

GAHC010026892021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/969/2021

PAWAN KUMAR GARG
S/O KEDAR NATH AGARWAL, R/O UNIQUE HEIGHTS, ROOM NO. 304, 3RD
FLOOR, OPP BSNL OFFICE, WIRELESS, RUKMANI PATH, DISPUR, ASSAM
781006

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF
FINANCE, DEPTT. OF REVENUE, ROOM NO. 46, NORTH BLOCK, NEW
DELHI 110001

2:THE PRINCIPAL DIRECTOR OF INCOME TAX (INVESTIGATION)
4TH FLOOR
NEW AAYAKAR BHAWAN
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI 781005

3:THE DEPUTY DIRECTOR OF INCOME TAX (INVESTIGATION)
UNIT-2(3)
DIBRUGARH 786008

4:THE ASSTT. DIRECTOR OF INCOME TAX (I AND CI)
U-2
AAYAKAR BHAWAN
CHRISTIAN BASTI
GUWAHATI 781005

5:THE COMMISSIONER OF INCOME TAX

AAYAKAR BHAWAN

CHRISTIAN BASTI
GUWAHATI 78100

Advocate for the Petitioner : DR. A SARAF

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 08-05-2024

JUDGMENT & ORDER (CAV)

Heard Dr. A. Saraf, learned Senior Counsel assisted by Mr. P.K. Bora, learned counsel for the petitioner and Mr. S. C. Keyal, learned Standing Counsel for the Income Tax Department, Government of India appearing for all the respondents.

2. The present writ petition has been filed by the petitioner challenging the illegal search and seizure conducted at the residential premises of the petitioner on 02.12.2020 and the impugned notices dated 29.12.2020, 05.01.2021, 21.01.2021 and 28.01.2021, issued by the respondent No. 3, on the ground that the same is absolutely illegal and without jurisdiction and in violation of the mandatory provisions of the Income Tax Act, 1961(herein after referred as 'the Act')

3. The facts of the case is that the petitioner is an assessee under the Income Tax Act, 1961 and is regularly filing income tax returns and discharging tax liabilities by paying income tax and TDS. A

search and seizure operation was conducted by the Additional Director of Income tax (Investigation) and his team at the residential premises of the petitioner on 4-12-2020 on the basis of the authorization dated 4-12-2020 issued by the Principle Director of Income Tax (Investigation) dated 4-12-2020. A survey operation was also conducted at the coal depot of the petitioner on 4-12-2020. During the search operation cash amounting to Rs.2,69,920/-, jewellery amounting to Rs.10,44,695 was found. Inventory of Bank accounts found was prepared which related to the petitioner and his family members and a restraint order was passed as regard to book accounts. Some loose paper, notes books and data of cell phone and laptop was also seized. Restraint order under Section 132(3) of the Act was passed in respect of two bank lockers on the date of seizure i.e. on 4-12-2020. The said lockers were opened on 21-1-2021 and jewellery contained in the lockers was not seized and the search was finally concluded.

4. Thereafter, a notice was issued by the Deputy Director of Income Tax (Investigation), Respondent No.3, being notice dated 29-12-2020 in the purported exercise of powers under Section 131 (1A) of the Income Tax Act 1961 directing the petitioner to attend his office on 6-1-2021 to give evidence and/or produce either personally or through an authorized representative, the books of accounts and other documents specified in the said notice i.e. audit report, profit and loss account, balance sheet for the financial years 2011-12 till date and other documents and papers.

5. The petitioner by its reply dated 4-1-2021 to the notice dated 29-12-2020 submitted that since search has already been conducted, no notice u/s 132(1A) of the Income Tax Act can be issued to the petitioner. The petitioner also submitted that it was practically not possible on the part of the petitioner to carry such huge books of accounts for a period of ten years to Dibrugarh and that the petitioner was ready to produce the available books of account at Guwahati.

6. The respondent no.3 however vide notice dated 05.01.2021 rejected the contentions of the petitioner made in its letter dated 4-1-2021 to the effect that issuance of the notice u/s 131(1A) of the Income Tax Act 1961 was not within the jurisdiction of the Respondent No.3 and directed the petitioner to send the soft copy of the books of account and others documents through email.

7. In reply to the notice dated 5-1-2021 issued by the respondent no.3, the petitioner sent a reply vide letter dated 16-1- 2021 by making the submission that the decision in the case of ***Classic Builders & Developers v. Union of India 251 ITR 492 (MP)*** as referred to its reply dated 05.01.2021 was related to a survey conducted and was not related to a case where search had already been conducted. The petitioner in support of its contention that issuance of the notice u/s 131(1A) of the Act after the search was illegal relied on a decision of the Allahabad High Court in ***Anita Sahani v. DIT (Investigation) 266 ITR 597.***

8. The respondent no. 3 however without appreciating the

provisions of Section 131(1A) of the Act in the correct perspective, issued another notice dated 21-1-2021 in the purported exercise of powers u/s 131(1A) of the Act directing the petitioner to appear before the said authority on 25-1-2021 to give and/or produce either personally or through an authorized representative the books and account and other documents specified in the said notice.

9. The petitioner again vide reply dated 25-1-2021 submitted that since as per Rule 6F and 6F(5) of the Income Tax Rules, the prescribed period of maintaining and keeping the books of account is six years from the end of Assessment Years, the books of account for Assessment Years 2011-12 were not available with the petitioner. The petitioner also informed the respondent no.3 that the petitioner had already produced the books of account for the Assessment Years 2013- 14 to 2014-15, which though was not legally required. The petitioner also provided the data for the financial year 2012-13 to financial year 2020-2021.

10. The respondent no.3, again, issued another notice dated 28.01.2021 in the purported exercise of powers u/s 131(1A) of the Act directing the petitioner to appear before the said authority on 02.02.2021 to give and/or produce either personally or through an authorized representative the books and account and other documents specified in the said notice.

11. Aggrieved by the action of the respondent authority in conducting the search and seizure without preceded by Notice under Section 131(1A) of the Act, the petitioner filed the present writ

petition under Article 226 of the Constitution of India challenging the issuance of the notices post search and seizure, under Section 131(1A) of the Act.

12. At the time of hearing of the writ petition, the petitioner has confined its arguments on the legality and validity of the notice issued under Section 131(1A) of the Act.

13. Dr. A. Saraf, learned Senior Counsel for the petitioner submits that that the impugned notices issued by respondent no.3 under Section 131 (1A) of the Act are illegal and without jurisdiction inasmuch as Section 131 (1A) of the Act empowers the specific authority referred to therein to exercise the power under Section 131 (1) notwithstanding the fact that no proceeding are pending before such authority and the summons so issued could be for the purpose of conducting an enquiry or investigation thereto provided he has reason to suspect that any income has been concealed or is likely to be concealed by a person or class of persons within his jurisdiction. If there is any reason to suspect concealment of income by any class of persons within his jurisdiction then he can exercise the power vested in him under Section 131 of the Act.

14. He further submits that the summons under Section 131(1A) of the Act have been assailed in this petition on the ground that as a search and seizure had already been taken place under Section 132(1)(i to v) of the Act, a further summons under Section 131(1A) of the Act would not be maintainable inasmuch as, Section 131(1A)

of the Act provides that if any of the authorities mentioned therein has reason to suspect that any income has been concealed or likely to be concealed, he may before taking action under Section 132(1)(i to v), may invoke the power under Section 131(1) for making any enquiry or investigation relating thereof.

15. He further submits that the pre-condition of invoking the power of Section 131(1) under Section 131(1A) of the Act for making an enquiry or investigation in respect of there being any reason to suspect that any income has been concealed or likely to be concealed is that such power can be invoked only before the authority concerned had taken any action under Section 132(1)(i to v) of the Income Tax Act. He further submits that as in the instant case, the action under Section 132(1)(i to v) had already been taken, therefore, the condition precedent for invoking Section 131(1A) is absent in the present case.

16. Mr. S. C. Keyal, learned Standing Counsel for the Income Tax Department, Government of India, on the other hand, submits that Section 131(1A) of the Act was introduced w.e.f. 1-10-1975 to empower officers of the Investigation Wing, to exercise the power mentioned in Section 131(1) of the Act. He further submits that Section 131(1A) of the Act was introduced to extend similar powers to an authorized Officer within the meaning of sub-section (1) of Section 132 before he takes search and seizure action under clauses (i) to (v) of that sub-section. He further submits that notice under Section 131(1A) confers powers on the authorities as mentioned

under Section 131 (1), if he has reason to suspect that any income has been concealed or is likely to be conceded.

17. He further submits that it is only an enabling power and does not in any way affect the search and seizure operations carried out under Section 132 of the Act. He further submits that a recent trend is that even after conclusion of the search, the Authorized Officer keep summoning the person searched under Section 131 (1A) to conduct a 'post-search inquiry'.

18. He further submits that the powers under Section 131(1) of the Act is exercised for the proper administration of tax laws and for obtaining further elucidation, on information available with the authorities, from the assessee concerned. It enables the authorities to conduct inquiry and collect evidences in support of their contentions. It also helps to bring to light the correct facts and circumstances, for the purpose of carrying out proceedings under the Act and is treated to be equally fair to the Department as well as the assessee. He further submits that Section 131 is comprised of two complementary sub-sections relating to two different classes of officers. Whereas Section 131(1) empowers the jurisdictional Assessing Officer to issue summons, Section 131(1A) empowers the officers of the Investigation Wing viz. Assistant Director, Deputy Director or the Director of Income-Tax (Investigation).

19. He further submits that another point of distinction is that powers u/s 131(1) of the Act can be exercised by the Assessing Officer only when any proceedings are pending before him in

relation to that assessee; whereas power under Section 131(1A) of the Act can be exercised notwithstanding that no proceeding is pending before the Investigating Officers. In other words, Section 131(1A) can also be invoked for the purposes of a preliminary inquiry before carrying out the search operations. He further submits that issuance of notices under Section 131 (1A) post search would not, in any manner, render proceedings under Section 132 invalid, if they were otherwise initiated pursuant to valid authorization issued after recording satisfaction on basis of material available on record. He further submits that provisions of Section 131(1A) do not require that before carrying out search proceedings under Section 132, a notice is required to be given to assessee.

20. He further submits that it is not required under the provision of Section 131(1A) that before proceeding with the provision of Section 132 a notice is required to be given to the assessee and it cannot be because the provision of Section 132 provides power of search and seizure and if the notice would be given, then the whole purpose of conducting search and seizure will vanish, as because the assessee after knowing the fact that a notice for initiating proceeding under Section 132 will be given, he will destroy all the documents making the proceeding a futile exercise. In support of the aforesaid submission, he relies upon the following judgments;

I. *Liberty Marine Syndicate (P) Ltd. v. PCIT, Cuttack (2017) 394 ITR 277:77 taxmann.com 52 (Orissa High Court.)*

II. *Classic Builders & Developers V Union of India*

(2001) 251 ITR 492 (MP High Court)

III. Arti Gases Vs DIT (Inv.) (2001) 248 ITR 055

(Gujrat High Court) paragraph 16

IV. Dr. Roop Vs Commissioner Income Tax(2012) 254

CTR 14(High Court of Allahabad)

V. Nessa Leisure Ltd Vs Union of India (2011) 245 CTR

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VI. Emaar Alloys Pvt Ltd Vs DGIT (2016) 288 CTR 413

paragraph 9(v).

21. Heard the rival submissions made at the bar and perused the materials available on records.

22. The question that falls for determination is as whether notice under Section 131 (1A) of the Act to the assessee is an essential condition to be fulfilled before the search and seizure is conducted.

23. Section 131 (1A) is reproduced hereunder for ready reference.

”131. Power regarding discovery, production of evidence, etc.-

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

- (a) discovery and inspection;*
- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;*
- (c) compelling the production of books of account and other documents; and*
- (d) issuing commissions.*

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

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

(3) Subject to any rules made in this behalf, any authority

referred to in sub-section (1) [or sub-section (1A) or sub-section (2) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

Provided that an Assessing Officer or an Assistant Director or Deputy Director shall not—

(a) impound any books of account or other documents without recording his reasons for so doing, or

(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefore, as the case may be.”

24. Section 132 (1) of the said Act is also reproduced hereunder for ready reference;

“132. Search and seizure.— (1) *Where the [Principal Director General or] Director General or [Principal Director or] Director or the [Principal Chief Commissioner or] Chief Commissioner or [Principal 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 (11 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, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other

documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(b) any person to whom a 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 (11 of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property [which has not been, or would not be, disclosed] for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

then,—

(A) the [[Principal Director General or] Director General or [Principal Director or] Director] or the [[Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner], as the case may be, may authorise any [Additional Director or Additional Commissioner or] [Joint Director], [Joint Commissioner, [Assistant Director [or Deputy Director]], [Assistant Commissioner [[or Deputy Commissioner] or Income-tax Officer], or

(B) such [Additional Director or Additional Commissioner or] [Joint Director], or [Joint Commissioner], as the case may be, may authorise any [Assistant Director [or Deputy Director]], [Assistant Commissioner [or Deputy Commissioner] or Income-tax Officer],

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

(i) enter and search any [building, place, vessel, vehicle or aircraft] where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

[(iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;]

[(iib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;]

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

[Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;

(iv) place marks of identification on any books of

account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:

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

[Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii):]

[Provided also that nothing contained in the second

proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business:]

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

[Explanation.—For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.]”

25. From a plain reading of Section 131 (1A) of the Act it is crystal clear that the power under Section 131(1A) cannot be said to be an independent power in itself but is the power for the purpose of making enquiry and investigation relating to any income which has been concealed or is likely to be concealed by any person or class of persons, equipping him with the powers regarding discovery, production of evidence, etc., as provided under Section 131(1) of the Act. The expression ***'before he, i.e., Authorized Officer, takes action under clauses (i) to (v) of section 132(1) of the Act'*** is material and relevant, that is the power regarding discovery, production, etc., as provided under Section 131(1) can be exercised by the Authorized Officer before exercise of the power of search and seizure mentioned in clause (i) to (v) of Section 132(1) of the Act.

26. A bare perusal of sub-section (1A) of Section 131 of the Act mandates that notice under section 131(1A) is issued before the

authority, takes action under clauses (i) to (v) of Section 132(1) of the Act. Pertinent that the designation of officers for exercise of powers are different as mentioned in Section 131 as compared to Section 131(1A) of the Act. The designation as mentioned in Section 131 are of the Officers of Assessment Wing who makes assessment and those mentioned in Section 131(1A) are of the Investigation Wing who carries out search & survey and as such both the sections operates in different fields.

27. The Madhya Pradesh High Court in the case of **Arjun Singh vs. Assistant Director of Income Tax [(2000)246 ITR 363]** while examining the provisions of Section 131(1A) and 132 held as under:

"But, under sub-s. (1A) of s. 131 of the Act, the statutory officer or the Director General, or Director or Deputy Director empowered by the Board or Assistant Director or the authorized officer referred to in sub-s. (1) of s. 132 of the Act, before he takes action under clauses (i) to (v) of that sub-section, if he has reason to suspect that any income has been concealed or is likely to be concealed by any person or class of persons within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-s. (1) on the income-tax authorities referred to in that sub-s, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.

The officers, i.e., the officers mentioned in sub-s. (1) of s. 131 are also possessed of the power of the

civil Court regarding discovery, production of evidence, etc., in relation to the judicial proceedings before them in regard to the assessment and there was no question of repetition of those Officers performing judicial function in sub-s. (1A) of s. 131 of the Act, but the power under s. 131(1A), is exercised notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income tax authority, for the purpose of the items enumerated in clauses (1) to (v) mentioned therein. But under the power of such search and seizure under s. 132 of the Act, the concerned authority cannot exercise power as enumerated in clauses (a), (b), (c) and (d) of s. 131(1) of the Act, on the basis of the reasons to believe consequent upon information in his possession in regard to the undisclosed income or property in regard to the income or property which is concealed or is likely to be concealed. Sub-s. (1A) of s. 131 of the Act empowers him or makes him competent for exercise of power, in his jurisdiction, as conferred under sub-s. (1) of s. 131 on the authorities mentioned under sub-s. (1) for proceeding against such person or class of persons for making enquiry or investigation relating to concealed income provided he has reason to suspect."

28. The Kerala High Court in the case of ***Amway India Enterprises vs. Union of India & Anr [(2003) 262 ITR 428]*** while examining the provisions of Section 131(1A) of the Act in paragraph 5 and 7 held as under:

"(5) On a reading of section 131(1A) it can be seen that various officers referred to therein are vested with powers

*as are vested in the civil court while trying a suit in respect of discovery and inspection, enforcing the attendance of any person and examining him on oath, compelling the production of books of account and other documents and issuing summons. As per sub-section (1A) if the Director-General or Director or Joint Director or Assistant Director or Deputy Director or the authorized officer referred to in sub-section (1) of section 132 **before he takes action under clauses (i) to (v) of that sub-section, has** reason to suspect that any income has been concealed by any person or any class of persons within his jurisdiction then, for the purpose of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority"*

*(7) Thus, **before any action is proceeded to be taken under section 132** if the officer mentioned under sub-section (1A) of section 131 has reason to suspect that any income has been concealed or likely to be concealed by any person or class of persons then, for the purpose of such enquiry or investigation, it will be open for him to exercise the powers under section 131 notwithstanding that no proceedings with respect to such person are pending before him".*

29. The Allahabad High Court in the case of **Dr. Mrs. Anita Sahai vs. Director of Income-Tax [(2004) 266 ITR 597]** while examining the provisions of Section 131(1A) of the Act in paragraph 27 held as under:

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

30. In view of the above, it is absolutely clear that before making of a search, a notice under Section 131(1A) of the Act has to be issued and since the taxing provisions of the statutes are to be interpreted strictly, the issuance of the notice under Section 131(1A) of the Act in the instant case after conducting of the search is absolutely illegal & without jurisdiction.

TAXING STATUTES ARE TO BE INTERPRETED STRICTLY:

31. It is a well settled law that taxing statutes are to be interpreted strictly and while interpreting the taxing statute one must have argued to the strict letter of law and not merely to the spirit of law and one cannot be taxed by inference or by analogy. In ***Cape Brandy Syndicate V. Commissioner of Inland Revenue, was expressed thus by Rowlatt, J: [1921] 1 K.B. 64*** held as under:

"In a taxing Act one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

32. The Apex Court in ***M/s Murarilal Mahabir Prasad & Ors. Vs. Shri B.R. Vad & Ors***, reported in **(1975) 2 SSC 736** has held that the true implication of the principle that a taxing statute must fairly extended beyond the legitimate field of its operation.

33. In ***M/s Murarilal Mahabir Prasad & Ors. (supra)*** the Apex Court further held that if the Revenue seeking to tax cannot bring the subject within the letter of law, the subject is free no matter that such a construction may cause serious prejudice to the Revenue. In other words, though what is called equitable construction may be admissible in relation to other statutes or other provisions of a taxing statute, such a construction is not admissible in the interpretation of a charging or taxing provision of a taxing statute.

34. In the ***C.I.T., Madras V. Ajax Products Ltd*** reported in ***AIR 1965 SC 1358*** it was held that the subject is not to be taxed unless the charging provision clearly imposes the obligation.

35. In ***Srimati Tarulata Shyam & Ors. Vs. Commissioner of Income-Tax, West Bengal*** reported in **(1977) 3 SCC 305** the Apex Court held as under:

"35. To us, there appears no justification to depart from the normal rule of construction according to which the

intention of the legislature is primarily to be gathered from the words used in the statute. It will be well to recall the words of Rowlatt, J., in Cape Brandy Syndicate v. IRC [(1921) 1 KB 64 at p 71] at p. 71, that "in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used". Once it is shown that the case of the assessee comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be".

36. In ***M/s. Polestar Electronic (Pvt) Ltd. Vs. Additional Commissioner, Sales Tax & Anr*** reported in **(1978) 1 SCC 636** in paragraph 12 held as under:

"12. it is well-settled rule of interpretation that in construing a taxing statute "one must have regard to the strict letter of the law and not merely to spirit of the statute or the substance of the law...."

37. The aforesaid law again reiterated in the case of ***H.H. Lakshmi Bai & Anr. Vs. Commissioner of Wealth Tax & Ors,*** reported in **(1994) 2 SCC 534** at paragraph 10 the Apex Court held that taxation statute in particular has to be strictly construed and that there is no equity in a taxing provision. In ***Federation of A.P. Chambers of Commerce & Industry and Ors. Vs. State of A.P. and Ors,*** reported in **(2000) 6 SCC 550** at paragraph 7, the Apex Court held that it is trite law that a taxing statute has to be strictly construed and nothing can be read into it. In ***Ajmera Housing***

Corporation &Anr. Vs. Commissioner of Income Tax, reported in **(2010) 8 SCC 739** at paragraph 36 it was held as under:

"36. It is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment".

AMBIGUITY IN THE PROVISIONS - BENEFIT MUST GO TO THE TAX PAYER:

38. It is a settled law that in case of an ambiguity in the taxing provision, the benefit of the same should go to the tax payer. The Apex Court in **M/s Murarilal Mahabir Prasad &Ors. (supra)** in paragraph 28 held as under:

"28. If the statute contains a lacuna or a loop-hole, it is not the function of the court to plug it by a strained construction in reference to the supposed intention of the Legislature. The Legislature must then step in to resolve the ambiguity and so long as it does not do so, the tax payer will get the benefit of that ambiguity. But, equally, courts ought not to be astute to hunt out ambiguities by an unnatural construction of a taxing section....."

39. In **M/s. Polestar Electronic (Pvt) Ltd. (supra)** the Apex Court held at paragraph 12 that the words of a taxing statute must never be stretched against a tax-payer and if the legislature has failed to clarify its meaning by use of appropriate language, the benefit must go to the tax- payer. The Apex Court held that even if there is any doubt as to interpretation, it must be resolved in favor

of the subject.

40. In view of the aforesaid decisions of the Apex Court, it is manifestly apparent that the taxing provisions has to be interpreted strictly, and on the strict interpretation of Section 131(1A) of the Act, it is clear that before making of the search, a notice under Section 131(1A) is mandatorily required to be issued. When the legislature in clear words under Section 131(1A) of the Act has provided that notice has to be issued under Section 131(1A) prior to making of the search, notice under Section 131(1A) cannot be issued after conducting of the search and thereby, the notice issued under Section 131(1A) of the Act is illegal and without jurisdiction contrary to the provision of the Section 131(1A) of the Act.

41. Pertinent to refer to the decision of the Privy Council in the case of ***Nazir Ahmad Vs. Emperor*** reported in ***1936 0 AIR (PC) 253; 1936 0 Supreme (SC) 2***, wherein it has held that when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all; other methods of performance are necessarily forbidden.

42. In the present case, the provisions of Section 131(1A) of the Act is very clear and there is no ambiguity in the provisions of the Act. However, even for sake of arguments, if there is an ambiguity the benefit of the same must go the taxpayer. The legislature having clearly laid down the manner in which the notice under Section 131(1A) is to be issued, the same has to be mandatorily followed. Any manner other than what is provided in the aforesaid provision is

necessarily forbidden. Therefore, it is imperative that before conducting search under sub-clause (i) of sub-section 1 of Section 132 of the Act, a notice under sub-section 1A of Section 131 has to be issued.

43. The submission of the respondents that Section 131(1A) of the Act was introduced to extend similar powers to an authorized Officer within the meaning of sub-section (1) of Section 132 before he takes search and seizure action under clauses (i) to (v) of that sub-section which is in conformity with the submissions advanced on behalf of the petitioner that Section 131(1A) was introduced in the statute empowering the Authorized Officer before he takes search and seizure action under clauses (i) to (v) of that sub- section.

44. The decisions of the Orissa High Court in the case of ***Liberty Marine Syndicate (P) Ltd. PCIT, Cuttack, [(2017) 394 ITR 277]***, relied by the respondent is not applicable in the present case in as much as in the said case, a notice under Section 142(1) of the Act was issued prior to making of the search.

45. The decision of the Madhya Pradesh High Court in the case of ***Classic Builders & Developers vs. Union of India &Ors., [(2001) 251 ITR 0492]***, relied by the respondent is also not applicable in the present case inasmuch as there was no search in the said case and only survey was conducted under Section 133 of the Act.

46. In the decisions of the Gujarat High Court in the case of ***Arti***

Gases vs. Director of Income Tax [(2001) 248 ITR 0055]

relied by the respondent, it was held that Section 131(1A) can also be issued after completion of search under Section 132 is in the context of that case, wherein post search, notices was issued calling for further information to have better particulars and complete picture about the seized materials. Decisions rendered are in the context of a particular case. Since, the facts of the present case is different, the aforesaid decision of the Gujarat High Court (***supra***) decision is not applicable. Further, in the case of **Anita Sahal (*supra*)**, the Allahabad High Court, in the context of Summons being issued under Section 131 (1A) of the said Act, post search and seizure, has held that failure of reasons to suspect that any income has been concealed or is likely to be concealed and to enquire thereof, before taking action of conducting inter-alia, search and seizure is illegal. The aforesaid decision of the Allahabad High Court squarely fits in the context of the present case.

47. The decision of the Allahabad High Court relied by the respondent in the case of ***Dr. Roop & Ors vs. Commissioner of Income Tax, [(2012) 254 CTR 0014]***, in fact support the case of the petitioner inasmuch as in paragraph 32 of the said judgment, it has been clearly held that as under:

"The exercise of powers under section 131(1A) is contemplated in a situation anterior to the exercise of power under section 132. Before authoring an officer, the office referred to in Section 132(1) would exercise power under section 131(1A) of the Act. Section 131(1A) operates

in different filed than Section 132."

48. The decision of the Gujarat High Court in the case of ***Nessa Leisure Ltd. & Anr vs. Union of India &Ors, [(2011) 338 ITR 0460]*** relied by the respondent is not applicable in the present case inasmuch as in the aforesaid case the notice issued under Section 131(1A) of the Act was not the subject matter of challenge in the writ petition. The Gujarat High Court at paragraph 11, in the last three line of the paragraph, held as under:

"As noted herein above, the notices under s. 131(1A) of the Act are not subject-matter of Challenge in the present petition, hence, it is not necessary to examine the validity of such notices."

Since the notice under Section 131(1A) was not matter of challenge, the High Court had not examined the validity of said notice and thereby, the aforesaid decision cannot said to be have any applicability in the present case.

49. Pertinent also to refer to the affidavit-in-opposition filed on behalf of the respondents no.2 and 3, wherein the respondents have stated that a search and seizure action under Section 132 of the Act in the case of the petitioner was conducted on 04.12.2020, on the basis of the authorization dated 02.12.2020, issued by the Principal of Income Tax (Investigation), NAR, Guwahati (respondent no.2). In the said affidavit, it is further stated that during the post search investigation, Deputy Director of Income Tax (Investigation) Unit (2) (3), Dibrugarh (respondent No.3) issued notices to the petitioner

under Section 131(1A). It is thus, evident that search was carried on without issuance of notice under Section 131 (1A) merely on the basis of the authorization dated 02.12.2020. On this score alone, the search conducted and subsequent impugned notices are illegal and without jurisdiction.

50. Further, in the facts of the instant case, there could not have been any material that could be a reason to suspect that any income has been concealed or likely to be concealed by the petitioner. Section 131 (1A) of the Act consist of two conditions which are required to be fulfilled before any action is taken under Section 131 (1A). Both the conditions has to co-exist before any action of search and seizure is undertaken. These conditions are; a) Assessing Officer has reasons to suspect any income that is concealed or likely to be concealed and, (b) Upon existence of such reasons, issues notice for the purpose of making enquiry or investigation relating thereto. After fulfillment of the aforesaid two conditions, the Assessing Officer is empowered to take action under clauses i to v of sub-section 1 of Section 132. In other words, it is only after fulfilment of the aforesaid two conditions the Assessing Officer can conduct a search and seizure.

51. In the present case, the respondent has not placed any materials whatsoever to indicate that Assessing Authority had any materials on the basis of which he has reasons to suspect that the petitioner has concealed or is likely to conceal any income. The affidavit filed on behalf of the authority is absolutely silent in this

regard. The very fact that the respondent issued notices under Section 131 (1A) of the Act after the search and seizure operation under Section 132 of the Act was conducted, goes to show that there was neither any reasons to suspect nor materials before the Authorizing Officer on the basis of which search operation could have been conducted under Section 132 of the Act. Thus, the two essential conditions being absent before the impugned search under Section 132 was conducted, the same is without jurisdiction. Search and seizure cannot be a fishing expedition. Before the search is authorized, the authority must have reasons to believe that the assessee has not or would not have disclosed his income. As such, the reasons to believe must exist before the authority to take action and not after the search is conducted. Since, in the present case, nothing has been shown, it is assumed that there was no material whatsoever before the Assessing Officer prior to authorizing the search.

52. Thus, both the essential conditions have been not fulfilled in the facts of the instant case before conducting the search and seizure on 4.12.2020. Non fulfillment of the same has rendered the search and seizure illegal and without jurisdiction.

53. In view of aforesaid, the subject search is absolutely illegal inasmuch as it is contrary to the express provisions of Section 131(1A) of the Act.

54. Resultantly, issue of authorization dated 4.12.2020 and consequence search and seizure conducted on 4.12.2020 and the subsequent notices dated 29.12.2020, 05.01.2021, 21.01.2021 and

28.01.2021, under Section 131(1A) of the Act are set aside and quashed.

Accordingly, the writ petition stands disposed of.

JUDGE

Comparing Assistant