

(2001) 09 CAL CK 0044

Calcutta High Court

Case No: A.P.O.T. No. 401 of 2001 and W.P. No. 1172 of 2000

Reckitt Colman of India Ltd. and
Another

APPELLANT

Vs

Assistant Commissioner of
Income Tax (TDS) and Others

RESPONDENT

Date of Decision: Sept. 7, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 116, 116(3), 116(5), 120, 120(2)
- Income Tax Rules, 1962 - Rule 36A

Citation: (2002) 3 CALLT 150 : (2002) 172 CTR 499 : (2001) 170 CTR 611 : (2002) 124
TAXMAN 496

Hon'ble Judges: Yad Ram Meena, J; Arun Kumar Mitra, J

Bench: Division Bench

Advocate: D.P. Pal, for the Appellant;

Final Decision: Dismissed

Judgement

A.K. Mitra, J.

This Appeal has been directed against the judgment and order dated May 16, 2001 passed by the learned single Judge in W.P. No. 1172 of 2000.

2. The writ petitioners filed the writ petition being W.P. No. 1172 of 2000 challenging the competence, authority and/or jurisdiction of the respondents and/or sub-ordinate to the respondents like Inspector of Income Tax to make survey u/s 133A of the Income Tax Act, 1961 (hereinafter referred to as the Act) and/or to issue summons u/s 131 of the Act to enforce the attendance of any person to require the petitioners to produce or furnish documents and/or information in relation to-tax deducted at source on the facts and circumstances mentioned in the writ petition.

3. The case in brief with prayers in the writ petition as has been made out by the petitioners is inter alia as follows :-

4. On 22nd February, 2000 several Inspectors from the office of the Joint Commissioner of Income Tax (TDS), Range-21, Calcutta, entered the office premises of the petitioner at 41, Chowringhee Road, Calcutta, and wanted to conduct survey u/s 133A of the Act regarding tax deducted at source matters. The said inspectors required the employees of the petitioners to produce some documents and books of accounts and the same were produced which were readily available.

5. It has been further stated by the writ petitioners in the writ petition that on 5th April, 2000 the petitioners received a summons issued u/s 131(1) of the Act dated 28th March, 2000 whereby the respondent No. 1 required the petitioner to appear before her personally and to produce the documents as per enclosure to the said summons on 12th April, 2000 at 12.30 P.M. The petitioner was required to appear before the respondent No. 1.

6. The writ petitioners in the writ petition as such prayed for writ in the nature of Mandamus commanding the respondents to cancel or rescind and/or withdraw the authorization issued by the respondent No. 2 authorising the Inspector of Income Tax to make survey u/s 133A of the Act in the office premises of the petitioners on 22nd February, 2000 and taking away of copies of the documents by the said Inspectors of Income Tax and the summons issued by the respondent No. 1 u/s 131(1) of the Act, dated 28th March, 2000 and all proceedings thereunder and/or in pursuance thereof. The writ petitioners in the writ petition also prayed for writ in the nature of Mandamus commanding the respondents not to give any effect to and/or taking any further steps under and/or in pursuance of the authorization issued by the respondent No. 2 authorising the Inspectors of Income Tax to make survey on 22nd February, 2000. The writ petitioners also prayed for writ of prohibition for prohibiting the Officers from making survey u/s 133A of the Act and for prohibiting to take action in pursuance of the summons issued by the respondent No. 1 u/s 131 of the Act dated 28th March, 2000.

7. The writ petition was heard on contest, and after hearing the learned counsel for the parties, the learned single Judge dismissed the writ petition by judgment and order dated May 16, 2001 and the writ petitioners therein being the appellant herein preferred the instant appeal against the said judgment and order.

8. Now in the above perspective, the submission of the learned counsel for the appellants are inter alia as follows :-

(a) The respondent No. 1 being the Assistant Commissioner of Income Tax (TDS), circle 21(2), Calcutta is the prescribed Income Tax authority u/s 206 of the Act read with Rule 36A of the Income Tax Rules, 1962 (hereinafter referred to as the rules). The appellant has within the prescribed period prepared and delivered to the said TDS Officer the return in prescribed form and verified in the prescribed manner setting forth such particulars as are prescribed by the rules. It is submitted by the learned counsel for the appellants that this TDS Officer has no competence,

jurisdiction or authority in respect of any assessment of the appellants' income. There is no proceeding for assessment pending before the said TDS Officer and she has no such power or jurisdiction to assess the appellant and no notice u/s 143(2) or under 142(2) had ever been issued in respect of assessment of the income of the appellant.

(b) It is further submitted by Dr. Pal appearing for the appellants that the TDS Officer, however, has issued the summons u/s 131(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) alleging that the attendance of the appellant is required for the proceeding under the Income Tax Act and the appellant was therefore required to appear before her and to produce evidence/documents and the said summons u/s 131(1) of the Act is the subject matter of challenging in the writ petition.

9. The broad question which has been raised in the instant appeal as contended or made through oral arguments and in the written submission on behalf of the appellants are as follows :-

(1) "Whether the respondent No. 1 viz. Assistant Commissioner of Income Tax, TDS, has at all any competence or jurisdiction to issue the summons u/s 131(1) of the Act?"

(2) Whether in any even, the said TDS Officer has any authority to issue such notice u/s 131(1) of the Act when no proceeding is pending before him at the time when such power u/s 131(1) had been exercised by issuing the summons u/s 131(1) of the Act?"

10. In support of his contention, it has been submitted by Dr. Pal that Chapter XVII-B of the Act speaks of "Deduction at Source". u/s 206 of the Act which falls under Chapter XVII-B the person responsible for deducting at source under Chapter XVII-B which includes the various sections starting from Section 192 to 195 shall within the prescribed time after the end of the financial year prepare and deliver to the Income Tax authority such return in such, form and verified in such a manner and setting forth such particulars as may be prescribed.

11. Dr. Pal also submitted that the expression "Prescribed" means prescribed by the rules framed under the Act as provided in Section 2(33) of the Act. According to Dr. Pal, Rule 36A of the Rules provides that the returns which are to be filed under Rule 37 and Rule 37A shall be furnished to the Assessing Officer so designated by the Chief Commissioner or the Commissioner of Income Tax within whose area of jurisdiction the office of the person responsible for deducting the tax under chapter XVII-B is situated. Rule 36A(ii) provides that in any other case, the return u/s 206 of the Act is to be filed before the Assessing Officer within whose area of jurisdiction the office of the person responsible for deducting tax under chapter XVII-B is situated.

12. It is also his contention that Rule 36A has provided for circumstances under which the return u/s 206 may be filed before the Assessing Officer within whose area of jurisdiction the office of the person responsible for deducting the tax under chapter XVII-B is situated. Therefore, Rule 36A makes a clear distinction between an Assessing Officer and Assessing Officer so designated by the Chief Commissioner or the Commissioner. In fact, under chapter XVII-B various sections deal with the deduction of tax at source.

13. Dr. Pal has referred to various provisions of the Act such as Sections 192, 193, 194 & 195 of the Act. For example it has been submitted by him that return u/s 194C for deducting the tax at source is to be filed u/s 206 of the Act before the prescribed Income Tax Authority so designated by the Chief Commissioner or the Commissioner u/s 194C(4) of the Act where the Assessing Officer having jurisdiction of assessment to assess the income of the contractor or sub-contractor from whose income the tax is deducted at source. It has been further submitted that the Parliament has made a material distinction even in chapter XVII-B between the Officer before whom the TDS return is to be filed and the Assessing Officer who has the jurisdiction over the assessment of the person from whose income the tax is deducted to give the certificate of non-deducting or deduction at a lower rate of tax.

14. He also cited example of Section 194J of the Act. He submitted that even under Rule 36A(II) a fundamental distinction has been made between the Income Tax authority designated by the Chief Commissioner under Rule 36A(i) and the Assessing Officer Rule 36A(ii). The Assessing Officer under Rule 36A(ii) is not the designated Income Tax authority. The Assessing Officer is the Officer who has the power and jurisdiction over the assessment of the person responsible for deducting the tax at source. This clearly shows that the prescribed authority is the authority who is competent to receive the return u/s 206 and for the purpose of convenience he is merely designated by the Chief Commissioner or the Commissioner as the Assessing Officer, but he has no power or jurisdiction to assess either the income of the person deducting the tax or the person being the recipient of the income from whom such tax is to be deducted.

15. Dr. Pal has relied upon the provisions of Section 116 of the Act for the purpose of showing the definition of the Income Tax authority vested with power by or under the Act to make assessment in respect of an assessee. He has also taken the shelter of Sections 120(1) & 120(2) of the Act for the purpose of clarifying the authority of delegation of power or jurisdiction. It has been submitted by him that if an authority has not been vested with the power of assessment under the Act the power of delegation cannot be exercised by the Board to invest such authority with the power, which has not been conferred upon him by or under the Act. To take illustration, the Income Tax authorities u/s 116 include inter alia tax recovery Officer, Inspector of Income Tax but these authorities have not been vested with any power by or under the Act to make any assessment in respect of income of an assessee.

16. Regarding the notification being F No. 275/116/90-II(B) issued by the Ministry of Finance, Government of India dated 12.2.1991 as also the notification No. AC/HQ/Planning/10/1999-2000 dated 15.9.99 issued by the Chief Commissioner of Income Tax, it has been submitted by Dr. Pal that the notification dated 15.9.99 in so far as the delegation of power is concerned the same is beyond the power and jurisdiction of the Chief Commissioner conferring such power under the said notification upon a TDS Officer and the said conferment of power under the said notification upon the TDS Officer is clearly illegal, invalid and ultra vires.

17. Dr. Pal submitted that even assuming though not admitting that the said notification confers power upon the Assistant Commissioner of Income Tax (TDS), Circle 21(2) all matters relating to all sections. Under chapters XVIIB, XVIIBB, XVIID, XX and XXII of the Act, in that event the question arises as to who under Sections 194C(4), 194J(2) is to give the certificate as to the rate at which the tax has been deducted or no deduction of tax has been made. It, therefore, created an anomalous situation and the notification clearly ultra vires the powers u/s 120(1) & Section 120(2) and is ultra vires those sections.

18. Now as regards the second point. Dr. Pal submitted that even assuming that the TDS Officer by virtue of aforesaid notification can exercise the power u/s 131 of the Act, summons u/s 131 can be issued only by an Officer who has the power of assessment and who exercises quasi judicial power while making an assessment. There must be a proceeding pending before the TDS Officer.

19. In support of his contention, Dr. Pal has relied upon several decisions namely (1) [Dwijendra Lal Brahmachari and Others Vs. New Central Jute Mills Co. Ltd. and Another](#), (2) [Income Tax Officer and Others Vs. James Joseph O'Gorman](#), (3) [Jamnadas Madhavji and Co. and another Vs. J.B. Panchal, Income Tax Officer and another](#), (4) [D.B.S. Financial Services Pvt. Ltd. Vs. Smt. M. George, Second Income Tax Officer and others](#), and (5) 235 ITR 319.

20. Dr. Pal to explain the definition of proceeding has relied upon Stroud's Judicial Dictionary, Vol. 3 at page 2309 to 2310. Black's Law Dictionary, 6th Edn. Halbury Laws of England, Vol. 1 and the Shorter Oxford English Dictionary, Vol. 2.

21. To explain the meaning of word "proceeding" he has also relied upon the decisions reported in [Brij Lal Suri Vs. The State of Uttar Pradesh and Others](#), and AIR 1956 Madras page 597.

22. In so far as the preliminary objection taken by the respondent regarding the maintainability of the writ petition, Dr. Pal has relied on the following decisions [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others](#), [Union of India \(UOI\) and Another Vs. Brij Fertilizers Pvt. Ltd. and Others](#), .

23. It has been further submitted by Dr. Pal that once the writ petition has been moved and is admitted and direction of filing an affidavit has been issued the plea of

an alternative remedy cannot be taken at a subsequent stage. In this context he has relied on the following decisions [L. Hirday Narain Vs. Income Tax Officer, Bareilly,](#) .

24. Dr. Pal ultimately submits that the appeal should be allowed and the impugned judgment and order should be set aside.

25. Mr. Agarwal appearing on behalf of the respondents submits that there is no infirmity in the judgment impugned in the instant appeal. He also submits that the contentions of the writ petitioner before the Appeal Court have no merit and the contentions of the writ petitioners are merely repetitions and the same were advanced before the learned single Judge and the learned single Judge on due consideration of the appellant herein dismissed the writ petition.

26. The summons u/s 131 of the Income Tax Act, 1961 dated 28.3.2000 was issued to ensure compliance of the show cause notice. Instead of complying with the directions made in the summons and answering the show cause notice the writ petitioners filed the writ petition in order to stall the proceeding and this is not bona fide. Mr. Agarwal submits that a party coming to writ Court must come with clean hands and he relied on the decision reported in [B.K. Saha and Brothers \(P.\) Limited and Another Vs. Income Tax Officer and Others,](#) In this regard he submits that in the instant case the petitioners/appellants have moved the instant writ petition with malafide intention so that no effective adjudication can be made by looking through the records.

27. Mr. Agarwal further submits that in the instant case there was a survey in the premises of the assessee and it was discovered that tax have not been deducted at source u/s 194(c) of the Income Tax Act, 1961 for payment about Rs. 4.5 crores on account of specific printing and from payment of about 137.64 crores to various parties for production of different items on behalf of the assessee on contract and from payment of rent over 2 lakhs u/s 194(1) of the Act. A survey was conducted u/s 133(a) of the Income Tax Act on an authorization issued by the Joint Commissioner of Income Tax, Range 21(2) on 22.2.2001. The information gathered was passed on to the Assistant Commissioner of Income Tax, Circle 21(2) who had the jurisdiction over the case of the writ petitioners (appellants herein). The Assistant Commissioner of Income Tax, Circle 21(2) was receiving the annual return prescribed regarding tax deduction at source and she could charge interest u/s 201(i)(a) and levy penalty u/s 221 of the Income Tax Act, 1961 in case of default on the part of the assessee.

28. Mr. Agarwal in this context relies on the definition of the term "assessee" as defined u/s 2(7) of the Income Tax Act and he submits that the term includes every person who is deemed to be an assessee under any provisions of the Act. Mr. Agarwal also submits that the Assistant Commissioner of Income Tax issued the show cause notice backed by the summons u/s 131 of the Income Tax Act affording an opportunity to the company to show that the information gathered in course of the survey u/s 133A as transmitted to the Assistant Commissioner of Income Tax

and the information gathered by her from annual return submitted by the assessee with her were not correct.

29. Relying on the decision reported in [Indo Asahi Glass Company and Another Vs. Income Tax Officer and Others](#), , Mr. Agarwal submits that the Assessing Officer merely issued the show cause notice and the Assessing Officer did not come to any finding and the assessee by submitting reply could have very well established that the statements submitted by the assessee in their annual return if are correct and there is no irregularity on their part and they could have very well submitted documents and produced evidence in support of their claims and/or they could have very well negated the information transmitted by the Officers conducting survey in the premises of the petitioners u/s 133A of the Act. Mr. Agarwal also submits that even after the appearance of the assessee in response to notice/ summons or after submission of documents or production of evidence on behalf of the writ petitioners/appellants, had there been any penalty imposed, the provision of appeal is there in the Act itself. Therefore, he submits, that since there is an efficacious alternative remedy the instant writ does not lie and in this regard Mr. Agarwal placed reliance on the decisions reported in 227 ITR 593 ([The Commissioner of Income Tax, Lucknow Vs. U.P. Forest Corporation](#), , [Salboni Hatcheries and Another Vs. Union of India \(UOI\) and Others](#), and [Bhagwant Kishore Sud Vs. Income Tax Appellate Tribunal, Chandigarh](#), .

30. In response to the challenge of the writ petitioners/appellants regarding the jurisdiction of the concerned authority Mr. Agarwal submits that the concerned authority is fully competent and vested with proper jurisdiction to take such action as has been taken in the instant case.

31. Mr. Agarwal further submits that Section 206 of the Act is to the effect that the Officers of the companies shall submit return in the prescribed form and manner with the prescribed particulars within the prescribed time before the prescribed income tax authorities, and u/s 2(33) of the Act. the term "prescribed" means prescribed by rules under this Act. Under rule 36(a) returns referred to in Rule 37 & 37(a) shall be furnished to the Assessing Officer so designated by the Chief Commissioner or Commissioner of Income Tax Act within whose area of jurisdiction the Officer of the persons responsible for deducting tax under chapter XVII-B is situated as per Clause (i) of the Rules. The annual returns in question were to be submitted to the Income Tax Officer having jurisdiction to assess the company concerned. Mr. Agarwal submits that the power to confer jurisdiction regarding submission and receipt of returns in respect of tax deducted at source is determined in terms of the rules framed by virtue of the power delegated duty cast by the Act itself in Section 206. Mr. Agarwal also submits that rules are not under challenge to be ultra vires and after 11.7.88 the Chief Commissioner and Commissioners have been authorized to delegate powers other than the authorities assessing the income to the prescribed authorities for the purpose of Section 206. Under Clause (i)

of Rule 36(a), the Chief Commissioners have conferred jurisdiction on the Assistant Commissioner of Income Tax, Circle 21(2) to receive the annual return of the assessee and the writ petitioners have been submitting such returns before her without any objection and in fact her power to receive the annual returns has not been disputed by the writ petitioners/appellants herein.

32. Mr. Agarwal further submits that since the Assistant Commissioner of Income Tax, Circle 21(2) is authority designated to receive the annual returns, it is her duty to see that the company has deducted at source from all payments where tax is deductible under the Act and deduction of tax at source does not depend on the volition of the payer. It has to deduct tax at source as laid down in the Act. It has to deposit tax deduction to the credit of the Government timely. There has to be a machinery to enforce the provisions. When the annual returns were submitted with the Income Tax Officers assessing the income, the power and duty vested in him and he was divested of the part of the function in the cases where the Chief Commissioners and Commissioners designated some other authority to receive the annual returns.

33. Mr. Agarwal also submits, that as per the system involved if the Assessing Officer in the field entrusted with the work of assessment of the income of the assessee come across any default on the part of the Principal Officers of the company or other persons responsible for deduction at source they communicate Assessing Officers in the tax deduction circles/wards. The information received in this regard in the tax deduction circles includes that passed on by the Joint Commissioner, Special Range-4, having jurisdiction of the assessment of the income of the writ petitioners/ appellants herein as well as the information passed on by other Assessing Officers in the field, regarding default on the part of the writ petitioners/ appellants to the Assistant Commissioner of Income Tax, Circle 21(2).

34. Mr. Agarwal submits that it is natural for the Assessing Officers receiving the annual return to scrutinize them and to take consequential action like issuance of summons charging of interest and levy of penalty. Scrutiny of the annual returns is a sine qua non to ascertain defaults as regards deduction of tax at source, deposit of the tax to the credit of the Government account and deposit thereof within the prescribed time. Since the annual returns of the Assessee herein are being submitted with the Assistant Commissioner of Income Tax, Circle 21(2) she is the Assessing Officer concerned with the scrutiny thereof, issue of show cause notices charging interest and levying penalty under the Act.

35. Mr. Agarwal submits that earlier this power was with the Assessing Officer receiving the return of income who also used to receive the annual returns by virtue of the provisions of Rule 37. With effect from 12. 7.88, when Rule 36A was inserted in the Income Tax Rules, 1962 in cases where the Assessing Officer has been designated under Clauses (i) of Rule 36A, the Assessing Officer so designated, (Assistant Commissioner of Income Tax, Circle 21(2) in this Case) and not Joint

Commissioner, Special Range 4, is the authority concerned for the scrutiny of the annual returns.

36. Mr. Agarwal then clarified the definition of "designate". He submitted that the word "designate means" give a specified portion or a status quo. He submits that the definition of Assessing Officer has been reproduced in [Jubilee Investments and Industries Ltd. Vs. Assistant Commissioner of Income Tax and Others](#), . He submitted that the authorities in the TDS Circles/ Wards have the power to scrutinize the annual returns, issue show cause notice and summons and these functions are condition precedent for charging interest and imposing penalty. Mr. Agarwal relied upon the decision reported in [Trustees of Gordhandas Govindram Family Charity Trust Vs. Commissioner of Income Tax, Bombay](#), to clarify the position of a charging section.

37. He also submits that the default would come to light in an information in this regard is received or discovery is made in course of survey as a result of the examination and scrutiny of the annual returns which is the case here. It is also the fundamental rule of law that a person has the implied powers in due discharge of his duties. He referred to the decisions reported in [Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd.](#), , which observes "it is well established rule of construction that a power to do something essential for the proper and effectual performance of the work which the statute has in contemplation may be implied".

38. Mr. Agarwal then referred to the various provisions of the Income Tax Act had he relied on the notices which has also been made annexures to the writ petition specific the notification dated 23.5.91. 15.9.1999 and 22.2.2000 and conclusively he submitted that delegation of power is legal. The Officer has surveyed u/s 133A have also acted in accordance with law and the notice/summons issued u/s 131(1) is valid and lawful and proceeding very much pending before the TDS Officer and it was the duty of the assessee to give reply to the show cause and to produce records/documents in support of their claim. He submitted that the appeal should be dismissed in limine and the judgment and order passed by the learned Trial Judge be upheld.

39. Heard learned counsel for the parties and perused the written submissions filed by both the parties.

40. The preliminary objection raised on behalf of the respondents regarding maintainability of the writ petition has been raised on the ground availability of alternative efficacious remedy.

41. Whether writ is maintainable we would like to refer same decisions.

42. In case in [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others](#), Hon"ble Supreme Court observed as under :-

"The jurisdiction of the High Court in entertaining the writ petition under Article 226 of the Constitution, in spite of the statutory remedy is not affected. Specially, in a case where the authority against whom a writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

43. In [Dr \(Smt.\) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur \(U.P.\) and Others](#), the Hon"ble Supreme Court observed as under:--

"Alternative remedy is not an absolute bar to the maintainability of the petition when the authority acted without jurisdiction."

In [Union of India \(UOI\) and Another Vs. Brij Fertilizers Pvt. Ltd. and Others](#), their Lordship observed :-

"That the petition once admitted and direction of filing affidavit given the plea of existence of alternative remedy cannot be taken at a subsequent stage."

44. Thus it is now more or less settled position of law that existence of alternative remedy is not absolute bar in moving a writ petition.

45. In the case in hand since the writ petition has been admitted and the affidavit-in-opposition have been filed and decision has been given by the learned single Judge in all the points and the appellants challenged the decision of the learned single Judge, and the appeal is placed for hearing. We are inclined to decide the issues/points referred to above to make a complete adjudication in the matter on merits.

46. Now it brings us to issue whether A.C. Income Tax T.D.S. can issue summons u/s 131(1) of the Act.

47. In so far as the first point regarding jurisdiction/authorization is concerned let us have a look in to the relevant provisions of Section 120 of the Income Tax Act, 1961 which deals with the jurisdiction of the Income Tax authorities and which provide :--

"(1) Income Tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or as the case may be assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of these authorities.

(2) The directions of the Board under Sub-section (1) may authorise any other income tax authority to issue orders in writing for the exercise of the powers and performances of the functions by all or any of the other income tax authorities who are sub-ordinate to it."

48. Sub-section (2) of Section 120 of the Act empowers the Chief Commissioner to confer jurisdiction on any Officer to perform all or any of the powers and functions of the Assessing Officer under this Act :-

49. Now let us come to the definition of "Assessing Officer" as provided in Section 2(7A) of the Act :-

"Assessing Officer means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income Tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under Sub-section (1) or Sub-section (2) of Section 120 or any other provision of this Act, and the Joint Commissioner or Joint Director which is directed under Clause (b) of Sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act."

50. Chapter-XVII of the Act deals with collection and recovery of tax and Clause B under chapter-XVII deals with "deduction at source". Section 206 and 206A of the Act provide as follows :-

"206.-The prescribed person in the case of every office of Government the principal Officer in the case of every company the prescribed person in the case of every local authority or other public body or association, every private employment and every other person responsible for deduction tax under the foregoing provisions of this chapter shall within the prescribed time after the end of each financial year, prepare and deliver or cause to be delivered to the prescribed income tax authority, such returns in such form and verified in such manner and setting forth such particulars as may be prescribed."

51. From the above, it will appear that the Principal Officer in the case of every company shall within the prescribed time prepare and deliver or cause to be delivered to the prescribed income tax authority such returns in such form and verified in such a manner and setting forth such particulars as may be prescribed. It is an admitted position that the petitioner company submitted returns before the Assistant Commissioner of Income Tax, Circle 21(2) the respondent No. 1 herein. Now Section 2(33) defines the word, "Prescribe" which provides "prescribed by rules under this Act". Now Rule 36A of the Income Tax rules which has been inserted by way of amendment effective from 12th July, 1988 provides :-

"36A- the returns referred to in rules 37 and 37A shall be furnished to-

(i) the Assessing Officer so designated by the Chief Commissioner or Commissioner of Income Tax, within whose area of jurisdiction, the office of the person responsible for deducting tax under chapter-XVII-B is situated; or

(ii) in any other case, to the Assessing Officer within whose area of jurisdiction, the office of the person responsible for deducting tax under chapter-XVII is situated."

52. Now Rule 37 and Rule 37A of the Rules run as follows:-

"The person making deduction of tax in accordance with Sections 193, 194, 194E, 195, 196A, 196B, 196C and 196D of the Act from any payment made to-

(i) a person, not being a company, who is a non-resident or a resident but not ordinarily resident, or

(ii) a company which is neither an Indian company nor a company which has made the prescribed arrangements for the declaration and payment of dividends within India".

53. It is, therefore, clear from the above provisions that the returns referred to in Rule 37 and Rule 37A shall be furnished to the Assessing Officer so designated by the Chief Commissioner or Commissioner of Income Tax within whose are of jurisdiction of the office of the person responsible for deducting tax under chapter-XVII-B situated.

54. On the plain reading of the aforesaid provisions of the statue it clearly appears that as per the powers delegated by or u/s 206 of the Act which is under chapter-XVII concerning tax deduction at source, the Officer authorized that is Assistant Commissioner of Income Tax (TDS), Circle 21(2) has got the jurisdiction to receive the returns relating to tax deduction at source and neither the amended provision of the rules nor the delegating power of the Chief Commissioner of the Commissions provided in the Act is under challenge and as stated earlier admittedly the petitioner company has been submitting the return before the respondent No. 1 without challenging or disputing her jurisdiction to receive the return relating to tax deduction at source.

55. In the case reported in 338 ITR 648 (Jubilee Investment & Industries Ltd. v. Assistant Commissioner of Income Tax and Ors.) question arose as to whether the Assistant Commissioner of Income Tax that is TDS Officer has power or authority to levy penalty u/s 221 of the Act and the Hon"ble Division Bench in the said case observed :-

"The Chief Commissioner has conferred the power on the Assistant Commissioner of Income Tax (TDS), Circle 21(1) who has imposed penalty u/s 221 of the Act, therefore, it cannot be said that the Assistant Commissioner of Income Tax has no power to impose penalty u/s 221 of the Act of 1961."

56. In the above view, the contention of Dr. Pal that Assistant Commissioner of Income Tax (TDS) is only the TDS return receiving authority fails. In this connection in the case reported in [Calcutta Chromotype Pvt. Ltd. Vs. Income Tax Officer](#), it has been observed :-

In a recent decision reported in [Peerless General Finance and Investment Co. Ltd. and Another Vs. Assessing Officer and Others](#), it has been observed by the Division Bench of the Hon"ble Allahabad High Court :-

"Section 131 of the Income Tax Act, 1961 is a machinery provision and must be interpreted in a manner which makes the machinery workable and practicable."

57. It has been mentioned that Assistant Commissioner of Income Tax (TDS), Circle 21(2), Calcutta will be in charge of all matters relating to all sections contained in chapter-XVII and this notification also has not been challenged in the writ petition though in the written submission Dr. Pal on behalf of the appellant submitted that this notifications is illegal. However, such submission on behalf of the appellant in a casual manner does not invalidate the notification unless it is challenged in the writ petition and declared ultra vires.

58. Section 120 of the Act gives power and/or jurisdiction to the Income Tax authority regarding all or any of the principles under the Income Tax Act. Section 120(2) provides that the Board can delegate the power to issue directions in exercise of the power and performance of the concerns by all or any of the other Income Tax Authorities who are sub-ordinate to. Chapter XVII deals with collection and recovery of tax in Section 206 of the Act which is under chapter XVII provides that the principal Officer in case of every company shall within the prescribed time of the end of financial year and prepare or cause to be delivered to the prescribed Income Tax authority such return in such form and verified in such manner and setting forth such particulars as may be prescribed.

59. Now the notification dated 15.9.1999 issued by the Chief Commissioner of Income Tax which is annexure to the affidavit-in-opposition filed by the respondent in the writ petition, empowers Assistant Commissioner of Income Tax (TDS), Circle 21 (2). Respondent No. 1 herein to deal all matters relating to all sections contained in chapter XVII in respect all persons who are or could come within the jurisdiction of Joint Commissioner of Income Tax the provisions and the rules referred to above as well as the notification dated 15.9.1999 are not the subject matter of the challenge and have not been declared ultra vires. It. Therefore, clearly appears that the respondent No. 1 is the appropriate authority or the empowered authority to deal with the TDS matters of the assessee company and the respondent No. 1 becomes the Assessing Officer to deal with the TDS return submitted before her.

60. Now let us have a glance to the provisions of Section 131 of the Act, Section 131 provides for the powers regarding discovery and production of evidence etc. The Assessing Officer u/s 131 therefore has got the jurisdiction to call for the records or number of evidence or document or discovery as the Civil Court has got under the CPC when trying a suit. Now under the same Section 131, this Assessing Officer has been given power to impound books of accounts or other documents. This Assessing Officer has been given power to charge interest and to levy penalty.

61. Now if Dr. Pal's contention is accepted then the respondent No. 1 being the appropriate authority will have to convert herself into a rubber stamp authority and she will be entitled only to accept the return. That is neither the intention of the legislation nor the language of the provisions which has introduced Rule 36A and Section 206 and Section 131 of the Act. The authority having power to charge interest and levy penalty on a particular return cannot be said to be an Officer who

is meant for the purpose of accepting only TDS return by giving rubber stamp.

62. Now in this regard reliance may be placed on the decision reported in [Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd.](#), in which the Hon"ble Supreme Court observed :-

"That a power to do so something essential for the proper and factual performance of the work which the statute has in contemplation, may be implied."

63. It is now well settled that the Court while interpreting statute or document should give effect to the intention of a maker. The intention of the author therefore has to be gathered from the attending circumstances. In the case of K.S. Paripurnan v. State of Kerala and Ors., reported in (1994)5 SCC 592 the Hon"ble Supreme Court observes :

"That if the legislature in keeping with feeling of its elected representative brings out a legislation then the Court's endeavour should be to advance it and the draftsman devil if any, should not be permitted to act as obstruction in achieving the basic purpose."

64. In the case of Peerless General Finance (supra), it has been observed :-

"The expression "Assessing Officer" in Section 2(7A) hence not confined to the Assessing Officer making the regular assessment but includes others also who may come within the purview of Section 2(7A)."

65. In view of the above discussions we hold that the respondent No. 1 in the instant case is an appropriate authority/Assessing Officer (TDS) and she has got power to issue summons/notices u/s 131 as has been done in the instant case.

66. In so far as other aspect of survey is concerned, let us now turn to the relevant provisions of Section 133A :-

" 133A. Power of survey :

(1) Notwithstanding anything contained in any other provisions of this Act, an income tax authority may enter -

(a) any place within the limits of the area assigned to him, or

(b) any place occupied by any person in respect of whom he exercises jurisdiction or

(c) any place in respect of which he is authorized for the purpose of this section by such income tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such at which a business or profession is carried on, whether such place by the principal place or not of such business or profession and require any proprietor, employee or any other person who may at that . time and place be attending in any manner to, or helping in, the carrying on of such business or profession-

- (i) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place.
- (ii) to afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein, and
- (iii) to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act."

Sub-section (6) further provides :-

"(6) If a person under this section is required to afford facility to the income tax authority to inspect books of account or other documents or to check or verify and cash, stock or other valuable article or thing or to furnish any Information or to have his statement recorded either refuses or evades to do so, the income tax authority shall have all the powers under Sub-section (1) of Section 131 for enforcing compliance with the requirement made."

67. u/s 116 of the Act "income tax authority" means a Commissioner, a Joint Commissioner, a Director, a Joint Director, an Assistant Director or Deputy Director or an Assessing Officer, and for the purpose of Clause (i) of Section (1), Clause (1) of Sub-section (3) and subsection (5), includes an Inspector of Income Tax. From the plain reading of the provisions of the statute as well as from the notifications it is clear that Section 133A confers power and in view of the provisions of the Act and the notification the Officer rightly conducted survey and under due authorization they did the same.

68. As stated earlier the jurisdiction is thereof the income tax authority u/s 120 of the Act and Rule 36A to authorize the Officers to conduct the survey and this position is clear from the statute itself and we hold that the income tax Inspectors conducting the survey u/s 133A are duly authorized and legally and validly conducted the survey at the premises of the petitioner company in the instant case.

69. In so far as the concluding point is concerned, it has been submitted by Dr. Pal that the issuance of the summons u/s 131(1) there must be a pending proceeding before the said authority. In this regard. Dr. Pal has placed reliance on the decisions reported in [Dwijendra Lal Brahmachari and Others Vs. New Central Jute Mills Co. Ltd. and Another, Income Tax Officer and Others Vs. James Joseph O"Gorman, D.B.S. Financial Services Pvt. Ltd. Vs. Smt. M. George, Second Income Tax Officer and others, Rina Sen Vs. Commissioner of Income Tax and Others, Jamnadas Madhavji and Co. and another Vs. J.B. Panchal, Income Tax Officer and another, .](#)

70. Now, in the instant case admittedly there was a survey in the premises of the appellant u/s 133A and the respondent No. 1 Assistant Commissioner of Income Tax (TDS), Circle 21(2) issued summons along with show cause notice. Dr. Pal in this regard has cited [Dwijendra Lal Brahmachari and Others Vs. New Central Jute Mills Co. Ltd. and Another,](#) which is in completely different, where the document were in a

sealed box and without looking into the documents the prescribed authority issued summons and the Hon"ble Court observed that there is non-application of mind and the summons is bad perspective. In the instant case there was survey u/s 133A of the Act in the premises of the petitioner company and the information on the basis of the survey were duly transmitted to the TDS Officer/authority and the TDS authority the respondent No. 1 issued summons with show cause notice on due application of mind.

71. In so far as the term "Proceeding" is concerned the following has been cited by Dr. Pal to clarify the definition of the proceeding. "Proceeding" according to Stroud's Judicial Dictionary Vol. 3 means any proceeding equivalent to any action and does not mean any step in an action. "Proceeding" is obviously used as meaning a step in an action.

72. "Black"s Law Dictionary, 6th Edition at page 1204- "proceeding" in a general sense means the form and manner of conducting judicial business before a Court or judicial Officer, regular and orderly progress in form of law including all possible steps in an action from its commencement to the execution of judgment.

73. Halbury"s Laws of England, Vol. 1, page 5 at page 7- the term "proceeding" is frequently used to denote a step in an action and obviously it has that meaning in such phrases as "proceeding in any cause or matter". When used alone, however, it is in certain statutes to be construed as synonymous with or including an action.

74. The Shorter Oxford Dictionary, Vol. II at page 1677 the instituting or carrying on of an action at law, a legal action or process, any act done by authority of a Court of law, any step taken in a cause by either party.

75. A proceeding covers step in an action and is equivalent to an action.

76. The word "proceeding" can be given a narrow or a wider meaning depending upon the nature and scope of an enactment in which it is used and in the particular context of the language of the enactment in which it appears. It may in some enactments mean an action or that which initiates an action and in other enactments it may also mean a step in an action.

AIR 1956 Mad. 597 at page 598.

77. Dr. Pal on the basis of the other decisions referred to above submitted that the existence of pendency is a condition precedent and sine-qua-non for the exercise of power u/s 131 of the Act.

78. Now in Webster"s Encyclopaedic Dictionary provides, "proceeding" means the institution or carrying on action at law. The word proceeding has been defined in [Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another](#), , and AIR 1962 SC 818 (Babulal v. Hajarilal Kishenlal) where it has been observed "proceeding" means it is a step in the judicial process. Taking all the definitions

together regarding the term preceding it can be safely said that the proceeding is a step or action in the judicial process. In the above view of the matter, in the instant case summons along with show-cause notice on the basis of the information being transmitted to the respondent No. 1 by the Officers conducting survey in the premises of the appellant. In the case of Peerless General Finance (supra) it has been observed :-

"Section 131 does not express and only lay down that some proceeding must be pending before the same income tax authority who exercises the power u/s 131. The view that same proceeding must be pending before the same authority cannot be made an absolute principle."

79. Therefore, we hold that in the instant case pendency of proceeding was there and the respondent No. 1 Assistant Commissioner of Income Tax, TDS, Circle 21(2) rightly issued the summons u/s 131(1).

80. We also hold that the survey conducted u/s 133A of the Income Tax Act in the instant case is valid and the summons/notice (impugned in the writ petition) issued by the Assistant Commissioner of Income Tax (TDS), Circle 21(2) to the Assessee Company is legal, valid and within the competence and jurisdiction of the respondent No. 1.

In the result, therefore, the appeal fails and stands dismissed and the judgment and order passed by the learned Trial Judge in W.P. No. 1172/ 2000 is upheld. In the facts and circumstances of the case, there will, however, be no order as to costs.

Prayer sought for a stay of operation of this order is rejected.