

## AO directed to release seized gold as assessee had made timely application and explained source of acquisition

**Summary – The High Court of Gauhati in a recent case of Mul Chand Malu (HUF), (the Assessee) held that Where Authorised Officer conducted search under section 132 upon assessee and seized his assets and further Assessing Officer did not take any decision on assessee's application made under first proviso to section 132B(1)(i) for release of seized assets within stipulated period of 120 days, Assessing Officer was to be directed to immediately release seized assets of assessee**

### Facts

- The Authorised Officer conducted a search under section 132 upon the assessee and seized jewellery, ornaments and bullion, etc. from his possession.
- The assessee within 30 days from the end of the month in which the assets were seized made an application under first proviso to section 132B(1)(i) before the Assessing Officer for release of his assets. He also explained therein the nature and source of acquisition of such assets.
- The Assessing Officer did not take any decision on the assessee's application for release of seized assets within the stipulated period of 120 days from the date on which the last authorization for search under section 132 was executed.
- On writ:

### Held

- Section 132B deals with application of seized or requisitioned assets and the manner in which assets seized be dealt with.
- Section 132B was discussed and interpreted by a Division Bench of the Gujarat High Court in the case of *Mitaben R. Shah v. Dy. CIT* [\[2011\] 331 ITR 424](#). In that case, like in the instant case, no decision was taken by the Assessing Officer within 120 days from the date on which the last authorisation for search under section 132 was executed despite filing of an application within 30 days for release of seized assets. The Assessing Officer later dismissed the application for release of assets after the expiry of 120 days on numerous grounds. The Court held that when an application is made for the release of assets under first proviso to section 132B(1)(i) explaining the nature and source of the seized assets and if no dispute was raised during the permissible time of 120 days by the Assessing Officer, he had no authority to retain the seized assets in view of the mandate contained in second proviso to section 132B(1)(i). This decision does not seem to have been challenged by the revenue before the Supreme Court.

- The Bench is in complete agreement with the view taken by the Division Bench of Gujarat High Court.
- Therefore, the Assessing Officer was to be directed to immediately release the seized assets of the assessee.