(2000) 10 GUJ CK 0105

In the Gujarat High Court

Case No : Special Civil Application No. 8393 of 2000 16 October 2000

MADHUPURI CORPN. APPELLANT

Vs

S. S. KHAN RESPONDENT

Date of Decision : 16-10-2000

Acts Referred:
Income Tax Act, 1961 — Section 132, 132(1), 132(1A), 132(8), 158BC

Citation : (2000) 113 TAXMAN 568

Hon'ble Judges : D.M. Dharmadhikari, C.J;A.R. Dave, J

Bench : Full Bench

Advocate : K.A. Puj, B.B. Naik and Manish R. Bhatt, for the Appellant;

Judgement

Dave, J.

Rule. Service of rule is waived by the learned advocate Shri B.B, Naik for the respondents.

The facts leading to the present petition, in a nutshell, are as under.

2. Petitioner No. 1 is an HUF, of which petitioner No. 2 is a karta. Petitioner No. 3 is a proprietor of Menka Soap Factory and petitioner No. 4 is a manager of Menka Soap Factory. A search was carried out at the residential/business premises of the petitioners under the provisions of section 132 of the Income Tax Act, 1961 (hereinafter referred to as `the Act'') and the said search was concluded on 8-12-1999. During the course of the search, certain documents and computer floppies, etc., were seized by the respondents and the said material is still in possession of the respondent-authorities.

3. According to the provisions of section 132(8) of the Act, the books of account and other documents seized under the provisions of section 132(1) or section 132(1A) of the Act cannot be retained by the authorised officer for a period exceeding 180 days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Chief

Commissioner, Commissioner, Director General or Director for such retention is obtained.

4. The grievance of the petitioners in the present petition is that, though the period of 180 days is already over, without communicating any reason to the petitioners, the respondent-authorities have continued to retain their books of account, etc., and, therefore, by approaching this court, they have prayed that the action with regard to continued retention of the books of account, etc., seized by the respondent-authorities during the search should be declared to be bad in law and the respondent-authorities should be directed to return the material seized during the search proceedings to the petitioners immediately.

5. In pursuance of the notice issued by this court to the respondent authorities, an affidavit-in-reply has been filed by the Commissioner, Rajkot, admitting the fact that the search had been carried out at the premises of the concerned petitioners and the books of account and other documents had also been seized by the respondent-authorities. It has been, however, submitted that the authorised officer had handed over the seized material to the assessing officer and after recording the reasons in writing, the assessing officer had submitted his report praying for extension of time for retaining the seized material to the Commissioner. The said report/ application was submitted on 11-4-2000. Upon perusal of the reasons, the Commissioner passed an order on 20-4-2000 permitting retention of the seized material till 31-3-2002.

6. As per the report of the assessing officer, as the proceedings u/s 158BC of the Act were pending and as completion of the block assessment was likely to take more time, it was necessary to retain the seized material till 31-3-2002.

7. Thus, the sum and substance of the affidavit-in-reply filed on behalf of the respondents is that the respondent-authorities have a right to retain the books of account and other seized material beyond the period of 180 days provided the requisite permission is obtained from one of the concerned authorities u/s 132 of the Act and as necessary permission has been granted, it is open to the respondent-authorities to retain the books of account till 31-3-2002.

8. At the time of hearing of this petition, the learned advocate Shri Puj appearing for the petitioners has submitted that section 132(8) of the Act prescribes limit of 180 days for retention of the books of account and other material. According to section 132(8) of the Act, the authorities can normally retain the seized material for a period of 180 days without obtaining any sanction from the higher authority. According to the learned advocate Shri Puj, the period prescribed under the provisions of the Act is quite reasonable and, therefore, unless there are exceptional circumstances, the authorised officer or the assessing officer should not ask for more time from the higher authorities because within such a long period of 180 days the needful should be done by the concerned officer.

9. It has been submitted by him that according to the law laid down by the Supreme Court in the case of Commissioner of Income Tax, West Bengal III and

Others Vs. Oriental Rubber Works, , it is not only necessary to obtain approval from the Commissioner but the reasons recorded by the authorised officer or the assessing officer on the basis of which the approval has been obtained, should also be communicated to the assessee as expeditiously as possible after the approval is accorded by the Commissioner. In case of default, it has been held by the Supreme Court that further retention of the books of account and other material seized by the authorities would become invalid and unlawful. On the basis of the law laid down by the Supreme Court in the case of Oriental Rubber Works (supra), it has been submitted by the learned advocate Shri Puj that the respondent-authorities had not communicated the reasons for which the approval was granted by the Commissioner for retention of the books of account and other seized material beyond the period of 180 days. In the circumstances, the said retention of books of account should be held to be illegal and the authorities should be directed to forthwith return the books of account to the assessees. The same view was taken by this court in the case of Cowasjee Nusserwanji Dinshaw Vs. Income Tax Officer, .

10. On the other hand, the learned advocate Shri B.B. Naik appearing for the respondent-authorities has submitted that section 132(8) provides for extension of time for retaining the books of account and other material seized during the search proceedings. When the statute itself provides that the authorised officer or the assessing officer can approach the higher authority and obtain necessary approval for retention of the seized material, by no stretch of imagination it can be said that the further retention, which is in pursuance of the provisions of section 132(8), is bad in law. He has relied upon the affidavit filed by the concerned officer and he has also placed on record the application given by the officer to the Commissioner and he has also stated that by an order dated 20-4-2000, necessary permission has been granted for retention of the books of account and other material beyond the period of 180 days. He has, therefore, submitted that the action taken by the respondent-authorities cannot be treated as illegal or unlawful.

11. Upon hearing the learned advocates, we had specifically asked the learned advocate Shri Naik appearing for the respondent-authorities about the reasons for which the respondent-authorities wanted to retain the books of account and other material beyond the period of 180 days. It was impressed upon him that the respondent-authorities must have a sound reason for further retention of the books of account and other material belonging to the assessees. Upon perusal of the reasons stated in the application given by the assessing officer, it is clear that the assessing officer wanted to retain the books of account and other material beyond the period of 180 days because notices u/s 158BC under the Act had been issued and, according to the provisions of the Act, the respondent-authorities have to complete the assessment on or before 31-12-2001. It has been further stated that for the purpose of completion of some of the consequential procedures, a further period of three months is required and, therefore, the assessing officer had prayed for extension up to 31-3-2002, which

was duly accorded by the Commissioner.

12. The learned advocate appearing for the respondent-authorities was unable to state any specific reason, except the one stated hereinabove, for which the books of account and other material were required to be retained beyond the period of 180 days.

13. Looking to the facts of the case, we are of the view that it would not be just and proper on the part of the respondent-authorities to retain the books of account and other seized material till the block assessment is completed. It is true that the Act gives powers to the authorities to retain the books of account and other material beyond the period of 180 days but that does not mean that the permission should be granted by the higher authorities as a matter of course. The power which has been given to higher authority for giving approval for further retention of the books of account and other seized material is to be used with circumspection. The said power is to be exercised reasonably, in good faith and on correct grounds. The object of retention of the books of account and other material up to 180 days is to allow the concerned officer to go through the material seized so as to find out details about the undisclosed assets or income of the assessee which had escaped assessment. The Legislature considered the period of 180 days to be reasonable period for the above purpose. Unless there is a special reason, the higher authority should not extend the said period by exercising its discretion under the provisions of section 132(8) of the Act. Permitting the concerned officer to cause delay in performance of his duty without any justifiable reason will amount to abuse of discretion on the part of the higher authority.

14. Looking to the facts of the case and the provisions of law, we are of the view that simply because the Commissioner has been authorised to accord approval for retention of the books of account and other material beyond the period of 180 days, it would not mean that without recording any special justifiable reason or for a vague reason he should accord his approval to the authorised officer or the assessing officer as and when he makes a request for retention of the books of account or other material beyond the period of 180 days. In the circumstances, looking to the facts of the case, we hold that the reasons which have been recorded by the assessing officer do not appear to be just and proper as there is no logic behind the retention of the books of account and other material till the entire block assessment is over. The respondent -authorities can very well take out copies of the documents required by them and can do the needful with the help of the said copies. It is always open to the respondent authorities to ask the petitioners to return the original documents in case of need.

15. As we are inclined to allow the petition on the ground stated herein above, we do not go into other submissions made on behalf of the learned advocate for the petitioners.

16. In the circumstances, we direct the respondents to return the books of

account and other seized material within a period of 15 days from today after obtaining an undertaking from the assessee that as and when the original books of account/ material are required by the authorities, they shall produce the same before the respondent- authorities. It would be open to the respondent-authority to take out copies of the documents required by them and to do the needful for the purpose of making identification marks or signs on the documents to be returned to the petitioners.

17. Learned advocate for the respondent-authority has submitted that the petitioners are not co-operating in the process of assessment. Mr. Puj appearing for the petitioners has submitted that the petitioners shall extend their co-operation so as to see that the assessment in accordance with law is framed as soon as possible.

18. In view of the above direction, the petition is disposed of as allowed. Rule is made absolute with costs.