(2002) 10 OHC CK 0033

In the Orissa High Court

Case No : Original Jurisdiction Case No. 12845 of 2001

Dayaram Agarwal APPELLANT

Vs

Income Tax Officer and Others RESPONDENT

Date of Decision : 30-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1961 — Section 131, 133, 133A

Citation : (2003) 180 CTR 67 : (2003) 261 ITR 419

Hon'ble Judges : P.K. Balasubramanyan, C.J;A.S. Naidu, J

Bench : Division Bench

Advocate : B.M. Patnaik, R. Sharma, S.S. Samanta, S. Mohanty and A. Mishra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J.—The premises of the assessee, the petitioner herein, were surveyed on February 9, 2000, by the Income Tax Officer u/s 133A of the Income Tax Act, 1961 (hereinafter referred to as the "Act"). The petitioner thereafter was issued a notice u/s 131 of the Act calling upon the petitioner, the assessee, to appear before the concerned authority along with his books of account. The assessee appeared and sought time to produce the books of account. The proceeding was adjourned to February 14, 2000. On that date, according to the petitioner, he had taken the books of account with him. He also made an application for copies of the statement recorded from the son of the assessee on the date the premises of the assessee were surveyed and also for a copy of the list of inventory taken on that date. They were not furnished to the assessee. According to the Department, they were not furnished to the assessee since the assessee had not made an appropriate application for the copies after remitting the requisite fees in that behalf. Since the stand adopted by the Department is that if the assessee complies with the requirements and makes an appropriate application, the copies will be issued, that aspect need not detain this court further.

2. It is seen from the writ petition that the petitioner had filed O. J. C. No. 7452 of 2001 in this court earlier, challenging the order of assessment as well as the impounding of the books of account and for supply of the certified copies of the statement recorded and the list of the inventory taken. This court disposed of the writ petition with the observation that since the impugned order therein was appealable, it was for the petitioner to invoke that statutory remedy. This court did not grant any relief to the petitioner regarding the impounding of the books of account, the non-supply of certified copies of the statement and the list of inventory. According to the petitioner, he has filed appeal against the order of assessment. Since the order impounding the books of account and the request to issue the certified copies of the statement recorded and the list of inventory prepared when the survey was made, was not appealable, the assessee submits that he has again filed the present writ petition.

3. In our view, the petitioner might and ought to have pressed the challenge to the order impounding the books of account and not giving of copies of the statement of the son of the petitioner recorded at the time of survey and the list of inventory prepared on that occasion, and sought an adjudication of those aspects. He not having done so, really, the petitioner is barred from filing the present writ petition for those reliefs since he does not have the right to file yet another writ petition on a cause of action already put forward in the earlier writ petition, unless he was specifically given the liberty to do so. There is no plea that any such liberty was reserved in favour of the writ petitioner.

4. Though there are some disputes regarding the factual details, the broad facts are that the premises of the petitioner was surveyed, the statement of the son of the petitioner was recorded since the petitioner was not available in the premises at that time and some stock inventory was taken. The point projected on behalf of the Department is that it was not a complete inventory. It is thereafter, that the assessee was directed to produce the books of account and the books of account were impounded. It is the case of the department that the concerned statutory authority had permitted the Assessing Officer to keep the books of account impounded until completion of the assessment. It is contended that the assessments for the years other than the year 1998-99 are yet to be completed.

5. Counsel for the petitioner relied on a decision of the High Court of Rajasthan in Maruti Mills (P.) Ltd. Vs. Union of India and Others, . It is laid down in that decision that the Income Tax authorities cannot impound the books of account and other documents during the course of survey. Here, in the case on hand, the books of account were not impounded at the time of the survey u/s 133A of the Act. Subsequent to the survey and before completion of the assessment, the assessee was called upon to produce the books of account in apparent exercise of power u/s 131 of the Act. Hence the impounding cannot be held to be per se illegal.

6. For the purpose of this, we do not think it necessary to discuss the law in detail, and to consider the inter-play of Sections 131: 132 and 133A of the

Income Tax Act. Here, the books of account were taken possession of on March 23, 2000, and they are being retained with the Assessing Officer even on the date of the hearing of the writ petition. We think that, on the facts and in the circumstances of this case, the authority has had the reasonable opportunity to verify the books of account and there is no justification in retaining the books of account indefinitely, whatever might be the extent of power available to the Assessing Officer with the permission of the superior officer concerned. We, therefore, direct the opposite parties to return the books of account to the assessee by November 30, 2002. In other words, the opposite parties are directed not to retain the books of account of the assessee impounded on March 23, 2000 beyond November 30, 2002.

7. The writ petition is allowed to the above extent.