

Mrs. Rumena Rahman Vs Union of India (UOI) and Others

Court: Gauhati High Court

Date of Decision: Sept. 17, 2003

Acts Referred: Income Tax Act, 1961 " Section 131, 131(3), 133A, 133A(4)

Citation: (2004) 187 CTR 58 : (2004) 2 GLR 720 : (2003) 3 GLT 447 : (2004) 265 ITR 16

Hon'ble Judges: B. Lamare, J

Bench: Single Bench

Advocate: P.K. Goswami, Dignata Das, A.C. Das and K.R. Surana, for the Appellant; G.K. Joshi and U.K. Bhuyan, for the Respondent

Final Decision: Allowed

Judgement

B. Lamare, J.

Heard Mr. D. Das, learned counsel for the petitioner and Mr. U. Bhuyan, learned counsel for the respondent.

2. The petitioner is the managing director of Rahman Properties Limited having its registered office at S. S. Road, Lakhtokia, Guwahati. The said

company runs a hotel under the name and style of Hotel Dynasty. On November 3, 1997, a group of about 8 to 10 Income Tax officials led by the

Assistant Director of Income Tax (Investigation) (respondent No. 3), entered into the office of the Hotel Dynasty and inquired about the petitioner.

The said persons identified themselves as Income Tax officials and stated that they had come to survey the premises u/s 133A of the Income Tax

Act, 1961 (in short as "the Act"). The officers thereafter entered into the office of Hotel Dynasty, Mohijuli Tea Company Pvt. Limited situated in

the same premises and collected records of documents, vouchers books of account from the premises. The above survey continued up to 11.30

p.m. In the process of survey, the Income Tax officials collected a large number of files, documents, books of account, vouchers, etc., from the

premises of Hotel Dynasty, Mohijuli Tea Company Pvt. Limited, Dynasty Walford and Texal Patty Tea Private Limited and prepared an inventory

of the documents, books of account and other documents and kept them in a separate room and put a paper pasting.

3. On the same day after completion of the survey u/s 133A of the Act, a notice u/s 131 of the Act was served on the petitioner and summoned

her to attend the office of respondent No. 3 on November 4, 1997, in connection with the case of Hotel Dynasty. The petitioner accordingly

attended the office of respondent No. 3. Thereafter the documents, books of account, etc., were impounded by respondent No. 3 u/s 131(3) of

the Act.

4. Respondents Nos. 2 and 3 refuting the claim of the petitioner filed the affidavit in opposition and stated that the documents were not impounded

on the basis of the survey conducted u/s 133A of the Act. But the documents, etc., were impounded after notice was issued to the petitioner u/s

131 of the Act and thereafter, the documents were impounded u/s 131(3) of the Act. Therefore, according to the respondents, there is no illegality

in the process of survey as the documents were not impounded in the course of survey u/s 133A of the Act.

5. Mr. Das, learned counsel for the petitioner, submits that under the provisions of Section 133A, respondent No. 3 has no occasion to impound

the documents in the course of the survey. According to counsel, respondent No. 3 has circumvented the provision of Section 133A by issuing

notice u/s 131 of the Act and thereafter, impounded the documents u/s 131(3) of the Act. According to counsel, the books of account, documents

and other papers were produced during the course of survey. They were removed in a separate room which was kept under lock and key and

also a paper seal was put in the entry to the room. Therefore, the above action of the respondent amounts to impounding the documents. Counsel

further contended that the issue of notice u/s 131 of the Act is only a pretext to camouflage the illegal action conducted by the respondent while

carrying out the survey u/s 133A.

6. Mr. Bhuyan, learned counsel for the respondents, on the other hand, contended that the documents, books of account and other papers found

in the course of the survey were kept in a separate room on the advice of the manager of the Hotel Dynasty for safe custody of the documents

which were marked by respondent No. 3 in the course of the survey. The documents were not taken away by the respondent in the course of the

survey but the documents were impounded only after the notice u/s 131(1) was served on the petitioner. Therefore, according to counsel, the

action was totally in accordance with the provisions of Sections 131 and 133A of the Act.

7. After hearing counsel for the parties and on a perusal of the records, it is seen that the petitioner has made a specific allegation in paragraph 4 of

the petition that the Income Tax authorities during the course of survey collected a large number of files, documents, books of account, vouchers,

etc., pertaining to Hotel Dynasty, Tezal Patty Tea Company, Mohijuli Tea Company Pvt. Ltd. and prepared an inventory of the documents. The

documents were removed to another room, sealed with paper paste and directed the petitioner not to enter into the sealed room. It is also stated in

paragraph 7 of the petition that on November 4, 1997, at about 9.30 a.m., two Inspectors of the Income Tax Department led by respondent No.

3 came to the office of the petitioner in their vehicle, removed the paper seal and entered into the room by opening the lock and lift the documents

in their vehicle and some in the vehicle of the petitioner.

8. The respondents in paragraph 5 of the affidavit in opposition, while replying to paragraph 4 of the affidavit filed by the petitioner have stated that

some of the books of account, paper documents found in the course of the survey contained some incriminating documents and, therefore, Mr. D.

Chertry, the manager (P & A) was requested to keep the documents in safe custody in view of the very sensitive nature of the documents. As Mr.

Cherty failed to contact the petitioner he suggested that the materials be kept in the room of Mr. S. Agarwal, manager, accounts. It was also stated

that after the concerned room was closed by Mr. Cherty paper pasting was made and the key was given by him willingly and that he wanted to

ensure that there was no ground for any suspicion. In paragraph 7 of the affidavit, while replying the averments made in paragraph 7 of the writ

petition, it is stated that on November 4, 1997, two Inspectors of Income Tax visited the office premises of Hotel Dynasty and handed over the

key of the concerned room which was given by Mr. D. Chertry and on their arrival all the documents were carried in the official vehicle of the

Department as well in the vehicle of the petitioner by the Inspectors.

9. Sub-section (4) of Section 133A provides/ ""an Income Tax authority acting under this section shall, on no account, remove or cause to be

removed from the place wherein he has entered, any books of account or other documents or any cash, stock or other valuable article or thing.

This provision, therefore, prohibits the Income Tax authorities from removing the documents, books of account, vouchers, etc., from the place

whenever, required by the authority where they conduct the survey.

10. Section 131(3) of the Act provides that any authority referred to in subsection (1) or Sub-section (1A) may impound and retain in its custody

for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act. The first proviso to

Sub-section (3)(a) of Section 131 of the Act, provides that an Assessing Officer or an Assistant Director shall not impound any books of account

or other documents without recording his reasons for so doing.

11. In the instant case, it is not disputed that the documents, books of account, files, etc., were removed from the place of survey, kept in a

separate room under lock and key and also a paper seal was put on the entry to the room. This fact is also not disputed by the respondent in the

affidavit in opposition as enumerated hereinabove. It is also noticed that the key to the room was taken by the Income Tax authority after putting

the paper seal. Therefore, in my considered opinion, the documents were impounded in the course of the survey conducted u/s 133A under which

the respondent has no authority to impound the documents.

12. Sub-section (4) of Section 133A of the Act clearly prohibits the Income Tax authorities from taking out the documents from the place of

survey whereas in the instant case the documents, books of account, files were kept in a separate room under lock and key with a paper seal. This

clearly amounted to impounding of documents.

13. The submissions of the rival parties as enumerated above would go to show that the two inspectors of the Income Tax Department entered the

premises on November 4, 1997, removed the paper seal, opened the room and carried out the documents in their departmental vehicle and some

in the vehicles of the petitioner on the directions of the two inspectors. Therefore, it is a clear case that on the day of survey conducted, the

respondents have impounded the documents, files books of account, vouchers, etc., marked by them for identification.

14. In the case of Ram Saroop Pawan Kumar Vs. Income Tax Officer, the Punjab and Haryana High Court dealt with the case of similar nature

and came to the conclusion that while conducting survey u/s 133A of the Act, removing of the books of account and other documents is in

violation of the provision of Sub-section (4) of Section 133A. Therefore, issue of notice u/s 131 of the Act, is only to circumvent the procedure

and to cover up removal of documents in the course of survey. So also, in the case of Gheru Lal Bal Chand Vs. Income Tax Officer, "A" Ward,

the Punjab and Haryana High Court held that the Income Tax Officer can resort to the powers under Sub-sections (1) and (2) of Section 131 only

when the assessee refuses or evades to co-operate in terms of Sub-section (6) of the section. Therefore, in that case the order to impound the

documents u/s 131(3) of the Act was turned down and is in violation of the provisions of Section 133A.

15. Mr. U. Bhuyan, learned counsel for the respondents, has taken the court to the case of Pooran Mal Vs. The Director of Inspection

(Investigation), New Delhi and Others, wherein it has been held that (headnote): ""Even though a search and seizure may be in contravention of

Section 132 of the Income Tax Act, 1961, still the material obtained thereby is liable to be used subject to law before the Income Tax authorities

against the person from whose custody it is seized and, therefore, no writ of prohibition in restraint of such use can be granted."" This case deals

with the provisions of Section 132 of the Act. It is not directly applicable in the instant case. Secondly, Mr. Bhuyan referred to the case of United

Chemical Agency Vs. R.K. Singh, Income Tax Officer, Ward II and Others, wherein it was held that (headnote) ; ""The officer conducting a

survey, therefore, have no power to impound any documents. Though the impounding of documents is illegal the Income Tax authorities can initiate

proceedings on the basis of information gathered from such documents"". Therefore, according to counsel, though the survey was conducted u/s

133A of the Act is illegal, the Income Tax authorities can initiate proceedings on the basis of information gathered from such documents. From

those decisions of the Allahabad High Court it is clear that the said respondents have no power to impound the documents in the course of

conducting survey.

16. In the instant case, it is also observed that it is the Assistant Director of the Income Tax Department who made impounding of the documents.

In such a situation, a proviso to Sub-section (3)(a) of Section 131 of the Act provides that an Assessing Officer or an Assistant Director shall not

impound any books of account or other documents without recording his reason for doing so. A perusal of the notice issued u/s 131 of the Act

shows that, as disclosed, no reason was recorded in the order of impounding the documents.

17. The order impounding the documents dated November 4, 1997, reads as follows :

The books of account, papers and documents marked HD 1 to HD 196, RR 1 to RR 14, MTC 1 to MTC 53 and DW 1 to DW 42 found during

the course of survey u/s 133A of the Income Tax Act, 1961, on November 3, 1997, in the office premises of Hotel Dynasty, SS Road, Laktokia,

Guwahati, which were asked to be produced u/s 131 of the Income Tax Act, 1961, on November 4, 1997, are hereby impounded u/s 131(3) of

the Income Tax Act, 1961.

18. From the above the order impounding of documents has not disclosed any reason whatsoever as required under the proviso to Sub-section (3)

(a) of Section 131 of the Act.

19. For the aforesaid reason, I am of the view that the impounding of the documents purported to have been made u/s 131(3) of the Act is only to

circumvent the provision of Section 133A of the Act. Therefore, the action of the respondents is totally in contravention of the provision of Section

133A of the Act. The order impounding the document, therefore, is not tenable in law and is liable to be set aside and quashed, which I hereby do.

20. However, since this court by the interim order dated November 13, 1997, has directed the respondent to produce the original documents

impounded. The documents were returned as per direction of this court. However, the petitioner has filed an affidavit stating that respondent No.

3, till date has not returned certain documents as per annexure Y to the affidavit. No affidavit has been filed by the respondent countering the

allegation of the petitioner made in the affidavit filed by her. It is hereby directed that respondent No. 3 shall return the documents as per annexure

Y to the affidavit filed by the petitioner within a period of 15 days from the date of receipt of a certified copy of this order by respondent No. 3.

21. In the result, this writ petition is allowed and disposed of. No costs.