

(1995) 05 P&H CK 0027

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 5851 of 1987

JANAK RAJ SHARMA

APPELLANT

Vs

DIRECTOR OF INSPECTION
(INVESTIGATION) AND OTHERS

RESPONDENT

Date of Decision: May 31, 1995

Acts Referred:

- Income Tax Act, 1961 - Section 131, 132, 142

Citation: (1995) 127 CTR 440 : (1995) 215 ITR 234 : (1995) 83 TAXMAN 429

Hon'ble Judges: Jawaharlal Gupta, J

Bench: Division Bench

Judgement

JAWAHARLAL GUPTA J. - Is the search of the petitioners premises vitiated on the ground that the competent authority had no information or material as contemplated u/s 132 of the Income Tax Act, 1961 ? This is the primary question that arises for decision in this case. A few facts maybe briefly noticed.

The petitioner is an assessee under the Income Tax Act since the year 1961. He was running a sole proprietary concern under the name and style of Jadco Industries for the manufacture and sale of auto parts. He has his residence within the factory premises. In the year 1986, the petitioner inducted his son, Mr. Tarun Sharma, as a partner. Jadco Industries had, thus, become a partnership concern.

In the year 1987, Mr. R. Bhardwaj, the petitioners son-in-law, was posted as Inspecting Assistant Commissioner of Income Tax (Acquisition) at Bangalore. At that time, according to the petitioner, respondent No. 3 was the Chief Commissioner of Income Tax at Bangalore. He made certain reports reflecting adversely on the integrity of Mr. R. Bhardwaj. As a result, the residential premises of Mr. Bhardwaj were searched on July 1, 1987. On the same day, the business and residential premises of the petitioner were also searched. During this search operation, certain documents, a list of which has been produced as annexure P-1, were seized. On the

same day, respondent No. 6 had also issued a notice u/s 131 of the Act calling upon the petitioner to produce certain books of account. A copy of this notice has been produced as annexure P-2. The petitioner alleges that the search of his premises and the seizure of the books of account as also the notice issued by respondent No. 6 were wholly illegal and without jurisdiction. The petitioner challenges the action of the respondents in conducting the search of his premises primarily on the ground that "there could be no information with respect to the concealment of any of these items which may have led to the belief that the petitioner was in possession of undisclosed income by way of money, bullion, jewellery or other valuable articles". He further alleges that respondent No. 6 was not the assessing authority of the petitioner. No proceedings were pending before him. As such, the issuance of the notice u/s 131 of the Act was wholly without jurisdiction.

A written statement on behalf of respondent No. 1 has been filed by Mr. K. Rangarajan. He states that the warrant of authorisation for search had been issued on the basis of "the information available to him on record". He maintains that while authorising the search against the petitioner, he had satisfied himself with the conditions precedent for issuance of search warrant u/s 132(1) of the Income Tax Act, 1961 ..." It has been further averred that "Shri R.R. Thakur, Income- tax Officer, Survey Circle, Jalandhar, was duly authorised to issue summons u/s 131 of the Act as he was competent authority under orders of the Commissioner of Income Tax, Jalandhar, vide orders dated May 25, 1987". Written statements filed by respondents Nos. 4 and 6 are of a formal nature.

The petitioner has filed a replication controverting the stand taken by the respondents and reiterating the claim as made in the petition. He has also filed a Civil Miscellaneous Application No. 2 of 1992 along with which he has produced a copy of the order dated December 7, 1988, passed by Mr. Justice S. Rajendra Babu of the High Court of Karnataka in Civil Writ Petition No. 11110 of 1987 ([R. Bhardwaj Vs. Chief Commissioner \(Admn.\) and Others](#),). A perusal of this order shows that learned senior standing counsel appearing for the Department had conceded that the warrant u/s 132 of the Act "could not have been issued by the Chief Commissioner of Income Tax" As a result, the petition was allowed and the rule was made absolute.

These are the pleadings.

Mr. Sanjay Majithia, learned counsel for the petitioner, contended that the search of the petitioners premises is vitiated on the short ground that the respondents had no information or material on the basis of which the competent authority could have reason to believe that he was in possession of undisclosed income, etc. Secondly, learned counsel contended that the notice issued u/s 131 by respondent No. 6 was wholly without jurisdiction. This claim was controverted by Mr. R. P. Sawhney, learned senior standing counsel for the respondent-Department.

The questions that arise for consideration are -

- (i) Was the action of the respondents in conducting search of the petitioners premises in conformity with the provisions of section 132 of the Income Tax Act, 1961 ?
- (ii) Was the notice dated July 1, 1987, issued by respondent No. 6 without jurisdiction ?

Re : (i)

A perusal of section 132 of the Act shows that the competent authority is empowered to permit the "authorised officer" to enter, search, break open, seize, place marks of identification and take all other steps as contemplated in sub-clauses (i) to (v). However, there are conditions precedent. Firstly, the competent authority must have information in its possession. Secondly, on the basis of the said information, it must have reasons to believe that the condition/s as stipulated in sub-clauses (a), (b) and (c) of section 132(1) exist. It is only then that it can authorise the search of the premises and seizure of the documents, etc.

Section 132 impinges upon the privacy of a citizen. It even carries a social stigma. To a sensitive man, the consequences can be serious. The Legislature has consequently provided the in-built safeguards. These have to be satisfied before any order for search, etc., can be passed.

What is the position in the present case ? The petition had initially come up for hearing on March 22, 1995. In view of the contention raised by counsel for the petitioner that there was no information with the competent authority on the basis of which it could have reasons to believe that the conditions precedent for ordering search existed, Mr. Sawhney was asked to produce the record. It was even adjourned from time to time. Ultimately, on one of the dates of hearing, Mr. Sawhney had produced the "satisfaction note" recorded by respondent No. 1. Further opportunities to produce records with regard to the existence of "information" were granted. When the case was taken up for hearing on May 15, 1995, Mr. Sawhney produced the warrants of authorisation issued by Mr. K. Rangarajan on June 30, 1987. The photocopies of the three documents produced by Mr. Sawhney were kept on record. The copy of the "satisfaction" note is on record as mark A. Copies of the warrants of authorisation issued against the petitioner and Jadco Industries are mark B and C, respectively. Mr. Sawhney categorically stated that "there is no information, document or evidence beyond the satisfaction note and the warrant of authorisation". It is in the background of this factual position that the contentions raised by counsel for the parties have to be considered.

The "satisfaction note" produced by Mr. Sawhney reads as under :

"Satisfaction note -

Shri Janak Raj Sharma,

S, 240, Industrial Area,

Jalandhar, Punjab -

in the case of -

June 30, 1987 : Information has been received that the C.B.I. and the Income Tax Department are jointly organising a search on Shri R. Bhardwaj, Inspecting Assistant Commissioner (Acquisition), Bangalore, on July 1, 1987. The above party is the father-in-law of Shri Bhardwaj. It is informed that Shri Bhardwaj has invested his ill-gotten funds with his relatives, and is very likely to have invested monies in the businesses of his father-in-law, which are :

1. Jadco Industries,

S. 240, Industrial area, Jalandhar, Punjab.

2. J. R. Industrial Corporation,

Focal Point, Jalandhar, Punjab.

The above party is not likely to divulge the above particulars if summons u/s 131 are issued to him. Therefore, if approved, the above three premises (residence and two business concerns) may be covered u/s 132 of the Act, for which purpose warrants of authorisation are put up for signatures.

(Sd.) ADI-1

DDI(INV.)U-I

I am satisfied that this is a fit case for action u/s 132. DI may kindly authorise search.

(Sd.) June 30, 1987.

DI(INV.)-II

I am satisfied that this is a fit case for action u/s 132 of the Income Tax Act. Warrant accordingly signed and issued.

(Sd.) June 30, 1987."

On a perusal of the above note, it is clear that according to the Assistant Director, information had been received regarding the factum of search by the C.B.I. and the Income Tax Department on the premises of Mr. Bhardwaj. It was also observed that "it is informed that Mr. Bhardwaj had invested his ill-gotten funds with his relatives". A further suspicion was expressed that he "is very likely to have invested monies in the businesses of his father-in-law". Without anything more, the request of the Assistant Director for action u/s 132 was endorsed by the Deputy Director and approved by respondent No. 1.

In the written statement filed by respondent No. 1, he had categorically averred that search had been authorised on the basis of "information available to him on record". It was also asserted that "he had satisfied himself with the conditions precedent for issuance of a search warrant u/s 132(1) of the Income Tax Act, 1961. ... " Still further, in the warrants of authorisation, it has been, inter alia, observed as under :

"whereas information has been laid before me and on the consideration thereof, I have reason to believe that :-

If a summons under sub-section (1) of section 37 of the Indian Income- tax Act, 1922, or under sub-section (1) of section 131 of the Income- tax Act, 1961, 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 the Income Tax Act, 1961, is issued to Shri Janak Raj Sharma (name of the person) to produce or cause to be produced, books of account or other documents which will be useful for, or relevant to, proceedings under the Indian Income Tax Act, 1922, or under the Income Tax, 1961 he would not produce, or cause to be produced, such books of account or other documents as required by such summons or notice.

Shri Janak Raj Sharma 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, or the Income Tax Act, 1961."

It would, thus, be seen that repeated assertions have been made both in the files of the Department as well as in the pleadings before this court that information was available "on record"; "the information had been laid before me ... " and that "the conditions precedent for issuance of a search warrant... " existed. However, at the time of the hearing of the case and in spite of repeated opportunities, the respondents could not produce any record indicating the existence of any information. In the "satisfaction note", it has undoubtedly been stated that Mr. Bhardwaj "is very likely to have invested monies in the businesses of his father-in-law " This was, however, a mere guess or a surmise. At best, it was a conjecture. Admittedly, there was no information. At least none was produced in spite of various opportunities. Similarly, in the warrant of authorisation, it was claimed by the first respondent that "information had been laid before" him and that on the consideration thereof, he had reason to believe that "if a summons under sub-section (1) of section 37 of the Indian Income Tax Act, 1922, or under sub-section (1) of section 131 of the Income Tax Act, 1961, or a notice under sub-section (4) of section 22 of the Indian Income Tax Act, 1922, is issued to Shri Janak Raj Sharma to produce or cause to be produced, books of account or other documents he would not produce or cause to be produced, such books of account or other documents ... " It was also observed that "Shri Janak Raj Sharma is

in possession of money, bullion, jewellery or other valuable articles " Clearly, there was no information with the respondents and the conclusions were wholly unfounded. Factually, respondent No. 1 had no information available to him on "record". There was no material on the basis of which he could have reasons to believe that the conditions precedent for proceeding u/s 132(1) were satisfied. Counsel was, in fact, driven to concede that there was no information, document or evidence beyond that satisfaction note. Admittedly, the "note" does not constitute "information" as contemplated under the law. It only embodies a conclusion. In the absence of foundation, the edifice cannot stand. Without information, the order for search and seizure cannot be sustained.

In view of the above, the first question is answered in the negative. It is held that the action of the respondents in conducting the search of the petitioners premises was not in conformity with the provisions of section 132 of the Act.

Re. : (ii)

As for the second contention, Mr. Sawhney, categorically stated that all books of account, etc., which had been seized, have since been returned. The factual position was not denied by even Mr. Majithia. Irrespective of that, it was contended that the notice given by respondent No. 6 was wholly without jurisdiction. Since the documents, etc., have already been returned, the issue has become academic. No useful purpose would be served by going into the matter.

Counsel for the petitioner had submitted that the raid was wholly unauthorised and the search of the petitioners premises was totally unjustified. He further submitted that in the entire raid, nothing incriminating was recovered. Be that as it may, in view of the finding that the conditions precedent for the exercise of the power u/s 132 of the Act were not satisfied, it is held that the action of the respondents in ordering the search of the petitioners premises was wholly illegal.

The writ petition is, accordingly, allowed. The petitioner shall also be entitled to his costs which are quantified at Rs. 10,000. The costs may be a small compensation. These should, however, symbolise the vindication of the petitioners stand.