



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1729/2024

- (1) **Balkrushna Gopalrao Buty,**
Aged about 52 years, Occ. Business,
R/o. 336/1, Keshav Raja Kothi Compound,
Civil Lines, Nagpur
- (2) **Smt. Geeta Balkrushna Buty,**
Aged about 46 years, Occ. Housewife,
R/o. 336/1, Keshav Raja Kothi Compound,
Civil Lines, Nagpur
- (3) **Mohanish Balkrushna Buty,**
Aged about 25 years, Occ. Business,
R/o. 336/1, Keshav Raja Kothi Compound,
Civil Lines, Nagpur

.... **PETITIONER(S)**

// VERSUS //

- (1) **The Principal Director (Investigation), Nagpur**
BSNL Building, Seminary Hills, Nagpur
- (2) **Additional Director (Investigation), Nagpur**
BSNL Building, Seminary Hills, Nagpur
- (3) **Deputy Director Income Tax (Investigation),**
Unit-III, Nagpur
BSNL Building, Seminary Hills, Nagpur

.... **RESPONDENT(S)**

Mr. S.V. Manohar, Sr. Adv a/b Mr. A.A. Naik, Adv for the
Petitioner(s)
Mr. A. Parchure & Mr. B.N. Mohata, Advocates for the
Respondents

CORAM : AVINASH G. GHAROTE &
SMT. M.S. JAWALKAR, JJ.
APRIL 23, 2024

ORAL JUDGMENT :- (PER: AVINASH G. GHAROTE, J.)

(1) **RULE.** Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties.

(2) The Petition questions the search and seizure carried out at the premises of the Petitioners from 01/11/2023 to 03/11/2023. The said search and seizure was in pursuance to the provisions of Section 132 of the Income Tax Act, 1961 (hereinafter referred to as “the said Act”).

(3) Mr. Manohar, learned Senior Counsel for the Petitioners, upon instructions, while relying upon the language of Section 132 of the said Act, submits that such a search and seizure has

necessarily to be in consequence of the information in possession of the Authority, which provides him a reason to believe that any of the actions, as indicated in Section 132(1)(a) to (c) of the said Act, are likely to occur, which would only be the grounds on which the search and seizure could be made under Section 132 of the said Act. Reliance is placed by him upon the **Director General of Income Tax (Investigation), Pune vs. Spacewood Furnishers Private Limited, (2015) 12 SCC 179**. It is contended that the operation of search and seizure at the premises of the Petitioner was only on the basis of five transactions dated 20/12/2019, 21/12/2019, 17/08/2020, 25/08/2020 & 02/02/2022, which the Petitioner No. 1 claimed to have had with Mr. Anil Sapra of Avaneesh Logistics Private Limited, in all of which, the Petitioner No. 1 is the Purchaser of the immovable property, jointly with the aforesaid person. According to him, these transactions have been already disclosed to the Income Tax Department in the returns filed by the Petitioner No. 1, for the relevant Assessment Years, and therefore, there is no other material, according to him, which would entitle the Respondents

to conduct a search and seizure in terms of the language & requirement of Section 132 of the said Act. He, therefore, submits that the aforesaid action is vitiated on that count and cannot be sustained.

(4) Mr. Parchure, learned Counsel for the Respondents, while supporting the action of the Respondents in conducting the search and seizure, invites our attention to the averments made in Paragraph No. 7 of his submissions dated 22/03/2024 (Page 392) contending that the Locker No. 105 held by the Petitioner at AXIS Bank, Branch at Nagpur had disclosed that it contained jewelry and valuables with gross weight of 6650.67 grams and silver items with gross weight of 15831.455 grams which were cumulatively valued at Rs. 3,91,00,297/-, out of which, only valuables amounting to Rs. 61,85,545/- with gross weight of 988.58 grams were seized. He submits that there was sufficient information available with the Respondents for the search and seizure which is borne out by what has been seized as indicated above. He also relies upon Principal Director of

Income Tax vs. Laljibhai Kanjibai Mandalia, 2022 SCC Online SC 872 in which the principles regarding interference in the search and seizure under Section 132 of the said Act have been laid down and submits that they impose an embargo upon the power of this Court to interfere in any such action by the Respondents. It is also contended that **Spacewood Furnishers (supra)** has also been considered in **Laljibhai Mandalia (supra)** and therefore what would govern the field would be **Laljibhai Mandalia (supra)**

(5) The language of Section 132 of the said Act permits a search and seizure to be carried out based upon two things (i) the sufficiency of the information in possession of the Authority; and (ii) the belief of the Authority that the Conditions (a) or (b) or (c), as indicated in Section 132(1) of the said Act, are satisfied. Relevant portion of the said provision reads as under:-

“132. Search and seizure. – (1) Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner

or Principal Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner 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."

(6) In **Spacewood Furnishers (supra)**, the Hon'ble Apex Court had laid down the principles which govern the provisions of Section 132 of the said Act as under:-

"8. 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 :

8.1 The authority must have information in its possession on the basis of which a reasonable belief can be founded that-

(a) the person concerned 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.

8.2 Such information must be in possession of the authorized official before the opinion is formed.

8.3 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.

8.4 Though Rule 112(2) of the Income Tax Rules which specifically prescribed the necessity of recording of reasons before issuing a warrant of authorisation had been repealed on and from 1-10-1975 the reasons for the belief found should be recorded.

8.5 The reasons, however, need not be communicated to the person against whom the warrant is issued at that stage.

8.6 Such reasons, however, may have to be placed before the Court in the event of a challenge to formation of the belief of the authorised 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.

(7) **Laljibhai Mandalia (supra)**, after considering **Spacewood Furnishers (supra)**, culls out the principle for interference in Paragraph No. 33 as under:-

“33. We would like to restate and elaborate the principles in exercising the writ jurisdiction in the matter of search and seizure under [Section 132](#) of the Act as follows:

i) The formation of opinion and the reasons to believe recorded is not a judicial or quasi-judicial function but administrative in character;

ii) The information must be in possession of the authorised official on the basis of the material and that the formation of opinion must be honest and bona fide. It cannot be merely pretence. Consideration of any extraneous or irrelevant material would vitiate the belief/satisfaction;

iii) The authority must have information in its possession on the basis of which a reasonable belief can be founded that the person concerned has omitted or failed to produce books of accounts or other documents for production of

which summons or notice had been issued, or such person will not produce such books of accounts or other documents even if summons or notice is issued to him; or

iv) 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;

v) Such reasons may 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 mala fides or on a mere pretence and that no extraneous or irrelevant material has been considered;

vi) Such reasons forming part of the satisfaction note are to satisfy the judicial consciousness of the Court and any part of such satisfaction note is not to be made part of the order;

vii) The question as to whether such reasons are adequate or not is not a matter for the Court to review in a writ petition. The sufficiency of the grounds which induced the competent authority to act is not a justiciable issue;

viii) The relevance of the reasons for the formation of the belief is to be tested by the judicial restraint as in administrative action as the Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made. The Court shall not examine the sufficiency or adequacy thereof;

ix) In terms of the explanation inserted by the [Finance Act, 2017](#) with retrospective effect from 1.4.1962, such reasons to believe as recorded by income tax authorities are not required to be disclosed to any person or any authority or the Appellate Tribunal."

(8) The position, that the Authority must have information in his possession on the basis of which a reasonable belief can be founded that the person concerned has omitted or failed to produce the books of accounts or other documents for production of which summons or notice has been issued or such

person will not produce such books of accounts or other documents even if summons of notice is issued to him, or such person is in possession of any money, bullion or other valuable articles which represents either wholly or partly income or property which has not been or would not be disclosed has to be the basic fulcrum on which, the exercise of the power under Section 132 of the said Act would revolve. The Hon'ble Apex Court in Laljibhai Mandalia (supra) has specifically held that such reasons may 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 formation of the belief, though not the sufficiency or adequacy thereof.

(9) Mr. Parchure, learned Counsel for the Respondents has been kind enough to place the original file of the Department before us and having perused the same in extenso, we are of the considered opinion that it does not disclose any information which would lead the Authorities to have a reason to believe that

any of the contingencies as contemplated by Section 132(1)(a) to (c) of the said Act are satisfied. That apart, the note also does not contain anything altogether regarding any reason to believe, as regards what has been stated in Section 132(1)(a) to (c) of the said Act, on account of which, in our considered opinion, there is total non-compliance with the requirements as contemplated by Section 132(1) of the said Act which vitiates the search and seizure.

(10) The Respondents cannot rely upon what has been unearthed on account of opening of the lockers of the Petitioners, as the information and reason to believe as contemplated under Section 132(1) of the said Act has to be prior to such seizure.

(11) For the sake of maintaining secrecy, we are not discussing the reasons recorded in the file, however, suffice it to note that, we are not satisfied with the satisfaction of the requirement of Section 132(1) of the said Act. It is also necessary to note that no notice has been issued to the Petitioners soliciting any

information from them, in this regard, at any point of time earlier to the action under Section 132(1) of the said Act, though it may not be necessary, in case the file would demonstrate the information and material enough to indicate a reason to believe. In absence of the same, we are, therefore, unable to sustain the action of the Respondents taken under Section 132(1) of the said Act. The same is, therefore, hereby quashed and set aside. As a result of which, all consequent actions cannot be sustained and are accordingly quashed and set aside.

(12) The Petition is **allowed** in the above terms. No costs.

(13) Needles to mention that the Respondents shall be free to take any action against the Petitioners in case it is so permissible in law, by use of the material which is seized. The original files which were handed over to us are given back to Mr. Parchure, learned Counsel for the Respondents after resealing them.

(14) At this juncture, Mr. Parchure, learned Counsel for the Respondents, seeks stay to the judgment in order to enable the

Respondents to question the same before the Hon'ble Apex Court. Considering that the search and seizure has been made on 01/11/2023, we stay the effect and operation of the judgment for a period of three weeks from today.

(SMT. M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)