



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 29356 of 2023 (O&M)

Reserved on : 05.12.2024
Date of Decision : 11th Dec, 2024

M/s Dillano Luxurious Jewels Limited ...Petitioner

Versus

Deputy Director Income Tax, Investigation, Bathinda
and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Ms. Radhika Suri, Senior Advocate, assisted by
Mr. Abhinav Narang, Advocate and
Ms. Pranika Singla, Advocate, for the petitioner.

Mr. Saurabh Kapoor, Senior Standing Counsel with
Ms. Pridhi Sandhu, Junior Standing Counsel and
Ms. Muskaan Gupta, Advocate, for the respondents.

SANJEEV PRAKASH SHARMA, J.

1. The petitioner has preferred this writ petition seeking directions to the respondents to release the jewellery seized from its bank locker as per *panchnama* dated 17.07.2023 prepared by respondents.

2. Brief facts which require to be noticed for adjudication of this case are that the petitioner states itself to be a company dealing in sale and purchase of various kinds of jewellery and ornaments and is situated in West Punjabi Bagh, New Delhi, with Head Office at Quila Chowk, Faridkot. It assails the action of the Income Tax Department for confiscating its jewellery which it had allegedly kept in Locker No. 161, maintained with South Indian Bank, Punjabi Bagh, Delhi.



3. One search and seizure operation was carried out at business and residential premises of one Deep Malhotra and his other concerns which included the premises of the petitioner company also. The search and seizure was carried out from 18.05.2023 which concluded on 23.05.2023. During the course of search, list of inventory of cash, jewellery, foreign currency and other assets was made. The statement of the director of the company, namely, Chitwn D. Malhotra was recorded on 18.05.2023 and it was stated by her that the company stores its jewellery and other ornaments in two lockers no. 160 and 161, as maintained in South Indian Bank, Punjabi Bagh, Delhi, while locker no. 160 is in the name of the directors of the company and locker no. 161 is in the name of the company. Thus, in both the lockers, the stock in trade of the company has been lying in safe custody. Her statement was recorded on 18.05.2023. The closing balance of the stock in trade as on 31.03.2023 was also provided, which reflected that the gold of 14 carat equivalent to 13575.02 grams, diamond of 1369.96 carat and coloured stone of 18065.46 carat was the closing stock as on 31.03.2023. The print out of the details of the stock in trade as on 17.05.2023 was also provided.

4. It is submitted that in spite of the bar contained under Section 132 of the Income Tax Act, 1961 (for short, 'the Act'), the respondents seized both the lockers on 19.05.2023 and the keys of the lockers were handed over to the authorized officer during the course of search. It was also informed that the main director Chitwn D. Malhotra was to leave for London from 06.07.2023 to 19.07.2023 to attend the summer camp of her two daughters.

5. It is stated that the respondents did not allow the petitioner to operate and open the lockers where the stock in trade of the company was lying and the denial on part of the Income Tax Authorities resulted in



hampering of business and the petitioner company suffered irreparable loss. On 11.07.2023, the Directors were issued summons under Section 131 (1)(A) of the Act and were asked to remain present on 13.07.2023 to which a reply was filed and inability to appear was expressed as one of the directors was abroad. Whereafter the directors were asked to be present on 17.07.2023. The Managing Director Mr. Chitwn Malhotra returned from London, who again persuaded the department vide her letter dated 20.07.2023 to allow operating the lockers in which the stock in trade of the company was lying. Another letter was written on 25.07.2023.

6. The Directors were informed by the bank that the Income Tax Authorities had operated and opened the lockers on 17.07.2023. The petitioner company, therefore, demanded the *panchnama*, valuation report and videography of the opening of lockers. The respondents provided the *panchnama* of bank locker no. 161 dated 17.07.2023 and details of jewellery but no copy of the videography was given. A request was made to release the jewellery and upon the petitioner being served with summons, vide letter dated 03.09.2023 pointing out that it was part of the stock-in-trade of the gold and diamond as per books as on 18.05.2023. However, their jewellery, was seized from locker was not released.

It is the submission of learned senior counsel for the petitioner that the details of sale made from 01.04.2023 to 18.05.2023 along with sale bills were given. The statement of Chitwn D. Malhotra was recorded on 19.05.2023. It is specifically pointed out that the locker contained jewellery, which was part of stock in trade, in spite thereto, the respondents did not release the stock in trade. The valuation was conducted by the respondents. She submits that during search, the gold weighing 6758.49 grams was found from the house, while 6555.69 grams of gold was found from the locker no.



161, which was in the name of the company. The same was 3765.31 grams of gold jewellery and 2790.38 grams of gold coins. That apart, diamond worth 371.55 grams was also found from the locker.

7. Learned senior counsel for the petitioner has invited attention to the *panchnama* prepared and the inventory of jewellery seized from the locker, and if both of them are added, the stock in trade is found to be tallied. Despite thereto, the respondents have refused to release the gold which has been seized from locker no. 161.

8. It is submitted by learned counsel for the petitioner that the action is in violation of the provision of Section 132 of the Act. She also submits that the respondents were obliged to pass orders under proviso to Section 132B(1) (i) of the Act. However, the respondents are sitting over the matter and are not releasing the jewellery.

9. *Per contra*, learned counsel for the respondents submits that on 18.05.2023, after the search and seizure operation of the premises was conducted of the Oasis Group, the premises of the petitioner -M/s Dillano Luxurious Jewels Limited located at 14 North Avenue, West Punjabi Bagh, New Delhi was also covered and as per ITR, Dimpy Malhotra, Chitwn D. Malhotra and Deep Malhotra, were directors of the company. Restrains were placed on two bank lockers one of which was in the name of the company, locker no. 161 and the other was in the name of Dimpy Malhotra and Chitwn D. Malhora, who were the directors of the company. As it could not be ascertained whether items held in the bank lockers are part of stock in trade or held by the directors in personal capacity, PO was imposed on 20.05.2023 and period of sixty days was expiring on 19.07.2023. The respondents asked the investigating team, issued summons to Dimply Malhotra and Chitwn D. Malhotra to appear in person or through authorized representative but both



could not appear being out of station and out of country. Another opportunity was given to them to appear on 14.07.2023 but they did not appear and, therefore, finally as the time period was expiring on 19.07.2023, the bank lockers were operated on 17.07.2023. The *panchnama* was prepared. The lockers contained gold coins, jewellery and bullion. Loose papers were found in the lockers which reflected that the gold seized was held in personal capacity of the directors and relatives.

10. It is stated that several opportunities were given for producing the books of accounts. As the company was a public limited company, it was required to maintain books of accounts including stock registers and stock movement register, etc. which were not provided by the directors in time. It is submitted by learned counsel for the respondents, Mr. Saurabh Kapoor that the petitioner company is not maintaining proper books of accounts and observations have been made by the auditors that valuation of the closing stock is not possible.

11. Learned counsel for the respondents submits that since there were slips found along with the lockers which reflected that the jewellery was of personal nature, the same cannot be treated as part of the stock in trade and cannot be released as such. It has also been denied of their having received any application from the directors of M/s Dillano Luxurious Jewels Limited for operating the concerned lockers.

12. The petitioner company has filed the rejoinder. It has been stated that the details of the stock in trade as mentioned in the statement made before the authorities tallied with the actual stock seized by the respondents. It is submitted that the books of accounts were being regularly maintained and were being audited. GST returns were being regularly filed and the counsel also invites attention to the documents placed along with the



rejoinder to submit that regular income tax returns had been assessed. The assessment for the year 2022-2023 was conducted, which was reflected in the said return tallied with the gold which was available with the petitioner.

13. Learned counsel for the petitioner submits that in all circumstances, there was no occasion available with the respondents, to have withheld the gold, which they have seized from the locker.

14. We have considered the submissions.

15. Section 132 of the Act laid down the search and seizure procedure to be followed and allows the authorities to enter, search and seize and also break open the lockers, etc, in terms of Section 132 (1)(B),(i)(ii)(ia)(ib)(iii) (iv) and (v) of the Act. However, for the present purpose, we notice that Section 132(B)(iii) of the Act provides as under:-

“Search and seizure

132.(1) xxx xxx xxx

(B) such [Additional Director or Additional Commissioner or] Joint Director], or [Joint Commissioner), as the case may be, may authorise any [Assistant Director [or Deputy Director]], [Assistant Commissioner [or Deputy Commissioner] or Income-tax Officer)

the officer so authorised in all cases being hereinafter referred to as the authorised officer) to-]

(i) xxx xxx

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;]



(iv) xxx

xxx

xxx

Thus, there is a bar to seize the stock in trade, which is found as a result of search, and the only authority available with the officer is to make a note and inventory of such stock in trade of the business. Further as per the second proviso where it is not possibly practical to take physical possession and remove to another place, the authorized officer would issue an order to the person in whose possession the things may be lying not to remove or part of it and such order shall be treated as if the concerned articles deemed to have been seized. However, it is further provided that nothing contained in the said proviso would apply to any valuable article or thing being stock in trade of the business. Thus, it is apparent from the above provisions that the stock in trade is not open for seizure by the concerned authorized officer.

16. In the present case, we find that immediately after the raid was conducted on 18.05.2023, the director has given a statement on 19.05.2023, which is as under:-

“Q.30 Please submit the stock-in-trade as on 17.05.2023 of M/s. Dillano Luxurious Jewels Ltd.

Ans. I am herewith providing you the print out of details of stock-in-trade (Exhibit-2 to the statement) as on 17.05.2023 of M/s. Dillano Luxurious Jewels Ltd. The print out has been taken from Dell PC located at the office of M/s. Dillano Luxurious Jewels Ltd. The same was maintained by Ms. Mudita at our office at No. 40, North Avenue, West Punjabi Bagh, New Delhi. However, the same may not be as per books of accounts. I am also submitting the closing balance of stock-in-trade (value in gms) as on 31.03.2023 as Exhibit-3. The closing stock as on 31.03.2023 is as under:

Gold (14 ct.): 13575.017 gms

Diamond: 1369.964 ct.



C Stone (Coloured Stone): 18065.46 ct.”

xxx

xxx

xxx

Q.33 Please submit the detailed inventory of stock available at your business premise and bank locker along with the description, weight and date of purchase, purchase bills etc.

Ans. I have submitted the details of stock available as Exhibit-2 to my statement. The same is prepared by Shri Sudeep who is an employee of M/s Dillano Luxurious Jewels Ltd. The purchase bills of raw material are seized as Annexure-A7 from the business premise of M/s. Dillano Luxurious Jewels Ltd.

However, the same details regarding the inventory at bank locker has been misplaced as the same was prepared by me. The stock in bank locker at South Indian Bank is usually used for very limited purposes like few exhibitions, few select clients and there are some items of jewellery which are least used by me are also kept at lockers.”

It is also noticed that the locker is in the name of the company.

The logical conclusion would be that the jewellery lying in the locker no. 161, which is in the name of the company, would be part of its stock in trade. There can be no other conclusion in this regard. The arguments being raised by the respondents of the value of stock in trade being shown as on 31.03.2023 would differ from that of 17.05.2023 when the search was being conducted, would have no relevance for the purpose of the jewellery which was lying in the locker belonging to the company. There was no occasion for the respondents to have seized the said jewellery and diamonds which were recovered from the concerned locker and upon the demand letter, the same should have been released to the company which is engaged in the business of jewellery. Entire provisions contained in the Finance Act are for furtherance of the taxpayers and the action being taken under the said Act,



ought not be detrimental to a regular business which is being conducted by the concerned company.

17. We find that the adamancy being shown for not releasing the jewellery was wholly unwarranted. An inventory could always be taken, which has already been done and the revenue could have proceeded to do the necessary assessments Physical withholding of gold jewellery, which is part of stock in trade is, found to be wholly warranted.

18. Learned counsel for the petitioner has also argued with regard to non compliance of proviso contained to Section 132B of the Act, which states 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 or reassessment or recomputation] [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.”

Thus, the said provision specifically lays down the procedure for releasing of the assets which have been recovered in normal search and seizure, even if they are not part of the stock in trade. The respondents have not come out with any reason as to why no order was passed by them for not releasing the gold, jewellery and diamond, which they had seized during the search operation. We do not approve such inaction.

19. In W.P. (C) No. 31361 of 2011 – **Sri Pushpa Ranjan Sahoo vs Assistant Director of Income Tax (NV)**, decided on 03.07.2012, the High Court of Orissa held as under:-

“21. In view of the specific provision contained in proviso to Section 132 (1) (iii) and third proviso to Section 132 (1) (v) of the Income Tax Act that bullion, jewellery or other valuable article or things being stock-in-trade of business found as a result of search shall not be seized, contention of Mr. Mohapatra that the authorized officer is fully empowered to seize stock-in-trade if he comes to the conclusion in course of seizure that said stock-in-trade represents wholly or partly undisclosed income or property of the assessee is not tenable in law.”



20. In **Mitaben R. Shah vs Deputy Commissioner of Income Tax and another** (2010) 42 DTR 124, the High Court of Gujarat held that once the period under Section 132 B(1)(i) of the Act is over, the respondents would have no authority to retain the jewellery.

21. The Rajasthan High Court in S.B. Civil Writ Petition No. 8900 of 2014 – **Shri Kamal Mohan Gupta and another vs Additional Director Income Tax and others**, decided on 23.02.2017, while relying judgment of High Court of Gujarat in **Mitaben R. Shah's** case (supra), held as under:-

“In Mitaben R. Shah, supra, the High Court of Gujarat was dealing with the case where the petitioner made application within permissible time limit for release of the gold ornaments explaining the nature of source of acquisition thereof. They were not released even after expiry of time limit of 120 days prescribed by Section of the Income Tax Act, 1961. The High Court held the action of the respondent authorities to be illegal because the application was rejected during the pendency of the writ petition, though the time sought to file reply affidavit, but it was utilized for the purpose of passing the order so as to make the earlier petition infructuous. The note said to have been prepared by the Assistant Director where the petitioner's claim for release of gold ornaments and jewellery was rejected, was never communicated to the petitioner. The impugned order passed after expiry of the prescribed period of 120 days, was held to be contrary to mandate of proviso to Section 132B(1)(i) of the Income Tax Act, 1961. Once the said period is over, respondents have no authority to retain the jewellery, held the High Court.

22. In our considered opinion and taking note of the aforesaid judgments, we hold that the respondents have acted in an arbitrary, illegal and unjustified manner in seizing the stock in trade of the petitioner company. Any jewellery recovered from the locker belonging to the



company, would have to be presumed to be that of the company and it cannot be allowed to contend that the jewellery belongs to any individual director. If such an attempt is allowed to be accepted, dispute would arise regarding the stock of the company itself. At the same time, the company's assets cannot be claimed by any individual director. However, the action of the respondent-department would result in the company's assets being claimed by the individual director also, which cannot be allowed.

23. We find that the action was being initiated against the Oasis Group and the petitioner company. The respondents, therefore, were wholly unauthorized to withhold the stock in trade after the same was already demanded.

24. Additionally, keeping in view the provisions of Section 132B(1)(i) and the proviso thereto, the respondents were obliged to pass orders for releasing the jewellery. In this case, no orders were passed, therefore, the petitioner company was entitled to release of the assets of the company which had been seized.

25. We agree with the counsel for the respondents of the stock in trade of different value as on 17.05.2023 in comparison to the stock in trade as on 31.03.2023. However, the same would have no relevance keeping in view the statement of the concerned director, who admits that the stock in trade may be more apart from the gold seized from the premises as well as the gold and jewellery lying in the locker. Such excuse could not be a ground to withhold the stock in trade, which has been seized from the locker as there was no such power available with the respondents in terms of the proviso to Section 132 (supra).

26. In view of the aforesaid discussion, the writ petition is allowed. We direct the respondents to release the jewellery as per the inventory of



bank locker no. 161, South Indian Bank, Punjabi Bagh, Delhi and as per *panchnama* dated 17.07.2023 forthwith.

27. All pending applications shall stand disposed of.

28. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

11th December, 2024
vs

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes