(1978) 04 AHC CK 0047

Allahabad High Court

Case No: Civil Miscellaneous Writ No''s. 301, 303 and 305 of 1976

Sudarshan and Company		APPELLANT
	Vs	
Commissioner of Income Tax and Others		RESPONDENT

Date of Decision: April 18, 1978

Acts Referred:

- Income Tax Act, 1961 - Section 132(5), 132A

Citation: (1983) 139 ITR 1032

Hon'ble Judges: Satish Chandra, C.J; K.C. Agrawal, J

Bench: Division Bench

Advocate: R.K. Gulati and S.C. Khare, for the Appellant;

Final Decision: Dismissed

Judgement

K.C. Agrawal, J.
This is a petition under Article 226 of the Constitution for quashing the authorisation issued by the Commissioner u/s 132A of the I.T. Act, 1961 (briefly stated as "the Act") read with Rule 112D of the I.T. Rules, 1962 (briefly stated as "the Rules") and for a writ of mandamus directing the Chief Judicial Magistrate, Ghazipur, as well as the Treasury Officer, Ghazipur, not to deliver the disputed articles to the ITO, Jaunpur, and to return the same to the petitioner.

2. On October 9, 1974, the premises of Sudarshan, petitioner No. 2, and Chandrika, both sons of Hardeo and Triloki, s/o Tekmau, were searched by the police authorities on suspicion that they were in possession of stolen ornaments and cash. As a result of the search the following valuable articles and cash were recovered from their respective possession :

Sudarshan, son of Hardeo	
Silver Ornaments	96 Kilogram 500 grams
Gold Ornaments	858 grams
Chandrika, son of Harden	
Silver Ornaments	84 Kilogram 700 grams
Gold Ornaments	2 Kilogram 450 grams
Triloki, son of Tekman	
Silver Ornaments	64 Kilogram 100 grams
Gold Ornaments	7 Kilogram 39 grams
Cash	Rs. 47,350 (returned to Triloki Nath by the court).

3. In pursuance of the search made on October 9, 1974, criminal proceedings were started before the Chief Judicial Magistrate at Ghazipur. It, however, appears that during the pendency of the aforesaid proceedings before the Chief Judicial Magistrate, the Superintendent of Police, Ghazipur, vide his letter dated November 26, 1975, informed the ITO concerned about the seizure of gold and other valuable articles from the premises of the petitioner No. 2 and Chandrika and Triloki. In the meantime in in January,

1976, the Chief Judicial Magistrate also wrote a letter to the ITO enquiring if he had any objection to the articles seized by the police being released. If was thereupon that the I. T. Inspector, Jaunpur, appeared before the Chief Judicial Magistrate on January 28, 1976, and asked for an adjournment of the case to enable the Department to proceed in respect of the seized ornaments in accordance with the provisions of the Act. The Chief Judicial Magistrate adjourned the case. Thereafter, on February 23, 1976, the ITO, Jaunpur, wrote a letter to the Commissioner giving the full details of the seizure and about the financial status of petitioner No. 2 as well as the firm, M/s. Sudarshan and Company, petitioner No. 1. It was also mentioned in this letter that the silver, gold and other valuable articles had been seized by the police from the premises of Sudarshan, Chandrika and Triloki Nath, and subsequent to the seizure, petitioner No. 2 of the present petition along with others filed before the ITO, Gorakhpur, an application for registration of the firm for the assessment year 1975-76, on March 30, 1975. This application was accompanied by an instrument of partnership dated October 29, 1974. The firm was alleged to have come into existence with effect from October 1, 1975. The following were shown to be the partners of the said firm : M/s. Sudarsham and Company :

(1) Sri Sudarshan, son of Hardeo

(2) Jogendra Prasad, son of Sudama

4. The aforesaid two partners also filed their individual returns for the past several assessment years on September 1, 1975, showing the income earned. The details of these returns are as follows :

Name of the Firm	Name of the partners.	Assessment Years.	Income returned	Income assessed
M/s. Sudarshan & Company.			(No return filed by the firm)	
	1. Sri Sudarshan	70-71	6000	(6,000 under new scheme).
		71-72	6,000	6,000 ,, ,,
		72-73	6,000	6,000 ,, ,,

2.	Jogendra Pd. Verma	68-69	2,010 ï¿½
		69-70	5,050 ï¿½
		70-71	5,750 ï¿½
		71-72	4,670 ï¿½
		72-73	5,440 ï¿½
		73-74	8,590 ï¿½
		74-75	8,010 ï¿½

All returns have been filed on September 1, 1975.

It may be noted that the firm, M/s. Sudarshan and Company, had not filed any return till the February 26, 1976. After receiving the aforesaid letter from the ITO and perusing the file, the Commissioner issued on March 13, 1976, the authorisation certificate to enable the ITO to get the oranments released from the custody of the Treasury Officer. The satisfaction recorded by the Commissioner for issuing the authorisation was in the following words :

"Having perused and considered the details and materials brought on record in the above noted case, I have reason to believe that the person mentioned in the subject heading above, is in possession of money, bullions, jewellery or other valuable articles or things which represent either wholly or partly undisclosed income or property of the person ; further, I have reason to believe that the person is in possession of books of accounts or other documents relevant to Income Tax assessments but he would not produce them before the ITO in normal proceedings.

For the reasons noted above, I issue authorisation for search and seizure in this case."

In pursuance of the aforesaid order of the Commissioner, a warrant of authorisation in Form No. 45-C was issued authorising Shri Pyarelal, ITO, to require the Treasury Officer, Ghazipur to deliver to the authorised person the books of account, other documents and assets as aforesaid. It also mentioned that the assets taken into custody by the Treasury Officer, Ghazipur, represented either wholly or partly income or property "which has not been or would not have been disclosed for the purposes of the Income Tax Act, 1961, by Sudarshan, son of Hardeo, Jagnipur from whose possession or control such assets had been taken into custody".

5. After obtaining the aforesaid authorisation, the I. T. Inspector, Jaunpur, produced these warrants, each in the cases of Sudarshan, Triloki and Chandrika, authorising Pyarelal, ITO, to obtain the seized articles from the Treasury Officer, Ghazipur, who had at that time the custody of the same. On being moved for the delivery, the Chief Judical Magistrate fixed March 22, 1976, for arguments. On the aforesaid date, the Chief Judicial Magistrate, on having gathered that a writ petition had been filed before the High Court

challenging the authorisation in which March 25, 1976 was fixed, postponed the case and fixed the same for April 10, 1976. It was, thereafter, that the present writ petition was filed in this court challenging the authorisation issued by the Commissioner.

6. The first contention raised by the learned counsel was that the Commissioner had no jurisdiction to issue the authorisation u/s 132A of the Act read with Rule 112D as he had no information in his possession which could honestly lead him to believe that the petitioner had not or would not have disclosed the assets representing his income for the purposes of the I.T. Act. Elaborating the submission, the learned counsel contended that the power conferred by Section 132A could be exercised by the Commissioner if, on the materials placed before him, he could form an opinion impelling him to take action u/s 132A of the Act and that, as, in the present case, there was no material, which could justifiably lead him to that conclusion, the action taken was ultra vires, the powers.

7. Before dealing with the aforesaid submission of the learned counsel it appears necessary to state, briefly the scheme of the Act dealing with the question of search and seizure. Section 132 of the Act empowers the Director of Inspection, or the Commissioner and other officers mentioned in the Schedule to authorise the ITO to search and seize assets including money, bullion, jewellery from the possession of any person if the said officer, in consequence of an information in his possession, has reason to believe that the case of such a person falls in one of the Clauses (a), (b) or (c). Under Sub-section (5) of Section 132, where any money, bullion, jewellery or other valuable articles or things, mentioned in Sections 132A or 132B, referred to as the assets, is seized under Sub-section (1) or Sub-section (1A), the ITO, after affording a reasonable opportunity to the person concerned of being heard and making such enquiry as may be prescribed, shall, within ninety days of the seizure, make an order, with the previous approval of the IAC :

"(i) Estimating the undisclosed income in a summary manner to the best pf his judgment on the basis of such materials as are available withhin;

(ii) calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian Income Tax Act, 1922, or this Act ;

(iia) determining the amount of interest payable and the amount of penalty imposable in accordance with the provisions of the Indian Income Tax Act, 1922, or this Act, as if the order had been the order of the regular assessment ;

(iii) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts, specified in Clause (a) of Sub-section (1) of Section 230A in respect of which such person is in default or is deemed to be in default,

and retain in his custody such assets or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in Clauses (ii), (iia) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized."

8. Since other provisions of Section 132 are not relevant for the purposes of deciding the controversy involved in the present writ petition, we do not think it necessary to mention the same. However, the next important provision is Section 132A, which lays down that :

"132A. (1) Where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that--.....

(c) any assets represent either wholly or partly income or property which has not been or would not have been, disclosed for the purposes of the Indian Income Tax Act, 1922, or this Act, by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force,

then, the Director of Inspection or the Commissioner may authorise, any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income Tax Officer (hereafter in this section and in Sub-section (2) of Section 278D referred to as the requisitioning officer) to require the officer or authority referred to in Clause (a) or Clause (b) or Clause (c), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

(2) On a requisition being made under Sub-section (1), the officer or authority referred to in Clause (a) or Clause (b) or Clause (c), as the case may be, of that sub-section shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody."

9. Sub-section (3) of Section 132A provides that where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of Sub-section (4-A) to (14) (both inclusive) of Section 132 and Section 132B, shall so far as may be, apply as if such books of account, other documents or assets had been seized under Sub-section (1) of Section 132 by the requisitioning officer from the custody of the person referred to in Clause (a). Section 132B deals with the application of the retained assets under Sub-section (5) of Section 132 of the Act.

10. It may be pointed out that by the Taxation Laws (Amendment) Act, 1975, which came into force on October 1, 1975, the section originally numbered as Section 132A as it stands now, was inserted and the section which was originally numbered as Section 132A was re-numbered as Section 132B. The power to requisition books of account, assets, etc., now conferred by Sub-section (1) of Section 132A was previously contained in Section 132 itself. There was, however, a difference of opinion between some High Courts with respect to the power of seizure under Sub-section (1) of Section 132 regarding assets or documents which were in the custody of courts or in the custody of a department of Government or other authorities. In order to remove the lacuna pointed out by some of the courts that such power could not be exercised u/s 132, as it stood before

the Taxation Laws (Amendment) Act, 1975, that Section 132 was amended by the aforesaid Amendment Act and the power of requisitioning the books of account, assets, etc., from the custody of the officer, court or other Governmental Authority was conferred by Sub-section (1)of Section 132A.

11. Reverting to the argument of the learned counsel for the petitioner, that there was no material in the possession of the Commissioner to believe that the petitioner was possessed of undisclosed wealth, it may be pointed out that u/s 132A the Commissioner can exercise the power to requisition only when in consequence of information in his possession he has reasons to believe that any asset representing either wholly, or partly income or property has not been or would not have been disclosed for the purposes of the I.T. Act, of 1922 or the Act of 1961. It is true, as emphasised by the learned counsel, that the satisfaction of the Commissioner about the existence of the facts mentioned in Clauses (a), (b) and (c) of s. of 132A is sine qua non for the issue of authorisation. As laid down by the Supreme Court in ITO v. Seth Brothers [19691 74 ITR 836, the said power can be exercised only when the Commissioner entertains the reasonable belief and for reasons recorded by him that a person has not disclosed or would not have disclosed the assets and property representing income, which was liable to be proceeded under the I.T. Act. The power cannot be exercised for a collateral purpose ; in cannot, at the same time, be vague, indefinite, remote or far detached. In the instant case, however, the allegations made by the petitioner to the effect that the Commissioner was not possessed of information which could reasonably or honestly lead him to believe that the petitioner had not disclosed the assets representing income, has been controverted in the counter-affidavits filed by R. N. Mehrotra, ITO, Jaunpur, and Tapan Kumar Chatterji, the Assistant Commissioner of Inspection, Allahabad. It has been averred in these affidavits that the ITO, Jaunpur, wrote a letter to the Commissioner, Lucknow, on February 23, 1976, giving full and complete details of the gold and silver ornaments as well as cash which had been seized from the premises of Sudarshan, Chandrika and Triloki. It also mentioned that Sudarshan had been assessed for the assessment years 1970-71, 1971-72 and 1972-73 only for a sum of Rs. 6,000 and that, thereafter, he filed the returns only on September 1, 1975, after the search had already been made at his premises and the valuables had been seized therefrom. Through this letter, the ITO made a written request to the Commissioner for a letter of authorisation in order to require the officer in custody of the seized articles to deliver the assets to the requisitioning officer. Sri Ashok Gupta, appearing for the Revenue, also produced the original letter as well as the record of the office of the Commissioner containing the entire correspondence as well as the reasons recorded by the Commissioner for issuing the authorisation certificate. Once there exist reasonable grounds for the Commissioner to form the above belief, that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not a matter for the court to investigate. The sufficiency of grounds which induced the Commissioner to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that the Commissioner did not hold the belief that there had been such non-disclosure. The existence of the belief can be challenged

by the assessee but not the sufficiency of reasons for the belief.

12. After a perusal of the counter-affidavits as well as the record, we are satisfied that there was material on the basis of which the authorisation certificate could be issued, and the seizure order made by the Commissioner was not based on irrelevant or extraneous considerations. Reference in this connection may be made to the letter dated March 26, 1976, written by the ITO, Jaunpur, giving details about the gold, silver and cash found from the possession of Sudarshan, Triloki and ChandYika as well as the income which had been shown in the returns in previous years. This information could legitimately lead the Commissioner to form an opinion that the aforesaid persons had undisclosed and unaccounted assets liable to tax. This belief was, therefore, not based on suspicion but on materials. The information received had rational and proximate connection with the object for which the power was conferred by Sub-section (1)(c) of Section 132A. The authority relied upon by the petitioner is of no help to him.

13. Counsel next attempted to urge that the material on the record was insufficient to justify the action taken. We find no merit in this submission. As held by the Supreme Court in the case of Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc., , the power of a court in a petition under Article 226 is restricted to seeing whether the Commissioner did not hold the belief. In our view, what can be challenged is the existence of the belief but not the sufficiency of the reasons for the belief. The sufficiency of grounds is not a justiciable issue. Where power is exercised bona fide and in furtherance of statutory duties by a tax officer, any error of judgment on the part of the officer would not vitiate the exercise of the power. As already observed, the power of the court is of a limited character and if it could be shown that there were no grounds, a court might infer that the officer did not honestly form the opinion. The court is not entitled to put itself in the shoes of the Commissioner and to decide the matter afresh. In Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, , the Supreme Court has dealt with the power of a court to interfere in these matters as well. It says the expression "reason to believe" does not mean a purely subjective satisfaction on the part of the ITO. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with, or a relevant bearing to the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the ITO in starting proceedings in respect of income escaping assessment is open to challenge in a court of law (See observations of Supreme Court in the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, and S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, , while dealing with similar provisions of the Indian I.T. Act, 1922). As we are satisfied that the material supplied by the ITO to the Commissioner was such which could reasonably lead him (the CIT) to hold the belief required by Section 132A(c) of the Act, we are unable to uphold the submission made by the learned counsel for the petitioner on the first point.

14. It was next contended by the learned counsel that as the petitioner had disclosed the income by filing the returns on March 1, 1975, the present case was not a case where the Commissioner could hold that the assets representing income or property of the petitioner had not been or would not have been disclosed for the purposes of the Act. It is true that the power under Clause (c) of Section 132A can be exercised only when the belief is entertained by the Commissioner that the assets seized, represented wholly or partly income which had not been or would not have been disclosed for the purposes of Income Tax. It appears difficult to accept that simply because the petitioners had filed the Income Tax returns after the articles belonging to them had been seized on October 9, 1974, that they could get out of the mischief of Clause (c) of Section 132A. This is again a question on which we cannot express any concluded opinion. All these matters would have to be investigated by the ITO.

15. It may further be noted that the object of Section 132 is also that the Government would, after giving an opportunity to the person concerned, retain what is due by way of tax to the Government which had been illegally withheld by the person concerned. Sub-section (5) of Section 132 provides a machinery, that is, the ITO should make a summary inquiry after notice to the person concerned, to determine how much of the seized wealth can be legitimately and reasonably retained to cover the tax liability already incurred. After the summary proceedings are over regular assessments follow. The ITO, having jurisdiction, in that event, will proceed with the assessment in due course and determine the correct amount of tax payable. In the meantime, the assets retained are only by way of sequestration to meet the tax dues found ultimately to be due. Dealing with the scope of Sub-section (5) of Section 132, the Supreme Court observed in Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others, :

"Moreover, it must be noted that the enquiry under Sub-section (5) is no substitute for regular assessment or reassessment. The Income Tax Officer, having jurisdiction, will proceed with the assessment in due course and determine the correct amount of tax payable. In the meantime, the assets retained are only by way of sequestration to meet the tax dues found to be eventually payable. If by reason of the enquiry u/s 132(5), which is admittedly a summary enquiry, an amount in excess of the dues is retained, the same is liable to be returned with interest at 9 per cent. per annum u/s 132A."

16. Sub-section (3) of Section 132A applies the provisions of Sub-sections (4A) to (14) (both inclusive) of Section 132 to the proceedings taken u/s 132A as well: Consequently, after the assets have been taken into possession by the authorised officer u/s 132A(1), the same will have to be proceeded in accordance with Section 132. Consequently, after the summary inquiry held u/s 132(5), the seized wealth can be retained to cover the tax and the assets in excess will be returned thereafter. This clearly shows that if the submission of the learned counsellor the petitioner is accepted, the very purpose of the seizure made u/s 132A would be defeated. Hence, it is not possible to uphold it.

17. The third submission made by the learned counsel was about the non-application of the mind by the authority to the relevant facts which could entitle him to exercise the power conferred by Section 132A. In this connection, the learned counsel pointed out that some of the ornaments seized, according to the report of the ITO itself, were pawned ornaments and, therefore, the same did not belong to the petitioner. Had the Commissioner applied his mind, he could not have come to the conclusion that the powers u/s 132A could be exercised in the present case. The submission made assumes that the Commissioner accepted that the seized ornaments were in fact the pawned ornaments. This is a controversial issue and would have to be gone into in the proceedings, which would be subsequently taken under the Act. It is not possible to say on the grounds suggested that the Commissioner had not applied his mind to the facts of the present case.

18. It is no doubt true that Section 132A casts a duty on the Commissioner to apply his mind and to proceed to take action under it only when grounds for the same existed. Failure to carry out a duty imposed by statute may also afford grounds for interference by the courts. The facts of the present case do not substantiate the challenge to the order, made on this ground. The record of the Commissioner produced by the learned counsel for the Revenue demonstrates that he applied his mind, to the controversy in question and then issued the authorisation. As the exercise of power is in accordance with law, we have no jurisdiction to set it aside. The Commissioner''s action having neither been challenged nor shown to have been exercised arbitrarily or mala fide, we will not be able to interfere. We cannot substitute our own judgment in place of that of the Commissioner. If it could be shown that there were no grounds, a court might infer that the Commissioner did not apply his mind to relevant facts, but that has not been the position in the present case.

19. The last submission made was that the documents which had been seized from the custody of the petitioner ought to have been returned, as Sub-section (8) of Section 132 authorises the ITO to retain the same for 180 days from the date of the seizure. This submission has no substance. We have pointed out above that before the custody of the assets or documents could be obtained by the ITO from the Treasury Officer, Ghazipur, the petitioner filed the writ petition in this court and obtained a stay order. As a result thereof, the ITO could not obtain either the documents or the assets. Moreover, the counter-affidavit further shows that no document had been seized by the police on the October 9, 1974, from the custody of the petitioner. In these circumstances no question of return arises.

20. On the facts and in the circumstances of the present case, however, we consider it appropriate to direct the respondents not to take possession of the oranments and other articles, from the Treasury Officer, Ghazipur, till the provisional assessment contemplated by Sub-section (5) of Section 132 of the I.T. Act is made. If these articles are required by the respondents for any purpose connected with the inquiry, it will be open to them, to inspect it or get it valued in the presence of the petitioners. It is further directed that in

case the provisional inquiry is not completed within the time provided by law, the articles and ornaments seized from the petitioner''s possession would be liable to be returned to them.

21. Subject to the above, the writ petition fails and is dismissed with costs.