

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION NO. 13374 of 2015**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**  
and  
**HONOURABLE MR.JUSTICE MOHINDER PAL**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

NADIM DILIPBHAI PANJVANI....Petitioner(s)

Versus

INCOM TAX OFFICER WARD-3, OR HIS SUCESSORS TO  
OFFICE....Respondent(s)

Appearance:

MR RK PATEL with MR B D KARIA WITH MR DARSHAN R PATEL,  
ADVOCATE for the Petitioner(s) No. 1

MR PRANAV G DESAI, ADVOCATE for the Respondent(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**  
and  
**HONOURABLE MR.JUSTICE MOHINDER PAL**

**Date : 11/01/2016**

**JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. Heard learned counsel for the parties for final disposal of the petition. The petitioner has challenged an order dated 20.07.2015 as at Annexure N to the petition in following factual background.
2. The petitioner, on 24.03.2014, was travelling from Morbi to Rajkot carrying cash of Rs. 20,07,000/-. According to him, he had to handover such cash to his friend Manoj P. Rajdev. The vehicle, in which, the petitioner was travelling, was intercepted by the police authorities being the election period for general election to the parliament. The police authorities, after being satisfied that the cash, which the petitioner was carrying, had no connection with the ensuing election, informed the Income Tax Department which, later on 25.03.2014 seized the cash from the petitioner. The case of the petitioner, as reflecting from the present petition is that, the cash belonged to said Shri Manoj P. Rajdev and not to the petitioner. However, since the same was seized from the petitioner, the petitioner filed a petition dated 14.04.2014 before the authority for releasing the cash which was filed on 17.04.2014. Under communication dated 12.09.2014, the petitioner reminded to the respondent authority

that the petition was still pending. On 13.07.2015, the petitioner once again applied to the respondent for release of cash citing the decision of this Court in case of ***Mitaben R. Shah vs. Deputy Commissioner of Income Tax and anr.*** reported in ***331 ITR 424***. Finally, on 20.07.2015, the respondent authority rejected the application of the petitioner *inter alia* on the grounds that cash can be released only when the source is explained to the satisfaction of the Assessing Officer. The petitioner failed to satisfy this requirement. Assessment under Section 153A of the Income Tax Act, 1961 was still pending. The final assessment of the tax and penalty liabilities is still not completed. Only after the completion of such proceedings, question of release of seized asset can be considered. The Assessing Officer did not accept the contention of the petitioner that such decision should have been taken within the time envisaged under further proviso to Clause (i) of sub-section (1) of Section 132B of the Act. The judgement of this Court in case of ***Mitaben R. Shah vs. Deputy Commissioner of Income Tax and anr.*** (supra) was distinguished. Decision in case of ***Jinkal Dineshbhai Virvadiya vs. Commissioner of Income Tax*** reported in ***367 ITR 713*** was cited, in which, when it was found that the petitioner failed to satisfy the authority about the source of the asset, rejection of the request for release of the same was upheld.

3. It is this order of the authority, the petitioner has challenged on multiple grounds. However, we have focused the petitioner's

ground of statutory time limit provided in sub-section (1) of Section 132B of the Act. In that view of the matter, we do not intend to go into the disputed question whether the petitioner was able to satisfy the source of the asset.

4. Relevant facts may be re-stated. On 25.03.2014, the Income Tax department seized the cash which was found by the police authority on 24.03.2014 in the hands of the petitioner. The petitioner applied for release of such cash under petition dated 14.04.2014 which was filed on 17.04.2014. Despite reminders, such application came to be decided by the respondent only on 20.07.2015.
5. In this context, we may peruse the statutory provisions. Section 132B of the Act pertains to application of seized or requisitioned assets and reads as under:

**“[Application of seized or requisitioned assets:**

**132B.** (1) The assets seized under [section 132](#) or requisitioned under [section 132A](#) may be dealt with in the following manner, namely:—

- (i) the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958) and the Interest-tax Act, 1974 (45 of 1974), and the amount of the liability determined on completion of the assessment [under [section 153A](#) and the assessment of the year relevant to the previous year in which search is initiated or requisition is made,

or the amount of liability determined on completion of the assessment under Chapter XIV-B for the block period, as the case may be] (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is [deemed to be in default, or the amount of liability arising on an application made before the Settlement Commission under sub section (1) of section 245C, may be recovered out of such assets]:

**[Provided** that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for release of asset and the nature and source of acquisition of any such asset is explained] to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the [*Principal Chief Commissioner or*] Chief Commissioner or [*Principal Commissioner or*] Commissioner, to the person from whose custody the assets were seized:

**Provided further** that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorisations for search under [section 132](#) or for requisition under [section 132A](#), as the case may be, was executed;

(ii) if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied;

(iii) the assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to

be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the [*Principal Chief Commissioner or*] Chief Commissioner or [*Principal Commissioner or*] Commissioner under sub-section (5) of [section 226](#) and the Assessing Officer or, as the case may be, the Tax Recovery Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (a) The Central Government shall pay simple interest at the rate of [one-half per cent for every month or part of a month] on the amount by which the aggregate amount of money seized under [section 132](#) or requisitioned under [section 132A](#), as reduced by the amount of money, if any, released under the first proviso to clause (i) of sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (i) of sub-section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in clause (i) of sub-section (1) of this section.

(b) Such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under [section 132](#) or requisition under [section 132A](#) was executed to the date of completion of the assessment [under [section 153A](#) or] under Chapter XIV-B.

[Explanation 1].—In this section,—

(i) "block period" shall have the meaning assigned to it in clause (a) of [section 158B](#);

(ii) "execution of an authorisation for search or requisition" shall have the same meaning as assigned to it in Explanation 2 to [section 158BE](#).]

[Explanation 2.—For the removal of doubts, it is hereby declared that the "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII.]”

6. As per Section 1 of Section 132B of the Act, thus, the assets seized under Section 132 or requisitioned under Section 132A has to be dealt with in the manner provided in Clauses (i) to (iii) thereof. Principally, under Clause (i), it is provided that the amount of any existing liability under the Income Tax Act or the related fiscal statutes and the liability determined on completion of assessment under Section 153A and the assessment of the year relevant to the previous year, in which, search is initiated or requisition is made, or the amount of liability determined including the penalty and interest would be recovered out of such assets. Provisio to Clause (i) of Section 1 of Section 132B, however, provides that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month, in which, the asset was

seized, for release of the asset and the nature and source of acquisition of any such assets is explained to the satisfaction of the Assessing Officer, the amount of existing liability referred to in the said clause may be recovered out of such asset and the remaining portion, if any, may be released to the person from whose custody the asset was seized, with the prior approval of the officer prescribed under the said proviso.

7. Under Clause (i) of sub-section (1) of Section 132B, any seized assets would be adjusted towards the recoveries not only against existing but also liabilities which may crystallize on completion of the assessment under Section 153A and the assessment of the relevant year to the previous year, in which, the search is initiated or the request is made or in the block assessment proceedings. Such liabilities would not only include the principal tax but also interest and penalties, if any. However, under the first proviso to Clause (i) of sub section (1), if the person concerned makes an application within the prescribed time and also satisfies the Assessing Officer about the source of acquisition of such asset, the asset would be adjustable only against the existing liabilities. In other words, upon the concerned person applying to the Assessing Officer and satisfying him about the source of the acquisition of the asset, the same would be released after adjustment towards existing liabilities, without waiting for the outcome of the assessment proceedings under Section 153A of the Act or the assessment

for the year relevant to the previous year, in which, the search was initiated or a requisition is made or for the block period referred to under Chapter XIV-B.

8. Further proviso to Clause (i) of sub section (1) of Section 132B of the Act provides that such asset or any portion thereof, as is referred to in the first proviso shall be released within a period of 120 days from the date on which the last of the authorizations for search under Section 132 or for requisition under Section 132A, as the case may be, was executed. This further proviso, therefore, has to be viewed and interpreted in the background of the provisions contained in Clause (i) of sub section (1) of Section 132B of the Act and the first proviso to the said clause. The further proviso, thus, requires that such assets or portion thereof referred to in the first proviso would be released within the prescribed time. Of course when this further proviso refers to any portion of the asset, as is referred to in the first proviso, it necessarily permits the Assessing Officer to apply the assets against the existing liability or even when not satisfied about the source of acquisition of the asset to refuse to release the same till the further liabilities which may arise upon completion of the assessment under Section 153A of the Act or the assessment of the year relevant to the previous year, in which, the asset was seized etc. are completed. To this extent, we fully accept the stand of the counsel for the revenue that the further proviso would have to be read in continuation of the first proviso and therefore would not override the provision of the first proviso

which requires the Assessing Officer to release the asset only upon being satisfied with the source of its acquisition. However, this further proviso puts a time limit, within which, such asset must be released. The question of not releasing the asset would arise only upon the decision on an application that may have been made by the person concerned is taken by the Assessing Officer. If no decision is taken, necessarily, the option of the Assessing Officer to adjust such seized asset would be confined to the existing liabilities. It is, in this context, in our opinion, the legislature required the Assessing Officer to follow the time limit scrupulously. In other words if the person concerned has made an application for release of the asset within the prescribed time, the authority can refuse such request on the ground of not being satisfied about the source of its acquisition. But if no such decision is taken within the time envisaged in the further proviso, releasing of the asset becomes imminent.

9. Somewhat similar question arose before this Court in case of Mitaben R. Shah vs. Deputy Commissioner of Income tax and *anr* (supra), in which also, the application for release of the seized assets and books of accounts was decided after expiry of 120 days from the last of the authorizations. Division Bench of this Court held and observed as under:

“18. *Having heard the learned advocates appearing for the parties and having considered their rival submissions in*

light of the statutory provisions and facts and circumstances of the case, the Court is of the view that the impugned order passed by the respondent rejecting the petitioner's application for release of jewellery and gold ornaments is not tenable at law and hence the same deserves to be quashed and set aside. The provisions contained in Section-132B(1) are very clear and unambiguous. Section-132B deals with the assets seized under Section- 132 or recognized under Section-132A of the Act. A detailed procedure is prescribed under Section-132B(1)(i) of the Act. Out of such seized assets, the amount of the existing liability or the amount of the liability determined on the completion of the regular assessment or reassessment including any penalty levied or interest payable in connection with such assessment or reassessment is required to be recovered. The first proviso of this Section enables the assessee to make an application within 30 days from the end of the month in which the asset was seized. For release of the assets the assessee is required to explain the nature and source of acquisition of such assets to the satisfaction of the Assessing Officer. On such satisfaction and with prior approval of the Chief Commissioner the Assessing Officer is empowered to release the asset to the person from whose custody the assets were seized. The second proviso to this Section makes it clear that the assets are required to be released within a period of 120 days from the date on which the last of the authorization for search under Section-132 or for requisition under Section- 132A, as the case may be, was executed.

19. Considering the above provisions, the petitioner made an application within the permissible time limit. Despite the fact that the period of 120 days was over, the assets were not released. The petitioner thereafter sent reminder and still no action was taken on behalf of the respondent. The petitioner, therefore, approached this Court by way of writ petition. During the pendency of this petition, the petitioner's application was rejected and since the order was passed by the respondent giving fresh cause of action the earlier petition was allowed to be withdrawn with a liberty to file fresh petition. The action of the respondent authorities is highly objectionable in view of the

fact that in earlier petition, after issuance of notice time was sought for to file the reply affidavit. However, this time was utilized for the purpose of passing the order so as to make the earlier petition as infructuous one. In the affidavit-in-reply the respondents have come out with the stand that a detailed note was prepared by the Assistant Director of Investigation whereby the the petitioner's claim for release of the gold ornaments and jewellery was rejected. However, the said note was never communicated to the petitioner. The petitioner is not concerned with the stand taken by the respondent in the affidavit-in-reply. With regard to the change of jurisdiction one has to see the compliance of the provisions of Section-132B(1) (i) of the Act. The first thing is to make an application in time explaining the nature and source of acquisition of the asset which was duly made by the petitioner. No dispute was raised during the permissible time of 120 days. It is only after the expiry of the said period the order was passed raising all sorts of contentions. However, this is not permissible in view of the mandate contained in second proviso to Section-132B(1)(i) of the Act. It clearly says that the assets or any portion thereof shall have to be released within a period of 120 days. Once this period is over the respondents have no authority to retain these assets. Interpreting somewhat similar provisions, this Court has already taken the view in *Cowasjee Nusserwanji Dinshaw (Supra)* wherein the books of accounts were retained beyond the period of 180 days from the date of seizure without communicating the reasons recorded by the authorised officer and approval of the Commissioner was held to be illegal and unlawful. The ratio of the said decision would squarely cover the present case and in all these cases the respondent authorities have retained the seized assets beyond the period of 120 days. The orders passed by the respondent authorities beyond such period are of no consequence and they are not tenable at law.

20. In the above view of the matter, all these orders which are challenged in the present group of petitions retaining the assets beyond the period of 120 days are hereby quashed and set aside and the respondent authorities are directed to release

*the gold ornaments and jewellery seized by them during the course of search and seizure operation forthwith and in any case not later than two weeks from the date of receipt of the writ of this Court or from that date of receipt of certified copy of this order, whichever is earlier.”*

10. We may also refer to the decision of Division Bench of this Court in case of ***Cowasjee Nusserwanji Dinshaw vs. Income Tax Officer*** reported in ***165 ITR page 702***, in which, the Court found that the books and documents of the assessee, which were seized during search and seizure operation, were retained beyond a period of 180 days without communicating the reasons recorded by the Assessing Officer for such purpose. The Court held that, continued retention of the books and accounts and seized documents would, therefore, be illegal and invalid. It was observed as under:

*“In the present case, the account books/documents were seized in November/December, 1984. Admittedly, after the expiry of the period of 180 days, the documents have been retained by the revenue authorities without communicating the reasons stated by the authorized officer and the approval of the Commissioner. To date, no such intimation has been given to the assessee and, therefore, in view of the ratio of the above decision, there can be no doubt that the extended retention of the account books/documents is wholly illegal and unlawful. We are, therefore, of the opinion that the grievance made by the assessee is well founded.”*

11. It can thus be seen that the Courts attach considerable importance to the time frame provided under Sections 132A and 132B of the Act when it comes to a question of retention of books of accounts or of seized assets. We cannot read the time

limit provided in further proviso to Clause (i) of sub section (1) of Section 132B of the Act as being merely directory. Any such view would substantially water down the rigors of the statutory provisions and would give an unlimited authority to the Assessing Officer to retain the seized assets awaiting finalization of future possible liability for indefinite period without deciding the application of the person concerned who may be perfectly legitimately in a position to explain the source of the asset so seized.

12. Facts, noted above, are rather glaring. The application of the petitioner for the purpose of releasing of the seized asset, which was made on 17.04.2014, came to be decided only on 20.07.2015 i.e. over one year later. In the meantime, the petitioner had sent two reminders. Action of the Assessing Officer cannot be countenanced. Impugned order dated 20.07.2015 is set aside. The seized cash shall be released in favour of the petitioner alongwith interest as per the statute.
13. With this direction, the petition is disposed of.

**(AKIL KURESHI, J.)**

**(MOHINDER PAL, J.)**

Jyoti