IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(PROCEEDINGS THROUGH V.C.)

103+216

1. Civil Writ Petition No.22812 of 2021
Date of Decision: February 10th, 2022

Aryan Goyal

...Petitioner

Versus

Assistant Commissioner of Income Tax, Central Circle 1, Chandigarh and others

...Respondents

2. Civil Writ Petition No.23329 of 2021

Saurabh Goyal

...Petitioner

Versus

Assistant Commissioner of Income Tax, Central Circle 1, Chandigarh and others

...Respondents

3. Civil Writ Petition No.24093 of 2021

Smita Goyal

...Petitioner

Versus

Assistant Commissioner of Income Tax, Central Circle 1, Chandigarh and others

...Respondents

4. Civil Writ Petition No.24095 of 2021

Payal Goyal

...Petitioner

Versus

Assistant Commissioner of Income Tax, Central Circle 1, Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Chopra, Mr. Deepak Aggarwal and
Ms. Pratishtha Singh, Advocates

for the petitioner(s).

Mr. Tejender K. Joshi, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J.

CM-19536-2021 in CWP-22812-2021

Prayer in these applications is for permission to place on record Annexure P-33.

Application is allowed subject to just exceptions.

Annexure P-33 is taken on record.

CM-19548-2021 in CWP-23329-2021

Prayer in these applications is for permission to place on record Annexures P-22 to P-23.

Application is allowed subject to just exceptions.

Annexures P-22 to P-23 are taken on record.

CM-19542-2021 in CWP-24093-2021

Prayer in these applications is for permission to place on record Annexures P-15 to P-16.

Application is allowed subject to just exceptions.

Annexures P-15 to P-16 are taken on record.

CM-19540-2021 in CWP-24095-2021

Prayer in these applications is for permission to place on record Annexures P-15 to P-16.

Application is allowed subject to just exceptions.

Annexures P-15 to P-16 are taken on record.

CWP Nos.22812, 23329, 24093 and 24095 of 2021

By this order, we propose to decide four writ petitions i.e. CWP Nos.22812, 23329, 24093 and 24095 of 2021 as the challenge in these writ petitions is to the search conducted of petitioner in CWP No.22812 of 2021 under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as '1961 Act') on 13.12.2020, notices dated 30.07.2021 issued under Section 153-A of the 1961 Act, notice dated 21.10.2021 under Section 142 (1) of the 1961 Act and rejection order dated 02.11.2021 passed by the Assistant Commissioner of Income Tax, Central Circle 1, Chandigarh-respondent No.1 (hereinafter referred to as 'respondent No.1') for the assessment period 2015-16 to 2020-21, search conducted of petitioner in CWP No.23329 of 2021 under Section 132 of the 1961 Act on 13.12.2020, notices dated 30.07.2021 issued under Section 153-A of the 1961 Act, rejection order dated 02.11.2021 and notices dated 11.11.2021 issued under Section 142 (1) of the 1961 Act by respondent No.1 for the assessment period 2015-16 to 2020-21, search conducted of petitioner in CWP No.24093 of 2021 under Section 132 of the 1961 Act, on 13.12.2020, notices dated 20.07.2021 issued under Section 153-A of the 1961 Act, and notices dated 11.11.2021 issued under Section 142 (1) of the 1961 Act, by respondent No.1 for the assessment period 2015-16 to 2020-21, search conducted of petitioner in CWP No.24095 of 2021 under Section 132 of the 1961 Act, on 13.12.2020, notices dated 30.07.2021 issued under Section 153-A of the 1961 Act, and notices dated 11.11.2021 issued under Section 142 (1) of the 1961 Act, by respondent No.1 for the assessment period 2015-16 to 2020-21.

2. Petitioners have stated that they are individual assessees residing in House No.309, Sector 9, Chandigarh and are being regularly assessed to tax. They have been regularly filing their tax returns. Petitioner in CWP No.22812 of 2021 is engaged full time with M/s. Nureca Ltd. as the Chief Executive Officer and petitioner in CWP No.23329 of 2021 is engaged in full time with

M/s. Nureca Ltd. as the Managing Director, which is engaged in the business of trading of healthcare products, petitioner in CWP No.24093 of 2021 is engaged in full time with M/s. Nectar Biopharma Ltd. as the Vice President and petitioner in CWP No.24095 of 2021 is engaged in full time with M/s. Nureca Ltd. as the Vice President, Administrative Advisory, which is engaged in the business of trading of healthcare products.

3. The challenge primarily is based upon the grounds that in the complete absence of any ‘reason to believe’ for the respondents to conduct any search on the petitioner(s) under Section 132 of the 1961 Act and in the absence of any incriminating material, Assistant Commissioner of Income Tax, Central Circle-I, Chandigarh-respondent No.1 had no jurisdiction to issue notices under Section 153-A of the 1961 Act for the block period. Being apparently a wrongful assumption of jurisdiction in the absence of fulfilling the statutory requirements, such search was *void ab initio* qua the petitioner(s). To assert further, it has been pleaded that the requisite of Section 132 of the 1961 Act is 'reason to believe', which is integral to ‘information’ in possession of the concerned authority before any action can be taken under this Section. Absence of any of these two ingredients would render the search of the petitioner(s) conducted on them illegal and, thus, liable to be struck down. Challenge has also been posed to the order disposing of the objections of the petitioner(s) on the ground of non-application of mind and requisites of speaking order.

4. It has been stated that the genesis of the search which has been conducted upon the petitioner(s) lay in a land deed undertaken by M/s. Avensis Exports Private Limited (hereinafter referred to as ‘company’) in which none of the petitioner(s) or their family member(s) is/are shareholders/directors and,

therefore, there is no relationship, business or otherwise, with the company. In the search which has been carried out, no incriminating document was found from the petitioner(s). After the search having been conducted, respondent No.1 has assumed jurisdiction under Section 153 of the 1961 Act and issued impugned notices for the block period 2015-16 to 2020-21 on 30.07.2021 requiring the petitioner(s) to file tax returns for the block period within 15 days of the receipt of notices. Objections were filed by the petitioner(s) before respondent No.1 and a request was also made to drop the said proceedings being totally unwarranted and not in accordance with the statutory mandate. Respondent No.1 without giving any opportunity or addressing any of the factual/legal objections raised by the petitioner(s), proceeded to reject the filed objections by way of a cryptic and non-speaking order directing the petitioner(s) to participate in the assessment proceedings. In the light of this factual background and at the stage of calling upon the petitioner(s) to participate in the assessment proceedings on issuance of notice under Section 142 (1) of the 1961 Act, petitioners(s) have approached this Court by way of the above writ petitions.

5. Learned counsel for the petitioner(s), with reference to Section 132 of the 1961 Act, has laid emphasis upon the aspect of the 'information in possession' of the competent authority as has been laid down on which basis 'reason to believe' that there would be non-production of the documents called for or where such notice has been issued had omitted or failed to produce or cause to produce such books of accounts or other documents as required by the summons or notice or where money, bullion, jewellery and other valuable articles or things etc. either wholly or partly income or property which has not been and would not be disclosed for the purposes of Income Tax Act, 1922 or

the 1961 Act, then and then only further steps are required to be taken by the officer(s) as mentioned therein who may authorize an authorized officer to enter and carry out search and seize documents and valuables as detailed therein. Learned counsel for the petitioner has emphasized upon the aspect that before taking any action or even initiating proceedings under Section 132 of the 1961 Act, there must be prior information relating to the person to be searched on the basis of which the prescribed authority forms a reason to believe that any of the conditions prescribed in Clauses A to C of Section 132 (i) are satisfied. In the absence of such satisfaction of such conditions, no action can be warranted under this Section. Meaning thereby that no person or premises can be searched on the basis of information which is not relatable to the person concerned. Counsel for the petitioner for this has placed reliance upon the judgments passed by the Hon'ble Supreme Court in the case of ***DGIT (Investigation) Versus Spacewood Furnishers P. Ltd. (2015) 374 ITR 595 (SC); ITO Versus Seth Brothers 1969 (74) ITR 836 (SC) and Pratap Singh Versus Director of Enforcement (1985) 155 ITR 166 (SC)***.

6. Learned counsel for the respondent had produced the original records for perusal of this Court, which had been retained by us. Counsel for the respondent has submitted that the requirement of the statute stands fulfilled and, therefore, no interference is called for by this Court in exercise of its writ jurisdiction. He acknowledges that the judgments passed by the Hon'ble Supreme Court, which have been referred to by learned counsel for the petitioner, would be applicable to the case in hand for testing the validity of the challenged notices.

7. We have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the pleadings as

also the records which have been produced by the respondent.

8. The principles as have been laid down by the Hon'ble Supreme Court with reference to the interpretation and the principles to be followed by the Income Tax Authorities as also the Courts for assessing the requirement of the statute having been fulfilled have been culled out and encapsuled by the Supreme Court in ***DGIT (Investigation) Versus Spacewood Furnishers P. Ltd. (2015) 374 ITR 595 (SC)***. In the said judgment, the Hon'ble Supreme Court has referred to and relied upon its earlier judgments rendered in relation to the exercise of powers under Section 132 of the 1961 Act. The powers of the High Court which are to be exercised under Article 226 of the Constitution and the ambit of such powers has also been dealt with by making reference to two earlier judgments i.e. ***ITO Versus Seth Brothers 1969 (74) ITR 836 (SC)*** and ***Pooran Mal Versus Director of Inspection (Investigation), Income Tax 1974 (93) ITR 505 (SC)***. In paras 6 and 7 of the said judgment, the Hon'ble Supreme Court has in extenso reproduced the relevant portions thereof. Reference has also been made to the judgment of the Hon'ble Supreme Court in ***Dr. Pratap Singh Versus Directorate of Enforcement 1985 (155) ITR 166 (SC)***, where pari materia provisions in the Foreign Exchange Regulation Act were considered by emphasizing upon the necessity of recording of reasons in support of term 'reason to believe' contemplated under Section 132 of the Income Tax Act. It may be mentioned here that the Hon'ble Supreme Court proceeded to hold that nowhere in this Section, reasons recorded prior to authorizing the search needs to be disclosed or communicated to the person against whom warrants of authorization is issued.

In para 9 of the judgment, six principles have been culled out and it is on the touchstone of these principles that the challenge, if any, posed to the search ordered on a person is to be tested. The same read as follows:-

> *"9. The principles that can be deduced from the aforesaid decisions of this Court which continue to hold the field without any departure may be summarized as follows:*
> *(i) The authority must have information in its possession on the basis of which a reasonable belief can be founded that-*
> *(a)the concerned person 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.*
> *(ii) Such information must be in possession of the authorized official before the opinion is formed.*
> *(iii) 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.*
> *(iv) 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.*
> *(v) The reasons, however, need not be communicated to the person against whom the warrant is issued at that stage.*
> *(vi) 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."*

9. The Hon'ble Supreme Court had further stated that it is necessary for recording of reasons to ensure accountability and responsibility in the decision making process. It also acts as a caution in the event of legal challenge being made to the satisfaction reached which enable proper judicial assessment of the decision taken by the revenue. Court goes to the extent of saying that this would not confer in an assessee a right of inspection of documents or to a communication of reasons for the believe at the stage of issuing of authorization. Any such view would be counterproductive to the entire exercise contemplated by Section 132 of the 1961 Act. It is only at the stage of

commencement of assessment proceedings after the completion of search and seizure, if any, that the requisite material may have to be disclosed to the assessee.

10. In the light of the above settled proposition of law, the Court has to exercise its extraordinary jurisdiction under Article 226 of the Constitution to satisfy itself if the action is maliciously taken or the power under this Section is exercised for a collateral purpose or not. If the condition of exercise of power is not satisfied, the proceeding is liable to be quashed. That does not mean that where the power is exercised *bona fide* and in furtherance of the statutory duties of the Tax Officers, any error of judgment on the part of the officers will vitiate the exercise of power. The Court cannot substitute its own opinion in the matter nor can the Court comment upon the irregularity in the course of entry, search and seizure committed by the officer acting in pursuance to the authorization. While exercising jurisdiction under Article 226 of the Constitution, the High Court does not act as an Appellate Authority nor can mere suspicion be the basis conferring jurisdiction to interfere in judicial proceedings. Care and caution needs to be taken while addressing the possibility and potential of conferring an undue advantage to the assessee which may have the effect of frustrating the endeavour of the revenue depending upon the stage the Court is approached with the challenge. It would, therefore, in itself, be not sufficient to vitiate the action taken with a rider that the officer exercising the authorization had acted *bona fide*.

11. With these parameters in mind, we had gone through the records and the satisfaction notes of the revenue authorities and are of the view that the mandate of the statute stands fulfilled. The competent authority while taking the decision has taken into consideration the relevant facts and the other

material based upon the information in its possession on the basis of which reasonable belief has been reached fulfilling the requirement of the mandate of Section 132 of the 1961 Act. In view of the above referred to legal position, we refrain from stating any further keeping in view the stage of the proceedings.

12. In the light of the above, we do not find it a fit case to interfere in the impugned notices/orders passed by respondent No.1 in exercise of our extraordinary jurisdiction.

13. Any opinion expressed by us shall not be construed as an opinion on the merits of the case except for the fulfillment of the requirement of issuance of notice under Section 132 of the 1961 Act.

14. The writ petitions stand dismissed with above observations.

15. In the light of the dismissal of the writ petitions, pending applications, if any, stand disposed of as infructuous.

16. Records be returned under proper receipt.

(AUGUSTINE GEORGE MASIH)
JUDGE

February 10th, 2022 **(SANDEEP MOUDGIL)**
Puneet **JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: Yes