(1987) 03 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 791 of 1986

Abdul Sattar APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 11-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 132, 132(3), 132(5), 132(8)

Citation : (1987) 64 CTR 328 : (1988) 173 ITR 516 : (1987) 34 TAXMAN 18

Hon'ble Judges : R.K. Gulati, J;K.C. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Gulati, J.—This writ petition has been filed by Shri Abdul Sattar. The petitioner''s premises were searched on July 23, 1986, u/s 132 of the Income Tax Act, 1961 ("the Act"). During the search, only books of account and documents were seized but no cash, bullion, jewellery or other valuable articles were seized. The authorised officer, on the date of search, also passed three separate orders u/s 132(3). These orders were addressed to the managers of three different banks where some persons named in those orders, being the family members of the petitioner, held certain accounts in their names. By these orders, the Income Tax Officer ordered the banks not to allow operation of these accounts till further orders from him. Besides the seizure of books of account and documents, a key of a bank locker found in the premises searched was also seized.

2. Initially, the writ petition was filed seeking mandamus from this court that the respondents be restrained from taking any proceedings in pursuance of the search and seizure and also for a direction that the respondents be restrained from passing any order against the petitioner with reference to the seizure effected by the Income Tax Officer.

3. At the time when this writ petition was filed, the period of 120 days contemplated for making an order u/s 132(5) of the Act had not expired. After

the expiry of the aforesaid period, the petitioner made an application seeking amendment of the writ petition with the prayer for a further relief, namely, that the respondents be directed to return forthwith the books of account and other documents seized from the petitioner''s premises during the aforesaid search.

4. The respondents have filed their counter-affidavit and a supplementary counter-affidavit-in-opposition to the reliefs sought by the petitioner.

5. We have heard learned counsel for the petitioner as well as learned standing counsel.

6. The petitioner''s counsel urged that the books of account and documents seized could be retained by the Department only up to 180 days from date of seizure and that period having expired during the pendency of this writ petition pending admission before this court, the retention of the books of account and documents is now without jurisdiction and is illegal. The petitioner is entitled to the return of the books of account and documents forthwith. Another point urged in support of the same relief was that the authorised officer who conducted the search and seizure was a person other than the Assessing Officer of the petitioner. In such a situation, it was obligatory for the authorised officer to have handed over the books of account and documents seized within 15 days of the seizure to the Assessing Officer of the petitioner. This has not been done. For this proposition, he referred to the provisions of Section 132(9A). According to counsel, retention of the books, etc., by the authorised officer is wholly without jurisdiction.

7. There is no force in any of the Submissions made on behalf of the petitioner. In the supplementary counter-affidavit filed on behalf of the Department, a copy of the order dated January 15, 1987, passed by the Commissioner has been filed. By this order, the Assessing Officer has been authorised to retain the books of account and documents till December 30, 1987. It is not disputed that such retention could be granted by the Commissioner u/s 132(8). Being confronted with this position, learned counsel for the petitioner urged that the extension of time granted by the Commissioner is not for good and valid reasons. We do not think so. The extension was sought on the ground that the books of account and documents seized are required for completion of assessment proceedings pending against the petitioner. This cannot be said to be an irrelevant ground.

8. Another Submission of the petitioner that the books of account and documents were not handed over to the Assessing Officer is also misconceived and is based on incorrect facts. From a perusal of the order dated January 15, 1987, it is apparent that the extension for retention of books of account and documents beyond 180 days was sought by the Assessing Officer of the petitioner and not by the authorised officer. The contention that the books of account and documents were not handed over to the Assessing Officer does not appear to be correct.

9. In any case, it is not necessary for us to go into further details inasmuch as

the petitioner has an alternative remedy to go before the Board against the Commissioner''s order granting extension as provided u/s 132(10) of the Act. The petitioner can file objections before the Board against retention of books, etc., by the Assessing Officer. The petitioner can take all his objections before the Board as may be open to him in law against the order of the Commissioner including those taken before us. We do not see any justification to interfere with the order of the Commissioner under Article 226 of the Constitution.

10. The next Submission of the petitioner is that orders of restraint issued to the bank managers are not liable to be sustained. The argument is that no order u/s 132(5.) has been passed. The period of 120 days from the date of the raid within which such an order could be made has expired. Therefore, the prohibitory orders issued to the managers of the three banks are of no avail as no order can now be passed u/s 132(5). For the same reasons, according to the petitioner, he is entitled to the return of the key of the bank locker taken in custody by the Income Tax Officer during the raid.

11. Learned counsel for the Department took us through the averments in the writ petition and in the amendment application. He argued that the petitioner has claimed no relief against the restraint order nor are there any clear averments to that effect in the petition. Another argument is that excepting one savings account, all other bank accounts, in respect of which prohibitory orders have been made, are in the names of persons other than the petitioner who have not come forward with any complaint before this court. Therefore, the petitioner is not entitled to any relief on this ground also.

12. In our opinion, the objections raised on behalf of the Department are well-founded and the petitioner is not entitled to any relief. That apart, the validity of an order u/s 132(3) is not dependent upon passing of an order u/s 132(5). The jurisdiction to pass an order u/s 132(5) is dependent where any money, bullion, jewellery or other valuable articles or things are seized under Sub-section (1) or Sub-section (1A) of Section 132. The prohibitory order u/s 132(3) is not within the sweep of Section 132(5). Therefore, in our opinion, the validity of the orders u/s 132(3) will not be affected merely because no order u/s 132(5) has been passed. Moreover, the petitioner''s grievance, as urged before us above, can appropriately be raised before the Commissioner or before the Assessing Officer and it would be within their jurisdiction to decide the objections of the petitioner in accordance with law.

13. What we have said above will equally apply to the demand of the petitioner for the return of the key of the bank locker.

14. For the reasons aforesaid, this writ petition is dismissed summarily.