IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10449 of 2018
With
CIVIL APPLICATION NO. 1 of 2018
With
CIVIL APPLICATION NO. 2 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH sd/-
and
HONOURABLE MR.JUSTICE A.Y. KOGJE sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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ADARSH CREDIT CO-OPERATIVE SOCIETY LIMITED
Versus
JOINT DIRECTOR OF INCOME TAX(INV.)

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Appearance:
MR. KAMAL TRIVEDI, SENIOR ADVOCATE WITH MR VISHWAS K SHAH(5364) for the PETITIONER(s) No. 1
DELETED(20) for the RESPONDENT(s) No. 6
MRS MAUNA M BHATT(174) for the RESPONDENT(s) No. 1,2,3,4,5

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MR.JUSTICE A.Y. KOGJE

Date : 08/08/2018

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1.0. By way of present petition under Article 226 of the Constitution of India, the petitioner through his authorized signatory Shri Rahul Modi has prayed for an appropriate writ, direction and order to quash and set aside the search and seizer conducted by the respondent authorities from 14.06.2018 to 19.06.2018 at the registered office and corporate office of the petitioner society at Ahmedabad. It is also further prayed to direct respondents to return the original seized items from the petitioner society. It is also further prayed to quash and set aside the order dated 19.06.2018 passed by the respondent no.4 under Section 133A(3)(ia) of the Income Tax Act.

2.0. It is the case on behalf of the petitioner - Adarsh Credit Cooperative Society Limited is a Multi- State Cooperative Society registered under the Multi State Cooperative Societies Act, 2002 and is having its corporate office at Ahmedabad. That according to the petitioner, the petitioner society is one of the largest Multi State Co-operative Societies in the field of the Credit. That earlier registered office of the petitioner society was at Palace Road, Sirohi at Rajasthan and thereafter it came to be changed to Ahmedabad. According to the petitioner, as per the last audit balance sheet profit of the petitioner society was Rs.481.28 crores. That the respondent no.1 issued warrant of authorization under Section 132 of the Income Tax Act. That the respondent no.4 passed an order under Section 133A(3)(ia) of the Act, by which, the documents as well as electronic media in the form of hard disk/CD/ Pen Drive etc. seized during the course of survey proceedings have been ordered to be impounded. Hence, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3.0. It is the case on behalf of the petitioner that on 14.06.2018, the respondent no.1 issued warrant of authorization under Section 132 of the Act, pursuant to which, search took place from the 14.06.2018 to 19.06.2018. It is the case on behalf of the petitioner that the impugned search and seizer is arbitrary, illegal and violative of fundamental rights of the petitioner.

3.1. Shri Kamal Trivedi, learned counsel for the petitioner has vehemently submitted that as such there is no reasons whatsoever to conduct search and seizer. It is submitted that in the year 2010 on the similar allegation earlier the search and seizer took place, however, thereafter nothing illegal was found against the petitioner and thereafter the assessment proceedings were culminated in favour of the petitioner. It is submitted that therefore, now again to conduct search and seizer on the similar set of facts and circumstances be violating the fundamental rights of the petitioner and same shall be undue harassment to the petitioner. It is submitted that therefore, again and again the petitioner society is not required to face the music.

3.2. It is further submitted by Shri Kamal Trivedi, learned counsel for the petitioner that the petitioner society is carrying on its activity and / or permitted to carry on its activities in view of the order passed by the Hon'ble Supreme Court against the order passed by the Rajasthan High Court order dated 14.5.2015 in DB Civil Writ (PIL) No. 26 of 2013. It is submitted that the petitioner society is running its affairs absolutely in consonance with the provisions of the Act and its all activities are legal and permitted under law.

3.3. It is further submitted by Shri Kamal Trivedi, learned counsel for the petitioner that assuming that the petitioner may not be entitled to reasons recorded while arriving at a subjective satisfaction of the appropriate authority, the petitioner is required to share information on the basis of subjective satisfaction is arrived at.

3.4. It is further submitted by Shri Kamal Trivedi, learned counsel for the petitioner that even the petitioner is not returned the documents impounded and / or seized during the search and due to which, members of the society are suffering and are subjected to harassment. It is further submitted that even the petitioner society is permitted to get xerox copies of the document seized / impounded, however the same is with such slow speed, it will take number of months.

Making above submissions and relying upon the following decisions of the Hon'ble Supreme Court as well as Allahabad High Court, it is requested to allow the present petition.

(1) Director General of Income Tax (Investigation) Pune and Ors vs. Spacewood Furnishers Private Limited and Ors reported in (2015) 12 SCC 179 (para 8.1, 10 and 12).

(2) M.D. Overseas Limited vs, Director General of Income Tax and Ors reported in (2011) 333 ITR 407 (Allahabad). (para 1, 13)

(3). Ravi Iron Industries vs. Director of Investigation and Ors reported in (2003) 264 ITR 28 (Allahabad) (para 9 to 14 and 21 to

23).

4.0. Present petition is vehemently opposed by Ms. Mauna Bhatt, learned counsel for the revenue. She has placed before the Court the satisfaction note prepared by the appropriate authority, for the perusal of the Court.

4.1. It is vehemently submitted by Ms. Bhatt, learned counsel for the revenue that impugned action of the search and seizer and the authorization is absolutely in consonance with the provisions of the Act and after following due procedure as required and after having satisfied the need for search and seizer.

4.2. Relying upon the explanation to Section 132 of the Income Tax Act inserted by the Finance At, 2017, it is submitted that reasons to believe, as recorded by the Income Tax Authority shall not be disclosed to any person or any authority or the Appellate Authority. It is submitted that therefore, the petitioner is not entitled to reasons to believe. In support of her above submissions, she has heavily relied upon the recent decision of the Hon'ble Supreme Court in the case of N.K. Jewellers and Another vs. Commissioner of Income Tax reported in (2017) 398 ITR 116(SC). It is further submitted by Ms. Bhatt, learned counsel for the revenue that even in the case of Spacewood Furnishers Private Limited and Ors (supra) in para 8.5, the reasons need not be communicated to the person against whom the warrant is issued. It is submitted that in the aforesaid decision, it is observed in para 8.6 that 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. It is submitted therefore, the respondent has placed before the Court for its perusal the satisfaction note / formation of the belief.

Making above submissions and relying upon the decision of the Division Bench of this Court in the case of Dipin G Patel vs. Director General of Income Tax (Investigation) and Ors reported in (2011) 339 ITR 636 (Guj) as well as in the case of Neesa Leisure Ltd and Another vs. Union of India Through Secretary and ors reported in (2011) 338 ITR 460 (Guj), it is requested to dismiss the present petition.

5.0. Now, so far as the submission on behalf of the petitioner that the petitioner is not returned the document seized / impounded and / or that the petitioner is permitted to get xerox copy of the relevant document seized / impounded in a very slow speed is concerned, it is submitted that as far as possible authorities are trying their best to give the xerox copy.

5.1. Relying upon the affidavit in reply, it is submitted that in view of the information coming to the possession of the Principal DIT (Investigation), Rajasthan and the said respondent in consequence of such information, has arrived at a reason to believe that ingredients under Section 132 are fulfilled.

5.2. It is further submitted by Ms. Bhatt, learned counsel for the revenue that pursuant to the satisfaction arrived at by the Principal Director of Income Tax (Investigation), Jaipur authorizations were issued under Section 132 to search the the registered office as well as the corporate office of the petitioner. It is submitted that search team visited corporate office with the warrant at the given address which was informed that the petitioner has shifted its corporate office to some other place therefore, in continuation of the earlier satisfaction recorded and authorization issued, consequential authorization was issued by the respondent no.1- Joint Director of Income Tax (Investigation), Udaipur. It is submitted by Ms. Bhatt, learned counsel for the revenue that a specific information has been received as to how the petitioner has been indulging in rotating money in a very unspecified manner to various unorganized business groups. It is submitted that information was received that promoters of the petitioner society have siphoned off around 1650 crores and transferred the said amount to about 40 companies which are mostly non operational and allegedly having their address at a single place of business of Gurgaon. It is submitted that information was also received that the petitioner though claiming to be a cooperative society has not been functioning on the lines of a cooperative society but as a family concern of Shri Rahul Modi or Shri Mukesh Modi. It is submitted that in this process, the petitioner has been evading payment of taxes by claiming substantial deductions under the provisions of Section 80 P of the Act. It is submitted that therefore, after satisfied and reasons to believe the authorization has been issued after recording reasons in the satisfaction note.

Making above submissions and relying upon above decisions, it is requested to dismiss the present petition.

6.0. Heard the learned advocates for the respective parties at length. At the outset, it is required to be noted that the petitioner has challenged the authorization and impugned search and seizer proceedings under Section 132 of the Income Tax Act on the ground stated herein above.

6.1. The main contention on behalf of the petitioner is that the impugned authorization and search and seizer proceedings is illegal and violative of fundamental rights of the petitioner and that it is nothing but to point out that even in the year 2010 on the same ground and facts and circumstances search and seizer proceedings have been initiated and nothing illegal was found thereafter and a clean chit was given. It is also the case on behalf of the petitioner that petitioner has not been disclosed / shared the information received by the appropriate authority.

6.2 While considering the aforesaid, the observation made by the Hon'ble Supreme Court in the case of Spacewood Furnishers Private Limited and Ors (supra) and in the case of N.K. Jewellers and Another (supra) are required to be referred to and considered. In the case of Spacewood Furnishers Private Limited and Ors (supra) while considering the very provision of Section 132 of the Income Tax Act and challenged to the warrant of authorization for search and seizer, the Hon'ble Supreme Court in para 8 has observed and held 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 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

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 authorization had been repealed on and from 1st October, 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 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.

6.3 In the recent decision in the case of of N.K. Jewellers and Another (supra), the Hon'ble Supreme Court in para 7 while confirming the authorization and not accepted the similar submission that the search person has not been given reasons, the Hon'ble Supreme Court has observed as under:

> *Further, we find that in view of the amendment made in Section 132A of the Income Tax Act, 1961 by Finance Act of 2017, the 'reason to believe' or 'reason to suspect', as the case may be, shall not be disclosed to any person or any authority or the Appellate Tribunal as recorded by Income Tax Authority under Section 132 or Section 132A. We, therefore, cannot go into that question at all. Even otherwise, we find that the explanation given by the appellant regarding the amount of cash of Rs.30 lacs found by the GRP and seized by the authorities has been disbelieved and has been treated as income not recorded in the Books of Account maintained by it.*

6.4. Even considering the explanation to Section 132 of the Income Tax Act inserted by Finance Act, 2017 the search person shall not be entitled to the reason to believe. If that be so, there is no question even sharing any information to the petitioner. Now, so far as reliance placed upon the decision of the Allahabad High Court referred to herein above, by the learned counsel for the petitioner is concerned, same shall not be applicable to the facts of the case on hand.

7.0. Original note sheet / satisfaction note leading to issuance of authorization over the search has been placed for our perusal. We find that the satisfaction note was recorded by the Principal Director of Income Tax (Investigation), Rajasthan. The same was placed before the Director of Joint Income Tax Office, Rajasthan and thereafter before Deputy Director of Income Tax

(Investigation) I, Udaipur. A detailed satisfaction note has been prepared on the basis of having information received. A detailed notes was made and recorded his satisfaction that he had reason to believe that the requirements of Section 132(1)(c) are satisfied. The appropriate authority, therefore, proposed to issue warrant of authorization under sub-section (1) of Section 132.

7.1. We have perused the satisfaction note. We have also perused further note recorded by the Higher Income Tax Authority, more particularly, conclusion in para 6. It is recorded that in view of the above outcomes of discreet verifications and modus operandi of the group involves in siphoning of funds from society to the shell companies by way of advancing loans without any equivalent collateral securities, the allegation of huge tax evasion by the group has been substantiated. It is recorded that incriminating documents / books of accounts evidencing such huge tax evasion are likely to be found in possession of various entities of the group of companies. The authorization is based on the definite information and after discreet verifications, it can be termed adequately sufficient for the purpose of satisfying the statutory requirement. Since the proceedings consequent to search and seizer operations are going on, at this stage, it would not be appropriate on our part to divulge in detail about the satisfaction note. Suffice it to record, in our opinion, there were sufficient grounds enabling the authorities to hold belief that case of the petitioner is covered under sub-clause (c)of sub-section(1) of Section 132 which permits the authorizing officer to issue authorization of search if he has reason to believe.

7.2. We further find that satisfaction note place by the Principal Director of Income Tax (Investigation), Rajasthan was placed before the Director of Joint Income Tax Office, Rajasthan who has considered and scrutinized satisfaction minutely. All the authorities offered their own comments and thereafter authorization be issued. We find that necessary care has been taken and the case properly scrutinized before issuance of the authorization. It is not a case of either hurriedly or perfunctorily issuing search authorization. Therefore, in the facts and circumstances of the case, we see no reason to interfere with the impugned authorization / search and seizer proceedings under Section 132 of the Act as well as impounding document etc. under Section 133 A(3)(ia) of the Act.

7.3. The impugned order dated 19.06.2018 passed by the respondent no.4 under Section 133 A(3)(ia) of the Act is also absolutely in consonance with the provisions of Section 133A(3)(ia) of the Act. Now, so far as submission on behalf of the petitioner that respondent authorities are permitting the petitioner to get xerox copy of the impounded document in a slow speed is concerned, as such aforesaid cannot be a ground to challenge the authorization under Section 132 of the Act. Looking to the voluminous record and the materials, the Court cannot, without any material before the Court with respect to the available resources can fix any time limit to provide xerox copy.

7.4. Now, so far as submission on behalf of the petitioner that earlier in the year 2010 on similar allegations the search and seizer had taken place, however thereafter clean chit was given, the department held in favour of the petitioner and therefore, impugned search and seizer is not warranted and therefore, same is required to be quashed and set aside is concerned, the aforesaid has no substance. Merely because, in the past for earlier transaction, the department might have given clean chit, there does not mean that on fresh cause of action and / or fresh material and / or evidence, search and seizer cannot be undertaken. In the facts and circumstances of the case and as observed herein above, as such on facts and considering the satisfaction note, the impugned search and seizer is absolutely just and proper and after recording the reasons and reason to believe.

8.0. In view of the above and for the reasons stated above, present petition fails and same deserves to be dismissed and is accordingly dismissed.

sd/-
(M.R. SHAH, J)

sd/-
(A.Y. KOGJE, J)

KAUSHIK J. RATHOD