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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-13017-1996 (O&M)
Date of Decision : 15.01.2020**

**THE I.N.B.E.C. COOPERATIVE URBAN (S.E.) THRIFT & CREDIT
SOCIETY LTD. CHANDIMANDIR AT CHANDIGARH**

..... PETITIONER

VERSUS

UNION OF INDIA AND OTHERS

..... RESPONDENTS

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. K.L. Goyal, Senior Advocate with
Mr. Avneet Singh, Advocate
for the petitioner.

Mr. Denesh Goyal, Advocate
for the respondents.

AJAY TEWARI, J. (Oral)

1. This petition has been filed challenging notice issued under Section 131 (1) of the Income Tax Act, 1961 (in short 'the Act') and for holding the action of respondent under Sections 132 of the Act illegal.

2. It is averred that the petitioner is a cooperative Society of Bank employees and the main objects of the society is to encourage thrift and savings. Deposits can be taken from any person and loan can be advanced to its members only. Since it was a cooperative society, its income comes under Section 80 (P) (2) of the Act and that is why it is never filed returns. However, the survey was conducted out on 27.06.1996 under Section 133-1(A) from 5.40 PM till 10.00

PM. While conducting the survey, the Authorised Officer issued the impugned notice under Section 131 of the Act and proceeded to seize the accounts of the petitioner. The ground taken is that there were no reasons to believe that the income has been concealed and that in any case, the money could not have been seized. At the very outset, learned counsel is confronted with the judgment of Supreme Court in the case of ***Director General of Income Tax (Investigation) and others Versus Spacewood Furnishers Pvt. Ltd. And others; (2015) 374 ITR 595 (SC)***. As a matter of fact, it would be appropriate to reproduce the relevant portion at this juncture itself:-

“21. Before we advert to the specific reasoning of the High Court, one specific aspect of the opinion expressed by the High Court needs to be taken note of inasmuch as the precise position in law in this regard needs to be clarified. The above aspect is highlighted by the following observations of the High Court expressed in paragraph 6 of the impugned order:-

“We, however, express that when the satisfaction recorded is justiciable, the documents pertaining to such satisfaction may not be immune and if appropriate prayer is made, the inspection of such documents may be required to be allowed.”

22. In the light of the views expressed by this Court in [ITO vs. Seth Brothers](#) (supra) and [Pooran Mal](#) (supra), 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.

23. 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.”

3. Thereafter, learned counsel for the revenue has placed before us, the reasons which were recorded at the time of converting the survey into search. It seems to us at this stage that the reasons disclosed cannot said to be non-existent and arbitrary.

4. Faced with this, learned Senior counsel sought to argue that the action subsequent to the search show the arbitrariness of the search operation.

5. We are afraid it would not be possible for us to comment on anything which is foreign to the writ petition. The writ petition has the following prayers:-

(i) “A writ in the nature of certiorari thereby quashing the impugned notice Annexure P- issued under Section 131 (1) of

- the Income Tax Act;*
- (ii) an appropriate writ, order of direction thereby holding that the search and seizure operation conducted by the respondent at the premises of the petitioner society is totally illegal and arbitrary and liable to be struck down with consequential relief;*
- (iii) issue a writ in the nature of mandamus, thereby directing the respondents to refund the amount of Rs. 42,10,000/-, alongwith interest @ 18% illegally taken away by the respondents from the bank accounts of the petitioner society;*
- (iv) an appropriate writ order or direction directing the respondents to lift the restraint imposed on the petitioner from operating its bank account;*
- (v) filing of certified copies of Annexures be dispensed with;*
- (vi) costs of the petition be also awarded;*
- (vii) advance service of notice on the respondents be dispensed with.”*

The prayer does not include the argument which now sought to be raised and thus, the same is rejected.

6. The third contention of the learned Senior counsel is that the money which was seized was not in the form of cash but in the form of bank deposit and there was no requirement to seize it.

7. We put it to him that money could be returned to the petitioner subject to the petitioner providing adequate surety in case any liability is created.

8. Learned counsel for the petitioner states that he has no objection. He has further argued that even till date no demand is pending. Learned counsel for the revenue has objected to point out that this is not an entirely correct factual situation because this Court granted stay of final order.

9. In these circumstances, we deem it appropriate to direct the petitioner to furnish the Bank guarantee for the amount seized (along with whatever the interest has accrued in this interregnum) and once that is done, the revenue shall refund the amount to the petitioner.

(AJAY TEWARI)
JUDGE

15th January, 2020
shabha

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned - *Yes/No*

Whether reportable - *Yes/No*