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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 13440/2023 & CM APPL. 53057/2023 (Interim Relief)

AHAN S. RAJPUT .....Petitioner

Through: Ms. Gunjan Arora, Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 3 DELHI & ANR. .....Respondents

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar & Mr. Rishabh Nangia, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **05.08.2024**

1. Petitioner has filed the present writ petition, seeking return of seized money amounting to INR 34,00,000/- with interest and for expeditious assessment of the financial statements of the petitioner.

2. Police at Khanna (Punjab) intercepted a vehicle on 03.12.2022 during their regular checking process and recovered cash of Rs. 34,00,000/- from the possession of Sandeep Kumar and Kuldeep. They could not explain the source of the cash. The information was shared by the police with the Income Tax Department. After completing the necessary formalities, the amount was seized under Section 132A of the Income Tax Act, 1961 [**"Act"**].

3. In his statement, Sandeep Kumar informed that he works as Supervisor in M/s. ASR Traders, proprietorship concern of Ahan S. Rajput and that the cash of Rs. 34,00,000/- belonged to the owner Ahan S. Rajput and that he was carrying the said cash on his directions. Kuldeep claimed that he was the driver of Ahan S. Rajput but was not aware about the cash.

4. Since the source of cash was unexplained, summons were issued to the petitioner under Section 131(1A) of the Act on 05.12.2022 and again on 09.12.2022. Petitioner submitted its response dated 13.12.2022, stating therein, inter alia, as under:-

> *"This is to update you that my employee Sandeep Kumar was taken into police inquiry for carrying cash amounting to Rs.34 lakhs. I just want to update you that it was operational cash of my company i.e., ASR TRADERS which I had received from Trade Receivable and I had transferred some amount from firm current account to me and my wife saving accounts. Suspected cash was withdrawn from firm accounts and saving accounts for the purpose of purchase of a four-wheeler from Punjab. "*

5. Petitioner was issued yet another summons dated 10.05.2023 under Section 131(1A) of the Act, asking him to furnish the source of cash of Rs. 34,00,000/-. Petitioner filed his return of income for the Assessment Year [**"AY"**] 2023-24 on 04.10.2023. Subsequently, a notice dated 21.11.2023 under Section 143(2) of the Act was served on the assessee and the Scrutiny Assessment Proceedings for the AY 2023-24 are still on going.

6. Petitioner's case in the writ petition is that he has furnished all the necessary documents and has duly explained the source of funds and therefore respondents have no reason whatsoever to withhold the money of the petitioner even after a lapse of long time.

7. Taking note of the submissions of the learned counsels for the parties, we had passed the following order dated 27.02.2024, which reads as under:-

> "1. Having heard learned counsel for parties, we note that undisputedly, the cash was seized by the police authorities whereafter it had been handed over to the Income Tax Department. It was in the aforesaid backdrop that we had queried as to how the seizure would sustain under Section 132A of the Income Tax Act, 1961.
> 2. We are today assured by Mr. Rai, learned counsel for the respondents, that the Assessing Officer shall duly examine the

issue in the aforesaid light and draw a formal order dealing with the challenge raised herein. Mr. Rai further states that the aforesaid order shall be placed on record of the instant writ petition within a period of three weeks from today.

3. In view of the aforesaid, let this writ petition be called again on 04.04.2024."

8. Pursuant to the said order, the learned counsel for respondents has placed a copy of the order dated 11.03.2024 passed by the Revenue stating therein that the facts narrated by the petitioner and the statements given by the other witnesses are contradictory to each other. The relevant paragraphs of the said order are extracted below:-

"5.1 In compliance to this summons, the assessee attended office of the DDIT (Inv.)-1, Ludhiana on 13.12.2022 and his statement was recorded on oath on 13.12.2022 u/s 131(1A) of the Act wherein he accepted that the cash of Rs. 34,00,000/- which was intercepted from Sh. Sandeep Kumar on 03.12.2022 belongs to him which further confirmed the facts deposed by Sh. Sandeep Kumar, in his statement recorded on oath u/s 131(1A) of the Act. He further stated that he is in the business of manufacturing and trading of iron-made door fittings.

5.2 The assessee in his statement further stated that he was planning to buy an E-Class Second Hand Mercedes Car from Ludhiana from the dealer M/s Passion Drive Showroom, Pakhowal Road, Ludhiana. He was in talks with the above concern through broker Sh. Munish (contact no. 7710353988) regarding the purchase of luxury cars for quite some time. From the outcome of these talks, he was expecting that the abovementioned Mercedes car would settle at a price of about 34,00,000/- for which cash amount was given by him to Sh. Sandeep Kumar.

5.3 He further stated in his statement that Sh. Munish had informed him that the Mercedes car which he was supposed to buy could only be bought in cash. It was also informed by him that Passion Drive is a second-hand car dealer and they sell off their second-hand vehicle in cash only. This is why he was buying the above-mentioned car in cash.

5.4 To verify the facts narrated by Sh. Ahan S. Rajput, summonses were issued to Smt. Divya Kataria W/o Sh. Munish Kataria (the broker), Sh. Munish Kataria and Sh. Vishal Malhotra Proprietor of M/s Passion Drive, Second Hand Car dealer, Pakhowal Road, Ludhiana. The statements of all the above-mentioned three persons were recorded on 27.12.2022.

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5.7 Statement of Sh. Munish Kataria S/o Sh. Sham Lal Kataria, H. No. 31, Golden Avenue, Hambran Road, Ludhiana was recorded u/s 131(1A) of the Act on 27.12.2022. Sh. Munish Kataria stated in his statement that he works as a Direct Sales Agent for the financing of new cars with ICICI Bank Ltd. and Yes Bank Ltd. He stated that customers who want to purchase a new car contact him on his mobile Nos. 77103-53988 and 98722-53988. After that, he verifies and collects customer's documents and deposits in the Bank. Thereafter bank re-verifies the customer's documents. After completion of the loan process, payment to the car dealer and delivery of the car to the customers, the bank pays him a commission.

5.8 On being asked about Sh. Ahan S. Rajput, he denied that he knew any Ahan S. Rajput and neither he had talked to him regarding the sale of an E-Class Second hand Mercedes Car during the last 1-2 months nor met him. However, Sh. Munish Kataria has admitted that he knows Sh. Vishal Malhotra Proprietor of M/s Passion Drive, Second Hand Car dealer, Pakhwal Road, Ludhiana, being his friend. He also admitted that he has been doing the business of selling/purchasing of old cars for the last 3-4 years.

5.9 Statement of Sh. Vishal Malhotra S/o Sh. Surinder Kumar Malhotra, H. No. 20, Ground Floor, Prem Vihar, Sahid Bhagat Singh Nagar, Ludhiana was recorded u/s 131(1A) of the Act on 27.12.2022. In his statement, he stated that he is the proprietor of M/s Passion Drive, Second Hand Car Dealer, Pakhowal Road, Ludhiana. He further stated that he deals in the sale/ purchase of old cars. Customers contact him for the purchase/sale of the old car, he introduces them to the seller /purchaser of the old car. For this, he charges commission from both parties @ 0.5% to 1% of the total sale/purchase consideration. On being asked about Sh. Ahan S. Rajput, he denied that he knew any Ahan S. Rajput and neither he had talked to him regarding the sale of an E-Class Second hand Mercedes Car during the last 1-2 months nor met him. He further clarified that Sh. Munish Kataria has never contacted him about this deal."

9. Order dated 11.03.2024 further takes note of the fact that the petitioner submitted a bank statement showing withdrawal through cheques of Rs. 12,00,000/- each from three different accounts. The amount was withdrawn on the same day i.e. 03.12.2022. The information received from the bank reveals that the said amount was withdrawn at 3.56 pm, 4.06 pm and 4.03 pm from the three accounts.

10. The timings of the General Diary Details recorded by the Inspector, Police Station, City, Khanna is 3.50 pm on 03.12.2022. If

the statement of Sandeep Kumar is to be believed, the cash of Rs. 34,00,000/- was handed over by the petitioner to him at 9.30 am on 03.12.2022. The enquiry conducted so far prima facie go on to establish that the cash withdrawals made between 3.56 pm to 04.06 pm on 03.12.2022 was subsequent to the seizure of cash by the police at Khanna and the same was possibly done by the assessee to save himself and to justify the unaccounted cash.

11. Prima facie, at this stage, it appears that the cash withdrawals from the bank through the cheques and intercepted cash have originated from different sources. The nature of acquisition of Rs. 34,00,000/- needs to be explained to the satisfaction of the Assessing Officer [**"AO"**]. As per provisions of Section 132B of the Act, the assets can be released only after the source of acquisition of such assets is explained to the AO.

12. Since the source of acquisition of cash of Rs. 34,00,000/- as seized under Section 132A of the Act, remains unexplained and the assessment proceedings still being pending, the seized cash of Rs. 34,00,000/- cannot be released at this stage.

13. In view of the aforesaid, we find no merit in the present petition. The writ petition is accordingly dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 5, 2024/*RM*