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W.P.No.640 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.12.2022

PRONOUNCED ON: 23.12.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.640 of 2020 &
WMP.No.755 of 2020 &
WMP.No.15415 of 2020

Anil Jain

Vs.

...Petitioner

- 1.Principal Director General of Income Tax (Inv),
CR Building, Queens Road,
Bengaluru – 560 001.
- 2.Additional Director of Income Tax (Inv),
CR Building, Queens Road,
Bengaluru – 560 001.
- 3.Assistant Director of Income Tax (Inv),
Unit-2(4),
CR Building, Queens Road,
Bengaluru – 560 001.
- 4.Deputy Director of Income Tax (Inv),
Unit 3(1), CR Building, Queens Road,
Bengaluru – 560 001.
- 5.Deputy Commissioner of Income Tax,
Corporate Circle 5(1) Chennai,
No.121, M.G.Road,
Chennai-600 034.



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6. Assistant Commissioner of Income Tax,
Central Circle 1(4), Bengaluru,
CR Building, Queens Road,
Bengaluru – 560 001.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the search conducted at the office premises and the residential premises of the Petitioner on 30.08.2017 and any other consequential proceedings as illegal, arbitrary, and contrary to the provisions of law.

For Petitioner : Mr.R.Sivaraman
For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The petitioner is an assessee on the file of the 5th respondent, the Deputy Commissioner of Income Tax, Chennai. On 02.08.2017, search and seizure operations under the provisions of Section 132 of the Income Tax Act, 1961 (in short 'Act') came to be conducted by R1 to R4 in the premises of one D.K.Shivakumar (in short 'person searched') and his group of companies. The person searched is an assessee on the files of R6.

2. On 30.08.2017, the premises of the petitioner at 4th Street, Rutland Gate, Chennai – 34 was searched by the Assistant Director of Income (Inv.), Bangalore/R3 along with Deputy Director of Income (Inv.), Bangalore/R4. The warrant of authorization was issued by R4, in the name of the petitioner



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and the petitioner thus seeks a Writ of Declaration declaring the search conducted at his residence and office at Chennai on 30.08.2017 and all other subsequent proceedings as illegal and contrary to the provisions of law.

3. The sum and substance of the rival contentions of Mr.R.Sivaraman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents turn upon a construction of Section 132 of the Act relating to search and seizure and Section 120 relating to jurisdiction of officers.

4. According to the petitioner, the operation of Section 132 is subservient and subject to the provisions of Section 120 of the Act that deal with jurisdiction of the Income-tax authorities. Thus, the initiation and conduct of the search in the residential and business of the petitioner by the Income tax authorities at Bangalore, R1 to R4, in the face of the admitted position that he falls under the jurisdiction of the officers at Chennai, is illegal and contrary to the Act.

5. The Department, for its part relies lock stock and barrel, upon Notification No.S.O.2914(E)(69/2014(F.No.187/37/2014), dated 13.11.2014. According to the respondents, the authorities listed in the aforesaid Notification have been given All-India jurisdiction to enter and



search assessee, situated anywhere in the country. It is pursuant to such authorisation that the respondent officers situated in Bangalore have entered upon, and conducted search and seizure in the premises of the petitioner.

6. Having heard the rival contentions of learned counsel, my decision is as follows. Section 132 to the extent to which it is relevant to decide this matter is extracted below:

'Search and seizure.

132. (1) Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal 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



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(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 Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal 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



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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 Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, but such Principal Chief Commissioner or Chief Commissioner or Principal 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



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he has reason to believe that any delay in getting the authorisation from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue :

.....

(1A) Where any Principal Chief Commissioner or Chief Commissioner or Principal 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 Principal Director General or Director General or Principal Director or Director or any other Principal Chief Commissioner or Chief Commissioner or Principal 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 Principal Chief Commissioner or Chief Commissioner or Principal 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.

.....'

7. Section 120 states that Income-tax authorities shall exercise all or any of the powers or functions conferred upon them in accordance with the directions of the Board. Such directions are to be issued bearing in mind the following criteria being a) territorial area, b) persons or classes of persons, c)



incomes or classes of income and d) cases or classes of cases. The first requirement is thus of territoriality.

8. Section 120, to the extent relevant to decide the issue in this matter, is extracted below:

JURISDICTION OF INCOME-TAX AUTHORITIES.

120.(1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.

Explanation – For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1).

(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely :-

- (a) Territorial area;*
- (b) Persons or classes of persons;*
- (c) Incomes or classes of income; and*
- (d) Cases or classes of cases.*



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..... ,
9. Over the years, and in recognition of the modus operandi of persons in secreting information/valuable articles or things in premises that may fall in multiple jurisdictions, the first proviso to Section 132 came to be inserted by the Taxations Laws (Amendment) Act, 1975 with effect from 01.10.1975.

10. Per this proviso, a building, place, vessel, vehicle or aircraft where the assessee is suspected to have kept material evidences, falling within the jurisdiction of any other Principal Chief Commissioner/ Chief Commissioner/ Principal Commissioner/Commissioner who has no jurisdiction over the person searched, may, for the reasons set out under clauses (a) to (c) of Section 132, be subject to search by such officer, notwithstanding the lack of jurisdiction normally.

11. Such officer will be competent to exercise the powers under sub-section (1), where he has reason to believe that obtaining necessary authorization from the officer having jurisdiction, would be prejudicial to the interests of the revenue.

12. The scheme of Section 132 thus takes note of multiple locations falling within the jurisdiction of several officers, and the need and necessity



to enable the officers of the Department to enter and search locations falling under the jurisdiction of officers other than the officer holding jurisdiction over the person in whose name warrant is issued. The proviso, inserted in 1975, enables the conduct of simultaneous search action in multiple locations.

13. In the interests of integrity and effectiveness of the search, the proviso enables immediate and swift action by an officer holding territorial jurisdiction over that particular location, who may intervene and act, notwithstanding that he has no jurisdiction under Section 120 over the assessee concerned.

14. The proviso goes on to say that such intervention by a non-jurisdictional officer can only be upon his recording 'reasons to believe' that delay in obtaining authorization from the officer holding jurisdiction would be prejudicial to the interests of the revenue.

15. The reasons have, evidently, to be reduced to writing such that they form part of the records. This application of this proviso is '*notwithstanding anything contained in Section 120*' which carves out an exception to the remaining portions of Section 132.

16. Likewise, Section 132(1A) of the Act relates to a situation where



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the officials have received information in the course of the search proceedings in regard to additional locations not covered under the main warrant of authorization, to which the search must be extended.

17. Sub-Section (1A) permits, in such a situation, the Principal Chief Commissioner/ Chief Commissioner/ Principal Commissioner/Commissioner to authorize the officer concerned who has been initially authorized by Principal Director General / Director General / Principal Director/ Director General of any other Principal Chief Commissioner/ Chief Commissioner/ Principal Commissioner/Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner, to take necessary action under the provisions of Section 132 in respect of those additional locations as well.

18. This sub-Section also uses the phrase '*notwithstanding anything contained in Section 120*' indicating that such authorization can be issued even to an officer who is not a jurisdictional officer of the assessee concerned. This sub-Section also applies only qua location/place of search.

19. The Hon'ble Supreme Court in the case of *Principal Director of Income –tax (Investigation) V. Laljibhai Kanjibhai Mandalia* ((2022) 140 taxmann.com 282), considered a challenge to a search conducted on

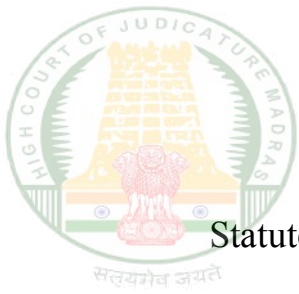


29.07.2016. The judgment is cited for the proposition that search and seizure action, being highly intrusive in nature, must be conducted scrupulously in line with the parameters set out under the Statute and applicable Rules. The judgement in *Director of Income –tax (Investigation) V. Spacewood Furnishers (P) Ltd.* ((2015) 57 taxmann.com 292), reiterates the same proposition.

20. One may also gainfully refer to the Rules, specifically Rule 112 of the Income Tax Rules, 1962 that refer to two separate Forms, one qua the *person* being searched and the second qua the *place* being searched. Form 45 is the form of warrant in regard to the person being searched and Form 45A in respect of the place falling under the jurisdiction of the person issuing the warrant, though not the person. There is no statutory Form envisaged for search of a person, not by the jurisdictional officer.

21. Petitioner has referred to Instruction No.1904 (F.No.415/25/92-IT(Inv.1) dated 07.12.1992 to point out that one of the issues dealt with therein relates to extension of the jurisdiction of an officer to cover areas hitherto falling outside his control.

22. This is only to say that while jurisdiction may be extended qua places to be covered under the search, there is no provision either under



Statute or Rules to permit search by an officer, of an individual not falling with his jurisdiction.

23. In *K.Raju V. Third Income-tax Officer* ((1985) 22 Taxman 523), a learned single Judge of this Court considered a challenge to retention of documents by an officer who was not a jurisdictional officer of the assessee searched. The objection was repelled, this Court noting that it was the concerned officer who has jurisdiction over that assessee, who was also the authorized officer.

24. In Notification No.S.O.2914(E)(69/2014 (F.No.187/37/2014), dated 13.11.2014, relied upon by the Revenue, the Central Board of Direct Taxes has extended the territorial jurisdiction of specified Director Generals of Income Tax in all States and of Union Territories of the Country to include territories hitherto not under their control.

25. Since the Notification is extensive, I select two instances, of Directors General of Income Tax, in Tamil Nadu and Gujarat, as illustrative of this point:

<i>Sr .N o.</i>	<i>Director General of Income-tax (Investigation)</i>	<i>Head Quarters</i>	<i>Principal Director/Director of Income-tax (Investigation)</i>	<i>Head quarters</i>	<i>Territorial areas</i>
1	Director	Chennai	Principal	Chennai	Areas within the

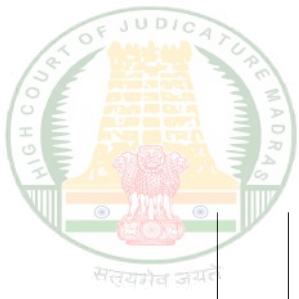


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	<i>General of Income-tax (Investigation) Tamil Nadu and Puducherry</i>		<i>Director/Director of Income-tax (Investigation), Chennai</i>		<i>limits of the state of Tamil Nadu and Union territory of Puducherry (including Karaikal but excluding Mahe and Yanam)</i>
2	<i>Director General of Income-tax (Investigation) Gujarat</i>	<i>Ahmedabad</i>	<i>Principal Director/Director of Income-tax (Investigation), Ahmedabad</i>	<i>Ahmedabad</i>	<i>Areas within the limits of the:</i> <i>(a) Union territory of Diu; and</i> <i>(b) following revenue districts in the state of Gujarat (including any district carved out from these subsequently):</i> <i>(i) Kachchh</i> <i>(ii) Dwarka</i> <i>(iii) Porbandar</i> <i>(iv) Jamnagar</i> <i>(v) Morvi</i> <i>(vi) Surendranagar</i> <i>(vii) Botad</i> <i>(viii) Bhavnagar</i> <i>(ix) Amreli</i> <i>(x) Junagadh</i> <i>(xi) Gir Somnath</i> <i>(xii) Rajkot</i> <i>(xiii) Ahmedabad</i> <i>(xiv) Gandhinagar (xv) Patan</i> <i>(xvi) Mahesana</i> <i>(xvii) Banaskantha</i> <i>(xviii) Sabarkantha</i> <i>(xix) Aravali</i>



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			<i>Principal Director/Director of Income-tax (Investigation), Surat</i>	<i>Surat</i>	<i>Areas within the limits of the: (a) Union territory of Dadra and Nagar Haveli (b) Daman; and (c) following revenue districts in the state of Gujarat (including any district carved out from these subsequently): (i) Kheda (ii) Nadiad (iii) Anand (iv) Mahisagar (v) Panchmahal (vi) Dahod (vii) Vadodara (viii) Chhota Udaipur (ix) Narmada (x) Surat (xi) Tapi (xii) Dang (xiii) Navsari (xiv) Valsad (xv) Bharuch</i>
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26. The above officers have been vested with the powers to perform functions relating to search and seizure and corresponding penal and prosecution proceedings in respect of the territorial area of the whole of India and the preamble of the Notification, as extracted below, makes this position, more than amply clear.



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S.O. 2914(E).—*In exercise of the powers conferred by sub-sections (1) and (2) of section 120 of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notifications of the Government of India, Central Board of Direct Taxes number S.O.1189(E), dated the 3rd December, 2001 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 3rd December, 2001 and S.O.734 (E), dated the 31st July, 2001 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 31st July, 2001, except as respects things done or omitted to be done before such supersessions, the Central Board of Direct Taxes hereby,—*

(i) *directs that the Directors General of Income-tax specified in column (2) of the Schedule annexed to this notification (hereinafter referred to as the “said schedule”) or the Principal Director / Director of Income-tax specified in column (4) of the said Schedule shall exercise powers under Part – C (Powers) of Chapter XIII and corresponding provisions of Chapter XXI (Penalties imposable), Chapter XXII (Offences and Prosecutions) and other provisions incidental thereto of the said Act and perform the functions relating thereto in respect of the territorial areas of whole of India;*

(ii) *directs that the Directors General of Income-tax specified in column (2) of the said Schedule or the Principal Director / Director of Income-tax specified in column (4) of the said Schedule shall exercise powers under all other provisions of the said Act, [other than the provisions mentioned in (i) above], and perform the functions relating thereto in respect of the territorial areas specified in the corresponding entries in column (6) of the said Schedule;*

(iii) *authorises the Director General of Income-tax specified in column (2) or the Principal Director/Director of Income-tax specified in column (4) of the said Schedule to issue orders in writing for exercise of powers and performance of functions mentioned in (i) above by all or any of the Income-tax authorities who are subordinate to such*



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Director General of Income-tax or Principal Director/ Director of Income-tax, in respect of the territorial areas of whole of India;

*(iv) authorises the Director General of Income-tax specified in column (2) of the said Schedule or the Principal Director / Director of Income-tax specified in column (4) of the said Schedule to issue orders in writing for **exercise of powers and performance of functions under all other provisions of the said Act, other than the provisions mentioned in (i) above**], by all or any of the Income-tax authorities who are subordinate to such Director General of Income-tax or Principal Director / Director of Income-tax, **in respect of the territorial areas specified in the corresponding entries in column (6) of the said Schedule;***

2. This notification shall come into force with effect from the 15th day of November, 2014.

(emphasis by marking in bold, by the Court)

27. Section 132 contains specific situations where it applies, notwithstanding the requirement of territoriality under Section 120. These instances have been specifically noted and elaborated upon in the preceding paragraphs, per Section 132(1A) and the proviso to Section 132, both in the context of *location* only.

28. Thus, the Notification relied upon by the revenue deals with extension of jurisdiction qua *territory* alone, and not with regard to an *assessee*. The Notification is in furtherance of the statutory sanction under the proviso to Section 132 and Section 132(1A), to enable officers in the Department to enter and search *places* located in areas other than those



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coming under the jurisdiction of the assessing officer holding jurisdiction over the assessee searched.

29. Thus it is my considered view, based upon the scheme of the Act and the specific statutory provisions, that it is statutorily enjoined for a search to be conducted by the jurisdictional officers of that assessee only. The sole exceptions to this rule are in regard to locations that fall within the jurisdiction of a different officer, subject to satisfaction of, and compliance with, the requisite conditions, under the proviso to Section 132 and Section 132(1A).

30. I have called for the records of the search and verified that the warrant of authorisation dated 29.08.2017 in regard to the search conducted on 30.08.2017 has been issued in Form 45, in the name of the Petitioner, by R4 Deputy Director of Income Tax (Inv), Bengaluru. In line with the discussion and conclusions in the foregoing paragraphs of this order, Declaration, as sought, is issued and this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

23.12.2022

Index : Yes



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Speaking Order

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To

- 1.Principal Director General of Income Tax (Inv),
CR Building, Queens Road,
Bengaluru – 560 001.
- 2.Additional Director of Income Tax (Inv),
CR Building, Queens Road,
Bengaluru – 560 001.
- 3.Assistant Director of Income Tax (Inv),
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- 4.Deputy Director of Income Tax (Inv),
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DR.ANITA SUMANTH,J.

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