Supreme Court of India
C.I.T. West Bengal - Iii & Ors. Etc vs Oriental Rubber Works Etc on 15 November, 1983
Equivalent citations: 1984 AIR 230, 1984 SCR (1) 817
Author: V Tulzapurkar
Bench: Tulzapurkar, V.D.

PETITIONER:
C.I.T. WEST BENGAL - III & ORS. ETC.

Vs.

RESPONDENT:
ORIENTAL RUBBER WORKS ETC.

DATE OF JUDGMENT15/11/1983

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
ERADI, V. BALAKRISHNA (J)
MADON, D.P.

CITATION:
1984 AIR 230 1984 SCR (1) 817
1984 SCC (1) 700 1983 SCALE (2)682

ACT:
Income Tax Act , 1961- Sec.132- Interpretation of Sub-sec.(1) -Seizure of books of account and documents-Sub-sec.(8) retention of books beyond 180 days of seizure-Read with sub-secs. (10) & (12) -Impose statutory obligation on Revenue to communicate Commissioner's approval and recorded reasons of the authorised officer to person entitled for return of books. Retention of books-Without such communication-unlawful.

HEADNOTE:
The Revenue who had seized the books of account and documents of the assessee under sec. 132(1) of the Income Tax Act, 1961 did not return the same to the assessee after a period of 180 days of the seizure. The assessee filed a writ petition in the High Court inter alia praying for a direction to the Revenue to return the said books of account. The assessee submitted that the retention of the seized books of accounts and documents beyond the period of 180 days was illegal and invalid inasmuch as neither the approval accorded by the Commissioner of Income Tax for such extended retention nor the recorded reasons of the Income Tax Officer on which such approval was based had been

communicated to him. A single Judge of the High Court held that the retention of the books and documents beyond 180 days was unlawful. A Division Bench dismissed the Revenue's appeal. In these appeals the Revenue submitted that sec. 132(8) of the Act did not impose any obligation on the Revenue to communicate the approval of the commissioner or the recorded reason of the Income Tax Officer on which it is based to the person from whose custody the books of accounts and documents had been seized.

Dismissing the appeals,

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HELD: It is true that sub-sec.(8) of sec. 132 of the Income Tax Act, 1961 does not in terms provide that the Commissioner's approval of the recorded reasons on which it might be based should be communicated to the concerned person but since the person concerned is bound to be materially prejudiced in the enforcement of his right to have such books and documents returned to him by being kept ignorant about the factum of fulfilment of either of the two conditions laid down therein it is obligatory upon the Revenue to communicate the Commissioner's approval as also the recorded reasons to the person concerned. In the absence of such communication the Commissioner's decision according his approval will not become effective. [823 H; 824 A]

Moreover, sub-sec.(10) of sec.132 confers upon the person legally entitled to the return of the seized books and documents a right to object to the

818

approval given by the Commissioner under sub-sec.(8) by making an application to the Central Board stating therein the reasons for such objection and under sub-sec.(12) of sec.132 it is provided that the Central Board may, after giving the applicant an opportunity of being heard pass such orders as it thinks fit. It is obvious that without the knowledge of the factum of the Commissioner's approval as also of the recorded reasons on the basis of which such approval has been obtained it will not be possible for the person to whom the seized books or documents belong to make any effective objection to the approval before the Board and get back his books or documents. [824 B-C]

The scheme of sub-secs (8), (10) and (12) of sec.132 makes it amply clear that there is a statutory obligation on the Revenue to communicate to the person concerned not merely the Commissioner's approval but the recorded reasons on which the same has been obtained and that such communication must be made as expeditiously as possible after the passing of the order of approval by the Commissioner and in default of such expeditious communication any further retention of the seized books or documents would become invalid and unlawful. It is obvious that such obligation arises in regard to every approval of the Commissioner that might have been accorded from time to time. [824 D-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1652 of 1973.

Appeal by Special leave from the Judgment and Order dated the 25th June, 1973 of the Calcutta High Court in Appeal No. 233 of 1970.

WITH Civil Appeal Nos. 759-760 of 1973 From the Judgment and Order dated the 2nd June, 1972 of the Calcutta High Court in Appeal from Original Order Nos. 155 & 158 of 1970.

AND Civil Appeal No. 661 of 1975 From the Judgment and Order dated the 15th March, 1974 of the Calcutta High Court in Appeal No. 96 of 1972.

V.S. Desai, B.B. Ahuja and Miss A. Subhashini for the Appellant, in CA. 1652 of 1973.

S.T. Desai, Miss A. Subhashini for the Appellants in CA. Nos. 759-760 of 1973 & 661 of 1975.

Sanjay Bhattacharya, Rathindas and K. Kathazarika for the Respondent in CA. No. 1652 of 1973.

V.B. Saharya for the Respondent in CA. No. 759 of 1973. N.S. Das Behl for the Respondent in CA. No.760 of 1973. D.N. Mukherjee for the Respondent in CA. No.661 of 1975.

The Judgment of the Court was delivered by TULZAPURKAR, J. All these appeals, at the instance of the Commissioner of Income-tax, raise a common question whether the Revenue is under a statutory obligation to communicate to the person (from whose custody books of account and documents have been seized under section 132(1) of the Income-tax Act, 1961) the approval obtained from the Commissioner of Income-tax and the recorded reasons of the Authorised Officer/Income Tax Officer on which such approval is based for the retention of the seized books of account and documents by the Department for a period exceeding 180 days from the date of seizure under sec. 132 (8) of the Income-tax Act, 1961 ?

Since in all these appeals the facts giving rise to aforesaid question are almost similar, it will suffice to indicate briefly the facts obtaining in M/s. Oriental Rubber Work's case (Civil Appeal No. 1652 of 1973). Under a proper authorisation issued in that behalf under sec. 132(1) of the Act, on 17th February, 1965 a search was conducted by the Income-tax Department in the factory premises at Kantalia as well as the offices and godown at Mahatma Gandhi Road Calcutta belonging to the respondent-assessee and various books of account and documents were seized from the aforesaid premises. After lawfully carrying out the aforesaid search and seizure, the respondent-assessee was given opportunity to inspect the seized books and documents as also to make copies of the entries. The concerned Income Tax Officer then issued a notice to the respondent assessee under Sec. 142(1) of the Act in connection with its assessment for the assessment year 1964-65 and after giving several hearings which were attended by the respondent- assessee or its representative the assessment for

the said year was completed under section 143(3) of the Act on 5th February, 1969. Notwithstanding the passing of such assessment order on 5th February, 1969, the respondent-assessee on 27th February, 1969 moved the Calcutta High Court by way of a writ under Art. 226 of the Constitution inter alia praying (a) for a direction to the Commissioner of Income-tax and the concerned Authorized Officer/Income Tax Officer to return forthwith the said books of account, documents and papers etc. seized as aforesaid and to cancel or rescind the warrant of authorisation issued under sec. 132(1) of the Act and (b) for a mandamus commanding the concerned Income Tax Officer not to proceed with the assessment for the assessment year 1964-65 until the return of documents seized on 17th February, 1965. The main submission of the respondent- assessee was that the retention of the seized books of account and documents beyond the period of 180 days from the date of the seizure (17th February, 1965) was illegal and invalid inasmuch as neither the approval accorded by the Commissioner of Income-tax for such extended retention nor the recorded reasons of the Authorized Officer/Income Tax Officer on which such approval was based had been communicated to the respondent/assessee and that without the return of the seized books of account and documents no assessment for the concerned assessment year 1964-65 could be proceeded with or made. On behalf of the Revenue it was pointed out that the concerned Income Tax Officer had recorded his reasons seeking approval of the Commissioner of Income-tax for extended retention of the seized books of account and documents and had obtained approval of the Commissioner of Income-tax for such extended retention from time to time and therefore such retention of the seized books and documents beyond 180 days was perfectly legal and valid that there was no obligation under sec. 132(8) of the Act to communicate the Commissioner's approval for such extended retention or the, recorded reasons of the Income Tax Officer therefor to the respondent-assessee and that in any event due inspection of the seized books and documents was afforded to the respondent assessee who was also permitted to take copies of the entries in the books and after giving proper hearing to the respondent-assessee the assessment for the year 1964-65 had been validly completed on 5th February, 1969 long before the respondent-assessee approached the Court and obtained a Rule Nisi. A learned Single Judge of the High Court held that the seized books of account and other documents could not be retained beyond the period of 180 days without a complete and effective order of approval for such extended retention of the said books and documents and that since the approval of the Commissioner and the recorded reasons therefore had not been communicated to the respondent-assessee, the retention of the books and documents beyond 180 days was unlawful. The learned Judge, therefore, ordered the issuance of a mandamus directing the Commissioner and the concerned Income Tax Officer to return all the seized books and documents and he further ordered that the concerned Income Tax Officer shall be at liberty to complete the assessment for the year 1964- 65 after the return of the said books and documents and after issuing afresh statutory notices under section 142(1)/143(2) of the Income-tax Act to the respondent- assessee. In rendering the aforesaid decision, the learned Judge followed two earlier decisions of his own High Court in Mahabir Prasad Poddar's case decided by T. K. Basu, J. and his own decision in C. K. Wadhwa's case (which is the subject matter of the companion Civil Appeal No.760 of 1973 before us). At the instance of the Commissioner of Income- tax, an appeal was preferred to the Division Bench of the High Court being Appeal No. 233 of 1970. The self-same contentions were urged on behalf of the Revenue in the appeal and it was specifically submitted that the assessment for the assessment year 1964-65 having been completed on 5th February, 1969 long before the rule nisi had been issued, the direction given by the learned Single Judge with regard to

the liberty to complete the assessment for the said assessment year had become infructuous. The Division Bench, however, negatived all the contentions a dismissed the appeal affirming all the directions given by the learned trial Judge. The Revenue has come up in appeal to this Court.

Counsel for the Revenue urged two points before us in support of this appeal. In the first place, the counsel urged that section 132(8) of the Income-tax Act, which deals with the extended retention of the seized books and documents in excess of the period of 180 days from the date of the seizure merely provides that for such extended retention the Authorised Officer/the concerned Income Tax Officer has to record his reasons in writing in that behalf and has to obtain the approval of the Commissioner of Income-tax for such extended retention and there is no obligation imposed by the said sub-section to communicate the approval of the Commissioner of the recorded reasons of the I.T.O. on which it is based to the person from whose custody the books and documents have been seized or to the person legally entitled to such books and documents and therefore the High Court erroneously held that such extended retention of the seized books and documents without communicating the Commissioner's approval and the reasons on which it is based was unlawful or illegal. Secondly, the counsel contended that in any event since proper opportunity to inspect the seized books and documents and to make copies of the entries was given to the respondent/assessee and since after issuing proper notices and giving hearing to the respondent- assessee, the assessment for the assessment year 1964-65 had been completed long before the issuance of the rule nisi, the same ought to have been upheld as binding on the respondent assessee. In other words, according to the counsel for the Revenue, the unauthorised retention of the seized books and documents beyond 180 days, if any, could not render the assessment for the year 1964-65 properly made invalid. Counsel further pointed out that the respondent- assessee had even preferred appeals to higher authorities challenging the said assessment on merits. It may be stated that Counsel for the respondent-assessee in this appeal conceded that in all the circumstances of the case the assessment already made on 5th February, 1969 should be allowed to stand subject of course to the result of the appeals that have been preferred by the respondent assessee against it. In this view of the matter, the second contention urged by Counsel for the Revenue in this appeal has to be accepted and the assessment for the assessment year 1964-65 made on 5th February, 1969 subject as aforesaid to be upheld. That leaves for consideration the first contention, which as we have indicated earlier, is common to all the appeals.

In order to decide the aforesaid contention it will be desirable to set out the material provisions of sec.132 of the Act, namely, sub-secs.(8), (10) and (12) thereof, which run as follows:

> "132 (8) The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Commissioner for such retention is obtained: Provided that the Commissioner shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (XI of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

> (10) If a person legally entitled to the books of account or other documents seized under sub-section (1) or sub-section (1A) objects for any reason to the approval given by the Commissioner under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents.
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> (12) On receipt of the application under sub- section (10) the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit."

On a plain reading of the aforesaid provisions it will be clear that ordinarily the books of account or other documents that may be seized under an authorisation issued under sub-sec.(1) of sec.132 can be retained by the authorised officer or the concerned Income-tax officer for a period of one hundred and eighty days from the date of seizure, whereafter the person from whose custody such books or documents have been seized or the person to whom such books or documents belong becomes entitled to the return of the same unless the reasons for any extended retention are recorded in writing by the authorised officer/the concerned Income Tax Officer and approval of the Commissioner for such retention is obtained. In other words two conditions must be fulfilled before such extended retention becomes permissible in law: (a) reasons in writing must be recorded by the authorised officer or the concerned Income-tax Officer seeking the Commissioner's approval and (b) obtaining of the Commissioner's approval for such extended retention and if either of these conditions is not fulfiled such extended retention will become unlawful and the concerned person (i.e. the person from whose custody such books or documents have been seized or the person to whom these belong) acquires a right to the return of the same forthwith. It is true that sub-sec.(8) does not in terms provide that the Commissioner's approval or the recorded reasons on which it might be based should be communicated to the concerned person but in our view since the person concerned is bound to be materially prejudiced in the enforcement of his right to have such books and documents returned to him by being kept ignorant about the factum of fulfilment of either of the conditions it is obligatory upon the Revenue to communicate the Commissioner's approval as also the recorded reasons to the person concerned. In the absence of such communication the Commissioner's decision according his approval will not become effective.

Moreover, sub-sec.(10) confers upon the person legally entitled to the return of the seized books and documents a right to object to the approval given by the Commissioner under sub-sec.(8) by making an application to the Central Board stating therein the reasons for such objection and under sub-sec.(12) it is provided that the Central Board may, after giving the applicant an opportunity of being heard pass such orders as it thinks fit. It is obvious that without the knowledge of the factum of the Commissioner's approval as also of the recorded reasons on the basis of which such approval has been obtained it will not be possible for the person to whom the seized books or documents belong to make any effective objection to the approval before the Board and get back his books or documents. In our view the scheme of sub-secs. (8), (10) and (12) of sec.132 makes it amply clear that there is a statutory obligation on the Revenue to communicate to the person concerned not merely the Commissioner's approval but the recorded reasons on which the same has been obtained and that such communication must be made as expeditiously as possible after the passing of the order of approval by the Commissioner and in default of such expeditious communicating any

further retention of the seized books or documents would become invalid and unlawful. It is obvious that such obligation arises in regard to every approval of the Commissioner that might have been accorded from time to time.

In the result the orders passed by the High Court directing the return of the seized books of account and documents to the respondents in each of the appeals are confirmed and the appeals (subject to the directions given below in two of them) are dismissed with no order as to costs.

In Civil Appeal No.1652 of 1973 the assessment order passed on 5th February, 1969 is upheld subject to the result of the appeals that may have been preferred against it. In Civil Appeal No.661 of 1975 it is directed that the assessment orders passed for the concerned assessment years would be subject to the appeals already preferred if any or such as might be preferred in accordance with law, against the same.

H.S.K. Appeals dismissed.