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Neutral Citation No. - 2024:AHC:49600-DB

Court No. - 39

Case :- WRIT TAX No. - 1597 of 2022

Petitioner :- Dipak Kumar Agarwal
Respondent :- Assessing Officer And 4 Others
Counsel for Petitioner :- Ram Narain Yadav,Suyash Agarwal,Sr. Advocate
Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan,Gopal Verma

Hon'ble Saumitra Dayal Singh,J.
Hon'ble Surendra Singh-I,J.

1. Heard Sri Rakesh Ranjan Agarwal, learned Senior Advocate assisted by Sri Ram Narain Yadav, learned counsel for the petitioner and Sri Gaurav Mahajan, learned counsel for the revenue.

2. Present writ petition has been filed to quash the seizure of Rs. 36,12,000/- dated 13.09.2022, effected under Section 132B(1)(i) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Further relief has been sought to release the said amount detained since 01.09.2022, together with due interest payable under Section 132(B)(4) read with Rule 119 (A) of the Income Tax Rule, 1961 (hereinafter referred to as 'the Rules').

3. Learned Senior Counsel for the petitioner submits, petitioner is a jeweller. He regularly filed his income tax returns since 2012-2013. In the year 2022, he set out to acquire stock of gold jewellery for the oncoming Dushehra and Diwali festivities. He thus handed over Rs.36,12,000/- to his worker Om Prakash Bind on 31.08.2022 alongwith railway ticket requiring him to undertake the rail journey to Kolkata to buy jewellery. On 31.08.2022, said Om Prakash Bind was apprehended by the Government Reserved Police (GRP) at Railway Station, Mirzapur. In the course of that search by the police authorities, Rs.36,12,000/- was recovered from his bag. Later, that information was passed on to the

Income Tax Authority who arrived on the scene on 01.09.2022 and subjected the cash recovered from Om Prakash Bind to proceeding under Section 132 (1-A) of the Act.

4. In the course of proceedings statements of the petitioner as also Om Prakash Bind were recorded. In that, according to the petitioner, a consistent story emerged that the cash Rs.36,12,000/- recovered from Om Prakash Bind, belonged to the present petitioner.

5. The petitioner further claims, during the course of that investigation, petitioner had produced regular books of accounts and details of his income tax returns filed for the past Assessment Years to establish that the seized cash was duly accounted for/tax paid money. On 15.09.2022, the petitioner made an application to the assessing authority/respondent No.3 in terms of Section 132 B (1) (i) read with the proviso to Section 132 B (1) (i) of the Act to release the amount Rs.36,12,000/-. As a fact, it is undisputed, rather it is admitted to the revenue-that application has remained pending till now.

6. In such facts, learned Senior Counsel for the petitioner has vehemently urged, in view of the clear language of Section 132 B (1) (i) of the Act read with the second proviso thereto, once the application had been made by the petitioner to release the seized amount, the assessing authority was obligated to examine, if the nature and source of acquisition of any part of the seized money was explained. Further, it was obligated to examine, if there was any existing liability of tax or penalty etc. against the petitioner that may be satisfied from the seized amount. In absence of such pre-existing demand etc., the amount or the balance amount, as the case may be, ought to have been released in favour of the petitioner.

7. Relying heavily of the second proviso, it has been urged, in absence of any decision made under the first proviso, the entire seized amount had to be released at the end of 120 days time period specified therein. Since, the petitioner had made the application within the stipulated time of 30 days (from the end of month in which assets/money was seized), that period of 120 days would expire not beyond mid January, 2023. Since no decision was made within that time, the petitioner has become absolutely entitled to release of that money.

8. Reliance has been placed on the decisions of the Gujarat High Court in **Mitaben R. Shah vs. Deputy Commissioner of Income-Tax And Another; (2011) 311 ITR 424 (GUJ)** as followed in **Mul Chand Malu (HUF) vs. Assistant/Deputy Commissioner of Income Tax; (2016) 69 Taxmann.com 437 (Gauhati)** and as also followed by the Gujarat High Court in **Nadim Dilip Bhai Panjvani vs. Income-tax Officer, Ward No.3; (2016) 66 Taxmann.com 124 (Gujarat)** and **Ashish Jayantilal Sanghavi vs. Income-tax Officer; (2022) 139 Taxmann.com 126 (Gujarat)**.

9. Second, referring to the provisions of Section 132 B (4) read with Rule 119 A of the Rules, it has been submitted, the petitioner is entitled to monthly interest at the rate one-half percent, to be computed strictly in accordance with Rule 119 A of the Rules.

10. Thus, it has been submitted, the word 'shall' used in the second proviso to Section 132 B (1) (i) of the Act is a legislative mandate. It comes into force on its own, upon expiry of time. Thus, at most, the revenue may hold the seized money for 120 days. During that period upon application filed, the assessing authority would become obligated to apply his mind-if money is duly accounted for and also if such money may be applied to satisfy any existing demand or demand

likely to arise from the seizure itself. In the present facts, there was no pre-existing demand against the petitioner. Therefore, the revenue authority could only have examined if the seized amount Rs.36,12,000/- was accounted for and it it was required to satisfy the likely demand of tax. The petitioner produced his books of accounts and clearly established that the entire money was duly accounted for. In absence of any adverse inference drawn within the permissible time limitation of 120 days, the petitioner is entitled to refund of that money, by operation of law.

11. On the other hand, Sri Gaurav Mahajan, learned counsel for the revenue would submit, there is no absolute right to refund earned by the petitioner during pendency of the assessment proceedings arising from the requisition made under Section 132 A (c) of the Act. He would also submit that the word 'shall' used in the second proviso of Section 132 B (1) (i) of the Act provides for directory scheme and not a mandatory legislative dictate.

12. Further objection that was also raised by Sri Mahajan, learned counsel for the revenue that the cash seized was not from the present petitioner but from Om Prakash Bind and therefore, application, if any, may have been made by said Om Prakash Bind, does not impresses the Court.

13. Having heard the learned counsel for the parties and perused the record, in the first place, it would be useful to take note of the provisions of Section 132 B (1) (i) of the Act. It reads:

> *"132 B. Application of seized or requisitioned assets.- (1) The assets seized under section 132 or requisitioned under section 132 A may be dealt with in the following manner, namely:-*
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> *(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]"*

14. Undoubtedly, the first proviso to the said sub-section allows the person searched, an opportunity to make an application for release of a seized assets, if nature and source of its acquisition, is explained. The money Rs. 36,12,000/- seized from Om Prakash Bind is clearly an asset that has been seized. Therefore, subject matter of seizure fell within the scope of provisions of Section 132 B (1) (i) of the Act.

15. Second it is also not in doubt that the petitioner applied for release of that asset/cash Rs.36,12,000/- within a time stipulated for that purpose i.e. 30 days from the last authorization. That, the revenue does not dispute.

16. Then, a presumption exists that under the Act, an asset seized from a person belongs to that person at the same time that presumption remains rebuttable in law. Therefore, it was open to the petitioner to make such an application even though the cash had not been seized from his person or from him. At the same time, it may have remained open to the respondent/authority to issue notice to Om Prakash Bind on that application made by the petitioner and pass appropriate order, thereafter.

17. Here, it is not disputed to the revenue that in the course of investigation arising from seizure made, the said Om Prakash Bind did

participate in the investigation and at present, the record appears to suggest that he made a statement indicating petitioner's ownership in the money Rs.30,12,000/-. In any case, we are not required to draw any final conclusion in that regard, at present, since that exercise had to be made by the assessing authority. Yet, there was no inherent defect in the application made by the petitioner.

18. In the present facts, no finding has been recorded by the Assessing Authority. In fact he has neither disputed the ownership of money claimed by the petitioner nor he has considered the issue to any extent. Therefore, the only conclusion to be drawn at this stage is-the application made by the petitioner for release of the seized money of Rs.36,12,000/- dated 15.09.2022 was wholly maintainable.

19. Under the scheme of the Act, in the first place, upon an application for release of seized assets filed, the Assessing Authority is first required to examine if the nature and source of acquisition of the seized asset is explained. In fact, law obligates the Assessing Authority to consider release such part of the seized asset of which nature and source of acquisition is explained by the person searched. The first caveat to that statutory principle is that there may not pre-exist any demand of tax to which such explained asset may not be applied, in the interest of revenue. The second caveat is, such asset may not be released if it would be required to recover the tax demand likely to arise upon assessment being made consequent to the search. Thus, though tax paid/duly explained assets of an assessee may come to be seized in the course of search proceedings on the strength 'reason to believe' recorded at that stage of proceedings, the Act does not permit retention of such assets. On the contrary, the Act stipulates, such assets may be released in favour of the person searched at the initial stage

itself subject however to the exception that there may not be any outstanding recovery of tax against such a person and such asset may not be required to recover the demand of tax likely to arise upon assessment to be made as consequent to the search.

20. Seen in that light, we come to the core issue involved in the present case. It is whether in such facts where the petitioner had made an application to release seized asset/cash of Rs.36,12,000/- in terms of the first proviso to Section 132 B (1) (i) of the Act and the Assessing Authority failed to record any satisfaction within '120 days' stipulated under the second proviso to the above noted provision, the petitioner became absolutely entitled in law to obtain release of those assets.

21. To decide that issue, we have to interpret the word 'shall release' appearing in the second proviso to Section 132 B (1) (i) of the Act. If those words express mandatory intent, it cannot be denied that the petitioner would remain entitled to refund of Rs.36,12,000/-, upon the Assessing Authority's failure to decide the petitioner's application dated 15.09.2022 within the stipulated time of 120 days. On the other hand, if those words express directory intent, the application would survive for consideration by the Assessing Authority, in terms of first proviso to Section 132 B (1) (i) of the Act.

22. In grammar, the words 'shall' and 'may' indicate different intent. The word 'shall' is normally used to indicate to cause a mandatory effect whereas 'may' indicates action to be taken as per the doers volition. In usage, the difference may also indicate the degree of politeness invoked by the user. However in law though application of the rules of grammar is not excluded, at the same time interpretation in law as to mandatory or directory nature of the word 'shall' is not to be

decided solely on the strength of rules of grammar. Well recognized principle in that regard involve looking at the object and purpose and whether consequences of non-compliance have been prescribed in law.

23. In **State of U.P. vs. Manbodhan Lal Srivastava: AIR 1957 SC 912,** a five-Judge bench of the Supreme Court observed as below:

> *11. An examination of the terms of Article 320 shows that the word "shall" appears in almost every paragraph and every clause or sub-clause of that article. If it were held that the provisions of Article 320(3)(c) are mandatory in terms, the other clauses or sub-clauses of that article, will have to be equally held to be mandatory. If they are so held, any appointments made to the public services of the Union or a State, without observing strictly, the terms of these sub-clauses in clause (3) of Article 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter. This result could not have been contemplated by the makers of the Constitution. Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on Statutory Construction— Article 261 at p. 516, is pertinent:*
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> *"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other…"*
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> *(emphasis supplied)*

24. Then, in the case **Banwarilal Agarwalla vs. The State of Bihar And Others; AIR 1961 SC 849**, another five Judge bench of the Supreme Court as under:

> *6. It was not disputed before us that when the Regulations were framed, no Board as required under Section 12 had been*

constituted, and so, necessarily there had been no reference to any Board as required under Section 59. The question raised is whether the omission to make such a reference makes the rules invalid. As has been recognised again and again by the courts, no general rule can be laid down for deciding whether any particular provision in a statute is mandatory, meaning thereby that non-observance thereof involves the consequence of invalidity or only directory, i.e., a direction the non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur. But in each case the court has to decide the legislative intent. Did the legislature intend in making the statutory provisions that non-observance of this would entail invalidity or did it not? To decide this we have to consider not only the actual words used but the scheme of the statute, the intended benefit to public of what is enjoined by the provisions and the material danger to the public by the contravention of the same. In the present case we have to determine therefore on a consideration of all these matters whether the legislature intended that the provisions as regards the reference to the Mines Board could be contravened only on pain of invalidity of the regulation."

(emphasis supplied)

25. Then, in **C. Bright vs. District Collector And Others; (2021) 2 SCC 392** a three Judge bench of the Supreme Court had the occasion to consider whether the word 'shall' used (in Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) to prescribe 30-60 days time limit to deliver possession, was mandatory or directory. The Supreme Court considered the pre-existing law on the subject and observed as below:-

8. A well-settled rule of interpretation of the statutes is that the use of the word "shall" in a statute, does not necessarily mean that in every case it is mandatory that unless the words of the statute are literally followed, the proceeding or the outcome of the proceeding, would be invalid. It is not always correct to say that if the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid and that when a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. The principle of literal construction of the statute alone in all circumstances without examining the

context and scheme of the statute may not serve the purpose of the statute.

9. The question as to whether, a time-limit fixed for a public officer to perform a public duty is directory or mandatory has been examined earlier by the courts as well. A question arose before the Privy Council in respect of irregularities in the preliminary proceedings for constituting a jury panel. The Municipality was expected to revise the list of qualified persons but the jury was drawn from the old list as the Sheriff neglected to revise the same. It was in these circumstances, the decision of the jury drawn from the old list became the subject-matter of consideration by the Privy Council. It was thus held that it would cause greater public inconvenience if it were held that neglecting to observe the provisions of the statute made the verdicts of all juries taken from the list ipso facto null and void so that no jury trials could be held until a duly revised list had been prepared.

10. The Constitution Bench of this Court held that when the provisions of a statute relate to the performance of a public duty and the case is such that to hold acts done in neglect of this duty as null and void, would cause serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, the practice of the courts should be to hold such provisions as directory. In a seven-Bench judgment, this Court was considering as to whether the power of the Returning Officer to reject ballot papers is mandatory or directory. The Court examined well-recognised rules of construction to observe that a statute should be construed as directory if it relates to the performance of public duties, or if the conditions prescribed therein have to be performed by persons other than those on whom the right is conferred.

11. In a judgment reported as Remington Rand of India Ltd. v. Workmen , Section 17 of the Industrial Disputes Act, 1947 came up for consideration. The argument raised was that the time-limit of 30 days of publication of award by the Labour Court is mandatory. This Court held that though Section 17 is mandatory, the time-limit to publish the award within 30 days is directory inter alia for the reason that the non-publication of the award within the period of thirty days does not entail any penalty.

12. In T.V. Usman v. Food Inspector, Tellicherry Municipality, the time period during which report of the analysis of a sample under Rule 7(3) of the Prevention of Food Adulteration Rules, 1955 was to be given, was held to be directory as there was no time-limit prescribed within which the prosecution had to be instituted. When there was no such limit prescribed then there was no valid reason for holding the period of 45 days as mandatory. Of course, that does not mean that the Public Analyst can ignore the time-limit prescribed under the Rules. He must in all cases try to comply with the time-limit. But if there is some delay, in a given case, there is

> *no reason to hold that the very report is void and, on that basis, to hold that even prosecution cannot be launched.*
>
> *13. This Court distinguished between failure of an individual to act in a given time-frame and the time-frame provided to a public authority, for the purposes of determining whether a provision was mandatory or directory, when this Court held that it is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified.*
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> *14. In P.T. Rajan v. T.P.M. Sahir, this Court examined the effect of non-publication of final electoral rolls before the time of acceptance of nomination papers. The Court held as under : (SCC p. 516, para 48)*
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> *"48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory."*
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> *(emphasis supplied)*

26. Then, the Supreme Court further considered the law laid down by a five Judge Constitution Bench of the Supreme Court in **New India Assurance Company vs. Hilli Multipurpose Cold Storage (P) Ltd; (2020) 5 SCC 757**. It observed:

> *"15. A recent Constitution Bench held that the provisions of the Consumer Protection Act granting 30 days' time to file response by the opposite party or such extended period not exceeding 15 days is mandatory as the object of the statute is for the benefit and protection of the consumer. It observed that such Act had been enacted to provide expeditious disposal of consumer disputes. In this case, an individual was called upon to file his written statement in contradiction for a pubic authority to decide the issue before it"*
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> *(emphasis supplied)*

27. Upon, that discussion of the law, the Supreme Court then concluded (in **C Bright vs. District Collector And Others: (2021) 2 SCC 392)** as below:

> *"21. The Act was enacted to provide a machinery for empowering banks and financial institutions, so that they may have the power to take possession of secured assets and to sell them. The DRT Act was first enacted to streamline the recovery of public dues but the proceedings under the said Act have not given desirous results. Therefore, the Act in question was enacted. This Court in Mardia Chemicals, Transcore and Hindon Forge (P) Ltd. has held that the purpose of the Act pertains to the speedy recovery of dues, by banks and financial institutions. The true intention of the legislature is a determining factor herein. Keeping the objective of the Act in mind, the time-limit to take action by the District Magistrate has been fixed to impress upon the authority to take possession of the secured assets. However, inability to take possession within time-limit does not render the District Magistrate functus officio. The secured creditor has no control over the District Magistrate who is exercising jurisdiction under Section 14 of the Act for public good to facilitate recovery of public dues. Therefore, Section 14 of the Act is not to be interpreted literally without considering the object and purpose of the Act. If any other interpretation is placed upon the language of Section 14, it would be contrary to the purpose of the Act. The time-limit is to instil a confidence in creditors that the District Magistrate will make an attempt to deliver possession as well as to impose a duty on the District Magistrate to make an earnest effort to comply with the mandate of the statute to deliver the possession within 30 days and for reasons to be recorded within 60 days. In this light, the remedy under Section 14 of the Act is not rendered redundant if the District Magistrate is unable to handover the possession. The District Magistrate will still be enjoined upon, the duty to facilitate delivery of possession at the earliest."*
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> *(emphasis supplied)*

28. Here, the only consequence of non-compliance of Section 132 B (1) (i) of the Act, as has been rightly pointed out by the learned Senior Counsel for the petitioner is contained in Section 132 B (4) of the Act. That provision of law reads as below:

> *" 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 [or reassessment or recomputation]"*

29. Thus, the only consequence of non-compliance of Section 132 B (1) (i) of the Act is by way of payment of interest at the highest rate provided by the legislature i.e. @ of 18 % per annum. The period for which such interest may become payable has also been specified under that provision. By imposing the levy of interest on the revenue, a plain reading of sub section (4) of Section 132 B (1) (i) of the Act, the legislature itself contemplated cases where orders may remain to be passed by the Assessing Authority within the timeline provided under Section 132 B (1) (i) of the Act. Payability of interest may arise only in a case where the order may have remained to be passed within a time stipulation provided under the second proviso to Section 132 B (1) (i) of the Act.

30. That being the only consequence provided, we find it difficult to persuade ourselves to the reasoning of the Gujarat High Court in **Mitaben R. Shah vs. Deputy Commissioner of Income-Tax And Another** (supra)-the sheet anchor of the submissions advanced by Senior Advocate for the petitioner, perusal of that decision reveals, mandatory intent was read into the language of Section 132 B (1) (i) of the Act by relying on the reasoning/ratio in **Cowasjee Nusserwanji Dinshaw vs. Income Tax Officer : (1987) 165 ITR 702**. That was a case of proceeding under Section 132 (8) of the Act and not Section 132 B of the Act, as it then existed. For ready reference, that provision of law is quoted below:

> *"132. (8) The books of account or other documents seized under sub-section (1) or sub-section (1-A) shall not be retained by the authorised officer for a period exceeding one hundred and eighty*

days from the date of seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Commissioner for such retention is obtained."

31. On the test of consequences provided, **Cowasjee Nusserwanji Dinshaw (supra)** case was a different case altogether. It provided a statutory injunction against retention of books of accounts and other documents beyond a period of 180 days, unless reasons for their continued retention were recorded in writing with the approval of the Commissioner. In absence of reasons recorded and approval granted prior to the expiry of 180 days time limit, the seized books of accounts and documents had to be released.

32. Plainly that mandate of law does not exist under the provision of Section 132 B (1) (i) of the Act. This provision only contemplates-a person subjected to search may not be made to wait endlessly for release of valuable assets that may have been seized during the course of search. If, the nature and source of acquisition of a seized asset is wholly explained and it may not be required for recovery of any outstanding demand or demand of tax that may arise under the assessment proposed to be made consequent to the search giving rise to the seizure itself, the same may be released. The provisions does not stipulate any consequence of automatic release. It would first have to be invoked by the assessee by filing a proper application. Then if conditions are fulfilled, an order recording that satisfaction may be passed. It is for that purpose a timeline of 120 days is contemplated on a non-imperative basis. In the event of delay in making the decision the revenue has been saddled with interest liability @ 18 % per annum. On the contrary under Section 132 (8) of the Act [as considered in **Cowasjee Nusserwanji Dinshaw (supra)]**, a statutory duty was cast on the seizing authority to itself record reasons to detain

seized documents beyond 180 days and the consequence of its non-adherence was also provided by way of release of the same. Therefore, in absence of statutory intent shown to exist, it may not be inferred through the process of legal reasoning-that if no order is passed within a time of 120 days, seized assets must be released notwithstanding its impact on the recovery of existing and likely demands.

33. As noted above, similar stipulations of time provided under different enactments have been interpreted to be directory and not mandatory. Therefore, we are unable to pursue ourselves to subscribe to the reasoning that has found its acceptance by the Gujarat High Court in the case of **Mitaben R. Shah vs. Deputy Commissioner of Income-Tax And Another** (supra), **Ashish Jayantilal Sanghavi vs. Income-tax Officer** (supra),**Nadim Dilip Bhai Panjvani vs. Income-tax Officer, Ward No.3** (supra) and Gauhati High Court in the case of **Mul Chand Malu (HUF) vs. Assistant/Deputy Commissioner of Income Tax** (supra).

34. Insofar as, learned Senior Counsel for the petitioner has invoked the principle-if an Act is required to be done in a particular way, it may be done in that way or not at all, we find the same to be inapplicable to the present law. In our opinion, the provision in question [Section 132 B (1) (i)] being directory, the jurisdiction of the Assessing Authority to deal with the petitioner's application dated 15.09.2022 did not lapse or abate upon expiry of the period of 120 days. Since that stipulation of law is only directory, it survives to the Assessing Authority to deal with the application, even today.

35. We may also observe at this stage, if on due application of mind, the Assessing Authority reaches a conclusion that the nature and source of Rs.36,12,000/- seized from Om Prakash Bind was duly

explained and if assessing officer is adequately satisfied that that amount was neither required for satisfaction of any outstanding demand or satisfaction of demand that may arise pursuant to the assessment proposed to be made, such refundable amount would attract liability of interest under Section 132 B (4) of the Act read with Rule 119 A of the Rules.

36. In view of the above, we decline to issue the writ of Mandamus as prayed. Instead, we **dispose of** the writ petition with a direction on the Assessing Authority/respondent No.2 to proceed to deal with and decide the application of the petitioner dated 15.09.2022 within two weeks from today, by a reasoned and speaking order, after hearing the petitioner. No order as to costs.

Order Date :- 19.3.2024
Amit

(Surendra Singh-I, J.) (S.D. Singh, J.)