REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4394 OF 2015
(Arising out of S.L.P.(C) No. 38611 of 2012)

Director General of Income Tax
(Investigation) Pune & Ors. . .. Appellants

Versus

M/s. Spacewood Furnishers Pvt. Ltd. & Ors. ... Respondents

J U D G M E N T

RANJAN GOGOI, J.

1. Leave granted.

2. The block assessment of the respondent-assessee for the assessment years 2004-05 to 2009-10 was sought to be initiated by notices issued under Section 153A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') following a

search made under the provisions of the Act. The same has been interdicted by the High Court of Delhi by interfering with the warrant of authorization for the search issued under Section 132 of the Act and the consequential search made between 19th June, 2009 to 21st July, 2009. Aggrieved, the Revenue has filed this appeal by special leave under Article 136 of the Constitution.

3. We have heard Shri Guru Krishna Kumar, learned senior counsel for the appellants and Shri Krishnan Venugopal, learned senior counsel appearing for the respondents.

4. The issues that arise in the present appeal lie within a short circumference. As the warrant of authorization under Section 132, which is required to be founded on a reasonable belief of the authorized official regarding the existence of the conditions precedent to the exercise of the power to issue the same, has been interdicted under Article 226 of the Constitution, the ambit of the power of the High Court to do so may be noticed at the outset.

5. The "classical" notion of the extent of power that the High Court would have in the exercise of its writ jurisdiction to cause such interference is formulated in ***ITO vs. Seth Brothers***[1] and ***Pooran Mal vs. Director of Inspection (Investigation), Income Tax***[2]. The parameters of permissible interference as laid down in the aforesaid two decisions have stood the test of time and continue to hold the field even today. We may, therefore, advert to ***ITO vs. Seth Brothers*** (supra) in the first instance.

6. Considering the scope of Section 132 of the Act in ITO vs. Seth Brothers (supra), this Court at page 843 held that :-

> "The section does not confer any arbitrary authority upon the Revenue Officers. The Commissioner or the Director of Inspection must have, in consequence of information, reason to believe that the statutory conditions for the exercise of the power to order search exist. He must record reasons for the belief and he must issue an authorisation in favour of a designated officer to search the premises and exercise the powers set out therein. The condition for entry into and making search of any building or place is the reason to believe that any books of account or other documents

[1] 1969 (74) ITR 836 (SC)
[2] (1974) 93 ITR 505 (SC)

which will be useful for, or relevant to, any proceeding under the Act may be found. If the Officer has reason to believe that any books of account or other documents would be useful for, or relevant to, any proceedings under the Act, he is authorised by law to seize those books of account or other documents, and to place marks of identification therein, to make extracts or copies therefrom and also to make a note or an inventory of any articles or other things found in the course of the search. Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the tax-payer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorizes it to be exercised. If the action of the officer issuing the authorization, or of the designated officer is challenged the officer concerned must satisfy the Court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the Court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed. But where power is exercised bona fide, and in furtherance of the statutory duties of the tax officers any error of judgment on the part of the Officers will not vitiate the exercise of the power. Where the Commissioner entertains the requisite belief and for reasons recorded by him authorises a designated officer to enter and search premises for books of account and documents relevant to or useful for any proceeding under the Act, the Court in a petition by an aggrieved person cannot be asked to substitute its own opinion whether an order

authorising search should have been issued. Again, any irregularity in the course of entry, search and seizure committed by the officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken, provided the officer has in executing the authorisation acted bona fide.

The Act and the Rules do not require that the warrant of authorisation should specify the particulars of documents and books of accounts a general authorisation to search for and seize documents and books of account relevant to or useful for any proceeding complies with the requirements of the Act and the Rules. It is for the officer making the search to exercise his judgment and seize or not to seize any documents or books of account. An error committed by the Officer in seizing documents which may ultimately be found not to be useful for or relevant to the proceeding under the Act will not by itself vitiate the search, nor will it entitle the aggrieved person to an omnibus order releasing all documents seized."

7. In ***Pooran Mal vs. Director of Inspection*** (supra) the constitutional validity of Section 132 was under challenge. While negating the said challenge, this Court at page 515 of its report had held that:

"Dealing first with the challenge under Article 19(1)(*f*) and (*g*) of the Constitution it is to be

> noted that the impugned provisions are evidently directed against persons who are believed on good grounds to have illegally evaded the payment of tax on their income and property. Therefore, drastic measures to get at such income and property with a view to recover the government dues would stand justified in themselves. When one has to consider the reasonableness of the restrictions or curbs placed on the freedoms mentioned in Article 19(1)(*f*) and (*g*), one cannot possibly ignore how such evasions eat into the vitals of the economic life of the community. It is a well-known fact of our economic life that huge sums of unaccounted money are in circulation endangering its very fabric. In a country which has adopted high rates of taxation a major portion of the unaccounted money should normally fill the Government coffers. Instead of doing so it distorts the economy. Therefore, in the interest of the community it is only right that the fiscal authorities should have sufficient powers to prevent tax evasion."

8. What is significant and, therefore, must be noticed is that in both the aforesaid two decisions while this Court has emphasized the necessity of recording of reasons in support of the 'reasonable belief' contemplated by Section 132, nowhere, in either of the decisions any view had been expressed that the

reasons recorded prior to authorizing the search needs to be disclosed or communicated to the person against whom the warrant of authorization is issued. The same is the view expressed by this Court in ***Dr. Pratap Singh vs. Director of Enforcement***[3] while considering a pari material provision in the Foreign Exchange Regulation Act.

> "The material on which the officer has reasons to believe that any documents will be useful for or relevant to any investigation need not be disclosed in the search warrant; such material may be secret, may have been obtained through intelligence, or even conveyed orally by informants. In the said case, the petitioner contended that, if the court is going to look into the file produced on behalf of the officer who authorized the search, it must be disclosed to the petitioner so that the petitioner "can controvert any false or wholly unreasonable material set out in the file", but the Supreme Court did not accept this submission. The Supreme Court also referred to an earlier decision in S. Narayanappa v. CIT [1967] 63 ITR 219 (SC), to hold that whether grounds for ordering search were sufficient or not is not a matter for the court to investigate. However, the court may examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the

[3] (1985 (155) ITR 166 (SC)

belief and are not extraneous or irrelevant for the purpose of the section."

9. The principles that can be deduced from the aforesaid decisions of this Court which continue to hold the field without any departure may be summarized as follows :

(i) The authority must have information in its possession on the basis of which a reasonable belief can be founded that-

(a) the concerned person has omitted or failed to produce books of account or other documents for production of which summons or notice had been issued

OR

such person will not produce such books of account or other documents even if summons or notice is issued to him.

OR

(b) such person is in possession of any money, bullion, jewellery or other valuable article which represents

either wholly or partly income or property which has not been or would not be disclosed.

(ii) Such information must be in possession of the authorized official before the opinion is formed.

(iii) There must be application of mind to the material and the formation of opinion must be honest and bonafide. Consideration of any extraneous or irrelevant material will vitiate the belief/satisfaction.

(iv) Though Rule 112(2) of the Income Tax Rules which specifically prescribed the necessity of recording of reasons before issuing a warrant of authorization had been repealed on and from 1st October, 1975 the reasons for the belief found should be recorded.

(v) The reasons, however, need not be communicated to the person against whom the warrant is issued at that stage.

(vi) Such reasons, however, may have to be placed before the Court in the event of a challenge to formation of the belief of the authorized official in which event the court (exercising jurisdiction under Article 226) would be entitled to examine the relevance of the reasons for the

formation of the belief though not the sufficiency or adequacy thereof.

10. Before proceeding further it will be necessary to take note of certain other facts that may have a bearing to the issues at hand.

By Notification No.354 of 2001 dated 3.12.2001 in exercise of the powers conferred by Section 120(1) & (2) of the Act, the Central Board of Direct Taxes had directed the Directors of Income Tax (Investigation) specified in Column (2) of the Schedule to the said Notification to exercise the power vested in them under Section 132 of the Act in relation to the territorial areas specified in Column (3) of the Schedule. By virtue of the said notification the Director of Income Tax (Investigation), Nagpur i.e. Appellant No.2 was authorized to exercise the power under Section 132 of the Act in respect of the territorial areas falling within the jurisdiction of the CCIT Nagpur and CCIT Nasik in the State of Maharashtra.

11. Notice must also be had of certain provisions contained in the Search and Seizure Manual published by the Directorate

of Income Tax with regard to the preparation of satisfaction note and issuing of warrant of authorization under Section 132 of the Act. Para 2.38 of the aforesaid Manual being relevant may be usefully extracted :

> "2.38 The "satisfaction note" should ordinarily be initiated by the ADIT (Investigation)/DDIT (Investigation). It should be put up to the DIT (Investigation) through the Joint/Additional DIT (Investigation), along with the detailed comments of the latter. The note must be recorded in the secret file, already prepared for this purpose, containing material like, the secret information collected from various sources, statement(s), if any of the informant(s), reference to tax evasion petition(s), if any, surveillance reports and information relating to assessment(s), returns of income, wealth, etc, where available."

12. It will also be required to be noticed that by Notification dated 7.3.2001 administrative approval of the Director General of Income Tax (investigation) was made mandatory before an authorization for search is issued. The said requirement appears to have been brought in order to obviate a malafide search and to avoid undue harassment of the taxpayers.

13. In the present case the satisfaction note(s) leading to the issuing of the warrant of authorization against the

respondent-assessee were placed before the High Court. As it would appear from the impugned order the contents thereof were exhaustively reproduced by the High Court. The said satisfaction note(s) have also been placed before us. A perusal of the file containing the satisfaction note(s) indicate that on 8.6.2009 the Assistant Director of Income Tax (Investigation), Nagpur had prepared an elaborate note containing several reasons as to why he had considered it reasonable to believe that if summons or notice were issued to the respondent to produce the necessary books of account and documents, the same would not be produced. The Assistant Director also recorded detailed reasons why he entertains reasons to believe that the promoters of the respondent-assessee company would be found to be in possession of money, bullion, jewellery etc. which represents partly or wholly income which has not been disclosed for the purposes of the Act

14. The said note was put up for consideration before the Additional Director (Investigation) who on perusal of the same once again proceeded to record elaborate reasons for his belief

that the conditions precedent for issuing warrant of authorization under Section 132 does exist in the present case. Accordingly, the file was put up before the Director of Income Tax (Investigation), Nagpur for issuing of warrant of authorization for search of the residential as well as business premises of the assessee and its Directors, if the Director of Income Tax (Investigation), Nagpur is so satisfied. The aforesaid note of the Additional Director (Investigation) is dated 8.6.2009.

15. The notes of the two officers i.e. Assistant Director (Investigation) and Additional Director (Investigation) were perused and considered by the Director (Investigation). The matter was also discussed. Thereafter the Director (Investigation) recorded the relevant facts of the case and came to the following conclusion:

> "On an overall appreciation of the facts of the case I am satisfied that M/s. Spacewood Furnishers P Ltd is suppressing its income substantially. I am also satisfied that the company is not likely to produce the details of such unaccounted income and the books of accounts and documents containing details of such unaccounted incomes and assets if notices were to be issued to it u/131 or u/s.142(1) of the

I T Act. It is also reliably learnt that the Directors S/Shri. Kirit Joshi and Vivek Deshpande and associated concerns M/S. i3Space Systems (India) P Ltd., Spacewood Exports P ltd., Spacewood Hongkong P Ltd., i3space Hongkong Ltd. and Spacewood Nest P Ltd are also in possession of undisclosed income / assets and books, documents containing details of such unaccounted incomes. It appears that a substantial portion of such unaccounted money is being held in cash also. The Directors are maintaining luxurious life styles out of such unaccounted income. I am also satisfied that these companies and the directors are not likely to furnish the details of such unaccounted incomes and assets if notices were to be issued to them u/s.131 or 142(1) of the I.T. Act. I am therefore satisfied that this is a fit case for exercise of powers vested u/s.132 of the Act to search the persons (M/S. Spacewood Furnishers P Ltd, its associated concerns and Directors mentioned above) and the premises mentioned in the note of the ADIT to seize unaccounted assets and documents and evidences relating undisclosed income."

The Director of Income Tax (Investigation), Nagpur thereafter put his signature dated 9.6.2009 on the said note.

16. There is an endorsement to the following effect at the bottom of the said note again under the signature of the Director (Investigation) –

> "DGIT (Inv) Pune may kindly peruse the above satisfaction note and grant administrative approval for the search and seizure action."

17. On 11.6.2009 the matter was considered by the Director General of Income Tax (Investigation) Pune who recorded the following view :

> "I have gone through the notes of ADIT (Inv), Nagpur and Addl.DIT (Inv.), Nagpur. The satisfaction note of DIT (Inv.) Nagpur has also been perused. I find that DIT (Inv.) Nagpur has got adequate information to arrive at his satisfaction that search and seizure action is required to be undertaken in the case of M/s. Spacewood Furnishers P. Ltd. promoted by Shri Kirit Joshi and Vivek Deshpande. Accordingly, the proposal of the DIT (Inv.) Nagpur to take action u/s 132(1) of the Act is approved."

18. The High Court by the impugned order dated 9.12.2011 has taken the view that in the present case there are four satisfaction notes of four different authorities. One of the said authority i.e. Assistant Director is not the competent authority under Section 132 of the Act. The Additional Director and the Director who are competent authorities to issue the warrant of authorization, though had recorded their satisfaction, have not

taken the final decision to issue the authorization and each such authority had passed on the file to his immediate superior, namely, the Additional Director to the Director and the Director to the Director General. The High Court further held that it is eventually the Director General who took the decision to issue the search warrant but the said decision was not on the basis of its own satisfaction but on the basis of the satisfaction recorded by the Director of Income Tax (Investigation). Consequently, the High Court held that the satisfaction mandated by Section 132 of the Act was not that of the authority who has issued the search warrant, thereby vitiating the authorization issued.

19. The High Court further held that each of the satisfaction notes was in loose sheets of paper and not a part of a single file maintained in proper sequence and order with due pagination. Therefore, according to the High Court, it is possible that the file containing the satisfaction note(s) was manipulated and thus is of doubtful credibility.

20. The High Court also held that the materials indicated by the department in the counter affidavit and the additional affidavit filed before it were at variance with what was revealed by the satisfaction note(s) placed before the Court. Even if the satisfaction notes alone are to be gone by, the essential details with regard to source of information; the persons who were interrogated and with whom discreet enquiries were made are not disclosed. The necessary information revealed by such interrogation and discreet enquiries with regard to over invoicing, market information etc. are not indicated. Materials like high growth, high profit margins, doubts about international brand and details thereof etc. as mentioned in the satisfaction note(s) are admitted and known facts and therefore could not have induced the requisite belief. The above constitutes the broad basis on which the High Court thought it proper to cause inference with the measures undertaken by the Revenue against the assessee.

21. Before we advert to the specific reasoning of the High Court, one specific aspect of the opinion expressed by the High

Court needs to be taken note of inasmuch as the precise position in law in this regard needs to be clarified. The above aspect is highlighted by the following observations of the High Court expressed in paragraph 6 of the impugned order:-

> "We, however, express that when the satisfaction recorded is justiciable, the documents pertaining to such satisfaction may not be immune and if appropriate prayer is made, the inspection of such documents may be required to be allowed."

22. In the light of the views expressed by this Court in ***ITO vs. Seth Brothers*** (supra) and ***Pooran Mal*** (supra), the above opinion expressed by the High Court is plainly incorrect. The necessity of recording of reasons, despite the amendment of Rule 112 (2) with effect from 1st October, 1975, has been repeatedly stressed upon by this Court so as to ensure accountability and responsibility in the decision making process. The necessity of recording of reasons also acts as a cushion in the event of a legal challenge being made to the satisfaction reached. Reasons enable a proper judicial assessment of the decision taken by the Revenue. However,

the above, by itself, would not confer in the assessee a right of inspection of the documents or to a communication of the reasons for the belief at the stage of issuing of the authorization. Any such view would be counter productive of the entire exercise contemplated by Section 132 of the Act. It is only at the stage of commencement of the assessment proceedings after completion of the search and seizure, if any, that the requisite material may have to be disclosed to the assessee.

23. At this stage we would like to say that the High Court had committed a serious error in reproducing in great details the contents of the satisfaction note (s) containing the reasons for the satisfaction arrived at by the authorities under the Act. We have already indicated the time and stage at which the reasons recorded may be required to be brought to the notice of the assessee. In the light of the above, we cannot approve of the aforesaid part of the exercise undertaken by the High Court which we will understand to be highly premature; having the potential of conferring an undue advantage to the

assessee thereby frustrating the endeavor of the revenue, even if the High Court is eventually not to intervene in favour of the assessee.

24. Having clarified the above issue in the manner indicated, we may turn to the reasons assigned by the High Court for its decision. The view expressed by the High Court with regard to the satisfaction note(s); the alleged absence of a final decision to issue the authorization at the level of the Additional Director and the Director; the absence of any satisfaction of the Director General who, according to the High Court took the decision to issue the authorization are all seriously flawed. The different steps in the decision making process is lucidly laid down in the instructions contained in the search and seizure manual published by the department, relevant part of which has been extracted above. The steps delineated have been scrupulously followed. Besides we may take note of the fact that the Additional Director was not one of the competent authorities under Section 132 on 8.6.2009 (date of his note)

inasmuch as it is by the Finance Act, 2009 effective from 19th August, 2009 that the Additional Director came to be included amongst the authorized officials though with retrospective effect from 1.10.1998. The reading of the relevant part of the satisfaction note of the Director goes to show that on the basis of materials produced satisfaction was duly recorded by him that authorization for search should be issued. The file was put up before the Director General (Investigation) for accord of administrative approval as required by Notification dated 7.3.2001. In fact, the requirement to obtain administrative approval is prompted by the need to provide an additional safeguard to the tax payer. A careful reading of the order of the Director General would go to show that all that he did was to record the view that the satisfaction of the Director, Income Tax (Investigation) was reasonable and therefore administrative approval should be accorded. The view taken by the High Court, therefore, cannot be sustained.

25. The possibility of manipulation of the records as found by the High Court also does not commend to us for acceptance. There is no basis, whatsoever, for coming to any such conclusion. Suspicion ought not to be the basis of any judicial order and this is where the High Court seems to have erred.

26. The remaining findings of the High Court with regard to the satisfaction recorded by the authorities appear to be in the nature of an appellate exercise touching upon the sufficiency and adequacy of the reasons and the authenticity and acceptability of the information on which satisfaction had been reached by the authorities. Such an exercise is alien to the jurisdiction under Article 226 of the Constitution.

27. In view of the foregoing discussions and for the reasons alluded to, the order of the High Court dated 9.12.2011passed in W.P. No. 2150 of 2010 is set aside. The proceedings against the respondent-assessee will now commence from the stage at which the same was interdicted by the High Court by its

impugned order. Consequently, the appeal filed by the Revenue is allowed.

.....J.
[Ranjan Gogoi]

.....J.
[Pinaki Chandra Ghose]

New Delhi;
May 13, 2015.