

(1966) 06 CAL CK 0015
In the Calcutta High Court
Case No : Matter No. 286 of 1964

Amal Kumar Ghatak

APPELLANT

Vs

Income Tax Officer, J-Ward and Another

RESPONDENT

Date of Decision : 09-06-1966

Acts Referred:

Income Tax Act, 1961 — Section 131, 142, 22(4)

Citation : (1971) 79 ITR 452

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Judgement

B.C. Mitra, J.—The short question involved in this application is the validity of the notice issued by the Income Tax Officer u/s 131 of the Income Tax Act, 1961, being a notice dated 1st May, 1964. By this notice the petitioner was called upon to attend personally at the office of the Income Tax Officer with all books of accounts for the years 1955, 1956, 1957 and 1958.

2. The petitioner contends that his assessments up to the assessment year 1961-62 have been duly completed and the tax due and payable in pursuance of the various assessment orders passed against him, had been paid by him and no amount of tax is due from him. The petitioner, however, has filed his return for the assessment years 1962-63 and 1963-64.

3. The point raised by Mr. D. Pai, appearing for the petitioner, is that section 142 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), deals with the powers of the Income Tax Officer to direct an assessee to produce books of accounts and also to furnish in writing information on such matters as the Income Tax Officer may require. But this power of the income tax Officer, Mr. Pal argued, was subject to the power imposed by Clause (b) of the proviso to Sub-section (1) of Section 142. Clause (b) of the proviso provides that the Income Tax Officer shall not require the production of any accounts relating to a period more than 3 years prior to the previous year. Relying upon this proviso, Mr. Pal argued that the only pending assessment of his client was subsequent to the year 1961-62,

up to which year the assessment has been completed, and, therefore, under the terms of the said proviso, the Income Tax Officer could not call for the production of the books of accounts for the years 1955, 1956, 1957 and 1958. It was argued that it was entirely beyond the competence of the income tax Officer to direct the petitioner to produce the said books. The assessments for the years 1962-63 and 1963-64 are pending, but for the assessment for the year 1962-63 the Income Tax Officer had no right or power, it was argued, to call for the books of accounts for the years 1955, 1956, 1957 and 1958. It was strenuously argued by Mr. Pal that Section 142 of the Act deals with the question of enquiry before the assessment and as that was the only matter with which the Income Tax Officer could deal, the notice requiring the petitioner to produce the account books for the years mentioned above is wholly illegal and void and, therefore, it should be struck down.

4. In order to appreciate this contention of Mr. Pal, it is necessary to refer to the notice itself which has been issued by the Income Tax Officer. This notice is headed "Summons of assessee u/s 131 of the Income Tax Act, 1961. " In the body of the notice there is a direction upon the petitioner to attend at the office of the Income Tax Officer on a particular day and at a particular hour and this is followed by a direction to produce the books of accounts for the years mentioned at the bottom of the notice, namely, 1955, 1956, 1957 and 1958. The notice does not purport to be a notice u/s 142 of the Act, but quite clearly it specifies that it is a notice u/s 131. This section confers upon the Income Tax Officer, the Appellate Assistant Commissioner and the Commissioner the powers that are vested in a court under the CPC with regard to discovery and inspection, enforcing attendance of any person including any officer of a bank and examining him on oath, compelling production of books of accounts and other documents, and finally issuing commissions. This section, therefore, quite plainly deals with the powers which the Income Tax Officer and also other officers mentioned above can exercise under the Act.

5. Section 142 of the Act, on the other hand, is confined to an enquiry before assessment and it confers powers on the Income Tax Officer only and not on the several other officers upon whom power has been conferred by Section 181 of the Act as mentioned above.

6. Mr. Gouri Mitter, appearing for the respondents, contended that the impugned notice is a notice u/s 131 of the Act, which clearly confers upon the respondent No. 1 the power to compel production of any books of account and other documents. He argued that under this section the Income Tax Officer has been given the power of a civil court under the CPC and, therefore, in so far as a civil court can call for the production of the books of accounts of a party to a suit for any year, the Income Tax Officer enjoys the same power in terms of Clause (c) of Section 131 of the Act. He further argued that Section 142 of the Act deals with entirely a different matter altogether, namely, the enquiry by an income tax Officer before assessment. It was argued that the scope of Section 142 was

limited to the enquiry before assessment. But there was no such limitation with regard to the powers conferred by Section 131 of the Act upon the Income Tax Officer, the Appellate Assistant Commissioner and the Commissioner. It seems to me that Mr. Mitter's contentions are well-founded. The scope of Section 142 of the Act is quite plainly limited to the enquiry before assessment by the Income Tax Officer. Section 131, on the other hand, confers upon the several officers mentioned in Sub-section (1) thereof, the powers enumerated in Clauses (a), (b), (c) and (d) thereof.

7. It was next contended by Mr. Pal that Section 131 of the Act merely enumerated the powers which were being conferred on the several officers mentioned in Sub-section (1) of the Act.

8. He argued that this section did not deal with the scope or the extent of the power to be exercised by the officers. He next argued that the extent or the scope of the power has been defined by Section 142, and Clause (b) to the proviso to Sub-section (1) of Section 142 quite plainly imposes a limit on the powers of the Income Tax Officer not to call for the accounts of any period more than 3 years prior to the previous year. This limitation expressly imposed by the statute, Mr. Pal argued, could not be ignored or overlooked. He argued that Sections 131 and 142 of the Act must be read together and the terms of the two sections should be harmoniously construed. It was further argued that, even assuming that Section 131 conferred upon the Income Tax Officer the power to call for the books of accounts of any year, such power must be exercised subject to the limitations imposed by Clause (b) of the proviso to Sub-section (1) of Section 142 of the Act. In my view, this contention of Mr. Pal cannot be accepted as Section 131 quite clearly confers upon the Income Tax Officer the power to compel the production of books of accounts and other documents. To hold that this power must be treated as subject to the limitations imposed by the proviso to Section 142 of the Act would be reading into Section 131 something which is not there. Section 131 of the Act, as I have noticed earlier, confers upon the several officers mentioned in Sub-section (1) thereof, the powers of a court under the Code of Civil Procedure. To say that, although this section has conferred upon the Income Tax Officer the power of a civil court, he cannot exercise such powers except subject to the limitations under the proviso to Section 142, would have the inevitable consequence of depriving the Income Tax Officer of the power to call for books of accounts of an assessee which the legislature expressly conferred upon him.

9. In support of his contention Mr. Mitter relied upon the Full Bench decision of the Madras High Court in T.M.M. Sankaralinga Nadar and Brothers Vs. The Commissioner of Income Tax, ..

10. In that case, the Full Bench of the Madras High Court considered the same question which was raised under the earlier Income Tax Act of 1922. In that case also the question was whether the Income Tax Officer could call for the production of the account books of the assessee beyond the three years

prescribed by Sub-section (4) to Section 22 of the 1922 Act. After considering the various contentions raised by the parties, it was held at page 215 of the report as follows : " Where, however, during the course of an enquiry the Income Tax Officer is not going to make the assessment to the best of his judgment owing to want of material but proceeds to make an enquiry as regards the truth or otherwise of the allegations made by the assessee in his return in order to determine whether the assessee has made out his allegations, there is nothing to prevent the Income Tax Officer from requiring the assessee to produce any evidence including accounts. It will be unreasonable to support that where, for example, an assessee claims certain deductions and the Income Tax Officer wants to make an enquiry into the truth or otherwise of the allegations, it is open to the assessee to refuse to produce any accounts beyond the three 3 years fixed in the proviso to Sub-section (4) of Section 22 and require the Income Tax Officer to come to a decision on the materials afforded by the three years accounts." I respectfully agree with the views expressed by the Full Bench of the Madras High Court. In my view, the statute having expressly conferred upon the Income Tax Officer the power to call for the books of accounts, to hold that he should not be allowed to call for the books of accounts beyond the period mentioned in the proviso to Section 147 of the Act, would have the effect of nullifying the provision in the statute by which the power has been conferred upon the several officers mentioned in Sub-section (1) of Section 131 of the Act.

11. The Full Bench of the Madras High Court was followed by the Nagpur High Court in a decision in (1945) 13 ITR 198 .. The question referred to the court in that case was whether the Income Tax Officer was entitled to call for accounts of more than three years back. This question was answered in the affirmative after relying upon the decision of the Full Bench of the Madras High Court.

12. It seems to me that the power conferred upon the Income Tax Officer to call for the account books u/s 131 of the Act cannot be taken away or whittled down because of the limitations imposed by the proviso to Section 142 of the Act.

13. In that view of the matter this application fails and is dismissed. The rule is discharged. Each party to pay its own costs.