(1980) 02 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 3418 of 1979

Ram Saroop Pawan Kumar — APPELLANT

Vs

Income Tax Officer — RESPONDENT

Date of Decision : 27-02-1980

Acts Referred:
Income Tax Act, 1961 — Section 131, 131(1), 131(3), 133A(4)

Citation : (1980) 18 CTR 101 : (1980) 125 ITR 603

Hon'ble Judges : S.P. Goyal, J;Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : Bhagirath Dass and S.K. Hirajee, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

S.P. Goyal, J.—This petition under Article 226 of the Constitution of India has been filed for quashing the order, annex. P-4, and the issuance of a direction to the respondent for the return of the books enumerated in annex. P-3.

2. The petitioner, M/s, Ram Saroop Pa wan Kumar, is a registered partnership concern engaged in the wholesale cloth business at Jullundur City. Its business premises were surveyed on August 30, 1979, by a survey party headed by Mrs. Baljit Bains, ITO, District 1(1), Jullundur. According to the allegations in the petition, the survey commenced at 11.00 A.M. and continued up to 9.15 P.M. About the close of the survey at 9.00 P.M. Pawan Kumar, a partner of the firm, was served with a notice, annex. P-2, u/s 131 of the I.T. Act, 1961, to produce the documents mentioned in annex. P-3 and simultaneously these books were collected by the raiding party and taken away along with them. It was further pleaded that the books were seized and taken away in violation of the provisions of Sub-section (4) of Section 133A but to circumvent the said provisions a notice under Sub-section (1) was prepared and served and the order passed under Sub-section (3) of Section 131 of the Act.

3. The petition has been contested by the ITO, who, while controverting all the material allegations regarding seizure and impounding of documents, pleaded,

that the survey had come to an end at 7.30 P.M., and it was thereafter that from the camp office, a notice u/s 131(1) was issued invoking the provisions of Sub-section (6) of Section 133A as Pawan Kumar, a partner of the firm, evaded to give satisfactory reply regarding certain account books. It was further claimed that the books were duly produced by Pawan Kumar in response to the notice, Ex. P-2, and the same were thereafter impounded by the ITO by virtue of the provisions of Section 131(3) of the Act.

4. Mr. Bhagirath Dass, the learned counsel for the petitioner, sought to challenge the impugned order on a number of grounds but we do not propose to go into all of them as the said order has to be quashed on the ground that the books were actually seized and taken away after the survey in violation of the provisions of Sub-section (4) of Section 133A and the alleged notice u/s 131(1) has been prepared and served during the course of the survey to circumvent the said provisions. To substantiate his contention that the books had been actually seized and taken away after the close of the survey, the learned counsel relied on annex. P-3 which is titled as " List of documents impounded u/s 131 on August 30, 1979 ". According to the learned counsel, this was, in fact, an annexure which accompanied the notice, annex. P-2, which conclusively shows that the books had been seized and impounded prior to the service of notice, annex. P-2. The learned counsel for the revenue however, strongly contested this factual averment and, therefore, we sent for the original record. From its perusal we found that annex. P-3 was the second carbon copy of the original which was found attached to annex. P-4, the order impounding the document, and there was no other list of documents on the record which is alleged to have been served on Pawan Kumar along with annex. P-2. It is, therefore, evident that before the service of annex. P-2, the documents had, in fact, been seized and impounded and it was only thereafter that the notice, Ex. P-2, was served to bypass the provisions of Sub-section (4) of Section 133A of the Act. We have, therefore, no doubt that the account books in the present case were seized and removed by the respondent while acting u/s 133A in violation of the provisions of Sub-section (4) of the said section.

5. In the result, this petition is allowed, the impugned order annex. P-4, quashed and direction issued to the respondent to return the books contained in annex. P-3 to the petitioner within fifteen days from today. The petitioner shall also be entitled to the costs of this petition which are assessed at Rs. 250.

Bhopinder Singh Dhillon, J.

6. I agree.

