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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **WRIT PETITION (CIVIL) No. 5937/2016**

Reserved on : 10th May, 2018
Date of decision: 30th November, 2018

SHAH E NAAZ JUDGE ..... Petitioner

Through Mr. Satyen Sethi, Mr. Arta Trana Panda & Ms. Gargee Sethi, Advocates.

versus

ADDITIONAL DIRECTOR OF INCOME TAX (INV)-UNIT VI AND ANOTHER ..... Respondents

Through Mr. Ashok K. Manchanda, Sr. Standing Counsel.

**WRIT PETITION (CIVIL) No. 11842/2016**

SAHYR KOHLI ..... Petitioner

Through Mr. Satyen Sethi, Mr. Arta Trana Panda & Ms. Gargee Sethi, Advocates.

versus

ADDITIONAL DIRECTOR OF INCOME TAX (INV)-UNIT VI AND ANOTHER ..... Respondents

Through Mr. Ashok K. Manchanda, Sr. Standing Counsel.

**WRIT PETITION (CIVIL) No. 11843/2016**

SANDEEP KOHLI ..... Petitioner

Through Mr. Satyen Sethi, Mr. Arta Trana Panda & Ms. Gargee Sethi, Advocates.

versus

ADDITIONAL DIRECTOR OF INCOME TAX (INV)-UNIT VI AND ANOTHER ..... Respondents

Through Mr. Ashok K. Manchanda, Sr. Standing Counsel.

**CORAM:**
**HON'BLE MR. JUSTICE SANJIV KHANNA**
**HON'BLE MR. JUSTICE CHANDER SHEKHAR**

**SANJIV KHANNA, J.:**

This common judgment would dispose of the afore-captioned writ petitions preferred by Shah-E-Naaz Judge, her husband Sandeep Kohli and her daughter Sahyr Kohli, who have challenged notices under Section 153A of the Income Tax Act, 1961 (Act, for short) dated 3rd May, 2016, 8th November, 2016 and 8th November, 2016, respectively. They have also challenged warrant of authorization dated 27th June, 2014 under Section 132 of the Act for search of locker No.7325-A in the joint names of Nagina Judge and Shah-E-Naaz Judge, locker No.7637-A in the joint names of Shah-E-Naaz Judge and Sahyr Kohli and locker No. 7712-D in the joint names of Sandeep Kohli and Shah-E-Naaz Judge in Delhi Safe Deposit Company Ltd. as illegal, bad in law and without jurisdiction. Other prayers made in the writ petition include quashing of proceedings initiated pursuant to notice under Section 153A of the Act. The notices under Section 153A and the proceedings initiated under Section 153A of the Act relate to Assessment Years 2009-10 to 2014-2015.

2. Nagina Judge is sister of Shah-E-Naaz Judge and is a Non-Resident Indian. Nagina Judge has not filed any writ petition. Nagina Judge, it was stated, has filed a statutory appeal challenging the assessment order dated 10th March, 2017 under Section 153A of the Act.

3. Precursor to the search warrants noted in paragraph 1 above, were search and seizure operations under Section 132 of the Act at the residential and business premises of Karamjit Singh Jaiswal on 10th June, 2014. Karamjit Singh Jaiswal is the first cousin (Bua's son) of Shah-E-Naaz Judge. During the course of search at the residential premises of Karamjit

Singh Jaiswal, key of locker No. 7325-A in the Delhi Safe Deposit Company in the joint names of Nagina Judge and Shah-E-Naaz Judge was found and seized. The panchnama/seizure memo specifically records that the locker was in the name of Nagina J. Water and Shah-E-Naaz J. Kohli. We are not concerned with the search and seizure operations and consequent proceedings against Karamjit Singh Jaiswal.

4. On 10th June, 2014 itself, a search team had visited Delhi Safe Deposit Company Ltd. and on inquiry had learnt about locker No.7712-D in the joint names of Sandeep Kohli and Shah-E-Naaz Judge and locker No. 7637-A in joint names of Shah-E-Naaz Judge and Sahyr Kohli. On 10th June, 2014, a restraint order under Section 132 (3) in respect of locker Nos.7325-A, 7712-D and 7637-A was passed based upon search warrants under Section 132(1) of the Act in the case of Karamjit Singh Jaiswal.

5. For the purpose of present decision, we have gone through and examined the satisfaction note in the case of Karamjit Singh Jaiswal or Jaiswal Group. Three petitioners are not mentioned and their involvement is not alluded to and alleged. The petitioners have stated that they do not have any commercial, business or financial relation with Karamjit Singh Jaiswal, Jaiswal Group or business entities managed by them. This factual position is not denied by the respondents in the counter affidavit. The respondents, however, rely on seizure of the key of locker No.7325-A from the residential premises of Karamjit Singh Jaiswal on 10th June, 2014, which locker was in the names of Nagina Judge and Shah-E-Naaz Judge.

6. On 10th June, 2014, statement of Karamjit Singh Jaiswal was recorded on oath under Section 132 (4) of the Act. Second and third question posed

and the answer given by Karamjit Singh Jaiswal, which relate to locker No.7325-A read as under:-

> "Q No.2 During the search at your residence i.e. The Green Rajokari a loker (sic) key mentioning locker No.7325 A with The Delhi Safe Deposit Co. Ltd was found. Please state to whom it belong?
>
> Ans. The locker belongs to Ms. Nagina J. Water & Ms. Shah-e-naaz J. Kohli.
>
> Q. No.3 What is the relationship with Ms Nagina J. Water & Ms. Sheh-E-naaz J. Kohli and why there keys are kept here?
>
> Ans. Ms. Nagina J. Water is my first cusion (sic) & Ms. Sheh-e-naaz J. Kohli is Nagina J. Water's sister. she (sic) was staying here till April 15, 2014. she (sic) is the resident of London and British Passport holder."

No other question or suggestion was put to Karamjit Singh Jaiswal.

7. On 27th June, 2014, search warrant was issued in the names of Nagina Judge, Shah-E-Naaz Judge, her husband Sandeep Kohli and her daughter Sahyr Kohli in respect of three lockers. For the sake of convenience, we would reproduce the relevant portions of the search warrant in the names of Nagina Judge and Shah-E-Naaz Judge Kohli, which reads as under:-

> "Whereas information has been laid before me and on the consideration thereof I have reason to believe that:-
>
> x x x x xx
>
> …….It a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 131 of the Income-tax Act, 1961, 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 the Income-tax Act, 1961, is issued to Ms. Nagina Judge and Ms. Shah Naaz J. Kohli [name of the person] to produce, or cause to be produced, books of account or other documents which will be useful for, or relevant to, proceedings under the Indian Income-tax act, 1922, or under the Income-tax Act, 1961, he would not produce, or cause to be produced, such books of account or other documents as required by such summons or notice. Sarvashri/Shri/Shrimati Ms. Nagina Judge and Ms. Hah Naaz J. Kohli possession of money, bullion, jewellery or other valuables articles 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, or the Income-tax, 1961;

And whereas I have reasons to suspect that such books of account, other documents, money, bullion, jewellery or other valuable articles or thing have been kept and are to be found in Locker No.7325-A, The Delhi Safe Deposit Co. Ltd., 86, Janpath, New Delhi

(Specify particular of the building/place/vessel/vehicle/aircraft);

This to authorise and require you as mentioned over leaf

[Name of the Deputy Director or of the Deputy Commissioner or of the Assistant Director or of the Asistant Commissioner or the Income-tax Officer]

(a) to enter and search the said building/place/vessel/vehicle/aircraft;

(b) to search any person who has got out of, or is about to get into, or is in the building/place/vessel/vehicle/aircraft if you have 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 think;

(c) to place identification marks on such books of account and document as may be found in the course of search and as you may consider relevant to or useful for the proceeding aforesaid and to make a list thereof together with particular of the identification mark;

(d) to examine such books of account and documents and make, or cause to be made, copies or extracts from such books of account and documents

(e) to seize any such books of account, documents, money bullion, jewellery or other valuable article or thing found as a result of such search and take possession thereof;

(f) to make a note or an inventory of any such money bullion, jewellery or other valuable article or thing;

(g) to convey such books of account, documents, money bullion, jewellery or other valuable article or thing to the office of the Deputy Commissioner of Income-tax or any other authority not below the rank of Income-tax Officer employed in the execution of the Income-tax Act, 1961: and

(h) to exercise all other powers and perform all other functions under section 132 of the Income-tax Act, 1961, and the rules relating thereto.

You may requisition the services of any police officer or any officer of the Central Government, or of both, to assist you for all or any of the purposes specified in sub-section (1) of section 132 of the Income-tax Act, 1961. "

[We have omitted the portion which has been scored off in the warrant of authorization dated 27th June, 2014 issued by the Additional Director of Income-tax (Inv.)].

8. On opening, locker Nos. 7712-D and 7637-A were found to be empty. Accordingly, nothing was seized and recovered. In locker No.7325-A in the name of Nagina Judge and Shah-E-Naaz Judge, jewellery worth Rs.49,73,295/- was found. Nagina Judge was questioned and her statement on oath under Section 132 (4) of the Act was recorded on 27th June, 2014. Nagina Judge had confirmed that she was a Non-Resident Indian residing in the United Kingdom. For the last 2-3 years, she had been filing her wealth tax and income tax returns in India. She would frequently visit India and mostly reside with her cousin Karamjit Singh Jaiswal. With reference to the locker key and jewellery found, the following questions and answers were put to and given by Nagina Judge:-

> "Q. No.9 Where do you keep your locker key usually?
>
> Ans Generally, I keep my locker key in my sister house S-137, Panchsheel Park, New Delhi or in London or in Chandigarh or in Rajokari.
>
> Q. No.10 When you have operated your locker last time?
>
> Ans. 27th March, 2014 or in last week of March, 2014.
>
> Q. No.11 Please explain how your locker key has gone at 6, The Green Rajokari, New Delhi in Karamjit Singh Jaiswal Houses.
>
> Ans. I was staying with him before I left for London in first week of April, 2014 and I was due to return shortly after. So I left the key alongwith other personal affect in his residence.
>
> Q. 12. As per the valuation of your jewellery total Net weight is 1868.900 gms whereas

no wealth tax return is filed by you. So you are entitled only 500 gms of jewellery. Please explain why rest of the jewellery may be seized?

Ans. It was not filed previously as I only acquired the jewellery in March, 2014.

Q. No.13. Please explain from where you have acquired the jewellery in March, 2014?

Ans. My sister & I divided my late mother jewellery in March 2014. Although she had passed away in November 2011.

Q. No.14. Do you have any proof that you and your sister have divided the jewellery in the m/o March 2014 which pertain to your deceased mother?

Ans. We have no return (sic) proof but we have a witness and we both can swear an affidavit to that affect.

Q. No.15 How much jewellery you have received from the said distribution of your mother jewellery?

Ans. As of today it was evaluated at Rs.49 lacs. Out of this most of it pertains to my mother.

Q. No.16. Please explain did your mother was filing wealth tax return before expire as most of the share of jewellery as stated by you pertains to your mother?

Ans. I am not sure.

Q. No.17. Do you want to say anything else?

Ans. No. Thanks. "

Nagina Judge had subsequently filed an affidavit dated 18th November, 2016 accepting that the jewellery found belonged to her and not her sister.

9. Pertinently, Shah-E-Naaz Judge was not examined on oath under Section 132 (4) of the Act, though she was present when the three lockers were forced open on 27th June, 2014.

10. We, however, would notice the contention of the Revenue that Nagina Judge had subsequently oscillated as in her subsequent letter dated 27th February, 2017, she had stated:-

> "As per the last Wealth Tax Return the jewellery of Mrs. Surinder Ajeet Judge (mother) was 740 gms. Thus the balance jewellery owned by both sisters is 1128.90 gms. as computed below:-
>
> | | |
> |---|---|
> | Jewellery accounted by M/s Swastic Jewellers, 1668, Dariba Kalan, Delhi-110006 | 1868.90 gms |
> | Less Jewellery declared by Mrs. Surinder Ajeet Judge | 740.00 gms |
> | Balance jewellery jointly owned by Mrs.Nagina Judge and Mrs. Shah Naaj. J. Kohli | 1129.90 gms |
> | The Jewellery in the hands of Mrs. Nagina Judge is 1 ½ of the aforesaid quantity i.e. | 564.45 gms" |

We shall subsequently deal with the said contention and the argument of the respondent that "statements of the petitioners and Nagina Judge were not credible and ex-facie untruthful and designed to pervert the cause of justice."

11. The primary contention and submission of the respondents is that on discovery of key of locker No.7325-A, consequential search warrants dated 27th June, 2014 were issued under Section 132 (1A) for search of the three lockers. These consequential warrants of authorization under sub-section (1A) to Section 132 were issued against the searched person i.e. Karamjit

Singh Jaiswal and not the petitioners. Validity of these search warrants should meet the parameter and the test of "reasons to suspect" and not on the legal requirement of "reason to believe". A lower test and requirement of "reason to suspect" is sufficient. This plea and reference to Section 132 (1A) of the Act was specifically taken and made in the written submissions dated 6th December, 2017, described as written statement, filed before us by the respondents. The submission asserts that the petitioners have misinterpreted the search and seizure actions as the search was in respect of the lockers and not against the petitioners in person. However, in the counter affidavit dated 27th March, 2018 filed to the amended W.P. (C) No.5937/2016 in the case of Shah-E-Naaz Judge, the respondents had taken a different stand and stance. They have stated that warrants of authorization dated 27th June, 2014 in the present case were issued under clause (i) to sub-section (1) to Section 132 in respect of the place i.e. locker, on the basis of "reasons to suspect" as key of locker No.7325-A was discovered and seized during the course of search under Section 132(1) in the case of Karamjit Singh Jaiswal and it was learnt subsequently that Shah-E-Naaz Judge, who was joint holder of locker No.7325-A with Nagina Judge, was also joint holder with her husband Sandeep Kohli and daughter Sahyr Kohli of locker Nos.7712-D and 7637-A respectively, in Delhi Safe Deposit Company Ltd. "Reasons to believe" with reference to sub-sections (a) (b) and (c) to Section 132(1) was against or qua the person, whereas warrant of authorization qua place or location under clause (i) to Section 132 (1) do not require recording of "reasons to believe". Warrants of authorization qua the place/location i.e. the lockers, was issued on the basis of "reasons to suspect". For clarity, we would like to reproduce the stand taken by the respondents in

response to ground V and paragraph 29 of the counter affidavit, which reads:-

> "V. During the search and seizure operation under section 132(1) of the Act on 10.06.2014 in the case of Mr. Karamjit Singh Jaiswal (the "searched person") at 6, The Green Rajokari, New Delhi which was duly authorized by the Director of Income-tax (Investigation)-II, Delhi after recording the 'reason to believe' with respect to conditions of section 132(1)(b) and 132(1)(c) of the Act *qua* person, key of the subject locker no. 7325-A maintained with The Delhi Safe Deposit Co. Limited, New Delhi was unearthed. The petitioner was the joint holder of the said locker No. 7325-A with her sister Ms. Nagina Judge. Following discovery of the key of the Locker No. 7325-A, a restraint order under section 132(3) of the Act was issued in respect of the locker on 10.06.2014. Subsequently, the locker was searched by the warrant issued under section 132(1) of the Act."
>
> xxx
>
> "29. That before issuing the warrant of authorization under section 132(1) of the Act, reason to believe with respect to conditions mentioned under section 132(1)(a) or 132(1)(b) or 132(1)(e) of the Act is *qua* person. Under section 132(1)(i) of the Act, the warrant of authorization *qua* place is on the basis of reason to suspect. In the present case, as mentioned above, pursuant to discovery of the key of the locker no. 7325-A during the search under section 132(1) of the Act in the case of Shri Karamjit Singh Jaiswal from his residential premise on 10.06.2014 which was duly authorized by the Director of Income-tax (Investigation)-II, Delhi after recording the 'reason to believe/satisfaction note with respect to conditions of section 132(1)(b) and 132(1)(c) of the Act *qua* person and detection of the other two lockers during subsequent investigation, consequential warrants of

> authorization dated 27.06.2014 were issued as per the provisions of section 132(1)(i) of the Act to search the above-mentioned three lockers. The consequential warrants of authorization under section 132(1) of the Act were issued to search these lockers after recording the satisfaction note with respect to the requisite conditions including under section 132(1)(b) and 132(1)(c) of the Act. Once a warrant of authorization under section 132 of the Act is issued and executed, the Assessing officer is required to issue notice under section 153A of the Act."

12. Search and seizure provisions in the Act introduced by Finance Act, 1964 have undergone a number of amendments including substantial amendments made by the Taxation Laws (Amendment) Act, 1975 and Direct Tax Laws (Amendment) Act, 1987. Sections 132(1) and 132(1A) of the Act as they exist read as under:-

> "132. (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.

37[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.]

(1A) Where any Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the Principal Director General or Director General or Principal Director or Director or any other Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, notwithstanding anything contained in section 120, authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

> [Explanation.—For the removal of doubts, it is hereby declared that the reason to suspect, 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.]"

13. In ***Pooran Mal Vs. the Director of Inspection (Investigation), New Delhi and Ors.*** (1974) 1 SCC 345, constitutional and legal validity of Section 132 was upheld relying on the inbuilt safeguards in the section itself including the condition that exercise of this power of search and seizure can follow only on a reasonable belief being entertained by an officer that any of the three conditions mentioned in clauses (a), (b) and (c) to Section 132(1) are satisfied. These reasons have to be recorded in writing before authorization is issued to the officer to conduct search and seizure. The Supreme Court observed that the provisions were evidently directed against persons who are believed on good grounds to have illegally evaded the payment of tax on their income and property. Drastic measure to get at such income and property for recovery of government dues were justified and required. The search and seizure provisions were reasonable restrictions and curbs on the freedoms mentioned under Article 19 (1)(f) and (g) of the Constitution.

14. The aforesaid legal position, viz., on the statutory mandate to record "reasons to believe" and their nexus with the three pre-conditions in clauses (a), (b) and (c) to Section 132 was thereafter emphasized and elucidated by the Supreme Court in ***Director General of Income Tax (Investigation), Pune and Ors. Vs. Spacewood Furnishers Private Limited and Ors.*** (2015) 12 SCC 179, which also refers to an earlier decision of the Supreme Court in ***ITO Special Investigation Circle-B, Meerut Vs. Seth Brothers & Ors.etc.***

(1969) 2 SCC 324 and ***Partap Singh Vs. Director of Enforcement Foreign Exchange Regulation Act & Ors.*** (1985) 3 SCC 72. ***Spacewood Furnishers Private Limited*** (supra) has laid down the following principles:-

> "8. The principles that can be deduced from the aforesaid decisions of this Court which continue to hold the field without any departure may be summarised as follows:
>
> 8.1. The authority must have information in its possession on the basis of which a reasonable belief can be founded that—
>
> (a) the person concerned has omitted or failed to produce books of account or other documents for production of which summons or notice had been issued
>
> Or
>
> such person will not produce such books of account or other documents even if summons or notice is issued to him
>
> Or
>
> (b) such person is in possession of any money, bullion, jewellery or other valuable article which represents either wholly or partly income or property which has not been or would not be disclosed.
>
> 8.2. Such information must be in possession of the authorised official before the opinion is formed.
>
> 8.3. There must be application of mind to the material and the formation of opinion must be honest and bona fide. Consideration of any extraneous or irrelevant material will vitiate the belief/satisfaction.
>
> 8.4. Though Rule 112(2) of the Income Tax Rules which specifically prescribed the necessity of recording of reasons before issuing a warrant of authorisation had

been repealed on and from 1-10-1975 the reasons for the belief found should be recorded.

8.5. The reasons, however, need not be communicated to the person against whom the warrant is issued at that stage."

15. The Supreme Court in ***H.L. Sibal Vs. CIT*** (1975) 101 ITR 112 (P&H), ***Dr. Nand Lal Tahiliani Vs. CIT & Ors.*** (1988) 170 ITR 592 (All), ***L.R. Gupta & Ors. Vs. UOI & Ors.*** (1992) 194 ITR 32 (Del), ***Ajit Jain Vs. UOI*** (2000) 242 ITR 302 (Del) and ***Madhu Gupta Vs. DIT (Inv.) & Ors.*** (2013) 350 ITR 598 (Del.), elucidate on compliance and satisfaction of the conditions of sub-clauses (a), (b) and (c) to Section 132 of the Act as recorded in the "reasons to believe", which formation of opinion must be in good faith and not mere pretence and subterfuge on the part of the authorities**.** The Court while examining the said reasons would not adjudge or test adequacy and sufficiency of the grounds, but could go into the question and examine rational connection between the information or material recorded and formation of the belief as to satisfaction of conditions specified in clauses (a), (b) and (c) to Section 132 (1) of the Act. The "reasons to believe" as recorded should have relevant bearing on formation of the belief, for the search warrants cannot be issued for making a fishing and roving inquiry. The test and parameters of reasonable man is applied. We would to avoid prolixity not quote from the aforesaid decisions, except the decision in the case of ***Madhu Gupta*** (supra) as in the said case, an identical plea relying upon the language of clause (i) to Section 132(1) of the Act was raised to submit that "reasons to suspect" and not "reasons to believe" were suffice in cases of consequential search. In the said case widow of the ex-Director, who had died, had been subjected to search on the

ground that there was evidence and material that the assessee as a group was in possession of unaccounted income in the form of money, bullion, jewellery and other valuable articles or things or papers relating to the undisclosed or *benami* properties as "these are likely to be found at the residence and business premises of the group members, their associates and family members". The reasons recorded to justify the search had stated there was a close relationship between the widow of the ex-Director and the group and it was likely that accounts relating to undisclosed income, sales etc. would be kept at her premises. The search was held to be illegal and violating Section 132 (1), as the provisions permit and authorize search on the basis of credible information and not mere suspicion. There must be nexus between the information and the "reasons to believe". Information, which is relied upon must not be in the nature of surmise or conjecture but must have tangible backing and some basis. It should not be mere *ipse dixit* but based upon reason. Simple "believe" was not sufficient, albeit satisfaction note must itself indicate and show whether the belief falls under clause (a), (b) and (c) to Section 132 (1) of the Act. "Likelihood and predisposition" in the "reasons to believe" for authorizing search at the residence of Madhu Gupta, widow of the ex-Director were held to be in nature of surmise and conjecture. Hence, the authorization was not predicated on information. Another reason given for accepting the writ filed by Madhu Gupta was that warrant of authorization under Section 132(1) had been issued in the name of Madhu Gupta. Therefore, there was need and requirement that "reasons to believe" should have recorded the connection between her and the group subjected to search. The "reasons to believe" thus

did not satisfy the requirement of clauses (a), (b) and (c) to Section 132(1) of the Act.

16. Before we delve on some other decisions striking down searches in cases of bank lockers, it would be appropriate and proper to quote the satisfaction note recorded in the present cases dated 27th June, 2014 on the basis of which warrants of authorization quoted above have been issued. The satisfaction note reads as under:-

> "During the course of search on 10.06.2014 at the residential premise of Shri Karamjit Singh Jaiswal, 6, The green Rajokar, New Delhi in the case of Jaiwal Group of cases, information has been received that following persons are maintaining lockers in banks/Vaults mentioned against each of them:

| SI No. | Name of Locker holder | Name of bank and Branch | Locker No. |
|---|---|---|---|
| 1 | Ms. Nagina Judge Ms. Shah e Naaj J. Kohli | The Delhi Safe Deposit Co. Ltd, 86, Janpath, New Delhi | Locker No.7325A |
| 2 | Sandeep Kohli & Ms. Shah e Naaz J. Kohli | The Delhi Safe Deposit Co. Ltd, 86, Janpath, New Delhi | Locker No.7712 D |
| 3 | Ms. Shah e Naaz J. Kohli & Sahyr Kohli | The Delhi Safe Deposit Co. Ltd, 86, Janpath, New Delhi | Locker No.7637-A |

> 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 or would not be disclosed for the purpose of Income Tax Act, 1961, even if, summons u/s 131 of the I.T. Act, are issued to them. Accordingly, it is requested that three (3 warrants) consequential warrants of authorization in the name of persons and lockers as mentioned above may be issued to search/seal the above lockers in the banks."

17. The satisfaction note dismally ignores the statutory mandate and requirements of clauses (a), (b) and (c) of Section 132 (1) of the Act. Note begins by referring to the factum that residential premise of Karamjit Singh Jaiswal was subjected to search on 10th June, 2014. Thereafter, it states that information had been received that three bank lockers were being maintained in Delhi Safe Deposit Co. Ltd. at Janpath, New Delhi. Without referring to any "information" in the form of material and evidence, the note proceeds to imprudently and on pretence record "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 u/s 131 of the I.T. Act, 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 before us. Conspicuously, the note does not refer to the statement of Karamjit Singh Jaiswal recorded on 10th June, 2014 in respect of locker No.7325-A. 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 locker No.7712-D and locker No.7637-A were not found during the course of search at the residential premises of Karamjit Singh Jaiswal. Details with regard to operation of these lockers had not been ascertained on 10th June, 2014, when the search team had visited Delhi Safe Deposit Co. Ltd. at Janpath. The satisfaction note is precipitously silent on any business connection, link and association between the petitioners and the Jaiswal Group or Karamjit Singh Jaiswal, who had been subject to search and seizure operations. Lockers were not subjected to search to unearth undisclosed and concealed assets of Jaiswal Group or Karamjit Singh Jaiswal. Accordingly, we have no hesitation in holding that the three "consequential" warrants of authorization issued in the name of persons and lockers for search/seizure, therefore, do not meet the mandate and requirement of clauses (a), (b) and (c) of Section 132 of the Act. We would now refer to some judgments relating to search and seizure operations in case of lockers.

18. In ***Lajpat Rai v. Commissioner of Income Tax*** (1995) 215 ITR 608 (All), locker key was found in residence of petitioner no. 1 therein during search and seizure operation. Request for issue of consequential warrant of authorization for search of locker was made 25 days after the earlier search. The Court observed that the authorities had sufficient opportunity to peruse the material already seized from the residential premises and inspite of time

and opportunity, the report did not contain any material or reason to justify search of the locker. Consequently, the authorization was based on irrelevant consideration and was quashed. This verdict highlights need to protect citizens from unnecessary and unsubstantiated assertion resulting in breach and violation of right to privacy. 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 on 10th June, 2014, i.e., the date of the seizure of locker key, and the date of authorization i.e. 27th June, 2014. The respondent authorities, therefore, had sufficient time to ascertain and verify facts and form an informed and considered opinion. We have also quoted the questions put and answers given by Karmajit Singh Jaiswal on 10th June, 2014 on the locker key. 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 Karamjit Singh Jaiswal was incorrect and false. On the other hand, assertion of Karamjit Singh Jaiswal that the locker key belonged to his cousins was found to be correct. On 10th June, 2014 and even subsequently Karamjit Singh Jaiswal was not questioned that the locker belongs to him or stores assets belonging to him. No attempt was made to verify and question Shah-E-Naaz Judge 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.

19. In ***Ameeta Mehra Vs. Additional Director of Income-tax (Inv)-Unit*** (2017) 395 ITR 185 (Delhi) in similar circumstances a locker key belonging to Ameeta Mehra was found in the residential and business premises of the person searched. Consequential search warrant was issued after recording the satisfaction note. Consequential search was struck down observing that the satisfaction note must contain credible information to trigger search action. Mere recovery of a locker's key by itself would not be sufficient justification for such search unless the person searched had some link in the business or otherwise connected activities of the person searched. Secondly, the opinion recorded in the satisfaction note must show nexus to the formation of the belief that Ameeta Mehra was in possession of money, jewellery or valuables representing her income which had not been disclosed. The decision upholds that the courts in a limited way can examine whether the belief formed was devoid of any basis and irrational in the extreme sense to fall foul of the Clapham Omnibus test. It was observed as under:-

> "20. Turning to the case on hand, in the first place there is nothing in the Satisfaction Note to indicate that there was any credible information available with the Department that the Petitioner belonged to the 'Nanda Group' who were being searched. It must be recalled that the Petitioner is a regular Assessee. The information needed to trigger the search action against the Petitioner had to be such that would show that she is linked in some manner to the business or other activities of the 'Nanda Group'. Secondly such information had to have a nexus to the belief that could be reasonably formed that she is in possession of any money, jewellery or valuable representing her income which has not been or would not be disclosed by her. The mere fact that the

key to the locker which she was operating was found during the search of her uncle Mr Suresh Nanda would not constitute 'information' leading to the reasonable belief that the locker would contain jewellery, or other valuable articles which she would not have disclosed in her returns. There obviously had to be something more. Therefore the jurisdictional pre-condition justifying the invocation of the power of search under Section 132 (1) of the Act against the Petitioner, was not fulfilled in the present case.

21. The counter affidavit filed by the Respondents suggests that they were not treating the Petitioner as part of the Nanda Group. In such event, there was no basis at all in proceeding to issue a search authorisation in the name of the Petitioner since the locker key was found during the search of the Nanda Group. Mr. Ruchir Bhatia, learned counsel appearing for the Revenue, however, urged that this Court should not go by what is stated in the counter affidavit but only by what is stated in the Satisfaction Note. Even then, the Satisfaction Note does not throw any further light on how the authority could form a reasonable belief that the Petitioner was connected with the Nanda Group and that her locker would contain money, jewellery etc that constituted her undisclosed income.

22. Mr. Bhatia repeatedly urged that the mere fact that nothing was found in the locker, would not for that reason alone, render the search illegal. This proposition is unexceptionable and to be fair to Mr M. S. Syali, learned Senior counsel for the Petitioner, he did not contest it. In fact the legal position in this regard stands settled in Income Tax Officer v. Seth Brothers (supra). However, the issue here is not what happened during or after the search but the absence of the jurisdictional pre-condition justifying it. In the absence of any credible information that could lead to the reasonable belief that the Petitioner was in possession of money, jewellery etc

> that constituted income that she has not or would not have disclosed, no search warrant qua her locker could have been issued. Further, the Satisfaction Note had to reflect the basis on which the reasonable belief was entertained. The one shown to the Court fails on this score.
>
> 23. The Respondent's search of the Petitioner was a classic case of a 'false start'. It was without legal basis. What were the options available to the Respondents when they came across the locker key when they searched Mr Suresh Nanda? The first step was to seal the locker. In fact they did so by issuing an order under Section 132 (3) of the Act. However, instead of immediately jumping to conclusions against the Petitioner, and before actually searching the locker by lifting the restraint order, the Respondents ought to have investigated further and gathered some credible information that could lead them to form a reasonable belief that (i) she was linked to the activities of the Nanda Group and (ii) her locker might contain money, jewellery etc that constituted undisclosed income. Only then was a search warrant qua her justified. Alternatively, they may have opted to proceed against her under Section 153 C of the Act. That too would have required two Satisfaction Notes: one by the AO of the searched person followed by one by her own AO. However, in the present case, the Respondents did not opt for the alternative."

20. This judgment refers to an earlier decision of Allahabad High Court in the case of ***Smt.Kavita Agarwal & Anr. v. Director of Income Tax (Investigation) & Ors.*** (2003) 264 ITR 472 (All). This again was a case in which during the course of search, keys of three lockers were found and seized. Thereafter, search warrants were issued simply on the ground that the keys of the lockers have been found during the course of search. The

warrants of authorization were struck down observing that the respondent authorities had failed to disclose the material and information on the basis of which they had entertained the belief recorded that the lockers contained money, jewellery, valuables and other articles representing disclosed income. Formation of belief by the authorities justifying the search must be based upon relevant information or material to satisfy the mandate of Section 132 (1) of the Act. This decision clearly holds that the law requires existence of "reasons to believe" and not "reasons to suspect". This was despite use of the expression "reasons to suspect" in clause (i) to Section 132 (1) of the Act.

21. Notwithstanding use of the expression "reason to suspect" in clause (i) to Section 132 (1) of the Act, the Supreme Court in its earlier judgments in ***Seth Brothers***, ***Pooran Mal*** and ***Spacewood Furnishers Private Limited(supra)*** has consciously emended to the effect that satisfaction in the form of "reasons to believe" is required and mandated by law. Decision of a Division Bench of this court in ***Madhu Gupta*** (supra) had rejected a similar argument that "reasons to suspect" and not "reason to believe" are sufficient. In the present case like in the case of Madhu Gupta, warrants of authorization was issued in respect of three lockers in the name of petitioners and Nagina Judge. These warrants of authorization were not issued and executed against Karamjit Singh Jaiswal.

22. 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 of the Act, while the expression "reasons to believe" is used in sub-section (1) to Section 132 of the Act. 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) of the Act. 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) of the Act 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 accounts 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) of the Act, *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 authorization under clause (i) of Section 132(1) of the Act. However, the satisfaction note in such cases must evince and bespeak this reason. Confluence and connection between the justification and reasons to believe recorded earlier meeting the mandate of clause (a), (b) and (c) of Section 132(1) and the consequential warrant of authorization under clause (i) of Section 132(1) of the Act should be

indicated and so stated. Clause (i) of Section 132(1) of the Act 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) of the Act. Appropriate in this regard would be the following observations of the Allahabad High Court in ***Motilal and Ors. Vs. Preventive Intelligence Officer, Central Excise and Customs, Agra & Ors***. (1971) 80 ITR 418 (All), wherein it was observed as under:-

> "It is clear that the articles or things referred to in Sub-section (3) of Section 132 are those which the authorised officer was empowered to search for and seize and no other. That is plain from the language of subsection (3), which refers to "such books of account, other document, money, bullion, jewellery...", that is, those articles or things which are the subject of authorisation under Section 132(1)(c). They must be articles or things which may be necessary to search for before they can be seized. That is clear from the nature of the powers conferred upon the authorised officer under Clauses (i) to (v) contained in Section 132(1). Clause (i) empowers him to enter and search a building or place where he has reason to suspect that the article or thing is kept. Obviously, that would not include a case where it is already known that the article or thing is kept in a certain building or place and will ordinarily be yielded up by the person holding custody of such article or thing. That conclusion is reinforced when we refer to the further power conferred by Clause (ii) which enables the

> authorised officer to break open the lock of any door, box, locker, safe, almirah or other receptacle when the keys thereof are not available. The power to seize, it is clear from Clause (iii), is contemplated in the case of those articles or things found as a result of such search. In my opinion, the power conferred under Section 132(1) is contemplated in relation to those cases where the precise location of the article or thing is not known to the income-tax department and, therefore, a search must be made for it, and where it will not be ordinarily yielded over by the person having possession of it and, therefore, it is necessary to seize it. If it is only such article or thing which is contemplated by Section 132(1), then it is such article or thing alone which can be the subject of an order under Section 132(3), I am unable to accept the contention on behalf of the income-tax department that Section 132(3) will include a case where the location of the article or thing is known and where ordinarily the person holding custody of it will readily deliver it up to the income-tax department. Such article or thing, I think, requires neither search nor seizure."

23. In ***Motilal and Ors.*** (supra), it was held that where an article, money or bullion is already seized, search under clause (i) to Section 132(1) of the Act cannot be authorized. Ratio of this decision was upheld by the Supreme Court in ***Commissioners of Income Tax Haryana, Himachal Pradesh and Delhi & Ors. Vs. Tarsem Kumar and Anr.*** (1986) 161 ITR 505 (SC). The aforesaid ratio exposits the object and purpose behind using the expression "reasons to suspect" with reference to "such" books of account, bullion, articles etc. 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 authorization can be issued. We are 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. It is in this context that a Division Bench of this Court in ***Strategic Credit Capital Pvt. Ltd. & Ors. Vs. Ratnakar Bank Ltd. & Anr.*** (2017) 395 ITR 391 (Del) had observed that Section 132 (1) of the Act envisages that a person could be in possession of undisclosed income not only in his or her own bank account but in the bank account of someone else. Thus, the legislature had deliberately used the word "any" to preface safe, locker, place, books of accounts and not "his" "her" or "its". Therefore, in a given case, the satisfaction note which records reasons to believe could also record the reasons why a third person is being searched not for his own income, books of account etc. but because he has in his custody the books of account, money, bullion etc. belonging to a third person, who is subjected to search.

24. We would, therefore, not re-write the decisions of the Supreme Court and Delhi High Court and hold that "reasons to suspect" and not "reasons to believe" were sufficient to conduct a search of the lockers in question. 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) of the Act in the satisfaction note.

25. Having recorded the aforesaid findings, we would now deal with supplementary or ancillary arguments raised by the respondents in the

counter affidavit. Shah-E-Naaz Judge in the original writ petition had not specifically challenged the search in her locker No.7325-A. Her stand and stance was that she was a second account holder and had not operated the locker in question from 2007. Therefore, Section 153A was not attracted and she should not be subjected to the procedure prescribed under the said section. The respondents do not deny and have not controverted the fact that she had not operated the locker since 2007. The respondents had pleaded and asserted that in the absence of challenge to the warrant of authorization to the search of lockers amounts to admission accepting validity of search in respect of locker No.7325-A. Shah-E-Naaz Judge had in light of the objection amended the writ petition to challenge validity of search of locker No.7325-A. The aforesaid "defect" or lapse was noticed during the course of hearing as recorded in the order dated 15th January, 2018. We would observe that this was a legal flaw and defect in the writ petition, consequences whereof were not understood by the counsel for Shah-E-Naaz Judge till arguments by the Revenue were made. Amendment application, C.M. No. 3504/2018 was filed and allowed by order dated 29th January, 2018 permitting Shah-E-Naaz Judge to challenge the warrant of authorization. This order also records that merits were not required to be gone into at that stage and that all issues were left open. The respondents have filed reply to the amended writ petition.

26. Shah-E-Naaz Judge, we state at the risk of repetition, had not accepted validity of search of locker No.7325-A as is apparent from the pleadings even in the original writ petition. She had challenged proceedings under Section 153A of the Act, which proceedings were initiated in view of the search of the locker. The original writ petition had proceeded on the

basis that the respondents had assessed and taxed the jewellery found in the said locker in the hands of Nagina Judge. We have also quoted the statement of Nagina Judge recorded on 27th June, 2014 on the said aspect. Given the background we would not apply the principle of estoppel to dismiss the writ petition filed by Shah-E-Naaz Judge.

27. We also do not agree with the respondents that the amendment application should not have been allowed as trial had commenced. This is not the correct way to interpret the power of the writ court to permit amendment to the writ petition. The amendment made and permitted was to meet the technical objection raised by the respondents as the legal impact was not at first understood.

28. Similarly, the contention of the respondents that jewellery was found in locker No.7325-A and Nagina Judge has taken contradictory stands is of no avail. Validity or invalidity of search is not to be judged and decided on the basis whether or not anything was found in the locker including locker Nos. 7712-D and 7637-A, which were empty. Validity of search has to be decided and adjudicated on the basis of satisfaction note; whether satisfaction note satisfies the statutory requirements and the respondents have acted in accordance with law. In fact, there is contradiction in the plea raised by the respondents for nothing was found in locker Nos.7712-D and 7637-A. In ***Seth Brothers*** (supra), the Supreme Court had distinguished between bona fide exercise of power in furtherance of statutory duty, which it was observed would not vitiate exercise of power when the authority that had granted the sanction had the requisite belief and reason to authorize the officer to enter and search the premises, for the Court does not substitute its

opinion with that of the order authorizing search and decide whether they should have been issued. Similarly, an irregularity in exercise of search and seizure would not affect the authorization or search. It could in a given case vitiate the action taken when the officer executing the search and seizure has acted malafidely. Clearly, therefore, legal validity of issue of warrant of authorization is distinguished from the manner and method in which it has been executed.

29. The respondents have also placed reliance on Section 292CC of the Act. The said section is of no relevance to the present case. It was inserted by Finance Act, 2012 with retrospective effect from 1st April, 1996 in view of some judgments holding that authorization for search must be separately issued in the name of each person and when warrant of authorization is issued in the name of more than one person, the assessment is to be made against all of them as Association of Persons and not as separate individuals. We fail to understand relevance of the said provision in the factual matrix of the present case.

30. In view of the aforesaid discussion, the supplementary or secondary contentions raised by the respondents have to be rejected.

31. Authority and power to conduct search and seizure operations is strident and caustic power authorized by law to be taken recourse to when the conditions mentioned under different clauses of Section 132 (1) of the Act are satisfied. Constitutional validity of the said provision has been upheld due to the safeguards provided by the section itself, to prevent and check cases of abuse and misuse. Investigation and detection of economic offences is onerous and a difficult task, for often evidence and material is

concealed and subterfuge is adopted to prevent and deflect detection. This, however, does not give liberty to the authorities to disregard and authorize search and seizure operations without formation of requisite belief. Power and authority given to the authorities must be exercised in terms of the statute and not contrary to and in violation of jurisdictional requirements. Power, as given, also imposes an obligation on the authorities to satisfy jurisdictional pre-conditions for the exercise of power to be held to be valid and not bad and contrary to law.

32. In view of the aforesaid discussion, we find merit in the present writ petitions and hold that the warrants of authorization for search and seizure operations in respect of the three lockers in the case of three petitioners are vitiated and illegal. Warrants of authorization against the petitioners are quashed and set aside. Consequently, proceedings under Section 153A of the Act are also set aside and quashed. We, however, clarify that we have not commented on evidence, if any, collected during the course of search and whether the said evidence or material can be used in any proceedings initiated by the income-tax authorities in accordance with law. Writ petitions are allowed in the aforesaid terms. In the facts of the present case, there would be no order as to costs.

**(SANJIV KHANNA)**
**JUDGE**

**(CHANDER SHEKHAR)**
**JUDGE**

**NOVEMBER 30th, 2018** NA/ssn