

(2012) 10 GUJ CK 0007
In the Gujarat High Court

Case No : Special Civil Application No's. 11281 and 11593 of 2012

LKS Bullion Import and Export (P.) Ltd.

APPELLANT

Vs

Director General of Income Tax

RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 226(2)

Income Tax Act, 1961 — Section 131, 131(1), 132, 132(1), 132(1)(c)

Citation : (2013) 214 TAXMAN 68

Hon'ble Judges : Harsha Devani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : S.N. Soparkar and P.A. Mehd, for the Appellant; M.R. Bhatt and Mrs. Mauna M. Bhatt, for the Respondent

Judgement

Akil Kureshi, J.—Rule. Learned advocate Mrs. Mauna Bhatt waives service of rule on behalf of the respondents. Petitioners have challenged the validity of search and seizure operations initiated by respondents against petitioner No. 1 Company. The petitioners have also prayed for quashing of order dated 10.8.2012 as at Annexure O to the petition, under which the request of the petitioners for release of gold ornaments, being stock in trade came to be rejected by the Deputy Director of income tax, Chennai.

2. The petition arises in following factual background.

3. Petitioner No. 1 is a company. Petitioner No. 2 is its Director. According to the petitioners, the Company is engaged in the business of wholesale trading in bullion since over 10 years. In the recent past, the Company decided to enter into a new venture of manufacturing and selling wholesale jewellery of 22 carat gold to jewellery show rooms situated across the country. For the purpose of such venture, the petitioner was required to prepare sample jewellery and exhibit them to different show-room owners doing the business of retail selling of jewellery so that the petitioners could get bulk orders from such jewellers. To be able to prepare such large collection of sample jewellery, the Company required

sizeable quantity of gold weighing nearly 25 kilos. Since purchasing such gold would have required a huge capital investment on the part of the Company, the petitioners contacted one Meghji Girdhar HUF (hereinafter to be referred to as "MG-HUF") to take such quantity of gold on lease to be used as stock in trade of the Company. It is the case of the petitioners that the said MG-HUF is engaged in the business of leasing out large quantity of gold which it owns. The Directors of the petitioner Company were acquainted with the members of MG-HUF. It was agreed between the parties that 25 kilos of 24 carat gold would be leased to petitioner No. 1 Company on agreed terms and conditions. The lease agreement was entered into on 14th June, 2012, under which, according to the petitioners, petitioner No. 1 Company received 25 kilos of 24 carat gold from MG-HUF on lease on rent at the rate of 1.5% per annum on the valuation of the gold given on lease, the valuation to be done as on 31st March of every year. Such gold was leased for a minimum period of one year and could not be returned before such period unless the lessor agreed. It is also the case of the petitioners that the gold was handed over to the petitioners at Ahmedabad on 14th June, 2012 by and in presence of karta of the family MG-HUF Shri Gunwantlal Godawat and his son Ravindra Godawat. It is also the case of the petitioners that such gold was thereafter, distributed to different goldsmiths engaged in the activity of preparing gold ornaments. Since the gold in question was of 24 carat purity, it required mixture of alloys to convert into 22 carat purity before ornaments could be made. Such addition of alloys was to be done by the goldsmiths. As per the petitioners, out of the total 25 kilos of gold, 22.038 kilos was thus distributed for preparation of different shape of ornaments. After adding alloys, the gold ornaments weighing 23955.390 grams of 22 carat was received back by the petitioners from the goldsmiths. Out of such jewellery, petitioner No. 2 along with four other persons, who were either office bearers or employees of the Company or relative of petitioner No. 2 decided to travel from Ahmedabad to Chennai carrying such gold jewellery for showing to retail outlet owners at Chennai, in the process hoping to get bulk orders in future.

4. What happened hereafter is more or less undisputed. On 25.7.2012, petitioner No. 2 along with four other co-passengers were to board Ahmedabad-Chennai Spicejet flight SG 281 with the scheduled departure time of 5.50 a.m. They were carrying gold ornaments weighing total 23915.800 grams. At the Airport, the security authorities detected such large quantity of gold ornaments in possession of petitioner No. 2 and the co-passengers. They, therefore, alerted the income tax officials who were present at the Airport. The income tax Authorities, however, did not detain petitioner No. 2 or any other co-passengers. While the passengers were mid-air, income tax Authorities started inquiring into the source of the gold. When the flight landed at Chennai, all the five passengers were detained. Their statements were recorded. Simultaneously, inquiries were also conducted at the business premises of petitioner No. 1 company. Statements of various persons were recorded. income tax Authorities also carried out inquiries with Karta of MG-HUF at Neemuch. On the basis of such materials collected and

the survey report received by the Chennai Officials, search authorization was issued. For such purpose, Deputy Director of income tax (Investigation), Air Intelligence Unit, Chennai recorded a satisfaction note on 26th July 2012. Such satisfaction note was placed before the Additional Director of income tax, Investigation, Chennai who placed his notings on the same date agreeing that warrant of authorization u/s 132 of the Income Tax Act ("the Act" for short) be issued and the gold jewellery be seized. The entire record was thereafter placed before the DGIT(Invest.), Chennai who approved the proposed actions. Pursuant to such authorization, the respondents seized the entire quantity of gold jewellery under a seizure panchnama dated 26th July 2012. The petitioners made a detailed representation dated 27.7.2012 to the respondents contending, inter alia, that the gold jewellery consists of stock in trade of petitioner No. 1 company. In view of section 132 of the Act, in any case, such stock in trade cannot be seized. The same may, therefore, be released. Such request, however, was rejected by the respondents by the impugned order dated 10.8.2012. The petitioners have, therefore, filed the present petition challenging the very validity of the search and seizure operation as also the order passed by the respondents rejecting the request of the petitioners to release gold jewellery which, according to them, was the stock in trade.

5. The case of the Department, on the other hand, is that petitioner No. 1 along with co-passengers was carrying gold jewellery without proper documents. Statements of petitioner No. 2 and others were recorded on 25.7.2012. Statement of karta of MG-HUF, Shri Gunwantlal Godawat was also recorded on 25.7.2012. Survey reports were received from Ahmedabad and Neemuch authorities of Income Tax. On the basis of such statements recorded and the survey reports received, large number of discrepancies were noticed in the theory of the gold ornaments being prepared from the gold received by the petitioners from MG-HUF. From the affidavits filed on behalf of respondent Nos. 1 to 3 dated 18th September 2012 and by respondent No. 5 dated 14th September 2012, we notice that principally the case of the Department is that agreement dated 14th June 2012 between MG-HUF and petitioner No. 1 Company does not inspire confidence since it is undated, that the agreement only records that gold shall be delivered, means, at the time of execution of the agreement, the gold was not actually delivered, the gold was handed over without any security, no witnesses have signed the agreement, the rate of return is extremely low at 1.596 per annum, there is nothing to connect the gold from which ornaments were prepared to the gold allegedly possessed by MG-HUF and that the original lease deed was found in the possession of the lessee and not the lessor. On such basis, it is contended that MG-HUF has only provided an entry of having supplied the gold. The case of the Department also is that the stock statement of books of petitioner No. 1 are not reliable. The seized gold ornaments, therefore, cannot be treated as stock in trade. It is the case of the Department that the vouchers" prepared by petitioner No. 1 Company for handing over the gold to the goldsmiths do not carry the signatures of the recipients. There are other

anomalies with respect to the quantity of gold handed over and received back as also with respect to labour charges paid, inward and outward registers do not match and only 22 kilos out of total 25 kilos of gold was used for ornaments and balance of the gold was not physically found during the survey. Principally on such basis, the respondents have sought to oppose the petition contending that after sufficient material was available at the command of the competent authority, satisfaction note was prepared suggesting authorization of search and seizure. Such satisfaction note was perused and approved by the higher authorities as required, only upon which search authorization was issued.

6. Learned Senior Advocate Shri Soparkar for the petitioners vehemently contended that the requirements of section 132(1) of the Act were not satisfied. The authority could not have formed a belief that the person in possession of jewellery had not or would not disclose it for the purpose of the Act. He submitted that the entire stock was duly reflected in the books maintained by petitioner No. 1 Company. Detailed vouchers were prepared evidencing the handing over of different quantities of gold to different goldsmiths for preparation of ornaments. Vouchers and records were also maintained recording receipt of fully prepared gold ornaments from such gold. He further submitted that all such records and documents were found by the Income Tax Authorities during survey operations. He further submitted that statements of all the goldsmiths to whom such gold was given for preparation of ornaments were recorded who had all supported the petitioners' version. Counsel further submitted that a detailed statement of petitioner No. 2 was recorded at Chennai shortly after his landing there at the Airport. In such statement, he had given detailed account of the manner in which such gold was received and ornaments were prepared and the purpose for which he was carrying such ornaments with him to Chennai from Ahmedabad. Counsel pointed out that petitioner No. 2 was carrying with him a certificate dated 24.7.2012 issued by the Director of petitioner No. 1 Company stating that gold ornaments weighing 23915.800 grams of 22 carat gold comprising of gold bali, chains, pendants, etc. were given to petitioner No. 2 and other co-passengers for carrying such jewellery to Chennai and Kolkata on approval basis for obtaining orders. Such certificate further stated that the jewellery is not for being sold but is only given as samples.

6.1 Counsel further submitted that MG-HUF possessed large quantity of gold which was borne out from the record. Previously, there was litigation with respect to such gold. Ultimately, the High Court of Rajasthan by the judgment dated 28th May 1997, ordered release of seized gold of the said MG-HUF which would establish that MG-HUF did own and possess sufficient quantity of gold to be able to part with 25 kilos therefrom for leasing it to the petitioners.

6.2 Counsel further submitted that Karta of MG-HUF Shri Gunwantlal Godawat had personally travelled to Ahmedabad to hand over such gold to the petitioners. His son Ravindra Godawat had also visited Ahmedabad on 14th June 2012 and in presence of both these persons such gold was handed over to the petitioners.

The Department confirms the movement of Karta of MG-HUF, Gunwantlal Godawat. With respect to Ravindra Godawat, whatever minor discrepancies in his movements, they have been sufficiently explained in the rejoinder filed by the petitioners pointing out that he had travelled to Ahmedabad via Pune. His mobile phone locations would establish this fact. In any case, some minor discrepancies with respect to the travel schedule of either of the two members of MG-HUF would not clothe the Department with jurisdiction to authorize search and seizure operations.

6.3 Counsel further submitted that the books maintained by the petitioner Company scrupulously matched with the quantity of gold handed over to different goldsmiths for preparation of gold ornaments. Outgoing quantity matched perfectly with the total weight of gold ornaments when converted from 24 carat gold into 22 carat gold by addition of alloys. He submitted that in view of the disclosure of the gold in the books of accounts of the Company, it cannot be stated that the petitioners had not or would not have disclosed such gold for the purpose of the Act.

6.4 Counsel lastly submitted that in any case, the gold ornaments form stock in trade of petitioner No. 1 Company. In view of proviso to sub-section (1) of section 132, gold ornaments which form stock in trade of petitioner No. 1 company could not have been seized. He submitted that the theory of the Department that such ornaments were the personal property of petitioner No. 2 is wholly invalid. There is nothing on record to suggest that petitioner No. 2 owned such large quantity of gold ornaments of different shapes and sizes or that petitioner No. 2 was required to carry such huge quantity of gold ornaments personally to Chennai without any reason or occasion. Counsel also highlighted that while travelling by air carrying gold ornaments in such large quantity, the petitioners would certainly have anticipated that such ornaments would be detected by the security officials while x-raying the baggage. It would, therefore, be naive to believe that petitioner No. 2 hoped to carry such gold ornaments without being detected.

6.5 Counsel relied on several decisions of the Supreme Court as well as various High Courts, reference to which would be made at an appropriate stage later.

7. On the other hand, learned Senior Counsel Shri Manish Bhatt for the Department, at the outset, contended that this Court has no territorial jurisdiction to entertain this petition. He submitted that petitioner No. 2 and other co-passengers along with gold ornaments were detained at Chennai Airport. Their statements were recorded at Chennai. After collecting full material, the Authorities at Chennai had initiated search and seizure operations. The gold ornaments were seized at Chennai. According to him, therefore, no part of the cause of action can be stated to have arisen within the territorial jurisdiction of this Court. This petition, therefore, according to him, would not be maintainable before the Gujarat High Court.

7.1 He vehemently opposed the petition on merits also contending that after collecting sufficient material through survey and recording of statements of various persons u/s 132 of the Act and taking into account the survey reports, search was authorized. He submitted that there were large number of discrepancies in the theory of the gold being received from MG-HUF for the purpose of preparing gold ornaments. He further submitted that the competent authority having taken into account such discrepancies, prepared a satisfaction note which was placed before the higher authorities who approved the search and seizure operations, upon which the authorization was issued, ultimately leading to the seizure of gold ornaments under a panchnama.

7.2 Counsel highlighted various anomalies and discrepancies which, according to him, were crucial and enabled the competent authority to form an opinion that requirements of section 132(1)(c) of the Act were fulfilled and that therefore, search and seizure operation was necessary. According to the counsel, the lease agreement suffers from various infirmities, which we have already noted earlier. Counsel also highlighted that there was no identification of the gold which was handed over to the petitioners by MG-HUF. In turn, it was not possible to connect the gold ornaments ultimately prepared by different goldsmiths with the gold received by the petitioner from said MG-HUF. Counsel pointed out that there were discrepancies and anomalies in the books of account maintained by petitioner No. 1 Company. All the accounts were prepared by one person, apparently with a view to covering the gold movement in case of being detected. The payments of labour charges for preparation of ornaments was made simultaneously on 27.7.2012 after the search operations. The passengers could not give details of the prospective customers at Chennai. It would be highly improbable that a person would carry such sizeable quantity of gold ornaments without any previous contacts of any of the jewellers at Chennai.

7.3 Counsel relied on the following decisions of this Court in support of his contention that at this stage, the court has to examine only the prima facie satisfaction of the competent authority that search and seizure operation was necessary.

- (1) In the case of Neesa Leisure Limited and Another Vs. Union of India (UOI) and Others
- (2) In the case of Dipin G. Patel Vs. Director General of Income Tax (Investigation) and Others, .

Counsel also relied on the decision of the Apex Court in the case of Rajendran Chingaravelu Vs. Mr. R.K. Mishra, Addl. Commissioner of IT and Others, to contend that the search and seizure was validly authorized.

8. Having thus heard the learned counsel for the parties and having perused the materials on record, we would first like to deal with the contention with respect to the territorial jurisdiction of the Court. In this regard, we are conscious that petitioner No. 2 was detained at Chennai Airport along with the co-passengers.

Gold was seized at Chennai. Search authorization has also been issued by the Director of income tax, Chennai. However, to vest jurisdiction in this court to entertain the petition it is not necessary that the entire cause of action must have arisen within the local limits of the court. If it is pointed out that part of the cause of action has arisen within the territorial jurisdiction, in terms of Article 226(2) of the Constitution, the petition would be maintainable. In this respect, we may recall that once petitioner No. 2 and co-passengers were detained at Chennai Airport, detailed inquiry was carried at the business premises of petitioner No. 1. During such inquiry, statement of son of petitioner No. 2 was recorded and documents and other records of the Company were seized. Survey report was prepared and submitted to the Chennai Income Tax Authorities. Simultaneously, similar actions were taken at Neemuch where the Karta of MG-HUF was stationed. Only thereafter and upon taking into account the survey reports and other materials, authorization was issued. Thus, it cannot be stated that the entire cause of action had arisen at Chennai. Part of cause of action can certainly stated to have arisen within the local limits of this Court. In this respect, we may refer to the decision of the Apex Court in the case of Rajendran Chingaravelu (*supra*). In such case, the petitioner had withdrawn sizeable amount from his bank account at Hyderabad with an intention to purchase property at Chennai. He travelled from Hyderabad to Chennai on 15th June 2007 carrying such cash. At Hyderabad Airport, he disclosed that he was carrying Rs. 65 lacs in cash along with the Bank's certificate certifying the source of withdrawal. He was allowed to board the flight. When he reached Chennai, the Income Tax Officials intercepted him. He was questioned about such large amount of cash that he was carrying. His defence that he had the certificate of the Bank having withdrawn such amount was not accepted. He was subjected to detailed interrogation and search and the money was seized, but later on released. For the harassment that he faced, he filed writ petition at Andhra Pradesh High Court. The High Court dismissed the petition for want of territorial jurisdiction. He carried the matter to the Supreme Court. In this background, the Supreme Court held and observed as under:

5. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction. In this case, the genesis for the entire episode of search, seizure and detention was the action of the security/intelligence officials at Hyderabad Airport (in Andhra Pradesh) who having inspected the cash carried by him, alerted their counterparts at the Chennai Airport that appellant was

carrying a huge sum of money, and required to be intercepted and questioned. A part of the cause of action therefore clearly arose in Hyderabad. It is also to be noticed that the consequential income tax proceedings against him, which he challenged in the writ petition, were also initiated at Hyderabad. Therefore, his writ petition ought not to have been rejected on the ground of want of jurisdiction.

The Delhi High Court also in case of *Ajit Jain Vs. Union of India and Others*, considered the objection of the respondents therein with respect to the territorial jurisdiction and the Court observed as under:

Before parting with the case we may also deal with the aforementioned two preliminary objections raised by the respondents with regard to the territorial jurisdiction of this court and the availability of alternative remedy to the petitioner of appeal to the income tax Appellate Tribunal against the block assessment. As regards the first objection, the question to be considered is whether in the instant case any cause of action, wholly or in part, has arisen within the territorial jurisdiction of this court, for if the cause of action arises within the jurisdiction of this court, the writ issued by the court can extend and run beyond its territorial jurisdiction. Explaining the expression "cause of action" within the meaning of article 226(2) of the Constitution, in *State of Rajasthan and Others Vs. Swaika Properties and Another*, , the Supreme Court held that the cause of action is a bundle of facts which, taken with the law applicable to them gives the plaintiff a right to relief. In the instant case, we are of the view that the petitioner being a regular assessee in New Delhi, survey operation u/s 133A of the Act having been conducted by the authorities at Delhi and the entire action of the search ultimately culminating in the block assessment under Chapter XIV B by the Assessing Officer based in New Delhi, not only a part of cause of action but substantial cause of action arose within the territorial jurisdiction of this court. Accordingly, we reject the objection.

9. Counsel for the Revenue relied on the decision of the Apex Court in the case of *Union of India v. Adam Exports Ltd.*, AIR 2002 SC 1260. In the said case, however, facts were that the petitioner company had claimed the benefit of duty exemption passbook scheme which was denied by the Madras Customs Authorities. Export and import of which credit was claimed had also been made from Madras. The petition was filed in the Gujarat High Court. The Apex Court held that merely because the assessee carried business at Ahmedabad and that export orders were received and placed from Ahmedabad would not give cause of action to file the petition at Ahmedabad. It was observed that in order to confer jurisdiction on the High Court to entertain writ petition, the High Court must be satisfied from the facts pleaded in support of cause of action that those facts do constitute a cause so as to empower the Court to decide a dispute which has at least in part arisen within its jurisdiction. It can thus be seen that the question of jurisdiction in the said case was decided against the petitioner on facts which were vitally different.

10. Now, advertent to the facts of the case, we find that the sequence of events is not seriously in dispute. To briefly summarise, petitioner No. 2 along with co-passengers carried gold ornaments of more than 23 kilos by air from Ahmedabad to Chennai. The fact that he was carrying such ornaments was detected by the Income Tax Authorities at Ahmedabad Airport itself. The passengers were allowed to board the flight. At Chennai, the Income Tax Authorities recorded the statements of petitioner No. 2 and other co-passengers. Enquiries were made at the business premises of petitioner No. 1 at Ahmedabad and with the Karta of MG-HUF at Neemuch. After collecting materials, satisfaction note was prepared by the competent authority which was duly approved by the two higher authorities before search and seizure operations were authorized. Pursuant to such authorization, the entire quantity of gold ornaments was seized under panchnama dated 26th July 2012.

11. Both sides have presented various factors for and against their cases. In particular, learned counsel for the Revenue has highlighted what, according to him, were the material contradictions and anomalies in the statements of various persons as also in the lease deed entered into between petitioner No. 1 and MG-HUF on 14th June 2012 under which allegedly 25 kilos of gold was handed over by MG-HUF to petitioner No. 1 Company. He also placed reliance on other factors.

12. To our mind, it is not necessary to deal with such contentions and counter contentions. We would prefer to focus our attention on the factors recorded by the Deputy Director of Income Tax, Chennai in his satisfaction note dated 26.7.2012. It cannot be disputed and it has not been disputed that any material collected subsequent to recording of satisfaction note and issuance of authorization of search and seizure cannot be pressed in service for supporting authorization to search. Further, the different factors and discrepancies sought to be highlighted by the Department, through affidavits filed before us and through oral submissions made by the counsel also independently would be of no consequence unless and until the genesis of such discrepancies are found in the satisfaction note. It may be to explain or expand particular factors already noted by the competent officer in his satisfaction note that such factors can be highlighted before us. In short, we have focused our attention to the different aspects noted by the Deputy Director of income tax in his satisfaction note dated 26th July 2012 to ascertain whether it can be stated that the requirements of section 132(1)(c) of the Act are satisfied. We may recall that sub-section (1) of section 132 of the Act empowers the officers mentioned therein to authorize an appropriate officer to carry out search and seizure operations if in consequence of information in his possession he has reason to believe that any of the requirements contained in clause (a) to (c) of sub-section (1) of section 132 are satisfied. Since we are concerned with clause (c) of sub-section (1) of section 132, we may reproduce the same as under:

132. (1) Where the Director General or Director or the Chief 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) & (b)** ** **

(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 Court (hereinafter in this section referred to as the undisclosed income or property.

For the purpose of exercising powers under sub-section (1) of section 132 of the Act, therefore, the competent authority had to have in consequence of information in his possession, reason to believe that the person in possession of jewellery represents either wholly or partly income or property which has not been or would not be disclosed for the purpose of the Act. In the satisfaction note, the Deputy Director of income tax, referred to the background under which the passengers who had landed at Chennai came to be interrogated and their statements were recorded leading to initiation of survey operations u/s 133A of the Act at the business premise of petitioner No. 1 Company, during which statements of Shri Dipen Soni, son of petitioner No. 2 was recorded. Such statements reveal that the gold was received from MG-HUF of Neemuch under an agreement between MG-HUF and petitioner No. 1 Company.

13. It is recorded that such lease agreement was found in possession of the lessee instead of the lessor. Further, that there was no security for leasing out 25 kilos of gold "which makes transaction suspicious". It is further recorded that there was no material evidence to prove that the jewellery in question had been actually manufactured from the bullion received from MG-HUF. He recorded that it is highly unlikely that such large quantity of gold jewellery was brought only as samples. The passengers could not give details of customers they were like to meet in Chennai. He further highlighted that it is not possible to establish correlation between the gold allegedly received from MG-HUF and the gold used for preparation of the ornaments which was found at Chennai Airport. On the basis of above observations, he recorded that "it is clear that the persons do not have an intention to disclose the jewellery of 23915 grams found in the Airport to the Department". On the basis of such conclusion, he suggested that the Director of income tax, if satisfied to issue a warrant of authorization for seizing the same by conducting a search and seizure operation u/s 132 of the Act.

14. Such satisfaction note was placed before the Additional Director of income tax who approved the suggestion noting that in view of the report received from the Additional DIT Unit II, Ahmedabad and the contents of the note of the Deputy Director, Chennai, it is clear that the jewellery found with Shri L.K. Soni at Chennai represents unaccounted assets.

15. Such notes were placed before the Director of income tax, Chennai who

recorded his reasons for issuance of warrant of authorization u/s 132 of the Act. His reasons primarily were that the gold was leased without any security which is against the normal trade practice and human conduct. According to him, the lease transaction was, therefore, not to be considered as genuine. His other reason was that there was no co-relation between the gold used in preparation of the ornaments with that received allegedly by petitioner No. 1 from MG-HUF.

16. To our mind, on the basis of the record and the reasons noted by the authority, it was not possible to come to the conclusion that the petitioners had not or would not have disclosed the jewellery for the purpose of the Act. We may recall that for authorization of search operations u/s 132(1)(c) of the Act, it is required that the competent authority in consequence of the information in his possession has reason to believe that the jewellery, bullion, etc. which represents either wholly or partly income or property has not been or would not be disclosed for the purpose of the Act. The record shows that petitioner No. 2 along with co-passengers was carrying gold ornaments along with the certificate issued by petitioner No. 1 Company, that such gold ornaments were stock in trade of the Company, that such ornaments were being carried to Chennai and Kolkata for showing samples to the prospective customers. Detailed statement of petitioner No. 2, one of the Directors of petitioner No. 1 Company was recorded at Chennai itself. In such statement, he at the very outset, gave the version that 25 kilos of gold was received by petitioner No. 1 Company from MG-HUF. Statements of various goldsmiths which were recorded by the income tax Authorities also supported the version of the petitioners. The records and the books of account maintained by petitioner No. 1 Company also matched this version. Vouchers were maintained in detail evidencing the outgoing gold to different goldsmiths and the incoming of the duly prepared gold ornaments from such gold so distributed. Each time, 24 carat gold was shown to have been given, the ornaments were of 22 carat gold by adding necessary quantity of alloys. We have perused such documents. We find that the entries of gold distributed to various goldsmiths matched perfectly with the entries of gold ornaments received from such persons after adding alloys for conversion of gold from 24 carat to 22 carat. The so called discrepancies pointed out by the Revenue in such documents really do not exist. Respondents fail to notice that the gold ornaments would weight marginally more than the weight of gold from which they are made due to addition of alloys. They also failed to see that such increase in weight was uniform in all cases. Accounts were also maintained regarding labour charges to be paid to different agencies. It can therefore not be stated that there was sufficient information in possession of the Director of income tax to have reason to believe that such jewellery had not been or would not be disclosed for the purpose of the Act.

17. There were some discrepancies highlighted by the Department particularly with respect to the agreement dated 14th June 2012. It was argued that such agreement was found in possession of the petitioners and not in possession of the lessee. It was further argued that the co-relation between the gold actually

used in preparation of the ornaments and the one which was available with MG-HUF could not be established.

18. To our mind, these factors would not be sufficient to clothe the authorities with the power to issue search authorization u/s 132(1)(c) of the Act. Prima facie, the petitioners had pointed out that MG-HUF owned and possessed sizeable quantity of gold, part of such quantity had become subject of legal controversy and the Rajasthan High Court through a judgment dated 28.5.1997 had released such gold in favour of MG-HUF. Out of such quantity of gold, 25 kilos was leased out to the petitioners. The Department's doubt about the source of gold of MG-HUF, even if it is genuine, cannot cast any shadow on the question whether the petitioners would or would not have disclosed the same for the purpose of the Act. Further, the contention that the identity of the gold could not be established also, to our mind, is not a sufficient factor. Once the gold was, as claimed by the petitioners, received from MG-HUF and the same was distributed among different goldsmiths for preparation of ornaments, we fail to see how the exact identity of the gold or co-relation thereof could be maintained or established. It was pointed out by the petitioners that the gold received from MG-HUF was 24 carat purity. For preparation of the ornaments, the same had to be mixed with alloys and converted into 22 carat purity. In addition to expecting an unreasonable requirement of establishing the identity of the very same gold being used for preparation of ornaments, we also otherwise see no relevance for the purpose of authorization of search. When it was pointed out that the petitioners had maintained voluminous records right from the beginning and when such record was found from the premises of petitioner No. 1 Company, immediately upon the survey operation being conducted, we do not see how the competent authority could form a reasonable belief that such gold jewellery had not been or would not be disclosed for the purpose of the Act.

19. We may notice that section 131 of the Act which pertains to the power regarding discovery, production of evidence, etc. gives wide powers to the Department. Under sub-section (1) of section 131, various officers of the income tax have been, for the purpose of the Act, clothed with the powers as vested in a court under the CPC for discovery and inspection and enforcing attendance of any person including any officer of a banking company and examining him on oath, compelling production of books of account and other documents and issuing commissions, Under sub-section (1A) of section 131, the Director General or Director or Joint Director or Assistant Director or Deputy Director or the authorized officer referred to under sub-section (1) of section 132, if has reason to suspect that any income has been concealed or is likely to be concealed by any person or class of persons within his jurisdiction, then for the purpose of making any inquiry or investigation relating thereto, it would be competent for him to exercise powers conferred under sub-section (1) notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other Income Tax Authority.

20. It can be immediately noticed that under sub-section (1A) of section 131, the officers mentioned therein have very wide powers of discovery and inspection and enforcing attendance or compelling production of documents and issuing commissions for the purpose of making any inquiry or investigation even when no proceedings are pending before him, if he has reason to suspect that any income has been concealed or is likely to be concealed by any person or class of persons. Thus, u/s 131 and in particular under sub-section (1A) thereof, mere suspicion that income is concealed or is likely to be concealed is sufficient to trigger the exercise of powers u/s 131(1) for making any inquiry or investigation relating thereto. By contrast, search and seizure authorization u/s 132(1) of the Act can be granted only on satisfaction that in consequence of information in possession of the competent authority has reason to believe that the circumstances mentioned in clauses (a) to (c) to sub-section (1) have arisen. In particular, clause (c) with which we are concerned, requires that the reason to believe should be that person in possession of the money, bullion, jewellery or other valuable article or thing which represents either wholly or partly income or property which has not been or would not be disclosed for the purpose of the Act. The onus placed on the competent authority to arrive at a satisfaction with respect to above factors thus is much greater than one required for exercise of powers under subsection (1A) of section 131 of the Act.

21. In the case of L.R. Gupta and Others Vs. Union of India and Others, , a Division Bench of the Delhi High Court in connection with section 132(1) of the Act observed as under:

The basis of the exercise of the jurisdiction u/s 132(1) has to be the formation of a belief and the belief is to be formed on the basis of receipt of information by the authorising officer.

The expression "information" must be something more than a mere rumour or a gossip or a hunch. There must be some material which can be regarded as information which must exist on the file on the basis of which the authorising officer can have reason to believe that action u/s 132 is called for any of the reasons mentioned in clauses (a), (b) or (c). When the action of issuance of an authorization u/s 132 is challenged in a court, it will be open to the petitioner to contend that, on the facts and information disclosed, no reasonable person could have come to the conclusion that action u/s 132 was called for. The opinion which has to be formed is subjective and, therefore, the jurisdiction of the court to interfere is very limited. A court will not act as an appellate authority and examine meticulously the information in order to decide for itself as to whether action u/s 132 is called for. But the court would be acting within its jurisdiction in seeing whether the act of issuance of an authorisation u/s 132 is arbitrary or mala fide or whether the satisfaction which is recorded is such which shows lack of application of mind of the appropriate authority. The reason to believe must be tangible in law and if the information or the reason has no nexus with the belief or there is no material or tangible information for the formation of the belief,

then in such a case, action taken u/s 132 would be regarded as bad in law.

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Sub-clause (c) refers to money, bullion or jewellery or other valuable articles which, either wholly or partly, should have been income of an assessee which has not been disclosed for the purpose of the Act. The said sub-clause pertains only to movable and not immovable assets. Secondly, it pertains to those assets which, wholly or partly, represent what should have been his income. The expression income "which has not been, or would not be disclosed for the purposes of the income tax Act" would mean that income which is liable to tax but which the assessee has not returned in his income tax return or made known to the income tax Department. The sub-clause itself refers to this as "undisclosed income or property". In our opinion, the words "undisclosed" in that context, must mean income which is hidden from the Department. Clause (c) would refer to cases where the assessee knows that the movable asset is income or represents income which is taxable but which asset is not disclosed to the Department for the purpose of taxation. Those assets must be or represent hidden or secreted funds or assets. Where, however, the existence of the money or asset is known to the income tax Department and where the case of the assessee is that the said money or valuable asset is not liable to be taxed, then in our opinion, the provisions of sub-clause (c) of section 132(1) would not be attracted. An assessee is under no obligation to disclose in his return of income all the moneys which are received by him which do not partake of the character of income or income liable to tax. If an assessee receives, admittedly, a gift from a relation or earns agricultural income which is not subject to tax, then he would not be liable to show receipt of that money in his income tax return. Non-disclosure of the same would not attract the provisions of section 132(1)(c). It may be that the opinion of the assessee that the receipt of such amount is not taxable may be incorrect and, in law, the same may be taxable but where the Department is aware of the existence of such an asset or the receipt of such an income by the assessee, then the Department may be fully justified in issuing a notice u/s 148 of the Act, but no action can be taken u/s 132(1)(c). An authorisation u/s 132(1) can be issued if there is a reasonable belief that the assessee does not want the income tax Department to know about the existence of such income or asset in an effort to escape assessment. Section 132(1)(c) has been incorporated in order to enable the Department to take physical possession of those movable properties or articles which are or represent undisclosed income or property. The words "undisclosed income" must mean income which is liable to be taxed under the provisions of the income tax Act but which has not been disclosed by an assessee in an effort to escape assessment. "Not disclosed" must mean the intention of the assessee to hide the existence of the income or the asset from the income tax Department while being aware that the same is rightly taxable.

22. In the case Vindhya Metal Corporation and Others Vs. Commissioner of

Income Tax and Others, , a Division Bench of the Allahabad High Court examined the case where the person was found in possession of cash of Rs. 4,63,000/- while he was travelling by train. Such amount was seized by the Railway Police and the Commissioner of income tax was informed about it. Search and seizure operation was carried out. The High Court held that mere fact that the person who was in possession of large amount of cash and he did not have document regarding his ownership or that his name was not found in the list of income tax assessee could not be treated as sufficient information leading to a reasonable mind to infer that the amount would not be disclosed for the purpose of the Act. It was observed that there was nothing before the Commissioner to suggest that the said amount, in fact, was wholly or in part, income of any person connected with the said person so as to induce a belief that if called upon, he would not have disclosed it for the purpose of the Act.

23. In the case of Commissioner of Income Tax, Allahabad and Others Vs. Vindhya Metal Corporation and Others, , the Apex Court upheld the decision of the Allahabad High Court in the case Vindhya Metal Corporation (supra).

24. In the case of Ajit Jain (supra), a Division Bench of the Delhi High Court quashed the search and seizure authorization observing that even assuming that the amount found from the person was not reflected in the books of account of the Company, mere possession of such amount by the petitioner could hardly be said to constitute information which could be treated as sufficient by a reasonable person. It is pointed out that such decision of the Delhi High Court came to be approved by the Supreme Court in the case of Union of India (UOI) Vs. Ajit Jain and Another, .

25. In the case of Dr. Mrs. Anita Sahal Vs. Director of Income Tax (Investigation) and Others, , search and seizure operations were quashed observing that search and seizure can not be fishing expedition. Before search is authorized, the Director must on the relevant material have reason to believe that the assessee has not and would not have disclosed his income.

26. On the basis of the above decisions, it emerges that mere possession of money, bullion, jewellery or such valuable article or thing per se would not be sufficient to enable the competent officer to form a belief that the same had not been or would not be disclosed for the purpose of the Act. What is required is some concrete material to enable a reasonable person to form such a belief. It is, of course, true that such belief is a matter of subjective satisfaction of the competent authority. Such subjective satisfaction, however, must be formed on the basis of the material on record and objective assessment of such material and cannot be on the basis of a mere suspicion or apprehension that the income had not been or would not be disclosed for the purpose of the Act.

27. The decisions referred to by the counsel for the Revenue were rendered in different fact situations. In the case of Neesa Leisure Ltd. (supra) a Division Bench of this Court upheld the search operations when it was found that there

was sufficient material enabling the competent authority to form such a belief. So also were the facts in case of Dipin G. Patel (*supra*) wherein, the Division Bench having perused the satisfaction note and further notes recorded by the higher Income Tax Authorities was of the opinion that the authorization was not based on isolated material that cash was found from the petitioner's premises. But such authorization was based on additional information which was adequately sufficient for the purpose of satisfying the statutory requirements.

28. In the result, the petition is allowed. Search and seizure operation is declared illegal and it is hereby quashed. Consequently, seizure of the gold ornaments under panchnama dated 26th July 2012 is also quashed. In view of the above findings, we do not go into the question whether the jewellery was stock in trade of petitioner No. 1 Company and therefore even in face of valid search and seizure, the same could not have been seized in terms of proviso to section 132 of the Act. Rule is made absolute accordingly.

29. Before closing, we may record that the learned counsel for the Revenue had placed for our perusal the satisfaction note and the connected notings of the different levels of the officers before the search operation was authorized. Along with such documents, he also supplied the copies of the statements and survey reports. Copies thereof may be retained in a sealed cover by the Registry.

30. In view of the above order, counsel for the petitioners did not press the Civil Application and the same stands disposed of accordingly. At this stage, counsel for the Revenue requested that the judgment be stayed for a reasonable period to enable the Department to carry the decision in appeal. Learned counsel for the petitioner opposed such a request contending that Diwali festivals are approaching and if the petitioners are deprived of their jewellery during such festival season, irreparable loss would be caused to their business. He highlighted that the jewellery being the stock in trade, in any case, even if the search and seizure is valid, the jewellery cannot be seized. Considering the facts and circumstances, request of the counsel for the Revenue to stay the judgment is refused. The jewellery seized under the panchnama dated 26th July 2012 shall be released latest by 8th November 2012.