

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 122 OF 2009

1 Echjay Industries Pvt Ltd.)
having its registered office at 83, Bajaj)
Bhawan, Nariman point, Mumbai 400021)

2 Mr. Vinodchandra H Doshi)
having his office at 83, Bajaj Bhawan,)
Nariman point, Mumbai 400021)

3 Mr. Deven V. Doshi)
having his office at 83, Bajaj Bhawan,)
Nariman point, Mumbai 400021)

4 Mr. Paras V. Doshi)
having his office at 83, Bajaj Bhawan,)
Nariman point, Mumbai 400021)

5 Mrs. Jyoti V. Doshi)
having her office at 83, Bajaj Bhawan,)
Nariman point, Mumbai 400021)

6 Dr. (Mrs.) Monica P. Doshi)
residing at First Floor, Krishna Kunj)
Altamount Road, Mumbai 400026)

7 Mrs. Sachi D. Doshi)
residing at Echjay House, 32A, Carmichael)
Road, Mumbai 400026)

8 Dr. Mrs. Amita V Doshi (now Amita Nene)
residing at 8B, Ajanta Apartments,)
Carmichael Road, Off Peddar Road,)
Mumbai 400 026)

..Petitioners

Vs.

1 Mr. Rajendra)
Director of Income Tax-II (Investigations))
having his office at 3rd floor, Scindia House,)
Ballard Estate, Mumbai 400 020)

Meera Jadhav

2. Mr. S. R. Kirtane)
 Asst. Director of Income Tax (Inv.))
 Unit-IV, having his office at 4th floor)
 Scindia House, Ballard Estate,)
 Mumbai 400 020)

3 Union of India, through the Secretary)
 Ministry of Finance, North Block,)
 New Delhi-110 001, also having address at)
 Ayakar Bhavan, Marine Lines, Mumbai-20)

..Respondents

**WITH
 WRIT PETITION NO.2309 OF 2010**

1 Echjay Overseas Trades Pvt Ltd.)
 having its registered office at 8th flr, Bajaj)
 Bhawan, Nariman point, Mumbai 400021)

2 Echjay Alloys & Special Steel Pvt Ltd)
 having its registered office at 8th flr, Bajaj)
 Bhawan, Nariman point, Mumbai 400021)

3 Palanpur Engineering and)
 Fabrications Pvt Ltd.)
 having its registered office at 8th flr, Bajaj)
 Bhawan, Nariman point, Mumbai 400021)

..Petitioners

Vs.

1 Mr. Rajendra)
 Director of Income Tax-II (Investigations))
 having his office at 3rd floor, Scindia House,))
 Ballard Estate, Mumbai 400 020)

2. Mr. S. R. Kirtane)
 Asst. Director of Income Tax (Inv.))
 Unit-IV, having his office at 4th floor)
 Scindia House, Ballard Estate,)
 Mumbai 400 020)

3 Mr. B. D. Singh)
 Dy. Commissioner of Income Tax)
 Central Circle-45, 6th Floor, Aaykar Bhavan)
 Mumbai 40 020)

4 Union of India, through the Secretary)
 Ministry of Finance, North Block,)
 New Delhi-110 001) ..Respondents

Mr. Nitesh Joshi a/w Mr. Vishesh Malviya, Mr. Bhavin Shah & Mr. Tejas Popat i/b Rashmikant and Partners for Petitioners.
 Mr. N. Venkatraman, Learned ASG a/w Ms Sushma Nagraj and Ms Sakshi Kapadia for Respondents-Revenue.

**CORAM : K. R. SHRIRAM &
 Dr. NEELA GOKHALE, JJ.
 RESERVED ON : 6th MAY 2024
 PRONOUNCED ON : 10th MAY 2024**

JUDGMENT (PER K. R. SHRIRAM J.) :

1 Since the challenge in both these petitions arise out of the same search action under Section 132 of the Income Tax Act 1961 (the Act), we dispose both the petitions by this common order and judgment. For convenience, we treat Writ Petition No.122 of 2009 as the lead matter.

2 Petitioner no.1 is a private limited company. Petitioner no.2 is the Chairman and Managing Director of petitioner no.1. Petitioner nos. 3, 4 and 5 are Directors of petitioner no.1. Petitioner nos. 5, 6 and 7 are the spouses of petitioner nos. 2, 4 and 3, respectively. Petitioner no.8 is the married daughter of petitioner no. 2.

3 Respondent No. 1 was the officer empowered by the Central Board of Direct Taxes (CBDT) to issue authorization under section 132 of the Act for carrying out search and seizure under the Act. In exercise of his powers under section 132 of the Act, respondent no.1 issued authorisations dated

7th July, 2008 in favour of respondent no.2 and others, authorising them to enter upon and search various premises belonging to petitioners.

4 Petitioner No.1 was incorporated on 31st December 1960 under the Companies Act 1956 and was a leading manufacturer of forging and engineering products required in the automobile industry. Petitioner no.1 had an annual turnover of over Rs.314 crores for the year ended 31st March 2007. Petitioners were regularly assessed to income-tax and wealth tax. It is stated in the petition that the income tax assessments of petitioner no.1 for the last 20 years have been made under section 143(3) of the Act by way of detailed scrutiny. It is also stated that no penalty under section 271(1)(c) of the Act has ever been levied upon petitioners for any concealment or furnishing inaccurate particulars of income.

5 On or about 9th and 10th July 2008, a search was conducted at the business premises of petitioner no.1 as well as at residential premises of petitioner nos.2 to 7, pursuant to an authorization dated 7th July, 2008 issued by respondent no.1 under section 132(1) of the Act. Respondent no.2 and other authorized officers entered into various premises and conducted the search. Panchnamas were also drawn up in the course of the search proceedings. It is petitioners' case that a search was conducted in the premises of petitioner nos. 6 and 7 on 9th July 2008 without any warrant of authorisation being issued in the names of petitioner nos.6 and 7. The details of premises searched, items seized and the proceedings thereafter

are summarized in the petition. It is stated that petitioners submitted various clarifications and explanations to respondents as and when they were called upon to do so. Petitioners stated that by the initiation of search proceedings and also the manner in which the proceedings were conducted, they are apprehensive that respondents will, without jurisdiction or authority of law, proceed against petitioners to make assessments and/or reassessments of past six assessment years in the case of all petitioners and raise huge demands by way of tax, interest and penalties, which will cause hardship and prejudice to petitioner. It is petitioners case that authorisations dated 7th July, 2008 issued against petitioners are unconstitutional, ultra vires, invalid, without jurisdiction, etc., and are liable to be quashed and set aside. The grounds on which petitioners have challenged the authorisations, *inter alia* are as under:

“(A) Respondent No. 1 erred in authorizing search action against the Petitioners despite not having any sort of reliable information in his possession that could give him a reason to believe that any of the conditions mentioned in clauses (a), (b) or (c) of section 132(1) were satisfied in the Petitioners' case and assuming that he had any information in his possession, the veracity of the same has not been verified even with preliminary enquiry and the action being on such unverified information, is bad in law,

(B) Non-observance of the safeguards in section 132 have rendered the search illegal.

(C) There were alternate provisions available for the department instead of taking invasive and drastic action under Section 132(1) of the Act.

(D) On the facts of the case, the Respondent No. 2 erred in seizing cash, jewellery and loose papers despite these being fully explainable.”

6 **Mr. Joshi submitted as under:**

(a) Section 132(1) of the Act provides that where the Director General or Director of the Chief Commissioner or Commissioner in consequence of information in his possession, has reason to believe that: (i) any person to whom a summons under section 131(1) of the Act, or a notice under section 142(1) of the 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 (ii) 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 Act; or (iii) any person is in possession of any money, bullion, jewellery or other valuable article or thing which represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Act, then, such Director General or Director or the Chief Commissioner or Commissioner may authorise any Officer, to enter any premises, search and seize items which he suspects to represent undisclosed income.

(b) There was no question of clauses (a) and (b) of section 132(1) being applicable as petitioners have never failed to respond to any of the notices mentioned in those clauses in the past nor has any summons been

issued to petitioners.

(c) In such a situation, there can be nothing that could prompt the authority to opine that if any summons or notices were issued, petitioners would not respond or comply with the said summons or notices.

(d) even clause (c) of section 132(1) was not applicable as respondent no.1 did not or could not have any information in his possession which could have given him any reason to believe that petitioners were in possession of anything valuable representing their undisclosed income.

(e) Despite repeated requests respondents have not furnished what was the information which led to the prescribed belief and that shows respondents had no such valid and verified information nor have any reasons recorded by respondent no.1 authorising the search. The court should draw adverse inference.

(f) Before launching a search, the empowered officer must satisfy himself as to whether information in his possession was believable and he has to satisfy himself by holding preliminary enquiries needed in the circumstance of the case that the information was correct as so verified and only then act in the matter under Section 132 of the Act, as otherwise a citizen's premises may be searched which is a serious action invading the privacy and adversely affecting the status of petitioners on mere rumors.

(g) If drastic provisions of search and seizure were invoked

without any information and without any reason to believe that any undisclosed income was in possession of petitioners, it compromises the assessee's position and exposes him to grave hardship.

(h) It is settled law that if the authorisations under section 132 of the Act were issued without observance of the jurisdictional conditions, the entire search and seizure proceedings must be regarded to be invalid. In view of the applicability of Section 165 of the Criminal Procedure Code to the searches and seizures by virtue of sub-section (13) of section 132 of the Act, the taxpayer has been provided with important safeguards against arbitrary action.

(i) At the time of search, certain items of cash, jewellery and loose papers were seized from various premises of petitioners notwithstanding the fact that the said seized items were reflected in the regular of books of account of petitioners. The jewellery or ornaments were fully disclosed in Wealth tax Returns Filed along with valuation reports giving detailed description of the items of jewellery and ornaments and their values. During the search and thereafter, before they were seized, the same were reconciled and explained by petitioners. Notwithstanding, the explanation the jewellery has been seized. Copy of the information which was in possession of the empowered officer and his satisfaction after holding preliminary inquiries needed in the circumstances of the case to verify that the information was correct, must also be made available to petitioners.

7 In the affidavit in reply, the stand taken by the revenue basically is that the grounds raised in the petition are based on presumptions and conjectures. It is submitted that respondent no.1 had information in his possession of undisclosed assets / documents which represented income or property which has not been or would not be disclosed by petitioners under normal circumstances. There was also reason to believe that petitioners were in possession of documents relating to such undisclosed income, which would not be produced if called for under relevant provisions of the Act. Proper inquiries were made and the relevant material placed on record to give rise to reasons for such belief. It is also stated that authorised officers have not seized the entire cash and jewellery found at various premises but have seized only a part, which remained unexplained by petitioners at the relevant time or in respect of which explanation was not to the satisfaction of the authorised officers.

8 The allegations that search was conducted in case of petitioner nos.6 and 7 on 9th July 2008 without issuance of any search warrant in their names is incorrect.

9 The action of respondent no.1 cannot be challenged unless it could be shown that the reasons for formation of belief by him were not existent or there was any act of malafide on his part. If a bonafide belief was formed on the basis of material available on record which was the case, it is not open to petitioners to challenge the same by way of plea of lack of alternate

remedy against such action by respondent no.1.

10 It is also submitted by revenue that there was credible basis to believe that petitioners were in possession of assets/documents which were not disclosed or which would not be disclosed. It is stated that there were proper enquiries and application of mind by four different Statutory Authorities (one being senior to the other), i.e., the Asstt. Director of Income Tax (Inv.), the Addl. Director of Income Tax (Inv.), the Director of Income Tax (Inv.) and the Director General of Income Tax (Inv.). The reasons for authorizing action under Section 132 of the Act are duly recorded in a Satisfaction Note which shows due application of mind by various statutory authorities. All the procedures and safeguards provided in the Act were duly followed and the search has been carried out within the framework of section 132 of the Act.

11 As regards making available the details of the information received and the satisfaction note, the Learned ASG and later Ms Nagaraj both strongly opposed disclosing / making available copies thereof and for that relied upon the decision of the Apex Court in ***Principal Director of Income - tax (Investigation) Vs. Laljibhai Kanjibhai Mandalia***¹. The Learned ASG further submitted that the principles in exercising the writ jurisdiction in the matter of search and seizure under Section 132 of the Act have been elaborated in *Laljibhai Kanjibhai Mandalia* (Supra) and it is settled law that copy of the material leading to the search should not be made available to

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

assessee. It was also submitted that in view of the explanation inserted in Section 132(1) by the Finance Act 2017 with retrospective effect from 1st April 1962, the reason to believe as recorded by the Income Tax authorities under Section 132(1) shall not be disclosed to any person or any authority or the Appellate Tribunal.

12 It was also submitted by the Learned ASG that the court may examine the information / documents based on which the authorisations of search and seizure was issued and decide the matter within the principles elaborated in paragraph 33 of *Laljibhai Kanjibhai Mandalia* (Supra).

13 Ms Nagraj submitted that the reason behind insertion of the Explanation is to remove the ambiguity created by judicial decisions regarding disclosure of reasons recorded to any person or to any authority. Petitioners' request for sharing a copy of the satisfaction note to examine whether the satisfaction note discloses any satisfactory information for the purpose of carrying out search is not only contrary to the letter of the Act but is also contrary to the spirit of the Act. Ms Nagraj also submitted that in any case, the statutory provisions are not being challenged by petitioners in the present Writ Petition.

14 Mr. Joshi, in rejoinder, relying upon the decision of the Apex Court in the matter of *ITO Vs. Seth Brothers*² and *Pooran Mal vs. Director of Inspection (Investigation)*³, submitted that the court has opined that the

2 (1969) 74 ITR 836

3 (1974) 93 ITR 505

necessity of recording of reasons was to ensure accountability and responsibility in the decision-making process. The necessity of recording of reasons also acts as a cushion in the event of a legal challenge being made to the satisfaction reached. At the same time, it would not confer in the assessee a right of inspection of the documents or to a communication of the reasons for the belief at the stage of issuing of the authorisation as it would be counterproductive of the entire exercise contemplated by Section 132 of the Act. At the same time, 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. Mr. Joshi submitted that since the assessment proceedings were commenced, the time is now ripe to disclose the requisite material to petitioners.

15 Before we proceed further, it would be useful to reproduce Section 132(1) of the Act, which reads as under:

“Section 132(1)

Search and seizure.

132(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 (hereinafter in this section referred to as the undisclosed income or property),

then,—

(A) 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, as the case may be, may authorise any Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer, or

(B) such Additional Director or Additional Commissioner or Joint Director, or Joint Commissioner, as the case may be, may authorise any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner 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;

(iib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;

(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:

Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;

(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 Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, but such Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in section 120, 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 Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue:

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii):

Provided also that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business:

Provided also that no authorisation shall be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after the 1st day of October, 2009 unless he has been empowered by the Board to do so.

Explanation.—For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or

the Appellate Tribunal.”

It will also be useful to reproduce paragraphs 20 and 33 of *Laljibhai*

Kanjibhai Mandalia (Supra):-

“20. This Court in another judgment in Spacewood Furnishers (P) Ltd. (supra) set aside the order of the High Court, wherein it had interdicted with the action of search and seizure under Article 226 of the Constitution. It was held as under:

“12. In the present case the satisfaction note(s) leading to the issuing of the warrant of authorisation against the respondent assessee were placed before the High Court. As it would appear from the impugned order [Spacewood Furnishers (P) Ltd. v. DG of Income Tax, 2011 SCC OnLine Bom 1610 : (2012) 340 ITR 393] the contents thereof were exhaustively reproduced by the High Court. The said satisfaction note(s) have also been placed before us. A perusal of the file containing the satisfaction note(s) indicate that on 8-6-2009 the Assistant Director of Income Tax (Investigation), Nagpur had prepared an elaborate note containing several reasons as to why he had considered it reasonable to believe that if summons or notice were issued to the respondent to produce the necessary books of account and documents, the same would not be produced. The Assistant Director also recorded detailed reasons why he entertains reasons to believe that the promoters of the respondent assessee company would be found to be in possession of money, bullion, jewellery, etc. which represents partly or wholly income which has not been disclosed for the purposes of the Act.

xx xx xx

21. In the light of the views expressed by this Court in ITO v. Seth Bros. [ITO v. Seth Bros., (1969) 2 SCC 324 : (1969) 74 ITR 836] and Pooran Mal [Pooran Mal v. Director of Inspection (Investigation), (1974) 1 SCC 345 : 1974 SCC (Tax) 114 : (1974) 93 ITR 505] , the above opinion expressed by the High Court is plainly incorrect. The necessity of recording of reasons, despite the amendment of Rule 112(2) with effect from 1-10-1975, has been repeatedly stressed upon by this Court so as to ensure accountability and responsibility in the decision-making process. The necessity of recording of reasons also acts as a cushion in the event of a legal challenge being made to the satisfaction reached. Reasons enable a proper judicial assessment of the decision taken by the Revenue. However, the above, by itself, would not confer in the assessee a right of inspection of the documents or to a communication of

the reasons for the belief at the stage of issuing of the authorisation. Any such view would be counterproductive of the entire exercise contemplated by Section 132 of the Act. 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.

22. At this stage we would like to say that the High Court had committed a serious error in reproducing in great detail the contents of the satisfaction note(s) containing the reasons for the satisfaction arrived at by the authorities under the Act. We have already indicated the time and stage at which the reasons recorded may be required to be brought to the notice of the assessee. In the light of the above, we cannot approve of the aforesaid part of the exercise undertaken by the High Court which we will understand to be highly premature; having the potential of conferring an undue advantage to the assessee thereby frustrating the endeavour of the Revenue, even if the High Court is eventually not to intervene in favour of the assessee.”

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.”

16 A similar matter came up for consideration before the Division Bench of this Court (Nagpur bench) in the case of ***Balkrushna Gopalrao Buty & Ors. Vs. The Principal Director (Investigation), Nagpur & Ors.***⁴. In that case also assessee was questioning the search and seizure carried out in his premises pursuant to the provisions of Section 132 of the Act. Assessee has also submitted that a search and seizure has necessarily to be in consequence of some 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 be the only grounds on which the search and seizure could be made under Section 132 of the said Act. It was assessee's case therein that the seizure was based on certain transactions which were all disclosed in the returns filed and, therefore, there was no material which would entitle the revenue

4 Judgment dated 23rd April 2024 in Writ Petition No.1729 of 2024

to conduct the search and seizure in terms of the language and requirement of Section 132 of the said Act. The court analysed Section 132 of the Act and decided not to disclose the reasons recorded in the file for the sake of maintaining secrecy but expressed its view on the satisfaction note. The satisfaction note and the information was made available only to the court for consideration and upon its consideration, the court concluded that the requirement of Section 132(1) of the Act was not satisfied. The Court also held that the department cannot rely upon what was unearthed on account of opening of the lockers of petitioners, as the information and reason to believe as contemplated under Section 132(1) of the Act must be prior to such seizure. We are also going to adopt the same approach.

Therefore, we are not inclined to discuss the provisions of Section 132 of the Act or the effect of the explanation inserted in Section 132(1) by the Finance Act 2017.

17 It will also be useful to reproduce paragraph 8 of *Director General of Income Tax (Investigation), Pune vs. Spacewood Furnishers Private Limited*,⁵ which reads 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

5 (2015) 12 SCC 179

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.

(emphasis supplied)

18 Section 132(1) of the Act as reproduced hereinabove provides the circumstances when the specified authorities can authorise the search and seizure action, consequent to a reason to believe. They are if:-

(i) any person to whom a summons under section 131(1) of the Act, or a notice under section 142(1) of the 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

(ii) 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 Act; or

(iii) any person is in possession of any money, bullion, jewellery or other valuable article or thing which represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Act.

19 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, is the foundation to exercise the power under Section 132 of the said Act. The Apex Court in *Laljibhai Kanjibhai Mandalia* (Supra) and in *Spacewood Furnishers Pvt Ltd.* (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.

20 It is also necessary to note that no notice or summons have been issued to petitioners calling for any information from them at any point of time earlier to the action under Section 132(1) of the Act to give rise to an apprehension of non compliance by petitioners justifying action under Section 132(1) of the Act. Therefore, no reasonable belief can be formed 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 that such person will not produce such books of accounts or other documents even if summons or notice is issued to him.

21 As regards the averments in the affidavit in reply, we agree with the view expressed in *Balkrushma Gopalrao Buty* (Supra) that respondents cannot rely upon what has been unearthed pursuant to the search and seizure action as the information giving a reason to believe as contemplated under Section 132(1) of the said Act must be prior to such seizure.

22 We have read the contents of the file of the department given to us in a sealed envelope by counsel for respondents. Having considered the contents thereof, we are of the 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. The reasons recorded, in our view, only indicates a mere pretence. The material considered is irrelevant and

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unrelated. For the sake of maintaining the confidentiality, we are not discussing the reasons recorded in the file, suffice to say that the information noted therein is extremely general in nature. The reasons forming part of the satisfaction note have to satisfy the judicial conscience. We are not satisfied. The satisfaction note does not indicate at all the process of formation of reasonable belief. We must hasten to add, we have not questioned the adequacy or sufficiency of the information.

23 That apart, the note also does not contain anything altogether regarding any reason to believe, 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. It does not fulfill the jurisdictional pre-conditions specified in Section 132 of the Act.

24 Hence, we are unable to sustain the action of respondents taken under Section 132(1) of the Act. The same is, therefore, quashed and set aside. As a result, all consequent actions and notices cannot be sustained and accordingly quashed and set aside.

25 Undoubtedly, even though the search is held to be invalid, the information or material gathered during the course thereof may be relied upon by revenue for making adjustment to the Assessee's income in an appropriate proceeding. 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.

26 Rule made absolute in both petitions.

27 Within four weeks, the bank guarantee issued by petitioner pursuant to order dated 4th September 2019 in the sum of Rs.2,19,34,221.30/- shall be returned to petitioners duly discharged.

(Dr. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)