

PETITIONER:
COMMISSIONER OF INCOME TAX, ALLAHABAD & ORS.

Vs.

RESPONDENT:
MS. VINDHYA METAL CORPORATION & ORS.

DATE OF JUDGMENT: 05/03/1997

BENCH:
S.C. AGRAWAL, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

This appeal is directed against the judgment of the Allahabad High Court dated May 4, 1983 whereby Civil Misc. Writ Petition No. 99 of 1992 filed by the respondents was allowed and the authorisation made by the Commissioner of Income Tax (for short 'the Commissioner') under Section 132-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and the proceedings in consequence thereof were quashed. It was also directed that action of the appellants in seizing of books and documents as well as the sum of Rs. 17,353/- on December 30, 1981 was contrary to law and the same be returned to the respondents.

On December 25, 1981 one Vinod Kumar Jaiswal, while he was travelling from Mirzapur to Calcutta by the Kalka Mail, was detained at Moghal Sarai Railway Station by the Government Railway Police and an attached case containing a sum of Rs. 4,63,000/- was sized from him on the suspicion that the money was stolen property or had been obtained through some other offence. A case under Section 411 I.P.C. read with Section 41 and 102 Cr.P.C. was registered against him. An intimation about the seizure of money was sent to the Income Tax Authorities at Varanasi on December 26, 1981. On December 29, 1981 the Inspecting Assistant Commissioner, Varanasi sent an intimation about it to the Commissioner about the fact of possession of the aforesaid amount by Vinod Kumar Jaiswal and also that he did not have any papers and documents regarding ownership or possession of the amount and that no person in the name of Vinod Kumar Jaiswal was borne on the General Index Register of Income tax Office at Mirzapur. The Commissioner issued a warrant of authorisation under Section 132-A(1) of the act on the basis of which the Income Tax Office sent a letter of requisition to the Station Officer Incharge Government Railway Police, Moghal Sarai requiring the Station Office to hand over the seized sum of money to him (Income Tax Officer) who had been authorised by a warrant of authorisation to receive it. The Inspecting Assistant Commissioner, Varanasi, in exercise of his power under Section 132 of the Act, authorised search of the residential premises of Rajendra Kumar Pandey, respondent No.2, a partner of M/s Vindhya Metal Corporation,

Imamganj, Mirzapur, respondent no.1. The Income tax Inspector visited the premises respondent No.1 on December 29, 1981 and found entered in the books of account that the aforesaid amount of Rs. 4,63,000/- had been handed over the Vinod Kumar Jaiswal, who was the nephew of Santosh Kumar Gupta (Jaiswal), respondent No.3, for being carried to Calcutta tin connection with the business of the said firm. On December 30, 1981 the search party which searched the premises of respondent No.1 carried away the sum of Rs. 17,353/- found as total balance and the books of account. After completing the investigation the Railway Police submitted the final report investigation the Railway Police submitted the final report on January 21, 1982 wherein it was stated that the money found in possession of Vinod Kumar Jaiswal did not represent stolen property or property acquired from any offence and the said sum belonged to respondent No.1. Prior to that, an application before the Judicial Magistrate (Railway), Varanasi praying the amount which belonged to the respondents and was being carried by Vinod Kumar, who was serving as a Munim with respondent No.1, be released to the applicant or in favour of Vinod Kumar. on January 4, 1982 the Income Tax Officer requisitioned the said amount and on January 13, 1982 he filed an objection to the application submitted by Rajendra Kumar Pandey. The Judicial Magistrate, by his order dated February 3, 1982, rejected the said objection of the Income Tax Department and directed the return of money to Rajendra Kumar Pandey. The said order of the Magistrate was assailed by the Income Tax Department by filing a revision before the Allahabad High Court which was allowed by the High Court by order dated April 19, 1982 and the Income Tax Department was permitted to take possession of the sum of Rs. 4,63,000/-.

In these circumstances, the Writ Petition, which has given rise to this appeal, was filed by the respondent before the Allahabad High Court wherein they assailed the validity of the warrant of authorisation issued by the Commissioner under Section 132-A(1) of the Act on the ground that condition precedent for the exercise of the powers under the said provision was not satisfied. Before the High Court an affidavit was filed by Shri Hira Singh, Commissioner of Income Tax, who had issued the warrant of authorisation. After examining the file containing the order passed by the Commissioner, the High Court has observed that the information on the basis of which the Commissioner had issued the warrant of authorisation was as follows :-

- (a) a sum of Rs. 4,63,000/- had been seized by the Government Railway Police from the possession of one Vinod Kumar Jaiswal, resident of Imamganj, Durga Devi, Mirzapur;
- (b) at the time to the seizure by the Railway Police, no papers or documents in regard to the ownership or possession of the amount were in possession of Vinod Kumar Jaiswal, and
- (c) no person by the name of Vinod Kumar Jaiswal was borne on the General Index Register of Income-tax assessee of the Income-tax Office at Mirzapur.

The High Court, after considering the material on which reliance was placed by the Commissioner, has held that on the information in possession of the Commissioner no

reasonable person could have entertained a belief that the amount in possession of Vinod Kumar Jaiswal represented income which would not have been disclosed by him for purpose of the Acts. The High Court has observed :-

"Vinod Kumar Jaiswal, according to the information in possession of the Commissioner, was not borne on the General Index Register of Income-tax assessee of the Income-Tax Offices at Mirzapur to which place he belonged. Obviously, therefore, there was not occasion for him to have disclosed the amount as his income in any assessment proceedings under the Act. Without anything more than what was actually there before the Commissioner, how could it have been assumed that he would not have disclosed it for purposes of any proceedings under the Act. There was nothing before the Commissioner to suggest that it was, in fact, wholly or in part, income of any person connected with Vinod Kumar Jaiswal so as to induce a belief that, if called upon, Vinod Kumar Jaiswal would not have disclosed it for the purpose of the Act. The mere fact this amount and did not have any documents with him regarding its ownership or possession could not be treated as appears to have been done by the Commissioner as information relatable to a conclusion that it represented income which would not have been disclosed by Vinod Kumar Jaiswal of purpose of the Act. Mere unexplained possession of the amount, without anything more, could hardly be said to constitute information which could be treated as sufficient by the reasonable person, leading to an inference that it was income which would not have been disclosed by the person in possession for purpose of the Acts"

We have heard the learned counsel for the appellant in support of the appeal and we have perused the impugned judgment of the High Court. Having considered the facts and circumstances of the case, we do not find any ground to interfere with the impugned judgment of the High Court. The appeal is, therefore, dismissed. No order as to costs.