(1988) 09 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1987 of 1988

Sugan Chand Vinod Kumar — APPELLANT

Vs

Commissioner of Income Tax and Another — RESPONDENT

Date of Decision : 01-09-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 131, 131(1), 131(1A), 131(3)

Citation : (1989) 75 CTR 206 : (1989) 175 ITR 273 : (1989) 43 TAXMAN 241

Hon'ble Judges : M.B. Sharma, J;I.S. Israni, J

Bench : Division Bench

Advocate : Z.S. Meratwal, Fateh Singh Meratwal and N.K. Maloo, for the Appellant; V.K. Singhal and R.B. Mathur, for the Respondent

Judgement

M.B. Sharma, J.—The petitioner is a registered partnership firm carrying on business in cotton and cotton waste and also acts as commission agent and has its business premises at Bijainagar, District Ajmer. The then Income Tax Officer, Ward-2, Beawar, on December 10, 1986, was camping at Bijainagar and entered the business premises of the petitioner at 10 a.m. to survey it u/s 133A of the Income Tax Act, 1961 (for short, "the Income Tax Act"). There are in all four partners in the firm, namely, Sarva Shri Sugan Chand, Kanhiyalal, Noratmal and Vinod Kumar. At the time, when the Income Tax Officer entered the business premises, Sugan Chand was present there. During the course of survey, account books were inspected and two lists marked "A" and "B" which are annexed to the writ petition as annexures 4 and 5, respectively, were prepared. Though it is the case of the petitioner firm that it was during the survey that the account books were seized and impounded, respondent No. 2 in his return has come out with the case that only lists "A" and "B" were prepared and thereafter, a notice u/s 131(3) of the Income Tax Act was given and it was in pursuance of that notice that the account books were presented and impounded. We will not like to enter into the controversy whether the account books were seized and impounded u/s 133A of the Income Tax Act as alleged by the petitioner or they were impounded after notice u/s 131(3) of the Income Tax Act. Assuming for the purpose of the disposal of this writ petition that the account, books were impounded after notice, annexure 7, dated December 10, 1986, the question arises as to whether there has been compliance with the provisions of Section 131(3) of the Income Tax Act in this case or not.

2. Under sub-section (3) of Section 131 of the Income Tax Act, 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 the Income Tax Act. But the proviso to the aforesaid provision of Section 131(3) makes two conditions for the exercise of the aforesaid discretion and the twin conditions are (a) that the reasons for impounding the account books and other documents must be recorded, and (b) if the account books or other documents are retained in custody by the Income Tax Officer or any other authority empowered in this behalf for a period exceeding fifteen days (exclusive of holidays), approval of the Commissioner therefore must be obtained. The approval as aforesaid must be obtained during the period of 15 days and if the approval is obtained after 15 days, it wilt have no effect. There can be no ex post facto approval. We called upon Mr. Singhal, learned counsel for the respondents, to let us know whether before impounding the account books or other documents, any reasons for so doing were recorded by respondent No. 2 or not. So far as the order of the Income Tax Officer at page 39 of the paper book, made u/s 131(3) of the Income Tax Act is concerned, a bare reading of the said order will show that it is not mentioned therein that any reasons for impounding the account books and other documents were recorded. The order reads as under :

"In exercise of powers conferred upon me u/s 131(3) of the Income Tax Act, documents/books of account as per annexures "A" and "B" produced before me u/s 131 of the Income Tax Act are hereby impounded.

(Sd.).....

income tax Officer,

B-Ward, Beawar. "

3. It does not read nor say that any reasons as required under the proviso to Sub-section(3) of Section 131 of the Income Tax Act were recorded. No other order has been placed before us by Mr. Singhal, learned counsel for the respondents, from which it can be said that the reasons as required under Clause (a) of the proviso to Sub-section (3) of Section 131 of the Income Tax Act had been recorded. Learned counsel for the respondents contends that there are two lists "A" and "B" prepared at the time of survey and it was in those lists themselves that under each and every account book/document it was mentioned as to what was the reason. Reasons have to be recorded separately though there is no specific pro forma in which reasons are to be recorded, but the Income Tax Officer must record reasons separately for impounding documents. It is well

settled that the provisions for recording reasons as contained in Section 131(3) are mandatory and not directory. Recording of reasons goes to the root of the jurisdiction of the Income Tax Officer to impound the account books/documents. We are, therefore, of the opinion that in the instant case, no reasons as required u/s 131(3)(a) were recorded and, therefore, the impounding of the account books and documents was in contravention of the mandatory provisions as aforesaid.

4. Mr. Singhal, learned counsel for the respondents, gives out that the assessment for the assessment year 1986-87 is pending and could not be completed because even after notice given u/s 142(1) of the Income Tax Act, the return was not filed. We may state that if despite notice, no return is filed, there are provisions in the Income Tax Act under which an ex parte assessment can be made. We may further state that this court had stayed proceedings on June 30, 1988. Mr. Singhal, learned counsel for the respondents, gives out that the assessment will be completed within two months.

5. Consequently, we partly allow this writ petition and though we hold that the impounding of the account books and other documents was not in accordance with the provisions contained in the proviso to Sub-section (3) of Section 131 of the Income Tax Act, we allow two months'' time as prayed for by Mr. Singhal, learned counsel for the respondents, to complete the assessment. The account books/documents in question shall be returned to the petitioner after two months from today. The stay order dated June 30, 1988, stands vacated. Costs made easy.