

HC quashed locker search warrant as Add. DIT failed to prove that such locker contained undisclosed income

Summary – The High Court of Delhi in a recent case of Shah E Naaz Judge., (the Assessee) held that where during search conducted upon premises of assessee's cousin, key belonging to assessee's locker was found and search warrant was issued in respect of said locker, since Additional Director had not disclosed any material or information on basis of which he had entertained belief that said locker contained valuable jewellery or other articles representing undisclosed income, impugned search warrant was unjustified

Facts

- A search and seizure operations under section 132 was carried out at the residential and business premises of one, KSJ who was the first cousin of assessee, SJ. During the search, keys of three lockers in DSDCL in the joint names of the assessee and her sister was found and seized.
- On finding the keys of lockers from premises of KSJ, restraint order under section 132(3) in respect of three lockers of the assessee was passed. Subsequently, the Additional Director of Income-tax issued a warrant of search authorisation along with a satisfaction note in the name of assessee and her sister to search said lockers. A notice under section 153A was issued requiring the assessee to furnish returns of total income and undisclosed income. He noted that the lockers might contain cash, jewellery, FDRs and other important documents etc. which were not disclosed by the assessee. On opening two lockers nothing was found and in one locker jewellery was found.
- In instant writ petition, the assessee objected to impugned notice of search.

Held

- The satisfaction note dismally ignores the statutory mandate and requirements of clauses (a), (b) and (c) of section 132(1). Note begins by referring to the factum that residential premise of KSJ was subjected to search. Thereafter, it states that information had been received that three bank lockers were being maintained in DSPCL. Without referring to any 'information' in the form of material and evidence, the note proceeds to imprudently and on pretence record that 'In my opinion, the lockers may contain valuables such as cash, jewellery, FDRs and other important documents, etc, which represent either wholly or partly income or property not disclosed for the purpose of Income-tax Act, 1961, even if, summons under section 131 are issued to them. The satisfaction note woefully forms the negative conclusion and finding without referring to material and evidence that had led and prompted the author to reach the denouncement. Use of the word 'may' to presume presence of undisclosed assets in the locker, given the absence of reference to even a single shred of evidence and material to justify the inference, reflect and establishes supine indifference to the statute and constitutional guarantee that 'right to privacy' should not be impinged and violated on mere posturing and pretentiousness. The first paragraph does not elucidate the information and details

available with the authorities. Indeed, none are available to be found in the original produced. Conspicuously, the note does not refer to the statement of KSJ recorded in respect of locker. No attempt was made to verify and ascertain when and who had operated the said locker and who was paying rent for the said locker. Keys of the two lockers were not found during the course of search at the residential premises of KSJ. Details with regard to operation of these lockers had not been ascertained, when the search team had visited DSDCL. The satisfaction note is precipitously silent on any business connection, link and association between the petitioners and the 'J' Group or KSJ, who had been subject to search and seizure operations. Lockers were not subjected to search to unearth undisclosed and concealed assets of 'J' Group or KSJ. Accordingly, the three 'consequential' warrants of authorization issued in the name of persons and lockers for search/seizure do not meet the mandate and requirement of clauses (a), (b) and (c) of section 132.

- Search is not valid when there was no material and evidence to justify intrusion and interference. In the present case also, there was time gap between the date of search, *i.e.*, the date of the seizure of locker key, and the date of authorization. The respondent authorities, therefore, had sufficient time to ascertain and verify facts and form an informed and considered opinion. Satisfaction note does not state that any attempt was made to verify and ascertain facts post discovery of the locker key. The note had not indicated that the statement on oath by KSJ was incorrect and false. On the other hand, assertion of KSJ that the locker key belonged to his cousins was found to be correct. On the date of search and even subsequently KSJ was not questioned that the locker belongs to him or stores assets belonging to him. No attempt was made to verify and question SJ on these aspects. As stated above, the last paragraph of the satisfaction note, without adverting to any fact and evidence records that the author's opinion that the locker 'may' contain valuables such as cash, jewellery, FDRs and other important documents etc. This would not meet the statutory requirement on formation of opinion with reference to information and material.
- There could be a good ground and reason why the legislature has used expression 'reasons to suspect' in clause (i) or even for that matter in sub-section (1A) to section 132 while the expression 'reasons to believe' is used in sub-section (1) to section 132. Clause (i) to section 132(1) refers to search of any building, place, vessel, vehicle or aircraft where it is suspected that 'such' books of account, other documents, money, bullion, jewellery or other valuable articles or things are kept. The word 'such' is with reference to books of account, documents, money, bullion, jewellery or other valuable articles or things etc. referred to in clauses (a), (b) and (c) to section 132(1). The legislature felt it appropriate to state and clarify that the same quality or material and information was not required to justify when consequential search of a building, place, vessel, vehicle or aircraft under clause (i) of the section 132 (1) is undertaken, for search would be in continuation of the authorized search recording the 'reasons to believe'. Consequential warrants would be justified in cases where the exact location of the offending articles, books of account etc. for which search had been initiated by recording reasons to believe is unknown or had been shifted and re-located to avoid detection and seizure. In such circumstances, the 'reasons to believe' must meet the

requirements of clauses (a), (b) or (c) of section 132(1) albeit the authorized officer directing consequential search must record and state the reason why another place, building, vehicle etc. was being subjected to search. Some latitude and stringent requirements in comparison may not be required when the satisfaction note records the reason for issue of warrants of authorisation under clause (i) of section 132(1). However, the satisfaction note in such cases must evince and be speak this reason. Confluence and connection between the justification and reasons to believe recorded earlier meeting the mandate of clauses (a), (b) and (c) of section 132(1) and the consequential warrant of authorisation under clause (i) of section 132(1) should be indicated and so stated. Clause (i) of section 132(1) is not a substitute and an independent provision to authorize search and seizure operations against third persons not included and subjected to the search after recording 'reasons to believe'. Connection and link between 'such' assets, articles etc. of the person subjected to search and the place, building etc. to be intruded and subjected to search must be elucidated by setting out 'reasons to suspect' why 'such' infringing articles could be found in the place, building, vehicle etc. mentioned in the authorization under clause (i) to section 132(1).

- The expression 'reasons to suspect' used in clause (i) and sub-section (1A) to section 132 is not to dilute the requirement of 'reasons to believe' but to only clarify that on occasions authorities will not know the exact location or the place where the offending books of account, money, bullion etc., may be kept for which consequential warrant of authorisation can be issued. One is conscious and aware that 'such' documents, articles etc. can be hidden off and kept with third parties and clandestinely concealed at different places and locations to prevent seizure and hamper investigation.
- The need and requirement to record 'reasons to believe', which is the statutory mandate was required and necessary in the present case, in the absence of the satisfaction of the condition and requirements of clause (i) to section 132(1) in the satisfaction note.
- In view of the aforesaid discussion, the warrants of authorisation for search and seizure operations in respect of the three lockers in the case of three petitioners are vitiated and illegal and same are quashed and set aside. Consequently, the proceedings under section 153A are also set aside and quashed.