(1987) 03 DEL CK 0055

In the Delhi High Court

Case No : C. W. No. 2587 of 1986

Sardar Parduman Singh APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 03-03-1987

Acts Referred:

Citation : (1987) 62 CTR 59 : (1987) ILR Delhi 9 : (1987) 166 ITR 115 : (1987) 31 TAXMAN 515

Hon'ble Judges : R.N. Aggarwal, J;Jagdish Chandra, J

Bench : Division Bench

Judgement

1. The challenge by Sardar Parduman Sing in this petition under Article 226 of the Constitution of India is to the legality and validity of order dated

December 24, 1985, passed u/s 132(3) of the Income Tax Act, 1961 (hereinafter for the sake of brevity called ""the Act""), restraining the

petitioner and one Harish Chander from removing, parting with or otherwise dealing with property shop No. 235, Lajpat Rai Market, Delhi,

without his previous permission. On the same day, vide seizure memo (annexure U), Shri P. L. Uppal A. D. I. (Investigation) sealed shop No.

235, Lajpat Rai Market. The search and seizure proceeding were conduct by Shri P. L. Uppal in the presence of Shri. Parduman Sing and Shri

Harish Chander. The seizure memo further in column records as follows :

Shri Parduman Singh having right in Shop No. 235, L. R. Market, Delhi.

Shri Harish Chander keeping the key of shop No. 235, -do-.

2. On April 23, 1986, the petitioner through his advocate wrote to the Deputy Director of Inspection (Investigation) stating the in that the shop No.

235, Lajpat Rai Market, belonged to the petitioner, Parduman Singh and it should be released to him. The petitioner received no reply and he sent

a registered notice on him. the petitioner received no reply and he sent a registered notice on May 19, 1986, for the release of the shop to him. To

the same effect, the petition wrote another letter on July 25, 1986. On July 22/23, 1986, the Deputy Director of Inspection wrote to the petition

that the shape under reference could be open subject to his furnishing a bank guarantee equal to the market value of the shop pr establishing his

owner of the shop. The petition through his advocate replied to the above letter and along with the letter sent Income Tax and sales tax orders and

some other document to establish his title to the shop. On August 13, 1986, the petitioner through advocate challenged the legality of the order

requiring the petition to furnish bank guarantee or to establish his ownership he could be permitted to open the shop.

3. The case of the petitioner is that some time 1965-66 he had entered into a partnership with Shri Kishan Chand and stated business in radios and

transistors under the name and style of M/s. Lucky Electronics and that the said partnership was dissolved and the petitioner took over the

business along with the shop and that doing his business in the said shop since 1965-66. The petitioner place on record Income Tax and sales tax

assessment orders since 1971 to show that he has been doing business in the said shop since 1965-66. He also produce don record a number of

other documents to prove his possession of the shop. The contention of the petition is the necessary conditions under which action could be taken

u/s 132 of the act to do not exist in this case and action of the respondent in sealing the shop and further passing the order dated December 24,

1985 (annexure A), are wholly without legal authority and are liable to be struck down.

4. The respondents in their reply affidavit have stated that they had reliable information that one Surjit Singh, resident of A-228, Daruwal (?)

Nagar, near Model town, Delhi and his father-in-law Shri Uttam Singh, resident, of M-247, Greater Kailash-I, had amassed huge wealth in the

form of cash deposits jewelry and immovable properties in their names and in the names of the family members out of their concealed income, and

that the information further was the premises, No. 235, Lajpat Rai Market, had been acquired by the aforesaid persons out of unexplained sources.

5. It is further stated that the information is that the aforementioned persons it acquired shop No. 235 by paying a ""pagri"" of Rs. 14 lakhs the

respondents have further stated in the affidavit that the search party had gone to the shop in question of December 24, 1985, and it was found to

be locked and that at about 3.30 p.m. one Harish Chander had come and produced the keys of the shop and thereafter, the shop was opened and

searched in the presence of Harish Chander and Parduman Singh. It is further stated the on the search on the residential premises of Surjit Singh

two visit cards were recovered in which the business particular of Surjit sign and his brother, Harpal Singh were given as shop No. 235, Lajpat Rai

market. it is further stated that Surjit Singh on being question had denied the acquisition of Shop No. 235, Lajpat Rai Market by paying any

pagri"". The respondent further stated that since it was not practice to seize the property in question, of restrain order u/s 132(3) of the Income Tax

Act was served on the petitioner and the shop was sealed pending the complete of the It is further stated that the shop in question is the property

of the Rehabilitation department government of India and since the petitioner is neither the allottee of the shop in question by the Rehabilitation

department nor was he found in possession of the shop at the time of search the possession of the shop could not be handed over to him and the

possession of the shop in question has been given to the Managing Officer ministry of Home Affairs department of Internal Security, Rehabilitation

Division New Delhi on January 8, 1987.

6. We have carefully gone through the petition the counter-affidavit, the rejoinder affidavit and the other papers placed on the record and we have

no hesitation in coming to the conclusion that the order dated December 24, 1985, as well as the action of the respondents in sealing the shop are

wholly illegal and without justification. Here we would discuss section 132 of the Act, under which the impugned action have been taken. The

relevant part of action 132 reads as follows :

132. (1) Where the Director of Inspection of the Commissioner or any such Deputy Director of Inspection of Inspecting Assistant Commissioner

as ma be empowered in this behalf by the Board in consequence of information in his possession has reason to believe that -

(a) any person to whom a summons under sub-section (i) of section 37 of the Indian Income Tax Act, 1922 (11 to 1922), or under sub-section

(1) of section 131 of this Act, or a notice under sub-section (4) if section 22 of the Indian Income Tax Act, 1922, or under sub-section (1) of

section 142 of this Act was issued to produce, or cause to be produced, any books of account or the documents has omitted or failed to produce,

or cause to be produced, such books of account, or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced,

any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income Tax Act, 1922 (11 of

1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other

valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of

the Indian Income Tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

then, -

(A) the Director of Inspection or the Commissioner, as the case may be, may authorise and Deputy Director of Inspection, Inspecting Assistant

Commissioner, Assistant Director of Inspection or Income Tax Officer, or

(B) such Deputy Director of Inspection or Inspecting Assistant Commissioner, as the case may be, may authorise any Assistant Director of

Inspection or Income Tax Officer,

(the officer so authorised in all aces being herein after referred to as other authorised officer) to -

(i) enter and search any balding, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents,

money, bullion, jewellery or other valuable article or thing are kept;......

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such

search;.......

(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other

valuable article or thing, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part

with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for

ensuring compliance with this sub-section......

(5) Where any money, bullion, jewellery or other valuable article or thing (hereafter in this section 132A and 132B referred to as the Assets) is

seized under sub-section (1) or sub-section (1A) the Income Tax Officer, after affording a reasonable opportunity to the person concerned of

being heard and making such enquiry as may be prescribed, shall, within one hundred and twenty days of the seizure, make an order, with the

previous approval of the Inspecting Assistant Commissioner.

7. From a reading of the various provisions of section 132, it is clear that an officer duly empowered u/s 132 can enter, search and seize books of

account, other documents, money, bullion, jewellery or other valuable article or thing only if the conditions mentioned in section 132(1) (a), (b) and

(c) exist. The conditions, inter alia, are (i) that where any of the officers mentioned in sub-section (1) of the section 132 has issued summons to any

person under any of the sections mentioned in section 132(1) requiring him to produce or cause to be produced any books of account, and that

person has omitted or failed to produce the books of account or other documents which were required to be produced; (ii) where such an officer

has reason to believe that any person to whom summons or notice as mentioned in clause (a) has been or might be issued will not or would not

produce or cause to be produced any books of account, etc., which will be useful for, or relevant to, any proceeding under the Act; (iii) that any of

the officers mentioned in section 132(1) has reason to believe that any person is in possession of money, bullion, jewellery or other valuable article

or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Act.

8. Above are the essential pre-conditions before any action can be taken to enter, search and seize any of the articles or things mentioned in

section 132. Sub-section (3) empowers an officer to take action under sub-section (3) in case he finds that it is not practicable to seize any such

books of account, other documents, money, bullion, jewellery or other valuable article or thing.

9. Sub-section (5) requires the Income Tax Officer to estimate the undisclosed income within a period of 120 days of the date of the seizure after

giving a reasonable opportunity to the person concerned of being heard.

10. We find from the counter filed by the respondents that beyond information that one Surjit Singh and his father-in-law had purchase the shop in

question after paying a ""pagri"" of Rs. 14 Lakhs, there was no material with the respondents that the petitioner was in possession of any money,

bullion, jewellery or other valuable article or thing in the said shop. Further, no satisfaction was recorded that such money, bullion, etc.,

represented either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Income Tax Act.

11. On a search of the shop, no documents, money, bullion, etc., was found in the shop. On these facts, the crucial question that arises is : was the

Assistant Director of Inspection competent to seal the shop and pass an order u/s 132(3) of the Income Tax Act in respect of the shop? A plain

reading of section 132 of the Act shows that its scope is limited to articles and things mentioned in section 132(1)(a), (b) and (c) and it does not

include within its ambit ""immovable property"" because of the reason that the location of an immovable property is known, as no search has to be

made for it, and if no search is called for, the question of seizure does not arise. u/s 132, the search and seizure go together.

12. In Motilal and Others Vs. Preventive Intelligence Officer and Others, , a Division Bench comprising of Mr. Justice R. S. Pathak, as his

Lordship then was, and Mr. Justice R. L. Gulati, held (headnote) :

The power conferred u/s 132(1) of the Income Tax Act is contemplated in relation to those cases where the precise location of the article or thing

is not known to the Income Tax Department and, Therefore, a search must be made for it, and where it will not be ordinarily yielded over by the

person having possession of it. The view that section 132(3) will include a case where the location of the article or thing is known and where

ordinarily the person holding custody of it will readily deliver it up to the Income Tax Department is not correct.

Consequently, goods in the custody of the Assistant Collector of Customs and Central Excise are not things which could be the subject of an order

u/s 132(3).

13. A similar view was taken in Ramesh Chander and Others Vs. Commissioner of Income Tax and Others, . His Lordship held (headnote) :

The articles or things referred to in sub-section (3) of section 132 are those which the authorised officer was empowered to search for the seize

and no other. They must be articles or thing which it may be necessary to search for before they can be seized. The power conferred u/s 132(1) is

contemplated in relation to those cases where the precise location of the article or thing is not known to the Income Tax Department and,

Therefore, a search has to be made for it, and where it will not ordinarily be yielded over by the person having possession of it and, Therefore, it is

necessary to seize it. It is such article or thing alone which can be the subject of an order u/s 132(3). Therefore, it would not include a case where

it is already known that the article or thing is kept in a certain building or place and will ordinarily be yielded up by the person holding custody of

such article or thing. u/s 132, the power to search and seize go together. If no search is called for, no seizure can be made. Therefore, a search

must be carried out u/s 132(1) before an order under sub-section (3) can be passed.

14. The view taken in the aforesaid authorities was approved by the Supreme Court in Commissioner of Income Tax, Haryana, Himachal Pradesh

and Delhi and Others Vs. Tarsem Kumar and Another, and their Lordships held (headnote) :

That where the exact location of the property was known and certain, there was nothing to search or look for. There was no need to seize the

money : the Income Tax Department could direct handing over of the money to the Income Tax Authorities or take steps for such direction through

appropriate authorities.

That, in the context in which the expressions ''seizure'' and ''search'' were used, where the location of the property was known to the Government,

it could not be said that one Government department could search any other Government department and seize documents, money, etc.

15. Mr. Jain, learned counsel for the respondents, referred us to I. Devarajan and

Others Vs. Tamil Nadu Farmers Service Co-operative

Federation and Others, . It was held in the said authority that a ""chose-in-action"" would also be a thing a hence money kept in a bank will be a

valuable thing"" so as to be covered by the provisions of section 132. It was further observed that even in relation to an intangible asset like a

debt"" an order for attachment u/s 132(3) can be made.

16. We have carefully gone through the cited authority and, in our view, it is distinguishable and it has no application to the case in hand. Learned

counsel for the respondents has not been able to cite a single authority where action u/s 132(1) has been taken in regard to an immovable

property.

17. For the reasons stated, we hold that the action of the respondents in sealing the shop and passing an order u/s 132(3) was totally illegal and

with out jurisdiction. Further, the unfortunate part of this case is that in spite of the petitioner repeatedly asking the respondents to remove the seal

and hand over the possession of the shop to him, the respondents persisted with their illegal action and further aggravated it by asking the petitioner

to furnish bank guarantee equivalent to the market value of the shop or to prove his ownership of the shop in case he wanted to open the shop.

This order was not warranted by any law.

18. We may notice here that sub-section (5) of section 132 requires that after any article or thing mentioned in section 132(1) has been seized, the

Income Tax Officer within a period of 120 days and after affording a reasonable opportunity to the person concerned of being heard and making

enquiry as may be prescribed, shall estimate the undisclosed income and proceed further as mentioned in the clauses of sub-section (5). In the case

in hand, after effecting the seizure on December 24, 1985, on action was taken under sub-section (5). The failure to proceed under sub-section (5)

also render the seizure invalid. Mr. Jain contended that the petitioner was only restrained by an order u/s 132(3) from parting with possession or

otherwise dealing with the property without the previous permission of the concerned officer and, Therefore, sub-section (5) was not attracted.

Counsel in support of his contention relied upon Kanwal Shamsher Singh Vs. Union of India and Others, . We find that this authority is

distinguishable and does not apply to the case in hand. Here, by sealing the property, the petitioner was dispossessed of his possession of the

property. This is also the case of the respondents in their counter. The respondents have stated that since the property belonged to the

Rehabilitation authorities, they have on January 8, 1987, given the possession of the shop to the Rehabilitation authorities. This circumstance puts it

beyond doubt that the petitioner had been dispossessed of the property; otherwise how could the respondents deliver the possession to the

Rehabilitation authorities. We find that even assuming the seizure to be valid, the non-compliance of the provisions of the sub-section (5) renders

the seizure invalid. We would here like to add that the action of the respondents in breaking the seals in the absence of the petitioner and handing

over possession of the property to the Rehabilitation authorities is wholly illegal and this action smacks of mala fides and was in all probability done

after coming to know of the filing of the present petition.

19. In Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc., , Mr. Justice Shah, speaking for the court,

observed as follows (headnote).

Since by the exercise of power u/s 132 of the Income Tax Act, 1961, as serious invasion is made upon the rights, privacy and freedom of the

taxpayer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorises it to be exercised.

If the action of the officer issuing the authorisation or of the designated officer is challenged, the officer concerned must satisfy the court about the

regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck

down by the court. If the conditions for the exercise of the power are not satisfied, the proceeding is liable to be quashed. But where power is

exercised bona fide, and in furtherance of the statutory duties of the tax officer, any error of judgment on the part of the officers will not vitiate the

exercise of the power.

20. On a consideration of the entire matter, we have no hesitation in finding that the entire action of the respondents in sealing in shop and passing

an order u/s 132(3) and finally passing its possession to the Rehabilitation authorities is without jurisdiction and it must be struck down. We allow

the petition and quash the order dated December 24, 1985. We further order the respondents to hand over possession of the shop to the

petitioner within 10 days from today. In case possession has been passed on to the Rehabilitation authorities, then they should take back the

possession of the shop and give to the petitioner. We further are of the view that it is eminently a fit case where the petitioner should be awarded

damages for the illegal action of the respondents. We direct the respondents to pay Rs. 10,000 as damages. We further direct that in case the

respondents do not hand back the shop within 10 days, they shall be liable to pay damages to the petitioner at the rate of Rs. 500 per day. The

petitioner also shall have costs which are assessed at Rs. 1,000.

