(1973) 04 CAL CK 0015

In the Calcutta High Court

Case No : Appeal No. 119 of 1970

Calcutta Chromotype (Private) Ltd. APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 09-04-1973

Acts Referred:
Income Tax Act, 1961 — Section 131, 139, 142(1), 143(3)

Citation : (1974) 95 ITR 595

Hon'ble Judges : Sankar Prasad Mitra, C.J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : P. Ginwala and P.K. Pal, for the Appellant; Balai Pal and Ajit Kr. Sen, for the Respondent

Judgement

Sankar Prasad Mitra, C.J.—This is an appeal from a judgment of Mr. Justice K. L. Roy delivered on 11th March 1970. In an application under Article 226 of the Constitution, the petitioner, which is the appellant before us, had challenged a notice dated 17th February, 1966,''under Section 131, issued to the principal officer of the appellant by the Income Tax Officer, Central Circle XV, Calcutta. There was a covering letter to this notice which was as follows :

" Sir,

Sub. : Your assessment for 1961-62 assessment year.

In connection with the above assessment you are hereby required u/s 131 of the Income Tax Act, 1961, to produce your books of accounts for financial years ending on 31st March, 1949, 31st March, 1950, 31st March, 1951, and 31st March, 1952, respectively on 22nd February, 1966. A notice u/s 131 is enclosed herewith.

Yours faithfully, (Sd.) D. P. Guha, income tax Officer, Central Circle XV, Calcutta."

2. Before we deal with the rival contentions of the parties let us set out the

relevant provisions of the Income Tax Act, 1961. These provisions are as follows:

"131. Power regarding discovery, production of evidence, etc.--(1) The Income Tax Officer................. shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely :--...

Calcutta Chromotype Pvt. Ltd. Vs. Income Tax Officer, . (c) compelling the production of books of account and other documents ; and........"

" 142. Enquiry before assessment.--(1) For the purpose of making an assessment under this Act, the Income Tax Officer may serve on any person who has made a return u/s 139 or upon whom a, notice has been served under Sub-section (2) of Section 139 (whether a return has been made or not) a notice requiring him, on a date to be therein specified,--

(i) to produce, or cause to be produced, such accounts or documents as the Income Tax Officer may require,.........

Provided that--.........

(b) the Income Tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year........"

"143. Assessment.--(1) Where a return has been made u/s 139 and the Income Tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that the return is correct and complete, he shall assess the total income or loss of the assessee, and shall determine the sum payable by him or refundable to him on the basis of such return.

(2) Where a return has been made u/s 139 but the Income Tax Officer is not satisfied without requiring the presence of the assessee or the production of evidence that the return is correct and complete, he shall serve on the assessee a notice requiring him, on a date to be therein specified, either to attend at the Income Tax Officer''s office or to produce, or to cause to be there produced, any evidence on which the assessee may rely in support of the return.

(3) On the day specified in the notice issued under Sub-section (2), or as soon afterwards as may be, the Income Tax Officer, after hearing such evidence as the assessee may produce and such other evidence as the Income Tax Officer may require on specified points, and after taking into account all relevant material which the Income Tax Officer has gathered, shall, by an order in writing, assess the total income or loss of the assessee, and determine the sum payable by him or refundable to him on the basis of such assessment."

3. This is a case in which a return u/s 139 was filed for the assessment year 1961-62. The impugned notice has been challenged on the ground that u/s 142, proviso, Clause (b), the Income Tax Officer could not require production of accounts relating to a period more than three years prior to the previous year. But, in the instant case, the Income Tax Officer has called for production of

books of accounts for financial years ending on the 31st March, 1949, 31st March, 1950, 31st March, 1951, and 31st March, 1952. By doing so, according to the appellant, the income tax Officer has exceeded his jurisdiction. In other words, in a case of this nature, the appellant''s contention is that the Income Tax Officer is restricted to Clause (b) of the proviso to Section 142 and cannot invoke his powers u/s 131 and call upon the assessee to produce books of accounts for periods beyond three years prior to the previous year.

4. In our opinion, these contentions cannot be upheld. Clause (b) of the proviso to Section 142 relates to a stage in the proceeding before the actual assessment is made. The heading of the section is " Enquiry before assessment". The assessment is made under the various provisions of Section 143 quoted above. Sub-sections (2) and (3) of Section 143 make it quite clear as to what kind of evidence the Income Tax Officer will call upon the assessee to produce. Sub-section (2) of Section 143 deals with or relates to that kind of evidence which the assessee may choose to rely upon in support of the return which the assessee has filed. But the matter does not end there. Under Sub-section (3) of Section 143, the Income Tax Officer is entitled to call upon the assessee to produce such other evidence as he may require on specified points in addition to what the assessee himself has produced in compliance with a notice served upon him u/s 143(2) in support of his return. In order to exercise this power the Income Tax Officer, it seems to us, can rely on the provisions of Section 131 because he is exercising the power for the purposes of the Income Tax Act. From this point of view, we do not see any conflict between Section 131 and Section 142, Clause (b) of the proviso. Going through the records, it seems to us, on the facts and in the circumstances of this case, that the Income Tax Officer did not exceed his jurisdiction by issuing the impugned notice dated 17th February, 1966, in the course of proceedings u/s 143 of the Act.

5. Incidentally, a similar view was also taken by the Full Bench of the Madras High Court in the case of T.M.M. Sankaralinga Nadar and Brothers v. Commissioner of Income Tax, AIR 1930 Mad. 209.

6. The result, therefore, is that this appeal fails and is accordingly dismissed. There will be no order as to costs. There will be an interim stay with regard to calling for further documents in pursuance of the notice u/s 131 dated the 17th February, 1966, for six weeks.

Sabyasachi Mukharji , J.

7. I agree.

