

Court No. - 35

Case :- WRIT TAX No. - 80 of 2017

Petitioner :- Rich Udyog Network Ltd. And 5 Others

Respondent :- Director Of Income Tax (Investigation) Kanpur And 3 Others

Counsel for Petitioner :- Udit Chandra, Praveen Kumar

Counsel for Respondent :- C.S.C., Manu Gildyal

Hon'ble Bharati Sapru, J.

Hon'ble Dinesh Kumar Singh, J.

1. The petitioners are group of companies registered under the Companies Act, 1956.
2. On 28.04.2015 a survey under Section 133-A of the Income Tax Act (hereinafter referred to as 'the Act') was conducted at premises Nos.7/125, C-2, Swarup Nagar, Kanpur which is the registered office of petitioner Nos.1, 2 and 4 and HDFC Bank, Civil Lines, Kanpur. Income Tax authorities during the course of survey seized cash amounting to Rs.64,56,970/- and impounded the books of account. Besides cash, incriminating evidence were found at the premises of the petitioners. These documents indicated that the petitioners were taking cash from various parties and returning the money via cheques to the same parties in the guise of unsecured loan and long term capital gain (LTGC).
3. The statement of one of the directors, Sri Gaya Prasad Gupta was recorded under Section 131(1A) of the Act, who was asked to explain the source of cash found at the premises of the petitioners. However, he failed to explain the source of cash. Sri Gupta was further asked to furnish the books of accounts of all companies. Doing business from the premises in question which he failed to produce. Sri Gupta also failed to explain the various entries in the documents recovered which indicated that the petitioners were receiving cash from various parties and returning the money via cheques to the same parties in the guise of unsecured loan and LTGC. Dubious entries in the document and unexplained cash recovered from the premises gave reason to believe that there was undisclosed income which was not disclosed in ordinary course and, therefore, a satisfactory note was prepared on

application of mind to convert the survey into a search. The satisfaction note was put before the Director of Income Tax (Investigation), who after obtaining administrative approval from the Director General of Income Tax (Investigation), Lucknow issued a warrant of authorisation under Section 132(1) of the Act to seize the unaccounted cash and documents from the premises of the petitioners.

4. It is also clear that Sri Gaya Prasad Gupta also failed to explain cash deposited in the bank accounts of the petitioners. Cash of Rs.64,56,970/- found at the premises of the petitioners was seized and deposited in the bank account of petitioner No.1 at HDFC Bank, Krishna Tower, Civil Lines, Kanpur and, thereafter, a demand draft had been obtained from the bank account of petitioner No.1 in favour of Director Income Tax (Investigation), Kanpur to deposit in the P.D. Account to adjust the seized amount against the liability to be determined on the completion of assessment under Section 153-A of the Act as per the provisions of Section 132-A of the Act.

5. Petitioner No.1 had earlier approached this Court by filing Writ Tax No.458 of 2015 for quashing of the search made by the Income Tax Authorities on 28.04.2015 under Section 132 of the Act at premises No.7/125, C-2, Swarup Nagar, Kanpur and HDFC Bank, Civil Lines, Kanpur with a further prayer to return the records so seized under the search.

6. This Court called for original record from the authorities and after perusing the record and considering the submissions advanced on behalf of the parties vide final judgment and order dated 07.07.2015 held that the authorities had information based on incriminating material which led a valid survey being conducted under Section 133-A of the Act. It was further held that on the basis of incriminating evidence that was discovered during the course of survey, a satisfactory note was placed before the competent authority who after considering the material and applying its mind, recorded the satisfaction for carrying out the search operation under Section 132 of

the Act. This Court, therefore, in view of aforesaid findings, dismissed the said writ petition vide final judgment and order dated 07.07.2015.

The relevant para of the said judgment is quoted hereinbelow:-

“We are consequently, of the opinion that in the facts and circumstances of the case, the authorities had information based upon material which led to a valid survey being conducted under Section 133A of the Act. Based on further incriminating evidence that came forward during the course of survey, a satisfactory note was placed before the competent authority, who after considering the material recorded his satisfaction. Such satisfaction recorded was in accordance with the provision of Section 132 of the Act.

For the reasons stated aforesaid, we do not find any manifest error in the search conducted by the respondents.

The writ petition is dismissed.”

7. Two years thereafter, the present writ petition was filed for release of the amount seized from the business premises and the banks of the petitioners with interest. This Court on 18.05.2017 passed the following order in the present writ petition:-

“Hon'ble Pankaj Mithal, J.

Hon'ble Vinod Kumar Misra, J.

During the search operations an amount of Rs. 64,56,970/- which was found in cash in the premises of petitioner no. 1 was seized by the Income Tax Department. It was deposited in the bank account of petitioner no. 1. After deposit of the aforesaid amount a total of Rs. 1,55,14,108/- was withdrawn from the bank accounts of petitioner no. 1 and the other petitioners and was taken away by the department.

Learned counsel for the Income Tax Department was called upon to pin point if such amount was withdrawn and if so under what authority and how the bank had permitted withdrawal of money from the account of petitioner no. 1 to the department without his consent.

In response to the above, Sri Manu Gildyal has filed affidavit of Sri Manoj Pandey, Income Tax Inspector attached to the office of the Deputy Director (Investigation) Income Tax Department, Unit-2 Kanpur annexing comments of Deputy Director (Investigation) Unit-2, Kanpur dated 5.5.2016 but unable to justify the withdrawal of the aforesaid amount.

The Income Tax Department during search operation can only seize the material which is found in the various premises on which the search and seizure operations are conducted. They have no prima-facie authority in law to withdraw any amount from the bank accounts of the assesseees and even the bank has no authority to release any amount from the account of the assesseees without their consent on the mere asking of the department.

In view of the aforesaid facts and circumstances, as a first step for adjudication of the petition in question, it is directed that the respondents may first return the entire amount withdrawn from the bank account of the petitioners over and above Rs. 64,56,970/- within a period of two weeks from today.

The controversy involved and the question of payment of interest on the aforesaid amount from the date it was withdrawn till its payment shall be considered thereafter.

List the petition after two weeks.”

8. From the perusal of this order, it appears that it was not brought to the notice of the Court that search and seizure operation of the authorities was carried out not only at the business premises of the petitioners but also at the banks as well wherein huge unexplained cash was deposited by the petitioners.

9. In compliance of the aforesaid order, the Department had refunded a sum of Rs.90,57,138/- to the petitioners. On 16.08.2017, this Court passed the following order:-

“Hon'ble Pankaj Mithal,J.

Hon'ble Umesh Chandra Tripathi,J.

A sum of Rs. 90,57,138/- has been refunded to the petitioner in the month of June/July 2017.

Sri Ghildyal is awaiting instructions for the payment of interest on the said amount for the period it had remained with the department.

On his request, list this case after two weeks by which time he will not only obtain instructions regarding the interest payable on the said amount but also give the names of the officers who have deposited the sum of Rs. 64,56,970/- in the account of the petitioner at the time of search and seizure operation and the officers who have withdrawn a sum of Rs. 1,55,14,108/- so that necessary action if any may be directed against these officers.”

10. Heard Sri Udit Chandra, learned counsel for the petitioners and Sri Praveen Kumar and Sri Manu Gildyal, learned counsels for the Department.

11. This is the second writ petition on the same cause of action i.e. search and seizure operation conducted on 28.04.2015 at the business premises and banks of the petitioners.

12. As mentioned above, the First writ petition i.e. Civil Misc. Writ Petition (Tax) No.458 of 2015 was dismissed by this Court by a detailed judgment and order which was passed after perusing the original record produced by the Department before the Court and considering the submissions of the parties. The petitioners could have very well prayed for the relief, prayed in the present writ petition, in the earlier writ petition, which was dismissed on 07.07.2015. Though the petitioners have mentioned in para 20 (last paragraph) of the writ

petition in a cursory manner that petitioner No.1 had earlier filed Civil Misc. Writ Petition (Tax) No.458 of 2015 and the said writ petition was dismissed on 07.07.2015 but the petitioners did not annexed the judgment and order dated 07.07.2015 passed by this Court with the present writ petition.

13. We are, therefore, of the view that present writ petition ought not to have been filed as it is not maintainable because cause of action remains the same in both the writ petitions.

14. Be that as it may, we have considered the submissions of the parties on merit as well.

15. Learned counsel for the petitioners does not dispute that the assessment proceedings under Section 153-A of the Act have not yet been finalised. The petitioners have not been co-operating in the assessment proceedings and, therefore, the assessment proceedings under Section 153-A of the Act are taking time for their completion.

16. Learned counsel for the petitioners, however, submits that the authorities did not have power to withdraw the amount deposited in the bank accounts and their action in withdrawing Rs.90,57,138/- from the bank account of the petitioners was illegal and without authority of law. Therefore, the petitioners are entitled not only to refund of the said amount but also interest thereon from the date of withdrawal of the amount till the payment was made in compliance of the order passed by this Court on 18.05.2017.

17. Learned counsel for the petitioners has placed reliance on the judgment of Supreme Court in the case of **Chironjilal Sharma vs Union of India : 2016(14) SCC 811**. Para 5 of the aforesaid judgment reads as under:-

“5. A close look at the above provisions and, particularly, clause (b) of Section 132-B(4) of the Act clearly shows that where the aggregate of the amounts retained under Section 132 of the Act exceeds the amounts required to meet the liability under Section 132-B(1)(i), the Department is liable to pay simple interest at the rate of fifteen per cent on expiry of six months from the date of the order under Section 132(5) of the Act to the date of the regular assessment or reassessment or the last of such

assessments or reassessments, as the case may be. It is true that in the regular assessment done by the assessing officer, the tax liability for the relevant period was found to be higher and, accordingly, the seized cash under Section 132 of the Act was appropriated against the assessee's tax liability but the fact of the matter is that the order of the assessing officer was overturned by the Tribunal finally on 20-2-2004. As a matter of fact, the interest for the post-assessment period i.e. from 4-3-1994 until refund on the excess amount has already been paid by the Department to the assessee. The Department denied the payment of interest to the assessee under Section 132-B(4)(b), according to Mr Arijit Prasad, the learned counsel for the Revenue on the ground that the refund of excess amount is governed by Section 240 of the Act and Section 132-B(4)(b) of the Act has no application. But, in our view, Section 132-B(4)(b) deals with pre-assessment period and there is no conflict between this provision and Section 240 or for that matter Section 244-A. The former deals with pre-assessment period in the matters of search and seizure and the latter deals with the post-assessment period as per the order in appeal.”

18. From the perusal of the aforesaid paragraph, it is clear that the judgment was passed in different set of facts i.e. assessment proceedings were completed and the excess amount was paid thereafter to the assessee. In the present case, assessment proceedings are yet to be completed. Further, the search and seizure operation was carried out not only at the business premises of the petitioners but also at the banks in which they had their accounts and in those accounts huge unexplained cash was deposited by the petitioners. The entire unexplained amount found at the business premises as well as bank accounts were seized and a bank draft was got prepared and the amount was deposited in the P.D. Account to meet the final liabilities towards tax of the petitioners after the assessment proceedings get over. Unless the assessment proceedings are completed, the amount could not have been released to the petitioners. There is no question of payment of any interest at this stage when the liabilities of the petitioners are yet to be finalised after assessment proceedings under Section 153-A of the Act get over.

19. We find that this writ petition is not maintainable as it is barred by principle of *res judicata* neither it has any merit and substance. We, therefore, dismiss this writ petition. No costs.

Order Date :- 24.7.2018/prateek