

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 12.11.2020
Pronounced on: 07.12.2020

+ W.P. (C) 5207/2020 & CM APPL.18787/2020

SHILPA CHOWDHARY Petitioner

Through: Mr. G.C. Srivastava and Mr. Suvinay K.
Dash, Advocates.

versus

PRINCIPAL DIRECTOR OF INCOME TAX
(INVESTIGATION)-I, NEW DELHI & ORS. Respondents

Through: Mr. Raghvendra Singh, Senior Standing
Counsel and Ms. Easha Kadian,
Advocate.

+ W.P. (C) 5213/2020 & CM APPL.18805/2020

VIKAS CHOWDHARY Petitioner

Through: Mr. G.C. Srivastava and Mr. Suvinay K.
Dash, Advocates.

versus

PRINCIPAL DIRECTOR OF INCOME TAX
(INVESTIGATION)-I, NEW DELHI & ORS. Respondents

Through: Mr. Raghvendra Singh, Senior Standing
Counsel and Ms. Easha Kadian, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

1. The petitioners, wife and husband, by way of separate writ petitions under Article 226 and 227 of the Constitution, impugn the validity and legality of the search action initiated by the Respondents. They seek, *inter alia*, (i) quashing of the impugned Warrant of Authorization [*hereinafter referred to as “WoA”*]; (ii) declaration that the search and seizure, conducted on them is illegal, void and without authority of law, and the exercise is without jurisdiction; (iii) direction to the Respondents to release the entire material and valuables seized under the search action; and (iv) quashing of the notices issued under Sections 153A/143(3) of the Income Tax Act, 1961 [*hereinafter referred to as the “Act”*]. Considering that in both the petitions the factual narrative, nature of reliefs sought and the grounds of challenge are nearly identical, the same are being decided by way of this common judgment.

Facts in W.P.(C) 5213/2020

2. The facts of the case, shorn off unnecessary detail, are as follows:-

- 2.1. On 05.02.2019, WoA were issued under Section 132(1) of the Act in the case of the ‘Kochar Group’, comprising of Sh. Avtar Singh Kochar, Sh. Gyandeep Singh Kochar, Sh. Hari Singh Kochar and M/s HL Impex (P.) Ltd. [*hereinafter collectively referred to as “**Primary Persons**”*]. Of the above WoAs, one in relation to Sh. Avtar Singh Kochar pertained to the residence-cum-office of the Petitioner - Shri Vikas Chowdhary at E-12/3, Vasant Vihar, New Delhi [*hereinafter referred to as “**Petitioner’s Premises**”*].
- 2.2. On 06.02.2019, a search and seizure operation was carried out at Petitioner’s Premises pursuant to the above WoA dated 05.02.2019.

The said search commenced at 12:30 PM and was temporarily concluded after a period of four days i.e. on 09.02.2019, at 09:00 PM, as revealed by one panchnama dated 09.02.2019. The said panchnama, prepared under the said WoA issued against the Primary Persons, inventorise the items found at the Petitioner's Premises, which comprised of: (a) Some loose papers; (b) One hard disk (a working copy of which was seized); (c) One Digital Video Recorder ("DVR"); (d) cash (which was released at the time of search), (e) one Godrej-branded key to Locker No. 150F, Bank of India, Punjabi Bagh, New Delhi, (f) three keys belonging to cylindrical containers, and (g) two keys belonging to a wooden cupboard in the bedroom of the Petitioner's daughter. Statements of both the Petitioners were also recorded on oath on 06.02.2019.

- 2.3. On 12.02.2019, Respondent No.2 issued the impugned WoA u/s 132(1) of the Act against the Petitioner and his wife (Mrs. Shilpa Chowdhary) to search Locker No. 150F—maintained with the Bank of India, Punjabi Bagh, New Delhi— key to which was found and seized on 09.02.2019.
- 2.4. On 19.02.2019, Petitioner requested Respondent No.3 to provide a copy of statements recorded during the search. He also represented that he was not connected to any of the Primary Persons in any manner, and sought information that had led the authorities to believe or suspect that something connected or relevant to the Primary Persons was likely to be found at the Petitioner's Premises.
- 2.5. Then on 03.04.2019 at 5:30 PM, pursuant to the impugned WoA dated

12.02.2019, search was conducted at Locker No. 150F, Bank of India, Punjabi Bagh, New Delhi. Jewellery valued at Rs. 1,00,67,181/- was found and seized. It is reiterated that the above search is not to be confused with the search carried out on Petitioner's Premises in respect of a WoA dated 05.02.2019 issued against the Primary Persons referred to hereinabove.

- 2.6. On 04.04.2019, search at Petitioner's Premises resumed under the WoA dated 05.02.2019 issued against the Primary Persons.
- 2.7. On 05.04.2019, a Final Panchnama was drawn. Statement of the Petitioner was also recorded.
- 2.8. Ultimately on 20.04.2019, notice for assessment proceedings under Section 153A/143(3) of the Act was issued to the Petitioner. Aggrieved with the search and seizure proceedings, Petitioner has approached this court.

Facts in W.P.(C) 5207/2020

3. Shilpa Chowdhary, the other Petitioner, is similarly aggrieved with the WoA u/s. 132(1) of the Act issued against her and her husband in respect of the Locker referred to above. She also faces the assessment proceedings pursuant to notice issued u/S. 153A/143(3) of the Act. The facts are identical to what has been stated above in W.P.(C) 5213/2020, except that the search and seizure operation carried out on 06.02.2019 at the Petitioner's Premises was in pursuance to the WoA addressed as "*residence-cum-office of Sh. Vikas Chowdhary bearing No.E-12/3, Vasant Vihar, New Delhi*" dated 05.02.2019 issued under Section 132(1) of the Act in the case of Primary Persons.

Contentions of the Petitioners

4. Mr. Srivastava learned counsel for the Petitioners raised several contentions to assail the WoA. The same are summarized as follows:-

- 4.1. The search and seizure action is entirely arbitrary and mala fide. The Competent Authority did not apply its mind while issuing the impugned WoA against the Petitioners or in conducting the search. The sequence of events and the actions of the search party reveal that Respondents conducted a general search on the Petitioner without any evidence that the Petitioners were in possession of any documents or valuable articles representing undisclosed income of the Primary Persons. The action is thus abuse of power of search conferred by the Act and is completely illegal.
- 4.2. Search carried out under WoA dated 05.02.2019 is beyond the scope of statute. The Petitioners were neither related to the Primary Persons, nor was any material available with the Competent Authorities to even raise a suspicion on any books of account, documents or valuables of the Primary Persons were kept at the Petitioner's Premises. Regardless, the authorisation was only to the extent of search and seizure of material relevant to the Primary Persons, at Petitioner's Premises. Therefore, the authorised officers conducting the search should have restricted their search to the extent of material or valuables pertained to the Primary Persons. However, from the Panchnama, it is amply clear, the officers went beyond their mandate, by conducting a full-fledged search against the Petitioners and their

family members, as apparent from the seizure/ restraint upon Petitioner's jewellery. Thus, the search and seizure action of the search party qua the Petitioner's belongings was void *ab initio*, conducted without any ground, based purely on surmises and assumption of Respondent No.1. The law does not allow or give unbridled powers to encroach upon the privacy of a person.

4.3. Impugned WoA seemingly issued under Section 132(1A) is illegal. As the original WoA dated 05.02.2019 was issued in the case of the Primary Persons, it can undoubtedly be inferred from the sequence of events, that the search action at the Petitioner's Premises between 06.02.2009 to 09.02.2009 was conducted under Section 132(1A) of the Act, on the suspicion that it housed incriminating evidence against the Primary Persons.

4.4. Arguendo, if the impugned WoA is issued Section 132(1), it is nonetheless illegal for the following reasons:

(i) If the stand of the Revenue is that the action in the case of the Petitioners was taken under Section 132(1) and not under Section 132(1A), then the obvious inference would be that the said action was illegal and unauthorised for the reason that none of the conditions stipulated in Clauses (a), (b) or (c) were either examined or found to have been satisfied in the case of the Petitioners. The conditions provided under these clauses of Section 132(1) were examined in respect of the Primary Persons and not qua the Petitioner.

(ii) An authorization u/s 132(1) must fulfil a higher threshold of the

test of “reason to believe”, and such reasoning has to be based on, and “in consequence of” information, which is already “in possession” of the competent authority.

- (iii) The existence of locker, its key or its contents was not known prior to search conducted on 06.02.2019, and came to be recorded only in the Panchnama dated 09.02.2019 drawn during search. Thus, the competent authority had no material in its possession to harbour any reasons to believe that the locker contains any jewellery or undisclosed income belonging to the Petitioner.
- (iv) During the entire search action conducted on 06.02.2019, the Petitioners were not questioned about the locker’s key, contents, or the source of acquisition of the contents, until the issuance of the impugned WoA dated 12.02.2019.
- (v) The process of questioning or recording statements of persons covered u/s 132(1A) must be restricted to the extent the same pertains to the material found/seized in relation to the Primary Persons.
- (vi) No adverse cognizance can be derived merely on the basis of so-called suspicion, surmises and conjectures. The Courts in several decisions have held that the formation of opinion as to belief must be in “*good faith and not mere pretence and subterfuge on the part of the authorities.*” Respondent No. 2 could not have formed a ‘reason to believe’ that the conditions set forth in subsections (a), (b) or (c) of Section 132(1) of the Act would be

fulfilled in the case of the Petitioner. No evidence linking the Petitioner's premises to the activities of the Primary Persons or evidence against Petitioners, or information pertaining to the above-mentioned locker was retrieved during the search at Petitioner's premises. In support of his submissions. Mr. Srivastava has also heavily relied upon the decision of this Court in the case of *Shah-E-Naaz Judge v. Additional Director of Income Tax, (INV)–Unit VI & Anr.*, (2019) 306 CTR (Del) 42, specifically paragraphs 15, 17, 18, 19, 22, 23 and 24. The same are not being reproduced herein for the sake of prolixity.

Contentions of the Revenue

5. Per contra, Mr. Raghvendra Singh, learned Senior Standing Counsel for the Revenue, defended the action of the Respondents and submitted that the entire foundation of the writ petitions is misconceived for the following reasons:

5.1. The petition is barred by delay and laches. Had the Petitioners felt aggrieved, the search warrant should have been challenged around the time of search activity, or around the time of receipt of the notice for assessment proceedings under Section 153A/143(3) of the Act. In the said assessment notice, the Petitioner was directed to file his return of income within the statutory time limit of 15 days. Petitioners chose not to file the same, then stayed silent for the next four months, and have now approached the Court after more than eighteen months from the date of the alleged cause of action. In this regard, reliance has been placed upon the judgment of this court in the case of *SK Industries v. Director General of Income Tax (Inv)*, (2007) 290 ITR 359 (Del),

wherein, the challenge to a WoA raised after sixteen months was held as time barred. It was thus pleaded by Mr. Singh that the Court should decline to exercise its discretionary jurisdiction under Article 226 of the Constitution of India on the ground of delay and laches.

- 5.2. The entire premise of the petitions is misconceived. The Petitioners have wrongly perceived that the search and seizure action against them has originated under Section 132(1A) of the Act, whereas search was conducted under Section 132(1) of the Act. This understanding forms the basis of the misguided grounds of challenge raised in the Petition. Elaborating on this aspect, Mr. Singh explained that the scope of Section 132(1) and 132(1A) is entirely different. Further, he elucidated that in the present facts, two separate search proceedings took place. He submitted that amongst the WoA dated 05.02.2019 under Section 132(1) issued in the case of the Kochar Group, one WoA pertained to the Petitioner's Premises, because the Issuing Authority had reason to believe that undisclosed income/books of accounts/documents of the Kochar Group were to be found there. The said reason to believe, as noted in the Satisfaction Note alongwith the other relevant material, have been placed by Respondents before the Court in a sealed cover. Thus, the initial search and seizure action, initiated at the Petitioner's Premises on 06.02.2019, was in the case of the Kochar Group. During said search, material and information was discovered which constituted "reason to believe" for WoA in the case of Vikas Chowdhary and Shilpa Chowdhary. Accordingly, a fresh WoA dated 12.02.2019 (impugned) was issued in the case of both the

Petitioners under Section 132(1) of the Act. It is the case of the Respondent that until 12.02.2019, the search was being conducted on the basis of WoA dated 05.02.2019 issued against Primary Persons. Thereafter, search was conducted on the basis of impugned WoA dated 12.02.2019 issued against the Petitioners. The Respondent has placed the “reason to believe” in respect of the said WoA in a sealed cover before this Court. No WoA was issued under section 132(1A), instead search was carried out under Section 132(1) of the Act.

- 5.3. It is well-settled law that this Court would not go into the sufficiency or adequacy of the material that was relied upon by the authorities for forming the reason to believe to initiate the search action. The Respondents have urged grounds that are founded on the subjective satisfaction of the Competent Authority, and therefore, this Court should decline to interfere in the present petition.

Findings and Analysis:

WHETHER THE PETITION IS BARRED BY DELAY AND LACHES?

6. The impugned search action was conducted on 03.04.2019 and the present petitions were filed on 11.08.2020. The Petitioners cite the present pandemic situation and rely upon the notices under Section 153A/143(3) of the Income-tax. Act, 1961 issued on 20.04.2020 to justify the delay. The undisputed fact is that the present petitions are predicated on the search action which served as a cause of action for the Petitioners to file the present petition. There is no convincing explanation for the delay, nevertheless,

since we have extensively heard the arguments on the merits of the case, we are not inclined accept the preliminary objection raised by the Revenue and would instead like to decide the petitions on merits.

WHETHER THE IMPUGNED WARRANT IS ISSUED UNDER SECTION 132(1) OR 132(1A) OF THE ACT?

7. Before going further, it will be fruitful to first take note of the relevant statutory provision, which reads as under:

132. (1) Where the Director of Inspection or the Commissioner or any such Deputy Director of Inspection or Inspecting Assistant Commissioner as may be empowered in this behalf by the Board, 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 of Inspection or the Commissioner, as the case may be, may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income-tax Officer, or*
- (B) *such Deputy Director of Inspection or Inspecting Assistant Commissioner, as the case may be, may authorise any Assistant Director of Inspection 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;*
 - (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;*
 - (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;*

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any Commissioner, but such Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in Section 121, it shall be competent for him to exercise the powers under this sub-Section in all cases where he has reason to believe that any delay in getting the

authorisation from the Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue.

(1A) Where any Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the Director of Inspection or any other Commissioner or any such Deputy Director of Inspection or Inspecting Assistant Commissioner as may be empowered in this behalf by the Board to take action under clauses (i) to (v) of sub-Section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under subsection (1), such Commissioner may, notwithstanding anything contained in Section 121, authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

X ... X ... X”

8. The foundation of the petition, indeed, is based on the premise that the search action against the Petitioners is under Section 132(1A) of the Act, as is evident from the grounds of challenge, wherein it was urged that “*it can be undoubtedly inferred that the search action at the residence of the Petitioner between 06.02.2019 and 09.02.2019 was conducted u/s 132(1A) of the Act....*”. The Respondents firmly defend their action and argue that no WoA were issued under the said provision. Thus, at the outset, we would like to first decide this essential and germane fact, as it relates to assumption of jurisdiction of the competent authority and also because the above-noted two provisions apply independently and postulate different threshold criteria for invocation. Therefore, the first question which requires to be answered is whether the search conducted in the Petitioner’s Premises on 06.02.2019

was under Section 132(1A) or Section 132(1) of the Act.

9. Insight into this factual position can be gained from the material placed before us. We have carefully perused the satisfaction note and the other accompanying material presented to us in a sealed cover, and on the careful examination thereof it transpires that the portrayal of the facts by the Petitioner is not accurate. The genesis of the search action originates from the WoA dated 05.02.2019 in the cases of Primary Persons i.e. the Kochar Group. The said WoA was undoubtedly issued in terms of Section 132(1), Rule 112 of the Rules and Form 45. It was based on detailed “reasons to believe” running into six pages. Briefly stated, the “reasons to believe”, as enumerated in the Counter Affidavit filed by the Revenue, are as follows:

(i) The Kochar Group were running hawala business under the guise of forex business through the company HL Forex Private Limited and several other six companies owned by the family members of the Kochar Group.

(ii) Information was received from an informer in the form of electronic records of communications of an employee of Kochar Group with respect to delivery of cash.

(iii) It was discovered that these people had earlier been searched by the Enforcement Directorate wherein cash in Indian and Foreign currency had been recovered and thereafter arrests had been made.

(iv) The electronic records evidenced that the illegal business was continuing.

(v) Thereafter several persons were put under physical and electronic surveillance and one key employee was identified who was involved in regular delivery of cash and maintaining records of the hawala transaction.

(vi) Further discreet enquiries revealed that the Kochar Group kept undisclosed income and unaccounted assets at multiple locations including houses and lockers.

(vii) It was also discovered that one of the affiliates of Kochar Group that was facilitating the hawala transactions in South Delhi was the Petitioner. On physical surveillance movement of cash was observed from the Petitioner's premises by motorcycle borne couriers.

(viii) On the basis of technical surveillance, it was also discovered that the Kochar Group was involved in illegal betting business.

(ix) The reasons to believe identified the key locations where undisclosed income/ assets/ documents and other incriminating evidence is likely to be found. One of the 11 premises was residence cum office of the Petitioner at E12/3, Vasant Vihar, New Delhi." [Emphasis added]

10. The Revenue thus suspected that the Petitioner's Premises was a location where undisclosed income/assets/documents/other incriminating evidence relating to the Kochar Group was likely to be found. Thus, amongst the various WoA dated 05.02.2019 in the case of Kochar Group, one was issued pertaining to the Petitioner's Premises.

11. Let's now examine the relevant provision. A careful reading of Section 132 discerns that the Competent Authority can issue a WoA for search and seizure if such an authority, in consequence of information in his possession, has "reason to believe" that conditions stipulated in either of clauses (a), (b) or (c) of the Section are satisfied. Such authorization is given in Form 45 under Section 132 of the Act read with Rule 112(1) of the Income Tax Rules, 1962. The first proviso to Section 132(1) also contemplates a WoA and

provides that the Principal Chief Commissioner/ Chief Commissioner or Principal Commissioner/ Commissioner of Income Tax / such other authority as named in the said proviso, has the power to authorize a search of any building, place, vessel, vehicle or aircraft of a person which is under his jurisdiction and also in cases where such building, place, vessel, vehicle or aircraft is in his area of jurisdiction but he has no jurisdiction over the persons concerned, if he has reason to believe that any delay in obtaining authorization from the Principal CCIT/CCIT or Principal Commissioner/ Commissioner having jurisdiction over the person would be prejudicial to the interests of revenue. This authorization is issued under Form 45A under the first proviso to sub-Section (1) of Section 132 of the Act with Rule 112(2)(b) of the Rules. Section 132(1A) envisions a different scenario. Under this provision, where a search for any books of account/other documents/assets has been authorized by any authority who is competent to do so, and some other Chief Commissioner/Commissioner in consequence of information in his possession has reason to suspect that such books of account/other documents/assets of the assessee are kept in any building, place, vessel, vehicle or aircraft, not specified in the search warrant issued by such authority, he may authorize the Authorized Officer to search such other building, place, vessel, vehicle or aircraft. This warrant is issued as per Form 45B under sub-Section (1A) of Section 132 read with Rule 112(2)(c) #

12. Thus, we can see that the Act provides for the three different warrants of authorisation which apply to different situations. Now, in the facts of the present case, the initial warrant dated 05.02.2019 was issued against the Primary Persons i.e. the Kochar Group. However, in consequence of the

information in the possession of the revenue authorities, i.e. it was suspected that books of account / other document etc. were kept in the Petitioner's Premises, the said property was searched. This search action was thus under Section 132(1) against the Primary Persons. The Petitioners have erroneously assumed that the search action at their Premises, between 06.02.2019 and 09.02.2019 was conducted under Section 132(1A) of the Act, as a premises suspected to have material belonging to the Primary Persons. As demonstrated from the material placed on record, this is palpably incorrect. The Respondents in their Counter Affidavit have categorically stated that the search was never conducted under Section 132(1A) of the Act. Having perused the WoA, we are inclined to agree. As we have noticed above, the Act distinguishes between search actions under sub Sections (1) and (1A) of Section 132, however the distinction is not of relevance in the facts of the case. Although the Petitioners are correct in submitting that the threshold requirement to determine the validity of the authorisation for such search under Section 132(1A) qua the premises is based on 'reason to suspect', but they have ignored the vital fact that for search of premises this threshold – viz. 'reason to suspect' – is also envisaged in Section 132(1)(i) in the following words “(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.” The only crucial factor to be borne in mind is that, while searching the premises under the above provision, there must be reason to believe with the Competent Authority to search the 'person', within the contemplation of clauses (a), (b) or (c) of Section 132(1). Indeed, Section 132(1) of the Act empowers the Competent Authority to authorize search of a 'person' who

fails to, or if such Competent Authority believes will fail to, produce books or accounts or other documents in response to a summon issued under the Act; or possesses some jewellery, money or other valuable or thing representing income that such person has not disclosed or would not disclose for the purposes of the Act, and seize the relevant material found as a result of the search. Such search against a “*person*” can be carried out by the authorised officer by searching any building, place, vessel, vehicle or aircraft where he suspects that such books of account, other documents, money bullion, jewellery etc. are kept. These premises to be search need not necessarily belong to the searched person. On the other hand, Section 132(1A) confers power to different set of officers to authorize search of a ‘*building, place, vehicle, vessel or aircraft*’ based on suspicion that any books of account or other documents, jewellery, valuables or other article or things in respect of which search has been authorized under Section 132(1) is or are kept, and seize the relevant material. In the case of the Petitioner, as explained above, the WoA under Section 132(1) of the Act in the case of Kochar Group pertained to the Petitioner’s Premises wherein the Issuing Authority had reasons to suspect that the undisclosed income, books of account and documents of the Kochar Group were kept or to be found. Accordingly, the search and seizure under Section 132(1) of the Act in respect of the Kochar Group was carried out at the premises of Vikas Chowdhary on 06.02.2019. We would like to add that we have also perused the WoAs issued by Respondent No. 2 under which the searches were initiated. As shown to us, both have been issued in Form No. 45, under Section 132 r/w Rule 112(1) of the Income Tax Rules 1962. WoA No. 7257 dated 05.02.2019 was issued to the Primary Persons i.e. the Kochar Group,

and was in respect of the Petitioner's Premises. WoA No. 7275 dated 12.02.2019 was issued to the Petitioners Shilpa and Vikas Chowdhary, and was in respect of their Locker No. 150F. Thus, the distinction sought to be drawn by Mr. Shrivastava is wholly irrelevant. Further the assumption and contention that, since Vikas Chowdhary was not the searched person under the WoA dated 05.02.2019, his premises could only be searched under Section 132(1A) of the Act, is entirely misconceived and is rejected.

VALIDITY OF SEARCH CARRIED OUT ON 06.09.2019 ON PETITIONER'S PREMISES

13. We do not find any merit in the challenge raised by the Petitioners to the search carried out at the Petitioner's Premises. Firstly, the Petitioners have asserted that they are not challenging the WoA for search conducted on 06.02.2019. Secondly, no prayer has been made in this regard. Besides, as noted above, this search action in relation to the Petitioner's Premises was under the WoA against the Kochar Group under Section 132(1) of the Act. The gist of the satisfaction note, as documented in the Counter Affidavit, has been extracted in the succeeding paras. The same pertains to the Kochar Group, whereunder the premises of the Petitioner were searched, reveals that the WoA were issued because it was suspected that some of the valuables/documents of Sh. Avtar Singh Kochar were kept at the premises of the Petitioner. The search action between 06.02.2019 to 09.02.2019, was therefore, not against the Petitioners but against the Primary Persons. The Petitioner's Premises was searched not for Vikas or Shilpa Chowdhary's income/books of account/etc., but for the books of

accounts/documents/money/bullion/jewellery/etc. belonging to the Primary Persons who were the subject of the search. The Respondents, on physical surveillance, observed movement of cash from the Petitioner's Premises by motorcycle borne couriers. Therefore, the premises was identified to likely have incriminating evidence. The connection and link between the persons subjected to search (i.e. the Primary Persons) and the Petitioner's Premises was thus established. We cannot ignore the fact that documents/articles/valuables etc. belonging to Primary Persons can be kept with third parties and concealed anywhere in different places and locations. Thus, the authorised officer can subject any such premises to search if there are reasons to suspect that such location could be accommodating such document/articles/valuables, etc . Therefore, the jurisdictional precondition or the threshold for justifying such action qua the premises, was satisfied. Though, it has been argued that such an action is unlawful, however the entire premise of the Petitioner's case is essentially founded on the plea that such action qua the Petitioners was under Section 132(1A) of the Act and not under Section 132(1) of the Act. This factual affirmation is incorrect and has been clarified for the reasons stated hereinafter. Thus, there is no credible foundation laid out by the Petitioners to challenge such an action. Even otherwise, this action of search and the consequences thereof are qua the Primary Persons i.e. the Kochar Group. Petitioners have no locus to challenge the same and we are not concerned with this search and consequent proceedings against the Kochar Group.

VALIDITY OF SEARCH ACTION UNDER WOA DATED 12.02.2019

14. Next, we shall deal with the search conducted on 03.04.2019, pursuant to

WoA dated 12.02.2019. As noted above, the precursor to this WoA is the WoA dated 05.02.2019 that was solely against the Kochar Group and at that stage no search was proposed to be initiated under Section 132(1) of the Act, in the case of the Petitioners or their family members. However, during the search of the Petitioner's Premises, material as well as information was discovered, which constituted "reason to believe" for the Revenue to proceed against the Petitioners. This material comprises of a key to a bank locker which was held in the name of the Petitioners and the statements recorded under Section 132(4) of the Act.

15. At this stage, it would also be relevant to note the Petitioners' contention regarding their statements. Mr. G.C. Srivastava, during the course of the argument had contended that the Petitioners were not questioned about the locker key, the contents of the locker or the source of acquisition of these contents. This contention appears to be incorrect in view of the statements recorded by the Respondents which have been shown to us. Specific queries were put to the Petitioners and their responses thereto are germane. The relevant portion of the statement of the Petitioners, recorded under Section 132(4) of the Act is extracted hereinbelow:

(a) Extracts from Statement of Shilpa Chowdhary dated 06.02.2019:

- 8) अपने माता-पिता की तरफ से आपके कितने गहने (तोला या ग्राम में अनुमानित मात्रा बताएं) शादी के समय बच्चे के जन्म के समय तथा अन्य सामाजिक और धार्मिक अवसरों पर प्राप्त हुए हैं? हीरो के गहनों के मामले में उसका कच्चा विवरण दें।

How much jewellery (to be given approximately in tolas or grams) did you receive at the time of marriage, birth of children & other social & religious occasions from your parents side? In case of diamond jewellery, please give rough description of the same.

I don't remember

- 14) क्या आपके अपने नाम या संयुक्त नामों से देश में कहीं भी किसी बैंक या किसी अन्य एजेंसी में कोई सुरक्षित जमा कक्ष/कोण्ड (अर्थात लाकर) या सुरक्षित अभिरक्षा सुविधा किराए पर ले रखी है? यदि हां, तो कृपया ब्योरा दें।
Have you hired any safe deposit vault (i.e. locker) of safe custody facility in any bank or any other agency either in your name or in joint names anywhere in the country? If so, please furnish details

बैंक/एजेंसी का नाम व पता Name & Address of Bank/Agency	लाकर नंबर Locker No	चाबी नंबर Key No.	किराएदार-किराएदारों के नाम Name/Names of hirers	जमा वस्तुओं के प्रकार Nature of Contents
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*Bank of India
Punjab
Rajin*

- 15) क्या आपके परिवार के अव्ययक बच्चों के नाम पर कोई लॉकर किराए पर लिया गया है? यदि हां, कृपया ब्योरा दें।
Have any locker been hired by any member of your family including in names of minor children? If so, please furnish details.

No

- 16) आज की तिथि तक आपके पास निजी गहने कितने हैं? (तोले में अनुमानित मात्रा बताएं) यह भी बताएं कि आपने तथा आपके परिवार के सदस्यों ने क्या-क्या गहने पहन रखे हैं? बैंक लॉकर सहित आपके घर में तथा किसी अन्य स्थान पर रखे गहनों का भी ब्योरा दें।

How much personal jewellery do you own as on today (to be given in tolas approximately)
This should include Jewellery on your person kept at home and in any other premise including bank locker?

Don't remember

- 17) क्या आपने कोई नकद रुपये/मूल्यवान वस्तुएं / गहने किसी और के पास या किसी अन्य स्थान पर रखे हैं? यदि हां तो कृपया विवरण दें
Have you kept any cash/valuables/jewellery with anybody else or any other premise? If so, please furnish details.

No

(b) Extracts from the statement of Vikas Chowdhary dated 06.02.2019:

- 14) क्या आपने या आपके परिवार के सदस्यों ने भारत/विदेश में कहीं पर अपने नाम से/या संयुक्त नाम से या किसी और व्यक्ति या प्रतिष्ठान की ओर से बैंक में फिक्स डिपोजिट खाते खोल रखे हैं? कृपया ब्यौर दें।
Please furnish details of fixed deposits held by you or your family members either in individual name or in joint name or on behalf of any other person or concerns in any bank, any where in India/abroad.

क्रम सं.	एफ.डी.आर. धारकों के नाम	बैंक का नाम व पता	एफ.डी.आर. नंबर/दिनांक	एफ.डी.आर.का निवेश मूल्य
Sr. No.	Name/Name of F.D.R. holders	Name & address of the bank	F.D.R. No./Date	Investment Value of F.D.R.

No

- 16) आपके द्वारा या आपके परिवार के सदस्यों द्वारा किसी भारतीय या विदेश बैंक अथवा किसी अन्य एजेंसी में अपने नाम से, संयुक्त नाम से या तीसरी पार्टी के नाम से खोले गए लॉकरों का ब्यौरा दें।
Please furnish details of lockers operated by you and your family members in individual, joint or in third party names in any bank or with any agency anywhere in India or abroad.

क्रम सं.	लॉकर नंबर एवं	बैंक का नाम व पता	जिसके नाम से लॉकर	संचालित करने वाले/वालों के नाम
Sr. No.	Lockers No. Key No.	Name & Address of the bank	In whose name the locker is held	Name of the operator/s

No

- 17) क्या आपने या आपके परिवार के सदस्यों ने किसी बैंक या एजेंसी की सेफ कस्टडी सुविधा सहित किसी तीसरी पार्टी के पास कोई कागजात, नकदी या मूल्यवान वस्तुएं रखी हैं? यदि हाँ तो उसका ब्यौरा दें।
Have you or your family members kept any document, cash or valuable with any third party including safe custody facility of bank or agency? If so, please give details.

क्रम सं.	पार्टी का नाम-बैंक अथवा किसी एजेंसी सेफ कस्टडी सुविधा का नाम	कानून नं. 1 के अनुसार व्यक्ति-व्यक्तियों के पास रखी गई परिसंपत्तियों एवं कागजातों का विवरण	जिस तिथि को परिसंपत्तियाँ रखी गईं
Sr. No.	Name of the party/safe custody facility of bank or agency	Description of assets and documents kept with person/s as per col. No. 1	Date on which such assets kept

No

18) क्या आपके पास या आपके परिवार के सदस्यों के पास किसी और व्यक्ति ने कोई कागजात, नकद संपत्ति या मूल्यवान वस्तुएँ रखवाई है? यदि हाँ तो विवरण दें।
 As any one kept any documents, cash or valuable with you or any of your family members or in locker safe deposit vaults hired by you or your family members? If so please give details.

क्रम सं. Sr. No.	उस व्यक्ति का नाम जिसने कागजातों Name of the person who kept documents and assets etc.	आपके और आपके परिवार के सदस्यों के Description of assets & documents kept with you and your family members	आपके और आपके परिवार के Date on which such assets (documents kept with you and your family members)
		No	18

3. किसी अन्य स्थान जैसे, लॉकरों इत्यादि अथवा किसी अन्य व्यक्तियों के पास कितनी है एवं यह भी बताएं कि यह नकद धनराशि किसकी है?
 Any other place such as lockers, etc. or with somebody else. Give particulars and whom does the same belong to.

No.

34. आपके घर में, लाकरों में और अन्य स्थानों में आपके और आपके परिवार के सदस्यों के पास कितने सोने/हीरे के पहने हो सकते हैं? कृपया सदस्य-वार विवरण दें?
 How much gold/diamond jewellery is likely to be with you and your family members in your residence, locker and in other place? Please give memberwise breakup.

क्रम सं. Sr. No.	परिवार का सदस्य का नाम Name of the family member	गहने		
		घर में In residence	लॉकर में Jewellery In lockers	किसी अन्य स्थान में Any other place
		Don't remember right now		

16. In this backdrop the satisfaction note recording the reason to believe for initiating the action reads as under:

“Satisfaction Note in case of Locker No. 150F, Bank of India, Punjabi Bagh West, Delhi in the name of Sh. Vikas Chowdhary and Shilpa Chowdhary.

A search and seizure action u/s 132 of the Income Tax Act, 1961 was conducted on various premises of Kochar Group on 06.02.2019. During the course of search and seizure action u/s.132 of the Income Tax Act, 1961 at residential premises of Sh. Vikas Chowdhary i.e. E-12/3, Vasant Vihar, New Delhi on 06.02.2019, Keys of locker No.

150F, Bank of India, Punjabi Bagh, New Delhi was found in the possession of Sh. Vikas Chowdhary and Smt. Shilpa Chowdhary.

Sh. Vikas Chowdhary in his statement recorded u/s 132(4) of the Income Tax Act, 1961 was asked to furnish the details of contents of the lockers but he could not provide the satisfactory explanation in respect of money, jewellery, documents or other valuable articles kept in the said locker. Under such circumstances, the contents of this locker are under question and need to be verified.

In view of the facts discussed above, I have reasons to believe that the above mentioned locker is being utilized for parking their unaccounted assets/income. Thus, the incriminating evidences are likely to be found from the locker. Therefore, locker mentioned below, is to be searched u/s 132 of the Income Tax Act, 1961 to seize details of unaccounted money, bullion, jewellery, assets, incriminating documents and other valuables:

<i>S. No.</i>	<i>Name</i>	<i>Locker No.</i>	<i>Name of Bank & Branch</i>
<i>1.</i>	<i>Sh. Vikas Chowdhary and Smt. Shilpa Chowdhary</i>	<i>150F</i>	<i>Bank of India, Punjabi Bagh, New Delhi</i>

17. From the above extracts, it is it is revealed that Mr. Vikas Chowdhary denied having any bank locker. Shilpa Chowdhary, while admitting the existence of the locker, did not give any information relating to its contents. Therefore, there was indeed material with the concerned authority to form reasons to believe that the locker contained any articles/cash/jewellery/other materials which represented the undisclosed income of the Petitioner. The satisfaction arrived at by the authority meets the conditions stipulated in Clauses (b) / (c) of Section 132(1) of the Act. The factual background noted above demonstrates that the impugned WoA against the Petitioners has been issued not merely on the ground of recovery of locker key, as Mr. Srivastava has sought to project. The formation of belief by the authorities is also based

on the statements of the Petitioners. The officers made an attempt to ascertain and verify the facts, post the discovery of the locker key. The satisfaction note also records that Petitioners were asked to furnish details of the contents of the locker, but did not provide satisfactory explanation. In these circumstances, we believe that the Revenue was well within its right to proceed to search the Petitioner's locker under section 132(1) of the Act.

COURT TO NOT EVALUATE THE ADEQUACY OF "REASON TO BELIEVE"

18. A perusal of the satisfaction note reveals that there is foundation for having reasons to believe in terms of the statute. The principle, as reiterated time and again by the Courts, necessary to be borne in mind is that the words "reason to believe" mean that the reason should exist. The existence of such a belief can be challenged by the assessee, but not its sufficiency. The Court can examine whether the reasons to believe have a rational connection or are relevant bearing to the formation of such belief, and are not extraneous or irrelevant to the purpose of the Section. But, as at the Court cannot sit in appeal or test the adequacy of the opinion formed by the Assessing Officer under Section 132. In **Balwant Singh v. R. D. Shah, Director of Inspection**, AIR 1969 Del 91:(1969) 71 ITR 550, this Court had determined that the Court can merely examine the existence of materials and whether, on such grounds, a reasonable person can form the same opinion. In **Director General of Income Tax (Investigation) Pune and Ors. v. Spacewood Furnishers Pvt. Ltd. and Ors.**, (2015) 12 SCC 179, the Supreme Court held that though the reasons to believe must be in writing and a Court would be entitled to examine the relevance of the reasons for the formation of the

belief, but it would not be entitled to examine the sufficiency or adequacy thereof. Thus, having regard to the settled legal position on the subject, we are of the view that the action initiated by the Respondents under Section 132(1) of the Act qua the Petitioners does not call for any interference by this Court.

19. We may clarify that we have only examined the legal validity of the WoA. As we find that the exercise of power was authorised on the basis of requisite belief as per the mandate of the Act, we cannot go into the question of whether the same should have been issued, or substitute it with our opinion.

THE *SHAH-E-NAAZ* JUDGE JUDGEMENT:

20. Lastly, we shall now deal with this court's judgment in ***Shah-E-Naaz Judge v. Additional Director of Income Tax, (INV)–Unit VI & Anr.***, (2019) 306 CTR (Del) 42, on which considerable reliance has been placed by the Petitioner to contend that the facts of the present case are squarely covered within the ambit of said judgment. We have thus perused the judgment at great length. The facts are similar to the present case to the extent that search and seizure proceedings were commenced under Section 132(1) in relation to a primary party (named KMJ). During the search of his residential and business premises, the keys for three lockers were found, which belonged to the Petitioner in that case. On the same day, a team visited the said locker, and a restraint order under Section 132(3) was passed, based upon the search warrant in the case of KMJ. Consequential search warrants under Section 132(1A) dated 27.06.2014 were subsequently

issued for search of the three lockers, in the name of the Petitioners therein. The lockers were forced open on the same day, and statement on oath recorded. The court had noted (in para 14) that for establishing the validity of these search warrants, the lower parameters for “reasons to suspect” was sufficient and parties were not required to meet the higher threshold for “reason to believe”.

21. In the present factual matrix too, the initial search proceedings in the residential premises of the present Petitioner were conducted in relation to Section 132(1) proceedings in respect of the Primary Persons. However, this is where the similarity ends between the two cases. In the present case, when the locker key was recovered, and Vikas and Shilpa Chowdhary were questioned in relation to it, they were unable to give satisfactory answers. On this basis, a fresh WoA dated 12.02.2019 was issued u/s. 132(1) against the Petitioner and her husband. It is important to note that, from this point forth, two separate proceedings were taking place: one against Mr. Kochar, and the other against Mr. & Mrs. Chowdhary. Both these proceedings were undertaken by way of independent WoA, both issued under section 132(1) of the Act. Here, petitioners have raked up a controversy regarding the initial search whereunder the key to the locker was found. In *Shah-E-Naaz* Judge judgment, Revenue defended the search action in respect of the locker by relying upon 132(1)(i) and 132(1A) in uncertain terms, as is evident from the following portion of the judgment:

“11. The primary contention and submission of the respondents is that on discovery of key of locker No.7325-A, consequential search warrants dated 27th June, 2014 were issued under Section 132(1A) for search of the three lockers. ... This plea and reference to Section 132 (1A) of the Act was specifically taken and made in the written

submissions dated 6thDecember,2017, described as written statement, filed before us by the respondents. The submission asserts that the petitioners have misinterpreted the search and seizure actions as the search was in respect of the lockers and not against the petitioners in person. However, in the counter affidavit dated 27thMarch, 2018 filed to the amended W.P. (C) No.5937/2016 in the case of Shah-E-Naaz Judge, the respondents had taken a different stand and stance. They have stated that warrants of authorization dated 27thJune, 2014 in the present case were issued under clause (i) to sub-section (1) to Section 132 in respect of the place i.e. locker... ”

22. Thus, in the *Shah-E-Naaz* case, the Revenue contended that the consequential WoA dated 27.06.2014 issued to inspect the Petitioner's lockers, was issued by under Section 132(1A) or under Section 132(1)(i). It was noted by the court that the WoA dated 27.06.2014 was issued in relation to search and seizure proceedings against the primary search party, and not in relation to the Petitioner in person. Even a WoA under section 132(1) sub-clause(i) in respect of a premises would relate to the Primary Persons. However, the WoA dated 27.06.2014 was issued in the name of petitioners in respect of the lockers and not against KSJ, who was the primary person in *that case*, without bringing on record any material to show any cogent nexus between the petitioners and the primary person. Thus, the impugned warrants are completely dissimilar and on this basis alone the *Shah-E-Naaz Judge* judgment is not applicable to the present case.

23. Besides, in the *Shah-E-Naaz Judge* judgment, heavy reliance was placed upon the satisfaction note, wherein unsatisfactory grounds were given by the Officer, which in the eyes of the court did not tantamount to either “reason to believe” or “reason to suspect”. On this point, the court had noted in paragraph 17 of the judgment that the satisfaction note was found lacking

even “a single shred of evidence and material to justify the inference”, and that “no attempt was made to verify and ascertain when and who had operated the said locker and who was paying rent for the said locker.” It then goes on to say that:

“The satisfaction note is precipitously silent on any business connection, link and association between the petitioners and the Jaiswal Group or Karamjit Singh Jaiswal, who had been subject to search and seizure operations. Lockers were not subjected to search to unearth undisclosed and concealed assets of Jaiswal Group or Karamjit Singh Jaiswal. Accordingly, we have no hesitation in holding that the three “consequential” WoA issued in the name of persons and lockers for search/seizure, therefore, do not meet the mandate and requirement of clauses (a), (b) and (c) of Section 132 of the Act. (...)”

Xxxxxxxx

“Notwithstanding use of the expression “reason to suspect” in clause (i) to Section 132 (1) of the Act, the Supreme Court in its earlier judgments in Seth Brothers, Pooran Mal and Spacewood Furnishers Private Limited (supra) has consciously emended to the effect that satisfaction in the form of “reasons to believe” is required and mandated by law. Decision of a Division Bench of this court in Madhu Gupta (supra) had rejected a similar argument that “reasons to suspect” and not “reason to believe” are sufficient. In the present case like in the case of Madhu Gupta, warrants of authorization was issued in respect of three lockers in the name of petitioners and Nagina Judge. These warrants of authorization were not issued and executed against Karamjit Singh Jaiswal.”

24. However in the present case, the Petitioners, under their statements on oath failed to provide acceptable explanation in respect of the valuables kept in the said locker. And as the proceeding is under a new and separate WoA in the case of the Petitioners where they are the party being searched, and not a consequential warrant issued during the search operations of the

Primary Persons, therefore any “*business connection, link and association between the petitioners and the primary search party*” is *prima facie* not required to be established. Thus, the said case is distinguishable on facts and does not assist the case of the Petitioner.

25. For the forgoing reasons, we find no merit in the present petitions. Accordingly, the same are dismissed.

26. Registry is directed to return the documents received in the sealed cover from the department forthwith.

SANJEEV NARULA, J

MANMOHAN, J

DECEMBER 07, 2020

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