(1995) 07 DEL CK 0036

In the Delhi High Court

Case No : Suit No. 2316 of 1985

Bansal Exports (P.) Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 26-07-1995

Acts Referred:
Income Tax Act, 1961 — Section 120, 132, 132(1A), 132(3), 293

Citation : (1995) 07 DEL CK 0036

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Pradeep Jain, for the Appellant; Sudha Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.—This suit has been filed by the plaintiff on the allegations that the plaintiff had withdrawn amounts totalling Rs. 28 lakhs from Asaf Ali Road branch of Bank of India for the purposes of his business in the morning of 29-7-1983 and it had a cash balance of Rs. 17,28,490. On the same day at about 10.00 a.m. officers of the Directorate of Enforcement reached the premises of the plaintiff-company and searched the same up to about 5.00 p.m. According to the plaintiff the raiding party did not find any incriminating documents. However, the said officers wrongly, illegally, unauthorisedly, maliciously and without any rhyme or reason or any justification summoned the income tax authorities to come to the premises and seize the said amount. On their having been summoned, the Assistant Director of Inspection (Investigation) of the income tax Department made a thorough search of the premises from 5.30 p.m. to 10.00 p.m. and they also did not find any unaccounted money or any other incriminating documents. According to the plaintiff, the cash in the premises was found to be in order. The officers of the income tax Department, however, sealed the safe in which the said cash amount was lying and passed a restraint order u/s 132(3) of the income tax Act, 1961 (''the Act'') sealing the safe containing the cash of Rs. 17,38,490. According to the plaintiff there was no justification for the officers of income tax Department to pass any restraint order u/s 132(3) and seal the safe with the cash lying therein. The plaintiff is alleged to have made representations to the Directorate of Enforcement and on having their not withdrawn the restraint order, the plaintiff filed a civil writ petition before the Delhi High Court for returning the said amount. It is the case of the plaintiff that the Directorate of Enforcement made an application before the Delhi High Court in the said writ petition for permission to seize the said amount as being necessary for the purposes of investigation into certain violations of the Foreign Exchange Regulations Act, 1947 (FERA) by the plaintiff-company. However, the said application was dismissed on 22-3-1984. According to the plaintiff, the writ petition was fixed for hearing on 24-4-1984. It is alleged that anticipating a likely dismissal of the case put forward by the income tax Department, the department two days prior to the date of hearing withdrew the restraint order and the writ petition was, therefore, dismissed on 24-4-1984 as having become infructuous but the Court was pleased to award counsel fee. It is, therefore, alleged that as the plaintiff has been wrongfully deprived of the use of the money from 29-7-1983 to its release on 19-4-1984 it was entitled to interest because of the plaintiff having been put to serious loss by the said money continuing to remain blocked under alleged wrongful orders of the officers of the income tax Department. Written statement has been filed by the defendant. The defendant has taken the objection that suit is barred u/s 293 of the Act as action of the officers of the Government was in good faith and was done in accordance with the provisions of the Act in the discharge of public duties. The suit was stated to be not maintainable. It was also stated that plaint does not disclose any cause of action. On merits, the defendants have justified the passing of the restraint order because the availability of the cash of Rs. 17,38,490 was not duly accounted for in the relevant books of account. The cash book was written up to 26-7-1983 and the statement of Shri Gopal Dass, Director of the company and Shri Ashok Kumar, Accountant were not found to be satisfactory. Certain figures have also been quoted in the written statement to indicate that there was difference between the cash balance and the balance available, as per the books of account of the plaintiff-company. It has further been stated that Director of the plaintiff-company was requested to attend the office of the Director of Inspection on 6-8-1983 at 10.30 a.m. The Director did not attend the office and Shri D.S. Rastogi, Assistant Director of Inspection (Investigation) visited the office of the plaintiff on 1-8-1983 at 12.30 p.m. to conclude the search and take necessary action under the Act. The premises was found to be locked with only a Chowkidar found at the premises. By a letter dated 9-10-1983 it was proposed to take further action for completing the search on 10-8-1983. The plaintiff, however, sought an adjournment by its letter dated 9-8-1983 and vide letter dated 11-8-1983 fresh opportunity was given to the plaintiff-company fixing the date as 22-8-1983 for concluding search and seizure operation. Officers of the income tax Department visited the premises of the plaintiff on 22-8-1983 at 11.30 a.m. and stayed there up to 1.00 p.m. However, no one was present at the premises and the same was found to be locked. Mrs. Rani Singh Nair, Assistant Director of Inspection (Investigation) vide her letter dated 24-11-1983 requested for certain explanations to be provided on 28-11-1983. An appraisal information and material before the department, a report was prepared on 9-12-1983 by Shri P.S. Gupta, Assistant Director of Inspection (Investigation). It is, therefore, stated that the action taken by the defendant was in good faith and no mala fide can be imputed. The action is stated to be in the discharge of public duties and warranted by law.

2. On the pleadings of the parties following issues were framed:

1. Whether the suit is barred u/s 293 of the income tax Act?

2. Whether the restraint order passed by the defendants against the plaintiff was illegal, Arbitrary and unjust? If so, its effect?

3. Whether the plaintiff is entitled to interest by way of damages? If so, at what rate?

4. Relief.

3. By a statement made on 11-7-1994 the counsel for the parties stated that since issues framed are legal in nature, no oral evidence was required and both of them closed their evidence. This is how the matter came to be listed for final arguments without any evidence on record.

4. I have heard the learned counsel for the parties and my findings are as under:

Issue Nos. 1 and 2:

5. Both these issues are interconnected and can be taken up together.

To appreciate the arguments advanced by the parties, it will be useful to reproduce sections 132(3) and 293.

Section 132(1A):

(1A) Where any Chief Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the Director General or Director or any other Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as may be empowered in this behalf by the Board to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such Chief Commissioner or Commissioner may, notwithstanding anything contained in section 120, authorise the stud officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

(2) The authorised officer may requisition the service of any police officer or of

any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1A) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control t hereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

Explanation - For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).

Section 293:

(i) No suit can be brought in any civil court to set aside or modify any proceeding taken or order made under this Act. (The section originally protected an assessment order only. The protection was extended from 1st March, 1987 to all other orders, and from 1st March, 1988 to all proceedings, under this Act.)

(ii) No prosecution, suit or other proceeding lies against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act."

6. To enable the plaintiff to succeed in the suit, it must be proved that the action taken by the officers of the income tax Department was not in good faith or had not been done under the Act. Unless it is proved on record by the plaintiff that action of the Government in passing restraint order dated 29-7-1983 and sealing the safe containing cash was not in good faith or the officers were not empowered to pass such an order under the Act, the plaintiff cannot succeed in the suit. No evidence has been led by the plaintiff to show the mala fides of the officers or to show that the action of the officers of the income tax Department was without jurisdiction.

7. Mr. Pradeep Jain has sought to argue that as there was no material before the officers of the income tax Department to pass the order of restraint u/s 132(3) and as the said restraint order was ultimately withdrawn by the department on 19-4-1983, the action of the officers of the defendant cannot be said to be in good faith and the suit is, therefore, not barred u/s 293. I find that there is no force in the argument of Mr. Jain, firstly, for the reason that it is a question of fact whether the action taken by the department was not in good faith and no evidence has been led on this point by any of the parties and secondly, the income tax Department has clearly stated in its written statement that there was

sufficient ground for the department to pass the restraint order as the cash was not accounted properly in the ledger and the cash book was not written up to the date of raid and the statements of the Director of the company and the accountant were not found to be satisfactory. In my opinion, in case the officers of the department on the basis of the material before them had decided to pass order of restraint, the same cannot be said to be an act of bad faith nor the act can said to be mala fide. Action of the department-at times may be erroneous but all erroneous actions cannot be said to be mala fide. While passing orders, an error can be committed by the officers of the department but such an error cannot always be said to be in bad faith. There is also no reason to hold that there was any error in the actions of the officers of the department. Even assuming that the department was not justified in passing restraint order such an action cannot be said to be an act of bad faith. u/s 293 no suit or other proceedings will lie against the Government or any officer of the Government for anything done in good faith or intended to be done under the Act. The department had the power u/s 132 to pass an order of restraint and the officers, therefore, on the basis of material had chosen to pass such an order. The said order, therefore, cannot be said to be without jurisdiction nor the same can be said to be in bad faith.

8. I am, therefore, of the opinion that the actions of the officers of the Government were done under the Act and in good faith and there is nothing to hold that the said actions were illegal, arbitrary and unjust. I, therefore, decide both the issues in favour of the defendant.

Issue No. 3:

9. Mr. Jain has placed reliance upon a judgment in The Godhra Electricity Co. Ltd. and Another Vs. The State of Gujarat and Another, to support his argument that in case an amount has been wrongly withheld by the department the only remedy open for the plaintiff was to file a suit for interest on the amount which was not allowed to be used by him by the restraint order. As I have already held that the department was within its rights to pass an order of restraint, the plaintiff is not entitled to any interest. This issue is, therefore, also decided in favour of the defendant. Issue No. 4:

In view of the findings given above, the plaintiff is not entitled to any relief in the suit and the same is, accordingly, dismissed. However, in the peculiar circumstances of this case, I leave the parties to bear their own costs. Petition dismissed.