



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 6097/2020

1. Harshvardhan Chhajed Son Of Shri Himmat Singh Chhajed, Aged About 43 Years, R/o 20, Sunder Nagar, Malviya Nagar, Jaipur Proprietor Of M/s Maha Pragma Jewellers Having Address At 2403, Dal Ki Gali, Ghee Walon Ka Rasta, Johari Bazar, Jaipur.

2. Siddharth Baid S/o Shri Pratap Mal Baid, Aged About 32 Years, R/o Fw-1150, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (E), Mumbai-40051 Proprietor Of M/s Daha Dimon Having Address At Fw-1150, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (E), Mumbai-40051

3. Kantivardhan Pradeep Choraria S/o Shri Pradeep Noratanmal Choraria, Aged About 28 Years, R/o A-602, Om Vihar, Kasturi Garden, Amritvani Lane, Behind Maxus Mall, Bhayander West, Mumbai-401101.

----Petitioners

Versus

1. Director General Of Income Tax (Investigation), New Central Revenue Building, Statue Circle, Bhagwan Das Road, C-Scheme, Jaipur.
2. Director Of Income Tax (Investigation), New Central Revenue Building, Statue Circle, Bhagwan Das Road, C-Scheme, Jaipur.
3. Assistant Director Of Income Tax (Investigation-1), New Central Revenue Building, Statue Circle, Bhagwan Das Road, C-Scheme, Jaipur.

----Respondents

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For Petitioner(s) : Mr. Siddharth Ranka  
Mr. Muzaffar Iqbal  
Mr. Saurav Harsh

For Respondent(s) : Mr. Siddharth Bapna on behalf of  
Mr. Anil Mehta, AAG

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**HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

**Order**

**Reserved on: 25/08/2021**

**Pronounced on: 07/09/2021**

1. The petitioners by way of this writ petition have prayed that the respondents be directed to release the attached stock-in-hand belonging to petitioner Nos.1 and 2 respectively and quash and set aside the wrongful action taken against the petitioners.

2. Brief facts to be noticed are that on 24.02.2020 the petitioner No.3-Kantivardhan Pradeep Choraria was intercepted and searched at Jaipur Airport during his journey from Mumbai to Jaipur while he was carrying jewellery and diamonds, by the Income Tax Authorities. The said jewellery found in his possession was seized in terms of Section 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act of 1961").

3. The petitioner No.1 and 2 who are the Proprietor of M/s Daha Dimon and M/s Maha Pragya Jewellers and are brother-in-law have submitted that apart from jewellery two challans were seized which had been issued by M/s Maha Pragya Jewellers and M/s Daha Dimon in relation to jewellery and the entire jewellery was part of stock-in-trade and stock-in-hand with petitioner No.3 who was employer of petitioner No.2.

4. Learned counsel for the petitioners submits that the challan bearing No.1050 in the name of M/s Maha Pragya Jewellers had been issued on 24.02.2020 and it stated that the goods are being sent to Jaipur.

5. A letter was sent by the petitioner No.1 on 26.02.2020 to release the stock attached and explained the stock details, purchase details, sales details, challans issued, stock register,



audit reports, income tax return, air ticket bills and certificate from Chartered Accountants etc. and justification of goods found from the possession of petitioner No.3 were also explained. Similarly, petitioner No.2 also sent a letter on 18.03.2020. Another application was submitted on 22.05.2020 wherein additionally other documents including PAN Card, GST Registration Certificate, Income Tax Return for the year 2018-19, GST return for the year 2019-20 and Bank statements from January 2020 to March 2020 of M/s Maha Pragma Jewellers were also submitted. It was also informed that some stock of the petitioner/s was left with his brother-in-law Siddharth Baid at Mumbai who was engaged in the same business while travelling from Jaipur to Kolkata and Kolkata to Mumbai. The challan relating to the stock for the said period was also produced.

6. Learned counsel for the petitioners submitted that statement of petitioner No.3 was recorded under Section 132(4) of the Act of 1961, who has stated that the goods are stock-in-trade of both the firms and the challan approval memos were also submitted to the authorities.

7. Learned counsel for the petitioners submits that the Department valuer, who conducts the valuation sheet, has valued the stock on a very higher side. It is stated that the goods mentioned from serial No.1 to 24 belonged to M/s Maha Pragma Jewellers while goods mentioned from serial No.25 to 49 were stocks belonging to M/s Daha Dimon. The petitioners also appeared before the investigation wing of the Income Tax Department and produced all the relevant papers and the jewellery had been purchased through proper banking channel and



therefore the petitioners submitted that the stock-in-trade ought to be delivered back to the petitioners.

8. Learned counsel submits that the provisions of the Income Tax Act do not allow seizure in terms of proviso to Section 132(1) (iii) of the Act of 1961 and therefore the goods ought to be returned to the petitioners. Learned counsel has relied on the judgments passed in case of **Amore Jewels Pvt. Ltd, Anuj Ajmera Vs. Principal Commissioner of Income Tax & Ors.** reported in **2018 (5) TMI 263- Rajasthan High Court, Kehm Chand Mukim Vs. Principal Director of Income Tax (Inv.)-2, AIU & Ors.** reported in **2020 (1) TMI 1114- Delhi High Court, Diamondstar Exports Ltd & Ors. Vs. Director General of Income Tax (Investigation) & Ors.** reported in **2004 (12) TMI 74- Bombay High Court, Mul Chand Malu (HUF) & 3 Ors. Vs. Assistant/Deputy Commissioner of Income Tax & 5 Ors.** reported in **2016 (5) TMI 550- Gauhati High Court** and **Mitaben R. Shah Vs. Deputy Commissioner of Income Tax** reported in **2010 (2) TMI 684- Gujarat High Court.**

9. It is submitted that the foundation of seizure and continuous seizure is based on surmises and conjectures and the action is arbitrary.

10. *Per contra*, learned counsel appearing for the respondents submitted that the concerned person who was searched namely petitioner No.3 failed to produce any evidence to prove the source of the seized jewellery while two challans were seized. They did not mention the price and value of the material. It was submitted that the challan mentions of the goods to be sent to Jaipur while the challan has to be issued from Jaipur and the concerned persons were travelling from Mumbai to Jaipur and therefore the



same would be concocted and false. It is further submitted that enquiry proceedings were conducted by enquiring from the father of the petitioner No.1 and employee of petitioner No.1 namely Karan Singh who had no claim of the said goods being in the stock and books of accounts of the petitioners. The challan cannot be said to be officially authentic document for transfer of such high valued jewellery and statement of petitioner No.3 was recorded.

The delivery challans only mention grams and carats of diamond and diamond jewellery which can be matched and counted with the purchase bills.

11. The affidavit of petitioner No.3 mentions that he was carrying stock for the purpose of business from Mumbai to Jaipur for delivering the same to Harshvardhan Chhajed, Proprietor M/s Maha Pragma Jewellers. It is further submitted that notices have been issued under Section 153A of the Act of 1961 to petitioner No.3 for the assessment year 2014-15 and therefore the seized goods are required for framing the assessment. So far as petitioner No.3 is concerned, the assessment in his case is yet to be finalised.

12. Learned counsel for the respondents has relied on Section 132B of the Act of 1961 to submit that not only the existing liabilities of the Income Tax Act, Welfare Tax Act, Expenditure Tax Act, Gift Tax Act and Interest Tax Act are applicable but even the amount of liability determined on completion of assessment under Section 153A of the Act of 1961 and the assessment of relevant previous years may be recovered and thus the interest of the revenue and public exchequer shall be protected.

13. It is further submitted in written submissions that even if it is found inappropriate to release the goods seized under Section 132



of the Act of 1961, the petitioners be directed to furnish appropriate security of equivalent amount.

14. I have considered the submissions.

15. Sections 132(1)(iii), 132(4) & Section 132B of the Income

Tax Act, 1961 reads as under:-

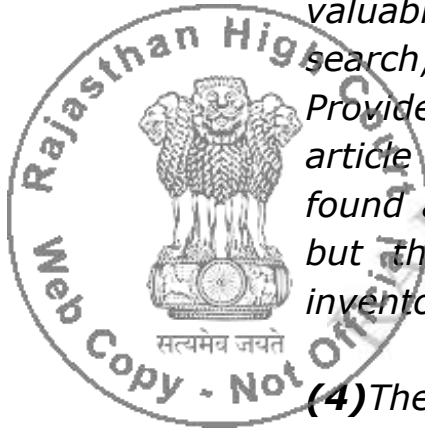
*"(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;*

*Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;"*

*(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.*

*[Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.]*

**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 4 [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 5 [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 7 [Principal Chief Commissioner or Chief Commissioner] or 8 [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 authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed:

(ii) if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied;

(iii) the assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the 1 [Principal Chief Commissioner or Chief Commissioner] or 2 [Principal Commissioner or Commissioner] under sub-section (5) of section 226 and the Assessing Officer or, as the case may be, the Tax Recovery





Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(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.

(4) (a) The Central Government shall pay simple interest at the rate of 3 [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 [under section 153A or under Chapter XIVB].

[Explanation 1.]—In this section,—

(i) —“block period” shall have the meaning assigned to it in clause (a) of section 158B;

(ii) —“execution of an authorisation for search or requisition” shall have the same meaning as assigned to it in Explanation 2 to section 158BE.]

[Explanation 2.—For the removal of doubts, it is hereby declared that the —“existing liability” does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII.]

16. In case of **Amore Jewels (supra)** this Court was examining a similar case where jewellery was seized at the Jaipur Airport which was claimed to be stock-in-trade of the employer company.





After considering the judgment passed in case of **Director General of Income Tax (Investigation) Pune & Ors. Vs. M/s Spacewood Furnishers Pvt. Ltd. & Ors.** reported in **(2015) 12 SCC 179**, this Court reached to the conclusion as under:-

"From above, it is apparent that the issue involved before the Apex Court was in relation to the satisfaction of the authorities while carrying out seizure. However, in the present case after the High Court had earlier remanded the matter to the respondents for taking a decision relating to release of the goods, it was incumbent upon the respondents to have examined the question only with regard to release and a subjective satisfaction was required to arrive at whether the jewellery was part of stock-in-trade of petitioner No.1 and whether the petitioner No.2 was duly authorized by the petitioner No.1 for the purpose of transaction, selling and putting up for approval. A look at the impugned order, however shows that the authority has proceeded to question in the manner in which the approval and authority was given to petitioner No.2 by petitioner No.1. The authority also questions the manner in which the rates were fixed by the petitioner No.1 (11 of 12) [CW-17508/2017] while selling the articles at higher price than their old price, however, this could not have entailed for denying release of goods to the petitioner No.1.

There is no finding by the Authority in the impugned order that the jewellery does not belong to petitioner No.1 company. It is also not the case of the department that the jewellery items are not mentioned as stock-in-trade of the company, the only variation with regard to the price. It is also not the case that the petitioner No.1 was engaged in tax evasion or that it was not authorized to hold the seized articles or carry on sale of the same.

9. As has been noted above, the petitioner No.2 has placed before the respondents' documents to show that the jewellery seized was part of their stock-in-trade. Documents to that effect has also been placed to show that the petitioner No.2 was carrying them for the purpose of sale as well as approval, transaction memos and the boarding pass, insurance policy were





relevant for the said purpose. However, a look at the impugned order is quite amazing.

10. In view of [Section 132B](#) proviso, the jewellery was liable to be released. In the light of the statement made under [Section 132\(4\)](#) by petitioner No.2 and in view of the documents and statements put forward on behalf of the petitioner No.1, there was no occasion to or reason to believe that the jewellery is part of undisclosed income of the petitioner No.2. The officer has apparently not taken into consideration the cited law as noted above. The judgment of Bombay High Court in the case of *Diamondstar Exports Ltd. & Ors.* (*supra*) and the judgment passed by the Supreme Court in the case of *CIT Versus Vindhya Metal (12 of 12) [CW-17508/2017] Corporation*, reported in [1997] 224 ITR 614 (SC) would apply to the facts of the present case.

11. Following the law as noted above, the writ petition is allowed. The order dated 19.07.2017 is quashed and set-aside. The respondents are now directed to release the seized jewellery to the petitioner No.1 within a period of two weeks hereinafter from the date of receipt of a certified copy of this order.

12. No costs."

17. In ***Khem Chand Mukim (supra)***, the Division Bench of Delhi High Court has held as under:-

"17. One of the questions that arises for our consideration is whether in the present case, the provisions of [Section 132\(1\)\(c\)](#) the Act were satisfied, or not, before authorizing the search. On a perusal of the satisfaction note as well as the counter affidavit on behalf of Respondent Nos. 3 and 4, it is evident that the sole ground for the action of search and seizure is that the Investigation Wing of the Income Tax department was in possession of credible information that Petitioner was in possession of jewellery which represents his undisclosed income or property. Apart from mere reproduction of the said words, no cogent basis for arriving at this conclusion is discernible from the satisfaction note. There is plethora of case law holding that the term "reason to believe" cannot be interpreted and construed as "reason to suspect". The reason to suspect that the Petitioner has undisclosed assets, and that there is likelihood that the same would not be disclosed, does not amount to saying that there



are reasons to believe that the Petitioner is in possession of undisclosed assets, and intends to evade tax. This is the fundamental flaw in the action initiated by the Respondent No. 2 and we have no hesitation to say that the entire exercise is vitiated and unlawful.”

It further noted:-

"25. After the seizure, Petitioner has been endlessly writing to the Respondents for the release of the seized articles. He had furnished all the necessary documents to explain as to how the articles seized are indeed his stock-in-trade. In fact, as noted in the preceding paragraphs, we had called upon the Respondents to give a specific response by way of an affidavit to the chart giving details of books of account provisioning for the articles seized. In response thereto, the Respondents have no plausible explanation and with the intent to deny the relief to the Petitioner, they have contended that the purchase invoices of the Petitioner are of bulk goods and cannot be identified with the individual seized items.”

and observed:-

"27. Before parting we may add that the opinion which has to be formed is subjective, and though the jurisdiction of the Court to interfere is very limited, and we are not to act as an Appellate Court and meticulously examine the information in order to decide whether an action under Section 132 is called for, yet at the same time we may emphasize that the power to search a person is a stringent power provided by law and this requires the officers to scrupulously follow the mandate and the rigor of the law prior to authorizing such an action, and unless the conditions to exercise such power are shown to exist, we would have no hesitation in striking down such an action. We are compelled to interfere as there was complete lack of information prior to the action of search, exhibiting gross non application of mind and arbitrariness by the appropriate authorities. The reason to believe in the present case was nonexistent prior to the search. Even after the search, there was no material to conclude that no such disclosure had been made, or that no disclosure would be made so as to satisfy the prerequisites of Section 132 of the Act. The Respondents have merely acted on the basis of surmises and conjectures, and without due authorization. Their actions are in contravention of

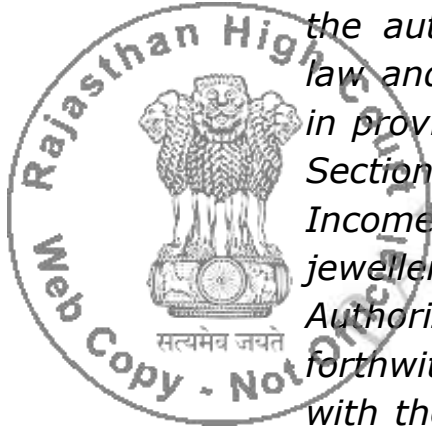




law, making the action of search and seizure bad in law.”

18. In case of **Sri Puspa Ranjan Sahoo Vs. Assistant Director Income Tax (Investigation), Bhubaneswar** reported in **2012 (9) TMI 432**, the Division Bench of Orissa High Court has held as under:-

"27. In view of the above, we are of the view that the seizure of jewellery being stock-in-trade by the authorized officer is wholly without authority of law and contrary to the statutory provision contained in proviso to Section 132 (1) (iii) and third proviso to Section 132 (1) (v). Therefore, the opposite parties-Income Tax Department are directed to return the jewellery (gold and silver ornaments) seized by the Authorized Officer in course of search on 9.9.2011 forthwith to the petitioner-assessee after complying with the requirement provided, i.e., making a note or inventory."



19. In case of **Director General of Income Tax & Anr. Vs. Diamondstar Exports Ltd. & Ors.** reported in **2006 (3) TMI 140**, the Supreme Court has observed as under:-

"5. Without going into the question as to value of goods found by the court to have been illegally seized, we hold that the appellants are liable to compensate the respondents at least by way of costs. The loss obviously suffered by the respondents during the pendency of the proceedings before the High Court was further aggravated by the delay in complying with the High Court's decision. In the circumstances, we direct the appellants to pay a sum of Rs. 75,000 to the respondents on account of costs which the respondents will accept in full and final settlement of the claim towards the quantum of interest under the impugned order. Such payment is to be made within a period of four weeks. In the event such payment is not made, this appeal will stand dismissed with costs.

6. The appeal is disposed of."

20. Section 132B (1)(i) of the Income Tax Act, 1961 provides as under:-

"(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 25[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 authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed;"

21. From the perusal of the aforesaid judgments and law laid down, it is apparent that the seizure has to be conducted after due care and caution. Merely on account of reasons to suspect, seizure of goods ought not to be undertaken as held in ***Khem Chand Mukim (supra)***. In fact the investigation wing has to show reason to believe that a person is carrying undisclosed asset.



22. However, if the concerned person has shown documents in order to explain the goods which he is carrying and also gives a statement like in the present case that the articles were belonging to a firm and were part of stock-in-trade. Before seizure is conducted explanation ought to be taken from the concerned firms and if they are able to produce the related books of account and necessary proof of articles which may include sale details, purchase details, stock register, audit reports, income tax returns etc. the Income Tax Authorities ought to take a decision at this stage and ought not to be allowed to seize the goods for years together to await for the assessment order to be passed in relation to concerned employee.

23. In view thereof, as the claim of the goods in terms of Section 132(1)(iii) of the Act of 1961 has been made by the petitioner Nos.1 and 2 as the jewellery seized in stock-in-trade and required material has already been placed before the Income Tax Authorities. The same was required to be released as the seizure itself is found to be unjustified and illegal. Non mentioning of price of the goods in the challan would not construe that the goods are not part of stock-in-trade.

24. Keeping in view, this Court holds that the seizure itself was wholly illegal and all consequential actions based on such seizure are illegal and contrary to the provision of Section 132(1)(iii) of the Act of 1961. Hence, the petitioners were entitled to receive back the goods from the respondents as more than one year and six months have lapsed. The petitioners would also be entitled to interest of a sum of Rs.1 lakh which was paid as a gross amount towards retention of the jewellery which is stock-in-trade and is marketable.



25. Accordingly, this writ petition is allowed as above. No costs.

26. All pending applications also stand disposed of.

(SANJEEV PRAKASH SHARMA),J

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RAJASTHAN HIGH COURT



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