

(2015) 01 KAR CK 0524
In the Karnataka High Court
Case No : W.A. No. 3014 of 2013 (T-IT)

Ramesh G. and Others

APPELLANT

Vs

Prakash V. Sanghvi

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 11
Income Tax Act, 1961 — Section 131, 131(1), 131(1A), 132, 132(1)

Citation : (2016) 236 TAXMAN 176

Hon'ble Judges : N. Kumar, J;B. Veerappa, J

Bench : Division Bench

Advocate : K.V. Aravind, for the Appellant; K. Kiran Kumar, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

N. Kumar, J.

1. The Revenue has preferred this Writ Appeal against the order passed by the learned Single Judge holding that the Income Tax Officer is not vested with the power to have a camp office at the residence of the assessee and get his attendance in connection with the proceedings under the Income Tax Act and therefore the notice issued as per Annexure-A is one without authority of law and setting aside of the said notice.

2. The learned Counsel appearing for the Revenue assailing the impugned order contends that a reading of the provisions of Section 131 of the Income Tax Act makes it clear that if the authority under the Act, has reason to suspect that any income has been concealed or likely to be concealed by any person or class of persons within his jurisdiction, then for the purpose of making any enquiry or investigation relating thereto it shall be competent for him to exercise the power conferred under sub-section (1) on the Income Tax authorities. Therefore the notice issued under Section 131 of the Act is legal and valid and the learned Single Judge erred in setting aside the same.

3. Per contra, the learned Counsel for the assessee submitted that Order 11 of the Code of Civil Procedure which deals with enforcing attendance of any person and examining him on oath do not provide for opening camp office in the assessee's residence and therefore the notice issued calling upon the assessee to appear before the authority in the camp office set up in the assessee's residence is without jurisdiction and rightly the learned Single Judge was justified in setting aside the same.

4. In the light of the aforesaid facts and rival contentions, the question that arise for our consideration is:

"Whether the Assessing Authority could enter upon the premises of the assessee and call upon him to give evidence, by virtue of power conferred under Section 131 of the Act?"

5. Section 131 and Section 131(1A) of the Act reads as under:

131. (1) The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel referred to in clause (a) of sub-section (15) of 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.

Sub-Section (1A) reads thus:

(1A) If the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director, or the authorised officer referred to in subsection (1) of section 132 before he takes action under clauses (i) to (v) of that sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that subsection, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.

Sub-section (1) of Section 131 confers the power on the authorities mentioned in the said provision the powers of a Court under the Code of Civil Procedure in

respect of matters mentioned in the said provision. One such provision is enforcing the attendance of any person including any officer of a banking company and examining him on oath. Sub-section 1(A) was inserted with effect from 1-10-1975 which provides that even before the authorized officer takes action under clauses (i) to (v) of sub-section (1) of Section 132, if he has reason to suspect that any income has been concealed or is likely to be concealed by any person or class of persons, within his jurisdiction, then for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.

6. In other words, sub-section (1A) vests in such an officer to exercise the power conferred under Section 131(1) even before initiating any proceedings with respect to such person under the provisions of the Act. Once such power is vested, the authorized officer has an option to summon the person to appear before him at his office or he can go to the place of such person and examine him on oath. The said provision enables the authorized officer to enforce attendance if the person is not willing to appear before him. It is not necessary that in each and every case the attendance is to be enforced. If the person who has to be examined on oath voluntarily appears, the question of enforcing the attendance would not arise. Yet another instance is, when the officer himself goes to the place of a person for the purpose of examining him on oath and if he deposes, the question of enforcing the attendance would not arise. The examination of such person on oath may be at the place of the authorized officer or at the place of person who has to be examined. Therefore in the instant case, the authorized officer went to the house of the assessee, the respondent herein, served notice on him to depose. In the said notice, as he should be notified whether he would be examined, it is mentioned that: "you are hereby required personally to attend my camp at your residence". Nothing could be read out of that phrase "camp at your residence". All that it means is, as he has already entered the premises of the residence, in order to comply with the legal requirement, he has served summons on him calling upon him to depose. To show the place where he should depose, the phrase, "camp at your residence" is mentioned. In that view of the matter, the learned Single Judge was not justified in his view that the authorized officer has no right to enter the premises of the residence. The observation of the learned Single Judge that the authorized officer has trespassed into the house of the assessee and it deserves to be prosecuted before the competent criminal court, has no legal basis.

7. In fact, the learned Single Judge has not interfered with the search and seizure of cash of Rs. 40 lakhs from the premises of the assessee and the panchanama drawn on that day. Under these circumstances, the observations made by the learned Single Judge at paragraphs 8 and 10 of the order is unsustainable and are hereby set aside. Even the interpretation sought to be

placed by the learned Single Judge on Section 131 and Section 132(1) of the Act, is also contrary to law and is hereby set aside. However the learned Single Judge has not interfered with the search and seizure of cash. Hence, that portion of the order is not interfered with.

Therefore, in the light of the above discussion, the Writ Appeal is partly allowed.