IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2461 OF 2014

The Commissioner of Income Tax City-23 ..Petitioner
Vs.
The Income Tax Appellate Tribunal & Anr ..Respondents

Mr. Siddharth Chandrashekhar for Petitioner.
Mr. Jitendra Singh a/w Mr. Om Kandalkar for Respondent No.2.

CORAM : K.R. SHRIRAM &
RAJESH S. PATIL, JJ
DATED : 13th OCTOBER 2023

P.C. :

1 Mr. Chandrashekhar relying on email dated 13th October 2023, copy whereof is taken on record and marked "X" for identification, states that the revenue does not have the satisfaction notice. Therefore, the situation will be similar to that covered by the order passed by this court in Writ Petition No.2849 of 2008 on 28th July 2023, wherein paragraphs 6 to 9 read as under:

> *6 It is settled law that if no reason was ascribed for search and seizure action taken under Section 132 of the Act it would be illegal. The exercise of power under Section 132 of the Act is a serious invasion upon the rights, privacy and freedom of the tax-payer. The courts have held that this power must be exercised strictly in accordance with law and only for the purposes for which law authorizes it to be exercised. The courts, after scrutiny, can decide on the correctness of the opinion formed by the Income Tax Officer where the action of the officer issuing authorization or of the Designated officer is challenged. The officer concerned must satisfy the Court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the Court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed. The courts have held that 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. Though it is settled law that while the sufficiency or otherwise of the information cannot be examined by the court in writ jurisdiction, the existence of information and its relevance to the formation of the belief is open to judicial scrutiny because it is the foundation of the condition precedent for exercise of a serious power of search of a private property or person, to prevent violation of privacy of a citizen. It is also a settled law that the court could examine whether the reasons for the belief have a rational connection or relevant bearing to the formation of the belief and search warrant could not be issued merely with a view to making a roving or fishing enquiry.

*The reasons will have to be placed before the High Court in the event of a challenge to formation of the belief of the competent authority in which event the Court would be entitled to examine the reasons for the formation of the belief, though not the sufficiency or adequacy thereof. In other words, the Court will examine whether the reasons recorded are actuated by malafides or on a mere pretence and that no extraneous or irrelevant material has been considered. Such reasons forming part of the satisfaction note are to satisfy the judicial conscience of the Court. (**Principal Director of Income-tax (investigation) Vs. Laljibhai Kanjibhai Mandalia**)*[1]

7 In view of the above, since the satisfaction note which formed the very basis for issuance and authorisation of the search warrant under section 132(1) of the Act has not been made available in spite of a specific direction given by the Tribunal way back on 17.06.2002 and repeated by this Hon'ble Court on 30.06.2023 an adverse inference needs to be drawn in respect of the same especially having regard to the circumstances set out hereinbefore.

8 Since, the Revenue has failed to produce the satisfaction note we have to and we hereby hold that the search action under section 132(1) of the Act and, consequently, the block assessment order dated 31.12.1999 passed under section 158BC of the Act, the order dated 04.10.2001 levying penalty under section 158BFA and the Criminal Case No. 28/SW/2004 filed by the Revenue before the 4th Court of the Additional Chief Metropolitan Magistrate at Esplanade Mumbai, which is now pending as renumbered Criminal Case No. 28/SW/2013 before 38th Court of Additional Chief Metropolitan Magistrate cannot survive as they are all predicated on the existence of a valid search. It is ordered accordingly. The complaint being Criminal Case No. 28/SW/2013 before 38th Court of Additional Chief Metropolitan Magistrate is quashed.

9 Undoubtedly the contention of the Revenue that, even assuming that the search is to be held invalid the information or material gathered during the course thereof may be relied upon by them for making adjustment to the Assessee's income in an appropriate proceeding has merit. Though, the Assessee disputes that no new information or material has been gathered by the Revenue in the present case other than what is already available in its books of account, it is clarified that this order does not preclude the Revenue

1. (2022) 140 taxmann.com 282 (SC)

> *from taking any such proceedings as they may be so advised and to utilise the information or material in such proceeding against the assessee as is permissible in law.*

2 Therefore, petition stands disposed accordingly.

3 By way of clarification, even if the search is held to be invalid, the information or material gathered during the course thereof may be relied upon by revenue by making adjustment to the assessee's income in an appropriate proceeding, if so advised and revenue may utilise the information and material in such proceeding as is permissible in law.

4 The Income Tax Appellate Tribunal is directed to dispose the pending appeal in terms of this order within a period of 12 weeks of this order being filed in the registry of ITAT.

(RAJESH S. PATIL, J.) **(K.R. SHRIRAM, J.)**