(1994) 04 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No''s. 190 and 191 of 1994, April 27, 1994.

 ORIENT (GOA) LTD. AND ANOTHER
 D. B. BANDODKAR AND SONS PVT. LTD. APPELLANT

Vs

UNION OF INDIA AND OTHERS RESPONDENT

Date of Decision : 27-04-1994

Acts Referred:
Income Tax Act, 1961 — Section 132

Citation : (1994) 124 CTR 196 : (1994) 210 ITR 896 : (1994) 81 TAXMAN 363

Hon'ble Judges : G. D. Kamat, J

Bench : Division Bench

Judgement

PANAJI BENCH

G. D. KAMAT J. - The petitioners are companies and they challenge the warrant of search and proceedings relating thereto u/s 132 of the Income Tax Act, 1961. It is common ground that pursuant to the warrants issued dated March 3, 1994, the premises of the petitioners were searched. For that matter, it is complained that searches were continuous right from March 9, 1994, until the petition was instituted and thereafter completed only on April 13, 1994, that too after the notice in the present petitions. Mr. Usgaokar, learned counsel for the petitioners, fairly conceded that the petitioners have no right to know the information based upon which the respondents resorted to action u/s 132 of the Income Tax Act. He, however, says that having regard to the notices issued dated March 18, 1994, based upon the search, it is clear that the subject matter of the notices is an undisclosed account. He also complains that whatever fixed deposit amounts recovered from the lockers belonging to the directors of the companies are not hidden accounts and they are reflected in the accounts and balance-sheet already submitted.

He relies upon the decision in Sriram Jaiswal Vs. Union of India (UOI) and Others, , to show that if there is no valid information with the Department there can be no justification for issue of a warrant of search. He also says that this authority has covered the ratio that even when the authorised officer is in doubt whether estate is disclosed or not an order u/s 132(3) becomes illegal. He equally relied upon a decision of a Division Bench of this court in, Narayan R. Bandekar Vs. Second Income Tax Officer and others, . A Division Bench of this court held that the court must be satisfied if a contention is raised that material was available from which a reasonable belief could have been reached by the authorised officer to issue a search warrant. He also stated that the court called upon the Department to produce the file to ascertain whether the exercise of power was just and proper.

These petitions are opposed by Mr. J. Dias, learned counsel for the respondents. He contends that it is not open to the court in every case to ask for the concerned file for the purposes of finding out as to how the authorised officer based upon the information in his possession has reason to believe that any of the predicates u/s 132(1) (a), (b) and (c), are present or not, unless a case is made out in the petition. According to him, no such case has been made out in the present petitions. He, however, said that the Department has no objection to handing over the file and in fact handed over the concerned file.

We have gone through the concerned file and are satisfied that information received was taken down by the officers concerned and some other information was also solicited from some source. The file also discloses that the proposal was discussed by higher officers and it was thought necessary that except for the action u/s 132 any other action would not serve the purpose.

Though Mr. Usgaokar, learned counsel for the petitioners, made attempts to show that there is no justification for holding that there is a difference between the production of ore in mines and the sale and consequent export as also certain amounts in fixed deposit are covered by duplication in the same panchanama, the fact remains that the matter is at large before the authorities. Once we accept that the exercise of power u/s 132 was based upon information and is not arbitrary, we do not think that any useful purpose would be served in entertaining these petitions. Accordingly, the petitions are rejected.