(2009) 07 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal No. 5067 Of 2009

ITO and Others — APPELLANT

Vs

U.K. Mahapatra and Co. and Others — RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:
Income Tax Act, 1961 — Section 132, 133A

Citation : (2009) 16 SCC 168 : (2010) 186 TAXMAN 181

Hon'ble Judges : S. B. Sinha, J;Deepak Verma, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. Having heard the learned Addl. Solicitor General Mr. Mohan Parasaranand Mr. Pal, learned senior counsel appearing on behalf of the respondents, we are of the opinion that keeping in view the documents in question having been seized as far back as 28-1-2008, the appellants could not and in fact did not object to return thereof. The learned Addl. Solicitor General states that the seized documents have been deposited in the High Court which are lying in the custody of Dy. Registrar (Judicial). We may also notice that the High Court in its order directed:

13. For the reasons stated in paras 7 to 10, the survey operation u/s 133A in the petitioner''s premises, impounding of books of account/documents on 28-5-2008 and retention of the same till date being made illegally without following the procedure as laid down in Section 133A of the Income Tax Act, the petitioner is entitled to get back the impounded books of account/documents.

In C/T v. Kamal & Co. (2007) CTR (Raj) 200 , it was held that the materials collected during the course of illegal survey can be used for making additions. In Pooran v. Director of Inspection (Inv), (1974) 93 ITR 505 (SC) , the Hon''ble Supreme Court held even assuming that the search and seizure were in contravention of the provisions of Section 132 of the Income Tax Act, still the material seized was liable to be used subject to law before the IT authorities against the person from whose custody it was seized. Therefore, if the opposite parties think that the books of account or any portion thereof are or is relevant for their purpose, they are entitled to take copy of such documents or portion of such books of account.

14. In the above fact situation, we direct opposite party No. 2 to return the books of account/documents as impounded from the premises of the petitioner in course of survey u/s 133A by opposite party No. 1 within a period of two weeks from the date of production of a certified copy of this order before him by the petitioner.

With the above direction, the writ petition is disposed of.

3. In view of the stand taken before us by the parties, we direct the aforesaid officer of the High Court to return the documents to the respondents herein, within two weeks from the date of receipt of a copy of this order, subject to the condition that the appellants herein would be entitled to take the print out of all the pages of the documents and the copies of the CD ROM, which may be certified by the said Dy. Registrar. Also similar certification would be granted by the said officer in respect of the photocopies of the blank cheques and other documents which have been photocopied.

The appeal is disposed of with the aforementioned directions.

