

**Deepak Kumar Vs. Assistant Commissioner of Income-tax and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Mar-28-2005

**Reported in :** [2006]284ITR624(MP)

**Judge :** A.M. Sapre, J.

**Acts :** Income Tax Act - Sections 131(3) and 133A

**Appeal No. :** W.P. No. 71 of 2004

**Appellant :** Deepak Kumar

**Respondent :** Assistant Commissioner of Income-tax and ors.

**Advocate for Def. :** A.P. Patankar, Adv.

**Advocate for Pet/Ap. :** G.M. Chafekar and ;Sarda, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**A.M. Sapre, J.**

1. In this petition, challenge is only to the action of the respondents in retaining the books of account of the petitioner (assessee) under the provisions of the Income-tax Act. According to the assessee, i.e., the petitioner, the books of account seized as contemplated under Section 131(3) read with Section 133A of the Act on March

12, 1999, should be returned to the petitioner. It is contended that the retention of books of account by the taxing authorities is in contravention of Section 131(3) and hence, mandamus be issued against the respondents directing them to return the books of account to the petitioner as specified in annexure P-1 (page 11 of file).

2. In reply, reliance is placed on the proviso to Section 131(3) of the Act and the approval granted by the specified authority for retention of the documents. The copies of the approval obtained by the Assessing Officer are filed along with the return--the last being (annexure R-4) dated June 16, 2004, granting approval to retain the books of account up to June 30, 2005. It is stated in all these approvals that assessment proceedings for the years 1994-95, 1995-96 and 1999-2000 are pending and hence, the books of accounts are needed. This in substance is the reply.

3. Heard Shri G.M. Chafekar, learned senior counsel with Shri Sarada, learned Counsel for the petitioner, and Shri A. P. Patankar, learned Counsel for the respondents.

4. Having heard learned Counsel for the parties and having perused the record of the case, I find no merit in the writ.

5. Although learned Counsel for the petitioner with vehemence, criticized the manner in which the approval was granted by the authorities to the Assessing Officer as also its contents, and contended that either they are manufactured at a later date or do not satisfy the requirement of Section 131(3) *ibid*, I am unable to accept this submission. In other words, it is difficult to hold that these approvals relied on by the Department are not genuine, and/or manufactured and/or do not contain the requirements of Section 131(3) *ibid*. In my opinion, once it becomes an admitted fact that cases for some years are pending then retention is justified. It then satisfies the requirement of Section 131(3) once the approval is obtained from the competent authority. One may seek direction for early disposal of the cases but it is too much to say that retention becomes illegal or uncalled for.

6. I, therefore, do not find any merit in the writ and it is liable to be dismissed. However, at the same this Court is inclined to observe that no more extension than

the last one which is in force till June, 2005 (annexure R-4) be sought from the authorities and that the Assessing Officer must ensure that pending cases for which the books of account in question are retained be released no sooner the cases are over and assessment orders are passed. Indeed, in all fairness, the efforts of the Assessing Officer must always be to ensure expeditious disposal of pending cases rather than to keep them pending and then go on seeking extension. This only shows slackness and/or casualness on the part of the Assessing Officer in not disposing of the cases promptly thereby resulting in harassment to the assessee and at the same time render him liable for disciplinary action for dereliction of his duties in discharge of his duties. It is the duty of the Commissioner of Income-tax to monitor such cases for their expeditious disposal rather than to encourage the Assessing Officer to go on obtaining the extension. It should never be in routine course. Some kind of explanation from the concerned Assessing Officer as regards delay on his part is called for by his higher ups.

7. It is with these observations the petition fails and is dismissed. No costs.

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