

Smt. Kusum Lata Singhal vs Commissioner Of Income Tax ... on 16 July, 1990

Equivalent citations: 1991 AIR 236, 1990 SCR (3) 393, AIR 1991 SUPREME COURT 236, 1990 (4) SCC 98, 1990 TAX. L. R. 1022, (1990) 185 ITR 56, (1990) 3 JT 287 (SC), 1990 (3) JT 287, (1990) 51 TAXMAN 300, (1990) 86 CURTAXREP 173

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, K. Ramaswamy

PETITIONER:

SMT. KUSUM LATA SINGHAL

Vs.

RESPONDENT:

COMMISSIONER OF INCOME TAX RAJASTHAN, JAIPUR AND ORS.

DATE OF JUDGMENT 16/07/1990

BENCH:

MUKHARJI, SABYASACHI (CJ)

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MUKHARJI, SABYASACHI (CJ)

RAMASWAMY, K.

CITATION:

1991 AIR 236	1990 SCR (3) 393
1990 SCC (4) 98	JT 1990 (3) 287
1990 SCALE (2) 121	

ACT:

Income Tax Act, 1961 /Income Tax Rules, 1962: Section 132(5), (7)/Rule 112A--Search and seizure by I.T. authorities--Assessee whether entitled to return of valuables.

HEADNOTE:

The petitioner was carrying on business as a stockist of Baba Brand Tobacco. The petitioner's husband, who was a sub-dealer of the product, was living with her at all material times.

A search under section 132 of the Income Tax Act was conducted at their house and valuables and books of account seized. A notice under rule 112A of the Income Tax Rules

read with sub-section (5) of section 132 of the Act was served on the petitioner.

The petitioner filed an application in the High Court under Article 226 of the Constitution claiming return of account books and other

valuables to her. On the other hand, in the proceedings under Section 132(5) of the Act against the petitioner's husband, he had claimed that the ornaments belonged to him and that the same could be treated as representing his undisclosed income.

The High Court came to the conclusion that the authorisation for search under section 132(1) of the Act against the petitioner was not in accordance with law and, therefore, the seizure of the assets could not be said to have been in accordance with law. The High Court however noted that in view of the order made under section 132(5) of the Act against the husband, the valuables could not be ordered to be returned to the petitioner.

Before this Court, it was contended on behalf of the petitioner that if search and seizure were illegal, the items of jewellery were liable to be returned. On behalf of the Revenue, it was contended that in a situation where there was a dispute as to who was the owner of the jewellery and ornaments, the decision of the High Court declining to direct their return to the petitioner could not be faulted.

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Dismissing the special leave petition, the Court,

HELD: (1) A dispute as to the ownership of jewellery in question cannot be resolved in proceedings under Article 226 of the Constitution in the manner sought for by the petitioner. [397F]

(2) In the instant controversy the Court is not concerned whether the proceedings against the husband under section 132(5) of the Act are valid or not, but irrespective of the validity of the proceedings, the evidence or testimony wherein the husband has asserted the ornaments and jewellery to be his, cannot be wiped out and does not become non-existent. The aforesaid being the factual matrix, the High Court was pre-eminently justified in declining to direct return of these items of jewellery and other items to the wife. If that is the position, then it cannot be said that the High Court has committed any error in law which required rectification by this Court under Article 136 of the Constitution. [397E-G]

Assainer & Anr. v. Income Tax Officer, Calicut, [1975] 101 ITR 854; J.R. Malhotra & Anr. v. Additional Sessions Judge, Jullunder, [1976] 2 SCR 993 and Commissioner of Commercial Taxes, Board of Revenue, Madras v. Ramkishnan Shrikishan Jhaver, AIR 1968 SC 59, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 15327 of 1989.

From the Judgment and Order dated 18.7. 1989 of the Rajasthan High Court in D.B. Civil Writ Petition No. 2161 of 1988.

C.S. Agarwal, H.R. Parekh, S.K. Jain for the Petitioner. O.P. Vaish, S. Rajappa and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by Sabyasachi Mukharji, CJ. This is a special leave petition directed against the judgment and order of the High Court of Rajasthan, dated 18th July, 1989. The petitioner herein i.e. Smt. Kusum Lata Singhal carried on, at all relevant times, business under the name and style of M/s. Lata & Company and she claims to be an authorised stockist of Baba Brand Tobacco manufactured by M/s.

Dharampal Premchand Ltd., New Delhi. Mr. R.K. Singhal is the husband of the petitioner. In the judgment under appeal, it has been stated that Mr. R.K. Singhal owns a house No. E117, Shastri Nagar in Jaipur and the petitioner lived with her husband at all material times. Mr. Singhal was a partner in Lata Sales Centre and is said to be a sub-dealer of M/s. Lata & Company.

A search under section 134 of the Income Tax Act, (hereinafter called 'the Act') was conducted at the said premises on 25/26th November, 1987. During the search, valuables and books of accounts were seized on 26th November, 1987, and a notice under rule 112A of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules') read with sub-section (5) of Section 132 of the Act was issued to the petitioner by the Income Tax Officer. The notice was served on the husband of the petitioner.

In the application under Article 226 of the Constitution of India filed before the High Court, the petitioner claimed return of account books and other valuables which were seized on 26th November, 1987. The return was claimed because, according to the petitioner, the retention of the books and valuables was in violation of the provisions of section 132 of the Act. The High Court in the judgment under appeal came to the conclusion that the authorisation for search in the instant case under section 132(1) of the Act was not valid or legal. Therefore, the High Court held that search was bad. At the time of search the silver and gold ornaments worth about Rs.4,58,1089 were found and some other silver and gold ornaments were also found but these were not seized. The High Court had directed return of account books to the petitioner on furnishing photostat copies thereof. The High Court came to the conclusion that the authorisation under section 132(1) of the Act was not in accordance with law and, therefore, the search and seizure of the assets could not be said to have been in accordance with law. The High Court noted that in view of the fact that by virtue of the power under section 132(7) and the order made under section 132(5) of the Act against the husband of the petitioner, the valuables etc. could not be ordered to be returned to the petitioner.

Aggrieved thereby, the petitioner seeks to challenge the said order under Article 136 of the Constitution of India. Mr. C.S. Agarwal appearing for the petitioner, contended before us that if search and seizure were illegal then the evidence obtained by such search and seizure could be utilised in subsequent proceedings, but the items of jewellery and goods worth, according to him, over

Rs.2,97,000 were liable to be returned. We are, however, unable to entertain this appeal. In the instant case the husband of the wife stayed in the same premises. The authorisation of search and seizure in respect of account books and goods which were seized was against the wife but in the proceedings under section 132(5) of the Act the husband Mr. Singhal has contended and claimed that the ornaments in question or the jewellery belonged to him.

Mr. Vaish, learned counsel appearing for the revenue, has drawn our attention to an authorisation issued against the husband Mr. Singhal under sub-section (5) of section 132 of the Act. Indeed, Mr. R.K. Singhal has stated on oath before the authorised officer at the time of search that the same belonged to him and he has claimed the same to be treated as representing his undisclosed income. Mr. R.K. Singhal, the husband, as his evidence has recorded in the proceedings against him, has disclosed the same and surrendered a total sum of over Rs.4,00,000 consisting of undisclosed cash of Rs. 1,16,550 and excessive jewellery worth Rs.2,97,750 received from his possession as his income for the purpose of income-tax assessment for the current year, which he claims to have earned from his business. Therefore, it appears that there is dispute as to who is the owner of the jewellery and ornaments or in other words, to whom do these belong. If in such a situation the High Court has declined to direct return of items of jewellery and ornaments, such decision cannot be faulted. Even though the search and seizure has been declared illegal, it cannot be illegal and the question of, dispute about the items not being urged before the High Court, we cannot say that the High Court has committed any error in this case thereby requiring interference by this Court, or, in other words, that injustice has been caused to any party.

It is well-settled that the dispute as to the ownership of jewellery in question cannot be reserved in proceedings under Article 226 of the Constitution in the manner sought for by the petitioner. Mr. Agarwal drew our attention to the decision in *Assaina & Anr. v. Income Tax Officer, Calicut & Ors.*, [1975] 101 ITR 854 wherein the Kerala High Court has observed that the goods which were seized from the custody of a particular person, should normally be returned to the person from whose custody the same had been seized. The aforesaid may be the position where there is no dispute as to the ownership of the goods in question. In such a situation, return of the goods to the person from whose custody the same are seized, may be possible but the said decision or the observations therein would be no authority in support of the petitioner's contention in the instant case where there is a dispute.

Our attention was also drawn to certain observations of this Court in *J.R. Malhotra & Anr. v. Addl. Sessions Judge, Jullundur & Ors.*, [1976] 2 SCR 993 in support of the proposition that revenue could not indirectly keep the money seized on the plea that there would be a demand and that the money may be kept by revenue where surrender and seizure was wrong. We are afraid that the aforesaid observations of this Court are also of no avail in the light of the perspective that we have mentioned hereinbefore. The said observations were made entirely in a different context.

Our attention was also drawn to the observations of this Court in *Commissioner of Commercial Taxes, Board of Revenue, Madras & Anr. v. Ramkishan Shrikishan Jhaver etc.*, AIR 1968 SC 59 in support of the proposition that when a search was found illegal, the goods should be returned. Normally speaking, that would be so. This proposition is unexceptional but in the light of the

controversy as we have perceived in this case, we are clearly of the opinion that this submission will not be of any assistance in doing justice in this case. Mr. Agarwal further contended that if the proceedings under Section 132(5) for the original search were held to be invalid then all proceedings thereafter would be invalid and, therefore, the proceedings initiated as a result of that search even against the husband, would be invalid and such a statement of the husband recorded, cannot be utilised any further. In the instant controversy we are not concerned whether the proceedings against the husband under section 132(5) of the Act are valid or not but irrespective of the validity of the proceedings, the evidence or testimony as mentioned hereinbefore, wherein he has asserted the ornaments and jewellery to be his, cannot be wiped out and does not become non-existent. After all, we are concerned with the contention of the husband that the jewellery in question belongs to him, in this case. The aforesaid being the factual matrix, the High Court, in our opinion, was pre-eminently justified in declining to direct return of these identical jewellery and other items to the wife. If that is the position then it cannot be said that the High Court has committed any error in law which requires rectification by this Court. This application for leave under Article 136 of the Constitution is certainly not entertainable. In the premises, this application must be dismissed without any order as to costs. Interim orders, if any, are vacated.

R.S.S.
missed.

Petition dis-