

(1970) 03 CAL CK 0040
In the Calcutta High Court
Case No : Matter No. 171 of 1966

Calcutta Chromotype Pvt. Ltd.

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 11-03-1970

Acts Referred:

Constitution of India, 1950 — Article 14

Income Tax Act, 1961 — Section 131, 142(1), 143(2), 144, 271

Citation : (1971) 79 ITR 442

Hon'ble Judges : K.L. Roy, J

Bench : Single Bench

Advocate : D. Pal and P.K. Pal, for the Appellant; Dipankar Gupta and A.K. Gupta, for the Respondent

Judgement

K.L. Roy, J.—By his application under Article 226 the petitioner prays for writs quashing certain penalty proceedings initiated under Sections 274/271 of the Income Tax Act, 1961, for its alleged failure to comply with the notices under Sections 142(1) and 143(2) of the said Act, and for a further writ quashing a summons purported to have been issued u/s 131 of the said Act by the respondent-income tax Officer. The petitioner is a private limited company and for the assessment year 1961-62, it filed its return u/s 22(2) of the Income Tax Act, 1922, on 1st November, 1962. The usual notice u/s 23(2) of the old Act, corresponding to Section 143(2) of the present Act, dated the 12th November, 1962, was served on the petitioner for compliance on the 3rd December, 1962. At the request of the petitioner time for compliance was extended periodically and in the meantime the petitioner's file was transferred to the Income Tax Officer, Companies District III, and a notice u/s 2.3(2) of the old Act read with Section 143(2) of the present Act dated the 11th August, 1965, for compliance on the 23rd August, 1965, was served on the petitioner by the last mentioned Income Tax Officer. Thereafter, the petitioner's case was again transferred to the Income Tax Officer, Central Circle XV, Calcutta, the present respondent to this application. In the meantime the authorised representative of the petitioner

appeared before the respondent-income tax Officer and his predecessors in compliance with the notice u/s 143(2) and discussions took place between the said authorised representative and the respective Income Tax Officers. By a letter dated 6/9th December, 1965, the Income Tax Officer forwarded two notices under Sections 143(2) and 142(1) to the petitioner for compliance on the 13th December, 1965, and in the said letter asked for certain informations to be furnished consisting of fourteen items. The notice u/s 143(2) was in the usual form requiring the petitioner to be present either in person or by a representative duly authorised in writing and to produce or cause to be produced any documents, accounts and other evidence on Which the petitioner might rely in support of the return filed by it. The other notice u/s 142(1) had some very peculiar features. It was addressed to the principal officer of the petitioner and the petitioner was required by that notice to produce or cause to be produced at the office of the respondent-income tax Officer, at 4, Hastings Street, Calcutta, on December 13, 1965, at 12 noon accounts or documents specified "below". At the bottom of the page, below a line drawn after the signature of the respondent-income tax Officer, the following words appear, viz., particulars of accounts and/or documents, copies of your accounts with Messrs. Ganga Saran & Sons Ltd., Aligarh, for the period from April 1, 1960, to March 31, 1961. Strangely, this part of the notice had been struck out and initialled by somebody, apparently the respondent-income tax Officer. There was a further note that failure on the part of the petitioner to comply with the terms of the notice would entail an ex parte assessment and might further entail a penalty or even prosecution. I have myself looked at the original notice and these peculiarities are present in the original. Thereafter, an application for time for compliance was made by the petitioner and was ultimately rejected by the respondent-income tax Officer by his letter dated 11/14th February, 1966. Along with that letter the respondent-income tax Officer enclosed a notice u/s 274/271 of the present Act for initiating penalty proceedings for failure to comply with the aforesaid notice u/s 142(1). In the last mentioned letter the respondent-income tax Officer has made the following curious observation :

" Please note that informations which were called for, vide my letter dated 6/9-12-65, were u/s 143(2)."

2. This would have an important bearing on certain submissions made by Mr. Gupta on behalf of the department. From the correspondence annexed to the petition it is quite clear that the Income Tax Officer was repeatedly asking the assessee for specific information and the petitioner was trying on various pretexts to avoid complying with the requisitions made by the Income Tax Officer. There can be no doubt that the petitioner's case is wholly without any merit but that would not affect its contention that no penalty proceedings could be initiated in respect of notices which Were not proper notices u/s 142(1).

3. By a summons u/s 131 of the 1961 Act. dated the 17th February, 1966, the respondent-income tax Officer required the petitioner, inter alia, to produce its

books of accounts or documents for the financial years ending on 31st March, 1949, 31st March, 1950, 31st March, 1951, and 31st March, 1952, respectively, on the 22nd February, 1966. This is the summons which is impugned in the second part of the application.

4. Before I deal with the respective contentions of the learned counsel for the parties it would be necessary to set out the provisions of the relevant Sections of the Income Tax Act, 1961, with reference to the corresponding sections in the repealed Act of 1922. Section 131 (old Section 37) endows certain Income Tax authorities, such as the Income Tax Officer, Appellate Assistant Commissioner, Inspecting Assistant Commissioner and the Commissioner with some of the powers vested in a civil court under the CPC when trying a suit, viz., (1) discovery and inspection, (2) enforcing the attendance of any person, (3) compelling the production of books of account and other documents and (4) issuing commissions. In the old section there was no specific penalty provided for non-compliance with any summons issued thereunder except that such proceedings would be deemed to be judicial proceedings for the purpose of Section 196 of the Indian Penal Code while under Sub-section (2) of the present section a person who fails to attend or give evidence or produce books of account or other documents intentionally in pursuance of any summons issued under Sub-section (1), the corresponding Income Tax authority may impose upon him such fine not exceeding Rs. 500 as it thinks fit and the fine so levied may be recovered as arrears of Income Tax. Section 139 (old Section 22) provides for the filing of returns of income and such returns may be filed by an assessee suo motu or in pursuance of a notice issued by the Income Tax Officer. Section 142(1) (old Section 22(4)) provides that for the purpose of making an assessment the Income Tax Officer may serve on any person who has made a return or upon whom a notice has been served for filing a return, a notice requiring him on a date therein specified, (1) to produce or cause to be produced such accounts or documents as the Income Tax Officer may require, or (2) to furnish in writing and verified in the prescribed manner information in such form and on such points or matters as the Income Tax Officer may require. Proviso (b) to the section prohibits the Income Tax Officer from requiring production of any accounts relating to a period more than three years prior to the relevant previous year. u/s 143(2) (old Section 23(2)) where a return has been filed the Income Tax Officer, if not satisfied without requiring the presence of the assessee or the production of evidence that the return is correct and complete, shall serve on the assessee a notice requiring him on a date therein specified either to attend at the Income Tax Officer's office or to produce or cause to be there produced evidence on which the assessee may rely in support of the return. It would thus be seen that the notice u/s 143(2) requires the assessee to produce such evidence as he might wish to rely in support of the return filed by him while the notice u/s 142(1) is a notice requiring the assessee to produce such evidence or furnish such information as the Income Tax Officer might require. One of the consequences of the failure of the assessee to comply with the aforesaid notices

is provided in Section 144 (old Section 23(4)) which enacts that if any person either fails to make a return in response to a notice u/s 139 or fails to comply with all the terms of a notice issued u/s 142(1) or having made a return fails to comply with all the terms of a notice issued u/s 143(2) the Income Tax Officer shall make the assessment of the total income or loss to the best of his judgment. A further penalty is provided for in Section 271 (old Section 28) which enables an Income Tax Officer if satisfied that any person has without reasonable cause failed to comply with a notice either u/s 142(1) or u/s 143(2) to direct that such person shall pay certain amounts as penalty as provided for in that section. Section 274 lays down the procedure for initiating such penalty proceedings by way of issue of notice, etc.

5. It is, therefore, clear that the failure to comply with a notice u/s 143(2), that is, a failure on the part of the assessee to produce before the Income Tax Officer any evidence to support the return filed by him might expose him to a best judgment assessment u/s 144 and also to a penalty u/s 271. Similarly, a failure to comply with a notice u/s 142(1) would again expose the assessee not only to a best judgment assessment but also to any penalty that might be imposed by the Income Tax Officer. It is further to be mentioned that the heading of Section 142 is " Enquiry before assessment " as this would have a material bearing on the contentions raised on behalf of the petitioner.

6. There is no dispute that there was no failure on the part of the assessee to comply with the notice u/s 143(2), as the assessee's authorised representative met the respondent-income tax Officer and had discussions with him in regard to the relevant assessment. Undoubtedly, the assessee has not complied with the notice u/s 142(1). But did that notice give the assessee any opportunity to comply therewith ? Section 142(1) specifically provides that the Income Tax Officer in his notice under that section should require the assessee to produce or cause to be produced such accounts or documents as the Income Tax Officer may require. It is, therefore, incumbent on the Income Tax Officer to specify in the notice what documents or information he is requiring the assessee to produce before him. As I have pointed out in the present case, as in the notice u/s 142(1), the details of the documents required to be produced was deliberately struck out and initialled, it cannot be said that the assessee has without reasonable cause failed to comply with the said notice. Mr. Gupta, the learned counsel for the department, tried to induce me to hold that the respondent-income tax Officer's letter dated the 6/9th December, 1965, giving the particulars of the information required should be treated as part of the notice u/s 142(1) as the said letter accompanied the two impugned notices. I am entirely unable to accept that contention. Penalty could only be imposed on the failure of the assessee to comply with the notice and not with any requisitions in any letter written by the Income Tax Officer. Strangely enough in his subsequent letter dated the 11/14th February, 1966, the respondent-income tax Officer himself points out that the informations asked for in his earlier letter were u/s 143(2). The contention of the petitioner must be accepted so far as the impugned

penalty notice u/s 271/274 of the Income Tax Act, 1961, is concerned and the said notice dated the 11/14th February, 1966, must be struck down,

7. But the summons u/s 131 is quite a different matter. Dr. Pal, the learned counsel for the petitioner, contended that Section 131 in so far as it authorised the respondent-income tax Officer to compel the assessee to produce its books of account and other documents covered the same field as Section 142(1) and as proviso (b) to the last-mentioned section prohibited the Income Tax Officer from calling for the books of the assessee beyond the period of three years from the accounting year corresponding to the assessment year, the application of Section 131 would be oppressive and discriminatory and must to that extent be struck down. He relied on the decision of the Supreme Court in *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, and in *Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and Another*, . In the first case reported at page 1 of that volume the Supreme Court struck down Section 5(4) of the Investigation Commission Act which provided that if in the course of any investigation the Commission has reason to believe mat some person other than the person whose case is being investigated has evaded payment of taxation on income it may make a report to the Central Government and on receipt of such report the Central Government shall forthwith refer to the Commission for investigation the case of such other person. Their Lordships compared the provisions of the aforesaid sub-section with Section 34 of the Indian Income Tax Act, 1922, and came to the conclusion that assesseees who had failed to disclose fully and truly all material facts necessary for their assessment u/s 34 could be equated with persons who had been discovered in the course of the investigation conducted u/s 5 to have evaded payment of Income Tax on their incomes and the result was that some of these persons would be dealt with under the provisions of the Investigation Commission Act at the choice of the Commission though they could also be proceeded with under the provisions of Section 34 of the Indian Income Tax Act. Their Lordships observed:

" It is well settled that in its application to legal proceedings, Article 14 assures to everyone the same rules of evidence and modes of procedure; in other words, the same rule must exist for all in similar circumstances. It is also well settled that this principle does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstance, in the same position. The State can by classification determine who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject, but the classification permissible must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis. Classification means segregation in classes which have a systematic relation, usually found in common properties and characteristics We thus hold that both Section 34, Indian Income Tax Act, and Sub-section (4) of Section 5 of the impugned Act, deal with all persons who have similar characteristics and similar properties, the common characteristics being that they are persons who

have not truly disclosed their income and have evaded payment of taxation on income..... It is clear that if persons dealt with by the impugned Act are deprived of the substantial and valuable privileges which they would otherwise have if they were dealt with under the Indian Income Tax Act, in that situation it is no defence to say that the discriminatory procedure also advances the course of justice. The matter has to be judged from the point of view of the ordinary reasonable man and not from the point of view of the Government. The ordinary reasonable man would say, when the stakes are heavy and serious charges of evasion of Income Tax are made against him, why one person similarly placed should have the advantage substantially of the procedure prescribed by the Indian Income Tax Act, while another person similarly situated be deprived of it. It is from this aspect that the application of Article 14 to the facts of this case has to be considered."

8. On a comparison of the relative sections of the impugned Act and the Indian Income Tax Act, their Lordships held that the provisions of the impugned Act were more onerous than those of the Indian Income Tax Act, and, accordingly, they struck down Section 5(4) of the impugned Act. In the other case, reported at page 713 *Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and Another*, of the same volume, on the amendment of Section 34 of the Indian Income Tax Act by introduction of Sub-section (1A), Section 5(1) of the Investigation Commission Act was struck down. After pointing out that after the introduction of the new subsection in Section 34 the only basis for giving substantial tax dodgers differential treatment on the ground that they formed a distinct class by themselves completely disappeared, the court observed as follows :

" All these persons can now well ask the question, why are we now being dealt with by the discriminatory and drastic procedure of Act XXX of 1947, when those similarly situated as ourselves can be dealt with by the Income Tax Officer under the amended provisions of Section 34 of the Act ? Even if we once bore a distinctive label that distinction no longer subsists and the label now borne by us is the same as is borne by persons who can be dealt with u/s 34 of the Act as amended. "

9. The court held that no satisfactory answer to that query could be provided by the respondents.

10. In the alternative Dr. Pal submitted that an attempt should be made at a harmonious construction of the two sections in order to avoid any conflict between them, and such a construction is possible if it is held that Section 131 contemplates cases of persons other than the assessee whose assessments are pending before the Income Tax Officer. Certain authorities of the Supreme Court were cited in support of such a construction.

11. Mr. Gupta, on the other hand, contended that Sections 142(1) and 131 operated on entirely different fields and there was no question of any overlapping

or there being a common territory in the operation of the two sections. Both Sections 142(1) and 143(2) authorise an Income Tax Officer to call for such documents and other evidence as he may require to complete the assessment, and such notices must be served before the assessment is made. Non-compliance with such notices may subject the assessee to two different kinds of penalties, namely, (1) a best judgment assessment u/s 144(b), and (2) penalty u/s 271. The powers granted to the respective revenue authorities u/s 131 are for the purposes of the Act, that is to say, not only making an assessment but for any other purpose. The section confers the same powers as that of a court, inter alia, on the Income Tax Officer for compelling the attendance of witnesses and production of documents and other evidence. The penalty for non-compliance with a summons under that section is also provided in the section itself. He referred me to a decision of a Full Bench of the Madras High Court, where the distinction between the powers exercised by the Income Tax Officer u/s 22(4) and Section 37 of the old Act were clearly enunciated. In *T.M.M. Sankaralinga Nadar & Bros. v. Commissioner of Income Tax* AIR 1930 Mad. 209 the court observed as follows :

" Reading these sections together we think that the proviso to Sub-section (4), Section 22, when read with Section 23, Sub-section (4), only limits the power to call for accounts for more than three years prior to the previous year, when the Income Tax Officer has to make the assessment to the best of his judgment where the conditions mentioned in Section 23(4) exist. Where, however, during the course of an inquiry 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 inquiry 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 inquiry into the truth or otherwise of the allegations, it is open to the assessee to refuse to produce any accounts beyond the three years fixed in the proviso to Section 22(4), and require the Income Tax Officer to come to a decision on the materials afforded by the three years' accounts."

12. In a decision of this court reported in *Amal Kumar Ghatak v. Income Tax Officer*, Sec Appendix infra, p. 452, B.C. Mitra J. had to consider a similar contention. Curiously enough, that case was also argued by Dr. Pal for the assessee. His Lordship observed as follows :

" 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. Section 142 of the Act, on the other hand, is confined to an inquiry 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 131 of the Act as mentioned above."

13. And again :

" 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."

14. Then, after citing with approval the passage from the judgment of the Full Bench of the Madras High Court I have already quoted above, his Lordship finally observed as follows :

" 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."

15. Naturally, in none of these two decisions the contention raised by Dr. Pal before me, namely, that Section 131 was bad in so far as it gave to the Income Tax Officer power to call for books of accounts from an assessee beyond the period covered by the proviso to Section 142 was not considered, but the said two cases clearly lay down that the powers exercised by the Income Tax Officer u/s 131 are in quite a distinct context from the powers exercised by him u/s 142. As I have already pointed out the heading of Section 142 is " Enquiry before assessment ". Therefore, the procedure laid down in that section is to enable the Income Tax Officer to make such inquiries in order to be satisfied as to the correctness of the return filed or other claims made by the assessee before he completes the assessment, and in such inquiry he could only ask for production of books of account for the previous three years. The failure to comply with this section renders an assessee liable to a best judgment assessment and also to penalties u/s 271. The power conferred u/s 131 is a general power to be exercised, inter alia, by the Income Tax Officer for the purposes of the Act. Unless such power was conferred it would not have been possible for any of the

officers of the revenue department mentioned in that section to have performed their duties under the Act, and it cannot be said that any power conferred by Section 131 covers the same territory as that covered by Section 142. The Income Tax Officer may u/s 131 compel the assessee to produce his books of accounts if it is necessary for the purposes of the Act. The Madras High ^Court has pointed out some instances where the exercise of such power would be necessary. I am, therefore, unable to accept Dr. Pal's contention that Section 131 or at least that part of it which confers on the Income Tax Officer jurisdiction to compel production by an assessee of his books of accounts and other documents beyond the period of three years from the assessment year is discriminatory and violative of Article 14 of the Constitution and his challenge to the validity of Section 131 must be rejected.

16. As I have upheld the petitioner's contention regarding penalty notices u/s 271/274 and I have quashed the same, the rule is made absolute to that extent, but discharged as to the rest. Interim order, if any, stands vacated. There would be no order as to costs.