

## A search action under section 132(1) has to be 'person specific'

**Summary – The High Court of Rajasthan in a recent case of Smt. Umlesh Goel., (the Assessee) held that A search action under section 132(1) has to be 'person specific'**

### Facts

- The Authorised Officer carried out a search under section 132(1) in the case of 'O' and his two sons, namely, 'A' and 'S' at their residential premises and seized certain documents, cash, *etc.* from their possession. In the warrant of authorisation, *i.e.*, in Form No. 45, it was simply mentioned as 'O', Mrs. 'O' and family 'A','S' and later on it was mentioned as 'O' and family, 'A' and all family members, 'S'.
- Thereafter the Assessing Officer issued notice under section 158BC to the assessee, namely, Ms. Umlesh and Ms. Surbhi, who were wife and daughter of 'A', requiring them to file return of income for the block period 1-4-1989 to 23-3-2000.
- However, the assessee filed their returns under protest for the block period declaring total undisclosed income at *NIL, inter alia*, contending that the provisions of section 158BC were inapplicable, as there was no warrant of authorization against them under section 132(1), therefore, the notice itself was bad.
- The Assessing Officer held that the notice issued under section 158BC was lawful in the case of assessee as a search under section 132(1) had been conducted in their case along with that of 'O' and 'A' and family members. When the warrant stated 'O', 'A' and family members and since the assessee were members of the family, they were automatically covered by the authorisation. Thus he was well justified in proceeding ahead in issuing the notice and to proceed ahead for assessment. Further he passed the assessment orders on the assessee despite of serious objections having been raised about jurisdiction and otherwise.
- The Commissioner (Appeals) called for Form No. 45 and held that since the search warrant itself did not indicate names of the assessee specifically, the Assessing Officer was precluded from proceeding ahead with the assessment of the assessee under section 158BC. He, therefore, annulled the assessment orders passed by the Assessing Officer.
- The Tribunal upheld the finding of the Commissioner (Appeals).
- On appeal to High Court by revenue:

### Held

- Section 132(1) authorises to carry out search and seizure operation where the revenue comes into possession of information that an assessee may be evading tax or has reason to suspect that a person has money, bullion and jewellery and other valuable articles or things, books of account, *etc.*, which does not depict true income, then a search is necessitated or got conducted.
- Search and seizure are drastic provisions and does not confer unbridled power to the Revenue Officer. The revenue must have in consequence of information reason to believe that statutory

conditions for the exercise of power to order search exist. The Competent Authority, namely, the Commissioner or the Director of Inspection, is supposed to record reason for the belief. Search and seizure under section 132 have a serious invasion upon the rights, privacy and freedom of tax payer. It presupposes that powers have to be exercised strictly in accordance with law and in fulfillment of the object and purport of the Act.

- The right of privacy has been held to be fundamental rights of citizens being integral part of article 21 of the Constitution and this right of privacy is not likely to be disturbed. The power of search and seizure under the provisions of the Act should be exercised only when there is sufficient material in possession of the competent authority on the basis of which he can have reasons to believe that there had been assets which could not be disclosed for the purposes of assessment under the Act.
- Provision of section 158BC is attracted 'where any search has been conducted under section 132 in the case of any person'. From these words it should statutorily mandate that search should have been carried out under section 132(1) in the name of a person before invoking the provision of section 158BC. 'Person' should normally mean name depicted in the warrant of authorisation and the authority authorising a search has to have information in his possession in respect of a person and such a person should be specifically named in the search warrant. Though 'family' is not defined under the Act but could not be stretched to cover all the family members, namely, wife, daughter, children, etc. Under the Income-tax Act 'Person' has been defined in section 2(31), which reads thus :

'Person' includes –

- (i) an individual;
  - (ii) a Hindu undivided family;
  - (iii) to (vii) xxx xxx xxx
- All the family members are separate assessable legal entities under the Act and in a case where search warrant has been issued in the name of 'O' and family, it cannot be stretched to cover all the family members, namely spouse and children. It has to be in the name of specific person to initiate proceedings.
  - The Tribunal has come to a correct conclusion that 'O' and family, 'A' and family, all family members, 'S' will not cover the assessee, *i.e.*, Ms. Umlesh and Ms. Surbhi, wife and daughter of 'A', so as to confer issuance of notice under section 158BC. The revenue cannot even remotely cover female members 'in family' insofar as proceedings under section 158BC is concerned though for all other purposes wife and daughter will always be part of family and would certainly cover them to be part of 'O' or/and 'A'. Therefore, the Assessing Officer had no valid jurisdiction under section 158BC to have issued notice and then to proceed ahead in passing an order under section 158BC. One fails to appreciate the reasoning of the revenue in extending the word 'family' to cover all family members when all are distinct and separate entities.
  - Perusal of Form No. 45, which is a warrant of authorisation under section 132 read with rule 112(1), clearly shows that the names of Ms. Umlesh and Ms. Surbhi have not been written in the warrant of

authorisation. Thus when names of the two assesseees do not find mention in the warrant of authorisation, the Assessing Officer has no jurisdiction to issue notice under section 158BC. The issuance of notice was illegal and has rightly been annulled by the Commissioner (Appeals) and confirmed by the Tribunal.

- Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with law and only for the purposes for which the law authorises it to be exercised. If the action of the officer issuing the authorisation or of the designated officer is challenged, the officer concerned must satisfy the court about the correctness of his action. Therefore, a search action under section 132(1) has to be 'person specific'. The authority authorising search has to have information in his possession in respect of a person and such a person should be specifically named in search warrant. Since names of the assesseees having not figured in the authorisation of warrant, the Assessing Officer has exceeded his jurisdiction in issuing the notice under section 158BC. Initiation of the proceedings being invalid, all subsequent action of the Assessing Officer including order of assessment is not sustainable in law.
- In view of the aforesaid, when a search action under section 132(1) has to be 'person specific' and when admittedly the names of the assesseees did not figure in the warrant, the Assessing Officer had committed an apparent error to assess the assesseees.