

Before conclusion of assessment, assessee couldn't insist on recovery of tax from proceeds of his seized assets

Summary – The High Court of Allahabad in a recent case of Hemant Kumar Sindhi, (the Assessee) held that assessee's claim for adjustment of tax liability against proceeds of seized assets was misconceived as recovery can be initiated only on crystallization of liability on completion of assessment.

Facts

- A search took place at the business and residential premises of the assessee which unearthed gold bars from the locker of the assessee.
- The assessee offered undisclosed income and moved the Assessing Officer with an application for the sale of the gold bars and for adjustment of the proceeds against the tax liability.
- The Assessing Officer had dismissed the application on ground that the tax liability could be determined only after the block assessment would be completed and it was only when the assessment would be completed and a demand would be crystallized that the recovery would have been initiated by the sale of the gold bars.
- On writ, the assessee submitted that the assessee was entitled to the release of the asset and since the nature and source of acquisition of the assets had been explained, the existing liability could be recovered out of the asset.

Held

- Section 132B deals with the application of seized and requisitioned assets. Under clause (i) of sub-section (1) of section 132B, assets which are seized under section 132 or requisitioned under section 132A can be dealt with towards the amount of any existing liability under the Income-tax Act and the amount of liability determined on completion of the assessment under section 153A and the assessment of the year relevant to the previous year in which the search is initiated or the amount of liability determined on completion of the assessment under Chapter XIV-B for the block period including penalty or interest. The crucial words which are used in clause (i) are 'the amount of any existing liability' and 'the amount of the liability determined'. The words 'existing liability' postulate a liability that is crystallized by adjudication. Similarly, a liability is determined on completion of the assessment or as the case may be, the block assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized. The first proviso to clause (i) states that the assessee may make an application to the Assessing Officer for release of the asset which has been seized. However, the assessee has to explain the nature and source of acquisition of the asset to the satisfaction of the Assessing Officer. In other words, it is not the *ipse dixit* of the assessee but the

satisfaction of the Assessment Officer on the basis of the explanation tendered by the assessee which is material. Moreover, in such a case the amount of an existing liability can be recovered from out of such asset; such asset being the asset which is referred to in the substantive part of clause (i).

- In the present case, the conditions, which are specified in the first proviso, are clearly not attracted. The Assessing Officer was justified in his conclusion that it is only when the liability is determined on the completion of the assessment that it would stand crystallized and in pursuance of it a demand would be raised and recovery can be initiated.
- Consequently, the application which was filed by the assessee was thoroughly misconceived and unsustainable with reference to the provisions of section 132B(1). In the alternate, the assessee submitted that the asset may be sold and the sale proceeds may be kept in fixed deposit.
- Any action which the Court may direct in respect of an asset, which has been seized, has to be strictly in compliance of section 132B. Where a case has not been made out within the four corners of section 132B, the Court would not be justified in passing a general order of a nature that is sought, beyond the scope and purview of the statutory provision. The jurisdiction under article 226 of the Constitution, it is well settled, has to be exercised in accordance with law and where there is a governing statutory provision, in accordance with that provision and subject to the conditions and limitations prescribed by the statute.