



2025:DHC:79-DB



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

% Judgment delivered on: 10.01.2025

+ **W.P.(C) 10960/2016 CM APPL. 42872/2016 CM APPL. 47923/2018 CM APPL. 35408/2023**

**GAUTAM THADANI**

..... Petitioner

versus

**DIRECTOR INCOME TAX (INVESTIGATION)  
AND ANR.**

..... Respondents

**Advocates who appeared in this case:**

For the Petitioners : Mr. Ved Jain, Mr. Nischay Kantoor and Ms. Soniya Dodeja, Advocates.

For the Respondents : Mr. Indruj Singh Rai, SSC, Mr. Sanjeev Menon, JSC, Mr. Rahul Singh, JSC and Mr. Anmol Jagga, Advocate for Revenue

Mr. Rajesh Kumar, SPP with Ms. Mishika Pandita and Mohd. Changez Khan, Advocates for CBI.

**CORAM**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**JUDGMENT**

**VIBHU BAKHRU, ACJ**

1. The petitioner has filed the present petition under Article 226 of the Constitution of India, *inter alia*, praying that directions be issued to respondent no.2/Superintendent of Police, Central Bureau of Investigation (CBI) to handover an amount of ₹98,00,000/- which was



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seized from the petitioner on 20.10.2012. The petitioner also impugns an order dated 05.09.2016 (hereafter *the impugned requisition*) passed under Section 132A of the Income Tax Act, 1961 (hereafter *the Act*) and further proceedings pursuant to the impugned requisition. Additionally, the petitioner also impugns a notice dated 08.10.2018 issued under Section 153A of the Act and notice dated 05.11.2018 issued under Section 142(1) of the Act in respect of the assessment years (AY) 2011-12 to 2016-17.

2. The petitioner had not impugned the notice issued under Section 153A of the Act in the petition as initially filed as the said notice was issued after the present petition was filed.

3. The petitioner contends that there was possibly no reason to believe that the petitioner's income had escaped assessment and therefore the impugned requisition was issued without authority of law.

#### **FACTUAL CONTEXT**

4. A search was conducted in the premises of the petitioner by CBI on 20.10.2012 in connection with R.C. No.AC-I/2012A/0014. The said case was registered in connection with an alleged bribe offered to General V.K. Singh in connection with procurement of High Mobility Vehicles for the defence forces. The concerned authority believed that the petitioner was also involved in the said matter.

5. During the search proceedings, the currency amounting to ₹98,00,000/- along with certain other documents were found in the premises of the petitioner and the same was seized by CBI.



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6. The petitioner's statement was recorded by the CBI on 22.10.2012 and he claimed that the seized cash belong to M/s Global Healthline Pvt. Ltd. – a company of which he was a Director. The explanation offered by the petitioner was not found plausible by the CBI. The Superintendent, CBI sent a letter dated 02.01.2013 to the office of Director General (Investigation) of the Income Tax Department informing the said authority regarding seizure of cash of ₹98,00,000/- recovered from the petitioner's residence.

7. The Income Tax Department states that the said information was forwarded internally to the Director of Income Tax (Investigation)-1 on 10.01.2013 and was thereafter, forwarded to the Investigation Wing (IO) on 15.01.2013. It was contended on behalf of the respondents that the information forwarded by CBI was not complete and therefore, the Superintendent of CBI was requested to provide further information along with copy of chargesheet as well as search and seizure list. The concerned Income Tax Authority also issued summons dated 02.05.2014 to the petitioner to produce the relevant documents. This was followed by another summon issued to the petitioner seeking his explanation in regard to the seized funds.

8. The petitioner responded, by a letter dated 07.07.2014, stating that the final findings of CBI were awaited.

9. It is affirmed that the Income Tax Department became aware that CBI had filed a chargesheet against some of the accused persons in the year 2016. The department was also informed by a letter dated



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07.04.2016 issued by the CBI that the petitioner had moved the Court for release of the funds seized from his premises.

10. In the aforesaid context, the department sent a letter dated 08.07.2016 requesting CBI not to release the amount seized till the investigation was completed.

11. On 19.08.2016, the petitioner filed an application before the learned Special Judge, CBI for release of the amount seized by CBI. CBI in its response dated 24.08.2016 to the said application, *inter alia*, stated that it did not intend to pursue the case further and did not require to retain the seized funds, however, the matter was under investigation by the Income Tax Department.

12. Thereafter, on 05.09.2016, the concerned Income Tax Authority (Principal Commissioner of Income Tax) issued warrant of authorization under Section 132A(1)(c) of the Act to the Superintendent of Police, CBI for handing over the seized documents and cash to the Requisitioning Officer.

13. The learned Special Judge, CBI passed an order dated 01.10.2016 rejecting the petitioner's request for release of the seized funds on the ground that the impugned requisition had been issued under Section 132A of the Act by the Income Tax Department.

14. It is stated that CBI handed over the seized cash of ₹98,00,000/- to the Requisitioning Officer on 15.12.2016.



15. On 11.07.2018, the Assessing Officer (AO) issued a notice under Section 148 of the Act seeking to reopen the assessment of petitioner's income for the AY 2013-14. However, thereafter, Income Tax Department took a corrective course and stated that perusal of the details indicated that the impugned requisition had been executed on 15.12.2016 and therefore, the petitioner's assessment was required to be completed under Section 153A of the Act and not under Section 148 of the Act. Accordingly, the proceedings under Section 148 of the Act were dropped by an order dated 08.10.2018 and notice under Section 153A of the Act was issued for the relevant AYs on 08.10.2018.

16. In view of the above, this court permitted the petitioner to amend the writ petition.

### **SUBMISSIONS**

17. Mr. Ved Jain, the learned counsel appearing for the petitioner advanced submissions on, essentially, three fronts. First, he submitted that the impugned requisition was inordinately delayed as the Income Tax Department was fully aware of the seizure of the cash in the year 2012. He contended that the department was informed regarding seizure of the cash on 02.01.2013 and therefore could not form a basis. Second, he contended that the investigation had been completed and no chargesheet had been filed against the petitioner. Further, the petitioner had also explained the source of the seized cash and therefore, there was no reason to issue the impugned requisition under Section 132A of the Act. Lastly, he contended that the time for making an assessment under



Section 153A of the Act has expired and therefore, the cash as requisitioned is liable to be released to the petitioner. He had also relied on the decision of the Division Bench of this court in *Gauri Shankar & Ors. v. Director of Income Tax*, *Neutral Citation: 2016:DHC:3810-DB*, in support of his contention that there was no justification for withholding the seized cash.

### REASONS AND CONCLUSION

18. The first and foremost question to be addressed is whether there was any delay in issuing the impugned requisition and if so, the effect thereof. Undisputedly, the information regarding seizure of the funds in question was received by the Income Tax Department on 02.01.2013. However, at the material time, CBI was conducting its investigation. According to the Income Tax Department, summons was issued to the petitioner under Section 131(1A) of the Act. Before the Investigation Wing, the petitioner claimed that a sum of ₹52,70,000/- seized were on account of cash sales of M/s Global Healthline Pvt. Ltd., which was in his possession. Additionally, the petitioner claimed that cash of ₹18,50,000/- was received by him from one Mr. Vinay Sharma as advance for sale of his motor vehicle (Porche Car). However, the said transaction was subsequently cancelled as the buyer did not pay the balance amount of ₹8,00,000/-.

19. The Income Tax Department also issued notices under Section 131 of the Act to M/s Global Healthline Pvt. Ltd. and Mr. Vinay Sharma



but the same were returned unserved. It was reported that Mr. Vinay Sharma had expired on 10.03.2016.

20. Additionally, the Income Tax Department also examined the income tax returns filed by the petitioner for the previous years and found that the petitioner's return of income during the AYs 2010-11 and 2011-12 were also negligible (₹15,843/- for AY 2010-11 and ₹29,103/- for AY 2011-12) and did not reconcile with his possession of huge amount of cash.

21. It is after conducting the investigation that the concerned Income Tax Officer (ITO) drew up a note seeking warrant of authorization under Section 132A(1)(c) of the Act. The said note is reproduced below:

“CBI case No. RC ACI 2012 A 0014 against Lt. Gen (Retd.)  
Tejinder Singh

In this case information was received from the Supretendent Of Police CBI, AC-1. New Delhi vide File No.06 dated 02.01.2013 where it was communicated that “A Criminal Case No. RC AC1 2012 A 0014 has been registered on 19.10.2012 u/s 12 of PC Act 1988 against Lt. Gen (Reld.) Tejinder Singh on the allegation of offering a bribe of Rs.14 crores to Genl. V.K. Singh, The then COAS, to clear the file for procurement of 1676 HMVs (High Mobility Vehicles), including Tatra Vehicles.” During the searches conducted at the premises of accused/suspect persons, cash amounting to Rs. 98 Lacs was recovered and seized from the residence of Sh Gautam Thandani, C-31 Mayfair Garden, Hauz Khas, New Delhi, which he could not satisfactorily account for.

On the basis of information received by this office. Summons were issued to Sh. Gautam Thadani to explain the source to Rs.98 Lakh found and seized during the CBI search on 19.10.2012. As per to reply furnished by Sh. Gautam Thandani.



he is managing director of Global Healthcare Pvt. Ltd. which is engaged in the business of running retail pharmaceutical shops. The company had 23 retail outlets in Delhi and Gurgaon and amounting to Rs. Rs. 52,70,000/- which forming part of Rs. 98,00,000/- (seized cash) was the cash sale proceeds of such pharmaceutical shops and kept with him.

Another Rs. 18.50 lacs was advance against sale of his Porche Car No. DL3C AY 4326 and the said amount was received in cash by him on different dates:-

03.09.2012 Rs. 3.50 Lacs  
05.10.2012 Rs. 5.00 Lacs  
12.10.2012 Rs. 10.00 Lacs

This amount could not be deposited by him in his bank account as he was travelling out of India and was not in India from 15th to 17th October 2012. Subsequently the deal was cancelled and the said amount is refunded to Vinay Sharma the said buyer through RTGS.

Balance Rs. 30.00 lacs approx was received by him as advance against sale of one of the shops belonging to M/s Global Influence situated at 103 Central Arcade, Gurgaon received on 14.10.2012 through a real estate broker Mr. Dhanraj in Cash. Mr. Dhanraj unfortunately expired on 01.01.2013 and the deal could not be completed. In the said circumstances the amount of Rs. 30.00 lacs was declared as his income in the return for assessment year 2013-14.

However, no supporting documents have been furnished by Sh. Gautam Thandani till date in support of his claim. Hence it can be concluded satisfactorily that the cash found and seized in the CBI Search on 19.10.2012 is the unaccounted income of Sh. Gautam Thandani. In view of the above, it is requested that the warrant of authorization under sub section (b) of section 132A of the Income tax Act, 1961 may be issued.”



22. The concerned authorities examined the said request and on 05.09.2016 recorded their satisfaction that it was a fit case for issuance of warrants of authorization under Section 132A(1)(c) of the Act. The impugned requisition was issued thereafter. It is apparent from the above that there has been some delay in issuance of the impugned requisition, however, the Income Tax Department has explained that the said delay was on account of investigations conducted by it. In the given circumstances, we are unable to accept that the impugned requisition is liable to be rejected on the ground of delay.

23. The second question to be examined is whether the impugned requisition is liable to be set aside on the ground that there was no reason to believe that the cash seized could not be disclosed by the petitioner. It is relevant to refer to Section 132A of the Act. The same is set out below:

**“Powers to requisition books of account, etc.**

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

- (a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents, as required by such summons or notice and the said books of account or other documents have been taken



into custody by any officer or authority under any other law for the time being in force, or

- (b) any books of account or other documents will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act and 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, such books of account or other documents on the return of such books of account or other documents by any officer or authority by whom or which such books of account or other documents have been taken into custody under any other law for the time being in force, or
- (c) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force,

then, the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may authorise any Additional Director, Additional Commissioner, Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer [hereafter in this section and in sub-section (2) of section 278D referred to as the requisitioning officer] to require the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

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.

- (2) On a requisition being made under sub-section (1), the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, of that sub-section shall deliver



the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

(3) Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sub-sections (4A) to (14) (both inclusive) of section 132 and section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under sub-section (1) of section 132 by the requisitioning officer from the custody of the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of this section and as if for the words “the authorised officer” occurring in any of the aforesaid sub-sections (4A) to (14), the words “the requisitioning officer” were substituted.”

24. The concerned authority had sought authorization under Section 132A(1)(c) of the Act.

25. A plain reading of Section 132A of the Act indicates that the concerned authority can issue a requisition under the said section if the said authority, as a consequence of information in his possession, has reason to believe that any asset represents either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of the Act. Thus, the question whether the cash seized from the petitioner was undisclosed is required to be considered in the light of the explanation as provided by the petitioner.

26. According to the Income Tax Department, on 22.10.2012, the petitioner made a statement before the CBI to the effect that the entire cash belonged to a retail company (M/s Global Healthline Pvt. Ltd.) of which he was a director. The petitioner claimed that the said cash was



part of the sale proceeds of over one and half months of the said retail company.

27. However, it is alleged that the petitioner subsequently changed the said explanation. Although, the petitioner denied the averments made in the counter affidavit to the said effect but neither the petitioner nor the respondents had produced the petitioner's statement recorded before the CBI on 22.10.2012.

28. The petitioner filed a response dated 07.07.2014 to the summons issued under Section 131(1A) of the Act for explaining the source of cash of ₹98,00,000/- seized from the petitioner. He submitted that he was a Director of the company (M/s Global Healthline Pvt. Ltd.) which operated twenty-three retail outlets in Delhi and Gurgaon. The average sales of the said concern were approximately ₹4,50,00,000/-. The cash received on account of sales at the said concern was deposited in the bank accounts maintained with Standard Chartered Bank or HDFC Bank. However, sometimes due to public holidays, Saturdays and Sundays, the cash was delivered to him. The petitioner claimed that the cash amounting to ₹52,70,000/- was lying with him on 19.10.2012 being the date on which the raid was conducted. In regard to the remaining cash amount of ₹45,30,000/- the petitioner claimed that he had received the same on various dates – ₹3,50,000/- on 03.09.2012, ₹5,00,000/- on 05.10.2012 and ₹10,00,000/- on 12.10.2012 – as an advance for the sale of car Porsche bearing Registration No. DL3CAY4326. The petitioner claimed that the said cash could not be deposited in his bank accounts as he was travelling out of India from



15.10.2012 to 17.10.2012. The petitioner also claimed that subsequently the said transaction was cancelled and the amount was refunded to the proposed buyer (Mr. Vinay Sharma) by RTGS. Additionally, the petitioner stated that the amount of ₹30,00,000/- had been received as an advance for sale of one of the shops belonging to M/s Global Influence which was located at 103 Central Arcade, Gurgaon. The petitioner claimed that he had received cash on 14.10.2012. The said cash also could not be deposited in the bank account as the petitioner was travelling from 15.10.2012 to 17.10.2012. The petitioner claimed that the cash was received from one Mr. Dhanraj on 14.10.2012. However, Mr. Dhanraj had unfortunately expired on 01.01.2013 before the transaction could be completed. The petitioner claimed that the amount of ₹30,00,000/- was declared in his return of income for the AY 2013-14 and tax on which was duly deposited.

29. The Income Tax Department was not convinced by the petitioner's explanation and in our view rightly so.

30. The explanation provided by the petitioner fails to give any particulars as to how much cash was collected by each concern and delivered to the petitioner. A bald statement that the petitioner had received cash of ₹52,70,000/- from his retail concerns (twenty-three in numbers) would clearly be insufficient to explain the source of the said cash. Absent any specific details as to how much cash was collected from each of the concerns, the date and time of the receipt of the same and who had delivered the same to the petitioner along with the necessary books of accounts to establish the same, it would be difficult



to accept that the cash found in the petitioner's residence was on account of proceeds of sales collected from various outlets of a company in which the petitioner was a director.

31. The explanation that the petitioner has received further sum of ₹18,50,000/- towards refund of advance against sale of a vehicle, a transaction which admittedly was never consummated, is also unpersuasive. Whilst the petitioner claims that he could not deposit the said amount, as he was travelling out of India from 15.10.2012 to 17.10.2012, there is no explanation why the amount, which was collected on 03.09.2012, 05.10.2013 and 12.10.2012 was not deposited in the bank account. There is also no explanation why the amount was collected in cash instead of through banking channels. Further, the explanation that the petitioner had collected ₹30,00,000/- towards advance for the sale of shops from a person who had expired prior to the date on which explanation was offered is difficult to accept. The petitioner had not produced any explanation why the advance for sale of property was not received through banking channels and why the amount was not deposited in the bank accounts immediately on receipt of the same. It is also relevant to note that although the petitioner claims that he had received ₹30,00,000/- in cash towards advance for the sale of immovable property, the said transaction was not completed and yet the amount received as advance had not been returned. No credible documents were produced to support the petitioner's explanation.

32. The concerned income tax authorities had in the requisition for warrants of authorization under Section 132A(1)(c) of the Act noted



that the petitioner had not furnished any supporting documents in respect of his explanation. Although, the petitioner had produced some documents regarding receipt of cash of ₹18,50,000/- from one Mr. Vinay Sharma (who has since expired) towards the purported total sale consideration of ₹26,50,000/- of Porche car; however, there are many gaps that remain unexplained, for instance, why the cash received was not deposited in the bank account or why the same was not received through banking channels. Admittedly, the possession of the car was not handed over to the prospective purchaser as, according to the petitioner, he had not paid the balance consideration of ₹8,00,000/-. Thus, according to the petitioner, he continued to hold cash against a transaction, which never fructified. There is no material on record to show the creditworthiness of Mr. Vinay Sharma or any explanation why he made payments in cash. Given the nature of explanation, we find no infirmity with the decision of the Income Tax Authorities in not accepting the same.

33. In view of the above, the petitioner's contention that the Income Tax Authorities had no reason to believe that the cash as seized was an undisclosed asset, is rejected. We find no infirmity with the decision of the Income Tax Authorities to issue the impugned requisition. Clearly, it is necessary for the authorities to examine the source of funds seized from the petitioner's premises.

34. The third issue to be addressed is whether the Income Tax Authorities can continue to retain the cash after more than twelve years have expired since the same was seized. The Income Tax Department



issued notice dated 08.10.2018 under Section 153A of the Act calling upon the petitioner to file his correct return of income for the AYs 2011-12 to 2016-17. Section 153A(1) of the Act posits that where a search is initiated under Section 132 of the Act or books of accounts, other documents or any assets are requisitioned under Section 132A of the Act, the AO shall issue a notice to such a person requiring him to furnish the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b) of Section 153A(1) of the Act. In view of the above, we find no infirmity in the Income Tax Authority issuing the impugned notice under Section 153 of the Act.

35. Having stated above, it is necessary to note that in terms of Section 153B(1)(a) of the Act, the assessment under Section 153A of the Act is required to be completed within a period of twenty-one months from the end of the financial year in which the requisition under Section 132A of the Act was executed.

36. In the present case, the warrant under Section 132A(1)(c) of the Act was executed on 15.12.2016, thus, the Income Tax Authorities are required to complete the assessment within the time period stipulated under Section 153B(1)(a) of the Act which was required to be reckoned from 15.12.2016. In the present case, it is contended on behalf of the petitioner that the time period for framing an assessment under Section 153A of the Act has expired. Undisputedly, if the time period for framing an assessment under Section 153A of the Act has expired, and



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there is no outstanding demand, the Income Tax Authorities would have no justification in retaining the seized cash.

37. In view of the above, this court directs that if no demand has been crystalized against the petitioner as yet, the seized cash be returned to the petitioner within a period of four weeks from date.

38. The petition is disposed of in the aforesaid terms. All pending applications are also disposed of.

**VIBHU BAKHRU, ACJ**

**SWARANA KANTA SHARMA, J**

**JANUARY 10, 2025**

‘gsr’