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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

CORAM :

THE HON'BLE MR.R.MAHADEVAN, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. Nos.2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2727, 2728, 2729, 2730, 2731, 2732, 2733, 2738 of 2022 and 34, 37, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 342, 343, 344, 345, 353, 356, 381, 388, 396, 400, 409, 410, 412, 413, 415, 420, 422, 423, 425, 426, 429, 432, 476, 478, 480, 481, 485, 488, 511, 512, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 726, 729, 731, 732, 734, 735, 736, 737, 738, 739, 740, 741, 742 , 743, 744, 745, 746, 930, 931, 932, 933, 934, 937, 941, 993, 994, 995, 996, 999, 1000, 1248, 3071, 3073, 3074, 3075, 3077, 3078, 3079, 3080, 3178, 3179, 3180, 3181, 3182, 3183, 3184, 3185 of 2023

and

C.M.P. Nos.22016, 22017, 22018, 22019, 22020, 22022, 22023, 22024, 22161, 22164, 22168, 22169, 22175, 22178, 22183, 22215 of 2022 and 336, 340, 344, 346, 348, 350, 351, 353, 355, 358, 3271, 3275, 3276, 3278, 3281, 3282, 3283, 3287, 3290, 3293, 3294, 3295, 3298, 3300, 3303, 3307, 3308, 3310, 3312, 3314, 3318, 3348, 3351, 3701, 3748, 3769, 3793, 3821, 3824, 3833, 3839, 3843, 3855, 3883, 3890, 3912, 3921, 3973, 3981, 3989, 4523, 4534, 4542, 4549, 4579, 4589, 4857, 4865, 6961, 6963, 6965, 6967, 6968, 6970, 6971, 6972, 6973, 6974, 6975, 6976, 6977, 6978, 6979, 6980, 6981, 6982, 6983, 6984, 6985, 6986, 6988, 6989, 6990, 6991, 6992, 6993, 6994, 6996, 6997, 7003, 7006, 7014, 7057, 7061, 7062, 7063, 7064, 7065, 7066, 7068, 7070, 7073, 7074,7075, 7076, 7077, 7078, 7079, 7080, 7084, 7086, 7087, 9296, 9298, 9303, 9306, 9309, 9324, 9347, 9982, 9989, 9998,

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10001, 10009, 10026, 12543, 25430, 25431, 25438, 25440, 25445, 25448, 25454, 25485, 26047, 26050, 26053, 26056, 26058, 26059, 26062, 26089 of 2023

W.A. No.2709 of 2022:

SNJ Breweries Pvt. Ltd,
Rep. By its Director,
Mr.N.Jayamurugan,
having registered office at,
Old No.47, New No.99,
Canal Bank Road, C.I.T.Nagar,
Nandanam, Chennai 600 035. .. Appellant

Vs.

1. The Principal Director of Income Tax,
   (Investigation)
   Income Tax Investigation Wing Building,
   New No.46, Old No.108, M.G.Road,
   Nungambakkam, Chennai 600 034.

2. The Deputy Director of Income Tax (Investigation),
   Unit 2(2), Chennai,
   Income Tax Investigation Wing Building,
   New No.46, Old No.108, M.G.Road,
   Nungambakkam, Chennai 600 034.

3. The Deputy Commissioner of Income Tax,
   Central Circle 2(1),
   Income Tax Investigation Wing Building,
   New No., Old No.108, M.G.Road,
   Nungambakkam, Chennai 600 034.

4. The Deputy Commmissioner of Income Tax,

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Central Circle 3(2),
Income Tax Investigation Wing Building,
New No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai 600 034. .. Respondents

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 20.10.2022 passed in W.P.No.19996 of 2020.

CASE NUMBERS	***COUNSEL FOR APPELLANT(S)/***	***COUNSEL FOR RESPONDENT(S)***
W.A.Nos.2713, 2712, 2714, 2715, 2727 ,2728, 2729, 2731, 2733, 2738, 2709, 2710 of 2022 and 476, 481, 485, 488, 511, 512, 3071, 3073, 3074, 3075, 3078, 3079, 3178, 3179, 3181, 3182, 3184, 3185 of 2023	Mr.R.V.Eswar, Senior Counsel for Mr.N.R.R.Arun Natarajan	Mr.A.P.Srinivas, Senior Standing Counsel and Mr.A.N.R.Jaya Prathap
W.A.Nos.2730, 2732 of 2022, 3077, 3180, 34 and 37 of 2023	Mr.N.R.R.Arun Natarajan	
W.A.No.327 of 2023	Mr.M.Velmurugan	
W.A.Nos.429 and 432 of 2023	Mr.A.R.Karthick Lakshmanan	
W.A.Nos.743 and 745 of 2023	Mr.N.R.R.Arun Natarajan	
W.A.Nos.695, 696, 706, 735 and 737 of 2023	Mr.Srinath Sridevan, Senior Counsel for Mr.Salai Varun	
W.A.Nos.2711 and 2716 of 2022	Mr.P.S.Raman, Senior Counsel for Mr.N.R.R.Arun Natarajan	
W.A.Nos.345, 330 and 336 of 2023	Mr.M.Velmurugan	
W.A.Nos.396 and 412 of	Mr.A.R.Karthick Lakshmanan	

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2023		
W.A.No.480 of 2023	Mr.P.S.Raman, Senior Counsel for Mr.N.R.R.Arun Natarajan	Mr.A.P.Srinivas, Senior Standing Counsel and Mr.A.N.R.Jaya Prathap
W.A.Nos.713, 742, 734, 720 and 722 of 2023	Mr.Srinath Sridevan, Senior Counsel for Mr.Salai Varun	
W.A.Nos.937, 993, 3080, 3183 and 478 of 2023	Mr.P.S.Raman, Senior Counsel for Mr.N.R.R.Arun Natarajan	
W.A.Nos.703, 710, 718, 741, 719, 324, 342, 353, 328, 334, 338, 325, 326, 329, 333, 335, 356, 331, 332, 337, 339, 343, 344 of 2023	Mr.M.Velmurugan	
W.A.Nos.381,420, 409, 410, 415, 422, 423, 425, 426, 413, 388, 400 of 2023	Mr.A.R.Karthick Lakshmanan	

COMMON JUDGMENT

MOHAMMED SHAFFIQ, J.

The present batch of writ appeals are filed against the common order of the learned Single Judge insofar as it has rejected the following challenges viz.,

a) Validity of search under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

b) Centralization of assessments.

c) Notices in terms of Section 153A of the Act.

d) Notices in terms of Section 153C of the Act .

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e) Attachment orders under Section 281B of the Act.

f) Notices under Section 143(2) of the Act and Orders of Assessment under Section 143(3) of the Act.

Brief Facts:

2. The appellants viz., SNJ Breweries Pvt. Ltd. (hereinafter referred to as "SNJB") and SNJ Distillers Pvt. Ltd., (hereinafter referred to as "SNJD") are engaged in the manufacture of brewing and distilling of liquor. Kaycee Distillers and Leela Distillers are suppliers of raw materials to SNJB and SNJD. SNJ Sugars and Products Ltd., is engaged in the manufacture of white crystal sugar, alcohol and generation of power. The above appellants form part of the SNJ Group of Companies. While Nandhini Transports, an appellant herein is a transporter, N.Jayamurugan, Geetha Jayamurugan, Ramamoorthy Srithar, Srithar Sudha, Kandaswamy Thirumoorthy, Thirumoorthy Kala, Manickam Karthikeyan, Chandran Somasundaram, C.Mariappan, Shanmuga Kani Sivajothi and Somasundaram Rishi Sharaan are the other appellants associated with SNJD and SNJB.

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2.1. The table below would give an overview of the challenge laid by the appellants before the learned Single Judge:

ISSUES	***APPELLANTS***	***DESCRIPTION***
ISSUE I	SNJ Breweries, SNJ Distillers, SNJ Sugars, N.Jayamurugan, Geetha Jayamurugan, Ramamoorthy Srithar, Srithar Sudha, Nandhini Transports Pvt. Ltd., Kandasamy Thirumoorthy, Thirumoorthy Kala, Manickam Karthikayen, Kaycee Distillers, Chandran Somasundaram, C.Mariappan, Shanmugakani Sivajothi, Somasundaram Rishi Sharaan and Leela Distillers.	Validity of search under Section 132 of the Act challenged by way of Writ of Declaration
ISSUE-II	SNJ Sugars, Ramamoorthy Srithar, Srithar Sudha, Kandasamy Thirumoorthy, Thirumoorthy Kala and Manickam Karthikayen	Centralization of Assessments under Section 127 of the Act
ISSUE-III	SNJ Breweries, SNJ Distillers, SNJ Sugars, N.Jayamurugan and Geetha Jayamurugan	Notices issued under Section 153A of the Act
ISSUE-IV	Ramamoorthy Srithar, Srithar Sudha, Nandhini Transports Pvt. Ltd., Kandasamy Thirumoorthy, Thirumoorthy Kala, Manickam Karthikayen, Kaycee Distillers, Chandran Somasundaram, C.Mariappan, Shanmugakani Sivajothi, Somasundaram Rishi Sharaan and Leela Distillers.	Notices issued under Section 153C of the Act
ISSUE-V	SNJ Breweries, SNJ Distillers, N.Jayamurugan and Geetha Jayamurugan,	Validity of attachment orders issued under Section 281B of the Act
ISSUE-VI	Section 143 (3): SNJ Breweries, SNJ Distillers, Leela Distillers, Kaycee Distillers, Nandhini Transports Pvt. Ltd., C.Mariappan. Section 143(2): Kandasamy Thirumoorthy, Thirumoorthy Kala, Ramamoorthy Srithar, Srithar Sudha	Challenge to notices under Section 143(2) of the Act and orders of assessment under 143(3) of the Act.

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2.2. As set out in the table supra, the appellants herein have challenged the assessment proceedings at different stages commencing with the validity of the search under Section 132 of the Act and culminating in the challenge to the orders of the assessment while also laying a challenge to Centralization of Assessments, Notices issued under Section 153A and 153C, validity of attachment Orders and the Orders of Assessment under Section 143(3) of the Act. Since the issues raised relate to jurisdiction giving rise to pure question of law, neither the learned Judge nor the counsels before us dealt with the facts in detail, instead focused on jurisdictional errors stated to have been committed by the respondent at different stages of the proceedings. We therefore do not intend to set out / narrate the facts extensively/ in detail, instead shall confine to those necessary to resolve the following legal issues that arise for consideration in this batch of writ appeals:

A) Validity of search under Section 132 of the Act.

B) Centralization of assessments.

C) Notices in terms of Section 153A of the Act.

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D) Notices in terms of Section 153C of the Act .

E) Attachment orders under Section 281B of the Act.

F) Notices under Section 143(2) of the Act and Orders of Assessment under Section 143(3) of the Act.

3. We shall proceed to deal with the above issues in seriatim.

A. Validity of search under Section 132 of the Act:

4. The challenge to the search can be broadly put under two heads viz.,

(i) Lack of jurisdiction in authorizing the search in view of non-existence of the circumstances enumerated in Clauses (a) to (c) to Section 132 of the Act which is a condition precedent / *sine qua non* to invoke the power of search under Section 132 of the Act.

(ii) Secondly, the search stands vitiated on the premise the actions of the search party are not in compliance with the safeguards under Section 132 of the Act, thereby resulting in violation of the Constitutional guarantees.

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4.1. We shall proceed to examine the challenge to the search which forms the foundation / sheet anchor on the basis of which various challenges are laid in this batch of Writ Appeals:

(i) Authorisation of search under Section 132 of the Act – Without Jurisdiction:

Case of the appellants:

4.2. The submissions of Mr.R.V.Easwar, learned Senior Advocate are as follows:

a. That notice issued under Section 153A of the Act, is a jurisdictional notice and therefore all the conditions that are foundational for the assumption of jurisdiction have to be cumulatively and strictly complied with.

b. That prior to authorising the search, the authorising authority must have "reason to believe" in consequence of information in his possession, existence of any of the circumstance enumerated in clauses (a) to (c) to Section 132(1) of the Act, warranting authorisation of the search.

c. That under Section 132(a) and 132(b) of the Act, a summons under

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sub section (1) of Section 131 or under Sub Section (1) of Section 142 of the Act should be issued by the respondents and the respondents should have reason to believe that the petitioner either failed or will not submit the books of account or other documents required to be submitted pursuant to the above summons.

d. In order to attract Section 132(a) and 132(b) of the Act, the past conduct of the appellant should be taken into account and in the past, the appellant should have willfully failed or had not submitted the books of account or other documents required to be submitted pursuant to the above summons.

e. SNJD and SNJB have been doing business from 2009 and 2011 respectively and have been paying income tax regularly.

f. SNJD and SNJB have not received any notice either under Section 131(1) or Section 142(1) nor have they failed to cooperate with the department.

g. SNJD scrutiny assessment under Section 143 of the Act for the year 2017-18 was completed on 21-12-2018.

h. There have been no further queries raised in this regard. As such,

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there could have been no basis to form an opinion of the existence of circumstance enumerated in Clauses (a) to (c) to Section 132 which is pre-requisite for a valid search and seizure.

i. Under Section 132 (c) of the Act, the authorities mentioned in Section 132 of the Act, should have reason to believe that the search will yield unaccounted cash, bullion, jewellery or other valuable things.

j. The search operations in the premises of the appellant SNJB, residence of the Managing Director of the appellant and his wife, did not yield any unaccounted cash, bullion, jewellery or other valuable things.

k. There was thus no reason to believe to order a search under Section 132 of the Act and the entire search operation under Section 132 of the Act ought to be declared as illegal and *void ab initio.*

l. The learned Single Judge called for the files and on a perusal of the files, the learned Single Judge held that reasons to believe have been recorded before initiation of the search. The reasons to believe which are recorded cannot be a pretence or in the nature of suspicion. Hence it is just and necessary that the Division Bench calls for the files for ascertaining if the reasons to believe have been properly recorded in terms with Section

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132(1) (a to c) of the Act. In support thereof, the learned Senior counsel would place reliance on the following judgments:

i. *Pooran Mal v. The Director of Inspection* reported in *(1974) 1 SCC 345.*
ii. *K.V.Krishnaswamy Naidu and Co. v. CIT* reported in *[1987] 166 ITR 244*
iii. *Khem Chand Mukim v. Pr.Director of Income Tax (Inv)* reported *in (2020) 423 ITR 129*
iv. *Principal Director of Income Tax (Inv) v. Laljibhai Kanjibhai Mandalia* reported in *(2022) 446 ITR 18*.

Case of the respondents:

4.3. The learned Standing Counsel would submit that the learned Judge had perused the files relating to the recording of "information" and "reason to believe", and found that the records reveal that the officer had information in his possession to believe that action under Section 132 of the Act was warranted. This Court in exercise of its powers of judicial review under Article 226 of the Constitution of India would not examine the sufficiency or adequacy of the decision of a statutory authority and would place reliance upon the following judgments viz.,

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i. Ajay Kumar Singh v. DGIT reported in [2021] 434 ITR 352.

ii. Laljibhai Kanjibhai Mandalia [2022] 140 taxmann.com 282 (SC) and DGIT].

iii. ITR vs. Space wood Furnitures (P) ltd [2015] 57 taxmann.com 292 (SC), in support thereof.

4.4. We shall firstly proceed to examine the challenge to Section 132 of the Act. Before we examine the above challenge, it may be necessary rather relevant to take a look at the relevant portions of Section 132 of the Act which read as under:

> ***"132. Search and seizure.***
>
> *(1) Where the Director General or Director or the Chief Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director 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 (XI of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922 (XI 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*

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(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (X1 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 (X1 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

.....

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

[Explanation. - For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.] [Inserted by Act 4 of 1988, Section 37 (w.e.f. 1.4.1989).]

....

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(9) The person from whose custody any books of account or other documents are seized under sub-section (1) [or sub-section (1-A)] [Inserted by Act 41 of 1975, Section 35 (w.e.f. 1.10.1975).] may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in his behalf, at such place and time as the authorised officer may appoint in this behalf.

(9A) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132-A and 132-B referred to as the assets) seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.

(9B) Were, during the course of search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer, for the reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do, he may with the previous approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee and for the said purpose the provisions of the Second Schedule shall, mutatis mutandis, apply."

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4.5. From a reading of Section 132 of the Act, it is evident that a search may be authorized only if the officer (specified in that section) has reasons to believe that any circumstance as enumerated in clauses (a) to (c) of Section 132(1) of the Act exists on the basis of information before him i.e.,

(a) omission or failure of any person [to whom a notice under Section 22(4) of the 1922 Act or Section 142(1) of the 1961 Act or a summons under Section 37(1) of the 1922 Act or Section 131(1) of the 1961 Act was issued to produce, or cause to be produced, any books of account or other documents to produce, or cause to be produced, such books of account or other documents as required by such notice or summons;

(b) possibility of non-production by a person [to whom a notice or summons as aforesaid has been or might be issued] of any books of account or other documents which will be useful for, or relevant to, any proceeding under the 1922 Act or the 1961 Act;

(c) possession by any person of any money, bullion, jewellery or other valuable article or thing representing either wholly or partly income or property which has not been, or would not be, disclosed (upto 30-9-1975,

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which has not been disclosed) for the purposes of the 1922 Act or the 1961 Act.

4.6. Clauses (a) to (c) to Section 132 of the Act, spells out the circumstances under which the authorizing authority may issue a warrant of authorization. In other words, such authorization is permissible only if the authorizing authority, in consequence of information in his possession, has reason to believe the existence of any of the circumstances enumerated in clauses (a) to (c) of Section 132(1) of the Act.

4.7. The search under Section 132 of the Act is challenged on the premise that the jurisdictional fact/condition precedent viz., that the authorizing authority had reason to believe the existence of any of the circumstances enumerated in clauses (a) to (c) of Section 132(1) of the Act, in consequence of information is absent thereby vitiating the search for want of jurisdiction. The belief to authorize the search has to be based on information or material. The information/material leading to the belief should also be relevant; it should be connected with the search. It is only then that a search can be authorized. It is necessary to bear in mind that for

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the purpose of Section 132 of the Act, there has to be a rational connection between the information or material and the belief about undisclosed income. The Explanation to the fourth Proviso to Sub Section (1) to Section 132 of the Act, provides that the reason to believe as recorded by the Income Tax Authority shall not be disclosed to any person, authority or Tribunal. It is thus only the superior courts in exercise of their powers of judicial review under Article 226 or 32 of the Constitution of India, which can examine the satisfaction note, if a challenge is made to the assumption of jurisdiction and the Court in its discretion finds it necessary to call for the files to satisfy itself that circumstances existed warranting authorizing a search u/s Section 132 (2) of the Act[1].

4.8. Courts while examining a challenge on the premise that invoking Section 132 of the Act was not warranted, will bear in mind that the opinion which has to be formed by the authorising authority under Section 132 of the Act, is subjective and the jurisdiction of the court to interfere is very limited. The court will not act as an appellate authority and examine meticulously the

1 *Mamchand & Co. v. CIT, (1970) 76 ITR 217 (Cal); Narayan R. Bandekar v. ITO. (1989) 177 ITR 207, 212 (Bom); Kusum Lata v. CIT, (1989) 180 ITR 365, 368 (Raj)*

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information in order to decide for itself as to whether action under Section 132 of the Act was called for.[2]

4.9. The learned Judge while dealing with the challenge to the assumption of jurisdiction on the premise that there was neither information in possession of the authority authorising the search nor were there reasons to believe that the circumstances existed warranting search under Section 132 of the Act, called for the files relating to recording of information and reason to believe and found as under:

> *"33. The files relating to the recording of -information- and -reasons to believe- were called for and I find that the officer has recorded cogent reasons for the initiation of the search itself. The records reveal that the officer has had information in his possession to lead to the belief that action under Section 132 was warranted. Reasons to believe have been recorded as have the reasons to suspect, based upon which the premises of connected entities/persons have been searched.*
>
> *34. The files contain the narration of the information leading to the reasons to believe and reasons to suspect that have been recorded by the authorities. I am of the considered view that the procedure to be followed in noting the information received as well as the recording of reasons is in line with the requirements of the Act. The sufficiency or the veracity of the same is not a matter for review by the Court and it would*

2. *Asst. DIT v. Apparasu Ravi, (2011) 332 ITR 497 (Mad)*

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thus suffice for this issue to be closed with the aforesaid observations."

4.10. With a view to satisfy ourselves, we called for the files containing the information and satisfaction note i.e., the recording of reasons to believe, that circumstances exist warranting issuance of authorisation under Section 132 of the Act. On perusal of the file, we are also satisfied that there were grounds to entertain reasonable belief as required under sub-section (1) to Section 132 of the Act for authorising the search. We thus affirm the finding of the learned Judge in this regard.

(ii) Search vitiated on account of non-compliance with safeguards under Section 132 of the Act and the Constitution – Action of Search Party High - handed and Arbitrary:

Case of the appellants:

4.11. The learned Senior Advocate Mr. P.S.Raman, would submit that the search is also challenged on the ground of being malicious, high-handed and oppressive thereby vitiating the search, *inter alia* for the following reasons:

a) The search commenced on 06.08.2019 at 6.30 a.m. when more than 150 officials of the Department commenced the proceedings in the

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temporary rental residence of the Director of the Brewery at No.4/27, Cenotaph Road First Lane, Teynampet, Chennai – 18. Simultaneously, his permanent residence located at Chitharanjan Salai, Teynampet and other locations i.e., companies owned by the Directors of the Brewery, the registered office of the appellant companies at Nandanam and other registered offices, the offices/residences of suppliers and vendors and other factory premises located at Tamil Nadu, Kerala, Goa and Andhra Pradesh as well as residences of the relatives of the Directors of the appellant companies, auditor and employees were also searched. In all, 56 locations spread over 7 States in India were raided. The basis for such a wide and far reaching search is questioned, particularly in the absence of any credible material to indicate the necessity for such action, which is excessive.

b) CCTV cameras were switched off at the appellant premises during the course of search. The Managing Director of the appellant and his family members were in illegal custody of the respondents during the entire period of the search from 06.08.2019 to 11.08.2019.

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c) The common areas in the apartment had the facility of CCTV. However, the second respondent disabled all cameras, evidently to suppress the inappropriate and improper manner in which the search was conducted.

d) N.Jayamurugan, his wife and their daughters were confined at their residence in Cenotaph Road, constituting illegal house detention, between 06.08.2019 from 6.30 a.m. and 11.00 a.m. on 11.08.2019. All the telephones of the Directors and family members were confiscated. Around 20 officers of the Income Tax Department stayed in the said premises during the entire search i.e., from 06.08.2019 to 11.08.2019. The appellants and their family members were not permitted to sleep and were made to sit throughout the day and night for all 5 days. This constitutes violation of human rights.

e) One of the daughters of the Director suffered seizures on 09.08.2019 on account of lack of sleep. Despite the emergent medical condition, medical measures were delayed and it was only after the lapse of more than an hour, was she permitted to be taken to the hospital. Even then, the search team did not permit either of the parents to accompany her and

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permitted only her sister to leave the premises. She was admitted to Apollo Hospital for treatment and diagnosed with break-through seizures. The discharge summary of Apollo Hospital sets out one of the causes for the medical condition and consequent hospitalization, as sleep deprivation. She was discharged on 11.08.2019.

f) The sister of one of the Directors, was also brought under the scanner on 06.08.2019. She is stated to be a diabetic and suffered a spike in her sugar levels on account of the stress induced due to the search, requiring urgent medical attention. An ambulance was called on 08.08.2019, but she was not permitted to leave immediately, despite the emergent medical condition. She was granted permission to leave only after about an hour and upon intervention of the doctors. It was thus submitted that she was denied timely treatment thereby offending Article 21 of the Constitution of India. The family members of the Managing Director of the appellant were denied emergency medical care from 06.08.2019 to 11.08.2019. The denial of medical care to the immediate family members of the Managing Director of the appellant was used as an intimidation technique to coerce and force the

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Managing Director to sign pre-drafted sworn statements under section 132(4) of the Act.

g) The search was ordered only for the purpose of preventing the appellant from submitting a winning bid for M/s Apollo Distilleries, which is a subsidiary company of M/s Empee Distilleries Pvt. Ltd.

h) Importantly, the panchanamas do not set out the correct dates and time of the search. Secondly, the panchas were not drawn from the locality in which the search was conducted. The panchas who signed in the panchanamas were not inhabitants of the locality in which the search was conducted thereby violating Rule 112(6) of the Income Tax Rules, 1962 and Para 3.23 of the Search and Seizure Manual.

i) As far as the individuals are concerned, they challenged the search on the ground that no warrant was produced at the time when the authorities visited their premises, while alleging gross violation of human rights.

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4.12. The learned Senior Counsel on behalf of the appellants that placing reliance on the above facts, urged the following aspects:

(a) That the search was conducted in gross violation of the safeguards provided under Section 132 of the Act, thereby rendering the search illegal and offending Article 265 of the Constitution.

(b) High-handed and excessive conduct of the search party which if found correct and true, would vitiate the search on the ground of being arbitrary, oppressive, excessive and infringing the appellants' right under Article 21 of the Constitution of India, thereby rendering the search itself unconstitutional, however, the above submissions were hardly examined.

(c) That any State action which infringes right to privacy would have to pass the muster of the four fold test laid down in *Puttaswamy*, which the impugned search miserably fails.

(d) That failure to provide timely medical treatment apart from violating Article 21 of the Constitution of India would constitute coercion thereby rendering the evidence/ statement collected / obtained during the search irrelevant, thereby inadmissible.

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(e) That the decision in *Pooran Mal (supra)* insofar as it finds that evidence obtained in an illegal search can be used if it satisfies the test of relevance, requires a revisit in view of the decision in *Puttaswamy* case.

(f) That the learned Judge ought to have seen that there was gross violation of the guidelines contained in the search and seizure manual issued by the Board under Section 119 of the Act which is binding on the authorities. Emphasis was placed on Paragraphs 6.36 to 6.40 of the manual which deals with the appraisal report made after the search and seizure.

4.13. The learned Senior Advocate in support of the above contentions, would rely on the following judgments:

i. Income Tax Officer v. Seth Brothers reported in (1969) 2 SCC 324;

ii. P.R.Metrini v. Commissioner of Income Tax reported in (2017) 1 SCC 789;

iii. K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1.

Case of the Respondents:

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4.14. The requirements under the Rules as well as Departmental manual have been adhered to and there is no merit in the submission that during the search there were violations thereof. All Panchas have been drawn from the locality concerned and the outstation addresses referred to by the appellant are their permanent addresses as reflected in their Aadhar cards. The allegation of violation of human rights put forth by the appellant is contrary to facts. According to the respondents, all necessary measures were taken to address the medical issues which cropped up during search, the submissions to the contrary by the appellant are without basis. A number of judgments were relied on by the respondents in support of their contention[3]. The allegation of violation of the guidelines contained in

3.Commissioner of Commercial Taxes, Board of Revenue, Madras v. Ramkishan Shri Kishan Jhaver (66 ITR 664); Income~tax Officer v. Seth Brothers (74 ITR 836); Pooran Mal v. Director of Inspection (93 ITR 505); State of Punjab v. Baldev Singh ((1999) 6 SCC 172); DGIT (Inv.) v. Spacewood Furnishers (P) Ltd. (374 ITR 595); Income Tax Officer, Calcutta and Ors. v.. Lakhmani Mewal Das (103 ITR 437); Principal Director Of Income Tax (Investigation) v. Laljibhai Kanjibhai Mandalia((2022)140 taxmann.com); Commissioner of Income~tax, Gujarat v. Vijaybhai N. Chandra (357 ITR 713); P.Murugesan v. Director of Income~tax (Inv.) (222 CTR 619); Agni Estates and Foundations (P) Ltd. v. DCIT (357 ITR 713); MDLR Resorts (P) Ltd. v. Commissioner of Income tax (361 ITR 407); Madhupuri Corporation v. DDIT (256 ITR 498); Arti Gases v. DGIT (Inv) (248 ITR 55);Digvijay Chemicals Ltd. v. ACIT (248 ITR 381); Sambhu Prasad Agarwal v. DIT (245 ITR 660); Commissioner of Income tax v.

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the search and seizure manual apart from the fact that it is factually incorrect cannot be sustained also for the reason that the manual is meant to serve as a guide to the officers while conducting the search and seizure effectively and does not have any statutory force. Thus, any challenge to a proceeding that the search and seizure manual was not followed is misconceived as it overlooks the position that manual is meant to be a guide but not mandatory nor enforcible.

Order of the learned Judge:

4.15. The learned Judge while dealing with the above contentions after referring to the judgment of the Hon'ble Supreme Court in the case of *ITO v. Seth Brothers. (1969) 2 SCC 324* and *Pooran Mal v. Director of Inspection (Investigation), (1974) 1 SCC 345* observed that search and seizure is a drastic measure and bound to produce inconvenience. The learned Judge proceeds to observe that allegations and rebuttals of high-handedness of the officials as well as oppression was also alleged in the case of *Pooran Mal (supra)*, however, the Apex Court on an overall view of the

Cr.C.Balakrishnan Nair (282 ITR 158); Dr.N.S.D.Raju v. DGIT (Inv.) (283 ITR 154); J.R.Tantia Charitable Trust v. DCIT(355 ITR 226).

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matter, found that the search was not established to be *mala fide*, oppressive or excessive. After observing so, the learned Judge rejected the contention of the appellant in this regard by stating that the search was not *mala fide* or excessive in the instant case as well by stating *"So too in this case"*. The following extract from the order of the learned Judge is relevant:

> *"27. The Bench notes that undoubtedly search and seizure is a drastic process and is bound to be accompanied by unsavoury events and sometimes inconvenient results. A sudden search and seizure will no doubt unnerve inmates of the location under search. In the cases before me, allegations and rebuttals have been advanced in regard to the highhandedness of the officials as well as the oppression that was allegedly meted out to the residents. So too in Pooran Mal?s case. This has been noticed in the judgment itself, but the Bench takes an overall view of the matter stating that on the whole, the search was not established to be malafide, oppressive or excessive.* ***So too in this case****. The Bench held further that even if a search had been illegal, the evidence seized can be validly used in the assessments to follow."*
>
> (emphasis supplied)

4.15.1. The learned Judge also records a finding that these measures are consciously undertaken to "intimidate", and finds that the allegation of not extending medical help immediately had not been met effectively by the respondents. Thereafter, the learned Judge proceeds to hold that the

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appellant herein can approach the Civil Court and seek redressal. The learned Single Judge refers to the discharge summary and records that the patient was diagnosed with *"Break Through Seizure"* and under the Head "Chief Complaints" it was *inter alia* recorded as *"History of recent decreased sleep", "History of fever associated with chills since 1 day"*. The following observations of the learned Judge are relevant in this regard:

> *"37. As the Hon'ble Supreme Court has observed in the case of Pooran Mal (supra), search and seizure, by its very nature, is bound to cause some dislocation to the parties concerned. Some of this dislocation is also intended as a conscious measure to intimidate. However, there are limits that must be adhered to and in the present case, the exacerbation of the medical condition of the person concerned is a matter of hospital record.*
>
> *History of recent poor compliance of anti~epileptic medications leading up to the seizures present.*
>
> *History of recent decreased sleep present.*
>
> *No history of recent trauma, headache, vomiting, sensori~motor deficits, blurring of vision or bowel & bladder disturbances.*
>
> *History of fever, associated with chills since 1 day and cough with expectoration since 2 days.*
>
> *Admitted for further care.*
>
> .....
>
> *39. Whatever may be the compulsions of the search action, it does not excuse the denial of or delay in, access to medical care. Discharge summary dated 11.08.2019 makes it clear that the person had suffered an*

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epileptic fit and had been admitted to the hospital on 10.08.2019 for treatment. There is a categoric assertion in the writ affidavit regarding the difficulties and resistance encountered by the family in seeking medical help for the person and these allegations have not, in my view, been met or addressed effectively either in counter or in the submissions advanced before me.

.....

43. Suffice it to say that on a wholistic appreciation of this aspect of the matter, I am inclined to give the benefit of doubt to the petitioner. Bearing in mind the factual disputes involved, this is not the appropriate forum to address this issue and I hence reserve the right of the petitioner to approach the Civil Courts/any other appropriate forum to establish (i) availability and disabling of CCTV in the searched premises and common areas and (ii) delay and procrastination on the part of the respondents in permitting the family to seek medical assistance, and seek compensation/redressal, if so inclined."

(emphasis supplied)

4.16. We shall now examine the contention that failure to render a finding on the allegation of the search being vitiated on the ground of being excessive, high-handed and malicious and contrary to the statutory safeguards thereby resulting in violation of the Right to Privacy guaranteed under Article 21 of the Constitution vitiates the order of the learned Judge.

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4.17. A perusal of the order of the learned Judge would show that no finding was rendered by the learned Judge on the contention raised as to the illegalities committed by the search party pursuant to the authorisation. Interestingly, insofar as denial of timely medical attention to the family members of the Managing Director and the act of switching off the CCTV camera, the learned Judge *prima facie* records that she is left with the impression that all is not well with the search. However, thereafter the learned Judge only permitted the appellant to seek remedy before the appropriate forum with regard thereto.

4.18. To appreciate as to why the failure to examine the above contentions of *mala fides*, high-handedness and oppressive behaviour during the course of search and render a finding thereon may warrant interference, it is necessary to keep in view the facets relating to search and the statutory and constitutional implications of a search, not in compliance with the provisions of the Income Tax Act and Rules.

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4.19. Search and seizure of documents and objects alleged to be incriminating have been the reason behind many litigations. The safeguards necessary to insulate the legislation and its administration from falling foul of constitutional guarantees is over the years forged out of conflict between the excessively enthusiastic or over zealous tax collectors/ administrators, on the one hand and the taxpayer on the other, ranging from the honest tax payer to the tax evader attempting to unjustly enrich himself at the cost of the exchequer and court's attempt to resolve such conflict.

4.20. Before proceeding further, it is necessary to bear in mind that while upholding the validity of Section 132 of the Act, the Constitution Bench in *Pooran Mal (supra)* found that there are adequate safeguards against misuse / abuse of the drastic power of search. The relevant portion is extracted hereunder:

(i) Pooran Mal v. Director of Inspection (Investigation), (1974) 1 SCC 345

> *"11. We are, therefore, to see what are the inbuilt safeguards in Section 132 of the Income Tax Act. In the first place, it must be noted that the power to order search and seizure is vested in the highest officers of the department. Secondly, the exercise of this power can only follow a reasonable belief entertained by such officer that any of the three conditions mentioned in Section 132(1)(a),(b) and (c) exists. In this*

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connection it may be further pointed out that under sub-rule (2) of Rule 112, the Director of Inspection or the Commissioner, as the case may be, has to record his reasons before the authorisation is issued to the officers mentioned in sub-section (1). Thirdly, the authorisation for the search cannot be in favour of any officer below the rank of an Income Tax Officer. Fourthly, the authorisation is for specific purposes enumerated in (i) to (v) in sub-section (1) all of which are strictly limited to the object of the search. Fifthly when money, bullion, etc. is seized the Income Tax Officer is to make a summary enquiry with a view to determine how much of what is seized will be retained by him to cover the estimated tax liability and how much will have to be returned forthwith. The object of the enquiry under sub-section (5) is to reduce the inconvenience to the assessee as much as possible so that within a reasonable time what is estimated due to the Government may be retained and what should be returned to the assessee may be immediately returned to him. Even with regard to the books of account and documents seized, their return is guaranteed after a reasonable time. In the meantime the person from whose custody they are seized is permitted to make copies and take extracts. Sixthly, where money, bullion, etc. is seized, it can also be immediately returned to the person concerned after he makes appropriate provision for the payment of the estimated tax dues under sub-section (5) and lastly, and this is most important, the provisions of the Criminal Procedure Code relating to search and seizure apply, as far as they may be, to all searches and seizures under Section 132. Rule 112 provides for the actual search and seizure being made after observing normal decencies of behaviour. The person in charge of the premises searched is immediately given a copy of the list of articles seized. One copy is forwarded to the authorizing officer. Provision for the safe custody of the

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articles after seizure is also made in Rule 112. In our opinion, the safeguards are adequate to render the provisions of search and seizure as less onerous and restrictive as is possible under the circumstances. The provisions, therefore, relating to search and seizure in Section 132 and Rule 112 cannot be regarded as violative of Article 19(f) and (g).”

(emphasis supplied)

4.21. The validity of the provision having been saved in view of the safeguards contained in the provision, it is only necessary that the search under Section 132 of the Act, ought to be carried out strictly in accordance with law.[4.] Failure to comply with the procedure or any safeguards may render the search vulnerable to challenge as being arbitrary and unconstitutional.

4.22. At this juncture, it is necessary to note that though there were doubts as to whether “Right to Privacy” would constitute fundamental right under the Constitution, the same has been laid to rest by the Constitution Bench of 9 Judges in the case of *K.S.Puttaswamy (2017) 15 SCC 1,* wherein it was held that “Right to Privacy” is a constitutionally protected fundamental right which inheres in Article 21 of the Constitution of India.

4. ITO v. Seth Brothers., (1969) 2 SCC 324

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Importantly, with *Puttaswamy's* judgment there may be a paradigm shift in the dimension/nature of the enquiry, which Court would make while dealing with the contention of a search being not compliant with statutory safeguards thereby rendering the search unconstitutional and the consequence that follows thereon.

4.23. To appreciate the nature of Right to Privacy which has been held to be a fundamental right, which inheres in Article 21 of the Constitution of India and its impact on the power of search and seizure of tax authorities, it may be necessary to give a brief background of its evolution. There can be no two views about the fact that search and seizure is a serious invasion on the rights of the subject, for it amounts without doubt intrusion into the privacy of the subject. Thus, any search and seizure ought to be carried in accordance with the procedure established by law.

4.24. In the case of *M.P. Sharma v. Satish Chandra,* reported in *(1954) 1 SCC 385,* a Constitution Bench of 8 judges of the Supreme Court, while adjudicating whether seizure of incriminatory documents by the authorities amounted to a violation of the fundamental right against self-

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incrimination, observed as under:

> *"21. ..... A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy... we have no justification to import it...".*

4.25. The above judgment of the Supreme Court finding that right to privacy is not a fundamental right, came to be followed in a series of decisions. However, there have been occasions when the Supreme Court found that right to privacy was a strictly protected fundamental right, some of them being:

(i) Gobind vs. State of M.P. Reported in (1975) 2 SCC 148;

(ii) R.Rajagopal vs. State of T.N. Reported in (1994) 6 SCC 632;

(iii)PUCL vs. Union of India reported in (1997) 1 SCC 301;

(iv) District Registrar and Collector vs. Canara Bank reported in (2005) 1 SCC 496.

4.26. There was thus uncertainty over the nature of the right to privacy, more particularly whether right to privacy is a fundamental right

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under the Constitution, in view of the divergent views. All doubt over the question whether right to privacy is a fundamental right or not is laid to rest by the Constitution Bench Judgment in the case of *K.S.Puttaswamy* (2017) 15 SCC 1, wherein the decisions in the case of *M.P.Sharma* and *Kharak Singh* were overruled and it was held that right to privacy is a fundamental right encompassed under Article 21 of the Constitution of India which protects "right to life".

4.27. In this regard, it may be relevant to refer to the following portions of the decision in *K.S.Puttaswamy's* case:

> *i) K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1 :*
>
> *"652. The reference is disposed of in the following terms:*
>
> *652.1. The decision in M.P. Sharma [M.P. Sharma v. Satish Chandra, AIR 1954 SC 300 : 1954 Cri LJ 865 : 1954 SCR 1077] which holds that the right to privacy is not protected by the Constitution stands overruled;*
>
> *652.2. The decision in Kharak Singh [Kharak Singh v. State of U.P., AIR 1963 SC 1295 : (1963) 2 Cri LJ 329 : (1964) 1 SCR 332] to the extent that it holds that the right to privacy is not protected by the Constitution stands overruled;*
>
> *652.3. The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.*
>
> (emphasis supplied)

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4.28. It is settled that search and seizure powers under tax laws have to be exercised within the bounds of law. We say so, inasmuch as any action contrary to the relevant statutory provision in the present case, Section 132 of the Act, may render the same vulnerable to challenge as infringing right to privacy.

4.29. Importantly, the Constitution Bench in *Puttaswamy* held that a challenge to a State action on the ground of infringement of the right to privacy may have to be examined applying the following tests viz.,

(a) The action must be sanctioned by law;

(b) The proposed action must be necessary in a democratic society for a legitimate aim;

(c) There must be procedural guarantees against abuse;

(d) The extent of such interference must be proportionate to the need for such interference.

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4.30. We shall now apply the above test to a search under Section 132 of the Act.

(a) Action must be sanctioned by law:

4.31. Now, applying the above test to a challenge to search and seizure, there must be a provision which confers power of search, we find Section 132 of the Act, does that. However, the power under Section 132 of the Act, must be invoked only for the purposes set out in Section 132 of the Act and not for any extraneous/collateral purpose. The authorities must exercise restraint while invoking the drastic power of search and seizure under Section 132 of the Act.

(b) Proposed Action must be necessary in a democratic society for a legitimate aim:

4.32. The object of section 132 is two fold: (i) to get hold of the evidence, which have a bearing on the liability of a person which the person is seeking to withhold from the assessing authority; and (ii) to get hold of assets representing the income believed to be undisclosed income. The

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above object is legitimate rather necessary to suppress the evil of tax evasion.

(c) Procedural safeguards against abuse of power:

4.33. Section 132 of the Act provides for inbuilt safeguards which have to be strictly complied with. Failure or breach of these safeguards during search in the light of the Constitution Bench decision in *Puttaswamy's* case holding "Right to Privacy", to be a fundamental right under Article 21 of the Constitution of India, may no longer constitute a mere violation of the statutory provision, but may also have an impact on the right to privacy as seen supra and therefore impairing the subject's fundamental right to privacy. It may also render itself vulnerable to challenge as being unconstitutional for violating Article 265 of the Constitution of India, which provides that *"no tax shall be levied and collected except by authority of law"*.

(d) The extent of such interference must be proportionate to the need for such interference:

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4.34. Doctrine of Proportionality has been the subject of several debates and there is abundance of judicial opinion and literature on the above subject. We propose to examine some of the important facets of the above doctrine.

4.35. Jurisprudentially, "proportionality" can be defined as a set of rules determining the necessary and sufficient conditions for limitation of a constitutionally protected right by a law to be constitutionally permissible. Modern theory of constitutional rights draws a fundamental distinction between the scope of the constitutional rights, and the extent of its protection. Insofar, as the scope of constitutional rights is concerned, it marks the outer boundaries of the said rights and defines its contents. The extent of its protection, prescribes the limitations on the exercise of the rights within its scope. In that sense, it defines the justification for limitations that can be imposed on such a right. This phenomenon of both the right and its limitation in the Constitution—exemplifies the inherent tension between democracy's two fundamental elements. Such balancing enables each facet to develop alongside the other facets, not in their place.

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This tension between the two fundamental aspects—rights on the one hand and its limitation on the other hand—is to be resolved by balancing the two so that they harmoniously co-exist with each other. This balancing is to be done keeping in mind the relative social values of each competitive aspects when considered in proper context.

4.36. Having found that Doctrine of Proportionality is balancing of competing interest in the form of rights *vis-a -vis* limitations on such right, that leads us to the next question viz., what criteria are to be adopted for a proper balance between the two facets viz., the rights and limitations imposed upon it by a statute. It is here the concept of "proportionality" becomes relevant. To put it pithily, when a law limits a constitutional right, such a limitation is constitutional if it is proportional. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary. This essence of doctrine of proportionality is beautifully captured by *Dickson, C.J. of Canada in R. v. Oakes, reported in 1986 SCC OnLine Can SC 6; (1986) 26*

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DLR (4th) 200. The following observations are relevant:

> *"..... This involves "a form of proportionality test" Although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups. There are, in my view, three important components of a proportionality test. First, the measures adopted must be rationally connected to the objective. Second, the means should impair "as little as possible" the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the right or freedom, and the objective which has been identified as of "sufficient importance". The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society."*

4.37. The exercise which is thus to be undertaken, is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests.

4.38. The discussion brings out that following four sub-components of proportionality need to be satisfied:

(a) A measure restricting a right must have a legitimate goal

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(legitimate goal stage).

(b) It must be a suitable means of furthering this goal (suitability or rational connection stage).

(c) There must not be any less restrictive but equally effective alternative (necessity stage).

(d) The measure must not have a disproportionate impact on the right holder (balancing stage).

4.39. The above broad principle on Doctrine of Proportionality was enunciated in the 2nd *Puttaswamy case* and keeping the same in view, we shall now proceed to examine as to whether the instant case meets the required parameters in respect of the above aspects / components.

4.40. To apply the doctrine of proportionality in the context of a search under a fiscal enactment, it is necessary to bear in mind the significance of the power of taxation under the Constitution of India. Power to tax has been universally acknowledged as an essential attribute of sovereignty. In this regard, it may be relevant to refer to the following

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portions of the judgment in the case of *Jindal Stainless Limited and another v. State of Haryana and Others,* reported in *(2017) 12 SCC 1*:

> *"17. .....Cooley in his book on Taxation, Vol. 1 (4th Edn.) in Chapter 2 recognises the power of taxation to be inherent in a sovereign State. The power, says the author, is inherent in the people and is meant to recover a contribution of money or other property in accordance with some reasonable rule or apportionment for the purpose of defraying public expenses. The following passage from the book is apposite:*
>
> > *"57. Power to tax as an inherent attribute of sovereignty.—The power of taxation is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent Government. It is possessed by the Government without being expressly conferred by the people. The power is inherent in the people because the sustenance of the Government requires contributions from them. In fact the power of taxation may be defined as "the power inherent in the sovereign State to recover a contribution of money or other property, in accordance with some reasonable rule or apportionment, from the property or occupations within its jurisdiction for the purpose of defraying the public expenses". Constitutional provisions relating to the power of taxation do not operate as grants of the power of taxation to the Government but instead merely constitute limitations upon a power which would otherwise be practically without limit. This inherent power to tax extends to everything over which the sovereign power extends, but not to anything beyond its sovereign power. Even the federal Government's power of taxation does not include things beyond its sovereign power. But where exclusive jurisdiction over land is granted to another State or country, the land remains subject to the taxing power of the State within whose boundaries it is located."*
>
> *18. To the same effect is the decision of this Court in Jagannath Baksh Singh v. State of U.P. [Jagannath Baksh Singh v. State of U.P., AIR 1962 SC 1563 : (1963) 1 SCR 220] where this Court observed : (AIR p. 1570, para 15)*
>
> > *"15. ... The power of taxation is, no doubt, the sovereign right of the State; as was observed by Chief Justice Marshall inM'Culloch v. Maryland [M'Culloch v. Maryland, 4 L Ed 579 : 17 US 316 (1819)] : (L Ed p. 607)*
> >
> > *'... the power of taxing the people and their property is essential to the very existence of Government, and may be legitimately exercised on the*

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objects to which it is applicable to the utmost extent to which the Government may choose to carry it.'

.....

20. In CIT v. McDowell and Co. Ltd. [CIT v. McDowell and Co. Ltd., (2009) 10 SCC 755] where this Court reiterated the legal position in the following words : .....

(emphasis supplied)

4.41. Now, having set out the relevance and significance of power to tax which is an attribute of sovereignty and essential for the very existence of the Government, one also need to keep in mind that the power to tax under the Constitution comes with certain express restrictions. One such restriction is the declaration under Article 265 of the Constitution of India, which provides that "no tax shall be levied or collected except by authority of law".

4.42. The expression "levy" has been construed to take within its fold "assessment". "Assessment" is a comprehensive word and can denote the entirety of proceedings which are taken with regard to it.[5] In other words, assessment would encompass within itself the entire process of

5. STO v. Sudarsanam Iyengar and Sons, (1969) 2 SCC 396

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determination of liabilities, commencing with the filing of returns and culminating in the passing of the order of assessment. Assessment would thus include the power to issue summons/ gather documents including by way of search.

4.43. We thus have two competing rights/ interest, one is the need to curb evasion and other is to ensure that the levy/ assessment, be made strictly in accordance with law for any violation of the law relating to levy which includes assessment may fall foul of Article 265 of the Constitution of India. More importantly, if the action complained of in a search is non-compliant with the statutory safeguards, it may result in impairing right to privacy, a fundamental right guaranteed under the Constitution of India. Keeping these aspects in mind, one may have to apply the doctrine of proportionality, when question arises of not following the statutory mandate under Section 132 of the Act. Needless to state the above enquiry would vary from case to case.

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4.44. Any violation of the statutory and constitutional safe guards during a search which impairs / impinges on the right to privacy of the subject may thus have to be examined applying the doctrine of proportionality. It may be relevant to note that following the 9 Judge Constitution Bench judgment, the Constitution Bench decision in the case of *K.S. Puttaswamy reported in (2019) 1 SCC 1*, while testing whether Aadhaar Regime infringes Right to Informational Privacy and Data Protection particularly against the apprehension that it may be susceptible to data profiling or leakage thereby impairing the Right to Privacy, reiterated the four fold test laid down in the *1st Puttaswamy's* case to be applied whenever challenge is laid to an action of the State on the ground that it violates the right to privacy.

4.45. The Doctrine of proportionality in the context of Right to Privacy was examined in great detail in the *Puttaswamy case* (2) reported in *(2019) 1 SCC 1* wherein it was observed as under:

> *"109.6.Right to privacy cannot be impinged without a just, fair and reasonable law : It has to fulfil the test of proportionality ... (K.S.*

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Puttaswamy case [K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1]

...

310. While it intervenes to protect legitimate State interests, the State must nevertheless put into place a robust regime that ensures the fulfilment of a threefold requirement. These three requirements apply to all restraints on privacy (not just informational privacy). They emanate from the procedural and content-based mandate of Article 21. The first requirement that there must be a law in existence to justify an encroachment on privacy is an express requirement of Article 21. For, no person can be deprived of his life or personal liberty except in accordance with the procedure established by law. The existence of law is an essential requirement. Second, the requirement of a need, in terms of a legitimate State aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness mandated by Article 14, which is a guarantee against arbitrary State action. The pursuit of a legitimate State aim ensures that the law does not suffer from manifest arbitrariness. Legitimacy, as a postulate, involves a value judgment. Judicial review does not reappreciate or second guess the value judgment of the legislature but is for deciding whether the aim which is sought to be pursued suffers from palpable or manifest arbitrariness. The third requirement ensures that the means which are adopted by the legislature are proportional to the object and needs sought to be fulfilled by the law. Proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law. Hence, the threefold requirement for a valid law arises out of the mutual interdependence between the fundamental guarantees against arbitrariness on the one hand and the protection of life and personal

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liberty, on the other. The right to privacy, which is an intrinsic part of the right to life and liberty, and the freedoms embodied in Part III is subject to the same restraints which apply to those freedoms."

(emphasis supplied)

4.46. Now that it is beyond the pale of any doubt that "right to privacy" is an intrinsic part of Article 21 of the Constitution of India, and a search without authority / sanction of law or in disregard of the statutory safeguards may constitute an infringement of the right to privacy, thus the need to comply with the statutory safeguards assumes greater significance and any violation would have to be tested applying the Doctrine of Proportionality. We say so, for any violation of the statutory safeguards relating to search may well touch on the right to privacy guaranteed under the Constitution thereby rendering the action susceptible to challenge on the ground of not just being illegal but also being unconstitutional which could change the complexion of the consequences that may ensue. This would be clear if we bear in mind that any action that is unconstitutional is rendered *"void"*. Though the validity of Section 132 of the Act, has been upheld, however, the individual search can be questioned as being violative of the

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statutory conditions or the guarantees under the Constitution. In this regard, it may be relevant to refer to the decision in *Maneka Gandhi's case* reported in *(1978) 1 SCC 248* wherein it was held as under:

> *"36. ....It is true, and we must straightaway concede it, that merely because a statutory provision empowering an authority to take action in specified circumstances is constitutionally valid as not being in conflict with any fundamental rights, it does not give a carte blanche to the authority to make any order it likes so long as it is within the parameters laid down by the statutory provision. Every order made under a statutory provision must not only be within the authority conferred by the statutory provision, but must also stand the test of fundamental rights. Parliament cannot be presumed to have intended to confer power on an authority to act in contravention of fundamental rights. It is a basic constitutional assumption underlying every statutory grant of power that the authority on which the power is conferred should act constitutionally and not in violation of any fundamental rights. This would seem to be elementary and no authority is necessary in support of it, but if any were needed, it may be found in the decision of this Court in Narendra Kumar v. Union of India [(1960) 2 SCR 375 : AIR 1960 SC 430 : 1960 SCJ 214] .*
>
> .....
>
> *It would thus be clear that though the impugned Order may be within the terms of Section 10(3)(c), it must nevertheless not contravene any fundamental rights and if it does, it would be void. Now, even if an order impounding a passport is made in the interests of public order, decency or morality, the restriction imposed by it may be so wide, excessive or disproportionate to the mischief or evil sought to be averted*

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that it may be considered unreasonable and in that event, if the direct and inevitable consequence of the Order is to abridge or take away freedom of speech and expression, it would be violative of Article 19(1)(a) and would not be protected by Article 19(2) and the same would be the position where the order is in the interests of the general public but it impinges directly and inevitably on the freedom to carry on a profession, in which case it would contravene Article 19(1)(g) without being saved by the provision enacted in Article 19(6).”

(emphasis supplied)

4.47. Recognition of the Right to Privacy as a fundamental right provides a significant constitutional impediment for the State to contend that its powers of search and seizure override on the previously unrecognised Right to Privacy, and can only be regulated through statutes citing the *M.P.Sharma* judgment. Importantly, after overruling *M.P.Sharma*, in the case of *Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors. [(2017) 10 SCC 1]*, the 9 judge bench of the Supreme Court recognized Right to Privacy as an extension of the fundamental rights under Article 19 and Article 21 of the Constitution of India.

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4.48. The learned Judge has erred in not dealing with any of the issues which are of great constitutional significance and has thereby erred in merely rejecting the contentions by stating that even in *Pooran Mal*'s case before the Supreme Court, there were allegations of excessive and high-handed behaviour, which have been noticed in the judgment itself, but the Bench takes an overall view of the matter stating that on the whole, the search was not established to be *mala fide*, oppressive or excessive, *"So too in this case."*

4.49. While, on the excesses during the search, we also find that the learned judge ought to have examined the impact of denial of timely treatment to the appellants which was recorded by the learned Judge while also expressing concern over the same but has concluded stating that the appellant may approach the appropriate forum for redressal. The significance of failure to provide timely treatment would be evident if we bear in mind that Article 21 is the heart and soul of the Indian Constitution, which speaks of the right to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has the authority to

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violate or take away that right. Article 21 of the Constitution of India takes all those aspects of life which go to make a person's life meaningful. Importantly, denial of timely medical treatment would constitute infringement of the "Right to Life" guaranteed under Article 21 of the Constitution of India.[6.]

4.50. The above discussion was only to show the significance of the issues raised and its ramifications under the Constitution of India. In the light of the above discussion, we are of the view that the nature of the issues raised require greater attention and closer examination and in the absence of an enquiry and finding on the above issues, we are inclined to remand the matter to the learned Judge for considering the above issues.

Value of Evidence obtained in illegal search:

4.51. The learned Senior Advocate Mr.P.S.Raman would submit that the learned Judge erred in giving a short shrift to the value to be attached or relevance of the evidence obtained in a search wherein the procedural

6. Pachim Banga Khet Mazdoor Vs State of W.B (1996) 4 SCC 37; Association of Medical Super Speciality Aspirants Vs UoI (2019) 8 SCC 607

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safeguards provided under the statute were not complied with, thereby rendering the action unconstitutional for infringing the right to privacy of the entity searched by merely relying on the decision in *Pooran Mal* wherein it was held that evidence obtained during the course of an illegal search can be used in framing assessment, without considering the impact of the decision in *K.S. Puttaswamy* wherein right to privacy has been held to be a fundamental right under Article 21 of the Constitution of India.

4.51.1. On the other hand it was submitted by the learned Senior Standing Counsel for the respondents that the law laid down in *Pooran Mal* that evidence obtained in illegal search can be used for making an assessment would continue to govern and the decision in *Puttaswamy* does not alter the position.

4.51.2. The learned judge has found that in any view, the evidence even in the case of an illegal search, is admissible if it satisfies the test of relevance, while referring to *Pooran Mal* wherein it was held that evidence obtained in an illegal search can be used if it is found relevant. The relevant finding of the learned Judge is extracted hereunder:

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" 27. ..... The Bench held further that even if a search had been illegal, the evidence seized can be validly used in the assessments to follow".

4.51.3. It is relevant to trace the judicial history as to the manner in which illegally obtained evidence is dealt with by the judiciary across jurisdictions. We find that by and large the approach of the judiciary has been not to exclude evidence on the ground of it being procured through illegal means. Evidence has been weighed by Indian Courts based on its relevancy/probative value, and irregularity or impropriety in the method of procuring said evidence does not, by itself, make the evidence inadmissible.

4.51.4. One of the oldest cases on the question of admissibility of illegally obtained evidence is *R* v. *Leatham*[7]. This was a case of allegations of corrupt practices, heard before a Commission appointed under the Corrupt Practices Prevention Act, 1854. A letter written by the person suspected of bribery to his agent was produced by the agent. On information being subsequently filed, this letter was called for and produced by the Secretary of the Commission. An objection was raised concerning the admissibility of

7. *R* v. *Leathem,* (1861) 8 Cox CC

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the letter because it had been discovered in consequence of an inadmissible statement made by the accused. In this background, Crompton, J. said, "*It matters not how you get it; if you steal it even, it would be admissible"* and the letter was admitted in evidence.

4.51.5. It seems, initially the Indian Courts were reluctant in following the above dictum of *R* v. *Leathem*. In *Ukha Kolhe* v. *State of Maharashtra*,[8] the Court while dealing with the admissibility of a blood sample in a case where the procedure for testing the blood sample was not followed and given this illegality - the Court excluded the results of the blood test, holding that, it is clear that the legislative intent was that the prescribed due procedure must be followed for collection of blood samples, and there can be no other way of collecting evidence other than what is specifically laid down. The Court ruled that the evidence cannot be held admissible when the due procedure has not been followed. To come to this conclusion, the Court drew strength from the landmark case of *Nazir Ahmad* v. *The King-Emperor,* reported in *1926 SCC Online Cal 270* wherein it was held, "… *where a power is given to do a certain thing in a certain way the thing must*

8. *Ukha Kolhe* v. *State of Maharashtra,* (1964) 1 SCR 926

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be done in that way or not at all. Other methods of performance are necessarily forbidden…" .

4.51.6. The above position viz., exclusion of illegally obtained evidence was short-lived. The Courts shifted to an approach whereby even if the tree is poisonous the fruit is fine. In other words, the courts took the position that the end justifies the means. In the case of *R.M. Malkani* v. *State of Maharashtra,* reported in *(1973) 1 SCC 471*, the Court admitted illegally obtained evidence. In this case, the police had fixed a tape-recording instrument to a telephone with the consent of *only one* of the parties to record the conversation. However, the other side contended that the tape-recorded conversation had been procured through illegal means. In this background, it was held that "*even if evidence is illegally obtained it is admissible*".

4.51.7. Similarly, in the case of *Pooran Mal* v. *Director of Inspection of Income Tax (Investigation), New Delhi*, reported in *(1974) 1 SCC 345*, while ruling on the question of admissibility of material seized in a search,

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alleged to be vitiated by illegality, the Court held that "*unless there is an express or necessary implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out*".

4.51.8. In *State of M.P. through CBI* v. *Paltan Mallah*, reported in 2005 (1) CTC 457 (SC) it was held that "*the evidence obtained under illegal search could still be admitted in evidence, provided, there is no express statutory violation or violation of the constitutional provisions".* The Court also went on to say that "*The general provisions given in the Criminal Procedure Code are to be treated as guidelines and if at all there is any minor violation, still the court can accept the evidence and the courts have got discretionary power to either accept it or reject it."*

4.51.9. Thus, Courts in India have by and large taken a view that if the evidence is relevant it is admissible, and it does not matter how it has been obtained. The ends do justify the means. These decisions have been used over the years to even discard some serious procedural transgressions

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by the authorities in the collection of evidence. There has however been instances where courts have departed from the above line of reasoning which we shall deal with shortly.

4.52. Having traced very briefly the history behind the above judicial approach in dealing with illegally obtained evidence, we find that the decision of the Apex Court in *Pooran Mal* was primarily based on the premise that there is nothing in the Evidence Act, 1872, forbidding the courts from looking at an illegally obtained piece of evidence if it is otherwise relevant to the matter. Now, we need to keep in view that Section 132 of the Act and Rule 112 of the Income Tax Rules 1962, provide for safeguards, importantly Article 265 of the Constitution of India, contains a declaration that "No tax shall be levied or collected except by authority of law". Thus, when there is search in violation of Section 132 of the Act or Rule 112 of the Income Tax Rules, it requires to be seen if Article 265 of the Constitution of India gets offended, if so, whether evidence gathered in a search which is unconstitutional or illegal can still be used only on the basis of its relevance.

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4.53. Apart therefrom, it is necessary to note that the above judgment in *Pooran Mal* was rendered relying upon the judgment of the Supreme Court in *M.P.Sharma's* case, wherein it was held that right to privacy was not a fundamental right protected under the Constitution of India. The same has now been overruled by 9 judge Constitution Bench in *Puttaswamy's* case wherein it was held that right to privacy is a fundamental right and inheres in Article 21 of the Constitution of India. Importantly, the 9 judge Bench has held that search is an intrusion into right to privacy. The sequitur is any search ought to be made strictly in compliance with law/safeguards under the enabling provision, in the present case Section 132 of the Act.

4.54. It is important to examine the impact, if any, of the law laid down in *Puttaswamy* case viz., right to privacy is a fundamental right on the law laid down in *Pooran Mal* viz., that illegally obtained evidence can be used if it satisfies the test of relevance.

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4.55. Interestingly, we find that other jurisdictions have either abandoned the above principle or substantially watered down the above reasoning. Though there is no doubt that *Pooran Mal* approved the principle that '*ends justify the means',* while dealing with the admissibility of illegally obtained evidence, the subsequent jurisprudential development in particular recognition of "Right to Privacy" as a fundamental right needs to be examined to see if it had altered the very foundation of *Pooran Mal*. Secondly, Article 265 of the Constitution of India was not considered in *Pooran Mal.* Now, one cannot reduce the declaration under Article 265 of the Constitution of India to a dead letter. Importantly in Pooran Mal the search was not found to be vitiated by any illegality.

4.56. Apart from the fact that the decision in Pooran Mal insofar as it finds that illegally obtained evidence can be used if found relevant needs to be examined keeping in view the above aspects, it is relevant to note that even prior to *Puttaswamy,* there have been instances where Courts have disallowed illegally obtained evidence, if in a given case, the strict rules of admissibility would operate unfairly against the accused.

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4.57. In *Umesh Kumar* v. *State of A.P.*, reported in *(2013) 10 SCC 591,* for instance, a complaint with supporting documents was sent to the Secretary, Union of India written by a Member of Parliament seeking an enquiry against the then, Director General alleging that he had disproportionate assets in the name of his wife and her associates. Later, it was known that the complaint was not sent by the Member of Parliament and on an enquiry, it was found that the supporting documents annexed with the complaint were obtained by one *Y* on the instructions of a senior officer. On an FIR being filed and subsequent enquiry, a charge sheet was filed against another person named Z. Z approached the Supreme Court for quashing of the charge sheet against him; in this background, a question arose concerning the complaint against the Director General and the Court held that even though the complaint was false, the documents annexed with the complaint, though illegally collected, were not fabricated and, therefore, could be taken note of. It is a settled legal position that "*even if a document is procured by improper or illegal means, there is no bar to its admissibility if it is relevant and its genuineness is proved. If the evidence is admissible, it*

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does not matter how it has been obtained."

4.58. However, importantly the Court also went on to observe: *"However, as a matter of caution, the court in exercise of its discretion may disallow certain evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused. More so, the Court must conclude that it is genuine and free from tampering or mutilation ..."*

4.59. What exactly would operate "unfairly" against the accused is a fact-intensive exercise. This exception seems to have been inspired by the "*Unfair Operation Principle*" applied by Courts in UK which prohibits admission of evidence, if in a given case, its reception runs contrary to the principles of basic fairness. The principle gives Courts the discretion to decide, on a case to case basis, as to what would operate fairly or unfairly against the accused, and in appropriate cases, exclude such evidence.

4.60. The Supreme Court in the case of *Selvi* v. *State of Karnataka*,

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reported in *(2010) 7 SCC 263*, while testing the legality of scientific tests like polygraph or narco analysis, made some interesting observations in this regard. The Supreme Court opined that if involuntary statements were given weightage during a trial, the investigators might feel incentivized to, "*compel such statements - often through methods involving coercion, threats, inducement or deception.*" In the view of the Supreme Court, the right against self-incrimination serves as a safeguard against torture and other methods that could be used to elicit information and the exclusion of such testimonies was important as otherwise, investigators will rely more on such violative methods instead of following the due process of law and this would frustrate the protection against self-incrimination provided under the Constitution. The Supreme Court remarked, "*The frequent reliance on such 'short-cuts' will compromise the diligence required for conducting meaningful investigations*." The Supreme Court further noted that reliance on involuntary statements by way of polygraph tests and narco-analysis was likely to push investigators to compel such statements through coercion, threats, inducement or deception, which would be against the constitutional right against self-incrimination, while proceeding to state that the "fruits of

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poisonous tree" principle is incorporated in Sections 25 and 26 of the Evidence Act. The relevant portions of the said judgment are extracted hereunder:

> ***"Underlying rationale of the right against self-incrimination***
>
> ***102.*** *As mentioned earlier "the right against self-incrimination" is now viewed as an essential safeguard in criminal procedure. Its underlying rationale broadly corresponds with two objectives—firstly, that of ensuring reliability of the statements made by an accused, and secondly, ensuring that such statements are made voluntarily. It is quite possible that a person suspected or accused of a crime may have been compelled to testify through methods involving coercion, threats or inducements during the investigative stage. When a person is compelled to testify on his/her own behalf, there is a higher likelihood of such testimony being false. False testimony is undesirable since it impedes the integrity of the trial and the subsequent verdict. Therefore, the purpose of the "rule against involuntary confessions" is to ensure that the testimony considered during trial is reliable. The premise is that involuntary statements are more likely to mislead the Judge and the prosecutor, thereby resulting in a miscarriage of justice. Even during the investigative stage, false statements are likely to cause delays and obstructions in the investigation efforts.*
>
> ***103.*** *The concerns about the "voluntariness" of statements allow a more comprehensive account of this right. If involuntary statements were readily given weightage during trial, the investigators would have a strong incentive to compel such statements—often through methods involving coercion, threats, inducement or deception. Even if such*

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involuntary statements are proved to be true, the law should not incentivise the use of interrogation tactics that violate the dignity and bodily integrity of the person being examined. In this sense, "the right against self-incrimination" is a vital safeguard against torture and other "third-degree methods" that could be used to elicit information. It serves as a check on police behaviour during the course of investigation. The exclusion of compelled testimony is important otherwise the investigators will be more inclined to extract information through such compulsion as a matter of course. The frequent reliance on such "short cuts" will compromise the diligence required for conducting meaningful investigations. During the trial stage, the onus is on the prosecution to prove the charges levelled against the defendant and the "right against self-incrimination" is a vital protection to ensure that the prosecution discharges the said onus.

104. *These concerns have been recognised in Indian as well as foreign judicial precedents. For instance, Das Gupta, J. had observed in State of Bombay v. Kathi Kalu Oghad [AIR 1961 SC 1808 : (1961) 2 Cri LJ 856 : (1962) 3 SCR 10] , SCR at pp. 43-44: (AIR p. 1819, para 30)*

"30. ... for long it has been generally agreed among those who have devoted serious thought to these problems that few things could be more harmful to the detection of crime or conviction of the real culprit, few things more likely to hamper the disclosure of truth than to allow investigators or prosecutors to slide down the easy path of producing by compulsion, evidence, whether oral or documentary, from an accused person. It has been felt that the existence of such an easy way would tend to dissuade persons in charge of investigation or prosecution from conducting diligent search for reliable independent evidence and from

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sifting of available materials with the care necessary for ascertainment of truth. If it is permissible in law to obtain evidence from the accused person by compulsion, why tread the hard path of laborious investigation and prolonged examination of other men, materials and documents? It has been well said that an abolition of this privilege would be an incentive for those in charge of enforcement of law 'to sit comfortably in the shade rubbing red pepper into a poor devil's eyes rather than to go about in the sun hunting up evidence'. (Sir James Fitzjames Stephen, History of Criminal Law, p. 442.) No less serious is the danger that some accused persons at least, may be induced to furnish evidence against themselves which is totally false—out of sheer despair and an anxiety to avoid an unpleasant present. Of all these dangers the Constitution-makers were clearly well aware and it was to avoid them that Article 20(3) was put in the Constitution.

....."The doctrine of "excluding the fruit of a poisonous tree" has been incorporated in Sections 24, 25 and 26 of the Evidence Act, 1872 which read as follows:

"24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.—A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

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25. Confession to police officer not proved.—No confession made to a police officer, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person."

(emphasis supplied)

4.61. Taking this step of recognition of the right to privacy as an inherent fundamental right further the Bombay High Court in the case of *Vinit Kumar v. CBI,* reported in *2019 SCC OnLine Bom 3155*, set aside certain interception orders and directed the destruction of copies of the intercepted messages. Here, the issue was whether the orders which directed interception of telephone calls were *ultra vires* Section 5(2) of the Telegraph Act, 1885 and the Rules and whether they were violative of the petitioner's fundamental rights.

4.62. Reference was made to the judgment of the Supreme Court in *People's Union for Civil Liberties (PUCL)* v. *Union of India,* reported in

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(1997) 1 SCC 301, which recognised holding a telephonic conversation in one's home or office without interference as a part of the right to privacy. The Supreme Court observed that adopting the adage 'the ends justify the means', "*would amount to declaring the government authorities may violate any directions of the Supreme Court or mandatory statutory rules in order to secure evidence against the citizens. It would lead to manifest arbitrariness and would promote the scant regard to the procedure and fundamental rights of the citizens, and law laid down by the Supreme Court*". This decision, again, seems to place unconstitutionally obtained evidence on a higher pedestal than evidence which is merely illegally obtained.

4.63. Thus, it needs to be examined if the recent judgment of 9 Judge Bench in *Puttaswamy's* case recognizing right to privacy to be part of Article 21 of the Constitution of India necessitates a revisit of *Pooran Mal*, to see the impact of the judgment in *Puttaswamy* with regard to the view that illegally obtained evidence can be used. We say so, since violation of the safeguards relating to search would now render the search not just illegal but

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unconstitutional. The sequitur of an unconstitutional action is that it is rendered void.

4.64. We shall just turn back for a moment to the decision in *Selvi's* case wherein the adverse consequences and the deleterious effect of admitting illegally obtained evidence would have on the authorities entrusted with the task of gathering evidence was examined at length in the context of Article 20(3) of the Constitution of India. Importantly, the 9 judge Constitution Bench in *Puttaswamy* has quoted the decision in *Selvi's* case impliedly with approval. That being the case, one may have to see if the rationale of the decision in *Selvi's* case which frowned upon the use of self incriminating statements on the premise that it would offend Article 20 (3) of the Constitution of India, would apply to a search under Section 132 of the Act. We are conscious of the position that Article 20(3) of the Constitution of India would not apply to statements obtained during the course of an enquiry by an Income Tax Officer, for such statements at the stage of being recorded is not one made by a person accused of an offence.[9]

9. Ramesh Chandra Mehta v. State of W.B., 1968 SCC OnLine SC 62; Harbansingh Sardar Lenasingh v. State of Maharashtra, (1972) 3 SCC 775

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While in *Selvi's* case it was dealing with right against self incrimination in terms of Article 20(3) of the Constitution of India, in the present case the submission is that right to privacy which has been recognized as a fundamental right stands offended in view of the fact that the search was not carried out in accordance with law. Search being an intrusion into right to privacy unless the search is in accordance with law, it may offend Article 21 of the Constitution of India, depending on the extent and nature of the violation of the safeguards. It is relevant to bear in mind that it is not every minor or technical infraction which would attract the wrath of Article 21 of the Constitution of India. That apart, whether failure to comply with the safeguards under Section 132 of the Act would offend Article 265 of the Constitution of India, may require consideration.

4.65. It may be relevant rather necessary to refer to the decision of the 5 Judge Bench in the case *State of Punjab vs. Baldev Singh* reported in *(1999) 6 SCC 172,* wherein while the question as to whether non-compliance with Section 50 of the Narcotics Drugs and Psychotropic Substances Act, 1985, would vitiate the trial, was considered and the decision in *Pooran Mal*

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was explained from a different dimension. Section 50 of the said Act casts an obligation on the empowered officer conducting the search of the person of a suspect, on the basis of prior information, to inform the suspect that he has a right to require his search being conducted in the presence of a gazetted officer or a Magistrate. The question was whether the illicit article seized from the person of an accused/ suspect during search conducted in violation of the above safeguard provided under Section 50 of the Act can be used as admissible evidence of proof of unlawful possession of the contraband on the accused. The Apex Court held that the safeguard contained in Section 50 of the Act ought to be observed/ complied with scrupulously, for failure to comply would be violative of "reasonable fair and just procedure", apart from rendering Section 50 of the Act wasteful and otiose. The following portion from *Baldev Singh* is relevant:

> "***28.****This Court cannot overlook the context in which the NDPS Act operates and particularly the factor of widespread illiteracy among persons subject to investigation for drug offences. It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed. We are not able to find any reason as to why the empowered officer should shirk from affording a real opportunity to the suspect, by intimating to him that he has a right "that if he requires" to be searched in the*

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presence of a gazetted officer or a Magistrate, he shall be searched only in that manner. As already observed the compliance with the procedural safeguards contained in Section 50 are intended to serve a dual purpose — to protect a person against false accusation and frivolous charges as also to lend creditability to the search and seizure conducted by the empowered officer. The argument that keeping in view the growing drug menace, an insistence on compliance with all the safeguards contained in Section 50 may result in more acquittals does not appeal to us. If the empowered officer fails to comply with the requirements of Section 50 and an order or acquittal is recorded on that ground, the prosecution must thank itself for its lapses. Indeed in every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of the judicial process may come under a cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for the law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted.

The judgment in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] therefore, cannot be understood to have laid down that an illicit article seized during the search of a person, on prior information, conducted in violation of the provisions of Section 50 of the Act can be used as evidence of unlawful possession of the illicit article on the person from whom that contraband had been seized during an illegal search. Apart from the position that in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] on facts, it was found that the search and seizure conducted in the cases under consideration in that case were not vitiated by any illegality, the import of that judgment, in the present

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context, can only be to the effect that material seized during search and seizure, conducted in contravention of the provisions of Section 132 of the Income Tax Act cannot be restrained from being used, subject to law, before the Income Tax Authorities in other legal proceedings against the persons, from whose custody that material was seized by issuance of a writ of prohibition. It was not the seized material, in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] which by itself could attract any penal action against the assessee. What is implicit from the judgment in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] is that the seized material could be used in other legal proceedings against an assessee, before the Income Tax Authorities under the Income Tax Act, dealing with escaped income. It is, therefore, not possible to hold that the judgment in Pooran Mal case [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] can be said to have laid down that the "recovered illicit article" can be used as proof of unlawful possession of the contraband seized from the suspect as a result of illegal search and seizure. If Pooran Mal [(1974) 1 SCC 345 : 1974 SCC (Tax) 114] judgment is read in the manner in which it has been construed in State of H.P. v. Pirthi Chand [(1996) 2 SCC 37 : 1996 SCC (Cri) 210] (though that issue did not strictly speaking arise for consideration in that case), then there would remain no distinction between recovery of illicit drugs etc. seized during a search conducted "after" following the provisions of Section 50 of the NDPS Act and a seizure made during a search conducted "in breach of" the provisions of Section 50 of the NDPS Act. Prosecution cannot be permitted to take advantage of its own wrong. Conducting a fair trial for those who are accused of a criminal offence is the cornerstone of our democratic society. A conviction resulting from an unfair trial is contrary to our concept of justice. Conducting a fair trial is both for the benefit of the society as well

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as for an accused and cannot be abandoned. While considering the aspect of fair trial, the nature of the evidence obtained and the nature of the safeguard violated are both relevant factors. Courts cannot allow admission of evidence against an accused, where the court is satisfied that the evidence had been obtained by a conduct of which the prosecution ought not to take advantage particularly when that conduct had caused prejudice to the accused. If after careful consideration of the material on record it is found by the court that the admission of evidence collected in search conducted in violation of Section 50 would render the trial unfair then that evidence must be excluded. In R. v. Collins [(1987) 1 SCR 265 (Canada)] the Supreme Court of Canada speaking through Lamer, J. (as his Lordship, Chief Justice of the Supreme Court of Canada then was) opined that the use of evidence collected in violation of the Charter rights of an accused would render a trial unfair and the evidence inadmissible. In the words of the Supreme Court of Canada:

> *"The situation is very different with respect to cases where, after a violation of the Charter, the accused is conscripted against himself through a confession or other evidence emanating from him. The use of such evidence would render the trial unfair, for it did not exist prior to the violation and it strikes at one of the fundamental tenets of a fair trial."*

(emphasis supplied)

4.65.1. From a reading of the above, it is clear that the argument that keeping in view the drug menace, insistence of Section 50 of the NDPS Act, would result in more acquittal was rejected and while doing so, it was held that brushing aside violation of Section 50 of the NDPS Act, would bring the

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very legitimacy of judicial process under a cloud. If the Court is seen to condone the act of lawlessness of the investigating agency during search operation, it may well undermine the respect for the law and may have the effect of unconscionably compromising administration of justice. That not just the end result which is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The Apex Court thereafter proceeded to deal with the judgment in *Pooran Mal* which was relied upon to contend that illegality in a search does not by itself render the evidence inadmissible. While considering the above submission, the Supreme Court proceeded to explain the law laid down in *Pooran Mal*'s case as one which cannot be understood that an illicit article seized during the search of a person in violation of Section 50 of the said Act can be used as evidence for unlawful possession of the illicit article on the person from whom that contraband had been seized during an illegal search. The Supreme Court proceeded to explain *Pooran Mal*'s case, observing that in *Pooran Mal* it was recorded that the search was not vitiated by any illegality and that the material seized during search and seizure conducted in contravention of the provisions under Section 132 of the Income Tax Act,

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1961, cannot be restrained from being used, subject to law before the Income Tax authorities in "*other legal proceedings*" against persons from whose custody material was seized. In other words, it was not the seized material in *Pooran Mal*'s case, which could result in adverse consequence against the assessee. What is implicit in *Pooran Mal*'s case was that the seized material can be used in "*other legal proceedings*" against the assessees by the Income Tax authorities. The decision in *Baldev Singh* would suggest that one cannot assume jurisdiction on the basis of the material seized during an illegal search under Section 132 of the Act even in terms of *Pooran Mal*.

4.66. We find that the learned Judge has relied upon *Pooran Mal* and observed that the Supreme Court held *"..... even if a search had been illegal, the evidence seized can be validly used in the assessments to follow"*.

4.66.1. The observation of the learned judge would suggest that the various aspects discussed above on the use of illegally more importantly unconstitutionally obtained evidence has not been examined through the prism of Articles 21 and 265 of the Constitution of India. That apart there is

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no reference to the recent judgments of 1st and 2nd *Puttaswamy*'s case wherein Right to Privacy was held to be a fundamental right which inheres in Article 21, which may possibly necessitate a paradigm shift as to the nature of enquiry, which Courts may have to undertake while examining cases of search allegedly involving violation of the statutory and constitutional safeguards.

4.66.2. In the light of the above discussion, we are of the view that it is necessary to examine closely if the search is made strictly in accordance with law and whether violation of any of the statutory/constitutional safeguards renders the action/search vulnerable to challenge as offending Articles 21 and 265 of the Constitution of India. It may also be necessary to examine the resultant impact, if any, on the decision of the Supreme Court in Pooran Mal wherein it was held that illegally obtained evidence can be used if the test of relevancy is satisfied.

4.67. We intend to clarify that the above discussion was for the limited purpose of highlighting the contours of the enquiry that may have to

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be made while dealing with the allegations of illegal search and violation of human rights offending Article 21 and 265 of the Constitution of India which was not made and also its resultant impact on the decision in Pooran Mal's case insofar as it finds that illegally obtained evidence can be used as long as it satisfies the test of relevance. We have not decided the above aspects on merits.

4.68. In the circumstances, we are inclined to remand the matter to the learned Judge leaving it open to the parties to raise the contentions on the above aspects before the learned Judge.

B. Challenge to Centralisation of Assessment:

5. It is submitted by the learned Senior Advocate appearing for the appellants that non-communication of the reasons for transfer under Section 127 of the Act vitiates the transfer.

5.1. To the contrary, it was submitted by the learned Standing Counsel for the respondents that communication of reasons is directory as found by the learned Judge and thus the order of the learned Judge does not

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warrant interference.

5.2. We shall now proceed to examine the challenge to centralisation of assessment which has been raised by the following appellants viz., SNJ Sugars, Manickam Karthikeyan, Kandaswamy Thirumoorthy, Ramamoorthy Sridhar, Sridhar Sudha and Thirumoorthy Kala.

5.3. The challenge was made on the premise that the order under Section 127 of the Act was not communicated and that non-communication of the order would prove fatal to the validity of the proceedings under Section 127 of the Act. On the other hand, it was submitted by the learned standing counsel for the respondents that the appellants had not availed the opportunity granted nor were objections filed and thus the non-communication of the order would not have any bearing on the validity of the proceedings under Section 127 of the Act.

5.4. The learned Judge found that non-communication of the order constitutes procedural irregularity that can be cured by supply of the copy before the learned Judge and proceeded to find that no prejudice is caused by

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non-service of the centralisation order. In any view, the reason for centralisation is for administrative efficiency and convenience.

5.5. We find that the above issue has been considered by the Supreme Court in the case of *Ajantha Industries v. Central Board of Direct Taxes*, reported in *(1976) 1 SCC 1001,* wherein it was found that recording of reasons under Section 127 of the Act is mandatory and non-communication of the reasons necessitating the transfer would not be saved by showing that the reasons exist in the file although not communicated to the assessee. It was found that recording of reasons and disclosure thereof is not a mere formality and non-communication of the reasons in the order would invalidate the proceedings. The relevant portions of the judgment referred to above are extracted hereunder:

> *"**9.** ..... The question then arises whether the reasons are at all required to be communicated to the assessee. It is submitted, on behalf of the Revenue, that the very fact that reasons are recorded in the file, although these are not communicated to the assessee, fully meets the requirement of Section 127 (1). We are unable to accept this submission.*
>
> ***10.** The reason for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the*

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assessee to approach the High Court under its writ jurisdiction under Article 226 of the Constitution or even this Court under Article 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that it is mala fide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question.

.....

15. *When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated.*

16. *Mr Sharma also drew our attention to a decision of this Court in S. Narayanappa v. CIT [AIR 1967 SC 523 : (1967) 1 SCR 590 : (1967) 63 ITR 219] where this Court was dealing with Section 34 of the old Act. It is clear that there is no requirement in any of the provisions of the Act or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed under Section 34 must also be communicated to the assessee. The Income Tax Officer need not communicate to the assessee the reasons which led him to initiate the proceedings under Section 34. The case under Section 34 is clearly distinguishable from that of a transfer order under Section 127(1) of the Act. When an order under Section 34 is made the aggrieved assessee can agitate the matter in appeal against the assessment order, but an assessee against whom an order of transfer is made has no such remedy under the Act to question*

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the order of transfer. Besides, the aggrieved assessee on receipt of the notice under Section 34 may even satisfy the Income Tax Officer that there were no reasons for reopening the assessment. Such an opportunity is not available to an assessee under Section 127 (1) of the Act. The above decision is, therefore, clearly distinguishable.

17. *We are, therefore, clearly of opinion that non-communication of the reasons in the order passed under Section 127 (1) is a serious infirmity in the order for which the same is invalid. The judgment of the High Court is set aside. The appeal is allowed and the orders of transfer are quashed. No costs."*

(emphasis supplied)

5.6. We are thus unable to concur with the order of the learned Judge, insofar as it finds that non-communication of order/ reasons under Section 127 of the Act is only a procedural irregularity inasmuch as it runs contrary to the judgment of the Supreme Court in the case of *Ajantha Industries*. Though there is no doubt that law is well settled that in respect of the transfer of income-tax cases from one Officer to another Officer, the procedure as laid down under the provisions of Section 127 of the Act is to be followed and opportunities as contemplated thereunder must be afforded to the assessee, failing which, the order of transfer is rendered a nullity. The above view has exceptions.

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5.7. If an assessee has acquiesced in the jurisdiction of the assessing officer to whom a case has been transferred under Section 127 of the Act, he cannot subsequently object to the jurisdiction of the Officer and seek to get the order of transfer quashed by invoking the jurisdiction of the Court under Article 32 or 226 of the Constitution of India.[10.]

5.8. In other words, where the assessee has acquiesced in the jurisdiction of the transferee-authority, all statutory rights which the assessee gets by virtue of Section 127 of the Act vanish and therefore, the assessee cannot assert that without affording opportunity as required under Section 127 of the Act, the case has been transferred.[11.] In this regard, it may be relevant to refer to the following decisions:

(i) Pannalal Binjraj v. Union of India, reported in *1956 SCC OnLine SC 34*:

> ***"42.*** *There is moreover another feature which is common to both these groups and it is that none of the petitioners raised any objection to their cases being transferred in the manner stated above and in fact*

10. Pannalal Binjraj vs. Union of India, (1957) 31 ITR 565, 594(SC); Ram Kumar Sitaram vs. Certificate Officer, (1963) 49 ITR 797, 800 (Cal)
11. Steel Engineering and Processing Works vs. Union of India, (2000) 243 ITR 721, 725-26, 726 (Pat)

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submitted to the jurisdiction of the Income Tax Officers to whom their cases had been transferred. It was only after our decision in Bidi Supply Co. v. Union of India [(1956) SCR 267] , was pronounced on March 20, 1956, that these petitioners woke up and asserted their alleged rights, the Amritsar group on April 20, 1956, and the Raichur group on November 5, 1956. If they acquiesced in the jurisdiction of the Income Tax Officers to whom their cases were transferred, they were certainly not entitled to invoke the jurisdiction of this Court under Article 32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this Court (Vide Halsbury's Laws of England, Vol. II, 3rd Edn., p. 140, para 265; Rex v. Tabrum, Ex parte Dash [(1907) 97 LT 551] ; O.A.O.K. Lakshmanan Chettiar v. Commissioner, Corporation of Madras and Chief Judge, Court of Small Causes, Madras [(1927) ILR 50 Mad 130]).

(emphasis supplied)

(ii) Steel Engineering and Processing Works v. Union of India, 1998 SCC OnLine Pat 815:

***"19.** This being so, the party having once acquiesced in the jurisdiction of the transferee court, all statutory rights which the assessee gets by virtue of section 127 of the, Act vanish and, therefore, the assessee cannot assert that without affording opportunity as required under section 127 of the Act, the case has been transferred. In this regard see Halsbury's Laws of England, volume II, third edition, page 140, pr. 265,*

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and also the case reported in O.A.O.K. Lakshmanan Chettiar v. Commissioner, Corporation of Madras, [1927] AIR 1927 Mad 130, which are referred to in the decision in the case of Pannalal Binjraj v. Union of India, [1957] 31 ITR 565 (SC). In the case of Pannalal Binjraj, [1957] 31 ITR 565, which is a Constitution Bench decision, the Supreme Court lays down the law to the effect that (head-note), "If an assessee has acquiesced in the jurisdiction of the Income-tax Officer to whom a case has been transferred, he cannot subsequently object to the jurisdiction of the officer and seek to get the order of transfer quashed by invoking the jurisdiction of the court under article 226 of the Constitution."

***17.** Thus, there is no doubt that law is well settled that in respect of the transfer of income-tax cases from one Income-tax Officer to another Income-tax Officer, the procedure as laid down under the provisions of section 127 of the Act is to be followed and opportunities as contemplated thereunder must be afforded to the assessed failing which, the order of transfer is rendered a nullity."*

(emphasis supplied)

5.9. In the case of *Shivabhai Khodabhai Patel vs. CIT, reported in (2000) 244 ITR 457,* from the facts, it was established that the order of transfer was passed and communicated to the assessee and he has permitted the assessing officer to whom the transfer has been made, to complete the assessment against which he has preferred an appeal. It was held that writ petition challenging the order of transfer was liable to be rejected.

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5.10. In the light of the above discussion it may be necessary to examine if there has been acquiescence on the part of the assessee in which event the non furnishing of reasons pales into insignificance. The above enquiry was apparently not made by the learned judge inasmuch as the learned judge was of the view that communication of reasons under Section 127 is not mandatory. It may also be required to be examined if the Respondents can take shelter under Section 292B of the Act which provides that no assessment or other proceedings shall be invalid or deemed to be invalid by reason of any mistake, defect or omission, if in substance and effect the assessment / proceeding is in conformity with or according to the intent of the Act.

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C. Whether assessments under Section 153A ought to be made only on the basis of the seized material and thus transfer of the seized material is a pre-condition to issuance of notice under Section 153A:

6. The learned Senior Advocate Mr.R.V.Easwar would challenge the notice under Section 153 A of the Act primarily on two grounds viz., finding of the learned judge that issuance of notice was mandatory once a search is made under Section 132 irrespective of whether seized materials were received by the assessing officer or even in the absence of incriminating material and non-compliance with Section 132 (9-A) of the Act. The sheet anchor of challenge before the learned Judge by the assessee to the notices under Section 153 A of the Act, were on the premise that the notices under Section 153A of the Act were not based on material found in the course of search. The above submission was made on the basis that while search concluded on 11.08.2019, notices were issued under Section 153A on 03.02.2020. However, the seized records were handed over by the search team to the Jurisdictional Assessing Officer only on 10.09.2020. It was submitted that the very fact that notices under Section 153A were issued by the authority even prior to being in possession of the seized material, which

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by itself would show that the assumption of jurisdiction under Section 153 A of the Act was without basis.

6.1. It was then contended by the learned Senior Advocate for the appellants that the records ought to be handed over within 60 days from the last of the authorisation executed for search in terms of Section 132 (9-A) of the Act. The learned Senior Advocate would place reliance on the following judgments:

i. CIT v. Kabul Chawla reported in (2015) SCC OnLine Del 115555

ii. Principal Commissioner of Income Tax Central -2 New Delhi v. Meeta Gutgutia Prop. M/s.Ferns 'N' Petals reported in (2017) SCC OnLine Del 8521

iii. Smrutisudha Nayak v. Union of India and others reported in (2021) SCC OnLine Ori 1784

iv. CIT v. Chetan Das reported in (2012) 254 CTR 392 Del

v. K.V.Krishnaswa naidu and Co. v. CIT reported in (1987) 166 ITR 244

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6.2. To the contrary, it was submitted by the learned Senior Standing counsel for the respondents that Section 153A of the Act, though titled as 'Assessment in the case of search or requisition', the section does not impose any pre-condition for the issuance of notices, including the necessity for incriminating materials found and seized in the course of search. Thus, the submission of the appellants that Section 153A notices can be issued only after receipt of all seized materials is misconceived. It was further submitted by the learned Senior Standing Counsel that once a search is initiated under Section 132 of the Act, the Assessing Officer is under a mandate to issue notice under Section 153 A of the Act, that for issuance of notices the assessing officer need not be in possession of any books/ documents / material (incriminating) and initiation of search would necessitate issuance of notice under Section 153 A of the Act. The reliance on the fourth proviso to Section 153 A of the Act is irrelevant at the stage of issuance of notice.

6.3. It was further submitted that the contention of the appellant on Section 132(9A) of the Act is misconceived. Section 132(9A) of the Act only provides for giving documents. The investigating officers are

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authorised as assessing officers as per Section 2 (7A) of the Act and can furnish / provide copies of documents at the request of the assessee. In view thereof, the 60 days prescribed under Section 132(9A) of the Act for handing over of documents is directory and failure to comply with the above requirement would not vitiate the search or assessment. That the handing over of the documents is to only enable the assessing officer for a speedy assessment and not meant for the benefit of the assessee. Reliance was placed on the following judgments:

i. Madhupuri Corporation v. DDIT (2002) 256 ITR 498 (Guj)

ii. Arti Gases v. DGIT (Inv.) (2001) 248 ITR 55 (Gujarat)

iii. Digvijay Chemicas Ltd., v. ACIT (2001) 248 ITR 381

iv. Sambhu Prasad Agarwal v. DIT (2002) 254 ITR 660 (Calcutta)

v. CIT v. Dr.C.Balakrishnan Nair (2006) 282 ITR 158 (Kerala)

vi. Dr.N.S.D.Raju v. DGIT (Inv.) (2006) 283 ITR 154 (Kerala)

vii. P.Murugesan v. DIT (Inv.) (2009) 222 CTR 619

viii. Agni Estates and Foundations P Ltd., v. Deputy Commissioner of Income Tax (2021) 434 ITR 79 (Madras)

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6.4. The learned Judge found that it was incumbent on the assessing officer to issue a notice under Section 153A of the Act to any person / entity searched irrespective of whether the seized materials were received or otherwise. The learned Judge thereafter proceeds to rely on the decision of *Kabul Chawla* while concluding that transfer of the seized material is not a condition precedent for the issuance of notice under Section 153A of the Act. The relevant portion of the judgment reads as under:

> *"105. The above conclusion supports the position that notice under Section 153A is to be mandatorily to be issued in the case of an assessee that has been searched (see sub-para (i) of paragraph 38 above). Neither Section 153A nor Section 153C provide for a time limit for the issuance of the notices and only limitation, for the completion of assessment under those sections, is set out under Section 153B.*
>
> .....
>
> *111. ..... I am thus unable to accept the argument of the petitioners to the effect that the transfer of the seized material is a pre-condition to the issuance of the notice under Section 153A as such a conclusion would tantamount to re-writing of the provision to read in such a condition, which is legally impermissible."*

6.5. We find that while the order of the learned judge is dated 20.10.2022, the Supreme Court had explained the scope of Section 153A of the Act in the case of *CIT v. Abhisar Buildwell (P) Ltd.,* reported in *(2024) 2*

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SCC 433 dated 24.02.2023, wherein the question as to whether in respect of completed assessments/unabated assessments, the jurisdiction of the assessing officer to make assessment is confined to incriminating material found during the course of search under Section 132 of the Act or requisition under Section 132-A of the Act or not i.e., whether any addition can be made by the assessing officer in absence of any incriminating material found during the course of search under Section 132 of the Act or requisition under Section 132-A of the 1961 Act was examined.

6.6. It was contended on the side of the Revenue before the Apex Court that once a search under Section 132 of the Act or requisition under Section 132-A of the Act, is made, notice has to be issued under Section 153-A of the 1961 Act, and thereafter the assessing officer has the jurisdiction to pass assessment orders and to assess the "total income" taking into consideration other material, though no incriminating material is found during the search even in respect of completed/unabated assessments. The Apex Court explained the scope of Section 153A of the Act in the case of *CIT v. Abhisar Buildwell (P) Ltd.,* reported in *(2024) 2 SCC 433* as under:

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*"**36.** In view of the above and for the reasons stated above, it is concluded as under:*

***36.1.** That in case of search under Section 132 or requisition under Section 132-A, the AO assumes the jurisdiction for block assessment under Section 153-A;*

***36.2.** All pending assessments/reassessments shall stand abated;*

***36.3.** In case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the "total income" taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*

***36.4.** In case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132-A of the 1961 Act. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved.*

***37.** The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals*

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and review petition preferred by the Revenue are hereby dismissed. No costs.

.....

40. *In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments. Therefore, the impugned judgment(s) and order(s) passed by the High Court taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee — M/s Kesarwani Zarda Bhandar, Sahson, Allahabad deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, no costs."*

6.7. A reading of the above judgment of the Apex Court would show that in case, any incriminating material is found in unabated / completed assessments, the assessing officer would assume jurisdiction to assess or reassess on the basis of such incriminating material. However, in case, no incriminating material is unearthed during the search, the assessing officer cannot assess or reassess taking into consideration other materials in respect of completed / unabated assessments. The order of the learned Judge insofar

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as it finds that even in the absence of seized material being handed over to the assessing officer, the assessing officer is under a mandate to issue a notice under Section 153A of the Act may have to be re-examined in the light of the law laid down by the Supreme Court in *Abhisar Buildwell* where a distinction is made between abated and unabated assessments and the need of incriminating material for assumption of jurisdiction to make the assessment or reassessment.

6.8. Since we are inclined to remand the matter for reconsideration on the issue whether possession of incriminating material is a *sine qua non* for issuance of notice under Section 153 A of the Act, we would think that certain aspects of the question raised in the context of Section 132 (9A) of the Act may overlap with the above issue. We are thus inclined to leave it open to both the parties to put forth their submissions with regard to Section 132 (9A) of the Act, as well.

D. Notices under Section 153C of the Act:

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7. The learned Senior Advocate Mr.Srinath Sridevan for the appellants in W.A.Nos.694 of 2023 and other cases would submit that the respondent authority had erred in invoking Section 153C of the Act, allegedly on the basis of material found in the course of search made on the noticees, as would be evident from the fact that the panchnamas have been drawn in their name and thus, the substratum for issuance of a notice under Section 153C of the Act does not exist, instead, notice, if any, could have been issued only in terms of Section 153A of the Act.

7.1. Secondly, seized material must relate to each of the assessment years for which notices under Section 153C of the Act ought to be issued and reliance was placed in this regard on the judgment of the Supreme Court in the case of *Sinhgad Technical Education Society,* reported in *2018 11 SCC 490*.

7.2. Mr.Velmurugan learned counsel appearing for the appellants in W.A.Nos.325 of 2023 and other cases, while adopting the arguments of Mr.Srinath Sridevan, would submit that separate satisfaction note must be prepared for each of the six assessment years.

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7.3. Mr.Karthik Lakshmanan, learned counsel for the appellants in W.A.Nos.318 of 2023 and other cases relying upon a recent judgment of the Delhi High Court in the case of *Saksham Commodities Ltd.,* in *W.P (c) 1459 of 2024* dated 09.04.2024 would reiterate that completed assessment could be interfered only if incriminating materials were unearthed and that it would be impermissible to reopen or reassess in relation to assessment years with respect to which the incriminating documents gathered did not relate while following the judgments in *Sinhgad Technical Educational Society* and *Abhisar Buildwell*.

7.4. To the contrary, the learned Senior Standing Counsel for the respondents would submit that on the basis of the plain language of Section 153C of the Act, issuance of notice for 6 years is mandatory subject only to recording of satisfaction by the officer that the seized material relate to a third party. That proper satisfaction note has been recorded in compliance with Section 153C of the Act.

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7.5. The learned Judge after extracting a sample satisfaction note in the case of *Anitha Bottles,* a sole proprietory concern of C.Mariappan, held that the sample satisfaction note extracted above is detailed and complies with the requisites of Section 153C of the Act.

7.6. We find that the learned Judge has erred in generalizing the challenge to the notices under Section 153C of the Act issued to 12 entities on the basis of a satisfaction note for a single entity nor has the learned judge applied the principles in *Sinhgad* reported in *(2018) 11 SCC 490* wherein it was held that seized materials must pertain to relevant assessment years in question. Instead, the learned Judge has chosen to pass an order rejecting the challenge to Section 153C made by Ramamoorthy Srithar, Srithar Sudha, Nandhini Transports Pvt. Ltd., Kandasamy Thirumoorthy, Thirumoorthy Kala, Manickam Karthikayen, Kaycee Distillers, Chandran Somasundaram, C.Mariappan, Shanmugakani Sivajothi, Somasundaram Rishi Sharaan and Leela Distillers on the basis of the notice issued to Anitha Bottles. It is trite law that assessments for each entity have to be made individually and there cannot be generalization. It is also trite law that each assessment year is a

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distinct unit even with regard to the very same assessee. Thus, generalization on the basis of a note issued to a different entity on the crucial aspect of existence of jurisdictional fact necessary to assume jurisdiction under Section 153C of the Act, vitiates the proceedings necessitating examination of the above aspects independently for each of the assessees / appellants.

E. Challenge to Provisional Attachments under Section 281B:

8. The provisional attachment passed during the pendency of assessments was challenged and the same was rejected by the learned judge with the following findings/observations:

> *"143. Though the parties would agree that there has been some extension of the orders passed originally, there is lack of clarity on the number of extensions and the periods that such extensions covered. Thus, and in light of the aforesaid ambiguity, I would merely reiterate the provisions of Section 281B. As no material has been placed before the Court to the effect that the extensions are contrary to statute, the submissions of the petitioners are rejected".*

8.1. The above observations would show that the learned Judge has rejected the challenge to the provisional attachments for want of clarity and absence of relevant materials being placed. In the light of the fact that we

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have already expressed our mind to remand the issue on several crucial aspects and this being incidental and the learned judge having rejected the challenge on the ground of lack of clarity and ambiguity, we think it appropriate to permit both the parties to raise contentions, if any, available on the aspect of provisional attachment before the learned Judge.

F. Challenge to notices under Section 143 (2) and orders under Section 143 (3) of the Act:

9. The learned Judge disposed of the above challenge by recording that "No arguments have been advanced by either party in regard to these writ petitions and in view of my decision above dismissing the challenge to notices under Sections 153A and 153C of the Act as well as the declaration sought challenging the search, there is no legal infirmity in the present impugned notices and orders of assessment and hence the same are confirmed."

9.1. Since the various aspects which were considered and with regard to which we have remanded the matter to the learned judge go to the root of

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jurisdiction and have a material bearing on the validity of the notices issued under Section 143(2) of the Act and orders of assessment under Section 143(3) of the Act, we leave it open to both the parties to raise the contentions before the learned judge even with regard to the validity of the notices and orders under Section 143(2) and 143 (3) of the Act respectively.

10. In the light of the above discussion, the order passed by the learned Judge in the writ petitions is set aside and the matter is remanded to the learned Judge for reconsideration afresh.

Accordingly, all these writ appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D., ACJ.) (M.S.Q., J.)
10.07.2024

Index : Yes/No
NC : Yes/No
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To:

1. The Principal Director of Income Tax,
   (Investigation)
   Income Tax Investigation Wing Building,
   New No.46, Old No.108, M.G.Road,
   Nungambakkam, Chennai 600 034.

2. The Deputy Director of Income Tax (Investigation),
   Unit 2(2), Chennai,
   Income Tax Investigation Wing Building,
   New No.46, Old No.108, M.G.Road,
   Nungambakkam, Chennai 600 034.

3. The Deputy Commissioner of Income Tax,
   Central Circle 2(1),
   Income Tax Investigation Wing Building,
   New No., Old No.108, M.G.Road,
   Nungambakkam, Chennai 600 034.

4. The Deputy Commmissioner of Income Tax,
   Central Circle 3(2),
   Income Tax Investigation Wing Building,
   New No.46, Old No.108, M.G.Road,
   Nungambakkam, Chennai 600 034.

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THE HON'BLE ACTING CHIEF JUSTICE
AND
MOHAMMED SHAFFIQ, J.

spp

W.A.Nos.2709 of 2022 etc. batch

10.07.2024

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