Delhi High Court Ajit Jain vs Union Of India & Ors. on 31 January, 2000 Equivalent citations: 2000 (2) ARBLR 264 Delhi, 84 (2000) DLT 1, 2000 (52) DRJ 645 Author: D Jain Bench: A Kumar, D Jain ORDER D.K. Jain, J. 1. Rule D.B. 2. Since a short point of law is involved and there is not much controversy on facts, with the consent of counsel for the parties, we proceed to decide the petition finally at this stage itself. 3. The petitioner, an individual and claiming himself to be the Managing Director of an incorporated company, impugnes in this petition under Article 226 of the Constitution of India, the legality and the validity of the authorisation dated 11th January, 1996, issued by Director of Income-tax (Inv), Chennai - respondent No. 4 herein, under Section 132(1) of the Income-tax Act, 1961 (for short "the Act"); the subsequent conduct of search by the Assistant Director of Income-Tax (Inv) - respondent No.5 herein, on the same date and finally the block assessment order, dated 31st January, 1997, passed under Section 158BC/144 of the Act by the Deputy Commissioner, Special Range 31, New Delhi - respondent No. 2 herein. 4. According to the petitioner, he and the company, of which he is the Managing Director, are regular assessees at Delhi with permanent account numbers; the company is carrying on business of imports in PU Synthetic Linings along with other items from Taiwan and Korea; on 7th January, 1996 the petitioner was informed by his customs clearing agent at Chennai that four consignments imported by his company had arrived at Chennai Port and sum of approximately Rs. 25 lakhs was required for payment of customs duty and allied expenses for getting the goods cleared from the Customs Department; at that point of time, in its current account with Corporation Bank, Mint Street Branch, Chennai, the company was having approximately Rs. 17 lakhs to its credit and, therefore, a further sum of Rs. 8.5 lakhs was required to be arranged for the aforesaid purpose; on 9th January, 1996, the petitioner went to Chennai with a sum of Rs. 8.60 lakhs, duly reflected in the company's cash book and stayed in Hotel Chola Sheraton, Chennai; the said money was to be deposited with the Bank for making a bank draft for payment of Customs duty on 12th January, 1996; while he was staying in the said hotel, a raid was conducted by the officers of the CBI on 11th January, 1996 and an amount of Rs. 8.5 lakhs was recovered from him; on the information of the CBI, respondents No. 4 & 5 arrived in the room and took into possession the said amount of Rs. 8.5. lakhs; the statement of the petitioner was recorded on oath by respondent No. 5 wherein, in answer to the question with regard to the source and the purpose for which the money was kept with him, he stated that the money was out of the sale proceeds fully recorded in the books of the company and he was carrying it because the same was to be deposited with SIB (Customs); the petitioner was summoned to appear before respondent No.5 on 12th January, 1996 with proof for the said amount having been reflected in the cash book, which he claims to have done by getting copies of cash book and ledger faxed from Delhi Office to respondent No. 4 showing that the money was reflected in the cash book; on 12th January, 1996, respondents No. 4 & 5 directed Assistant Director of Income-tax (Inv) New Delhi - respondent No. 3 herein, to conduct survey under Section 133-A of the Act on the company to ascertain whether the cash of Rs. 8.6. lakhs was

reflected in the accounts of the company; survey was conducted but no report was supplied to the petitioner; on 13th January, 1996, an order under Section 132(3) of the Act was passed by respondent No. 5 prohibiting the operation of the account of the company in Corporation Bank, Chennai; subsequently, the petitioner was summoned by respondent No. 3 to bring all the records of the company, which were produced on 16th June, 1996 and were retained by the said respondent. It is averred that the company filed its audited balance sheet with the Income-tax Department for the assessment year 1995-96 showing turn-over of Rs. 4.89 crores with a gross profit of Rs. 24.59 lakhs and was heading to achieve a turn-over of Rs. 6 crores during the previous year relevant to the assessment year 1996-97 but was put to an abrupt stop by the seizure of the company's assets by the respondents. Consequent upon the said search, respondent No. 2 proceeded to issue notice under Section 158-BC of the Act calling upon the petitioner, in his status as individual, to explain the source of said amount, of Rs. 8.5 lakhs, found in his possession at the time of search on 11th January, 1996. In response thereto, the petitioner filed the return in his individual capacity declaring nil income. Thereafter, the petitioner received the block assessment order passed by respondent No. 2 in respect of assessment years 1986-87 to 1996-97 dated 31st January, 1997 in the status of "individual" whereby a demand of Rs. 50,13,204/- was raised against the petitioner. 4A. The action of respondent No. 4 in issuing the authorisation under Section 132 of the Act and seizure of Rs. 8.5 lakhs is challenged on the ground that there was no "information" on record on the basis whereof respondent No. 4 could form the belief that the said amount recovered from the petitioner represented wholly or partly income which had not been or would not have been disclosed for the purpose of the Act, a condition precedent for exercise of power under Section 132(1) of the Act. The contention is that since the authorisation itself was illegal and void abinitio, all proceedings taken consequent thereto are also rendered illegal and void. In support, reliance is placed on a decision of this Court in the case of L.R. Gupta Vs. Union of India & Ors. (1992) 194 ITR 32. 5. In the common affidavit in opposition, filed on behalf of the respondents, two preliminary objections have been raised to the maintainability of the petition, namely, (i) that since the search and seizure was carried out by the Income-tax authorities at Chennai, this Court has no territorial jurisdiction and (ii) the petitioner has an efficacious alternative remedy against the block assessment order, passed on 31st January, 1997, by way of appeal to the Income-tax Appellate Tribunal, which, in fact, has already been availed of by the petitioner. On merits, it is stated that since the petitioner was unable to offer proper and reasonable explanation for the amount found in his possession, the respondents were within their jurisdiction to seize the said amount. In the reply affidavit it is not denied that survey was conducted under Section 133-A of the Act at the premises of the company and the books of account were scrutinised but it is not indicated whether the said amount of Rs. 8.6 lakhs, claimed to have been taken by the petitioner from Delhi to Chennai, was found reflected in the books of account or not. The contents of the survey report have not been disclosed. It is pointed out that the cash seized has now been adjusted against the demand

raised on account of the block assessment. 6. We have heard Mr. Mukul Rohtagi and Mr. Rajiv Nayyar, learned senior counsel for the petitioner and Mr. R.D. Jolly, learned senior standing counsel for the Income-tax Department. 7. It is submitted by learned senior counsel for the petitioner that a mere intimation by the CBI to the Income-tax authorities about recovery of cash from the petitioner could not constitute information within the meaning of Section 132(1) of the Act particularly when the petitioner had also stated on oath that the entire money found in his possession was reflected in the books of account of the company, a regular assessee at Delhi. It is asserted that there could be no reason for respondent No. 4 to form a belief that the petitioner was in possession of the money which represented his un-disclosed income. It is, thus, contended that none of the ingredients of Section 132(1)(c) of the Act, admittedly invoked against the petitioner, were made out and, therefore, the entire action under Section 132 of the Act was illegal. On the other hand, it is contended by Mr. Jolly that the information furnished by the CBI provided the foundation for the belief that the amount in question represented un-disclosed income of the petitioner and in any case, since the information was coming from the CBI, the action based on it was bond fide. 8. Section 132 of the Act clothes the Director General or the Chief Commissioner and some other officers, in circumstances mentioned therein, with the power to authorise entry into and search on any building, place etc., and seizure of any books of account, documents, money etc., found therein, and prescribes the procedure to be adopted consequent upon such seizures or acquisition. It also specifies the manner in which the documents and the money seized is to be dealt with. Section 132 of the Act has undergone various amendments. The provisions of Section 132(1)(c), relied upon by the respondents and material for our purpose, read as follows: "132(1) Where the Director General or Director or the Chief Commissioner or Commissioner or any such Joint Director or Joint Commissioner as may be empowered in this behalf by the Board, in consequence of information in his possession, has reason to believe that - (a) xxxxxxxxxxx (b) xxxxxxxxxx (c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property (which has not been, or would not be, disclosed) for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property), then:- (A) the Director General or Director or the Chief Commissioner or Commissioner, as the case may be, may authorise any Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer or (B) such Joint Director or Joint Commissioner as the case may be, may authorise any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer. (the officer so authorised in all cases being hereinafter referred to as the authorised officer) to (i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other document, money, bullion, jewellery or other valuable article or thing are kept: (ii) xxxxxxxxxxxxxxx (iia) xxxxxxxxxxxxxx (iii) seize any

books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search: (iv) xxxxxxxxxxxxxxxxxx (v) xxxxxxxxxxxxxxxxxxx" 9. Thus, for authorising action under Section 132, the conditions precedent are: (i) the information in the possession of the named authority; and (ii) in consequence of which he may have reason to believe that the person concerned is in possession of money, bullion etc. which represents, either wholly or partly, income which has not been or would not be disclosed for the purpose of the Act. If either of these conditions are missing or have not been adhered to, then power under section 132 cannot be invoked. Thus, the basis of exercise of power under Section 132(1) has to be formation of belief and the belief has to be formed on the basis of receipt of information by the authorising officer that the person is in possession of money etc. which represents un-disclosed income. "Information", in consequence of which the Director General or the Chief Commissioner etc., as the case may be, has to form his belief is not only to be authentic but capable of giving rise to the inference that a person is in possession of money etc. which has not been or would not be disclosed for the purpose of the Act. In other words, it must necessarily be linked with the ingredients mentioned in the Section. 10. In L.R. Gupta's case (supra), speaking for the Court, B.N. Kirpal, J (as his Lordship then was) explained the scope of the expression "information" as under: "The expression"information" must be something more than a mere rumour or a gossip or a hunch. There must be some material which can be regarded as information which must exist on the file on the basis of which the authorising officer can have reason to believe that action under section 132 is called for any of the reasons mentioned in clauses (a), (b) or (c). When the action of issuance of an authorisation under Section 132 is challenged in a court, it will be open to the petitioner to contend that, on the facts or information disclosed, no person could have come to the conclusion that action under Section 132 was called for. The opinion which has to be formed is subjective and, therefore, the jurisdiction of the court to interfere is very limited. A court will not act as an appellate authority and examine meticulously the information in order to decide for itself as to whether action under section 132 is called for. But the court would be acting within its jurisdiction in seeing whether the act of issuance of an authorisation under section 132 is arbitrary or mala fide or whether the satisfaction which is recorded is such which shows lack of application of mind of the appropriate authority. The reason to believe must be tangible in law and if the information or the reason has no nexus with the belief or there is no material or tangible information for the formation of the belief, then, in such a case, action taken under section 132 would be regarded as bad in law". 11. By now it is well settled that while the sufficiency or otherwise of the information cannot be examined by the court in writ jurisdiction, the existence of information and its relevance to the formation of the belief is open to judicial scrutiny because it is the foundation of the condition precedent for exercise of a serious power of search of a private property or person, to prevent violation of privacy of a citizen. In Balwant Singh & Ors. Vs. R.D. Shah, Director of Inspection, Income Tax New Delhi & Ors. (1969) 71 ITR 550, a Division Bench of this Court, while reiterating that the High Court cannot test

the adequacy of the grounds leading to the satisfaction recorded, under Section 132 of the Act, observed that if the grounds on which the belief is founded are non-existent or are irrelevant or are such on which no reasonable person can come to that belief, the exercise of power under the said Section would be bad; short of that, the Court cannot interfere with the belief bona fide arrived at by the Director of Inspection. But the Court could examine whether the reasons for the belief have a rational connection or relevant bearing to the formation of the belief and search warrant could not be issued merely with a view to making a roving or fishing enquiry. 12. The expression 'reason to believe' has been explained in various decisions by the Apex Court and High Courts while dealing with Sections 132 and 148 of the Act. It has been held that the word"reason to believe" means that a reasonable man, under the circumstances, would form a belief which will impel him to take action under the law. The formation of opinion has to be in good faith and not on mere presence. For the purpose of Section 132 of the Act, there has to be a rational connection between the information or material and the belief about un-disclosed income, which has not been and is not likely to be disclosed by the person concerned. 13. It is in the light of the above principles of law, that we take up the question whether the intimation given by the CBI to respondent No. 5 would constitute "information" and could it be said to be relevant for formation of the belief that the money found in the possession of the petitioner had not been or would not be disclosed for the purpose of the Act. We called for the file containing the reasons recorded and the order passed by respondent No. 4 authorising the search in the room occupied by the petitioner. A Xerox copy of the file containing the information and the orders passed by the said respondent has also been placed on record. We are constrained to observe that action under Section 132 in the instant case on the basis of material on record has left much to be desired. The file starts with a note dated 11th January, 1996 by the ADI, Unit IV(2) to the effect that he had received information from the Superintendent, CBI that the petitioner, staying in hotel Chola Sheraton, had been interrogated in connection with some criminal case being investigated by the CBI and that cash of Rs. 8.5 lakhs was found in his possession, which was un-disclosed. The note records that "considering the circumstances, this is the case fit for action, under Section 132 of the Income-tax. Warrant of authorisation to search the person may be issued."The note was submitted to the Additional Director, Unit IV, who forwarded the same to the Director of Incometax (Inv) with his recommendation that "in the above circumstances explained by the ADIT" warrant of authorisation may be issued. On this recommendation, the Director of Income-tax passed the following order: "I have gone through the note above. I agree that action under Section 132 of the IT Act is necessary in this case. Authorisation issued accordingly. Sd/- 11.1.1996" We have no hesitation in holding that on the basis of the aforenoted information, without anything more, respondent No. 4 - a Director of Income-tax, incharge of investigations, as a reasonable person, could not entertain a belief that the said amount in the possession of the petitioner represented his un-disclosed income which had not been and would not be disclosed by him for the purposes of the Act. The information provided by

the CBI was very general in nature. The mere fact that the petitioner was in possession of the said amount it could not straightaway lead to the inference that it was his un-disclosed income. 14. It would appear, as noticed above, that in his statement recorded by respondent No. 5 on the spot, in answer to the question about the source of the said amount, the petitioner stated on oath that he had brought this money with him from Delhi which was fully reflected in the books of account of his company. He also explained the urgency for carrying this amount with him. The petitioner pleaded with the officer not to seize the cash and permit him to deposit the same with the Customs authorities on 12th January, 1996 in order to avoid demurrage, detention charges and penalties but apparently his request was turned down and the cash was seized. It is also pertinent to note, as admitted in the reply affidavit of the respondents that on the directions of respondents No. 4 & 5 from Chennai, a survey was also conducted under Section 133-A of the Act on the company by the Assistant Director of Income-tax(Inv), New Delhi to verify whether the cash of Rs. 8.6 lakhs was reflected in the accounts of the company, but, for the reasons best known to the respondents, the outcome of the action has not been disclosed. It can, thus, safely be assumed that nothing adverse was noticed in the books of account. The normal presumption is that the cash was duly reflected in the books of account. Be that as it may, the intimation simplicitor by the CBI that the money was found in possession of the petitioner, which, according to the CBI, was un-disclosed, in our view, without something more, did not constitute information within the meaning of Section 132 so as to induce a belief that the cash represented the petitioner's income which has not been or would not be disclosed. A bare intimation by the police or for that matter by any person, without something more, cannot be considered sufficient for action under Section 132 of the Act, for it would be giving naked powers to the authorities to order search against any person and prone to be abused. This cannot be permitted in a society governed by rule of law. 15. Even assuming that the said amount was not reflected in the books of account of the company, as claimed by the petitioner, the mere possession of the said amount by the petitioner could hardly be said to constitute information which could be treated as sufficient by a reasonable person, leading to an inference that it was the income which had not been or would not have been disclosed by him for the purposes of the Act, particularly when the petitioner as well the company, of which he was claiming to be the Managing Director, were regular assesses with the Income Tax Department. We do not find any substance in the argument of learned counsel for the respondents that if the said money had not been seized, the Department would not have ever realised it. We are afraid, this is not the object and purpose of Section 132 of the Act. We, therefore, hold that the condition precedent for the exercise of power under Section 132 was utterly lacking in the present case and authorisation issued by respondent No. 4 and the consequent action of search and seizure of the said amount was without jurisdiction. 16. We now come to the second prayer of the petitioner with regard to the legality of the block assessment order dated 31st January, 1997, issued under Section 158-BC/144 of the Act. Chapter XIV-B was inserted by the Finance Act, 1995 with effect from

1st July, 1995 laying down special procedure for assessment of search cases. It deals with assessment of a block period as defined in Clause (a) of Section 158-B, being a period of previous years relevant to ten assessment years preceding the previous year in which the search was conducted under Section 132 of the Act. It provides that in cases where search is initiated under Section 132 in case of any person after 30th June, 1995, the Assessing Officer is required to proceed to assess the un-disclosed income in accordance with the provisions of the said Chapter and the total un-disclosed income relevant to the block period has to be charged to tax at the rates specified in Section 113 as to income of the block period irrespective of the previous year or years to which such income relates and irrespective of the fact whether regular assessment for any one or more of the relevant assessment years is pending or not, as provided under Section 159-BA of the Act. 17. Since search in the present case had taken place on 11th January, 1996, in accordance with the said provisions, an ex parte block assessment for the assessment years 1986-87 to 1996-97 was made on 31st January, 1997, creating a total demand of Rs. 50,13,204/- on the petitioner in his status as individual. As the title of the said Chapter suggests these are special provisions for assessment of search cases and, therefore, a search under Section 132 is a pre-requisite for invoking the provisions of the said Chapter. It is axiomatic that search under Section 132, as contemplated in the Chapter has to be a valid search. An illegal search is no search and as a necessary corollary in such a case Chapter XIV-B would have no application. Since, in the instant case, we have come to the conclusion that the search conducted on 11th January, 1996 was without jurisdiction and was thus void ab initio, the imminent consequence would be that the provisions of Chapter XIV-B cannot be invoked against the petitioner, pursuant to the said search of his room at Chennai. Consequently, the block assessment order dated 31st January, 1997 cannot be sustained. We accordingly quash the same. 18. Before parting with the case we may also deal with the aforenoted two preliminary objections raised by the respondents with regard to the territorial jurisdiction of this Court and the availability of alternative remedy to the petitioner of appeal to the Income-tax Appellate Tribunal against the block assessment. As regards the first objection, the question to be considered is whether in the instant case any cause of action, wholly or in part, has arisen within the territorial jurisdiction of this Court, for that if the cause of action arises within the jurisdiction of this Court, the writ issued by the Court can extend and run beyond its territorial jurisdiction. Explaining the expression "cause of action" within the meaning of Article 226 of the Constitution, in State of Rajasthan & Ors. Vs. M/s. Swaika Properties & Anr. , the Supreme Court held that the cause of action is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief. In the instant case, we are of the view that the petitioner being a regular assessee in New Delhi; survey operation under Section 133-A of the Act having been conducted by the authorities at Delhi and the entire action of search ultimately culminating in the block assessment under Chapter XIV-B by the Assessing Officer based in New Delhi, not only a part of cause of action but substantial cause of action arose within the territorial jurisdiction of this Court. Accordingly we reject the

objection. 19. The availability of an alternative remedy is not an absolute bar to the entertainment of a petition under Article 226 of the Constitution, though on account of availability of statutory remedies Courts normally do not entertain the writ petitions but where an action is wholly without jurisdiction and results in the infringement of any fundamental right, the plea of alternative remedy is of no avail. We feel that the present case does fall in that category. 20. In view of the foregoing discussion, the impugned authorisation issued by respondent No. 4 under Section 132 and all further actions/proceedings in consequence thereof, including the block assessment are quashed and the rule is made absolute. The seizure of Rs. 8.5 lakhs on 11th January, 1996 being contrary to law, the respondents are directed to refund the same to the petitioner within four weeks from today with interest @ 12% per annum on the said amount from the date of its seizure to the date of actual refund. 21. We, however, make it clear that if otherwise permissible in law, this judgment will not preclude the respondents from taking fresh appropriate proceedings to bring to tax any income in respect of any of the assessment years covered by the block assessment order dated 31st January, 1997. 22. The petitioner will be entitled to costs, quantified at Rs. 5,000/-.