IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2017 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 2022 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH Sd/-

and

HONOURABLE MR.JUSTICE A.Y. KOGJE Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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SANDEEP RAGHUNATH GUPTA
Versus
DEPUTY COMMISSIONER OF INCOME TAX

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Appearance:
MR RAVISH D BHATT(5867) for the PETITIONER(s) No. 1
MRS MAUNA M BHATT(174) for the RESPONDENT(s) No. 1,2,3

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MR.JUSTICE A.Y. KOGJE

Date : 25/06/2018

COMMON ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1. **RULE.** Learned Advocate Mrs. Mauna M. Bhatt waives service of notice of Rule on behalf of the respective respondents in both the petitions.

2. In the facts and circumstances of the case and with the consent of learned Advocates appearing for the respective parties, both the petitions are taken up for final hearing today.

3. As common questions of law and facts arise in both the petitions, they are disposed of by this common judgment and order.

4. By way of these petitions under Article 226 of the Constitution of India, the respective petitioners have prayed for the following reliefs :-

> "A. Your Lordships may be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction directing the respondents to release the assets as prayed for in various applications of the petitioner at **Annexure G (Collectively)** to the present petition.

B. Your Lordships may be pleased to to issue a writ of mandamus or any other appropriate writ, order or direction inter alia directing the respondent authority to rectify the errors apparent on the face of the record in not giving the TDS credit and in making addition of long term capital gain on financial assets, as pointed out in various applications of the petitioner at **Annexure H (Collectively)** to the present petition,

C. Your Lordship be pleased to issue a writ of mandamus or any other appropriate writ, order or direction inter alia directing the respondent authorities to release third party assets seized during search operation, as pointed in various applications of the petitioner at **Annexure G colly**, with immediate effect in the interest of justice."

5. However, it is required to be noted that the main issue in both the petitions is the non-return of the fixed deposit receipts and the jewellery seized during the search conducted under Section 132 of the Income Tax Act, 1961 at the residential premises of the assessee on 08.09.2010.

6. That a search under Section 132 of the Income Tax Act, 1961 was conducted on the residential premises of the assessee on 08.09.2010. During the course of search in the case of the assessee and her spouse – Sandeep Gupta, the following assets were seized as per copy of the panchnama dated 09.09.2010 :-

No.	Particulars	Amount
1	Cash	214700
2	Jewellery	619286
3	Fixed Deposits NSCs etc.	8833670
Total Assets		**11599956**

It also appears that cash of Rs.10,00,000/= was seized from the residence of Sarita Gupta / Sanjay Gupta and Rs.11,47,000/= from Locker No.548 of Canara Bank, Satellite Road Branch, Ahmedabad

7. A notice under Section 153A of the Act for the Block Period, Assessment Year : 2005-2006 and 2010-2011 was issued by the DCIT, Central Circle 2(2), Ahmedabad on 07.11.2011 and the assessments were completed on 19.03.2013 by making various additions aggregating to the tune of Rs.59,18,400/=. In the appellate proceedings, the learned CIT (Appeals) deleted additions to the tune of Rs.35,29,616/= in favour of the assessee vide order dated 29.09.2015. It appears that thereafter, an order giving effect to CIT (Appeals)'s order were passed by the DCIT, Central Circle, 2(2), Ahmedabad and aggregate demand of Rs.19,80,445/= was determined.

8. Thereafter, the Assessing Officer passed a penalty order under Section 271(1)(C) of the Act in March 2017 by raising a demand of Rs.7,97,233/- for various years from 2005-2006 to 2011-2012. From the correspondence by the Assessing Officer addressed to the learned Counsel appearing on behalf of the Revenue, which is directed to be taken on record and the copy of which is given to the learned Advocate appearing for the petitioners, it appears that the assessee filed various rectification applications as credits for regular payments were not allowed in the orders giving effect to the CIT (A)'s order. In the rectification applications, orders were passed and the outstanding demands were reduced accordingly. After giving effect to various rectification applications, the net demand outstanding in the case of assessee were determined as under in the case of Saritha Gupta :-

A.Y.	REGULAR DEMAND	REFUND	PENALTY
2005-06	0	59471	64486
2006-07	0	62484	33898
2007-08	0	67911	24773
2008-09	0	274450	112565
2009-10	0	150176	169429
2010-11	322290	0	274077
2011-12	419470	0	118005
2012-13	0	0	0
TOTAL	**741760**	**614492**	**797233**
(PAYABLE DEMAND + PENALTY)			**1538993**

Less :	**Refund to be Adjusted**	**614492**
Payable Demand		**9,24,501/-**

9. Thus, the net amount payable by the assessee – Saritha Gupta was Rs.9,24,501/=. It appears that the assessee requested to release the cash seized during the course of search proceedings. However, the assessee was informed that the entire cash of Rs.21,47,000/= seized during the search was adjusted against the demand outstanding of Saritha Gupta and Sandeep Gupta. The details are as under :-

<u>In the case of Saritha Gupta</u> :

Cheque Credit Date	Asstt. Year	Minor Head	Amount
21/02/2014	2005-06	400	2,37,655/-
21/02/2014	2006-07	400	1,40,734/-
21/02/2014	2007-08	400	98,736/-
21/02/2014	2008-09	400	3,25,134/-
21/02/2014	2009-10	400	2,67,152/-
21/02/2014	2010-11	400	77,589/-
TOTAL			**11,47,000/-**

In the case of Sandeep R Gupta :

Cheque Credit Date	Asstt. Year	Minor Head	Amount
21/02/2014	2005-06	400	41,924/-
21/02/2014	2006-07	400	1,53,325/-
21/02/2014	2007-08	400	1,71,393/-
21/02/2014	2008-09	400	5,13,429/-
21/02/2014	2009-10	400	1,19,929/-
TOTAL			**10,00,000/-**

10. Thus, the entire cash amount seized during the search proceedings was adjusted against various demands raised during the assessment proceedings and even the details of adjustment has been provided to the assessee by a letter dated 21.06.2018. Thus, it appears that there is no question of return and/or release of cash seized during the proceedings as the same were already adjusted earlier in the year 2014.

11. However, the question still remains with respect to return of fixed deposit receipts and jewellery seized during the search under Section 132 of the Act on 08.09.2010 and search under the panchnama dated 09.09.2010, the particulars of which are stated hereinabove.

12. Considering the correspondences, it is the case on behalf of the revenue that as on date, a sum of Rs.9,24,501/= (with interest under the law) is outstanding in the case of the assessee – Smt. Saritha Gupta.

13. Learned Counsel appearing on behalf of the Revenue has stated at the Bar that after adjustment of the outstanding demand of Rs.9,24,501/=, i.e. the outstanding in the case of Saritha Gupta, the balance of fixed deposit receipts will be released at the earliest. At this stage, it is required to be noted that there is no demand of outstanding reported in the case of Sandeep Gupta. Thus, after adjustment of outstanding demand of Rs.9,24,501/= shown as outstanding in the case of Saritha Gupta, the balance fixed deposit receipt as well as the jewellery seized during the course of search conducted on 08.09.2010 is required to be returned. There is no justification to continue with the seizure of such fixed deposit receipts, jewellery and national savings certificates etc. [after deducting Rs.9,24,501/= (with interest under the law)], shown to be outstanding in the case of one of the assessees – Smt. Saritha Gupta.

14. Under the circumstances, after undertaking the exercise as above, and after adjusting the outstanding amount of Rs.9,24,501/= (with interest under the law) in the case of Smt. Saritha Gupta, the respondents are directed to return the balance fixed deposit receipts / national savings certificates and the jewellery seized as per the seizure panchnama dated 09.09.2010, at the earliest, **not later than two (2) weeks from today**.

15. The petitions stand allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

Sd/-
(M.R. SHAH, J)

Sd/-
(A.Y. KOGJE, J)

CAROLINE