

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

S.B. Civil Writ Petition No.3421/2017

Surendra Pal Singh Sahni S/o Late Rajendra Singh, aged about 59 years, resident of Ruber Factory Road, Rajendra Vila, Kota Junction, Kota (Rajasthan).

----Petitioner

Versus

1. The Director General of Income Tax (Investigation), C R Building, near Statue Circle, Bhagwan Das Road, Jaipur.

2. The Assistant Commissioner of Income Tax, Central Circle Kota, Room No.212, Central Revenue Building, Rawatbhata Road, Kota (Rajasthan).

----Respondents

For Petitioner(s) : Mr. Suresh Sahni with Mr. R.M. Sharma

For Respondent(s) :

HON'BLE MR. JUSTICE M.N. BHANDARI

Order

09/03/2017

By this writ petition, a direction is sought for quashing of the search proceedings under Section 132 of the Income Tax Act, 1961 (for short "**the Act of 1961**"), Panchnama dated 30th June, 2016 and consequential proceedings.

Learned counsel submits that Income Declaration Scheme, 2016 (for short "**the Scheme of 2016**") was launched by the respondents which was between 1st June, 2016 till 30th September, 2016. The assessee was given option to make disclosure during the intervening period and avail the benefit. The petitioner made

disclosure but his case has not been considered under the Scheme of 2016, rather, his application was dismissed by the Principal Commissioner of Income Tax, Kota.

The petitioner maintained a writ petition and is pending. During pendency of the writ petition, respondents are now proceeding in pursuance of search and even notice under Section 153A of the Act of 1961 has also been given.

It is submitted that when beneficial scheme has been launched and till it was available, the respondents were under an obligation not to effect Section 132 of the Act of 1961 during the intervening period. If at all any search is made under Section 132 of the Act of 1961, it should not debar any person to take benefit of the Scheme 2016. If search comes in the way of the petitioner then very purpose of the Scheme of 2016 gets frustrated and otherwise exclusion of the person to whom scheme would not apply, does not allow proceedings against those who have made disclosure under the Scheme of 2016. In view of the above, the search proceedings against the petitioner deserve to be set aside.

I have considered the submission made by learned counsel for petitioner and perused the record.

The petitioner has made reference of the Scheme of 2016 to seek benefit and also to state that no proceedings under Section 132 of the Act of 1961 followed by proceedings under Section 153A of the Act of 1961 could have been initiated during the currency of the Scheme of 2016 between 1st June, 2016 till 30th September, 2016. The petitioner's premises was searched on 28th/30th June, 2016 which was during the currency of the scheme.

I find that scheme itself makes reference for those on whom it would not apply. The relevant Para 196 of the Scheme of 2016 is reproduced hereunder:

196. The provisions of this Scheme Shall not apply-

(a) to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that-

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board;

or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9 of the said Act; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;

(b) in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code (45 of 1860), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) and the Prevention of Corruption Act, 1988 (49 of 1988);

(c) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (27 of 1992);

(d) in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015);

(e) in relation to any undisclosed income chargeable to tax under the Income-tax Act for any previous year relevant to an assessment year prior to the assessment year beginning on the 1st day of April, 2017-

(i) where a notice under section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer; or

(ii) Where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and a notice under sub-section (2) of section 143 for the assessment year relevant to such previous year or a notice under section 153A or under section 153C of the said Act for an assessment year relevant to any previous year prior to such previous year has not been issued and the time for issuance of such notice has not expired; or

(iii) where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset.”

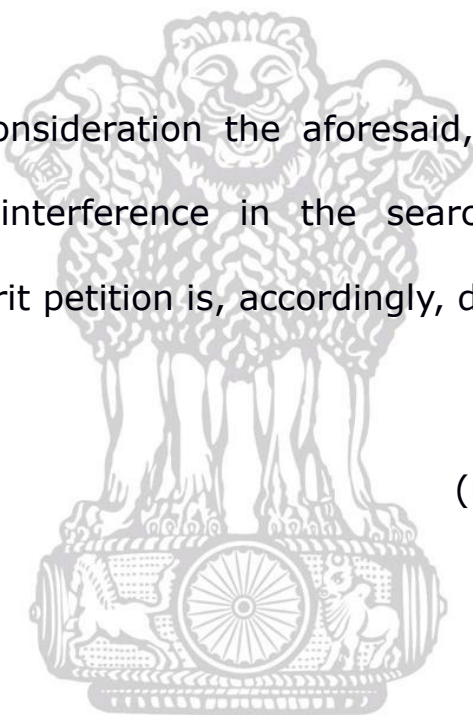
The perusal of Clause (e) reveals that it would not apply in relation to any undisclosed income chargeable to tax under the Income Tax Act for any previous year relevant to an assessment year prior to 1st day of April, 2017 where search/proceedings under Section 132 and 132A of the Act of 1961 have been undertaken. It would not apply even on a notice under Section 153A apart from many other provisions. In the instant case, search proceedings were conducted on 30th June, 2016 and it was during the currency of the Scheme of 2016. Till search was

conducted under Section 132 of the Act of 1961, the petitioner did not make disclosure/declaration under the Scheme of 2016. It is subsequent to the search proceedings under Section 132 of the Act of 1961. As per para quoted above, the petitioner is not entitled to seek benefit of the Scheme of 2016. The position would have been different if declaration under the Scheme of 2016 would have been made earlier to proceedings under Section 132 of the Act of 1961. It is not that relevant provisions of the Income Tax Act were kept in abeyance during currency of the Scheme of 2016, rather, there exists no provision under the scheme and otherwise scheme cannot override provisions of law so as to keep it in abeyance.

Taking into consideration the aforesaid, I do not find any ground to cause interference in the search and subsequent proceedings. The writ petition is, accordingly, dismissed.

(M.N. BHANDARI)J.

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