

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 11th OF OCTOBER, 2023

WRIT PETITION No.25697/2023

BETWEEN:-

1. **DILIP MEHTA, S/O DHIRAJ LAL MEHTA, AGED ABOUT 68 YEARS, OCCUPATION : BUSINESS, R/O HOUSE No.1047, PACHPEDI, SOUTH CIVIL LINES, JABALPUR (M.P.).**
2. **PRIYANK MEHTA, S/O DILIP MEHTA, AGED ABOUT 35 YEARS, OCCUPATION : BUSINESS, R/O 1813, SILVER OAK COMPOUND, RUSSEL CHOWK, JABALPUR, CURRENTLY RESIDING AT VILLA No.25, PHASE I, ANANTARA, JABALPUR (M.P.)**

.....PETITIONERS

(BY SHRI SUMIT NEMA – SENIOR ADVOCATE WITH SHRI SANKALP KOCHAR AND SHRI AYUSH GUPTA - ADVOCATES)

AND

1. **INCOME TAX DEPARTMENT, THROUGH PRINCIPAL DIRECTOR INVESTIGATION, BHOPAL (M.P.).**
2. **DEPUTY DIRECTOR, INCOME TAX DEPARTMENT (INVESTIGATION), BHOPAL (M.P.).**

.....RESPONDENTS

(BY SHRI SIDDHARTH SHARMA -ADVOCATE)

This petition coming on for admission this day, Justice Sheel Nagu passed the following:

The instant petition filed u/Art. 226 of the Constitution assails order dated 29.09.2023 (Annexure-P/3) passed by respondent No.2 invoking Section 132(3) of the Income Tax Act, 1961 (for brevity, “IT Act”) prohibiting petitioners/assessee from removing articles (liquor bottles) in the cupboard at the resident of petitioner No.1, without prior permission of the IT Authorities.

2. The challenge is founded on the ground that exercise of power by the Authorities is colourable in nature since the subject matter in question relates to Section 133 (1) but not u/S.133(3) of IT Act. It is contended that Section 132(3) has been intentionally invoked to gain advantage of sixty days limitation period prescribed u/S.132(8) by exposing petitioners/assessee to frequent access and intrusion into the privacy of their premises where the said cupboard is kept.

2.1 Counsel for petitioners in support of contention has placed reliance on **2023 (150) taxmann.com 301 (SC) (D.N. Singh Vs. Commissioner of Income-tax, Central** Para 64 and 73) and **(1991) 192 ITR 436 (Delhi) (B.K. Nowlakra Vs. Union of India)**.

3. Revenue, in turn, has justified the impugned order by assigning singular reason that since the cupboard contains liquor bottles of different brands valued as per the petitioners at Rs.1,24,493/-, the same could not have

been seized u/S. 132(1) without permission of the Excise Authorities and, therefore, Section 132(3) was invoked imposing prohibitory order.

3.1 For this purpose, Revenue has relied upon letter dated 10.10.2023 (Annexure-R/1) of the Assistant Director, Income Tax (Inv.) – I informing Excise Authority about the prohibitory order passed by Revenue u/S.132(3) *qua* cupboard containing foreign liquor.

3.2 For this purpose, Revenue relies upon CBDT's Circular dated 23.11.1984 laying down that whenever liquor in excess of the prescribed limit is found by Income-tax Authorities in search and seizure, then the same should be made available to the nearest Collector of Central Excise for allowing them to take appropriate action in accordance with law.

3.3 Another reason assigned by the Revenue is that liquor neither falls under the definition of books of account/other documents/ money/ bullion/ jewellery/other valuable article or thing.

3.4 For this purpose, learned counsel for Revenue relies upon **2008 (14) SCC 91 (*Deputy Director of Inspection (Intelligence) and others Vs. Vinod Kumar Didwania and another*)**.

4. For convenience and ready reference, it is appropriate to reproduce the relevant Sections 132(1) and 132(3) which read thus:

132 (1) [Where the [Principal Director General or] Director General or [Principal Director or] Director] or the [Principal Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner] [or Additional Director or Additional Commissioner], [or Joint Director or Joint Commissioner] in consequence of information in his possession, has reason to believe that—

(a) any person to whom a summons under sub-section (1) of Section 37 of the Indian Income-tax Act, 1922

(11 of 1922), or under sub-section (1) of Section 131 of this Act, or a notice under sub-section (4) of Section 22 of the Indian Income Tax Act, 1922, or under sub-section (1) of Section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account, or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

then,—

(A) the [Principal Director General or] Director General or [Principal Director or] Director] or the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner], as the case may be, may authorise any [Additional Director or Additional Commissioner or] [Joint Director], [Joint Commissioner], [Assistant Director [or Deputy Director]], [Assistant

Commissioner [or Deputy Commissioner] or Income Tax Officer], or

(B)such [Additional Director or Additional Commissioner or] [Joint Director] or [Joint Commissioner], as the case may be, may authorise any [Assistant Director [or Deputy Director]], [Assistant Commissioner [or Deputy Commissioner] or Income Tax Officer],

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to—]

(i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(ii-a) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

[(ii-b) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (i) of sub-section (1) of Section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;]

(iii) *seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:*

[Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business.]

(iv) *place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;*

(v) *make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:*

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner], but such [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in Section 120, it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] having jurisdiction over such person may be prejudicial to the interests of the revenue:

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due

Explanation.—For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).”

5. Bare perusal of Section 132(1) elicits that where the Revenue receives information which compels them to believe that any person is in possession of any money, bullion, jewellery or other valuable articles or things and such item represents either wholly or partly undisclosed income for the purpose of Income-tax Act, then Revenue is empowered to enter and search any building, place, vessel, vehicle or aircraft where such articles are suspected to be kept, or break open the lock of any door, box, locker, safe, cupboard (almirah) or other receptacle of which keys are not available or search any person who is suspected of having on his person any such article or require of any person to afford the authority concerned the necessary facility to have access the articles or to seize such articles found as a result of such search and to place marks of identification on any such articles after making note or inventory if these articles are stock-in-trade.

5.1 The Officer concerned u/S.132(1) has wide powers of search and seizure of articles mentioned therein which include books of account, other documents, money, bullion, jewellery, other valuable articles.

5.2 Whereas sub-section (3) of Section 132 can be invoked for imposing similar prohibitory order in regard to various articles which for reasons other than the reasons mentioned in second proviso to Section 132(1) make it

impossible or impracticable for the competent authority to take physical possession or to remove.

5.3 The expression “valuable article” is not defined in Income-tax Act but is understood in common parlance to include all such things which have value or in other words are marketable.

5.4 Liquor is undoubtedly a thing which is a valuable article since it has value in the market. Thus, by the very wide sweep and extent of expression “valuable article”, liquor stands included within the expression “valuable article”.

5.5 The expression “valuable” in dictionary is defined as such:

| Dictionary meaning of “Valuable” | | | | | | |
|--|-----------------|---|---------|--|-----------------|---|
| As per Oxford Dictionary | Concise English | As per Webster’s Dictionary Thesaurus | New and | As per Cobuild Dictionary | Collins English | As per Black’s Law Dictionary |
| adj. Worth a great deal of money, very useful or important, small valuable items of personal property. | | Precious, worth a good price, worthy thing of value | a | 1. If you describe something or someone as valuable, you mean that they are very useful and can help someone a great deal. 2. Valuable objects are objects which are worth a lot of money. Just because a camera is old does not mean it is valuable -----valuable books. | | Of financial or market value; commanding or worth a good price; of considerable worth in any respected; estimable. Webster, Dict. |

5.6 The words “article” or “thing” are defined in dictionary as such:

| Dictionary meaning of “Article” | | | | | | |
|---------------------------------|-----------------|------------------|-----|----------------|-----------------|-------------------------------|
| As per Oxford Dictionary | Concise English | As per Webster’s | New | As per Cobuild | Collins English | As per Black’s Law Dictionary |
| | | | | | | |

| Dictionary | Dictionary and Thesaurus | and Dictionary | |
|---|---|---|---|
| <p>n.1 a particular object 2. a piece of writing included with others in a newspaper or magazine.</p> | <p>n. a clause or term in a contract, treaty, etc.; a literary composition in a journal etc.; a paragraph or section; a point of faith, a rule of condition, an item; a commodity or object; (Gram.) one of the words a,n (the indefinite article) and the (the definite article); v.t. to apprentice; to accuse specifically [L. articulus, a little joint].</p> | <p>1. You can refer to objects as articles of some kind, a formal use ----articles of closing----He had stripped the house of all articles of value ----house-hold articles. 2. If you describe something as the genuine article, you are emphasizing that it is genuine and often that it is very good. The vodka was the genuine article.</p> | <p>A separate and distinct part of an instrument or writing comprising two or more particulars'; one of several things presented as connected or forming a whole. Charter v. Railroad Co., 126 N.C. 437, 36 S.E.14. A particular object or substance, a material thing or a class of things. People v. Epstein, 170 N.Y.S. 68, 73, 102 Misc. 476. Material or tangible object. Gayer v. Whelan, 59 Cal.App.2d 255, 138 P.2d 763, 768. "Thing" of value. Gayer v. Whelan, 59 Cal.App.2d 255, 138 P.2d 763, 768 In English ecclesiastical law. A complaint exhibited in the ecclesiastical court by way of libel. The different parts of a libel, responsive allegation, or counter allegation in the ecclesiastical courts. 3 Bl. Comm.109. In Scotch practice, A subject or matter; competent matter. Article of dittay" 1 Broun, 62. A "point of dittay" 1 Swint. 128,</p> |

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| Dictionary meaning of “Thing” | | | |
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| As per Concise Oxford English Dictionary | As per Webster’s Dictionary Thesaurus | New and | As per Collins Cobuild Dictionary |
| <p>n.1 an object that one need not, cannot, or does not wish to give a specific name to (things) personal belongings or clothing. 2. an inanimate material object as distinct from a living being. a living creature or plant. a person or animal in terms of one’s feelings of pity, approval, etc. you lucky thing 3 an action, activity, concept, or thought (things) unspecified circumstances or matters. 4 (the thing) <i>informal</i> what is needed or required. what is socially acceptable or fashionable. 5. (one’s thing) <i>informal</i> one’s special interest or concern.</p> | <p>n. material or inanimate object; entity; specimen; commodity; event; action; person (in pity or contempt); pl. belongings; cloths, furniture [O.E. thing, an object].</p> | <p>1. You can use thing to refer to any object, feature, or event when you cannot, need not or do not want to refer to it more precisely.</p> | <p>The objects of dominion or property as contradistinguished from “persons”. Western Union Telegraph Co. v. Bush, 191 Ark. 1085, 89 S.W.2d 723, 725, 103, A.L.R. 367; Gayer v. Whelan, 59 Cal. App.2d 255, 138 P.2d 763, 768.. The object of a right; i.e., whatever is treated by the law as the object over which one person exercises a right, and with reference to which another person lies under a duty. Holl. Jur. 83. Things are distributed into three kinds: (1) Things real or immovable, comprehending lands, tenements and hereditaments; (2) things personal or movable, comprehending goods and chattels; and (3) things mixed, partaking of the characteristics of the two former, as a title-</p> |

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| | | | <p>deed, a term for years. The civil law divided things into corporeal (tangy possunt) and incorporeal (tangy non possunt). Wharton.</p> |
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5.7 The above definition of “valuable”, “article” or “thing” as understood in common parlance, is that any inanimate thing which has some value or not.

6. The aforesaid definition thus reveals that the expression “valuable article”/“thing” being of wide amplitude and inclusive in nature would by all means include liquor.

6.1 Thus, the contention of Revenue that liquor cannot be included in the expression of valuable article is heard to be rejected at the very outset.

6.2 As regards other objection of the Revenue that power of seizure of liquor is exclusively vested with Excise Authorities and thus the Revenue Authorities by implication are denuded of any such power of seizure of liquor is an interesting argument but on close scrutiny is untenable for reasons infra:-

6.3 Coming to sub-section (3) of Section 132, it is seen that the same is an exception to Section 133(1) in its sweep and purpose. Section 132(3) provides that where it is not practicable to seize the said articles (books of accounts, other documents, money, jewellery or other valuable article or thing) for reasons other than those mentioned in second proviso to sub-section (1) of Section 132, then prohibitory order can be passed preventing the person concerned from removing the said articles found in his possession.

6.4 Second proviso to Section 132(1) operates in a different field. It provides that where it is not possible or practicable to take physical possession of any valuable article or thing and to remove them to safe place due to its volume, weight or other physical characteristics or being dangerous in nature, the Revenue would serve an order on the owner or the person in possession of such article that he shall not remove or part with or otherwise deal with it, except with the previous permission of the Revenue and such action of Revenue shall be deemed to be seizure of such valuable article or thing.

6.5 The factors necessary for invoking the second proviso to Section 132(1) are enumerated below:

- (i) volume;
- (ii) weight;
- (iii) other physical characteristics;
- (iv) and dangerous nature making it impossible or impracticable for the competent authority to remove articles.

6.6 Moreso, the objection of Revenue that liquor cannot even be included in the expression “valuable article”/“thing” defies the very definition of “valuable article” or thing understood in common parlance and, therefore, deserves to be and is rejected.

6.7 Pertinently, Section 132 deals with search and seizure contains comprehensive provisions for which the Revenue may encounter. This provision thus is quite exhaustive. The entire Section 132 does not give any indication that the expression “valuable article”/“thing” can have restrictive meaning to the extent as indicated by counsel for Revenue.

7. Another aspect which deserves consideration is that Taxing Statute is to be understood by the plain meaning of the words employed and to which no intendment or implication is permissible. While interpreting Taxing Statute in case of doubt, meaning understood in common parlance is to be accepted.

8. In view of above discussion what comes out loud and clear is that the impugned order is an outcome of colourable exercise of power by the Revenue Authorities which have wrongly invoked Section 132(3) of IT Act since the facts and circumstances were suitable enough for invocation of Section 132(1). The decision cited by learned counsel for petitioners in **B.K. Nowlakha (supra)** is reproduced hereinbelow for ready reference and convenience:

“Reading the second proviso to Section 132(1) and sub-section (3) of Section 132, it appears that the Legislature, with effect from April 1, 1989, has regarded certain orders of restraint as amounting to an order of seizure. The phraseology of the two provisions is somewhat identical. Sub-section (3) of Section 132 the authorised officer to pass a restraint order where it is "not practicable to seize" any such books of account, documents, valuable articles, etc., The second proviso to Section 132(1) also talks of a case where it is not practicable to take physical possession of a valuable article or thing and in which case an order of restraint may be issued but the second proviso would come into play only where it is not practicable to take physical possession of the valuable article for any of the four reasons, viz., due to its volume or weight or other physical characteristics or due to its being of a dangerous nature. To put it differently, if any of these four reasons exists, then the authorised officer need not take physical possession of the articles but can pass a restraint order but such a restraint order will be deemed

to be seizure of such valuable articles. Physical possession is not taken because it is not practicable. If it is not practicable to take physical possession of a valuable article for any reason other than that provided in the second proviso to Section 132(1), then the provision of Section 132(3) can be validly invoked, e.g., books of account or valuable articles which are liable to be seized may be under a lock and it may not be possible to get physical possession of the same because the key may not be available. Another example is where the key of a locker is recovered but the locker cannot be opened for any reason and it may be suspected that the said locker would contain articles which are liable to be seized. There can be a large number of reasons which make it impracticable to seize documents and valuable things. The word "practicable" indicates that, for some good and valid reason, it is not possible to seize the valuable articles or the books of account. Sub-section (3) of Section 132 would apply only in those cases where the second proviso to Section 132(1) does not apply. Where it is not practicable to seize the account books and valuable articles for the reason stated in the second proviso to Section 132(1), a restraint order would be regarded as a deemed seizure but where it is not practicable to do so for any other reason, then a restraint order will be regarded as having been validly passed under Section 132(3) and the restraint order will continue till a formal seizure is effected.

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In our opinion, the power under Section 132(3) cannot be so exercised as to circumvent the provisions of Section 132(1) read with sub-section (5) thereof. When a search is conducted and valuable movable articles are found which are liable for seizure, then they should be seized. Because such seizure was not effected due to their physical characteristics, Parliament thought it necessary

to enact the second proviso to Section 132(1). Whereas previously due to the weight, volume or physical characteristics, only restraint orders under Section 132(3) were passed, now with effect from April 1, 1989, such restraint orders are being regarded as deemed seizure under sub-clause (iii) of Section 132(1). The intention of the Legislature is very clear, viz., it is the duty of the authorised officers to effect seizure wherever any valuable article or thing is found during the course of the search and the words "not practicable to seize" used in Section 132(3) have to be understood in this sense, viz., where there is a practicable difficulty in effecting seizure, then an order under Section 132(3) can be passed. Not knowing the value of the articles or whether they are antique or not cannot be regarded as a practical difficulty on the part of the authorised officer in effecting seizure. In our opinion, therefore, the orders which were issued under Section 132(3) were not validly issued and the goods which were found at the premises could have been seized by actually seizing the articles or by making an order of restraint under the second proviso to Section 132(1) of the Act. This was not done in the present case."

9. Before concluding, it would be appropriate to notice another fallacy of Revenue. Revenue has failed to satisfy that this was a case which made it impossible/impracticable for Revenue to seize the liquor found at the premises of petitioners and, therefore, it can be presumed that there were no compelling reasons to invoke Section 132(3).

10. In the conspectus of above discussion, this Court has no hesitation to **allow** the petition in the following terms:

- (i) Impugned order dated 29.09.2023 (Annexure-P/3) passed by respondent No.2 u/S.132(3) of IT Act is set aside.

- (ii) Revenue is at liberty to invoke the right provisions in accordance with law, if so advised.
- (iii) Revenue is saddled with cost of **Rs.10,000/-** out of which petitioners are entitled to **Rs.5,000/- (Rupees Five Thousand)** which shall be paid by respondents by depositing the same in the bank account of petitioners through digital transfer and balance of **Rs.5000/- (Rupees Five Thousand)** to be paid to Madhya Pradesh State Legal Services Authority, Jabalpur to be forwarded to the Permanent Artificial Organ Transplantation Centre, Netaji Subhash Chandra Bose Medical College, Jabalpur for having wasted the precious time of this Court in adjudicating this avoidable piece of litigation with compliance report to be filed in the Registry within a period of 60 days from today, failing which the matter be listed under the caption of “Direction” as PUD for execution *qua* cost.

(SHEEL NAGU)

JUDGE

(HIRDESH)

JUDGE

