**2023:BHC-NAG:16644-DB**



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**
**NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 507 OF 2021**

Sunny s/o Ratansingh Mago,
aged about 35 years, Occ. Business,
R/o Old Narsinghpur Naka,
Chhindwara (M.P.) - 480001.

**PETITIONER**

**.....VERSUS.....**

1. The Union of India,
through Ministry of Finance,
New Delhi – 110001,
through its Secretary.

2. Central Board of Direct Taxes,
through Deputy Director of Income Tax (Inv.),
Unit – II, Aaykar Bhawan,
Civil Lines, Nagpur – 440001.

3. The Reserve Bank of India,
Palm Road, Civil Lines,
Nagpur – 440001,
through its General Manager.

**RESPONDENTS**

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Shri Amit A. Choube, Counsel for the petitioner.
Shri Anand Parchure, Counsel for respondent no.2.
Shri S.N. Kumar, Counsel for respondent no.3.

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**CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.**

**ARGUMENTS WERE HEARD ON : SEPTEMBER 6, 2023**

**JUDGMENT IS PRONOUNCED ON : NOVEMBER 30, 2023**

**JUDGMENT : (PER : A.S. CHANDURKAR, J.)**

Rule. Rule made returnable forthwith and heard the learned Counsel for the parties.

2] On 17/11/2016, an amount of Rs.30,00,000/- in cash was seized by the Election Officer, Sindewahi from the vehicle owned by the petitioner. According to the said Election Officer, the Code of Conduct with regard to the elections of the Nagar Panchayat was in force and hence it was impermissible to carry cash of such value in the vehicle. A show cause notice was accordingly issued to the petitioner as to why action should not be taken for breach of the Model Code of Conduct. On intimation being given to the Income Tax Department, its authorized officer issued notice to the petitioner under Section 131 of the Income-tax Act, 1961 (for short "Act of 1961") requiring the petitioner to attend the office of the authorized officer and to produce the relevant documents in that regard. The statement of the petitioner was thereafter recorded wherein the petitioner stated that the said amount represented the income earned by him in the business of trading of steel from 1/4/2016. He stated that the said amount was not accounted in his books of accounts and he sought to offer the same for taxation as an additional income for the Financial Year 2016-17. The petitioner further stated that he would pay 30% taxes along with interest on the amount of additional income. The petitioner gave a letter to the authorized officer requesting him to adjust that amount towards advance tax. Thereafter, the Income Tax Department prepared an inventory of cash found and seized from the petitioner. It was stated that 198 pieces of currency notes of the denomination of Rs.1,000/- and 5604 pieces of currency notes of the denomination of Rs.500/- were found and seized. The petitioner thereafter on 13/9/2017 sought refund of the amount seized on 17/11/2016 by stating that since the additional income of Rs.30,00,000/- had been declared and the petitioner had also paid taxes on the said amount with interest, the amount of Rs.30,00,000/- that was seized be refunded. In the Income Tax Return for the Assessment Year 2017-18, the said amount of Rs.30,00,000/- was also indicated in his balance sheet.

3] On 20/3/2020, the petitioner received a communication from the Deputy Director of Income Tax (Inv.), Unit – II, Nagpur in which it was stated that the specified bank notes (SBNs) could not be accepted for deposit without any Court orders. It is in this backdrop that the petitioner has filed this Writ Petition praying that the amount of Rs.30,00,000/- seized by the government agencies be returned to him with interest with a further prayer that the Reserve Bank of India (RBI) be directed to accept deposit of the said currency notes that were seized from the petitioner on 17/11/2016. This is in the backdrop of the policy of demonitisation that came into force on 8/11/2016 and exchange of SBNs was permitted only till 25/11/2016.

4] According to the Income Tax Department, the amount seized under Section 132 of the Act of 1961 ought to be treated as seizure by a

Court of law in view of the provisions of sub-sections (1) and (1A) of Section 132. It was therefore obligatory on the part of the RBI to accept the said deposit which it was refusing to accept. A reference was made to the communications dated 20/6/2019, 13/9/2019 and 3/10/2019 written by the Income Tax Department to the RBI.

5] According to the RBI, in view of the provisions of the Specified Bank Notes (Cessation of Liabilities) Act, 2017 (for short "Act of 2017"), its liabilities with regard to such notes ceased on 31/12/2016 and the notes of the said denominations were no longer a legal tender. The request made by the Income Tax Authorities to deposit the SBNs of Rs.30,00,000/- with the RBI could not be accepted since it was a deposit without any specific order/direction of the Court. Since there was no specific order/direction of the Court, it was not possible to accept the contention of the petitioner or the Income Tax Authorities. Reference was also made to the communication dated 26/9/2019 in which it was clarified that the provisions of the Act of 2017 as amended merely granted exemption to the Law Enforcement Agencies for holding of such SBNs. There was no exemption for transferring, receiving or depositing such SBNs. It was thus re-iterated that in absence of any directions of the Court, the request as made could not be accepted. The RBI has sought to rely upon the orders passed by the Hon'ble Supreme Court in the case of

*Vivek Narayan Sharma v. Union of India [AIR 2017 SC 221]* and the subsequent orders passed by various High Courts in that regard.

6] In the aforesaid backdrop, we have heard the learned Counsel for the parties and we have perused the documents on record. At the outset, it would be necessary to refer to the undisputed factual position on record. An amount of Rs.30,00,000/- was seized from the petitioner's vehicle on 17/11/2016. Taking cognizance of the intimation received, the Income Tax Authorities proceeded to issue notice under Section 131 of the Act of 1961 on 8/12/2016. After completion of the necessary formalities in that regard in which the petitioner offered the amount of Rs.30,00,000/- as an additional income for the Financial Year 2016-17, the said amount of cash was sought to be requisitioned from the Sub-Treasury Office, Sindewahi, District – Chandrapur in whose possession and control the same had been kept. On 19/12/2016, the office of the Assistant Director of Income Tax (Inv.) - II issued a communication to the Collector, Chandrapur to issue directions to the District Treasury Office for handing over the seized cash to its office. The Collector issued such communication as requested on 28/12/2016. Since the cash was in demonitized currency notes of Rs.500/- and Rs.1000/-, the Branch Manager of the State Bank of India, Sindewahi refused to issue a demand draft in the name of the Principal Commissioner of Income Tax (Central), Nagpur against the said cash. Thereafter, a written request was made by the office of the Assistant Director of Income Tax (Inv.) - II to the Reserve Bank of India on 29/12/2016 for issuing such directions to the Branch Manager, State Bank of India, Sindewahi. Such instructions were issued in the evening of 29/12/2016. As the Treasury Officer was on leave on 30/12/2016, the cash could not be requisitioned on the same day and the requisition took place on the next working day which was 2/1/2017. When the seized cash was sought to be deposited, the same was refused to be accepted by the Reserve Bank of India and hence that amount could not be deposited in the PD account of the Principal Commissioner of Income Tax (Central), Nagpur. These details are reflected in the communication dated 29/8/2018 that was issued by the Assistant Director of Income Tax (Inv.) – II, Nagpur to the Deputy General Manager, Reserve Bank of India (Annexure No.7, page 72 of the Writ Petition).

The aforesaid would thus indicate that after the cash of Rs.30,00,000/- was seized on 17/11/2016, the Income Tax Authorities proceeded further and that amount was treated as an additional income of the petitioner. Thereafter, the petitioner was in no way concerned with the handling of that cash and the same after its seizure was under the control of the District Treasury Office, Chandrapur.

7] Insofar as the Assistant Director of Income Tax (Inv.) – II is concerned, it is its specific stand that the amount seized under Section 132 of the Act of 1961 ought to be treated as an order of seizure by a Court of law. In its affidavit-in-reply, it has referred to various communications entered into with the Reserve Bank of India in that regard. In this context, it would be necessary to refer to the statements made in paragraphs 4 and 8 of its affidavit dated 28/4/2021 (page 40 of the Writ Petition).

> *"1 to 3 XXXX*
> *4. It is submitted that this respondent has been writing to various authorities in order to ensure that the amount seized under section 132 of the Income Tax Act, 1961 can be treated as an order of seizure by a court of law particularly because the provision of Criminal Procedure Code (CrPC), 1973 are applicable in view of sub section 1 and 1A of 132. Similarly in terms of section 136 of the Act, proceedings before the Income Tax authorities are judicial proceedings and can be termed as such within the meaning of section 193, 228 & 196 of the Indian Penal Code and every Income Tax Authority can be treated as civil court for the purpose of the section 195. However not for the purpose of chap XXVI of the Criminal Procedure Code (CrPC), 1973.*
> *5 to 7 XXXX*
> *8. It is therefore submitted that although Income Tax proceedings are equivalent to judicial proceedings and the order passed by them after following due procedure of law can be treated as with the order of the court coupled with the recent amendment of*

*section 5, it was obligatory in the part of Respondent No 3 to accept the deposit.”*

8] On the other hand, the Reserve Bank of India insists on a specific order of the Court to permit deposit or exchange of the SBNs, serial numbers of which have been noted by the Law Enforcement Agency. The Act of 2017 stipulates 31/12/2016 to be the “appointed day” as per Section 2(1)(a) thereof. By virtue of Section 5 of the Act of 2017, on and from the appointed day, holding of, transfer or receipt of any SBN is not permissible, knowingly or voluntarily. Proviso (d) to Section 5 has been inserted with effect from 24/8/2018 and the said prohibition of holding SBNs is not prohibited at the instance of the Law Enforcement Agencies such as the Central Board of Direct Taxes on production of the documents authorizing such seizure or confiscation as the case may be. It is thus clear that by virtue of Section 5 and proviso (d) thereof, holding, transfer or receipt of any SBN is not prohibited when the same is at the instance of a Law Enforcement Agency on production of the requisite documents.

9] At this stage, we may refer to the judgment of the Madras High Court in *R. Sarathkumar v. The Chief Electoral Officer & Ors. (Writ Appeal Nos. 409 and 445 of 2018* decided on *23/3/2018*).The facts therein indicate that an amount of Rs.6,00,000/- came to be seized from an accused. Such seizure was effected in exercise of power under Section

451 of the Code of Criminal Procedure. After completion of the investigation, the Assistant Director of Income Tax (Investigation), Tirunelveli directed release of the said amount on 28/11/2016. Considering the request for return of the said amount to the appellant therein, reference was made to the provisions of the Act of 2017 and after noting that the amount seized had been accounted for, a direction was issued to the Reserve Bank of India to take steps to transfer the said amount to the authorities who had seized the same with a further direction to the said authorities to remit that amount to the appellant. The Court noted that such direction was necessitated in the interests of justice, fair play, equity and good conscience.

We find that the facts of the present case are clear and that the Income Tax Authorities while acting under the Act of 1961 had seized the amount of Rs.30,00,000/-. The procedure prescribed by Section 131 of the Act of 1961 was duly followed. The amount seized was thereafter declared as an additional income of the petitioner followed by payment of requisite income tax and interest. There does not appear any justifiable reason to preclude the petitioner from receiving the aforesaid amount in lieu of the seized SBNs. Much prior to the appointed day, the seizure had been effected and requisite formalities had been completed. The provisions of Chapter XIII of the Act of 1961 and especially Sections 131, 132 and 132B indicate that seizure of the SBNs in the present circumstances been undertaken by a Law Enforcement Agency referred to in the proviso to Section 5 of the Act of 2017 and hence the petitioner is entitled to return of the aforesaid amount. The interests of justice and fairplay warrant issuing of such direction to the RBI, which direction would be an order envisaged by proviso (d) to Section 5 of the Act of 2017.

10] For the aforesaid reasons, it is held that the petitioner is entitled to return of the amount of Rs.30,00,000/- that was seized by the Election Officer on 17/11/2016. To facilitate refund of the said amount, the Reserve Bank of India is directed to accept the SBNs valued at Rs.30,00,000/- and thereafter deposit the same in the PD account of the Principal Commissioner of Income Tax (Central), Nagpur. On such deposit, the Assistant Director of Income Tax (Inv.) – II, Nagpur shall take necessary steps to ensure that the said amount is refunded to the petitioner on completion of the requisite formalities. The entire exercise be completed within a period of six weeks from today.

11] Rule is made absolute in the aforesaid terms with no order as to costs.

(**MRS. VRUSHALI V. JOSHI, J.**) (**A.S. CHANDURKAR, J.**)

Sumit