Tulsi Devi and ors. Vs. Commissioner of Income-tax and ors.

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SooperKanoon Citation : sooperkanoon.com/474259

Court : Allahabad

Decided On : Feb-22-1989

Reported in : [1989]178ITR435(All)

Judge : R.M. Sahai and ;R.K. Gulati, JJ.

Acts : Income Tax Act, 1961 - Sections 132, 132(5) and 132(11)

Appeal No. : Civil Miscellaneous Writ Petition No. Nil of 1989

Appellant : Tulsi Devi and ors.

Respondent : Commissioner of Income-tax and ors.

Judgement :

1. By this petition, a direction is sought to the opposite parties to open a tin box in which the bundles of jewellery of the petitioners have been kept in search proceedings conducted under Section 132 of the income-tax Act, against Jagdish Lal Shah. It is claimed that the petitioners are ladies of the family of Jagdish Lal Shah and when the search and seizure were carried on by the Department, gold was recovered from their rooms and it was taken away by the Department in respect of which proceedings were taken and assessment order was passed under Section 132(5) of the Income-tax Act and, later on, a regular assessment order was also passed against Sri Shah.

2. The claim of the petitioners is that even though they raised an objection, the Income-tax Officer did not afford any opportunity under Section 132(5) and their apprehension is that their objection filed under Section 132(11) of the Act may be disposed of by opposite party No. 1 without opening the tin box and affording an opportunity to the petitioners to explain that in fact the gold seized, in respect of which assessment orders had been passed, belonged to them. We do not find any justification for this apprehension nor do we consider it necessary to admit this petition and to decide it on merits, as we are of the opinion that since the application is pending before opposite party No. 1, he shall decide the same in accordance with law. In order to protect the interest of the petitioners, however, we direct that while disposing of the petitioners' application, the opposite party shall consider the objection of the petitioners in respect of the gold and further, he shall open the tin box containing gold which was seized during the raid and the Commissioner shall also get a list prepared and supply it to the petitioners before the objection is decided. We further make it clear that while deciding the objection under Section 132(12), the Commissioner shall not be influenced or persuaded by the order passed under Section 132(5) of the Income-tax Act and the assessment made against Mr. Shah.

3. This petition is disposed of accordingly.