
(1975) 10 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Writs No's. 968, 969, 4894 and 4895 of 1975

Manmohan Krishan Mahajan

APPELLANT

Vs

Commissioner of Income Tax and Others

RESPONDENT

Date of Decision : 29-10-1975

Acts Referred:

Income Tax Act, 1961 — Section 132, 132(1), 132(5)

Citation : (1977) 107 ITR 420

Hon'ble Judges : M.R. Sharma, J;Gurnam Singh, J

Bench : Division Bench

Advocate : Kuldip Singh, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

1 This judgment will dispose of Civil Writs Nos. 968, 969, 4894 and 4895 of 1975. All the petitioners are residing in house No. 355, sector 9-D, Chandigarh, along with Shri Mulkh Raj Mahajan, advocate, Chandigarh. The petitioners in Civil Writs Nos. 4894 and 4895 of 1975 are the sons of Shri Mulkh Raj Mahajan and the petitioners in Civil Writs Nos. 968 and 969 of 1975 are the daughters-in-law of Shri Mulkh Raj Mahajan, advocate, Chandigarh.

2. The house of the latter was searched under a warrant of authorisation issued by the Commissioner of Income Tax, respondent No. 1, in exercise of the powers u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), on October 17, 1974. When the authorised officer wanted to search the premises of the petitioners they raised objections that the same could not be searched in the absence of relevant authorisations by the Commissioner of Income Tax. It is alleged that on receipt of these objections the authorised officer rang up Shri J. S. Dulat, the Inspecting Assistant Commissioner of Income Tax, who sent a warrant authorising the search of the premises occupied by Shri Manmohan Krishan Mahajan, petitioner in Civil Writ No. 4894 of 1975, Shri Brij Mohan Mahajan, petitioner in Civil Writ No. 4895 of 1975 and Shri Jagmohan Mahajan, petitioner in Civil Writ No. 119 of 1975 (Jagmohan Mahajan and Another Vs.

Commissioner of Income Tax and Others,) decided on August 13, 1975. As a consequence of the search made, some jewellery and cash found from the premises in possession of the various petitioners were taken into possession under a memo prepared in accordance with law. The petitioners have challenged the legality of the search and seizure, inter alia, on the ground that the Commissioner of Income Tax could not have been satisfied within the meaning of Section 132 of the Act for coming to the statutory belief and the search having been conducted pursuant to a general warrant was illegal.

3. In Civil Writ No. 119 of 1975 (Jagmohan Mahajan and Another Vs. Commissioner of Income Tax and Others,) decided by a Division Bench of this court on August 13, 1975, the same warrant of authorisation which was utilized for the search of the premises occupied by Shri Jagmohan Mahajan was quashed with these observations (page 583):

"The case of petitioner No. 1's father was dealt with by respondent No. 1 along with the case of Shri H. L. Sibal. In that file, respondent No. 1 has not at all adverted to the case of the petitioner. From this fact alone, it is clear that respondent No. 1, even if it be assumed that he did authorise the initiation of action against the petitioners, acted in the absence of any information on the basis of which statutory belief could be formed. The search of the premises of the petitioners must be declared to be illegal on this ground alone and we order accordingly."

4. It was also held by the Division Bench that issuance of general warrants or the warrants in which the name of a person whose premises were to be searched were not given, were illegal. The Division Bench also held that where the very basis under which action u/s 132(1) of the Act could be founded was missing, no enquiry u/s 132(5) of the Act could be held. In these circumstances, the cash and other items of jewellery recovered from the possession of Jagmohan Mahajan and another were ordered to be returned.

5. The same warrant of authorisation having been quashed in Civil Writ No. 119 of 1975 [Jagmohan Mahajan and Another Vs. Commissioner of Income Tax and Others,] we find no justification in withholding the relief prayed for by the present petitioners.

6. Mr. D. N. Awasthy, the learned counsel for the revenue, has argued that two important decisions were not considered by the Division Bench in Civil Writ No. 150 of 1975 [H. L. Sibal v. Commissioner of Income Tax [1976] 103 ITR 606]. These cases are Vashist Bhargava Vs. Income Tax Officer, Salary Circle, and Sakarlal Balabhai Vs. Income Tax Officer, Special Investigation Circle IV, Ahmedabad and Another, . In Vashist Bhargava Vs. Income Tax Officer, Salary Circle, it was held that the Income Tax Officer could take action u/s 147(b) of the Act after receiving information from the Ministry of Law and the Revenue Audit. In Sakarlal Balabhai Vs. Income Tax Officer, Special Investigation Circle IV, Ahmedabad and Another, action taken by the Income Tax Officer u/s 147(b) of

the Act on the basis of report of valuation made by the executive engineer was held to be valid. These cases are clearly distinguishable. The observations made by their Lordships of the Supreme Court in Gemini Leather Stores Vs. The Income Tax Officer B Ward, Agra and Others, do fortify the view taken by the Division Bench of this court in Hira Lal Sibal's case [1976] 103 ITR 606, which we are bound to follow.

7. For the reasons mentioned above, we allow these petitions, quash the warrant of authorisation on the basis of which the search of the petitioner's premises was conducted and also hold that since there was no basis for initiating action u/s 132(1) of the Act, it was not open to the authorised officer to hold or to continue with any enquiry against the petitioners u/s 132(5) of the Act. An order u/s 132(5) of the Act, if any, passed by the Income Tax Officer against any of the petitioners shall also stand quashed. The money, jewellery and other articles recovered from the possession of the petitioners will be returned to them preferably within three weeks.