

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2849 OF 2008**

The Assistant Commissioner of Income Tax,
Central Circle-35,Petitioner

V/s.
M/s Marico Industries Ltd. & Anr ...Respondents

**WITH
WRIT PETITION NO.745 OF 2009**

Mr. Suresh Kumar for Petitioner in WP/2849 of 2008 and for Respondents in WP/745/2009.

Mr. P. J. Pardiwalla, Senior Advocate a/w Mr. Nitesh Joshi, Mr. Atul K Jasani and Mr. Ashok Boghani i/b Ashok Boghani & Co. for Respondent No.1 in WP/2849/2008 and for Petitioner in WP/745/2009.

**CORAM : K.R. SHRIRAM &
FIRDOSH. P POONIWALLA, JJ
DATED : 28th JULY 2023**

P.C. :

1 In the present case, on 23.10.1997, a search and seizure action was carried out at the Assessee's premises under section 132(1) of the Income-tax Act, 1961 (the Act). Pursuant to the said search action a block assessment order dated 31.12.1999 was passed under section 158BC of the Act. Further penalty has also been levied under section 158BFA of the Act and prosecution proceeding has been initiated on the basis of such block assessment order and a complaint filed before the Court of Additional Chief Metropolitan Magistrate for offences allegedly committed under section 276C and 277 read with section 278B of the Act.

2 The assessee had objected to the passing of the block assessment order by filing an additional ground in the appeal filed by it before the CIT(A) from the block assessment order. In the said additional ground raised on 20.11.2000, it was urged that the jurisdictional pre-conditions in section 132(1) viz., clauses (a) to (c) thereof had not been fulfilled and that there ought to have been a valid satisfaction note justifying the fulfillment of the requirement of the said section before the search was initiated. A copy of the said satisfaction note was sought from the Assessing Officer. In the absence of the satisfaction note, the search and consequently the block assessment order would be invalid. Since, the said additional ground did not find favour with the CIT(A), the Assessee had filed an appeal before the Tribunal wherein it raised the said ground. As this ground was fundamental to the issue of exercise of jurisdiction, the Tribunal, on 17.06.2002, was pleased to pass an order whereby they directed the Departmental Representative to produce the records containing the satisfaction recorded before issuance and authorization of the search warrant under section 132(1) of the Act.

3 The Revenue did not comply with the direction for close to six years and, thereafter, after the hearing on 30.10.2008 the Revenue has filed writ petition No. 2849 of 2008 seeking writ of Certiorari for quashing and setting aside the interim order dated 17.06.2002 passed by the Tribunal directing them to produce the record containing the satisfaction note. According to them, the Tribunal was not empowered to look into the said matter and,

hence, the direction was invalid. As this Court was pleased to issue rule in Revenue's writ petition, the Assessee has filed writ petition being No.745 of 2009 challenging the validity of the search action and seeking quashing and setting aside of the consequent block assessment order dated 31.12.1999 passed under section 158BC of the Act, order dated 04.10.2001 levying penalty under section 158BFA and also the complaint being 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.

4 On 30.06.2023, this Court, after hearing both the parties, was pleased to direct the Revenue to file, in a sealed envelope, the reason to believe recorded before the search action was carried out. Therein, it has also been clarified that non production of the same will invite an adverse inference being drawn. Paragraph 5 of the said order dated 30th June 2023 reads as under :-

"5 Before we proceed further, we direct the Revenue to file in a sealed envelope the reasons to believe. It should be made available in four sets and within four weeks with no chance of extension being granted. We say this because the order of ITAT was passed way back on 17th June 2002. Petition itself has been filed way back on 2008 by the Revenue and, therefore, since the matter would have been alive in the records of the Revenue, the Revenue should have kept these reasons to believe in safe custody to be made available in case so directed. Non production will invite adverse inference being drawn."

5 One Preeti Hooda, the Deputy Commissioner of Income tax Circle – 4(3)(1), Mumbai has filed an affidavit dated 27.07.2023 to which is

annexed, a letter dated 25.07.2023 from the Deputy Director of the Income tax (Investigation) Unit – 6(1), Mumbai wherein it is stated that most of the official record pertaining to the charge of the Additional Director of the Income tax (Investigation) Unit – 6, Mumbai were gutted in a fire incident on 01.06.2018. Though, it is not clear whether the concerned satisfaction note was part of the record which got destroyed by fire, it has been observed that the said satisfaction note could not be traced despite efforts made to locate the same. It may also be noted that right since the date of the fire in 2018 till today nowhere has the Revenue adverted to this incident on any of the earlier hearings.

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

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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 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.

10 Accordingly, the Tribunal is directed to dispose of the pending appeal in terms of this order within a period of 12 weeks from the date of this Order.

11 Both petitions disposed.

(FIRDOSH P POONIWALLA, J.)

(K.R. SHRIRAM, J.)