

(1993) 02 AHC CK 0024

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 386 of 1992

Variety General Stores

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

---

**Date of Decision:** Feb. 2, 1993**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 131, 131(3), 132

**Citation:** (1993) 202 ITR 660**Hon'ble Judges:** M.C. Agarwal, J; A.P. Misra, J**Bench:** Division Bench**Advocate:** Vikram Gulati, for the Appellant;**Final Decision:** Allowed

---

**Judgement**

A.P. Misra, J.

In this case, time was granted to learned counsel for the Revenue for filing counter-affidavit as far back as on April 9, 1992, but so far no counter-affidavit has been filed. In the absence of any counter-affidavit, we proceed to decide this case.

2. The petitioner in this case seeks mandamus directing the Income Tax Officer, Ward-II, Moradabad, to release the seized books of account and other documents of the petitioner lying in his custody, further directing the Commissioner of Income Tax, Lucknow, for release of the petitioner's books of account and the documents immediately and also directing the Sales Tax Tribunal, Moradabad Bench, Moradabad, to stay the hearing of the appeals of the petitioner pending before it till the books of account are made available to him.

3. According to the case of the petitioner, a survey took place at the business premises of the petitioner on January 24, 1986, and the petitioner was issued an order u/s 131(3), dated January 24, 1986, by virtue of which the books of account of

the petitioner were seized. Thereafter, the assessment as against the petitioner has been completed. Since, thereafter; the petitioner needed the books of account in the proceeding before the sales tax authorities, he made an application dated December 17, 1991, for the release of the same. So far no order has been passed on that application. It has been further averred by the petitioner that he has not received any order except one which is annexure 3 to the petition by virtue of which the extension of time for retention of the said document was made by the Commissioner of Income Tax. It is stated by the petitioner that one order u/s 132(3), dated March 17, 1990, was served on him by which the Commissioner of Income Tax, Lucknow, had permitted the Income Tax Officer, Ward-II, Moradabad, to retain the books till December 31, 1990, only, although the request of the Income Tax Officer was to retain the books till March 31, 1991. Apart from this, no order has been communicated to the petitioner. Thereafter, again the petitioner moved an application on February 4, 1992, with the same request for release of the said documents but even then no order was passed. Again, on February 21, 1992, the petitioner moved an application for the same relief but no order was passed ; hence this petition seeking the said relief.

4. Having heard learned counsel for the parties and having perused the uncontroverted averments made in this petition and as per our observations above that no counter-affidavit has been filed so far in this case, we accept the averments made in this case. Admittedly, the documents and the books of account of the petitioner have been seized as far back as on January 24, 1986, u/s 131(3) of the said Act and in the absence of anything from the side of learned counsel for the Revenue, we direct respondents Nos. 1 and 2 to return the impounded books of account and other documents of the petitioner, seized on January 24, 1986, when the impounding order was passed by the Income Tax Officer, Ward-B, and to keep the photostat copy of the same, if they so require in future.

5. With the aforesaid observations, the present writ petition is allowed. Costs on parties.