

Asha Devi and anr. Vs. Commissioner of Income Tax and anr.

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Court : Delhi

Decided On : May-09-2007

Reported in : (2007)212CTR(Del)475; [2007]291ITR496(Delhi)

Judge : Madan B. Lokur and; V.B. Gupta, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 132B, 132B(1), 132B(3) and 260A;
Income Tax Rules, 1962 - Rule 112C

Appeal No. : W.P. (C) 15007-8/2006

Appellant : Asha Devi and anr.

Respondent : Commissioner of Income Tax and anr.

Advocate for Def. : R.D. Jolly, Adv.

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

Disposition : Petition allowed

Judgement :

Madan B. Lokur, J.

1. Some jewellery valued at Rs. 7,41,836/- belonging to the Petitioners were seized by the Respondents. According to the Petitioners the present value of the jewellery is about Rs. 16 lacs. Be that as it may, block assessment proceedings

were initiated against the Petitioners and the admitted position is that whatever demands were raised in terms of the block assessment, the same were paid and all the liabilities discharged. The grievance of the Petitioners is that notwithstanding this, the Respondents have retained the jewellery belonging to them.

2. Notice was issued by this Court and in response thereto the Respondents have filed an affidavit in which it is stated that it is difficult to distinguish the jewellery belonging to Petitioner No. 1 (wife) as against the jewellery belonging to Petitioner No. 2 (husband). The additional reasons for retaining the jewellery is that an appeal under Section 260A of the [Income Tax Act, 1961](#) has been filed in respect of block assessment relating to Petitioner No. 2.

3. Learned Counsel for the Petitioners has drawn our attention to Section 132B(3) of the [Income Tax Act, 1961](#) which reads as follows:

132B(3) Any assets or proceeds thereof which remain after the liabilities referred to in Clause (i) of Sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

4. Our attention has also been drawn to Rule 112C of the Income Tax Rules, 1962 which reads as follows:

Any assets or proceeds thereof which remain after the liabilities referred to in Clause (i) of Sub-section (1) of Section 132B are discharged shall be forthwith made over or paid to the person, from whose custody the assets were seized, in the presence of two respectable witnesses.

5. On a plain reading of the Section and the Rule, it is clear that the Respondents cannot retain the jewellery belonging to the Petitioners when the tax liability has been discharged by them.

6. Our attention has also been drawn to the *Mukundray K. Shah v. Director General of Income-Tax (Investigation) and Ors.* : [2004]269ITR529(Cal) wherein it has been held that the mere filing of an appeal (in that case before the Tribunal) does not operate as a stay of the order appealed against. If the Revenue is

desirous of retaining any assets belonging to the assessed, it must apply for an appropriate stay order before the Tribunal, so that it can retain the assets.

7. Similarly in *Naresh Kumar Kohli v. Commissioner of Income Tax and Anr* (2004) 187 CTR 140, the Punjab and Haryana High Court took the view that jewellery that is recovered and seized cannot be retained in the absence of any existing liability or demand against the assessed. In that case, while allowing the writ petition and directing the release of the jewellery, the Punjab and Haryana High Court imposed costs of Rs. 10,000/- on the Revenue.

8. In *Veena Jain v. The Commissioner of Income Tax WP (C) No. 1803/1995* decided on 29th November, 1995, a Division Bench of this Court held that once the penalty has been paid, the Respondents must return the jewellery seized unless there is some cogent reason for retaining the same. This Court also imposed costs of Rs. 5,000/- on the Respondents for unnecessarily retaining the assets of the Petitioner.

9. In so far as the present case is concerned, the reasons for retaining the jewellery are that it is not possible to distinguish the jewellery of the husband from that of the wife and that an appeal under Section 260A of the Act has been filed in respect of the block assessment relating to Petitioner No. 2. These reasons for refusing to release the jewellery are hardly relevant. If the Petitioners have discharged their liability, which is admittedly so, there is no reason to retain their jewellery on any of these two grounds. There is admittedly no stay granted by this Court in exercise of its jurisdiction under Section 260A of the Act. Consequently, the Respondents are obliged to give effect to the order appealed against.

10. Under the circumstances, we allow the writ petition. The Respondents will return the jewellery to the Petitioners within a period of fifteen days from today. The Respondents will also pay costs of Rs. 10,000/- to Petitioner No. 1.

11. A copy of this order be given dusty to learned Counsel for both the parties under the signature of the Court Master.

12. The writ petition stands disposed of.

