

HC justified search & seizure as its authorization was based on definite information & discreet verifications

Summary – The High Court of Gujarat in a recent case of Adarsh Credit Co-operative Society Ltd., (the Assessee) held that where satisfaction note had been considered and scrutinized by all authorities and they offered their own comments and thereafter warrant of authorization was issued, on ground that assessee, a co-operative society, was involved in siphoning off of funds from society to shell companies by way of advancing loans without any equivalent collateral securities, allegation of huge tax evasion by assessee had been substantiated and, thus, authorization was based on definite information and justified

Facts

- The assessee was a State co-operative Society.
- A specific information was received that assessee had been indulging in rotating money in a very unspecified manner to various unorganized business groups and that promoters of the assessee society had siphoned off funds and transferred same about 40 companies which were mostly non-operational and allegedly having their address at a single place of business. After recording reasons in the satisfaction note, warrant of authorization under section 132 issued and an order under section 133A(3)(ia) passed by which, the documents as well as electronic media in the form of hard disk/CD/Pen Drive etc. seized during the course of survey proceedings.
- The assessee prayed for an appropriate writ, direction and order to quash and set aside the search and seizure and submitted that in the year 2010 on the similar allegation the search and seizure took place, however, thereafter nothing illegal was found and the assessment proceedings were culminated in favour of the assessee. Therefore, it was submitted that now again to conduct search and seizure on the similar set of facts and circumstances be violating the fundamental rights of the assessee and same would be undue harassment to the assessee.

Held

- The main contention on behalf of the assessee is that the impugned authorization and search and seizure proceedings is illegal and violative of fundamental rights of the assessee and that even in the year 2010 on the same ground and facts and circumstances, search and seizure proceedings have been initiated and nothing illegal was found thereafter and a clean chit was given. It is also the case on behalf of the assessee that it was not disclosed/shared the information received by the appropriate authority.
- Even considering the *Explanation* to section 132 inserted by Finance Act, 2017, the searched person shall not be entitled to the reason to believe. If that be so, there is no question even sharing any information to the assessee.

- The satisfaction note was recorded by the Pr. DIT (Investigation) and same was placed before the Director of Joint Income Tax Office, Rajasthan and thereafter before Deputy Director of Income Tax (Investigation), Udaipur. A detailed satisfaction note has been prepared on the basis of information received. A detailed note was made and authority recorded his satisfaction that he had reason to believe that the requirements of section 132(1)(c) are satisfied. The appropriate authority, therefore, proposed to issue warrant of authorization under sub-section(1) of section 132.
- In view of the above outcome of discreet verifications and *modus operandi* of the group involved in siphoning of funds from society to the shell companies by way of advancing loans without any equivalent collateral securities, the allegation of huge tax evasion by the group has been substantiated. It is recorded that incriminating documents/books of account evidencing such huge tax evasion are likely to be found in possession of various entities of the group of companies. The authorization is based on the definite information and after discreet verifications, it can be termed adequately sufficient for the purpose of satisfying the statutory requirement. Since the proceedings consequent to search and seizure operations are going on, at this stage, it would not be appropriate to divulge in detail about the satisfaction note. Suffice it to record that there were sufficient grounds enabling the authorities to hold belief that case of the assessee is covered under sub-clause (c) of sub-section (1) of section 132 which permits the Authorizing Officer to issue authorization of search if he has reason to believe.
- All the authorities offered their own comments and thereafter authorization be issued. Necessary care has been taken and the case is properly scrutinized before issuance of the authorization. It is not a case of either hurriedly or perfunctorily issuing search authorization. Therefore, in the facts and circumstances of the case, there is no reason to interfere with the impugned authorization/search and seizure proceedings under section 132 as well as impounding document etc. under section 133A(3)(ia).
- The impugned order dated 19-6-2018 under section 133A(3)(ia) is also absolutely in consonance with the provisions of section 133A(3)(ia).
- Now, so far as submission on behalf of the assessee that earlier in the year 2010 on similar allegations the search and seizure had taken place, however thereafter clean chit was given as the department held in favour of the assessee and therefore, impugned search and seizure is not warranted and therefore, same is required to be quashed and set aside is concerned, the aforesaid has no substance. Merely because, in the past for earlier transaction, the department might have given clean chit, that does not mean that on fresh cause of action and/or fresh material and/or evidence, search and seizure cannot be undertaken. In the facts and circumstances of the case and as such on facts and considering the satisfaction note, the impugned search and seizure is absolutely just and proper and after recording the reasons and reason to believe.