High Court of Judicature at Allahabad
(Lucknow)
****

Neutral Citation No.-2025:AHC-LKO:34257-DB
Reserved on: 04.04.2025
Delivered on: 03.06.2025

Court No. - 2

Case :- WRIT TAX No. - 30 of 2025

Petitioner :- Pramod Swarup Agarwal Thru. Authorized Signatory Nitesh Sinha
Respondent :- Prin. Director Of Income Tax (Inv.) Lko. And 6 Others
Counsel for Petitioner :- Anupam Mishra,Shalabh Singh
Counsel for Respondent :- Neerav Chitravanshi,A.S.G.I.,Dr. Ravi Kumar Mishra

WITH

Case :- WRIT TAX No. - 31 of 2025

Petitioner :- Sneh Lata Agarwal Thru Authorized Signatory Nitesh Sinha
Respondent :- Prin. Director Of Income Tax Lko And 6 Others
Counsel for Petitioner :- Anupam Mishra,Shalabh Singh
Counsel for Respondent :- Kushagra Dikshit,A.S.G.I.,Dr. Ravi Kumar Mishra

Hon'ble Rajan Roy,J.
Hon'ble Om Prakash Shukla,J.

(Per: Rajan Roy, J.)

(1) Heard Sri Jahangir Mistri and Sri J.N. Mathur, learned Senior Advocate assisted by Sri Shalabh Singh, Sri Satish Mody, Sri Anupam Mishra, Sri Mudit Agarwal and Ms. Aishwarya Mathur, learned counsel for the petitioners as well as Sri N.

Venkataraman, learned Senior Advocate & Additional Solicitor General of India assisted by Sri Neerav Chitranshi, Sri Kushagra Dikshit and Sri Ravi Kumar Mishra, learned counsel for the opposite parties.

(2) Petitioners of both the above mentioned petitions are husband and wife.

(3) In both the writ petitions, Warrant of Authorization dated 11.12.2024 and issued on 12.12.2024 under Section 132 of the Income Tax Act, 1961 and the validity of search proceedings conducted at the premise of the petitioners based thereon under Section 132 of the Income Tax Act, 1961 has been challenged.

(4) In Writ Tax No.31 of 2025, in addition to the aforesaid challenge, as, a notice was issued to the said petitioner under Section 131(1A) of the Act, 1961, therefore, by way of an amendment, the said notice dated 27.01.2025 has also been challenged.

(5) Inspite of sufficient opportunity, the Revenue did not file any counter affidavit to the writ petitions and in fact, on 11.03.2025, learned Senior counsel appearing for the Revenue made a statement as has been recorded by us in the ordersheet that pleadings are not required to be filed and that he would argue on the basis of facts on record.

(6) Petitioner of Writ Tax No.30 of 2025 is said to be an eighty years old doctor. Though not very relevant but it is said that he is suffering from Alzheimer. He is a promoter shareholder of a company, namely, India Pesticides Limited.

(7) Petitioner of Writ Tax No.31 of 2025 is also aged about eighty years, as claimed and a promoter shareholder of the aforesaid company.

(8) Both the petitioners have been filing their income tax returns for the last more than eighteen years and it has never been the case that any notices were issued to which they did not respond or for that matter any summons for producing any document or information or for appearance may have been issued to the said petitioners but they did not respond. They claim to be filing their returns regularly and disclosing their income.

(9) On 01.07.2021, the petitioners had sold/ transferred equity shares of company under Offer For Sale (O.F.S.) to the public as part of I.P.O. In the case of Pramod Swarup Agrawal, 11,11,486 equity shares were transferred for total consideration of Rs.33,00,00,000/- whereas in the case of Sneh Lata Agarwal, she sold/ transferred 14,05,405 equity shares for a total consideration of Rs.41,59,99,880/-. At the time of such transfer, the company was not a listed company. It was listed on recognized stock exchange on 05.07.2021. It is claimed that the proceeds from the sale of shares were received in the bank account of the petitioners. They paid advance tax on the income arising out of sale of O.F.S. share in I.P.O. but before filing their income tax returns for A.Y.2022-23 after seeking consultations and opinion from various tax consultants they came to the conclusion that consideration received by them on sale/ transfer of shares to public through O.F.S. was not liable to capital gains tax under Section 45 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act, 1961'). For this reason, they did not offer any tax on the said transaction in their returns filed for A.Y. 2022-23 and in fact, claimed refund of the advance tax paid.

(10) According to learned counsel for the petitioner, there was no column in the income tax return which permitted petitioners to inform that the said transactions were not taxable otherwise as claimed they would have done so. However, the petitioners through their Chartered Accountants/ Consultants filed a letter dated 16.01.2023 before the opposite party no.5 i.e. the jurisdictional assessing officer as this is the most they could do, there being no provision for uploading of such information upon the relevant portal of the Income Tax Department. Copy of the said document is annexed as Annexure no.1 in both the writ petitions. It details the reasons why petitioners were not liable to capital gain tax.

(11) The provision contained in Section 55(2)(ac) of the Act, 1961 did not contain any such mechanism under which the 'fair market value' of the shares sold by the petitioners could be calculated which was necessary for calculating the capital gain and paying tax thereon. In the absence of this mechanism, there is no way that Capital Gain Tax could be calculated and paid. Most important, the assessing officer ordered refund of the advance tax paid by the petitioners. Therefore, even the Department understood that the income was not liable to tax, otherwise, proceedings would have been initiated against the petitioners for sentencing etc.

(12) As many similarly placed persons were claiming advantage of not being liable to tax in respect of such transactions, therefore, realizing the lacunae, an amendment was brought in Section 55 of the Act, 1961 on 01.09.2024 making such transactions liable to capital gain tax by providing a mechanism for calculating their fair market value. The absence of

any such mechanism in the unamended provision made it impossible for any willing person to pay the tax. The amendment was made effective from 01.04.2018. It is on account of the aforesaid that petitioners were illegally subjected to search operations under Section 132 of the Act, 1961.

(13) It was contended by Sri Mistri, learned Senior Counsel appearing for the petitioners that in view of this retrospective amendment, the petitioners were liable to pay the tax on the transaction but on account of the search operation conducted by the opposite parties on 12.12.2024, in view of the second proviso to Section 139 (8A) of the Act, 1961, they were statutorily prohibited from doing so. The said proviso provides that a person shall not be eligible to furnish an updated return under the said sub-Section where (a) a search has been initiated under section 132 or books of account or other documents or any assets are requisitioned under section 132A in the case of such person. He also invited our attention to the consequences of initiation of search operations.

(14) It is only when persons similar to the petitioners started claiming the said benefit that the department woke up to amend the provision. Petitioners, according to him, could not be subjected to search operations under Section 132 on account of non-payment of capital gains tax on account of an admitted lacunae in the law which has been rectified only subsequently and this fact could not be the basis for any action under the said provision of the Act, 1961.

(15) According to him, there was no information referable to Section 132(1) (b) and no prudent person could in the facts of

this case have a reason to believe referable to clause (b) of sub-Section (1) of Section 132 of the Act, 1961.

(16) He also emphasized upon the fact that normally capital gain tax is payable at the relevant time at the rate of ten percent, however, after the search operations if the assessment takes places, the liability would be sixty percent. In this regard, he referred to Section 113 of the Act, 1961, which refers to tax in the case of block assessment of search cases, a position which could not be refuted by learned counsel for the Revenue. He submitted that the petitioners would now be subjected to block assessment. Therefore, the action in question apart being illegal is highly prejudicial to the petitioners.

(17) Learned counsel for the Revenue, of course, submitted that the scope of judicial review in such matters is very limited and the Court should keep in mind the pronouncement of Hon'ble the Supreme Court especially in the case of **'Principal Director of Income Tax (Investigation) and ors. vs. Laljibhai Kanjibhai Mandalia'** reported in (2022) 446 ITR page 18 (SC) on the subject and should not decide the matter as an appellate court. There was sufficient information and based thereon, reason to believe was formed for the search operation by a competent officer and within the limited bounds of judicial review, this was not a case for interference. He contended that argument of Sri Mistri, learned counsel for the petitioners that the search operations were invalid because of the fact that though the search operations under Section 132 required the competent authority to form a reason to believe which was on a higher footing than the requirement under Section 131 (1A) which only required a reason to suspect, therefore, as in the case of Sneh

Lata Agarwal, a notice under Section 131(1A) had been issued subsequent to the search operations, therefore, the search operations were invalid, was not acceptable and was contrary to law. He also stated that reliance placed by Sri Mistri upon the judgment of Division Bench of this Court in **'Dr. Anita Sahay vs. Director of Income Tax (Investigation) & ors.'** reported (2004) ITR Vol.266 597 is misplaced for the reason that the said judgment has been clarified subsequently by another Division Bench in the case of **'Dr. V.S. Chauhan vs. Director of Income Tax, Investigations'** reported in **(2011) 200 Taxman 413 (Allahabad). Secondly, Jharkhand High Court had taken another view and held that this by itself will not validate the search operations which according to him displays a correct understanding of the legal position.**

(18) During course of hearing, an envelope containing the satisfaction note in the context of proceedings under Section 132 of the Act, 1961 was placed before the Court which was sealed and kept on record. We have perused the same. In addition to it, on a subsequent date, another sealed envelope containing certain documents were placed before us which we will refer to hereinafter.

(19) As far as challenge to warrant of authorization and search proceedings under Section 132 of the Act, 1961 both the petitioners being husband and wife reside at the same residence where the search took place on 12.12.2024 and the grounds of challenge in this context are same in both the writ petitions. We will, therefore, first of all deal with this aspect of the matter and in that process, we will consider the arguments and counter-arguments of the rival parties.

(20) Section 132 of the Income Tax Act, 1961 reads as under:-

"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

(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 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 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 :

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii):

Provided also that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business:

Provided also that no authorisation shall be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after the 1st day of October, 2009 unless he has been empowered by the Board to do so.

Explanation.—For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

(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, authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

Explanation.—For the removal of doubts, it is hereby declared that the reason to suspect, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

[(2) The authorised officer may requisition the services of,—

(i) any police officer or of any officer of the Central Government, or of both; or

(ii) any person or entity as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the procedure, as may be prescribed, in this regard,

to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1A) and it shall be the duty of every such officer or person or entity to comply with such requisition.]

(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

Explanation.—For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination

may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(5) [***]

(6) [***]

(7) [***]

(8) The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorised officer for a period exceeding [76][one month from the end of the quarter in which the order of assessment or reassessment or recomputation is made] under sub-section (3) of section 143 or section 144 or section 147 or section 153A or clause (c) of section 158BC unless the reasons for retaining the same are recorded by him in writing and the approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director for such retention is obtained :

Provided that the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

(8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order.

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1A) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

(9A) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.

(9B) Where, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer, for reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do, he may with the previous approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee, and for the said purposes, the provisions of the Second Schedule shall, mutatis mutandis, apply.

(9C) Every provisional attachment made under sub-section (9B) shall cease to have effect after the expiry of a period of six

months from the date of the order referred to in sub-section (9B).

[(9D) The authorised officer may, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, make a reference to,—

(i) a Valuation Officer referred to in Section 142A; or

(ii) any other person or entity or any valuer registered by or under any law for the time being in force, as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the procedure, as may be prescribed, in this regard,

who shall estimate the fair market value of the property in the manner as may be prescribed, and submit a report of the estimate to the authorised officer or the Assessing Officer, as the case may be, within a period of sixty days from the date of receipt of such reference.]

(10) If a person legally entitled to the books of account or other documents seized under smissioner, Principal Director General or Director General or Principal Director or Director under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

(11) [***]

(11A) [***]

(12) [***]

(13) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1) or sub-section (1A).

(14) The Board may make rules in relation to any search or seizure under this section ; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

(i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available ;

(ii) for ensuring safe custody of any books of account or other documents or assets seized

[Explanation 1.—For the purposes of sub-sections (9A), (9B) and (9D), the last of [authorisations] for search shall be deemed to have been executed,—

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or

(b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorised officer.]

Explanation 2.—In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

Powers to requisition books of account, etc.

132A. (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, 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 and the said books of account or other documents have been taken into custody by any officer or authority under any other law for the time being in force, or

(b) any books of account or other documents will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act and 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, such books

of account or other documents on the return of such books of account or other documents by any officer or authority by whom or which such books of account or other documents have been taken into custody under any other law for the time being in force, or

(c) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force,

then, 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 may authorise any Additional Director, Additional Commissioner, Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer (hereafter in this section and in sub-section (2) of section 278D referred to as the requisitioning officer) to require the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

Explanation.—For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

(2) On a requisition being made under sub-section (1), the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, of that sub-section shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

(3) Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sub-sections (4A) to (14) (both inclusive) of section 132 and section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under sub-section (1) of section 132 by the requisitioning officer from the custody of the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of this section

and as if for the words "the authorised officer" occurring in any of the aforesaid sub-sections (4A) to (14), the words "the requisitioning officer" were substituted.

Application of seized or requisitioned assets.

132B. (1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:—

(i) the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958) [79a][the Interest-tax Act, 1974 (45 of 1974) and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015)], and the amount of the liability determined on completion of the assessment or reassessment or recomputation and the assessment of the year relevant to the previous year in which search is initiated or requisition is made, or the amount of liability determined on completion of the assessment under Chapter XIV-B for the block period, as the case may be (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is deemed to be in default, or the amount of liability arising on an application made before the Settlement Commission under sub-section (1) of section 245C, may be recovered out of such assets :

Provided that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for release of asset and the nature and source of acquisition of any such asset is explained to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, to the person from whose custody the assets were seized:

Provided further that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed;

(ii) if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied;

(iii) the assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner under sub-section (5) of section 226 and the Assessing Officer or, as the case may be, the Tax Recovery Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (a) The Central Government shall pay simple interest at the rate of one-half per cent for every month or part of a month on the amount by which the aggregate amount of money seized under section 132 or requisitioned under section 132A, as reduced by the amount of money, if any, released under the first proviso to clause (i) of sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (i) of sub-section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in clause (i) of sub-section (1) of this section.

(b) Such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment or reassessment or recomputation.

Explanation 1.—In this section,—

(i) "block period" shall have the meaning assigned to it in clause (a) of section 158B;

(ii) "execution of an authorisation for search or requisition" shall have the same meaning as assigned to it in [Explanation to section 158B].

Explanation 2.—For the removal of doubts, it is hereby declared that the "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII."

(21) Section 132 is a provision which invades the rights and liberties of citizens especially the Right to Privacy, therefore, exercise of power thereunder is hedged by certain conditions so as to ensure avoidance of arbitrary and malafide action and to safeguard citizens from such action. They also balance the demands of the State (Revenue) vis-a-vis the rights and liberties including right to privacy available to the citizens of this country. Therefore, the provisions of Section 132 have to be understood and interpreted strictly just as they have to be complied strictly.

(22) On a bare reading of the above quoted provision, it is evident that in order to initiate any action thereunder, first of all, there has to be information in possession of the officers referred thereunder. Secondly, such officers should have reason to believe as a consequence of such information and based thereon. Thirdly, this information and reason to believe should have a relation with any of the three clauses (a), (b) or (c) contained therein, otherwise such exercise would be bad in law.

(23) In this context, we may fruitfully rely on a Division Bench judgment of Delhi High Court in the case of **'L.R. Gupta & Ors. vs. Union of India & Ors'** reported in (1992) Income Tax

Reports Volume-194 Page 32, wherein their lordships have observed as under:-

> *" A search which is conducted under Section 132 is a serious invasion into the privacy of a citizen. Section 132(1) 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 or the belief so recorded must clearly show whether the belief falls under sub-Clause (a), (b) or (c) of Section 132(1). No search can be ordered except for any of the reasons contained in sub-Clauses (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 Clauses (a), (b) or (c) then an authorisation under Section 132(1) will have to be quashed. As observed by the Supreme Court in Income Tax Officer v. Seth Brothers, (1969) 74 ITR 836, 843:*
>
> *"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 authorises it to be exercised. If the action of the officer issuing the authorisation 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"."*

(24) A Division Bench of the Delhi High Court in **L.R. Gupta (supra)** had the occasion to consider the meaning, purport and scope of Section 132 (1) clauses (a), (b) and (c) and in that context while referring to clause (b) of Section 132(1) of the Act, 1961 observed as under:-

> *"Sub-clause (b) of Section 132(1) refers to cases where there is reason to believe that if any summons or notice, as specified in the said sub-clause (a) has been issued or will be issued then that person will not produce or cause to be produced the books of account, etc. In other words, the said provision refers to the belief which may be formed by the Appropriate Authority to the effect that the person concerned is not likely to voluntarily,*

or even after notice, produce documents before the Income Tax authorities. Where, for example, there is information that a person is hiding or likely to hide or destroy documents or books of account which are required or are relevant for the purposes of the Act then, in such case, it can be said that unless and until search is conducted, the said books of account or documents will not be recovered. The belief of the authority must be that the only way in which the Income Tax Department would be in a position to obtain books of account and documents from a person is by the conduct of a search and consequent seizure of the documents thereof. In our opinion, some facts or circumstances must exit on the basis of which such a belief can be formed. For example, if the Department has information that a person has duplicate sets of account books or documents where havala transactions are recorded, then the Department can legitimately come to the conclusion that, if a notice is sent, then that person is not likely to produce the said documents, etc. Duplicate books of account and such like documents are maintained primarily for the reason that they are not to be produced before the Income Tax authorities. To put it differently, the nature of the documents may be such which are not, in the normal course, likely to be produced before the Income Tax authorities either voluntarily or on requisition being sent. It may also happen that the documents may exist and be in the custody of a person which would show the existence of immovable property which he may have acquired from money or income which has been hidden from the Income Tax Department. The past record of the assessee and his status or position in life are also relevant circumstances in this regard. Where, however, documents exist which are not secretly maintained by an assessee, for example pass books, sale deeds which are registered and about the existence of which the Department is aware, then in such a case, it will be difficult to believe that an assessed will not produce those documents."

(25) We respectfully concur with the exposition of law as to the application of clause (b) of Section 132 (1) of the Act, 1961 by the Delhi High Court as quoted hereinabove.

(26) We may in this very context refer to a decision of Punjab and Haryana High Court in the case of **'H.L. Sibal vs.**

Commissioner of Income Tax & Ors.' (1975) 101 ITR 112 (P&H) which has been referred in the decision of Delhi High Court in the case of **L.R. Gupta (supra)** and in that case, it was observed as under:-

> *"The applicability of Section 165, Criminal Procedure Code, to the searches made under Section 132(1) gives an indication that this Section is intended to apply in limited circumstances to persons of a particular bent of mind, who are either not expected to cooperate with the authorities for the production of the relevant books or who are in possession of undisclosed money, bullion and jewellery, etc. Take for instance, a particular assessee who has utilised his undisclosed income in constructing a spacious building. His premises cannot be subjected to a search under this Section on this score alone. A search would be authorised only if information is given to the Commissioner of Income Tax that such a person is keeping money, bullion, jewellery, etc., in this building or elsewhere. Further, if an assessee has been regularly producing his books of account before the assessing authorities who have been accepting these books as having been maintained in proper course of business, it would be somewhat unjustified use of power on the part of the Commissioner of Income Tax to issue a search warrant for the production of these books of account unless of course there is information to the effect that he has been keeping some secret account books also. He has to arrive at a decision in the background of the mental make up of an individual or individuals jointly interested in a transaction or a venture. A blanket condemnation of persons of diverse activities unconnected with each other on the odd chance that if their premises are searched some incriminating material might be found is wholly outside the scope of Section 165, Criminal Procedure Code. This power has to be exercised in an honest manner and search warrants cannot be indiscriminately issued purely as a matter of policy."*

(27) Reason to Believe are contained in the Satisfaction Note. It is this note which is to be seen by us but before doing so, we need to understand the meaning of the term 'Reason to Believe' and scope of judicial review in such matters. This Court had the occasion to explain the phrase 'Reason to Believe' in the

case of **'Ganga Prasad Maheshwari vs. CIT'** reported in (1981) 6 Taxman 363 in the following manner:-

> *"Reason to believe' is a common feature in taxing statutes. It has been considered to be the most salutary safeguard on the exercise of power by the officer concerned. It is made of two words 'reason' and 'to believe'. The word 'reason' means cause or justification and the word 'believe' means to accept as true or to have faith in it. Before the officer has faith or accepts a fact to exist there must be a justification for it. The belief may not be open to scrutiny as it is the final conclusion arrived at by the officer concerned, as a result of mental exercise made by him on the information received. But, the reason due to which the decision is reached can always be examined. When it is said that reason to believe is not open to scrutiny what is meant is that the satisfaction arrived at by the officer concerned is immune from challenge but where the satisfaction is not based on any material or it cannot withstand the test of reason, which is an integral part of it, then it falls through and the court is empowered to strike it down. Belief may be subjective but reason is objective. In ITO v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC), the Supreme Court, while interpreting a similar expression used in section 147 of the Act, held (at page 446 103 ITR):*
>
> *The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The reason must be held in good faith. It cannot be merely a pretence."*

(28) As regards the scope of judicial review in matters of search under Section 132 of the Act, 1961 and other ancillary issues, we may straightaway refer to a decision of Hon'ble the Supreme Court in the case of **'Principal Director of Income Tax (Investigation) and ors. vs. Laljibhai Kanjibhai Mandalia'** (2022) 446 ITR page 18 (SC) wherein after considering earlier precedents on the subject, ultimately, observed as under:-

> *"32. In the light of judgments referred to above, the sufficiency or inadequacy of the reasons to believe recorded cannot be gone into while considering the validity of an act of authorization to conduct search and seizure. The belief recorded alone is justiciable but only while keeping in view the Wednesbury*

Principle of Reasonableness. Such reasonableness is not a power to act as an appellate authority over the reasons to believe recorded.

33. We would like to restate and elaborate the principles in exercising the writ jurisdiction in the matter of search and seizure under Section 132 of the Act as follows:

i) The formation of opinion and the reasons to believe recorded is not a judicial or quasi-judicial function but administrative in character;

ii) The information must be in possession of the authorised official on the basis of the material and that the formation of opinion must be honest and bona fide. It cannot be merely pretence. Consideration of any extraneous or irrelevant material would vitiate the belief/satisfaction;

iii) The authority must have information in its possession on the basis of which a reasonable belief can be founded that the person concerned has omitted or failed to produce books of accounts or other documents for production of which summons or notice had been issued, or such person will not produce such books of accounts or other documents even if summons or notice is issued to him; or

iv) 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;

v) Such reasons may have to be placed before the High Court in the event of a challenge to formation of the belief of the competent authority in which event the Court would be entitled to examine the reasons for the formation of the belief, though not the sufficiency or adequacy thereof. In other words, the Court will examine whether the reasons recorded are actuated by mala fides or on a mere pretence and that no extraneous or irrelevant material has been considered;

vi) Such reasons forming part of the satisfaction note are to satisfy the judicial consciousness of the Court and any part of such satisfaction note is not to be made part of the order;

vii) The question as to whether such reasons are adequate or not is not a matter for the Court to review in a writ petition. The sufficiency of the grounds which induced the competent authority to act is not a justiciable issue;

viii) The relevance of the reasons for the formation of the belief is to be tested by the judicial restraint as in administrative action as the Court does not sit as a Court of appeal but merely

> ***reviews the manner in which the decision was made. The Court shall not examine the sufficiency or adequacy thereof;***
> *ix) In terms of the explanation inserted by the Finance Act, 2017 with retrospective effect from 1.4.1962, such reasons to believe as recorded by income tax authorities are not required to be disclosed to any person or any authority or the Appellate Tribunal."*

(29) The Supreme Court of India while rendering the judgment in **Laljibhai Kanjibhai Mandalia (supra)** referred to its earlier judgment in the case of **'Spacewood Furnishers (P) Ltd. v. DG of Income Tax'**, reported in (2012) 340 ITR 393 wherein the order of the High Court was set aside disapproving the judgment of High Court wherein the satisfaction note had been reproduced extensively.

(30) In this context, we may also refer to a Division Bench judgment of this Court in the case of **'Vindhya Metal Co-operation & Ors. vs. Commissioner of Income Tax and Ors. (1985)'** ITR Vol.156 page 233 wherein it has been held as under :-

> *"It is settled that the existence or otherwise of the condition precedent to exercise of power under these provisions is open to judicial scrutiny. The absence of the condition precedent would naturally have the effect of vitiating the authorisation made by the Commissioner in either of the two provisions and the proceedings consequent thereto. 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. (See Chhugamal Rajpal v. Chaliha [1971] 79 ITR 603 (SC); Motilal v. Preventive Intelligence Officer [1971] 80 ITR 418 (All); Sibal v. CIT [1975] 101 ITR 112 (P&H); ITO v. Lakhmani Mewal Das [1976] 103 ITR 437 (SC); Manju Tandon (Smt.) v. Kapoor [1978] 115 ITR 473 (All) and Ganga Prasad Maheshwari v. CIT [1983] 139 ITR 1043 (All)."*

(31) This judgment also explains the scope of judicial review in such matters which is in tune with the decision of Hon'ble the Supreme Court though it has been rendered earlier.

(32) Learned Senior Advocate and A.S.G. appearing for the Revenue relied heavily upon the judgment of Hon'ble Supreme Court in the case of **Laljibhai Kanjibhai Mandalia (supra)** to submit that the scope of judicial review in the case at hand is limited and in view of the information and reason to believe referred and contained in the satisfaction note which has been produced before the Court veritably there is no scope for such review of the impugned action in this case as there is no illegality therein. Not only there is information but reason to believe and in this context he submitted that the petitioners' counsel has proceeded to argue on the incorrect premise as if non-payment of capital gains tax for the sale of shares under the OFS is the only basis for search operations under Section 132 of the Act, 1961 whereas it is not so. In this context, he asked the Court to read the satisfaction note under the heading 'Other Allegations'.

(33) During course of argument Sri N. Venkataramana, learned Senior Advocate and A.S.G. appearing for the Revenue very fairly submitted that clause (a) and (c) of sub-Section (1) of Section 132 of the Act, 1961 are not at all attracted in the case at hand which is referable only to clause (b) thereof.

(34) The bottomline is that there has to be information referable to clause (b) of sub-Section (1) of Section 132 of the Act, 1961 and reason to believe based thereon that the petitioners before us who had not been issued any summons/

notice prior to search operation, if it was to be issued to them they would not produce or cause to be produced any books of account or other documents which will be useful for, or relevant to, any proceedings under the Indian Income Tax Act, 1961.

(35) The information and reason to believe referred above has to be related/ referrable to clause (b) aforesaid and should have a rational connection with the said clause (b) and if it is not then it can be a ground for interference under Article 226 of the Constitution of India because then it would be a case of absence of such information/ reason to believe in the context of said clause (b) of sub-Section (1) of Section 132 of the Act, 1961 and would lead to a conclusion that it is an arbitrary exercise of power, without application of mind to the provisions of law and legal requirements contained therein.

(36) In the light of the aforesaid, we have perused the satisfaction note carefully. As we are not required to reproduce it nor to refer its context extensively for obvious reason as according to the Revenue, the assessment is still to commence and it is only in view of the explanation to Section 132 such material / information could be available to the assessee only after the assessment proceedings commence and of course, in view of the Supreme Court mandate in the case of **Laljibhai Kanjibhai Mandalia (supra)** but, in order to justify our decision, we will have to refer, even if cursorily, to the Satisfaction Note in the light of the requirements of law.

(37) When we peruse the Satisfaction Note, we do not find any information whatsoever whether under the heading 'Other Allegations' or otherwise, elsewhere, which could be referable to

clause (b) of sub-Section (1) of Section 132 for issuance of warrant of authorization for search.

(38) Without impeding upon the requirements of law as referred in the case of **Laljibhai Kanjibhai Mandalia (supra)** or the explanation to Section 132, the information/ material referred in the satisfaction note, other than under the heading 'Other allegation', has absolutely no relation to clause (b). This part is only in the context of sale of shares under O.F.S. and the amendments in Section 55 (2)(ac) of the Act, 1961. The amendment of Section 55(2) (ac) of the Act, 1961 on 01.09.2024 itself demonstrates that because of absence of any mechanism for calculation of Fair market Value in respect of sale of share of an unlisted company, capital gain tax could not be calculated on sale/ transfer of shares by the promoter shareholders under O.F.S. This could not be an information for search under Section 132(1)(b), as the Revenue has failed to demonstrate that such sale/ transfer was liable to capital gain tax as on the date of filing of Return by the petitioner for A.Y. 2022-23. Even under the heading 'Other Allegations', on which great emphasis was laid by learned A.S.G. only one paragraph refers to one of the petitioners, namely, Pramod Swarup Agrawal but this again contains vague averments which have no relation whatsoever to clause (b) of sub-Section (1) of Section 132. It was asserted by Sri Mistri that petitioners are neither director of Indian Pesticide Ltd. nor in any managerial post therein. There is no information in the satisfaction note which could be the basis for a belief as envisaged under Section 132 that if petitioners were to be issued summons or notice, they would not produce or cause to be produced any books of account or any other documents which

will be useful for or relevant to any proceedings under the Act, 1961. No such past conduct of the petitioners is referred therein. Nor any other information is referred which may have any relation to Section 132(1)(b).

(39) No prudent person on a reading of the satisfaction note in the light of requirements of law contained in Section 132(1)(b) can arrive at a conclusion that such information and reason to believe formed by the competent authority in this regard as contained in the handwritten note signed on 10.12.2024 had any relation whatsoever to clause (b) of sub-Section (1) of Section 132 of the Act, 1961 so as to justify a search operation under the said provision in the context of the petitioners.

(40) On a bare reading of the satisfaction note and Section 132, we have no hesitation to conclude that the jurisdictional prerequisites for exercise of power under Section 132 are / were woefully absent in this case and consequently, we have no hesitation to say that the entire search operations based on such satisfaction note and warrant of authorization are illegal. The information and reason to believe based thereon so far as the petitioners are concerned are a mere pretence.

(41) Interestingly, the 'reasons to believe' contained in the satisfaction note are in respect of all the three conditions contained in clause (a), (b) and (c) of Section 132 (1) of the Act, but learned A.S.G. during course of argument very fairly submitted that only clause (b) is attracted and we have no doubt in our mind that there is absolutely no information on the basis of which any prudent person could have formed a reason to believe referable to clause (a) and (c) so far as the petitioner-

Pramod Swarup Agrawal and Sneh Lata Agarwal are concerned. Of course, the satisfaction note is in respect of not only Pramod Swarup Agrawal and Sneh Lata Agrawal but several other persons, therefore, possibly, reference to all these three clauses has been made on account of aforesaid fact, otherwise, so far as the petitioners before us in these two petitions are concerned, there is no information referable to clause (a) and (c) of Section (1) of Section 132 nor for that matter to clause (b).

(42) We have already stated earlier that the Revenue has not filed any counter affidavit that in any earlier proceedings under the Income Tax Act, the petitioners had avoided production of documents etc so as to give a reasonable belief that they would do so in this case also, as and when notices or summons are issued. We have also referred to the Division Bench judgment in the case of **L.R. Gupta (supra)** wherein law in the context of clause (b) of sub-Section (1) of Section 132 has been elucidated and with which we have concurred. The Revenue has not contradicted the assertions in the pleadings or by the two petitioners that they have timely filed their income tax returns and always responded to the notices and summons issued by the income tax authorities. Therefore, this is also a factor which has to be taken into consideration apart from the fact that in the notice there is no such information based on which, any prudent person could form reason to believe referable to clause (b) of sub-Section (1) of Section 132.

(43) In this context, we may refer to the reliance placed by learned A.S.G. upon certain supplementary documents submitted before the Court which according to him were explanation to the satisfaction note. We have gone through the

one page note and the documents annexed therewith. We have taken into consideration the submission of learned A.S.G. that the Revenue is only at the investigation stage, therefore, looking at the judgment of Hon'ble the Supreme Court in the case of **Laljibhai Kanjibhai Mandalia (supra)** , this Court should not pass any order which may stall the investigation and ultimately impede the Revenue from taking further action in the matter. He also emphasized the fact that out of the eighteen shareholders of India Pesticide Limited, two had paid the capital gains tax based on the sale of shares held by them under O.F.S., however, he had no answer to the contention of Sri Mistri, learned counsel for the petitioners that if the search operations were not based on the said transaction then why the premises of these two persons were not searched. Be that as it may, can the petitions be thrown out merely because two shareholders paid capital gain tax especially when the petiioner had from the beginning claimed that they were not liable to tax, certainly not. We do not dwell on this aspect any further in view of what has already been stated by us based on our examination of the satisfaction note to the extent it relates to the petitioners before us. Learned A.S.G. even went to the extent of saying that if the petitioners so choose they can file a return by 31.03.2025 in the context of non-payment of capital gains tax. However, on being confronted with the provisions of law as pointed out by Sri Mistri, that is, second proviso to Section 139 (8-A) which prevented the petitioners from doing so, he had no answer. Be that as it may, we are only concerned with the validity of warrant of authorization and search operations conducted under Section 132 as of now.

(44) In the context of the supplementary documents provided by learned A.S.G., we are constrained to observe that these contain information which was discovered post-search. Information and reason to believe referred in Section 132 of the Act, 1961 have to pre-exist the search operations under Section 132. Such search cannot be justified or validated by relying upon post-search material or information or reason to believe. Reference may be made in this regard to decision of Division Bench of Bombay High Court in Writ Petition No.122 of 2009 **'H.J. Industries Pvt. Ltd. And Ors. vs. Mr. Rajendra and Ors.'** as also another Division Bench judgment of the same High Court in Writ Petition No.1729 of 2024 **'Bal Krushna Gopalrao Buty and Ors. vs. Principal Director (Investigation), Nagpur and ors.'** decided on 23.04.2024 (Nagpur Bench).

(45) The search and post-search information or reason to believe cannot form the basis for justifying the warrant of authorization or the search conducted in pursuance thereof. The legal position is settled in this regard.

(46) Even after having gone through the supplementary documents, especially, the one page note, we find that most of the recitals therein do not find mention in the satisfaction note, and the documents appended relate to post-search information which cannot made the basis for justifying the impugned search but even after taking into consideration the same, for the reasons already given hereinabove, we do not find any reason to change our opinion as expressed hereinabove. It is always open to the Revenue to proceed against the petitioner under other provisions of Act, 1961 such as Section 148 etc as far as it may be permissible but the search under Section 132 can't be sustained.

We only wish we could have discussed the satisfaction note more elaborately to disclose our mind on the recitals and information contained therein but the law as declared by Hon'ble the Supreme Court in the case of **Laljibhai Kanjibhai Mandalia (supra)** prevents us from doing so. Suffice it to say, even at the cost of repetition that nothing stated in the satisfaction note is referable to Section 132(1) clause (b) nor clause (a) and (c). Post-search information cannot be used to justify such an act.

(47) The contention of Sri Mistri, learned counsel for the petitioners that the fact that a notice under Section 131 (1A) of the Act, 1961 was issued to one of the petitioners-Sneh Lata Agrawal after the search operations is itself proof of the fact that prior to it there was no reason to believe to undertake an exercise under Section 132 as the requirement of Section 131 is a lesser requirement that is of having reason to suspect whereas the reason to believe stands on a higher footing, is not required to be considered in view of the discussion already made.

(48) In view of the above discussion, we quash the warrant of authorization impugned herein and also declare the search operation impugned before us as illegal. Consequences shall follow accordingly as per law. The benefit of the order shall not be *ipso facto* available to others whose names figure in the satisfaction note and, their cases, if the occasion so arises, can be considered independenty. Our order shall also not come in the way if the Revenue has a cause to proceed against the petitioners under any other provisions of the Act, 1961.

(49) Now, coming to other issue which arise in the writ petition of Sneh Lata Agrawal, that is, the validity of the notice dated 27.01.2025 issued under Section 131 (1A) of the Act, 1961.

(50) Section 131 of the Act, 1961 reads as under:-

"(1) The Assessing Officer, Deputy Commissioner (Appeals), Commissioner (Appeals), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and Dispute Resolution Panel referred to in clause (a) of sub-section (15) of section 144C shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

(1A) If the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director, or the authorised officer referred to in sub-section (1) of section 132 before he takes action under clauses (i) to (v) of that sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.

(2) For the purpose of making an inquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority not below the rank of Assistant Commissioner of Income-tax, as may be notified by the Board in this behalf, to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) or sub-section (1A) or sub-section (2) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

Provided that an Assessing Officer or an Assistant Director or Deputy Director shall not:
(a) impound any books of account or other documents without recording his reasons for so doing, or
(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefor, as the case may be."

(51) In this context, one of the facts which came to light during argument was that an authorized officer under Section 132 of the Act, 1961, namely, Adarsh Kumar who had issued the notice under Section 131(1A) dated 27.01.2025, he could not have done so as the action envisaged under clauses (i) to (v) of sub-Section (1) of Section 132 had already been taken prior to issuance of this notice and sub-Section (1A) of Section 131 prohibited any action by him after the stage of clauses (i) to (v) of sub-Section (1) of Section 132 had been crossed. It was argued by Sri Mistri, learned counsel appearing for the petitioners that Sri Adarsh Kumar who was Authorized Officer under Section 132 was not the assessing officer of the petitioners nor had assessment proceedings started, therefore, he could not have issued such notice under Section 131 of the Act, 1961. We had specially granted opportunity to learned A.S.G. to address us on this issue vide our order dated 28.03.2025. The only argument advanced by learned A.S.G. was that the Authorized Officer also happened to the Deputy Director of investigation as under sub-Section (1A) and as Deputy Director (Investigation) he was competent to issue such notice under Section 131, therefore, there was no illegality. With respect, we cannot accept this argument.

(52) We have carefully considered the provisions of sub-Section (1A) of Section 131 and we find that several officers have been authorized to exercise the powers conferred under sub-Section (1) if they have 'reason to suspect' that any income has been concealed, or is likely to be concealed by any person or class of persons within his jurisdiction for the purposes of making any inquiry or investigation relating thereto, first is the Principal Director General, who has not issued the notice, second is the Director General who has also not issued the notice, the Principal Director or Director or Joint Director or Assistant Director have also not issued the notice. Now, in addition to the aforesaid, the authorized officer referred to in sub-Section (1) of Section 132 is also empowered to exercise the powers under sub-Section (1) of Section 131 but with a rider that is he can do so before he take action under clauses (i) to (v) of sub-Section (1) of Section 132. Now, if we accept the contention of learned A.S.G. that Sri Adarsh Kumar apart from being Authorized Officer aforesaid was also Deputy Director, therefore, he could issue such notice even after the search operations had been concluded i.e. after the stage contemplated in clauses (i) to (v) of sub-Section (1) of Section 132 had been crossed, and this would not invalidate such notice because he had presumably acted as DDIT and not an authorized officer, then this would amount to negating the restrictions imposed upon the authorized officer under Section 131(1A) and would amount to reading and understanding the provision in a manner so as make it susceptible to abuse and misuse at the hand of the revenue authorities.

(53) The explanation offered in this regard by learned A.S.G. cannot be accepted as it will render the conditions imposed upon the authorized officer under Section 131 (1A) otiose and also leave scope for circumvention of said conditions and its misuse. Sri Adarsh Kumar being the Authorized Officer and he not being the assessing officer of the petitioners nor the assessment proceedings having started, he could have issued such notice only prior to action under clauses (i) to (v) of sub-Section (1) of Section 132 having been taken and not after that. The Revenue cannot be given the benefit of the fact that he also happened to be Deputy Director, therefore, he could have issued the notice. We have gone through the documents on record and there is no dispute about the fact that he was an authorized officers under sub-Section (1) of Section 132 and had issued the impugned notice under Section 131 (1A), therefore, he could not have issued the notice under sub-Section (1) of Section 131 after action had been taken under clauses (i) to (v) of sub-Section (1) of Section 132 and having done so, the said notice dated 27.01.2025 cannot be sustained.

(54) In fact, this is precisely the opinion expressed by a Division Bench of Jharkhand High Court in the case of **'Emaar Alloys Pvt. Ltd. vs Director General of Income Tax (Investigations) and Others'** reported in (2015) 235 Taxman 569 (Jharkhand) wherein towards the end of the judgment while discussing the question as to whether issuance of notice under Section 131 (1A) subsequent to action under Section 132 would invalidate the search operations, negate the said argument it has been observed that the authorised officer does not have any power to issue notices under section 131(1A) of the Act post-

search, as such, at best issuance of such notice would render the notice invalid. But issuance of notice under s. 131(1A) of the Act post-search would not in any manner render the proceedings under section 132 of the Act invalid, if they were otherwise initiated pursuant to a valid authorization issued after recording satisfaction on the basis of the material available on record. We are not expressing any opinion on the issue as to whether issuance of a notice under Section 131(1A) subsequent to exercise under Section 132 would invalidate the latter but are only saying that Sri Adarsh Kumar who was Authorized Officer for exercising power under sub-Section (1) of Section 132 could not have issued the notice under sub-Section (1A) of Section 131 of the Act, 1961 post-search operations as has been observed by Jharkhand High Court. The impugned notice dated 27.01.2025 is accordingly quashed.

(55) In view of the above discussion, both the petitions are **allowed.**

(56) We, however, make it clear that our judgment shall not come in the way of the opposite parties in initiating proceedings against the petitioners if otherwise permissible, under other provisions of the Act, 1961 such as under Section 148 etc.

(57) The satisfaction note and the supplementary documents which are in sealed cover shall be returned to learned counsel for the Revenue.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 3.6.2025

Shanu/-