IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2488 of 2016
Date of decision:8.2.2016

Sewak Industries

……Petitioner

Deputy Commissioner of Income Tax (Circle) Yamuna Nagar

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Ms. Rashmi Chopra, Advocate with
Mr. Rahul Sinha, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Challenge in this writ petition is to the conduct of survey proceedings under section 133A of the Income Tax Act, 1961 (in short, "the Act") which according to the learned counsel for the petitioner were void *ab initio*. Further prayer has been made for quashing the order and notice dated 26.10.2015, Annexure P.8 and P.9 respectively.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a partnership firm. It is engaged in the manufacturing and sale of wooden ply and operates from Yamuna Nagar. A survey under Section

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133A of the Act was conducted from 13.3.2013 to 15.3.2013 at the business premises of the petitioner. The said operation continued for three days. Statements of various persons were recorded on oath and certain documents were impounded. Order dated 14.3.2013, Annexure P.2 under Section 133A(3)(ia) of the Act was passed impounding certain books of account/documents. On the basis of the documents impounded during the survey proceedings and the statements recorded, scrutiny assessment proceedings for the assessment year 2013-14 were initiated and notice was issued to the petitioner. In reply, the petitioner filed copy of the income tax return, audit report, balance sheet and copy of Form No.26AS. The respondent issued notice under section 143(2) of the Act to the petitioner to which it replied by giving all the requisite details. The petitioner raised certain objections before the respondent with regard to the proceedings under section 133A of the Act. The respondent rejected the objections vide Annexure P.1. The impugned notice and order dated 26.10.2015, Annexures P.8 and P.9 had also been issued. Hence the instant writ petition by the petitioner.

3. We have heard learned counsel for the petitioner.

4. The primary challenge laid in the writ petition is to survey carried out at the premises of the petitioner from 13.3.2013 to 15.3.2013.

5. It would be expedient to refer to relevant portion of Section 133A of the Act relating to survey prevalent on the date of survey. It is quoted as under:-

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“Power of survey.

133A. (1) Notwithstanding anything contained in any other provision 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 authorised for the purposes 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 place,at which a business or profession is carried on, whether such place be 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.

Explanation.—For the purposes of this sub-section, a place where a business or profession is carried on shall also include any other place, whether any business or profession is carried on therein or not, in which the person carrying on the business or profession states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing

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relating to his business or profession are or is kept.

(2) xxxxxxxxxx

(3) An income-tax authority acting under this section may,—

(i) if he so deems necessary, place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom,

(ia) impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him:

Provided that such income-tax authority shall not—

(a) impound any books of account or other documents except after recording his reasons for so doing; or

(b) retain in his custody any such books of account or other documents for a period exceeding ten days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or the Chief Commissioner or the Director General or the Director General therefor, as the case may be,

(ii) make an inventory of any cash, stock or other valuable article or thing checked or verified by him,

(iii) record the statement of any person which may be useful for, or relevant to, any proceeding under this Act :

(4) xxxxxxx

(5) Where, having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, the income-tax authority is of the opinion that it is necessary or expedient so to do, he may, at `any time after such function, ceremony or event, require the assessee by whom such expenditure has been incurred or any person who, in the opinion of the income-tax authority, is likely to possess information as respects the expenditure incurred, to furnish such information as he may require as to any matter which may be useful for, or relevant to, any

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proceeding under this Act and may have the statements of the assessee or any other person recorded and any statement so recorded may thereafter be used in evidence in any proceeding under this Act.

(6) xxxxxxxxxx"

6. From the perusal of the above provision, we find that the Income-tax Authority has power to enter into any place in respect of which it has the jurisdiction or any place occupied by any person in respect of whom it exercises jurisdiction where a business or profession is carried on (Business premises) and inspect the books of account and other documents or to check or to verify the cash, stock or other valuable article or thing which may be available at such place and gather such other information which may be useful for, or relevant to, any proceedings under this Act. It is also empowered to impound the books of account or other documents and require the assessee or any other person to furnish necessary information in respect of the expenditure in connection with the function, ceremony or such other events at any time after such a function, ceremony or such other events which may be useful for, or relevant to, any proceedings under the Act and record the statements of the assessee or such other person which can be used in evidence in any proceedings under the Act.

7. In accordance with the provisions of Section 133A of the Act, survey operation was conducted at the business premises of the petitioner on 13.3.2013 which continued for three days. During the operation, statements of various persons like partner, supervisor and labourers were recorded. Certain documents were also impounded. The petitioner filed objections on 3.9.2015 (Annexure P.7) after expiry of

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about two and a half years challenging the survey by terming it to be 'search and seizure' operation which after consideration were rejected by the respondent. The impugned order and notice dated 26.10.2015 were issued. In the present case, survey was conducted on 13.3.2013 and the present petition has been filed after about three years on 3.2.2016 of the survey when notice for framing of assessment had been issued on 26.10.2015 challenging the survey. This had been done only to thwart the assessment proceedings initiated by the Assessing Officer by issuing statutory notices to the assessee. Further, the pleas that have been raised in the grounds of challenge in the writ petition to assail the survey under Section 133A of the Act fall in the domain of the disputed questions of fact for which writ jurisdiction under Articles 226/227 of the Constitution of India is not an appropriate remedy. We find no error in the jurisdiction exercised by the respondent authorities. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

February 08, 2016
'gs'

(Raj Rahul Garg)
Judge

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