
(1998) 144 CTR 550

High Court Of Kerala

Case No: CMP No. 3435 of 1997 in O.P. No. 1935 of 1997

ALLEPPEY FINANCIAL
ENTERPRISES

APPELLANT

Vs

ASSISTANT
DIRECTOR OF Income
Tax (INVESTIGATION)
and Another

RESPONDENT

Date of Decision: Feb. 13, 1997

Acts Referred:

Income Tax Act, 1961 " Section 132(1)

Citation: (1998) 144 CTR 550

Hon'ble Judges: P. Shanmugam, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

P. SHANMUGAM, J. :

Notice.

The petitioner has prayed for a direction to the respondents to release and hand over the gold ornaments and pledge forms and applications seized

by order under Ext. P2 by accepting immovable property security.

2. The petitioner is a partnership firm doing money lending business. They have filed the above original petition challenging the order of the 1st

respondent, authorised officer, passed under s. 132(1) of the IT Act. They also prayed for a direction to return the gold ornaments and other

articles seized under Ext. P2 order.

3. A search was conducted at the business premises of the petitioner on 6th January, 1997. It was seen that the firm had been doing unaccounted

gold business advancing amounts in respect of gold pledged. The advances so made comes to Rs. 39,56,630. In the absence of satisfactory

explanation gold weighing 10,802.300 gms. approximately valued at Rs. 47,53,000 were seized under s. 132(1) of the Act. The petitioner

requested for the release of the seized articles on furnishing immovable property security along with the valuation report showing the value of the

property at Rs. 24,45,000. As there was no response from the Department, the original petition was filed.

4. By the time the matter came up for hearing on 16th February, 1997 the second time, while rejecting the request of the petitioner to accept

immovable property security, the petitioner was requested adequate and sufficient security in the form of bank guarantee to cover the value of the

assets seized. Thereafter learned counsel pursued to argue the matter.

5. The main submission made by learned counsel for the petitioner is that the gold jewellery seized from the petitioner does not belong to firm.

They were pledged articles. The assessment of undisclosed income as a result of search would not result in more than 60 per cent. of its value

being assessed as tax and therefore, petitioner is entitled to get the release of the articles on furnishing Rs. 24,45,000 as it would be sufficient to

safeguard the interest of the Department. Learned counsel for the petitioner further submitted that the 1st respondent has no jurisdiction to pass

assessment orders and therefore, he cannot assess the value for the release of the jewellery.

6. The contention of the petitioner is that the pledged articles do not belong to them. Prima facie I cannot accept it. The petitioner-firm as pledgee

is entitled to possession. They have statutory right to realise the money advanced on the security. The right of the pledgee is a special property

right. A Division Bench of Madras High Court in Madras Pawn Brokers Assn. vs. State of Tamil Nadu (1995) 98 STC 457 while dealing

Pawners right held as follows :

While pledging an article with a licensed pawn broker, the pawnier not only parts with the possession of the pledged article in favour of the

pawnbroker, but by virtue of such pledge parts with the rights he held to sell the pledged article in case of default of payment and discharge of the

loan or redemption of the article pledged within the time stipulated therefor. Such auction or sale by the pawnbroker does not depend upon any

further consent or permission by the pawnier.

Therefore, the action of the Department in seizing the jewels which represented undisclosed investment cannot be held to be illegal.

7. Chapter XIV-B of the IT Act provides for special procedure for assessment of search cases. Sec. 158BE sets out time limit for completion of

procedure for assessment. There is no assessment done. They have only given the approximate value of the jewellery seized.

8. Learned standing counsel for the IT Department while opposing the release of the goods referred to the instructions furnished to him. According

to him, the firm was doing money lending on the security of gold ornaments pledged and was charging interest at 36 per cent. but was accounting

only 24 per cent. The excess interest of 12 per cent. was being noted on a separate sheet of paper and was being shared among the partners who

were using their share for their personal investments. On a preliminary scrutiny of the seized materials, it is seen that the firm by resorting to

understating of its interest income had concealed its real income as indicated below :

Rs.

Interest @ 17% Siphoned away during the asst. yrs. 1992-93 to 1994-95 19,98,750

Interest income Siphoned away during current financial year upto 7th January, 2,53,395

199 ?

Unaccounted investment in gold loan business as on 7th January, 1997 39,56,630

Cash balance on the unaccounted gold loan business 66,548

62,75,323

There is no serious dispute regarding the value of the gold which come to Rs. 47,53,000. It is also not seriously disputed that the business of which

seizure is taking place was not the subject-matter to assessment and that therefore, they are only unaccounted assets. The petitioner would be

given sufficient opportunity as per the special procedure set out in reference to assessment of such cases.

Taking into account all the facts and circumstances of the case, there will be a conditional order of interim direction. Accordingly, I direct the 1st

respondent to release and hand over the gold ornaments and pledge forms and application immediately on the petitioner furnishing bank guarantee

for a sum of Rs. 47,53,000 to the satisfaction of the 1st respondent.