

Anil Kumar Bindal Vs. Director General of Income Tax and ors.

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Court : Delhi

Decided On : Feb-27-2002

Reported in : (2002)174CTR(Del)376

Appeal No. : Civil Writ Petn. No. 1306 of 2002 & C.M. No. 2192 of 2002 27 February 2002

Appellant : Anil Kumar Bindal

Respondent : Director General of Income Tax and ors.

Advocate for Pet/Ap. : A.N Haksar and; Rajiv Garg and; Atul Sharma, for the as

Judgement :

Dalveer Bhandari, J.

By this order we propose to dispose of Civil Writ Petition Nos. 1306/02 & 1194/02 filed by Anil Kumar Bindal and his wife Sanita Bindal.

2. The petitioners are aggrieved by the income-tax search on 21-11-2000 under section 132 of the Income Tax Act at the premises of the petitioners. Flat No. 1, Ground Floor, B-2, Vivek Vitiar, Delhi. During the search two keys of the locker No. 290 of Corporation Bank, Vivek Vitiar, Delhi, and locker No. 895 of Central bank of India, Savita Vihar, Delhi, were taken in possession by the Income Tax Department. On 6-2-2002, the petitioners received notices under section 158BC of

the Income Tax Act directing the petitioners to get the block assessment for the period 1-4-1990, to 21-11-2000.

The petitioners have prayed that the respondents be directed not to proceed in any manner against the petitioners in pursuance to the illegal searches and declare the searches as illegal. The petitioners have also prayed that the respondents' directions to them to file return for the block period 1-4-1990, to 21-11-2000, in pursuance to the search conducted on 18-11-2000, are illegal and they are liable to be quashed.

It is mentioned in these petitions that the petitioners along with their children and mother are residing at Flat No. 1, Ground Floor, B-2, Vivek Viliai, New Delhi. The same is assessed in the Municipal Corporation of Delhi in the name of the petitioner, Anil Kumar Bindal. It is submitted that the IT department had the search warrants in the name of Vinod Kumar Bindal, brother of Anil Kumar Bindal, who according to the petitioners, resides in Flat No. 2, Ground Floor, B-2, Vivek Vitiar, New Delhi, and having his office in Flat Nos. 3 and 4 on the first floor of the same premises.

3. It is submitted that the respondents at about 8.30 a-m. on 21-11-2000, entered Flat No. 1 of the petitioners to carry out the search without having the search warrants against the petitioners. It is submitted that the petitioners mentioned to the respondents that they have no business relationship with Vinod Kumar Bindal, brother of the petitioner Anil Kumar Bindal. During the search the respondents found two keys of the bank lockers belonging to the petitioners.

On 23-11-2000 a show-cause notice was sent to the petitioners in which the petitioners were required to furnish the following information and documents :

1. Full details of the contents of the lockers.
2. Supporting documents of sources of acquisition of the valuables, if any.
3. VDIS declarations along with valuation report (of jewellery) and copy of challan showing payment of taxes; copies of wealth-tax return filed, if any.

4. Details of sale/exchange/alteration of any jewellery referred to in the above point along with supporting bills.

The petitioners were asked to submit replies by 27-11-2000. They failed to give details of the contents of the lockers. therefore, after giving requisite notice the lockers were opened by the respondents in the presence of the petitioners and after making an inventory, the ornaments, jewellery and other articles were handed over to the petitioners. The petitioners mentioned that they have nothing to do with Vinod Kumar Bindal though he is the brother of Anil Kumar Bindal and living in the same premises but in different flat. It is however, submitted that since the search warrant was in the name of the Vinod Kumar Bindal, the respondents could not search the premises of the petitioners.

4. Advance copy of the petition was served on the learned counsel for the respondents. To assist the court, counsel for the respondents are present. They submitted that both brothers along with their mother are living in the same premises (B-2 Vivek Vitiar). This is proved by the fact that at the time of search the petitioners did not object and did not even mention to the respondents that the petitioners are living separately from Vinod Kumar Bindal. Apart from this, even during the search, keys of two lockers belonging to the petitioners were., found from the premises of Vinod Kumar Bindal. This also establishes close link of the petitioners with Vinod Kumar Bindal.

5. It may be pertinent to mention that the petitioners have filed Civil Writ Petition No. 3783 of 2001 which came up for hearing before the Division Bench on 1-6-2001, and the counsel for the petitioners did not press the petition at that stage and the same was dismissed as withdrawn without reserving liberty of filing a fresh petition. It may be pertinent to mention that the prayers in that petition and the present petitions are exactly identical. Prayers in the earlier petition reads as under :

'..... this Hon'ble court may be pleased to issue :

(a) Writ of certiorari or any other appropriate writ, order or direction, directions to the respondents to produce the record pursuant to which they conducted the

search under section 132, Income Tax Act, 1961, on 21-11-2000, at the premises of petitioners, i.e., Flat No. 1, Ground Floor B-2, Vivek Vihar, Phase-1, Delhi on 18-12-2000, at 11.30 A.M. at locker No. 895 with Central Bank of India Savita Vihar, Delhi, and pursuant to same centralising of cases of petitioner with M/s Sunair Hotels Ltd. and on examining quash the same.

(b) Writ of Mandamus or any other writ/order/directions directing the, respondents not to proceed in any manner against the petitioners pursuant to the illegal searches and declare the said searches as illegal.

(c) Grant the petitioners further or other relief as this hon'ble court deem lit and proper on the facts and the circumstances mentioned hereinabove.'

On exactly similar prayers both these petitions have now been filed. The only distinguishing feature, even according to the petitioners, is that at that time no formal order of centralising was passed by the respondents. Thereafter, the respondents had written to the petitioners to file return with the Circle No, 11, for the block period of 1-4-1990, to 21-11-2000. Other than that there is no difference between the petition which was dismissed as not pressed and these two petition.

6. Usually after hearing the petitioners when the court is not inclined to grant relief as prayed for, then at that point of time invariably request is made to withdraw the petition and such requests are normally not declined. The fact remains that the court declined to grant relief as prayed after hearing the petitioner.

7. Permitting the petitioners to reargue these petition is impermissible and would amount to sitting in judgment over the decision of the earlier Division Bench. In the earlier petition, exactly similar challenges were made regarding the illegal search by the respondents and the court declined to interfere. it would neither be legal nor in consonance with the principles of propriety to entertain these petition now on identical grounds which were specifically raised in the earlier petition and the court dismissed the petition as withdrawn at this stage. No leave was granted to the petitioners to file another petition. In our considered opinion, the petitioners cannot be permitted to reagitate the issues raised in the earlier petition.

8. Learned counsel for the respondents, Mrs. Sanjiv Khanna submitted that according to the provisions of section 158BC of the Income Tax Act, 1961, after the search is conducted under section 132 or books of account, other documents or assets are requisitioned under s, 132A, then block assessment follows. During the course of hearing the learned counsel for the petitioners submitted that the respondents have committed illegality proposing to have block assessment under section 158BC.

Section 158BC of the Act reads as under :

'158BC. Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case, of any person, then

(a) the assessing officer shall

(i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30-6-1995, but before the. 1-1-1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days.;

(ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1-1-1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days;

as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block period :

Provided that no notice under section 148 is required to be issued for the purpose of proceeding under this chapter;

Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return.

(b) the assessing officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158BB and the provisions of section 142, sub-sections (2) and (3) of section 143 and section 144 shall, so far as may be, apply;

(c) the assessing officer, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment.;

(d) the assets seized under section 132 or requisitioned under section 132A shall be retained to the extent necessary and the provisions of s, 132B shall apply subject to such modifications as may be necessary and the references to 'regular assessment' or 'reassessment' in section 132B shall be construed as references to 'block assessment'.

9. Mr. Khanna, counsel appearing for the revenue, maintained that in an cases where search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, the procedure for block assessment is followed.

He also submitted that the question of block assessment under section 158BC would arise only after the search has been conducted under section 132 of the Income Tax Act. The petitioners in the previous writ petition, CWP No. 3783 of 2001 had challenged legality of the search and that petition was dismissed as withdrawn at that stage. Exactly with the same prayer these petitions have been filed. thereforee, the petitioners are precluded from challenging the legality of the search in these proceedings. The petitioners cannot be permitted bench hunting in this manner.

10. Mr. Khanna, the learned counsel for the respondents, has placed reliance on the judgment of the Supreme Court in *Upadhyay & Co. v. State of UP & Ors.* (1999) 1 SCC 81. In that case the petitioner challenged the order of the Allahabad High Court dated 3-5-1996, by filing SLP(C) No. 12673 of 1996. For the reasons best known to the petitioner he withdrew the SLP on 7-9-1996, and thereafter, he filed an application before the High Court for clarification of order dated 3-5-1996.

The Division Bench dismissed the application for clarification.

In the aforesaid judgment, a reference has been made of a case reported as *Sargula Transport Services v. STAT* (1987) 1 SCC 5. Relevant para of the Supreme Court judgment reads as under :

'We are of the view that the principle underlying rule 1 of order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in the High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission.'

11. To be fair to the petitioners we deem it appropriate to leave the question of legality and validity of section 158BC of the Income Tax Act open. The petitioner's assessment is not yet complete and if the petitioners are aggrieved by the assessment order, they can always challenge the same in appeal and even thereafter also they are not without any remedy.

We do not deem it appropriate to permit the petitioners to reagitate the question of the legality of the search in these proceedings. The petitioners have earlier filed a petition on exactly the same grounds which was dismissed as not pressed at that stage. The petitioners were not granted permission to file a fresh petition. The petitioners are now precluded from agitating the question of the legality of search.

12. Mr. Haksar, the learned counsel for the petitioners prays for some time for filing the returns under section 158BC of the Act. Mr. Khanna, the learned counsel for the respondents, has no objection if the petitioners are granted ten days time

for filing the return from the date of receipt of this order. We order accordingly.

Both these writ petitions are devoid of any merit and are accordingly dismissed.

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