



GAHC010050532020

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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/4176/2020**

SHEETAL BAMALWA  
W/O SRI VINOD BAMALWA, R/O MAHALAYA ROAD, DIBRUGARH, PIN-  
786001

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REP. BY THE SECY. TO THE GOVT OF INDIA, MINISTRY OF FINANCE,  
DEPTT., OF REVENUE, NEW DELHI-110101

2:THE CENTRAL BOARD OF DIRECT TAX  
REP. BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI-110001

3:ASSISTANT DIRECTOR OF INCOME TAX (INV)  
UNIT- 2(3)  
DIBRUGARH  
ASSAM

4:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C.R. BUILDING  
DIBRUGARH- 786003

5:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C.R. BUILDING  
DIBRUGARH-786003  
ASSAM



6:THE DIRECTOR OF INCOME TAX (INVESTIGATION ) (NER)  
UNIT 2(2)  
1ST FLOOR  
DR. R.K. BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSA

**Advocate for the Petitioner** : MS. M L GOPE

**Advocate for the Respondent** : SC, ITD

Linked Case : WP(C)/7253/2018

VINOD BAMALWA  
S/O- SRI MADANLAL BAMALWA  
BY OCCUPATION BUSINESS  
C/O- MAHALAYA ROAD  
DIBRUGARH- 789006  
ASSAM

VERSUS

UNION OF INDIA AND 5 ORS.  
REP. BY THE SECRETARY TO THE MIN OF FINANCE  
GOVT OF INDIA  
NEW DELHI

2:CENTRAL BOARD OF DIRECT TAXES  
REP. BY ITS CHAIRPERSON UNDER THE MIN OF FINANCE (DEPTT OF  
REVENUE) GOVT OF INDIA  
NORTH BLOCK  
NEW DELHI- 01  
3:ASSTT DIRECTOR OF INCOME TAX (INV)  
DIBRUGARH  
UNIT 2(3)  
DIBRUGARH  
ASSAM  
4:PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH



CR BUILDING  
DIBRUGARH  
ASSAM  
786003  
5:DIRECTOR OF INCOME TAX (INV) (NER)  
UNIT 2(2) 1ST FLOOR  
DR. R K BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSAM  
6:DEPUTY DIRECTOR OF INCOME TAX (INV)  
KOLKATA

-----  
Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/4061/2020

PRAMOD BAMALWA  
S/O SRI HANSRAJ BAMALWA

RESIDENT OF MAHALAYA ROAD  
DIBRUGARH  
786001 ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPARMENT OF REVENUE  
NEW DELHI 110101

2:THE CENTRAL BOARD OF DIRECT TAX  
REPRESENTED BY ITS CHAIRMAN UNDER THE MINISTRY OF  
FINANCE(DEPT. OF REVENUE)  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI 110001  
3:ASSISTANT DIRECTOR OF INCOME TAX (INV)  
UNIT-2(3) DIBRUGARH  
ASSAM  
4:THE PRINCIPAL COMMISSIONER OF INCOME TAX



DIBRUGARH  
CR BUILDING  
DIBRUGARH  
786003 ASSAM  
5:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
CR BUILDING  
DIBRUGARH  
786003 ASSAM  
6:THE DIRECTOR OF INCOME TAX (INVESTIGATION)(NER)  
UNIT 2(2)  
1ST FLOOR  
DR. R K BORKOTOKY BUILDING DR. LILA GOGOI PATH  
MILANNAGAR  
DIBRUGARH ASSAM

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Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/4100/2020

HANSRAJ BAMALWA  
S/O LATE NEMICHAND BAMALWA. RESIDENT OF MAHALAYA ROAD  
DIBRUGARH  
786001 ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NEW DELHI 110101

2:THE CENTRAL BOARD OF DIRECT TAX  
REPRESENTED BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI 110001  
3:ASSISTANT DIRECTOR OF INCOME TAX (INV)  
UNIT 2(3) DIBRUGARH  
ASSAM  
4:THE PRINCIPAL COMMISSIONER OF INCOME TAX



DIBRUGARH  
C R BUILDING  
DIBRUGARH  
786003 ASSAM  
5:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C R BUILDING  
DIBRUGARH  
786003 ASSAM  
6:THE DIRECTOR OF INCOME TAX (INVESTIGATION((NER)  
UNIT 2(2) 1ST FLOOR  
DR. R K BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSAM

-----  
Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/7237/2018

HANSRAJ BAMALWA  
S/O- LATE NEMICHAND BAMALWA BY OCCUPATION BUSINESS  
C/O- MAHALAYA ROAD  
DIBRUGARH- 789006  
ASSAM

VERSUS

UNION OF INDIA AND 4 ORS.  
REP. BY THE SECRETARY TO THE MIN OF FINANCE  
GOVT OF INDIA  
NEW DELHI- 01

2:CENTRAL BOARD OF DIRECT TAXES  
REP. BY ITS CHAIRPERSON  
UNDER THE MIN OF FINANCE (DEPTT OF REVENUE)  
GOVT OF INDIA  
NORTH BLOCK  
NEW DELHI- 110001  
3:ASSTT DIRECTOR OF INCOME TAX (INV)  
DIBRUGARH  
UNIT -2(3)



DIBRUGARH  
ASSAM  
PIN- 786003  
4:PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
CR BUILDING  
DIBRUGARH  
ASSAM  
786003  
5:DIRECTOR OF INCOME TAX (INV) (NER)  
UNIT 2(2)  
1ST FLOOR  
R K BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSAM  
PIN- 786003

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Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/4233/2020

MEENAKSHI BAMALWA  
D/O SRI BACHHRAJ BAMALWA RESIDENT OF MAHALAYA ROAD  
DIBRUGARH  
786001 ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NEW DELHI 110101

2:THE CENTRAL BOARD OF DIRECT TAX  
REPRESENTED BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI 110001  
3:ASSISTANT DIRECTOR OF INCOME TAX (INV)



UNIT 2(3) DIBRUGARH

ASSAM

4:THE PRINCIPAL COMMISSIONER OF INCOME TAX

DIBRUGARH

C R BUILDING

DIBRUGARH

786003 ASSAM

5:THE DIRECTOR OF INCOME TAX (INVESTIGATION((NER)

UNIT 2(2) 1ST FLOOR

DR. R K BORKOTOKY BUILDING

DR. LILA GOGOI PATH

MILAN NAGAR

DIBRUGARH

ASSAM

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Advocate for : MS. M L GOPE

Advocate for : SC

INCOME TAX appearing for THE UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/4064/2020

SMTI BHAGWATI DEVI BAMALWA

W/O SRI MADANLAL BAMALWA

R/O MAHALAYA ROAD

DIBRUGARH

ASSAM

PIN-786001

VERSUS

THE UNION OF INDIA AND 4 ORS.

REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

NEW DELHI-110101

2:THE CENTRAL BOARD OF DIRECT TAX

REPRESENTED BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

GOVERNMENT OF INDIA

NORTH BLOCK

NEW DELHI-110001

3:ASSISTANT DIRECTOR OF INCOME TAX (INV)

UNIT-2(3)

DIBRUGARH



ASSAM  
4:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C.R. BUILDING  
DIBRUGARH-786003  
ASSAM  
5:THE DIRECTOR OF INCOME TAX (INVESTIGATION) (NER)  
UNIT 2(2)  
1ST FLOOR  
DR. R.K. BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSAM

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Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for THE UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/4102/2020

RAVI BAMALWA  
S/O SHRI HANSRAJ BAMALWA RESIDENT OF MAHALAYA ROAD  
DIBRUGARH  
786001 ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NEW DELHI 110101

2:THE CENTRAL BOARD OF DIRECT TAX  
REPRESENTED BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI 110001  
3:ASSISTANT DIRECTOR OF INCOME TAX (INV)  
UNIT 2(3) DIBRUGARH  
ASSAM  
4:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH





C R BUILDING  
DIBRUGARH  
786003 ASSAM  
5:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C R BUILDING  
DIBRUGARH  
786003 ASSAM  
6:THE DIRECTOR OF INCOME TAX (INVESTIGATION((NER)  
UNIT 2(2) 1ST FLOOR  
DR. R K BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSAM

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Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/4234/2020

MADANLAL BAMALWA  
S/O LATE NEMICHAND BAMALWA.RESIDENT OF MAHALAYA ROAD  
DIBRUGARH  
786001  
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NEW DELHI 110101

2:THE CENTRAL BOARD OF DIRECT TAX  
REPRESENTED BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI 110001  
3:ASSISTANT DIRECTOR OF INCOME TAX (INV)  
UNIT 2(3) DIBRUGARH  
ASSAM



4:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C R BUILDING  
DIBRUGARH  
786003 ASSAM

5:THE DIRECTOR OF INCOME TAX (INVESTIGATION)((NER)  
UNIT 2(2) 1ST FLOOR  
DR. R K BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSAM

6:THE PRINCIPAL COMMISSIONER INCOME TAX (INVESTIGATION)  
KOLKATA.

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Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/4101/2020

VINAY BAMALWA  
S/O HANSRAJ BAMALWA RESIDENT OF MAHALAYA ROAD  
DIBRUGARH  
786001 ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NEW DELHI 110101

2:THE CENTRAL BOARD OF DIRECT TAX  
REPRESENTED BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI 110001

3:ASSISTANT DIRECTOR OF INCOME TAX (INV)  
UNIT 2(3) DIBRUGARH  
ASSAM

4:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH



C R BUILDING  
DIBRUGARH  
786003 ASSAM  
5:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C R BUILDING  
DIBRUGARH  
786003 ASSAM  
6:THE DIRECTOR OF INCOME TAX (INVESTIGATION((NER)  
UNIT 2(2) 1ST FLOOR  
DR. R K BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSAM

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Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/9308/2019

BAJRANG LAL BAMALWA AND SONS (HUF)  
GROUND FLOOR  
MAHALAYA ROAD  
DIBRUGARH-786001  
ASSAM REP BY ITS KARTA BAJRANGLAL BAMALWA

VERSUS

UNION OF INDIA AND 4 ORS.  
REP. BY THE SECRETARY TO THE MINISTRY OF FINANCE  
GOVT. OF INDIA  
NEW DELHI

2:CENTRAL BOARD OF DIRECT TAXES  
REP. BY ITS CHAIRPERSON  
UNDER THE MINISTRY OF FINANCE (DEPTT. OF REVENUE)  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI-110001  
PRINCIPAL COMMISSIONER OF INCOME TAX  
JORHAT  
C.R. BUILDING DIBRUGARH  
ASSAM



786003  
3:THE DEPUTY/ ASSISTANT COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C.R. BUILDING DIBRUGARH  
ASSAM  
786003  
4:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
KOLKATA-10  
KOLKATA  
5:THE DEPUTY/ASSISTANT COMMISSIONER OF INCOME TAX  
CENTRAL CIRCLE 4(3)  
KOLKATA  
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Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/3944/2020

ROHIT BAMALWA  
S/O- SRI BAJRANGLAL BAMALWA  
R/O- MAHALAYA ROAD  
DIBRUGARH  
PIN- 786001  
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REP. BY THE SECY. TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NEW DELHI- 110101

2:THE CENTRAL BOARD OF DIRECT TAX  
REP. BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE (DEPTT. OF  
REVENUE)  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI- 110001  
3:ASSTT. DIRECTOR OF INCOME TAX (INV)  
UNIT-2 (3)  
DIBRUGARH  
ASSAM  
4:THE PRINCIPAL COMMISSIONER OF INCOME TAX



DIBRUGARH  
C.R.BUILDING  
DIBRUGARH- 786003  
ASSAM  
5:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C.R.BUILDING  
DIBRUGARH- 786003  
ASSAM  
6:THE DIRECTOR OF INCOME TAX (INVESTIGATION) (NER)  
UNIT 2(2)  
1ST FLOOR  
DR. R.K.BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSAM  
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Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/3942/2020

SANTOSH BAMALWA  
W/O- SRI BAJRANGLAL BAMALWA  
R/O- MAHALAYA ROAD  
DIBRUGARH  
ASSAM  
PIN- 786001.

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REP. BY THE SECY. TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NEW DELHI- 110101.

2:THE CENRAL BOARD OF DIRECTOR TAX  
REP. BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE (DEPTT. OF  
REVENUE)  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI- 110001.



3:ASSTT. DIRECTOR OF INCOME TAX (INV)

UNIT- 2(3)

DIBRUGARH

ASSAM.

4:THE PRINCIPAL COMMISSIONER OF INCOME TAX

DIBRUGARH

C.R. BUILDING

DIBRUGARH

ASSAM

PIN- 786003.

5:THE PRINCIPAL COMMISSIONER OF INCOME TAX

DIBRUGARH

C.R. BUILDING

DIBRUGARH- 786003

ASSAM.

6:THE DIRECTOR OF INCOME TAX (INVESTIGATION) (NER)

UNIT 2 (2)

1ST FLOOR

DR. R.K. BORKOTOKY BUILDING

DR. LILA GOGOI PATH

MILAN NAGAR

DIBRUGARH

ASSAM.

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Advocate for : MS. P S CHAKRABORTY

Advocate for : SC

INCOME TAX appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/9311/2019

BACHHRAJ BAMALWA (HUF)

GROUND FLOOR

MAHALAYA ROAD

DIBRUGARH-786001

ASSAM REP BY ITS KARTA BAJRANGLAL BAMALWA

VERSUS

UNION OF INDIA AND 4 ORS.

REP. BY THE SECRETARY TO THE MINISTRY OF FINANCE

GOVT. OF INDIA

NEW DELHI

2:CENTRAL BOARD OF DIRECT TAXES

REP. BY ITS CHAIRPERSON



UNDER THE MINISTRY OF FINANCE (DEPTT. OF REVENUE)  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI-110001  
PRINCIPAL COMMISSIONER OF INCOME TAX  
JORHAT  
C.R. BUILDING DIBRUGARH  
ASSAM  
786003  
3:THE DEPUTY / ASSISTANT COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C.R. BUILDING DIBRUGARH  
ASSAM  
786003  
4:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
KOLKATA-10  
KOLKATA  
5:THE DEPUTY/ASSISTANT COMMISSIONER OF INCOME TAX  
CENTRAL CIRCLE 4(3)  
KOLKATA  
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Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/4150/2020

HANSRAJ BAMALWA (HUF)  
S/O LATE NEMICHAND BAMALWA RESIDENT OF MAHALAYA ROAD  
DIBRUGARH  
786001 ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NEW DELHI 110101

2:THE CENTRAL BOARD OF DIRECT TAX  
REPRESENTED BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
GOVT. OF INDIA  
NORTH BLOCK



NEW DELHI 110001  
3:ASSISTANT DIRECTOR OF INCOME TAX (INV)  
UNIT 2(3) DIBRUGARH  
ASSAM  
4:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C R BUILDING  
DIBRUGARH  
786003 ASSAM  
5:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C R BUILDING  
DIBRUGARH  
786003 ASSAM  
6:THE DIRECTOR OF INCOME TAX (INVESTIGATION)((NER)  
UNIT 2(2) 1ST FLOOR  
DR. R K BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSAM

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Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/4075/2020

RAHUL BAMALWA  
S/O SHRI RAHUL BAMALWA  
RESIDENT OF MAHALAYA ROAD  
DIBRUGARH

786001 ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NEW DELHI 110101

2:THE CENTRAL BOARD OF DIRECT TAX  
REPRESENTED BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE





DEPARTMENT OF REVENUE  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI 110001  
3:ASSISTANT DIRECTOR OF INCOME TAX (INV)  
UNIT 2(3) DIBRUGARH  
ASSAM  
4:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C R BUILDING  
DIBRUGARH  
786003 ASSAM  
5:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C R BUILDING  
DIBRUGARH  
786003 ASSAM  
6:THE DIRECTOR OF INCOME TAX (INVESTIGATION)((NER)  
UNIT 2(2) 1ST FLOOR  
DR. R K BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSAM

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Advocate for : MS. M L GOPE  
Advocate for : SC  
INCOME TAX appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/7254/2018

BACHH RAJ BAMALWA  
S/O LATE NEMICHAND BAMALWA  
BY OCCUPATION BUSINESS

C/O MAHALAYA ROAD  
DIBRUGARH- 789006  
ASSAM

VERSUS

UNION OF INDIA AND 4 ORS.  
REP. BY THE SECRETARY TO THE MINISTRY OF FINANCE  
GOVT. OF INDIA



NEW DLEHI-01.

2:CENTRAL BOARD OF DIRECT TAXES

REP. BY ITS CHAIRPERSON

UNDER THE MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

GOVT. OF INDIA

NORTH BLOCK

NE WDELHI- 110001.

3:ASSISTANT DIRECTOR OF INCOME TAX (INV)

DIBRUGARH

UNIT-2 (3)

DIBRUGARH

ASSAM

786003.

4:PRINCIPAL COMMISSIONER OF INCOME TAX

DIBRUGARH

C.R. BUILDING

DIBRUGARH

ASSAM- 786003.

5:DIRECTOR OF INCOME TAX

(INVESTIGATION) (NER)

UNIT-2 (2)

1ST FLOOR DR. R.K.BORKOTOKY BUILDING

DR. LILA GOGOI PATH

MILAN NAGAR

DIBRUGARH

ASSAM

PIN - 786003.

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Advocate for : MS. M L GOPE

Advocate for : SC

INCOME TAX appearing for UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/4185/2020

USHA BAMALWA

W/O SRI HANSRAJ BAMALWA

R/O MAHALAYA ROAD

DIBRUGARH



PIN-786001  
ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NEW DELHI-110101

2:THE CENTRAL BOARD OF DIRECT TAX  
REPRESENTED BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
GOVERNMENT OF INDIA

NORTH BLOCK  
NEW DELHI-110001

3:ASSISTANT DIRECTOR OF INCOME TAX (INV)  
UNIT-(3)  
DIBRUGARH  
ASSAM

4:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C.R. BUILDING  
DIBRUGARH-786003  
ASSAM

5:THE DIRECTOR OF INCOME TAX (INVESTIGATION)(NER)  
UNIT 2(2)  
1ST FLOOR  
UNIT 2(2)  
1ST FLOOR  
DR. R K BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSAM

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Advocate for : MS. M L GOPE

Advocate for : SC

INCOME TAX appearing for THE UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/4149/2020

RENU BAMALWA  
S/O SHRI BACHHRAJ BAMALWA RESIDENT OF MAHALAYA ROAD



DIBRUGARH  
786001 ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NEW DELHI 110101

2:THE CENTRAL BOARD OF DIRECT TAX  
REPRESENTED BY ITS CHAIRMAN UNDER THE MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
GOVT. OF INDIA  
NORTH BLOCK  
NEW DELHI 110001

3:ASSISTANT DIRECTOR OF INCOME TAX (INV)  
UNIT 2(3) DIBRUGARH  
ASSAM

4:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C R BUILDING  
DIBRUGARH  
786003 ASSAM

5:THE PRINCIPAL COMMISSIONER OF INCOME TAX  
DIBRUGARH  
C R BUILDING  
DIBRUGARH  
786003 ASSAM

6:THE DIRECTOR OF INCOME TAX (INVESTIGATION)((NER)  
UNIT 2(2) 1ST FLOOR  
DR. R K BORKOTOKY BUILDING  
DR. LILA GOGOI PATH  
MILAN NAGAR  
DIBRUGARH  
ASSAM

7:THE DIRECTOR OF INCOME TAX (INVESTIGATION)  
I.T DEPARTMENT KOLKATTA

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Advocate for : MS. M L GOPE

Advocate for : SC

INCOME TAX appearing for THE UNION OF INDIA AND 5 ORS.

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT AND ORDER(ORAL)**

**Date : 27/04/2023**

Heard Ms.M.L. Gope, the learned counsel appearing on behalf of the petitioners in the present batch of writ petitions. Mr. S.C. Keyal, the learned Standing counsel appears on behalf of the Income Tax Department.

2. The challenge made in the instant batch of writ petitions relates to the searches conducted in the premises belonging to the petitioners on 20/11/2017. The issue involved is whether the exercise of the power under Section 132 (1) (b) of the Income Tax Act, 1961(for short, the Act of 1961) was illegal on the grounds alleged that the Respondent Authorities had no reasons to believe the existence of the circumstances for going ahead with the searches, which was a condition precedent for exercise of the power of search and seizure.

3. As the issue involved pertains to as to whether the formation of the opinion for going ahead with the searches were in accordance with the provisions of Section 132 (1) (b) of the Act of 1961, this Court finds it pertinent to reproduce the relevant portion of Section 132 (1) of the Act of 1961 :-

*132. Search and seizure - (1) Where the Principal Director General or Director General or Director or the Principal Chief Commissioner or Chief Commissioner or Principal 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) 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 (11 of 1922), or under subsection (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).*

*Explanation-For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.*

*.....”*

4. This Court vide an order dated 23/3/2023 directed the Income Tax Department to produce the records which would justify the formation of the opinion. This was done so in view of the fact that the Affidavit in Opposition so filed by the Respondent Authorities was vague. Accordingly, on 20/4/2023, the learned Standing Counsel appearing on behalf of the Income Tax Department produced the records relating to the search made in the year 2017. On the said date, upon hearing the learned counsels and further taking into consideration that the learned counsel appearing on behalf of the Income Tax Department

was not in a position to assist the Court in view of the fact that the records were only received in the morning hours of 20/4/2023, this Court further fixed the matter on 27/4/2023 for further consideration. It is relevant to take note of that when the matter was taken up on 20/4/2023, this Court put a specific question to the learned Standing Counsel for the Income Tax Department as to whether the search in the year 2017 which has been challenged in the instant proceedings had any relation with the search which was conducted by the Income Tax Department upon the petitioners in the year 2015. This query was made as it was the specific and categorical submission made by the learned counsel for the petitioners that after the searches made in the year 2015 to the premises of the petitioners there could be no reasons to again search at the premises of the petitioners and the searches carried out in the year 2017 was not bonafide and was a mere pretence to harass the petitioners.

5. The learned Standing Counsel for the Income Tax Department sought for some accommodation so that he could obtain the necessary instructions in that regard. Today when the matters were taken up, the learned Standing Counsel for the Income Tax Department not only produced the materials on the basis of which the opinion was formed for the searches in respect to the year 2017 but also produced the materials which led to the formation of the opinion in respect to the searches of the year 2015.



6. In the backdrop of the above, let this Court therefore take into consideration the facts involved.

7. Taking into account that the facts in respect to the challenge to the search made in the year 2017 are similar in respect to each of the petitioners, this Court for the purpose of convenience takes up the facts in respect to W.P.(C) No.4176/2020 which is a writ petition of at later point of time and as submitted by the learned counsel for the petitioners covers the total factual matrix. The petitioner herein is an assessee under the Act of 1961 and is assessed to tax by the Deputy/Assistant Commissioner, Dibrugarh. It has been mentioned in the writ petition that on 16/11/1999, a search was conducted in exercise of the power under Section 132 of the Act of 1961 and thereupon an order was passed under Section 127 (2) (a) on 18/7/2000 by the Commissioner of Income Tax, Shillong thereby transferring the Bamalwa group of cases to Kolkata. Against the said order a writ petition was filed before this Court which was registered and numbered as W.P.(C) No. 4132/2000. This Court vide an order dated 2/8/2000 issued notice and stayed the order dated 18/7/2000 issued by the Commissioner of Income Tax, Shillong. Thereupon another departmental order was passed under Section 127(2) (a) of the Act of 1961 dated 23/1/2001 thereby transferring the cases from the DCIT, Central Circle- XXVII, Cal to the DCIT(Inv), Circle-II, Dibrugarh. Thereupon block assessments were completed



and no additions were made as nothing was found to what was declared by the groups in their returns. Subsequent thereto, on 3/9/2015, the Income Tax Department further searched the premises of all the petitioners in the present batch of writ petitions. The search period was from 3/9/2015 to 18/9/2015. On the basis of the said searches carried out and in view of the mandate of Section 153A of the Act of 1961, the assessments which were done for the period of 6 years preceding the period of search stood abated by operation of law and fresh assessments were carried out in terms with Section 153A of the Act of 1961. It has been further mentioned that in respect to those completed assessments, no additions were made and in respect to the other years the assessments were pending at the final stage.

8. Subsequent thereto, on 20/11/2017, another search and seizure operations were conducted which is impugned in the instant proceedings at the premises of the petitioners in the present batch of writ petitions under Section 132 of the Act of 1961. It has been mentioned in the writ petitions that although nothing was found during the search operation in the year 2015 and all assessments/reassessments (which included the period from 2010-11 to 2015-16) with no additions in income, were calculated as either nil or normal figures and some were at its final stage. It is the case of the petitioners that the respondents authorities had most arbitrarily and illegally conducted the search

and seizure on 20/11/2017 and prepared a Paanchnama to that effect. It has been further mentioned that the Principal Commissioner of Income Tax, Dibrugarh following the search and seizure, most arbitrarily and illegally proposed to transfer the files of the petitioners to Kolkata by centralization and issued notice dated 14/2/2018. It is the case of the petitioners that the said steps were taken by the Income Tax Department only to harass the petitioners and the search so carried out were not bonafide but a mere pretence to harass the petitioners. The petitioners thereupon submitted a common objection on 20/3/2018. It has been further alleged that the Principal Commissioner of Income Tax, Dibrugarh by an order dated 2/5/2018 without considering the objection raised by the petitioners rejected the objection and passed an order of transfer under Section 127 (1) of the Act of 1961.

9. On the above premises, the petitioners have challenged the search and seizure dated 20/11/2017 and sought for a writ of mandamus not to give effect to the impugned search and seizure dated 20/11/2017 and all further proceedings connected thereto. Upon the filing of the writ petitions, this Court had issued notice. Amongst the batch of writ petitions, in two writ petitions i.e. W.P.(C) No. 9308/2019 and W.P.(C) No. 9311/2019 there was a challenge to the order of transfer dated 12/2/2018 which was passed in respect to the petitioners in the said two writ petitions. This Court in the above mentioned two



writ petitions while issuing notice, stayed the said impugned orders dated 12/2/2018 as well as the notices dated 5/11/2019 till the next returnable date. Thereupon when both the above mentioned two writ petitions were listed on 6/1/2020, this Court fixed the matter again on 28/2/2020 and the interim order was directed to continue till then. However, it appears thereafter that the interim order has not been continued.

10. It reveals from the records that the Income Tax Department had filed one affidavit on 23/3/2023 covering all the cases. It appears from the said affidavit filed by the Deputy Director of Income Tax Unit-2 (3) Investigating Officer, Dibrugarh that the outcome of the search made on 3/9/2015 does not effect the legal validity of the search carried out on 20/11/2017. It was further mentioned that the search and seizure carried out on 20/11/2017 was not arbitrary and illegal because the assessment year covered in the said search are not almost the same assessment years which were covered under the search and seizure dated 3/9/2015. It was mentioned that Section 132 of the Act of 1961 does not put any restriction on conducting searches even when some of the assessment years were covered under the earlier search. Further to that, it was mentioned in paragraph No. 8 of the said affidavit that as per the second proviso to Section 153 A (1), the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant

assessment year or years referred to in Sub-section (1) pending on the date of initiation of search under Section 132 of the Act of 1961 as the case may be shall abate. Hence pendency of assessment as on the date of search does not influence the validity of the search. It was further mentioned that as regards the assessment years for which the assessment/reassessment were completed, the matter is required to be raised before the Appellate Authority i.e. the Commissioner of Income Tax (Appeals) instead of a writ petition filed before this Court. In support of the search so carried out, it was mentioned that the circumstances under which a search and seizure can be conducted under Section 132(1) of the Act of 1961 is that the authorized Officer who is duly empowered by the Board has in his possession materials through which he has reason to believe that such person to whom a summon or notice might be issued will not or would not cause to produce any books of accounts etc. It was further mentioned that filing of a writ petition in the year 2020 against the search and seizure conducted on 20/11/2017 alleging harassment is nothing but an afterthought.

11. This Court upon perusal of the affidavit so filed by the Income Tax Department would further like to observe that the affidavit does not speak as to what were the reasons behind which led to the formation of the opinion or for that matter the affidavit was vague. It is under such circumstances as already

stated supra, this Court had directed the respondents to produce the records vide an order dated 23/3/2023.

12. In the backdrop of the above, this Court, in order to adjudicate the writ petitions, is compelled to peruse the records which were placed before this Court. It is also relevant to mention that it was the categorical submission on the part of the petitioners that after the search conducted in the year 2015, there could have been no materials for the formation of the opinion in order to go ahead for another search in the year 2017 and the search made in the year 2017 was not bonafide but a mere pretence to cause harassment to the petitioners. It was also the case of the petitioners that even after the search conducted in the year 2017, nothing which were incriminating were found which therefore vindicates the stand of the petitioners that the action of the respondents IT Department was not bonafide. It is under such circumstances, this Court finds it necessary to touch upon the reasons which led to the formation of the opinion in the case of the search in the year of 2015 as well as in the year 2017 on the basis of the records so produced. This Court is also of the opinion that if the reason so mentioned which led to the formation of the opinions in the year 2015 and 2017 are not touched upon, to give findings to the issue involved for adjudication would be impossible. However, certain figures are redacted on account of the right of privacy and privilege.

13. A perusal of the records pertaining to the search made in the year 2015 would show that the basis on which the opinion was formed is on account of suppression of turnover and inflation of prices and inclusion of bogus creditors as well as the life style in which the petitioners conducted themselves in the public. The officials of the Income Tax Department had based its opinion on the basis that though the marginal profits in the business of jewellery is quite high, but the net income which was shown by the petitioners who belong to the NCP group were not in tune to the scale and area of their business operation. This suppression of turnover is clear and apparent from the reputation the petitioners' enjoy in the region. It was also believed that the suppression of sales and inflation of purchases have resulted in showing of low profits and accumulation of unaccounted investments. Further referring to the assessment years of 2011-12, 2012-13, 2013-14 and 2014-15, the net profits which were shown were xx %, xx %, xx % and xx % respectively but from the lavish life style maintained by the petitioners who were the members of the NCP groups having posh residential flats in Kolkata, and other immovable assets plus the personal foreign travel expenses led to the formation of the opinion that the NCP group have unaccounted income on which they were evading tax and the total income on which the tax have been evaded by them would be in crores of rupees. It was on the basis of that and the specific information of investments

in undisclosed stock/bullion and as gold prices were still stagnant, there is every possibility that the said investments could be discovered only if searches were made under Section 132 of the Act of 1961.

14. On the other hand, it would reveal from the records that the main reason behind the formation of the opinion as regards the search conducted on 20/11/2017 was on account claims pertaining to long term capital gain. On the basis of information available with the Income Tax Department, it was found that the total long term capital gain in Penny Scrip Twenty First Century taken by the whole group comes to around Rs. xxxxxxxxx during the period from financial year 2009 to 2013-14. However, from the Trade Ledger of Twenty First Century (India) Ltd. scrips of Rs.xxxxxxxx was sold by NCB group members only. Therefore, if the said amount, as per the opinion of the officials of the Income Tax Department, is discounted, yet an amount of Rs.xxxxxxxx were bogus long term capital gain taken by NCB group. It is relevant further to take note of that while formulating the statement of its opinion one xxxxxxxx, the Entry Operator of Penny Scrip Twenty First Century statements were recorded in relation to the nature of business activities of M/S Twenty First Century (India) Ltd. which is further the basis of the opinion so formed that long term capital gain taken by the NCB group were bogus. It was also the opinion of the concerned Respondent Authorities that it was quite possible that the NCB group

had taken long term capital gain in other Scrips as well which had not come to the notice of the Department and these facts may uncover during search and seizure operation. It was therefore on the basis of the report so submitted and the materials placed, the DGIT (Inv.) Kolkata formed the opinion that the NCB group had indulged in the forms of bogus long term capital gains of approximately .. xx crores. There is also an opinion formed that the members of the NCB group were engaged in large scale tax evasion through suppression of diamond value as also the gold jewellery. However, the modus operandi of the tax evasion were such which cannot be brought to book through issue of summons under Section 131 of the Act of 1961. It is on the above basis therefore, the concerned authority of the Respondent had reasons to believe that the search and seizure action under Section 132 was necessary and accordingly it proposed to cover 4 premises under Section 132 of the Act of 1961 and further 4 premises under Section 133 (A) of the Act of 1961.

15. In the backdrop of the above, let this court therefore take into consideration as to whether the exercise of jurisdiction under Section 132 of the Act of 1961 to conduct the search and seizure operation was within the confines of law. In order to do so, it is also required to see the jurisdiction of this Court under Article 226 of the Constitution as to what extent, this Court can exercise the powers of judicial review. In a recent judgment of the Supreme Court in the



case of the **Principal Director of Income Tax (Investigation) and Others Vs. Laljibhai Kanjibhai Mandalia** reported in **2022 SCC Online SC 872**, the Supreme Court after making a copious of analysis the various judgments of the Supreme Court in respect to Section 132 of the Act of 1961 culled out the various propositions including the extent of the powers of the Court in exercise of writ jurisdiction in matters concerning search and seizure. Paragraph 33 of the said judgment being relevant is reproduced hereinunder :-

*“33. We would like to restate and elaborate the principles in exercising the writ jurisdiction in the matter of search and seizure under Section 132 of the Act as follows:*

- i) The formation of opinion and the reasons to believe recorded is not a judicial or quasi-judicial function but administrative in character;*
- ii) The information must be in possession of the authorised official on the basis of the material and that the formation of opinion must be honest and bona fide. It cannot be merely pretence. Consideration of any extraneous or irrelevant material would vitiate the belief/satisfaction;*
- iii) The authority must have information in its possession on the basis of which a reasonable belief can be founded that the person concerned has omitted or failed to produce books of accounts or other documents for production of which summons or notice had been issued, or such person will not produce such books of accounts or other documents even if summons or notice is issued to him; or*
- iv) Such person is in possession of any money, bullion, jewellery or other valuable article which represents either wholly or partly income or property which has not been or would not be disclosed;*
- v) Such reasons may have to be placed before the High Court in the event of a challenge to formation of the belief of the competent authority in which event the Court would be entitled to examine the reasons for the formation of the belief, though not the sufficiency or adequacy thereof. In other words, the Court will examine whether the reasons recorded are actuated by mala fides or on a mere pretence and that no extraneous or irrelevant material has been considered;*
- vi) Such reasons forming part of the satisfaction note are to satisfy the judicial consciousness of the Court*
- vii) The question as to whether such reasons are adequate or not is not a matter for*

*the Court to review in a writ petition. The sufficiency of the grounds which induced the competent authority to act is not a justiciable issue;*

*viii) The relevance of the reasons for the formation of the belief is to be tested by the judicial restraint as in administrative action as the Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made. The Court shall not examine the sufficiency or adequacy thereof;*

*ix) In terms of the explanation inserted by the Finance Act, 2017 with retrospective effect from 1.4.1962, such reasons to believe as recorded by income tax authorities are not required to be disclosed to any person or any authority or the Appellate Tribunal."*

16. From a perusal of the above quoted paragraph, it would reveal that the contours of the jurisdiction under Article 226 of the Constitution in respect to search and seizure under Section 132 of the Act of 1961 is circumscribed. The formation of the opinion and 'the reasons to believe' has to be based upon information in the possession of the authorized official as well as the materials in possession. The formation of the opinion must be honest and bona fide. It was also made clear that such formation of the opinion cannot be merely a pretence. Basing the opinion upon consideration of any extraneous or irrelevant material would vitiate the belief/satisfaction. It was further observed by the Supreme Court that the authority prior to formation of the opinion must have information in its possession on the basis of which a reasonable belief can be founded that the person concerned has omitted or failed to produce books of accounts or other documents for production of which summons or notice had been issued or such person will not produce such books of accounts or other documents even if summons or notice is issued to him or such person is in

possession of any money, bullion, jewellery or other valuable articles which represents either wholly or partly income or property which have not been or would not be disclosed if summons or notice is issued to him.

17. At this stage, it may be relevant to take note that the very purpose of search is detection of undisclosed income by undertaking the extraordinary power of search and seizure, i.e. the income which cannot be detected in ordinary course of regular assessment. Therefore, the power being extraordinary, the formation of the opinion has to be based upon information and materials in the possession of the official concerned. The materials as well as the information in possession of the authorised official has to have a nexus to the object of detection of undisclosed income. It is therefore seen that the Supreme Court in the case of **Laljibhai Kanjibhai Mandalia**(supra) have clearly spelt out that extraneous or irrelevant materials being taken into consideration for formation of the opinion would vitiate the search and seizure. Therefore, the formation of the belief/opinion cannot be a mere pretence but has to be bonafide on the basis of the information and materials available in the possession with the authorised official.

18. The scope of judicial review have been also dealt with in Sub-paragraphs (5), (6), (7) and (8) of paragraph 33 of the above quoted judgment. In terms

with Sub-paragraph (5) of paragraph 33, this Court upon a challenge made to the formation of the opinion would be entitled to examine the reasons for the formation of the belief, though not the sufficiency or adequacy thereof. In order words, the Court can examine whether the reasons recorded are actuated by mala fides or on a mere pretence or that no extraneous or irrelevant materials have been considered. It has been further mentioned that the analysis of the reasons forming such satisfaction are to only satisfy the judicial consciousness of the Court and any part of such satisfaction note is not to be made a part of the order. The adequacy of the reasons is not a matter for this Court to review in a writ petition inasmuch as the sufficiency of the grounds which induced the competent authority is not a justiciable. Further to that, it has also been mentioned that the relevance of the reasons for the formation of the belief is to be tested by keeping in mind the principles of judicial restraint as in administrative action as the Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made and the Court shall not examine the sufficiency or adequacy thereof.

19. In the backdrop of the above law laid down by the Supreme Court and the same being applied to the present facts, this Court is only to see as to whether the Respondent Authorities while forming its belief/opinion had done so on the basis of information and/or materials in its possession which are relevant to the

object of discovering undisclosed income which cannot be unearth without the exercise of the extraordinary powers of search and seizure. In the preceding segments of the instant judgment, this Court duly noted the reasons which led to the search and seizure in the year 2015 and 2017. The materials and information in possession of the Respondent Authorities which led to the formation of the belief have also been discussed above. From the said discussion, it cannot be said that the Respondent Authorities did not have materials and/or information for the formation of belief/opinion, more so, when this Court in exercise of powers under Article 226 of the Constitution cannot decide the sufficiency as well as the adequacy of the materials/information for the formation of belief/opinion.

20. The learned counsel for the petitioners Ms. M.L.Gope, strenuously argued that the materials/information so in possession of the authorised official were irrelevant and extraneous to the object to unearth the alleged undisclosed income on account of long term capital gain. However, from what have been discussed in paragraphs 13 & 14 hereinabove, in the opinion of this Court, the said material/information mentioned in the records cannot be said to be extraneous and irrelevant to the object to unearth the undisclosed income on account of long term capital gains.

21. The learned counsel for the petitioners further submitted that the stand of the petitioners to the effect that there were no materials/information stands vindicated in view of the orders passed by the Commissioner of Income Tax (Appeals) in various Appeals filed by the petitioners against the assessment and reassessment carried out by the Assessing Officer under Section 153A of the Act of 1961 wherein the Appellate Authority had set aside such assessment orders on the ground that there were no incriminating materials found. The said submissions though are attractive at the first blush but the same are misconceived inasmuch as there is distinction between the formation of the opinion to go ahead with a search and seizure with what is unearth during search and seizure and the assessment/reassessment so done under Section 153A of the Act of 1961.

22. A perusal of Section 132 of the Act of 1961 as quoted would show that from the information and materials in possession of the Authorized Official, he has reasons to believe that any of the steps mentioned in Sub-Clauses (a), (b) or (c) of Section 132 (1) if taken would not be sufficient to unearth the undisclosed income, the Authorised official can exercise the powers under Sub-Clauses (i) to (v) of Section 132(1) of the Act of 1961. The term 'reasons to believe' have been explained by the Supreme Court in various judgments. Reference can be made to the judgment of the Supreme Court in the case of

**State of Uttar Pradesh & Ors. Vs. Aryaverth Chawal Udyog & Ors. Vs.****Aryavartha Chawal Udyog & Ors.** reported in **(2015) 17 SCC 324** wherein

the Supreme Court dealt with and explained the term 'reasons to believe' after taking into consideration the previous judgments dealing with the term 'reasons to believe'. Paragraphs 19 to 30 of the said judgment is reproduced herein below :-

**“19.** Under Section 21(1) of the Act, the reassessment proceedings can only be initiated if the assessing authority has “*reason to believe*” that there is a case of escaped assessment and not otherwise. It is now trite law that whenever a statute provides for “reason to believe”, either the reasons should appear on the face of the notice or they must be available on the materials which have been placed before him. (See *Aslam Mohammad Merchant v. Competent Authority*)

**20.** In context of Section 21 of the Act, the position of law was explained succinctly by this Court in *CST v. Bhagwan Industries (P) Ltd.* as follows: (SCC pp. 271-72, paras 11-12)

*“11. The controversy between the parties has centered on the point as to whether assessing authority in the present case had reason to believe that any part of the turnover of the respondent had escaped assessment to tax for Assessment Year 1957-1958. Question in the circumstances arises as to what is the import of the words “reason to believe”, as used in the section. In our opinion, these words convey that there must be some rational basis for the assessing authority to form the belief that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for some year. If such a basis exists, the assessing authority can proceed in the manner laid down in the section. To put it differently, if there are, in fact, some reasonable grounds for the assessing authority to believe that the whole or any part of the turnover of a dealer has escaped assessment, it can take action under the section. Reasonable grounds necessarily postulate that they must be germane to the formation of the belief regarding escaped assessment. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under the above section. If, however, the grounds are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High Court or this Court; for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue. What can be challenged is the existence of the belief but not the sufficiency of reasons for the belief. At the same time, it is necessary to observe that the belief must be held in good faith and should not be a mere pretence.*

*12. It may also be mentioned that at the stage of the issue of notice the consideration*

*which has to weigh is whether there is some relevant material giving rise to prima facie inference that some turnover has escaped assessment.* The question as to whether that material is sufficient for making assessment or reassessment under Section 21 of the Act would be gone into after notice is issued to the dealer and he has been heard in the matter or given an opportunity for that purpose. The assessing authority would then decide the matter in the light of material already in its possession as well as fresh material procured as a result of the enquiry which may be considered necessary.”

**21.** In *CIT v. Kelvinator of India Ltd.*, a three-Judge Bench of this Court has considered the meaning of expression “reason to believe” in the context of change of language in Section 147 of the Income Tax Act, 1961 (for short “the IT Act”). The said provision provides for income that has escaped assessment and lays down the test for ascertainment of the case where reassessment should be performed by the assessing authority. The test being

“if the assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year...”. (SCC p. 724, para 4)

**22.** This Court in *Kelvinator case* has referred to the legislative intent behind reintroduction of condition of “reason to believe” in the said section and observed that: (SCC pp. 724-25, paras 5-7)

“5. On going through the changes, quoted above, made to Section 147 of the Act we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the assessing officer to make a back assessment, but in Section 147 of the Act (with effect from 1-4-1989), they are given a go-by and only one condition has remained viz. that where the assessing officer has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post 1-4-1989, power to reopen is much wider. *However, one needs to give a schematic interpretation to the words “reason to believe” failing which, we are afraid, Section 147 would give arbitrary powers to the assessing officer to reopen assessments on the basis of “mere change of opinion”, which cannot be per se reason to reopen.*

6. We must also keep in mind the conceptual difference between power to review and power to reassess. *The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of “change of opinion” is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place.*

7. One must treat the concept of “change of opinion” as an in-built test to check abuse of power by the assessing officer. Hence, after 1-4-1989, *the assessing officer has power to reopen, provided there is “tangible material” to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief.* Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words “reason to believe” but also inserted the



word "opinion" in Section 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the assessing officer."

**23.** This Court in *Aslam Mohammad Merchant case* has reaffirmed the earlier view taken in *Phool Chand Bajrang Lal v. ITO*, wherein, this Court, after a detailed analysis of the import of the words "reason to believe" in the phraseology of Section 147 of the IT Act, has observed thus: (*Aslam Mohammad case*, SCC pp. 205-06, para 51)

"51. ... '25. From a combined review of the judgments of this Court, it follows that an Income Tax Officer acquires jurisdiction to reopen an assessment under Section 147(a) read with Section 148 of the Income Tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to income tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income Tax Officer, the sufficiency of reasons for forming this belief is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief.' (*Phool Chand case*, SCC pp. 95-96, para 25)"

(See *ITO v. Lakhmani Mewal Das*; *Chhugamal Rajpal v. S.P. Chaliha*; *Calcutta Discount Co. Ltd. v. ITO* and *S. Narayanappa v. CIT*.)

**24.** It would be profitable to refer to the observations of this Court in *CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd.* In the said case, this Court has considered the import of the phrase "reason to believe" as provided under Section 247(a) of the IT Act. While interpreting the phrase, this Court considered both Section 147 and Section 247(a) of the IT Act and observed as follows: (SCC p. 217, para 19)

"19. Section 147 authorises and permits the assessing officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. *The word "reason" in the phrase "reason to believe" would mean cause or justification. If the assessing officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion.* The function of the assessing officer is to administer the

statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers.”

**25.** The import of the words “reason to believe” has also been examined by this Court in cases arising out of proceedings under Section 34 of the Income Tax Act, 1922 which also has the same phraseology. It deals with income escaping assessment and confers jurisdiction on the Income Tax Officer to make assessment or reassessment if he had reason to believe that income, profits or gains chargeable to income tax had been underassessed and that such under-assessment had occurred by reason of either omission or failure on the part of the assessee to make a return of his income or to disclose fully and truly all material facts necessary for his assessment. Since other provisions of the said Section 34 are not relevant for the present discussion, we would not saddle the judgment by elaborating on them.

**26.** Dealing with the said provision, this Court in *S. Narayanappa v. CIT*, this Court had observed that: (SCR p. 592)

“... But the legal position is that if there are in fact *some reasonable grounds for the Income Tax Officer to believe that there had been any non-disclosure as regards any fact, which could have a material bearing on the question of under-assessment, that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notice under Section 34.* Whether these grounds are adequate or not is not a matter for the Court to investigate. In other words, the sufficiency of the grounds which induced the Income Tax Officer to act is not a justiciable issue. It is of course open for the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. Again the expression “*reason to believe*” in *Section 34 of the Income Tax Act does not mean a purely subjective satisfaction on the part of the Income Tax Officer.*”

**27.** Therefore, the said satisfaction ought to be a satisfaction reached by the assessing authority on the basis of facts or materials available before it. The said position is also discussed in earlier decisions of this Court in *Calcutta Discount Co. Ltd. v. ITO*; *Sheo Nath Singh v. CIT*; *CIT v. Kurban Hussain Ibrahimji Mithiborwala* and *CIT v. Bhanji Lavji*.

**28.** This Court has consistently held that such material on which the assessing authority bases its opinion must not be arbitrary, irrational, vague, distant or irrelevant. It must bring home the appropriate rationale of action taken by the assessing authority in pursuance of such belief. In case of absence of such material, this Court in clear terms has held the action taken by the assessing authority on such “reason to believe” as arbitrary and bad in law. In case of the same material being present before the assessing authority during both, the assessment proceedings and the issuance of notice for reassessment proceedings, it cannot be said by the assessing authority that “reason to believe” for initiating reassessment is an error discovered in the earlier view taken by it during original assessment proceedings. (See *Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan*.)

**29.** The standard of reason exercised by the assessing authority is laid down as that of an honest and prudent person who would act on reasonable grounds and come to a cogent conclusion. The necessary sequitur is that a mere change of opinion while perusing the

same material cannot be a "reason to believe" that a case of escaped assessment exists requiring assessment proceedings to be reopened. (See *Binani Industries Ltd. v. CCT; A.L.A. Firm v. CIT*.) If a conscious application of mind is made to the relevant facts and material available or existing at the relevant point of time while making the assessment and again a different or divergent view is reached, it would tantamount to "change of opinion". If an assessing authority forms an opinion during the original assessment proceedings on the basis of material facts and subsequently finds it to be erroneous; it is not a valid reason under the law for reassessment. Thus, reason to believe cannot be said to be the subjective satisfaction of the assessing authority but means an objective view on the disclosed information in the particular case and must be based on firm and concrete facts that some income has escaped assessment.

**30.** In case of there being a change of opinion, there must necessarily be a nexus that requires to be established between the "change of opinion" and the material present before the assessing authority. Discovery of an inadvertent mistake or non-application of mind during assessment would not be a justified ground to reinitiate proceedings under Section 21(1) of the Act on the basis of change in subjective opinion (*CIT v. Dinesh Chandra H. Shah; CIT v. Nawab Mir Barkat Ali Khan Bahadur*)."

23. Therefore it would be seen that for the purpose of exercising the powers under Section 132(1) of the Act of 1961, the satisfaction ought to be satisfaction of the Authorised Official on the basis of the facts and materials available before it. Such materials must not be arbitrary, irrational, vague, distinct or irrelevant. The standard of reason for formation of the opinion has to be tested as that of an honest and prudent person who would act on reasonable grounds and come to a cogent conclusion. Further the reasons to believe cannot be said to be the subjective satisfaction of the Authority concerned but would be the objective view on the basis of information/materials in possession of the Authority and must be based on firm and concrete facts as regards the existence of undisclosed income. On the other hand, upon search and seizure conducted, such information/materials in possession of the Authorised Official which led to

the formation of the opinion may or may not lead to the discovery of incriminating materials. But in the opinion of this Court, merely because incriminating materials were not seized/found would not affect the opinion/belief formation for the purpose of exercise of powers under sub-clauses (i) to (v) of Section 132(1) of the Act of 1961. In fact, it may be relevant to mention that in a recent judgment of the Supreme Court in the case of **Principal Commissioner of Income Tax, Central 3 Vs. Abhisar Buildwell P. Ltd.** reported in **2023 SCC Online SC 481**, the Supreme Court categorically held at paragraph No. 23 (iv) that in case no incriminating materials is/are is unearthed during the search, the Assessing Officer cannot assess or reassess taking into consideration the other materials in respect of completed assessment/unabated assessment or in other words in respect of completed/unabated assessments, no addition can be made by the Assessing Officer in absence of incriminating material found during search under Section 132 or requisition under Section 132A of the Act of 1961. Therefore, having not found incriminating material would not effect the formation of the opinion for going ahead with exercise of powers under Section 132 of the Act of 1961. On the other hand, the consequence of not unearthing incriminating material has to be dealt with as declared by the Supreme Court in paragraph 23(iv) of the judgment in Abhisar Buildwell P. Ltd.(supra).

24. The learned counsel for the petitioners further submitted that the Income Tax Authorities have resorted to multiple searches as could be seen i.e. in the year 1999, 2015 and then in 2017 and therefore the said searches made not only is illegal but causes undue harassment to the business and reputation of the petitioners. True, search and seizure proceedings if based upon extraneous and irrelevant materials without being bonafide would be a harassment. But if the Authorised Official is in possession of information and materials for which he has reasons to believe that even if the steps contemplated under Clauses (a), (b) & (c) of Section 132(1) are taken, there is no likelihood of unearthing the total income, unless the powers under sub-clauses (i) to (v) of Section 132(1) of the Act of 1961 is exercised, the mere fact that it causes harassment would not render the search and seizure illegal. The statute in question i.e. the Act of 1961 mandates tax on total income from whatever source derived in the case of a resident assessee and the Authorities in terms with the Act of 1961 have been empowered subject to fulfillment of the conditions to exercise such powers seeking compliance to payment of tax on total income. The fulfillment of the condition precedent as held by the Supreme Court in **District Registrar and Collector, Hyderabad Vs. Canara Bank & Ors.** reported in (2005) 1 SCC 496 are adequate safeguards to exercise the powers of search and seizure. Therefore, if the condition for invoking the powers under Section 132 of the Act

of 1961 are fulfilled, the exercise of powers to make search and seizure cannot be nullified on the ground of harassment.

25. In that view of the matter, this Court does not find any merit in the writ petitions for which the writ petitions stand dismissed.

26. Before parting with the records, this Court however, would like to observe that the dismissal of the writ petitions and the observations made hereinabove would however not effect the petitioners in respect to such assessments so carried out pursuant to the search and seizure in terms with Section 153A of the Act of 1961 as well as the decisions so rendered by the Appellate Authority.

27. The record so produced is returned to the learned counsel appearing on behalf of the Income Tax Department.

**JUDGE**

**Comparing Assistant**