BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.9980 of 2024
and
W.M.P.(MD) No.9025 of 2024

V.R.Muthu ... Petitioner

/vs./

The Deputy Commissioner of Income Tax,
Corporate Circle,
Madurai 625 002. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the first respondent in his proceedings in PAN:AGLPM4471G, quash the assessment order dated 30.03.2024 passed therein for the Assessment Year 2016-17.

For Petitioner : Mr.R.L.Ramani Senior Counsel for
Mr.S.Raja Jeyachandra Paul

For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

Mr.N.Dilip Kumar, learned Standing Counsel takes notice for the respondent.

2.In this writ petition, the petitioner has challenged the impugned assessment order dated 30.03.2024 passed under Section 143(3) r/w 254 of the Income Tax Act, 1961.

3.By the impugned order, the respondent has confirmed the tax on 1099.96 gms of gold out of 10514.960 gms of gold and 14.05 carats of diamond that was found at the residence of the petitioner at the time of search. Earlier, the petitioner had also suffered an adverse assessment order on 28.12.2017, pursuant to the search conducted at the premises of the petitioner. The petitioner had succeeded partly before the Appellate Commissioner in ITA No.319/17-18 vide order dated 09.10.2019, wherein the Appellate Commissioner had ordered as under:-

> *"4.I have gone through the assessment order, the written submissions and the grounds of appeal. Briefly, the A.O has made addition of excess jewellery of 2201.715gms (Out of Total jewellery found of 10514.96gms in gold and 14 carat in Diamond) found at the time of search at the residential premises of the Appellant on 17.11.2015. The A.O has accepted the jewellery found to the extent of*

8313.245gms and diamond of 11.05 Carat that the appellant could satisfactorily explain. Regarding the rest, the appellant has accepted the difference as unaccounted investment vide Q.5 in sworn statement at the time of search. I find the decision of the A.O reasonable and no need to interfere with his order except, on the addition proposed on account of making charges uniformly applied at the rate of 5%. It is noted that in the inventory of jewellery prepared at the time of search there are items of gold bar and gold coin that do not require any making charges. The making charges have to be accordingly reduced. The appellant gets relief to that extent.

5.In nutshell, the appeal of the assessee is partly allowed.”

4.Aggrieved by the same, the petitioner had filed ITA.No. 3428/CHNY/2019. The aforesaid appeal of the petitioner came to be disposed of along with the petitioner's brother's appeal in ITA.No.3427/CHNY/2019 (the petitioner in W.P.(MD) No.9978 of 2024) and another appeal of the petitioner's other brother, namely V.V.V.R.Sathiyam in ITA.No.3429/CHNY/2019.

5.By a common order in these appeals dated 11.01.2023, the Tribunal has passed the following order:-

““7.After hearing both the sides and going through the case records and paper-books filed in all the three appeals by different assessees, it is noticed that the assessees have purchased this gold through banking channels or through accounting entries, this needs verification. Hence, all these three appeals are remanded back to the file of the AO and orders of AO as well as the CIT(A) restricting the addition

> *are set aside. The assessees will file all these details before AO, who will verify and examine in detail the source of jewellery as well as explanation. In term of the above, all the three appeals are allowed for statistical purposes.*"

6.Pursuant to the aforesaid remand order, the impugned order has been passed. The grievance of the petitioner before this Court is that the respondent has not complied with the requirements of CBDT Instruction 1916 dated 11.05.1994. Hence, it is submitted that the impugned order is liable to be quashed.

7.That apart, the learned Senior Counsel for the petitioner would submit that the circular clearly provides the prescribed limit of jewellery cannot be seized. In this connection, a reference was made to the decision of the Rajasthan High Court in ***CIT Vs. Satya Narain Patni*** reported in ***(2014) 46 taxmann.com 440*** and and the decision of Allahabad High Court in ***CIT Vs. Ghanshyam Das Johri*** reported in ***(2014) 41 taxmann.com 295***.

8.The learned Senior Counsel for the petitioner would further submit that if CBDT Instruction 1916 dated 11.05.1994 was followed, there is nothing further to be explained. It is submitted that the petitioner has explained the facts clearly.

However, the respondent has failed to consider the same and thus, passed the impugned order, which is liable to be quashed.

9.Defending the impugned order, the learned Standing Counsel for the respondent would submit that the petitioner has an alternate remedy before the Appellate Commissioner under Section 246A r/w 249 of the Income Tax Act, 1961. That apart, it is submitted that the aforesaid instructions of the Board pertain to only restriction on seizure of items at the time of inspection. It does not deal with the items, which were seized on a allocation of the same.

10.The learned Standing Counsel would draw attention to para 4 of the impugned order, wherein it has been stated that the petitioner has submitted the invoice for purchase of gold and jewellery, ledgers and accounting entries in the books of accounts of various entities, where the assessee is a partner, through which the payments for purchase of jewellery were made, accounting entries in the books of accounts of the assessee himself and the assessee has submitted the copies of bank account statements, wherever payment for purchase of gold was made through bank account. The assessee was required to submit the returns of income of all the entities from where the payments for purchase of gold and jewellery were made, vide notice u/s 142(1) of Income Tax Act, dated 06.03.2024. The returns of income, called for were submitted by the assessee. On perusal of all such documents submitted by the assessee, it was observed that the Wealth Tax returns for A.Y. 2009-10 in the cases of Smt. M. Malarvizhi (wife of the assessee), M/s. V.R. Muthu HUF and Shri. V.R. Muthu evidences that gold jewellery of 3634.456 grams of gold and 13.95 carats of diamond is explained.

11.Further, it is observed that the purchase of gold jewellery [gold weighing 5781.04 grams and diamond of 12.66 carats] from A.Y. 2010-11 to A.Y. 2015-16 were made from income, which has been disclosed for Income Tax purposes. The weight of gold jewellery, the source for purchase of which remains to be explained is 1099.96 grams.

12.In connection with the gold of 1099.96 grams of gold, the source for purchase of which remains to be explained, the assessee has submitted vide letters dated 18.03.2024 and 19.03.2024 requesting the undersigned to consider the Instruction No.1916 of CBDT in F. No. 286/63/93-IT (Inv.II) dated 11/05/1994.

13.The learned Standing Counsel reiterates that in the aforesaid instruction of CBDT, dated 11.05.1994 bearing Ref.No.286/63/93-IT (Inv.II), it has been clarified as under:-

"The authorized officer may, having regard to the status of the family and the custom and practices of the community to which the family belongs and other circumstances of the case decide to exclude a larger quantity of jewelry and ornaments from seizure."

14.He further reiterates that the order does not call for any interference. In any event, it is open for the petitioner to file a statutory appeal.

15.I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Standing Counsel for the respondent.

16.The language of the circular No.1916 of CBDT, dated 11.05.1994 bearing Ref.No.286/63/93-IT (Inv.II) reads as under:-

"Instances of seizure of jewellery of small quantity in the course of operation under section 132 have come to the notice of the Board. The question of a common approach to situation where search parties come across items of jewellery has been examined by the Board and following guidelines are issued for strict compliance.

(i) In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax

return only need to be seized.

(ii) In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms. per married lady 250 gms per unmarried lady and 100 gms. per male member of the family, need not be seized.

(iii) The authorized officer may having regard to the status of the family and the customs and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income-tax/Commissioner authorising the search all the time of furnishing the search report.

(iv) In all cases, a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment purposes."

17.Para (iii) of the aforesaid circular makes it clear that the Authorized Officer may having regard to the status of the family and the customs and practices of the community to which the family belongs and other circumstances of the case decide to exclude a larger quantity of jewellery and ornaments from **seizure**.

18.Para (iv) makes it clear that a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment purposes.

19.Thus, the purport of the above circular is confined only at the stage of investigation of seizure and not to the stage of assessment. Therefore the complaint of the petitioner that the circular has not been followed cannot be countenanced.

20.Under these circumstances, no case is made out for interfering with the impugned order. However, liberty is given to the petitioner to pursue the alternate remedy before the Appellate Commissioner in terms of Section 246A of the Income Tax Act, 1961.

21.At this stage, the learned Senior Counsel for the petitioner would submit that the time for filing the appeal would have already expired.

22.Considering the same, the time for filing the appeal is extended by another 30 days from the date of receipt of a copy of this order.

23.With the above liberty, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

23.04.2024

Index : Yes / No
Internet : Yes / No
mm

C.SARAVANAN, J.

mm

W.P.(MD) No.9980 of 2024

23.04.2024