

14.05.2025
Item No.7
Ct. No.01
RP/SM

MAT/639/2025
with
IA NO: CAN/1/2025

DIA GOLD JEWELS PVT LTD
VS.
PRINCIPAL COMMISSIONER OF
INCOME TAX AND ORS.

Mr. Ranjeet Kumar Murarka, Sr. Adv.
Mr. P.K. Saraf, Adv.
Mr. Vivek Murarka, Adv.
Mr. D.N. Dey, Adv.

...For the Appellant

Mr. Aryak Dutt, Adv.
Mr. Soumen Bhattacharyee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv.
Ms. Riya Kundu, Adv.

...For the Respondent

1. This intra-court appeal filed by the writ petitioner is directed against the judgment dated 7th April, 2025, passed in WPA 7637 of 2023. The appellant had filed the writ petition for various relieves, the first of which is to set aside the summon dated 14th November, 2022, issued by the respondent No.3 to two of the employees of the appellant-assessee and also the statements which have been recorded from them, the search warrant dated 15th November, 2022, and panchanama dated 16th November, 2022, in relation thereto and valuation report dated 15th November, 2022 and the examination and recording of statements of Mrs. Varda Goenka and Mr. Dinesh

Bajoria at Kolkata by the respondent No.4 and the said employees of Ranchi and all proceedings, notices and orders relating thereto and thereunder to be quashed. The second prayer sought for in the writ petition is to forthwith release and hand over possession of jewellery seized from the respondent No.3 who is the Deputy Director of Income Tax (Investigation) Unit-I, Ranchi, in the State of Jharkhand. The appellant also sought for a writ of prohibition restraining the respondents from giving any effect to the proceedings with or under or purported to search and seizure and summons and statements and panchanama and valuation report dated 14th November, 2022, 15th November, 2022 and 16th November, 2022 and search warrant issued at Ranchi. The learned Single Bench by the impugned order has dismissed the writ petition. Aggrieved by the same, the appellant filed the present appeal.

2. We have heard Mr. Murarka, learned senior advocate assisted by Mr. Saraf, learned advocate appearing on behalf of the appellant and Mr. Dutt appearing for the respondent-department.
3. Firstly, the prayer sought for by the appellant to quash the summons, panchanama and statements recorded from the employees of the appellant is not maintainable. So, to that extent, the relief sought for

has to be definitely rejected. The learned senior advocate appearing for the appellant would fairly submit that the summons have been acted upon, statements have been recorded and panchanama has been drawn. If that be the admitted factual position the effect of the summons has worked out itself and it has been implemented. Therefore, the challenge to the summons or panchanama or statements recorded from the employees or from the Director of the appellant cannot be quashed in the present proceedings, more particularly, at this stage of the proceeding. Therefore, such prayers are to be rejected. If this be the conclusion that has to be drawn then obviously a writ of prohibition cannot be issued to the authorities prohibiting them from taking action in accordance with law and no such writ can be issued by a court exercising jurisdiction under Article 226 of the Constitution of India to perpetually restrain a statutory authority from exercising its powers under the relevant statutes. Therefore, the prayer for issuance of writ of prohibition also has to be rejected. Thus, leave us with only one prayer for release of the jewellery which has been seized.

4. The learned senior advocate has elaborately referred to various documents and also drawn our attention to section 131, 132, 132(B), 132(B) second proviso

and 132(9)(a) of the Income Tax Act, 1961 and submitted that the Income Tax authorities have no jurisdiction to retain the jewellery which has been seized under the panchanama and they ought to have returned the same. It is admitted by the appellant that the seizure has been effected at Ranchi in the State of Jharkhand which is outside the territorial jurisdiction of the High Court at Calcutta. Therefore, a writ of mandamus cannot be issued to an authority which is situated outside the jurisdiction of this court, though such authority is impleaded as a respondent at the behest of the writ petitioner and may be the said respondent has also filed the affidavit-in-opposition. The territorial limits of the jurisdiction of this court having been clearly circumscribed, direction cannot be issued to the authority which is situated at Ranchi. The argument of the senior advocate appearing for the appellant is that the authority, namely, the respondent No.3 who has seized the jewellery has a duty to forward the jewellery to the jurisdictional assessing officer. Initially the respondent No.3 was the assessing officer, now the assessment has been centralised and the respondent No.7 is the assessing officer. Therefore, the respondent No.3 ought to have transferred the seized jewellery to the custody of the respondent No.7. Even in this regard, a direction

cannot be issued to the respondent No.3 to deposit the jewellery with the respondent No.7 who has now been conferred with the power to assess the appellant. In fact, two of the employees who are also assesses under a different assessing officer, their assessments have also been centralised and vested with the respondent No.7 and in the case of one of the employees, namely, Abhijit Pal, respondent No.7 has completed the assessment for year 2023-24 under section 143(3) by order dated 4th February, 2025. This assessment has been referred to by the learned senior advocate to support their submission that the fact that the appellant, namely, M/s. Dia Gold Jewels Pvt. Ltd. had claimed ownership of the entire seized jewellery has been accepted and recorded by the assessing officer in the said assessment order dated 4th February, 2025. Furthermore, it is submitted that the assessing officer has stated that the ownership of the jewellery seized during the course of search and seizure operation does not lie on the assessee, namely, Abhijit Pal. If according to the appellant, this finding recorded by the assessing officer would enure in their favour, it is well-open to them to rely upon the same and that can be done only when the assessment proceeding is commenced by the respondent No.7. Therefore, the only direction that can be given is to

direct the respondent No.7 to commence the assessment proceeding by issuing appropriate notice under the relevant provisions of the Income Tax Act, 1961. The learned senior advocate appearing for the appellant would vehemently contend that on account of the jewellery being seized their business has been hampered since those jewelleries are taken throughout the country to be displayed in various jewellery exhibitions so that the customers can view the jewellery and based on their satisfaction orders will be placed. Therefore, in other words, the appellant appears to have taken a stand that the jewellery which has been seized are model jewelleries for the purpose of exhibiting the same throughout the country in various places and not intended for sale. However, these issues cannot be gone into by us at this juncture and only direction that can be given is to direct the respondent No.7 to commence the assessment proceeding. Since the appellant pleads that on account of the seizure being effected, their business has been seriously affected, we grant liberty to the appellant to file an appropriate application before the respondent No.7, assessing officer with a prayer to release the seized jewellery upon such conditions as the respondent No.7 may deem appropriate to impose.

5. The learned senior advocate submitted that the respondent No.3 may be directed to return the jewellery to the custody of the respondent No.7 which will facilitate the process of seeking for release of the jewellery. Such direction cannot be issued as the respondent No.3 is outside the jurisdiction of this court. However, it will be well-open to the respondent No.7 to make appropriate requisition to the respondent No.3 so that the seized jewellery are put in the custody of the respondent No.7, who undoubtedly is the assessing officer who has to complete the assessment.
6. Thus, for the above reasons, we find no good grounds to interfere with the order passed by the learned Single Bench. Accordingly, the appeal as well as the connected application is dismissed with the above observations and directions.
7. It is made clear that during the assessment proceeding the respondent No.7 shall independently decide the matter without being influenced in any manner by any of the observations made by the learned Single Bench in the impugned order or the observations which have been made by us in this judgment and order.
8. The respondent No.7 is advised to commence the assessment proceeding within two months from the date of receipt of server copy of this order.

9. When the writ petition was pending the appellant filed CAN 1 of 2024 challenging the notice issued by the respondent No.7 under section 148 of the Act dated 22nd August, 2024. Since the writ petition has been dismissed and we have affirmed the order, the appellant is granted 15 days time from the date of receipt of server copy of this order to file their return of income in pursuance of the notice issued under section 148 of the Income Tax Act, upon such return being filed the assessing officer is directed to take forward the direction issued in the preceding paragraphs.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]