2022 INSC 719

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4081 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 25046 OF 2019)

PRINCIPAL DIRECTOR OF INCOME TAX (INVESTIGATION) & ORS. .....APPELLANT(S)

VERSUS

LALJIBHAI KANJIBHAI MANDALIA .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order dated 22.02.2019 passed by the High Court of Gujarat at Ahmedabad whereby the warrant of authorization dated 07.08.2018 issued by the appellant[1] under Section 132 of the Income Tax Act,1961[2] was quashed. Consequently, all actions taken pursuant to such warrant of authorization were ordered to be rendered invalid.

2. The respondent[3] in its writ petition challenged the act of authorization for search and seizure on the ground that it is a fishing enquiry and the

1 For short, 'Revenue'
2 For short, 'Act'
3 For short, 'Assessee'

conditions precedent as specified in Section 132 of the Act are not satisfied. It is the stand of the assessee that he was looking for an avenue to invest some money and the M/s. Goan Recreation Clubs Private Ltd[4]. was in need of finance for setting up of its business and hence consequently approached the assessee herein for a loan. As a security, the borrower company offered that another company would give its property to the assessee. It may be noticed that there is no allegation of *mala-fides* against the officers of the Revenue.

3. In the counter-affidavit filed by the Revenue, giving the history of transaction, it was stated that the "chain of events raised credible doubt on the transaction entered into by the petitioner (assessee) with the company in question as it is the familiar modus operandi being practiced by the entry operators". It was also stated that the assessee was not expected to comply with the notice of the Revenue as the assessee would have brought the alibi of jurisdiction to evade or not comply with the notice. It was in the interest of revenue that it was not expected to disclose to any outside agency/body or to any of the members directly or indirectly involved in the cob-web of financial transactions with the core groups, viz. Sarju Sharma and associated group of companies. Any inkling of action contemplated by the Revenue was likely to compromise the confidentiality and secrecy of the case intact. It was further stated that the apparent investment

4 For short, 'Company'

made by the assessee was found to be not a judicious investment choice from the point of view of a prudent businessman as the company to which loan was provided by the assessee had no established business, no goodwill in the market, nor was it enlisted in any of the stock exchanges, nor did the assessee had any financial dealings with the company previously. The quick repayment of loan shows that the investment was not meant to earn steady interest income. The investment and nature of transaction entered into by the assessee was akin to the familiar modus operandi employed by the entry operators to provide an accommodation entry to bring the unaccounted black money to books for brief period to run the business till sufficient fund is generated by running the business or some fund from any other unaccounted source comes later on. This is the angle of the investigative process underway in which trail of the money being paid by the assessee is being investigated.

4. The undisputed facts are that the assessee during the financial year 2016-17 transferred a sum of Rs. 6 crores on 01.06.2016 and Rs. 4 crores on 21.06.2016 to M/s Goan Recreation Clubs Private Ltd. The assessee secured the loan by way of a mortgage of the property forming part of Survey No. 31/1-A situated in Village Bambolim, Distt. North Goa. It is an admitted fact that the assessee became the Director of the Company on 18.05.2016 and then ceased to be so on

23.06.2016. It is also admitted that amount of Rs.10 crores was repaid on different dates starting from 06.10.2016 till 31.03.2017 and after repayment of the loan, mortgage was released on 10.07.2017. The Company paid interest as well. It is admitted that the assessee has filed his income-tax return showing the interest income of Rs.42,51,946/- which has been taxed as well. The assessment was finalized under Section 143(3) of the Act on 02.03.2021.

5. In terms of the authorization after recording reasons to believe in the satisfaction note, search was conducted on 10.08.2018 at the residential premises of the assessee which continued till 3:00 am on 11.08.2018 in terms of Section 132 of the Act. The satisfaction note was not supplied to the assessee nor was required to be disclosed in terms of Explanation to Section 132(1) of the Act inserted by the Finance Act, 2017 with retrospective effect i.e. on 01.04.1962. The reasons recorded were produced before the High Court and before this Court.

6. The High Court has reproduced the stand of the Revenue to explain the action of search and seizure against the assessee as under:

> "a) The authorized officers/ investigating officers conducted search and seizure operation at various spots across various states related to the case of Shri Sarju Sharma & other associated group 'of companies which had financial transactions with Shri Sarju Sharma (PANAKOPS3325A) and M/s. Goan Recreation Clubs Pvt Ltd., Goa (PAN-ANYPS6038F), hereinafter referred to as 'the company'. Shri Sarju Sharma is a leading business entrepreneur of Siliguri, Dist-Jalpaiguri, engaged in the

hospitality business of Hotel, Restaurant and Bar running business under the name and style of M/s Hotel Alishan and Restaurant. The company M/s. Goan Recreation Clubs Pvt Ltd. after being incorporated in the year 2015 has stepped into the world of gaming & entertainment unit of Casino industry. The casino business is being operated from the premises of Grand Hyatt Hotel, Bambolin, Goa w.e.f. 29th Ju1y, 2016.

b) The name of M/s Goan Recreation Clubs Pvt Ltd. appeared in the credible information on high value cash deposits/ data of suspicious cash deposits post demonetization period disseminated by the DGIT(Inv.), W.B., Sikkim & NER, wherein it was found that the said company had deposited cash to the tune of Rs.13,79,10,500/- into its two bank accounts maintained with ICICI Bank and HDFC Bank, North Goa.

c) M/s Goan Recreation Clubs Pvt. Ltd. was incorporated on 28.09.2015 with a nominal paid up share capital of Rs 2,00,000/-. The initial Directors were Sarju Shanna and Shri Rohit Gurubhakta Sharma. During the initial year of its incorporation, i.e., in the financial year 2015-16 the company raised huge unsecured loan of Rs 5.77 crore from various individuals and companies in a very peculiar manner, as the company at that juncture was yet to commence any substantive business activities. Again, in the financial year 2016- 17 the company raised an unsecured loan of Rs.34.10 crore from various individuals and companies which includes an amount of Rs.10 crore from the petitioner viz. Shri Laljibhai Kanjibhai Mandalia from Ahmedabad. The details of unsecured loan received by the company and credited into the bank accounts of the company are given below:

xx xx xx

d) From the above chart it is noticed that the company raised huge unsecured loans within two years of its incorporation from various individuals and companies.

e) Whereas, in the pre search analysis, on going through the records available with the MCA (Ministry of Corporate Affairs) and ITBA (Income Tax Business Application) it came to light that the company M/s Goan Recreation Clubs Pvt. Ltd. During the financial year 2016-17 have introduced three new Directors along with the exit of then existing Director Shri Rohit

Gurubhakta Sharma on 03.03.2017, the details given in the following table:

	xx	xx	xx
(f)	xx	xx	xx
(g)	xx	xx	xx

The search and seizure operation in the premises of the petitioner was contemplated and carried out on the basis of the information gathered as explained in the above point nos. (a) to (g) of this para.

From the above though it is found that Shri Mandalia had resigned as Additional Director of the company on 25.06.2016 and the loan was repaid by the company in the same year as noticed from the table given at point no. (g) of this para but the chain of events raises credible doubt on the transactions entered into by the petitioner with the company in question as it is the familiar modus operandi being practiced by the entry operators.

Therefore, from the foregoing paras it can be concluded that the department initiated the search and seizure operation in the premises of the petitioner after conforming to all the criteria mentioned in the Section 132 sub-section 1 clause (s), (b) and (c) of the Income Tax Act, 1961. The search and seizure action was initiated after detailed analysis of information, duly recording of reasons in the Satisfaction Note and approval of the same by the competent authorities."

7. The Company was incorporated on 28.09.2015 with two Directors holding 10,000 shares each of the face value of Rs.10. The stand of the Revenue shows that the said Company stepped into the business of gaming and entertainment and launched a casino in Goa on 29.07.2016 without having any adequate capital. The allegation against the company is in relation to cash deposits of total

Rs.13,79,10,500/- soon after demonetization on 08.11.2016. The satisfaction note prepared by DDIT (Investigation), Unit-1, Jalpaiguri was approved by Additional Director of Income Tax (Investigation) Unit-5, Kolkata and further approved by DGIT (Investigation), Kolkata on 07.08.2018. The High Court also quoted paragraph 4.3 from an affidavit in-reply filed by the Revenue which reads thus:

> "5.3. As far as the investment opportunity is concerned, it is quite glaring that the petitioner invested 10 crores within a span of one month on 01.06.2016 and 21.06.2016 by way of loan on interest given to M/s Goan Recreation Clubs Pvt. Ltd. The investment was made from the Kotak Mahindra Bank A/c No. 80116714807 of the petitioner and deposited into the HDFC Bank A/c No. 50200015405430 of the company, M/s Goan Recreation Clubs Pvt. Ltd. Interestingly, the loan was repaid by the latter in five installments from 06.10.2016 to 31.03.2017 [as shown in point no. (g) of para 4.1]. The apparent investment made by the petitioner is found to be not a judicious investment choice from the point of view of a prudent business man as the company to which the petitioner provided loan, had no established business, no goodwill in the market, nor was it enlisted in any of the stock exchanges, nor did the petitioner have had any financial dealings with the company previously. The quick repayment of the loan shows that the investment was not meant to earn steady interest income. All this goes on to suggest that the investment and nature of transaction entered into by the petitioner was akin to the familiar modus operandi being employed by the entry operators to provide an accommodation entry to bring the unaccounted black money to books for brief period to run the business till sufficient fund is generated by running the business or some fund from any other unaccounted source came later on. That is the angle of the investigative process underway in which fund trail of the money paid by the petitioner is being investigated"

8. The High Court found that none of the reasons to believe to issue authorization met the requirement of Section 132(1)(a), (b) and (c).

The said Section reads thus:

> “132. Search and seizure - (1) Where the Principal Director General or Director General or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Chief 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 (11 of 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).
>
> 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.
> .....”

9. Mr. Balbir Singh, learned Additional Solicitor General of India, appearing for the Revenue argued that the High Court has completely misdirected itself in quashing the authorization as the jurisdiction of the High Court while exercising judicial review is very limited. It was contended that the High Court erred in law in finding that clauses (b) and (c) of Section 132(1) of the Act are not satisfied when it recorded as under:

> "16……Thus, as rightly submitted by the learned counsel for the petitioner, the belief that the petitioner would not respond to a summons or notice issued as envisaged under clause (b) of sub-section (1) of section 132 is not based upon any information or other material but is based upon conjectures and surmises that the petitioner would take the alibi of lack of jurisdiction on the part of the respondents. This contention of the first respondent also lends support to the contention raised on behalf of the petitioner that powers under section 132 of the Act have been resorted to because that is the only provision which vests jurisdiction in the Kolkata authorities for taking action against the petitioner. Evidently, therefore, the circumstance envisaged under clause (b) of sub-section (1) of section 132 of the Act does not exist in the present case.
>
> 17…..There is nothing on record to indicate that any belief has been formed by the competent authority to the effect that the petitioner has in his possession any money, bullion, jewellery or other valuable article or thing which would not have been disclosed by him for the purposes of the Act. On the contrary, in the facts of the present case, from the record of the case as produced by the respondents as well as by the petitioner, it is evident that the loan transaction whereby the petitioner had advanced Rs.10,00,00,000/- to the borrower company has been duly reflected in the books of account of the petitioner. In his return of income, the petitioner has duly shown the interest income from such transaction. The tax deducted at source in respect of such interest income, has been credited to the account of the petitioner by the concerned authority. Therefore, the entire transaction has been disclosed by the petitioner. There is no other material on record on the basis the respondents could have formed the belief as contemplated under clause (c) of sub-

> section (1) of section 132 of the Act. Evidently, therefore the circumstance envisaged under clause (c) of section 132(1) of the Act also does not exist in the present case."

10. Mr. Balbir Singh referred to the judgments of this Court reported as ***N.K. Jewellers and Another*** v. ***Commissioner of Income Tax, New Delhi***[5], ***Commissioner of Income Tax, Allahabad and Ors.*** v. ***Vindhya Metal Corporation and Ors.***[6], ***Income Tax Officer, Special Investigation Circle-B, Meerut*** v. ***Seth Brothers and Ors.***[7] and ***Director General of Income Tax (Investigation), Pune and Ors.*** v. ***Spacewood Furnishers Private Limited and Ors***.[8] to contend that though it is open to the Court to examine the question whether "reasons to believe" have any rational connection or a relevant bearing to the formation of the belief and that such reasons are not extraneous or irrelevant as the officer has to produce relevant evidence to sustain his belief in case the reasons to believe are questioned in court, however, it was argued that the jurisdiction of the High Court is to examine the existence of reasons not the legality of the same.

11. On the other hand, Mr. Datar, learned senior advocate appearing for the assessee argued that the High Court has rightly held that none of the pre-requisite conditions for search and seizure under Section 132 of the Act are satisfied. It was argued that it is not the case of the

5 (2018) 12 SCC 627
6 (1997) 5 SCC 321
7 (1969) 2 SCC 324
8 (2015) 12 SCC 179

Revenue that clause (a) of sub-section (1) of Section 132 of the Act is applicable, whereas the High Court has recorded a finding that even clause (b) and clause (c) of sub-section (1) of Section 132 of the Act are not satisfied. Since the view of the High Court is based upon established principles of law, no case for interference is made out in the present appeal under Article 136 of the Constitution of India. Mr. Datar referred to the following judgments, namely, ***Seth Brothers & Ors. etc.***; ***Vindhya Metal Corporation & Ors***; ***Ajit Jain*** v. ***Union of India***[9], ***Union of India*** v. ***Ajit Jain & Anr.***[10], ***Dimondstar Exports Ltd.*** v. ***Director General of Income-Tax (Investigation)***[11], ***MECTEC*** v. ***Director of Income-Tax (Investigation)***[12], ***L.R. Gupta & Ors.*** v. ***Union of India & Ors.***[13] and ***Janak Raj Sharma*** v. ***Director of Inspection (Investigation) & Ors.***[14].

12. We have heard learned counsel for the parties and find that the view of the High Court that the authorization to search the premises of the assessee is invalid, cannot be sustained. The expression “reasons to believe” is a component of many statutes such as in the case of reassessment of Income under the Act or its predecessor statute, the Essential Commodities Act, 1955; the Foreign Exchange Regulation Act, 1973 as well as in respect of action of the Revenue in the matter of

9 (2000) 242 ITR 302 (Del.)
10 (2003) 260 ITR 80 (SC)
11 (2005) 278 ITR 36 (Bom.)
12 (2021) 433 ITR 203 (Telangana)
13 (1991) SCC OnLine Del. 584 : (1992) 194 ITR 32 (Del.)
14 (1995) 215 ITR 234 (P&H)

search and seizure.

13. ***In S. Narayanappa v. CIT,***[15] a case of re-assessment for the reason that income had escaped assessment, this Court held the Revenue must have reason to believe that the income, profits or gains chargeable to income tax had been underassessed. The Court held as under:

> "2. .... But the legal position is that if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any non-disclosure as regards any fact, which could have a material bearing on the question of underassessment that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notice under Section 34. *Whether these grounds are adequate or not is not a matter for the court to investigate. In other words, the sufficiency of the grounds which induced the Income Tax Officer to act is not a justiciable issue. It is of course open for the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief.* Again the expression "reason to believe" in Section 34 of the Income Tax Act does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The belief must be held in good faith: it cannot be merely a pretence. To put it differently it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Income Tax Officer in starting proceedings under Section 34 of the Act is open to challenge in a court of law. (See Calcutta Discount Co. Ltd. v. Income Tax Officer, Companies District I, Calcutta [41 ITR 191]
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> xxx xxx xxx

15 AIR 1967 SC 523

> 4. ..... *The earlier stage of the proceeding for recording the reasons of the Income Tax Officer and for obtaining the sanction of the Commissioner are administrative in character and are not quasi-judicial.* The scheme of Section 34 of the Act is that, if the conditions of the main section are satisfied a notice has to be issued to the assessee containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 22. ....."

14. ***Seth Brothers*** is referred to by both Revenue and the assessee relating to the act of search and seizure. It was held that the exercise of power is a serious invasion upon the rights, privacy and freedom of the tax-payer. The power must be exercised strictly in accordance with law and only for the purposes for which law authorizes it to be exercised. The High Court had accepted that the correctness of the opinion actually formed by the Income Tax Officer was not open to scrutiny in a writ petition, but the search and seizure of documents and books of accounts held to be made in excess of the powers conferred upon the Income Tax Officer was mala fide. This Court found no merit in such finding in view of the sworn affidavits by the concerned Income Tax Officers that they did in fact form the requisite opinion under Section 132 of the Act. This Court set aside the findings recorded by the High Court, when it was held as under:

> "8. 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. .....

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.*

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21. These proceedings were brought before the High Court by way of a writ petition under Article 226 of the Constitution before any investigation was made by the Income Tax Officers pursuant to the action taken by them. In appropriate cases a writ petition *may lie challenging the validity of the action on the ground of absence of power or on a plea that proceedings were taken maliciously or for a collateral purpose. .....*"

15. In ***The Income Tax Officer, I Ward, District VI, Calcutta and Ors.*** v. ***Lakhmani Mewal Das***[16], this Court was examining the scope of the expression "reason to believe" in the context of reopening of assessment on the ground that income had escaped assessment. It was held that the powers of the Income Tax Officer to reopen

16 (1976) 3 SCC 757

assessment, though wide, but are not plenary. The words of the statute are “reason to believe” and not “reason to suspect”. It was held that no doubt the Court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment, but at the same time, it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. This Court held as under:-

> “11. As stated earlier, *the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.* ..... The reason for the formation of the belief must be held in good faith and should not be a mere pretence.
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> *12. The powers of the Income Tax Officer to reopen assessment though wide are not plenary. The words of the statute are “reason to believe” and not “reason to suspect”* The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if

grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the Income Tax Authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. *The live link or close nexus which should be there between the material before the Income Tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case.* ....."

16. In ***Partap Singh (Dr)*** v. ***Director of Enforcement***[17], this Court was considering the action of search and seizure under the Foreign Exchange Regulation Act,1973. It was held that when an officer of the Enforcement Department proposes to act under Section 37, he must have reason to believe that the documents useful for investigation or proceeding under the Act are secreted. It was further held that the reasons must be sufficient for a prudent man to come to the conclusion that income escaped assessment and that the Court can examine the sufficiency or adequacy of the reasons on which the Income Tax Officer has acted. This Court held as under:-

> *"9. When an officer of the Enforcement Department proposes to act under Section 37 undoubtedly, he must have reason to believe that the documents useful for investigation or proceeding under the Act are secreted. The material on which the belief is*

17 (1985) 3 SCC 72

grounded may be secret, may be obtained through Intelligence or occasionally may be conveyed orally by informants. ....

The Court in terms held that whether these grounds are adequate or not is not a matter for the court to investigate.

10. *The expression "reason to believe" is not synonymous with subjective satisfaction of the Officer. The belief must be held in good faith; it cannot merely be a pretence. In the same case, it was held that it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section.* To this limited extent the action of the Income Tax Officer in starting proceedings under Section 34 is open to challenge in a court of law. ..... *The last part of the submission does not commend to us because the file was produced before us and as stated earlier, the Officer issuing the search warrant had material which he rightly claimed to be adequate for forming the reasonable belief to issue the search warrant*.

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14. Assuming that it was obligatory to record reasons in writing prior to directing the search, the file submitted to the court unmistakably shows that there was material enough before the officer to form a reasonable belief which prompted him to direct the search. That the documents seized during the search did not provide sufficient material to the officer for further action cannot be a ground for holding that the grounds which induced the reasonable belief were either imaginary or fictitious or mala fide conjured up.

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16. In this behalf, the appellant further contended that if the search was genuine or bona fide for carrying out the purposes of the Act, it is surprising that when the matter was before the High Court, the Enforcement Directorate submitted that it does not wish to take any further action in respect of the material seized during the search. There is no warrant for the assertion that every search must result in seizure of incriminating material. Such an

approach would be a sad commentary on human ingenuity. There can be cases in which search may fail or a reasonable explanation in respect of the documents may be forthcoming. ……..”

17. This Court in a judgment reported as ***Phool Chand Bajrang Lal and Anr.*** v. ***Income Tax Officer and Anr.***[18] was examining the reasons to be recorded for the purpose of re-assessment of the Income Tax already assessed. It was only on the basis of specific, reliable and relevant information coming to the knowledge of Income Tax Officer subsequently, he has reasons which must be recorded, to believe that due to omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income tax has escaped assessment. This Court held as under:-

> “25. ……. *Since, the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information.* To that limited extent, the Court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income Tax Officer at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent information, the Income Tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(*a*) of the Act, that the assessee had not

18 (1993) 4 SCC 77

made a full and true disclosure of the material facts at the time of original assessment and therefore income chargeable to tax had escaped assessment……..”

18. This Court in a judgment reported as ***N. Nagendra Rao & Co.*** v. ***State of A.P.***[19], was examining the provisions of Essential Commodities Act, 1955. This Court considering the objective of the Act, the provisions dealing with search, seizure and confiscation and the nature of their powers and manner of its exercise to assist in determining if the statutory authorities are responsible for any loss or damage to the stocks, held as under:-

> “5. ……. *The expression “reason to believe” has been interpreted by this Court to mean that even though formation of opinion may be subjective but it must be based on material on the record. It cannot be arbitrary, capricious or whimsical*. It is, thus, a check on exercise of power to seize the goods. The procedure after seizure is provided for by Section 6-A of the Act. ……
>
> ……But what needs to be mentioned is that since the power is very wide as a person violating the Control Orders is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found or is conveyed or carried, but is liable to be prosecuted and penalised under Section 7 of the Act*, it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act*. Further, it should not be lost sight of that the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word ‘may’. A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated on a par with

19 (1994) 6 SCC 205

technical violations such as failure to put up the price-list etc. or even discrepancies in stock".

19. In a judgment reported as ***Union of India*** v. ***Agarwal Iron Industries***[20] it was noticed that it is difficult to appreciate how the denial in the counter-affidavit filed by the Revenue could be treated as an admission by implication to come to a conclusion that no reason was ascribed for search and seizure and, therefore, action taken under Section 132 of the Act was illegal. The relevant confidential file, if required and necessary, could have been called for and examined. The Revenue in the counter-affidavit was not required to elucidate and reproduce the information and details that formed the foundation of search. It was further held that the issuance of search and seizure on the basis of formation of opinion which a reasonable and prudent man would form for arriving at a conclusion to issue a warrant was done by way of an interim measure. The search and seizure is not to be treated as confiscation. This Court held as under:-

> "10. The provision contained in Section 132(1) of the Act enables the competent authority to direct for issuance of search and seizure *on the basis of formation of an opinion which a reasonable and prudent man would form for arriving at a conclusion to issue a warrant. It is done by way of an interim measure*. *The search and seizure is not confiscation.* The articles that are seized are the subject of enquiry by the competent authority after affording an opportunity of being heard to the person whose custody it has been seized. The terms used are "reason to believe". Whether the competent authority had formed the opinion on the basis of any acceptable material or not, as is clear as crystal, the High Court has not even remotely tried to see the reasons. *Reasons, needless*

20 (2014) 15 SCC 215

to say, can be recorded on the file and the Court can scrutinise the file and find out whether the authority has appropriately recorded the reasons for forming of an opinion that there are reasons to believe to conduct search and seizure. As is evincible, the High Court has totally misdirected itself in quashing the search and seizure on the basis of the principles of non-traverse."

20. This Court in another judgment in ***Spacewood Furnishers (P) Ltd.*** set aside the order of the High Court, wherein it had interdicted with the action of search and seizure under Article 226 of the Constitution. It was held as under:

> "12. In the present case the satisfaction note(s) leading to the issuing of the warrant of authorisation against the respondent assessee were placed before the High Court. As it would appear from the impugned order [*Spacewood Furnishers (P) Ltd.* v. *DG of Income Tax*, 2011 SCC OnLine Bom 1610 : (2012) 340 ITR 393] 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.
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> 21. In the light of the views expressed by this Court in *ITO* v. *Seth Bros.* [*ITO* v. *Seth Bros.*, (1969) 2 SCC 324 : (1969) 74 ITR 836]

and *Pooran Mal* [*Pooran Mal* v. *Director of Inspection (Investigation)*, (1974) 1 SCC 345 : 1974 SCC (Tax) 114 : (1974) 93 ITR 505] , 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 1-10-1975, 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 authorisation. Any such view would be counterproductive 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.

22. At this stage we would like to say that the High Court had committed a serious error in reproducing in great detail 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 endeavour of the Revenue, even if the High Court is eventually not to intervene in favour of the assessee."

21. The judgment of this Court in ***N.K. Jewellers*** referred to by Mr. Balbir Singh is on line of the facts of the case. The proceedings initiated under Section 132 of the Act were held to be valid as the explanation given by the appellant regarding the amount of cash of Rs 30 lakhs found by GRP and seized by the authorities has been disbelieved and

has been treated as income not recorded in the books of accounts maintained by it. In ***Vindhya Metal Corpn.,*** this Court had not interfered with the order passed by the High Court that on the information in possession of the Commissioner, no reasonable person could have entertained a belief that the amount in possession of the assessee represented income which would not have been disclosed by him for purpose of the Act.

22. The judgment of Delhi High Court in ***Ajit Jain*** is on the facts of that case but the law stated is not in dispute. The High Court found the act of search as invalid on the facts of that case. In that case, a survey under Section 133-A of the Act was conducted to ascertain whether the cash of Rs. 8.6 lakhs was reflected in the accounts of the company. The action of respondent No. 4 in issuing the authorisation under Section 132(1) of the Act and seizure of Rs. 8.5 lakhs was challenged on the ground that there was no "information" on record on the basis whereof respondent No. 4 could form the belief that the said amount recovered from the petitioner represented wholly or partly income which had not been or would not have been disclosed for the purpose of the Act, a condition precedent for exercise of power under Section 132(1) of the Act. The High Court held thus:-

> "Thus, for authorising action under Section 132, the conditions precedent are: (i) the information in the possession of the named authority; and (ii) in consequence of which he may have reason to believe that the person concerned is in possession of money, bullion etc. which represents, either wholly or partly, income

which has not been or would not be disclosed for the purpose of the Act. If either of these conditions are missing or have not been adhered to, then power under Section 132 cannot be invoked. Thus, the basis of exercise of power under Section 132(1) has to be formation of belief and the belief has to be formed on the basis of receipt of information by the authorising officer that the person is in possession of money etc. which represents undisclosed income.

"Information", in consequence of which the Director General or the Chief Commissioner etc., as the case may be, has from to his belief is not only to be authentic but capable of giving rise to the inference that a person is in possession of money etc. which has not been or would not be disclosed for the purpose of the Act. In other words, it must necessarily be linked with the ingredients mentioned in the Section.

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By now it is well settled that while the sufficiency or otherwise of the information cannot be examined by the court in writ jurisdiction, the existence of information and its relevance to the formation of the belief is open to judicial scrutiny because it is the foundation of the condition precedent for exercise of a serious power of search of a private property or person, to prevent violation of privacy of a citizen……. But the Court could examine whether the reasons for the belief have a rational connection or relevant bearing to the formation of the belief and search warrant could not be issued merely with a view to making a roving or fishing enquiry.

The expression 'reason to believe' has been explained in various decisions by the Apex Court and High Courts while dealing with Sections 132 and 148 of the Act. It has been held that the word "reason to believe" means that a reasonable man, under the circumstances, would form a belief which will impel him to take action under the law. The formation of opinion has to be in good faith and not on mere pretence. For the purpose of Section 132 of the Act, there has to be a rational connection between the information or material and the belief about undisclosed income, which has not been and is not likely to be disclosed by the person concerned."

23. The judgments of the High Courts relied upon by Mr. Datar are primarily on the facts of the respective case but in view of the judgment of this Court, we do not feel the necessity to discuss such judgments herein.

24. The detailed satisfaction note shows multiple entries in the account books of Sarju Sharma and others. The manner of Sarju Sharma who was either in Siliguri (West Bengal) or in Goa contacting the assessee in Ahmedabad for a loan of Rs.10 crores does not appear to be a normal transaction. Subsequent repayment of mortgage and the interest income reflected in the relevant assessment year appears to be the steps taken by the assessee to give a colour of genuineness but the stand of the Revenue that such entry was an accommodation entry is required to be found out and also the cobweb of entries required to be unravelled including the trail of the money paid by the assessee.

25. The High Court quoted extensively from the counter-affidavit filed by the Revenue as well as quoted para 4.3 of the affidavit-in reply but still returned a finding that the Court could not find any other material whatsoever insofar as the assessee is concerned for the purpose of recording satisfaction under Section 132 of the Act. We find that reasons to believe are not the final conclusions which the revenue would arrive at while framing block assessment in terms of Chapter

XIV-B of the Act. The test to consider the justiciability of belief is whether such reasons are totally irrelevant or whimsical. The reply in the counter affidavit shows that the intention of the Revenue was to un-layer the layering of money which is suspected to be done by the assessee. The Revenue has asserted that the accommodation entry is a common modus operandi to bring the unaccounted black money to books for a brief period. The investment of Rs.10 crores for a short period was not for earning interest income as the same was repaid in the same assessment year. The Revenue intends to investigate the fund trail of the money paid by the assessee. Such belief is not out of hat or whimsical. The assessee's stand is that it is fishing enquiry and not a malafide action of the Revenue. The Revenue is specific so as to find out the genuineness of the transaction believing that it was a mere accommodation entry.

26. In ***Partap Singh***, the action of search and seizure was found to be valid. Though the stand of the Enforcement Directorate was that in view of the material seized during the search, it does not wish to take any further action, it was found that there was no warrant for the assertion that every search must result in seizure of incriminating material. There can be cases in which search may fail or reasonable explanation of the documents may be forthcoming. At this stage of search and seizure, the Court has to examine whether the reason to

believe are in good faith; it cannot merely be pretence. The belief recorded must have a rational connection or a relevant bearing to the formation of the belief and should not be extraneous or irrelevant to the purpose of the section. In view of the detailed reasons recorded in the satisfaction note including the investment made by the assessee for brief period and that investment is alleged to be an accommodation entry, it cannot be said to be such which does not satisfy the pre-requisite conditions of Section 132(1) of the Act.

27. As per the Revenue, Clauses (b) & (c) of Section 132 (1) were satisfied before the warrant of authorization was approved. The satisfaction note was recorded in terms of an assessee whose jurisdictional assessing officer was in the State of the West Bengal. It is the cobweb of accounts of such assessee which are required to be unravelled. It is not unreasonable for the Revenue to apprehend that the assessee would not respond to the summons before the Assessing Officer in the State of West Bengal. It was also alleged that such summons would lead to disclosure of information collected by the Revenue against Sarju Sharma and his group. Therefore, it was a reasonable belief drawn by the Revenue that the assessee shall not produce or cause to be produced any books of accounts or other documents which would be useful or relevant to the proceedings under the Act. Such believe was not based upon conjectures but on a bona-fide opinion framed in

the ordinary conduct of the affairs by the assessee generally. The notice to the assessee to appear before the Income Tax authorities in the State of West Bengal would have been sufficient notice of the material against the Company and its group, to defeat the entire attempt to unearth the cobweb of the accounts by the Company and its associates.

28. Even clause (c) of Section 132(1) is satisfied. The assessee was in possession of Rs.10 crores which was advanced as loan to the Company. The Revenue wishes to find out as to whether such amount is an undisclosed income which would include the sources from which such amount of Rs.10 crores was advanced as loan to a totally stranger person, unconnected with either the affairs of assessee or any other link, to justify as to how a person in Ahmedabad has advanced Rs.10 crores to the Company situated at Kolkata in West Bengal for the purpose of investment in Goa. The Revenue may fail or succeed but that would not be a reason to interfere with the search and seizure operations at the threshold, denying an opportunity to the Revenue to unravel the mystery surrounding the investment made by the assessee.

29. In a celebrated judgment of this Court in ***Tata Cellular v. Union of India***[21], on the scope of judicial review, though in the context of tenders, is very well applicable to the powers or limitations of the Courts while exercising the jurisdiction under Article 226 of the Constitution. One of the principles is that of judicial restraint. This Court held that:

> "73. Observance of judicial restraint is currently the mood in England. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the *court's ability* to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.
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> 74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.
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> 78. What is this charming principle of Wednesbury unreasonableness? Is it a magical formula? In *R.* v. *Askew* [(1768) 4 Burr 2186 : 98 ER 139] , Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians. He expressed the relevant principles in two eloquent sentences. They gained greater value two centuries later:
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> > "It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physicians and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike."
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21 (1994) 6 SCC 651

80. At this stage, *The Supreme Court Practice*, 1993, Vol. 1, pp. 849-850, may be quoted:

> "4. *Wednesbury principle*.— A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.* [(1948) 1 KB 223 : (1947) 2 All ER 680] , per Lord Greene, M.R.)"

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82. Bernard Schwartz in *Administrative Law*, 2nd Edn., p. 584 has this to say:

> "If the scope of review is too broad, agencies are turned into little more than media for the transmission of cases to the courts. That would destroy the values of agencies created to secure the benefit of special knowledge acquired through continuous administration in complicated fields. At the same time, the scope of judicial inquiry must not be so restricted that it prevents full inquiry into the question of legality. If that question cannot be properly explored by the judge, the right to review becomes meaningless. 'It makes judicial review of administrative orders a hopeless formality for the litigant. … It reduces the judicial process in such cases to a mere feint.'

Two overriding considerations have combined to narrow the scope of review. The first is that of deference to the administrative expert. In Chief Justice Neely's words:

> 'I have very few illusions about my own limitations as a judge and from those limitations I generalise to the inherent limitations of all appellate courts reviewing rate cases. It must be remembered that this Court sees approximately 1262 cases a year with five judges. I am not an accountant, electrical engineer, financier, banker, stock broker, or systems management analyst. It is the height of folly to

expect judges intelligently to review a 5000 page record addressing the intricacies of public utility operation.'

It is not the function of a judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator.

The result is a theory of review that limits the extent to which the discretion of the expert may be scrutinised by the non-expert judge. The alternative is for the court to overrule the agency on technical matters where all the advantages of expertise lie with the agencies. If a court were to review fully the decision of a body such as state board of medical examiners 'it would find itself wandering amid the maze of therapeutics or boggling at the mysteries of the pharmacopoeia'. Such a situation as a state court expressed it many years ago 'is not a case of the blind leading the blind but of one who has always been deaf and blind insisting that he can see and hear better than one who has always had his eyesight and hearing and has always used them to the utmost advantage in ascertaining the truth in regard to the matter in question'.

The second consideration leading to narrow review is that of calendar pressure. In practical terms it may be the more important consideration. More than any theory of limited review it is the pressure of the judicial calendar combined with the elephantine bulk of the record in so many review proceedings which leads to perfunctory affirmance of the vast majority of agency decisions."

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94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) ....."

30. The power of judicial review and interference by the Courts in the matters of disciplinary proceedings was being examined in the judgement of this Court reported as ***Indian Oil Corporation Ltd.*** v. ***Rajendra D. Harmalkar***[22]. It was held that interference was not permissible unless the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.

31. In another judgment reported as ***Utkal Suppliers*** v. ***Maa Kanak Durga Enterprises***[23], this Court was examining tender conditions in a writ petition. It was held that judicial review in these matters is equivalent to judicial restraint.

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.

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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.

34. In view of the above, we find that the High Court was not justified in setting aside the authorization of search dated 07.08.2018. Consequently, the appeal is allowed and the order passed by the High Court is set aside. As a consequence thereof, the Revenue would be at liberty to proceed against the assessee in accordance with law.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

NEW DELHI;
JULY 13, 2022.