

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5067 OF 2009

[Arising out of SLP(C) No. 7434/2009]

INCOME TAX OFFICER AND ORS.

... APPELLANT(S)

:VERSUS:

U.K. MAHAPATRA & CO. AND ORS.

... RESPONDENT(S)

ORDER

Leave granted.

Having heard the learned Additional Solicitor General Mr. Mohan Parasaran and Mr. Pal, learned senior counsel appearing on behalf of the respondents, we are of the opinion that keeping in view the documents in question having been seized as far back as 28.1.2008, the appellants could not and in fact did not object to return thereof. The learned Additional Solicitor General states that the seized documents have been deposited in the High Court which are lying in the custody of Deputy Registrar (Judicial). We may also notice that the High Court in its order directed:

“13. For the reasons stated in paragraphs 7 to 10, the survey operation under Section 133A in the petitioner's premises, impounding of books

of account/documents on 28.5.2008 and retention of the same till date being made illegally without following the procedure as laid

down in Section 133A of the I.T. Act, the petitioner is entitled to get back the impounded books of account/documents.

In *C/T v. Kamal & Co.* (2007) CTR (Raj) 200, it was held that the materials collected during the course of illegal survey can be used for making additions. In *Pooran v. Director of Inspection (Inv)*, (1974) 93 ITR 505 (SC), the Hon'ble Supreme Court held even assuming that the search and seizure were in contravention of the provisions of Section 132 of the I.T. Act, still the material seized was liable to be used subject to law before the Income Tax authorities against the person from whose custody it was seized. Therefore, if the opposite parties think that the books of account or any portion thereof are or is relevant for their purpose, they are entitled to take copy of such documents or portion of such books of account.

14. In the above fact situation, we direct opposite party No. 2 to return the books of account/documents as impounded from the premises of the petitioner in course of survey under Section 133A by opposite party No.1 within a period of two weeks from the date of production of a certified copy of this order before him by the petitioner.

With the above direction, the writ petition is disposed of.”

In view of the stand taken before us by the parties, we direct the aforesaid officer of the High Court to return the documents to the respondents herein, within two weeks from the date of receipt of a copy of this order, subject to the condition that the appellants herein would be entitled to take the print out of all the pages of the documents and the copies of the CD ROM, which may be certified by the said Deputy Registrar. Also

-3-

similar certification would be granted by the said officer in respect of the photocopies of the blank cheques and other documents which have been photocopied.

The appeal is disposed of with the aforementioned directions.

.....J
(S.B. SINHA)

.....J
(DEEPAK VERMA)

NEW DELHI,
JULY 29, 2009.

