

* **HIGH COURT OF DELHI : NEW DELHI**

+ **Writ Petition (Civil) No.5108 of 1993**

Judgment reserved on: October 8, 2007

% Judgment delivered on: October 24, 2007

1. M/s Puran Mal & Sons
(a partnership business)
14/16, Poppatwadi, Third Floor
Kalbadevi Road, Bombay

2. Shri Gopal Das
Son of Shri Laxmi Narain
Partner
14/16, Poppatwadi, Third Floor
Kalbadevi Road
Bombay

...Petitioners

Through Mr. Chetan Sharma, Sr. Advocate
with Mr. J.P. Gupta and Mr. Rikky
Gupta, Advocates

Versus

1. Union of India
through the Secretary
Government of India
Department of Revenue & Expenditure
Ministry of Finance
North Block, New Delhi

2. Chairman
Central Board of Direct Taxes
North Block, New Delhi

3. The Commissioner of Income Tax
Delhi-V
Vikas Bhawan, New Delhi

4. The Director of Inspection (Investigation)
Jhandewalan, New Delhi
5. The Commissioner of Income Tax
Bombay City-VII
Matra Mandir, Tardeo Road, Bombay
6. The Income Tax Officer, District IV(1)
Vikas Bhawan, New Delhi
7. The Assistant Commissioner of Income Tax
Circle 7(1), Vikas Bhawan, New Delhi ...Respondents

Through Mr. J.R. Goel, Advocate

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MADAN B. LOKUR, J.

Petitioner No.1 is a partnership firm while Petitioner No.2
is one of its partners.

2. It appears that on 15th/16th October, 1971 the Income Tax Authorities [particularly the Director of Inspection (Investigation)] conducted a search and seizure operation in the residential as well as business premises of the partnership firm and one of its partners, namely, Shri Puran Mal. The search and seizure operation was conducted in Delhi, Hathras and Bombay. As a result of the operation, 114 silver bars lying deposited with the Laxmi Commercial Bank in Delhi and Punjab National Bank in Delhi were seized by the Respondents along with books of accounts and other documents.

3. It was submitted by learned counsel for the Petitioners that the silver bars belonged to Puran Mal (individual) and not to the partnership firm. We need not go into this controversy since Puran Mal (Individual) is not before us.

4. Be that as it may, assessment proceedings were held and by an assessment order dated 20th January, 1978 the income of the partnership firm was assessed at Rs.4,58,808/-. This was revised at the instance of the partnership firm and eventually the tax liability of the

partnership firm was assessed at Rs.2,067/- by an assessment order dated 31st May, 1979.

5. Under these circumstances, the silver bars which were seized (and perhaps retained due to the tax liability) being the subject matter of an order under Section 132(5) of the Income Tax Act, 1961 (for short the Act) were required to be released to the partnership firm. Over a period of time, from 10th September, 1974 onwards till 25th August, 1984, the silver bars were released to the partnership firm.

6. For the first time on 8th October, 1990, the partnership firm made a representation to the Commissioner of Income Tax at Bombay (and not at Delhi) asking for payment of interest on the seized assets. It may be noted in this regard that even though the search and seizure proceedings were conducted at the instance of the Income Tax Department in Delhi and the silver bars were seized in Delhi, the partnership firm made a representation to the Income Tax Department at Bombay. Learned counsel for the Petitioners was unable to explain this except to say that because the partnership firm was being assessed at

Bombay, a request was made to the Income Tax Department in Bombay for payment of interest.

7. Be that as it may, by a letter dated 28th February, 1992, the partnership firm was informed that no interest could be paid on the seized assets since they are not cash and, therefore, the provisions of Section 132B of the Act would not be applicable.

8. It is under these circumstances that the Petitioners have filed the present writ petition wherein they have prayed for payment of interest to the extent of Rs.16.3 crores or in any case a sum of Rs.7.43 crores as interest under Section 132B(4) of the Act on the seized assets.

9. We are inclined to dismiss the writ petition for several reasons.

10. In the first place, the tax liability of the partnership firm was assessed at Rs.2,067/- as far back as on 31st May, 1979 making it quite clear to the partnership firm that it had become entitled to release

of the silver bars. In spite of this, the partnership firm took no steps to demand any interest or any compensation from the Respondents till as late as on 8th October, 1990. There is no explanation forthcoming for this delay of almost 11 years and under these circumstances, we do not think that the Petitioners were really serious in making the claim.

11. Secondly, there is no worthwhile explanation given by the Petitioners for demanding interest from the Income Tax Authorities in Bombay rather than in Delhi when the search and seizure operation was orchestrated from Delhi and the silver bars were seized in Delhi. To say that because the partnership firm was assessed in Bombay is being a little non-serious to say the least. What is commonly understood as the “cause of action” actually accrued in Delhi and there was no valid justification for the Petitioners to approach the Income Tax Authorities in Bombay for redressal.

12. Thirdly, the claim of the Petitioners is essentially for recovery of money and a writ petition under Article 226 of the Constitution is hardly an appropriate remedy for this. The Petitioners

can, if at all, file a civil suit for recovery of money where they would have to justify their demand for such a huge amount of interest. Under Article 226 of the Constitution we cannot look into these factual issues. This is quite apart from the fact that a writ petition under Article 226 of the Constitution is an inappropriate remedy for recovery of money.

13. Finally, we are of the view that the Respondents are not entitled to interest under Section 132 of the Act on seizure of assets. The relevant provision of law is Section 132B (4) and this reads as follows: -

“(4)(a) The Central Government shall pay simple interest at the rate of six per cent per annum 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.”

14. Among the assets that can be seized under Section 132 of the Act are money, bullion, jewellery or any other valuable article or thing. Silver bars cannot by any stretch of imagination be described as money. Section 132B(4)(a) refers to payment of simple interest on the aggregate amount of money seized under Section 132 of the Act. In other words, where money is seized by the Respondents, they would be obliged to pay interest thereon if the conditions of Sections 132B of the Act are fulfilled but this provision is clearly inapplicable to bullion or jewellery that is so seized.

15. Learned counsel for the Petitioner was unable to point out any decision which would support his point of view and we think that that is so because the language of Section 132B(4) is quite clear in this regard.

16. It may be mentioned that learned counsel for the Respondents submitted that action under Section 132 of the Act was not

taken against the partnership firm but against Puran Mal (individual) but we need not enlarge the scope of the controversy before us particularly since there is no reason at all for the Petitioners to get the relief that they have prayed for.

17. Learned counsel for the Petitioners drew our attention to *Dimondstar Exports Ltd. & Ors. v. Director General of Income Tax & Ors., (2005) 194 CTR 132 (Bombay)*. In this case, Respondents were directed to return the gold, diamond, jewellery and ornaments seized from petitioner No. 3 therein with interest @ 8% per annum on the value of the jewellery and ornaments. The cited decision is clearly distinguishable for the reason that the question before the Bombay High Court was the legality of the warrant of authorisation issued under Section 132 of the Act. The High Court held that the warrant of authorisation itself was liable to be struck down and it is in this context that the final order was passed. In so far as the case that we are dealing with is concerned, there is no challenge to the warrant of authorisation.

18. Reference was also made to *Collector of Central Excise,*

Vadodra v. M/s. Dhiren Chemical Industries, 2001 X AD (SC) 333.

We are not at all clear why this judgment has been cited. This case has reference to payment of excise duty and the interpretation of an exemption notification and has really no relevance to search and seizure operation under Section 132 of the Act.

19. Finally, learned counsel cited *Sandvik Asia Ltd. v. Commissioner of Income Tax-1, Pune & Ors., AIR 2006 SC 1223*. In paragraph 56 of the cited decision, it was held that the court has to take all relevant factors into consideration while awarding interest. The main issue in this case, which arose out of a statutory appeal filed under the Act was whether an assessee would be entitled to compensation by the Income Tax department for delay in paying to the assessee the amount admittedly due to it. The assessee was admittedly entitled to a refund of tax and that was delayed by the department and it was under these circumstances that the assessee in that case sought payment of interest. This decision is not at all apposite to the facts of the present case.

20. As already noted above, the present case is one under

Article 226 of the Constitution and not as a result of statutory and adjudicatory proceedings under the Income Tax Act, 1961. Moreover, as mentioned above, the Respondents have disputed their liability and learned counsel has even gone to the extent of suggesting that the proceedings under Section 132 of the Act were not even initiated against the partnership firm but against Puran Mal (individual).

21. The decision relied upon is clearly inapplicable to the facts of the present case and, in any event, it does not advance the case of the Petitioner.

22. Under these circumstances, we are of the opinion that there is no substance in this writ petition. It is accordingly dismissed.

Madan B. Lokur, J

October 24, 2007
ncg/kapil

S. Muralidhar, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.