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Judgment reserved on 31.01.2012
Judgment delivered on 02.03.2012

Civil Misc. Writ Petition No.1614 of 2006
Dr. Roop v. Commissioner, Income Tax, Meerut & Ors.

Civil Misc. Writ Petition No.1615 of 2006
Dr. Sangeeta v. Commissioner, Income Tax, Meerut & Ors.

Civil Misc. Writ Petition No.1616 of 2006
Meerut Laser and Eye Care Center (P) Ltd. v. Commissioner, Income Tax, Meerut & Ors.

Civil Misc. Writ Petition No.1617 of 2006
Mrs. Krishna v. Commissioner, Income Tax, Meerut & Ors.

Civil Misc. Writ Petition No.1618 of 2006
Dr. Karan Singh v. Commissioner, Income Tax, Meerut & Ors.

Civil Misc. Writ Petition No.1619 of 2006
Roop and Sons (HUF) through Karta Dr. Roop v. Commissioner, Income Tax, Meerut & Ors.

Civil Misc. Writ Petition No.1620 of 2006
Krishna Karna Charitable Trust through Trustee Dr. Karan v. Commissioner, Income Tax, Meerut & Ors.

Hon. Sunil Ambwani, J.
Hon. Manoj Misra, J.

1. We have heard Shri Subham Agrawal, learned counsel for the petitioners. Shri Sambhu Chopra appears for the Income Tax Department.

2. The petitioners in these writ petitions have prayed for directions in the nature of certiorari to quash the illegal search and seizure operation dated 27th/28th October, 2005 and 14th November, 2005 by the Income Tax Department under Section 132 (1) of the Income Tax Act, 1961 (the Act). They have also prayed for releasing the cash and jewelery found in locker and house-cum-clinic, provide copy of computer data containing medico legal records, and title deeds of property already disclosed in the income tax return.

3. The petitioner is MBBS, and MD from AIIMS, New Delhi. He is an eye-surgeon and is practicing along with his wife, who is also a medical doctor at Meerut. The petitioner derives his income from salary from Meerut Laser and Eye Care Centre Pvt. Ltd., house property and income from other sources with interest etc. It is stated that his income tax returns have been consistently accepted by the income tax authorities for last 15 years.

4. That on 27.10.2005 search and seizure operations were carried out at his residence-cum-clinic in the premises of the petitioner opposite N.A.S. college, E.K. Road, Meerut. The warrant of authorisation was prepared in the name of the petitioner and his wife Dr. Sangeeta. It is alleged that the warrant of authorisation was not given to the petitioner even though he has specifically demanded during the search operations, which was carried out for two days i.e. on 27th/28th October, 2005. A panchnama dated 28.10.2005 of search and seizure was prepared. The manner in which the search operations were carried out made it clear that the Taxing Officers had not scrutinised the past income tax records of the petitioner, before signing the warrants. The petitioner does not run his own clinic. He is working as one of the doctors of Meerut Laser and Eye Care Centre Pvt. Ltd., which is a private limited company. The inventories were prepared and various FDRs were seized, which was in the name of other family members and were duly disclosed in their income tax returns. The FDRs in the name of the petitioner and his wife are also disclosed in the returns of his wife Dr. Sangeeta. The FDRs belonging to the petitioner, his sons, HUF duly disclosed in the income tax returns were wrongly shown in the panchnama in the name of the petitioners. Rs.6,00,000/- out of Rs.7,25,300/- found in cash was also seized. A locker no.182 in the name of the petitioner

and his mother Smt. Krishna was opened from which the cash was seized. It is stated that almost all the articles seized by the income tax authorities were shown in the income tax returns, filed along with balance sheet of the preceding assessment years.

5. It is alleged that the income tax authorities also seized the CPU containing data relating to clinical research carried out by the petitioner for last several years. The search of locker no.182 in the Punjab National Bank, E.K. Road, Meerut in the name of the petitioner and his mother was carried out under warrant for search dated 28.10.2005. The income tax authorities seized the cash of Rs.3 lacs and gold jewellery weighing approximately 1394.5 grams from the lockers. The panchnama revealed that the respondent authorities had seized the bank locker on 27.10.2005 for which the search warrant was issued on 28.10.2005. Subsequently on 24.10.2005 and 12.1.2006 the Addl. Director, Income Tax Investigation, Meerut issued summons under Section 131 (1-A) of the Act requiring production of details of returns of the previous years of the petitioner by himself and his family members, which was always available with the department.

6. The search and seizure operations have been challenged on the ground that the income tax authorities did not verify the income tax returns of the company, the petitioner, his wife and other family members, and there could be no reason to believe with them, as they issued the notice under Section 133 (1A) of the Act after carrying out the search operation. At best they had only reason to suspect, and hence the basic requirement conferring jurisdiction under Section 132 of the Act for carrying out search and seizure operations was missing.

7. It is submitted relying upon Income Tax Officer v. Seth Brothers, (1969) 74 ITR 836 (SC) and P.R. Metreni v. CIT, (2007) 1 SCC 789 that search and seizure operation is a serious invasion, on the privacy and freedom of the tax payers and thus powers under Section 132 of the Act must be exercised strictly in accordance with law, and only for the purposes for which the law authorises it to be exercised. The search and seizure operations can only be authorised in view of the Instruction No.7 of the instructions issued by the Central Board of Direct Taxes on 30.7.2003, to be authorised only by the concerned Director General of Income Tax, and by no other official, read with Section 119 and Section 132 (1) and (14) of the Act makes it mandatory after 30.7.2003 the searches are to be authorised by the concerned DGIT (Investigation). In the present case the search operations were authorised on 27.10.2005 by the Director of Investigation on 18.10.2005 as is evident from the panchnama, which makes the issuance of authorisation of search void ab initio.

8. It is submitted that the revenue can resort to search only in a case, where there is expected income of more than Rs.1 crore. This limit was never considered before authorisation of search. The satisfaction must be recorded that there is substantial unaccounted asssets without specifying the assets or value of these and also without correlating with the findings of the search as is mandatory by the CBDT Instruction No.4 of 2004. The circulars in view of Paper Products Ltd. v. CCE, (2001) 247 ITR 128 (SC) are binding on the department.

9. Learned counsel appearing for the petitioners has relied upon Ganga Prasad Maheshwari v. CIT, (1983) 139 ITR 1043 (All.); Dr. Nand Lal Tahiliani v. CIT, (1988) 170 ITR 592 (All.); Dr. Sushil Rastogi v. Director of Investigations,

(2003) 260 ITR 249 (All.); Ravi Iron Industries v. Director of Investigation, (2003) 264 ITR 28 (All.); Smt. Kavita Agarwal v. Director of Income Tax, (2003) 264 ITR 472 (All.) and Dr. Anita Sahai v. DIT, (2004) 136 Taxman 247 (All), in which it was held that before taking any action under Section 132 of the Act, the condition precedent, which must exist should be the information in possession of Director of Income Tax, which gives him 'reason to believe', that a person is in possession of some article, jewelery, bullion, money, which represents wholly or partly his income, which was not disclosed or would not be disclosed. If these conditions are missing, the Commission or Director of Investigation will have no jurisdiction to issue the warrant of authorisation under Section 132 (1). When a positive averment is made in the writ petition, that there was no material which could lead to formation of reason to believe in the directive for issuance of warrant of authorisation, the respondents must in their counter affidavit give specific details as to what particulars and material was taken into consideration. Such material must be taken into consideration by the Director at the time, when he issues warrant of authorisation under Section 132. If the Director considers the material after issuance of warrant of authorisation, it will be illegal, even if the material existed earlier. In this connection the petitioner has also relied upon Suresh Chand Agarwal v. DGIT, (2004) 139 Taxman 363 (All.); Shyam Jewellers v. Chief Commissioner (Admn.), (1992) 196 ITR 243 (All.); Dr. D.C. Shrivastava v. DIT (Investigation), (2007) 162 Taxman 290 (All.) and Giridhar Gopal Gulati v. Union of India, (2004) 269 ITR 45 (All.).

10. Learned counsel for the petitioner relying upon P.R. Metrani v. Commissioner of Income-Tax, Bangalore, (2006) 157 Taxman 325 (SC) submits that the Supreme Court

observed in para 15 that Section 132 to 132B of the Act embody an integrated scheme laying down the procedure comprehensively for search and seizure and the power of the authorities making the search and seizure to order the confiscation of the assets seized. Section 132A gives power to the authorities to requisition books of account in consequence of the information in its possession. Section 132B provides the manner in which the assets retained under sub-section (5) of Section 132 can be dealt with. Section 132 is a Code in itself. It provides for the conditions upon which and the circumstances in which the warrants of authorization can be issued. After discussing the scheme of Section 132 including sub-section (2), sub-section (4), sub-section (4A) and (5); sub-section (6) and sub-section (7) the Supreme Court held that search and seizure under Section 132 is a serious invasion into the privacy of a citizen and therefore it has to be construed strictly. Sub-section (4A) was inserted by the Taxing Laws (Amendment) Act, 1975 w.e.f. 1.10.1975, to permit a presumption to be raised in the circumstances mentioned therein. Before the insertion of sub-section (4A), the onus of proving the seized accounts, documents, money, bullion and jewelery belong to that person was on Income Tax Department. It enables the assessing authority to raise a rebuttable presumption that such books of accounts, money, bullion etc. belong to such persons, that the contents of such books of accounts and other documents are true, and other documents are signed by such persons or are in hand writing of that person. The object of Section 132 is to prevent evasion of tax i.e. to unearth the hidden and undisclosed income or property and bring it to assessment. It is not merely an information of undisclosed income but also to seize money, bullion etc. representing the undisclosed income and to retain them for

the purposes of realisation of tax, penalties etc. A presumption is an inference of facts drawn from other known or proved facts. The words in sub-section (4) are 'may be presumed'. The presumption is, therefore, a rebuttal presumption. It will not be available for the purposes of framing a regular assessment. Where during the course of search under Section 132, any money, bullion, jewelery or other valuable articles or things are tendered by the prosecution in evidence against the person, then the provision of sub-section (4A) of Section 132 shall apply. The presumption under sub-section (4A) is available only in regard to the proceedings of search and seizure and for the purposes of retaining the assets under Section 132 (5) and their application under Section 132 (B). It is not available for any other proceedings except where it is provided that the presumption under Section 132 (4A) would be available.

11. Shri Subham Agrawal appearing for the petitioner has also relied upon the judgment of the High Court of Bombay (Nagpur Bench) in Spacewood Furnishers (P) Ltd. & Ors. v. Director General of Income Tax (Investigation) & Ors., (2012) 246 CTR Reports 313 in which the note prepared by the Assistant Director of IT (Investigation) in consultation with the Addl. Director of IT (Investigation) authorising the search was considered. The note in that case did not show any date, time or place, when the discreet enquiries were made and did not name the person from whom it was made. The market information did not find place in the satisfaction note and no details of the discreet enquiry were disclosed. It was held that satisfaction note must be based upon contemporaneous material, information becoming available to the competent authority. Loose satisfaction notes placed by authorities before each other cannot meet the

requirement of the provisions and thus the authorisation in that case was found to be bad and unsustainable.

12. Shri Subham Agrawal has also cited a judgment of this Court in City Montessory School (Regd) v. Union of India & Ors., Writ Petition No.2818 (MB) of 2000 decided in May, 2007, judgment of Lucknow Bench in Raghuraj Pratap Singh v. Asstt. Commissioner of Income Tax, Writ Petition No.5731 (MB) of 2004 decided on 14th December, 2006 and judgment of Delhi High Court in Ajit Jain v. Union of India, 84 (2000) DLT page 1 in support of the submissions that the information within the meaning of Section 132 (1) should be as accurate as possible having reference to the precise assets of a person and not of a general nature and that should in all probability lead the authorities to have the unmistaken belief that money, bullion, jewelery or other valuable articles or things pointed out by the informer would be in the possession of the person named by the informer. All efforts must be made by the authorities to ensure the correctness of the information and they should assure and reassure themselves about truthfulness and correctness of the information before taking any action violating the privacy of citizen.

13. It is submitted by Shri Subham Agrawal that mere possession of money, bullion, jewelery and other valuable article or thing is not enough to initiate proceedings under Section 132 (1). Besides the information that the petitioner is in possession of certain money, bullion, jewelery and other valuable articles or thing, there must be some further material to show that the petitioner would not disclose it as his income or property under the Income Tax Act.

14. It is submitted that the search was authorised in violation of Instruction No.7 of 2003 by CBDT Circular. There was no reason to believe for satisfying the pre-

condition of Section 132. The search was authorised without scrutinising the past returns of the petitioner. The appraisal report was not prepared even after 11 months of the search. During the course of search, the mandatory requirement of calling two witnesses was not followed. The cash, and property owned by the petitioner already forms the assets disclosed in his return was filed before the search. The CPU containing only clinical data was seized to harass the petitioner. The documents seized were not relevant for the income tax as they were already disclosed. The Addl. Director of Income Tax has no jurisdiction to authorise the search. There was no reason to believe that the locker contained any undisclosed assets. The locker was sealed on 27.10.2005 without any valid reason one day prior to the issuance of search warrant. Only Rs.69,000/- belong to the petitioner, which was duly reflected in his income tax return. The seizure of gold was illegal as it was disclosed in the returns of the petitioner's mother Mrs. Krishna. The summons under Section 131 (1A) and the information sought prove that search was initiated without mandatory reason to believe and was just a fishing expedition. The restraint order in violation of Section 132 (8A) continued for more than 60 days after its issuance. It is not denied that the title deeds were withdrawn in violation of the law and that photocopies of the seized documents were not provided. None of the assets seized were considered undisclosed. There was no mention of any seized document in the order and computer data and there was no mention that the petitioner was running his own clinic. The petitioner did not have any undisclosed income nor any such undisclosed income was found during search and seizure operation.

15. During the pendency of the writ petitions the Court passed orders on 10.3.2011, 4.5.2011, 17.5.2011 and

12.8.2011 in which keeping the question of validity of search and seizure open, in view of the fact that the assessments for the block periods were completed and that ITAT had upheld the orders of CIT (A) for dealing Rs.8 lacs as gifts and had set aside the orders of CIT (A) regarding the sum of Rs.50 lacs, directed the income tax authorities to release the entire seized articles after accepting security for an amount of Rs.15 lacs only, which remained in dispute. The order dated 12.8.2011 is quoted as below:-

> *"We have heard Shri Subham Agarwal for the petitioner. Shri Dhananjai Awasthi appears for the department.*
>
> *On 04.5.2011 we had passed the following order:-*
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> *"In pursuance to our direction on 10.3.2011 Shri Dhananjay Awasthi has produced two sealed envelopes containing the material for 'reason to believe' for conducting search and seizure operations; copy of the satisfaction note, warrants of authorisation and authorisation for survey. These documents are duly certified by Deputy Director of Income Tax (I and V)-1, Meerut. Both the envelopes will be resealed and kept in the custody of the Registrar General to be produced on the next date.*
>
> *Shri Dhananjay Awasthi states that the satisfaction note is a confidential document and should not be disclosed to the petitioner, who is present in person.*
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> *The legal position with regard to disclosure of the satisfaction note has been considered by this Court in several decisions beginning from Dr. Nand Lal Tahliani Vs. CIT 170 ITR 592 (Alld) to City Montessory School (Regd) Vs. Union of India & Ors. (Writ Petition No.2818 (MB) of 2000 along with two other connected petitions in 2007. The consistent view taken is that the material on the basis of which warrant of authorisation under Section 132 was issued and the search and seizure operations were carried out should be disclosed to the assessee unless privilege is claimed.*
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> *Shri Dhananjay Awasthi has pleaded but has not filed application and affidavit claiming privilege of the documents. He prays for and is allowed two weeks*

time to have consult with the department and if advised claim privilege.

We are informed that after the search and seizure was carried out, the assessment orders were passed by ACIT under Section 153 on 28th December, 2007, making some additions. None of the assets seized were considered undisclosed and there was no mention of any seized documents in the order. There is no mention of computer data also in the order. By order dated 29th June, 2009 CIT (Appeals), Meerut passed an order deleting all the additions made by the Assessing Officer and accepting returned income.

It is stated by Shri Subham Agrawal that CIT (Appeals) opined that AO has passed assessment order without examining seized material; old records were not available with AO; AO did not take cognizance of case-laws; copies of seized material were not provided even during assessment and that the petitioner did not have any undisclosed income. It is stated that on 17th August, 2010 seized material was transferred to ACIT Circle-1 after decentralization of the powers to the officers.

It is admitted by Shri Awasthi that assessments have become final and refunds were allowed to the petitioners. He relies upon statement given in the counter affidavit that the data in the hard disc and all the material seized were actually returned to the petitioner. Dr. Roop appearing in person has strongly denied these avermetns and states that nothing, which was seized has been returned so far and that infact the FDRs of his father from out of the retirement dues were also seized and that when his father requested for their return he was not even given acknowledgment of his presence in the office and was not treated with respect due to senior citizen.

Dr. Roop appearing in person also submits that CPU was seized along with hard disc. CPU has been returned but hard disc was retained. The copy of the hard disc given back to the petitioner was examined by experts. The entire clinical data was found missing. He states that there was no financial data in the hard disc. In this writ petition we are prima facie concerned with the validity of the search and seizure operation. Since a complaint has been made that seized articles have not been returned including hard disc, title deeds, fixed deposits, jewelery etc., on the admissions made on behalf of the department that nothing further is required to be done and that actual refunds have been allowed to the petitioner in respect of relevant assessment orders, we direct the department to

immediately return all the seized articles described as above or any other article, which may have been seized and is still retained. The department will call Dr. Roop and return all the articles to him after obtaining receipt, within a week from today.
Let the assessments and the appellate orders as well as the application for return of the articles be brought on record by supplementary affidavit within a week. The assessment and appellate orders will be filed by Shri Shubham Aggrawal along with supplementary affidavit before the date fixed.

List again in the additional cause list on 17th May, 2011.

A copy of the order be given to Shri Dhananjay Awasthi appearing for the Income Tax Department."

The department claimed privilege to disclose the satisfaction note, put up by the Assistant Director of Income Tax (Investigation) before the Joint/Additional Director of Income Tax (Investigation). The application claiming privilege filed under Section 123 of the Evidence Act, 1872 was rejected by us on 17.5.2011. It was thereafter brought to our notice that against the assessments on the basis of seized material in the searches carried out on 27th and 28th October, 2005, and against the orders of CIT (A), the department has filed appeals in the Income Tax Appellate Tribunal (ITAT) and that the finality of the assessment proceedings and interest of revenue will suffer in case the directions dated 4.5.2011 are to be followed. The department prayed for modifying the order, or to recall it keeping in view of interest of the revenue.

We accepted the request of the revenue, and passed an order on 17.5.2011 as follows:-

"The supplementary affidavit filed by the petitioner is taken on record.

On 04.5.2011 we passed the orders giving two weeks' time to Shri Dhananjai Awasthi, learned counsel appearing for the department to consult with the department and if advised, claim privilege on the materials, which form the reason to believe for conducting search and seizure operations. We also directed that since all the assessment of the block periods, which co-relate to the search and seizure, was concluded at the stage of CIT (Appeals) and that the CIT had opined that AO had passed assessment order without examining seized material; old records were not available with AO; and further it was admitted by

Shri Agarwal that the assessments had become final and refunds were allowed to the petitioners, there was no justification to retain the seized articles including hard disc, title deeds, fixed deposits, jewelery etc. We had directed the assessments and the appellate orders to be brought on record by supplementary affidavit within a week. The department was directed to immediately return all the seized articles and any other articles, which may have been seized and are still retained within one week after receipt of the petitioner.

Shri Dhananjay Awasthi has filed two applications. By the first application, the department is seeking privilege under Section 123 of Evidence Act, 1872 on the grounds given in paragraphs 5, 6 and 7 as follows:-

"5. That the process of finalizing a search action is a detailed process were by the satisfaction note is put up by the Assistant Director of Income Tax (Investigation) before the Joint/Additional Director of Income Tax (Investigation). In case the superior authority is satisfied with the contents he records his own satisfaction and then it is forwarded to the Director of Income Tax (Investigation) who after examination records his own satisfaction and eventually the Director General of Income Tax (Investigation) gives his final approval, after this warrant of authorization for conducting searches are issued after due diligence and in deserving cases only. If the Hon'ble Court in a routine manner sets a precedent of showing these confidential documents to the assessee it will jeopardize the whole functioning of the department irreparably and on the broader terms whole search and seizure actions of the future will get affected.

6. That the source of information and method of verification is confidential and cannot be disclosed to the petitioner or to any other person. The satisfaction note prepared before the signing of the authorization is highly confidential and its revelation to the assessee or to general public may prove detrimental to the potential information given as well as the department.

7. That in view of the above stated facts I, Director of Income Tax (Investigation) under Section 123 & 124 of the Evidence Act, 1972 hereby claim privilege in the instant case for not showing this satisfaction note to the petitioner."

We find that none of the grounds, taken in the affidavit of Shri Umesh Takyar, Deputy Director of Income Tax (Investigation)-I, Meerut in support of the application under Section 123 of the Evidence Act, is

relevant for claiming privilege. The confidentiality of the information by itself cannot be a ground to claim privilege. The claim of the department, that the authorisation is highly confidential and its revelation to the assessee or to general public may prove detrimental to the potential information given as well as the department, by itself cannot be a ground to claim privilege of the documents. The satisfaction has to depend upon the material on which it is based, the disclosure of which will bring it within the grounds mentioned in Section 123. We have already discussed the case law in this regard in our order dated 4.5.2011 and do not find that the application is founded on any of the ground on which such privilege can be claimed.The application is accordingly rejected.

In the second application, it is stated that in so far as the return of seized material is concerned, it will affect the finality of the assessment proceeding. In para-8 of the application it is stated that the appeals have been filed by the department against the order of CIT (A) in ITAT and that the finality of the assessment proceedings and interest of revenue will suffer, in case directions in the order dated 4.5.2011 are to be followed. The department has prayed for modifying the order or to recall it keeping in view of the interest of the revenue. It is further stated that if the High Court finds it necessary to release the seized article, the completion of administrative formality in coordination of various wings of the department may be taken into consideration and one month's time be granted to the department to comply with the order of the High Court dated 4.5.2011.

Prima facie we find from the punchnama of the articles prepared that none of the articles or material may be required physically to be produced before the ITAT for the purposes of deciding the appeal. The copies of the documents and hard disk could be easily obtained in the presence and under signature of the petitioner. The department has already committed gross default of the provisions of Section 132-B (1) (i) providing in the first and second proviso and sub section (2) and (4) for release of the articles on application made by the persons from whom the articles have been seized, within 120 days from the date on which the list of the authorisation for search under Section 132 or for requisition under Section 132-A, as the case may be, was executed. The list of authorisation was given on 14.11.2005 and the first application was made for return of goods on 30.11.2005. The department was required to complete

the proceedings of assessment and return the articles, if nothing was required to be recovered from such articles in consequence to the assessment, long ago. The department has also attracted, in the process the penalty of simple interest at the rate of one and half per cent for every month or part of the month of the amount which was seized.

In order to alley any apprehension and to conclude the issues, we find it appropriate to direct that pending appeals be decided by ITAT within a period of one month from the date a certified copy of the order is produced and that within a week from the decision of the appeal, unless the orders of the ITAT otherwise provide, the entire article seized may be returned to the petitioner within a week of the decision of the appeal. Our order dated 4.5.2011 is modified to that extent.

List this matter for final hearing on 19.7.2011. The sealed envelop shall be retained by the Registrar General to be produced on 19.7.2011."

Shri Dhananjai Awasthi appearing for the department has filed an affidavit of Smt. Beena Jaiswal, Income Tax Inspector, in the office of Income Tax (Investigation)-I, Meerut, annexing therewith the order of the ITAT dated 01.7.2011 running into 76 pages deciding ITA No. 3794 & 3795/Del/2009 and Cross Objection Nos. 365 & 366/Del/09 relevant to the assessment years 2003-04 and 2004-05. The ITAT has allowed the appeals of the revenue for the assessment year 2003-04 and partly allowed the appeal for the assessment year 2004-05 for statistical purposes. The cross objections filed by the assessee were also allowed partly for statistical purposes.

Summing up observations and findings of ITAT, it is stated in the affidavit of Smt. Beena Jaiswal, Income Tax Inspector as follows:-

"3. That the ITAT vide the order dated 1.7.2011 has decided the pending appeal of the petitioner by detailed order. The ITAT has upheld the order of the CIT (A) for deletion of Rs. 8 Lacs as received as gift but has set aside the order of the CIT (A) regarding a sum of Rs. 15 lacs. A copy of the ITAT order dated 1.7.2011, is being annexed as Annexure-1 to this affidavit.

4. That now the position is that since major portion of the quantum has been decided by the ITAT against the petitioner the department cannot return the seized assets because the department does not have the power to divide the assets in proportion of the ITAT order also the department is filing appeal against the

ITAT order regarding the gift of Rs. 8 Lacs received from Sri Sanjeev Juneja, hence it is prayed that for substantial justice and to balance the equity the assets of the petitioner are being retained.

5. That the present affidavit is being filed in order to demonstrate the bonafide of the respondent and to seek further directions in the present circumstances.

6. That the department has taken into cognizance the order dated 17.5.2011 and wants to comply the order in letter and spirit but after the order of the ITAT the department is constrained to return the seized assets as it is no longer possible or feasible to return the assets as major portion of the quantum have been decided in the favour of the department, hence it is prayed that the Hon'ble High Court may suitable modify the directions contained in order dated 17.5.2011 so as to meet out the current situation which has arisen after the ITAT order dated 1.7.2011.

7. That it is being clarified that the department is unable to follow the direction contained in order dated 17.5.2011 as it is no longer feasible to do so, hence the Hon'ble High Court may condone the non-compliance of direction regarding return of the seized material within 7 days after decision of the ITAT. The Hon'ble Court may take a lenient view and may suitably modify the order dated 17.5.2011."

From the order of the ITAT we find that the Tribunal has upheld the order of CIT (A) for deletion of Rs. 8 lacs received as gift, but has set aside the order of CIT (A) regarding a sum of Rs. 15 lacs. In the circumstances the objections raised by Shri Dhananjai Awasthi for the revenue, that since the CIT (A) has to decide the appeal denovo, there is no justification to return the seized gifts at this stage, is liable to be rejected. The ITAT has observed in paragraph-3 of the order that the AO initiated assessment proceedings under section 153A by issuing a notice on 10.9.2007 for six assessment years from assessment year 2000-01 to 2005-06, and also for the assessment year 2006-07. The Tribunal concerned itself only with the appeals relating to assessment made by AO for the assessment years 2003-04 and 2004-05. No other appeal was filed by the assessee or by revenue for any previous years or was pending.

After the remand by ITAT, the only issue, which survives for consideration before the CIT (A), is regarding a sum of Rs. 15 lacs. We are thus satisfied that the release of assets seized during the search operations will not in any way prejudice the interest of

the revenue, if the petitioner gives security for an amount of Rs. 15 lacs, which will not only cover the tax payable, if the CIT (A) does not accept the gift of the sum of Rs. 15 lacs, and also penalty, if any, imposed on the petitioner.

We have seen the list of the documents, hard discs, jewelery, cash and fixed deposits seized during the search and seizure conducted on 27.10.2005, 7.11.2005 and 14.11.2005. The AO and CIT(A) had adjudicated on the material seized during the search operations and that after the order of ITAT only a question of the validity of the gift of Rs. 15 lacs survives. There is as such no justification whatsoever to allow the department to continue to retain the articles including hard discs, the documents, jewelery, cash, FDRs seized five years ago.

Keeping the question of the validity of the search and seizure operations open; the proceedings pending before CIT (A) as well as the right of the petitioner to file appeal against the order of the ITAT, we direct that in case the petitioner furnishes security of Rs. 15 lacs, which will be other than cash and bank guarantee, the entire articles including hard disc, documents, jewelery, cash and FDRs seized and lying in the custody of the Income Tax Department shall be released within 15 days from the date the security is furnished, to the satisfaction of the A.O.

So far as question of validity of search and seizure is concerned, since we have rejected the application for claiming the privilege, for disclosing the satisfaction note and warrant of authorisation, for conducting searches, the petitioner along with his counsel will be permitted inspection these documents produced in the Court and kept in the sealed cover in the custody of the Registrar General. The inspection will be carried out in presence of the counsel for the department. Learned counsel for petitioner may make an appropriate application to the Registrar General along with the certified copy of this order for inspection of the documents, and thereafter may make appropriate representation to the Court, for fixing a date for hearing."

16. In the order dated 18.10.2011 it was noted after perusing the affidavit of Shri Lal Ji Prasad, Asstt. Commissioner of Income Tax, Circle-2, Meerut that inspite of orders of the Court the documents and hard discs as per

Annexure-A of the panchnama dated 27th-28th October, 2005; document as per Annexure-A of the Panchnama dated 7.11.2005; jewelery as per Annexure 'J' of Panchnama dated 7.11.2005 (Sl.No.108 comprising 8 Kara Thos 24 Ct. weighing 933.700 gms); jewelery as per Annexure 'J' of panchnama dated 14.11.2005 (Sl.No.1-6, comprising of 10 bars, necklace & bunde (studded)- gross 1418.100 gms); cash (Rs.6 lacs) as per panchnama dated 28.10.2005; cash Rs.3 lacs as per panchnama dated 14.11.2005 and FDRs as per Panchnama dated 28.10.2005 were not returned. The department was required to give the reasons as to why items have not been returned inspite of completion of the assessment proceedings and the directions issued by the Court.

17. On 21.10.2011 we passed an order as follows:-

> *"Sri Shubham Agrawal appears for the petitioner. Sri A.N. Mahajan appears for the Income Tax Department.*
>
> *Sri Laljee Prasad Assistant Commissioner, Income Tax, CIR-II, Meerut is present in person. He has also filed a supplementary affidavit.*
>
> *It is stated by Sri A.N. Mahajan that apart from documents and items noted in the previous orders, he is returning the cash of Rs. 6 lacs and Rs.3 lacs as per panchnamas dated 28.10.2005 and 14.11.2005, to Sri Shubham Agrawal by cheques today in Court.*
>
> *So far as articles mentioned at Sl. Nos. 1 to 8 of Annexure 'J' of panchnama dated 7.11.2005 comprising of 8 Kara of 24 ct. weighing 933.700 gms, it is submitted by Sri A.N. Mahajan that these articles are under the custody of the Assistant Director of Income Tax (Investigation), who is on official trip to Kolkatta, and these articles will be returned latest by 25.10.2011.*
>
> *We express our displeasure with the process, adopted in returning the articles seized by panchanams dated 28.10.2005, 7.11.2205, and 14.11.2005 to the petitioner. Inspite of clear orders passed by us on 12.8.2011, to return all the articles within 15 days after accepting 15 lacs as security, the Income Tax Department is taking its own time, in returning the articles one by one.*

We expect that the officer present in Court will carry out the undertaking given in the affidavit filed today, in returning the articles to the petitioner by 25.10.2011.

The personal presence of Sri Laljee Prasad, Assistant Commissioner, Income Tax, CIR-II, Meerut from the proceedings is exempted, until directed by the Court.

Put up on 14.11.2011 for further hearing.

18. The satisfaction note and other related documents were received on 17.5.2011. The envelope was kept in the custody of the Registrar General. On the request of learned counsel for the petitioner we allowed the documents to be inspected by the counsel for the petitioner. On 5.9.2011 Shri Subham Agrawal, learned counsel for the petitioner in the presence of the petitioner Dr. Roop inspected the documents. Shri Sambhu Chopra, learned counsel appearing for the Income Tax Department appeared in place of Shri Dhananjay Awasthi. He also inspected the records. The arguments were heard and the judgment was reserved on 31.1.2012.

19. A supplementary affidavit has been filed by Dr. Roop annexing therewith the photocopies of the orders of the CIT (Appeals) and the photocopy of the application filed by him for release of the seized material. He also filed applications demanding inspection of his own IT records and other seized materials, which were annexed to the application.

20. In the counter affidavit of Ms. Vrunda Desai, Asstt. Director of Income Tax (Investigation), Unit-1, Meerut, it is stated in paragraphs 3, 4, 5, 15, 16, 17, 18, 19, 27, 30 and 40 as follows:-

"3. That before giving parawise reply to the various paragraphs of the writ petition, it is averred that the petitioner has challenged the search and seizure action of the department belatedly and on this ground alone the present writ petition should be dismissed. The search and seizure operation has been done following due procedure as per Income Tax Rules

and now assessment is being carried out under Section 153B (1) of the Income Tax Act, 1961 for which the time period is 2 years.

4. That the petitioner has based the writ petition on the case of Dr. (Mrs.) Anita Sahai Vs. Director of Income Tax (Investigation), which is absolutely misleading. Both the cases are radically different, as premise on which the Dr. Anita Sahai Case proceeds is that the department did not have any Reasons to Believe or satisfaction note of the Director of Income Tax (investigation). Here in this case, there was credible evidence before the competent authority to indicate huge tax evasion and possession of substantial unaccounted assets, which was put before the Director of Income Tax (Investigation), Kanpur who after being satisfied from the evidence on record that huge tax evasion is being carried on by the petitioner, recorded his satisfaction note. Subsequently the Director General of Income Tax (Investigation) also recorded his administrative approval for conducting search and seizure operation. Accordingly the search warrant was issued and search was conducted by the authorized officers on 27.10.2005 in present of independent witnesses and following due proper procedure where the search warrant was also shown to the assesee/ petitioner an the independent witnesses before commencement of search and their satisfaction note were also obtained as proof of having seen the warrant and subsequently search was closed by drawing a panchnama in which the assessee/ petitioner as well as the 2 witnesses certified that the search action was conducted in a proper and orderly manner. Both these notes will be placed if this Hon'ble Court so desired at any time during course of hearing, as these documents are sensitive in nature, hence will be placed only on requirement.

5. It is categorically denied that "even irrelevant documents and unrelated items been seized". The C.P.U. seized contained information relating to business of petitioner, which was opened before the assessee/ petitioner and two witnesses on 13.1.2006 and after making copies from the Hard Disc, original was retained and sealed and copies of hard Disc was returned along with the C.P.U., hence contention of the petitioner raised are misleading and are only aimed to obtain some interim direction from the Hon'ble Court. All the judgments cited in the petitioner are distinguishable and do not cover the present case. Moreover the present writ petition is also premature as presently the department after the search and seizure is

in the process of finalizing the assessment for which a period of two years has been provided in the Act and hence at present there is no cause of action. The petitioner has not been able to make out any case, hence the present writ petition should be dismissed with costs in the interest of justice, otherwise the answering respondents shall suffer irreparable loss and injury.

15. That the contents of paragraph no.11 of the writ petition are denied as stated. It is submitted that at the time of search various Income Tax Returns and Balance Sheet were not available before the authorized officer.

16. That the contents of paragraph no.12 of the writ petition are denied as stated. It is submitted that search and seizure operation was conducted with proper warrant of authorizsation at the premises belonging to the petitioner and the CPU was seized as it was found to contain the books of accounts. After taking out copy of Hard Disc to Hard Disc of CPU, original Hard Disc has been sealed and retained and both the CPUs have been released to the petitioner with Hard Disc copied. The photocopy of Panchanama dated 13.1.2006 is being filed and marked herewith as Annexure No.CA-2 to this counter affidavit.

17. That the contents of paragraph no.13 of the writ petition are denied as stated. It is submitted that the Locker No.182 was sealed in pursuance of proper warrant of authorization dated 28.10.2006, which was later on executed on 14.11.2006.

18. That the contents of paragraph no.14 of the writ petition are denied as stated. It is submitted that initial warrant of authorization for search under Section 132 of the Act was issued by the Director of Income Tax (Investigation) and the locker was searched in consequence to such authorization. Moreover according to the provisions of Income Tax Act, 1961, the Additional/ Joint Director of Income Tax (investigation) are also authorized to issued warrant of authorzation under Section 132 of the Act for authorizing search as also for operation of locker as has been held in the case of Vinod Goel Vs. UOI, 252 ITR 29 (P&H).

19. That the contents of paragraph no.15 of the writ petition are denied as stated. It is submitted that the search and seizure operation was conducted on 27.10.2005 in presence of assessee/ petitioner after obtaining due satisfaction certificate from both the authorities namely Director of Income Tax (Investigation) and Director general of Income Tax (Investigation), who had Reasons to Believe that huge

unaccounted assets were there in possession of the petitioner.

27. That the contents of paragraph no.24 of the writ petition are denied as stated. It is submitted that the CPUs that were seized during the search and seizure operation contained information relating to the business of the assessee/ petitioner as also the books of account apart from any clinical research work maintained by the petitioner. Both the CPUs have been opened in the presence of the petitioner, ADIT (Systems) and two witnesses on 13.1.2006. After taking out copy of Hard Disc to Hard Disc of CPU original Hard Disc has been sealed and retained and both the CPUs have been released to the petitioner with Hard Disc copied.

30. That the contents of paragraph no.27 of the writ petition are denied as stated. It is denied that copy of date contained in its Hard Disc has not been provided to the petitioner. As regards FDRs restrained, proper approval of the Director General of Income Tax (Investigation) for such retention has been obtained. As such the retained assets are to be dealt in accordance with provisions of Section 132B of the Act. Order for appropriation or release of assets can be made only after final order is passed under Section 132 (5) of the Act.

40. That the contents of paragraph no.38 of the writ petition are denied as stated. It is submitted that out of total jewellery found of Rs.18,36,561/-, only jewellery for the value of Rs.15,78,727/- was seized and the jewellery worth Rs.2,57,834/- was not seized which would translate into exemption of 100 gm. provided to the male member of the family."

21. The true copies of the original satisfaction note, warrants of authorisation under Section 132, authorisation under Section 133A, panchnama and summons with covering letter dated April 28th, 2011 are verified and signed by Shri Umesh Takyar, Deputy Director of Income Tax (Inv.)-1, Meerut.

22. The satisfaction note of DIT (Inv.), Kanpur dated 17.10.2005 received approval of the Director General of Income Tax (Inv.), Lucknow on the same date on 17.10.2005. It is based on the material collected by the department for

which the preparations were made for search in the year 2002. The relevant files were handed over to Addl. DIT (Inv.), Meerut. The then ADIT and JD-II had opined that the persons in question were not disclosing their true and correct income and were indulging in large scale understatement of their receipts of profession. The Addl. Director, Income Tax, visited the clinic-cum-residence of Dr. Roop and Dr. Sangeeta, at Roop Netralaya run by Meerut Laser and Eye Care Centre Pvt. Ltd., Opposite NAS College, B.K. Road, Meerut. He visited the clinic-cum-residence on 21.8.2005 at 1.30 p.m. to find out the services provided at the clinic. He sought appointment for a patient on 25.8.2005 and got the patient examined in the waiting list at Sl.No.25 at 12.30 p.m. The patient was advised to come again on 28.8.2005. The patient was charged Rs.100/- as consultation fees and was asked to come again on 28.8.2005 for 'parda janch'. On that date there were 87 patients listed for consultation. The patient was again charged fees for 'parda janch' by Dr. Sangeeta. She advised him to get YAG Laser cleaning for which she asked for Rs.1200/-. The amount was paid and the patient was subjected to YAG Laser treatment in about four minutes. The Addl. Director found that there were 80 patients registered for consultation on 21.8.2005; 82 on 25.8.2005 and 87 on 28.8.2005. Taking into account the receipts of consultation at Rs.100/- per patient for 300 working days and the charges of procedures carried out by laser surgery, stitch less cataract (cold phaco) surgery, YAG Laser retinal, laser photo coagulation, vetreo-ratinal surgery, fluorescein-angiography computerised perimetry applanetion-tonomartry, computerised refraction contact lenses, at an average rate of Rs.5000/- for 300 days. The annual income from consultation and procedures was estimated at Rs.2,04,90,000/-. He did not make any further

enquiries regarding staff and expenses, as there was possibility of leakage. He observed that some of the officers and inspectors of the Income Tax Department were very close to doctors and were visiting them and giving consultations.

23. The Addl. Director again visited the clinic-cum-residence with a patient on 19.9.2005 and found that the consultation fees has been increased from Rs.100/- to Rs.150/- and the operation charges for one eye are Rs.8000/- and for both eye Rs.16,000/-. On the revised fees and charges, he estimated annual receipts of Rs.2,50,00,000/- and` reported that the case is fit for action under Section 132 (1).

24. On the report submitted by the Addl. Director, the Addl. DIT (Inv.), Meerut examined the PAN numbers and tax payments from the AD systems for entire Meerut range. The results were as follows:-

		Adv. Tax	Adv. Tax	140A
1.	Roop Netralaya run by Meerut Laser & Eye Care Centre (P) Ltd.	AAACM9498D (04-05) CIRI, MRT (05-06)	- -	22944 -
2.	Dr. Roop	ABPPR3723B (0405) W 2 (2) MRT (05-06)	-	22044 7255
3.	Dr. Sangeeta	ABSPS9773P (2004-05) W 2 (3) MRT (05-06)	-	
4.	Roop & Sons HUF	AABHR9105G 04-05 05-06	- -	10906 -

25. The Addl. DIT (Inv.), Meerut on the aforesaid report and the verification of the PAN and tax payments, recorded his opinion that the tax payments of the couple are no where near the estimation of AD's in 2002 and 2005, and this suggests massive understatement of income by them. Considering all aspects he recorded reason to believe that Dr. Roop and Dr. Sangeeta are not disclosing their correct

incomes and are in possession of undisclosed income, which may be in the shape of cash, bullion, jwellery, FDRs, immovable assets and other valuables. He thus requested DIT (Inv.), Kanpur to issue Warrant of Authorisation to conduct search in the name of Dr. Roop, Dr. Sangeeta, M/s Meerut Laser and Eye Care Center (P) Ltd. under Section 132 (1) of the Act.

26. The DIT (Inv.), Kanpur in his note dated 17.10.2005 recorded that he has gone through the noting of ADIT and Addl. DIT, and discussed the case with them. He recorded that it appears that Dr. Roop and Dr. Sangeeta are not recording their receipts correctly. They are paying tax only on fraction of their actual income. They must have amassed huge undisclosed assets by not paying proper tax. In view of the fact he recorded his satisfaction that it was a fit case to conduct search and seizure under Section 132 (i) of the Act and requested the Director General, Income Tax to consider the fact and accord administrative approval to conduct search under Section 132 (1) of the Act, if found proper.

27. The Director General, Income Tax (Inv.), Lucknow in his note dated 17.10.2005 recorded that he has discussed with Addl. DI (Inv.), Meerut and ADI, Meerut, who had visited the clinic. He recorded that couple are doctors, and agreed with DI (Inv.) that it is a fit case for issue of warrant under Section 132 (i) and directed issuance of warrants accordingly. The warrants were directed to be issued by DIT (Inv.), Kanpur on 18.10.2005. On 27.10.2005, after the search, permission was taken for warrant of authorisation for search proceedings of Locker No.1085 with Punjab National Bank, B.K. Road in the name of Dr. Roop and Dr. Sangeeta and thereafter again on 28.10.2005 permission was obtained for warrant of authorisation for search of another Locker No.182

with PNB, E.K. Road, Meerut in the name of Smt. Krishna and Dr. Roop, which were traced out.

28. Shri Sambhu Chopra appearing for the Income Tax Department submits that there was credible evidence before the competent authority that the petitioner have indulged into huge tax evasion and are in possession of substantial unaccounted assets, which was put before the Director of Income Tax (Investigation), Kanpur, and who had after satisfying himself from the material on record that huge tax evasion is being carried out by the petitioner, recorded the satisfaction note. The Director General of Income Tax (Investigation) also recorded his administrative approval for conducting search and seizure operations. Accordingly the search warrant was issued and search was conducted by the authorised officers on 27.10.2005, in the presence of independent witnesses, and following due and proper procedure. The search warrant was also shown to the assessee and the independent witnesses before the commencement of search and their satisfaction was also obtained as proof of having seen the warrant and subsequently the search was closed by drawing panchanma in which assesee/ petitioner as well as two witnesses certified that the search was conducted in a proper and orderly manner. He denies that any irrelevant document and unrelated items were seized. The seized CPU contained information relating to business of the petitioner, which was opened before the assessee/ petitioner and the two witnesses on 13.1.2006, and after making copies from the hard disc the original was retained and sealed and the copies of hard disc was returned along with the CPU. A period of 2 years is provided under the Act for finalisation of the assessment. The assessments were carried out within the same period. The search and seizure operations have not

violated the petitioner's right of privacy as these operations were carried out strictly in accordance with the provisions of the Act.

29. Shri Sambhu Chopra relied upon Shri Vipin Kumar Jain & Ors. v. Union of India & Ors., 2001 ITR (249) 728 (Punjab and Haryana); Deputy director of Income Tax (Investigation) & Ors. v. Mahesh Kumar Agarwal, 2003 (262) ITR 338; Amar Agrawal & Anr. v. Director of Income Tax (Investigation) & Ors., 2005 (276) ITR 182 (MP); Commissioner of Income Tax v. Smt. Jayalakshmi Deverajan, (2006) 286 ITR 412 (Ker); Arti Gases v. Director of Income Tax (Investigation), 2001 (248) ITR 55 and Dr. V.S. Chauhan & Anr. v. Director of Income Tax Investigations & Ors., 2011 UPTC 651 in support of his submissions that where Director of Investigation has reasonable information and no malafides were attributed in issuing the authorisation, in the absence of any other cogent material, the search warrants should not be quashed. If the petitioners had any grievance that certain acts had not been correctly recorded in different documents, when the raid was conducted and that notices served was not valid, the issue must be raised in appeal. When alternative remedy is available or being availed of, as in the present case in the assessment proceedings, then the High Court under Art.226/227 of the Constitution of India would ordinarily restrain itself from exercising the writ jurisdiction.

30. In Deputy Director of Income Tax (Investigation) & Ors. v. Mahesh Kumar Agarwal (Supra) the Calcutta High Court held that when an officer of the rank of Deputy Director had made discreet enquiries, and has given details of the reasons, which were considered by the Director and Director General, who authorises search and seizure, the Court would not judge the efficiency or adequacy of the materials. The

Court would only examine the material and see whether on such material, a reasonable man could form an opinion that there was reasons to believe for the purposes of issuing notice under Section 132 (1). In Amar Agrawal & Anr. v. Director of Income Tax (Investigation) & Ors. (Supra) the High Court examined the case file and found that the department has satisfied itself in proper manner to initiate proceedings under Section 132A. It was not a case of mere suspicion but the explanation, which was found to be incorrect, which had led to the formation of the belief. In Dr. V.S. Chauhan & Anr. v. Director of Income Tax Investigation & Ors. (Supra), a case much close to the facts of the present case, the petitioner nos.1 and 2, the husband and wife were medical doctors by profession. Dr. V.S. Chauhan is qualified orthopedic surgeon and also Chairman and Managing Director of Prakash Hospital, Sector-33, Noida. He is also running a clinic from his residence besides the facts that he was operating the patient in the hospital. Both were regular income tax asessee and were filing returns. A search was carried out on March 9th, 2002 under the search warrant issued under Section 132 (1) of the Act. A panchnama was prepared and list of document found and seized during search operations including petitioner's lockers in Bank of India. The locker was found empty, cash amounting to only Rs.8150/- and Rs.13,151/- was found at the residence and hospital, which was not seized, jewelery amounting to Rs.1,84,104/- was also found and was not seized as it was within permissible limits. After looking into the warrant of authorisation the Court found, the information in possession of the Director of Inspection and Commissioner to be sufficient on which he had recorded the reasons to believe that the petitioners were in possession of money, bullion, jewelery and other valuable articles and such wealth

represents wholly or partly the undisclosed income. It was found that Dr. Chauhan maintains very high standard of living and has made substantial investment in his clinic by constructing a super-class three storey clinic-cum-residence, with a total investment estimated at Rs.50 lacs. A 75 bedded hospital developed on a plot of 2000 sq. mtrs., in four storied hospital including basement, pathology, x-ray machine, was first class construction valued at about Rs.2 crores. Substantial investments were made from which it was found that the disclosed income of Dr. Chauhan in the balance sheet dated 31st March, 2000 showing Rs.31,36,427/- as provisional receipts for the year ending 31st March, 2000 and Rs.31,64,551/- for the year ending 31st March, 2001, were highly insufficient to enable him to make such huge investment of super-class hospital. The disclosed nursing and operation charges were patently low, the receipts against only part payment were made and major amount was charged in the name of operation charges, fees for visiting doctors were taken outside the books of accounts and were unaccounted. The Court found that satisfaction note in the other part had recorded the constructions of the Prakash Hospital as investment made, which was not possible from the disclosed income. In respect of notice under Section 131 (1A) this Court observed that it confers powers on the authorities as mentioned in Section 131 (1), if he has reason to suspect that any income has been concealed or is likely to be concealed notwithstanding that no proceedings with respect to such person, class of persons pending before him. It is only a enabling Section and does not in any manner affect the search and seizure operations carried out under Section 132 of the Act. Section 132 is an independent code in itself. The Court held in paras 37 and 38 that the exercise of power under Section 131 (1A) is contemplated in a situation

anterior to exercise of power under Section 132. In other words before authorsing an officer to carry on search and seizure operation, the officers referred to in Section 132 (1) would exercise power under Section 131 (A) of the Act. Section 131 (1A) operates in different fields than Section 132. Section 131 (1A) occupies the field before issuing search and seizure warrants, while Section 132 comes into play thereafter, and thus the power under Section 131 (1A) cannot possibly be invoked before the power under Section 132 is put into motion. If power is invoked, it will not affect the validity of search and seizure operations.

31. We have considered the submissions and carefully perused the records of the authorisation. We do not find any error of law in the recording of satisfaction note, the authorisation or in the process of search and seizure operations carried out by the Income Tax Department under Section 132 (1) of the Act, on the clinic-cum-residence of Dr. Roop and Dr. Sangeeta. There was credible and reliable evidence before the competent authority on which the satisfaction was recorded by DIT (Inv.), Kanpur and on which the administrative approval was given by DGIT (Inv.), Lucknow. The Addl. Director had visited the clinic on four occasions. On the last three occasions he visited along with decoy patient, and obtained receipt of consultation and laser treatment. He perused the registers and took details of the number of patients, payments received by the doctors from their patients, who were not issuing receipts to all the patients. The Income Tax Department based on the records of the year 2002 and the report of the Addl. Director after visiting the clinic in 2005 on four occasions along with decoy patients, and having examined the income tax returns and balance sheets in which negligible income was returned, authorised the search. There was no illegality in recording the satisfaction note by the

competent authorities based on relevant and credible evidence collected by the department. The satisfaction that the doctor couple was disclosing only the part of their income and that they had amassed huge wealth by receipts of crores of rupees every year, does not suffer from any error of law.

32. We also find substance in the contention of learned counsel for the department that in the present case the Director of Investigation had reliable and sufficient information to proceed with the authorisation for search. No malafides have been attributed or pleaded in the writ petition. The petitioners have been subjected to block assessment on the basis of the recoveries made during search, in which they are pursuing the remedies. The appeal filed by the department has been allowed by ITA, and the matter in remand is pending consideration in assessment. We do not find substance in the submission of Shri Subham Agrawal, learned counsel appearing for the petitioners that the notice under Section 131 (1A) shows that the department did not have sufficient material with regard to reason to believe that the income had escapement from assessment. This Court has in Dr. V.S. Chauhan & Anr. v. Director of Income Tax (Inv.) & Anr. (Supra) held that notice under Section 131 (1A) confers power on the authorities as mentioned in Section 131 (1), if he has reason to suspect that any income has been concealed or is likely to be concealed. It is only an enabling power and does not in any way affect the search and seizure operations carried out under Section 132 of the Act. Section 132 is an independent code in itself. The exercise of powers under Section 131 (1A) is contemplated in a situation anterior to the exercise of power under Section 132. Before authorsing an officer, the officer referred to in Section 132 (1) would

exercise power under Section 131 (A) of the Act. Section 131 (1A) operates in different field than Section 132.

33. On the aforesaid discussions, we do not find any good ground to interfere with the orders under Section 132 (1) of the Act for carrying out search and seizure operations.

34. All the writ petitions are **dismissed.**

Dt.02.03.2012
SP/