

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 24<sup>TH</sup> DAY OF APRIL, 2009

BEFORE:

THE HON'BLE MR. JUSTICE D.V. SHYLENDRA KUMAR

Writ Petition No.6564 of 2009 (T-I)

**BETWEEN:**

M/S. SUBHA AND PRABHA  
BUILDERS PVT LTD  
REP BY ITS MANAGING DIRECTOR  
ONE SRI T.D.RAMAKRISHNA  
I FLOOR, R.K.COMMERCIAL COMPLEX  
BANGALORE - 560 016

... PETITIONER

[By Sri. K Kiran Kumar, Adv.,]

**AND:**

1. INCOME TAX OFFICER  
WARD 12 (2), NO.14/3  
4<sup>TH</sup> FLOOR, RASTHROTHANA  
BHAVAN, (OPP.RBI),  
NRUPATHUNGA ROAD  
BANGALORE I

2. COMMISSIONER OF INCOME TAX  
BANGALORE III  
QUEENS ROAD  
BANGALORE - 560 001

... RESPONDENTS

[By Sri Aravind, Adv., for Sri. M V Seshachala, Adv.,]

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO PROHIBIT THE ORDERING FOR IMMEDIATE RETURN OF THE IMPOUNDED BOOKS OF ACCOUNT AND OTHER DOCUMENTS AND ETC.,

THIS PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

Writ petition by a private limited company which claims to be carrying on business in real estate as a builder and developer.

2. It appears the petitioner's activities had attracted the attention of the Income Tax Authorities and in a survey conducted, the officers of the income tax department had visited the business premises of the petitioner as on 20.9.2005, examined the general activities of the petitioner, various books of accounts and other documents maintained at the office premises of the petitioner and as a follow up action issued a notice on the same day summoning the petitioner to appear before the officer with ledgers, cash book, vouchers and bank passbooks and its details.

3. It appears the respondents also made an inventory of the books of accounts, documents and such other papers available there and while took away the papers and documents contained in as many as thirty files, but

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nevertheless issued summons on 20.9.2005 [copy at Annexure-A] calling upon the petitioner to produce the ledger, cash book etc., as referred to above on the next day at the office of the first respondent – Income Tax Officer, Ward No.12[2], Rashthrothana Bhavan, Nrupathunga Road, Bangalore – 1.

4. It is the version of the petitioner that the petitioner appeared before the first respondent – officer the next day along with the remaining books of accounts which were left with the petitioner and which had been summoned and while the first respondent – officer retained even those books of accounts also, did not return the earlier files and documents which had been taken away from the office premises of the petitioner the previous day.

5. It is the version of the petitioner that much later the petitioner was issued with an order dated 7.10.2005 purporting to be an order passed under section 133A[3][IA] of the Income Tax Act, 1961, [for short 'the Act'], *inter alia*, indicating that at the time of survey of the

office premises of the petitioner on 20.9.2005, certain files and documents were found and they had been inventorized; that they were also produced before the authorities for verification and in the light of the power under section 131[3] of the Act the files and documents as per annexure attached to this order are impounded for further verification [copy at Annexure-B] and the number of files retained or impounded are thirty in number and each file containing documents and other papers ranging from 5 pages as in the case of file figuring at Sl. No.5 upto 253 pages as in the case of the file figuring at Sl. No.13 of the inventory list.

6. Though the petitioner it appears kept demanding for return of the impounded documents and files, while it was not so returned, the petitioner was furnished with an order dated 27.10.2005 [copy at Annexure-C] signed by the Commissioner of Income Tax, Bangalore-III, Bangalore, indicating that the Commissioner had accorded permission to the Income Tax Officer to retain the books of accounts and documents impounded by him



for the period upto 31.3.2006. It was indicated that the reason for retention order was to verify books of accounts/documents for the purpose of completion of assessments.

7. Petitioner it appears had addressed a letter dated 26.2.2006 [copy at Annexure-D] seeking for retention of the impounded documents pointing out that the documents amongst others contain sale deeds, agreements also belonging to some other parties and they were all very essential for the purpose of the petitioner and sought for retention of such documents forthwith.
8. This appears was followed up for the same purpose by communication as per letter dated 2.5.2006 [copy at Annexure-E].
9. While the petitioner went on representing for return of such documents and the latest such request is as per letter dated 21.1.2009 [copy at Annexure-H], the petitioner was only responded with the periodic extension accorded by the Commissioner extending the period for a year as

per memorandum dated 26.3.2007 [copy at Annexure-J] and further memorandum dated 19.12.2007 [copy at Annexure-K] indicating that the extension of period of retention approved by the Commissioner on this occasion was up to 31.3.2009.

10. It is the version of the petitioner that on the petitioner submitting the representation as at Annexure-H, the response on the part of the respondents [copy at Annexure-L] was only to extend the period of retention for further period of one year upto 31.3.2010, along with the memorandum as this order has been communicated to the petitioner subsequent to the filing of the writ petition.

11. It is in the background of such persistent refusal on the part of the respondents to return the impounded documents of the petitioner, the present writ petition seeking for following reliefs:

*“issue writ of certiorari or writ of mandamus or writ of prohibition or such other writs which this Hon’ble Court deems fit in the facts and circumstance of this case and, thus:*

1. *ordering for immediate return of the impounded books of account and other documents.*
  2. *Declaring that both the initial impounding of books of account and other documents as well as the subsequent retention of the same is illegal and unlawful.*
  3. *Imposing of exemplary cost as against the respondents and, in favor of the petitioner for the undue hardship and agony endured by the petitioner.*
  4. *May pass such order which best serves the interest of Justice, Equity and Law.*
12. The first respondent – Income Tax Officer, Ward No.12[2] and the second respondent – Commissioner of Income Tax had been put on notice and have entered appearance through Sri Aravind, learned counsel.
13. The matter was taken up for consideration of interim order on 2.4.2009. It was adjourned to 8.4.2009 at the request of learned counsel for the respondents to receive instructions and to make submissions. On 8.4.2009, the petition was admitted and the matter was adjourned to 13.4.2009 to enable the respondents to file objections.



Statement of objections have been filed on behalf of the respondents.

14. After hearing Sri. Kiran Kumar, learned counsel for the petitioner and Sri. Aravind, learned counsel for the respondents the following order was passed on 16.4.2009.

**“DVSKJ:  
16-4-2009**

*Writ petitioner is a private limited company doing business as land developer and is also an assessee under the provisions of the Income Tax Act, 1961 [for short, the Act].*

*The petitioner has been moving heaven to earth to get back the voluminous books of account and documents, which had come to be impounded as on 20-9-2005 and for the return of the same, having failed in all its attempts, has approached this court seeking for issue of a writ of mandamus to compel the authority to return the documents impounded.*

*The impounded documents were evidenced as per the inventory, reducing into writing and furnished a copy thereof to the petitioner, as produced at Annexure-B to the writ petition, which reads as under:*

1. *Triplex file containing copy of sale agreements.*
2. *Ebsons file containing copy of sale agreement and receipts.*





3. Triplex file containing copy of sale deed and connected papers.
4. Thickest file containing copy of absolute sale deeds and agreement
5. Harry file containing a/c with Arun Associates
6. Classic file containing agreement papers [copy]
7. Triplex folder containing correspondence and pay receipts Pramila S Suvarna.
8. Triplex file containing copy of sale agreements and loose papers
9. Thickest bank pass sheet a/c No 7649 and loose papers
10. Prestige files - copy of deeds, declarations, sale deeds etc
11. Triplex file containing bank pass sheet BK a/c No 29280 & loose sheets
12. Harry file containing sale agreements, receipts etc.
13. Super thickest file containing sale agreements, receipts etc,
14. Epsoms print file containing copy of absolute sale deed and sale agreements, loose sheets etc
15. Hari file containing copy of indemnity bond and receipts



16. *Epsons file containing original sale deed dated 22-7-02 and 2-6-03 and loose papers*
17. *Super thickest file containing copy of sale deed etc*
18. *Triplex file containing copy of sale agreements, receipts etc*
19. *Thickest file containing receipts*
20. *Triplex file containing copy of sale agreements and receipts*
21. *Double extra thick file containing loose papers*
22. *Triplex file containing receipts and correspondence*
23. *Hari file containing copy of sale agreement, receipts*
24. *Epsons file containing original sale deed dated 31-7-02 and connected papers*
25. *Triplex file containing receipts and correspondence*
26. *Super thickest file containing bank pass sheets and loose sheets*
27. *File containing copy of sale deeds and loose sheets*
28. *Cobra file containing original lease deeds Andal*
29. *Triplex file containing correspondence and receipts*



30. *Cobra spring file containing copies of sale agreements, absolute sale deeds etc*

*The writ petition is on the premise that the income tax authorities, who have power to impound the documents under the provisions of sub-section (3) of Section 131 of the Act, which normally is for a period of 15 days and if such documents are required to be retained for a longer period, it can be done by obtaining approval of the chief commissioner of income tax, but the power never enables the authority to retain the documents for an indefinite period, that in spite of several demands and requests, the respondents have not returned the documents for the past more than four years and therefore a writ of mandamus should be issued.*

*Notices had been issued to the respondents on the writ petition and the learned standing counsel for the income tax department took notice for the respondents.*

*The matter was heard for some time on 8-4-2009. It has come up for further orders and for hearing on a few more occasions.*

*Sri Aravind, learned counsel for the respondents submits that the statement of objections has already been filed.*

*Sri K Kiran Kumar, learned counsel for the petitioner would submit that the statement of objections is more frivolous in nature, no valid reason is indicated for retention of the documents for as long as a period of five years; that even the statutory provision does not enable the authorities to retain the impounded*

documents for such a long duration; that the frivolous and inexplicable orders are being passed by the authority concerned postponing the return of documents time after time; that this is a clear case of gross misuse of the statutory power and as the respondents are not prepared to return the documents even now and are holding the same without authority of law, a writ of mandamus should be issued directing the respondents to return the documents.

The stand of the respondents is that while the impounding is under the powers conferred on the authorities under Section 131 of the Act, the assessee has been called upon to explain various notings and contents of the documents, but the petitioner-assessee did not cooperate with the authorities; that an order had come to be passed and the petitioner has preferred an appeal, which is pending consideration. It is sought to be contended that in view of the pendency of the appeal, it has become necessary for the authorities to retain the impounded documents with the special approval of the commissioner.

Even a cursory glance of the provision of Section 131 of the Act indicates that subsection (3), which is an exception for retaining the impounded documents for some duration, putting an outer limit of 15 days for such detention and beyond this can only with the approval of the chief commissioner. A period beyond 15 days can be understood as a few days supplementing the outer limit of 15 days.

Be that as it may, the stand of the respondents to retain the documents for as long as a period of more than four years is



absolutely without any justification in law nor are the authorities enabled to retain the documents for such a long period.

*In the circumstances, an interim direction is issued to the respondents to return the documents impounded forthwith to the petitioner and if it is so needed, it is open to the respondents to retain the photo copies of the documents obtaining the signature of the managing director of the petitioner-company to indicate that it is the affirmed copy of the very documents which were impounded by the authorities from the petitioner and is being returned now and use that for any purpose as needed by the respondents. The documents referred to in Annexure-B which had been impounded from the petitioner and retained with the respondents shall be returned to the petitioner by or before 21<sup>st</sup> April 2009.*

*List this matter for further orders on 21-4-2009.*

*Furnish copies of this order to the learned counsel for the petitioner and the learned counsel for the respondents."*

15. On 21.4.2009, the petitioner has filed a memo indicating that the respondents have complied with the interim order and with Sri. Aravind, learned counsel for the respondents asserting that the action that had been taken by the respondents is well justified under the statutory provision, particularly, the proviso to sub-

section [3] of section 131 of the Act, the matter was directed to be listed for examination of these aspects and disposal.

16. The principal contention urged on behalf of the respondent - department is that the statutory power, particularly, the proviso to sub-section [3] of section 131 of the Act specifically enables the impounded books of accounts or other documents to be retained in the custody of the impounding officer for a period exceeding fifteen days with the prior approval of the Chief Commissioner or Director-General or Commissioner or Director; that, in fact, such approval has been obtained even as per the orders which have been produced by the very petitioner along with the writ petition and therefore no exception can be taken to the retention of the documents; that the respondents were justified in retaining the books of accounts and other documents as such documents were required for perusal and examination by the appellate authority and during the pendency of the petitioner's appeal before the first appellate authority where under the

petitioner has questioned the validity of the assessment order and determination of tax liability of the petitioner is very well permitted in law and such questions have been examined by the courts and the power for retention of the documents is very well established.

17. In support of the submission, Sri. Aravind, learned counsel for the respondents has placed reliance on the division Bench Judgment of the Patna High Court in the case of **'M L ENTERPRISES AND OTHERS vs. COMMISSIONER OF INCOME TAX AND OTHERS'** reported in **[1994] 209 ITR 872** and also a single Bench decision of the Madhya Pradesh High Court in the case of **'DEEPAK KUMAR vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS'** reported in **[2006] 284 ITR 624 [MP]**.

18. Submission with reference to the above two decisions is that while in the former case, a challenge to the retention of the impounded documents for a period beyond eight to ten months and during the pendency of

the assessee's appeal before the appellate commissioner was not found illegal, no relief was extended to the petitioner and the writ petition was dismissed holding that the proviso to sub-section [3] of section 131 of the Act was applicable for such retention.

19. Likewise, in the case decided by the single Bench of the Madhya Pradesh High Court, the retention of the documents during the pendency of the proceedings in appeal were again sustained and it was observed that while the mandamus for return of the documents cannot be issued during the pendency of the proceedings, the only option open to such aggrieved assessee is to seek for early disposal of the case and not for direction to return the impounded documents and the petition was dismissed.

20. Sri. Kiran Kumar, learned counsel for the petitioner, on the other hand, has drawn attention to the statutory provision of sub-section [3] of section 131 of the Act which reads as under:





**“131. Power regarding discovery, production of evidence etc.,” -**

[3] *Subject to any rules made in this behalf, any authority referred to in sub-section [1] or sub-section [1-A] may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:*

**Provided** *that an Assessing Officer or an Assistant Director or Deputy Director shall not -*

[a] *impound any books of account or other documents without recording his reasons for so doing, or*

[b] *retain in his custody any such books or documents for a period exceeding fifteen days [exclusive of holidays] without obtaining the approval of the Chief Commissioner or Director - General or Commissioner or Director therefor, as the case may be.”*

and submits that apart from the proviso to sub-section [3] of section 131 of the Act being not a provision which empowers the impounding authority to retain the impounded documents for indefinite period as is done in the present case, it also enjoins the impounding authority to indicate the reasons for impounding which in the language of the provision, the word ‘reasons’ in plural being used, unless more than one reason is being given,

the documents/account books in the first instance cannot be impounded; that the impounding order should be made only by the authority impounding and retention beyond fifteen days being only with the approval of the Commissioner of Income Tax, the Commissioner can only pass an order for extension and not for an order himself for impounding or for retaining it indefinitely and therefore it is pointed out that in the present case, there being no order for impounding passed by the retaining authority subsequently after the initial period of impounding, if at all there is no order in law for retaining the document as of now and it is the duty of the respondents to return the documents.

21. It is also submitted that on reading of the statutory provisions, it is very clear that the power to extend the period of retention beyond fifteen days while can be exercised by the Commissioner for relevant and justifiable reasons, that power can be exercised only once and not repeatedly and time and again as has been done in the case of the writ petitioner; that the proviso does not enable

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even the Commissioner to pass orders for extension of period of retention time and again and at any rate for retaining a document impounded in the year 2005 for as long as a period of five years as has been done now and not returning the documents inspite of persistent demands by the petitioner for the return of the same.

22. It is also the submission of Sri. Kiran Kumar, learned counsel for the petitioner that the period of extension should be in consonance with the spirit and intendment of fixing the outer limit of fifteen days and cannot be in total derogation of the period prescribed by the statute and therefore also assuming that there is an order for impounding and with prior approval of the Commissioner, the period of impounding extended by later order, such order still is not sustainable and not permitted in law and therefore is to be quashed.

23. In support of the submission that the reasons for recording should be found in the records before passing the order etc., reliance is placed on the decision of the



Rajasthan High Court in the case of '**SUGAN CHAND**

**VINOD KUMAR vs. COMMISSIONER OF INCOME TAX AND ANOTHER'** reported in **175 ITR 273** and further submission is that the statutory provision being quite clear and unambiguous, it should be understood and enforced as it is and there being no scope for interpreting for extending the period of fifteen days indefinitely the rule of literal interpretation should be applied and therefore on a plain reading of the statutory provisions, it should be held that the provision does not enable the authorities to impound and retain the documents for periods indefinitely long and for years together.

24. Learned counsel for the petitioner has placed reliance on a division Bench decision of this court in the case of '**C R ASHOK vs. STATE OF KARNATAKA AND OTHERS'** reported in **2009 [1] KCCR 634 [DB]**.

25. It is the further submission that any statutory power should be exercised bonafide and for the purpose of the Act etc., and a power not exercised in such a manner is no



good for enforcing administrative action and in support of this submission places reliance on the single Bench decision of this court in the case of '**RAJ AND RAJ INVESTMENTS vs. INCOME TAX OFFICER, VISHVESHWARAPURAM, MYSORE**' reported in [2008] 166 TAXMAN 463 [KAR].

26. It is also the submission that any statutory power should be exercised in accordance with the statute and not in whimsical and arbitrary manner and in support has placed reliance on the decision of the Supreme Court in the case of '**INDIAN NUT PRODUCTS AND OTHERS vs. UNION OF INDIA AND OTHERS**' reported in [1994] 4 SCC 269.

27. Sri. Aravind, learned counsel for the respondents has further submitted that the initial impounding if is of the concerned officer, the extension automatically enures for the benefit of further retention etc.,.

28. The question in the present writ petition is as to whether the orders passed by the respondents for



retaining the documents such as books of accounts belonging to the petitioner which are purported to be retained as per order dated 7.10.2005 till now, on the strength of orders passed by the Commissioner extending the period of impounding and if such retention is permitted and valid in law.

29. The statutory provision is one providing for retention of documents and books of accounts which are noticed by the authorities in the context of any action taken under the Act against the assessee.

30. The power under sub-section [3] of section 131 of the Act being subject to the rules for exercising the power, the outer limit of the power is again to be found in the proviso and it says that such documents or books of accounts cannot be impounded without recording reasons for impounding and further that the retention cannot be beyond fifteen days without obtaining the approval of the Chief Commissioner etc.,. In the normal course, the outer limit is fifteen days, as an exception, it can be more.



31. While on facts in the present case, as submitted by Sri. Kiran Kumar, learned counsel for the petitioner, the authorities have virtually misused the power by taking away the documents even as on 20.9.2005, it is only for regularizing the taking away of the documents, an order for impounding them came to be passed on 7.10.2005, in fact, after the expiry of period of fifteen days and therefore the initial impounding order itself is bad in law.
32. Be that as it may, as the more important question is the extent of power under sub-section [3] of section 131 of the Act and even as indicated in the statutory provision, an outer limit for retention of document is fifteen days, extension can only be for a few days more and for any specific purpose and with the prior approval of the Commissioner.
33. Where the statute has fixed the outer limit of fifteen days and permits extension beyond for justifiable reasons and with the safeguard of obtaining approval of the higher authorities, the power to approve retention beyond fifteen

days cannot be so understood as to destroy the very purpose of fixing the outer limit of fifteen days as the period for retention of the documents.

34. Interpreting the power for extending the period beyond fifteen days as per the proviso to sub-section [3] of section 131 of the Act, as a power to extend retention indefinitely or during the pendency of the appeal will virtually defeat the very object of impounding within an outer limit of fifteen days as period of retention.

35. It should be noticed that the power for impounding is an inroad into the privacy and freedom of an assessee and therefore it should be construed strictly even if rule of interpretation is to be employed. The power for extension cannot be interpreted in such a manner as to destroy the limit of fifteen days intended by the statute, particularly, the provision occurring in a statutory provision conferring powers on the authorities to invade the privacy of citizens. Exercise of such power while will be scrutinized strictly, interpretation can only be to limit the power as per the





statutory provision and not for extending or stretching the power by way of reasoning or logic. In this regard, with great respect, I am unable to agree with the views taken by the division Bench of the Patna High Court and the single Bench decision of the Madhya Pradesh High Court.

36. If one should peruse the scheme of the Act, it is obvious that section 131 of the Act which occurs in chapter - XIII sub-chapter-C indicating the powers of the Income tax authorities, is a provision which confers certain powers on the income tax authorities during the conduct of proceedings under the Act and conferring on such authorities some of the powers of a civil court as contemplated under the Code of Civil Procedure, 1908 facilitating the authority to obtain necessary information, gather relevant evidence and to compel assessee and the related persons for production of documents, material, appearance and other evidence in their possession for the purpose of ascertaining the income of an assessee in a given assessment year and for computing the tax liability for the year. The provisions are designed to supplement



the powers of the authorities for such purpose. A specific analysis of the provisions of section 131 of the Act which confers power regarding discovery, production of evidence and for impounding of accounts and documents with the power of search and seizure as conferred under section 132 of the Act clearly indicates that the power under section 131 of the Act is inferior to the power under section 132 of the Act.

37. While the power under section 132 of the Act is normally in the context of assessee's not forthcoming with true particulars and indulging in suppression of information and material and to deal with such situations, conferring the authority with greater powers, power under section 131 of the Act is a power incidental to the proceedings taken under the Act and in situations contemplated under section 131[1-A] of the Act even in a situation when there are no proceedings in respect of whom power is sought to be exercised under this provision pending before the authority taking action or before any other income tax authority.



38. The comparative analysis of these two sections also reveals that the legislative scheme is to provide for greater safeguards in favour of the assessee and citizens when more drastic powers under section 132 of the Act is sought to be exercised by the income tax authorities and lesser scrutiny and control when powers as available under section 131 of the Act is exercised. The lesser safeguard is obviously for the reason that the power under this section itself is a limited power and not drastically affecting the interest and freedom of assessee. The legislative scheme is very clear that more draconian a power conferred on the income tax authorities greater the safeguards in favour of the assessee and greater checks and control on the authorities exercising the power. If such is the scheme of the Act, section 131 of the Act providing for lighter safeguards cannot be understood or interpreted as one providing for exercising a drastic or draconian power such as retaining an impounded document for indefinite periods as in the present case or to retain the same till the disposal of all the proceedings



taken under the Act. Such drastic or draconian provision can never be read into the provisions of section 131 of the Act.

39. The power under the proviso to sub-section [3] of section 131 of the Act cannot be interpreted as to understand that the higher authority can pass orders to approve the retention of documents upto three to four years. If one should peruse the scheme of the Act, the provision occurs in section 131 of the Act which is one for supplementing the proceedings under the Act. The books of accounts or documents while can be compelled to be produced and while so, produced can be retained for some period as indicated in the statutory provision, that cannot be retained or elevated to be put on a higher pedestal to virtually seize the documents for indefinite period. The whole object of the Act is to peruse the books of accounts and documents for some other purpose and so far as the Income Tax Act is concerned for the purpose of determining the tax liability of the petitioner and nothing beyond.



40. In the instant case, the petitioner's tax liability has already been determined by the assessing authority and the assessee filing an appeal in the normal course if he is aggrieved by the determination, can never be a ground for retention of the impounded documents indefinitely when such retention is not provided for under the statute itself.

41. The provisions of section 132 of the Act which is for search and seizure and more drastic powers on the authorities, contains more safeguards and imposes greater restrictions on the exercise of power by fixing outer limits for taking action pursuant to a seizure and also the provisions of section 133-A of the Act which is a power for survey also providing for retaining books indicating that the outer limit while exercising the power under section 133-A of the Act for survey is ten days and the power of impounding being a power exercisable under the provisions of the Act and compelling an assessee to produce books of accounts, outer limit is being fixed at fifteen days and in respect of more drastic action under

section 132 of the Act for search and seizure which is being subjected to scrutiny by a higher authority like the Central Board of Direct Taxes and also being subject to the provisions of the Criminal Procedure Code relating to search and seizure, while enables retention of seized documents till the culmination of the proceedings pursuant to seizure, such a drastic power cannot be read into the proviso to section 131[3] of the Act for the simple reason, the power for impounding documents/account books under this statutory provision is for inferior power compared to the power of seizure. The retention of the documents by the respondents by extending the period of impounding time and again is justified by the respondents on the premise that the appeal filed by the petitioner against the order of assessment is still pending. Such stand of the respondents is obviously on the understanding that the account books/documents impounded by the authorities can be retained during the pendency of the proceedings as is enabled under the provisions of section 132 of the Act. Such stand and



understanding of the respondents is obviously wrong and cannot be accepted and is only to be rejected for the reason that such an understanding will virtually transplant the powers exercisable under section 132 of the Act even in respect of the powers exercisable under section 131 of the Act, quite contrary to the very language of section 131 of the Act.

42. So far as the power under section 131 of the Act is concerned, the proviso indicates the limits of the exercise of power and those limits are [a] recording of reasons for impounding the books of accounts and other documents and [b] upto the outer limit of fifteen days. The outer limit can be crossed with the prior approval of the higher authority and for relevant reasons and for reasonable period and not for indefinite period. The reasonable period that can constitute outer limit of fifteen days should take its colour from the normal period of fifteen days fixed as outer limit and therefore can supplement the normal fifteen days period by a few more days and not either by few more months or few more years. Permitting the



proviso to enable the authorities to retain the documents for few more years is nothing but doing violence to the statutory provision.

43. I am of the clear view that the proviso to sub-section [3] of section 131 of the Act does not enable the Chief Commissioner or other authority who has the power to extend the period and supplement it to an outer limit of fifteen days to keep extending the period repeatedly as is done in the present case and for years together. The extension can only be a one-time exercise and supplementing the outer limit of fifteen days for some more days depending on the circumstances. The extension period should be counted only in days and not in months or years as outer limit is indicated in days. As already observed the length of extension should necessarily take its colour from the outer limit prescribed for retention.

44. That will be the proper understanding of the proviso to sub-section [3] of section 131 of the Act and if so the





present orders extending the period of retention under Annexure - B dated 7.10.2005, Annexure - C dated 27.10.2005, Annexure - J dated 26.3.2007, Annexure - K dated 19.12.2007, Annexure - L dated 16.3.2007 are all illegal and without the authority of law and are therefore quashed by issue of a writ of certiorari and the interim order passed earlier is made absolute.

45. However, the respondents having misused the powers under the Act for retaining the documents for indefinite period and by repeated employment of the power under the proviso to sub-section [3] of section 131 of the Act are required to compensate the petitioner for the hardship and losses suffered.

46. While the quantification of losses and damages may not be possible in writ jurisdiction, the petitioner's hardship, inconvenience, legal expenses are all quantified at a sum of Rs.25,000/-.

47. Writ petition is allowed imposing cost of Rs.25,000/- on the respondents. Cost to be paid to the petitioner by

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the respondents within ten weeks from today failing which on an application to the registry, it is open to the petitioner to file an application in the registry and seek for certificate for realization of this amount as decree of the civil court.

**Sd/-  
Judge**

AN/-