* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ W.P.(C) 9479/2007 & CM 9520/2008

S.R. BATLIBOI & CO. ..... Petitioner through
Mr. S. Ganesh, Sr. Adv.
with Mr. Akhil Anand, Adv.

versus

DEPARTMENT OF INCOME TAX(INVESTIGATION)
..... .Respondent through
Mr. Vikas Singh, Sr. Adv.
with Ms. P.L. Bansal,
Mr. M.P. Gupta &
Mr. Sanjeev Rajpal, Advs.

% Date of Hearing : May 21st, 2009

Date of Decision : May 27th, 2009

CORAM:
* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE RAJIV SHAKDHER

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

VIKRAMAJIT SEN, J.

1. The present writ petition has been filed by the Petitioner, S.R. Batliboi & Co., reputed Auditors and Accountants against the Department of Income Tax entreating the issuance of an appropriate writ to prevent the Respondents from forcibly gaining or securing access

to the data contained in two laptops belonging to them. The brief facts adumbrated before us are that while conducting an audit of EMAAR on 11.9.2007, the laptops of two employees of the Petitioner were seized by the Deputy Director, Income Tax (DDIT) in the course of conducting a Search and Seizure operation against EMAAR. Subsequently on 17.9.2007, the DDIT issued summons under Section 131 of the Income Tax Act, 1961 (the Act for the sake of brevity) on 17.9.2007 to Ms.Sandhya Sama and Shri Sanjay K. Jain, the employees of the Petitioner firm and their statements were recorded on 18.9.2007. It is further stated by the Petitioner that on the request of the DDIT these employees provided him with the electronic data relating to three companies of the EMAAR Group together with the print copies of the data. Nevertheless, the DDIT insisted on securing total and unrestricted access to the laptops obviously in order to gain information and data of all the other clients of the Petitioner. This request was refused by the employees. The seized laptops were sent by the Respondents to Central Forensic Science Laboratory (CFSL) who, however, could not ascertain the

password and accordingly could not access the entire data on the laptops. The Petitioner was thereupon asked to disclose the password, which it again declined and thereafter the laptops were sealed in the presence of the said employees of the Petitioner.

2. Synopsis of arguments were filed by the parties on 21st May, 2009, and clarifications were made.

3. In its Order dated 18.11.2008, the previous Division Bench passed the following orders:

> "The learned counsel appearing on behalf of the respondent submits that as per his instructions he would like to argue the matter with regard to de-sealing of the laptops and having access to the data in the laptops. He submits that to ascertain as to whether the data relates to EMAAR-MGF, the entire data available on the laptops would have to be examined. On the other hand, the learned counsel for the petitioner submits that the data concerning EMAAR-MGF is available on different and distinct files and has nothing to do with its 47 other clients. We had suggested that the laptops be de-sealed and the data be examined by the Assessing Officer in the presence of representatives of the petitioner as well as of the assessee. It was also suggested that the entire

> inspection of the data on the laptops be done without copying the data in any form for the purposes of informing the Court as to which files were connected with EMAAR-MGF and would be required by the Assessing Officer. Unfortunately, this suggestion is not acceptable to the respondents though the petitioners had accepted the same. Consequently, this matter would have to be heard. The learned counsel for the petitioner requests for some other date for advancing arguments inasmuch as today the respondents were only to report as to whether the suggestion was to be carried out or not".

4. Mr. Vikas Singh, the learned Senior Counsel appearing on behalf of the Respondents, has contended that the Income Tax Department has made a valid seizure of the laptops and the Petitioners are bound to provide the password under Section 275B of the Act, which reads thus:-

> 275B. If a person who is required to afford the authorized officer the necessary facility to inspect the books of account or other documents, as required under clause (iib) of sub-section(1) of section 132, fails to afford such facility to the authorized office, he shall be punishable with

rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.

It has not been pleaded nor have we been informed as to whether or not notice required by Section 132 has been served upon the Petitioner. We have no alternative but to presume against the issuance of the notice. That being so, resort to Section 275 B becomes otiose. As will be seen sundry safeguards have been put into place by the Legislature before such an inquisition can be commenced. It is important to clarify that so far as this provision is concerned it contemplates only access to and not seizure of the books or material since seizure is dealt with in Section 132(1)(iii). A Notice dated 17.9.2007 is Annexure P-2 to the Petition. It does not refer to any provision of the Act, but the Written Submissions appear to indicate that it is predicated on Section 131 of the Act.

5. The argument on behalf of the Petitioner is that the data relating to EMAAR Group of Companies has already been provided to the Respondents and the Petitioners are willing to cooperate with the Respondents in respect of every hue and aspect of the Search and to identify and provide any data stored in the laptops concerning EMAAR

Group of Companies. The contention on behalf of the Petitioner is that granting absolute access to the IT Department of all the data even pertaining to the other clients of the Petitioners, having no dealings with the EMAAR Group, would tantamount to grave professional misconduct and would be contrary to the code of ethics applicable upon the Petitioner as well as the obligations contained in Chartered Accountants Act, 1949, which proscribes them from disclosing confidential information to third parties. The Petitioner submits that the basic principles governing an audit on the point of confidentiality, as stipulated in the Council of the Institute of Chartered Accountants of India, read as follows:-

> 6. The auditor should respect the confidentiality of information acquired in the course of his work and should not disclose any such information to a third party without specific authority or unless there is a legal or professional duty to disclose.

6. In the synopsis dated 21.5.2009 filed by the Revenue it has been stated that "a combined reading of S.132(1)(iib), 275B, Section 153A, Section 153C and other related provisions unequivocally leads to the fact that the

assessing officer the scheme of the Act has an unconditional right to view the files and documents found and seized during search u/s 132 to find out its relevancy in relation to the assessment proceedings pending before him". To this extent there is no quarrel, as is clear from the Orders passed in these proceedings. The controversy arises because Mr. Vikas Singh, the learned Senior Counsel for the Respondent further argues that the Petitioner is legally bound to provide unabridged, unrestricted and comprehensive data available/stored on the laptops pertaining to all the clients/companies. The arguments is that the law entitles the IT Department to seize not only the data concerning the Assessee to whom notice under Section 132 of the IT Act has been served, but by virtue of Section 153C, its dominion is extended over any money, bullion, jewellery or other valuable article or thing or book of accounts or documents seized by them even if it belongs to a third party. This Section reads as under:-

> **153C. Assessment of income of any other person.**
>
> Notwithstanding anything contained in section 139, section 147, section 148, section 149, section

> 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

7. However, we cannot, in the present case, persuade ourselves to agree with the argument of the learned Senior Counsel for the Respondent that the above stated provision would entitle and empower the DDIT to seize any or all the articles, valuables or documents found during the course of the Search regardless of whether they are relevant for the purpose of assessment of the Assessee on whom a Search and Seizure is conducted. The Section provides for "Assessment of Income of any other person" and the same is a much later stage to one which we find ourselves at the present juncture. At the cost of repetition, we would like to

emphasise that the question before this Court is whether the Revenue is entitled to demand an unrestricted access to and/or right to acquire the electronic records present in the laptops that belong to the Auditor of the Assessee and not to the Assessee himself including electronic records pertaining to third parties unconnected with the EMAAR Group. It has been specifically submitted in the synopsis of the Revenue that they would be allowed to use information stored in the said laptops of the Auditors relating to an unconnected Company, namely, Maytas.

8. Parliament has recently with effect from 1.6.2002 inserted new provisions in Section 132 providing for Search and Seizure of Books of Account or other documents maintained in the form of electronic records. Sub-sections 132 (1)(iib) and (iii) provide as under:

> (iib) 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 (t) 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;

Thus, sub-section 132 (1)(iib) casts a compulsion on the owner of the laptops to provide the Department with the password to the computer to enable inspection of the Books of Account maintained in electronic form in the laptops. The authorized officer of the Department may, after inspection of the documents, seize such documents and Books of Account obviously connected with the Assessee in respect of whom steps under the other parts of Section 132 have been initiated.

9. It would be perilous and fatal to lose sight of the reality that the powers of the Search and Seizure are very wide and thus the legislature has provided a safeguard that the Assessing Officer should have reasons to believe that a

person against whom proceedings under Section 132 are to be initiated is in possession of assets which have not been or would not be disclosed. Secondly, the authorized officer is also required to apply his mind as to whether the assets found in the Search have been disclosed or not, and if no undisclosed asset is found no action can be taken under Section 132(1)(iii) or(3). An arbitrary seizure cannot be maintainable even where the authority has seized documents with ulterior motives.

10. As regards the extent of power of the Authorised Officer acting under the authority of Section 132, their Lordships in *ITO –vs- Seth Bros.*, (1969) 2 SCC 324 have enunciated the law in these words:

> 7. The Commissioner or the Director of Inspection may after recording reasons order a search of premises, if he has reason to believe that one or more of the conditions in Section 132(1) exist. The order is in the form of an authorisation in favour of a subordinate departmental officer authorising him to enter and search any building or place specified in the order, and to exercise the powers and perform the functions mentioned in Section 132(1). The Officer so authorised may enter any building or place and make a search where he has reason to

believe that any books of account or other documents which in his opinion will be useful for, or relevant to, any proceeding under the Act, may be found. The Officer making a search may seize any books of account or other documents and place marks of identification on any such books of account or other documents, make or cause to be made extracts or copies therefrom and may make an inventory of any articles or things found in the course of any search which in his opinion will be useful for, or relevant to any proceeding under the Act, and remove them to the Income Tax Office or prohibit the person in possession from removing them. He may also examine on oath any person in possession of or control of any books of account or documents or assets.

8. The section does not confer any arbitrary authority upon the Revenue Officers. The Commissioner 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 authorisation 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 proceedings under the Act, he is authorised 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 tax-payer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorizes 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 Commissioner entertains the requisite belief and for reasons recorded by him authorises 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 authorising 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 authorisation will not be sufficient to vitiate the action taken, provided the officer has in executing the authorisation acted bona fide.

9. The Act and Rules do not require that the warrant of authorization should specify the particulars of documents and books of accounts a general authorization to search for and seize documents and books of account relevant to or useful for any proceeding complies with the requirements of the Act and the Rules. It is for the officer making the search to exercise his judgment and seize or not to seize any documents or books of accounts. An error committed by the officer in seizing documents may ultimately be found not to be useful for or relevant to the proceeding under the Act will not by itself vitiate the search, nor will

it entitle the aggrieved person to an omnibus order releasing all documents seized.

It appears plain to us, therefore, that for a search or seizure to be legal it should not be firstly ordered for malafide, extraneous or for oblique reasons. Secondly, it must be predicated on information received by the Authority who would have reason to believe that it is necessary to conduct such an operation. Thirdly, it should not be in the nature of a roving or fishing exercise. These three factors must be observed rigorously and even punctiliously since the exercise of such powers invariably result in a serious invasion of the privacy and freedom of the citizen. However, search and seizure operations may not be illegal if the seized documents pertain to transactions of allied concerns, since they would have a bearing on the case of evasion of income tax by the assessee concerned. *CIT –vs- Jawahar Lal Rastogi*, 1970 (2) SCC 225 mandates that if the seized material is to be retained beyond 180 days it must be supported by good and adequate reasons which have received the approval of the Commissioner. Although, the warrant of authorization need not specify the particulars of documents and books of

account, an indiscriminate search or seizure is not postulated by the Act. Form No.45 and 45A and Rule 112(2) which seek to effectuate the purposes of Section 132(1) of the Act reinforce the distillation of the law articulated above. To justify search and/or seizure it is essential that (a)there must exist information which is laid before the Commissioner as a consequence of which he has (b) reason to believe that it is expedient to issue summons to produce books of accounts or other documents specified therein, which summons must (c) be addressed to a particular person, which formality obtains even in the case of money, bullion jewellery etc. that has not been declared; (d) specific particulars of the place where the above items are believed to be available must be indicated. All these rigorous formalities are indicative of the intention of Parliament that the extremely harrowing experience of Search or Seizure made available under the Act must be particular to the named person and be confined to the mentioned place. If this is applicable to all and sundry it would infract and nullify the fundamental rights of the citizen (third or unconnected party) concerned.

11. In *Manish Maheshwari –vs- Assistant CIT*, (2007) 3 SCC 794 one of the provisions which was at the fulcrum of discussion was Section 158-BD of the Act in the context of the legitimacy of ordering a Block-Assessment. This provision has also been relied upon before us in order to vindicate the stance of the Revenue that information that can be gleaned from the seized computers belonging or relating to other clients of the Petitioner, even those who have had no dealings whatsoever with the assesses against whom the search and seizure operations are directed, can legitimately be demanded and acted upon. The argument is that the Act contemplates that all such information should be forwarded by the Authority carrying out the search and seizure to the Assessing Officer of those third parties. We are unable to accept such an extreme stand. The words "other person" employed in the Section must only be construed as referring to the 'other person' having dealings or transactions with the party who is being searched or whose material is being seized. Otherwise, the provisions may well be seen as violative of the fundamental rights enshrined in Articles 14 and 19.

12. Over two score years ago the Division Bench of this Court had opined in *N.K. Textiles Mills –vs- CIT*, [1966] 61 ITR 58 propounded that it was "necessary and essential for these officers to take into custody only such books as were considered relevant to or useful for the proceedings in question. It was not open to them to indiscriminately, arbitrarily and without any regard for relevancy or usefulness, seize all the books and documents which were lying in the premises, and, if they did so, the seizure would be beyond the scope of the authorization". Our learned Brothers have designedly used the words "proceeding in question", in order to clarify that material that may possibly be of relevance to the affairs of a third party, unconnected with the raided assessee and beyond the contemplation of the search and seizure exercise, should not be retained. All remaining doubts will be dispelled on a perusal of *H.L.* ***Sibal*** *–vs- CIT*, [1975] 101 ITR 112 in which the Division Bench has, *inter alia*, analysed *Commissioner of Commercial Taxes –vs- Ramkishan Shrikishan Jhaver*, [1967] 66 ITR 664 into four concomitants – (1)The authorized officer must have reasonable grounds for

believing that anything necessary for the purpose of recovery of tax may be found in any place within his jurisdiction; (2) he must be of the opinion that such thing cannot be otherwise got at without undue delay; (3)he must record in writing the grounds of his belief; and (4) he must specify in such writing, so far as possible, the thing for which search is to be made. Where material or document or assets belong to a third party, totally unconcerned with the person who is raided, none of these conditions are fulfilled. In ***Sibal*** the belongings of a house-guest of Shri Sibal were searched and some money found therein was seized. The Court had concluded that the authorization for the search of the house-guest was prepared after the planned search of Shri Sibal. The warrants were quashed partly for this reason.

13. An indiscriminate seizure deracinates the personal liberty and privacy of the citizen and is anathematic to law. It can be proscribed under Article 226 of the Constitution. The question of "indiscriminate search" has to be answered by the Court by looking into the evidence and the facts of each case. Taking note of the observations in ***Seth Bros***

their Lordships have further enunciated the law in the case of *CIT –vs- Jawahar Lal Rastogi*, (1970) 2 SCC 225 in these words:

> 6. It must, however, be stated that the findings that the action of the Commissioner of Income Tax and the Income Tax Officer amounted to "indiscriminate search" and was beyond the "legitimate scope of Section 132" depends upon the evidence in each case and no general rule can be laid down in that behalf.

14. Coming back to the contention of the Petitioner, it has argued that the laptops that have been seized by the Respondent have confidential information relating to the accounts of 46 other clients, having no relation or business dealings with the Assessee, and seizure of these accounts will amount to serious breach of confidentiality which they are bound to protect by the principles of professional ethics. It is also our view that the Income Tax Department cannot make fishing or roving inquiry to initiate proceedings against all these companies which are the clients of the Petitioner. It has been argued orally as well as in the synopsis that the Petitioner cannot assist any party in breaking the law; this submission is illogical since

it cannot be presumed that the accounts relating to 46 other clients of the Petitioner contained in the two laptops are of this character. The rigours of the law, *inter alia* the necessity to have reasons to believe so must be recorded and be followed by warrants. An indiscriminate search frustrates the whole scheme of Section 132 and emasculates the protective measures against these draconian powers.

15. Mr. Vikas Singh, learned Senior Advocate for the Revenue, has attracted our attention to Sections 132, 158BD and Section 275B of the Act to buttress his arguments that once a search or seizure has been validly commenced, anyone who has been drawn into the vortex of that whirlpool would have to suffer all its activities and consequences. Mr. Singh has laid emphasis on the words "any person" occurring in Section 132 and Section 158BD to contend that all repercussions of a search and seizure operation can visit even a bystander or a third party. Gramatically, the word "any" can relate either to only one person particularized by the circumstances or situation or to several or limitless indistinguishable or indeterminate

persons. ‘Any’ person, or ‘a’ person or ‘the’ person can be used synonymously in singular. This is the user which commends itself to our thinking, to protect against the peril of the provision being perceived as *ultra vires* of Chapter III of the Constitution. So far as Section 275B is concerned, it does not resolve the conundrum before us, since the notice under that provision is under siege, insofar as it pertains to books of accounts of documents having no relevance or bearing on the affairs of MGF EMAAR. It will be relevant to remind ourselves that the Objection of the Petitioner is vis-à-vis only the material relating to their other clients and not to material which has causal connection with EMAAR against whom the Search and Seizure operation is directed. The offer in this regard has been spurned by the Revenue, as is manifest from the previous Order dated 18.11.2008 already extracted above.

16. Mr. Vikas Singh, learned Senior Counsel for the Revenue has also referred to Section 153C of the Act, which essentially prescribes the period within which the action envisaged in that Act is to be completed, and the method by which it is to be computed. Section 153

prescribes the period within which assessments or reassessments must be completed, viz. in the normal course within two years from the end of the Assessment Year in which the income was assessable. If income appears to have escaped taxation and Sections 147 to 149 are pressed into service, Section 153(2) mandates broadly that the assessment must be completed within one year. Sections 153A, 153B and 153C were introduced by the Finance Act, 2003 with effect from 1.6.2003. In essence, Section 153A has in focus the 'case of a person where a Search is initiated or any assets are requisitioned' and envisages the furnishing of a Return of income for six years. The succeeding Section 153B sets a limit of two years for the making of an order of assessment or reassessment of such a person, that is, one in respect of whom a search or requisition has been initiated. Section 153C, on the other hand, brings within its sweep "a person other than the person referred to in Section 153A" to whom the money, bullion, jewellery or other valuable article belongs or books of account or document seized or requisitioned belong and directs that they shall be

forwarded to the Assessing Officer of that person. The Assessing Officer will then proceed in the manner prescribed by Section 153A, which principally extends the period within which the assessment has to be completed. The vires of these sections were challenged in *Soraya Industries Ltd. –vs- UOI*, [2008] 306 ITR 189, but the argument that distinguishable persons have been impermissibly placed in the same mould did not find favour with the Division Bench. Our esteemed Brothers opined that "the seizure or requisition must be of such a character as to persuade the Assessing Officer to even reopen closed assessments". So far as the case in hand is concerned we have again to interpret the words "a person" employed in the Section. The consideration would be whether these words would include a person totally unconnected with the party in respect of whom the seizure or seizure maneuver is directed, who by a quirk of fate chances to be in the wrong place at the wrong time. Conceive of a coincidence where the raided party has it offices on the 2nd Floor of an office complex in which the other person unconnected altogether with the former works out of the 3rd Floor, and a

courier with a parcel of document walks into the 2nd Floor at that awkward or inopportune time. It appears to be absurd that that parcel could be consfiscated by the raiding revenue regiment for being forwarded to the Assessing Officer of the 3rd Floor person. However, as already observed above this provision does not of itself shed any light on the question whether even a person unconnected with the assessee who is the subject of the raid, having no dealings with it, is envisaged in any manner with the consequences of that operation.

17. Our research has led us to a reading of *District Registrar and Collector, Hyderabad –vs-* ***Canara Bank***, AIR 2005 SC 186, which concerns the challenge to Section 73 of the Stamp Act (as substituted by A.P.Act No.17 of 1986), permitting any person authorized by the Collector to inspect registers, books, papers, documents and proceedings and to take notes and extracts as may be deemed necessary. Chief Justice Lahoti considered not only several precedents delivered by Courts panning the globe, but also the Article 12 of the Universal Declaration of Human Rights, Article 17 of the International Covenant of

Civil and Political Rights, the European Convention on Human Rights; and the Canadian Charter of Rights and Freedoms which emblazons that "Everyone has the right to be secure against unreasonable search and seizure"; and the New Zealand Bill of Rights which additionally qualifies that the said rights encompass the person, property or correspondence; and the Fourth Amendment of the US Constitution. Their Lordships emphasized upon *Govind –vs- State of MP,* AIR 1975 SC 1378, [1975] 2 SCC 148 in which the need to guard against the pernicious possibility of a "police-raj" was forcefully articulated. The triple tests distilled by the 7 Judge Bench in *Maneka Gandhi –vs- Union of India,* (1978) 1 SCC 248: AIR 1978 SC 597 were reiterated viz. that a law interfering with personal liberty must (a) be consonant with a prescribed procedure which should, (b) be compliant with one or more rights mentioned in Article 19 and (c) with Article 14 additionally. Their Lordships thought it to be essential that documents deposited or stored in a Bank must remain confidential. It is our considered opinion that the same privilege of confidentiality must extend to auditors as well. The

decision of the High Court striking down unbridled power sought to be given in Section 73 of the Stamp Act was affirmed by the Supreme Court. This ratio can logically be extrapolated upon the facts of the present case to conclude that the Revenue is not empowered to make use of material stumbled upon by its officers in a Search conducted against a third party. The extracted paragraph from ***Canara Bank*** particularly calls for reproduction:-

> 50. In the Income Tax Act, 1961 elaborate provisions are made in regard to "search and seizure" in Section 132; power to requisition books of account, etc. in Section 132-A; power to call for information as stated in Section 133. Section 133(6) deals with power of officers to require any bank to furnish any information as specified there. There are safeguards. Section 132 uses the words "in consequence of *information* in his possession, *has reason to believe*". (emphasis supplied) Section 132(1-A) uses the words "in consequence of information in his possession, has reason to suspect". Section 132(13) says that the provisions of the Code of Criminal Procedure, relating to searches and seizure shall apply, so far as may be, to searches and seizures under Sections 132(1) and 132(1-A). There are also Rules made under Section 132(14). Likewise Section

132-A(1) uses the words "in consequence of *information* in his possession, *has reason to believe*". (emphasis supplied) Section 133 which deals with the power to call for information from banks and others uses the words "*for the purposes of this Act*" and Section 133(6) permits a requisition to be sent to a bank or its officer. There are other Central and State statutes dealing with procedure for "search and seizure" for the purposes of the respective statutes.

18. We may also advert to the several decisions of different High Courts where the material which was not found as a result of search and seizure was discarded for the purposes of assessment under Chapter XIV-B. In the case of *CIT –vs- G.K Senniappan,* (2006) 284 ITR 220 it was held that the material collected during Survey under Section 133 does not constitute "such evidence" based on which assessment under Section 158 BB can be framed. In the case of *CIT –vs- Ravi Kumar* the Court held that loose slips found during a Search cannot constitute substantial evidence to invoke Section 69A of the Act. Similar views have been endorsed by a Division Bench of this Court in *CIT –vs- Ravi Kant Jain:* [2001] 250 ITR 141, where the Court emphasized on the fact that Block Assessment under

Chapter XIV-B cannot be a substitute for regular assessment and thus the change of opinion of Revenue on audited accounts seized during search cannot form the basis for a special assessment. If apparently reliable material cannot be directly used against an assessee solely because it was not collected during a Search of that assessee, *a fortiori*, material palpably concerning a third party with no connection with the raided party must be ignored. It is also illogical that the rigours which apply to the Search of a particular notified person can be flagrantly ignored so far as an unconnected person is concerned. It is argued that under Section 153C the Department acts as a post-office, viz. it sends the seized material to the concerned Assessing Officer. This proposition advanced by the Revenue is legally acceptable so long as it is restricted to any person having dealings or transactions with the person who is the subject of the Search and Seizure operation.

19. Finally, so far as the prayers in the Petition are concerned, we are of the opinion that in a situation such as the one which we are seized with, in view of the fact that

the Respondents have rejected the offer made by the Petitioner as recorded in our Order dated 18.11.2008 : the impugned summons, as referred to in Prayer (ii) of the Writ Petition are set aside, and the Respondents are directed to forthwith return the laptops to the Petitioner.

20. Petition is allowed and the pending application stands disposed of.

21. DASTI.

(VIKRAMAJIT SEN)
JUDGE

May 27th, 2009
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(RAJIV SHAKDHER)
JUDGE