SUPREME COURT OF INDIA

Director of Inspection of Income tax (Investigation), New Delhi

Vs.

Pooraran Mall and Sons

C.A.No.1118 of 1974

(P. Jaganmohan Reddy and A. Alagiriswami, JJ.)

20.09.1974

JUDGEMENT

ALAGIRISWAMI, J.:-

1. This case is an off-shoot of a search and seizure in pursuance of the provisions of Sec. 132 of the Income-tax Act, 1961 dealt with in the decision of this Court in Pooran Mal v. Director of Inspection, (1974) 1 SCC 345 = (AIR 1974 SC 348). One of the cases there dealt with was Writ Petition No. 446 of 1971 filed by one Pooran Mal. The facts stated therein are set out below for the sake of brevity:

"The petitioner Pooran Mal is a partner in a number of firms - some of them doing business in Bombay and some in Delhi. His permanent residence is 12-A Kamla Nagar, Delhi. His business premises in Delhi are A-14/16 Jamuna Bhavan, Asaf Ali Road, New Delhi. It would appear that on an authorization issued by the Director of Inspection, his residence and business premises in Delhi were searched on October 15/16 1971. On the 15th his premises in Bombay were also searched and at that time it appears the petitioner was present in Bombay ...."

"The search in the business premises was made when a number of persons who usually worked there were present. Books of account, documents, some jewelry and a large amount of cash amounting to about Rs. 61,000 were seized.

On October 16 there was a search in the Branch Offices of Laxmi Commercial Bank and the Punjab National Bank. 84 silver bars were seized from Laxmi Commercial Bank and 30 silver bars were seized from the Punjab National Bank." (It appears that the bars themselves were not actually seized but were only attached under the provisions of sub-section (3) of Section 132 of the Income-tax Act. 1961). "The value of these silver bars comes to nearly 18 lakhs. It is the case of the petitioner that these bars belong to M/s. Pooranmal and Sons of Bombay who sent the same to the Motor and General Finance Company of which the petitioner is a partner and this Finance Company, it is alleged, kept these bars with the two banks. 84 bars were kept in the account of M/s. Udey Chand Pooranmal for an alleged overdraft limit while the 30 silver bars were pledged with the Punjab National Bank in the account of the Finance Company. In all these aforesaid firms the petitioner is a partner and it is the Department's case that all these bars are the undisclosed assets of the petitioner. It appears that the Income-tax Officer made a summary enquiry as required by Section 132 (5) after issuing notice to the petitioner and his order dated January 12, 1972 shows, of course prima facie, that all the assets which had been seized in the house, the business premises and the banks, except for the value of the ornaments declared by Mrs. Sharda Devi in her Wealth Tax Return, had to be retained for being appropriated against tax dues from 1969 onwards which amounted to nearly 42 lakhs. Indeed this prima facie liability was subject to regular assessment and re-assessment."

2. In the case dealt with earlier by this Court the constitutional validity of Section 132 and legality of the search and seizure alone were under consideration. This Court held the provisions valid and the search and seizure legal.

3. Thereafter respondent 1, which is a firm of which Pooran Mal was a partner, and respondent 2, who claims to be another partner of the 1st respondent firm, filed Writ Petition No. 82 of 1972 challenging the order of the Income-tax Officer dated 12-1-1972. This writ petition was disposed of on 6-4-1972 on the basis of the consent of the parties. The relevant portion of the order is as follows:

"Mr. G. C. Sharma, learned counsel appearing for the respondents, fairly and frankly conceded that such an opportunity was not afforded to the petitioner. The parties are agreed that the impugned order be quashed and that the Department be permitted to look into the matter afresh after giving an opportunity to the petitioner to place his case before the Department in respect of the contention that the property belongs to the firm and not to Pooran Mal individually.

The parties are also agreed that the property shall remain in the custody of the Department and shall not be sold by them till fresh decision is taken by the Department in the light of evidence to be supplied by the parties.

Mr. B. S. Gupta, Income-tax Officer -cum-Assistant Director of Inspection (Intelligence) is present and he has undertaken to complete this case within two months.

The writ is accordingly accepted and disposed of in terms of the submissions of the parties referred to above, but with no order as to costs."

In that writ petition the contention of the petitioner was that the silver bars were the property of the 1st respondent firm and not that of Pooran Mal the individual who was only one of the partners. After the disposal of the writ petition the Income-tax Officer duly held a fresh enquiry and passed an order on 5-6-1972 holding that the silver bars belonged to Pooran Mal the individual and not to 1st respondent firm. Respondents 1 and 2 thereafter filed Civil Writ Petition No. ,595 of 1972*, out of which this appeal arises contending that the silver bars belonged to the 1st respondent firm and that the order of the Income-tax Officer holding that they represented the undisclosed income of Pooran Mal the individual was illegal. It was also contended that the Income-tax Officer had no jurisdiction to pass the impugned order beyond the period prescribed in sub-section (5) of S. 132. This second contention found favour with the learned Judges of the High Court. As a result they set aside the order of the Income-tax Officer dated 5-6-1972 and ordered the return of the 114 silver bars to respondents 1 and 2.

* Reported in 1974 Tax LR 795 (Delhi).

4. Before us the learned Additional Solicitor General put forward five contentions:

1. Section 132 (5) is for the benefit of the person concerned and it is competent for him to waive this benefit. The petitioners waived the benefit by the consent order and by appearing before the Income-tax Officer and leading evidence.

2. Period of time runs from the date of seizure and on a true construction of the order it is a new seizure.

3. The period of time applies only to the initial order and not to any subsequent order that may be directed under Section 132 (12) or by a Court in writ proceedings.

4. The period of time is directory and not mandatory and finally.

5. The order for return of the silver bars was also illegal on the ground that only properties seized under the provisions of Section 132 (1) could be ordered to be released and not property which has been attached under Section 132 (3) as in this case.

5. In the view we take of the matter we think it would be sufficient to deal with contentions 1 and 3. We do not, therefore, propose to consider the question whether the period of time provided in Section 132 (5) is directory or mandatory nor the other two questions.

6. Even if the period of time fixed under Section 132 (5) is held to be mandatory that was satisfied when the first order was made. Thereafter if any direction is given under Section 132 (12) or by a Court in writ proceedings, as in this case, we do not think an order made in pursuance of such a direction would be subject to the limitations prescribed under Section 132 (5). Once the order has been made within ninety days the aggrieved person has got the right to approach the notified authority under Section 132 (11) within thirty days and that authority can direct the Income-tax Officer to pass a fresh order. We cannot accept the contention on behalf of the respondents that even such a fresh order should be passed within ninety days. It would make the sub-sections (11) and (12) of S. 132 ridiculous and useless. It cannot be said that what the notified authority could direct under Section 132 could not be done by a Court which exercises its powers under Article 226 of the Constitution. To hold otherwise would make the powers of courts under Article 226 wholly ineffective. The Court in exercising its powers under Article 226 has to mould the remedy to split the facts of a case. If in a particular case a Court takes the view that the Income-tax Officer while passing an order under Section 132 (5) did not give an adequate opportunity to the party concerned it should not be left with the only option of quashing it and putting the party at an advantage even though it may be satisfied that on the material before him the conclusion arrived at by the Income-tax Officer was correct or dismissing the petition because otherwise the party would get unfair advantage. The power to quash an order under Article 226 can be exercised not merely when the order sought to be quashed is one made without jurisdiction in which case there can be no room for the same authority to be directed to deal with it. But in the circumstances of a case the Court might take the view that another authority has the jurisdiction to deal with the matter and may direct that authority to deal with it or where the order of the authority which has the jurisdiction is vitiated by circumstances like failure to observe the principles of natural justice the Court may quash the order and direct the authority to dispose of the matter afresh after giving the aggrieved party a reasonable opportunity of putting forward its case. Otherwise, it would mean that where a Court quashes an order because the principles of natural justice have not been complied with it should not while passing that order permit the Tribunal or the authority to deal with it again irrespective of the merits of the case. A Division Bench of the Punjab High Court, in C. I. T. v. Ramesh Chander ,93 ITR 450 at p. 478 = (1973) Tax LR 1427 at p. 1440 (Punj)) took the view that what the notified authority could do under Section 132 (12) a Court could do in writ proceedings. Though the observation was obiter we consider that it is correct. In this connection we must refer to the decision of the Gujarat

High Court, relied upon by the respondents, in Ramjibhai Kalidas v. I. G. Desai, (1971) 80 ITR 721 (Guj). In that case it was held that Rule 112-A, which provides that a show cause notice in respect of an inquiry under Section 132 (5) is to be made within 15 days from the date of the seizure, is mandatory and if that is not done no order under Section 132 (5) can be passed. It seems to have been admitted before the Bench by the Advocate General who appeared on behalf of the Revenue that he did not dispute that the period of ninety days prescribed under Section 132 (5) is a mandatory period. That decision is, therefore, no authority for the proposition that the period fixed under Section 132 (5) is mandatory. But even if it were the decision that R. 112-A is also mandatory is clearly erroneous. When Section 132 (5) permits an Income-tax Officer to pass an order within ninety days that power cannot be in any way whittled down by a rule made under that section.

7. On behalf of the respondents a number of decisions were relied upon for contending that no equitable consideration should enter into in deciding the matter. Reliance was placed. on the observations of Rowlatt. J. in Cape Brandy Syndicate v. Inland Revenue Commissioners; (1921-1KB 64 at p. 71), referred to with approval in the decision in Commr. of Income-tax v. Ajax Products Ltd., 55 ITR 741 at p. 747 = (AIR 1965 SC 1358 at pp. 1361, 1362), that :

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

We do not consider that every provision of a taxing statute will fall within this rule. The question whether a certain provision of law is directory does not fall to be decided on different standards because it is found in a taxing statute. There is no rule that every provision in a taxing statute is mandatory. The strict construction that a citizen does not become liable to tax unless he comes within the specific words of a statute is a different proposition tion. That a person cannot be taxed on the principle of estoppel does not admit of much argument. Article 265 of the Constitution lays down that no tax shall be levied except when authorised by law.

8. It was also argued based on Explanation 1 to Section 132 and similar provision in certain other sections which lay down that in computing the period of limitation any period during which any proceeding is stayed by an order or injunction of any court shall be excluded, that where it is intended that the period of limitation prescribed by any of the provisions of the Income-tax Act should not be strictly enforced the law itself makes a specific provision. It is a well established principle of judicial procedure that where any proceedings are stayed by an order of a Court or by an injunction issued by any Court that period should be excluded in computing any period of limitation laid down by law. Especially after the Limitation Act 1963, the provisions of which are now applicable to all proceedings, a provision like Explanation 1 to Section 132 is superfluous and no argument can be based on it.

9. Reference was made to various decisions of the various Courts which have held that the particular period of limitation under consideration by the Court should be strictly construed. There is no doubt that there is no equity about limitation. Most of the decisions relied on relate to provisions which laid down a period of limitation for taking one kind of action or other in order to assess to tax the person concerned. Naturally after the period of limitation has expired no proceedings can be taken to assess nor could any period of limitation laid down by the Act be extended merely by a superior tribunal directing an inferior tribunal to make an assessment or to take proceedings which result in assessment after the period of limitation is over. They are not in pari materia with the present proceedings. In deciding to whom any property seized under Section 132 (1) belongs the Income-tax Officer cannot be said to be exercising any powers of taxation. He is not deciding the question of taxing a person after the period prescribed therefor is over. He is really deciding to whom the property seized belongs and to such a case the provisions of ordinary law which deals with tribunals and courts which decide the questions of title to properties should be deemed to apply. This is not a case where equity is relied upon to tax a person who is not otherwise liable to be taxed. It is a general principle applicable to all judicial proceedings.

10. But the most important principle on the basis of which the order of the Income-tax Officer should be upheld is that it is in pursuance of an agreement between the parties which has obtained the imprimatur of the Court that this order has been made. The period of limitation is one intended for the benefit of the person whose property has been seized. It is open to him to waive it. We consider that to hold that the period of ninety days which is mentioned in S. 132 (5) is an immutable one would cause more injury to the citizen than to Revenue. It is, therefore, open to the aggrieved person, as happened in this case, to agree to a fresh disposal of the case by the Income-tax Officer and thereby waive the period of limitation.

11. Even apart from the consent of the parties it was open to the Court in Writ Petition No. 82 of 1972 to have set aside the earlier order of the Income-tax Officer and directed a fresh disposal of the matter by the Income-tax Officer on the ground which was in fact agreed to by the parties, that the aggrieved party had no reasonable opportunity of putting forward its case. It was within its powers to do so. If respondents 1 and 2 wanted to urge that the order of the Income-tax Officer impugned in W. P. 82 was liable to be set aside as they had no reasonable opportunity to put forward their case they could have done so. They need not have agreed to the matter being considered afresh. The Court would in any case have passed such an order. Having agreed and thus persuaded the Court to direct the Income-tax Officer to pass a fresh order respondents 1 and 2 cannot question the order of the Income-tax Officer on the basis of such direction. They should be deemed to be estopped from so contending. They had by their consent made the Income-tax Officer to put himself at a disadvantage, because he is now faced with the contention that he had no jurisdiction to pass a fresh order. Furthermore, it is not a case of the Court conferring jurisdiction on the Income-tax Officer to decide a case after he had lost jurisdiction over the matter. The procedure from the date of seizure to the date of the second order of the Income-tax Officer is an integrated process. Though a proceeding under Article 226 is an original proceeding and not by way of an appeal against the order of a Court or of Tribunal, it is part and parcel of our established judicial procedure and to treat it as though it were something outside the normal procedure and not part of an integrated whole would be wholly unrealistic. It is, therefore, possible for the parties to agree to a fresh disposal by the Income-tax Officer even as the Court would have ordered. It is also not a case of the parties conferring

jurisdiction on the Income-tax Officer by consent. It is a case where the parties agreed to a particular mode of exercise by the Income-tax Officer of a jurisdiction which he cannot be said to have lost or in respect of which he has become functus officio. Though it is true that on passing an order under Section 132 (5) the Income-tax Officer can be said to become functus officio it is the Court's order that revives his powers and jurisdiction.

12. We also find ourselves unable to accept the contention on behalf of the respondents that the order contemplated to be passed by the Income-tax Officer after the fresh inquiry in pursuance of the order of the High Court in W. P. No. 82 of 1972 was not necessarily an order under Section 132 (5). It was an order under Section 132 (5) that was impugned before the High Court. It was that order that was set aside by consent. It was the subject-matter of that order which had to be considered by the Income-tax Officer after giving a fresh opportunity to the petitioners and a new order passed. It could not therefore be anything but an order under Section 132 (5) that was under contemplation when the consent order was passed by the High Court in W. P. No. 82 of 1972.

13. We may in this connection refer to the decision in Wilson v. McIntosh (1894 AC 129). In that case an applicant to bring lands under the Real Property Act filed his case in Court under Section 21, more than three months after a caveat had been lodged, and thereafter obtained an order that the caveator should file her case, which she accordingly did. It was held that he had thereby waived his right to have the caveat set aside as lapsed under Section 23. The Privy Council held that the limitation of time contained in Section 23 was introduced for the benefit of the applicant, to enable him to obtain a speedy determination of his right to have the land brought under the provisions of the Act and that it was competent for the applicant to waive the limit of the three months, and that he did waived it by stating a case and applying for and obtaining an order upon the appellant to state her case, both which steps assumed and proceeded on the assumption of the continued existence of the caveat. They referred with approval to the decision in Phillips v. Martin, (11 NSWLR 153, where the Chief Justice said:

"Here there is abundant evidence of waiver, and it is quite clear that a man may by his conduct waive a provision of an Act of Parliament intended for his benefit. The caveator was not brought into Court in any way until the caveat had lapsed. And now the applicant, after all these proceedings have been taken by him, after doubtless much expense has been incurred on the part of the caveator, and after lying by and hoping to get a judgment of the Court in his favour, asks the Court to do that which but for some reasons known to himself he might have asked the Court to do before any other step in the proceedings had been taken. I think he is altogether too late. It is to my mind a clear principle of equity, and I have no doubt there are abundant authorities on the point, that equity will interfere to prevent the machinery of an Act of Parliament being used by a person to defeat equities which he has himself raised, and to get rid of a waiver created by his own acts."

These principles will apply exactly to the facts of this case.

14. In, Wright v. John Bagnall and Sons Ltd., (1900) 2 QB 240, a case arising under the Workmen's

Compensation Act, 1897 which requires the claim for compensation to be made within six months of the occurrence of the accident causing the injury, it was held that:

"An agreement arrived at between the parties shortly after the accident that there is a statutory liability on the employer to pay compensation, the amount of compensation being left open for future settlement, is evidence upon which the judge or arbitrator may properly find that the employer is estopped from setting up the defence that the request for arbitration was not filed within six months of the accident".

The agreement between the parties in this case that the Income-tax Officer may pass a fresh order within two months of the order of the High Court is an agreement which proceeded on the basis that the Income-tax Officer had jurisdiction to pass a fresh order. The principle of these decisions is also stated in Craies on Statute Law (6th Edn.) at page 269 as follows:

"As a general rule, the conditions imposed by statutes which authorise legal proceedings are treated as being indispensable to giving the court jurisdiction. But if it appears that the statutory conditions were inserted by the legislature simply for the security or benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the court."

There is no question of the period of limitation in Section 132 (5) involving public interests. It is intended for the benefit of the parties.

15. We are thus satisfied that as the period of limitation prescribed by Section 132 (5) is intended for the benefit of persons like the respondents, it is competent for them to waive it, that the respondents have in fact waived it, and the order of the High Court in W. P. No. 82 of 1970 is a consequence of such waiver, that the Income-tax Officer had, therefore, the jurisdiction to pass a fresh order. It follows, therefore, that as the High Court did not go into the question of the correctness or otherwise of the fresh order of the Income-tax Officer that the property belonged to Pooran Mal the individual and not to the 1st respondent firm, it was not competent for the High Court to order the return of the 114 bars of silver to the 1st respondent firm.

16. There is still another reason why the order of the kind which the High Court made could not be made. We may refer to the decision of this Court in Lokenath Tolaram v. B. N. Rangvani, AIR 1974 SC 150. There certain goods were seized from the possession of the appellants. They filed a petition challenging the legality of the order of the Excise Authorities granting extension of time to serve notice under Section 124 (a) of the Customs Act, 1962 after the expiry of the period of six months from the date of seizure. During the pendency of the petition the appellants in pursuance of consent orders deposited certain securities with Excise Authorities and executed bonds in their favour and obtained release of the seized goods. The appellants also agreed that in the event of their failure in

the writ petition the securities deposited shall be treated as sale proceeds of the said goods and treated as goods so seized for the purpose of any adjudication proceedings. They further agreed that they shall not raise any contention in the adjudication proceedings that the said proceedings will not be valid on the ground that the goods have been released to the appellants and are not available for confiscation or imposition of fine in lieu of confiscation. It was held that the consent terms operated as a waiver of notice for extending time within six months of the seizure of goods. It was also held that the appellants had no locus standi to ask for release of the goods because the Bank was in possession of the goods as the pledgee and the Excise Authorities seized the goods from the possession of the Bank. In this case we have already mentioned that the silver bars were not seized from the respondents under Section 132 (1) but were attached under Section 132 (3). The 1st respondent firm cannot, therefore, question the order of the Income-tax Officer on the ground that it was passed after the three months' period laid down by Section 132 (5), nor was it permissible for the High Court to order return of the silver bars to the 1st respondent firm. It had not even gone into the question whether the Income-tax Officer's decision on the question of ownership of the silver bars was correct or not.

17. The appeal is, therefore, allowed and the judgment and order of the High Court set aside. The High Court will now deal with the other contentions raised in the Writ Petition.

Appeal allowed.