HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

Writ Petition Nos.23023 and 29297 of 2019

COMMON ORDER:

(Per Sri Justice M.S.Ramachandra Rao)

The petitioner in W.P.No.23023 of 2019 (for short 'the petitioner') is a proprietary concern carrying on business of purchase of agricultural lands and agricultural products throughout the country and claims that it has 46 branches at different places all over the country having employee strength of about 300. It also deals as a wholesale trader of agricultural products, vegetables, fruits, and post-harvest crop activities.

2. The petitioner in W.P.No.29297 of 2019 is Vipul Kumar Mafatlal Patel and he is alleged to be an employee of the petitioner in W.P.No.23023 of 2019 (henceforth referred to as 'Vipul Kumar Patel').

3. The petitioner claims that its annual turnover for 2015-16 is Rs.28,34,96,248/-, for 2016-17 is Rs.20,26,86,915/-, for 2017-18 it is Rs.20,26,86,915/-, for 2017-18 it is Rs.73,28,06,623/- and for 2018-19, it is Rs.72,79,33,999/-.

4. The petitioner contends that it has a large turnover and it handles large quantities of cash which are also disclosed to the Income Tax Department. According to it, there are no proceedings of reopening of assessment pending before the Income Tax Department.

5. The petitioner states that it has business transactions in the State of Telangana also and that it entrusted a sum of Rs.5.00 Crores to its employee Vipul Kumar Patel for its business purposes.

6. The said individual had come to Hyderabad with friends, and on 23.08.2019 their car a Maruti Ciaz car bearing No.TS09FA 4948 was intercepted by the Task Force Police of the State of Telangana.

7. According to the petitioner, the said employee, his friends, the cash of Rs.5.00 Crore together with the above vehicle and another car and two wheeler were detained illegally from 23.08.2019 onwards by the Telangana State Police.

8. The GPA holder of the petitioner filed on 27.8.2019 a Habeas Corpus Petition for release of the said persons, the cash and vehicles in the High Court of Telangana.

9. The Task Force Police filed a counter affidavit in the said Writ Petition claiming that the discovery of cash with the said persons was made on 26.08.2019 and that the police had handed over the detenues along with cash to the Principal Director of Income Tax, Ayakar Bhavan, Hyderabad for taking further action against them.

10. Admittedly, the Task force Police addressed a letter under Ex.P5 letter dt.26.08.2019 to the Principal Director of Income Tax, Ayakar Bhavan, Hyderabad stating that he is handing over both the cash and the detinues to the latter and the Deputy Director of Income Tax, Unit 1 (3), Hyderabad

(2nd respondent in W.P.No.23023 of 2019) acknowledged receipt of the letter on 27.08.2019 and put his stamp thereon.

11. However, a panchanama was prepared by the 2nd respondent on 28.08.2019 (Ex.R8) as if a search was organized by a search party consisting of 8 persons who are employees of the Income Tax Department including the 2nd respondent (without mentioning the place where the alleged search was to be conducted in the panchanama); that there were also 2 panch witnesses, one from Nalgonda District, Telangana and another from Dabilpura, Hyderabad who witnessed the search at the place of alleged search; that a warrant of authorization dt.28.08.2019 was issued to the 2nd respondent under Section 132 of the Income-tax Act, 1961 to search the place (whose location was not mentioned in the panchanama) by the Principal Director of Income Tax (Inv), Hyderabad; the search warrant was shown at 9.00 AM on 28.08.2019 to Vipul Kumar Patel who was present at the alleged place (not mentioned specifically); that a search was conducted at the place (not mentioned specifically in the panchanama); and allegedly the cash of Rs.5.00 Crore was seized at that time from his custody.

12. Counsel for the petitioner contends that authorization for search has to be given *prior* to the seizure of the cash by the officials of the Income Tax Department under Section 132 of the Income-tax Act, 1961; when the Task Force Police had admitted in the counter affidavit filed in W.P.No.18720 of 2019, that they had handed over the cash of Rs.5.00 Crores on 27.08.2019, and Ex.P5 letter dt.26.08.2019 of the Inspector of Police, Commissioner's Task Force, West Zone Team, Hyderabad states that he handed over the cash of Rs.5.00 Crores along with the detenues to the Income Tax Department and it was acknowledged on 27.08.2019 by the 2nd respondent, the story of 2nd respondent mentioned in the panchanama created by the 2nd respondent as if the Income Tax Department conducted a search at an undisclosed place at 9.00 AM on the next day i.e., 28.08.2019 and that there was an authorization issued for the said search prior thereto, cannot be accepted; that the respondents cannot deny receipt of cash from the Task Force Police on 27.08.2019 and claim that they conducted a search of some undisclosed place and found the cash with Vipul Kumar Patel pursuant to such authorization. The absence of mention of the place of search, according to counsel for the petitioner, is indicative of the false narrative induced by the respondents to mislead the Court and the said panchanama has to be discarded as unbelievable.

13. According to the petitioner, the very seizure of cash from Vipul Kumar Patel without valid authorization under Section 132 is illegal; that the petitioner's cash book, balance sheet show sufficient quantity of cash in hand from which the sum of Rs.5.00 Crores could have been made available by the petitioner to its employee; and the money therefore has to be returned to the petitioner with interest and heavy costs must be imposed on the respondents for the illegality committed by them.

14. In W.P.No.29297 of 2019 filed by him in his individual capacity, Vipul Kumar Patel also stated that he is an employee of the petitioner in W.P.No.23023 of 2019, that he has been employed with the said concern from 01.08.2019 on a monthly salary of Rs.10,000/- to look after the business at Hyderabad, that he was entrusted Rs.5.00 Crores by his employer which was seized by the Task Force Police on 23.08.2019 itself; certain statements were recorded after torturing him in the office of the Task Force Police by the Income Tax officials; that he had studied in Gujarati medium and was not well versed with English language, but statements were recorded by the Income Tax Department officials in English and he was made to sign them under coercion; that the police had taken him and others in the early hours of 28.08.2019 to the office of the Income Tax Department at Ayakar Bhavan in Hyderabad along with the cash.

He contended that from the moment the cash was taken out of the car on 23.08.2019, it was lying with the police only and then it was taken by the Income Tax Department officials on 27.08.2019.

He stated that after going to the office of the Income Tax Department on 27.08.2019 midnight, again his statement was recorded in English under threat and his signature was obtained.

According to him, another statement was also obtained from him in English language under threat on 28.08.2019.

He stated that he and his friends were let off on 28.08.2019 and the cash was retained by the Income Tax Department officials.

He categorically asserted that the cash of Rs.5.00 Crores does not belong to him and that it belongs to his employer, i.e., the petitioner in W.P.No.23023 of 2019.

He therefore sought a direction to the respondents to return the said amount to himself as he is responsible to account for the cash to his employer.

15. He also filed a notarized affidavit bearing date 04.09.2019 retracting the statements made by him before the police and the Income Tax Department officials and asserting that under coercion the same were obtained from him in English language which he does not properly understand. This affidavit was sent by e-mail through a Chartered Accountant to the Income Tax Department e-mail ID *postmaster@incometax.gov.in* and screen shots of the same are filed along with his affidavit.

16. Counsel for petitioner contended that mere possession of cash of large amount without documents regarding its ownership or possession cannot be treated as information relatable to a conclusion that it represented income which would not have been disclosed by Vipul Kumar Agarwal for the purposes of the Act and relied on decision in **Commissioner of Income Tax, Allahabad and others vs. Vindhya Metal Corporation and others**[1].

17. Counsel for petitioners also relied on **D.G.I.T. vs. Spacewood Furnitures (P) Ltd.**[2] and contended that warrant of authorization for search and seizure can be issued if the authority granting it has information in its possession *before* it forms an opinion / reasonable belief that person is in possession of money which represents wholly or partly income which had

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[1] (1997) 5 S.C.C. 321
[2] (2015) 12 S.C.C. 179

not been or would not be disclosed; and there must be application of mind to the material and the formation of opinion must be honest and bona fide.

According to counsel for petitioners, the very fact that the money was handed over by the Task Force Police to the Income Tax Department on 27.08.2019 and the authorization was issued for search on 28.08.2019 suggests that the authority giving authorization could not have given it for a search for seizure of the cash from Vipul Kumar Patel *after* the cash was received by the Income Tax Department and the warrant of authorization is based on fictitious facts and cannot be said to be honest and bona fide.

The Stand of the Respondents

18. The respondent Nos.1 and 2 filed a counter-affidavit and an additional counter-affidavit.

19. They denied that Vipul Kumar Patel is not the employee of the petitioner because he had stated in a statement made to the Inspector of Police, Commissioner's Task Force, West Zone Team, Hyderabad that he is the Manager of a different firm by name M/s.P.Umeshchandra & Company.

20. While admitting that a letter dt.26.08.2019 was received on 27.08.2019 about the detention of Vipul Kumar Patel and his friends with cash of Rs.5.00 crores, it is admitted that the 2nd respondent along with her team visited the office of the Inspector of Police, Commissioner's Task Force, West Zone Team, Hyderabad to examine him on oath; that summons were issued to all 7 persons and sworn statements were recorded under Section 131(1A) of the Act in which he stated that the cash belong to

M/s.P.Umeshchandra & Sons. It is stated that he failed to produce books/relevant documents relating to the cash found in his possession and so a warrant was issued under Section 132 of the Act on 28.08.2019 and the unexplained cash was seized from his hands.

21. It is stated that Vipul Kumar Patel did not mention that the cash belongs to the petitioner M/s.Mectec and the latter had also not claimed that the cash belongs to them from the Income Tax Department even after 50 days from the date of seizure.

22. It is asserted that the provisions of Section 132 of the Act are attracted where the person in possession of any money and such money either wholly or partly is income which has not been or would not be disclosed for the purposes of the Income Tax Act, 1961.

23. It is admitted that Vipul Kumar Patel had filed before this Court a third party affidavit dt.25.10.2019 and copy of his petition dt.04.09.2019 retracting his earlier statement recorded under Section 132 of the Act on 27.08.2019 but it is stated that the contents of these affidavit/retraction petition are contrary to the facts submitted by him on oath before the Income Tax Department on 27.08.2019 and 28.08.2019. It is also stated that he never filed the said statements before the Department.

24. It is also asserted that in the sworn statements recorded from Vipul Kumar Patel under Section 131(1A) and 132(4) of the Act on 27.08.2019 and 28.08.2019, he stated that he studied upto XII standard and that he can read, write, understand and speak in Hindi and that he can also read and understand English language and that the said statements were given without any threat, coercion or undue influence.

Consideration by the Court

25. Heard Sri V.Srinivas, learned counsel for petitioner in W.P.No.23023 of 2019, Sri V.V.Raghavan, learned counsel for petitioner in W.P.No.29297 of 2019 and Sri Suryakiran Reddy, learned Additional Solicitor General of India for respondents in both Writ Petitions.

26. In these Writ Petitions, we are primarily concerned with the question whether the plea of the petitioners for return of the cash of Rs.5.00 crores to them is legally valid or not.

27. But before that issue is dealt with, we shall first consider as to how the cash in question came into the custody of the Income Tax Department.

28. The above amount of cash was seized from the custody of Vipul Kumar Patel is an admitted fact. The date of seizure according to the petitioners is 23.08.2019, but the case of the respondent Nos.1 and 2 is that the cash was seized on 26.08.2019 by the Inspector of Police, Commissioner's Task Force, West Zone Team, Hyderabad; that on receiving a letter dt.26.08.2019 from the said Police on 27.08.2019, the 2nd respondent and others went to the office of the Task Force Police and examined Vipul Kumar Patel on oath along with others and recorded sworn statements under Section 131(1A) of the Act on 27.08.2019. It is stated that thereafter because he did not explain the cash in his possession, warrant under Section 132 was issued on 28.08.2019.

29. *Curiously, in the counter-affidavits filed by respondent Nos.1 and 2 they do not give the date on which they took possession of the cash and how they got possession of the cash.*

30. But, in the counter filed by the Inspector of Police, Commissioner's Task Force, West Zone, Hyderabad in W.P.No.18720 of 2019 (the *Habeas Corpus Writ*), he stated at para no.7 as under:

> *"7. … … … I submitted a letter dt.27.08.2019 to the Principal Director of Income Tax (IT) Department, Ayakar Bhavan, Hyderabad narrating the above facts requesting him to take further action in the matter. On that, the Deputy Director of Income Tax (Investigation), Unit.1 (3) came to the Task Force Office and recorded their statements under Section 131 of I.T. Act and requested me to produce the alleged detenu before the Principal Director of Income Tax (IT Department), Ayakar Bhavan, Hyderabad for conducting further enquiry / investigation which is evident from Mahazarnama, dt.27.08.2019. Accordingly, I produced the alleged detenu along with cash before the Principal Director of Income Tax (IT Department), Ayakar Bhavan, Hyderabad on the same day. The I.T. officials recorded their statements and seized the cash by conducting panchanama. … …"*

This shows that the cash, along with Vipul Kumar Patel and others, was handed over to the Income Tax Department by the Police on 27.08.2019 itself by bringing them to the Aayakar Bhavan Office of the Income Tax Department in Hyderabad and statements were also recorded on the same day by the officials of the said Department.

31. The respondent Nos.1 and 2 had filed Ex.R-8, a panchanama allegedly prepared on 28.08.2019 along with their counter-affidavit referring to a warrant issued to Vipul Kumar Patel for search of a place *which is left blank,* details of the search party including the 2nd respondent, names of two panch witnesses, one from Nalgonda District and the other from Dabilpura (from the Old City of Hyderabad). It is stated that a warrant of authorization dt.28.08.2019 issued to the 2nd respondent under Section 132 by the Principal Director of Income Tax (INV), Hyderabad, that the said warrant was to search a place (the place of search is *left blank*) , that Vipul Kumar Patel was present at that place at 9 a.m. on 28.08.2019 and he read the same and Rs.5.00 crores of cash was seized.

32. How there could be a warrant issued under Section 132 by the Principal Director of Income Tax (INV), Hyderabad to the 2nd respondent without mentioning the place to be searched, is not explained by the respondents 1 and 2. How could there be a search at a place which is not disclosed and left blank by the 2nd respondent and her team allegedly on 28.08.2019 at 9 a.m.? Also, how coincidentally at the time of the alleged search the respondent No.2 and her team could find two panch witnesses from Nalgonda District and the Old City of Hyderabad – both too distant from the Basheerbagh office of the Income Tax department, at this unknown place of search, is equally a mystery.

33. This document, in our opinion, is clearly a fabricated document of a search of an unknown/undisclosed place. We disbelieve that any such search was in fact conducted at all by the 2nd respondent and her team to seize the cash. Why the 2nd respondent should resort to fabricating this panchanama Ex.R-8 is obvious i.e., to make out a case for seizure and retention of cash illegally by giving a colour of legal validity.

34. We deprecate this conduct of the 2nd respondent strongly.

35. Therefore we record a finding that the cash of Rs.5.00 crores was received by the Income Tax Department only from the Task Force Police after seizure by them and the Panchanama dt.28.08.2019 records false facts and it is a fabricated one.

36. Section 132 of the Act deals with procedure for search and seizure of cash or gold or jewellery or other valuable things. This Section contemplates that the competent authority in consequence of information in his possession must have 'reason to believe' *inter alia* that a person is in possession of cash etc., and such cash represents either wholly or partly income which has not been or would not be disclosed for the purposes of the Act and he may authorize another Officer of the Department lower in rank to enter and search any building etc., where he has reason to suspect that books of account or other documents, money, bullion, jewellery or other valuable article or thing are kept and seize the same.

37. In **Spacewood Furnitures Pvt. Ltd. and others** (2 supra), the Supreme Court dealt with the exercise of power by the competent authority to issue warrant for authorization for search and seizure and declared :

> *"**8.** The principles that can be deduced from the aforesaid decisions of this Court which continue to hold the field without any departure may be summarised as follows:*
>
> ***8.1.** <u>The authority must have information in its possession on the basis of which a reasonable belief can be founded that</u>—*
>
> *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 authorised 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 bona fide. Consideration of any extraneous or irrelevant material will vitiate the belief/satisfaction." (emphasis supplied).*

38. In our opinion, there were no circumstances existing for the Principal Director of Income Tax (INV), Hyderabad to issue any warrant for search or seizure under Section 132 of the Act on 28.8.2019 when the cash had been handed over to the Income Tax Department by the Task Force Police on 27.8.2019 and therefore the seizure of the cash from Vipul Kumar Patel by the respondents and its retention till date by them is *per se* illegal.

39. In our opinion, intimation by the Police to the Income Tax Department on 27.08.2019 would not confer jurisdiction on the Income Tax Department to detain and withhold cash, that too by issuance of an invalid search warrant under Section 132 of the Act; and there is no basis for the Income Tax Department to invoke the provisions of Section 132, 132A and 132B of the Act since there is no 'reason to believe' that the assessee has violated any provision of Law.

40. This is because, as held in **Vindhya Metal Corporation and others** (1 supra), mere possession of cash of large quantity, 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 have been disclosed by the person in possession for purpose of the Income Tax Act.

41. The petitioner in Writ Petition No.23023 of 2019 is the only claimant for the cash which was found in the hands of one of its employees, Vipul Kumar Patel. In Writ Petition No.29297 of 2019 he also states that the cash belongs to the petitioner in Writ Petition 23023 of 2019 and that he is their employee from 01.08.2019. There is no police case about the genuineness or otherwise of the cash.

42. The stand in the counter-affidavit that Vipul Kumar Patel did not produce any letter furnished by the petitioner in Writ Petition No.23023 of 2019 that he is its employee before the Income Tax Department though opportunity was given to him allegedly on five occasions, and therefore he is not its employee cannot be accepted in the light of the third-party affidavit of Vipul Kumar Patel filed in Writ Petition No.23023 of 2019 enclosing copy of appointment letter of Vipul Kumar Patel issued on 01.08.2019 along with salary slips for four months.

43. It is not the case of the respondents 1 and 2 that there was any claim made by M/s.P.Umeshchandra & Company or M/s. P.Umeshchandra & Sons, who they claim was mentioned by Vipul Kumar Patel as owner of the cash before the Task Force police and in statements under Sec.131(1A) or Sec.132 of the Act, before the Income Tax Department for the cash of Rs.5.00 crores which is in custody of the Income Tax Department from 28.08.2019 till date.

44. Now, both M/s.Mectec, the petitioner in W.P.No.23023 of 2019 and Vipul Kumar Patel are asserting that the said cash belongs only to M/s.Mectec.

45. It was no doubt open to the Income Tax Department, if there was any rival claim for the cash of Rs.5.00 crores by M/s.Umeshchandra & Sons, to file an Inter Pleader suit in a competent Civil Court invoking Order XXXV of C.P.C., but there was no occasion for it to do so in the absence of any claim before it by M/s.P.Umeshchandra & Sons or M/s P.Umeshchandra & Sons.

46. In the absence of any rival claim for the cash amount of Rs.5.00 crores by any third party, the respondents cannot imagine a third party claimant and on that pretext retain the cash indefinitely from M/s.Mectec thereby violating Article 300-A of the Constitution of India.

47. We may also point out that a return of income would be filed by M/s.Mectec, the petitioner in W.P.No.23023 of 2019 for the annual year 2019-20 only after 31st March, 2020. The explanation of the cash transaction can be expected to be found only after such return of income is filed by the petitioner. There is no basis for the respondents to presume that petitioner would not disclose the cash transaction of Rs.5.00 crore in its Income Tax return which was not filed by the alleged date of seizure of the cash by the Police, i.e., 26.08.2019.

48. As rightly contended by the petitioner, an income tax inspection and/ or investigation would be permissible only in respect of a past event but not for possible future contingencies; and if the petitioner was going to disclose and explain the cash of Rs.5.00 crore in its income tax returns for 2019-20, there was no basis for proceeding with any coercive action against the petitioner such as retention of cash.

49. Retention of cash by the respondents even before the commencement of an offence under the Income Tax Act, 1961, i.e., possible future non-disclosure by the petitioner in Writ Petition No.23023 of 2019 in its income tax return which would be filed after 31st March, 2020 would clearly violate Article 300-A of the Constitution of India.

50. So, even the statements recorded under Section 132 of the Act from Vipul Kumar Patel cannot be relied upon by the respondents to contend that he is working with M/s. P. Umesh Chandra and Sons or M/s. P. Umesh Chandra and Company and not the petitioner.

51. In these circumstances, the very seizure and retention of the cash amount of Rs.5.00 crore by the respondents from 27.08.2019 till date is illegal and unsustainable.

52. The learned Additional Solicitor General initially sought to place reliance on proviso to Section 132B(1)(i) and raised a plea that the petitioner should file an application for return of the cash before the Income Tax Department and then it would adjudicate the issue of ownership of the cash. When we pointed out to him that the 'Assessing Officer' of both petitioners is in Gujarat State, and the cash was seized at Hyderabad in the State of Telangana, and the Assessing Officer of petitioners in Gujarat would have no knowledge of the circumstances leading to the seizure of the cash at

Hyderabad, and also would not have custody of the cash to be returned to the petitioners, he did not press the said contention.

53. For all the aforesaid reasons, the Writ Petitions are allowed; the action of the respondents in conducting panchanama dt.28.08.2019 and seizing cash of Rs.5.00 crores from Vipul Kumar Patel, employee of the petitioner in W.P.No.23023 of 2019, and retaining it till date, is illegal and ultra vires the provisions of the Income Tax Act, 1961 and also violative of Art.14 and 300-A of the Constitution of India ; the respondents are directed to forbear from conducting any further enquiry pursuant to the said panchanama under the said Act; and they shall refund within 4 weeks from date of receipt of copy of this order the said cash of Rs.5.00 crores to the petitioner in W.P.No.23023 of 2019 with interest at 12% p.a. from 28.08.2019 till date of payment to the said petitioner. The respondents shall also pay costs of Rs.20,000/- to the petitioner in W.P.No.23023 of 2019.

54. Pending miscellaneous petitions, if any, in these Writ Petitions shall stand closed.

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

Date: 28-12-2020

Svv / Ndr/Vsv