(1972) 03 CAL CK 0029

In the Calcutta High Court

Case No : Appeal No. 96 of 1971

Bharati Private Ltd. APPELLANT

Vs

R.S. Chadda and Others RESPONDENT

Date of Decision : 02-03-1972

Acts Referred:
Income Tax Act, 1961 — Section 132

Citation : 76 CWN 604 : (1973) 89 ITR 108

Hon'ble Judges : P.B. Mukharji, C.J;B.C. Mitra, J

Bench : Division Bench

Advocate : P. Pal and A.K. Roy Chowdhury, for the Appellant; Dipak Sen and Suhas Sen, for the Respondent

Judgement

P.B. Mukharji, C.J.—This is an appeal from the judgment and order of T. K. Basu J. dismissing the application of the appellant and discharging the rule. This application was made under Article 226 of the Constitution.

2. The appellant is Messrs. Bharati Private Ltd. It is a private limited company. It carries on the business of distribution of cement, iron and steel, asbestos and also the business of clearing handling agency.

3. On February 10 and 11, 1966, the appellant''s business and residential houses were searched under a search warrant and certain articles seized. It is against this search and seizure that the present challenge was made under Article 226 of the Constitution. The appellant''s premises which were searched were : (1) office at 12A, Netaji Subhas Road, Calcutta, (2) godown at 244, Upper Chitpur Road, Calcutta, (3) P-6, Block-B, Bangur Avenue, Calcutta-28, (4) 95-B, Dhuramtalla Street, Calcutta, (5) Branch Depot at Barasat 24-Parganas, (6) Branch Depot at Bongaon, 24-Parganas, and (7) premises of the appellant in village Ramchandrapur, P. 0. Narendrapur, 24 Pafganas. A large number of books, documents and papers were seized. A list of the appellant''s books, documents and papers seized has been set out in annexure " B " to the petition.

4. The search was made u/s 132 of the Income Tax Act, 1961. The crucial words of this section may be stated briefly :

Section 132:

" (1) Where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that--.........

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of accounts or other documents which will be useful for, or relevant to, any proceedings under the Indian Income Tax Act, 1922, or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income Tax Act, 1922, or this Act (hereinafter in this section referred to as the undisclosed income or property),

he may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income Tax Officer to enter and search any building or place or break open the lock of any door, box, locker, safe, etc., or seize any books of account or other documents, money, valuable article or thing, etc., place marks of identification on any books of account or other documents or cause to be made extracts or copies therefrom or make an inventory of any such money, bullion, jewellery or other valuable article or thing."

5. Before the Commissioner acts under the section, he has got to comply with certain requirements of the statute. First, he has to have certain information in his possession. Secondly, in consequence of that information, he must have reason to believe that any person to whom a summons or notice has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents. Thirdly, those documents must be useful for, or relevant to, any proceedings under the Indian Income Tax Act, 1922, or under the Income Tax Act, 1961. Fourthly, that any person is in possession of money, bullion, jewellery or other valuable article or thing and that represents either wholly or partly income or property which has not been disclosed for the purpose of the Income Tax Act, 1922 or 1961.

6. Mr. Pal, appearing for the appellant, has emphasised these four essential requirements of the statute. He has described them as the pre-conditions before the section applies.

7. In the first place, he says that there is no pending proceedings, and, therefore, the whole notice or summons u/s 132 of the Act was illegal and unauthorised. This is not a fact. The proceedings were pending. The petitioner had filed returns of income for the assessment years 1963-64 and 1964-65 and such assessments for the aforesaid years were pending on the date of the institution of this application under Article 226 of the Constitution for a writ in

the nature of certiorari at the time when notice and summons u/s 132 of the Income Tax Act was given. This is an admitted position, if one looks at paragraphs 2 and 3 of the petition of the present petitioner. This is the first answer to the appellant''s argument.

8. The second answer is that no proceedings need actually be pending at the time before a summons or notice is issued u/s 132 of the Act. Explanation 2 of Section 132 of the Act expressly includes " also of proceedings under this Act which may be commenced after such date in respect of any year ", By the word " proceedings " this apparently includes not only present proceedings or past proceedings but also future proceedings, which " may be commenced ".

9. A reference was made to the decision of the Allahabad High Court in the case of SETH BROTHERS Vs. COMMISSIONER OF Income Tax, U. P., AND OTHERS., where the Allaha bad High Court struck down the search and seizure. The case thereafter went to the Supreme Court of India and it is reported as Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc., . The Supreme Court allowed the appeal and set aside the order of the Allahabad High Court. The Supreme Court held that the issue of search warrant by the Commis sioner u/s 132 of the Income Tax Act, 1961, is not judicial or quasi-judicial act. It laid down that where the Commissioner entertains the requisite belief and for reasons recorded by him authorises a designated officer to enter and search premises for books of account and documents relevant to or useful for any proceedings under the Act, the court, in a petition by an aggrieved person, cannot be asked to substitute its own opinion whether an order authorising search should have been issued. Any irregularity in the course of entry, search and seizure committed by an officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken provided the officer has, in executing the authorisation, acted bona fide. The Supreme Court further held that the Act and the Rules do not require that the warrant of authorisation should specify the particulars of documents and books of account; a general authorisation to search for and seize documents and books of account relevant to or useful for any proceedings complies with the requirements of the Act and the Rules. It is for the officer making the search to exercise his judgment and seize or not seize any document or books of account.

10. It has been held also in certain cases that there is nothing in Section 132 of the Act to show that search and seizure under that section can be resorted to only if there are pending proceedings. The Explanation 2 of Section 132 of the Act makes it clear that the question whether the section requires that the proceedings should be imminent need not be answered. It may be imminent or it may not be imminent. If there is only a remote possibility of such summons or notice being issued, the section would not be satisfied, not because there are no proceedings imminent, but because a reasonable person could not have, in those circumstances, reason to believe that the person concerned will not produce the document if summons or notices are issued to him. Wide as the powers are u/s

132 of the Act, there are some inherent limitations. Search warrants cannot be issued with a view to making a roving or fishing enquiry. But subject to that limitation, a bona fide search and seizure is protected under the Act. Once the court finds that there are materials to justify the summons or notices u/s 132 of the Act, the court''s function ceases. The decision of BALWANT SINGH AND OTHERS Vs. R. D. SHAH, DIRECtor OF INSPECTION, Income Tax, NEW DELHI, AND OTHERS., may be seen--a Division Bench judgment of the Delhi High Court.

11. It was contended by Mr, Pal for the appellant that this was really an indiscriminate search. But there is no allegation in the petition or in the affidavits to suggest what is meant by the indiscriminate search. There is no allegation in the petition or in the affidavits to show what particular document, if any, was supposed to be relevant to the proceedings. Commissioner''s second affidavit affirmed on February 12, 1969, has given enough materials. The appellant''s allegation by itself will not be enough. He must specify the documents not relevant for the purpose within the meaning of Section 132 of the Act. Therefore, the allegations that the search and seizure were indiscriminate are not proved.

12. Lastly, it was contended by Mr. Pal that with regard to the search of premises No. P-6, Block-B, Bangur Avenue. Calcutta, there was no warrant of authorisation u/s 132 of the Income Tax Act, 1961. It is true it is not printed in the paper book. But we are satisfied from the records which were shown to us that there was an authorisation.

13. The appeal is, therefore, dismissed. There will be no order as to costs.

B.C. Mitra, J.

14. I agree.

