

(2001) 01 MP CK 0068

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1705 of 2000 16 January 2001

Classic Builders and Developers

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Contract Act, 1872 — Section 1

Income Tax Act, 1961 — Section 131, 132, 132A, 133, 133A

Citation : (2001) 115 TAXMAN 393

Hon'ble Judges : A.M. Sapre, J

Bench : Division Bench

Advocate : G.M. Chaphekar and J.W. Mahajan, for the Assessee and A.P. Patankar, for the Revenue, for the Appellant;

Judgement

By filing this writ under articles 226 and 227 of the Constitution, the petitioner claims following relief :

"7(a) By an appropriate writ, direction or order the respondent No. 4 be directed not to accept the valuation made by the respondent No. 3 vide Annexure P2;

(b) By an appropriate writ, direction or order, it be held that the reference made by the respondent No. 2 vide Annexure P 1 to the respondent No. 3 is without jurisdiction, unwarranted and not sustainable in law and, therefore, deserves to be quashed."

In order to appreciate the controversy involved in this writ and the issue urged, few facts which lie in a narrow compass that led to filing of the petition need mention.

2. The petitioner, an assessee, as defined u/s 2(7) of the Income Tax Act, 1961 (hereinafter referred to as the Act) is engaged in the business of construction of multistoreyed buildings and allied construction. The petitioner has filed the return of their income for the assessment year 1999-2000 (Annexure P4). It is yet to be

assessed.

3. A survey u/s 133 of the Act was conducted by the Income Tax authorities in the business premises of the assessee. In these proceedings, when asked, the petitioner furnished an information that the value of one of their property now under dispute in this petition by name-Classic Gold, 23/24, New Palasia, Indore, is valued at Rs. 62,75,000. In order to elucidate the correctness of the cost of construction of this property, the Deputy Director (Investigation)-I, Indore, by its letter dated 31-5-1999 (Annexure P1) asked the Departmental Valuation Officer (hereinafter referred to as the DVO) of the Income Tax Department to inspect the aforementioned property and to make such investigation, seek clarification and material from an assessee and then determine the true and correct cost of construction of the aforesaid property. It was also said that the letter may be treated as issue of Commission as provided u/s 131(1)(d), read with section 131(1A), of the Act. In substance, the Deputy Director (Investigation), invoked his powers conferred on him u/s 131(1A) and issued a commission as provided u/s 131(1)(d) *ibid*. A copy of this letter was sent to the petitioner as also to the assessing officer of the petitioner. Pursuant to the aforesaid letter, the DVO made an inquiry as is necessary for determining the cost of construction of the aforementioned property, i.e., Classic Gold, 23/24, New Palasia, Indore, and by its report dated 12-11-1999 (Annexure P2) determined the cost of the said property at Rs. 1,38,75,000. On receipt of the said report from the DVO, the Assistant Commissioner (Circle) (2)(1) (Inv.), by its letter dated 18-11-1999 (Annexure P2) sent the same to the petitioner and requested for furnishing the objections, if any, to the valuation so made by the DVO. The petitioner was asked to submit the objections by 15-12-1999 else, it was said that the petitioners have nothing to say about the determination so made by the Valuation Officer. It is in reply to this letter that the petitioner vide Annexures P4 and P5 filed their objections. The objections Annexure P5 was in the nature of technical one prepared by one another registered valuer--Mr. N.S. Raheja objecting to the valuation made by the DVO. It is at this stage, i.e., after filing these objections contending that the valuation of the DVO be not accepted, the petitioner has filed this writ and claimed aforementioned relief.

4. The revenue has filed the return opposition to writ and has supported the entire action so far taken by the Income Tax authorities which is referred *supra*. According to the revenue, no case is made out to interfere and secondly, the authorities who have initiated the action impugned against the petitioner does possess the power to take impugned action against the petitioner which is not only in conformity with the provisions of the Act but is conceived in the interest of the revenue. It is also prayed that petition is in fact a premature one as no decision as such is taken on the basis of the report of the DVO and secondly, the objections raised by the petitioner are yet to be gone into and, hence, the petition deserve dismissal.

5. Heard Shri G.M. Chaphekar, the learned senior counsel with Shri J.W, Mahajan,

the learned counsel for the petitioner and Shri A.P. Patankar, the learned counsel for the respondents.

6. The learned counsel for the petitioner mainly assailed the letter dated 31-5-1999 (Annexure P1) written by the Deputy Director (Inv.) to the DVO for making the valuation of property. According to the learned counsel, this letter (impugned herein) issued by the Deputy Director is without authority of law. The learned counsel urged that the Deputy Director has no power u/s 131(1A) to issue commission as contemplated u/s 131(1)(d) asking the DVO to determine the cost of any property. According to the learned counsel, such power can be exercised by the Deputy Director only in the case of search and seizure u/s 132 and that too before taking action under clauses (i) to (v) of section 132(1) of the Act. The learned counsel while referring to section 132(1A) urged that the submission made by him lends support if one reads section 132(1A) in its proper perspective. In other words, the submission was that the words "before he takes action under clauses (i) to (v) of that sub-section" used in section 132(1A) applies to all authorities specified in sub-section (1A) which according to the learned counsel includes the Deputy Director. It is on this interpretation of section 132(1A), the learned counsel urged that since admittedly in this case, no action was taken against the petitioner u/s 132 but was taken u/s 133 and, hence, no power could be exercised by the Dy. Director u/s 132(1A) for issuance of commission u/s 131(1)(d) for determining the value of property. It was also urged that action u/s 133 even if taken against the petitioner does not give any right to the Dy. Director to exercise power u/s 131(1)(d). It was also apprehended that the assessing officer is now bound to take and rely upon the report of the DVO while making an assessment of the petitioner and not the valuation made by the petitioner thereby causing extreme prejudice to the petitioner. These were mainly the submissions made by the petitioner while assailing the impugned action.

7. The learned counsel for the revenue in reply supported the action any urged for its upholding. The learned counsel also elaborated his submissions on legal issues urged by the learned counsel for the petitioner in regard to interpretation of section 132(1A) and contended that the interpretation in regard to powers of the Deputy Director suggested by the learned counsel for the petitioner is misplaced, if one reads the section 131(1A) in its proper perspective and the object for which it is enacted.

8. Having heard the learned counsels for the parties at length and having perused the entire record of the case, I find no merit in this writ. It deserves dismissal.

9. The fate of this petition largely depends upon the true interpretation of section 131(1A). Section 131(1) and (1A) reads as under :

"Power regarding discovery, production of evidence, etc.--(1) The assessing officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner

(Appeals) and Chief Commissioner or Commissioner shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

(1A) If the Director General or Director or Joint Director or Assistant Director or Deputy Director, or the authorised officer referred to in sub-section (1) of section 132 before he takes action under clauses (i) to (v) of that sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the Income Tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other Income Tax Authority."

10. Perusal of sub-section (1A) would indicate that it empowers six authorities of the Income Tax Department to invoke/use the powers of sub-section (1) of section 131 on fulfilment of certain conditions specified in sub-section (1A). It says that if any of these 6 specified authorities, i.e., (1) Director General, (2) Director, (3) Joint Director, (4) Assistant Director, (5) Deputy Director, and (6) the authorised officer referred to in section 132 has reason to suspect that any income has been concealed or is likely to be concealed by any person or class of persons, within his jurisdiction, then for purpose of making any inquiry or investigation in relation to the said income, i.e., (concealed income), the authority who has noticed the concealment of income will be competent to exercise the powers conferred under sub-section (1) of section 131 notwithstanding that no proceedings with respect to such person/class of persons are pending before him or any other Income Tax authority.

11. What really falls for consideration is whether use of words "referred to in sub-section (1) of section 132 before he takes action under clauses (i) to (v) of that sub-section" in sub-section (1A) qualify the word authorised officer only or these words also apply to other five specified authorities named therein. As noted supra, the submission of the learned counsel for the petitioner was that these words apply to all the six authorities specified in sub-section (1A) whereas, the submission of the learned counsel for the revenue was it applies and qualify only one authority, namely, authorised officer.

12. The question as to what should be the approach of courts when such

interpretation falls for consideration was succinctly explained by Mr. G.P. Singh in his book, *Interpretation of Statute*, 8th edn. at page 267 under the heading Rule of last antecedent. This is how the subject was dealt with and explained by the learned author :

"As a corollary to the rule that phrases and sentences in a statute are interpreted according to the grammatical meaning, relative and qualifying words, phrases and clauses are applied to the antecedent immediately preceding. The rule is, however, subordinate to context and may be better stated by saying that a qualifying phrase ought to be referred to the next antecedent which will make sense with the context and to which the context appears properly to relate it."

13. It is this rule, which was being consistently applied by the Privy Council and the Supreme Court while interpreting several words used in sections of different Acts. If the aforesaid rule is applied for interpreting subsection (1A) of section 131 and particularly to the words mentioned supra, then in my opinion, the words "referred to in sub-section (1) of section 132 before he takes action under clauses (i) to (v) of that sub-section" do not qualify the words-Director General, Director, Joint Director, Assistant Director, Deputy Director, but only qualify the words the authorised officer which precedes them. In other words, these words are meant only for the last and 6th specified authority, namely,, authorised officer and not other 5 authorities named therein.

14. In my opinion, the first five authorities specified in sub-section (1A) are in no way concerned with section 132 while exercising the powers under sub-section (1A) or powers under sub-section (1) of section 131. The reference of section 132 in sub-section (1A), is only for that authorised officer who is specially empowered to conduct the search and seizure operation u/s 132. Indeed these five specified authorities who were not initially empowered to exercise powers u/s 131(1), are now empowered to exercise it by virtue of sub-section (1A) which was inserted with effect from 1-10-1975 and later amended on 1-6-1988.

15. In case, if the interpretation suggested by the learned counsel for the petitioner of sub-section (1A) is accepted, it will not be in conformity with the well-settled rules of interpretation referred supra. On the other hand, it will destroy the very purpose for which sub-section (1A) was enacted and will restrict the powers of five specified authorities thereby resulting in a situation which was even intended by the Legislature while enacting sub-section (1A). In other words, when the very object of enacting subsection (1A) was to give more powers to these five specified authorities named therein, then by accepting the submission, it will amount to confining its exercise only in relation to cases of search and seizure u/s 132. Such an eventuality is not contemplated when one reads section 131(1A).

16. In the case of *Mongibai Hariram Vs. State of Maharashtra and Another*, , while construing the definition of premises, in the Bombay Land Requisition Act, 1948, the question fell for consideration for interpreting the words "any building

or part of a building let or intended to be let separately". Relying upon the said principle and the rule of last antecedent, their Lordships held that the words let or intended to be let separately" did not qualify the word building but only qualify the words part of a building.

17. Similarly, in one of the oldest cases in *Irrawaddy Flotilla Co. v. Bugwandas* (1891) 18 ILR Cal. 620 (PC), the question arose while interpreting section 1 of the Indian Contract Act, 1872 which reads "Nothing herein contained shall affect the provisions of any statute, Act or Regulation, not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract not inconsistent with the provisions of the Lord Macnaghten applying the aforesaid rule of interpretation observed : The words not inconsistent with the provisions of this Act are not to be connected with the clause nor any usage or custom of trade. The learned Lord ruled that if such a sentence is to be tried by any rules of grammar, seems to require that the application of those words should be confined to the subject which immediately precedes them.

18. Indeed the view that I have taken also lends support to the clarificatory note issued by Departmental Circular No. 551, dated 23-1-1990 (See Taxmanns Direct Taxes Circulars, Vol. 4, 1999 edn., pp. 2.1353, 2.1382). While explaining the scope and effect of an amendment made in section 131 and also in sections 132, 132A, 133, 133A and 138, the aforementioned departmental circular was issued which reads as under :

"By the Direct Tax Laws (Amendment) Act, 1987--the scope and effect of the amendments made in section 131 as also in sections 132, 132A, 133, 133A and 138, have been elaborated in the following portion of the departmental Circular No. 551, dated 23-1-1990, as under:

Amendment of the provisions conferring powers of a civil court in certain matters on the Income Tax Authorities (section 131)-9.1 Under the old provisions of sub-section (1A) of section 131, the powers of a civil court in certain matters like enforcing attendance of witnesses and examining them on oath, compelling the production of books of account and documents, etc., which are normally exercised by the assessing officers and appellate or revisionary authorities under the provisions of sub-section (1), were also conferred on an Assistant Director of Inspection, who generally deals with searches and seizures, and enabled him to exercise the powers even when no proceedings were pending. However, these powers were not available to the Directors and the Deputy Directors, who are generally associated with investigation of cases and intelligence work in connection with searches and seizures u/s 132. Another difficulty felt was that an authorised officer could record a statement on oath only during the course of search under the provisions of section 132(4). Sometimes it becomes necessary to record a preliminary statement before the commencement of the search for proper investigation. This was not possible, as the courts had held that such a preliminary statement before the search could not be recorded under the provisions of section 132(4).

9.2 To overcome these difficulties, the Amending Act, 1987, has amended the said sub-section (1A) to extend similar powers to the Director-General or Director. As per the new definition of Director-General or Director in section 2(21), the term also includes a Deputy Director and an Assistant Director. Thus, the powers have been extended to the Director-General, Director, Deputy Director and the Assistant Director. The Amending Act, 1987, has further extended the powers to an authorised officer under sub-section (1) of section 132 before he takes search and seizures action under clauses (i) to (v) of that sub-section."

(Emphasis here italicised in print supplied)

19. Applying the principle of rule of last antecedent, its application to various provisions of Acts by their Lordships of the Privy Council and the Supreme Court, and the circular issued by department referred supra, I have no hesitation as I have already held supra in rejecting the submission of the learned counsel for the petitioner on the exercise of the powers by the Deputy Director (Inv.) u/s 131(1)(d), read with section 131(1A) *ibid*. In my opinion, the Deputy Director (Investigation) is perfectly within his rights to independently exercise the powers in issuing a commission u/s 131(1)(d) if he has reason to suspect that any income has been concealed or is likely to be concealed by any person.

20. Coming to the facts of this case. In my opinion, the Deputy Director (Inv.) was fully justified in invoking the powers conferred u/s 131(1)(d), read with section 131(1A) when by his letter dated 31-5-1999 (Annexure P1), he asked the DVO, value the property (Classic Gold, 23/24, New Palasia, Indore). With a view to elucidate the correctness of the cost of construction, and with a view to find out whether any income has been concealed or is likely to be concealed, by the petitioner when it showed its valuation at Rs. 62,75,000 and is carrying on its business in his jurisdiction, the reference to the DVO for making the valuation of property was just and proper. It was an act falling strictly within the four corners of section 131(1A).

21. The submission of the learned counsel for the petitioner that the valuation report submitted by the DVO (Annexure P2) which is apparently against the petitioner is bound to be relied on by the assessing officer in making assessment for the assessment year (1999-2000), has no force. Firstly, it is simply an apprehension, secondly-even this apprehension has no basis for the simple reason that the Assistant Commissioner (Circle) (2)(1)(Inv.) by its letter dated 15-11-1999 (Annexure P2) has given to the petitioner an opportunity to file objections to the said report of the DVO. A copy of the said report is also sent to the petitioner to enable them to file their objections. The petitioner has also filed its objections (Annexures P4 and P5) to the report of the DVO. these Objections are yet to be decided on merit one way or other. Needless to observe that the authority concerned, will decide the objection so raised by the petitioner and will pass necessary speaking orders before making the assessment.

22. In view of aforesaid discussion, I do not find any merit in the writ. It is, accordingly, dismissed.