

(1990) 07 AHC CK 0077

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No"s. 380, 673 to 675 of 1989

Jai Pal Singh Jain

APPELLANT

Vs

Asstt. Commissioner

RESPONDENT

Date of Decision: July 17, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 132

Citation: (1990) 53 TAXMAN 40

Hon'ble Judges: B.P. Jeevan Reddy, C.J; R.A. Sharma, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. A common question arises from these writ petitions. A raid was conducted in the premises of the petitioners on 13-1-1986 and certain books of account and documents were seized. The petitioner applied to the authority, requesting him to return the books of account, etc., inasmuch as he required them in connection with the sales tax assessment proceedings. The authority replied to the assessee saying that these books cannot be returned but it is open to him to inspect the documents and take notes. Thereupon the petitioners approached this Court by way of these writ petitions. Now a contention is raised by the learned counsel for the assessee that no order was passed by the authority extending the period of retention as contemplated by sub-section (8) of section 132 of the income tax Act, 1961 and, therefore, the retention beyond 180 days is bad and illegal. We, however, find that this contention was never urged before the authority. It is not even clearly raised in the writ petitions. We cannot presume that no such order has been passed. This is a matter for allegation and proof. In the circumstances, the factual basis is missing as to apply the principle of the decision of the Supreme Court in the case of CIT v. Oriental Rubber Works [1983] 15Taxman 51/[1984] 145ITR 477.

2. In the circumstances, the writ petitions are dismissed. However, it is made clear that it is open to the petitioners to submit a representation before the authority raising such objections as are open to them in law with respect to the retention of the books, etc., seized by the authority. If any such representation is made within a period of one month from today, the authority shall consider the same and pass order according to law within one month thereafter. In case the petitioners are aggrieved by any such order, it is open to them to pursue such remedies, as are open to them in law. It is stated by Sri Vikram Gulati, the learned counsel for the petitioners, that during the pendency of these writ petitions, regular assessment with respect to assessment year 1986-87 was stayed by this Court and unless the said stay order is extended for another period of three months, the assessment may be completed. It is also stated by the learned counsel that in writ petition Nos. 673 of 1989, 674 of 1989 and 675 of 1989, assessment orders have already been made. It is accordingly directed that the regular assessment with respect to the petitioners in Writ Petition No. 380 of 1989 shall remain stayed for three months. So far as the other three writ petitions are concerned, it is enough to observe that it is open to the petitioners to adopt such remedies and for file such representations as are open to them in law against the orders of assessment. The writ petitions are accordingly dismissed.