

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 24TH DAY OF MARCH 2022 / 3RD CHAITHRA, 1944

WP(C) NO. 12849 OF 2021

PETITIONER:

UDAYA SOUNDS
PULLEPPADY, CHITTOOR ROAD,
KOCHI-682035,
REPRESENTED BY ITS MANAGING PARTNER,
K.K.YOUSUF,
RESIDING IN KARUVELITHUNDIL HOUSE,
LISSIE HOSPITAL ROAD, SOUTH END,
ERNAKULAM-682018.
BY ADVS.
SRI.K.I.MAYANKUTTY MATHER
SRI.R.JAIKRISHNA
SMT.UTHARA ASOKAN

RESPONDENTS:

- 1 THE PRINCIPAL COMMISSIONER OF INCOME TAX
CENTRAL REVENUE BUILDING, IS PRESS ROAD,
ERNAKULAM NORTH P.O.,
KOCHI-682018.
- 2 ASSISTANT COMMISSIONER OF INCOME TAX,
CORPORATE CIRCLE-1,
CENTRAL REVENUE BUILDING,
IS PRESS ROAD, ERNAKULAM NORTH P.O.,
KOCHI-682018.
BY ADVS.
SRI.P.K.RAVINDRANATHA MENON (SR.)
JOSE JOSEPH, SC, FOR INCOME TAX

W.P.(C) No.12849/21

-:2:-

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 24.02.2022, THE COURT ON 24.03.2022 DELIVERED
THE FOLLOWING:

"C.R."

BECHU KURIAN THOMAS, J.

W.P.(C) No.12849 of 2021

Dated this the 24th day of March, 2021

JUDGMENT

Title deeds of the petitioner are retained by the Income Tax department under the colour of a search and seizure for the last more than twenty-two years. Alleging that the retention of the said documents are contrary to law, petitioner has approached this Court seeking directions to return the originals of seven documents of title.

2. On 19-12-2001, a search was conducted in the business place as well as in the residence of the Managing Partner of the petitioner under section 132 of the Income Tax Act, 1961 (for short, 'the Act'). During the search, title deeds were seized by the Income Tax Officers. Consequent to the search and seizure, block assessment proceedings for the period 01-04-1995 to 19-12-2001 were launched against the petitioner as per section

158BC of the Act. On 31-12-2003, the assessment proceedings were completed reckoning undisclosed income in the hands of the assessee. On appeal, the quantum of undisclosed income was reduced, thereby allowing the appeal in part. The second appeal preferred by the revenue ended in dismissal, while that filed by the assessee was partly allowed. On appeal to this Court, in I.T.A. No.819 of 2009 and I.T.A. No. 1326 of 2009, this Court directed the assessing officer to refix the undisclosed income at 25% of the originally assessed figure. Petitioner has preferred a Special Leave Petition before the Supreme Court and it is still pending.

3. In the meantime, petitioner alleges that though no order has been recorded by any of the officers as contemplated under section 132(8) of the Act, still, the respondents are retaining the seized documents of title for periods beyond 30 days without authority of law. Despite repeated requests of the petitioner and even after several representations, no response could be elicited from the respondents and the documents of title continued to remain with the respondents. In such circumstances, a petition was filed as Ext.P7, seeking a direction to release the originals of

the seven documents. Thereafter, an application was filed under the Right to Information Act, 2005, in which a reply was given that the documents are retained due to proceedings pending before the Supreme Court. Since petitioner could not obtain release of the title deeds, this writ petition was preferred seeking a direction to release/return the originals of the seized documents or to compel the respondents to take a decision on the representations filed by the petitioner seeking release of the documents.

4. A statement was filed by the respondents contending that as per the provisions of section 132(8) of the Act, the documents seized by the Department can be retained beyond 30 days, if the reasons for retaining the documents are recorded by the assessing officer and the same is approved by the Principal Chief Commissioner/Chief Commissioner or other officers mentioned in the said provision. It was further pleaded that as per order dated 26-02-2021, the Principal Commissioner of Income Tax had accorded permission to retain the seized material till 28-02-2022 and that the special leave petition preferred by the petitioner is still pending before the Supreme

Court and hence the assessment proceedings had not become final.

5. After the statement was filed by the respondents, petitioner amended the writ petition and challenge was raised against the order permitting retention of documents up to 28-02-2022. Petitioner pleaded that the order permitting retention of documents were never communicated and no proceedings under the Act are pending, warranting continued retention of the documents by the respondents. It was also pleaded that the mandatory DIN (Document Identification Number) is glaringly absent in the records produced by the respondent which rendered such communication invalid.

6. Subsequent to the amendment, an additional statement was filed by the second respondent pleading that the orders directing retention of the documents were communicated to the petitioner and also that the tax liability of the petitioner has not attained finality.

7. I have heard Adv.Uthara Asokan, learned counsel for the petitioner and Sri.Jose Joseph, learned Standing Counsel for the respondents.

8. Adv.Uthara Ashokan contended that, as per the provisions of section 132(8) of the Act, the documents seized during a search and seizure can be retained by the Department only for a period beyond 30 days from the date of order of assessment under section 158BC of the Act, unless, the reasons for retaining the same are recorded in writing and the approval of any of the officers mentioned in the sub-section is obtained. According to the learned counsel, since the order of assessment is dated 31-12-2003, the seized documents could not have been retained by the respondents beyond 31-01-2004. The learned counsel further pointed out that, the authorisation to retain documents cannot under any circumstances continue beyond 30 days after all proceedings under the Act are completed as specified in the proviso to section 138(8) of the Act.

9. According to Adv.Uthara Asokan, none of the orders permitting retention of the documents beyond the period specified in section 132(8) of the Act were ever communicated to the petitioner and further, that, even if Ext.P13 is assumed to be issued, the same was beyond the jurisdiction of the Principal Commissioner of Income Tax. The learned counsel contended

that the impugned order Ext.P13 does not even bear the signature of the Principal Commissioner of Income Tax apart from it having never been communicated to the petitioner. The learned counsel further argued that the document produced as Ext.P13 is issued 17 years after the date prescribed under section 132(8) of the Act and the authenticity of the document is doubted due to the absence of the document identification number (DIN), which is mandatory as per Ext.P10 Circular dated 14-08-2019. The learned counsel further contended that the seized documents were never utilised or even referred to in the block assessment proceedings and indicating that the said documents were not required for the department to pursue any further proceedings against the assessee. She relied upon the decision in **Joshi P. Mathew v. Deputy Commissioner of Income Tax, Ernakulam and Another** (2013 (1) KHC 288).

10. Sri.Jose Joseph, the learned Standing Counsel for the respondents contended that approval for detention of documents was granted by the authorised officer and hence the contention to the contrary had no basis. The learned Standing Counsel further submitted that, though proceedings under the Act had

already been completed, since the assessee had preferred Special Leave Petition before the Supreme Court, the respondents were justified in authorising the retention of documents.

11. While appreciating the rival contentions, it is necessary to advert to the statutory provisions. Section 132(8) of the Act reads as below:

"S.132(8). The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorised officer for a period exceeding 30 days from the date of the order of assessment under section 153A or clause (c) of section 158BC unless the reasons for retaining the same are recorded by him in writing and the approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director-General or Director-General or Principal Director or Director for such retention is obtained:

Provided that the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director-General or Director-General or Principal Director or Director shall not authorise the retention of the books of account and other documents for a period exceeding 30 days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922) or this Act in respect of the years for which the books of account or other documents are relevant are completed."

12. The above statutory provision mandates that the books of accounts or other documents seized during a search and

seizure cannot be retained beyond 30 days from the date of the order of assessment under section 153A or section 158BC of the Act, without recording reasons in writing by the officers specified therein. The statute further mandates that retention of the documents shall not be authorised beyond 30 days after proceedings under the Income Tax Act, 1961 are completed.

13. Title deeds are the choicest of possessions of an owner since ownership of property and its absolute dominion are reflected in the possession of such deeds. When the owner is denuded of its choicest possession, under the facade of statutory prescriptions, such provisions must scrupulously be adhered to.

14. Section 158BC of the Act provides for the procedure for block assessment. In the instant case, admittedly the order under section 158BC was issued on 31-12-2003. Therefore, the respondents are bound to adhere to the provisions strictly and substantiate that, reasons were recorded by the authorised officer to retain the documents and the approval for such retention was also obtained from the officers mentioned in the sub-section.

15. However except for a statement that as per the

impugned order dated 26-02-2021, the Principal Commissioner of Income Tax-I, Kochi had approved the continued retention of the books of account and other documents impounded/seized up to 28-02-2022, and further that on earlier occasions, the Principal Commissioner of Income Tax-I, Kochi approved the continued retention of books of account and other documents from time to time, nothing is produced to substantiate that orders were issued permitting continued retention. Though details of earlier orders passed under section 132(8) were mentioned in a tabular column as below, the same does not satisfy the requirement of strict adherence to the statutory prescriptions. The tabular column provided was as follows:

Item No.	Order u/s.	Dated	Retention upto
1	132(8)	31-03-2017	28-02-2018
2	132(8)	26-02-2018	28-02-2018
3	132(8)	27-02-2017	28-02-2020
4	132(8)	26-02-2020	28-02-2021

16. Further, except for mentioning that the copies of the earlier orders under section 132 have all been duly dispatched to the assessee either through the office of the Principal Commissioner of Income Tax or through the assessing officer,

there is nothing on record to substantiate such an averment. The manner in which the orders were dispatched to the assessee has not been specified nor has the acknowledgements produced for consideration of this Court. Thus there is nothing on record to assume that orders were issued directing continued retention of the documents from the date of the order under section 158-BC of the Act, till 2018.

17. There is an added obligation upon the Department to communicate the orders to the assessee to enable retention of documents beyond 30 days' period specified in section 132(8) of the Act. In the decision in **CIT, West Bengal-III and Others v. Oriental Rubber Works** [(1984) 1 SCC 700], the Supreme Court held that though sub-section (8) of Section 132 of the Act does not in terms provide that the approval or the recorded reasons on which the retention is based should be communicated to the concerned person, since the person concerned is bound to be materially prejudiced in the enforcement of his right to have such books and documents returned to him being kept ignorant about the factum of fulfillment of either of the conditions, it was obligatory upon the revenue to communicate the Commissioner's

approval as also the recorded reasons to the person concerned. It was further held that in the absence of such communication, the order granting approval will not become effective.

18. A learned Single Judge of this Court also had, in the decision in **Joshi P. Mathew v. Deputy Commissioner of Income Tax, Ernakulam and Another** (2013 (1) KHC 288), held that non-communication of the orders recording the reasons and the grant of approval to the assessee renders the retention of the documents beyond 30 days of completion of the assessment as illegal.

19. Thus, there was a bounden duty upon the Department to establish that the orders recording the reasons and grant of approval were communicated to the assessee. No such communication has been produced for consideration of this Court. Except for vague averments, that too, in the form of a statement instead of an affidavit, that orders were communicated to the assessee, nothing has been produced to convincingly prove that the orders for retention were communicated to the petitioner. In such a view of the matter, retention of documents beyond 30 days of the order of

assessment is illegal.

20. Even otherwise, the statute confers authority to grant authorisation for retaining the documents beyond the order of assessment only till the proceedings under the Act is completed. The word "proceedings under this Act" is a clear indication that the power of the officers empowered to grant authorisation is available only till the statutory proceedings are completed. Once the statutory proceedings are completed, the authorities under the statute are denuded of the power to grant further authorisation.

21. The word proceeding is a term of wide importance and it includes the original proceedings as well as the appellate proceedings as it is trite law that an appeal is a continuation of the original proceedings (see the decision in **State of Tamil Nadu and Others v. S. Subramaniam** [(1996) 7 SCC 509]. In the context in which the word 'proceedings' appear in section 132(8), it can be held to be used in a very comprehensive sense to include even revisional proceedings, provided the same is invoked under the statutory provisions of the Income Tax Act. Thus an assessment proceeding, appellate proceeding, and even

revisional proceeding are all "proceedings under this Act".

22. The proceedings under this Act expired by the disposal of the appeal by this Court, as evidenced by Ext.P4 judgment dated 08-01-2010. Thereafter, no proceedings under this Act are in existence. On the contrary, the special leave petition having been filed under Article 136 of the Constitution of India cannot be regarded as a proceeding under this Act. As a taxing statute, strict interpretation is to be adopted and that being so, recourse by the assessee to the provisions of the Constitution by filing a special leave petition before the Supreme Court cannot be regarded as 'a proceeding under this Act'. Thus by the disposal of the appeal filed before the High Court in I.T.A. No.819 of 2009 and I.T.A. No.1326 of 2009, the statutory authority lost its power to grant further authorisation to retain the documents. Therefore, even on this count, the respondents are not authorised or justified in retaining the documents of title seized by them under section 132 of the Act.

23. In view of the above, the petitioner is entitled to succeed in this writ petition. Accordingly, while quashing Ext.P13 proceedings issued by the first respondent, this Court directs the

-:16:-

first and second respondents to return to the petitioner the originals of document No. 2126/2000, document No. 2498/2000, document No.1152/2000, document No.1689/1997, document No.1688/1997, document No.1242/1997 and document No.432/1997, all executed before the Sub-Registrar's Office, Ernakulam, as expeditiously as possible, at any rate, within a period of 30 days from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX OF WP(C) 12849/2021

PETITIONER'S/S' EXHIBITS

- EXHIBIT P1** TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE 2ND RESPONDENT DATED 31.12.2003.
- EXHIBIT P2** TRUE COPY OF THE ORDER OF THE CIT (APPEALS), KOCHI DATED 28.9.2004.
- EXHIBIT P3** TRUE COPY OF ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 31.8.2007.
- EXHIBIT P4** TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN ITA 819/2009 AND 1326/2009 DATED 8.1.2010.
- EXHIBIT P5** TRUE COPY OF THE INTIMATION RECEIVED FROM THE OFFICE OF THE 1ST RESPONDENT DATED 27.11.2019.
- EXHIBIT P5(a)** TRUE COPY OF THE INTIMATION RECEIVED FROM THE OFFICE OF THE 1ST RESPONDENT DATED 14.10.2020.
- EXHIBIT P6** TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT WITH COPY TO 2ND RESPONDENT DATED 18.6.2021.
- EXHIBIT P7** TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT
- EXHIBIT P8** TRUE COPY OF THE APPLICATION SUBMITTED BY PETITIONER UNDER THE RIGHT TO INFORMATION ACT BEFORE PRANAB KUMAR DAS, INCOME TAX COMMISSIONER
- EXHIBIT P9** TRUE COPY OF THE REPLY GIVEN BY THE INCOME TAX OFFICER (TECH) TO THE PETITIONER
- EXHIBIT P10** TRUE COPY OF THE CIRCULAR NO 19/2019 ISSUED BY THE DEPARTMENT OF REVNUe
- EXHIBIT P11** TRUE COPY OF THE REPRESENTATION GIVEN BY THE PETITIONER BEFORE THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX
- EXHIBIT P12** TRUE COPY OF THE POWER OF ATTORNEY EXECUTED BY K.K.BASHEER IN FAVOUR OF

W.P.(C) No.12849/21

-:18:-

K.K. YOUSUF

EXHIBIT P13 TRUE COPY OF THE PROCEEDINGS OF THE 1ST
RESPONDENT.

RESPONDENT 'S/S' EXHIBITS

ANN.R2 (A) TRUE COPY OF THE COMMUNICATION DATED 12-
03-2021