(1977) 07 CAL CK 0050

In the Calcutta High Court

Case No : Appeal No. 132 of 1972 (arising out of Matter No. 378 of 1970)

Dwijendra Lal Brahmachari and Others — APPELLANT

Vs

New Central Jute Mills Co. Ltd. and Another — RESPONDENT

Date of Decision : 28-07-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 14, Order 11 Rule 15, 30
Income Tax Act, 1961 — Section 131

Citation : (1978) 112 ITR 568

Hon'ble Judges : S.C. Ghose, J;R.N. Pyne, J

Bench : Division Bench

Advocate : Balai Pal, for the Appellant;R.C. Deb, for the Respondent

Judgement

Ghose, J.—This appeal arises out of the judgment and order dated February 2, 1972, passed by Sabyasachi Mukharji J. New Central Jute Mills Co. Ltd. Vs. Dwijendralal Brahmachari and Others, . By and under the said judgment and order, his Lordship was pleased to make the rule nisi issued in the matter absolute and was pleased to quash a notice dated the 5th June, 1969, mentioned in the petition issued u/s 131 of the Income Tax Act, 1961. His Lordship made it clear that the order of his Lordship would not prevent the appellants (who were respondents in the application) from taking any step for discovery and inspection of documents mentioned in the notice u/s 131 of the Income Tax Act in accordance with the provisions of law.

2. Although the ambit of this appeal falls within a narrow compass we have to recite the facts leading to the making of the above-mentioned application in the writ jurisdiction of this court by the respondents in order to appreciate the issues involved herein.

3. The respondents, New Central Jute Mills Co. Ltd., in the said application in the court of first instance made under Article 226 of the Constitution sought to have the notice dated the 5th June, 1969, issued by the appellant-income tax Officer u/

s 131 of the Income Tax Act, 1961, quashed and/or set aside.

4. On or about April 11, 1963, an order was passed u/s 237(b)(i) and (ii) of the Companies Act, 1956, for investigation of the affairs of the respondent-company. By order dated the 12th June, 1964, another co-officer of the Company Law Board was appointed as co-Inspector with co-extensive powers u/s 237(b)(i) and (ii) of the said Act, along with the previous Inspector. Another Inspector was appointed on the 30th June, 1964, under the above section of the Companies Act in the place and stead of one of the Inspectors appointed earlier. The time to complete the investigation was extended from time to time. The said Inspector obtained order for search and seizure of the respondent''s documents from the Chief Presidency Magistrate, Calcutta, District Magistrate, 24-Parganas and District Magistrate, Howrah, u/s 240A of the Companies Act, 1956, notwithstanding the respondent''s request to withhold any action on their part as the respondent intended to challenge the orders of appointment by means of a writ petition. On July 21, 1964, the respondent-company moved under Article 226 of the Constitution before this Hon''ble court whereupon a rule nisi was issued by D. N. Sinha J. On July 23, 1964, his Lordship directed that all books, papers and documents seized by the said Inspectors or to be seized by the said Inspectors in terms of the order passed u/s 240A of the Companies Act would be kept in sealed boxes, sealed by the respondent-company and the said Inspectors and the said boxes would be kept in the office of the respondent No. 4, Registrar of Companies, West Bengal. The said matter was marked as Matter No. 272 of 1964.

5. Inasmuch as it was found in the course of the hearing of the said application that the Chief Presidency Magistrate, Calcutta, and the District Magistrates of 24-Parganas and Howrah were necessary parties to the said application, another application was made by the respondent-company on June 30, 1964, under Article 226 of the Constitution against the said Union of India, State of West Bengal, the said Inspectors, the Chief Presidency Magistrate, Calcutta, Sub-Divisional Magistrate, Sadar, Howrah, and District Magistrate, 24-Parganas, the Inspector appointed by order dated the 30th June, 1964, and the Registrar of Companies, West Bengal, for quashing the said orders of search and seizure passed u/s 240A of the Companies Act and for the return of the books, papers and documents seized by the said Inspectors.

6. The Matter No. 272 of 1964 [New Central Jute Mills Co. Ltd. Vs. Deputy Secretary, Ministry of Finance and Others,] was dismissed by B. N. Banerji J. on August 4, 1965, whereupon the respondent-company appealed against the said judgment and order and applied for stay of the operation of the said judgment and order dated August 4, 1965. The Court of Appeal, in the said application, ordered that status quo was to be maintained till the disposal of the said appeal. The said order was made on September 20, 1965. The second application made, as stated hereinbefore, by the respondent-company was marked as Civil Rule No. 581(W) of 1965, was finally heard by B. N. Banerji J. By judgment and order

dated March 5, 1968, in the said Civil Rule, B. N. Banerji J. was pleased to quash the order, obtained by the said Inspectors from the said Magistrate u/s 240A of the Companies Act. B. N, Banerji J. by the said order gave liberty to the Inspectors to apply before the said Magistrates on further and better materials for search and seizure and until such applications were made the documents would lie where they were lying. The above-mentioned appeal preferred by the appellant from the order made on August 4, 1965, in Matter No. 272 of 1964 [New Central Jute Mills Co. Ltd. Vs. Deputy Secretary, Ministry of Finance and Others,] was heard by the appellate court by a judgment and order passed on March 7, 1969 [New Central Jute Mills Co. Ltd. v. Dy. Secretary, Ministry of Finance [1970] 40 Comp Cas 102 (Cal)]. In the said appeal, the appellate court set aside the judgment and order of B.N. Banerji J. dated August 4, 1965, and, inter alia, quashed the purported orders u/s 237(b)(i) and (ii) of the Companies Act, 1956. The respondents did not prefer any appeal from the said judgment and order of the appellate court dated March 7, 1969.

7. On June 10, 1969, the appellant No. 4 applied to the appeal court praying for appropriate directions in regard to the books, documents and papers kept with him in pursuance of the order dated July 23, 1964. In the said application it was stated by the respondent No. 4 (sic) that on or about May 3, 1969, a notice u/s 19(ii) of the Foreign Exchange Regulation Act was served on the appellant No. 4 calling upon him to furnish all the documents of the respondent-company which were lying in the office of the appellant No. 4 in pursuance of the above-mentioned order dated July,23, 1964. It was further stated, inter alia, that on or about June 5, 1969, the appellant No. 4 was served with a summons u/s 131 of the Income Tax Act, 1961, by the appellants Nos. 1 and 2 requiring him to produce the books of accounts and other documents which were lying in his custody. An order was made in the said application on June 23, 1970, whereby the appellant No. 4 was directed to retain custody of the said documents for 3 weeks from the said date, i.e., June 23, 1970, within which period the respondent-company was to seek appropriate remedy before the appropriate court and if the appellant No. 4 was not restrained within three weeks from the said date from delivering the documents, in that event the appellant No. 4 would make over the documents to the Assistant Director, Enforcement Directorate, Ministry of Finance, Government of India. Hence, this application was made by the respondent-company for quashing the summons u/s 131 of the Income Tax Act, 1961, and dated the 5th June, 1969. The said summons is material for our purpose and so it would be worthwhile to have the same reproduced hereunder :

"To The Registrar of Companies, West Bengal, '' Narayani Buildings'', Brabourne Road, Calcutta.

Whereas your attendance is required in connection with the proceedings under the Income Tax Act in the case of M/s. New Central Jute Mills Co., 11, Clive Row, Calcutta, you are hereby required personally to attend my office at 18, Rabindra Sarani, Calcutta-1, on the 6th of June, 1969, at 11 a.m. there to give evidence and/or to produce either personally or through an authorised representative the books of account or other documents specified overleaf, and not to depart until you receive my permission to do so. Without prejudice to the provisions of any other law for the time being in force if you intentionally omit to so attend to give evidence or produce the books of account or documents, a fine up to Rs. 500 may be imposed upon you u/s 131(2) of the Income Tax Act, 1961.

Sd/-Illesible Income Tax Officer, CC-XX-Cal.

Books of account or documents to be produced.

1. Books of accounts, documents and other papers of M/s. New Central Jute Mills Co. Ltd. of 11, Clive Row, Calcutta in your custody."

8. Various points were taken by the respondent-company in its challenge to the said summons. Sabyasachi Mukharji J., who heard the application, quashed; the said summons on the ground that the issuer of the summons-appellant No. 1 did not apply his mind to the matter before issuing the said summons.

9. From the said judgment and order of Sabyasachi Mukharji J., this appeal has been preferred. Mr. Balai Pal, on behalf of the revenue, submitted that the impugned notice was issued u/s 131(1)(c) of the Income Tax Act, 1961. Section 30 of the CPC read with Order 11 of the Code was not applicable in the present case. These provisions apply only to parties to a suit. The Income Tax Officer is not a litigant in the assessment proceedings. He acts in a quasi-judicial capacity and is not bound by the provisions of Section 30 of the CPC read with Order 11 of the Code. The Income Tax Officer, according to Mr. pA], is not subjected to the same limitations regarding power to require discovery, inspection or production of documents as a civil court is. The only limitation within the four walls whereof the Income Tax Officer must act must be " for the purposes of the Act". The said power is analogous to the powers of search and seizure u/s 132B of the Income Tax Act, 1961.

10. To my mind, the controversy involved in the appeal really centres rcund the construction of Section 131 of the Income Tax Act and Section 30 of the Civil Procedure Code, read with Rules 12, 14 and 15 of Order 11. of the said Code. In this connection, Mr. Pal compared the terms of Section 131(1)(c) of the Act with Section 132(13) of the Act and pointed out the difference between the terms of the two sections.

11. To appreciate the real controversy between the parties it is necessary now to set out Section 131(1) and Section 132(13) of the Income Tax Act and Section 30 of the CPC and Rules 12, 14 and 15 of Order 11 of the said Code. Mr. Pal relied on the case in Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc., and submitted that in spite of limitation in language in Section 132(13) large number of documents, etc., were seized. In support of his submission that power u/s 131(1)(c) is unfettered except for the purposes of the Act, Mr. Pal referred to us the case of Calcutta Chromotype Pvt.

Ltd. Vs. Income Tax Officer, . It should be noted that the argument of Mr. Gouri Mitter, the counsel in that case [Amal Kumar Ghatak Vs. Income Tax Officer, J-Ward and Another,] before B. C. Mitra J., as it would appear from the last four lines of page 453 of the said report, was that the Income Tax Officer''s power u/s 131(1) was co-extensive with that of a civil court and B. C. Mitra J. accepted the said submission of the counsel. The said case was confirmed in Calcutta Chromotype (Private) Ltd. Vs. Income Tax Officer and Another, . Mr. Pal also relied on the case of The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others, and the proposition stated in head note " B " of the said case. Mr, Pal also referred to us the Full Bench decision of the Madras High Court in T.M.M. Sankaralinga Nadar and Brothers Vs. The Commissioner of Income Tax, .

12. From a perusal of Section 131 of the Income Tax Act, we are of the opinion, that the power of the Income Tax Officer under that Section is co-extensive with that of a court trying a suit u/s 30 of the Civil Procedure Code, read with Rules 12, 14 and 15 of Order 11 of the Code. Section 131 empowers the officers mentioned in the section to act for the purpose of the Act, but that cannot be the only limitation set out u/s 131 imposed upon the powers of the officers mentioned in the said section to act in the terms of the said section. All statutory bodies must act for the purposes of the statute even though the term " for the purposes of the Act " be not expressly stated. Secondly, it appears to us that the statutory power cannot be exercised without application of mind as urged by Mr. R. C. Deb appearing on behalf of the respondent. If such powers are granted then such powers would be so naked that the section itself would become ultra vires. Application of mind must be in regard to the question of relevancy of the documents to the Us involved in the matter before the Income Tax Officer. A civil court cannot order discovery, production or inspection of documents until it is of the opinion that such documents are relevant for the purpose of the issues involved in the suit pending before it. Similarly, it seems to us that the officers mentioned in Section 131 of the Income Tax Act have been vested with powers to make the orders as mentioned therein provided they are satisfied that the orders made would be relevant for the purpose of deciding the case pending before them. If we hold otherwise we would be holding that Section 131(1) has conferred naked and arbitrary powers upon such officers which would make the section itself liable to be struck down.

13. It appears from the terms requiring the production of the books, documents, etc., as contained in the above-quoted notice u/s 131(1)(c) that the Income Tax Officer concerned had no idea as to what those documents were and as such there was no occasion for him to apply his mind to the question as to whether the same were relevant or necessary for the purpose of assessment or reassessment of the income of the respondent-company for any particular year. It seems to us that it has been admitted that, as the documents were lying in sealed boxes, the officer concerned could not and, in fact, did not apply his mind to those documents. In the premises, it appears that the Income Tax Officer did not apply his mind to the question of relevancy of documents in determining any

issue required to be determined by him. The wide ambit of the language requiring the production of the documents itself goes to show that the officer concerned did not a apply his mind at all to the nature of the documents or the purpose for which he required the production of the said documents. (See in this connection The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc., ; last four lines and paragraphs 16 and 17 appearing at pages 65 and 66 of the said report). As already stated, the action in issuing the impugned summons u/s 131 is tainted with the vice of non-application of mind to the documents required to be produced. The summons for that reason must be held to be bad and is to be struck down.

14. For the reasons stated hereinbefore, this appeal must fail and is dismissed. There shall, however, be no order as to costs.

K.N. Pyne, J.

15. I agree.

