

Hari Kishan and ors. Vs. Notified Authority Under the Income-tax Act and ors.

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Court : Allahabad

Decided On : Apr-05-1978

Reported in : [1979]117ITR276(All)

Judge : Satish Chandra, C.J. and ;K.N. Goyal, J.

Acts : [Income Tax Act, 1961](#) - Sections 132(1), 132(5) and 132(11)

Appeal No. : Civil Miscellaneous Writ No. 695 of 1976

Appellant : Hari Kishan and ors.

Respondent : Notified Authority Under the Income-tax Act and ors.

Advocate for Def. : Ashok Gupta, Adv.

Advocate for Pet/Ap. : R.K. Gulati, Adv.

Judgement :

Satish Chandra, C.J.

1. On 12th November, 1973, Hari Kishan, petitioner No. 1, visited the premises of Messrs. Mahavir Prasad Suraj Prasad, Jewellers, Kanpur. At that time, he was carrying a jhola containing a sum of Rs. 20,000 in cash and certain jewellery and ornaments. Soon after a party from the income-tax department raided the

premises of Messrs. Maha-vir Prasad Suraj Prasad. It seized and took into custody the jhola carrying the cash as well as the ornaments from petitioner No. 1. In due course, petitioner No. 1 made an application under Section 132(11) of the I.T. Act, praying that the cash amount of Rs. 20,000 be returned to him. It appears that the ornaments had already been returned to him. This application was made to the Board of Direct Taxes as the Notified Authority. The Board, by its order dated 6th September, 1976, dismissed the application on the ground that since an order under Section 132(5) had been passed in relation to the firm, Messrs. Mahavir Prasad Suraj Prasad, and the matter was pending in appeal before the Tribunal, the application under Section 132(11) has become infructuous.

2. Aggrieved, the petitioner has come to this court, petitioners Nos. 2 and 3 are, respectively, the wife and brother of petitioner No. 1. Petitioner No. 1's case is that though a sum of Rs. 15,000 out of the impugned amount of Rs. 20,000 belonged to his wife and the balance to his brother, he was also entitled to its refund because the money was seized by the raiding party from his custody. Learned counsel further urged that the fact of an assessment order under Section 135(2) having been passed against the firm, Mahabir Prasad Suraj Prasad, Kanpur, is irrelevant and could not make the application for return of the money infructuous. We find substance in this submission. It is not disputed that a sum of Rs. 20,000 was seized from the custody of petitioner No. 1. Petitioner No. 1 was hence entitled to get it back even though in fact the money may have belonged to the second and the third petitioners. It is true that in the assessment order passed against the firm, Mahabir Prasad Suraj Prasad, the ITO had recorded a finding that the sum of Rs. 20,000 in fact belonged to that firm; but since the present petitioners were not parties to those proceedings, that finding could not be binding on the present petitioners. Their application was liable to be decided on merits without treating the finding in the assessment order as binding, as having the effect of res judicata as against the petitioners. Again, the fact that the assessment order had been challenged by Messrs. Mahavir Prasad Suraj Prasad and the appeal was pending before the Tribunal was, in our opinion, entirely beside the point. Since the finding that may ultimately be recorded in those proceedings would not be binding on the petitioners, it is difficult to accept that the application for refund of money has become infructuous.

3. Learned counsel for the department submitted that petitioner Nos, 2 and 3 who, even according to the first petitioner, are the real owners of the money, could have filed an appeal against the order under Section 132(5) in which a finding was recorded against them. They having not filed an appeal, it is not competent for the first petitioner to have straightaway applied under Section 132(11). We are not impressed by this submission. Petitioners Nos. 2 and 3 may have been entitled to file an appeal but that could not debar them from objecting under Sub-section (II). Similarly, the first petitioner from whose custody the money was actually seized, was a person interested in recovering the money and so he was also entitled under Sub-section (11) for the return of the money. The fact that petitioners Nos. 2 and 3 did not make an application would not, in our opinion, debar the first petitioner from applying under Sub-section (11).

4. In the result, the petition succeeds and is allowed. The impugned order of 6th September 1976, is quashed. The matter is remitted to the Notified Authority for deciding the application made by the petitioners under Section 132(11) of the I.T. Act afresh and in accordance with law keeping in view the observations made above. The petitioners will be entitled to costs.

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