P. Murugesan Vs. Director of Income Tax (investigation) and ors.

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Court : Chennai

Decided On : Jul-03-2008

Reported in : (2009)222CTR(Mad)619

Judge : N. Paul Vasanthakumar, J.

Appellant : P. Murugesan

Respondent : Director of Income Tax (investigation) and ors.

Disposition : Petition dismissed against the assessee

Judgement :
ORDER

N. Paul Vasanthakumar, J.

1. By consent of both sides, the writ petition is taken up for final disposal.

2. Prayer in the writ petition is to issue a writ of mandamus directing the respondents to release/return the amount of Rs. 1,00,00,000 (rupees one crore) seized from the petitioner on 25-11-2006 and Rs. 4,00,000 (rupees four lakhs) seized on 28-11-2006.

3. The case of the petitioner is that the chairman of Sri Ponnaiah Ramajeyathammal Educational and Charitable Trust, which is running 14 educational institutions in Thanjavur and Trichy District, went to New Delhi on 23-

11-2006 with liquid cash, for the purpose of purchasing a flat at East Patel Nagar, New Delhi, with a view to have an office-cum-guest house at New Delhi. He contacted one Sri Ganesh Estate, New Delhi, and the said purchase deal having not materialised, he returned to Chennai on 25-11-2006. On arrival at the domestic airport at Chennai, at about 11.00 p.m. on 25-11-2006, the officials attached to the Income Tax Department intercepted the chairman and seized the cash carried by him. The department issued summons under Section 131 of the Income Tax Act, 1961, on the same day and a sworn statement was recorded from the chairman. A Panchanama was issued by the first respondent along with cash seizure and simultaneous search was conducted by the income-tax officials on 26-11-2006. On 28-11-2006 summons was issued to the chairman by the first respondent. Panchanama and prohibitory order was issued under Section 132(3) by the Income Tax authorities to the bank officials and freezed the bank account of the trust and the chairman. On 1-12-2006, a sworn statement was recorded and the office premises of the trust was sealed and documents were also seized. After enquiry, the prohibitory order was lifted by the department permitting the petitioner and the trust to operate the bank accounts.

4. It is stated in the affidavit that on 13-3-2007, the chairman wrote a letter to the respondent department and requested to release the amounts seized. Since there was no response, on 21-8-2007 a reminder was sent. Having not received any reply, this writ petition is filed contending that there was no material before the Income Tax authorities for initiating proceedings under Section 132 of the Income Tax Act, 1961, and sufficient records were placed before the Director of IT (Inv.), who authorised search and seizure. It is further stated in the affidavit that mere possession of cash could not be treated as an information sufficient to infer that the cash represented income which was not disclosed. There is no material for exercising the power under Section 132 and therefore there was no reason to believe that the petitioner has not disclosed his income. It is the further case of the petitioner that for retaining the money for a period exceeding 60 days by invoking Section 132 of the Income Tax Act, an order of higher authority or by the CBDT is required as per Section 132(9) and no such order was passed and therefore the amount cannot be retained after 60 days which is liable to be returned..

5. The respondents filed counter-affidavit by stating that on 25-11-2006 information was received from the Area Intelligence Unit, New Delhi, that the petitioner who was travelling in IC 540, was in possession of huge cash and therefore he was intercepted at Chennai airport. A sworn statement was recorded from him by the Intelligence Officer, Area Intelligence, Chennai, under Section 131 of the Income Tax Act, 1961. The petitioner stated that he was carrying an amount of Rs. 1.05 crores in cash which was withdrawn from the corpus fund of Sri Ponnaiah Ramajeyathammal Educational and Charitable Trust and the said sum was received as donation from the public, which includes fees collected from the students of educational institutions. When the petitioner was questioned as to whether he carried the cash from Chennai to New Delhi on 23-11-2006 by Jet Airways, he stated that he carried the cash in two bags, one hand baggage and another checked in baggage. A report was obtained from Jet Airways and it was found therefrom that the petitioner carried only a hand baggage and no checked in baggage was carried by him. It is further stated that the cash found was mostly in the denomination of Rs. 1,000 and Rs. 500 bundles, which carry the seal of banks at North India like New Delhi, Ajmer, etc. The statement given by the petitioner was not cogent and self-contradictory. In the sworn statement recorded under Section 131 at the time of interception, petitioner stated that the said cash was unaccounted. Based on the entire statements and contradictions including the admission, an authorisation for search and seizure was issued. Consequently, the residence of the petitioner/chairman and trust office premises were surveyed/searched and various books and accounts and documents were impounded. It was found that the trust did not maintain regular books of accounts for the moneys received from the parents/alleged public. There was intermingling of funds between the trust and the trustees and diversion of funds from the trust to individual accounts. On the basis of the above materials and findings substantial legal issue arose as to how the public charitable trust funds were kept unaccounted, diverted to the trustees for their personal use, which are to be determined during regular assessment.

6. It is further stated that appraisal report was furnished to the third respondent, who is also the assessing officer and assessment related proceedings are in progress. A Panchanama was issued on 26-11-2006 and on 28-11-2006

summons was issued by the second respondent. Since the post-search enquiries were not completed, some of the bank accounts were prohibited from operation with effect from 9-2-2007 under Section 132(3), which were subsequently allowed for operation. Petitioner requested the Dy. Director of IT to release the cash seized. Since the petitioner has taken inconsistent stand stating that the amount carried by him was unaccounted and in the request for the release of the amount it was stated that it was accounted, the case was notified to Central Circle, Madurai and the assessment proceedings are in progress. Therefore, the department could not act on the letters of the petitioner to release the amount. There is a prima facie case against the petitioner as the explanations given by the petitioner are self-contradictory. The contention of the petitioner that the department cannot retain money exceeding 60 days without permission from the appropriate authorities under Section 132(9) is denied by stating that Section 132(9) enables making of copies or extracts and does not speak about the retention of assets. Assets seized under Section 132(1) can be retained by the department without taking any approval from any authority upto the completion of the search related assessments. Stating all the above contentions in the counter affidavit, the respondents prayed for dismissal of the writ petition.

7. The learned senior Counsel appearing for the petitioner contended that the source of the amount was already informed and there was no contradiction about the same and on any event, the amount cannot be retained by the respondents beyond the period of 60 days. The learned senior Counsel cited a Division Bench judgment of this court reported in K.V. Krishnaswamy Naidu & Co. v. CIT : [1987]166ITR244(Mad) to substantiate his contention and the procedural safeguards given under the Act are to be strictly complied with for the validity of the orders. Relying on the said-Judgment the learned senior Counsel submitted that the retention of the amount beyond 60 days is unauthorised and the respondents are bound to return the amount subject to assessment proceedings.

8. The learned Counsel for the respondents on the other hand submitted that prima facie case is made out against the petitioner that the amount carried by him was unaccounted and there is inherent contradictions in the statements given by the petitioner by stating that the amount was carried from Chennai to New Delhi in

two baggages, however, the Jet Airways stated that the petitioner carried only one hand baggage while he was travelling from Chennai to New Delhi; the Rs. 1,000 and Rs. 500 bundles carried the seal of the banks in the North India like Ajmer, New Delhi, and therefore the respondents ordered assessment proceedings and the same is notified to the Central Circle, Madurai and the same are in progress. Therefore, the department cannot return the amount seized before finalising the assessment proceedings. With regard to the decision relied on by the senior Counsel for the petitioner, the learned Counsel for the respondents submitted that the Division Bench of Kerala High Court in the decision reported in Dr. N.S.D. Rqju v. Director General of IT (Inv.) : [2006]283ITR154(Ker) considered similar issue and taking note of the amendment issued in Sub-section (9A) of Section 132 of the Income Tax Act, 1961, held that the authorised officer or his collegues in the Investigation Wing of the Income Tax department, who is also an assessing officer as per Section 2(7A) of the Act, has power to retain the seized books of account and documents, etc. The time upto which the Investigation Wing can retain the money/document is upto the completion of assessment proceedings and therefore retention of seized document and money is legal. The Division Bench judgment of this court was distinguished by the Division Bench judgment of the Kerala High Court and rejected the similar claim for the return of the money.

9. I have considered submissions of the learned senior Counsel for the petitioner as well as the learned Counsel for the respondents.

10.Admittedly there was search and seizure of documents and money. The assessment proceedings have been initiated due to the inconsistent stand taken by the petitioner with regard to the source of the money asto whether it was accounted or unaccounted. Admittedly the amount was seized on 25-11-2006 and 28-11-2006. Since there were inherent contradictions in the statements of the petitioner, the said amount was remitted in the RBI, Chennai on 28-11-2006, pending investigation. Original challan for the said remittance was also produced before this court and a xerox copy was handed over to the learned senior Counsel for the petitioner during the course of the arguments. Now assessment proceedings are admittedly in progress as the case was notified to Central Circle, Madurai, and is yet to be completed. Section 132(9A) which was substituted by the

Finance Act, 2002, with effect from 1-6-2002 is as follows:

132(9A). Where the authorised officer has no jurisdiction over the person referred to in Clause (a) or Clause (b) or Clause (c) of Sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this Section and in Sections 132A and 132B referred to as the assets) seized under that sub-section shall be handed over by the authorised officer to the assessing officer having jurisdiction over such person within a period of sixty days from the date of which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under Sub-section (8) or Sub-section (9) shall be exercisable by such assessing officer.

From the perusal of the above provision it is evident that the books of account or other document or any money etc., seized under Sub-section (1) of Section 132 shall be handed over by the authorised officer to the assessing officer having jurisdiction within a period of 60 days and thereafter the powers shall be exercised by such assessing officer.

11. Here in this case, the authorised officer is the third respondent, who was also the assessing officer and on transfer, the matter is now pending with the assessing officer viz., Central Circle, Madurai, and therefore retaining, the money beyond 60 days is not in violation of the above-referred rule. The third respondent was the authorised officer as well as the assessing officer as per Section 2(7A) of the Income Tax Act, 1961 and now the assessment proceedings are transferred to the assessing officer, Madurai. Central Circle, under Section 120(2) of the Income Tax Act, 1961, by the Director of Income Tax and all the seized documents are handed over to the assessing officer, Madurai. The assessing officer can retain the books, etc. seized as per Section 132(1) of the Income Tax Act, 1961, till the completion of the assessment proceedings. Hence the retention of the books and money by the assessing officer is perfectly legal and valid. The assessment proceedings will have to be completed and after completion of the assessment proceedings, if the petitioner succeeds he is entitled to get refund of the amounts seized with interest under Section 244 of the Income Tax Act, 1961. Now the amount is under the safe

custody of the RBI.

12. From the letter of the Deputy Commissioner, Central Circle, Madurai-2, it is seen that on the basis of the reports received from the Dy. Director of IT Unit 21, Chennai, on the search conducted, notices under Section 153A were issued to the petitioner on 15-10-2007 and notices under Section 153C were issued to the trust on 13-3-2008 and they have sought for time to file returns of income. It is also stated therein that the assessment has to be completed before 31-12-2008 as per law. As the assessment proceedings have to be completed within a period of six months, no direction could be issued to return the amount as admittedly the investigation was also conducted by the assessing officer himself and the same is now pending with the assessing officer, Madurai, with all books of accounts. The transfer order was passed on 28-6-2007. Prior to the said date the matter was with the assessing officer, Trichy, who is none other than the third respondent. The investigating officer and the assessing officer being one and the same officer, the judgment relied on by the learned senior Counsel for the petitioner reported in : [1987]166ITR244(Mad) (cited supra) will not help the petitioner in any manner and the facts in this case are identical to the facts of the case arose before the Division Bench of Kerala High Court reported in : [2006]283ITR154(Ker) (cited supra).

13. In the light of the above findings, I hold, no case is made out by the petitioner to issue a writ of mandamus as sought for. There is no merit in the writ petition and the writ petition is dismissed. No costs. Connected miscellaneous petition is also dismissed.