

AO cannot retain documents of title as security for any tax liability that may arise in future: HC

HIGH COURT OF KERALA

Muthukoya T.

v.

Commissioner of Income-tax

BECHU KURIAN THOMAS, J.

WP(C) NO. 20341 OF 2021

MAY 18, 2022

Gist:

Assessing Officer seized the sale deed of the assessee pertaining to the residential house of the petitioner under section 131(3) while conducting a survey on 17-2-2010. The assessee pleaded that the AO is not returning the sale deed and on the other hand the revenue pleaded that custody of the sale deed is needed to prevent substantial tax arrears due from a firm in which assessee was partner and was necessary to safeguard interests of revenue.

Major Observation:

- The document in question was seized on 17-2-2010.
- The petitioner has any liability in respect of the assessment years prior to 2009-10.
- There is no provision under the Income Tax Act to retain the documents of title as security for any tax liability that may arise in the future.
- In the absence of any such statutory provision, the respondents cannot retain documents of title impounded/seized by them under section 131(3) of the Act.

As per section 131(3) of the Act, an Assessing Officer shall not

(a) impound any books of account or other documents without recording his reasons for so doing, or

(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General or Commissioner or Director therefore, as the case may be.

No such approval had been obtained by the department from any of the officers mentioned in section 131(3) of the Act.

Therefore the respondents cannot under any circumstances retain the documents of title of the petitioner.

Order Summary:

In view of the above, the AO has acted illegally and with material irregularity in retaining the documents of title belonging to the petitioner. Accordingly, the AO are directed to return the original Sale Deed bearing No. 3561/2008 executed before the Sub Registrar's office, Ernakulam to the petitioner within an outer period of 30 days from the date of receipt of a copy of this judgment.