NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 10-12-2018

Order delivered on 17-05-2019

WPT No. 6775 of 2008

1. Subhash Sharma S/o Lokeshwar Prasad Sharma, aged about 48 years, R/o House No. G.C. 209A, Ashoka Millennium, Ring Road, District - Raipur C.G.

---- Petitioner

Versus

1. Commissioner Of Income Tax, Raipur.
2. Union Of India Through Secretary, Finance North Block, New Delhi
3. Director Of Income Tax, Investigation Central Revenue Building, Civil Lines, District - Raipur C.G.
4. Deputy Commissioner Of Income Tax, Circle 2(1) Central Revenue Building, District - Raipur C.G.

---- Respondent

For Petitioner — Ms Smiti Sharma, Advocate
For Respondents — Shri Amit Choudhary, Advocate

C A V Order

By

Prashant Kumar Mishra, J.

1. Petitioner would call in question the legality and validity of the notice issued to him under Section 153A of the Income Tax Act, 1961 (for short 'the IT Act'). Petitioner wold also pray for declaring the search of his premises as illegal and void *ab initio*

and for return of money, bullions or other valuable items seized from his premises.

2. Challenge is thrown on the ground that there is no basis of issuance of search warrant under Section 132 of the IT Act because 'reason to believe' does not exist for issuance of the search warrant. It is also argued that there was no information in possession of the authorising officer forming the basis for the reason to believe and further that the warrant of authorisation is in the name of Amolak Singh Bhatia and Others and not against the petitioner. It is also argued that issuance of notice under Section 153A of the IT Act to a person against whom search is initiated under Section 132 of the IT Act will arise when the search is legal, but the same not being the case here, Section 153A of the IT Act has no application. Petitioner has referred to the law laid down by the Supreme Court in **Commissioner of Commercial Taxes and Others v Ramkishan Shrikishan Jhaver and Others**[1] and **Director General of Income Tax (Investigation), Pune and Others v Spacewood Furnishers Private Limited and Others**[2].

3. Learned counsel appearing for the respondent/Revenue, *per contra*, would also refer to **Spacewood Furnishers Private Limited** (supra) to argue that the search warrant issued against

1 [1967] 66 ITR 664
2 (2015) 12 SCC 179 : [2015] 374 ITR 595 (SC)

the petitioner under Section 132 of the IT Act was based on material forming the foundation to provide lawful reason to believe, therefore, notice under Section 153A of the IT Act is in accordance with law and there can be no judicial review of the sufficiency of the material forming the reason to believe. It is also argued that the information were germane to the subject in hand, therefore, no interference is called for in this petition.

4. In **Spacewood Furnishers Private Limited** (supra) the High Court had quashed the notice under Section 153A of the IT Act by interfering with the warrant of authorisation for search issued under Section 132 of the IT Act. On appeal by the Revenue before the Supreme Court the High Court's judgment has been set aside. The Supreme Court referred to its earlier decisions rendered in **Income-Tax Officer, Special Investigation Circle-B, Meerut v Messrs Seth Brothers and Others Etc.**[3], **Pooran Mal v The Director of Inspection (Investigation), New Delhi and Others**[4], and **Dr. Pratap Singh and Another v Director of Enforcement, Foreign Exchange Regulation Act and Others**[5] and thereafter, summarise the legal position in paras 8 & 8.1 to 8.6, which are reproduced hereunder :

> 8. The principles that can be deduced from the aforesaid decisions of this Court which continue to hold the field without

---
3 1969 (2) SCC 324
4 1974 (1) SCC 345
5 1985 (3) SCC 72

any departure may be summarized as follows:

8.1 The authority must have information in its possession on the basis of which a reasonable belief can be founded that-

(a) the person concerned has omitted or failed to produce books of account or other documents for production of which summons or notice had been issued

or

such person will not produce such books of account or other documents even if summons or notice is issued to him.

or

(b) such person is in possession of any money, bullion, jewellery or other valuable article which represents either wholly or partly income or property which has not been or would not be disclosed.

8.2 Such information must be in possession of the authorized official before the opinion is formed.

8.3 There must be application of mind to the material and the formation of opinion must be honest and bonafide. Consideration of any extraneous or irrelevant material will vitiate the belief/satisfaction.

8.4 Though Rule 112 (2) of the Income Tax Rules which specifically prescribed the necessity of recording of reasons before issuing a warrant of authorization had been repealed on and from 1st October, 1975 the reasons for the belief found should be recorded.

8.5 The reasons, however, need not be communicated to the person against whom the warrant is issued *at that stage*.

> 8.6 Such reasons, however, may have to be placed before the Court in the event of a challenge to formation of the belief of the authorized official in which event the court (exercising jurisdiction Under Article 226) would be entitled to examine the relevance of the reasons for the formation of the belief though not the sufficiency or adequacy thereof.

5. The Supreme Court, while eventually setting aside the order passed by the High Court observed further thus in paras 21, 22 & 23 :

> 21. In the light of the views expressed by this Court in ITO v. Seth Brothers and Pooran Mal, the above opinion expressed by the High Court is plainly incorrect. The necessity of recording of reasons, despite the amendment of Rule 112(2) with effect from 1st October, 1975, has been repeatedly stressed upon by this Court so as to ensure accountability and responsibility in the decision making process. The necessity of recording of reasons also acts as a cushion in the event of a legal challenge being made to the satisfaction reached. Reasons enable a proper judicial assessment of the decision taken by the Revenue. However, the above, by itself, would not confer in the Assessee a right of inspection of the documents or to a communication of the reasons for the belief *at the stage of issuing of the authorization*. Any such view would be counter productive of the entire exercise contemplated by Section 132 of the Act. It is only at the stage of commencement of the assessment proceedings after completion of the search and seizure, if any, that the requisite material may have to be disclosed to the Assessee.
>
> 22. At this stage we would like to say that the High Court had committed a serious error in reproducing in great details the contents of the satisfaction note(s) containing the reasons for the satisfaction arrived at by the authorities under the Act. We have already indicated the time and

stage at which the reasons recorded may be required to be brought to the notice of the Assessee. In the light of the above, we cannot approve of the aforesaid part of the exercise undertaken by the High Court which we will understand to be highly premature; having the potential of conferring an undue advantage to the Assessee thereby frustrating the endeavor of the revenue, even if the High Court is eventually not to intervene in favour of the Assessee.

23. Having clarified the above issue in the manner indicated, we may turn to the reasons assigned by the High Court for its decision. The view expressed by the High Court with regard to the satisfaction note(s); the alleged absence of a final decision to issue the authorization at the level of the Additional Director and the Director; the absence of any satisfaction of the Director General who, according to the High Court took the decision to issue the authorization are all seriously flawed. The different steps in the decision making process is lucidly laid down in the instructions contained in the search and seizure manual published by the department, relevant part of which has been extracted above. The steps delineated have been scrupulously followed. Besides we may take note of the fact that the Additional Director was not one of the competent authorities Under Section 132 on 8.6.2009 (date of his note) inasmuch as it is by the Finance Act, 2009 effective from 19th August, 2009 that the Additional Director came to be included amongst the authorized officials though with retrospective effect from 1.10.1998. The reading of the relevant part of the satisfaction note of the Director goes to show that on the basis of materials produced satisfaction was duly recorded by him that authorization for search should be issued. The file was put up before the Director General (Investigation) for accord of administrative approval as required by Notification dated 7.3.2001. In fact, the requirement to obtain administrative approval is prompted by the need to provide an additional safeguard to the tax payer. A careful reading of the order of the Director General would go to

> show that all that he did was to record the view that the satisfaction of the Director, Income Tax (Investigation) was reasonable and therefore administrative approval should be accorded. The view taken by the High Court, therefore, cannot be sustained.

6. In order to ascertain as to whether sufficient information is available in the record of the department forming basis of reason to belief, I had directed the Department to produce the entire record. In compliance of the said order, the Department produced the records in sealed covers.

7. On perusal of the said record, it is manifest that Shri Muneesh Kumar, DDIT (Inv) II, Raipur, has mentioned that 'Shri Subhash Sharma of Raipur is known to be a close associate of Amolak Singh Bhatia group and therefore, he is proposed to be included in the search.” Similar observation in respect of other liquor contractors of the State is also mentioned in the note sheet concluding that in the light of above, on the basis of information gathered during discrete enquiries, it is apparent that the Shri Amolak Singh group and his associates and Shri Manjeet Singh Bhatia and associates are concealing their true income and are in possession of substantial amount of money, bullion, jewellery and other valuable assets representing income which has not been and shall not be disclosed for the purposes of taxation. The officer thereafter proposed issuance of warrant of authorisation under Section 132 of the IT Act in respect of

premises of Shri Amolak Singh Bhatia and family, Shri Surjeet Singh Bhatia and family, Shri Manjeet Singh, Shri Subhash Sharma, Shri Santosh Kumar, Shri Gurmeet Singh Bhatia and family and Shri Manjeet Singh at different locations.

8. Based on the above note, Shri A.K. Singh, DIT (Inv), MP & CG, Bhopal recorded his satisfaction in the following words :

> I have gone through the notes of the Additional DIT(Inv.), Raipur and DDIT (Inv.) Raipur. I have also discussed these cases in detail with Shri Munesh Kumar Additional DIT and Shri Muneesh Kumar DDIT. As per the facts brought out in the notes and discussion, it is clear that the groups mentioned are gnerating and then utilising the unaccounted money to obtain licenses in benami names as well as their own and family members names. It is also clear that money is generated by way of sale of unaccounted production of liquor. The tax records as discussed at X on prepage aslo indicate that tax is being evaded to a very large extent. The quantum of money involved in applying in benami names and then obtaining the licenses in these benami names runs into several crores as has been brought out in the DDIT's note.
>
> In view of the above facts, I am satisfied that these groups are involved in substantial tax evasion.
>
> I also have reason to believe that if summons/notices under the Income Tax Act are issued to these persons they will neither produce nor cause to be produced books of accounts/documents which would be relevant for determining the correct income liable to tax.
>
> I am, therefore, satisfied that this is a fit case for action under Section 132 of the Income Tax Act,1961.

> The proposal to restrict action to the main players in the highest revenue yielding districts has been made after detailed discussion with me. This has come about because of logistic/manpower problems faced by this Directorate.
>
> DGIT (Inv.) Bhopal may kindly peruse the notes on prepages and accord administrative approval for action on persons/premises mentioned at 'A' & 'B' on page 9/N.

On the basis of the above note, Shri M.K. Moghe, Director General (Inv), Bhopal, accorded administrative approval on 9-3-2007.

9. Upon perusal of the record, this Court is satisfied that the authority was possessed of information on the basis of which a reasonable belief was founded that the petitioner has omitted or failed to produce books of accounts or other documents and that such person is in possession of any money, bullion, jewellery or other valuable article which represents either wholly or partly income or property which has not been or would not be disclosed. This Court is further satisfied that before issuance of warrant and the notice under Section 153A of the IT Act the authority applied its mind to the material and the formation of opinion is honest and *bona fide* and further that it is not based on any extraneous or irrelevant material.

10. Having examined the papers, this Court is also satisfied that the reasons for formation of belief are relevant to the subject matter

at hand and since this Court is not required to go into the sufficiency or adequacy of the information nor can the Court sit in appeal over the satisfaction of the authority, this Court does not find any illegality or infirmity in the entire process based on which the warrant under Section 132 and the notice under Section 153A of the IT Act was issued against the petitioner.

11. As an upshot, the writ petition, *sans substratum*, is liable to be and is hereby dismissed.

12. There shall be no order as to cost(s).

Sd/-

Judge
Prashant Kumar Mishra

Gowri