rd and 5th respondents relied on the decision of the Supreme Court and that of this court and in the Delhi High Court the following cases:-

i. Alchemist Ltd. and Another Vs. State bank of Sikkim and Others, (2007) 11 SCC 335.
ii. Nawal Kishore Sharma Vs. Union of India and Others, (2014) 9 SCC 329.
iii. Sterling Agro Industries Ltd. Vs. Union of India, 2011 SCC OnLine Del 3162.
iv. Zeenath International Suppliers Vs. Commissioner of Customs, Visakhapatinam, 2014 SCC OnLine Mad 564.
v. Union of India and Others Vs. Adanai Exports Ltd. and Anothers, (2002) 1 SCC 567.

23.The learned counsel for the respondents further submits that the assessment order has also been passed by the 5th respondent on 31.12.2018 who is located in Kolkata and therefore the 4th petitioner has an alternate remedy before the Commissioner of Income Tax (Appeals).

24.It is further submitted that in any event, this court has no jurisdiction to quash the aforesaid impugned order of the 5th respondent even otherwise.

25.Countering these arguments learned counsel for the petitioner relies on the decision of the Supreme Court in the following cases:-

i. Rajendran Chingaravelu Vs. R.K.Mishra Additional Commissioner of Income Tax and Others, (2010) 1 SCC 457.
ii. LKS Bullion Import & Export Pvt. Ltd. Vs. Director General of Income Tax, 2012 SCC OnLine Guj 6350.
iii. Vindhya Metal Corporation and Others Vs. Commissioner of Income Tax and Others, 1983 OnLine All 998.
iv. Shri L.R. Gupta and Others Vs. Union of India and Others, 1991 SCC OnLine Del 584.
v. Commissioner of Income Tax, Allahabad and Others

Vs. M/s. Vindhya Metal Corporation and Others, (1997) 5 SCC 321.

vi. Mrs. Anita Sahai Vs. Director of Income-Tax, 2004 SCC OnLine All 1769.

vii. Mitaben R Shah Vs. Deputy Commissioner of Income Tax and Another, 2010 SCC OnLine Guj 1740.

viii. Tejram Omprakash (Huf), Indore Vs. Director of Income Tax (Investigation), 2013 SCC OnLine MP 10794.

ix. Mul Chand Malu (HUF) and 3 Others Vs. Assistant/Deputy Commissioner of Income Tax and 5 Others, 2016 SCC OnLine Gau 138.

x. Ameeta Mehra Vs. Additional Director of Income Tax (INV)-Unit and Another, 2017 SCC OnLine Del 8439.

xi. Ajit Jain Vs. Union of India and Others, 2000 SCC OnLine Del 92.

xii. Union of India Vs. Ajit Jain and Another, 2003 (260) ITR 80.

xiii. Dimondstar Exports and Others Vs. Director General of Income Tax (Investigation) and Others, 2004 SCC OnLine Bom 1255.

xiv. Sterling Agro Industries Ltd. Vs. Union of India and Others, 2011 (122) DRJ 693 (FB).

xv. Sterling Agro Industries Ltd. Vs. Union of India and Others, 2011 (124) DRJ 633 (FB).

xvi. Vishnu Security Services Vs. Regional Provident Fund Commissioner, 2012 (129) DRJ 661 (DB).

xvii. Sonu Sardar Vs. The Union of India and Another, 2016 SCC OnLine Del 6206.

xviii. M/s. Venkata Sai Ram Traders Vs. The customs, Central Excise & Service Tax Settlement Commission, 2017 SCC OnLine Mad 37515.

xix. Additional Commissioner of Income Tax Vs. S.Pichaimanickam Chettiar, 1982 SCC OnLine Mad 257.

xx. Commissioner of Income Tax Vs. Mrugesh Jaykrishna, 1999 SCC OnLine Guj 415.

xxi. Commissioner of Income Tax, Delhi Vs. Anoop Jain, 2019 SCC OnLine Del 9718,

xxii. Firm Kaura mal Bishan Dass Vs. Firm Mathra Dass Atma Ram, Ahmedabad and Others, 1959 SCC OnLine P&H 2.

xxiii. Smt. Shakuntala Devi Vs. Banwari Lal and Others, AIR 1977 ALLAHABAD 551(1).

xxiv. Ram Narain Singh Vs. Gurinder Kaur and Another, (1997) 116 PLR 1.

xxv. Arun Batra Vs. M/s. Bimla Devi and Others, 2009 SCC OnLine Del 769.

26. The Learned Counsel for the Petitioners further submits that the expression "Unexplained Money" is defined in Section

69A of the Income Tax Act, 1961. It is submitted that bullion jewellery and etc. could be deemed to be that of the 4th petitioner if only the explanation offered by the 4th petitioner was unsatisfactory. It is submitted that there is a categorical denial regarding ownership by the 4th petitioner and since these were part of stock in trade of the 1st petitioner, there is no basis to conclude that the seized gold bullion/use jewellery were that of the 4th petitioner.

27. I have considered the arguments advanced on behalf of the petitioners and the respondents and perused the records.

28. Gold bullion and jewellery were seized from the custody of the 4th petitioner on 01/07/2016. At the time of interrogation, by the officer of 2nd respondent the 4th petitioner had categorically stated that the entire consignment of gold/bullion and jewellery were handed over to him by the 2nd petitioner on 30.06.2016 for the purpose of manufacture and repair/polishing purpose.

29.The 4th petitioner has not wavered for his submission whether at the time when Panchanama was drawn or at the time of seizure or thereafter. Pursuant to the statement recorded from the 4th petitioner at the Netaji Subash Chandra Bose International Airport, Calcutta, a summons was also issued to the 2nd petitioner on the same date on 01.07.2016 by the 1st respondent.

30.The 2nd petitioner has also explained the position that it had received 18043.960 gms for manufacturing and 1765.450 gms of old gold jewellery for repair and polishing purpose from the 1st petitioner on 30.06.2016 and that these gold items were handed over to the 4th petitioner along with voucher Nos. 98 and 100 dated 30.06.2016.

31.They have also produced stock register of fine gold and gold repairs. Thereafter, summonses were issued on 08.07.2016 to the 1st and the 2nd petitioners for recording statements.

32.There is no variance between the statements of the petitioners in the proceedings. They have clearly stated that the seized gold bullion and jewellery were meant for manufacturing and repair/polishing purpose and were handed over to the 4th petitioner only for the aforesaid purpose. Thus, the official respondents can no longer rely on presumption under Section 292C of the Income Tax Act, 1961. The 5th respondent also cannot deem the seized gold as that of the 4th petitioner for the purpose of Section 69 of the Income Tax Act, 1961.

33.Therefore, the 2nd respondent was not justified in seizing the gold bullion/jewellery from the custody of the 4th petitioner on 01.07.2016. The 5th respondent was also not justified in concluding that the seized gold/jewellery was undisclosed income of the 4th petitioner in terms of Section 69A of the Income Tax Act, 1961. Only question therefore to be answered is whether this court can exercise jurisdiction and interfere with the seizure effected by the 2nd respondent at Calcutta on 01.07.2016 and quash the consequential assessment order passed by the 5th respondent holding the explanation offered by the 4th petitioner as unsatisfactory to tax as income from undisclosed source?

34.Admittedly, the 4th petitioner had carried the gold bullion and jewellery from Chennai on 30.06.2016 and seizure was effected by the officers of the 2nd respondent on 01.07.2016 based on the exchange of intelligence/tip off from the 1st respondent at Chennai.

35.The seizure effected by the 2nd respondent and the consequential assessment order dated 31.12.2018 are intertwined and have their basis from the intelligence gathered at Chennai regarding the gold being carried from Chennai to Kolkata by the 4th petitioner.

36.The 4th petitioner has adequately explained that the gold in question were carried by him for manufacturing and repair/polishing purpose for the 2nd petitioner. That should have been sufficient ground for the 2nd petitioner to send the seized gold to the 1st respondent for further investigation at Chennai. Instead, the 2nd petitioner not only seized the gold but also refused to send it to his counterparts at Chennai for further investigation.

37.In fact, summonses were also issued to the 1st and the 2nd petitioners at Chennai by the officers attached to the 1st respondent's officer. The 1st petitioner has claimed ownership/responsibility over the seized gold bullion/jewellery. Therefore, it was imperative for the 2nd respondent should have also transferred the seized gold for further investigation to his counterparts at Chennai.

38.Instead the 5th respondent has chosen to disbelieve the statements of the petitioners to conclude that the explanation given by the 4th petitioner was not satisfactory even though as per 1st proviso to Section 132(1)(c), makes it clear that bullion, jewellery or other valuable article or thing being stock in trade of the business, found as a result of search shall not be seized and the is authorised officer shall merely make a note of inventory of such stock in trade of the business.

39.Since the investigation and eventual seizure by the officers of the 2^{nd} respondent was pursuant to the tip off from the officers of the 1^{st} respondent at the Chennai Kamaraj International Airport when the 4^{th} petitioner was boarding the flight in evening to Kolkata on 30.06.2016 carrying gold, the 2^{nd} respondent ought to have seized the gold and sent it to his counterpart for further investigation.

40.Detention & seizure effected by the officers at Kolkata shows arbitrary exercise of power in as much as person claiming to be the owners of the seized gold bullion and jewellery is admittedly located within the State of Tamil Nadu at Chennai and carry on business in retail sale and manufacture of gold jewellery.

41.If the 1^{st} respondent had any doubts regarding the ownership, he should have detained the 4^{th} petitioner and effected a seizure at the Chennai Airport before the 4^{th} petitioner boarded the flight. Instead, after the 4^{th} petitioner was airborne to Kolkatta, he informed the 2^{nd} respondent. Merely because the seizure was effected at Kolkata by itself is not a sufficient ground to conclude that this court will have no jurisdiction to pass appropriate orders as the basis of the seizure itself is on account of tip off/exchange of intelligence by the officers located at the Chennai Kamaraj International Airport. The fact that ownership is claimed by persons located in Chennai, also shows that investigation should have been transferred over to the officers in Chennai by the 2^{nd} respondent.

42.Further, to exercise the power to search and seize under Section 132(1)(c) of the Income Tax Act, 1961, an officer concerned has to form a subjective opinion that gold bullion/jewellery either represents wholly or partly income or property which has not been, or would not be disclosed in the return. If the seized gold were transferred to the 1^{st} respondent, the 1^{st} respondent could have scrutinized the documents and could have came to a fair conclusion on facts. There was no basis for the 2^{nd} respondent to conclude otherwise to effect seizure from the 4^{th} petitioner. Therefore, the impugned seizure effected by the 2^{nd} respondent is quashed.

43. Further, both under Section 132(4A) and Section 292C(1), there is only a presumption. However, such presumptions are rebuttable if adequate explanations are given. Therefore, it was not proper on the part of the 2^{nd} and the 5^{th} respondents to exercise control over the seized gold articles to deny the rights of the 1^{st} and 2^{nd} petitioners under the 1^{st} proviso to Section 132 of the Income Tax Act, 1961. In P.R.Metrani Vs. Commissioner of Income Tax, Bangalore, (2007) 1 SCC 789,

wherein, it was observed that a presumption is an inference of fact drawn from other known or proved facts. It is a rule of law under which courts are authorised to draw a particular inference from a particular fact. It is of three types, (i) "may presume", (ii) "shall presume" and (iii) "conclusive proof". "May presume" leaves it to the discretion of the court to make the presumption according to the circumstances of the case. "Shall presume" leaves no option with the court not to make the presumption. The court is bound to take the fact as proved until evidence is given to disprove it. In this sense such presumption is also rebuttable. "Conclusive proof" gives an artificial probative effect by the law to certain facts. No evidence is allowed to be produced with a view to combating that effect. In this sense, this is irrebuttable presumption.

44.The Court further observed as follows:-

> 24. The words in sub-section (4-A) are "may be presumed". The presumption under sub-section (4-A), therefore, is a rebuttable presumption. The finding recorded by the High Court in the impugned judgment that the presumption under sub-section (4-A) is an irrebuttable presumption insofar as it relates to the passing of an order under sub-section (5) of Section 132 and rebuttable presumption for the purpose of framing a regular assessment is not correct. There is nothing either in Section 132 or any other provisions of the Act which could warrant such an inference or finding.
>
> 25. Presumption under sub-section (4-A) would not be available for the purpose of framing a regular assessment. There is nothing either in Section 132 or any other provision of the Act to indicate that the presumption provided under Section 132 which is a self-contained code for search and seizure and retention of books, etc. can be raised for the purposes of framing of the regular assessment as well. Wherever the legislature intended the presumption to continue, it has provided so. Reference may be made to Section 278-D of the Act which provides that where during the course of any search under Section 132, any money, bullion, jewellery or other valuable articles or things or any books of account, etc. are tendered by the prosecution in evidence against the person concerned, then the provisions of sub-section (4-A) of Section 132 shall, so far as may be, apply in relation to such assets or books of account or other

documents. This clearly spells out the intention of legislature that wherever the legislature intended to continue the presumption under sub-section (4-A) of Section 132, it has provided so. It has not been provided that the presumption available under Section 132(4-A) would be available for framing the regular assessment under Section 143 as well.

26 [Ed.: Para 26 corrected vide Official Corrigendum No. F.3/Ed.B.J./17/2007 dated 22-2-2007] . This is also evident from the fact that whereas the legislature under Section 132(4) has provided that the books of account, money, bullion, jewellery and other valuable articles or things and any statement made by such person during examination may thereafter be used as evidence in any other proceedings under the Act but has not provided so under sub-section (4-A) of Section 132. It does not provide that the presumption under Section 1324-A would be available while framing the regular assessment or for that matter under any other proceeding under the Act except under Section 378-D.

27. Section 132 being a complete code in itself cannot intrude into any other provision of the Act. Similarly, other provisions of the Act cannot interfere with the scheme or the working of Section 132 or its provisions.

28. Presumption under Section 132(4-A) is available only in regard to the proceedings for search and seizure and for the purpose of retaining the assets under Section 132(5) and their application under Section 132-B. It is not available for any other proceeding except where it is provided that the presumption under Section 132(4-A) would be available.

45.Since 3rd respondent is the jurisdictional Income Officer within whose circle the 1st and the 2nd petitioners are registered as income tax assessee, I am of the view that seized gold should be directed to be delivered to the office of Chief Commissioner of Income Tax, Chennai who may himself decide or nominate a senior officer from the department to investigate the case.

46.The 1st and the 2nd petitioners along with 3rd and 4th petitioners and the 4th respondent may thereafter file appropriate written submission together with evidence in support of this case before the Chief Commissioner of Income Tax or any other senior officer of the Income Tax Department who may be nominated by the Chief Commissioner of Income Tax, Chennai for the aforesaid purpose.

47.It is for the said officer to conclude as to whether the 1st petitioner and/or the 4th respondent or both can claim ownership over the seized gold bullion and jewellery which was seized from the 4th petitioner by the 2nd respondent on 01.07.2016.

48.If on further investigation such officer comes to a conclusion that the explanation offered by the 1st and 2nd petitioners along with the 4th petitioner and 4th respondent are unsatisfactory, appropriate steps shall be thereafter taken in accordance with law. On the other hand, if on enquiry it is concluded that the 1st petitioner or the 4th respondent are indeed the owner of the seized gold bullion and jewellery, it shall be handed over to the lawful owner or person who is entitled to it.

49.The above exercise shall be carried out within a period of three months from date of receipt of a copy of this order strictly without any deviation. The petitioners shall be given due notice of hearing before order is passed.

50.As far as impugned order dated 31.12.2018 passed by the 5th respondent is concerned, liberty is given to the 4th petitioner to take appropriate steps against the said order before the jurisdictional Appellate Commissioner within a period of thirty days from the date of receipt of a copy of this order.

51.The petition stands disposed with the above directions. No cost. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

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To

1.Deputy Director of Income Tax (Investigation),
Unit - 3 (2), No. 108,
Nungambakkam High Road,
Chennai - 600 034.

2.Deputy Director of Income Tax (Investigation),
Unit - 1(3), Aayakar Bhawan Annexe,
P-13, Chowringhee Square,
Kolkata - 700 069.

3.The Income Tax Officer,
Central Circle - I (4),
Office of the Income Tax Department,
Ayakar Bhavan, M.G.Road,
Nungambakkam, Chennai - 600 034.

4.The Assistant Commissioner of
Income Tax,
Office of the Assistant Commissioner
of Income Tax,
ACIT / DCIT, Circle - 44,
Kolkatta.

+1cc to M/s.Mcgan Law Firm, Advocate, SR.No.11612.
+1cc to Mr.A.Sivakumar, Advocate, SR.No.11611.
+1cc to Mr.A.P.Srinivas, SSC(I.T), SR.No.11342.

Order
in
W.P.No.24261 of 2017
and W.M.P.No.9645 of 2019

VSN II(CO)
CSR: 12/03/2020