
(2000) 11 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 500 of 1998

Peerless General Finance and Investment Co. Ltd. and
Another

APPELLANT

Vs

Assessing Officer and Others

RESPONDENT

Date of Decision : 09-11-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Income Tax Act, 1961 — Section 120, 120(1), 120(2), 120(4), 131
Income Tax Rules, 1962 — Rule 36A, 37, 37A

Citation : (2001) 167 CTR 22 : (2001) 248 ITR 113 : (2001) 117 TAXMAN 253

Hon'ble Judges : Onkareshwar Bhatt, J;M. Katju, J

Bench : Division Bench

Advocate : Debi Prosad Pal and Rakesh Kumar, for the Appellant; Bharatji Agarwal, for the Respondent

Judgement

M. Katju, J.—Heard Dr. Debi Prosad Pal and Sri Rakesh Kumar, for the petitioner, and Sri Bharatji Agarwal, for the Department.

2. This writ petition has been filed praying for a writ of certiorari to quash the impugned letters and summons dated October 23, 1998, four letters and summons all dated November 6, 1998, four letters and summons all dated November 25, 1998, and four letters and summons all dated December 2, 1998, relating to the financial years 1995-96, 1996-97, 1997-98 and 1998-99 and the survey and seizure made on October 30, 1998, and the retention of documents made u/s 131(3) of the Income Tax Act on November 17, 1998, by respondent No. 1 and all proceedings pursuant thereto. It has also been prayed that a writ of mandamus be issued commanding the respondent to act in accordance with law and cancel the impugned letters. It has further been prayed that a writ of prohibition be also issued to the respondent prohibiting the respondent from taking action in pursuance of the aforesaid letters and summons.

3. The petitioner is a company registered under the Indian Companies Act doing

the business of insurance and investment. After nationalization of the life insurance business, the petitioner stopped the provident insurance business and has been carrying on business of providing social welfare saving schemes for the benefit of the public. Petitioner No. 2 is a citizen of India and shareholder in the petitioner-company. The petitioners are challenging the competence and the authority of the respondents to issue summons u/s 131 of the Income Tax Act and to conduct survey u/s 133A of the Act and to seize books of account or documents in the course of survey. In paragraph 4 of the writ it is alleged that the petitioner has crores of customers all over India who have availed of various social welfare savings schemes of the petitioner. The petitioner has numerous employees and has various branches and units of which the Kanpur branch is one. The present dispute relates to the Kanpur branch of the petitioner. The petitioner also engaged various contractors and subcontractors and professional or technical personnel. The petitioner has to deduct Income Tax u/s 192 of the Act of those employees who have taxable income. The petitioner also deducts tax u/s 194C of the Act in respect of payments made to contractors or subcontractors. The petitioner also deducts Income Tax under the Act wherever it is applicable. All the said taxes have been deducted at source by the petitioner and have been duly paid by the petitioner to the credit of the Central Government u/s 200 of the Act. The petitioner also furnishes returns in respect of the said tax deducted at source u/s 206 of the Act to the prescribed Income Tax authorities in different States, respondent No. 1, Assessing Officer, TDS Ward-III(9), Kanpur, being one of them in respect of the branch office at Kanpur where the petitioner deducts tax u/s 192 of the Act and files returns in Form No. 24. In respect of other deductions of tax made by the petitioner at source under other provisions of the Act the same are done at the head office at Calcutta and the tax deducted at source is paid at Calcutta and all returns in prescribed forms are filed at Calcutta with the Income Tax Officer, TDS Ward 21(3), Calcutta.

4. In paragraph 5 of the writ petition it is stated that the petitioner was a regular Income Tax assessee being assessed by the Joint Commissioner of Income Tax, Special Range-13, Calcutta, who is under the Commissioner of Income Tax, West Bengal-III, under the Chief Commissioner of income tax-11, West Bengal, Calcutta.

5. The petitioner duly filed the return under the Income Tax Act up to the assessment year 1998-99 before the Joint Commissioner of Income Tax, Special Range-13, Calcutta (hereinafter referred to as the regular Assessing Officer of the petitioner), and along with the said returns duly filed copies of audited profit and loss account and balance-sheet and tax audit report apart from other documents. u/s 44AB of the Act the petitioner is also required to have the accounts audited (known as tax audit report) and to enclose a copy of the same along with the returns. In Form No. 3CD of the tax audit report certain particulars regarding tax deducted at source are required to be given which the auditor has to certify. It is alleged that the said requirements go to show that it is for the Assessing Officer who is making the Income Tax assessment of the

petitioner to consider whether proper tax has been deducted at source and paid accordingly or not. Copies of the relevant extracts of the tax audit report for the assessment year 1996-97 are at annexure A. In paragraph 7 of the petition it is alleged that all assessments up to the assessment year 1994-95 have been completed and all taxes which were payable by the petitioner on these assessments have been realised by way of adjustment with the amounts refundable to the petitioner for other years excepting a small portion for which rectification applications are pending before the Assessing Officer. As regards the pending assessments the taxes which had been deducted at source are said to be higher than the amount of tax payable and hence nothing is allegedly due or payable by the petitioner by way of advance tax. Assessments for annual year 1995-96 and onwards are pending before the Assessing Officer being the Joint Commissioner of Income Tax, Special Range-13, Calcutta.

6. In paragraph 8 of the writ petition it is alleged that the petitioner duly deducted tax u/s 192 of the Act in respect of the employees who have taxable income and paid the same u/s 200 of the Act. The petitioner also duly filed the return in Form No. 24 u/s 206 of the Act in respect of its Kanpur branch with the Income Tax Officer, TDS Ward-III (9), Kanpur, who is the prescribed Income Tax authority u/s 206 of the Act read with Rule 36A of the said Rules. The Kanpur office of the petitioner received a summons issued u/s 131 of the Act dated October 23, 1998, addressed to the principal officer of the petitioner-company requiring the principal officer to appear before respondent No. 1 on October 30, 1998, and to produce all Forms No. 15H and policy documents. By the said summons respondent No. 1 threatened to impose penalty u/s 272A(l)(c) of the Act in default of compliance of the summons. The principal officer of the petitioner is having its office in the head office at Peerless Bhawan, 3, Esplanade East, Calcutta, and not at Kanpur. A true copy of the summons is annexure B.

7. In paragraph 10 of the writ petition it is alleged that on October 30, 1998, about 10 to 12 Income Tax officials from the office of respondents Nos. 1 to 4 visited the office premises of the petitioner at Kanpur for checking the records for ascertaining compliance of Section 194A of the Act. The said officials required the petitioner to produce various documents and detained two of the staff of the petitioner. It is alleged that although the petitioner fully co-operated with the said officials and made available all the records which they wanted to survey, the said officials seized several documents as is evident from the seizure list copy of which is annexure C. On or about November 17, 1998, the head office of the petitioner at Calcutta received letters dated November 6, 1998, one each in respect of the financial years 1995-96, 1996-97, 1997-98 and 1998-99 enclosing summons u/s 131 of the Act also dated November 6, 1998, requiring the principal officer of the petitioner at Kanpur to appear before respondent No. 1 on November 23, 1998, and to produce various documents mentioned at the back of the summons. By the said letters, respondent No. 1 also threatened to levy penalty and institute prosecution for default of the compliance of the said summons. Similar letters with summons were also served upon the Kanpur office

of the petitioner copy of which is annexure D. The petitioner also received summons u/s 131 of the Act dated November 6, 1998, requiring the petitioner to appear on November 17, 1998, and to produce certain documents vide annexure E. In paragraph 13 of the petition it is alleged that on November 17, 1998, an employee of the petitioner appeared before respondent No. 1 and produced the documents which were required to be produced. Respondent No. 1 retained the books of account u/s 131(3) of the Act. A true copy of the letter dated November 17, 1998, is annexure F.

8. In paragraph 14 of the writ petition it is alleged that the petitioner pointed out to respondent No. 1 that summons u/s 131 of the Act can be issued only when any proceeding is pending but there was no proceeding pending. The petitioner also pointed out that the returns of income for the financial years ended March 31, 1996, and March 31, 1997, had already been filed with the Joint Commissioner of Income Tax, Special Range-13, Calcutta, and the returns of income for the financial years ended on March 31, 1998, and March 31, 1999, were yet to be filed as the due dates for filing the same had not passed. It was pointed out to respondent No. 1 that the Assessing Officer of the petitioner being the Joint Commissioner of Income Tax, Special Range-13, Calcutta, had also initiated enquiry under Sections 142(1) and 143(2) of the Act. It was also pointed out that no enquiry or proceeding before any TDS officer in respect of any financial year concerned is pending. Hence, it was alleged that the purported summons were without jurisdiction and without authority of law. It was also alleged that the seizure of the books of account and other documents in the course of survey and retention thereof u/s 131(3) of the Act are wholly illegal, invalid and inoperative and without any authority of law. Thereafter, the petitioner received four letters all dated November 25, 1998, for the relevant assessment years whereby respondent No. 1 alleged that there was no compliance with the summons issued u/s 131 of the Act. Respondent No. 1 issued fresh summons u/s 131 of the Act requiring the alleged principal officer of the petitioner at Kanpur to produce the said documents by December 1, 1998, true copies of which are annexure H to the writ petition. By letter dated December 1, 1998, the petitioner alleged that respondent No. 1 has no competence or authority to issue the summons and require the petitioner to produce any document or to seize any document. The petitioner prayed to cancel the said summons and return the books of account and documents. True copies of the letters are at annexure I. It is alleged in paragraph 17 of the petition that as yet the petitioner has not received any reply to any of the said letters. However, respondent No. 1 by four letters dated December 2, 1998, alleged non-compliance of the summons issued u/s 131 of the Act and again required the petitioner to comply with the summons. True copies of the four letters are annexure J. Thereafter by letter dated December 10, 1998, the petitioner informed respondent No. 1 that till now the petitioner has not received any reply to his letters. The petitioner again alleged that respondent No. 1 has no competence or authority to issue the summons and take the impugned action. A

true copy of the said letter is annexure K to the petition.

9. In paragraph 19 of the petition various provisions of the Income Tax Act and Rules are referred to and it is alleged that the respondent acted illegally and without jurisdiction. In paragraph 27 it is alleged that respondent No. 1 is not the Assessing Officer of the petitioner and hence has no competence or authority to invoke any power u/s 131 of the Act or to retain the books of account and documents. In paragraph 28 it is alleged that respondent No. 1 has not recorded any reason for impounding the said documents and hence his action is illegal. In paragraph 29 of the petition it is alleged that under proviso (b) to Section 131(3) the documents cannot be validly retained beyond 15 days without the approval of the Chief Commissioner or Director. It is alleged that such approval has not been granted. In paragraph 30 it is alleged that the power u/s 133A can only be exercised by the Assessing Officer and not by respondent No. 1. It is alleged that the inspection and seizure are without jurisdiction. In paragraph 32 it is alleged that Article 19(l)(g) and Article 14 of the Constitution have been violated.

10. A counter-affidavit has been filed in which the allegations in the writ petition have been denied. In paragraph 4 of the counter-affidavit it is alleged that respondent No. 1 has jurisdiction to issue the summons and conduct the survey. The powers have been conferred upon respondent No. 1 by the Commissioner of Income Tax, Kanpur, vide order u/s 120(2) dated September 29, 1995, annexure C. A. 1 to the counter-affidavit. It is alleged that the documents were validly seized and retained. True copies of the retention order are annexure C. A. 2 to the counter-affidavit. True copy of the order sheet is annexure C. A. 3.

11. In paragraph 5 of the counter-affidavit it is alleged that the person making payments at the Kanpur office was liable to deduct Income Tax at source. The details have been given in the said paragraph. It is alleged that the petitioner did not furnish the prescribed return in Form No. 26A because it did not make deduction of TDS u/s 194A and thus helped its depositors in tax evasion. It is alleged that since Forms Nos. 24, 26C and 26J had been filed at Kanpur then it is not understandable as to why return in Form No. 26A was not filed at Kanpur. In paragraph 6 of the counter-affidavit it is alleged that even though the petitioner can be assessed at Calcutta, still with respect to the proceeding under Sections 201 and 201(1A) of the Income Tax Act, that fact is not relevant in view of the statutory obligation of the petitioner to deduct Income Tax at source at Kanpur in respect of the payments made at Kanpur. Since the liability for deduction in respect of payments made by the Kanpur office of the petitioner was at Kanpur and the said amount was liable to be deposited at Kanpur by the petitioner, hence the fact that the petitioner was assessed by the Assessing Officer at Calcutta is not relevant for the purpose of proceedings under Sections 201 and 201(1A) which are pending before respondent No. 1. In paragraph 7 of the counter-affidavit it is alleged that in Column No. 11 of Form No. 3CD the auditor has to comment whether the Assessing Officer has made compliance of the TDS provisions and thus comments have necessarily to be taken into cognizance by

the Assessing Officer having jurisdiction over the TDS matters. In paragraph 8 of the counter-affidavit it is alleged that the petitioner has filed annual returns in Forms Nos. 24, 26C and 26J before respondent No. 1.

12. In paragraph 9 of the counter-affidavit it is alleged that since the petitioner did not make deduction of Income Tax at source u/s 194A from interest it was necessary to quantify the default and hence the proceeding under Sections 201 and 201(1A) and summons u/s 131 were valid. It is further alleged that instead of making TDS deduction and deposits, the petitioner and its agents at Kanpur provided pre-printed blank Forms No. 15H to their depositors but they were not filled up nor was the verification clause filled up. They were not submitted to the Commissioner of Income Tax as prescribed. It is alleged that the fact that the signature of the depositors was filled on blank forms sufficiently indicates that under the cover of these forms the petitioner never made TDS deduction. The petitioner has not been able to explain why these forms which should have been submitted by the seventh of the succeeding month in which they were received were kept in the petitioner's Kanpur office. Since the relevant documents were of vital nature relevant to the proceeding as such they were lawfully retained u/s 131(3) of the Act. In paragraph 10 it is alleged that the survey and seizure were lawful and in accordance with law. In paragraph 13 it is stated that Sri Chandra Prakash who introduced himself as Subhash Chandra and one Sri M. P. Agarwal refused to put their signatures on the order sheet. The intention of the petitioner and its employees was not proper. The petitioner and its officials provided blank Form No. 15H to their depositors and simply obtained their signatures without getting them filled up and verified and made payments without deduction of Income Tax at source. In paragraph 14 it is alleged that the petitioner has failed to deduct the Income Tax at source u/s 194A of the Act. It is further alleged that respondent No. 1 was the Assessing Officer in terms of the order dated September 29, 1995, and as such the order issuing" summons, etc., were valid. Respondent No. 1 never intended to touch the assessment of the petitioner but being the Assessing Officer for TDS purposes he had to enforce the compliance on the part of the petitioner to produce the books of account and documents which are relevant for TDS purposes only. In paragraph 16 it is alleged that the attitude on behalf of the petitioner was unco-operative right from the beginning of the enquiry. The petitioner and his employees refused to sign the order sheet recording their presence and they have objected to the lawful issuance of summons and retention of books of account. They only wanted to create hurdles on the Income Tax authorities. In paragraph 22 of the counter-affidavit it is alleged that the petitioner has tried to confuse two issues, one relating to the assessment and the other relating to the proceedings u/s 201, which are absolutely different. Before making recovery under Sections 201 and 201(1A) it is mandatory on the part of the respondent to ascertain the quantum of default and to issue notice of demand thereafter. Since the petitioner had not provided the relevant information for determination of the amount of default he cannot claim that necessary notice of demand was not issued. It is further stated that

orders under Sections 201 and 201(1A) are appealable. Simply obtaining of Form No. 15H does not matter since they were not obtained in the prescribed manner nor were they furnished to the Commissioner of Income Tax or Chief Commissioner of Income Tax. In paragraph 24 it is alleged that the petitioner had indulged in mass scale tax evasion as he has provided pre-printed forms to its depositors and obtained their signatures and made payment of interest without TDS deduction. The petitioner had not deducted the Income Tax at source and had violated the statutory provisions. In order to recover the tax in default the determination of its quantum was necessary for which relevant books of account and documents were lawfully seized. In paragraph 24 of the counter-affidavit various alleged defaults by the petitioner have been mentioned. Since the petitioner has its office at Kanpur the respondent has jurisdiction in the matter since the payments were being made there. In paragraph 28 of the counter-affidavit it is alleged that before retaining the books of account and documents the respondent has duly recorded the reasons and secured the approval of the Commissioner of Income Tax, Kanpur, to continue retention beyond 15 days. In paragraph 30 it is alleged that u/s 133A every Assessing Officer can make survey in respect of the person or classes of persons in respect of whom he exercises jurisdiction. Respondent No. 1 is the Assessing Officer for TDS purposes and hence his action was valid. A rejoinder affidavit has also been filed and we have perused the same. Before dealing with the submissions of learned counsel for the parties we may quote the relevant provisions of the Income Tax Act. Section 131(1) of the Act states as follows :

"The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals) and Chief Commissioner or 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, namely :-

- (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."

13. Section 131(3) states as follows :

"Subject to any rules made in this behalf, any authority referred to in Sub-section (1) or Sub-section (1A) 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 Assessing Officer or an Assistant Director or Deputy Director shall not-

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

(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General or Commissioner or Director therefor, as the case may be."

14. Section 133A(1) states as follows :

"Notwithstanding anything contained in any other provision of this Act, an Income Tax authority may enter-

(a) any place within the limits of the area assigned to him, or

(b) any place occupied by any person in respect of whom he exercises jurisdiction, or,

(c) any place in respect of which he is authorised for the purposes of this section by such Income Tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place,

at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession-

(i) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place,

(ii) to afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein, and

(iii) to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.

Explanation. -- For the purposes of this sub-section, a place where a business or profession is carried on shall also include any other place, whether any business or profession is carried on therein or not, in which the person carrying on the business or profession states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to the business or profession are or is kept."

15. A perusal of Section 131(1) shows that the Assessing Officer has various powers mentioned in those provisions. The expression "Assessing Officer" has been defined in Section 2(7A) of the Act. It states :

""Assessing Officer" means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income Tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under Sub-

section (1) or Sub-section (2) of Section 120 or any other provision of this Act, and the Joint Commissioner or Joint Director who is directed under Clause (b) of Sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act."

16. The short controversy is, therefore, whether respondent No. 1 can be said to be an Assessing Officer in respect of the impugned action which was taken. We are not going into the factual controversies involved in this case as that is not relevant for disposing of this petition.

17. Dr. Debi Prosad Pal, learned counsel for the petitioner, submitted that respondent No. 1 has no jurisdiction in the matter as he is not the Assessing Officer. It may be noticed that Section 2(7A) mentions that "Assessing Officer" means the officer who has been vested with the relevant jurisdiction by virtue of directions or orders issued u/s 120(1) or (2) or any other provision of this Act. Section 120(1) of the Act states that the Income Tax authorities shall exercise all the powers and functions assigned in the Act in accordance with such direction as the Board may issue. Section 120(2) states that the directions of the Board under Sub-section (1) may authorise any other Income Tax authority to issue orders in writing for the exercise of powers and performance of the functions by all or any of the other Income Tax authorities who are subordinate to it. u/s 206 of the Act the principal officer of the company has to furnish the prescribed returns regarding deduction to the prescribed authority.

18. The word "prescribed" means prescribed by the Rules. Rule 36A of the Income Tax Rules provides that the returns which are to be filed under Rules 57 and 37A shall be furnished to the Assessing Officer so designated by the Chief Commissioner of Income Tax within whose area of jurisdiction the office of the person responsible for deducting tax under Chapter XVII-B is situate. This implies that the person before whom such returns are to be filed is not the Assessing Officer having jurisdiction over the assessee for the purpose of regular assessment. However, the prescribed authority has to be designated by the Chief Commissioner or the Commissioner as the Assessing Officer. There is a distinction between annual return which a person responsible for deducting the tax is to file and the return of the income which an assessee is to file u/s 139(1) in respect of his income. The annual return which has to be filed u/s 206 is different from the disclosure of the income u/s 139(1). The return filed under Rule 36A has to be forwarded to the regular Assessing Officer which in the present case is the Joint Commissioner of Income Tax, Special Range-13, Calcutta. Dr. Debi Prosad Pal, therefore, contended that respondent No. 1 has no jurisdiction to issue summons or take the impugned action.

19. On the other hand, Sri Bharatji Agarwal, learned counsel for the Department, has relied on the order of the Commissioner of Income Tax, dated September 29, 1995, annexure C. A. 1, and has contended that respondent No. 1 has been authorised as the Assessing Officer and hence his action is valid as he is the Assessing Officer of TDS Ward-III (9), Kanpur. However, this order dated

September 29, 1995, has been issued not by the Board but by the Commissioner of Income Tax, Kanpur. Hence, it cannot be said to be an order u/s 120. It is, therefore, submitted by Dr. Debi Prosad Pal, that by the aforesaid order dated September 29, 1995, respondent No. 1 has not been vested with any such powers to perform the function of the Assessing Officer and to take the impugned action. He has submitted that respondent No. 1 received the return filed u/s 206 read with Rule 36A. The order dated September 29, 1995, only gives concurrent power to respondent No. 1 over TDS matters but it does not enlarge his power except what has been conferred by Section 206 read with Rule 36A. Hence, he has submitted that the order dated September 29, 1995, does not confer power on respondent No. 1 to take the impugned action. He has further submitted that the Income Tax authorities can issue summons u/s 131(1) only with respect to any proceeding which may be pending before the said authority but the proceeding's cannot be invoked for initiating any fresh proceeding. He has submitted that no proceeding was pending before respondent No. 1 and the summons u/s 131(1) was issued only in connection with the proceeding initiated by respondent No. 1 u/s 201. He has further submitted that the petitioner cannot be said to be an assessee in default. He has submitted that the payment to the policyholder does not amount to payment of any interest so as to attract Section 194A and hence no annual return u/s 194A has been submitted, although the returns u/s 192 have been filed. Hence, the question of any proceeding pending for non-deduction of tax does not arise. In fact no order u/s 201 has been passed. No notice of demand has been served on the petitioner. Hence, he contended that no proceeding is pending before respondent No. 1 and hence the summons u/s 131(1) was illegal and without jurisdiction. Consequently, impounding of books of account and documents under Sections 131 and 151(1) was illegal as those provisions applied to the authority who was validly holding powers u/s 131(1). On the other hand, Sri Bharatji Agarwal relied on the order of the Commissioner of Income Tax, Kanpur, dated September 29, 1995. He has submitted that respondent No. 1 was the Assessing Officer for the purpose of Chapter XVII which includes Sections 190 to 206. He has submitted that the definition of Assessing Officer in Section 2(7A) is not restricted to an officer making the regular assessment. Hence, he has submitted that respondent No. 1 is also the Assessing Officer for the purpose of taking the impugned action. He has stated that respondent No. 1 cannot be treated as a post office merely for receiving the return of TDS and transmitting it to the regular Assessing Officer at Calcutta. The petitioner did not furnish the prescribed return in Form No. 36A. He has further submitted that respondent No. 1 has to ensure that the petitioner who is making payment of interest to various persons has deducted tax at source. Since the petitioner did not make deduction of tax at source hence the action was validly taken. Respondent No. 1 has to verify whether the TDS has been deducted or not and whether after deduction of TDS the same has been deposited with the Income Tax Department by the person responsible for it. He submitted that the petitioner committed gross violation of the statutory provisions of Section 194A by not making TDS deduction as is evident from

annexure C.A. 7. He has relied on the decision of the Calcutta High Court in *Indo Asahi Glass Company and Another Vs. Income Tax Officer and Others*, .

20. In our opinion, the submissions of learned counsel for the petitioner cannot be accepted. No doubt it is only the Board which can issue directions or orders u/s 120 but Section 2(7A) not only refers to Section 120 but also refers to directions or orders issued under any other provision of the Act. Rule 36A states :

"The returns referred to in Rules 57 and 37A shall be furnished to-

(i) the Assessing Officer, so designated by the Chief Commissioner or Commissioner of Income Tax, within whose area of jurisdiction, the office of the person responsible for deducting tax under Chapter XVII-B is situated ; or

(ii) in any other case, to the Assessing Officer within whose area of jurisdiction, the office of the person responsible for deducting tax under Chapter XVII-B is situated."

21. It is settled law that a rule made under an Act is treated to be part of the Act itself. A perusal of Rule 36A shows that the Assessing Officer can be designated by the Commissioner of Income Tax within whose area the office of the person responsible for deducting the tax under Chapter XVII-B is situate. The expression "Assessing Officer" in Section 2(7A) is hence not confined to the Assessing Officer making the regular assessment but includes others also who may come within the purview of Section 2(7A). Since the Commissioner of Income Tax has designated respondent No. 1 by his order dated September 29, 1995, annexure C. A. 1, hence respondent No. 1 has also to be held to be the Assessing Officer.

22. The view which we are taking is also a practicable view because it is not practicable or convenient that the Joint Commissioner of Income Tax, Calcutta, who is making the petitioner's regular assessment should make enquiries relating to Kanpur when there are Income Tax authorities at Kanpur. In our opinion, it cannot be said that respondent No. 1 has only to act as a post office and transmit the returns to Calcutta. Respondent No. 1 can make some prima facie investigation regarding TDS matters relating to the Kanpur office of the petitioner, since he is expected to send correct information to the best of his ability to Calcutta. Since respondent No. 1 is situate at Kanpur it will be convenient if we hold that respondent No. 1 can make preliminary or prima facie investigations and transmit the same to the regular Assessing Officer at Calcutta. No doubt the regular assessment will be done at Calcutta and hence the Assessing Officer at Calcutta can also make enquiries so as to make a correct assessment of the petitioner's income, but enquiries can also be made by respondent No. 1 who is at Kanpur regarding the TDS matters of employees of the Kanpur office of the petitioner. This will be convenient to the petitioner also relating to the functioning of his Kanpur office since the employees of the petitioner at Kanpur and other persons to whom the petitioner has paid interest at Kanpur office can easily be contacted by respondent No. 1 and details regarding their TDS can be verified by the Income Tax authority at Kanpur. The

view we are taking appears to be a practicable view otherwise to take the view that only the regular Assessing Officer at Calcutta can make these enquiries would be placing a difficult burden on him as he is at Calcutta far away from Kanpur.

23. The provisions in question are machinery provisions and it is a settled principle of interpretation that such provisions should be interpreted to make the machinery workable, vide CIT v. Mahaliram Ramjidas [1940] 8 ITR 442; CIT v. National Taj Traders [1980] 121 ITR 535, etc. No doubt the opinion of respondent No. 1 regarding TDS details will not be binding on the regular Assessing Officer at Calcutta but they will certainly help him in coming to a correct determination of the petitioner's income. Hence, respondent No. 1 is expected to send correct information to Calcutta, for which he may have to make some enquiries and inspect some documents.

24. As regards the submission of Dr. Debi Prosad Pal that no proceedings are pending before respondent No. 1 we are of the opinion that since, admittedly, the assessment proceedings are pending at Calcutta it is not a case where no proceedings are pending at all. Section 131 does not expressly lay down that some proceedings must be pending before the same Income Tax authority who exercises the power u/s 131. No doubt some High Courts have taken a view that some proceeding must be pending before the same authority, but we do not think this can be made an absolute principle. Section 131 is a machinery provision and must be interpreted in a manner which makes the machinery workable and practicable .

25. In view of the above this petition fails and is dismissed. No order as to costs.