

IN THE INCOME TAX APPELLATE TRIBUNAL : JODHPUR BENCH : JODHPUR

BEFORE SHRI HARI OM MARATHA, JUDICIAL MEMBER AND  
SHRI N.K. SAINI, ACCOUNTANT MEMBER.

ITA NOs.329, 341,342 & 330 /Jodh/2010  
ITA Nos. 43 & 44/Jodh/2011  
(A.Ys. 2001-02 to 2003-04 & 2005-06 to 2007-08)

Shri Parma Ram Bhakar,  
3-CHH, Bhagat Ki Kothi Exten.  
Jodhpur.

Vs.

The DCIT,  
Central Circle-1, Scheme,  
Jodhpur.

PAN No. AADPB0509K  
(Appellant)

(Respondent)

ITA No.311/Jodh/2010  
(A.Ys. 2007-08)

The ACIT, Central Circle-1,  
Jodhpur.

Vs.

Shri Parma Ram Bhakar  
3-CHH, Vistar Yojna,  
Bhagat Ki Kothi, Pali Road,  
Jodhpur.

(Appellant)

PAN No. AADPB0509K  
(Respondent)

Assessee by : Shri N.R.Mertia  
Department By : Dr. Deepak Sehgal-CIT-D.R.  
Date of hearing : 17/09/2013.  
Date of pronouncement : 23/09/2013.

**ORDER**

**PER BENCH**

This is a bunch of 07 appeals related to one assessee-Shri Parma Ram Bhakar. The appeal of the assessee for the A.Y. 2001-02 and cross appeals for the A.Y. 2007-08 are directed against the separate orders each dated 26/02/2010 of Id. CIT (A), Central, Jaipur while the appeals of the assessee for the A.Y. 2002-03 and 2003-04 have been filed against the separate orders each dated 08/03/2010 and appeals pertaining to A.Y. 2005-06 and 2006-07 filed by the assessee are directed against the separate orders each dated 22/11/2010 of Id. CIT(A), Central, Jaipur. Since, these appeals are having some common issues and were heard together, so, these are being disposed off by this consolidated order for the sake of convenience.

2 In these appeals, common issue raised by the assessee vide grounds No. 1 & 4 relates to the legal issue concerning the validity of the assessment order.

3. Facts related to this issue in brief are that a search operation under section 132 of the I.T. Act, 1961 (hereinafter referred to as “Act”, for brevity) was carried out on 29/03/2007 at room No. 403 of hotel

Shalimar, Jaipur, where the assessee was staying. During the course of search operation, some alleged incriminating documents, note books containing details of unexplained payments were claimed to be found and seized. Thereafter, notice under section 153A of the Act was issued by the Assessing Officer. Assessee filed his returns of income for different years on 08/12/2008 and the assessments were completed on 23/12/2008 as per the following details:-

Assessment Year	Income declared (Rs.)	Assessed Income (Rs.)
2002-03	64,037-00	76,000-00
2003-04	60,583-00	7,91,960-00
2005-06	1,03,987-00	6,05,490-00
2006-07	1,40,639-00	11,59,140-00
2007-08	4,46,280-00	53,21,160-00

4. Before the learned CIT(A), the assessee challenged the validity of search and submitted that search in the case of assessee was carried out on the information from other agencies, but no material or evidence on record was brought so as to show or establish the existence of the reason authorizing a valid search and merely stating that on information from other agencies, operation under section 132 of the Act was carried out was not sufficient, valid and justified for holding the search as valid. It was contended that at least some material was required from the side of

the authorities for knowledge of the assessee to meet his case that the search was a valid and lawful search. Since, no information or other material was either confronted to the assessee or was referred to in the proceedings relating to the existence of reason for search under section 132 of the Act, it clearly led to an infallible conclusion that the search was not a valid search and the reason did not exist. Reliance was placed on the judgment of the Hon'ble Delhi High Court in the case of *Ajit Jain Vs. Union of India (2000) 242 ITR 302*. The said decision was affirmed by the Hon'ble Supreme Court in the decision reported in (2003) 260 ITR 80 (SC). It was contended that in the assessee's case, nothing was brought on record as to what was the basis for carrying out search under section 132 (1) of the Act. Therefore, the search was liable to be quashed and cancelled leading to the cancellation of the impugned assessment order. It was also stated that the issue regarding validity of search under section 132(1) of the Act can be raised in appeal also and it is justiciable.

Reliance was placed on the following case-laws:-

- 1) Ashok Kumar Soni Vs. DCIT (2001) 72 TTJ 323 (Jd.)
- 2) CIT Vs. Vindhya Metal Corporation and others (1997) 224 ITR 614 (SC)
- 3) Sanjay Kumar Mody Vs. DI (Inv.) (2005) 278 ITR 314 (Cal.)

- 4) CIT Vs. Chitra Devi Soni (2009) 313 ITR 174 (Raj.). SLP against this decision was dismissed as reported in (2009) 313 ITR (St.) 28
- 5) Raghuraj Pratap Singh and others Vs. ACIT (2009) 222 CTR (All.) 153
- 6) Mohd. Raffique Bhai and others Vs. ACIT (2000) 67 TTJ (Ahd.) 191.

5. Learned CIT(A) after considering the submissions of the assessee did not find merit in the submissions/explanation of assessee by observing in para 3.2 of the impugned order for the A.Y. 2001-02 as under:-

“3.2. I have considered the submissions made by the A.R. and have perused the material on record. In this case the asstt. was completed u/s 153A r.w.s. 143/153B of the Income Tax Act, 1961. As per section 153A, in the case of a person where search is initiated u/s 132 after 31/05/2003, the A.O. shall issue a notice to him calling for return of income for each of the asstt. Years falling within 6 assessment years immediately preceding the asstt. year relevant to the previous year in which search is conducted and shall also assess or reassess the total income for these asstt. years. Thus the basic requirement for exercising jurisdiction u/s 153A is that search u/s 132 should have been taken in the case of the concerned person. Therefore, the moment it is proved that search had taken place in the case of an assessee, the A.O. is justified in resorting to section 153A and in making asstt. u/s 153A. Therefore, the basic requirement is whether search was conducted or not. In this case, it is not in dispute that search u/s 132 was conducted on the assessee on 29.3.2007 and during the course of search operations, some incriminating documents, note books etc. containing details of unexplained payments were found and seized by the department. I have also perused the relevant folder from which search u/s 132 in the assessee's case was authorised. A perusal of the same shows that search was conducted on the assessee consequent upon authorisation u/s 132 issued by the Director of Income tax (Inv.), Jaipur on 29.3.2007. It is also seen that reasons have been recorded by the Director of Income-tax (Inv.), Jaipur

as well as by the Director General of Income-tax (Inv.), Jaipur on 29.3.2007 before authorising search in the assessee's case. Therefore, it is clear that the primary condition of valid authorization for search having been satisfied, the A.O. had proper jurisdiction to frame asstt. u/s 153A in the assessee's case. It has been held by the Hon'ble Rajasthan High Court in the case of Kusum Lata vs. CIT(1989)180 ITR 365 that the court cannot go into the sufficiency of the information or the material. All that has to be seen is as to whether some material in fact existed or not for coming to the opinion and to have reason to believe that any person was in possession of any undisclosed income/property. As mentioned above, in the present case, in consequence of information in his possession and after recording satisfaction, the DIT (Inv.) issued authorization u/s 132 in the assessee's case. Therefore, the proceedings u/s 153A were validly initiated by the A.O. The facts of this case are different from the facts of the cases relied upon by the A.R. In the case of Chitra Devi Soni, the Revenue was not able to prove the factum of existence of authorisation for carrying out the search which is not so in the present case since the search was conducted in this case on the basis of valid authorisation u/s 132. Further, there is no case of Sanjay Kumar Modi at 278 ITR 314 which has been relied upon by the assessee. In view of these facts and circumstances, I am of the considered view that the impugned assessment order is valid and cannot be quashed. These grounds of appeal are, therefore, dismissed.”

Now, the assessee is in appeal.

6. Learned counsel for the assessee submitted that in this case there was no satisfaction of the Assessing Officer because a raid was conducted by the CBI on false information that the assessee was possessing a huge amount of cash and that information was provided to the income Tax Department. However, no cash was found from the possession of the assessee neither any incriminating document was found. It was further stated that nothing was requisitioned from the police by the income-tax

department. So, there was no satisfaction of the Assessing Officer for conducting the search on the assessee and since there was no material to suggest search on the assessee, therefore, the search was invalid.

7. In his rival submissions, Id. D.R. submitted that initiation and conduct of search is an administrative Act, which cannot be made a subject matter of the appeal. Therefore, ITAT do not have power to examine the issue of validity of search. However, he agreed to produce satisfaction note and not search folder to show the factum of existence of the material.

8. We have considered the submissions of both the parties and carefully gone through the material available on record. During the course of hearing, on the direction of this bench of the tribunal, learned C.I.T. D.R. had shown us copy of the satisfaction recorded by the Assessing Officer. We have gone through the certified copy of the satisfaction note furnished by the learned C.I.T. D.R. In the said note, it is mentioned that SP CBI informed telephonically that they had got information regarding undisclosed cash being carried by Shri P.R. Bhakar (the assessee) through reliable source and deputed one Additional S.P.,C.B.I to discuss the matter in detail, who met DIT (Investigation) and mentioned that Shri Bhakar was staying in room No. 403 of Hotel

Shalimar, Jaipur and cash was likely to be handed over to some person. On the basis of said information, action under section 132 of the Act was taken by issuing warrant of authorization by the DIT (Investigation). We deem it proper to reproduce the letter No. 362 dated 29/03/2007 written by Superintendent of Police, C.B.I., Jaipur to the Director General (Investigation) of Income Tax Department, Jaipur, which read as under:-

“To

The Director General (Investigation),  
Department of Income Tax,  
Jaipur.

Sir,

Sub:- Source information.

An information has been received from a reliable source that Shri R.K. Bhakar R/o Kota is staying in Room No. 403 of Hotel Shalimar at Jaipur. As per the source information, he is carrying huge amount of cash with him, which is likely to be illegally handed over to some person/ persons.

It is requested that necessary action may be taken in this matter at your end.

Yours faithfully,  
Sd/-  
Supt. Of Police  
SPE CBI : Jaipur.”

On the basis of the above information all the enquiries and search was conducted. In the instant case, it is noticed that the information provided, the S.P. CBI mentioned the name as R.K. Bhakar R/o Kota and the search was conducted on Shri Parma Ram Bhakar (P.R. Bhakar). Assessee was staying in room No. 403 of Hotel Shalimar. In the instant



case, an action was taken under section 132(1) of the Act, therefore, it is relevant to consider the provisions contained in the said section which read as under:-

“132(1) Where the [ Director General or Director] or the [ Chief Commissioner or Commissioner] [or Additional Director or Additional Commissioner] [or Joint Commissioner], in consequence of information in his possession, has reason to believe that-

- (a) any person to whom a summons under sub- section (1) of section 37 of the Indian Income- tax Act, 1922 (11 of 1922 ) or under subsection (1) of section 131 of this Act, or a notice under sub- section (4) of section 22 of the Indian Income- tax Act, 1922 (11 of 1922 ), or under sub- section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or
- (b) any person to whom a summon or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income- tax Act, 1922 (11 of 1922 ), or under this Act, or
- (c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property [ which has not been, or would not be disclosed] for the purposes of the Indian Income- tax Act, 1922 (11 of 1922 ) or this Act (hereinafter in this section referred to as the undisclosed income or property),
- (A) the [ Director General or Director] or the [ Chief Commissioner or Commissioner], as the case may be, may authorise any [ Additional Director or Additional Commissioner or], [Assistant Director], [or Deputy Director]] [ Assistant Commissioner [or Deputy Commissioner] or Income- tax Officer], or
- (B) such [ Additional Director or Additional Commissioner or] or [ Joint Director], or [Joint Commissioner], as the case may be, may authorise any [Assistant Director [or Deputy Director]] [ Assistant Commissioner [or Deputy Commissioner] or Income- tax Officer],

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to-]

- (i) enter and search any [ building, place, vessel, vehicle or aircraft] where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;
- (ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;
- (iia) [search any person who has got out of, or is about to get into, or is in the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that a such person has secreted about his person any such books of account, other documents, money bullion, jewellery or other valuable article or thing;]
- (iib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;]
- (iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;  
**[Provided** that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;]
- (iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;
- (v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:

**[Provided** that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the are of jurisdiction of any [ Chief Commissioner or Commissioner], but such [Chief Commissioner or Commissioner] has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then notwithstanding anything contained in section [ 120], it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation for the [ Chief Commissioner or Commissioner] having jurisdiction over such person may be prejudicial to the interest of the revenue:]

**[Provided** further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised

officer may serve an order on the owner or the person who is in immediate possession or control on the owner or the person who is in immediate possession or control thereof that he shall not remove part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii)]

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

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

9. From the above provisions, it is clear that Section 132 contemplates existence of certain eventualities in the event of existence where of the competent authority should have reason to believe the existence of the circumstances mentioned in clause (a) to (c) of sub-section (1) of Section 132 of the Act and in the event, the competent authority mentioned in clause (A) & (B) of sub-section(1) of Section 132 of the Act can authorise the authorities mentioned in these two clauses conduct the search. Therefore, the existence of reason to believe in consequence of the information in possession of the officer about existence of the reason to believe is not satisfied, there could possibly be no authorization, irrespective of the fact that it may have been made, and inturn, if any search is conducted in pursuance of the authorization issued in absence of the eventualities mentioned in clause (a) to (c) of sub-section (1) of Section 132 of the Act, the said search under section 132 of the Act

cannot be said to be a valid search. In the instant case, there was no complete information in possession of SP CBI about any bullion, jewellery, cash or any other document, which could reveal that the assessee was in possession of undisclosed assets or incriminating documents. It appears that the department acted upon the information provided by the police department on 29/03/2007 and on the same day, the warrant of authorisation was issued and the search was conducted, but nothing is brought on record to substantiate that any cash was found, although, search was conducted on the information that undisclosed cash being carried out by the assessee. On the similar issue, the Hon'ble jurisdictional High Court in the case of *CIT Vs. Smt. Chitra Devi Soni* (2009) 313 ITR 174 (Raj) held as under:-

*“.....that the Revenue failed to produce records containing relevant material including information in the possession of the competent authority, on the basis of which it had entertained the reason to believe the existence of one or more of the eventualities covered by clauses (a) to (c) of section 132(1). In the absence of a legal search, in accordance with the provisions of section 132 the “block period” or the previous year in which the search was conducted could not be said to have come into existence and therefore any assessment order based on such search could not stand. The Tribunal was justified in holding that when the authorization to conduct the search based on reasons germane to section 132(1) did not exist the search became invalid and that the assessment order based on such search could not stand and had rightly set is aside.*”

Similarly, the Hon'ble Supreme Court in the case of Union of India Vs. Ajit Jain and another (2003) 260 ITR 80 held as under:-

*“(iii) intimation simpliciter by the CBI that money was found in the possession of the respondent, which according to the CBI was undisclosed, without something more, did not constitute “information” within the meaning of section 132 of the Income-tax Act, 1961, on the basis of which a search warrant could be issued, and the search conducted on the basis of such information and the block assessment made pursuant to such search was not valid.”*

10. In the present case also, the search was conducted only on the basis of the information received from S.P. C.B.I. that undisclosed cash being carried out by the assessee, but no such cash or any other incriminating documents, books of accounts, money, bullion, jewellery or other valuable article or thing were found in the possession of the assessee. Therefore, the authorization to conduct search based on reason under section 132(1) of the Act did not exist and the search became invalid. Therefore, the assessment order based on the said search cannot stand and to be set aside. We, therefore, are of the view that the assessment orders passed by the Assessing Officer on the basis of invalid search deserve to be set aside and quashed. Since, the assessment orders are directed to be quashed, therefore, no finding is given on other issues raised by the assessee or the department.

11. In the result, appeals of the assessee are allowed and that of the department is dismissed.

(Order Pronounced in the Court on 23<sup>rd</sup> September, 2013).

**Sd/-**  
**(HARI OM MARATHA)**  
**JUDICIAL MEMBER**

**sd/-**  
**(N.K.SAINI)**  
**ACCOUNTANT MEMBER**

**Dated : 23<sup>rd</sup> September, 2013.**

*vr/-*

*Copy to:*

1. *The Appellant*
2. *The Respondent*
3. *The Id.CIT*
4. *The CIT(A)*
5. *The D.R*

Assistant Registrar,  
ITAT, Jodhpur.