

(2004) 11 MP CK 0080

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1298 of 2003 22 November 2004

Amar Agrawal and Another

APPELLANT

Vs

Director of IT (Investigation) and Others

RESPONDENT

Date of Decision : 22-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 102
Income Tax Act, 1961 — Section 131, 132, 132A, 2

Citation : (2005) 144 TAXMAN 762

Hon'ble Judges : Arun Mishra, J

Bench : Division Bench

Advocate : Pankaj Bagadia, with Piyush Mandovara, for the Assessee and Rohit Arya, with Ajit Ade, for the Revenue, for the Appellant;

Judgement

Arun Mishra, J.

This writ petition has been filed by the petitioners to quash the authorization dated 24-1-2003, issued by the Director of Income Tax (Inv) u/s 132A of Income Tax Act (hereinafter referred to as Income Tax Act) and the action of requisitioning the cash from the custody of respondent No. 3/Police Station, Talaiya, Bhopal. Further prayer made is for quashing the notice (P-1) issued by respondent No. 2 u/s 131(3) of the Income Tax Act on 24-1-2003, impounding the bank slips found on the cash of the petitioner No. 2. Prayer has also been made to quash the notice (P2) issued u/s 131(1A) on 24-1-2003. In addition, writ is sought to quash notice (P-3) dated 30-1-2003, issued u/s 131(3) of Income Tax Act impounding the books of account of the petitioner No. 1, mandamus is sought to return the cash and restrain the respondent Nos. 1, 2 and 4 from taking any further action pursuant to the impugned orders (P-1), (P-2) and (P-3).

2. It is averred in the petition that petitioner No. 1 is a resident of Sendhwa, Distt. Barwani, M.P., and petitioner No. 2 is also resident of Sendhwa and is the

uncle of the petitioner No. 1. Both the petitioners are assessed to Income Tax by Income Tax Officer, Khargone. The petitioner No. 1 on his way to Bhopal in his car was checked by the respondent No. 3/Police Station, Talaiya, Bhopal, on 24-1-2003, at Retghat, Bhopal. The petitioner No. 1 was carrying cash Rs. 29,80,000 belonging to petitioner No. 2 in a bag. The petitioner No. 2 is the proprietor of the firm. M/s. Om Cotton Corporation. The petitioner No. 2 for his business requirements wanted to deposit cash in his bank account at Indore for which he had withdrawn an amount of Rs. 28,00,000 in cash from his bank account with State Bank of Indore, branch Sendhwa, at Sendhwa. The said amount was withdrawn on two consecutive days. Rs. 13,00,000 was withdrawn on 22-1-2003 and Rs. 15,00,000 was withdrawn on 23-1-2003. The petitioner No. 2 had cash balance Rs. 2,83,498 with him as cash in hand in his regular books of account. The withdrawal is evidenced by bank certificate (P-4) for which cash book entry (P-5) was made. Petitioner No. 2 had handed over the cash amount of Rs. 30,00,000 to the petitioner No. 1 on 23-1-2003, who was going to Bhopal from Sendhwa via Indore to meet his sister, with the instruction to deposit the said amount in the bank account of the petitioner No. 2s firm. at Indore after obtaining specific confirmation from petitioner No. 2 in this regard after reaching Indore. Petitioner No. 1 reached Indore on 23-1-2003, in his car with the above cash in night. After reaching Indore, the petitioner No. 1 tried to contact petitioner No. 2 on phone. However, petitioner No. 2 had to suddenly leave for Maharashtra for settlement of his daughters marriage and as such petitioner No. 1 was not able to contact petitioner No. 2. He then proceeded to Bhopal with the cash of petitioner No. 2 as per his schedule to meet his sister. On his way to Bhopal, petitioner No. 1 as car was inspected by P.S. Talaiya, Bhopal, he was carrying sum of Rs. 29,80,000 in a bag and the remaining Rs. 20,000 was carried in his pocket. Petitioner No. 1 was required to explain the possession of the said cash amount. Petitioner No. 1 explained respondent No. 3 about the source of the cash and also immediately arranged its proof, i.e., the certificate of the bank (P-4) and letter (P-6) dated 23-1-2003, of petitioner No. 2 faxed to respondent No. 3.

3. It is further averred that respondent No. 3 seized the car and cash in the bag amounting to Rs. 29,80,000 from the petitioner No. 1. Case u/s 102 of CrPC was registered. Police informed the respondent No. 1 as to the seizure of the cash without producing the seized property before learned Magistrate. The respondent No. 3 immediately issued authorization u/s 132A of the Income Tax Act on 24-1-2003, authorizing the respondent No. 2 who in turn required respondent No. 3 to hand over the possession of the seized cash Rs. 29,80,000 to respondent No. 2. Statement (P-7) of petitioner No. 1 was recorded by Dy. Director, Income Tax (Inv). Respondent No. 2 had no power or authority to record statement. Cash was handed over to the Income Tax Department. Car was produced before the Magistrate, and was released by the Magistrate. Director of Income Tax (Inv) u/s 131(3) of the Income Tax Act by order (P-2) dated 24-1-2003, got the said cash deposited in State Bank of India, Udyachal

Branch, Bhopal, for issuing draft for Rs. 29,80,000 in favour of CITs P.D. account and impounded the slips attached with the cash. Thereafter, the respondent No. 2 issued notice u/s 131(1A) of Income Tax Act dated 24-1-2003, to the petitioner No. 1 directing him to personally appear and to produce his books of account on 27-1-2003. The petitioner No. 1 appeared before the respondent No. 2 with his books of account on 27-1-2003. On this day, the matter was adjourned to 30-1-2003. On 30-1-2003, the respondent No. 2 impounded the books of account produced by the petitioner No. 1 by order (P-3) dated 30-1-2003, u/s 131(3) of Income Tax Act. On the instructions of Income Tax Officer, Khargone, conducted a survey at the business premises of petitioners on 24-1-2003, in the evening and verified the availability of cash in the books of account of the petitioner No. 2. This fact was also informed by the Income Tax Officer to respondent No. 3 on telephone on 24-1-2003 itself. Income Tax Officer also recorded the statements (P-8) of the manager and the accountant of the firm of petitioner No. 2. The statements of petitioner No. 2 could not be recorded as he was at Aurangabad (Maharashtra). The Income Tax Officer thus, after conducting the survey issued summons (P-9) dated 24-1-2003, u/s 131 of the Income Tax Act for appearance of the petitioner No. 2 along with the books of account on 27-1-2003. Petitioner No. 2 appeared before the Income Tax Officer on 27-1-2003. Then statement (P-10) of petitioner No. 2 was recorded. It is further submitted that as per section 132A of the Income Tax Act, the authority authorizing requisitioning officer to requisition any asset should have a reason to believe based on information in his possession that the asset is not disclosed or is not likely to be disclosed. Then only the authority can take action u/s 132A of the Act. A mere information by the police that the petitioner No. 1 was found carrying cash of Rs. 29,80,000 could not be said to be an information on the basis of which the respondent No. 1 could have had any reason to believe that the seized sum was not disclosed or would not have been disclosed for the purposes of the Act. Under sections 131(1), 131(1A) and 131(3) of Income Tax Act, the assessing officer can call for discovery and inspection, etc. as provided, from any person within his jurisdiction. The respondent No. 2 had no authority either to issue summons u/s 131(1A) for examining the petitioner No. 1 on oath, enforcing the attendance and production of books of account of petitioner No. 1 at her office to impound the books of account, hence writ petition has been preferred.

4. In the return filed by the respondent Nos. 1, 2 and 4, it is contended that petitioner No. 1 was carrying cash of Rs. 29.80 lakhs kept in the dickey of the car. The Director of Income Tax (Inv) had reason to believe that the amount in question was unexplained in the hands of petitioner No. 1 and represented income of the property which had not been and would not have been disclosed for the purpose of Income Tax Act. Petitioner No. 1 has not been able to explain the source of acquisition of cash seized from him. He only made an attempt to establish that cash found with him was the same as withdrawn by his uncle/ petitioner No. 2 from the bank which is not factually correct. It is claimed that

the petitioner No. 2 had withdrawn cash amounting to Rs. 13 lakhs on 22-1-2003, and 15 lakhs on 23-1-2003, from his bank account at State Bank of Indore, Sendhwa. It is also claimed that the same cash was given to petitioner No. 1 by the petitioner No. 2. It was further claimed by the petitioner that the remaining amount of Rs. 2 lakhs was given to petitioner No. 1 by petitioner No. 2 out of cash balance of Rs. 2,83,498. On the contrary, it is found that seized currency notes of denomination of Rs. 500, Rs. 100 and Rs. 50 consist of bank slips, most of these were dated 17-1-2003, 18-1-2003, 20-1-2003, 21-1-2003 and 22-1-2003. Besides these, bundles of currency notes were issued from different banks based at Indore such as Vyasya Bank Ltd. Indore/Vijaya Bank, Indore/Central Bank of India, Indore/Shubh Laxmi Mahila Cooperative Bank, Indore/HWC Bank, Indore/UCO Bank, Indore/Indore Cloth Merchant Cooperative Bank, Indore/Premier Cooperative Bank Ltd., Indore/Union Bank of India, Indore, hence it is clear that cash seized from petitioner No. 1 was not the same as that withdrawn by the petitioner No. 2 from his bank account in Sendhwa. The petitioner No. 2 is only trying to help petitioner No. 1 to explain source of cash seized from his possession by the police personnel at Bhopal. Under these circumstances, it is crystal clear that the seized cash represents unaccounted income of petitioner No. 1 inasmuch as he has not been able to explain its source of acquisition. Section 132(4A) read with section 132A of the Income Tax Act clearly specified the presumption of law that estate may be assumed to belong to the persons in whose possession it was found during the course of search. The answering respondent has further submitted that in addition to the reasons mentioned in the statement of petitioner No. 1, petitioner No. 2 and Shri Sharma (accountant of petitioner No. 2) recorded before different authorities and on different dates, following discrepancies and contradictions emerged :

(i) Before the police authorities, petitioner No. 1 had stated that he had left Sendhwa for Indore solely with a view to dispose of the cash given by his uncle.

(ii) In the later statement given before the Income Tax Authorities (especially Q. Nos. 11, 19 and 20) he changed his stand and stated that the sole purpose to leave Sendhwa was to go to Bhopal to meet his sister.

(iii) In the statement recorded before the police authorities, petitioner No. 1 has stated that cash had been given to him by petitioner No. 2 to deliver it to some one at Indore. However, before the Income Tax Authorities (Q. Nos. 8 and 6), he stated that the cash had been given by petitioner No. 2 for being deposited in State Bank of India at Indore.

(iv) If the instructions were so specific (namely, cash to be deposited in the specified bank at Indore), there was no need to seek telephonic instructions consequently.

(v) Petitioner No. 1 reached Indore at 11.30 PM at night. It is totally unlikely that he would have been able to either deposit the cash in his uncles bank account or otherwise dispose it of at that late hour.

(vi) Though petitioner No. 1 claims that he would have received instructions from petitioner No. 2 telephonically, surprisingly petitioner No. 2 decided to suddenly leave for Maharashtra. He thus left petitioner No. 1 totally stranded at Indore with a large amount of cash totalling to Rs. 30 lakhs in his possession and without any instructions whatsoever as to what to do with it. This is an unbelievable scenario.

(vii) Petitioner No. 1 has stated that petitioner No. 2 had left Sendhwa for Maharashtra at 9.30 PM on 23-1-2003. However, Sharma, the accountant, stated that petitioner No. 2 had left Sendhwa only on the next day, i.e., on 24-1-2003 at 12.30 PM.

(viii) Petitioner No. 2 has admitted that he was aware of the seizure of the cash by the police by 11 AM on 24-1-2003, while he was at Sendhwa. It is not believable that he would leave for Maharashtra immediately instead of sorting out the matter with the police and to claim the cash to be his. Instead of coming personally, he merely sent a fax and left for Maharashtra.

5. It is further contended that petitioner No. 2 had faxed certificate dated 23-1-2003, no reasons have been given why the certificate (which was apparently meant to be carried by petitioner No. 1) was not handed over to him along with the cash. In response to question No. 6 of the statement u/s 131 of the Income Tax Act recorded on 27-1-2003, it is stated that he has issued abovementioned certificate only on 24-1-2003. It is, therefore, not clear why the certificate is dated 23-1-2003. It was mentioned that cash was given for business purpose. It is claimed that it was for being deposited in the bank account. The cash withdrawn from the bank at Sendhwa was not the same which was seized from the petitioner No. 1's possession. The action is strictly in accordance with the provisions of the Income Tax Act. The requisition issued u/s 132A was in order. Other factual averments have been denied. Warrant of requisition was not issued solely on the factum of seizure of cash by the police authorities. Action taken by the respondents is proper. Letter of petitioner No. 2 did not reflect the correct position as that of the bank. Notification issued by the CBDT vests the power which has been exercised. Respondent No. 2 was authorized to issue summons u/s 131(1A). He can exercise some powers of State of M.P. and Chhattisgarh. Notification has been issued u/s 2(21) of the Income Tax Act.

6. A rejoinder has been filed by the petitioner, contending that there was no information in the possession of the respondents u/s 132A. The stand of the respondents that cash which was seized in the denomination of Rs. 500, Rs. 100 and Rs. 50 was carrying different bank slips has no merit because Shri Jagdishchand. Chaturvedi, Chief Manager of State Bank of Indore, has been subsequently examined on 7-3-2003, who in his statement has clearly stated that bank does not change the bank slips of all the bundles received and delivered to its customers. He has further clarified that in fact the petitioner No. 2 had withdrawn cash of Rs. 24,60,000 on 21-1-2003, Rs. 13,00,000 on

22-1-2003 and Rs. 15,00,000 on 23-1-2003. Slips were not changed as amount was not deposited into the RBI Chest. Statement of petitioner No. 2 carries no weight. The petitioner No. 1 is aged 24 years and a person under distress may make little variation. It is not very unlikely that the petitioner No. 1 could have carried the cash amount of Rs. 30,00,000 for petitioner No. 2 to be deposited in Indore. He carried it to Bhopal instead of depositing it in Indore. A citizen is entitled to carry any amount of cash legally in his possession anywhere in the country and there is no bar as such. Simply because a person is carrying a huge amount of cash does not itself give any person reason to believe that such cash has not been disclosed or would not be disclosed for the purposes of the Act. Recording the statement is without authority.

7. An additional return has been filed by the respondents. It is, inter alia, contended that order of Magistrate is not required for proceedings under Income Tax Act. Petitioner No. 1 who was in possession of the cash was not able to give any satisfactory explanation for the source of Rs. 29.80 lakhs. On physical verification, it was also observed that the currency notes in the custody of petitioner No. 1 were of the denominations of Rs. 500, Rs 100, Rs. 50 and contained bank slips most of which were dated 17-1-2003, 18-1-2003, 20-1-2003, 21-1-2003 and 22-1-2003. They were issued from different banks, cash was not the same as that withdrawn by the petitioner No. 2 from the bank account in Sendhwa. Statement of Shri Jagdish Chandra Chaturvedi has been wrongly referred. Contents have not been correctly mentioned. From the statement it is clear that amount which was withdrawn should have contained the bank slip of State Bank of India, Indore, The branch manager has nowhere stated that cash was the same as withdrawn from the bank by petitioner No. 2. He was unable to state positively that amount was withdrawn from the bank. It is further contended that Sri Amar Agrawal on 24-1-2003, wherein he was asked as to how many times and when, he had travelled out of Sendhwa with the cash given by Shri Kishorilal Agrawal, Shri Kailash Agrawal and Shri Om Prakash Agrawal for business purposes. He stated that on neither occasion he was given cash by the aforesaid persons, nor he travelled outside with huge cash. In respect to question No. 16, whether he had ever deposited cash in bank, he stated that he had never deposited any cash in the bank earlier. In response to question No. 17, whether he had ever withdrawn cash from any bank, he stated that he had never done so. He has further stated that he has no business relations with his uncle Shri Kailash Agrawal, it is unlikely that Shri Kailash Agrawal asked to carry such huge amount with him to deposit the same at Indore. Statement was recorded in connection with the cash which was the subject-matter of proceedings u/s 132A. There was sufficient reason to take action u/s 132A which is taken, where asset is found to be prima facie unexplained. There is no requirement to establish or to hold that the asset in question is unexplained before the warrant of authorization is issued. Information in possession should be such as to justify formation of reasons to believe that the asset is unexplained. In case it is found to be explained, it is for the department

to consider the explanation.

8. Shri Pankaj Bagadia with Shri Piyush Mandovara, learned counsel appearing for the petitioner has submitted that possession of the cash was explained properly, money was accounted for. It was withdrawn from the bank by petitioner No. 2. There was no reason to believe, to issue warrant of authorization u/s 132A of Income Tax Act. Action taken is impermissible. A citizen is entitled to carry the cash. Considering the huge amount which was withdrawn on 22-1-2003 and 23-1-2003 by petitioner No. 2, it is not unnatural that he had handed over the cash to petitioner No. 1, Amar Agrawal to deposit it in the bank at Indore. He has also referred to the statement of the bank manager and other statements to submit that possession stood explained, as such notices (P-1), (P-2) and (P-3) deserve to be quashed along with the entire proceedings.

9. Shri Rohit Arya, learned senior counsel with Shri Ajit Ade, appearing for the respondent Nos. 1, 2 and 4 has submitted that action has been taken in accordance with law. There was reason to believe available to respondent No. 1 to authorize respondent No. 2 to take action. Respondent No. 2 is authorized to issue the notices, etc., sufficiency of the reasons cannot be a ground to be agitated in writ petition considering the fact that amount was carrying the slips of different banks at Indore. It is clear that the amount was not withdrawn from the concerned bank at Sendhwa by the petitioner. On the verification, its possession could not be explained immediately by the petitioner, Amar Agrawal. There were doubtful circumstances, initial stand was contradictory, cash was found in possession of petitioner No. 1. It was prima facie not the same which was withdrawn by the petitioner No. 2 from the bank. In case amount was to be deposited at Indore, as alleged, why it was not deposited and carried to Bhopal. Entire story set up is extremely doubtful. If there was a direction by petitioner No. 2 to deposit the amount in the State Bank of India at Indore, there was no necessity of seeking further direction. No interference is called for in this writ petition considering the material contradictions between the statements of witnesses. The slips indicate that money was withdrawn from Indore banks not at Sendhwa.

10. The main question for consideration is that whether there was any reason to believe for formation of opinion as contemplated u/s 132A of Income Tax Act to the respondent No. 1 to issue warrant of authorization, which file has been produced by the respondents. Letter No. Q/1, dated 24-1-2003 was written by the Officer-in-charge of Police Station, Talaiya, delivered to the office of Dy. Director of Income Tax (Inv)-II, Bhopal, on 24-1-2003 at 12.45 PM. As per this letter during vehicle checking at Retghat, cash of Rs. 29,80,000 has been recovered from vehicle No. MP12-E-7667 belonging to Shri Amar Agrawal. As per this letter, Shri Amar Agrawal was unable to give correct information in respect of source of this cash. Police authorities have seized cash of Rs. 29,80,000 u/s 102 of Cr.PC, 1973. On verbal enquiries from Shri Amar Agrawal, he informed that cash of Rs. 13 lakhs and Rs. 15 lakhs was withdrawn on 22-1-2003 and

23-1-2003, respectively, from the State Bank of Indore, Sendhwa branch. However, on physical examination of the currency notes found in possession of Shri Amar Agrawal, it is observed that most of the bundles did not contain bank slips and in some bundles, the bank slips were dated 17-1-2003, 18-1-2003, 20-1-2003, 21-1-2003 and 22-1-2003 issued from various banks based in Indore such as Vijaya Bank, Indore, Central Bank of India, Indore, Union bank of India, Indore, etc. Some bundles also carried slips of private parties. It is highly improbable that such bundles of cash which are dated 17-1-2003 to 22-1-2003 would reach from Indore to some bank of another town Sendhwa and thereafter, could be withdrawn further from the bank at Sendhwa. Shri Amar Agrawal could not satisfactorily explain the source of acquisition of the cash found in his possession by the police authorities. Thus, it appears that there is reason to believe that the assets represent either wholly or partly income or property which has not been, or would not have been disclosed for the purposes of the Income Tax Act, 1961, by Shri Amar Agrawal from whose possession or control such assets have been taken into custody by the police authorities. It was, therefore, proposed by Dy. Director of Income Tax (Inv) to initiate the action, if deemed fit, to issue warrant of authorisation. The proposal was put up before the respondent No. 1, Director of Income Tax (Inv), Bhopal. He, on the basis of facts collected, has observed that he has reason to believe that amount in question represents income/property, which has not been and would not have been disclosed for the purpose of Income Tax Act, warrant of authorization was, therefore, issued to take into departmental custody, the cash amounting to Rs. 29.80 lakhs, warrant of authorization under sub-section (1) of section 132A was issued on 24-1-2003, by Director of Income Tax (Inv), Bhopal, as apparent from original files, which have been produced.

11. The case of the petitioners is that petitioner No. 1 had carried an amount of petitioner No. 2 withdrawn from State Bank of Indore at Sendhwa as per the direction of petitioner No. 2/Kailash Chandra Agrawal to deposit it at Indore. Explanation has been doubted as amount was carrying different bank slips of the bank, at Indore issued between 17-1-2003 to 22-1-2003, and sum carried the slips of other parties. It is also the stand of the respondents that in case amount was to be deposited at Indore there is no plausible reason why it was not deposited and amount could not have travelled from Indore to Sendhwa and withdrawn from Sendhwa, thereafter, again brought to Indore. The slips of Sendhwa bank were not found on the bundles. In case petitioner No. 1 had to deposit the amount in State Bank of Indore, there was no necessity of further instructions to be obtained from petitioner No. 2. Thus the case set up by the petitioner was doubted. No doubt that a citizen is entitled to carry the currency notes with him but on being required to explain, he has to explain the possession of the currency notes. In the instant case, initial explanation, which was given, has not been found to be in tune with the bank slips. Letter (P-6) was sent by the fax by petitioner No. 2 which bears the date 23-1-2003. In the statement of petitioner No. 2, it has come that it was issued on 24-1-2003. It was supposed to

be carried by petitioner No. 1. In the facts and circumstances, it has been inferred that source of money which has been found in the possession of the petitioner No. 1 has not been explained. Petitioner No. 2 may be Income Tax payee but in the instant case money was found in the possession of petitioner No. 1. Statement of Amar Agrawal which has been recorded on 24-1-2003 reflects that money was handed over by his uncle/petitioner No. 2. It was to be given to someone else, whose name was not disclosed. It was not be informed on the telephone. It was not stated that amount was to be deposited in bank at Indore. Such a statement was given to the police. On being questioned about the contradictions by respondent No. 2, Shri Amar Agrawal has stated that he was not able to inform the police properly as to the purpose of carrying the currency notes. It was stated by Shri Amar Agrawal that amount was withdrawn from State Bank of India, the fax letter (P-4) mentions that amount was withdrawn from a different bank, State Bank of Indore at Sendhwa. He has stated that he has made the statement due to mistake. When he was questioned that on certain bundles of currency notes, there was seal of Shubh Laxmi Mahila Cooperative Bank Ltd., Indore, dated 22-1-2003 and as per fax, amount has been withdrawn on 22-1-2003 and 23-1-2003, from Sendhwa bank and on some of the bundles there were slips of Tube Traders, Shastri Market, Indore, and on remaining bundles there were bank slips of Indore bank as such question was put to the petitioner No. 1 that he has withdrawn the amount from different places at Indore and contradiction in his statement that amount was withdrawn from Sendhwa whether the amount has been recovered from Indore, he has stated that he was not aware of these facts. On being questioned when his uncle left for Maharashtra, he answered that uncle left on 23-1-2003 in the night at about 9 : 00-9 : 30 PM. In the initial statement recorded by respondent No. 2 Shri Amar Agrawal was unable to explain the possession as apparent from his statement that he was told by his uncle to deposit the amount in bank at Indore. On being questioned that whether on earlier occasions he had carried money of Shri Kailash Agrawal, petitioner No. 2, he answered in negative. On being questioned that money was to be deposited in bank at Indore why he carried it to Bhopal, he stated that it was his mistake and he has further submitted that he came all of a sudden to Bhopal, it was not preplanned. He has further submitted that he has no business relations with his uncle, Shri Kailash Agrawal and he is not a partner in any of his business. He has not transacted any business on behalf of his uncle on earlier occasions. He has not deposited in bank any amount in cash on earlier occasions. He has further submitted that he has not withdrawn any amount from the bank. On being questioned that it was amount which was undeclared of M/s. Om Cotton Corporation, he answered that he has nothing to say.

12. In the facts and circumstances of the case, the explanation given that amount was withdrawn from Sendhwa on 22-1-2003 and 23-1-2003 from State Bank of Indore, was found prima facie not reliable one. There were sufficient reason to form such an opinion in view of the slips on currency notes, initial statement made to the police and the change of version by Shri Amar Agrawal,

thus, prima facie it was inferred that cash in hand of petitioner No. 1 is such which has not been or would not have been disclosed for the purpose of Income Tax Act. It was not shown that petitioner No. 1 was having any earlier business transactions with petitioner No. 2 and explanation given was wholly unsatisfactory. In my opinion, there was material to form opinion/reason to believe as required for issuance of authorization. Possession has not been satisfactorily explained, facts and circumstances were such, it cannot be said that there was no material to form an opinion.

13. In JAI BHAGWAN OM PARKASH Vs. DIRECTOR OF INSPECTION AND OTHERS., it has been observed that in case there is information with the authorities and department had satisfied itself with regard to the authenticity of the information available and bona fide belief was found, it is not for the court to make interference. In instant case, file which has been produced indicates that department had satisfied itself in proper manner to initiate the proceedings u/s 132A of Income Tax Act. In Rugmini Ram Raghav Spinners (P) Ltd. and others Vs. Union of India and others, it has been held that it is not for the court to find out that belief is rational and has nexus with information, in case circumstances exist to form an opinion. In the instant case, I find that opinion was formed on relevant facts. In Sudarshan and Company Vs. Commissioner of Income Tax and Others, , it has been observed by the Allahabad High Court that existence of belief can be challenged but not sufficiency of reasons for belief. If the information is sufficient for formation of the belief that assets would not be disclosed filing of returns subsequent to seizure is not relevant. In Mamchand and Co. and Others Vs. Commissioner of Income Tax, West Bengal II and Others, , it has been held that there must be existence of prima facie reason to believe. He has to show facts which prima facie will convince the court that a reasonable man could, under the circumstances, form a belief which will impel him to take action under the law. The court will not go into the sufficiency or adequacy of such reasons. In B.P. Abdul Gafoor Vs. Commissioner of Income Tax and Another, it has been observed that belief must not be blind but one based on reasons which are relevant and material. Materials which may only be remotely relevant may not be sufficient to satisfy the test of relevance. But this need not be taken to mean that sufficiency or adequacy of the reasons can be examined by a Court. The question a court would naturally ask is whether there is an application of the mind of the authority concerned and whether that application has been on the basis of material which bears a nexus to the matter which the authority is called upon to decide. In Kusum Lata Vs. Commissioner of Income Tax and Others, it has been held that court cannot go into the sufficiency of information or the material. All that has to be seen is as to whether some material, in fact, existed or not for coming to the opinion and to have the reason to believe that any person is in possession of any undisclosed income or property. In BALWANT SINGH AND OTHERS Vs. R. D. SHAH, DIRECTOR OF INSPECTION, Income Tax, NEW DELHI, AND OTHERS., , it has been held that when exercising the writ jurisdiction, the High Court cannot go into the adequacy

of the grounds leading the Director of Inspection or the reasons to believe that the person to whom a summons is issued or might be issued will not or would not cause to be produced. The existence of "reason to believe" as contemplated in section 132 of the Income Tax Act, 1961, is subject to a limited scrutiny and the High Court cannot substitute its own opinion for that of the Director of Inspection or the CIT. However, before he acts, he must be reasonably satisfied, as the decision must still remain his and not that of Court. In *C. Venkata Reddy and Another Vs. Income Tax Officer (Central) I, Bangalore and Others*, , it has been laid down on facts that the searching officers had not proceeded in a high-handed manner and seized documents without regard to their usefulness or relevancy, nor had they failed to comply with any of the provisions of section 132 in the matter of issue of authorizations for search and seizure. The court has not to substitute its view for that of authority u/s 132 of Income Tax Act.

14. The Apex Court in *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, , has laid down that information gathered from the documents seized, cannot be excluded from the evidence. It has been further held that reason to believe cannot be said to be ousted because assessment was earlier done still it is open to the Director of Inspection to entertain necessary belief. The Apex Court has observed thus :

"In this petition also it was alleged that the Director of Inspection could possibly have no reason to believe the existence of circumstances required by sub-clauses (b) and (c) of sub-section (1) of section 132 because the petitioners assessment for the year 1970-71 had been already completed and so also the wealth-tax assessment for the year 1969-70. But this does not mean that on the information in the possession of the Director of Inspection, he cannot entertain the necessary belief. The grounds for the belief recorded by the Director of Inspection before the authorization were shown to us and we do not think that on the material the authority could not have entertained the belief. A big godown has been newly constructed by the petitioner but his books of account did not reflect the expenditure on account of this construction. It is alleged on behalf of the department that, on search, certain documents in the nature of maps, etc. were seized which showed that the petitioner had constructed the building in the month preceding the date of search and the money with which the said building was constructed was unaccounted money. There is, therefore, no substance in the contention that the Income Tax Authorities could not have possibly entertained the required belief. The search and seizure, therefore, impugned in this writ petition cannot be regarded as illegal-"

15. In *Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc.*, , it is laid down that section 132 does not confer any arbitrary authority upon the revenue officers. It is incumbent upon the authority to record the reason to believe. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the court. The court cannot substitute its own opinion whether an order

authorizing search should have been issued and any irregularity in the course of entry, search and seizure committed by the officer acting in pursuance of the authorization will not be sufficient to vitiate the action taken, provided that officer in executing the authorization acted bona fide :

"8. The section does not confer any arbitrary authority upon the revenue officers. The CIT or the Director of Inspection must have, in consequence of information, reason to believe that the statutory conditions for the exercise of the power to order search exist. He must record reasons for the belief and he must issue an authorization in favour of a designated officer to search the premises and exercise the powers set out therein. The condition for entry into and making search of any building or place is the reason to believe that any books of account or other documents which will be useful for, or relevant to, any proceeding under the Act may be found. If the officer has reason to believe that any books of account or other documents would be useful for, or relevant to, any proceeding under the Act, he is authorized by law to seize those books of account or other documents, and to place marks of identification therein, to make extracts or copies therefrom and also to make a note or an inventory of any articles or other things found in the course of the search. 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 the law and only for the purposes for which the law authorized it to be exercised. If the action of the officer issuing the authorization, or of the designated officer is challenged, the officer concerned must satisfy the court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed. But where power is exercised bona fide, and in furtherance of the statutory duties of the tax officers any error of judgment on the part of the officers will not vitiate the exercise of the power. Where the CIT entertains the requisite belief and for reasons recorded by him authorizes a designated officer to enter and search premises for books of account and documents relevant to or useful for any proceeding under the Act, the court in a petition by an aggrieved person cannot be asked to substitute its own opinion whether an order authorizing search should have been issued. Again, any irregularity in the course of entry, search and seizure committed by the officer acting in pursuance of the authorization will not be sufficient to vitiate the action taken, provided the officer has, in executing the authorization, acted bona fide."

16. In Chandra Prakash Agrawal Vs. State of Rajasthan and Others, it has been held that in case silver and cash is seized by the police officers, IT authority can pass an order u/s 132(5) and (7) which will be subject to a final assessment.

17. Shri Pankaj Bagadia with Shri Piyush Mandovara, appearing for the Petitioners with all ingenuity at his command has submitted that there was no reason to believe. In my opinion, once reasons have been recorded, which has

been shown to the court, this court cannot substitute its view. Shri Bagadia has relied upon the CIT v. Vindhya Metal Corporation (1997) 139 (SC) 495, in which the Apex Court has held thus :

"3. The High Court, after considering the material on which reliance was placed by the CIT, has held that on the information in the possession of the CIT, no reasonable person could have entertained a belief that the amount in the possession of Vinod Kumar Jaiswal represented income which would not have been disclosed by him for Vinod Kumar Jaiswal, according to the information in the possession of the CIT, was not borne on the general index register of Income Tax assessee of the Income Tax Officer at Mirzapur to which place he belonged. Obviously, therefore, there was no occasion for him to have disclosed the amount as his income in any assessment proceedings under the Act. Without anything more than what was actually there before the CIT, how could it have been assumed that he would not have disclosed it for purposes of any proceedings under the Act. There was nothing before the CIT to suggest that it was, in fact, wholly or in part, income of any person connected with Vinod Kumar Jaiswal so as to induce a belief that, if called upon, Vinod Kumar Jaiswal would not have disclosed it for the purpose of the Act. The mere fact that Vinod Kumar Jaiswal was in possession of this amount and did not have any documents with him regarding its ownership or possession could not be treated as appears to have been done by the CIT as information relating to a conclusion that it represented income which would not have been disclosed by Vinod Kumar Jaiswal for purposes of the Act. Mere unexplained possession of the amount, without anything more, could hardly be said to constitute information which could be treated as sufficient by a reasonable person, leading to any inference that it was income which would not have been disclosed by the person in possession for purposes of the Act."

18. It has been held that mere on unexplained possession of amount without anything more it cannot be said that information which could be treated as sufficient by a reasonable person. In the instant case explanation was given which was not found to be prima facie believable and was contradictory, thus action has been taken, hence ratio of the above case is not attracted.

19. Counsel for the petitioner has further relied upon the decision of Allahabad High Court in Vindhya Metal Corporation & Ors. v. CIT & Ors. (1983) 36 (All) 238, wherein it was held that unexplained possession of amount alone without anything more would hardly constitute information sufficient for leading to an inference that it was income which would not have been disclosed by persons in possession thereof. The person was carrying huge cash while on railway journey. He was detained by railway police on suspicion that money was stolen property. The said person was not borne on GIR of Income Tax, hence CIT assumed therefrom that the said person would not have disclosed the amount for the purpose of Income Tax Act. Formation of opinion has to be seen in the backdrop of facts of each of the case. In the instant case, as mentioned above, explanation

was furnished which was found to be improbable and was found to be contradictory, hence action has been taken.

20. Counsel for petitioner has further relied upon the decision of Apex Court in *Union of India v. Alit Jam & Anr.* (2003) 181 CTR (SC) 22, wherein the Apex Court has laid down that information and reason to believe did not exist by mere intimation by the CBI to the IT authority about recovery of cash from the petitioner and could not constitute information within the meaning of section 132(1) particularly when the petitioner had also stated on oath that the money found in his possession was reflected in the books of account of the company, of which he was the managing director. Ratio of the above case is not attracted in the instant case as money has not been found to be prima facie withdrawn from the bank at Sendhwa as slips on bundles were of Indore of same dates when withdrawal was claimed at Sendhwa.

21. Shri Pankaj Bagadia has further relied upon the decision of Allahabad High Court in *Manju Tandon & Anr. v. T.N. Kapoor, Dy. Supdt. of Police & Ors.* 1978 CTR (All) 139, in which it has been laid down that High Court has jurisdiction to grant relief under Art. 226 of the Constitution in cases where violation of a fundamental right is made out, the petitioners were deprived of the gold ornaments without authority of law, hence writ petition was entertained and recourse to Income Tax Act was held not to be necessary. He has further relied upon the decision of High Court of Calcutta in *Mahesh Kumar Agrawal v. Dy. Director of IT (Inv) & Ors.* (2003) 180 CTR (Cal) 517, wherein it has been laid down that 1 reason to suspect is subject to satisfaction of the primary test of reason to believe u/s 132(1) of the Act. Unless one successfully crosses the hurdle of "reason to believe u/s 132(1) of the Act, there is no scope to get attracted by sub-sections (1A) and (4A) of section 132A of the Act. Reason to believe is the mandatory requirement of law for search and seizure. Reason to believe is a common feature of taxing statute. It has been considered to be the most salutary safeguard on the exercise of the power by the authorities. On the other hand, adequacy or sufficiency of the materials cannot be the subject-matter of scrutiny of the court. The belief must be held in good faith. There has to be a balance. On the basis of record it was found that there was no reason to believe on the facts of the said case.

22. In *Ganga Prasad Maheshwari & Ors. v. CIT* (1981) 21 CTR (All) 83, it has been held that there has to be material to take action u/s 132. In the absence of the same, it was held that, there was no material to form the belief, hence authorization was quashed. The decision is distinguishable on the facts.

23. In *B.R. Metal Ltd. & Ors. v. CIT & Ors.* (2000) 161 CTR (Gau) 212, undisclosed cash was found and there was suspicion that it would not be disclosed. It has been observed that belief cannot be on the basis of suspicion. Suspicion cannot take place of reason to believe. In the instant case, I find that it was not mere suspicion but the explanation was found to be incorrect, which has led to formation of belief. Thus, the submission, which has been raised falls down.

24. Resultantly, I find no merit in this petition. Writ petition is dismissed. Parties to bear their own costs as incurred.