

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 3494 of 2012

Emaar Alloys Pvt Ltd. through Manoj Kr. Sinha, Director, 1/2 Awas Cristal, Imperial Bank Area, Bistpur, Jamshedpur, District East Singhbhum.

.....Petitioner

Versus

1. Director General of Income Tax (Investigations), Central Revenue Building, 3rd Floor, Birchand Patel Marg, Patna.
2. Director of Income Tax (Investigations) Patna, Central Revenue Building, 3rd Floor, Birchand Patel Marg, Patna.
3. Additional Director of Income Tax (Investigations) Ranchi, Central Revenue Building, 7th, Main Road, Ranchi.
4. Assistant Director of Income Tax (Investigations), Jamshedpur, 1st Floor, 1st Office Road, Central Circle, Jamshedpur.
5. Commissioner of Income Tax, 47-C, II Area Jamshedpur.
6. Commissioner of Income Tax (Central) Patna, Central Revenue Building, 2nd Floor, Birchand Patel Marg, Patna.
7. Deputy Commissioner of Income Tax (Central Circle-I), Ranchi, Mahavir Tower, Main Road, Ranchi-834 001.
8. Assistant Commissioner of Income Tax, Central Circle, Jamshedpur, 1st Office Road, Jamshedpur

..... Respondents

CORAM: HON'BLE MR. JUSTICE D.N. PATEL
HON'BLE MR. JUSTICE RATNAKER BHENGRA

For the Petitioner : M/s Radhey Shyam Pandey, Vinay Prakash,
Anand Kumar Sinha, Advocate
For the Respondents : Mr. Deepak Roshan, Advocate.

17/Dated: 5th May, 2015

Oral order:

Per D.N. Patel, J.:

1. This writ petition has been preferred challenging the legality of search and seizure operations carried out by the Income Tax Authorities under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' for the sake of brevity) and also challenging the legality and validity of the summons issued by the Income Tax Authorities more particularly by Assistant Director of Income Tax under Sub Section (1A) of Section 131 of the Act, 1961. Moreover, notice issued under Section 153A of the Act, 1961 has also been challenged and it is also prayed that the respondents may be prohibited from proceeding in any manner whatsoever pursuant to the alleged search and seizure in exercise of the powers under Section 132 of the Act, 1961 by the respondents and for release of seized documents.

2. Counsel appearing for the petitioner submitted that the grossest illegality has been committed by the respondents in carrying out search and seizure under Section 132 of the Act, 1961 and also in issuing summons under Section 131(1A). It is submitted by the counsel for the petitioner that the notice given under Section 131(1A) is subsequent to the search and seizure carried out under Section 132 of the Act, 1961. This is not permissible in the eye of law. Moreover, the satisfaction which ought to be arrived at under Section 131(1A) and under Section 132(1) is not reduced in writing nor looking to the counter affidavit it appears that the respondents had any material on record which has supplied the Income Tax Authorities a reason to believe to carry out search and seizure. In absence of any such material on record, the Income Tax Authorities was not having a reason to believe to give any command to carry out search and seizure and therefore, search and seizure carried out by the respondents from 31st October, 2009 to 4th November, 2009 is absolutely illegal and in contravention of Section 132 of the Act, 1961.

3. Counsel for the petitioner has relied upon a decision rendered by Hon'ble Supreme Court reported in **(2015) 370 ITR 180(SC)**. Counsel for the petitioner has also relied upon a decision of the Division Bench rendered by Hon'ble High Court of Delhi in W.P.(C) No. 1417 of 2011 dated 11th January, 2013 in the case of **Madhu Gupta Vs Director of Income-Tax (Investigation)**. On the basis of the aforesaid two decisions, it is submitted by the counsel for the petitioner that the information available with the Income Tax Authorities must be credible information and there must be nexus between the information and the belief, which is lacking in the present case and hence also, the search and seizure carried out by the respondents may be declared as illegal and all consequent actions of the respondents of issuance of summons under Section 131(1A) and notice issued in exercise of power under Section 153(A) dated 20th June, 2011 also deserves to be quashed and set aside.

4. Counsel appearing for the respondents vehemently submitted that this petition has been preferred with all ulterior motive. The detailed counter affidavit has been filed by the Additional Director of Income Tax (Investigation) especially in para-19 it has been stated that there was ample material with the respondents authorities that this petitioner was in possession of money, bullion, jewellery and other valuable articles represents either wholly or partly income or property which has not been

disclosed for the purpose of Income Tax Act. Moreover, the Assistant Director of Income Tax has to write a satisfaction note alongwith supporting documents proposing an action under Section 132. This note tantamounts reason to believe. Similarly, Joint Director of Income Tax (Investigation)/Additional Director of Income Tax (Investigation) forwards this note to the Director of Income Tax (Investigation). Both these officers arrived at independently about a conclusion for search and seizure to be carried out and thereafter, Director General of Income Tax (Investigation) approves "the reason to believe". Thus, all the aforesaid officers are putting a note and their satisfaction with supporting documents for carrying out search and seizure under Section 132 of the Act. This is a reason to believe. In the facts of the present case also, there is noting of these officers which is approved by the Director General of Income Tax (Investigation) that there is a reason to believe for search and seizure to be carried out. This paragraph no. 19 has not been denied in the rejoinder affidavit filed by the petitioner even otherwise also, it is submitted by the counsel for the respondents that this procedure Income Tax Authorities is following for every search and seizure and therefore, there is no illegality committed by the respondents in carrying out search and seizure of the premises of the petitioner during the period 31st October, 2009 to 4th November, 2009.

5. It is further submitted by the counsel for the respondents that the writ petition has been preferred on 25th June, 2012 i.e. after several months from the date on which the raid was carried out. Thus, this writ petition is nothing, but, an afterthought and with some ulterior motive this writ petition has been preferred which may not be entertained by this Court and may be dismissed with a heavy cost.

6. Counsel for the respondents further submitted that this petitioner has approached the Settlement Commissioner also on 16th July, 2012 and has declared huge income. Such declaration made by the petitioner before the Settlement Commissioner under Section 245C of the Act, 1961 reveals that the raid carried out by the Income Tax Authorities was absolutely just and proper. Thereafter for any reason whatsoever this application was withdrawn which is not permissible in the eye of law and the case was abated which has been recorded on 27th January, 2014 by the Settlement Commissioner and thereafter, the Assessing Officer passed an order on 28th March, 2014 and a notice issued to this petitioner to meet the payment of Rs.4.65 crore approximately of Income Tax against which an

appeal has been preferred by this appellant-petitioner before the Commissioner of Income Tax (Appeals) and therefore, also this writ petition may not be entertained by this Court.

7. Counsel for the respondents has relied upon the decision rendered by Hon'ble Madhya Pradesh High Court reported in **(2001) 251 ITR 492 (MP)** and has submitted that the Assistant Director has all power, jurisdiction and authority to issue summons under Section 131(1A) of the Act, 1961, prior to and subsequent also of the search and seizure carried out by the Income Tax Authorities under Section 132 of the Act, 1961. Moreover, the Assistant Director of Income Tax has also power, jurisdiction and authority to record the statement under Section 132 i.e. during the search and seizure.

8. It is further submitted by the counsel for the respondents that no illegality has been committed by the respondents in carrying out search and seizure on the basis of subjective satisfaction arrived at by the Income Tax Authorities that there were reasons to believe to carry out search and seizure under Section 132 of the Act. It is further submitted by the counsel for the respondents that this Court is not sitting in appeal against the subjective satisfaction arrived at by the Income Tax Authorities on the basis of the materials on record that there was reason to believe for these authorities to carry out search and seizure. Once there is a reason to believe, with the Income Tax Authorities, as stated in paragraph no. 19 of the counter affidavit filed by respondent nos. 1 to 4, the High Court in exercise of powers under Section Article 226 of the Constitution of India will not go behind the sufficiency of the materials available with the Income Tax Authorities which was found sufficient by the Income Tax Authorities to formulate an opinion that there is a reason to believe to carry out search and seizure and hence, this writ petition may not be entertained by this Court.

Reasons:

9. Having heard counsels for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this writ petition mainly for the following facts and reasons:-

- (i) This petitioner has close connection with Ex. Chief Minister of the State. These facts have been stated in para-9 of the counter affidavit filed by the respondent nos. 1 to 4.

(ii) There was ample materials with the Income Tax Authorities that this petitioner has not disclosed huge income. On the basis of information with the Income Tax Authorities they found need of carrying out search and seizure at the premises of the petitioner. Before issuance of warrant of authorization by the Director of Income Tax to carry out search and seizure under Section 132 of the Act, in detail the procedure prescribed under Section 132 of the Act has been followed. Paragraph 19 of the counter affidavit filed by the Additional Director of Income Tax (Investigation) on behalf of the respondent nos. 1 to 4 reads as under:-

“19. That it is stated that in the instant case the competent had reasons to believe based on information in his possession that M/s Emaar Alloys Pvt Ltd had possession of 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 have been disclosed for the purpose of I.T. Act and that if a summon u/s 131(1) of I.T. Act 1961 or a notice u/s 142(1) might be issued to produce or cause to be produced any books of accounts or other documents then such books of accounts or other documents would not be produced or cause to be produced as required by such summon.

To carry out any search and seizure activity u/s 132 of the Income Tax Act, 1961, the concerned ADIT or DDIT has to write a satisfaction note along with supporting documents proposing an action u/s 132 if he has reasons to believe that such an action is justified. The said satisfaction note is then forwarded by JDIT(Inv.)/Addl DIT(Inv) to the DIT(Inv.) and both these officers should independently have reason to believe on the basis of information in possession that a search and seizure activity u/s 132 of Income Tax Act, 1961 is justified.

The satisfaction note is administratively approved by the Director General of Income Tax (Investigation) who independently should also have reason to believe that the provisions of Section 132 of the Income Tax Act, 1961 are complied for issue of warrant of authorization to carry out a search and seizure action.

In the instant case also the search and seizure operation was carried out in accordance with the provisions of Section 132 of the Income Tax Act, 1961 and warrant of authorization were issued in each case by the competent authority as provided under Section 132 of the I.T. Act after following due process of law.”

(iii) The petitioner has filed rejoinder affidavit, but, the facts stated in paragraph no. 19 has not been controverted at all. Counsels appearing for both the sides have read and re-read Section 131 and Section 132 of the Income Tax Act and therefore, relevant portion of Section 131 and 132 of the Act read as under:-

“131. Power regarding discovery, production of evidence, etc. -(1) The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals) and, Chief Commissioner or Commissioner and the Dispute Resolution Panel referred to in clause (a) of sub-section(15) of section 144C shall, for the purpose of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:-

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.

(1-A) If the Director-General or Director or Joint Director or Assistant Director or Deputy Director, or the authorised officer referred to in Sub-section (1) of Section 132 before he takes action under clauses (i) to (v) of that sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons within his jurisdiction, then, for the purposes of making any inquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.

(2) For the purpose of making an inquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority not below the rank of Assistant Commissioner of Income-tax, as may be notified by the Board on this behalf, to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) or sub-section(1A) or sub-section(2) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

Provided that an Assessing Officer or an Assistant Director or Deputy Director shall not-

- (a) impound any books of account or other documents without recording his reasons for so doing, or
- (b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director general or Commissioner or Director therefor, as the case may be.

132. Search and seizure- (1) Where the Director General or Director or the Chief 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 Director-General or Director or the Chief 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 Chief Commissioner or Commissioner, but such Chief 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 Chief 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.

(1-A) Where any Chief Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the Director-General or Director or any other Chief Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such Chief Commissioner or Commissioner may, notwithstanding anything contained in section 120, authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1-A) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), 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 officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

Explanation.—For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

(4-A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—

- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
- (ii) that the contents of such books of account and other documents are true; and
- (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document, stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

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(8) The books of account or other documents seized under sub-section (1) or sub-section (1-A) shall not be retained by the authorised officer for a period exceeding thirty days from the

date of the order of assessment *under Section 153A or clause (c) of Section 158BC* unless the reasons for retaining the same are recorded by him in writing and the approval of the Chief Commissioner, Commissioner, Director General or Director for such retention is obtained:

Provided that the Chief Commissioner, Commissioner, Director General or Director shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

(8-A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order:

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1A) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

(9-A) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in Sections 132A and 132B referred to as the assets) seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.

(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) or sub-section (1-A) objects for any reason to the approval given by the Chief Commissioner, Commissioner, Director General or Director under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

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(13) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1) or sub-section (1A).

(14) The Board may make rules in relation to any search or seizure under this section in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

- (i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;
- (ii) for ensuring safe custody of any books of account or other documents or assets seized.

Explanation 1.—For the purposes of sub-section (9A), “execution of an authorisation for search” shall have the same meaning as assigned to it in *Explanation 2* to Section 158BE.

Explanation 2.—In this section, the word “proceeding” means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

(Emphasis Supplied)

(iv) Counsel for the petitioner has submitted that the satisfaction of the Income Tax Authorities before carrying out search and seizure must be reduced in writing and it must be based upon sufficient materials and in the facts of the present case, there was no sufficient materials with the Income Tax Authorities and therefore, they had no reason to believe, to carry out search and seizure at the premises of the petitioner. This contention is devoid of any merit mainly for the following reasons:

(a) In paragraph 19 of the counter affidavit, as stated hereinabove, this satisfaction has been arrived at with supporting documents by Assistant Director of Income Tax thereafter, by Joint Director of Income Tax and individually by Director General of Income Tax (Investigation).

(b) More than one authorities of the Income Tax have reason to believe on the basis of the supporting documents to carry out search and seizure under Section 132 of the Act, 1961 at the premises of this petitioner.

(c) This Court is not sitting in appeal against the subjective satisfaction arrived at by the Income Tax Authorities for arriving at a conclusion that there are sufficient reasons to believe to carry out search and seizure at the premises of this petitioner.

(d) Suffice it will be for this Court that if there is supporting documents with a satisfaction note by the Assistant Director of Income Tax, also by Joint Director of Income Tax which is finally approved before issuance of warrant of authorization for carrying out search and seizure under Section 132 of the Act by the Director of Income Tax (Investigation), this Court cannot verify those documents, based upon which

subjective satisfaction was arrived at by the Income Tax Authorities to formulate an opinion that there are sufficient reasons to believe that a search and seizure is to be carried out. If this Court exercises its judicial review powers to open up the documents upon which an opinion was formulated by the Income Tax Authorities, perhaps, this Court will consume lots of time to understand the purpose of carrying out search and seizure and the very purpose of raid will be frustrated. This Court has no expertise knowledge of Cost Accountant and Charter Accountant or of Economist. There are varieties of methods of concealment of Income Tax. The Income Tax Department has to find out, evasion of income tax, if need arises, by carrying out raids at the premises of tax evader, on the basis of the documents on record, after formulating necessary opinion which is known in the eye of law either “satisfaction” or “reason to believe”. This Court cannot check the weightage of those documents which have been relied upon by the Income Tax Authorities, before carrying out, search and seizure and therefore, the arguments canvassed by the counsel for the petitioner that this Court must look at the materials and should find out that whether the materials are sufficient or not to formulate an opinion to carry out search and seizure, this absurd proposition therefore, is not acceptable by this Court.

(v) It has been argued out by the counsel for the petitioner that summons issued under sub Section (1A) of Section 131 of the Income Tax Act which is dated 4th May, 2010 (Annexure-3) is subsequent to the date of search and seizure which was carried out on 31st October, 2009 to 4th November, 2009. This argument is also not accepted by this Court mainly for the following reasons:

(a) The powers under Section 131(1A) can be exercised by authorized officer if he has reason to suspect that any income has been concealed and before he takes action under clauses (i) to (v) of Section 132 (1) of I.T. Act is legally flawed.

(b) There are two distinct sub sections, each with its precondition, under which the Income-tax Authorities have been given the power to issue summons. Section 131 of the

Income-tax Act has been in operation since the introduction of the Income-tax Act. Under section 131(1) the power to issue summons has been given to the officers engaged in assessment and appellate and revisionary related functions during the pendency of Income-tax Proceedings. The limitations of issuing summons during the pendency of Income-tax proceedings were recognized and sub section (1A) to section 131 was introduced by the Taxations Laws (Amendment) Act, 1975 w.e.f. 01-10-1975. Originally inserted the powers of the civil court were given to Assistant Directors of Inspection only. Circular-179 dated 30.09.1975 explains the purpose of introduction of the sub section, which is as follows:-

“At present Income-tax Officers, Appellate Assistant Commissioners, Inspecting Assistant Commissioners, and Commissioners exercise powers of discovery and inspection, enforcing attendance of persons, compelling production of books of account, etc, and issuing commissions. These powers are, however, not available to Assistant Directors of Inspection. With a view to enabling Assistant Directors of Inspection to make proper investigation in the cases entrusted to them, the Amending Act has modified the provisions of section 131 to confer on the Assistant Director of Inspection all such powers as the Income-tax Officer exercises under that section. Assistant Directors of Inspection will be able to exercise these powers in cases where there is reason to suspect that any income has been concealed or is likely to be concealed by any person or class of persons within his jurisdiction, even though no proceedings with respect of such persons or classes of persons may be pending before him or any other income-tax authority.”

(c) The sub section was amended most notably by the Finance Act, 1988 w.e.f 01-06-1988 to include other officers/class of officers. Section 131(1A) as it stands today specifies six different I.T. Authorities who can exercise action under Section 131. Five of these authorities namely the Director General of Income Tax (DGIT), the Director of Income Tax (DIT), the Joint Director of Income Tax (JDIT), the Additional Director of Income Tax (ADIT) and the Deputy Director of Income Tax (DDIT) are officers in varying hierarchy of the Investigation Wing. The other class of officer is the “Authorised Officer” under Section 132(1) of the Act. The powers under Section 131(1A) can be exercised by any officer whose name is mentioned in the warrant of authorisation before action under Section 132 is taken. It is

due to this power that the preliminary statement under Section 131 is recorded during the course of search. The clause “before he takes action under clauses (i) to (v) of section 132(1)” has a very limited application.

(d) Circular 551 dated 23-01-1990 explains the introduction of this particular clause in sub section (1A) of section 131 which is as follows:

“.....Under the old provisions of sub-section (1A) of section 131, the power of a civil court in certain matters like enforcing attendance of witnesses and examining them on oath, compelling the production of books of account and documents, etc. which are normally exercised by the Assessing Officers and appellate or revisionary authorities under the provisions of sub-section (1), were also conferred on an Assistant Director of Inspection, who generally deals with searches and seizures, and enabled him to exercise the powers even when no proceedings were pending. However, these powers were not available to the Directors and Deputy Directors, who are generally associated with investigation of cases and intelligence work in connection with searches and seizures under section 132. Another difficulty felt was that an authorised officer could record a statement on oath only during the course of search under the provisions of section 132(4). Sometimes it becomes necessary to record a preliminary statement before the commencement of the search for proper investigation. This was not possible, as the Courts had held that such a preliminary statement before the search could not be recorded under the provisions of section 132(4).....”

(Emphasis Supplied)

(e) When the Chief Commissioner of Income Tax/Director General of Income Tax/Commissioner of Income Tax/Director of Income Tax (CCIT/DGIT/CIT/DIT) issues the warrant, the Authorised Officers could be the JCIT/JDIT/DCIT/DDIT/ADIT/ACIT/ITO. Similarly when the Addl. DIT/JDIT issues the warrant the authorised officers could be the DCIT/DDIT/ADIT/ACIT/ITO.

(f) Thus an **“Authorised Officer”** could be an officer engaged in assessment related work or an Income-Tax Officer. It must be emphasized that these officers, in contradistinction to DDIT/ADIT do not have any power to issue summons other than before the commencement of search and seizure action.

The powers given to the five hierarchical officers of the Investigation Wing are not encumbered by the situation of the Authorised Officers. The works **“referred to in sub-**

section (1) of section 132 before he takes action under clauses (i) to (v) of that sub-section” in sub-section (1A) of section 131 qualify the words 'authorised officer' only to exclusion of other five specified authorities named in the section. The said conclusion can be arrived at after interpreting the first and the second commas (,) of section 131(1A). This interpretation has been judicially affirmed by the High Court of Madhya Pradesh in *Classic Builders & Developers v. Union of India* [2001] 251 ITR 492 (MP).

(g) Section 132(4) authorises the “**Authorised Officer**” to examine on oath any person who is found to be in possession or control of any books of account, documents or any valuable articles. It did not empower the recording of the statement of a person who had not yet been found to be in possession of documents or valuable articles. The preliminary statements of the occupants of the premises or of any person, before the commencement of search, could not be recorded under Section 132(4) of the Act. It was to get over this handicap that the “Authorised Officers” were empowered to issue summons prior to the commencement of search and seizure action by the Finance Act, 1988, which has been explained by Circular-551 dated 23-01-1990.

(h) Form-45 of the Income-tax Rules, 1962 which specifies the format of warrant, is of particular relevance. The form mentions the instances of the issue of summons. The summons is required to be issued by three classes of Assessing Officers viz: The DCIT, the ACIT and the ITO. The warrant therefore presupposes the issue of summons/notice during the course of assessment proceedings as the power to issue summons, without the pendency of proceedings has not been given to the Assessing Officers. Reading both section 132 and Form-45 makes it amply clear that issue of summons under Section 131(IA) is not even discussed in section 132 and therefore no argument can be taken that summons cannot be issued under Section 131(1A) after the completion of the search proceedings.

The non-compliance of summons issued during the course of assessment proceedings is only one of the pre-conditions that are required to be fulfilled before the issue of a search warrant. Any one of the three pre-conditions mentioned u/s 132 is required to be fulfilled. The cumulative fulfillment of all the three preconditions is not mandated under Section 132 of the Act.

In section 132 the issue of summons under Section 131(1) and the issue of notice under Section 142(1) have been mentioned together. Since contextually both are together so also is their fate. If one fails, so would the other. If summons [sub section has not been mentioned] cannot be issued after the conduct of the search then notice under Section 142(1) cannot also be issued after the conduct of search. If this argument is extended then, assessment under Section 153A of the Act also gets affected. Assessing Officers then would be precluded from asking any question during the course of assessment. Such an interpretation will render section 132 toothless.

(i) It has further been argued that as section 132 mandates reason to believe to issue the warrant, therefore, issue of summons on the basis of reason to suspect is retrograde. **“Reason to believe”** stands at a higher footing than **“reason to suspect”**. Generally speaking reason to believe comes after reason to suspect and is supported by some evidence or the other. The argument therefore, that once reason to believe has been formed [i.e. prior to the issue of warrant] no reason to suspect can be formed is incorrect, inconsistent and beset with many fatal complications, if the argument is agreed upon, it would mean that although a summons can be issued only upon suspicion, one would be precluded from doing so if there were some evidence to support the suspicion.

(j) Therefore, the powers under Section 131(1A) given to the five specified authorities are not hindered by the conduct of search. It can be invoked both before and after the conduct of the search.

(k) The above view has been taken by Hon'ble the Gujarat High Court in the case of **Arti Gases Vs Director of Income-tax [2001] 248 ITR 55[Guj]**. The Court in this case has examined the Circular No-551 dated 23-01-1990 at para-16 of the judgment and has concluded that the issue of notice under Section 131(1A) of the Act prior to or subsequent to the search is perfectly legal. This view has been further affirmed by a subsequent judgment of the Gujarat High Court in the case of **Neesa Leisure Limited & ANR v Union of India (2011) 245 CTR (Guj) 634**.

(l) In **Mamchand & Co. Vs CIT [1968] 69 ITR 631 [Cal]**, the High Court has held that section 132 is a comprehensive code in itself. The operative part of the judgment is reproduced as under:

“The next contention of the learned Advocate-General was that it was argued on behalf of the petitioners that fulfillment of the conditions in section 131 of the Act was a condition precedent to the issue of a warrant of authorisation under section 132 of the Act. In other words, the learned Advocate-General submitted, that it was contended on behalf of the petitioner that the offices of the income-tax department had the same powers as were vested in a civil court under the Civil Procedure Code with regard to discovery and inspection of documents, compelling production of books of account and other documents, etc. So far as civil court is concerned, discovery, inspection and production of documents could be directed only with regard to particular documents which are specified in the order, and not with regard to all the documents in the possession of a party. The learned Advocate-General submitted that matters dealt with in sections 131 and 132 of the Act were entirely different and that section 131 was not an adjunct of section 132. Section 131 of the Act, it was argued, related to the power regarding discovery production of evidence, etc., while section 132 of the Act dealt with search and seizure. It was submitted that it could not, therefore, be argued that the condition in which a civil court could direct production and inspection of documents should be treated to be condition precedent which must be fulfilled before a warrant of authorisation was issued by the Commissioner of Income-tax. Sections 131 and 132 of the Act, it was argued, were not supplementary to each other in view of the matters and circumstances contemplated by the two sections, which were entirely different in nature and scope. In my opinion, there is a good deal of force in this contention of the learned Advocate-General. Section 132 of the Act is a comprehensive code in itself and the conditions upon which and the circumstances in which warrants of authorisation could be issued, have been set out in great detail in that section.”

(Emphasis Supplied)

(m) It may be kept in mind that during the search and seizure several documents are being seized. These documents are to be analysed and thereafter, a summon will be issued either by the Director General or by Director or by Joint Director or by Assistant Director or by Deputy Director. This provides one more opportunity to the person at whose premises the raid is carried out to explain the sources of his income. This also provides an opportunity to a person who has concealed the income to prefer application before the Settlement Commissioner under Section 245C of the Income Tax Act, 1961. Nothing is wrong in issuing such type of notices or summons even after the search and seizure is carried out.

(n) In the facts of the present case also the search and seizure was carried out during 31st October, 2009 to 4th November, 2009. Lot of documents were seized. Analysis whereof took some time due to paucity of staff. Like other departments, Income Tax Department has lot of vacancies. After some time, summon was issued by the Assistant Director of Income Tax under sub Section (1) of Section 131 dated 4th May, 2010. This provides an opportunity to explain source of income or to go before the Settlement Commission under Section 245C.

In view of the aforesaid reasons, the summons issued by the Assistant Director of Income Tax dated 04.05.2010 (Annexure-3 to the memo of this writ petition) is absolutely legal and it can also be issued even after the search and seizure is carried out. The aforesaid summons issued by the Assistant Director of Income Tax (Investigation), Ranchi is for enforcing the attendance which is permissible under Section 131 (1)(b) of the Act, 1961.

(vi) Moreover, this writ petitioner has also preferred application before the Settlement Commission on 16th July, 2012 under Section 245C of the Act, 1961. Thereafter, the Settlement Commission passed an order under Section 245D(4) of the Act, 1961 dated 27th January, 2014 to the effect that there is no “true and full disclosure”

of the income nor in the application preferred by this petitioner under Section 245C the manner in which such income has been derived is given. For this reason the final order was passed by the Settlement Commission, thereafter Assessing Officer has already passed an order dated 28th March, 2014 and assessment is arrived at Rs. 4.65 crores approximately of the income which is to be paid by this petitioner against which an appeal is preferred by this petitioner which is pending before the Commissioner of Income Tax (Appeal). These facts reveals that there is sufficient materials with the Income Tax Authorities which has provided reason to believe to these authorities to carry out search and seizure because this petitioner has preferred an application before the Settlement Commission under Section 245C. Normally this type of applications are being preferred by those assessee who have not disclosed their huge income. This applicant has also preferred such type of “*repent application*” which was ultimately not accepted by the Settlement Commission as there was no “full and true disclosure” of income nor the application under 245C had been given, the manner in which such income has been derived. “This repentance application” which is known in the eye of law an application under Section 245C of the Income Tax Act, 1961 justifies the search and seizure carried out by the respondents at the premises of this petitioner under Section 132 of the Act, 1961.

(vii) For this reason it appears that this writ petition has been preferred with all ulterior motive to cause delay in finalisation of process of payment of the income tax. Even the application preferred before the Settlement Commission was an afterthought just to cause delay in payment of true and correct income tax. Evey type of proceedings has been misused by this petitioner either by way of this writ petition or which was available before the Settlement Commission as there was not true and correct disclosure of the income by this petitioner.

(viii) It has been held by Hon'ble High Court of Gujarat in **Arti Gases vs Director of Income-Tax (Investigation)** reported in [2001] 248 ITR 55 (Guj.) in paragraph no. 16 as under:-

“16. We have considered the rival submissions made by the learned advocates. We have also perused Circular No.551, dated January 23, 1990, referred to by the learned advocate, Shri Puj. Upon considering the rival submissions, we are of the view that

the notices under Section 131(1A) can also be issued after completion of the search undertaken under the provisions of Section 132 of the Act. In our opinion, it would be absolutely logical to call for information so as to have better particulars or to have a complete idea about the material seized during the search. If some material is seized at the time of the search and the authorised officer wants to have some details so as to understand the nature of the documents, he may issue notice under Section 131(1A) of the Act. In our opinion, in a given case such a notice cannot only help the Department but can also help the assessee. If the assessee is in a position to give more explanation so as to satisfy the authorised officer that the documents seized by him do not reveal any undisclosed income, but the income or transactions referred to in the documents had been duly shown by him in his books of account or if the assessee gives any information to the effect that the first impression of the authorised officer with regard to the nature of the documents was not correct, we are sure that such a notice would help the assessee himself. If the assessee is called upon to give some information or to explain certain documents or writings seized during the process of search, in our opinion, no harm can be caused to the assessee and as stated hereinabove, such particulars can be helpful not only to the Department but to the assessee also. We, therefore, do not agree with the submissions made by the learned advocate, Shri Puj, that such a notice can be issued only before initiation of proceedings under Section 132 of the Act. Moreover, even under the provisions of Section 133 of the Act, the Assessing Officer or the officers referred to in the said section are having power to call for information. So issuance of such a notice during or after the search cannot be said to be bad in law”

(Emphasis Supplied)

(ix) It has been held by Hon'ble Gujarat High Court in **Neesa Leisure Ltd. & Anr Vs. Union of India & Ors** reported in [2011] **338 ITR 460 (Guj)** paragraph no. 11 as under:-

“11. In this regard, it may be pertinent to note that in the concluding sub-para of para 3 of the petition, it has been averred that after search, the Asstt. Director of IT, in-charge of search operations has issued several notices under s. 131(1A) to the persons searched for production of books of accounts and other information, which are already with him in the seized books of accounts and document. In paragraph 7 of the petition it has been averred thus: “The IT authorities have issued several notices under s. 132(1A)(sic) calling upon the petitioners and its officers to produce books of accounts and documents which are in fact in his own possession seized during the course of search. These notices are illegal inasmuch as the notice under s. 131(1A) can be issued only before action under s. 132(1) is taken. Such notices issued after conducting the search are illegal.” Copies of some of the notices under s. 131(1A) of the Act have been placed on record along with the affidavit dt. 16th Oct., 2010 made by the petitioner No. 2. A perusal of the prayer clause indicates that there is no challenge to the said notices. In the circumstances, there is no question of going into the validity of the said notices. Moreover, the said issue already stands concluded in favour of the Revenue by the decision of this High

Court in the case of *Arti Gases v. Director of IT (Inv.)* (supra), wherein the Court has held thus: “In our opinion, it would be absolutely logical to call for information so as to have better particulars or to have a complete idea about the material seized during the search. If some material is seized at the time of the search and the authorised officer wants to have some details so as to understand the nature of the documents, he may issue notice under s. 131(1A) of the Act. In our opinion, in a given case such a notice cannot only help the Department but can also help the assessee. If the assessee is in a position to give more explanation so as to satisfy the authorised officer that the documents seized by him do not reveal any undisclosed income, but the income or transactions referred to in the documents had been duly shown by him in his books of account or if the assessee gives any information to the effect that the first impression of the authorised officer with regard to the nature of the documents was not correct, we are sure that such a notice would help the assessee himself. If the assessee is called upon to give some information or to explain certain documents or writings seized during the process of search, in our opinion, no harm can be caused to the assessee and as stated hereinabove, such particulars can be helpful not only to the Department but to the assessee also. We, therefore, do not agree with the submissions made by the learned advocate, Shri Puj that such a notice can be issued only before initiation of proceedings under s. 132 of the Act. Moreover, even under the provisions of s. 133 of the Act, the AOs or the officers referred to in the said section are having power to call for information. So issuance of such a notice during or after the search cannot be said to be bad in law”.

The main plank of the submissions advanced by the learned counsel for the petitioners was that issuance of notices under s. 131(1A) of the Act subsequent to the search proceedings was fatal and would render the search proceedings invalid even if the requisite satisfaction had been recorded prior to issuance of authorization under s. 132(1) of the Act. This Court does not find any merit in the said contention, inasmuch as if there is sufficient and tangible material available on record, prior to the search, based on which the concerned officer has formed the requisite belief under s. 132(1) of the Act, merely because certain other information has been sought for by the authorised officer or any of the officers mentioned in s. 131(1A) of the Act, the same would not render the search proceedings invalid. Even if the contention raised on behalf of the petitioners were to be accepted, viz., the authorised officer does not have any power to issue notices under s. 131(1A) of the Act post-search, the same at best would render the notices invalid. But issuance of notices under s. 131(1A) of the Act post-search would not in any manner render the proceedings under s. 132 of the Act invalid, if they were otherwise initiated pursuant to a valid authorization issued after recording satisfaction on the basis of the material available on record. It is difficult to fathom as to how the satisfaction recorded by the Director General of IT (Inv.) on the basis of the material on record, would be rendered invalid merely because the Asstt. Director of IT(Inv.) has subsequently issued notices under s. 131(1A) of the Act. As noted hereinabove, the notices under s. 131(1A) of the Act are not subject-matter of challenge in the present petition, hence, it is not necessary to examine the

validity of such notices.”

(Emphasis Supplied)

In view of the aforesaid decisions, no illegality has been committed by the respondents in issuing the summons under sub Section (1A) of Section 131 of the Act, 1961.

10. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, there is no illegality committed by the respondents in carrying out search and seizure under Section 132 of the Act, 1961 nor any illegality has been committed in issuing summons dated 4th May, 2010 (Annexure-3) compelling the attendance under sub section (1A) of Section 131 the Act, 1961. There is no substance in this writ petition, hence the same is hereby, dismissed.

(D.N. Patel, J.)

(Ratnaker Bhengra J.)