

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No.11899 of 2000

For Approval and Signature:

HONOURABLE MS. JUSTICE HARSHA DEVANI
HONOURABLE MR. JUSTICE R.M.CHHAYA

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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PRAKASH JAICHAND SHAH - Petitioner(s)

Versus

DIRECTOR OF INCOME TAX (INVESTIGATIONS) & 3 - Respondent(s)

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Appearance:

MR JP SHAH for Petitioner(s): 1,
MR KM PARIKH for Respondent(s): 1 - 4.

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CORAM : HONOURABLE MS. JUSTICE HARSHA DEVANI

and

HONOURABLE MR. JUSTICE R.M.CHHAYA

Date : 27/04/2012

CAV JUDGMENT
(Per : HONOURABLE MS. JUSTICE HARSHA DEVANI)

1. By this petition under Article 226 of the Constitution of India, the petitioner has challenged warrant of authorisation dated 25th July, 2000 issued by the Director of Income Tax (Investigations) – respondent No.1 herein in favour of the Deputy Director of Income Tax (Investigations), Unit – III (3) - respondent No.2 herein as well as the order under section 132A dated 18th August, 2000. The petitioner also seeks a direction to the respondents to return forthwith to the petitioner the seized amount of Rs.11 lakhs with interest thereon at the rate of 15% from the date of seizure thereof till the date of repayment.

2. The facts of the case as stated in the petition are that the petitioner herein is a resident of Bhuj and has been working as a cotton broker. On 25th July, 2000, he was carrying with him cash of rupees eleven lakhs collected from Ahmedabad in respect of the sale of cotton through him as a broker by Shreenathji Trading Company of Bhuj – Kutch to Raj Trading Company of Ahmedabad. On a written requisition from the seller Shreenathji Trading Company, Raj Trading Company had given cheques for Rs.11 lakhs, which he got discounted with a shroff by the name of M/s, J.J. Shroff at Ahmedabad and got the cash of the said amount. The petitioner was trying to take a bus to Bhuj from the S.T. Bus Depot at Gita Mandir road, Ahmedabad and was questioned by a policeman. The petitioner explained the above facts but the policeman did not believe the same and the petitioner was taken to Kagdapith Police Station, where the police took possession of the cash from him under section 102 of the Code of Criminal Procedure by

drawing a panchnama and a receipt of rupees eleven lakhs was given to the petitioner. It appears that an order under section 132A of the Income Tax Act, 1961 (the Act) came to be made by the Deputy Director of Income Tax (Investigation), Unit-III (3) which indicated that the Deputy Director of Income Tax went to the office of Kagdapith Police Station and showed the warrant of authorisation under section 132A from the Director of Income Tax (Investigation), Ahmedabad and collected the amount of Rs.11 lakhs on the same day. It is the case of the petitioner that he waited for some days for a notice from the Deputy Director but having not received one, addressed a letter dated 10th August, 2000 to him through his Chartered Accountants M/s. Natha Jain and Company inter alia stating that the petitioner had been doing business of cotton for the last several years and that the petitioner had come to Ahmedabad to collect payment from Shri Rajan Shah of Raj Trading Company for the sale of cotton of his client Shreenathji Trading Company, Bhuj. After collecting money from Shri Rajan Shah through angadia M/s. J.J. Shroff, the petitioner reached the S.T. Bus Depot at Gita Mandir road, Ahmedabad for departure to Bhuj where the police questioned him and found Rs.11 lakhs in cash in his possession. He explained that Shri Rajan Shah had arranged the cash of Rs.11 lakhs against sale of cotton of M/s. Shreenathji Trading Company and that the police officer was satisfied about the identity and evidence found and could not gather any adverse facts. Therefore, they called the income tax officials who recorded the statement of the petitioner wherein he had stated that the amount had been arranged by Shri Rajan Shah through Shroff of Kalupur against purchase of cotton. The income tax officials surveyed the business premises of Shri Rajan Shah, examined his books of

accounts and recorded his statement and that Shri Rajan Shah corroborated the statement of the petitioner that the payment had been arranged by him through M/s. J.J. Shroff, Kabutarkhana, Kalupur, Ahmedabad against the purchase of cotton from Shreenathji Trading Company, Bhuj and that he had made the payment to the petitioner. The income tax officials tried to contact the said J.J. Shroff to examine the source of cash but the office of the shroff was closed and he was not available. That only because J.J. Shroff was not available, cash was seized in spite of source of cash having been explained as paid by M/s. J.J. Shroff who had been doing cheque discounting business. That both the petitioner and Shri Rajan Shah requested the official on duty to keep the matter pending till the statement of M/s. J.J. Shroff was recorded but the request was turned down without any lawful reason. A copy of the cash book of M/s J.J. Shroff which according to the petitioner clearly explains the source of cash was enclosed therewith. The petitioner also requested for a copy of his statement and also Shri Rajan Shah.

3. By a letter dated 18th August, 2000, the Deputy Director replied that the request for release of cash is to be dealt with by the Commissioner of Income Tax, Rajkot and as such, the application is being forwarded to him and that the Assessing Officer, Bhuj will supply the copies of the statement of the petitioner and Shri Rajan Shah, if the same are going to be used as evidence against the petitioner. That in view of the aforesaid, the request made in the letter dated 10th August, 2000 cannot be acceded to at present.

4. The petitioner on 19th September, 2000 addressed a

letter to the Commissioner of Police, City of Ahmedabad stating inter alia that the police ought to have handed over the moneys to the court under section 102(3) of the Code of Criminal Procedure and that instead the same was handed over to the Income Tax Department without any authority of law and asked the police to return the moneys because even the seizure was invalid under section 102. It is the case of the petitioner that the seizure of Rs.11 lakhs by the Deputy Director is totally invalid and without authority of law. The petitioner has, therefore, presented this petition seeking the reliefs noted hereinabove.

5. Mr. J.P. Shah, learned advocate for the petitioner invited attention to the provisions of section 132A of the Act, to submit that the respondent No.1 – Director of Income Tax could have issued warrant of authorisation under section 132A of the Act provided that he had reason to believe that the cash of Rs.11 lakhs represents either wholly or partly, income or property which has not been or would not have been disclosed for the purposes of the Income Tax Act by the petitioner and that such reason to believe of the Director must be in consequence of the information in his possession. It was submitted that if these two conditions precedent are not fulfilled, then his authorisation is absolutely invalid. It was urged that when the Director issued the authorisation to the Deputy Director, he had no reason to believe that Rs.11 lakhs represented wholly or partly, income or property which has not been or which would not have been disclosed for the purposes of the Act by the petitioner. It was submitted that seizure proceedings are a very serious invasion on the life and liberty of a citizen and that is why, the legislature has been careful

enough to invest the power of giving authority of seizure in a very high officer like a Director and this power is to be exercised in a very careful manner and with a lot of circumspection. It was submitted that in the facts of the present case, it was the case of the petitioner that the amount of Rs.11 lakhs had been secured by him from M/s. J.J. Shroff by discounting the cheques given to him by Shri Rajan Shah of M/s. Raj Trading Company of Ahmedabad. Shri Rajan Shah, the purchaser of cotton had confirmed the same and had stated on oath that he had given the cheques which were discounted with the Shroff, viz. M/s. J.J. Shroff to obtain the cash and that it was the same cash which was found in the possession of the petitioner. In the circumstances, the statement of the petitioner having been corroborated by Shri Rajan Shah, there was absolutely no material with the respondent No.1 whereby it can be stated that there was requisite information and requisite belief. It was further submitted that both the petitioner and Shri Rajan Shah had requested the officer to keep the matter pending till the statement of M/s. J.J. Shroff was recorded but the request was turned down without any lawful reason. It was urged that no irreparable damage would have been caused to the Department if M/s. J.J. Shroff, who was not available at its business premises at night after the office hours, was visited on the next day. According to the learned advocate, if on such visit M/s. J.J. Shroff had stated that they had not discounted the cheques, perhaps there could have been some basis. It was contended that 'information' means some positive material and there was no such material with the Director to form the requisite belief. It was emphatically argued that before signing a warrant of authorisation, the Director should have considered that in these times of liquidity crunch, an amount of Rs.11

lakhs being taken away from a citizen without any justification can do irreparable damage to the life and liberty of a citizen and to his business and financial standing and no amount of compensation from the Department can be a proper substitute for the same. Attention was invited to the panchnama made by the police authorities at Annexure 'A' to the petition which shows that the same was made on 25th July, 2000 at 15.15 hours. It was pointed out that the seizure made by the respondent No.2 under the warrant of authorisation issued under section 132A was at 9.00 p.m. on the same day within a period of less than six hours from the time when the police officers had drawn the panchnama under section 102 of the Code of Criminal Procedure. Referring to the copy of accounts of M/s. J.J. Shroff annexed at Exhibit C-1 to the petition, it was pointed out that the said accounts clearly reflect discounting of cheques to the tune of Rs.11 lakhs on 25th July, 2000 in favour of Shreenathji Trading Company. The attention of the court was also drawn to the inventory of accounts book seized by the Department Exhibit 'G' to the affidavit-in-rejoinder filed by the petitioner which clearly shows that the aforesaid cheques which were discounted by M/s. J.J. Shroff had been issued by Raj Trading Company in favour of Shreenathji Trading Company. It was also pointed out that the panchnama made by the police authorities clearly indicated that the currency notes were bearing the label of Siddhi Co-operative Bank Ltd. The attention of the court was drawn to the receipts at Exhibit 'I' collectively to the affidavit-in-rejoinder indicating withdrawal of cash amount of Rs.11 lakhs by M/s. J.J. Shroff from Siddhi Co-operative Bank Ltd. on 25th July, 2000 which is also reflected in the bank statement of M/s. J.J. Shroff which also is annexed alongwith the affidavit-in-rejoinder. It was pointed out that

bank passbook of Raj Trading Company also demonstrates issuance of cheques drawn in favour of Tamilnad Mercantile Bank Ltd. bearing numbers of the cheques which have been discounted by M/s. J.J. Shroff in favour of Shreenathji Trading Company. It was submitted that in the light of the aforesaid bank statements and accounts produced by the petitioner, it is apparent that the petitioner had explained the cash amount in his possession; that there was no reason for the respondent No.1 to believe that the cash of Rs.11 lakhs represented either wholly or partly, income or property which had not been or would not have been disclosed for the purpose of the Act of the petitioner. Reliance was placed upon the decision of the Allahabad High Court in the case of **Vindhya Metal Corporation and Others vs. Commissioner of Income-Tax and others**, 1985 (156) ITR 233 which came to be confirmed by the Supreme Court in the case of **Commissioner of Income-Tax vs. Vindhya Metal Corporation and others**, 1997 (224) ITR 614. It was submitted that the facts of the present case are similar to the facts of the said case and as such, the condition precedent for exercise of power under section 132A of the Act is not satisfied in the present case and as such, the warrant of authorisation is liable to be quashed and set aside and the respondents are required to be directed to return the amount of Rs.11 lakhs to the petitioner with 18% interest thereon.

6. Opposing the petition, Mr. K.M. Parikh, learned standing counsel for the respondents placed reliance upon the affidavit-in-reply filed by the respondent No.2 wherein it has interalia been stated that the petitioner in his statement recorded under section 131(1A) of the Act, had stated that he

was carrying the cash amount which was given to him by one Shri Rajan B. Shah for making cotton purchases for proprietary firms of the said Shri Rajan B. Shah. The petitioner had specifically stated that cash in particular denominations had been handed over to him by Shri Rajan Shah in his office cabin. Simultaneously survey action under section 133A of the Act was conducted at the office premises of M/s. Rajan Enterprise at 181, New Cloth Market, Ahmedabad and the statement of Shri Rajan Shah under section 133A of the Act was recorded on 25th July, 2000. However, the petitioner's version did not match with the version given by Shri Rajan. Shri Rajan had given the name of Shri J.J. Shroff and it was not possible to inquire from Shri J.J. Shroff as he was not available at the relevant date. It is further averred that no request was made to postpone the proceedings till the statement of Shri J.J. Shroff was recorded. That during the proceedings under section 133A in case of Shri Rajan Shah, copies of the cash book initialled by him were collected and in view of the said facts, the Joint D.I.T. (Investigation) placed a satisfaction note for the approval of Director of Income Tax who after satisfying himself on the basis of the note alongwith accompanying material as also on the basis of discussions with the Joint D.I.T. (Investigation), authorised proceedings under section 132A for requisitioning the cash from the police authorities. The learned counsel, accordingly, submitted that the seizure had been made only after proper satisfaction based on independent inquiry and not merely on intimation by the police. It was submitted that the petitioner in his statement had stated that Rajan Shah had handed over cash of Rs.11 lakhs to him and stated that the owner of J.J. Shroff - Shri Jashubhai had been informed on telephone to pay Rs.11 lakhs in cash to the petitioner who is a

cotton trader and accordingly the petitioner had informed him on telephone that he had received Rs.11 lakhs in cash from Shri Jashu Patel, the owner of J.J. Shroff. It was, accordingly, submitted that there is a discrepancy in the statement of the petitioner and Shri Rajan Shah and as such, the respondent No.1 had every reason to form the opinion as required under section 132A of the Act. Attention was also invited to the affidavit-in-reply filed by the respondent No.3 wherein it has been stated the cash has been seized by the income tax authorities under section 132A of the Income Tax Act and the same can be dealt with only in accordance with the procedure laid down under section 158BC (d) read with section 132B of the Act. Proceedings under section 158BC were initiated and are in progress before the Assessing Officer, and therefore, the petition filed before the C.I.T., Rajkot for release of the seized cash being premature, was not considered. That the request of the petitioner will be considered on completion of the proceedings initiated under section 158BC of the Act. Attention was also invited to the affidavit-in-reply filed by the respondent No.1 wherein he has stated that in consequence of the information in his possession, he had reason to believe that the said cash would not be disclosed by the petitioner and he had, therefore, required the concerned officer to deliver the cash. Attention was also invited to the fact that during the proceedings under section 133A of the Act in the case of Shri Rajan Shah, a copy of cash book initialled by him was collected and the said cash book did not contain any entry showing any payment to Shri Prakash J. Shah on 25th July, 2000. That it was in view of these facts placed before him by way of a satisfaction note for his approval, that he, after satisfying himself on the basis of the said note accompanied with

material, issued warrant of authorisation under section 132A of the Act. Mr. Parikh, accordingly, submitted that in the facts of the present case, it is apparent that there was sufficient material for the respondent No.1 to form the necessary opinion for issuance of warrant under section 132A of the Act and as such, there is no warrant for intervention by this court.

7. In rejoinder, Mr. J.P. Shah, learned advocate for the petitioner referred to the averment made in the affidavit-in-reply filed by the respondent No.1 to the effect that the cash book initialled by Shri Rajan Shah did not contain any entry showing any payment to Shri Prakash J. Shah on 25th July, 2000, to submit that from the facts which have come on record, it is apparent that Shri Rajan Shah had issued five cheques in favour of Shreenathji Trading Company and as such, there would be no question of making any entry in respect thereof in the cash book of Shri Rajan Shah. The attention of the court was invited to the bank passbook to point out that the issuance of cheques in favour of Shreenathji was duly reflected therein. It was, accordingly, submitted that the impugned warrant of authorisation under section 132A of the Act being without authority of law is required to be quashed and set aside and the respondents are required to be directed to return the seized amount to the petitioner.

8. In this matter, rule came to be issued vide an order dated 5th February, 2001 and the same was made returnable on 15th February, 2001. This court had further directed the Deputy Director of Income Tax (Investigation) Unit-III(3), Ahmedabad to keep the file containing the impugned order passed by him available with the learned counsel for the

revenue for perusal of the court on the returnable date. It may be pertinent to note that till date, the file containing the impugned order has not been produced before this court for its perusal.

9. From the facts and contentions noted hereinabove, admittedly the petitioner herein was carrying cash of Rs.11 lakhs and was detained by the police authorities and the cash of Rs.11 lakhs was seized by the police authorities under section 102 of the Code of Criminal Procedure. Subsequently, the police officers informed the income tax department to record the statement of the petitioner and Shri Rajan Shah. Thereafter, the Deputy Director prepared a satisfaction note and placed the same alongwith the statements and other documents before the respondent No.1, who recorded satisfaction and issued warrant of authorisation under section 132A of the Act.

10. The question that arises for consideration is as to whether on the facts of the present case there was any material with the respondent No.1 to arrive at a satisfaction as required under section 132A of the Act for issuance of warrant of authorisation. A perusal of section 132A(1) of the Act shows that the jurisdiction of the authorising officer to authorise an officer to requisition assets which have been taken into custody by an officer or authority under any other law and thereafter to proceed to deal with the assets in the manner provided in sections 132 and 132B arises only where the authorising authority has in consequence of information in his possession reason to believe that such assets represent either wholly or partly income or property which has not been or would not be

disclosed for the purposes of the 1921 Act or 1961 Act by any person from whose possession or control such assets have been taken into custody by the officer or authority from whom these were to be requisitioned. Thus, there must be some material which can be regarded as information which must exist on file on the basis of which the authorising officer can have reason to believe that action under section 132A of the Act is called for, for any of the reasons mentioned in clauses (a), (b) and (c) thereof. It is a settled legal position that the existence or otherwise of the condition precedent for exercise of power under section 132A of the Act is open to judicial scrutiny. In the absence of fulfillment of the condition precedent, the Commissioner or Director of Investigation will have no jurisdiction to issue the authorisation under section 132A, accordingly any authorisation made by the Commissioner or Director of Investigation, as well as the proceedings consequent thereto, would stand vitiated. While the sufficiency or otherwise of the information cannot be examined by the court, the existence of information and its relevance to the formation of the belief can undoubtedly be gone into. Also, whether on the material available with the Commissioner, any reasonable person could have arrived at the conclusion that a search, seizure or requisition should be authorised is a field open to judicial review.

11. In the present case, the authorisation had been made under section 132A by the respondent No.1 requisitioning the sum of Rs.11 lakhs which had been found with the petitioner and had been seized by the police authorities. From the facts noted earlier, it is apparent that after receiving intimation from the police station, the

respondent No.1 recorded the statement of the petitioner who had stated that the amount of Rs.11 lakhs in cash had been handed over to him by Shri Rajan Shah in respect of proposed sale of cotton bales of M/s. Shreenathji Trading Company, Bhuj. Thus, it was the case of the petitioner that the amount had been collected by way of payment from Shri Rajan Shah for sale of cotton bales of his client Shreenathji Trading Company, Bhuj. The respondent No.2 had also recorded the statement of Shri Rajan Shah who had stated that he had asked M/s. J.J. Shroff to hand over Rs.11 lakhs in cash to the petitioner. It is the case of the petitioner that Rajan Shah had issued five cheques in favour of Shreenathji Trading Company which he had deposited with M/s. J.J. Shroff and had obtained Rs.11 lakhs in cash. It is the say of Rajan Shah that he had issued five cheques in favour of Shreenathji Trading Company against which cash had been obtained by the petitioner from M/s. J.J. Shroff. From the documents annexed with the petition, which form part of the record of the income tax authorities, it is apparent on a perusal of the accounts of J.J. Shroff that the same clearly show receipts of cheques No.937738, 937739, 937740, 937741 and 937742 drawn on Tamilnad Mercantile Bank in favour of Shreenathji Trading Company which have been discounted for cash of Rs.11 lakhs. The accounts of Raj Trading Company also clearly show issuance of five cheques bearing No.937738, 937739, 937740, 937741 and 937742 issued in favour of Shreenathji Trading Company on 25th July, 2000. The receipts annexed at Annexure 'I' also show withdrawal of an amount of Rs.11 lakhs by Shri J.J. Shroff from Siddhi Co-operative Bank Ltd. on 25th July, 2000. The cash recovered by the police from the petitioner was also bearing the label of Siddhi Co-operative Bank, Ahmedabad. Moreover,

the bank passbook record of Raj Trading Company of 25th July, 2000 also indicates issuance of the aforesaid five cheques in favour of Shreenathji Trading Company drawn on Tamilnad Co-operative Bank Ltd. In the backdrop of the aforesaid facts, it is the case of the petitioner that the amount was given to him by Shri Rajan Shah of Raj Trading Company. The say of Rajan Shah is that he had given the amount of Rs.11 lakhs to the petitioner for purchase of cotton from Shreenathji Trading Company through M/s, J.J. Shroff. Rajan Shah's accounts show issuance of five cheques in favour of Shreenathji Trading Company drawn on Tamilnad Mercantile Bank Ltd. The accounts of J.J. Shroff show that the five cheques issued by Rajan Shah have been deposited with them for discounting against which Rs.11 lakhs in cash had been handed over to the petitioner herein.

12. It may be noted that the concerned Police Officer of Kagdapith Police Station seized the cash of rupees eleven lakhs vide panchnama drawn on 15:15 hours on 25th July, 2000. The police informed the Joint Director of Income Tax (Investigation) who directed the second respondent to record the statement of the petitioner. The petitioner's statement was recorded under section 131(1A) of the Act and simultaneously survey action under section 133A of the Act was conducted at the office premises of M/s Rajan Enterprises and statement of Rajan B. Shah was also recorded and cash book initialled by him came to be seized. The Joint D.I.T. (Inv.) placed a satisfaction note for the approval of the Director of Income Tax (Inv.) who after perusing the material placed before him and discussing the same with the Joint D.I.T. (Inv.) authorised proceedings under section 132A for requisitioning the cash from the police authorities. Thus, the entire exercise of recording statements,

conducting survey action, preparation of satisfaction note and application of mind by the Director of Income Tax to the material on record has taken place within a span of about five to six hours.

13. It may further be noted that despite a direction by this court to produce the record on the basis of which the Director of Income Tax recorded satisfaction as regards the fulfillment of the condition precedent for exercise of powers under section 132A of the Act, the same has not been produced for the perusal of the court. However, in the affidavit-in-reply filed by the second respondent, extracts of the statements of the petitioner and Rajan Shah recorded under section 133A of the Act have been reproduced. It is the case of the respondents that the petitioner could not adduce satisfactory evidence to show the source of cash found and seized from him and that all he could say was that he had received the cash from Rajan Shah. Rajan Shah has in his statement recorded under section 133A of the Act stated that he had given the cash of rupees eleven lakhs to the petitioner through M/s J.J. Shroff. Thus, without verification at the end of M/s J.J. Shroff there was no reason for the respondents to jump to the conclusion that the source of the amount is unexplained. Moreover, Rajan Shah having clearly admitted that he has paid the said amount to the petitioner, and having stated that the amount was paid through M/s J.J. Shroff, the submission in the affidavit-in-reply that the cash books seized from Rajan Shah do not disclose sufficient balance in the proprietary firm of Rajan Shah or his associate concerns, is clearly misconceived inasmuch as it is not the case of Rajan Shah that rupees eleven lakhs had been handed over to the petitioner in cash, under

the circumstances there was no question of making any such entry in the cash book. Thus, insofar as the petitioner is concerned, the source of the amount was Rajan Shah, who in turn has admitted payment of the said amount through M/s J.J. Shroff. Under the circumstances, without due verification with M/s J.J. Shroff, no satisfaction could have been recorded that the amount of rupees eleven lakhs represents income which has not been, or would not have been, disclosed for the purposes of the Income Tax Act, 1961 by the petitioner from whose possession the said amount has been taken in custody by the respondents.

14. In the aforesaid factual background, in the opinion of this court, no reasonable person could have come to the conclusion that the amount of rupees eleven lakhs belonged to the petitioner or that the petitioner would not disclose the same to the income tax authorities under the provisions of the Act. In the circumstances, on the basis of the material before him, the first respondent could not have formed the requisite opinion as required under section 132A of the Act. The warrant of authorisation issued by the first respondent, therefore, stands vitiated as having been issued without the condition precedent for exercise of powers under section 132A being satisfied.

15. In ***Vindhya Metal Corporation and Others vs. Commissioner of Income-Tax and Others*** (supra), the Allahabad High Court was dealing with a case where V was found in possession of cash amounting to Rs.4,63,000/- on December 25, 1981, while he was travelling by train wherein the money came to be seized by the railway police and the

Commissioner was informed about it. A search came to be carried out on 29th December, 1981 on the premises of V.M. Corporation and the books of account contained an entry that a sum of Rs.4,63,000/- had been handed over to V, who was the nephew of one of the partners, for making purchases. A sum of Rs.17,353/- was cash balance with the firm. This sum and the books of account of the firm were carried away by the income tax authorities. On a writ petition to direct return of the amount as well as cash balance of Rs.17,353/- and the books of accounts, the High Court held that: (i) the mere fact that V was in possession of a huge amount of cash and did not have documents regarding its ownership and the fact that his name was not found in the list of income-tax assesseees could not be treated as sufficient information leading a reasonable man to the inference that the amount would not be disclosed for income tax purposes. The condition precedent for the exercise of power under section 132A was lacking and the order made under it was liable to be quashed; and (ii) there was no material on record to sustain the order made on the firm. The seizure of the books of accounts and the sum of Rs.17,353/- was without authority of law and, therefore, liable to be quashed. The aforesaid decision came to be carried before the Supreme Court in the case of **Commissioner of Income-Tax vs. Vindhya Metal Corporation and Others** (supra) and came to be affirmed.

16. The above decision would be squarely applicable to the facts of the present case inasmuch the respondent No.1 on the material on record could not have formed the requisite belief under section 132A of the Act and as such, the impugned warrant of authorisation under section 132A of the Act cannot

be sustained.

17. For the foregoing reasons, the petition succeeds and is accordingly allowed. The warrant of authorisation dated 25th July, 2000 issued by the first respondent in favour of the second respondent as well as the order under section 132A of the Act are hereby quashed and set aside. The respondents are directed to forthwith return to the petitioner the seized amount of rupees eleven lakhs alongwith interest at the appropriate rate as contemplated under the Act from the date of seizure till the date of repayment. Rule is made absolute accordingly with no order as to costs.

(Harsha Devani, J.)

(R.M. Chhaya, J.)

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