
(1990) 04 DEL CK 0001

In the Delhi High Court

Case No : Civil Write Petitions No. 1898 of 1989

TIN BOX CO.

APPELLANT

Vs

Income Tax APPELLATE TRIBUNAL AND OTHERS.

RESPONDENT

Date of Decision : 30-04-1990

Acts Referred:

Citation : (1990) 84 CTR 187 : (1990) 185 ITR 630

Hon'ble Judges : Kirpal, J

Bench : Division Bench

Judgement

KIRPAL J. - Rule D.B. As the question involved is covered by a Full Bench decision of this court [See Smart P. Ltd. Vs. Income Tax Appellate Tribunal, , we are disposing of the writ petition immediately.

An order as to section 132 was issued where after the business premises of the petitioner were searched. In respect of the assessment year 1984-85, an assessment order was passed on March 31, 1987. The same was challenged in appeal, but the appeal was dismissed on January 5, 1988. A second appeal was filed to the Income Tax Appellate Tribunal (respondent No. 1). The petitioner also filed applications for adducing additional evidence. Vide an order dated August 30, 1988, the said appeal was, however, dismissed. We are informed that an application u/s 256 (1) has been filed pursuant to the said order dated August 30, 1988. The petitioner then filed an application u/s 254 (2) for recalling or rectifying the order dated August 30, 1988. Vide an order dated February 2, 1989, this application was rejected. Another miscellaneous application u/s 254 (2) was filed on March 13, 1989, and this was dismissed by an order dated March 29, 1989.

In the present writ petition, the aforesaid orders passed by the various authorities have been challenged before us.

As far as the assessment order and the order of the Commissioner of Income Tax (Appeals) and the order dated August 30, 1988, are concerned, there is no

question of our interfering with them in these proceedings under article 226 of the Constitution. The assessment order has merged in the appellate order of the Commissioner of Income Tax (Appeals) and that order has merged in the order dated August 30, 1988, of the Income Tax Appellate Tribunal. There is an alternative remedy provided to the petitioner under the provisions of the Income Tax Act and the petitioner has availed of the same by filing an application u/s 256(1) of the Act.

As far as the order dated February 2, 1989, and March 29, 1989, are concerned, the contention of the petitioner is that the said orders have been passed without affording any opportunity to be heard in person and without any reasons being indicated in the impugned orders.

This court in *Smart P. Ltd. Vs. Income Tax Appellate Tribunal*, has held that, when an application u/s 254(2) is filed, the applicant has to be heard before the & egrave application is disposed of and, secondly, the reasons for dismissal should be given.

In the present case, admittedly, the applicant was not heard when the said applications were disposed of, nor do the impugned contain any reasons.

The other contention which is raised in this petition is that the books of account and other documents which were seized by the respondents pursuant to the raid which was conducted u/s 132 of the Act on July 23, 1985, have not yet been returned. The contention of the petitioner is that no notice was ever served on the petitioner to the effect that any order u/s 132(2) had been passed for continued retention of the books; nor were any reasons communicated.

Mr. Rajendra has placed before us a copy of the letter dated April 23, 1990, informing the petitioner that an order dated December 19, 1989, had been passed by the Commissioner of Income Tax for continued retention of the books. It is further stated in this letter that earlier approval of the Commissioner for retention of the books, etc., up to December 31, 1989, had been accorded, but learned counsel is unable to bring to our notice a copy of any earlier letter written to the petitioner prior to April 23, 1990.

Under sub-section (8) of section 132, the appropriate authority, namely, the Commissioner of Income Tax, can order the retention of books, etc., for reasons to be recorded in writing. Against such an order which is passed, the assessed has a right to file an application to the Central Board of Direct Taxes u/s 132(10). This right would become meaningless if the passing of the order u/s 132(8) is not made known to the assessed within a reasonable time and, what is more important is that the reasons for continued retention of the books are not communicated to the petitioners. Merely sending intimation to the petitioner that an order for continued retention of the books had been passed cannot give the petitioner adequate opportunity to exercise his right u/s 132(10). Unless and until the petitioner knows what are the reasons which have weighed for passing an order u/s 132(8) he cannot file a meaningful application seeking to challenge

the said reasons which may have weighed with the Commissioner of Income Tax. In our opinion, Therefore, when an order u/s 132(8) is passed, it is imperative that the assessed should be communicated the order itself containing the reasons on which the said order has been passed. Furthermore, this order should be communicated to the petitioner within a reasonable time and as expeditiously as possible so as to enable the assessed to exercise his right u/s 132(10).

In view of the fact that there has been a failure on the part of the respondents in informing the petitioner, within a reasonable time, of the passing of the orders u/s 132(8) and, furthermore, because no reasons have been communicated to the petitioner, the continued retention of the books of account and the other documents is, in our opinion, not warranted.

For the aforesaid reasons, we allow this writ petition. We quash the orders dated February 2, 1989, and March 29, 1989, and issue a writ of mandamus directing respondent & egrave;No. 1 to hear and dispose of the two applications u/s 254(2) on merits and in accordance with law. We further issue a writ mandamus to respondent No. 3 to return to the petitioner, within three weeks from today, the books of account and other documents which had been seized from the petitioners premises. Before returning the books and other documents, the Department will be at liberty, at their own cost, to obtain photo copies of the relevant entries and the documents and they should be attested by the petitioners representative as true copies. The petitioner will produce the returned documents and account books, etc., as and when he is required to do so in accordance with law, the petitioner will keep the documents and other returned material in safe custody.

It is not necessary to decide the validity of rule 46A for the view which we have taken.

There will be no orders as to costs.

Petition allowed.