

Commissioner of Income-Tax

Vs

Jawahar Lal Rastogi

Civil Appeal No. 16 of 1970

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

07.05.1970

JUDGMENT

SHAH, J. -

1. Jawaharlal Rastogi - hereinafter called 'the assessee' - is a Hindu Undivided Family which carries on the business of money-lending at Lucknow and is also interested as a partner in different firms engaged in the business of manufacturing barbed wire, pharmaceuticals, etc.

2. On September 14, 1964, the Income-tax Officer, A-ward, called upon the assessee to furnish within 10 days certain information with regard to its income and assets. On September 17, 1964, the Income-tax Officer submitted to the Commissioner of Income-tax a report requesting that he be authorised to enter and search the premises of the assessee. The Commissioner by his order, dated September 19, 1964, authorised entry and search after recording reasons for his belief that it was necessary to carry out the search. On September 21 and 22, 1964, the premises of the assessee were searched and a large number of documents were seized and were taken away to the Income-tax Office. The Income-tax Office also prepared inventories of the ornaments and other goods kept in the premises searched. After the seizure of the books of account and other documents the case was fixed for hearing before the Income-tax Officer on several occasions, but no substantial step was taken.

3. In May, 1966, the assessee filed a writ petition in the High Court of Allahabad challenging the validity of the search made by the Department contending that it "was illegal and in excess of the power conferred by Section 132 of the Income-tax Act, 1961" and prayed that the documents seized may be ordered to be released. The High Court of Allahabad considered the evidence appearing from the affidavits filed and observed that in the present case the assessee had established the following "points" :

- (1) The Income-tax Officer was apparently interested in investigating transactions prior to 1953. On September 14, 1964, the assessee was directed to furnish statements relating to four years ending on March 31, 1960, yet the Commissioner of Income-tax issued letters of authorisation permitting Income-tax Officers to seize documents relevant to nine assessment years;
- (2) The raid was ordered and organised before the expiry of the period of the notice;
- (3) More than 300 books and registers were seized during the raid and the Income-tax Officers carried away thousands of promissory notes. Some of the documents

seized appear to be irrelevant for assessment purposes and some of them were public documents;

(4) There is reason to believe that all or almost all the documents found on the premises were seized and carried away by the Income-tax Officers;

(5) Marks of identification were not placed on the documents in spite of the direction contained in the letters of authorisation, and

(6) The documents seized during the raid were detained by the Income-tax Officers for 19 months before the petition was filed.

4. In the view of the High Court the circumstances of the case indicated that the Commissioner of Income-tax and the Income-tax Officers acted beyond "the legitimate scope of Section 132 of the Act and there was force in the complaint of the assessee that the opposite parties carried out indiscriminate search which constituted abuse of power conferred on Income-tax authorities by Section 132 of the Act". In reaching its conclusion, the High Court relied upon the judgment of the Allahabad High Court in Seth Brothers v. Commissioner of Income-tax. (62 ITR 44)

5. In this appeal filed by the Commissioner of Income-tax with special leave, the Solicitor-General contends that the decision of the Allahabad High Court since the judgment in Seth Brothers' case (supra) was overruled by this Court in Income-tax Officer, Special Investigation Circle "B" Meerut v. Seth Brothers and Others (74 ITR 836) and on that account the judgment under appeal is liable to be set aside. In Seth Brother's case (supra) this Court examined the scheme of Section 132 in some detail and observed :

"The condition for entry into and making search of any building or place is the reason to believe that any books of account or other documents which will be useful for, or relevant to, any proceeding under the Act may be found. If the Officer has reason to believe that any books of account or other documents would be useful for, or relevant to, any proceedings under the Act, he is authorised by law to seize those books of account or other documents and to place marks of identification therein, to make extracts or copies therefrom and also to make a note or an inventory of any articles or other things found in the course of the search. Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorises it to be exercised.

#x x x##

If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed.

#x x x##

The Act and the Rules do not require that the warrant of authorisation should specify the particulars of documents and books of accounts a general authorisation to search for and seize documents and books of account relevant to or useful for any proceeding complies with the requirements of the Act and the Rules. It is for the officer making the search to exercise his judgment and seize or not to seize any

documents or books of account.

#x x x x##

The aggrieved party may undoubtedly move a competent court for an order releasing the documents seized. In such a proceeding the Officer who has made the search will be called upon to prove how the documents seized are likely to be useful for or relevant to a proceeding under the Act. If he is unable to do so, the court may order that those documents be released. But the circumstance that a large number of documents seized is not a ground for holding that all documents seized are irrelevant or the action of the officer is mala fide."

6. It must, however, be stated that the findings that the action of the Commissioner of Income-tax and the Income-tax Officer amounted to "indiscriminate search" and was beyond the "legitimate scope of Section 132" depends upon the evidence in each case and no general rule can be laid down in that behalf.

7. In the present case the High Court has noticed two important circumstances : (1) that whereas the notice, dated September 14, 1964, required the assessee to furnish statements relating to the four assessment years ending on March 31, 1960, the Commissioner of Income-tax authorised search for a period of nine assessment years even before the period fixed by the notice had expired; and (2) that contrary to the plain terms of Section 132(8) the Income-tax Officer retained with him the books of account for a period exceeding 180 days.

8. Under Section 132(2) as in force on the date on which the search and seizure took place stood as follows :

"The books of account or other documents seized under sub-section (1) shall not be retained by the Inspecting Assistant Commissioner of the Income-tax Officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Commissioner for such retention is obtained :

Provided x x x."

By the Finance Act of 1965, sub-section (2) was re-enacted by sub-section (8) with the modification that for the words "Inspecting Assistant Commissioner or the Income-tax Officer" the words "authorised officer" be substituted.

9. In the present case the premises of the assessee were searched on September 21 and 22, 1964, and the documents were retained till May 1966, i.e., for a period of 19 months. Our attention has not been invited to any order of the authorities recording reasons for retaining the documents seized after the expiry of 180 days, nor is there any approval of the Commissioner for retaining such documents. The retention of the documents without complying with the requirements of the statute after expiry of the period of 180 days would be plainly contrary to law.

10. The Solicitor-General said that it was not urged before the High Court that because the authorised officer did not record reasons and the Commissioner did not approve the retention of the documents after 180 days, the revenue authorities were bound to release the documents. Counsel submitted that failure to produce evidence on a matter not put in issue may not be regarded as a

ground in support of an order releasing documents. But the High Court has found that the documents seized during the raid were detained by the authorised officer for 19 months before the application was filed. If it was the case of the Department that detention of the documents after the expiry of 180 days was supported by good and adequate reasons recorded by the Income-tax Officer and the approval of the Commissioner as required by the Act was obtained, such record of reasons and approval would have been tendered in evidence. It cannot be said that the attention of the parties was not directed to the circumstance that the Income-tax Officer had failed to comply with the requirements of the Act.

11. The order recorded by the High Court must be sustained on the ground that the documents taken possession of were retained without authority of law for a period exceeding 180 days contrary to the terms of Section 132(8) as amended by the Income-tax (Amendment) Act, 1965.

12. The appeal therefore fails and is dismissed with costs.

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