

Raj Kumar and ors. Vs. Union of India and ors. (Dina Nath and ors. V. Union of India and ors.)

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Court : Punjab and Haryana

Decided On : Dec-02-1999

Reported in : [2000]242ITR584(P& H)

Judge : N.K. Sodhi and; N.K. Sud, JJ.

Acts : Income-tax Act, 1961 - Sections 132

Appeal No. : Civil Writ Petn. No. 14173 of 1998 (Civil Writ Petn. No. 742 of 1999)

Appellant : Raj Kumar and ors.

Respondent : Union of India and ors. (Dina Nath and ors. V. Union of India and ors.)

Advocate for Def. : R.P. Sawhney,; Rajesh Bindal and; S.M. Sharma, Advs.

Advocate for Pet/Ap. : P.C. Jain,; Pankaj Jain and; N.L. Sammi, Advs.

Judgement :

N.K. Sud, J.

1. This order will dispose of two writ petitions No. 14173 of 1998 and 742 of 1999 involving identical facts and common questions of law. In the CWP 14173 of 1999

there are two petitioners, namely, Raj Kumar and Vimal Kumar whereas in CWP 742 of 1999 there are five petitioners, namely, Dina Nath, Yash Kumar, Shanta, Rajinder Singh and Sat Pal. All the seven petitioners had deposited different amounts in fixed deposits with the respondent No. 4 the Oriental Bank of Commerce (for short the bank), Gobindpuri branch, Yamunanagar, the details of which are as under :

Name	Amount	Rs.	Date of deposit	Date of maturity
Raj Kumar	15,000	15-12-1995	15-3-1998	Raj Kumar
Vimal Kumar	12,000	20-12-1995	20-3-1998	Dina Nath
Yash Kumar	15,000	15-12-1995	15-3-1998	Shanta
Shanta	15,000	15-12-1995	15-3-1998	Rajinder Singh
Sat Pal	15,000	15-12-1995	15-3-1998	Sat Pal

2. The grievance of the petitioners is that when they approached the bank on the date of maturity for releasing the payment against their FDRs, the bank informed them that the same had already been encashed by the respondent No. 3, the Asstt. Director of Income-tax, Ambala (for short 'the ADI.') on the ground that the same belonged to the respondent No. 5, Ved Parkash Anand against whom proceedings under s. 132 of the IT Act, 1961 (for short the 'Act') had been initiated by the IT Department. According to the petitioners, the respondent No. 3 had no authority under the Act to prematurely encash their FDRs and take away the proceeds.

3. Notice was issued to the respondents and detailed replies have been filed on behalf of the bank as well as the ADI. The case put up on behalf of the bank was that the respondent No. 3 had searched the bank premises under the warrant of authorisation dt. 31st January, 1997, authorising her to seize the FDRs mentioned in the list annexed with the notice. The list included the FDRs of the petitioners. According to the bank the respondent No. 3 exerted a lot of undue pressure on the then Chief Manager Mr. L. K. Dham to encash the FDRs and issue draft in favour of the IT Department in respect of their proceeds. It is alleged that he was not

permitted to take any legal opinion or consult any other officer and was held in illegal confinement in his office by the respondent No. 3 who insisted on compliance of her verbal order to hand over the drafts of the proceeds of the FDRs. It is under these circumstances that the bank claims to have encashed the FDRs and handed over the proceeds to the respondent No. 3. The bank has also stated that the information to this effect was sent to all the affected parties on the same day. The bank also claims to have written to the ADI on 4th March, 1997, requesting her to remit back the amount of Rs. 4,10,074 in respect of 24 FDRs (including the FDRs of the petitioners) on the ground that the same did not belong to the Anand Group and as such could not have been encashed and seized by her. A reminder to this effect was sent on 18th April, 1997. The bank also claims to have advised the owners of said FDRs to lodge their claims with the ADI. In fact vide letter, dt. 18th June, 1997, it also pointed out to the ADI that the beneficiaries of the FDRs were old aged persons, ladies, etc. who were illiterate and were not able to contact her at Ambala.

4. On the other hand, the respondent No. 3 justified her action by referring to the provisions of s. 132 of the Act. It has been contended that the IT Department had material in its possession to suggest that there were many fixed deposit receipts (including the FDRs of the petitioners) which were benami and actually belonged to the Anand Group of Yamunanagar against which search and seizure operations had been taken. It was also pointed out that the respondent No. 3 had a valid search warrant under s. 132(1) of the Act, dt. 31st January, 1997, against the bank authorising her to seize the FDRs in question. IT was claimed that the action of the respondent No. 3 in getting the FDRs encashed and taking away the proceeds along with her was not without jurisdiction as it was a valid seizure under s. 132(1)(iii) of the Act. Respondent No. 3 also denied the charge that she had exercised any undue pressure on the then Chief Manager for release of cash or had held him in illegal confinement in his office. According to the ADI, she had informed the Chief Manager that she wanted to seize the FDRs in dispute which she was fully authorised to do. Thereafter, the Chief Manager had, after checking the authorisation, encashed the FDRs and handed over the drafts to her.

5. In the light of conflicting stands taken by the bank and the ADI we directed Mrs. Rekha Shukla, the then ADI and the four concerned bank officials, namely, Sarv Shri S. P. Malik, Krishan Chand Chandna, Vinod Sethi and L. K. Dham to be personally present in the Court along with the records.

6. The relevant records of the IT Department show that the bank itself had furnished information to the Department in respect of a number of FDRs (including the FDRs of the petitioners) to the effect that the same belonged to the Anand group. It is only on receipt of such information that the authorisation warrant, dt. 31st January, 1997, had been issued by the CIT authorising the respondent No. 3 to seize the same from the bank. There are also letters written by the bank to the effect that the account opening forms in respect of the FDRs were almost blank. The same contained only the names of the persons without any proper address or parentage or age of the concerned persons. The forms were mostly blank in respect of the particulars of the person who had introduced the holders of the FDRs to the bank. It is also on record that on the date of search, account opening forms in respect of many FDRs were missing. In fact there is a letter written by the bank dt. 28th January, 1997, where not only this irregularity has been confirmed but it has also been admitted by the bank that the FDRs were opened at the instance of Mr. Sanjay Anand of the Anand group. It would be relevant to reproduce a part of the said letter as under :

'Regarding FDRs in benami names, we submit that as the addresses given were not proper and their names provided in your list of 78 persons doesn't contain their names. It could'nt be detected. It was only on telephone the names were made available to us by you and the same were confirmed by us to your staff. Madam, we would like you to know why & how it happened One day Mr. Sanjay Anand came to our bank and requested for some account opening forms of deposit and said that the same will be made in the names of his close relatives and will get it signed at home. After some days he came back and handed the cash and signed account opening forms. We deposited the cash and as told by him we wrote their address, which was incomplete and Mr. Anand said that complete address will be given later on. However, for our information we quoted his name as reference on account opening forms so that the payment can be made to right person on

maturity time. That is why it all happened and were not reported to you earlier. Further we would like to let you know that we are always burdened with huge deposit targets and we always endeavour to achieve our targets. Thus, we are lured with deposits. We now feel sorry for the procedural lapses made at our end and assure you that such instances will not occur in future.'

7. It is also on record that to cover up the irregularities, the bank vide letter dt. 29th May, 1997, had informed the ADI that the account opening forms were available with it and the same could not be made available to her during search due to some confusion. The authorisation, dt. 31st January, 1997, has also been produced in original in which the relevant FDRs have duly been mentioned. However, there is no written order or direction to the bank for the encashment of the FDRs. The respondent No. 3 has also produced a copy of assessment order in case of Shri Sanjay Anand for the period 1st April, 1986, to 24th December, 1996, under s. 158BC of the Act, dt. 26th February, 1998, to show that the FDRs of the petitioners have already been assessed as undisclosed income in his hands. It has also been mentioned that the appeal against the said order is pending.

8. We have also perused the records of the bank and find that the charge about the account opening forms being incomplete is correct. There are hundreds of forms containing only the names of the account-holders without any particulars. In many forms in the address column or in the reference column names of some members of the Anand group have been mentioned. The addresses either are not given or are totally sketchy and incomplete. The columns for giving the father/husband's name are mostly blank. This, read with the letter of the bank, dt. 28th January, 1997, as reproduced above, makes it absolutely clear that the bank has not been following any procedure for opening the FDR accounts. The same appear to have been opened at the instance of some person known to the bank. In fact on a query from the Bench the bank manager frankly conceded that he did not know the petitioners personally and even did not know about their whereabouts. When further queried as to how he would have identified the person to whom the payment would eventually have to be made, he stated that the signatures on the forms would be tallied. It is interesting to note that the petitioners claim to have acquired the knowledge of encashment of their FDRs by the respondent No. 3

when they approached the bank for claiming the proceeds on maturity which is in March, 1998, in all but one FDR. On the other hand, the bank in its written statement has denied this charge vide para 5 of the written statement and has maintained that the petitioners were informed immediately on the same day when the respondent No. 3 had seized the proceeds of the FDRs on 3rd February, 1997. However, no letter addressed to the petitioners in this behalf is available on the record. There is a letter, dt. 25th March, 1997, addressed to Shri Ved Parkash Anand and Shri Raj Pal Anand in which it is mentioned that a letter dt. 3rd February, 1997, had been sent to them in which they were informed that their FDRs (including the FDRs of the petitioners) had been seized by the IT Department. It is, thus, clear that whatever information had been sent by the bank was to the Anand Group and not to the petitioners. This action itself gives credence to the suspicion that the FDRs in dispute had been opened at the instance of some member of the Anand Group. Further, when the bank did not possess the complete addresses of the petitioners it is not understood as to how the petitioners could have been contacted and informed. It is again very strange to notice that although the bank officials did not know the account-holders personally and the account opening forms available with them did not contain their respective ages or addresses, yet it chose to address a letter, dt. 18th June, 1997, to the ADI stating that the beneficiaries were old aged persons, ladies, etc. who were unable to travel to Ambala. All these documents clearly lead to the inference that the bank records are totally incomplete and kept in an irregular manner. We are also left with an impression that all the subsequent letters written by the bank are either an effort to cover up its lapses or have been written at the instance of Anand Group. Such irregularities may enable a bank to fulfil its target of collecting deposits but can also make it a tool in the hand of unscrupulous persons who are out to evade tax.

9. As far as the present petitioners are concerned, normally we would have relegated them to their remedy in the civil Court for recovery of amounts due to them on account of maturity of their FDRs. The petitioners are holding the original fixed deposit receipts issued to them by the bank. It is also evident that there is no written order of attachment of the proceeds of these FDRs with the bank. In such circumstances the claim of the petitioners could only be against the bank.

However, since we have gone into the records of the bank as well as of the IT Department and heard the parties at great length, we are inclined to dispose of the matter at this stage itself.

10. We are satisfied that the respondent No. 3 was holding a valid authorisation for searching the bank and seizing the FDRs of the petitioners. It may here be kept in view that the validity of the said authorisation is not in dispute. However, we are of the view that the respondent No. 3 had no jurisdiction to order the encashment of the FDRs and recover the proceeds thereof under s. 132(1) of the Act. It is now a well settled position of law that the credit in the bank is a valuable thing and is liable to attachment. However, such action can only be taken under sub-s. (3) of s. 132 of the Act by passing a restraint order. The counsel for the petitioners has placed reliance on the decision of the Patna High Court in *Santosh Verma v. Union of India* : [1991]189ITR549(Patna) in this behalf. It would be apt to notice the relevant passage of this report from p. 552 as under :

'..... It is no doubt well-settled that an amount in credit with the banker is always liable to attachment. An action in that behalf can be taken under sub-s. (3) of s. 132 of the Act. That provision contemplates a prohibitory order not to deal with the monies deposited by the petitioner except with the prior permission of the authority. Such an order would have been undoubtedly justified but the bank, in my opinion, could not have been directed under s. 132(3) of the Act to convert the amount deposited by the petitioner by preparing a draft in favour of the CIT. No provision of law was brought to our notice to support this action

11. This view was reaffirmed by the Patna High Court in *Smt. Bimla Singh & Anr. v. Chief CIT & Ors.* : [1998]230ITR349(Patna) . The Andhra Pradesh High Court in the case of *Lan Eseda Steels Ltd. & Anr. v. Asstt. CIT & Ors.* : [1994]209ITR901(AP) has also taken a similar view. The reliance placed by Shri Sawhney, learned standing counsel for the Department, on the decision of Madras High Court in *I. Devarajan & Ors. v. Tamilnadu Farmers Service Co-operative Federation & Ors.* : [1981]131ITR506(Mad) is misplaced. What was challenged in that case was that the FDRs were not liable to attachment under s. 132. This plea had been negatived by the Court. However, in that case the prohibitory order

under s. 132(3) had been passed and it was that order which was under challenge. The Court nowhere held that the attachment could be made by withdrawing the money lying in the bank accounts of depositors. In fact the High Court had noticed the judgment of the Kerala High Court in *Shahjahan v. ITO* : [1976]104ITR347(Ker) to hold that implicit in that decision was the conclusion that the authorised officer has power to pass a prohibitory order under s. 132(3) in respect of the amount lying in a bank. Thus, this authority in fact supports the case of the petitioners. However, in the present case there is no written order issued by the respondent No. 3 to the bank to encash the FDRs and hand over the proceeds to her. Thus, irrespective of the fact whether it could be done or not the seizure by an oral order would be without jurisdiction. However, having perused the material produced by the respondent No. 3 in connection with search proceedings of Anand group and the irregularities in the bank records we are satisfied that the action of the respondent No. 3 in encashing the FDRs was guided by her concern to protect the interest of the Revenue on a bona fide misunderstanding of law and we are sure that she will be more careful in future and not give such verbal directions.

12. In the light of the aforesaid discussion, we have now to decide what relief the petitioners are entitled to. According to us, the FDRs of the petitioners should not have been encashed but could only be attached by means of a prohibitory order under s. 132(3) of the Act. The bank had totally gone wrong in encashing the same and handing over the proceeds to the respondent No. 3 under an oral order. They ought to have insisted on a written order prescribed under the law. The conduct of the bank officials leaves much to be desired and we are satisfied that whatever loss has been caused to the petitioners on account of premature encashment of their FDRs should be borne by the erring officials of the bank. We, therefore, order as under :

1. The respondents Nos. 1, 2 and 3 are directed to remit the money mentioned against the encashment of the FDRs of the petitioners to the bank forthwith preferably within one month from the date of receipt of a certified copy of this order. This amount must have been kept by the IT Department in a bank and, therefore, whatsoever interest the Department has earned on this amount should

also be refunded to the bank.

2. Respondent No. 4 is directed to work out the maturity value of each FDR by calculating the interest (as specified on each FDR) on the fixed deposit amount from the date of deposit to the date of refund of money by the IT Department, and issue fresh fixed deposit receipts for such amounts to the petitioners for a period carrying maximum rate of interest. However, said FDRs would be deemed to be frozen and would be released only after the issue about the ownership of the FDRs has been finally decided in the IT proceedings of the Anand group. The FDRs will be renewed from time to time, if necessary.

3. The financial burden to be suffered by the bank in complying with our direction No. 2 above, shall be borne equally by the then Chief Manager Shri A. L. Dham who was responsible for encashing the FDRs without a written order and the then Branch Manager/Managers who were responsible for opening the FDR accounts without filling in the proper forms. In no case the loss shall be debited to the account of the bank.

13. However, we may clarify that we have not gone into the merits of the issue about the ownership of the FDRs. Therefore, nothing observed by us in this order will prejudice the case of either the IT Department or the Anand group in any proceedings.

14. The writ petitions are disposed of in the above terms. No costs.

15. Civil Writ Petition No. 742 of 1998

16. For orders see Civil Writ Petition No. 14173 of 1998.

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