

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 14.11.2014

+ **W.P.(C) 7639/2014 & CM 18004/2014**

OM FINCAP PVT. LTD

..... Petitioner

versus

COMMISSIONER OF INCOME TAX-III, & ORS

..... Respondents

+ **W.P.(C) 7640/2014 & CM 18006/2014**

PAWAN KUMAR DHINGRA

..... Petitioner

versus

COMMISSIONER OF INCOME TAX-III & ORS

..... Respondents

+ **W.P.(C) 7642/2014 & CM 18020/2014**

OM PRAKASH DHINGRA

..... Petitioner

versus

COMMISSIONER OF INCOME TAX-VII, & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Salil Kapoor with Mr Vikas Jain

For the Respondents : Mr Rohit Madan with Mr P. Roy Chaudhuri and
Mr Akash Vajpai

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. These writ petitions arise out of common sequence of events and are, therefore, being disposed of together, the main writ petition being WP(C) 7642/2014 (Om Prakash Dhingra v. CIT and Others). In that petition, there is a prayer for quashing the warrant of authorization dated 15.05.2013 and the consequent search conduct on 23.05.2013 under Section 132 of the Income Tax Act, 1961. A prayer has also been made for quashing all the subsequent events including the order dated 18.09.2013 under Section 127 of the said Act as also the *Panchnamas* dated 24.05.2013, 23.05.2013 and 14.06.2013. Similar prayers have been made in the other two writ petitions.

2. Mr Om Prakash Dhingra is a director in Om Fincap Private Limited and Pawan Kumar Dhingra, who is the petitioner in WP(C) 7640/2014, is the son of Om Prakash Dhingra and is also a director in Om Fincap Private Limited. The latter company is the petitioner in WP(C) 7639/2014. The relevant file was produced by Mr Madan appearing on behalf of the Income Tax Department. We have seen the original Form No. 45, which is the warrant of authorization under Section 132 of the said Act. The said warrant has been issued in the name of “Shri Om Prakash” and the address given is – “J-6/15, DLF City-II,

Gurgaon. Mr Madan has also handed over a letter dated 10.11.2014 which has been issued to him by the Assistant Commissioner of Income Tax, Central Circle, Noida in connection with WP(C) 7639/2014 titled Om Fincap Private Limited v. CIT and Others. He has received similar letters in respect of the other two writ petitions also. The said letter is taken on record.

3. On going through the said letter, it appears that the search was conducted essentially in respect of the Premia Group and its group companies. Elevate Real Estate Services Private Limited is one such group company of the Premia Group in which the directors, *inter alia*, include one Shri Om Prakash. The residential address of Shri Om Prakash was given as J-6/15, DLF City-II, Gurgaon. It is for this reason that the search was conducted at the above address on 23.05.2013. Further searches were conducted at the office premises of Om Fincap Private Limited and the locker belonging to Mr Pawan Kumar Dhingra.

4. The learned counsel for the petitioners stated that the searches that were conducted at the above mentioned locations were on the basis of a mistaken identity. The petitioners contend that Mr Om Prakash Dhingra

is not the person in respect of whom the Income Tax Department intended to conduct the search. This is so because Mr Om Prakash Dhingra is neither a director in Elevate Real Estate Services Private Limited nor is he in any way connected with the Premia Group. The confusion has arisen because one of the directors in Elevate Real Estate Services Private Limited was also one Mr Om Prakash, whose full name was Om Prakash Duggal. Coincidentally, the said Mr Om Prakash Duggal was earlier also a resident of J-6/15, DLF City-II, Gurgaon.

5. The learned counsel for the parties are agreed that Mr Om Prakash Dhingra and Mr Om Prakash Duggal are two different persons as their parentage is entirely different and they are holders of two different PAN numbers. Shri Om Prakash Dhingra has a PAN Card bearing No. ADIPD 5137A. The name of his father is late Sh. Bhagwan Das. Insofar as Mr Om Prakash Duggal is concerned, his PAN Number is BNMPP 5846B. His father's name is Ram Kumar. It is, therefore, obvious that Shri Om Prakash Duggal and Shri Om Prakash Dhingra are two different persons.

6. Furthermore, Mr Om Prakash Dhingra has no connection with Elevate Real Estate Services Private Limited and consequently with the Premia Group. As such, the search that was conducted in the premises of Mr Om Prakash Dhingra as also in the office premises of Om Fincap Private Limited and the locker belonging to Mr Pawan Kumar Dhingra was a clear case of a *bona fide* mistake of identity on the part of the Income Tax Authorities.

7. Be that as it may, the fact remains that the warrant of authorization dated 15.05.2013 did not, in fact, relate to Mr Om Prakash Dhingra. Consequently, the search operations conducted in the aforesaid locations would be without the authority of law. We are making it clear that we are not quashing the warrant of authorization dated 15.05.2013 as it now stands clarified that it does not relate to Mr Om Prakash Dhingra but to Mr Om Prakash Duggal. The Income Tax Department would be at liberty to proceed with the warrant of authorization in accordance with law insofar as Mr Om Prakash Duggal is concerned. Subject, of course, to any rights which the latter may have in law. But, insofar as Mr Om Prakash Dhingra and the other petitioners are concerned, the search operations are held as *non est* and all subsequent events pursuant thereto

are also declared as *non est*. The order passed under Section 127 of the Income Tax Act on 18.09.2013 is also set aside.

8. The writ petitions are allowed as above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

**NOVEMBER 14, 2014
SR**

SIDDHARTH MRIDUL, J

