

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

10

+

W.P.(C) 1471/2013

AMEETA MEHRA

..... Petitioner

Through: Mr. M.S. Syali, Sr. Advocate with
Mr. Satyen Sethi, Mr. Mayank Nagi,
Mr. Arta Trana Panda, Ms. Ritika
Goyal and Mr. Tarun Singh,
Advocates.

versus

**ADDITIONAL DIRECTOR OF INCOME TAX (INV)-UNIT
AND ANR.**

..... Respondents

Through: Mr. Ruchir Bhatia, Advocate.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE CHANDER SHEKHAR**

ORDER

16.05.2017

%

Dr. S. Muralidhar, J.:

1. Ms. Ameeta Mehra, the Petitioner, has in this petition under Article 226 of the Constitution of India sought a declaration that the warrant of authorization dated 27th February, 2012 issued by the Additional Director of Income Tax (Inv) Unit II (Respondent No.1) under Section 132 of the Income tax Act, 1961 ('the Act') in the name of the Petitioner to search locker No.4979 with the Delhi Safe Deposit Co. Ltd., New Delhi. The Petitioner also seeks the quashing of the notice dated 22nd October 2012 issued to her under Section

153-A of the Act, issued by the Assistant Commissioner of Income Tax (ACIT) Central Circle-13 (Respondent No.2) requiring the Petitioner to file returns for the Assessment Years (AYs) 2006-07 to 2011-12. The Petitioner also seeks a writ of prohibition to restrain the Respondents from taking further proceedings pursuant to the aforementioned two impugned notices.

2. The brief facts of the case are that the Petitioner claims to be an individual engaged in the business of horse breeding. She is a regular Assessee and is being assessed to tax under the jurisdiction of the ACIT Circle 27. It is stated that after the search operation was conducted, the case was transferred to the jurisdiction of the ACT CC-13, Respondent No.2. For the AYs 2006-07, 2007-08 and 2009-10, the Petitioner's assessments were made under Section 143(3) of the Act and no additions under section 68 to 69C were made. For the AY 2008-09, the return as filed was accepted. The Petitioner's assessments for AYs 2010-11 and 2011-12 were pending on the date, the impugned notice under Section 153 A of the Act was issued.

3. On 24th February 2012, a search and seizure operation under Section 132 of the Act was undertaken on the residential and business premises of Mr. Suresh Nanda, his family members and business associates. Mr. Suresh Nanda is the maternal uncle of the Petitioner (brother of Petitioner's deceased mother). The Petitioner claims that except for the said relation, the Petitioner has no other commercial/business or financial relation with Mr. Suresh Nanda or

his family members and/or his business associates (referred to hereafter collectively as the 'Nanda group').

4. During the search on Mr. Suresh Nanda, keys of locker No.4979 with Delhi Safe Deposit Co. Limited, New Delhi were found. This locker was initially in the joint names of late Mrs. Sumitra Nanda and late Mr. S.M. Nanda, parents of Mr. Suresh Nanda. Mrs. Sumitra Nanda, the Petitioner's maternal grandmother, added the Petitioner's name in 2003 to help her in operating the said locker No. 4979. The Petitioner states that the key of the said locker always used to be with Mrs. Sumitra Nanda. After the demise of Mrs. Sumitra Nanda in February 2011, the key remained with Mr. Suresh Nanda. The Petitioner claims to have never used the locker for her benefit.

5. On finding the key of locker No. 4979 from the premises of Mr. Suresh Nanda, Respondent No.1 issued a warrant of search authorization dated 27th February, 2012 in the name of the Petitioner to search the said locker. On 29th February, 2012, an order under section 132 (3) of the Act restraining the operation of locker No.4979 with Delhi Safe Deposit Co. Limited, New Delhi was passed. This order was revoked on 11th April, 2012 to effect the search. On opening the said locker, nothing was found.

6. Pursuant to an order passed by this Court on 14th February 2017, Mr Ruchir Bhatia, learned counsel for the Respondents, has produced before the Court the Satisfaction Note regarding issuance of the warrant and the authorization of the search. The Satisfaction Note

dated 27th February 2012 prepared by the DDIT (Inv) U-II (1) states that during the search conducted on 24th February 2012 at various premises belonging to Mr Suresh Nanda, his family members and business associates, information was received from “group leaders conducting search at those premises that following persons are maintaining lockers in various banks.”

7. Below this a list of 10 names has been set out in a table which has four columns: Serial No., Name of Locker Holder, Name of bank and branch, Locker No. In the said table at Serial No. 1 the name of the Petitioner figures. She is shown as holder of locker 4979. Below the said table the DDIT noted that his opinion the lockers “may contain” such cash, jewellery, FDRs and other important documents which represent either wholly or partly income or property not disclosed or would not be disclosed for the purpose of the Act even if summons under Section 131 of the Act were issued to them. Accordingly, the DDIT requested that consequential warrants of authorization in the names of persons and lockers as mentioned in the table be issued to search/seal the above lockers in the banks.

8. This note of the DDIT was placed before the Respondent No.1 who endorsed his satisfaction and ordered the issuance of the warrants of authorization. This was followed an order being issued on 29th February, 2012 restraining the operation of the above locker. This restraining order was revoked on 11th April, 2012 in order to conduct the search. On search of the locker nothing was found. A copy of the *Panchnama* of that

date with a questionnaire has been enclosed with the petition.)n 22nd October, 2012, a notice under Section 153A of the Act was issued requiring the Petitioner to furnish returns of total income and undisclosed income for AYs 2006-07 to 2011-12 in the prescribed format.

9. The impugned notice under section 153A of the Act requiring the Petitioner to furnish returns of total income for AYs 2006-07 to 2011-12 within 20 days of service of the notice was issued on 22nd October, 2012. On 25th October 2012, Respondent No.2 issued a questionnaire under Section 142(1) of the Act. It is stated that none of the questions referred to any incriminating material found during the search on the Nanda Group.

10. On 3rd December, 2012 the Petitioner objected to the issuance of the above notice. However, she received no reply. It is in these circumstances, that the present petition was filed on 28th February, 2013.

11. In response to the notice issued to them the Respondent No. 1 has filed a counter affidavit dated 11th April, 2013. The specific stand taken by Respondent No.1 is that the warrant of authorization was drawn in the name of the Petitioner, based on information in possession of the authorizing officer in respect of the Petitioner. It is stated that "the reasons to believe were framed with respect to the Petitioner as she was the only owner of the locker." Further it is stated that since the locker key during the search was found on the premises of Mr. Suresh Nanda, the warrant of authorization was issued to the

Petitioner "after the satisfaction of the authorizing officer that there existed sufficient reasons to conduct search on the abovementioned locker of the Petitioner." It is denied that by the impugned notices and the questionnaire dated 2nd October 2012, the case of the Petitioner has been treated as a part of Nanda Group. It is stated that "the inference drawn by the Petitioner is ex-facie incorrect and not borne on record."

12. Two questions arise for consideration in light of the above facts:

(a) Was the search conducted on the Locker No. 4979 by issuing an authorization dated 27th February, 2012 under Section 132 of the Act valid?

(b) Was there any justification for issuance of the impugned notice dated 22nd October, 2012 to the Petitioner under Section 153 A of the Act for the AYs 2006-2007 to 2011-2012?

13. In one sense both the above questions are interrelated. This is because once a search is conducted under Section 132 of the Act the person in whose name the search authorisation is issued should be served with a notice under Section 153-A of the Act. This is a well settled legal position as explained in a large number of cases including ***CIT v. Kabul Chawla (2016) 380 ITR 573***. Therefore, if question (a) is answered in the negative, then question (b) has to be also answered in then negative. On the other hand, if the answer to question (a) is in the affirmative, the answer to question (b) would be likewise.

14. The Satisfaction Note preceding the issuance of the search authorisation has been summarized earlier. The law in relation to searches under Section 132 of the Act has been explained in a large number of decisions of the Supreme Court and the High Courts. The jurisdictional facts that have to be established before a search under Section 132 (1) of the Act can be authorised are that (i) the authority issuing the authorisation is in possession of some credible information, other than surmises and conjectures (ii) that the authority has reason to believe that the conditions stipulated in clauses (a), (b) and (c) of Section 132 (1) qua the person searched exist; and (iii) the said information has nexus to such belief.

15. The Courts have laid emphasis on the mandatory nature of the above requirement to be fulfilled under Section 132 (1) of the Act. The Supreme Court in *Income Tax Officer v. Seth Brothers (1969) 74 ITR 836 (SC)* explained:

"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 authorizes it to be exercised. If the action of the Officer issuing the authorization, 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 power 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. But where power is exercised bona fide, and in furtherance of the statutory duties of the tax officers any error of judgment on the part of the Officers will not vitiate the exercise of the power. Where the Commissioner entertains the requisite belief and for reasons

recorded by him authorises a designated Officer to enter and search premises for books of account and documents relevant to or useful for any proceeding under the Act, the Court in a petition by an aggrieved person cannot be asked to substitute its own opinion whether an order authorising search should have been issued. Again, any irregularity in the course of entry, search and seizure committed by the Officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken, provided the Officer has in executing the authorisation acted bona fide."

16. The need for there to be, prior to issuance of the authorisation for search, of some credible information which leads to formation of a reason to believe that the conditions stipulated in Section 132 (1) (a) to (c) exists is the running theme of several decisions. In *CIT v. Vindhya Metal Corporation (1997) 224 ITR 614* it was explained by the Supreme Court that:

"Mere unexplained possession of the amount, without anything more, could hardly be said to constitute information which could be treated as sufficient by a reasonable person, leading to an inference that it was income which would not be disclosed by the person in possession for the purpose of the Act."

17. In *Smt. Kavita Agarwal v. Director of Income Tax (2003) ITR 472 (All)* the search of the premises of the Petitioner's husband and his family resulted in the finding of keys to three lockers one of which stood in the couple's joint names. The jewellery found in that specific locker was valued at Rs.6,28,861. Yet, the Court was not prepared to accept that this by itself satisfied the requirement of the law. It held:

"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."

18. In *Ajit Jain v. Union of India* (2000) 242 ITR 302 (Del), the Petitioner was the managing Director of a company in the business of importing PU synthetic linings and was a regular income-tax Assessee. For clearing some imported goods that had arrived in Chennai he went there with cash of Rs. 8.6 lakhs which he intended to use for payment of the customs duty. The CBI conducted a raid and recovered the said sum from his hotel room in Chennai. This information was passed on by the CBI to the income tax authorities leading to the issuance of a search warrant under Section 132 (1) of the Act. This Court agreed with the Petitioner that:

"The intimation simpliciter by the CBI that the money was found in the possession of the petitioner, which according to the CBI was undisclosed, without something more, did not constitute information within the meaning of Section 132 so as to induce a belief that the cash represented the petitioner's income which had not been or would not be disclosed. The condition precedent for the exercise of the power under Section 132 was lacking in the present case and authorisation issued by Respondent No.4 and the consequent action of the search and seizure of the said amount was without jurisdiction."

19. The above decision of this Court in the *Ajit Jain (supra)* was affirmed by the Supreme Court by the dismissal of the Revenue's Special Leave Petition by an order reported as *Union of India v. Ajit Jain (2003) 260 ITR 280 (SC)*.

20. Turning to the case on hand, in the first place there is nothing in the Satisfaction Note to indicate that there was any credible information available with the Department that the Petitioner belonged to the 'Nanda Group' who were being searched. It must be recalled that the Petitioner is a regular Assessee. The information needed to trigger the search action against the Petitioner had to be such that would show that she is linked in some manner to the business or other activities of the 'Nanda Group'. Secondly such information had to have a nexus to the belief that could be reasonably formed that she is in possession of any money, jewellery or valuable representing her income which has not been or would not be disclosed by her. The mere fact that the key to the locker which she was operating was found during the search of her uncle Mr Suresh Nanda would not constitute 'information' leading to the reasonable belief that the locker would contain jewellery, or other valuable articles which she would not have disclosed in her returns. There obviously had to be something more. Therefore the jurisdictional pre-condition justifying the invocation of the power of search under Section 132 (1) of the Act against the Petitioner, was not fulfilled in the present case.

21. The counter affidavit filed by the Respondents suggests that they were not treating the Petitioner as part of the Nanda Group. In such event, there

was no basis at all in proceeding to issue a search authorisation in the name of the Petitioner since the locker key was found during the search of the Nanda Group. Mr. Ruchir Bhatia, learned counsel appearing for the Revenue, however, urged that this Court should not go by what is stated in the counter affidavit but only by what is stated in the Satisfaction Note. Even then, the Satisfaction Note does not throw any further light on how the authority could form a reasonable belief that the Petitioner was connected with the Nanda Group and that her locker would contain money, jewellery etc that constituted her undisclosed income.

22. Mr. Bhatia repeatedly urged that the mere fact that nothing was found in the locker, would not for that reason alone, render the search illegal. This proposition is unexceptionable and to be fair to Mr M. S. Syali, learned Senior counsel for the Petitioner, he did not contest it. In fact the legal position in this regard stands settled in *Income Tax Officer v. Seth Brothers (supra)*. However, the issue here is not what happened during or after the search but the absence of the jurisdictional pre-condition justifying it. In the absence of any credible information that could lead to the reasonable belief that the Petitioner was in possession of money, jewellery etc that constituted income that she has not or would not have disclosed, no search warrant *qua* her locker could have been issued. Further, the Satisfaction Note had to reflect the basis on which the reasonable belief was entertained. The one shown to the Court fails on this score.

23. The Respondent's search of the Petitioner was a classic case of a 'false start'. It was without legal basis. What were the options available to the

Respondents when they came across the locker key when they searched Mr Suresh Nanda? The first step was to seal the locker. In fact they did so by issuing an order under Section 132 (3) of the Act. However, instead of immediately jumping to conclusions against the Petitioner, and before actually searching the locker by lifting the restraint order, the Respondents ought to have investigated further and gathered some credible information that could lead them to form a reasonable belief that (i) she was linked to the activities of the Nanda Group and (ii) her locker might contain money, jewellery etc that constituted undisclosed income. Only then was a search warrant *qua* her justified. Alternatively, they may have opted to proceed against her under Section 153 C of the Act. That too would have required two Satisfaction Notes: one by the AO of the searched person followed by one by her own AO. However, in the present case, the Respondents did not opt for the alternative.

24. For the aforementioned reasons, question (a) is answered in negative. It is held that search conducted on Locker No. 4979 by issuing an authorization dated 27th February, 2012 under Section 132 of the Act against the Petitioner was invalid. The said authorisation is hereby quashed.

25. Consequently, question (b) is also answered in the negative by holding that there was no legal justification for the issuance of the impugned notice dated 22nd October, 2012 to the Petitioner under Section 153 A of the Act for the AYs 2006-2007 to 2011-2012. The said notice is also hereby quashed. All consequential actions of the Respondents are

hereby declared invalid.

26. The writ petition is allowed with the costs of Rs. 10,000 which shall be paid to the Petitioner by the Respondents within four weeks.

S. MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 16, 2017

b

