

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 1856 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI Sd/-****and****HONOURABLE MR. JUSTICE DEVAN M. DESAI Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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PRAVEENBHAI GIRDHARILAL AGARWAL

Versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), AHMEDABAD

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Appearance:

MR FENIL H MEHTA(11663) for the Petitioner(s) No. 1

for the Respondent(s) No. 1,2,4

MR.VARUN K.PATEL (3802) , MR DEV PATEL, for the Respondent(s) No.

1,2,3,4

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CORAM:HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 27/06/2023

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

1. **RULE.** Learned Standing Counsel, Mr. Varun Patel, appearing with learned Advocate, Mr. Dev Patel, waives service of rule for the Respondents.

2. Since, the issue involved in this matter, runs in a very narrow compass, learned Advocates appearing for the parties made a joint request to take-up the same for final hearing, at the admission stage.

3. By way of this petition, filed under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs;

“6. ...

(a) direct the Respondent No.1 to accord the approval for release of the seized gold weighing 100.350 grams of the petitioner;

(b) direct the Respondent No.4 to release the seized gold weighing 100.350 grams of the petitioner;

(c) any other and further relief deemed just and proper be granted in the interest of justice;

(d) to provide for the costs of this petition;”

4. The factual matrix of the case, leading to the filing of the present petition, are that, according to the petitioner, he filed his income tax return for the A.Y. 2018-2019 on 17.09.2018, declaring total income of Rs.11,53,400/- .

4.1 It is, further, the case of the petitioner that during the course of search and seizure, carried out under Section 132 of the Income Tax Act, 1961 (in brief, 'the Act'), in respect of one Mr. Sureshkumar from Jay Mata Di Air Service and one Mr. Jagdish Prasad from Bright Courier, a parcel containing gold, weighing total 720.34 grams, was intercepted and seized by Respondent No.4 on 27.10.2017.

4.2 Pursuant to the above, the assessment proceedings were carried out, as provided under Section 153C of the Act, for the A.Y. 2018-2019, where, Respondent No.3 added the value of the seized gold of the petitioner, weighing 720.34 grams, i.e. Rs.21,79,813/-, to the total income of the petitioner, treating the same to be as an unaccounted investment, so as to protect the interest of the revenue, as provided under Section 143(3), read with Section 153C, of the Act vide order dated 19.12.2019.

4.3 It appears that, being aggrieved with the order dated 19.12.2019, the petitioner preferred an appeal before the CIT(A)-11, Ahmedabad (referred to as the 'Appellate Authority', hereinafter).

4.3.1 After hearing both the sides, the Appellate Authority, in exercise of the appellate powers under Section 250 of the Act, allowed the appeal filed by the petitioner and deleted the addition made by Respondent No.3 vide order dated 19.12.2019 vis-a-vis

the seized gold of the petitioner, vide order dated 25.02.2021.

4.4 Pursuant to the above, Respondent No.3 passed the order dated 07.04.2021, giving effect to the order of the Appellate Authority dated 25.02.2021, by raising NIL demand.

4.5 It is the case of the petitioner that, pursuant to the order dated 07.04.2021, since, there was no demand outstanding qua the petitioner either under the provisions of Section 132B(1)(i) of the Act or any other provisions of the Act, he made a request, vide letter dated 20.04.2021, to Respondent No.1 to release the seized gold, weighing 720.34 grams.

4.6 It appears that, subsequently, out of the total seized gold, the gold, weighing 619.99 grams, came to be released in favour of the petitioner on 05.01.2022. However, the remaining seized gold, weighing 100.350 grams, continued to be withheld by the concerned Respondent-authorities.

4.6.1 For the purpose of getting the remaining seized gold released, i.e. the gold weighing 100.350 grams, the petitioner send a letter dated 19.03.2022. However, no reply was received, in response to the same.

4.6.2 Being aggrieved with the same, the

petitioner ventilated his grievance on Centralized Public Grievance Redress and Monitoring System (CPGRAMS) portal on 09.01.2023. However, the aforesaid grievance came to be disposed of, stating that, since, there is a demand pending in the case of one M/s. Anant Jewellers (i.e. the Sender Party), the seized gold, weighing 100.350, is not released.

Hence, the present petition.

5. Heard, learned Advocate, Mr. Mehta, appearing for the petitioner and learned Standing Counsel Mr. Varun Patel, appearing with learned Advocate, Mr. Dev Patel, for the Respondents.

6. Learned Advocate, Mr. Mehta, appearing for the petitioner, submitted that there is no demand outstanding against the present petitioner for any of the liabilities, as provided under Section 132B(1)(i) of the Act, after the effect is given to the order of the Appellate Authority dated 07.04.2021 and therefore, the Respondent-authorities ought to have released the remaining seized gold, weighing 100.350 grams, in favour of the petitioner.

6.1 In support of his submission, learned Advocate, Mr. Mehta, referred to and relied on the provisions contained in Section 132B(1)(i) of the Act.

6.2 Next, learned Advocate, Mr. Mehta, referred to

the order passed by the Appellate Authority, a copy whereof is produced at Page-31 of the compilation, and relied, more particularly, on the observations made in Paragraph-12.9, thereof.

6.3 Learned Advocate, Mr. Mehta, submitted that even otherwise, the order passed by the Appellate Authority, Dated: 25.02.2021, has attained finality. It was, therefore, submitted that, now, it is not open to the Respondents to contend that, since, a demand is pending qua the sender, i.e. M/s. Anant Jewellers, the remaining seized gold, weighing 100.350 grams, cannot to be released.

6.4 In support of his submissions, learned Advocate, Mr. Mehta, placed reliance on the decision of the Division Bench of this Court, rendered in the case of '**RAKESHKUMAR BABULAL AGARWAL VS. PRINCIPAL COMMISSIONER OF INCOME-TAX**', reported in [2022] 136 taxmann.com 329 (Gujarat).

6.4.1 Lastly, it was submitted that, since, the issue involved in this matter is covered by the aforesaid decision, this petition be allowed.

7. On the other hand, learned Standing Counsel, Mr. Varun Patel, appearing with learned Advocate, Mr. Dev Patel, strongly opposed this petition and, while referring to the averments made in the affidavit-in-reply on behalf of the Respondents, submitted that

three different parcels were found in the possession of one Shri. Sureshkumar, who was from Jay Mata Di Air Service, and one Mr. Jagdish Prasad, who was from Bright Courier. It was, further, submitted that the details of the courier parcels, which were to be delivered to the petitioner, are mentioned in Paragraph-3 of the affidavit-in-reply.

7.1 It was submitted that the search related assessment / addition, in the case of the petitioner, was done as per the provisions of the Act. The order of assessment was challenged before the Appellate Authority, which deleted the addition made by the concerned Assessing Officer vide order dated 25.02.2021.

7.1.1 It was submitted that subsequent to the above order, the petitioner made an application for release of the seized gold, weighing 720.34 grams, and since, in case of the two sender parties, i.e. namely, Sheel Sangam Jewellers and Siya Ram Jewels, there was no addition made, out of the total seized gold, the gold weighing 619.99 grams, came to be released. However, since, there was an addition made in the hands of the sending party, i.e. M/s. Anant Jewellers, the remaining seized gold, weighing 100.350 grams, could not be released and the order of assessment, along with the demand notice, came to be passed on 03.06.2021 in the case of M/s. Anant Jewellers.

7.1.2 It was pointed out that M/s. Anant Jewellers had also preferred appeal against the order dated 03.06.2021, however, the Appellate Authority dismissed the same vide order dated 09.12.2022.

7.1.3 It was, therefore, submitted that as the addition has been made by the concerned Assessing Officer in the hands of the sender party, i.e. M/s. Anant Jewellers, with respect to the seized gold, weighing 100.350 grams, and consequently, a demand of Rs.3,09,992/- has also been raised against the assessee, M/s. Anant Jewellers, the request of the petitioner to release the remaining seized gold has rightly not been entertained and thereby, the Respondents have committed no illegality.

7.2 It was, therefore, prayed that this petition be dismissed.

8. We have heard the learned Counsels for the parties and also perused the material produced on record, which, reveal that the Respondent-authorities intercepted one Mr. Sureshkumar from Jay Mata Di Air Service and one Mr. Jagdish Prasad from Bright Courier, who were carrying parcel of gold, weighing total 720.34 grams, and seized the same on 27.10.2017.

8.1 In wake of the above, the Respondent-authorities

initiated the assessment proceedings under Section 153C of the Act and an addition of Rs.21,79,813/- was made, in respect of the seized gold, weighing 720.34 grams, to the total income of the petitioner. The petitioner challenged the action of the Respondent-authorities before the Appellate Authority by way of filing an appeal, which allowed the same vide order dated 25.02.2021.

8.1.1 Now, if, the order passed by the Appellate Authority, Dated: 25.02.2021, is perused, it has specifically recorded that in the case of Anant Jewellers the sales was recorded in the books of accounts of the assessee vide GST bill dated 24.10.2017, but, the sales was returned back by the concerned party, i.e. Anant Jewellers. Later on, i.e. on 27.10.2017, the same was intercepted at Rajkot Airport.

8.1.2 The Appellate Authority also has observed that the GST of Rs.8,896/- was also charged in the invoice qua the aforesaid sales and therefore, there was no case of unaccounted sales made out against the assessee, i.e. the petitioner.

8.1.3 It is, further, recorded by the Appellate Authority that the appellant, i.e. the present petitioner, had provided all the necessary documents in support of his say, which shows that both the parties have duly recorded the transaction in the

books of accounts and therefore, there was no question of any unaccounted transactions, which could be considered for addition.

8.1.4 Here, it may be noted that the Respondent-authorities have not challenged the order passed by the Appellate Authority by filing appeal before the higher forum, and therefore, the same has attained finality.

8.2 While giving effect to the aforesaid order, the Respondent-authorities passed an order on 07.04.2021, raising NIL demand in case of the petitioner.

8.2.1 Since, there was no demand pending qua the Petitioner, he send a communication dated 20.04.2021 for the release of the seized gold. It appears that, since, the concerned Assessing Officer had not made any addition, so far as Sheel Sangam Jewellers and Siya Ram Jewels are concerned, the concerned Respondent-authorities released the gold, weighing 619.99 grams, out of the total seized gold and the same was handed over to the petitioner. However, the remaining seized gold, weighing 100.350 grams, was not released, on the ground that there was an addition made in the hands of the sending party, i.e. M/s. Anant Jewellers. Thereafter, the order of assessment, along with the demand notice, came to be passed on 03.06.2021 in the case of M/s. Anant Jewellers.

8.2.2 It may be noted that, as recorded herein above, M/s. Anant Jewellers had also preferred appeal against the order dated 03.06.2021. However, the Appellate Authority dismissed the same vide order dated 09.12.2022.

8.2.3 Here, it is pertinent to note that the appeal filed by M/s. Anant Jewellers was not dismissed by the Appellate Authority on merits, but, the same was dismissed on the ground that it was filed, without mentioning even a single ground for appeal.

8.3 At this stage, it would be relevant to refer to the provisions of Section 132B(1)(i) of the Act, which provides that;

“ [132B]. Application of seized or requisitioned assets.—

(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 [under section 153A 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:

Provided further that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorizations for search under section 132 or for requisition under section 132A, as the case may be, was executed:"

8.4 Further, Sub-Section (3) of Section 132B reads thus;

"[132B]. ...

(3) Any assets or proceeds thereof which remain after the

liabilities referred to in clause (i) of subsection (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.”

8.5 Bearing in mind the aforesaid provisions of the Act, if, the facts of the case on hand are examined, admittedly, in the case of the petitioner, there is no demand remains outstanding or pending, for any of the liabilities referred to in the aforesaid provisions for any assessment year, after giving effect to the order of the Appellate Authority dated 25.02.2021. Therefore, merely, because, some demand is pending qua M/s. Anant Jewellers, it is not open to the Respondent-authorities to continue to withhold the gold, weighing 100.350 grams, which is of the ownership of the petitioner.

8.6 At this stage, it would be relevant to refer to the decision of the Division Bench of this Court in the case of '**RAKESHKUMAR BABULAL AGARWAL**, (Supra), wherein, at Paragraphs- 3 to 6 it is observed as under;

3. It appears from the materials on record that the writ applicant is engaged in the business of Gold Jewellery. The writ applicant filed his return of income for the A. Y. 2018-19 on 29th September 2018 declaring his total income to the tune of Rs.16,41,430/-.

4 It appears that search was carried out in the case of one Shri Sureshkumar under Section 132 of the Income Tax Act (for short, “the Act”). It is the case of the Revenue that one M/s. Parv Kundan and Diamonds

Private Limited, in its capacity as the consignor, dispatched a package containing gold jewellery weighing 524.500 grams, through a courier which was to be received by the writ applicant as the consignee. The case of the writ applicant is that he had purchased the gold weighing 524.500 grams from M/s. Parv Kundan and Diamonds Private Limited.

5 *The assessment proceedings were carried out in the case of the writ applicant under Section 153C of the Act. In the assessment proceedings for the A. Y. 2018-19, the respondent No.3 added the seized gold jewellery weighing 524.500 grams valued at Rs.12,26,333/- to the total income of the writ applicant treating the same as unaccounted investment vide the assessment order under Section 143(3) read with Section 153C of the Act dated 19th December 2019.*

6 *The writ applicant is here before this Court with a prayer that the gold jewellery which came to be seized by the Revenue weighing 524.500 grams should be released and handed over to him.”*

8.7 The Division Bench, further, observed and held as under at Paragraphs-11 and 12 thereof;

“11 In view of the aforesaid findings recorded by the CIT(A) and such findings having attained finality as the order of CIT(A) has not been challenged further by the Revenue before the appellate Tribunal, we are left with no other option, but to accept the case put up by the writ applicant that he had purchased the gold in question from M/s. Parv Kundan and Diamonds Private Limited and had also accounted for the same in his books of account. In such circumstances, the Revenue cannot withhold the seized gold jewellery weighing 524.500 grams. It has got to be released in favour of the writ applicant.

12 In the result, this writ application succeeds and is hereby allowed. The respondent No.1 shall accord the approval for release of the seized gold jewellery weighing 524.500 grams in favour of the writ applicant at the earliest. Direct service is permitted.

8.8 Considering the provisions of Section 132B of the Act as well as the observations made by the Division Bench of this Court, as noted herein above, we are of the considered view that, since, the order passed by the Appellate Authority has attained finality, as the Respondent-authorities have not challenged the same before a higher forum, we are left with no other option, but, to accept the case put forth by the petitioner that the gold in question belongs to him and he had accounted the same in his books of accounts. Therefore, the Respondent-authorities ought not to have withheld the gold in question.

9. Resultantly, this petition is **ALLOWED**. The Respondent-authorities, more particularly, Respondent No.1 is **DIRECTED** to grant approval for release of the remaining seized gold, weighing 100.350 grams, in favour of the petitioner, **at the earliest**. Rule is made absolute, accordingly. Direct service is permitted.

Sd/-
(VIPUL M. PANCHOLI, J)

Sd/-
(D. M. DESAI, J)

UMESH/-