

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 11.01.2013

+ **WP (C) No. 1417/2011**

MADHU GUPTA

... Petitioner

versus

**DIRECTOR OF INCOME-TAX (Investigation)
AND OTHERS**

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Dr Rakesh Gupta with Mr Ashwani Taneja and
Mr Rani Kiyala

For the Respondents : Ms Suruchi Aggarwal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

JUDGMENT

BADAR DURREZ AHMED, J

1. In this writ petition, the petitioner has prayed for the following reliefs:-

- “(I) To declare the authorization of income-tax search u/s 132 of the Income Tax Act, 1961 as illegal in the case of the petitioner.
- (II) To direct the concerned authority of the income tax department to vacate prohibitory order passed u/s 132(3) of the Income Tax Act, 1961 with respect to three bank lockers of the petitioner.

- (III) To direct the concerned authority of income tax department to release the papers / documents seized from the residence of the petitioner.
- (IV) To pass any other order or direction as this Hon'ble court may deem fit and proper on the facts and circumstances of the instant case in order to grant necessary relief to the petitioner."

2. Essentially, what the petitioner is seeking is a declaration that the warrant of search issued against the petitioner under Section 132 of the Income-tax Act, 1961 (herein after referred to as 'the said Act') was without the authority of law and, therefore, all proceedings pursuant to the search conducted at the residential premises of the petitioner at C-18, Sector-26, Noida, U.P. and pertaining to the petitioner ought to be declared as being illegal and the jewellery, articles and documents in lockers belonging to the petitioner be released to her unconditionally and the prohibitory orders in respect thereof be vacated.

3. From the affidavit filed on behalf of the respondent / revenue, it appears that an information had been received by the Deputy Director of the Income-tax (Investigation), Unit-IV (3), New Delhi from the Director General Central Excise Investigation, Delhi (DGCEI) in 2009 with regard to alleged unearthing of unaccounted sales and production as well as

alleged clandestine removal / clearing of the products of M/s Dharampal Satyapal Group from their units at Noida, Gauhati and Agartala. The products comprised of various brands of *paan masala*, *gutkha*, such as Rajni Gandha and Tulsi. It is further revealed in the said affidavit on behalf of the revenue that a show cause notice had been issued by the DGCEI to the said M/s Dharampal Satyapal Group (DS Group) for evasion of Central Excise Duty. It is further indicated in the affidavit that on the basis of “information” received, “secret discreet inquiries” were carried out by the said Director of Income-tax and it was allegedly revealed that the DS Group was involved in sales which were not accounted for in the books and that such unaccounted income was being invested in agricultural and immovable properties and other assets in the names of group concerns of DS Group. The affidavit further reveals that during “discreet inquiries” the said Deputy Director of Income-tax allegedly got information that the undisclosed accounts of DS Groups were being kept at the residence of Smt. Madhu Gupta, widow of Late Shri R.N. Goela residing at C-18, Sector 26, Noida, U.P. It is further indicated in the affidavit that the said Deputy Director of Income-tax recorded a satisfaction note for the purposes of

conducting a search under Section 132 (1) of the said Act on the DS Group.

The satisfaction note, *inter alia*, indicated as under:-

“That the above facts indicate that the assessee group is in the possession of unaccounted income in the form of money, bullion, jewellery and other valuables / articles or things / papers related to the undisclosed / benami properties. These are likely to be found at the residence and business premises of the group members, their associates and family members. Keeping in view of the above facts, I am of belief that even if notices u/s 142 (1) of the Act or summons u/s 131 of the Act are issued to the above assesses, they will not produce the documents which will be useful for determining the taxability under IT Act, 1961. Therefore, warrant of authorization u/s 132 of the IT Act may be issued to search the following premises.”

(underlining added)

4. In the said affidavit, it is further alleged that Smt. Madhu Goela, the petitioner herein, who uses the name Madhu Gupta, is the widow of Late Shri R.N. Goela, who was one of the major share-holders in the DS Group of Companies till his death in the year 2006. He was also a director in the said Group of Companies till his death. It is alleged in the affidavit that, while inquiring into the allegations against the DS Group, the said Deputy Director of Income-tax had received information that in view of the close relationship of the petitioner with the promoters of DS Group, accounts containing details of undisclosed sales and incomes, etc. were “likely to be

kept” at the residence of the petitioner at C-18, Sector 26, Noida, U.P. It is further indicated in the said affidavit that the following was mentioned in the satisfaction note prior to the conduct of the search on the residence of the petitioner:-

“She is the wife of deceased director and according to information her house is used to keep accounts which are unaccounted.”

5. The said affidavit further indicates that, based on the satisfaction note prepared by the said Deputy Director of Income-tax, the Additional Director of Income-tax (Investigation), Unit-IV recommended search under Section 132(1) on the DS Group. The Director of Income-tax (Investigation)-II, New Delhi discussed the matter with the said Deputy Director of Income-tax as also the said Additional Director of Income-tax (Investigation) and accorded satisfaction that there were strong reasons to believe that DS Group of companies were engaged in unaccounted production of *paan masala* and other products resulting in generation of unaccounted income which was not fully being disclosed in the income-tax returns. Consequently, the Director of Income-tax (Investigation)-II, Delhi authorized the search under Section 132(1) of the said Act and after such authorization, the said Deputy Director of Income-tax carried out the search

on the DS Group on 21.01.2011. The search was also carried out on the residential premises of the petitioner.

6. From the above, it is clear that the warrant of authorization which preceded the search at the residential premises of the petitioner was issued in the name of the petitioner – Smt. Madhu Gupta / Goela. This is also apparent from the copy of the *panchnama* which is to be found at page 56 of the paper book. The second point that is to be noted is that the allegation was that the petitioner was the wife of a deceased director and that there was information that her house was being used to keep the accounts of DS Group which were unaccounted.

7. The search on the premises of the petitioner has been challenged by the petitioner on the ground that, although the warrant of authorization is in the name of the petitioner, there could not have been any reason to believe that the pre-conditions stipulated in clauses (a), (b) and (c) of Section 132(1) of the said Act had been satisfied. In fact, the exact nature of the information is also not disclosed and, therefore, the search could not be founded on mere surmises and conjectures. At this juncture, we may point out that though the learned counsel for the petitioner submitted that a search

under Section 132 entails serious consequences insofar as the person searched is concerned inasmuch as the department, by virtue of Section 153A of the said Act, can re-open the assessments of six years, the learned counsel for the revenue had conceded, on instructions, and this is recorded in our order dated 22.02.2012, that the department shall not be proceeding against the petitioner under Section 153A. Thus, the scope of the petition is with regard to the lifting of the prohibitory orders and the release of the goods / articles to the petitioner. It was first contended by the learned counsel for the petitioner that the mere fact that the revenue had conceded that they would not be proceeding against the petitioner under Section 153A itself meant that the initiation of the search was bad. However, the revenue has raised certain arguments which need to be considered.

8. The learned counsel for the petitioner had placed reliance for his submissions on the following decisions:-

- 1) **Suresh Chand Agarwal v. Director General of Income-tax (Investigation) & Others: (2004) 269 ITR 22 (All);**
- 2) **S.R. Batliboi & Co. v. Director of Income-tax (Investigation): (2009) 315 ITR 137;**
- 3) **Dr Sushil Rastogi v. Director of Investigations, Income Tax Department & Others: (2003) 260 ITR 249 (All);**

- 4) *Dr Nand Lal Tahiliani v. Commissioner of Income-tax & Others:* (1988) 170 ITR 592 (All);
- 5) *Narayan R. Bandekar & Another: v. Income-tax Officer & Others:* (1989) 177 ITR 207 (Bom);
- 6) *Smt. Kavita Agarwal & Another v. Director of Income-tax (Investigation) & Others:* (2003) 264 ITR 472 (All);
- 7) *L.R. Gupta & Others v. Union of India & Others:* (1992) 194 ITR 32 (Del);
- 8) *H.L. Sibal v. Commissioner of Income-tax & Others:* (1975) 101 ITR 112 (P&H).

9. The contentions of the petitioner were that the opinion or the belief amounting to a reason to believe, as indicated in Section 132(1) of the said Act, must clearly show that the belief falls under clauses (a), (b), or (c) of Section 132(1) and that no search could be ordered except for any of the reasons contained in clauses (a), (b) or (c) of Section 132(1). Furthermore, it was contended that the satisfaction note ought to show the application of mind and formation of the opinion by the officer ordering the search and that if the reasons recorded do not fall under clauses (a), (b) or (c), then the authorization under Section 132(1) would be bad and would be liable to be quashed. It was further contended that where the authorizing authority is challenged in a judicial review, he would have to prove the basis for his belief. Furthermore, the information on the basis of which a belief is

formed must be something more than a mere rumour or a gossip or a hunch. There must be some material which can be regarded as information which must exist on the file on the basis of which the authorizing officer could be said to have a reason to believe that an action under Section 132(1) is called for on the basis of any of the conditions mentioned in clauses (a), (b) or (c) of Section 132(1). Furthermore, it was contended that the information has not only to be authentic, but must be capable of giving rise to the inference that the person was in possession of the undisclosed accounts which would not normally be disclosed. It was submitted that before any action is taken under Section 132(1) of the said Act, the competent authority must do so only after a serious application of mind on the material before him. It was also contended that the facts, which constitute an information, should be such on the basis of which a reasonable and prudent man could come to the requisite belief or conclusion as required under Section 132(1) of the said Act. The belief must not be based on mere suspicion. He further contended that it would be open in the course of judicial review for the court to examine whether there was, in fact, information in the possession of the authorizing authority and whether there was a rational connection between information and the belief entertained by him. It was further

contended that the information has to be of a fairly reliable character because unless the information is of such a character, it could not furnish a reliable basis for entertaining the belief that any of the circumstances mentioned in Section 132(1) existed. The information must have a relevant bearing on the formation of the belief and must not be extraneous or irrelevant. It was contended that in the present case, there is no information revealed by the revenue at all. Merely stating that some information had been received is not sufficient. There must be tangible evidence on the file. Secondly, the information must be such that it is reliable and on the basis of which a reasonable and prudent man would come to the conclusion that one of the conditions mentioned in Section 132(1) has been satisfied and, therefore, a search was warranted. It was submitted by the learned counsel for the petitioner that no such condition existed and, in fact, neither clause (a) nor clause (b) nor clause (c) of Section 132 (1) was satisfied in the present case.

10. The learned counsel for the revenue, however, contended that the reason to believe was in respect of the DS Group and clauses (a), (b) and (c) were satisfied insofar as a search was warranted on the DS group. According to the learned counsel for the revenue, the facts on the file

clearly indicate that there was enough reason for the competent authority to believe that the condition stipulated in clauses (a), (b) and (c) of Section 132(1) existed insofar as the DS Group was concerned. Once that was satisfied, the provisions of Section 132(1) (i) clearly permitted the search to be carried out in any building, place, etc. where the officer authorized had “reason to suspect” that the books of accounts, other documents, etc. were kept. It was contended by the learned counsel for the revenue that as there was ‘reason to believe’ insofar as the DS Group was concerned, the authorized officer could conduct a search at any place which included the residential premises of the petitioner at C-18, Sector 26, Noida, U.P. as also the three bank lockers belonging to her. For conducting a search under Section 132(1)(i), the authorized officer had only to have a ‘reason to suspect’ as distinct and different from a ‘reason to believe’ as appearing in Section 132(1). It was contended that the reason to suspect for entering any premises could not be equated with the reason to believe, which was necessary for directing any search of any tax payer. It was submitted that the search of the DS Group was based on several allegations, which according to the revenue, were found to be, *prima facie*, correct and once that satisfaction was reached, the authorized officer only needed to have a

reason to suspect that some books, assets or other documents or evidence would be found at the residence of the petitioner. It is accepted that the search in the case of DS Group was legal and had been validly authorized. The only issue that requires to be seen is that whether there was any reason to suspect to enter and search the residence of the petitioner. According to the learned counsel, there was sufficient reason to suspect and this was enough for the issuance of a warrant to enter and search the residence of the petitioner. She submitted that no independent search of the petitioner was directed to be conducted and, therefore, the first requirement of Section 132(1) of the existence of a reason to believe consequent upon information in possession was not required to be satisfied. Therefore, it was submitted that the case law presented by the learned counsel for the petitioner as also the propositions advanced by him relating to proper authorization of the search based on information in possession were not at all applicable to the facts of the present case.

11. The provisions of Section 132(1), to the extent relevant, are set out hereinbelow:-

“132. Search and seizure. – (1) Where the Director General or Director or the Chief Commissioner or Commissioner or

Additional Director or Additional Commissioner or Joint Director or Joint Commissioner in consequence of information in his possession, has reason to believe that—

- (a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or
- (b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, or
- (c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

then,—

- (A) the Director General or Director or the Chief Commissioner or Commissioner, as the case may be, may authorise any Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director or Deputy

Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer, or

- (B) such Additional Director or Additional Commissioner or Joint Director, or Joint Commissioner, as the case may be, may authorise any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer,

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to –

- (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 article or thing are kept;
- (ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;
- (iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;
- (iib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information

Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;

- (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:

Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;

- (iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;
- (v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:”

12. It is apparent that there are several parts to the said provision of search and seizure. In the first part, certain persons have been named, who would be competent to authorize other officers of the Income-tax Department to carry out searches. The first authority or warrant of authorization can only be issued by the named persons, namely, the Director General or Director or the Chief Commissioner or Commissioner or an Additional Director or Additional Commissioner or Joint Director or Joint Commissioner. Such warrant of authorization can only be issued by such a person in consonance of information in his possession and after he

has formed a reason to believe that the conditions stipulated in clauses (a), (b) and (c) existed.

13. The information must be credible information and there must be a nexus between the information and the belief. Furthermore, in our view, the information must not be in the nature of some surmise or conjecture, but it must have some tangible backing. Until and unless information is of this quality, it would be difficult to formulate a belief because the belief itself is not just an *ipse dixit*, but is based on reason and that is why the expression used is “reason to believe” and not simply ‘believes’.

14. We shall now examine the decisions cited by the learned counsel for the petitioner. In *H. L. Sibal (supra)*, the Punjab & Haryana High Court observed as under:-

“30. ... The word "information" has been defined in the Shorter Oxford Dictionary as "that of which one is apprised or told". The word "reason" has been defined as "a statement of fact employed as an argument to justify or condemn some act". On the other hand, the word "conclusion" is defined as "a judgment arrived at by reasoning; an inference, deduction, etc.". In other words, when the information received or the basic facts are harnessed in support of an argument, the resultant effect assumes the shape of a reason and when a number of reasons are considered in relation to each other, the final result of this consideration assumes the shape of a conclusion. A necessary concomitant of this approach is that

the facts constituting the information must be relevant to the enquiry. They must be such from which a reasonable and prudent man can come to the requisite belief or conclusion. If either of the afore-mentioned elements is missing, the action of the authority shall be regarded as lying outside the ambit and scope of the Act. Such an action would be liable to be struck down on the basis of what is commonly known as “legal malice”.”

15. In ***Dr Nand Lal Tahlilani*** (*supra*), the Allahabad High Court observed as under:-

“5. ... The expression is “reason to believe that the income has not been disclosed and not probably it may not have been disclosed”. It is not left to guessing. It carries with it the impress of certainty. The dwelling house of a person is his fortress. "Every householder, the good or the bad, the guilty or the innocent, is entitled to the protection designed to secure the common interest against unlawful invasion of the house ". Ransacking of the house and the act of taking away the property is an inroad on the citizens' right of privacy": one of the values of civilization. Any unwarranted intrusion on it cannot be countenanced. Reasonable belief exists if the information is not only trustworthy but reasonable and sufficient in itself to warrant the conclusion that the provisions of Section 132 were being violated. Because, if the exercise of power is bad or unlawful in inception, then it is not validated or nor does it change character from its success. It would not, therefore, be asking too much from the authorities to comply with the basic requirements of the section before they are permitted to invade the secrecy of one's home.”

16. In ***Narayan R. Bandekar*** (*supra*), the High Court of Bombay observed as under:-

“3. ... A plain reading of sub-section (1) of section 132 makes it clear that the powers can be exercised in consequence of information in the possession of the Director of Inspection or the Commissioner of Income Tax and from such information of the Commissioner has reason to believe that (a) any person, in spite of issue of summons, has failed to produce the books of account or other documents, (b) any person is likely to fail to produce the books if so called upon, and (c) any person is in possession of any money, bullion, jewellery or other valuable articles and which are not accounted for and which represent undisclosed income. It hardly requires to be stated that the power conferred upon the Commissioner under section 132 is of a drastic nature and the exercise of power can only be after serious application of mind to the information in the possession of the Commissioner and from which a reasonable person would come to the conclusion that the conditions prerequisite for the exercise of power existed.”

17. In ***L.R. Gupta & Others*** (*supra*), the Delhi High Court held as under:

“17. A search which is conducted under Section 132 is a serious invasion into the privacy of a citizen. Section 132(1) has to be strictly construed and the formation of the opinion or reason to believe by the authorising officer must be apparent from the note recorded by him. The opinion or the belief so recorded must clearly show whether the belief falls under sub-Clause (a), (b) or (e) of Section 132(1). No search can be ordered except for any of the reasons contained in sub-Clauses (a) (b), or (e). The satisfaction note should itself show the application of mind and the formation of the opinion by the officer ordering the search. If the reasons which are recorded do not fall under Clauses (a), (b) or (e) then an authorisation under Section 132(1) will have to be quashed. As observed by the Supreme Court in *Income Tax Officer v. Seth Brothers*: (1969) 74 ITR 836 (SC):

‘Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the tax payer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorises it to be exercised. If the action of the officer issuing the authorisation or of the designated officer is challenged, the officer concerned must satisfy the Court about the regularity of his action. If the action is maliciously taken or poer under the Section is exercised for a collateral purpose, it is liable to be struck down by the Court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed’.”

18. In ***Dr Sushil Rastogi*** (*supra*), the decisions in ***Dr Nand Lal*** (*supra*) as also in ***L.R. Gupta*** (*supra*), were followed. The same is the position with ***Smt. Kavita Agarwal*** (*supra*) wherein, while considering the said decisions in ***Dr Nand Lal*** (*supra*) and ***L.R. Gupta*** (*supra*), a Division Bench of the High Court of Allahabad observed as under:-

“5. On the facts of the case we are of the opinion that this writ petition deserves to be allowed. The law is well settled that a warrant of search and seizure under Section 132(1) can only be issued on the basis of some material or information on which the Commissioner/Director has reason to believe that any person is in possession of money, jewellery or other valuable articles representing wholly or partly income or property which has not been or would not be disclosed, under the IT Act. In the present case the respondents have not disclosed what was the material or information on the basis of which the Director/Commissioner entertained the belief that the lockers contained valuable jewellery or other articles

representing undisclosed income. It is well settled that the satisfaction of the authorities under Section 132 must be on the basis of relevant material or information. The word used in Section 132(1) are "reason to believe" and not "reason to suspect". In the counter-affidavit it has been specifically stated in para. 18 that the authorized officer had reason to suspect and not reason to believe."

19. In ***Suresh Chand Agarwal*** (*supra*), the High Court of Allahabad held as under:-

“12. As regards the allegations in paragraphs 11, 12, 13, 14 and 15 of the counter affidavit to the effect that the assessee could not give a satisfactory explanation regarding certain assets or documents found during the search, this court held in the case of Smt. Kavita Agarwal v. Director of Income Tax (Investigation): [2003] 264 ITR 472 that the material on the basis of which the reason to believe of the Commissioner/Director is said to exist must be such material which was brought to the knowledge of the said authority prior to the search. In other words, the authorities cannot rely on material found during the search for taking the plea that this was the basis of the reason to believe, unless such material was brought to the knowledge of the authority who signs the warrant of authorisation before or at the time when he signs it. To take a contrary view would mean that the Commissioner/Director can issue a warrant of authorisation under Section 132(1) without considering any material, and thereafter the Income Tax authorities can indulge in a fishing enquiry to uncover some undisclosed asset. No such view can be countenanced by this court as it would give unbridled and arbitrary powers to the Income Tax authorities to harass the citizens.

13. For the reasons given above, the writ petition is allowed and the impugned warrant of authorisation is quashed and the entire search and seizure is declared illegal. The respondents are directed to release the cash, articles and documents seized from the

petitioner or his wife from their residence as well as the bank locker forthwith.”

20. Finally, in *S.R. Batliboi and Company (supra)*, the Delhi High Court held as under:-

“9. It would be perilous and fatal to lose sight of the reality that the powers of the Search and Seizure are very wide and thus the legislature has provided a safeguard that the Assessing Officer should have reasons to believe that a person against whom proceedings under Section 132 are to be initiated is in possession of assets which have not been or would not be disclosed. Secondly, the authorized officer is also required to apply his mind as to whether the assets found in the Search have been disclosed or not, and if no undisclosed asset is found no action can be taken under Section 132(1)(iii) or (3). An arbitrary seizure cannot be maintainable even where the authority has seized documents with ulterior motives.

XXXX

XXXX

XXXX

XXXX

XXXX

12. Over two score years ago the Division Bench of this Court had opined in *N.K. Textiles Mills v. CIT* [1966] 61 ITR 58 propounded that it was necessary and essential for these officers to take into custody only such books as were considered relevant to or useful for the proceedings in question. It was not open to them to indiscriminately, arbitrarily and without any regard for relevancy or usefulness, seize all the books and documents which were lying in the premises, and, if they did so, the seizure would be beyond the scope of the authorization. Our learned Brothers have designedly used the words proceeding in question, in order to clarify that material that may possibly be of relevance to the affairs of a third party, unconnected with the raided assessee and beyond the contemplation of the search and seizure

exercise, should not be retained. All remaining doubts will be dispelled on a perusal of *H.L. Sibal v. CIT*: 1975 CTR (P&H) 302 in which the Division Bench has, inter alia, analysed *Commissioner of Commercial Taxes v. Ramkishan Shrikishan Jhaver*: [1967] 66 ITR 664 (SC) into four concomitants (1) The authorized officer must have reasonable grounds for believing that anything necessary for the purpose of recovery of tax may be found in any place within his jurisdiction; (2) he must be of the opinion that such thing cannot be otherwise got at without undue delay; (3) he must record in writing the grounds of his belief; and (4) he must specify in such writing, so far as possible, the thing for which search is to be made. Where material or document or assets belong to a third party, totally unconcerned with the person who is raided, none of these conditions are fulfilled. In *Sibal* the belongings of a house-guest of Shri Sibal were searched and some money found therein was seized. The Court had concluded that the authorization for the search of the house-guest was prepared after the planned search of Shri Sibal. The warrants were quashed partly for this reason.”

21. These are the principles of law which have been set down by several judicial pronouncements. In the present case, we find that the so-called information is undisclosed and what exactly that information was, is also not known. At one place in the affidavit of Deputy Director of Income-tax, it has been mentioned that he got information that there was a “likelihood” of the documents belonging to the DS Group being found at the residence of the petitioner. That by itself would amount only to a surmise and conjecture and not to solid information and since the search on the premises

of the petitioner was founded on this so-called information, the search would have to be held to be arbitrary. It may also be pointed out that when the search was conducted on 21.01.2011, no documents belonging to the DS Group were, in fact, found at the premises of the petitioner.

22. With regard to the argument raised by the learned counsel for the respondent that there was no need for the competent authority to have any reason to believe and a mere reason to suspect would be sufficient, we may point out that the answer is provided by the fact that the warrant of authorization was not in the name of the DS Group but was in the name of the petitioner. In other words, the warrant of authorization under Section 132(1) had been issued in the name of the petitioner and, therefore, the information and the reason to believe were to be formed in connection with the petitioner and not the DS Group. None of the clauses (a), (b) or (c) mentioned in Section 132(1) stood satisfied in the present case and, therefore, the warrant of authorization was without any authority of law insofar as the petitioner was concerned. Had the warrant of authorization been issued in the name of the DS Group and in the course of the searches conducted by the authorized officer, the premises of the petitioner had also been searched, then the position might have been different. But, in the

present case, that is not what has happened. The warrant of authorization was in the name of the petitioner and, therefore, it was absolutely necessary that the pre-conditions set out in Section 132(1) ought to have been fulfilled. Since those pre-conditions had not been satisfied, the warrant of authorisation would have to be quashed. Once that is the position, the consequence would be that all proceedings pursuant to the search conducted on 21.01.2011 at the premises of the petitioner would be illegal and, therefore, the prohibitory orders would also be liable to be quashed. It is ordered accordingly. The jewellery / other articles / documents are to be unconditionally released to the petitioner. The writ petition is allowed as above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

V.K. JAIN, J

JANUARY 11, 2013

duff