IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2016

CORAM

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

W.P.No.9742 of 2016

V.Reginakantham ... Petitioner

-vs-

1.The Commissioner of Income Tax,
Central Circle II, New No.46,
Mahatma Gandhi Road,
Chennai-600 034.

2.The Deputy Commissioner of Income Tax,
Central Circle II, (4),
New No.46, Mahatma Gandhi Road,
Chennai-600 034.

3.The Tax Recovery Officer,
Central-II, Chennai
Room No.322, 3rd Floor,
New No.46, Mahatma Gandhi Road,
Chennai-600 034.

4.V.Magadevan ... Respondents

(R4 is impleaded as per order dated
04.07.2016 by T.S.S.J. In W.M.P.
No.18220/2016 in W.P. No.9742 of 2016)

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents herein to forthwith release the jewellery to the petitioner, which were seized during the course of search during September 1996 and recorded in a Panchanama dated 27.09.1996.

For Petitioner : Mr. K.Ravi

For Respondents : Mr.T.Pramod Kumar Chopda
Standing Counsel for R1 to R3

Mr.K.S.Guruprasadh for R4

O R D E R

Heard Mr.K.Ravi, learned counsel for the petitioner and Mr.T.Pramod Kumar Chopda learned standing counsel for the respondents 1 to 3/ department and Mr.K.S.Guruprasadh for 4th respondent.

2. In this Writ Petition, the petitioner seeks for a direction upon the respondents to forthwith release the jewellery to the petitioner, which were seized during the course of search during September 1996 and recorded in the panchanama dated 27.09.1996.

3. It is rather surprising to note as to why the petitioner, all of a sudden, in the year 2013 staked a claim to the jewellery, which were seized by the Department in search and seizure operation conducted during September, 1996.

4. Be that as it may, the question would be as to whether such a direction sought for, could be issued by this Court, in a petition under Article 226 of the Constitution of India.

5. The case of the petitioner revolves primarily on two facts:-

(i) Firstly, by referring to panchanama dated 27.09.1996, which shows the list/ inventory of jewellery found/seized.

(ii) Secondly, it is contended that there is no tax arrears in so far as the petitioner is concerned and the petitioner's immovable properties are said to have been released from attachment by the Income Tax Department.

6. Admittedly, the petitioner has not signed the inventory, but it has been signed by the petitioner's son, 4th respondent. The learned counsel for the petitioner referred to the panchanama, wherein it has been stated in the column of items claimed to be belonging to Smt.Reginikantham W/o Late Dr.Vinodagan. Therefore, the petitioner submitted a representation on 09.12.2013 requesting for return of the jewellery. This was followed by another letter from the 4th respondent to

the 2nd respondent dated 26.02.2014 stating that panchanama indicates the jewellery was found in a bank locker, which was in the name of the petitioner and the 4th respondent has no objection for the release of the jewellery to her.

7. The matter was heard on several dates and the first respondent has filed a counter affidavit.

8. The stand taken in the counter affidavit is that after the search, during the course of block assessment proceedings initiated under Section 158BC of the Act, the 4th respondent was asked to explain the source of investment in the jewellery weighing 2397 grams found during search, including the jewellery of 1356 grams seized from the said bank locker. However, in the absence of any reply filed by the 4th respondent after allowing credit of jewellery for about 200 grams, which was also admitted by him in the return of income already filed, the investment in the balance jewellery was treated as unaccounted investment made by 4th respondent. Accordingly, the value of the same amounting to Rs.11,74,530/- was added to the income in the case of the 4th respondent, treating it as unexplained investment made by him during the financial year relevant to assessment year 1997-1998 in the assessment order dated 29.09.1997.

9. It is further submitted that the 4th respondent filed an appeal as against the said assessment order before ITAT. The appeal was allowed and the order of assessment was set aside and the assessing officer has been directed to re-do the assessment in accordance with law.

10. With regard to the jewellery found at the time of search, the 4th respondent appears to have given a statement, stating that out of the total of 3515 grams, which was found in the bank locker, which stood in the name of the Writ Petitioner, 1,600 grams belongs to the 4th respondent's wife, K.V.M.Chitra, 634 grams to the another son of the petitioner, V.Thangamani, 561 grams to the 4th respondent and 720 grams to Subasri Baskaran, 4th respondent's sister.

11. Therefore, the respondents have taken a stand that the jewellery found at the time of search has been satisfactorily explained and since proof is already available with the Department, the assessee is not producing the same and therefore, no additions can be made on account of the jewellery found at the time of search.

12. The above appears to be the factual background of the case.

13. It is stated that the 4th respondent wife, Smt.K.V.M.Chitra and the petitioner's another son, Thangamani are defaulters. All of them put together the arrears of tax is to the tune of Rs.1,01,84,550/-.

14. The learned counsel for the petitioner submitted that in terms of Section 132B (3) of the Income Tax Act, 1961, any assets or proceeds 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 persons from whose custody the assets were seized by referring to sub-section (4A) of Section 132.

15. It is submitted by the petitioner that it has to be presumed that jewellery which were seized from the locker standing in the name of the petitioner are owned by the petitioner and the jewels of the petitioner more particularly, in the light of the observations made in the panchanama. Reference was also made to Sub-Section 4 of Section 132 regarding the

effect of statements recorded during the course of search and it is submitted that the panchanama refers to the name of the petitioner and it goes without saying, that the petitioner has made a claim and therefore, the jewels should be returned to the petitioner.

16. Per contra, the learned standing counsel appearing for the respondents 1 to 3 referred to the statements which have been recorded from the 4th respondent and his brother, Thangamani and has relied on the answers given by the 4th respondent and his brother to the questions posed. As could be seen from the statement given by the 4th respondent on 25.05.1996 in reply to question no.30, the 4th respondent would state that out of 1,241 grams of jewels, 600 grams belongs to his wife and the remaining belongs to his sister and mother (petitioner) and it does not include the 20 grams of gold jewellery owned by his sister, apart from the 400 gms of jewellery held by his wife. The other son of the petitioner, Thangamani in his statement dated 25.09.1996 among other things while replying to question no.6 has stated that his jewellery weighing 80 grams has been kept in safe custody in the bank locker standing in the name of the petitioner.

17. In the light of these disputed questions of fact, this Court is unable to consider granting the relief to the petitioner in this Writ Petition nor can this Court out rightly draw a presumption as put forth by the learned counsel for the petitioner. Therefore, the petitioner has to necessarily avail the remedies which are available to her under the provisions of the Act, more so in the light of the statements given by her kith and kin namely, sons, daughter and daughter-in-law. Therefore, this Court is not inclined to issue a Writ of Mandamus as sought for. Accordingly, the Writ Petition stands dismissed. However, there shall be a direction to the 1st respondent to consider the petitioner's representation dated 09.12.2013 along with the letter given by the 4th respondent dated 26.02.2014 and further the representation of the petitioner dated 04.08.2015 and appropriate orders shall be passed on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. No costs.

27.07.2016

Index: Yes/No; Internet: Yes/No

ssd

To

1.The Commissioner of Income Tax,
Central Circle II, New No.46,
Mahatma Gandhi Road,
Chennai-600 034.

2.The Deputy Commissioner of Income Tax,
Central Circle II (4),
New No.46, Mahatma Gandhi Road,
Chennai-600 034.

T.S.SIVAGNANAM,J.,

ssd

3.The Tax Recovery Officer,
Central-II, Chennai
Room No.322, 3rd Floor,
New No.46, Mahatma Gandhi Road,
Chennai-600 034.

W.P.No.9742 of 2016

27.07.2016