

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 27 of 2024

M/s Paras Jewelers, Proprietor Inder Chand Jain, Through Its Special Power Of Attorney Holder Shri Paras Chand Jain, S/o Inder Chand Jain, Aged About 50 Years, Having Its Registered Office At 1, SBI Road, Balaji Ward, Jagdalpur, Bastar (CG)

--- Petitioner

Versus

1. Principal Director Of Income Tax, Investigation, Raipur (C.G.)
2. Additional Director Income Tax, (Investigation Unit 3), Raipur Branch (C.G.)
3. Deputy Director Of Income Tax (Investigation Unit 3) Raipur (C.G.)

--- Respondents

For Petitioner	:	Mr. Apurv Goyal, Advocate.
For Respondents	:	Mr. Ajay Kumrani, Advocate on behalf of Mr. Amit Choudhari, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas
Order on Board

29/02/2024

1. The petitioner has filed the present writ petition praying for following relief:-
 - (1) This Hon'ble Court may kindly be pleased to issue a writ/writs, direction/directions, order/orders quashing the communication/ order dated 25.01.2024 passed by respondent No. 2.
 - (2) This Hon'ble Court may kindly be pleased to issue a writ/writs, direction/directions, order/orders directing the respondents to immediately release the seized items (jewellaries/ornaments) from the bedroom of Inder Chand Jain [Locker (G34-G58) and wooden cupboard (G62-G67)] as the same was part of stock-in-trade.
 - (3) This Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case.
2. Learned counsel for the petitioner would submit that during search and seizure, the jewelery which is part of stock-in-trade cannot be seized and the same was unused. He would further submit that the petitioner has no other alternative remedy

available under the law. To substantiate his submission, he would refer to the judgment rendered by High Court of Delhi in case of **Khem Chand Mukim** reported in **(2020) 423 ITR 129**. It is contended that the assessing authority cannot question about correctness of the search and seizure made by the department, as such the writ petition is maintainable.

3. Learned counsel for the respondents vehemently objecting the submission made by learned counsel for the petitioner would submit that the petitioner has remedy under Section 132(B)(i) of the Income Tax Act, 1961 for moving an application before Jurisdictional Assessing Authority where assessment proceeding is being conducted, as such the instant writ petition is not maintainable and would pray for dismissal of the writ petition.
4. Learned counsel for the petitioner would submit that Section 132(B)(i) of the Income Tax Act, 1961 is not applicable to the present facts of the case.
5. I have heard learned counsel for the parties and perused the documents place on record.
6. For better understanding, it is expedient for this Court to extract Section 132(B)(i) of the Income Tax Act, 1961 which reads as under:-

"132B. Application of seized or requisitioned assets.
 [Substituted by Act 20 of 2002, Section 57, for Section 132-B (w.e.f. 1.6.2002).]- (1)The assets seized under section 132 or requisitioned under section 132-A 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] [completion of the assessment or reassessment or recomputation] [under section 153-A 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] [Substituted by Act 32 of 2003, Section 60, for " under Chapter XIV-B for the block period" (w.e.f. 1.6.2003).] [(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] [Substituted by Act 20 of 2002, Section 57, for Section 132-B (w.e.f. 1.6.2002).:]

[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] [Substituted by Act 32 of 2003, Section 60, for " Provided that where the nature and source of acquisition of any such asset is explained" (w.e.f. 1.6.2003).][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 Chief 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 authorisations for search under section 132 or for requisition under section 132-A, as the case may be, was executed;”

7. From bare perusal of Section 132B(i) of the Income Tax Act, 1961, it is quite vivid that the petitioner can move an application before 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 who can with the approval of Chief Commissioner or Commissioner, to the person from whose custody the assets were seized can release the assets.
8. Considering the submission and the petitioner has remedy of approaching the Jurisdictional Assessing Authority for releasing the writ petition at this juncture is liable to be and is hereby dismissed. It is made clear that this Court has not expressed any opinion of merits of the case, it is for the Assessing Authority to consider and decide it in accordance with law.

Sd/-
(Narendra Kumar Vyas)
Judge