(1992) 08 DEL CK 0041

In the Delhi High Court

Case No : Civil Writ Appeal No. 1169 of 1992 and Civil Miscellaneous Appeal No. 1744 of 1992

M.L. Dujari, F.C.A. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 12-08-1992

Acts Referred:
Income Tax Act, 1961 — Section 132(5), 132(8)

Citation : (1992) 48 DLT 644 : (1993) 66 TAXMAN 665

Hon'ble Judges : G.C. Mittal, C.J;Sat Pal, J

Bench : Division Bench

Advocate : S.K. Dholakia, B.V. Desai, R. Rangaswamy, Rajindra and D.C. Taneja, for the Appellant;

Judgement

Gokal Chand Mital, C.J.

(1) Rule D.B.

(2) The main point raised before us was that the respondents have not complied with the provisions of sub-Section (5) and sub-Section (9) of Section 132 of the Income Tax Act, 1991 inasmuch as reasonable opportunity of hearing was not given and the copies of the books of accounts which were seized were not supplied to the petitioner before making a summary assessment.

(3) On a consideration of the matter, we find that at the time of seizure, a punchnama was prepared by which Rs.95,000.00 in cash and numerous shares worth Rs. 40 Lakhs were recovered and complete details of shares were mentioned in punchnama, copy whereof was given to the petitioner. The petitioner was given opportunity to explain and he made statements and furnished Explanation which runs into numerous pages starting from page 278 to page 362 of the paper book before us.

(4) Another contention raised by the learned Counsel for the petitioner is that the petitioner was not supplied copies of the documents seized from various

companies who were operating from the some premises.

(5) We do not find any substance in this contention inasmuch as proceedings u/s 132(5) of the Income Tax Act are summary proceedings and the petitioner was entitled to have copies of the records seized from these by companies.

(6) The learned Counsel placed reliance on a judgment of the Sunn. me Court in Kishinchand Chellaram Vs. Commissioner of Income Tax, Bombay City II, Bombay, in support of the aforesaid contention. We, however, find that the ratio of this judgment is not applicable to the facts of the present case. As stated above, in the present case we are concerned with the proceedings u/s 132(5) of the Income Tax (in short ''the Act'') but in the case of Kishinchand Chellaram (supra) the Court''s concerned regarding denial of opportunity to the assessed in the re-assessment proceedings.

(7) It will also be pertinent to point out here that the order u/s 132(5) of the Act was passed on 12th June, 1990 and the petitioner filed an appeal against the said order before the Commissioner of IncomeTax, Jaipur who vide his order dated 25th November, 1991 rejected the appeal of the petitioner. Meanwhile, the regular assessment proceedings for the assessment year in question have already commenced and it has been stated in the reply-affidavit filed on behalf of respondent No. 5 that during the regular assessment proceedings the petitioner has been provided all the opportunities of inspection and to take zerox copies of the seized material.

(8) In view of these facts we are not inclined to interfere with the impugned order.

(9) The last contention raised by the learned Counsel for the petition r is that u/s 132(8) of the Act the seized books of accounts and other documents cannot be retained by the authorised officer for a period exceed ing 180 days from the date of seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the -Commissioner for such detention is obtained. He submitted that in the present case the retention of the seized records was authorised by the Commissioner only up to 30th June, 1991 as intimated to the petitioner vide letter dated 12th September, 1990 and as such the continued retention of the seized documents beyond 30th June, 1991 was in violation of the aforesaid provisions of the Act. In support of his contention he placed reliance on the Division Bench judgment of this Court in SURVIR ENTERPRISES Vs. COMMISSIONER OF Income Tax, CENTRAL RANGE-I, NEW DELHI, AND OTHERS., . The learned Counsel for the respondent could not produce any order passed by the Commissioner of Income Tax for retention of the books of accounts beyond 30th June, 1991. He, however, submitted that the original file was not available with him today but such an order must have been passed by the Commissioner.

(10) In view of these facts, we direct that in case no order has been passed by the Commissioner of Income Tax for retention of books beyond 30th June, 1991,

the books of accounts shall be released to the petitioner forthwith and in case such an order has been passed by the Commissioner of Income Tax, a copy of the same shall be supplied to the petitioner within two weeks from today.

(11) With these observations ,the writ petition stands disposed of.