IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2429 OF 2008

1. Genom Biotech Private Limited, having uits registered office at A-601/602, Delphi Orchard Avenue, Hiranandani Busines Park, Powai, Mumbai-400 076

2. Mr.Binod Kumar (Binod Kumar) A-601/602, Delphi Orchard Avenue, Hiranandani Busines Park, Powai, Mumbai-400 076

3. Mr.C.M.P. Singh, at A-601/602, Delphi Orchard Avenue, Hiranandani Busines Park, Powai, Mumbai-400 076

4. Mr.Amit Kumar, at A-601/602, Delphi Orchard Avenue, Hiranandani Busines Park, Powai, Mumbai-400 076 ..Petitioners.

V/s.

1. Director of Income Tax-1 (Investigation) having his Office at 3rd Floor, Scindia House, Ballard Estate, Mumbai - 400 020.

2. Deputy Director of Income Tax (Inv.), Unit-II, having his Office at 4th Floor, Scindia House, Ballard Estate, Mumbai - 400 020.

3. The Commissioner of Income Tax Mumbai-X, having his Office at 5th Floor, Ayakar Bhavan, Queen's Road, Mumbai - 400 020.

4. The Assistant Commissioner of Income Tax., Ward 10(3), having his Office at 4th Floor, Ayakar Bhavan, Queen's Road, Mumbai - 400 020.

5. The Commissioner of Income Tax

Central IV, Mumbai, having his)
Office at 6th Floor, Ayakar)
Bhavan, Queen's Road,)
Mumbai - 400 020)
)
6. The Deputy Commissioner of)
Income Tax, Circle 40, Central)
Circle IV, Mumbai, having his)
Office at 6th Floor, Ayakar)
Bhavan, Queen's Road,)
Mumbai - 400 020.)..Respondents.

Mr.Andhyarujina, senior Advocate with Ms.Aasifa Khan for the petitioners.

Mr.G.N.Srinivasan with Suresh Kumar Advocates for the respondents.

CORAM : SMT. RANJANA DESAI AND J.P.DEVADHAR, JJ.

JUDGMENT RESERVED ON : 4TH APRIL, 2009.

JUDGMENT PRONOUNCED ON : 7TH MAY, 2009.

JUDGMENT (PER J.P.DEVADHAR, J.)

1. Whether the search and seizure action initiated against the petitioners pursuant to the warrant of authorisation issued by the Director Income Tax (Investigation) under section 132(1) of the Income Tax Act, 1961 ('Act' for short) on 14/15-5-2008 is in accordance with law and whether the order passed on 24/7/2008 under section 281B of the Act to attach the immovable properties as well as the shares in the demat account held by the petitioner No.2 is valid in law are the basic questions raised in this petition.

2. The petitioner No.1 is a private limited company and the petitioner No.2 who is a non resident Indian ('N.R.I.' for short) is the Chairman and Managing Director ('C.M.D.' for short) of the petitioner No.1 company. The petitioner Nos.3 & 4 are the Directors of the petitioner No.1 company. The petitioner No.1 company is engaged in the business of manufacturing and exporting pharmaceutical products.

3. The business premises of the petitioner No.1 company as well as the residential premises belonging to the petitioner Nos.2, 3 & 4 (hereinafter referred to as 'assessee' for short) were searched in the light of the warrant of attachment dated 14/15-5-2008 and incriminating documents found during the course of search were attached under panchanamas drawn from time to time.

4. Thereafter, on 24/7/2008 the Deputy Director of Income Tax (Investigation) issued a notice under section 153A of the Act calling upon the assessee to file return of income for the past six years. On the same day, i.e. on 24/7/2008 itself, the Asstt. Commissioner of Income Tax, Mumbai passed an order under section 281B(1) of the Act thereby provisionally attaching the immovable properties of the assessee and also shares of various companies held in demat account

by the petitioner No.2. The assessee objected to the attachment levied under section 281B of the Act. As the attachment was not lifted, the present petition is filed.

5. Mr.Andhyarujina, learned senior Advocate appearing on behalf of the assessee submitted threefold arguments, namely:-

(a) Search and seizure action can be initiated only if the designated authority on the basis of the material in possession forms a reasonable belief that there exists any one or more of the three conditions set out in clauses (a), (b) & (c) of section 132 (1) of the Act. In the present case, none of the three conditions existed and, therefore, the warrant of authorisation as well as the entire search and seizure action is bad in law.

(b) Attaching the immovable / movable properties of the assessee as well as the family members of the petitioner No.2 provisionally by invoking section 281B of the Act is wholly unjustified, because, there were enough assets to protect the interests of the revenue and there was no apprehension that the assessee was trying to sell, dispose off or

create third party rights on the assets belonging to the assessee with a view to thwart the interests of the revenue in collecting the demand that may ultimately be crystalised. In fact in the present case, even after the search, there is addition of immovable property and, therefore, resorting to the provisional attachment is wholly unjustified.

(c) Even assuming that in the present case it was necessary to protect the interests of the revenue by resorting to the provisional attachment, then and in that event the attachment of the immovable properties was sufficient to cover the alleged demand and, therefore, attachment of the shares held by the petitioner No.2 in the demat account is totally unjustified.

6. Section 132(1) (b) & (c) of the Act to the extent relevant to the present case reads thus:-

132. (1) Where the [Director General or Director] or the [Chief Commissioner or Commissioner] [or any such (Joint Director) or (Joint Commissioner) as may be empowered in this behalf by the Board], 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 India 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 of property [which has not [which has not been, or would not be, disclosed] for the purposes of the Indian Income-tax Act, 1922 (11 of 1992), or this Act (hereinafter in this section referred to as the undisclosed income of property).

then,--

(A) the Director General or Director..... or

(B) ..... as the case may be, may authorise any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner 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;

Thus, search and seizure action can be initiated under section 132 of the Act only if the designated authority forms a reasonable belief on the basis of the information already in possession that (one) a person to whom summons was issued to produce

books of account or other documents has failed to produce the said books of account or documents specified in the summons, or (two) any person to whom a summons might be issued, will not produce any books of accounts or other documents which may be useful for or relevant to any proceedings under the Act, or (three) any person in possession of any money, bullion, jewellery or other valuable articles which partly or wholly represents the income which is not disclosed or would not be disclosed.

7. The first contention of the assessee is that in the present case, there was neither information received nor any reason to believe formed by the designated authority that any one or more conditions set out in clauses (a), (b) & (c) of section 132(1) of the Act existed before issuing the warrant of authorisation and, therefore, the entire search and seizure action is ab initio void.

8. There is no merit in the above contention because, the revenue has produced before us the confidential information received by the designated authority as well as the satisfaction note recorded by the designated authority before issuing the warrant of authorisation. The revenue has declined to furnish a copy of the satisfaction note to the assessee on the

ground that the said note contains the name of the informer and disclosing the name of the informer would seriously prejudice the investigation. It is not the mandate of section 132 or any other provision in the Act that the reasonable belief recorded by the designated authority before issuing the warrant of authorisation must be disclosed to the assessee. Therefore, the fact that a copy of the information received or the satisfaction note recorded has not been furnished to the assessee cannot be a ground to hold that the search and seizure is bad in law. However, on the basis of the material placed before us, it is clear that in the present case, specific information was received on 16/4/2008 and after holding preliminary enquiry, the designated authority recorded its reasons on 13/5/2005 as to why search and seizure action is necessary and thereafter issued the warrant of authorisation on 14/15-5-2008.

9. It is contended on behalf of the assessee that none of the three conditions set out in clauses (a), (b) & (c) of section 132(1) of the Act existed in the present case, and, therefore, the above preconditions set out in section 132 of the Act being not fulfilled, the entire search and seizure operation is bad in law. It is contended that always in the past the assessee had responded to the summons issued and, therefore, the

presumption drawn by the designated authority that the assessee may not respond to the summons is totally baseless. Similarly, the investments are made in India by the petitioner No.2 and his family members out of the funds transferred from his foreign income brought to India through proper banking channel. Since the petitioner No.2 is an N.R.I., the income earned by him outside India is not taxable in India and, therefore, initiating search and seizure action with a view to tax the amount brought to India as undisclosed income does not arise at all.

10. There is no merit in the above contention, because, the information received in the present case was that during the period from FY 2001-02 to 2007-08 the petitioner No.1 had evaded tax by claiming deduction of business expenditure amounting to Rs.170 crores on the ground that the said amounts have been paid to Cyprus / UK based companies towards marketing and advertisement expenses, but in fact the said amount has been credited by the said Cyprus & U.K. based companies in the private bank account of petitioner No.2 in Cyprus.

11. In other words, the information received was that the companies in Cyprus and U.K. were used as a conduit for transferring the taxable income of the

petitioner No.1 to the petitioner No.2. By claiming deduction of Rs.170 crores as marketing and advertisement expenses paid to the foreign companies, the petitioner No.1 has not paid the tax on the said amount of Rs.170 crores. However, the said amounts have been received by the petitioner No.2 from the aforesaid Cyprus & U.K. based companies which represents the undisclosed income of the petitioner No.2. Apart from the above, the information received was that the marketing and advertisement expenses have been paid on the basis of fake / exaggerated invoices which were prepared at the Powai office of the assessee. On discreet enquiry, it was found that the informer as well as the assessee were available at the place mentioned in the written complaint received by the designated authority. On the basis of the preliminary investigation, the designated authority formed a reasonable belief that any delay in taking action might result in removal or destruction of the evidence and accordingly after recording reasons on 13/5/2008 for initiating search and seizure action, issued the warrant of authorisation on 14/15-5-2008. In these circumstances, the prima facie belief formed by the designated authority that the tax evasion can be unearthed by initiating search and seizure action would be in consonance with the provisions of section 132(1) of the Act.

12. Where the information is that the tax due to the revenue has been evaded by furnishing fake or exaggerated bills, it would be reasonable to believe that the assessee would not disclose the actual modus operandi adopted for such tax evasion. Similarly, if the information received is that the assessee has received undisclosed income, then it would be reasonable to believe that the assessee would not disclose details of the undisclosed income received. In the present case, the information received was that the assessee has been manufacturing fake / exaggerated invoices and, therefore, the designated authority was justified in forming a belief that conditions set out in clause (b) of section 132(1) of the Act is satisfied. Similarly, the information received was that the investments made out of the funds brought to India represented the undisclosed income of the petitioner No.2 and, therefore, the designated authority was justified in forming a belief that conditions set out in clause (c) of section 132(1) of the Act are satisfied.

13. The argument that the marketing and advertisement expenses have been allowed in the past by the Transfer Pricing Officer / CIT(A) after detailed enquiry would not affect the reasonable belief formed

by the designated authority to initiate search and seizure action, because, neither the Transfer Pricing Officer nor the CIT(A) had occasion to consider the genuineness of the transaction from the point of the petitioner No.2 being the ultimate recipient of the amounts remitted by the petitioner No.1 as marketing and advertisement expenses. In other words, the enquiry in the past related to the existence of the foreign customers and actual remittance of the amount by the petitioner No.1 to the said foreign customers. The enquiry in the past did not relate to the foreign customers in turn crediting the amounts received from the petitioner No.1 in the private bank accounts of petitioner No.2. Therefore, the fact that the remittances made to the foreign companies in the past were through the banking channel after obtaining requisite permission from R.B.I. and that the Transfer Pricing Officer / CIT(A) had allowed the claim after investigation would not affect the reasonable belief formed by the designated authority on the basis of the confidential information that search and seizure action is necessary in the present case.

14. Strong reliance was placed by the counsel for the assessee on the decision of Allahabad High Court in the case of **Dr.D.C.Srivastava v/s. DIT (Inv)** reported in **(2007) 112 CTR 526 (All)** and the decision of the

Apex Court in the case of **Union of India V/s. Ajit Jain and Anr.** reported in **260 I.T.R. 80 (SC)**. In our opinion, none of the above decisions support the case of the assessee. In the case of Dr. D.C.Srivastava (supra), it is held that if the reason to believe comes into existence after the issuance of warrant of authorisation, then, the entire search and seizure would be illegal. In the present case, as noted above, the reason to believe was formed on the basis of the confidential information received prior to the issuance of warrant of authorisation. Hence the above decision has relevance to the facts of the present case.

15. Similarly, the decision of the Apex Court in the case of Ajit Jain (supra) does not support the case of the assessee. In that case, search and seizure action was initiated on the basis of information received from C.B.I. that the assessee therein was in possession of cash amounting to Rs.8.5 lakhs, without any further enquiry. The assessee therein stated on oath that the amount was fully reflected in the books and in any event mere possession of money would not lead to an inference that the said amount was income which is not disclosed or would not be disclosed. In that context, it was held that there has to be a rational connection between the information or materials and the reasonable belief. In the present

case, the amount paid by the petitioner No.1 to the foreign companies was claimed to have been received by the petitioner No.2 and admittedly, the petitioner No.2 had brought the said amounts to India and invested but not disclosed in his return of income. Thus, the decision in the case of Ajit Jain (supra) is wholly distinguishable on facts.

16. Reliance was also placed by the counsel for the assessee on the decision of the Calcutta High Court in the case of **Maheshkumar Agarwal V/s. DDIT** reported in **260 I.T.R. 67 (Cal.)** and the decision of the Allahabad High Court in the case of **Sureshchand Aggarwal V/s. DGIT** reported in **269 I.T.R. 22 (All)** in support of his contention that the material found during the course of search cannot be the basis for issuing the warrant of authorisation and the reason to suspect cannot be construed as reason to believe. As noted earlier, the search and seizure action was initiated by the revenue on the basis of the material received before search and not on the basis of the material received during the course of search. Moreover, the information received being specific regarding the amount of tax evaded and the source from which the tax evasion could be unearthed, the designated authority was justified in forming a reasonable belief that search and seizure action is

necessary. Thus, the above decisions do not support the case of the assessee.

17. The second contention of the assessee is that the drastic provisions contained in section 281B of the Act can be resorted to only when there are exceptional circumstances which warrant immediate action to protect the interests of the revenue, pending crystallisation of the demand. According to the assessee, the provisional attachment cannot be levied on the mere presumption that the marketing and advertisement expenses amounting to Rs.170/- crores which were allowed in accordance with law in the past are liable to be disallowed. Similarly, the provisional attachment cannot be levied on the mere presumption that the immovable / movable properties purchased by the petitioner No.2 and his family members represent the undisclosed income, when in fact the investments have been made out of the funds brought into India through the banking channel and the income derived from such investments have been offered to tax.

18. The argument of the assessee is that even if the marketing and advertisement expenses allowed in the past are liable to be disallowed, then, the proper course for the revenue is to adopt proceedings for rectification or revision or reassessment and not

resorting to the provisional attachment. It is further contended that the petitioner No.2 being an N.R.I., his income earned outside India is not taxable in India and, therefore, the investments made by the petitioner No.2 and his family members in India out of the foreign income transferred to India cannot be treated as investments made from undisclosed income of the petitioner No.2. It is contended that loans from the local banks have also been taken for the purpose of investment. In these circumstances, it is argued that attaching the immovable / movable properties of the petitioner No.2 and his family members is wholly unjustified.

19. It is true that attaching the properties of an assessee even before the crystlisation of the demand is a drastic step and has to be exercised only in extreme circumstances. Whether extreme circumstances existed in the present case so as to levy provisional attachment under section 281B of the Act is the question.

20. In the present case, the incriminating documents seized during the course of search and seizure operation reveal that the payments made by the petitioner No.1 to Cyprus / UK based companies towards marketing and advertisement expenses were further

liable to be paid over to Ukrainian advertising agencies who are in fact supposed to have advertised the product of the petitioner No.1 in Ukraine. The documents further reveal that the said Cyprus / UK based companies have credited the amounts received from the petitioner No.1 in the private bank account of the petitioner No.2 in Cyprus. Moreover, during the course of search, incomplete and / or unsigned invoices of the foreign companies along with their seals / stamps were recovered from the office of the petitioner No.1 (see page 544 of the petition). These incriminating documents prima facie establish that large scale tax fraud has been committed.

21. When confronted with the incriminating documents which are seized, the petitioner No.2 while recording his statement on 11/6/2008 promised that he would explain the entire seized materials but he left for UK on 14/6/2008. The petitioner Nos.3 & 4 who are other directors of the petitioner No.1 company expressed their inability to explain the seized materials (see page 191 of the petition). Thereafter, till date the petitioner No.2 has failed to furnish requisite information. In these circumstances, invoking section 281B of the Act on 24/7/2008 to protect the interest of revenue cannot be faulted.

22. The fact that the notice under section 153A of the Act as well as the order under section 281B of the Act have been issued on the same date i.e. on 24/7/2008 would not affect the validity of the provisional attachment, because, under section 132 of the Act it is not mandatory that the proceedings must be pending on the date of invoking section 281B of the Act. Provisional attachment can be levied even in cases where the proceedings are yet to be initiated. Therefore, issuing 153A notice and invoking section 281B of the Act on the same day would not affect the validity of the order passed under section 281B of the Act on 24/7/2008.

23. Admittedly, the petitioner No.2 holds 97% shares of the petitioner No.1 company. During the course of investigation the petitioner No.2 admitted (see page 247 of the petition) that till September / October, 2003 he was holding 95% of the shares of Cyprus & U.K. based companies to whom the payments have been made by the petitioner No.1 as marketing and advertisement companies. Although, the petitioner No.2 claims to have divested his shareholding in those foreign companies and he is in no way connected with the said companies, in the absence of any explanation given as to the circumstances in which the said foreign companies have credited the amounts in the private bank

accounts of the petitioner No.2, the reasonable belief formed by the designated authority that the transactions between the petitioner No.1 and the Cyprus / UK based companies were tax avoidance transactions and the amounts received by the petitioner No.2 which is brought into India and invested, constitute undisclosed income of the petitioner No.2, cannot be faulted.

24. From the investigation carried out so far, it is seen that the assessee has declined to divulge any information as to the circumstances in which the said Cyprus / UK based companies deposited the amounts in the private bank account of the petitioner No.2 in Cyprus after receiving the amounts from the petitioner No.1. During the course of investigation the petitioner No.2 has stoutly refused to answer the questions put to him by merely stating that he being an N.R.I. is not obliged to disclose the source of income earned in foreign countries. As a result, there is delay in completing the investigation. Consequently, there is delay in finalising the assessment pursuant to the notice issued under section 153A of the Act.

25. Strong reliance was placed by the counsel for the assessee on the decision of the Andhra Pradesh High Court in the case of **Society for Integrated Development**

in Urban & Rural Areas V/s. C.I.T. reported in **252 ITR 642 (A.P.)** and a decision of this Court in the case of **Gandhi Trading Company V/s. C.I.T.** reported in **239 ITR 337 (Bom.)** in support of his contention that power under section 281B of the Act has to be used sparingly and only if the substantive evidence gives rise to the reasonable apprehension that the assessee may thwart the interest of the revenue in collecting the ultimate demand. None of the above decisions support the case of the assessee, because, the substantive evidence in the present case is the recovery of incomplete and / or unsigned invoices of the foreign companies from the office of the petitioner No.1, which clearly demonstrate that the assessee had resorted to tax evasion device and in such a case reasonable formed by the officer that the assessee may thwart the interests of the revenue cannot be faulted.

26. The third argument of the assessee is that, even assuming that the provisional attachment was necessary to protect the interests of the revenue, then and in that event, in the facts of the present case, attachment of the immovable properties was sufficient to cover the interests of the revenue and attachment of the shares in the demat account belonging to the petitioner No.2 is wholly unjustified.

27. Whether attachment of the immovable properties belonging to an assessee would be sufficient to cover the demand likely to be raised, would depend upon the facts of each case. In the present case, though the order passed under section 281B of the Act states that the demand likely to be raised would be more than Rs.100 crores, in the affidavit in reply it is explained that the tax with interest and penalty payable by the petitioner No.1 for availing deduction of marketing and advertisement expenses based on fabricated invoices would be around Rs.130 crores. Moreover, if it is held that the amounts brought into India by the petitioner No.2 and invested by his family members constitute undisclosed income of the petitioner No.2 received from the petitioner No.1 through Cyprus / UK based companies, then, huge demands would be raised against the petitioner No.2 who is CMD of the petitioner No.1. It is pertinent to note that the petitioner No.2 who is CMD of the petitioner No.1 has declined to divulge any information, particularly, the circumstances in which the amounts paid by the petitioner No.1 have been deposited by the Cyprus / UK based companies in the private bank accounts of the petitioner No.2. Moreover, since the petitioner claims to have acquired assets not only from the funds transferred into India, but also by obtaining loan from local banks, it is difficult to ascertain as to whether

the attachment of the immovable properties of the assessee would cover the demand likely to be raised.

28. It is pertinent to note that the petitioner No.2 who is the CMD of the petitioner No.1 had filed the tax returns for AY 2002-03 to AY 2008-09 (see page 188 of the petition) declaring income of Rs.25,200/-, Rs.25,200/-, Rs.25,200/-, Rs.66,800/-, Rs.1,17,440/-, Rs.15,800/- and Rs.4 crores respectively. Similarly, Mrs.Sheila Singh had filed return of income of Rs.50,400/- in AY 2002-03, Rs.25,200/- in AY 2003-04, Rs.63,000/- in AY 2007-08. As against the above income, the petitioner No.2 has invested more than Rs.35 crores in immovable properties and more than Rs.60 crores in acquiring shares of various companies. Since the investments made are disproportionate to the known sources of income and the incriminating documents seized during the course of search prima facie suggest that the funds brought into India are not the foreign income of the petitioner NO.2, but represent the amounts received by the petitioner No.2 under the tax avoidance transactions between the Petitioner No.1 and the Cyprus / UK based companies, the attachment of the immovable / movable properties cannot be faulted.

29. Strong reliance was placed by the Counsel for the revenue on the Board Circular dated 5-11-2004.

That circular was issued merely to safeguard against the indiscriminate use of Section 281B of the Act. In the facts of the present case, it cannot be said that invoking Section 281B of the Act is unreasonable or uncalled for, especially when the seized documents show that the petitioner No.2 is the mastermind in siphoning off the funds of the petitioner No.1 to his personal bank account in the foreign countries through the Cyprus / UK based companies with which he was closely associated. Whether the petitioner No.2 continues to be closely associated with those companies is yet to be investigated. In these circumstances, attachment of the shares held by the petitioner No.2 in his demat account out of the funds brought from the foreign companies cannot be faulted.

30. The decision of this Court in the case of Gandhi Trading (supra) which is heavily relied upon by the counsel for the assessee, has no bearing on the facts of the present case. No doubt, as held in that case, attachment as far as possible should be made of the immovable properties and attachment of bank accounts and trading assets should be made only as a last resort. In the present case, the shares held by the petitioner No.2 in demat account are not trading assets but are investments made out of funds brought to India which prima facie appears to be the amounts

remitted by the petitioner No.1 (of which the petitioner No.2 is CMD) as marketing and advertisement expenses to Cyprus / UK based companies. In these circumstances, attachment of the shares of the petitioner No.2 in demat account on the ground that they represent undisclosed income of the petitioner No.2 cannot be faulted.

31. The contention that the petitioner No.2 has lost about Rs.29 crores on account of the attachment of shares in the demat account is without any merit, because, fluctuation in the prices of shares in the share market is a natural phenomena, and, therefore, the revenue cannot be blamed if there is fall in the prices of shares which are attached. However, we agree with the counsel for the assessee that wherever the assessee applies for sale of the attached shares and seeks investment of the sale proceeds in the blue-chip shares, then, the proper officer should consider the said request and pass appropriate orders so that no prejudice is caused to the assessee by reason of attachment of shares and at the same time the interests of the revenue are protected by attaching the blue-chip shares that may be purchased out of the sale proceeds received on sale of the attached shares. The argument that the assessee ought to have been permitted to shift the security from one banker to another banker so as to

avail higher facilities cannot be accepted, because, the petitioner No.2 who appears to be the brain behind the massive tax evasion is not co-operating with the department in unfolding the truth. As a result of non co-operation the investigation is hampered. Consequently, there is delay in determining the demand. In these circumstances, permitting the petitioner No.1 company to enhance its liability during the course of investigation would be detrimental to the interest of the revenue.

32. For all the aforesaid reasons, we see no reason to interfere with the orders impugned in the present petition. Accordingly, petition is dismissed with no order as to costs.

(SMT. RANJANA DESAI, J.)

(J.P.DEVADHAR, J.)