

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

WRIT PETITION NO.1344 OF 2000

Dr. Gautam Sen ... Petitioner
 Versus
 Chief Commissioner of Income-Tax And Others ... Respondents

.....
 Ms. Shobha Jagtiani a/w Mr. Ravi Rattesar i/b D.M. Harish & Co., for the
 Petitioner.

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Respondents.

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**CORAM : M.S. SANKLECHA &
S.C.GUPTE, JJ**

DATE : 14 SEPTEMBER 2016

P.C. :

. This Petition under Article 226 of the Constitution of India, challenges a notice dated 16 May 2000 issued by the Assessing Officer under Section 158BC of the Income-Tax Act, 1961 (“the Act”) calling upon the Petitioner to file his return of income within a period of 15 days of service of the notice. This was consequent to search and seizure proceedings under Section 132 of the Act on the Petitioner. This search operation has also been challenged by the Petitioner seeking an apology from the Respondents-Revenue.

2 On 10 October 2000, this Petition was admitted only with regard initiation of proceedings under Chapter XIVB of the Act i.e. issue of the

impugned notice while staying it. In view of the above, the challenge to search and seizure proceedings by the Petitioner and consequent apology does not survive for examination.

3 The genesis of the present proceedings was the search and seizure operation on the Concept Communication Group of Companies on 6 January 1999 belonging to one Mr. Nirmal Suchanti. During the course of the search, the search party came across a bank account in M/s Samta Sahkari Bank, Santacruz, Mumbai (Bank) in the name of Pioneer Publicity (of which one Mr. Gautam Sen is shown as Proprietor). The address shown with the bank was found to be fictitious. However a telephone diary of Mr. Nirmal Suchanti (Concept Group) had the name of the Petitioner with his telephone numbers mentioned therein alongwith the name of M/s Devaki Hospital in brackets.

4 On the aforesaid basis the Respondent-Revenue carried out the search on 16th January, 1999 under Section 132 of the Act on the Petitioner and his premises. During the course of the search, an amount of Rs.20,000/- in cash was found in his house which was explained to the satisfaction of the Revenue. Nothing incriminating was found during the course of search. During the course of investigation, the Petitioner explained the fact that he is in no way connected with the Account in the name of M/s Pioneer Publicity found in the said Bank. During the course of his statements, the Petitioner clarified that he knew Mr. Nirmal Suchanti socially as he had treated his brother one Dr. Hiren Suchanti consequent to an accident. Besides, during the course of the investigation Mr. Nirmal Suchanti gave an affidavit dated 2 February 1999 duly notarised pointing

out that Dr. Sen (Petitioner herein) is not concerned in any manner with the account found with the said Bank nor has the Concept Group of Companies had any business dealing with him. The affidavit put on record the apology of Mr. Nirmal Suchanti to the Petitioner. A copy of the above affidavit of Mr. Nirmal Suchanti was also submitted by the Petitioner to the Income Tax Department.

5 Despite the above, the impugned notice dated 16 May 2000 was issued under Section 158BC of the Act to the Petitioner to file his return of income for the block period covered by the search. Today, the grievance of the Petitioner as also that recorded in the order admitting this Petition, is that during course of search, nothing was found with the Petitioner, so as to infer that he was in possession of any undisclosed income either at the time of search or at any time prior thereto. Consequently, in the absence of there being undisclosed income, the Assessing Officer would not have any justification to issue the impugned notice under Section 158BC of the Act.

6 We find that the Respondents-revenue have field an affidavit-in-reply of one Shri Dinesh Singh, Deputy Director of Income Tax dated 29 August 2000. However, in the affidavit-in-reply there is no averment made with regard to any incriminating material found during the course of search linking the Petitioner to any undisclosed income. In fact, the averment of the Petitioner that nothing incriminating was found during the course of the search is not challenged. Thus in the absence of the same, there is no basis to infer that the Petitioner was in possession of undisclosed income. This is not disputed by the Respondents-revenue at the hearing of the Petition.

7 It may be pointed out (although not strictly necessary) that the affidavit in reply does not mention a word about satisfaction note being recorded before carrying out the search. This alone would have been evidence of reasonable belief for carrying out the search operation (See *Director General of Income Tax (Investigation) & Ors. Vs. Speacewood Furnishes (P) Ltd.* 374 ITR 595). We specifically asked the Respondents-revenue to produce the record maintained by it including the appraisal report, consequent to search, before taking a decision to issue the impugned show cause notice. At this stage, Mr. Suresh Kumar, learned Counsel for the Respondents-revenue has produced an appraisal report dated 16 April 2000, i.e. prior to issuing the impugned show cause notice dated 16 May 2000. Appraisal report dated 16 April 2000 *in te ralia* records as under :

“Shri (Dr.) Gautam Sen : Search action was mounted against Dr. Gautam Sen on 16 January 1999 based on the incriminating documents pertaining to the fictitious bank account of *Pioneer Publicity* purported to have been operated by him at Samta Sahakari Bank on behalf of Concept Communication group and also for introducing another fictitious bank account in the name of *TOI Outdoor* owned by so-called 'Sudhir Jain'. Dr. Gautam Sen vehemently denied having any such bank account and also denied having introduced *TOI Outdoor* to the bank. He, however, claimed to know Shri Nirmal Suchanti as a family friend for the last 20 years.

Dr. Gautam Sen is an eminent consulting surgeon and a professor in Grant Medical College and a Head of Department of Surgery at GT Hospital. On a careful examination of his antecedents and the related records, it is concluded that Dr. Sen has no involvement in the said bank accounts. Moreover, the so-called Sudhir Jain is a non-existent person. Shri Nirmal Suchanti also consequently admitted to have owned the two stated bank accounts. In other words, no incriminating documents on Dr. Sen's personal case are

found. Cash of Rs.20,000/- was found in the house where his parents also stay.”

8 From the above extract of the appraisal report, it is clear as daylight that no incriminating documents were found during the course of search nor was it found that he was in any manner involved in the bank account with his name in the said Bank. Thus it appears that the Respondents-revenue took search and seizure proceedings in respect of the Petitioner on account of mistaken identity. In any case the appraisal report would indicate that no notice under Section 158BC of the Act could be issued to the Petitioner as the condition precedent to issue notice under Section 158BC of the Act, viz. undisclosed income found during the search proceedings, is not satisfied.

9 In the above facts, the impugned notice is quashed and set aside.

10 We note that this action on the part of the Respondents-revenue to issue the impugned notice ignoring the appraisal report is highly deplorable. We live in a Country governed by laws. The Officers of the Income Tax Department are obliged to proceed in accordance with the statutory provisions and not on their whim and fancy. The Officers hold power in trust and must ensure that no citizen is harassed by sending him notices, when on the basis on its own record, such notices are not sustainable. We trust that the Income Tax Department would adopt a standard operating procedure which would provide for appropriate safeguards before issuing notices under Chapter XIVB of the Act. This alone would ensure that Officers of the Revenue act in terms of the mandate provided in the Act.

11 In fact, at the very outset, after a preliminary hearing, we had asked the learned Counsel for the Respondents-Revenue whether the Revenue would still want to persist with the impugned notice under Section 158BC of the Act. On instructions, Mr. Suresh Kumar, learned Counsel for the Respondents-revenue informed us that the Respondents-revenue seeks to press the impugned notice and seek dismissal of the present Petition. In the above view, this is the fit case where costs should be awarded to the Petitioner. The Respondents-revenue i.e the jurisdictional Chief Commissioner of Income Tax (Respondent No.1) is directed to pay the costs of Rs.20,000/- to the Petitioner within four weeks from today.

12 Rule made absolute with costs quantified at Rs.20,000/- to be paid within four weeks from today.

(S.C. GUPTE, J.)

(M.S. SANKLECHA, J.)