

COMMISSIONER OF INCOME TAX, BHUBANESHWAR AND ANR. A

v.

PARMESHWARI DEVI SULTANIA AND ORS.

MARCH 6, 1998

[MRS. SUJATA V. MANOHAR AND D.P. WADHWA, JJ.] B

*Income Tax Act, 1961: Sections 293, 132 (B), 132 (4), (5), (7) and (11)—  
Bar of civil suit to set aside or modify assessment order— Search and  
seizure—Certain assets including gold ornaments seized and retained by  
Income Tax Department—Partition suit by a sister of assessee claiming her  
share in the seized gold ornaments—Maintainability of—Held, not  
maintainable as the claim in the suit would effect the order passed under  
section 132(5) of the Income Tax Act—Claimant could have instead resorted  
to the remedy provided under the Act by filing objection under section  
132(11)—Civil Procedure Code, 1908—Section 9.* C D

*Words and Phrases :*

*'Any person'—Meaning and scope of—Income Tax Act, 1961 : Section  
132(11).*

**Income-Tax Officer conducted search and seizure under section 132  
of the Income Tax Act, 1961 at a residential and business premises of 'B'.  
Various assets including gold ornaments were seized in the raid. On  
interrogation 'B' gave a statement that the gold ornaments belonged to  
deceased 'M' first wife of his father, who had bequeathed them for her only  
daughter, Respondent No. 1 and other children of his father from his second  
wife. The said gold ornaments were in the custody of his father and on his  
death it came into his custody. The Income Tax Officer disbelieving the  
version of 'B' passed an order under section 132(5) of the Act and directed  
that all the assets seized including gold ornaments be retained by the  
department. Respondent No. 1 filed a petition before the Income Tax Officer  
for return of the ornaments, which was rejected. Therefore, she filed a  
partition suit claiming 5/14th of her share in the gold ornaments which were  
seized. Revenue objected to the maintainability of the suit being clearly  
barred by section 293 of the Act. However, the Subordinate Court rejected  
the objection of the Revenue holding that section 293 of the Act could not  
be a blanket bar for all types of civil suits and as there was no remedy in** E F G H

A the Act for redressal of the grievance of respondent No. 1, the relief claimed in the suit could be granted to her in the Act. On revision, High Court upheld the order of the Subordinate Court on the ground that section 132 (5) of Income Tax Act did not give finality to order passed under the Act. Aggrieved, Revenue has filed the present appeal.

B Allowing the appeal, this Court

HELD : 1.1. Both the High Court and Subordinate Court were not justified in holding that the suit was not barred under section 293 of the Income Tax Act, 1961. [270-G]

C 1.2 The High Court failed to consider the effect of the decree if passed in the suit on the order under Section 132(5) of the Act or other proceedings under Section 132B of the Act. When Section 293 originally stood, it provided that “no suit shall be brought in any civil court to set aside or modify any assessment or order made under this Act”. The word “assessment” was omitted and the words “proceeding taken” were inserted in its place. The scope of Section 293 of the Act has been widened now even to include any proceeding under the Act and it is not confined merely to set aside or modify any order. Section 293 is specific and does not admit filing of suit which has the effect of even indirectly setting aside modifying of any proceeding taken under the Act or order made thereunder. [264-D, 270-C]

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E *Raleigh Investment Co. Ltd. v. Governor-General in Council*, (1947) 15 IR 332 (PC); *Kamala Mills Ltd. v. State of Bombay*, (1965) 56 TR 643 and *Dulhabhai etc. v. State of Madhya Pradesh & Anr.*, [1968] 3 SCR 662 = AIR (1969) SC 78, relied on.

F *Ranganmal & Ors. v. Union of India & Ors.*, (1963) 48 ITR 598 Mad. approved.

G *State of Bombay (Now Gujarat) v. Jagmohanda & Anr.*, (1966) 60 ITR 206, distinguished.

H 1.3. The direct effect of the decree in the suit would be that the gold ornaments, subject matter of the suit, would be taken out of the order of the Income Tax Officer under Section 132 (5) of the Act and would not be available to be applied in proceedings under Section 132-B of the Act. It is immaterial if the proceeding under Section 132 gives no finality to the order passed under section 132(5) or 132(11) of the Act. It is not the case of the Revenue that Income Tax Authority can grant decree for partition. It is not also material for the decision of the case if the will now set up by the plaintiff was genuine or not. The question that fell squarely for consideration was the

right of the plaintiff as a third party in the proceedings under section 132 of the Act. [264-F-G] A

2.1. In the instant case, search and seizure were effected as per the provisions of the Act, assets and documents seized and statement of 'B' recorded under sub-section (4) of Section 132 of the Act wherein he admitted that the gold was acquired from his and his brother's undisclosed income which he was even prepared to surrender to tax. It was thereafter in the course of further enquiry that he came up with a version that the gold ornaments in question belonged to his step-mother who bequeathed the same for the benefit of children of the plaintiff and other children that would be born to the second wife of his father. This version did not find favour with the Income Tax Officer and he was not satisfied that gold ornaments in question did not belong to 'B'. It was, therefore, not necessary for him to issue any notice under sub-section (7) of Section 132 of the Act to the plaintiff. Moreover the plaintiff was well aware of the proceedings before the Income Tax Officer and she could have also filed objection to the order made by the Income-Tax Officer under Section 132(5) of the Act to the Chief Commissioner or Commissioner under sub-section (11) thereof. [270-E-G] B C D

2.2. Sub-section (11) of Section 132 of the Act is not confined to only that person who was subjected to search and seizure operation and against whom the order under sub-section 132(5) was passed. The words "any person" appearing in sub-section (11) are significant and even a third party can make an application to the Chief Commissioner or Commissioner giving reasons for his objection to the order and seeking appropriate relief in the matter. This remedy the plaintiff did not avail. [265-H; 266-A] E F

2.3. When the plaintiff was unable to get the release of the seized gold ornaments, allegedly belonging to her mother, under the provision of the Act, she could not by filing a partition suit indirectly get a decree to have a finding that the gold ornaments belonged to her mother and that she had right to claim her share therein. If she succeeds in her claim this will have direct effect of getting that order of the Income-Tax Officer under Section 132(5) of the Act set aside or modified to that extent. This, section 293 does not permit. The decree if passed in a suit would not only effect 5/14th share of the plaintiff which she was seeking on partition of the gold ornaments, but also whole of the ornaments would get effected and taken out of the order H

**A under sub-section (5) of Section 132 of the Act. [266-B-C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 142 of 1997.

From the Judgment and Order dated 24.10.94 of the Orissa High Court in C.R. No. 6 of 1993.

**B** Ranbir Chandra, C.V.S. Rao, (Ms. Shashi Kiran) and B.K. Prasad for the Appellants.

N.K. Bisht, (NP) for the Respondents.

**C** Joseph Vellapaly and R.K. Kapoor for the Amicus Curiae appointed by the Court.

The Judgment of the Court was delivered by

**D** **D.P. WADHWA, J.** Commissioner of Income Tax, Bhubaneshwar and Union of India, Ministry of Finance have filed this appeal against the judgment dated October 24, 1994 of the Orissa High Court which the High Court dismissed their revision and affirmed the order of the subordinate court rejecting the plea of the Revenue that a suit for partition filed by the first respondent was not maintainable in view of the bar of in Section 293 of the Income Tax Act, 1961 (for short, the 'Act').

**E** Respondent No. 1, as the plaintiff, filed a suit for partition against 7 defendants, defendants 6 and 7 being respectively Union of India through Finance Secretary and Commissioner of Income Tax, Orissa, now the appellant before us. Defendants 1 and 2 are step-brothers and defendants 3 to 5 are step-sisters of the plaintiff. Plaintiff said that she was the daughter of Bansidhar Agarwal from his first wife, while, defendants 1 to 5 were the children of Bansidhar Agarwal from his second wife. Defendant No. 1 is Babulal whose residential and business premises were subjected to search and seizure operation under Section 132 of the Act and various assets including certain gold ornaments, subject matter of the suit filed by the plaintiff, were seized. In the suit the plaintiff had prayed for partition of those very gold ornaments. Plaintiff said that her mother died in 1938 and that at that time she was possessed of 200 tolas of gold ornaments which was her stridhan. Her mother made a will bequeathing gold ornaments to the plaintiff and other children of Bansidhar from his second wife in proportion to number of daughters of each of such children to meet the dowry demand and marriage requirements of their daughters. These ornaments were kept in the custody of father of the plaintiff

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**H** who died on February 10, 1990. After his death the ornaments came in the

custody of Babulal Agarwal, the first defendant. The family decided to partition the ornaments. At that time there were 14 grand-daughters who were the daughters of the plaintiff and defendants 1 to 5. Since the plaintiff had 5 daughters, she was entitled to 5/14th share in the ornaments. But before the partition could take place, Income Tax Officer raided the house of the first defendant on March 23, 1990 and seized those gold ornaments which weighed 2128 gms. along with other assets. Plaintiff said that she filed a petition before the Income Tax Officer for return of the ornaments but he refused. The plaintiff then issued a notice to the Commissioner of Income Tax, Orissa, defendant No. 7, who, it is alleged, assured her that justice would be done to her claim and had stated that her case would be disposed of within three months. Nothing happened in spite of the reminders and no decision was taken. This gave cause of action to the plaintiff. She served a notice under Section 80 of Code of Civil Procedure on Defendants 6 and 7 and thereafter filed the suit.

From the facts, it is quite obvious that the plaintiff would not have filed the suit for partition as there was no dispute to her claim by other relatives but for the fact that gold ornaments were then in the custody of the Income Tax Department. Notices of the suit were served on Defendants 6 and 7. They filed an application in the Court on August 7, 1992 challenging the very maintainability of the suit in view of Section 293 of the Act. The Section is as under :

“293. *Bar of suits in civil courts.* No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act, and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act.”

As to why the suit was not maintainable, reference was made to the operations conducted under Section 132 of the Act and the order passed in those proceedings under the Act. Under the authorisation issued by the Director of Income Tax (Investigation), Hyderabad under sub-section (1) of Section 132, search and seizure operations were conducted in the residence-cum-business premises of Babulal and also at the business premises of a company of which he was the Managing Director. Two bank lockers in the name of Babulal and his brother Girdharilal in the Andhra Bank were also searched. These search operations were carried on from March 23, 1990 to March 26, 1990. Cash, Jewellery, diamond ornaments, silver coins and ingots were found and seized. Statement of Babulal was recorded under sub-section

A (4) of Section 132 of the Act. In respect to cash and jewellery Babulal admitted having concealed income of Rs. 7,00,000 which according to him was the value of the gold ornaments found in excess of 515 tolas which had been disclosed by him and his family members in his wealth-tax return. He offered an additional income of Rs. 3,50,000 in his name and the same amount in the name of his brother on account of undisclosed investment in acquisition of gold ornaments. During the course of investigation, Babulal also gave written submission. Regarding gold ornaments, his stand now was that gold ornaments weighing 2128 gms. belonged to Mani Devi who was the first wife of his father and as per her wishes, his father was the custodian of this jewellery on behalf of the plaintiff who was the only daughter of his father from his first wife and also on behalf of the children to be gotten after remarriage of his father. His contention was that this jewellery had been kept by his father who was now no longer alive. After completion of the investigation, the Income Tax Officer passed an order under Section 132(5) of the Act holding that total liabilities on account of tax, interest and penalty of Babulal came to Rs. 56,95,079 as against which value of the assets seized from him was Rs. 20,49,694. He, therefore, directed that all the assets seized during the course of search and seizure operation which included the gold ornaments in question to be retained with the Department. The Income Tax Officer disbelieved the version of Babulal that gold ornaments in question were owned by his step-mother and how she wished to distribute the same among her daughter and other children that may be born to the second wife of her husband. According to Babulal, as per his second version, the gold ornaments remained in the custody of his father from 1938 till 1990, when he died without these having been utilised as per the wishes of his step-mother, natural mother of the plaintiff. The assets retained by the order under sub-section (5) of Section 132 are to be dealt with in accordance with the provisions of Section 132B of the Act.

An order passed under sub-section (5) of Section 132 of the Act can be objected to under sub-section (11) thereof to the Commissioner of Income Tax. We may set out Section 132, in the relevant part, as under :

G "132. Search and seizure.-

(1)...

(2) ...

H (3) ...

(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. A  
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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), of under this Act. C

(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be Presumed— D

- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
- (ii) that the contents of such books of account and other documents are true; and E
- (iii) that the signature and every other part of such books of account and other documents which purporting to be the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested. F

(5) Where any money, bullion, jewellery or other valuable article or thing hereafter in this section and in sections 132A and 132B referred to as the assets is seized under sub-section (1) or sub-section (1A), the Income-tax Officer, after affording a reasonable opportunity to the person concerned of being heard and making such enquiry as may be prescribed, shall, within one hundred and twenty days of the seizure, G  
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A make an order, with the previous approval of the Deputy Commissioner:-

(i) estimating the undisclosed income (including the income from the undisclosed property in a summary manner to the best of his judgment on the basis of such materials as are available with him;

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(ii) calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act;

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(iia) determining the amount of interest payable and the amount of penalty imposable in accordance with the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act, as if the order had been the order of regular assessment;

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(iii) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (a) of sub-section (1) of section 230A in respect of which such person is in default or is deemed to be in default,

and retain in his custody such assets or part thereof as are in his opinion, sufficient to satisfy the aggregate of the amounts referred to in clauses (ii), (iia) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized :

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Provided that it, after taking into account the materials available with him, the Income-tax Officer is of the view that it is not possible to ascertain to which particular previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized and may also determine the interest or penalty, if any, payable or imposable accordingly :

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Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clause (ii), (iia) and (iii) or any part thereof, the Income-tax Officer may, with the previous approval of the Chief Commissioner or Commissioner, release the assets or such part thereof as he may deem fit in the circumstances

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of the case.

(6) The assets retained under sub-section (5) may be dealt with in accordance with the provisions of section 132B.

(7) If the Income-tax Officer is satisfied that the seized assets or any part thereof were held by such person, for or on behalf of any other person, the Income-tax Officer may proceed under sub-section (5) against such other person and all the provisions of this section shall apply accordingly.

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(11) If any person objects for any reason to an order made under sub-section, he may, within thirty days of the date of such order, make an application to the Chief Commissioner or Commissioner, stating therein the reasons for such objection and requesting for appropriate relief in the matter.

132B. *Application of retained assets*—(1) The assets retained under sub-section (5) of section 132 may be dealt with in the following manner, namely :-

- (i) The amount of the existing liability referred to in clause (iii) of the said sub-section and the amount of the liability determined on completion of the regular assessment or reassessment for all the assessment years relevant to the previous years to which the income referred to in clause (i) of that sub-section relates including any penalty levied or interest payable in connection with such assessment or reassessment and in respect of which he is in default or is deemed to be in default may be recovered out of such assets.
- (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 (1) as remains

A           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, Tax Recovery Officer under authorisation from the Chief Commissioner under sub-section (5) of section 226 and the Assessing Officer or, as the case may be, 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.

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C           (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.

D           (3) Any assets or proceeds thereof which remain after the liabilities referred in clause (j) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

E           (4)(a) The Central Government shall pay simple interest at the rate of fifteen per cent per annum on the amount by which the aggregate of money retained under section 132 and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (iii) of sub-section (5) of that section exceeds the aggregate of the amounts required to meet the liabilities referred to in clause (i) of sub-section (1) of this section.

F           (b) Such interest shall run from the date immediately following the expiry of the period of six months from the date of the order under sub-section (5) of section 132 to the date of the regular assessment of reassessment referred to in clause (i) of sub-section (1) or, as the case may be, to the date of last of such assessments or reassessments.”

G           In view of the proceedings conducted under Section 132 of the Act and order having been passed under sub-section (5) of Section 132 thereof and seized assets including the gold ornaments, subject matter of the suit ordered to be retained, the Revenue objected to the maintainability of the suit and said, that it was clearly barred by Section 293 of the Act and a civil court had no jurisdiction to try such a suit under Section 9 of the Code of Civil Procedure. Section 9 of the Code imparts jurisdiction on a civil court to try  
H of suits of the civil nature excepting suit of which their cognizance is either

expressly or impliedly barred.

The Subordinate Judge framed and tried the preliminary issue on the maintainability of the suit. He observed that Section 293 of the Act could not be a blanket bar for all types of civil suit brought for redress against infringement of a legal right for which no remedy was prescribed under the Act. According to him, the claim of the plaintiff as set out in the suit had not been adjudicated by defendant No.7 and on that account legal right of the plaintiff stood violated and she suffered legal injury which entitled her to judicial process to file a suit. Thus, according to the learned Subordinate Judge, there is no remedy in the Act for redressal of the grievance of the plaintiff and the relief which the plaintiff claimed in the suit could not be granted to her in the Act. He, therefore, held the suit to be maintainable. Commissioner of Income Tax and Union of India aggrieved of this order filed a revision in the Orissa High Court. The learned Single Judge upheld the order of the Subordinate Judge and dismissed the revision. High Court did note the fact that the plaintiff filed a petition before the Income Tax Officer for returning the seized gold ornaments but the prayer was refused and that thereafter she issued a notice to the Commissioner of Income Tax and when that yielded no result, she filed the suit for partition of the suit properties. High Court also noticed that the order passed under sub-section (5) of Section 132 of the Act was not appealed against and had become final and further that the assessment proceedings were still pending before the Deputy Commissioner, Income Tax (Assessment). High Court referred to a decision of this Court in *Dulhabhai v. State of Madhya Pradesh*, [1968] 3 SCR 662 - AIR (1969) SC 78 wherein seven principles were laid down regarding exclusion of jurisdiction of a civil court. According to the High Court, the suit filed by the plaintiff was not to set aside or modify the order passed by the Income Tax Officer under Section 132(5) of the Act and had she filed suit for that purpose, the plaint could have been rejected at the threshold in the face of the bar contained in Section 293 of the Act. A perusal of entire provision of Section 132 would show that it did not give finality to any order passed under sub-section (5) thereof, though the order could be varied or modified by the Chief Commissioner or Commissioner, as the case may be, but even that order did not give finality under the Act. High Court said that :

“it has to be borne in mind that section 132 of the Act relates to the pre-assessment stage. In order to oust the jurisdiction of the civil court in the case at hand one has to examine whether the Income tax

- A Officer under sub-section (11) of Section 132 would be able to grant the relief claimed by opposite party No.1 that the seized gold ornaments are subject to partition, it being the stridhan property of her mother who bequeathed the same in a will. As the matter, I am of the view, neither the Income-tax Officer nor the named authority under sub-section (11) of section 132 would be able to grant the aforesaid relief.
- B Opposite Party No.1 is not an assessee and she is a third party so far as the proceeding initiated against opposite party No.2 under Section 132 of the Act is concerned.”

- C High Court also held that although Section 132 provided for a remedy by way of challenge before the named authority under sub-section (11) of Section 132 of the Act, plaintiff could not redress her grievance because the relief of partition claimed by her in the suit could not be granted by the statutory machinery provided in the Act.

- D We do not think that the High Court approached the question in its proper perspective. It failed to consider the effect of the decree if passed in the suit on the order under Section 132(5) of the Act or other proceedings under Section 132B of the Act. When Section 293 originally stood, it provided that “no suit shall be brought in any civil court to set aside or modify any assessment or order made under this Act”. The word “assessment” was omitted and the words “proceeding taken” were inserted in its place. This made the section more comprehensive in nature. Direct effect of the decree in the suit would be that the gold ornaments, subject matter of this suit, would be taken out of the order of the Income Tax Officer under Section 132(5) of the Act and would not be available to be applied in proceedings under Section 132B of the Act. It is immaterial if the proceeding under Section 132 gives no finality to the order passed under Section 132(5) or 132(11) of the Act. It is not the case of the Revenue that Income Tax Authority can grant decree for partition. It is not also material for the decision of the case if the will now set up by the plaintiff was genuine or not. The question that felt squarely for consideration was the right of the plaintiff as a third party in the proceedings under Section 132 of the Act. If we analyse the section, the following steps are visualised :

- H “(1) search is conducted under the authorisation of the named authority;
- (2) seizure of the assets, books of accounts, documents etc. in pursuance thereto;

(3) to examine on oath any person during the course of search or seizure operations who is found to be in possession or control of any of the assets, books of account, documents etc.;

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(4) statements so recorded can be used in evidence in any proceeding under the Act;

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(5) there is a presumption that assets, books of account or documents found in control of any person in the course of search belong to him and that the contents of books of account and documents are true and that signatures, books of account and documents which purported to be in the writing of any particular person are signed or in the handwriting of that particular person;

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(6) after affording a reasonable opportunity of being heard and after making enquiry as prescribed, the Income Tax Officer is to pass an order keeping in view the requirements of sub-section (5) of Section 132 of the Act;

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(7) if the Income Tax Officer passes order for retention of assets, these are to be dealt with in accordance with Section 132B;

(8) if the Income-tax Officer is satisfied that the seized assets or any part thereof belongs to any other person, the Income-tax Officer may proceed under sub-section (5) against any such person; and

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(9) if any person objects for any reason to the order made under sub-section (5), he can approach the Chief Commissioner or Commissioner for redressal of his grievance.

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A perusal of the order passed under Section 132(5) would show that the Income-tax Officer was not satisfied that the subject gold ornaments belonged to any other person and not to Babulal. It was, therefore, not necessary for him to proceed under sub-section (7) of Section 132 of the Act. However, the plaintiff was well aware of the proceedings under Section 132 and she did approach the Income-tax Officer, as aforesaid, who rejected her petition. In any case, she could have approached the Chief Commissioner or Commissioner under sub-section (11), if she had any objection for any reason to the order made under sub-section (5) of Section 132 of the Act. We do not think sub-section (11) is confined to only that person who was subjected to search and seizure operation and against whom the order under sub-section 132(5) was

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A passed. The words “any person” appearing in sub-section (11) of Section 132 of the Act are significant and even a third party can make an application to the Chief Commissioner or Commissioner giving reasons for his objection to the order and seeking appropriate relief in the matter. This remedy the plaintiff did not avail. When the plaintiff was unable to get the release of the seized gold ornaments, allegedly belonging to her mother, under the provisions of the Act, she could not by filing a partition suit indirectly get a decree to have a finding that the gold ornaments belonged to her mother and that she had right to claim her share therein. If she succeeds in her claim this will have direct effect of getting that order of the Income-tax Officer under Section 132(5) of the Act set aside or modified to that extent. This Section 293 does not permit. The decree if passed in a suit would not only effect 5/14th share of the plaintiff which she was seeking on partition of the gold ornaments, but also whole of the ornaments weighing 2128 gms would get effected and taken out of the order under sub-section (5) of Section 132 of the Act. Mr. Vellapalli, who at our request, appeared amicus curiae submitted that one had to see if the suit was filed before or after the conclusion of the assessment proceedings.

D He said it was a suit for title and not, in any way, for setting aside the order passed by the Income-tax officer, even though as a consequence of an ultimate decree, it might affect the working of that order. He said form of the suit was to be seen if it is maintainable or not and that the jurisdiction of the civil court is decided as to how suit is framed. According to Mr. Vellapalli, purpose of Income-tax proceedings is to determine the tax liability of the assessee and if liability is created, then to recover that and assets are to be retained but that was not an issue before the civil court. He also referred to Schedule 2 of the Act to contend that the Act did not altogether bar a civil suit. It is difficult to accept such submissions. We think Section 293 is quite specific and does not admit of any ambiguity if ultimately a suit is to result in a decree or order which sets aside or modifies any proceeding taken or order made under the Act, that suit would not be maintainable. We are not concerned with the frame of the suit as such but to see the ultimate result to which the suit as such but to see the ultimate result to which the suit would lead to. In the present case, both the Commissioner of Income-tax and Union of India have been impleaded as defendants. On pleadings of the parties, an issue will have to be framed on the validity of proceedings under Section 132 of the Act which cannot be permitted in view of the bar contained in Section 293 of the Act.

*In Raleigh Investment Co., Ltd. v. Governor-General in Council, (1947)*

H 15 ITR 332 PC, a suit was filed by Raleigh Investment Company Ltd. claiming

repayment of Rs. 4,35,295, part of a larger sum paid by it under an assessment of Income-tax made upon it. The basis of this claim was that in the computation of assessable income, effect had been given to a provision of the Income-tax Act, 1922 which in the submission of the plaintiff was ultra vires the legislature and that the assessment was, therefore, wrong. One of the contentions raised was that the suit was barred by reason of Section 67 of the Income Tax Act, 1922. Section 67 contained bar of suits in civil court. Section 67 provided as under :

“67. *Bar of suits in Civil Court.*-No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution suit or other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.”

The Court held that though in form the relief claimed did not profess to modify or set aside the assessment, in substance the suit was directed exclusively to a modification of the assessment and was barred by Section 67 of the Indian Income-tax Act. In *Kamala Mills Ltd. v. State of Bombay*, (1965) 56 ITR 643 SC, plaintiff, the appellant filed a suit claiming to recover certain amount paid as sales tax on the ground that it had been illegally levied against it. One of the questions for consideration was if Section 20 of the Bombay Sales Tax Act, 1946 contained a bar against the suit. Section 20 is as under :

“Save as is provided in section 23, no assessment made and no order passed under this Act of the rules made thereunder by the Commissioner or any person appointed under section 3 to assist him shall be called into question in any civil court, and save as is provided in sections 21 and 22, no appeal or application for revision shall lie against any such assessment or order.”

It was contended by the plaintiff that Section 20 had no application because the order of assessment which the plaintiff sought to challenge had been made by the relevant Sales Tax Authorities without jurisdiction. This Court repelled this argument and said that an assessment based on an erroneous finding about the character of the transaction was not an assessment made without jurisdiction and was not outside the purview of Section 20 and that words in that section were wide enough to take within its sweep even erroneous orders of assessment and would be entitled to claim protection

A against the institution of a civil suit. The court then observed :

B “The jurisdiction of a civil court can be excluded even without an express provision. In every case, the question about the exclusion of the jurisdiction of civil courts either expressly or by necessary implication must be considered in the light of the words used in the statutory provision on which the plea is rested, the scheme of the relevant provisions, their object and their purpose.”

C In *State of Bombay (Now Gujarat) v. Jagmohandas & Anr.*, (1966) 60 ITR 206, the respondent-plaintiff had filed a suit against the State of Bombay for recovery of a certain amount which it alleged it had paid as advance tax on various dates, while submitting returns for a particular period. It also claimed interest. The State raised objection that the suit was barred by Section 13 and 20 of the Bombay Sales Tax Act, 1946. This Court held that as no assessment had been made under the Act and no assessment or order made under the Act was called in question in the suit Section 20 of the Act did not bar the suit. This Court also negatived the contention of the defendant that when a registered dealer filed a return and calculated and paid tax on the basis of the return, he, in fact, made an assessment and, therefore, brought himself within Section 20 of the Act. The Court said :

E “We are unable to read the word ‘assessment’ in section 20 to include a mere filing of return and payment by a registered dealer. In our opinion, the word “assessment” has reference to assessments made under sections 11 and 11A of the Bombay Sales Tax Act, 1946. Therefore, we must overrule the contention of the learned Solicitor General that section 20 expressly bars the present suit.”

F It is not necessary for us to consider the scope of Section 13 referred to above as that is not relevant to the issue raised before us.

G In *Rangammal & Ors. v. Union of India & Ors.*, (1963) 48 ITR 598 Mad, the appellants-plaintiffs had brought a suit for a declaration that property described in the plaint should not be either sold or could be sold if at all only subject to a charge in favour of the sixth plaintiff for realisation of income tax arrears due from their elder brother and for a permanent injunction restraining the Union of India and the Collector of Coimbatore from bringing those properties to sale for realisation of the income-tax arrears due. It was the H contention of the plaintiffs that the brothers were having their independent

business and were not having joint family businesses. However, the Income-tax authorities treated all the businesses as joint family business and the status of the assessee was taken as Undivided Hindu Family. In order to realise the arrears of income-tax, the properties, subject matter of the suit, were brought to sale. At that stage, the suit was filed. Earlier, it appeared that the plaintiffs had filed a suit for partition of joint family estate and a preliminary decree was passed and then final decree where some of the properties mentioned in the plaint in the present suit were allotted to minor plaintiffs. One of the question raised was whether the suit as such was barred by Section 67 of the Income-tax Act, 1922. A Division Bench of the Madras High Court, after examining the background of the case, observed that it was true that prayer in the plaint was not couched in terms which would bar the operation of section 67 of the Income-tax Act because the prayer was for declaration that the properties in question were not liable to be proceeded against for the satisfaction of the demand due under the assessment. The Court said that merely by casting the prayer in the form a declaration, the substance of the prayer could not be hidden. The Court held that the substance here was that the share of the minors in the joint family property was not liable for the income-tax arrears because the tax was assessed on businesses which were not joint family businesses. The court, thus, held that Section 67 of the Act was a bar to the maintainability of the suit even though the declaration asked for did not in terms referred to cancellation of the assessment made by the tax authorities.

Principles of law are, therefore, well settled where a civil court will not assume jurisdiction. In *Dulhabhai etc. v. State of Madhya Pradesh & Anr.* [1968] 3 SCR 662 - AIR (1969) SC 78, this Court laid 7 principles for the courts to see if the suit was barred under Section 9 of the Code or not. It is not necessary to set out all the 7 principles as we find that the present suit would be barred under the second principle laid by this Court which we reproduce as under :

“Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intentment becomes necessary and the result of the inquiry may be decisive. In

- A the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.”

B

We have seen above that the scope of Section 293 of the Act has been widened now even to include any proceeding under the Act and it is not merely confined merely to set aside or modify any order. Form of suit is not relevant. It is the substance which is to be seen. When the statute prescribed certain procedure and proceedings thereunder are held and order passed, it is difficult to accept a contention that the proceeding and order can be modified or set aside in a civil suit filed by a third party. Section 293 is specific and does not admit filing of a suit which has the effect of even indirectly setting aside or modifying any proceeding taken under the Act or order made thereunder. In the present case, search and seizure were effected as per the provisions of the Act, assets and documents seized and statement of Babulal recorded under sub-section (4) of Section 132 of the Act wherein he admitted that the gold was acquired from his and his brother's undisclosed income which he was even prepared to surrender to tax. It was thereafter in the course of further enquiry that he came up with a version that the gold ornaments in question belonged to his step-mother who bequeathed the same for the benefit of children of the plaintiff and other children that would be born to the second wife of his father. This version did not find favour with the Income-tax Officer and he was not satisfied that gold ornaments in question did not belong to Babulal. It was, therefore, not necessary for him to issue any notice under sub-section (7) of Section 132 of the Act to the plaintiff. In any case, the plaintiff was well aware of the proceedings before the Income-tax Officer and she could have also filed objection to the order made by the Income-tax Officer under Section 132(5) of the Act to the Chief Commissioner or Commissioner under Section (11) thereof which remedy she did not avail. Considering the whole gravamen of the plaintiff in the suit and the law on the subject, we are of the opinion that the Subordinate Judge and the High Court were not correct in rejecting the contention of the Revenue and holding that the suit was not barred under Section 293 of the Act.

H

We, therefore, allow the appeal, set aside the impugned judgment of the

High Court and of the Subordinate Judge and dismiss the suit filed by the A  
plaintiff.

We would like to record our appreciation of the assistance rendered by  
Mr. Vellapalli and Mr. Kapur who appeared amicus curiae at our request.

S.V.K.I.

Appeal allowed. B