

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR(SMC).**

BEFORE SH. A.D. JAIN, JUDICIAL MEMBER

ITA No.630(Asr)/2015
Assessment year:2006-07
PAN:BWKPS8078P

Sh. Amrik Singh,
S/o Sh. Surinder Singh,
VPO Khajurla, Distt. Kapurthala.
(Appellant)

vs. Income Tax Officer,
Ward-1, Kapurthala.
(Respondent)

Appellant by:Sh. Sandeep Vijn, CA
Respondent by: Sh. Tarsem Lal, DR

Date of hearing: 09/03/2016
Date of pronouncement: 11/05/2016

ORDER

This is the assessee's appeal for the assessment year 2006-07,
against the order dated 16.10.2015, passed by the Id. CIT(A), Jalandhar.

The assessee has raised the following grounds of appeal:

- "1. That the Id. CIT(A), has erred in upholding an order which is bad in law. The issue of improper service of notice u/s 148 dated 30.04.2008 amounting to non service of notice has not been appreciated.
2. That the Id. CIT(A), has erred in upholding the assumption of jurisdiction for re-assessment. The re-assessment proceedings in this case were only based on presumption/suspicion and were thus not validly initiated.
- 3(a). That the Id. CIT(A), has erred in not allowing the benefit of amount received on sale of property at Rs.215,000/- by giving insufficient reasons. This cash was available with the assessee for making subsequent deposit in bank.

- (b) That the Id. CIT(A), has erred in not fully allowing the benefit of cash in hand being available with the assessee out of the withdrawals made from bank or making subsequent deposit in bank.
- (c) That the Id. CIT(A), has erred in not fully allowing the benefit of some cash in hand being available with the assessee at the starting point of the cash flow statement. The Id. CIT(A) has also erred in not allowing benefit of funds available with the real brother – Sh. Gurpal Singh who was living together.
- 4. That the Id. CIT(A), has erred in enhancing the income by Rs.60,000/- which according to him was the estimated income from tax driving . Not only this source of income could not have been a part of enhancement of income but no show cause notice was given thereby violating the principles of natural justice.”

2. The brief facts of the case are that as per the income tax data base of the Department, the assessee was not an income tax assessee and as such, the assessee had not filed any return of income with the Department. As per the information available with the Department, the assessee was found to be maintaining a savings bank account with State Bank of India, Branch Office, VPO Khajurla, Tehsil Phagwara, District Kapurthala, in which, a cash deposit of Rs. 2,60,000/- was made by the assessee during the F.Y. 2005- 06 relevant to A.Y. 2006-07, i.e., the year under consideration, on 28.04.2005. To verify the source of the said cash deposit, an inquiry letter was written to the assessee by the Assessing Officer on 13.03.2008, fixing the date of hearing on 26.03.2008. The inquiry letter was stated to be received by Smt. Tejpal Kaur (wife of the assessee) on behalf of the assessee. However, on the fixed date, neither anybody attended, nor any written reply was filed. As

there was no response to the inquiry letter issued, the Assessing Officer formed the belief that income of the assessee amounting to Rs.2,60,000/- had escaped assessment. In view of these facts, the case of the assessee was sought to be assessed under section 147 of the Act by issue of notice under section 148 of the Act, dated 30.04.2008. However, neither was there any compliance to this notice, nor any return in response to the notice was filed. As there was no compliance to the notice under section 148 of the Act, the Assessing Officer issued a notice under section 142(1) of the Act dated 12.09.2009 for 26.06.2009, enclosing therewith the reasons recorded for the proposed assessment, under section 147, thereby asking the assessee again to file the return. This notice was served through the notice server of the Department on the grandfather of the assessee on 20.06.2009. However, again, there was no compliance on 26.09.2009. Subsequently, another notice under section 142(1) of the Act dated 23.10.2009 along with a detailed questionnaire was issued for compliance on 27.10.2009. The notice along with the questionnaire was served on Sh. Gurpal Singh, brother of the assessee. Vide the questionnaire, the assessee was specifically asked to furnish the following evidence and documents:

1. Documentary evidence regarding source of the cash deposits in the bank account maintained by the assessee.
2. Copy of all the bank accounts maintained by the assessee in his name or jointly with any other family member.

Again, there was no compliance from the assessee's side, as neither anybody appeared before the Assessing Officer, nor any return of income or the requisite evidence and documents were filed. As there was repeated non compliance from the assessee, the Assessing Officer proceeded to complete the assessment in this case on the basis of the material on record, vide order dated 29.10.2009 passed under section 144 read with section 147 of the Act, at an assessed income of Rs.2,68,110/-. While completing the assessment, the Assessing Officer made the following additions:

- (i) Addition on account of undisclosed cash deposit
in the bank account of the assessee Rs.2,60,000/-
- (ii) Addition on account of undisclosed interest income Rs.8,110/-

3. The ld. CIT(A) confirmed the addition of Rs.2,06,000/- made by the A.O. Besides, the assessee being a taxi driver, an estimated income of Rs.60,000/- from taxi driving was also added, thereby enhancing the assessee's income by Rs.60,000/-.

4. At the outset, the ld. counsel for the assessee has stated at the bar that Ground no. 1 is not pressed. Rejected as not pressed.

5. Apropos Ground no.2, the ld. counsel for the assessee relied on 'Bir Bahadur Singh Sijwali vs. I.T.O.', 53 Taxman.com 366 (Delhi - Trib.) to contend, as held therein, that where the AO proceeds on a fallacious assumption that bank deposits constitute undisclosed income and overlooks the fact that the source of the deposit need not necessarily be the

income of the assessee, reassessment proceedings (assessment proceedings in the present case) are required to be set aside.

6. The ld. DR, on the other hand, contends that as observed in 'Bir Bahadur Singh Sijwali vs. I.T.O.', (supra), reassessment/assessment proceedings u/s 147 can be commenced, if there is a reason to believe that there is an escapement of income, but not on the basis of a mere suspicion of escapement of income. He submits that as against in that case, in the present one, a letter of enquiry dated 13.03.2008 was issued by the AO to the assessee, to verify the source of the cash deposits and when the assessee did not respond to this letter, the AO got to form the belief of escapement of income. Thus, according to the ld. DR, 'Bir Bahadur Singh Sijwali' (supra), is not applicable.

7. On a query from the Bench, as to under which provision the said letter dated 13.03.2008 was issued by the AO to the assessee, the ld. DR responded by stating that this was a general enquiry letter. However, the provision under which such a letter is sanctioned by the law could not be pointed out.

8. So, the first issue arisen for consideration is the legal force, sanctity and value of the enquiry letter dated 13.03.2008 and also the effect of the assessee's response/non response thereto.

9. The enquiry letter dated 13.03.2008 reads as follows:

"No.ITO-WI-CIB.Inf.2007-08

dated 13.03.2008

To

*Sh.Amrik Singh S/o Sh. Surinder Singh,
VPO Khajurla, Tehsil Phagwara.*

Sub: Verification of CIB Information – Reg.

In connection with verification of CIB information received in your case with regard to cash deposit in Bank accounts, you are requested to produce your Bank Passbook. Cash Book and Ledger for the period ending 31.03.2006 on 31.03.2008 at 11.25AM. In this regard, you are requested to bring documentary evidence for the source of deposit of cash on different dates if not referred by cash in hand of business.

*Sd/-
(Jagir Singh)
Income Tax Officer,
Ward-1, Phagwara.”*

10. The letter itself makes no mention of the provision under which it has been issued. So we have to examine the provisions of the Act to ascertain as to under which provision it was issued. Now section 133(6) , which is relevant for our present purposes, reads as under:

“Section 133: The Assessing Officer, the Deputy Commissioner (Appeals), the joint Commissioner or the Commissioner (Appeals) may, for the purposes of this Act,-

(6) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals), giving information in relation to such points or matters as, in the opinion of the Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals), will be useful for, or relevant to, any enquiry or proceeding under this Act.”

11. Thus, as per section 133(6), the concerned Income Tax Authority may require any person, inter-alia, to furnish information in relation to

such points or matters, as in their opinion would be useful for, or relevant to, any enquiry or proceeding under the Act.

12. Section 133(6) corresponds to section 38 of the Income Tax Act, 1922. It was amended in 1995 and the words 'enquiry or' were inserted before the word 'proceedings' and the second proviso was also inserted, by the Finance Act, 1995, w.e.f. 1.7.1995. This second proviso, as amended by the Finance (No.2) Act, 1998, w.e.f. 1.10.1998, reads as follows:

“Provided further that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Director or Commissioner without the prior approval of the Director or, as the case may be, the Commissioner.”

13. The scope and effect of this amendment brought about in 1995 was explained by the CBDT in its Circular No.717, dated 14.08.1995, (1995) 215 ITR (St.) 70, as under:

“Power to call for information when no proceedings is pending.-
41.1. The Income tax Department has taken steps to improve information-gathering and its processing to be in line with its plans of computerization. Allotment of permanent account number is being done with the help of computers. Quoting of such numbers in high value transactions may be made to a statutory requirement.

41.2. At present the provisions of sub-section (6) of section 133 empower income-tax authorities to call for information which is useful for, or relevant to, any proceeding under the Act which means that these provisions can be invoked only in cases where the proceedings are pending and not otherwise. This acts as a limitation or restraint on the capability of the Department to tackle evasion effectively. It is, therefore, thought necessary to have the power to gather information which after proper enquiry, will result in initiation of proceedings under the Act.

41.3. With a view to having a clear legal sanction, the existing provisions to call for information have been empowered to requisition information which will be useful for or relevant to any enquiry or proceedings under the Income-tax Act in the case of any persons. The Assessing Officer, would, however, continue to have power to requisition information in specific cases in respect of which any proceeding is pending as at present. However, an income-tax authority below the rank of Director or Commissioner can exercise this power in respect of an inquiry in a case where no proceeding is pending, only with the prior approval of the Director or the Commissioner.

41.4. The proposed amendment takes effect from 1st July, 1995.”

14. It is, therefore, evident that the pre-1995 amendment section 133(6) could be invoked only in cases where some proceedings were pending, and not otherwise, as taken note of in ‘D.B.S. Financial Services Pvt. Ltd. vs. Smt. M. George, Second Income Tax Officer and Others’, 207 ITR 1077 (Bom.) and ‘Grindlays Bank Ltd. vs. Income-Tax Officer and Others’, 231 ITR 612 (Cal.).

15. The 1995 amendment brought in power to the Department to gather information which, after proper inquiry, would result in initiation of proceedings under the Act. However, by virtue of the second proviso to the section, an Income Tax Authority below the rank of Commissioner can exercise this power in respect of an enquiry, in a case where no proceeding is pending, only with the prior approval of the Director or Commissioner, as held in 'Karnataka Bank Limited vs. Secretary, Govt. of India', 255 ITR 508 (SC) and U.G. Upadhya, General Manager, Janatha Co-operative Bank Ltd; UDUPI vs. Director of Income Tax And Another', 255 ITR 502 (Kar.) [the S.L.P. where-against was dismissed by the Hon'ble Supreme Court vide their order reported at 251 ITR (St.) 51].

16. In 'Karnataka Bank Ltd. vs. Secretary, Government of India' (supra), the Hon'ble Supreme Court observed as under:

“It is clear from the mere reading of the said provision that it is not necessary that any inquiry should have been commenced with the issuance of notice or otherwise before section 133(6) could have been invoked. It is with the view to collect information that power is given under section 133(6) to issue notice, inter-alia, requiring a banking company to furnish information in respect of such points or matters as may be useful or relevant. The second proviso makes it clear that such information can be sought for even when no proceeding under the Act is pending, the only safeguard being that before this power can be invoked the approval of the Director or the Commissioner, as the case may be, has to be obtained. In the instant case, the notice date July 7, 2000, indicates that it was at the instance of the Director of Income-tax (Investigation) that the information was sought for”. (emphasis supplied)

17. Thus, to reiterate, with effect from 01.07.1995, the condition that some proceeding must be pending is no longer applicable. Under the earlier provisions of section 133(6), the prescribed Authorities had the power to call for any information from any person which would be useful for, or relevant to, any proceeding under the Act. The amendment in sub-section (6) empowers the prescribed Authorities to call for information for the purpose of any inquiry under the Act even in cases where no proceeding is pending. However, an Income Tax Authority below the rank of Director or Commissioner can exercise the said power in respect of an inquiry only with the prior approval of the Director or the Commissioner.

18. In the present case, the enquiry letter dated 13.03.2008 was issued by the Income Tax Officer, i.e., an Officer below the rank of the Income Tax Authorities referred to in the second proviso to section 133(6). Thus, in keeping with the said second proviso to section 133(6), prior approval was required to be obtained from the competent Authority before exercising power under section 133(6).

19. There is nothing on record to suggest that any such prior approval was obtained herein. The letter, per se, also does not make mention of any such approval. Hence, the power exercised by the ITO, without compliance with the second proviso to section 133(6), would tantamount to an illegal exercise of power.

20. However, be that as it may, this is not detrimental to the cause of the Department. In the present case, the ITO did not merely ask for

information from the assessee. This takes the case out of the ken of section 133(6), as shall presently be seen.

21. The letter dated 13.03.2008 requires the assessee to produce, inter-alia, cash book and ledger and documentary evidence for the source of the deposit of cash. As such, the ITO may be said to have invoked the provisions of section 131(1) of the Act, which section deals with the power regarding, inter-alia, production of evidence.

22. Section 131(1) reads as follows:

Power regarding discovery, production of evidence, etc.

131. (1) The Assessing Officer, Deputy Commissioner (Appeals)], Joint Commissioner, Commissioner (Appeals), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel referred to in clause (a) of sub-section (15) of [section 144C](#) shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :—

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

23. Thus, section 131(1) confers on the Income Tax Authorities mentioned therein, the same powers as those vested in a court under the CPC, when trying a suit.

24. The operative words in the section, for our present purposes, are '*when trying a suit*'. Courts have various powers under the CPC, i.e., powers of a Court during trial of suits and other powers. Section 131(1) of the I.T. Act, by conferment of the powers as envisaged therein, equates the powers of the Income Tax Authorities with those of a Court. And it provides for vesting on the Income Tax Authorities, the powers vested in a Court *when trying a suit*. Now, in juxtaposition to the trial of a suit by a Court, what would the equivalent before the Income Tax Authorities be? But obviously, proceedings under the Income Tax Act. Else, there would be no scope at all for the exercise of such power.

25. As a natural corollary, therefore, it follows that it is only during the pendency of some proceeding before it, that an Income Tax Authority can exercise the power vested on them under section 131(1), and not otherwise.

26. And this position stands judicially acknowledged in various judicial pronouncements, as follows.

27. In 'Jamnadas Madhavji & Co. and Others vs. J.B. Panchal, ITO and Another', 162 ITR 331 (Bom.), for two years, the assessment orders were passed. For a third year, assessment proceedings became time barred. Subsequently, the assessee received from the ITO, summons under section 131(1) of the I.T. Act, calling upon the assessee to furnish information, documents and books of account on various points specified therein, in respect of the previous years relevant to all the aforesaid three

years. In reply, reiterating the aforesaid position of assessment proceedings, the assessee stated that as no proceedings were pending, there was no question of any summons being issued. The assessee then received a letter alongwith fresh summons from the ITO, stating that section 131(1) could be invoked even where no proceedings were pending and the purpose of the information called for was with a view to investigate whether the above assessment should be reopened u/s 147 or not. The assessee filed a writ petition before the Hon'ble High Court. The Hon'ble High Court held, (i) that no proceedings were pending when the ITO issued the summons and, therefore, the summons were liable to be quashed; (ii) that the reason for issuing the summons, as stated by the ITO in his letter, was to investigate whether the assessment for the first two years should be reopened u/s 147; (iii) that it was for the ITO to first decide whether he had reason to believe that the income had escaped assessment; (iv) that only if he decided that question in the affirmative, could he initiate proceedings u/s 147 and only thereupon could he become entitled to invoke section 131(1); and (v) that, therefore, the impugned summons were liable to be quashed. For holding so, the Hon'ble High Court observed that the Officers mentioned in section 131(1) of the I.T.Act, 1961, are conferred with the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit; that the Code of Civil Procedure confers upon a Court powers, for the exercise whereof, existence of a suit or a proceeding is a sine qua

non, that in pari materia, therefore, powers in respect of matters mentioned in section 131(1) of the Act, namely, (a) discovery and inspection; (b) enforcing the attendance of any person and examining him on oath; (c) compelling the production of books of account and other documents; and (d) issuing commissions, can be exercised only if a proceeding is pending before the concerned officer and not otherwise. Now, it may be argued that what was being dealt with in 'Jamnadas Madhavji & Co. and Another' (supra), was a summons u/s 131(1), whereas what has been issued in the present case is a simple enquiry letter. This, however, does not change the position and the question remains substantially the same. The assessee, even through the enquiry letter, has been asked, inter-alia, to produce evidence. This, in keeping with 'Jamnadas Madhavji & Co. and Another' (supra), cannot be done sans pendency of some proceeding before the Income Tax Authority. At this juncture, it would be appropriate to reiterate that as finds mention in the impugned order, the assessee had not filed any return of income with the Department. As such, obviously, no proceeding whatsoever was pending before the Authority at the relevant time, i.e., at the time of issuance of the enquiry letter.

28. Also, as available from the concluding portion of the judgment in 'Jamnadas Madhavji & Co. and Another' (supra), their Lordships held that the ITO had, at that stage, i.e., when no proceedings were pending before him, no authority in law to invoke section 131(1) of the I.T. Act

against the assessee. It was on holding so, that it was held that consequently, the ITO had no power to issue the impugned summons, having no sanction of law. Therefore, in 'Jamnadas Madhavji & Co. and Another' (supra), in the absence of pendency of any proceeding, the very invocation of the provisions of section 131(1) of the Act has been held to be without due authority of law.

29. 'Jamnadas Madhavji & Co. and Another' (supra), was followed by the Hon'ble Calcutta High Court in 'ITO and Another vs. James Joseph & Others', 204 ITR 254 (Cal.).

30. In 'Dr. Arjun D. Bharad vs. ITO', 259 ITR (AT) 1 (Nagpur, ITAT), it was, inter-alia, held that the phrase "for the purposes of this Act", as contained in section 131(1) of the I.T. Act, has to be read in conjunction with the further words "for the same powers, as are vested in Civil Court under the Code of Civil Procedure, 1980, when trying a suit", that thus, the phrase "for the purposes of this Act", means for the purposes of making an assessment or trying a suit, when it comes to the exercise of the power conferred u/s 131(1); that the powers exercisable while making an enquiry or investigation have been specifically and separately classified u/s 131(1) and the same are to be exercised by the concerned Authority for making an assessment; that the Code of Civil Procedure confers upon the Court the power to issue commissions while trying a suit and the pendency of a suit or proceeding before the Court is a sine qua non for the exercise of such powers; and that similarly, when it

comes to Income tax proceedings, the power u/s 131(1) of the Act can be exercised by the concerned officer only if a proceeding is pending before them, and not otherwise. The Tribunal referred to, inter-alia, 'Jamnadas Madhavji & Co. and Another' (supra), and 'James Joseph and Others' (supra).

31. In 'G.M. Breweries Ltd. and Another vs. Union of India and others', 241 ITR 446 (Bom.), the assesses contended before the ITO that no proceedings whatsoever were pending before him, for the purpose of which, the books of account and documents called for could have been required. The jurisdiction of the ITO to issue the summons was also questioned. The ITO did not bother to consider the same. On the other hand, he directed the assesses to comply with the same under the threat of penalty for non-compliance. The assessee approached the Hon'ble High Court by way of a writ petition. The Hon'ble High Court, inter-alia, quashed the summons issued u/s 131 of the I.T. Act, 1961, section 37 of the Wealth Tax Act, 1957 and section 36 of the Gift Tax Act, 1958. It was observed that a plain reading of section 131(1) of the I.T. Act makes it clear that the powers thereunder can be exercised only "for the purposes of the Act", which must mean for the purposes of the proceedings under the Act pending before the concerned Authority; that the powers of the Income Tax Authorities u/s 131(1) are powers of the Court of law; that while exercising these powers, the Income Tax Authorities have a quasi-judicial capacity; that these powers must be exercised strictly for the

purposes set out in sub-section (1) of section 131 of the Act, and not for any extraneous purposes; that the powers u/s 131 can be exercised only if proceedings are pending before the Authority concerned under the I.T. Act; and that the same is the position under the Wealth Tax Act and the Gift Tax Act.

32. In 'Rina Sen vs. CIT & Others', 235 ITR 219 (Patna); the assessee constructed a house between 1967 and 1973. Return of income for the assessment year 1982-83 disclosed rental income, which was accepted by the ITO. In 1992, a notice was issued by the Assistant Valuation Officer, in terms of section 131(1)(d) of the Act, to produce documents regarding the house. It was held that since no Income tax proceedings were pending against the assessee in respect of the earlier years, the notice issued in terms of section 131(1)(d) of the Act, was not valid. It was observed that notice u/s 131(2) in respect of assessment year 1991-92 could not be construed as an initiation of proceedings for the earlier years. 'Jamnadas Madhavji & Co. and Another' (supra), was referred to.

33. Then, the above position is also evident from the fact that whereas section 131(1) does not expressly lay down (though it has been judicially interpreted to have such an effect only, as considered hereinabove) that some proceedings must be pending before the Income Tax Authorities mentioned therein, section 131(1A), which concerns search or search contemplated, specifically provides that where the Authority has reason to suspect concealment or likely concealment of income by any person

or class of persons within their jurisdiction, it shall be competent for the Authority to exercise powers conferred u/s 131(1), notwithstanding that no proceedings with respect to such person or class of persons are pending before him, or before any other Income tax Authority. For ready reference section 131(1A) is reproduced hereunder:

“Section 131(1A): If the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director, or the authorised officer referred to in sub-section (1) of [section 132](#) before he takes action under clauses (i) to (v) of that sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.”

34. Thus, the legislative intent is that where a search is contemplated, the Income Tax Authority can exercise the powers vested u/s 131(1), i.e., the powers regarding discovery, production of evidence, etc., inspite of the fact that no proceedings are pending before such Authority.

35. The position u/s 131(2), which relates to inquiry or investigation concerning agreement with a foreign country or specified territory and adoption by Central Government, of agreements between specified associations for double taxation relief, is exactly similar to that of matters concerning section 131(1A). Under section 131(2) also, the

Authority can exercise powers u/s 131(1) even in the absence of pendency of proceedings before them. Section 131(2) reads as follows:

“Section 131(2): For the purpose of making an inquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in [section 90](#) or [section 90A](#), it shall be competent for any income-tax authority not below the rank of Assistant Commissioner of Income-tax, as may be notified by the Board in this behalf, to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.”

36. It is thus seen that whereas both sections 131(1A) and 131(2) deal with the situation where the powers u/s 131(1) can be exercised inspite of absence of pendency of proceedings and specific mention of such enablement is made by the legislature in both of these provisions, there is no such enablement contained in section 131(1). In other words, the legislative intent is clear from the words employed in sections 131(1), 131(1A) and 131(2), respectively. Whereas, in sections 131(1A) and 131(2), the Authorities are enabled to exercise the powers u/s 131(1) even in the absence of pendency of proceedings before them, there is no such enablement contained in section 131(1). Now, it is trite that the legislature chooses its words with utmost care and where the language employed in a provision is clear and unambiguous, there is no scope of interpretation thereof. So, once enablement of exercise, by Income Tax Authorities, of power of a Civil Court while trying a suit, where no

proceedings are pending, is not envisaged by the provisions of section 131(1), no such enablement can be read into the section, particularly in view of the existence of such enablement by the express language contained in sections 131(1A) and 131(2). This is apart from the decided cases discussed hereinabove.

37. In this regard, in 'Jamnadas Madhavji & Co. and Another' (supra), it was observed that under section 131(1A), if the Assistant Director of Investigation has reason to suspect that any income has been concealed, then, for an inquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred u/s 131(1), notwithstanding that no proceedings with respect to such person are pending before him or before any other Income Tax Authority; that it is thus, obvious, that whereas an officer mentioned in section 131(1) can exercise powers thereunder only if a proceeding is pending before him, the officer mentioned in section 131(1A) can exercise such powers notwithstanding that no such proceedings are pending before him, or before any other officer.

38. For the above reasons, since in the present case, no proceeding was pending before the ITO when he issued the letter of inquiry on 13.03.2008, requiring the assessee to, inter-alia, produce evidence, such letter of inquiry is not valid in the eye of law. It does not require any cognizance to be taken of. And that being so, the assessee was not obliged to respond to this invalid and non est so-called letter of enquiry,

requiring the assessee, inter-alia, to produce evidence. Quod erat demonstrandum.

39. Therefore, finding no merit in the contention of the Department that the assessment of the assessee under section 147 was preceded by the issuance of a letter of inquiry by the ITO, the same is rejected.

40. Now, the AO recorded the following reasons for initiating assessment proceedings u/s 147 of the Act in the present case:

“Brief reasons to issue Notice u/s 148 of the Income Tax Act, 1961

As per information available with this office, the assessee is found to maintain saving bank account with State Bank of India, Khajurla, Tehsil Phagwara, in which the assessee, has inter-alia, made following cash deposits during the account period 01.04.2005 to 31.03.2006:.

<u>Dated</u>	<u>Amount</u>
28/04/2005	2,60,000/-

To verify the source of above cash deposit enquiry letter was issued to the assessee on 13.03.2008 which was received by Smt. Tejpal Kaur on behalf of the assessee. The assessee has failed to turn up on the date of hearing i.e. 26.03.2008. As per data base available with this office, neither the assessee is assessed to Income Tax nor the Return for the Asstt. Year under consideration has been filed by him. Therefore, under the circumstances, the above deposit remains unexplained and has to be treated as having been made out of undisclosed sources.

In view of the above facts, I have reasons to believe that income of Rs.2,60,000/- has escaped assessment for the A.Y. 2006-07.

Issue notice u/s 148 of the Act, 1961.

Sd/-
I.T.O.”
30.04.2008

41. Thus, as evident from the reasons, the material available for the AO to form a belief of escapement of income consists of two items:

- (i) Information with the department, of cash deposit of Rs.2,60,000/- by the assessee in his savings bank account; and
- ii) The non-response of the assessee to the letter of enquiry dated 13.03.2008.

42. As found in the preceding paragraphs, the letter of enquiry being illegal, it was not obligatory on the assessee to respond to the same. Hence, non-response by the assessee to the enquiry letter cannot be said to constitute material before the AO which could lead him to form any belief of escapement of income.

43. Thus, the only material left with the AO to enable him to form a belief that income had escaped assessment was the information regarding the cash deposits. Now, whether this information can be said to constitute material which could lead to such a belief ?

44. It is this question which takes us back to the applicability/non-applicability of the decision in 'Bir Bahadur Singh Sijwali' (supra). The ratio thereof has not at all been disputed by the Department. In fact, the only dispute which has been raked up is the applicability or otherwise thereof to the facts of the present case, in view of the position that the initiation of the assessment proceedings u/s 147 in the present case stands preceded by the issuance of the alleged enquiry letter by the ITO. This dispute has been dealt with in detail in the foregoing paragraphs.

45. In 'Bir Bahadur Singh Sijwali' (supra), it has been held that where the AO issued a notice u/s 148 on the ground that there was an escapement of income and the belief regarding such escapement of income was formed on the fallacious assumption of the AO that bank deposits constituted undisclosed income, over-looking the fact that the source of the deposits need not necessarily be the income of the assessee, the reassessment proceedings cannot be sustained. In the present case, similarly, the basis of initiation of the assessment proceedings u/s 147 was the information with the Department, of the deposits made by the assessee in his bank account.

46. 'Bir Bahadur Singh Sijwali' (supra), makes reference to 'Hindusan Lever Ltd. vs. R.B. Wadkar', 268 ITR 332 (Bom.), to hold that the reasons recorded for reopening the assessment are to be examined on a standalone basis and nothing can be added to the reasons. It was also observed that the reasons must point out to an income escaping assessment and not merely need of an enquiry which may result in detection of an income escaping assessment. It was observed that it is necessary that there must be something which indicates, even if it does not establish, the escapement of income from assessment; that it is only on that basis that the AO can form a prima-facie belief that an income has escaped assessment; that merely because some further investigations have not been carried out, which, if made, could have led to detection of an income escaping assessment, this can not be reason

enough to hold the view that the income has escaped assessment; and that there has to be some kind of cause and effect of relationship between the reasons recorded and the income escaping assessment. The observations of the Hon'ble Supreme Court in the case of 'ITO vs. Lakhmani Mewal Das', 103 ITR 437 (SC), were reproduced, as under:

“the reasons for the formation of the belief must have rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of this belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into sufficiency or adequacy of the material and substitute its own opinion for that of the ITO on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.”

47. It was further observed as follows:

“8. Let us, in the light of this legal position, revert to the facts of the case before us. All that the reasons recorded for reopening indicate is that cash deposits aggregating to Rs.10,24,100/- have been made in the bank account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment. The reasons recorded for reopening the assessment do not make out a case that the assessee was engaged in some business and the income from such a business has not been returned by the assessee. As we do not have the liberty to examine these reasons on the basis of any other material or fact, other than the facts set out in the reasons so recorded, it is not open to us to deal with the question as to whether the assessee could be said to be engaged in any business; all that is to be examined is whether the fact of the deposits, per se, in the bank account of the assessee could be basis of holding the view that the income has escaped assessment. The answer, in our humble understanding, is in negative. The Assessing Officer

has opined that an income of Rs.10,24,100/- has escaped assessment of income because the assessee has Rs.10,24,100/- in his bank account but then such an opinion proceeds on the fallacious assumption that the bank deposits constitute undisclosed income, and overlooks the fact that the sources of deposit need not necessarily be income of the assessee. Of course, it may be desirable, from the point of view of revenue authorities, to examine the matter in detail, but then reassessment proceedings cannot be resorted to only to examine the facts of a case, no matter how desirable that be, unless there is a reason to believe, rather than suspect, that an income has escapement assessment.”

48. The Tribunal concluded thus:

“but then in the case before us the only reason for reassessment proceedings was the fact of deposit of bank account which by itself does not lead to income being taxed in the hands of the assessee. Learned Departmental Representative has referred to several other judicial precedents in support of the proposition that at the stage of initiation of reassessment proceedings, all that is to be seen is existence, rather than adequacy, of the material to come to the conclusion that income has escaped assessment. There cannot be any, and there is no, doubt on the correctness of this proposition but then, as we have elaborately explained earlier in this order, the material must indicate income escaping assessment rather than desirability of further probe in the matter which may or may not lead to income escaping the assessment, in our humble understanding, cannot be drawn.”

49. Now, in keeping with ‘Bir Bahadur Singh Sijwali’ (supra), this information cannot form a valid basis for initiating assessment proceedings under section 147 of the I.T. Act. As observed in ‘Bir Bahadur Singh Sijwali’ (supra), the mere fact that the deposits had been made in the bank account does not indicate that these deposits constitute income which has escaped assessment.

50. Thus, it was a mere suspicion of the AO, that prompted him to initiate assessment proceedings under section 147, which is neither

countenanced, nor sustainable in law. Too, the AO proceeded on the fallacious assumption that the bank deposits constituted undisclosed income, over-looking the fact that the source of the deposits need not necessarily be the income of the assessee. That being so, in keeping with 'Bir Bahadur Singh Sijwali' (supra), the reasons recorded to initiate assessment proceedings under section 147 of the Act and all proceedings pursuant thereto, culminating in the impugned order, are cancelled. Ground No.2 is, accordingly, accepted.

51. In view of the above, none of the remaining grounds survives for adjudication. Ground no. 1, as already noted, has not been pressed.

52. In the result, the appeal is partly allowed.

Order pronounced in the open court on 11/05/ 2016.

Sd/-
(A.D. JAIN)
JUDICIAL MEMBER

/SKR/
Dated: 11/05/2016

Copy of the order forwarded to:

1. The Assessee:Sh. Amrik Singh, Kapurthala
2. The ITO, Ward-1, Kapurthala
3. The CIT(A), Jalandhar
4. The CIT, Jalandhar.
5. The SR DR, ITAT, Amritsar.

True copy
By order

(Assistant Registrar)
Income Tax Appellate Tribunal,
Amritsar Bench: Amritsar.