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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ W.P.(C) 6068/2016
ARUN KUMAR DHANUKA Petitioner
versus
DIRECTOR OF INCOME TAX(INV)-2 & ANR. Respondents

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+ W.P.(C) 6979/2016
MAMTA DHANUKA Petitioner
versus
DIRECTOR OF INCOME TAX (LNV)-2, & ANR. Respondents

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+ W.P.(C) 6980/2016
MANISH DHANUKA Petitioner
versus
ADDL.DIRECTOR OF INCOME TAX (INV),UNIT-4 & ANR.
..... Respondent

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+ W.P.(C) 6982/2016
OTSUKA CHEMICALS (INDIA) PVT. LTD. Petitioner
versus
PR. DIRECTOR OF INCOME TAX (INV)-2, & ANR.
..... Respondents

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+ W.P.(C) 6983/2016
ARJUN DHANUKA NEW DELHI Petitioner
versus
DIRECTOR OF INCOME TAX (INV)-2, & ANR. Respondents

12

+ W.P.(C) 7027/2016
SMT. SEEMA DHANUKA Petitioner
versus
ADDL. DIRECTOR OF INCOME TAX (INV), UNIT-4, & ANR.
..... Respondents

Present: Mr.Satyen Sethi and Mr.Arta Trana Panda, Advocates
for the petitioners in all the matters.
Mr.Ashok K.Manchanda, Sr.Standing Counsel and
Ms.Lakshmi Gurung, Jr.Standing Counsel for the
Revenue in all the matters.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **31.08.2016**

1. The premise of the writ petitioners was searched on 31.07.2015 pursuant to a warrant issued on 30.07.2015 under Section 132 of the Income Tax Act. It is contended that the requirements of Section 132 as regards recording satisfaction with respect to the materials existing – which is a pre-condition for the issuance of warrants to enter the premises to carry out the search and seize documents and articles etc. was missing. In other words, there was no material that could have led the authorities concerned i.e. Director of Investigation to record satisfaction.

2. The main argument on behalf of the petitioners is that they are all connected or a part of the Arun Kumar Dhanuka Group. It is submitted that M. K. Dhanuka Group is controlled by other individuals, in respect of whom, materials were said to have been discerned by the respondent which led to the recording of satisfaction note, for initiation of search and seizure proceedings. The petitioners submit that the said M. K. Dhanuka Group had, as alleged by the revenue, declared long term capital gains on sale of shares in Prraneta Industries Limited, Konark Commerce Industries Limited and Blue Circle Services Limited, in the course of search action. It is submitted

that the materials on record nowhere disclose any link or nexus with the individual petitioners who have approached this court in these proceedings or members of the Arun Kumar Dhanuka Group, inasmuch as none of them have ever purchased or sold shares of the said companies. It is emphasised that in fact, no income by way of capital gains on sale of shares was declared by the petitioners. Furthermore, the petitioners submit that during the search of their premises and lockers, no unaccounted cash, bullion, jewellery or valuable articles or thing were seized.

3. Notices were issued to the petitioners – both the companies as well as the individuals on 25.04.2016, under Section 153A calling upon them to file their return for the block years in question having regard to the warrants executed.

4. Mr.Satyen Sethi, learned counsel for the petitioners relies upon the decision of this court in ***L.R.Gupta Vs. Union of India* (1992) 194 ITR 32** and submits that the expression “reason to believe” means that the belief entertained should have some nexus or basis with the materials brought to the knowledge of the authority. Counsel emphasises that such material or information should have a bearing upon the role played by the individual whose premises, are expected to be searched and that the nexus should be reasonable, not fanciful. Reliance was also placed upon the judgment in ***Chiranji Lal Vs. Commissioner of Income Tax* 1982 (135) ITR 530** and other decisions, which have emphasised the meaning and purport of Section 132 of the Income Tax Act.

5. We notice that in ***L.R.Gupta’s*** case (*supra*), the court held that

there was not sufficient material for the passing of the order nor did the satisfaction note, produced during hearing, show any application of mind on the part of the Director, Income Tax Department; it did not fulfil the criteria envisaged under Section 132 of the Act. In the present case, the revenue has produced the file containing the report of enquiry and investigation, carried out confidentially. There is the elaborate exercise of discerning the facts pertaining not only to the petitioner but the other individuals and entities whose premises were searched. For obvious reasons it would be inexpedient and inappropriate for the court to delve further into the details. The court's task in exercising its jurisdiction under Article 226, is to satisfy itself as to the existence of some material which has reasonable bearing or nexus with the opinion expressed that either implicates or excludes the assessee whose premises are sought to be searched. This court is satisfied that such reasonable nexus did exist though it is not apparent to the petitioners in the circumstances. A further discussion, in our opinion, is not called for, given the nature of the pending proceedings. Having regard to these facts, the court is of the opinion that no interference is called for. All rights and contentions of the parties are expressly reserved.

6. All the writ petitions are dismissed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 31, 2016

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