(1970) 03 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 3212 of 1969

Ramji Dass Om Parkash — APPELLANT

Vs

Income Tax Officer and Another — RESPONDENT

Date of Decision : 26-03-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1961 — Section 131(3)

Citation : (1970) 77 ITR 1010

Hon'ble Judges : B.R. Tuli, J

Bench : Single Bench

Advocate : Hans Raj Aggarwal, for the Appellant; D.N. Awasthy and Avinash Chander, for the Respondent

Judgement

B.R. Tuli, J.—The petitioner-firm carries on business of commission agents and retailers in food-grains at Rama Mandi, District Bhatinda. The firm submitted its returns of income on the basis of which the assessments were completed up to the assessment year 1968-69, For the assessment year 1969-70 the firm submitted its return on July 15,1969, and the assessment proceedings are still pending. The Income Tax Officer, Bhatinda, respondent No. V, received, a complaint regarding concealment of income and tax evasion indulged in by the petitioner-firm and on receipt of the complaint, he authorised Shri Nand Singh Kanwal, Inspector of Income Tax, u/s 133A(1)(b) of the Income Tax, 1961 (hereinafter called "the Act "), to enter the business premises occupied by the petitioner-firm and to inspect the books of account and, if necessary, to place marks of identification thereon, Shri Nand Singh visited the shop of the petitioner-firm on September 29, 1959, and, while inspecting the books of account, he came across Roznamcha Bahi containing a number of Uchanti entries which, though incorporated in the Roznamcha Bahi, were not taken into other books of account like cash book and ledger. The Roznamcha Bahi was signed by Nand Singh, who also recorded the statement of Shri Parkash Chand, a partner of the firm, who admitted the Uchanti nature of the entries. On September 27, 1969, the petitioner-firm had been issued a notice u/s 143(2) of the Income Tax Act for October 3, 1969, and on that day Shri Parkash Chand, partner of the petitioner-firm, appeared before respondent No. 1 along with Shri R. K. Goel, advocate, and produced books of account relating to the period from April 1,1968, to March 31, 1969. Respondent No. 1 impounded these books of account by passing the following order :

" The books of account of the assessee contain some fictitious entries (account period April 1, 1968, to March 31, 1969). A number of entries in the Roznamcha do not occur in the other books of the assessee. The assessee is alleged to be carrying on Uchanti business. The books, if returned, are not likely to be produced again. Hence, the books of account are being impounded u/s 131(3)."

2. Thereafter, he recorded the presence of Shri Parkash Chand and Shri R. K. Goel, advocate, and passed the following order :

"Account produced as per order u/s 131(3). Nakal has not been produced. The same would be produced tomorrow. Statement of Shri Parkash Chand has been recorded and placed on record. Nakal to be produced on October 1, 1969."

3. This order is signed by respondent No. 1 as well as Parkash Chand, the assessee. The allegation of the petitioner-firm in the writ petition is that no reasons in support of the order impounding were recorded on October 3, 1969, and the order that now exists on the order sheet was written after the petition was filed. The learned counsel for the petitioner, for this submission, relies on the order u/s 131(3) of the Income Tax Act delivered to the petitioner-firm which is in the following terms :

" Under powers conferred upon me u/s 131(3) of the Income Tax Act, 1961, I hereby impound and retain in my custody the following books of accounts which have been produced before me during the course of assessment proceedings."

4. Then follows the list of account books impounded and retained by respondent No. 1.

5. From this order, it is quite clear that the account books enumerated in the order delivered to the petitioner-firm were impounded and retained by respondent No. 1 on October 3, 1969. The only point for determination is whether respondent No. 1 had recorded the reasons in support of his order impounding the account-books. I have seen the original order sheet and have no doubt that the order, in which reasons were recorded, was passed on October 3, 1969, in the presence of Shri Parkash Chand and his counsel, Shri R. K. Goel. It may be that the reasons were not communicated to them, which led the petitioner-firm and its counsel to believe that no reasons were recorded as the order delivered to them did not contain any reasons. The fact, however, is that respondent No. 1 did record reasons for impounding and retaining the account books and thus complied with the provisions of Section 131(3) of the Act. This sub-section only requires the Income Tax Officer to record his reasons for

impounding any books of account or other documents but does not cast any duty on him to communicate those reasons to an assessee. The learned counsel for the petitioner submits that it is of the essence of the mandate of the legislature to the Income Tax Officers to record reasons and that those reasons should also be communicated to the assessee in order to enable him to take further remedies against impounding. Reliance is placed on a judgment of a Division Bench of the Allahabad High Court in Kanodia Brothers Vs. S.S. Seth, Income Tax Officer, wherein the provisions of proviso (a) to Section 37(2) of the Income Tax Act, 1922, were considered. That section corresponded to Section 131(3) of the Income Tax Act, 1961. In that case, the Income Tax Officer had summoned the books of account from the Secretary, Income Tax Investigation Commission, and, after obtaining them, retained them in his possession without making any order impounding them and thus without recording any reasons for impounding the same. All he did was that he made a subsequent report for obtaining the approval of the Commissioner for impounding the books of account. The learned judges held that the provision contained in Sub-section (2) of Section 37 of the 1922 Act for recording reasons for impounding books of account or other documents was of a mandatory character and, therefore, the Income Tax Officer had first to record reasons for impounding the books and then pass an order for impounding them. Without following this procedure, the books of account could not be retained by the Income Tax Officer. There is nothing in that judgment to suggest that the communication of the reasons recorded by the Income Tax Officer in support of his order to the assessee impounding the account books was also necessary. The language of Sub-section (3) of Section 131 of the Income Tax Act, 1961, does not indicate that the communication of the reasons in support of the order impounding the account books is necessary to be made to the assessee.

6. There is, thus, no force in the writ petition, which is dismissed, but without any order as to costs, as the petitioner-firm seems to have been misled to file the writ petition because in the order served on it the reasons recorded by the Income Tax Officer on the file were not stated,

