Bapurao Vs. Assistant Director of Income Tax and ors.

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Court : Madhya Pradesh

Decided On : Jul-03-2000

Reported in : (2000)162CTR(MP)377

Appeal No. : Writ Misc. Petn. No. 1148 of 1990 3 July 2000

Appellant : Bapurao

Respondent : Assistant Director of Income Tax and ors.

Advocate for Pet/Ap. : J. W. Mahajan, *for the Assessee* R. L. Jain, *for the Revenue*

Judgement :
ORDER

N. K. Jain, J.

By this petition under article 226/227 of the Constitution of India, petitioner Bapurao, an assessee under the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), calls in question the two orders (Annexures 'B' and 'C') made by respondents Nos. 1 and 2, respectively, purporting to act under the provisions of section 132 of the Act.

2. Pursuant to a warrant of authorisation issued by the Director of Income Tax (Inv.), Pune, the respondent No. 1-Asstt. Director of Income Tax (Inv.) purporting

to act under sections 132(1) of the Act, conducted search at the residential premises of the petitioner situated at 47, Gulmohar Colony, Indore, on 19-3-1990, and 20-3-1990 (vide Panchnama Annexure `A'). Respondent No. 1 was of the view that undisclosed investment has been made in certain immovable properties as enumerated in the order Annexure-B and since it was not practical or feasible to take possession of those properties, he passed prohibitory order Annexure-B under section 132(1) of the Act directing the petitioner not to part with or dispose of the said properties without his permission. Respondent No. 2 to whom jurisdiction under section 132 was later on transferred, after necessary enquiry as envisaged under section 132(5), on 16-7-1990, passed impugned order Annexure -`C' endorsing the order Annexure B and directing retention of the said immovable properties.

3. The petitioner has assailed the aforesaid orders as without jurisdiction. It was contended that respondents No. 1 and 2 had no jurisdiction under section 132 to seize or retain any immovable property as according to the petitioner, section 132 in terms applies to only movables like books of accounts, other documents, money, bullion, jewellery or other valuable articles or things found as a result of such search.

As against it, respondents/revenue have supported the impugned action and contended that immovable properties also fell within the ambit of section 132. A preliminary objection was also taken that the petitioner before moving this court under article 226/227 of the constitution, ought to have exhausted alternative remedy as provided under sub-section (11) of section 132 of the Act.

4. Having heard learned counsel for the parties and considered the provisions of section 132, I am clearly of the view that the entire action taken by the respondents No. 1 and 2 was without jurisdiction.

5. Clause (B) of section 132(1) provides for the action which the authorised officer may take in exercise of his power of search and seizure under section 132(1). It authorises him to :

132(1)(B)

'(i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable articles or thing are kept ;

(ii) break open the lock...

(iia) search any person...

(iii) seize any such books of account, other documents money, bullion, jewellery or other valuable article or thing found as a result of such search;

(iv) place marks of identification

....

(v) make a note...'

6. A plain reading of the aforesaid provision would show that while the authorised officer has power to enter and search any building, place, vessel or aircraft, he can seize only the books of account, other documents, money, bullion, jewellery or other valuable article or thing kept therein. He has no power to seize the building and the place itself which he has searched or other immovable properties of the assessee. Needless to add that order of retention under sub-section (5) of section 132 can be made only in respect of things and articles seized under sub-section (1) not with respect of the building or the place searched. There is absolutely nothing in section 132 which may authorise the officer to seize or retain any immovable property.

7. In Sardar Praduman Singh v. Union of India & Ors. : [1987]166ITR115(Delhi) , Division Bench of Delhi High Court has held that 'Scope of section 132 was limited to the articles and things mentioned in sub-section (1), the section does not include within its ambit immovable properties.....' I, respectfully agree with the view taken by the Delhi High Court as no other interpretation of section 132 is possible.

8. In the result the petition succeeds and is allowed and the impugned orders Annexures 'B' and 'C' are quashed.

There shall be, however, no order as to costs. Security deposit, if any be refunded to the petitioner after verification.