**(1970) 05 CAL CK 0009**

**In the Calcutta High Court**

**Case No :** Matter No. 541 of 1967

C.K. Wadha APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

**Date of Decision :** 06-05-1970

**Acts Referred:**
Income Tax Act, 1961 — Section 132(1), 132(10), 132(12), 132(8)

**Citation :** (1970) 78 ITR 782

**Hon'ble Judges :** Sankar Prasad Mitra, J

**Bench :** Single Bench

**Advocate :** D. Pal and S. Bhattacharya, for the Appellant;D. Gupta and S. Sen, for the Respondent

## Judgement

Sankar Prasad Mitra, J.—In this petition the only point urged before me relates to the retention by the tax authorities of books of accounts and other documents of the petitioner u/s 132 of the Income Tax Act, 1961. It is alleged that these books and documents were seized in September, 1965. The seizure admittedly was in pursuance of the provisions of Sub-section (1) of Section 132. And it would be necessary to consider in this application the provisions of Sub-sections (8), (10) and (12) of the said section. These sub-sections are as follows:

"(8) The books of account or other documents seized under Sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Commissioner for such retention is obtained .......

(10) If a person legally entitled to the books of account or other documents seized under Sub-section (1) objects for any reason to the approval given by the Commissioner under Sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents.

(12) On receipt of the application under Sub-section (10) the Board . . . may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit."

2. From the provisions set out above, it is apparent that unless at least the approval of the Commissioner is communicated to the person whose books and documents are seized he cannot exercise the rights conferred on him by Sub-section (10). A similar, view was taken by T. K. Basu J. in Matter No. 204 of 1966 Mahabir Prosad Poddar Vs. Commissioner of Income Tax and Others, in a judgment delivered on the 9th January, 1970, with which I respectfully agree.

3. In the instant case, the approval of the Commissioner dated the 29th September, 1966, was forwarded to the petitioner for his information. This approval was upto the 30th of April, 1967. The petitioner''s contention is that he is not aware of any other subsequent approvals.

4. This application under Article 226 was moved on the 5th September, 1967. The petitioner in Clause (bb) of; paragraph 33 of the petition has stated that the time to retain the seized documents having long expired and no further extension of time to retain the said documents having been granted by the respondent No. 1, i.e., the Commissioner of Income Tax or communicated to the petitioner, the respondent has no power, authority and jurisdiction to retain the seized documents.

5. In paragraph 19 of the affidavit-in-opposition of Satyendra Nath Sen affirmed on the 6th August, 1969, it is alleged that the period of retention of the seized books and documents has been lawfully and duly extended from time to time. No copy of any order of approval of the Commissioner subsequent to the one dated the 29th September, 1966 (which is an annexure to the petition), has, however, been annexed to this affidavit-in-opposition. Assuming that the period of retention was duly extended from time to time, the Commissioners approval thereto was not admittedly communicated to the petitioner. And, in the absence of such communication retention of the seized documents after the expiry of the 30th April, 1967, appears to be without jurisdiction. Learned counsel for the respondent has contended before me that, under the scheme of the Income Tax Act, communication of approval is not necessary but for reasons already stated I do not agree with this argument.

6. In the result, I make an order in terms of Clause (b) of the prayer''s in the petition. There will be a writ in the nature of mandamus directing the respondent to return all the books and documents seized by them in pursuance of the warrant of authorization mentioned-in the petition which are still being retained by them.

7. There will be no order as to costs.

8. On the oral application of counsel for the respondent I stay the operation of this order for three weeks.