(2002) 03 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Original Writ Petition No. 484 of 2000 13 March 2002

Mohan Magotra APPELLANT

Vs

Director of Income Tax RESPONDENT

Date of Decision : 13-03-2002

Acts Referred:
Income Tax Act, 1961 — Section 132

Citation : (2002) 123 TAXMAN 843

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Division Bench

Advocate : Ashok Mishra, for the Assessee and D.S. Thakur, for the Revenue, for the Appellant;

Judgement

The petitioner herein invokes the assistance of section 132(8) of (he Income Tax Act, 1961 (hereinafter referred to as 'the Act'). It is submitted

that the account books maintained by the petitioner-assessee were taken possession of by the assessing authority on 7-4-1995. It is said that in

terms of section referred to above, these books of account and the records could be retained by the assessing authority for a period of 180 days.

It is further submitted that if these are to be retained beyond that period, then the approval of the higher authorities named in section 132(8) is

supposed to be obtained. It is stated that not only approval has to be obtained, but the reasons for this retention are supposed to be mentioned

and these reasons are supposed to be conveyed to the assessee. According to the petitioner, the assessee was not made aware of the fact that the

approval has been obtained. In this situation, it is submitted that the question of reasons being made available to the petitioner, does not arise.

2. The respondents have, however, controverted the allegations. It is submitted

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that the approval of the Additional Commissioner, Investigation

Circle, Jammu, was obtained. The first approval was obtained on 13-9-1996. It was again obtained on 17-10-1996, 11-6-1997, 23-6-1998, 15-

6-1999 and 21-6-2000. It is submitted that these records are being retained because these are required by the higher hierarchy who are to

examine the orders passed by the assessing authority.

3. There can be no dispute with the legal proposition. This is to the effect that u/s 132(8), the authority effecting seizure of the documents can retain

them for a period of 180 days and in case these are to be retained beyond that period, then approval of the higher authorities indicated in the sub-

section is required to be taken. There is also no dispute with the proposition that the reasons are not only to be recorded, but these are to be

conveyed to the assessee. The maximum limit for which the account books or other documents can be retained, has been indicated in the proviso

to the said sub-section. This is 30 days after the proceedings are completed.

4. So far as the legal position is concerned, the learned counsel for the petitioner has rightly placed reliance on the decision of the Supreme Court

in CIT v. Oriental Rubber Works 62 TC 17. In this decision, the Supreme Court has observed that reasons for retaining the records are to be

reduced into writing. This has to be done by the authorised officer. The approval is to be sought. Thereafter, the approval as also the reasons for

retention are supposed to be conveyed to the assessee. Similar view has again been expressed in a number of decisions. They are as under :

Commissioner of Income Tax and Others Vs. Mahabir Prasad Poddar, ,

Mahabir Prosad Poddar Vs. Commissioner of Income Tax and Others, ,

In the Matter of: Shki Hanuman Pershadganeriwala Vs. The Director of Inspection, Income Tax, New Delhi, .

5. A decision of this court in Director of Inspection and Others Vs. K.C. and Co. and Others, also supports the legal position put across by the

learned counsel for the petitioner.

6. The counsel appearing for the respondents does not dispute the correctness of the legal aspect as noticed in the judgments referred to above.

He, however, submits that the approval was sought. It is further submitted that reasons for retention of accounts were also recorded. It is further

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stated that the fact that the records are going to be retained was duly conveyed to the petitioner. For this, the letter of the approval, as noticed

above, is in the records produced in the court. The first approval is dated 6-10-1995. This is addressed to Shri Mohan Mangotra, B-68, Greater

Kailash-I, New Delhi. The reasons for retention of the records as indicated in the communication are that these records were required for

completing the investigation. The latest approval is dated 21-6-2000. This has again been addressed to the petitioner at B-68, Greater Kailash-I at

New Delhi. The reasons have, thus, again been indicated therein. Therefore, to say that the approval was not obtained or that reasons have not

been recorded, is a argument which is factually incorrect. So far as the communications addressed to the petitioner are concerned, the presumption

would be that these were duly conveyed. In the face of the record maintained by the respondents, the argument raised by the petitioner that the

orders of the approval or the reasons were not conveyed to the petitioner, cannot be sustained. As a matter of fact, there are no factual averments

made in the writ petition that the orders by which the records were retained or the approval(s) were never conveyed to the petitioner, and what

has been stated is that there was non-compliance of section 132(8). This has not been elaborated. From a perusal of the record, it becomes

apparent that the requisite approvals have been duly addressed to the petitioner. The presumption would, therefore, be in favour of the revenue, so

far as the addressing of communications was concerned.

7. In view of the above, there is no merit in this petition. This is dismissed. The respondents are, however, directed to return the records to the

petitioner in terms of the proviso and also to complete the proceedings at the earliest, preferably within this year.

8. Disposed of accordingly.

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