IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION NO. 1 of 2018
IN R/SPECIAL CRIMINAL APPLICATION NO. 10055 of 2017

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VIPUL CHAVDA OR SUCCESSOR IN THE OFFICE OF THE DEPUTY DIRECTOR OF INCOME
Versus
STATE OF GUJARAT

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Appearance:
MRS MAUNA M BHATT for the PETITIONER(s) No.
MR BHAVESH J PATEL for the RESPONDENT(s) No.
MR RAKESH PATEL, APP for the RESPONDENT(s) No.

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**

Date : 29/06/2018

IA ORDER

1. Rule returnable forthwith. Mr. Rakesh Patel, the learned APP waives service of notice of rule for and on behalf of the respondent-State of Gujarat.

2. By this application, the applicant - original petitioner has prayed for the following reliefs:

> "8 A This Hon'ble Court may be pleased to recall the order dated 18.1.2018 passed by this Hon'ble Court in Special Criminal Application No.10055 of 2017 and be pleased to delete the directions for making Fixed Deposit of the requisitioned cash and be further pleased to direct the

department to give treatment of the said cash as per the provisions of the Income Tax Act;

B This Hon'ble Court may be pleased to grant any other and further relief/s which may be deemed just and fit in the interest of justice."

3. The main matter i.e. the Special Criminal Application No.10055/2017 came to be disposed of by this Court vide judgment and order dated 18.01.2018. Last two paragraphs of the judgment i.e. paras 15 and 16 are relevant for the purpose of deciding this application. Paras 15 and 16 are extracted as hereunder:

"15. In the result, this application succeeds and is hereby allowed. The order passed by the J.M.F.C, Kathor below Exh.3 is hereby quashed and set aside. It is declared that the department is entitled to retain the cash till the final conclusion of the proceedings under the Income Tax Act. The Investigating Officer is permitted to handover the Muddamal currency notes amounting to Rs.13,00,000/- (Thirteen Lakh) to the applicant-Deputy Director of Income Tax (Investigation), Unit-II, Surat at the earliest. It is clarified that prior to handing over the Muddamal currency notes, the Investigating Officer shall get the videography of the currency notes done as provided in the decision in the case of ***Sunderbhai Ambalal Soni vs. State of Gujarat***, *AIR 2003 SC 638*, and if necessary, to carry out the Panchnama with the serial numbers of the currency notes, if not already done. A copy of the Panchnama or the videography be placed before the court concerned and the same shall be furnished to the Income Tax Department so also to the respondent No.2-original first informant.

16. The applicant-department shall be free to undertake all actions permitted under the law, however, he shall make the Fixed Deposit of the entire amount of Rs.13,00,000/- with any Nationalized Bank within a period of four weeks from the date of taking over such Muddamal currency notes, initially for a period of two years and, thereafter, the same shall be renewed from time to time till the finalization of such proceedings initiated by the applicant-department. Any appropriation, if, is to be made, the same shall be made only with the prior permission of this Court. Rule is made absolute to the aforesaid extent.

Direct service is permitted."

4. Thus, this court while permitting the department to undertake all actions permitted under the law directed that the entire amount of Rs.13 lac shall be invested by way of a fixed deposit with another nationalised Bank within a period of four weeks from the date of taking over the muddamal currency notes. By this application filed on behalf of the department, it is pointed out that the requisitioned assets are to be dealt with in accordance with the statutory provisions as contained in Section 132(4A) to section 132(14) of the Income Tax Act. It is further pointed out that the cash which is requisitioned is required to be dealt with in accordance with the provisions of Section 132B of the Act. Rule 112 provides for the procedure to be followed in search and seizure. Rule 112(12) mandates the deposit of the packets with any branch of the Reserve Bank of India or State Bank of India or Government treasury.

5. For the convenience of this Court, Rule 112(12) has been reproduced in the application.

6. In such circumstances, it is pointed out that there is no provision to make a fixed deposit. The amount will have to be deposited in the P.D. Account. It is further pointed out that

upon finalisation of the assessment, the cash so deposited in the P.D. Account would be appropriated towards the tax due of the concerned assessee and in the event no demand is raised, the same would be refunded to the concerned person.

7. Having heard the learned counsel appearing for the applicant - original petitioner as well as Mr. Rakesh Patel, the learned APP appearing for the state of Gujarat and considering the averments made in this application, the prayer in terms of para 8A is hereby granted.

8. Paragraph 16 of the order passed by this Court in the main matter shall now read as under:

> "The applicant department shall be free to undertake all actions permitted under the law, however he shall deposit the entire amount of Rs.13 lac in the P.D. Account in accordance with the provisions and Rules of the Income Tax Act within a period of four weeks from the date of the receipt of this order."

9. Registry shall act the necessary correction and issue a fresh writ of the order. This application is disposed of.

(J.B.PARDIWALA, J)

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