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Reserved

Civil Misc. Writ Petition (Tax) No.451 of 2012

Harbhajan Singh Chadha And Others Petitioner
Vs.

Director Of Income Tax And Others Respondents

Hon'ble Tarun Agarwala, J.

Hon'ble Dr. Satish Chandra, J.

(Per: Tarun Agarwala, J.)

(Delivered on 27th March, 2015)

The petitioners have filed the present writ petition praying for the quashing of the search and seizure operations initiated against the petitioners by the respondents under Section 132 of the Income Tax Act (*hereinafter referred to as the Act*) in consequence of a search warrant, which was not issued in the name of the petitioners. The petitioners have also prayed that all the properties, cash, jewellery and other movable properties including books of account and other documents so seized from the petitioners premises including bank lockers should be released.

The facts leading to the filing of the writ petition is, that a warrant of authorization dated 31st January, 2012 under Section 132 of the Act was issued by the Director

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of Income Tax, Intelligence New Delhi, respondent no.1. This warrant of authorization under Section 132 of the Act was in the name of Gurdeep Singh Chaddha (Ponty), Rajendra Singh Chaddha, Hardeep Singh Chaddha, all sons of Late Sri Kulwant Singh and brother of petitioner no.1 as well as in the name of Ginni Chaddha, S/o Sri Narendra Singh Chaddha, brother of petitioner no.1 and M/s G.S. HUF. Based on this warrant of authorization, a search and seizure operation was conducted on 1st February, 2012 by the Assistant Director of Income Tax, Intelligence and Criminal Investigation ND, respondent no.2 on 1st February, 2012 at premises no.455, Civil Lines, Moradabad. Petitioner no.1 is the father of petitioner nos.2 and 3. Petitioner nos.4, 5 and 6 are wives of petitioner nos.1, 2 and 3. Petitioner no.7 is the son of petitioner no.2 and petitioner no.8 is the wife of petitioner no.7. On the basis of the search conducted on 1st February, 2012 and the materials seized, the respondent issued a letter to the banks on the basis of which the bank accounts and lockers were seized/attached on 2nd February, 2012 based upon consequential warrant of authorisation under Section 132 of the Act dated 1st February, 2012 issued by the Additional Director.

It is alleged that the petitioners are jointly residing on the 1st floor of the building situate at House No.455, Civil Lines, Moradabad. The petitioners further contend that the kitchen of the petitioners is common. The petitioners contend that plot No.455, Civil Lines,

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Moradabad was purchased jointly in the name of six persons, namely, Late Sri Gurbachan Singh (father of petitioner no.1), Late Kulwant Singh, Harbhajan Singh (petitioner no.1), Late Surinder Singh, Late Gurbax Singh and Surjeet Singh, who are sons of Late Gurbachan Singh. Over a period of time a residential house was constructed and, it is alleged, that the petitioners started residing on the first floor. Other portions of the residential building was occupied by other co-owners.

The petitioners contended that there is no partition by metes and bounds of the premises in question between the co-owners and, by a mutual arrangement, each co-owner is residing and living in their residential portions along with their family. It is alleged that each portion of the residential complex has a separate electric connection. The petitioners, however, admit that there is a common entrance, common car parking and the guard room is also common. However, the name plates of each co-owner is shown at the main gate as well individual names are affixed at the entrance of their residential portion.

We have heard Sri S.P. Gupta, the learned Senior Counsel alongwith Sri Rakesh Ranjan Agarwal, the learned Senior Counsel, Sri Pramod Agarwal and Sri Suyash Agarwal, the learned counsel for the petitioners and Sri Bharat Ji Agarwal, the learned Senior Counsel alongwith Sri Ashok Kumar, the learned counsel for the Income Tax department.

Sri S.P. Gupta, the learned Senior Counsel contended that the warrant of authorization was not issued in the name of the petitioners and, therefore, the search and seizure operations carried out at their premises was wholly illegal, void and liable to be quashed. The learned Senior Counsel contended that there was no material to initiate search and seizure operation against the petitioners at their premises and, consequently, the respondents have proceeded illegally without any application of mind. Further, no such material or reasons to believe has been produced before the Court to justify their action. The learned counsel contended that the search was only conducted at the premises of the petitioners and not at the premises of the persons mentioned in the warrant of authorization. It was urged that based on this illegal search, the petitioners' bank accounts and lockers were seized or attached illegally which action was also liable to be quashed by the Court as no search warrant was served by the respondents relating to lockers of the petitioners. It was urged that there was no material or information on the basis of which the lockers of the petitioners were seized and, therefore, the action of the respondents was wholly illegal and without jurisdiction.

In support of his submissions, the learned Senior Counsel has placed reliance on ***Jagmohan Mahajan and another Vs. Commissioner of Income Tax, Punjab and others, 103 ITR 579, Manmohan Krishan Mahajan Vs. Commissioner of Income Tax, Patiala***

and others, 107 ITR 420, Ajit Jain Vs. Union of India and others, 242 ITR 302, Commissioner of Income Tax Vs. Rohini Walia, 289 ITR 328, Commissioner of Income Tax Vs. Ram Singh, 351 ITR 391 and Smt. Kavita Agarwal and another Vs. Director of Income Tax (Investigation) and others, 264 ITR 472.

On the other hand, the learned Senior Counsel for the department, Sri Bharat Ji Agarwal justified the action of the department in conducting the search at the premises mentioned in the warrant of authorization. The learned Senior Counsel contended that the search was conducted at premises No.455, Civil Lines, Moradabad which is one composite property and has not been partitioned by metes and bounds nor was there anything to show that each person mentioned in the warrant of authorization as well as the petitioners had separate identifiable portions. The statements of the petitioners recorded under Section 132(4) does not indicate that the petitioners' portion was separate. On the other hand, the petitioners themselves admit that there is a common entrance to premises No.455 and there is common parking lot and a common guardroom. The learned Senior Counsel submitted that the search was conducted at the residential premises at 455, Civil Lines, Moradabad as well as the business premises at Chaddha Palace, Prince Road, Moradabad on the basis of a warrant of authorization dated 31st January, 2012 after recording the satisfaction separately. The learned Senior Counsel submitted that the jewellery seized was

released subsequently on 16th February, 2012 upon taking a bank guarantee. It was further contended that the petitioners have a business link with Gurdeep Singh Chaddha (Ponty) in a company named GSR Granites (P) Ltd. in which some of the petitioners are Directors and share the same address. The learned Senior Counsel further placed reliance on the provision of Section 292CC of the Act, which was inserted by the Finance Act, 2012 w.e.f. 1.4.1976 in which a provision has been incorporated that it was not necessary to issue a warrant of authorization in the name of each person.

In support of his submissions, the learned Senior Counsel has placed reliance on ***Dr. Pratap Singh and another Vs. Director of Enforcement and others, 155 ITR 166*** and ***Takshila Educational Society Vs. Director Of Income-Tax (Investigation) and others, 272 ITR 274.***

Having heard the learned counsel for the parties, we find that a search is necessary to secure evidence, which is not likely to be made available by issue of summons. Tax authorities have to resort to search and seizure when there is evidence of undisclosed documents or assets which have not been and would not be disclosed in ordinary course. Section 132 of the Act read with Rule 112 of the Rules is intended to achieve two limited objectives, namely, to get hold of evidence bearing on the tax liability of a person which the said person is seeking to withhold from the assessing authority and to get hold of assets

representing income believed to be undisclosed income and applying so much of them as may be necessary in discharge of the existing and anticipated tax liability of the person concerned. Section 132 of the Act envisages to unearth the hidden or undisclosed income or property and bring it to assessment.

However, a search which is conducted under Section 132 of the Act is a serious invasion into the privacy of a citizen. Section 132(1) of the Act has to be strictly construed and the formation of the opinion or reason to believe by the Authorising Officer must be apparent from the note recorded by him. The opinion so recorded must clearly show whether the belief falls under clause (a), (b) or (c) of Section 132(1) of the Act. No search can be ordered except for any of the reasons contained in clause (a), (b) or (c). The satisfaction note should itself show the application of mind and the formation of the opinion by the officer ordering the search. If the reasons, which are recorded, do not fall under clause (a), (b) or (c), in that event, the authorisation issued under Section 132(1) will become illegal and will have to be quashed as held in ***L.R. Gupta and others Vs. Union of India and others, 194 ITR 32.***

In order to attract clause (c) of Section 132(1) of the Act, there must be “information” with the authorising authority relating to two matters, namely, that any person is in possession of money, etc. and secondly, that such money, etc. represents either wholly or partly

income or property, which has not been or would not be disclosed for the purposes of the Act. The search would be valid if the authorising authority had reasonable ground for believing that a search was necessary and that he further believes that the required object cannot otherwise be obtained without undue delay. In our opinion, clause (a), (b) and (c) of Section 132(1) of the Act spells out the circumstances under which authorising authority may issue a warrant of authorisation. Such authorisation is possible only if the authorising authority in consequence of information in his possession has reason to believe the existence of the circumstances enumerated in clause (a), (b) and (c) of Section 132(1) of the Act.

In order to justify the action under Section 132, it is incumbent upon the authority to collect relevant material on the basis of which, the authority can form an opinion that he has reasons to believe that an action under Section 132 of the Act would be justifiable. The expression “information” must be something more than a mere rumour, gossip or hunch. There must be some material, which can be regarded as “information”, which must exist on the file, on the basis of which the authorising officer can have “reason to believe” that an action under Section 132 of the Act is called for any of the reasons mentioned in clause (a), (b) and (c).

We are also of the opinion that merely by alleging that the authority had no “information” nor reason to believe by itself is not sufficient to challenge the action

taken by the authority under Section 132 of the Act. The contention that whenever the action under Section 132 of the Act is challenged, the authority empowered to issue a search warrant should be called upon to disclose information on the basis of a mere denial by the petitioner of a valid information in the possession of the department would frustrate the whole scheme of Section 132 of the Act. Only where the petitioner furnishes adequate and cogent material in support of his denial of a valid information that the court can justifiably call upon the department to disclose the information. We may make it clear that the disclosure of the material or information to the persons against whom action under Section 132 of the Act is taken is not mandatory because in our opinion the very disclosure would affect or hamper the investigation. The person against whom the action is to be taken would be supplied all the relevant facts and materials on which further action is proposed after investigation is completed. The stage of disclosure consequently is given only when the authority resolves to make an appropriate order to impose tax liability or penalty, etc. and, at that stage, relevant material would be disclosed.

The words “has reasons to believe” as provided in Section 132(1) of the Act postulates a belief and existence of reasons for that belief. The belief must be held in good faith: it cannot be a mere pretence. Such belief should not be based on mere suspicion but must be based on information which is in the possession of

the authorising authority. The formation of the belief within the meaning of Section 132(1) is a condition precedent to the authorisation of search and seizure. It is basically a subjective step essentially to make up one's mind as to whether on the basis of information available he had or had not formed the reasons to believe. This belief, cannot be a mere pretence nor can it be a mere doubt or suspicion but has to be something more than that.

In the light of the aforesaid, a warrant of authorisation issued by an authorising authority under Section 132 of the Act can authorise the Authorised Officer to enter and search any building, place, vessel, vehicle, etc. where he has reasons to believe that such books of accounts, documents, money, bullion, jewellery or other valuable articles or things are kept. The authorising authority is under law expected to sign a warrant of authorisation, which is complete in all aspect. The warrant of authorisation should be in the name of the persons whose premises, etc. are sought to be searched. When it is not clear whether one or more persons are in occupation or control of the premises, it would be safe and proper to issue the authorisation against all the unknown persons, who may be owners or in possession of the articles and occupiers of the premises.

In the light of the aforesaid position of law, we find that in the instant case there is no challenge on the question that the warrant of authorisation was not issued

by the competent authorising authority. The petitioners' however, contend that the warrant of authorisation was not issued in their names and, therefore, the search conducted at their premises was wholly illegal and without jurisdiction. In the first blush, the proposition appears to be attractive but on a closer scrutiny, we find that the contention cannot stand the test of scrutiny. Admittedly, the warrant of authorisation under Section 132 of the Act was issued in the name of Gurdeep Singh Chaddha (Ponty), Rajendra Singh Chaddha, Hardeep Singh Chaddha, all sons of Late Sri Kulwant Singh and brother of petitioner no.1 as well as in the name of Ginni Chaddha, S/o Sri Narendra Singh Chaddha, brother of petitioner no.1 and M/s G.S. HUF. The warrant of authorisation indicated the premises where the search and seizure operation was to be conducted, namely, premises no.455, Civil Lines, Moradabad. It is not in dispute that the warrant of authorisation issued in the name of the aforesaid persons were not the residents of the premises in question. Some of them were co owners. Consequently, we are of the opinion that the petitioners' cannot question the validity or legality of the issuance of the warrant of authorisation in the name of Gurdeep Singh Chaddha (Ponty) and others, on the basis of which, search and seizure operations was conducted at the premises no.455, Civil Lines, Moradabad. We are also of the opinion that the petitioners' cannot allege that there was no "information" or "reasons to believe" warranting the issuance of the

warrant of authorisation under Section 132 of the Act since the petitioners' name was not mentioned in the warrant of authorisation. Only the persons mentioned in the warrant of authorisation can allege that the action taken under Section 132 was wholly illegal based on no information and having no reasons to believe or that no satisfaction was recorded on the file.

Since the persons mentioned in the warrant of authorisation are not before this Court, it is not necessary for us to go into the question whether there was sufficiency of material or existence of information with the authorising authority, which led the authorising officer to have a reason to believe that an action under Section 132 of the Act was called for any of the reasons mentioned in clause (a), (b) or (c) of Section 132 of the Act. We are of the opinion that persons mentioned in the warrant of authorisation alone can contend that on the facts or information disclosed, action under Section 132 of the Act was wholly illegal.

The petitioners' contend that they are living on the first floor of premises no.455, Civil Lines, Moradabad and that their residence was illegally searched and, therefore, the action of the respondents was wholly illegal and the search and seizure conducted was liable to be quashed. We find that admittedly, premises no.455, Civil Lines, Moradabad was purchased jointly in the name of six persons, namely, Late Sri Gurbachan Singh (father of petitioner no.1), Late Kulwant Singh, (Harbhajan Singh) petitioner no.1, Late Surinder Singh,

Late Gurbax Singh and Surjeet Singh, who are all sons of Late Gurbachan Singh. We find that the property is still joint and no partition by metes and bounds has taken place. The petitioners' themselves admit that there is a common entrance, common car parking and a common guard room. We find that the statements of the petitioners were recorded under Section 132(4) of the Act which does not disclose that the premises no.455, Civil Lines, Moradabad was partitioned by metes and bounds. Once a valid warrant of authorisation is issued, the search has to be conducted at the premises in question, namely, premises no.455, Civil Lines, Moradabad. No doubt, while searching the premises of the persons mentioned in the warrant of authorisation the portion occupied by the petitioners' were also searched, which in our opinion was valid and proper since premises no.455, Civil Lines, Moradabad had not been partitioned by metes and bounds. In such a situation when there was no authorisation in respect of the petitioners' premises, the search and seizure operations would not be held to be illegal and we are of the opinion that the provisions of Section 158BD of the Act would be attracted. For facility, the provision of Section 158BD is extracted hereunder:-

“ Undisclosed income of any other person.

158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132 or whose books of account or other documents or any assets were

requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and the provision of this Chapter shall apply accordingly.”

From the aforesaid it is clear that the jurisdiction to assess the undisclosed income, if any, of the petitioners' on the basis of the search vests in the assessing officer by virtue of the provisions of Section 158BA of the Act in case where a search under Section 132 of the Act is initiated. Such assessment is to be carried out in respect of undisclosed income of a person, who was not issued a warrant of authorisation by invoking the provisions of Section 158BD. We are of the opinion that even though no warrant of authorisation was issued against the petitioners' under Section 132 of the Act, nonetheless, the search conducted against them was wholly valid for the reasons stated aforesaid.

Pursuant to the search conducted on the first day, the respondents found various bank accounts and lockers of the petitioners' and, based on the search, fresh warrant of authorisation for searching the lockers was obtained on 1st February, 2012. The contention of the petitioners that there was no material or information with the authorising authority to believe that there was money, jewellery, etc. in the lockers and, therefore, the action of the respondents was wholly illegal is bereft of merit. It may be noted here that only a bald assertion

has been made in para 59 of the writ petition which paragraph has been sworn on legal advice. Such assertion based on legal advice without making the foundational assertion cannot be investigated. Making such allegation without corroborative support is by itself not sufficient to challenge the action taken by the authority under Section 132 of the Act, nor can the Court call upon the authority to disclose the information on the basis of an allegation made on legal advice. Since the petitioners did not furnish adequate and cogent material, we are not inclined to call the respondents to disclose the information. We are also of the opinion, that in the given circumstances, information received on the first date of the search by itself caused a reasonable belief for issuance of the warrant of authorisation against the petitioners' for search of their lockers. Such search conducted and the lockers seized on 2nd February, 2012, on the basis of the search conducted on 1st February, 2012 was perfectly valid.

In the light of the aforesaid, we are of the opinion that the writ petition is devoid of merit and is dismissed.

In the circumstances of the case, parties shall bear there own costs.

Date:27.3.2015

Bhaskar

(Dr. Satish Chandra, J.) (Tarun Agarwala, J.)