IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1358 OF 2011

Dinkar U. Desai ..Petitioner
Vs.
Commissioner of Income tax-16
and Ors ..Respondents

Mr. S. C. Tiwari a/w Ms. Natasha Mangat i/b Mr. S. C. Tiwari, Mr. R. Asokan, Ms. Natasha Mangat,for the Petitioner.
Mr. Suresh Kumar, for the Respondent.

CORAM :- ***S. J. VAZIFDAR &***
M. S. SANKLECHA,JJ.
DATE :- **JULY 3, 2012.**

JUDGMENT (Per M. S. Sanklecha, J)

1 By this petition under Article 226 of the Constitution of India, the petitioner seeks to:

(a) quash a notice dated June 6, 2011 issued by the Assistant Commissioner of Income Tax calling upon the petitioner to produce documents, as called for, by an earlier letter dated May 31, 2011 and personally attend on June 15, 2011 so as to complete assessment for the period April 1, 1986 to January 30, 1997:

(b) a direction to the respondents to release the cash, jewellery and silver utensils seized during search proceedings on January 30, 1997 under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act').

2 During the course of search of the petitioner's premises on January 30, 1997, jewellery, silver utensils and cash amounting to Rs.150,000/- were seized. Consequent to the search, block assessment proceedings for the period April 1, 1986 to January 30, 1997 under Section 158BC of the Act were commenced. On March 26, 1999 the Assessing Officer passed an order under Section 158BC read with Section 143(3) of the said Act, for the block period April 1, 1986 to January 30, 1997. In the above order the Assessing Officer negatived the petitioner's case that some of seized diamond jewellery and precious stones belonged to third parties viz. Subhash Jain, Nayan Desai and Mahesh Parikh.

3 Being aggrieved, the petitioner took the matter up in appeal and finally by an order dated April 10, 2006 the Income Tax Appellate Tribunal set aside the orders of the departmental authorities while restoring the matter to the file of the Assessing Officer to enable the

petitioner to establish that some of the diamond jewellery and precious stones which were seized during the search belonged to others and not to the petitioner. The Tribunal directed as under:

> "We have heard the parties and considered their submissions. As evident from the grounds of appeal, the items in question are stated to have been given by Shri. Subhan Jain (Rs.1,66,000/-); Shri. Maheshkumar Hiralal Parikh (Rs. 18,40,650/-) and Shri. Nayan Dinkar Desai (Rs.4,64,650/-). At the time of hearing before us, the learned authorized representative for the assessee reiterated the submissions made by the assessee before the Departmental authorities that all the aforesaid items of jewellery were covered by the disclosure made by Shri. Subhash Jain, shri. Maheshkumar Hiralal Parikh and Shri. Nayan Dinkar Desai under the Voluntary Disclosure of Income Scheme, 1997. The issue in the case before us is not as to whether the said parties have made the disclosure under the VDIS. The issue before us is as to how the nature and source of the items in question is explained. Mere declaration by third parties may not be sufficient unless the assessee also establishes as to how the items in question reached the assessee from third parties and consequentially found in his possession at the time of search. The presumption u/s. 132 (4A) that the

valuables found in possession or control of a raidee in the course of a search belong to him is a rebuttable presumption. The assesee must therefore adduce satisfactory evidence to rebut that presumption. In our view, the entire issue needs further examination to establish as to whether the items in question belong to the assessee or to the third parties. If they are held to belong to third parties, no further action on the part of the Department may be necessary. If the items in question are however held to belong to the assessee, the nature and source of investment made in them would need to be further examined. In this view of the matter, the orders passed by the Departmental authorities are set aside and entire issue is restored to the file of the AO for a fresh decision after giving a reasonable opportunity of hearing to the assessee."

4 By a communication dated May 31, 2011 the Assessing Officer in accordance with the directions in the order dated August 10, 2006 of the Income Tax Appellate Tribunal fixed the hearing of the petitioner's case on June 15, 2011 at 3.30 p.m. and called upon the petitioner to submit evidence with regard to its claim that part of the seized diamonds and precious jewellery were owned by Subhash Jain, Maheshkumar Parikh and Nayan Desai The respondent sent a reminder

dated 6th June, 2011.

5 The petitioner, instead of attending the hearing before the Assessing Officer and producing the necessary evidence in support of his claim, filed the present petition in this Court. The advocate for the petitioner, submits that in view of the inordinate delay and the fact that the petitioner is an old person, the entire proceedings be quashed.

6 We are not inclined to interfere in the present case more particularly when the adjudication proceedings consequent to the order of the Income Tax Appellate Tribunal dated April 10, 2006 are pending before the Assessing Officer. The petitioner, instead of attending the hearing and leading evidence in support of his claim, is seeking to avoid the hearing. It ill comes from such a person to complain of delay.

7 In the circumstances, the petition cannot be entertained. However, we direct that in case the petitioner has any evidence to lead he should file the same within one month from the date of this order before the Assessing Officer. Thereafter, he should attend the personal hearing either by himself or through his duly authorized representative as and when the matter is fixed for hearing by the Assessing Officer. The

Assessing Officer is requested to dispose of the proceedings before him at the earliest preferably within six months from today.

8 In view of the above, the petition is dismissed. No order as to costs.

(*M. S. SANKLECHA,J.*) **(*S. J. VAZIFDAR,J.*)**