(1969) 09 CAL CK 0016

In the Calcutta High Court

Case No : Matter No. 440 of 1968

Gopal Das Gupta APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 11-09-1969

Acts Referred:
Income Tax Act, 1961 — Section 131, 135

Citation : (1970) 1 ILR (Cal) 195 : (1971) 80 ITR 200

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

Bench : Single Bench

Advocate : D. Pal and A.K. Roy Choudhury, for the Appellant;G. Mitter and Biswarup Gupta, for the Respondent

Judgement

1. By a notice in writing purported to be a summons u/s 131 of the Income Tax Act, 1961, the respondent, D. K. Guha, the Assistant Director of Inspection (Intelligence), Income Tax Department, required the petitioner personally to attend the office of the said respondent on the 21st June, 1968, as his attendance was required in connection with the proceedings under the Income Tax Act in the case of Aruna Estates Ltd., either personally or through an authorised representative to give evidence and to produce certain books of account and other documents specified overleaf. The petitioner was further notified that, in case of intentional omission to attend and give evidence as required, a fine up to Rs. 500 might be imposed u/s 131(2). The petitioner raised various objections to the said notice and the time for compliance was extended from time to time until finally, by his letter dated 25th June, 1968, the said respondent informed the petitioner that the said summons was issued u/s 131 of the Act in the exercise of his legal jurisdiction. This rule was obtained on the 27th June, 1968, calling upon (1) the Union of India, (2) the Assistant Director of Inspection, and (3) Sri D. K. Guha, who happened to be the said Assistant Director of Inspection, to show cause why appropriate writs should not be issued to quash the aforesaid notice dated the 19th June, 1968, and cancel all proceedings taken thereunder.

2. In order to appreciate the contentions raised in this application it would be necessary to examine the following provisions in the Income Tax Act, 1961, hereinafter referred to as "the Act". Section 2(21) defines a "Director of Inspection" to mean a person appointed to be a Director of Inspection and to include a person appointed to be an Additional Director, a Deputy Director or an Assistant Director of Inspection. Section 131, as it stood at the material time, provided as follows :

"Section 131.--(1) The Income Tax Officer, Appellate Assistant Commissioner, Inspecting Assistant Commissioner and 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, viz:--

(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.

(2) Without prejudice to the provision of any other law for the time being in force, where a person to whom a summons is issued either to attend to give evidence or produce books of account or other documents at a certain place and time, intentionally omits to attend or produce the books of account or documents at the place or time, the Income Tax authority may impose upon him such fine not exceeding five hundred rupees as it thinks fit, and the fine so levied may be recovered in the manner provided in Chapter XVIID.

(3) Subject to any rules made in this behalf, any authority referred to it Sub-section (1) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act :

Provided that an Income Tax Officer shall not-

(a) impound any books of account or other documents without recording his reasons for so doing, or

(b) retain in his custody any such books are documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefore"

3. It is to be mentioned in this connection that originally the words "Inspecting Assistant Commissioner" did not appear in Sub-section (1). By Section 38 of the Finance Act, 1965, the name of the Inspecting Assistant Commissioner was inserted between the Appellate Assistant Commissioner and the Commissioner. In this connection it would be necessary to refer to the Finance Bill of 1965 and

the Statement of Objects and Reasons therefore later on in this judgment.

4. Section 132(1) provides that where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that (there follows a number of conditions) he may authorize any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income Tax Officer (hereinafter referred to as the authorized officer), to do certain acts such as entering and searching any premises, breaking of any locks of any doors, box, lockers, safe, etc., seize and take possession of any books of account and other documents, moneys, etc., and make a note or an inventory of such articles seized and taken possession of.

5. Section 135, the construction of which is material for the purpose of this application, is to the following effect :

"The Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner shall be competent to make any enquiry under this Act, and for this purpose shall have all the powers that an Income Tax Officer has under this Act in relation to the making of enquiries."

6. The only other section required to be considered is Section 142 which authorizes the Income Tax Officer to serve notices on any person who has made a return to produce or cause to be produced books of account and documents, to furnish in writing and verified in the prescribed manner such information as may be required and other ancillary powers including the power to make such enquiry as he considers necessary for obtaining full information for the purpose of making an assessment.

7. The main contention of Dr. Pal, the learned advocate for the petitioner, is that, as the Director of Inspection was not one of the authorities mentioned in Section 131, either before or after its amendment in 1965, the respondent No. 2 had no jurisdiction to issue the impugned notice and the notice and the proceedings thereunder should be quashed. The claim of the said respondent that he was authorized under the provisions of Section 135 to exercise all the powers of the Income Tax Officer u/s 131 and as such he had acted within his jurisdiction cannot be sustained. It is further submitted that the general authority given u/s 135 cannot override the specific provisions of Section 131. If the Director of Inspection could exercise the powers u/s 131 as claimed, then the Inspecting Assistant Commissioner would also be so entitled and there would have been no necessity for amending Section 131. Dr. Pal referred to the Statement of Objects and Reasons in respect of Clause 38 of the Finance Bill, 1965, which was subsequently enacted as Section 38 of the Finance Act, 1965, effecting the aforesaid amendment in Section 131 of the Act, which are as follows :

"Clause 38 seeks to amend Section 131 of the Income Tax Act to confer on the Inspecting Assistant Commissioner of Income Tax the powers of discovery and inspection, enforcing attendance of any person, including any officer of a banking company, and examining him on oath, compelling production of books of account and other documents and issuing commissions. At present these powers are available to the Income Tax Officer, Appellate Assistant Commissioner and Commissioner under this section and also to the Appellate Tribunal under the other provisions of the Act."

8. Dr. Pal submitted that the above statement makes it clear that the legislature interpreted Section 131 before its amendment as authorizing only the three officers mentioned therein, namely, the Income Tax Officer, the Appellate Assistant Commissioner and the Commissioner to exercise the powers mentioned in the section and in order to enlarge the number of officers so authorized the Appellate Assistant Commissioner was included by the amendment.

9. Dr. Pal also referred to two decisions of the Supreme Court for the proposition that in case of any doubt or ambiguity the Statement of Objects and Reasons can be looked into. In The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi, ., the following observations were made :

"It is clear that unless there is any such ambiguity it would not be open to the court to depart from the normal rule of construction which is that the intention of the legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principles and practice."

10. Their Lordships quoted from the judgment of Lord Lindley M. R. in Thomson v. Lord Glanmorris [1900] 1 Ch. 718 (C.A.) and of the Supreme Court in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, , in the support aforesaid proposition. Another passage from the said judgment was also relied on by Dr. Pal, namely :

"Though it is not legitimate to refer to the Statement of Objects and Reasons as an aid to the construction or for ascertaining the meaning of any particular word used in the Act or statute........... nevertheless, this court, in The State of West Bengal Vs. Subodh Gopal Bose and Others, , referred to the same ''for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of evil which he sought to remedy."

11. The other decision in S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others, , also reiterates the same principle in the following words, namely:

"It is indeed true that the Statement of Objects and Reasons for introducing a particular piece of legislation cannot be used for interpreting the legislation if the words used therein are clear enough. But the Statement of Objects and Reasons can be referred to for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislation aimed at."

12. Dr, Pal submitted that in view of the fact that it was felt that the provisions of Section 131, as it stood prior to its amendment, could not be availed of by the Inspecting Assistant Commissioner, though he was one of the authorities mentioned in Section 135, it can be legitimately inferred that no authority to exercise any of the powers u/s 131 was intended to be given to anybody except the three officers mentioned therein. Further, Section 132 confers power on the Director of Inspection along with the Commissioner to conduct search and seizure and to impound any books or documents found on such search. It was, therefore, not necessary for the Director of Inspection to claim jurisdiction u/s 135 for issuing the impugned notice. Dr. Pal further pointed out that if the interpretation claimed by the department is upheld and the Director of Inspection is held to have the powers of the Income Tax Officer for the purpose of Section 131 then a strange anomaly would arise because the Director of Inspection will have to record his reasons and obtain the approval of the Commissioner before impounding any books and documents and before obtaining them beyond a period of fifteen days. This would certainly lead to an absurdity because the Director of Inspection is not an officer subordinate to the Commissioner.

13. Mr. Gouri Mitter, the learned counsel for the department, also relied on the same passages in the two decisions of the Supreme Court cited by Dr. Pal and submitted that if the words of a section are plain and there is no ambiguity then the question of the intention of the legislature or that such a provision would be contradictory to the other provisions of the Act would not enter into consideration in construing that section. Mr. Mitter contended that the words of Section 135 are absolutely plain and free from any ambiguity and it confers on the Director and the other authorities mentioned therein all the powers of an Income Tax Officer to make any enquiries under the Act. Such enquiry must necessarily involve summoning of witnesses and production of material books or documents.

14. I am unable to accept the contention of Mr. Mitter. In my opinion, the problem is not entirely one of construction of the relevant sections of the Act. The authority to issue the impugned notice is sought to be derived from Section 131. Section 131 specifically empowers the four authorities mentioned therein to exercise the powers vested in a court under the Civil Procedure Code. Section 135, inter alia, gives the Director of Inspection all the powers of the Income Tax Officer to make any enquiry under the Act. Section 131 does not specifically deal with an enquiry under the Act ; it authorises the taking of certain steps to facilitate such an enquiry. If the Director of Inspection assumes the power of an Income Tax Officer u/s 131 then he would have to obtain the approval of the Commissioner before impounding or seizing any books and documents. I am inclined to agree with Dr. Pal that when Section 135 speaks of the power of an Income Tax Officer to make any inquiry, the inquiry is one as provided in Section 142 for the purposes of making an assessment and/or proceedings in relation thereto, as, for example, proceedings for penalty. In this case there is no allegation that any assessment is pending before the respondent No. 2 and, therefore, no question could arise of his exercising any power u/s 131.

15. I also do not agree with Mr. Mitter that the words of Section 131 are so plain that no reference could be made to the objects and reasons for introducing the amendment in 1965. On the face of the section the respondent No. 2 is excluded from the authorities who are entitled to exercise jurisdiction under it. It is only by recourse to the provisions of Section 135 that the respondent No. 2 is trying to justify his assumption of jurisdiction u/s 131. In order to test that claim the purpose for which Section 131 had been enacted must be looked at. It is quite clear from the notes of the objects and reasons for introducing the amendment that it was never in the contemplation of the authorities that the powers u/s 131 could be exercised by any one else other than the three officials mentioned therein, viz., the Income Tax Officer, the Appellate Assistant Commissioner and the Commissioner. With the object of bringing in an additional officer who would be entitled to exercise the authority u/s 131 the amendment was effected in 1965, and clearly the legislature did not contemplate this section to authorise anybody else except the persons named therein to exercise the powers conferred by the section. Further, in my opinion, the maxim generalia specialibus non derogant is applicable to this case and Section 135 cannot be utilised by respondent No. 2 to exercise any authority specifically conferred u/s 131. In this view of the matter, the rule must be made absolute. Considering that there are no reported decisions on this question I direct each party to pay and bear its own costs.

