

## **Even information from CBI won't authorize search unless it is based on reasons given under sec. 132(1)**

**Summary – The Jodhpur ITAT in a recent case of Parma Ram Bhakar, (the Assessee) held that search conducted in pursuance of authorization issued in absence of the eventualities mentioned in clauses (a) to (c) of sub-section (1) of section 132, cannot be said to be valid search.**

### **Facts**

- On the basis of information given by CBI that undisclosed cash was being carried by assessee, search proceedings under section 132 were initiated by issuing warrant of authorization by the Director (Investigation).
- Some alleged incriminating documents, note books containing details of unexplained payments were found and seized. Thereafter, notice under section 153A was issued by the Assessing Officer. The assessee filed his returns of income for different years and the assessments were completed. On appeal, the assessee challenged the validity of assessment based on said search.
- The Commissioner (Appeals) held that on the basis of information in his possession and after recording satisfaction, the Director (Investigation) issued authorization under section 132 in the assessee's case and therefore, search was valid and the proceedings under section 153A were validly initiated by the Assessing Officer.
- On second appeal :

### **Held**

- From the provisions (1) to section 132 it is clear that it contemplates existence of certain eventualities in the event of existence whereof the competent authority should have reason to believe the existence of the circumstances mentioned in clauses (a) to (c) of sub-section (1) of section 132 and in the event, the competent authority mentioned in clauses (a) and (b) of sub-section (1) of section 132 can authorize the authorities mentioned in these two clause to conduct the search.
- If the existence of reason to believe in consequence of the information in possession of the officer about existence of the reason to believe is not satisfied, there could possibly be no authorization, irrespective of the fact that it may have been made, and in turn, if any search is conducted in pursuance of the authorization issued in absence of the eventualities mentioned in clauses (a) to (c) of sub-section (1) of section 132, the said search under section 132 cannot be said to be valid search.
- In the instant case, there was no complete information in possession of SP, CBI about any bullion, jewellery, cash or any other document, which could reveal that the assessee was in possession of undisclosed assets or incriminating documents. It appears that the department acted upon the

information provided by the police department on 29-3-2007 and on the same day, the warrant of authorization was issued and the search was conducted, but nothing is brought on record to substantiate that any cash was found, although, search was conducted on the information that undisclosed cash was being carried out by the assessee.

- Therefore, the authorization to conduct search based on reason under section 132(1) did not exist and search became invalid. Therefore, the assessment order based on the said search could not stand and had to be set aside.