

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

S.B. Sales Tax Revision / Reference No. 318 / 2011

C T O, Anti Evasion-I, Kota

----Petitioner

Versus

M/S Anand Minerals Pvt Ltd, Chhawani, Baran Road, Kota through
its Managing Director

----Respondent

Connected With

S.B. Sales Tax Revision / Reference No. 138 / 2011

C T O Kota

----Petitioner

Versus

M/S Anand Minerals Pvt Ltd

----Respondent

For Petitioner(s) : Mr. R.B. Mathur with
Ms. Meenal Ghiya

For Respondent(s) : Mr. Kinshuk Jain
Mr. Sandeep Pathak, Mr. Arnav Singh for DRI
& Customs
Mr. T.P. Sharma, SPP (CBI)
Mr. Ashwini Kr. Sharma for CBI
Mr. Abhishek Bhandari, Mr. Jitendra Mishra
for RBI
Mr. Bhupendra Pareek for DGFT
Ms. Manjeet Kaur, Mr. C.S. Sinha for Mr.
R.D.Rastogi, Addl. Solicitor General

Mr. Rahul Rajput, Joint Director, Enforcement Directorate

Dr. S.R. Meena, Addl. Commissioner (Narcotics),

Mr. V.K. Singh, IG, ACB

Mr. S.C. Goyal, Addl. Director (Revenue) JDA,



Mr. M.S. Khan, S.P. CBI

Mr. Sanjeev Singh, Director, Revenue Intelligence

Mr. Kishan Singh, Asstt Director, IB

Mr. Virendra Singh, Joint DGFT, Jaipur

Dr. S.L. Meena, Principal Comm, CGST Commissionerate, Jaipur,
[holding additional charge of Chief
Commissioner, CGST & Central Excise Zone,
Jaipur]

Mr. Rajendra Kumar, Addl. DG, GST Intel., Jaipur Zonal Unit, Jaipur

Mr. Namit Mehta, Addl. Commissioner GST

Mr. Sanjay Kumar Gupta, Registrar of Companies, Raj & Official
liquidator, Jaipur

Mr. S.K. Gupta, DG, Income Tax (Inv.)

Mr. N.S. Janpangi, Addl. DG, Income Tax

Mr. Vahid Alia, Addl. Commissioner (Legal) Commercial Tax Deptt

Dr. Hemant Kumar, Asstt Director, DRI, Jaipur

Mr. G.P. Gupta, Sr. Intelligence Officer

Mr. Subhash Chandra Agarwal, Commissioner, Customs

Dr. Rajesh Sharma, IG, Registration & Stamps Department, Ajmer

Mr. Satyapal, Addl. IG, Registration & Stamps Department, Jaipur

Mr. P.K. Jain, General Manager (Law) for RBI

HON'BLE MR. JUSTICE JAINENDRA KUMAR RANKA

Order Reserved on : 24/07/2017

Order Pronounced on : 02/08/2017

Reportable

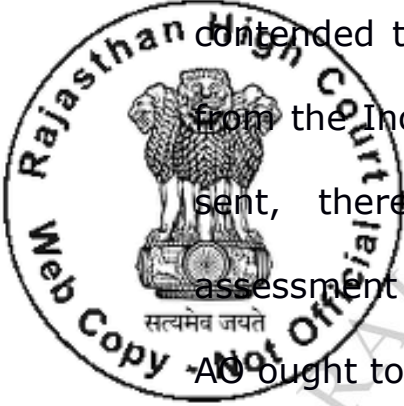
1. This court on 19.12.2016 heard the revision petition / reference of the Revenue, being not satisfied, dismissed the petitions preferred by the Revenue. However, the facts transpired that it is a case where the assessment was reopened by the Assessing Officer on an information having been received from the Income Tax Department, who had searched / surveyed the

respondent assessee and on that basis, the assessment was reopened. However, though the assessment was reopened and proceedings commenced but the AO did not care to seek further information from the Income Tax Department and merely on that basis proceeded to pass an assessment order. Learned counsel contended that the AO had no say and if the AO though desired from the Income Tax Department but further information was not sent, therefore, it being a time barring assessment, the assessment had to be completed and this court also held that the AO ought to have gathered / further material in support which was gathered by the Income Tax Officers, and merely because of the said communicate from the Income Tax Department, the addition could not have been sustained and the Tax Board also decided against Revenue and this court also found as a finding of fact the reasoning of the Tax Board and upheld the same.

2. This court on noticing the facts called upon the Commissioner, Commercial Taxes, to state whether there is any reciprocal arrangement of exchanging such information of the search / survey conducted by the other Tax Departments or other Departments.

3. Simultaneously, the Registry was directed to send notices to the Chairman, Central Board of Direct Taxes, and Chairman, Central Board of Excise & Customs.

4. The Commissioner, Commercial Taxes, on 9.3.2017 when the matter was taken up, filed an affidavit bringing to the notice of court that a Committee has been constituted by the



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Government of India, namely Regional Economic Intelligence Council (REIC), wherein all branches of Tax Authorities, including Sales Tax Department are part of the Committee, and it is mandated that every two months meeting would take place and material collected would be exchanged by various agencies of the



4.1 Further dates were given and later-on, after seeking further information, notices were sent to all the Tax Departments and other connected Departments in REIC, who may be involved in conducting search/survey, gathering information of undisclosed/unrecorded information/transactions. On subsequent hearings, most of the Chief / Principal Commissioners / Director General / Commissioners, Heads / Senior Officers of various Departments appeared before the court and gave their inputs. In between as directed by this court, two meetings of REIC was held where on the basis of minutes provided it appears that fruitful meetings had taken place amongst the various members of the REIC.

5. Having noticed that there was lack of coordination as noticed earlier and in fact it was noticed that in a few cases the Sales Tax Officers / Senior Officials of the Sales Tax Department, desired repetitive information from the Income Tax Department about the material gathered / collected by them during the course of search / survey conducted by the Income Tax Department and it was expressed by the Commissioner, Commercial Taxes, that despite even bringing to the notice in the meeting of REIC the information was not received and taking clue on this, it was noticed that there was no proper coordination in between the

members of various Tax Departments and one agency was not expected to repeatedly request for providing information and the other not giving, that means the other agency was reluctant to pass, for the reasons best known and the very purpose of forming REIC was defeated. REIC was formed for a purpose and not for holding meetings that's all.



6. It is an admitted fact known to all that under most of the tax proceedings, namely under Income Tax / Sales Tax or Service Tax and other Tax Departments, a time barring period is fixed within which an assessment is to be completed, come what may and if by the deadline assessment is not completed, all the proceedings come to a standstill and gets time barred.

6.1 Even Government of India was keen that there should be a proper coordination amongst the various Tax Departments in passing of the information collected by one Agency to other, then it was incumbent upon an officer in whose possession the information was available to have passed on such material / incriminating documents to the other agency, to whom such information was required to be passed so that an effective order could be passed rather than an order in futility without any basis or evidence as in the instant case.

7. It may be observed that the Union of India by constituting REIC gave certain guidelines, which are reproduced hereunder :-

"1) The Regional Economic Intelligence Councils (REICs) would continue to be the nodal agencies for ensuring operational coordination amongst the different

enforcement and investigation agencies dealing with economic offences in the region.

2) The REICs will directly report to the Central Economic Intelligence Bureau (CEIB)

3) The REICs will consist of designated Officers of the Departments of Income tax and Customs & Excises, heads of related agencies of Central and State Government, local heads of the RBI and SBI, etc. However, if at a particular place no officer of this rank is posted, the officer heading the local office of the enforcement agencies will attend the meeting. Accordingly, the composition and location of the 18 REICs would be as in the Annexure-I

4) The mandate of the REICs would be to:-

- cover all areas of economic interest to the Government and not confine themselves to the field of tax collection only;

- ensure operational coordination between different agencies in the region;

- gather general economic intelligence on trade and industry in the region and examine trends on intelligence and changing dynamics of economic offences, including new modus operandi, for such offences and suggest measures for dealing effectively against economic offenders;

- make estimates of evasion of taxes and duties in their respective regions;

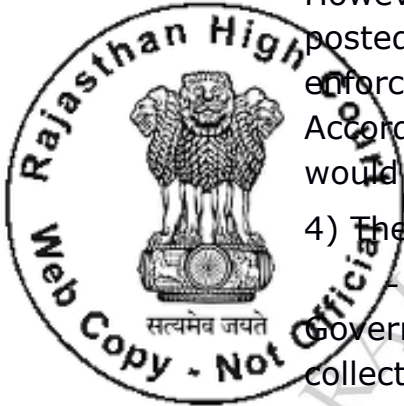
- develop a computer based network to serve as a data bank for real time dissemination of intelligence to regional enforcement agencies.

Information on:

- . Suspicious transactions
- . Unusual financial transactions
- . Search and seizure cases
- . Other economic offences related to different agencies like banking, SEBI, Police and State Excise, etc.
- . Trends/ patterns of economic crimes.

above a threshold limit (to be decided by each REIC) would necessarily be exchanged timely and promptly between the members of the REICs; joint operations could also be considered, if found necessary. An illustrative format for exchange of information is given at Annexure-II.

The REICs would meet bi-monthly and would be attended by the designated officers. Regular minutes of the

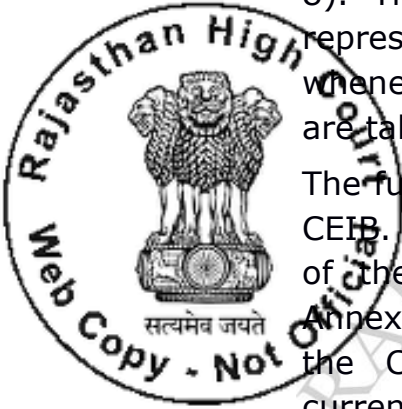


meeting would be maintained by the REICs detailing action taken on the information exchanged between various agencies and the net result of information exchanged would be sent to the convener in the illustrative format given as Annexure-III and made part of the minutes.

7). The office of the Convener would act as a permanent secretariat to the REIC.

8). The Convener of the REIC is authorized to invite representatives from other intelligence agencies whenever matters relating to areas of interest to them are taken up for discussion.

The functioning of the REICs would be coordinated by the CEIB. The REICs would send a monthly report by the 10th of the following month in the proforma enclosed as Annexure-IV. In addition, CEIB will convene a meeting of the Conveners bi-annually to discuss problems and current economic issues common to all REICs and coordinate the inter REIC activities."

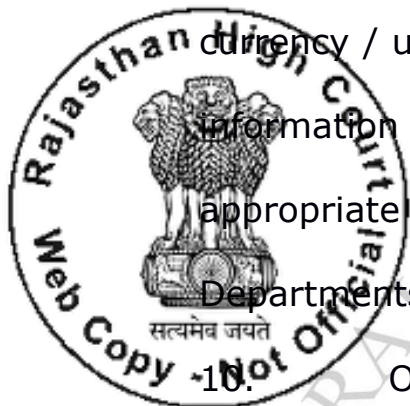


8. It appears that further guidelines were issued for REIC by the Central Intelligence Bureau on 15.4.2011 and thereafter. It may be expressed that the Union Government is keen that a tax offender / tax evader once searched /surveyed, is certainly committing offence not only of that particular Department, say Income Tax Department, but such search / survey wherein incriminating documents are recovered / undisclosed sales are noticed, then other Tax Departments also gets automatically involved to say if there is undisclosed sales admitted by an assessee during the course of search / survey on that un-recorded / undisclosed sales, sales tax is evaded so liability of sales tax also emerges. If there is undisclosed / unrecorded sale, and it is a case of a manufacturer then it is production outside books of account which results into evasion of Central Excise. So one offence committed under an Act is affecting many other Tax

Departments and, therefore, Union Government also expected that the various agencies should pass on such information to the other agencies.

9. Even police personnel on a tip or otherwise on normal checking at night come across people carrying undisclosed currency / undisclosed bullion / silver in huge quantities, and such information is certainly useful to the other agency who can take appropriate remedial measure according to the evasion by such Departments.

10. On 25.5.2017 following officers, namely Mr. Alok Gupta, Commissioner, Commercial Taxes; Mr. Sanjeev Singh, State Director Revenue Intelligence; Mr. N.S. Jangpangi, Addl. Director Income-tax Headquarters; Mrs. Sapna Bhatia, Addl. Director, Income-tax; Ms. Rashmi Gupta, Addl. Director Revenue Intelligence; Dr. Rajesh Sharma, I.G., Registration & Stamps; Mr. Sanjay Aggarwal, Commissioner Police; Mrs. Simmi Jain, Commissioner, Customs; Mr. R.K. Bairwa, Suptd. Customs Department; Mr. Manish Chaudhary, Inspector, Customs Department; Ms. Ruchita Vij, Addl. Commissioner, Central Excise & Service Tax; Mr. Arif Ali, Suptd. on behalf of DNC, Central Bureau Narcotics, Kota, and Mr. Tej Prakash Sharma, Special Public Prosecutor, Central Bureau Narcotics, were present, who gave their inputs and suggestions during the course of hearing and have personally submitted affidavits on behalf of the Tax / other Departments to whom they are representing. The minutes of the meeting of REIC members committee held on 7.6.2017 and



29.6.2017 have been placed on record and are taken on record, which binds the respective Departments.

11. On perusal of the above minutes, it transpires that now after the court took cognizance, certainly most of the Departments have become vigilant and active in taking it to a logical end, when earlier in the beginning when this Court took cognizance even most of the Departments were unaware about the role and functioning of REIC.

At this juncture, it would be appropriate to quote some paras of additional affidavits filed on behalf of the respective Departments which would help in future to be more transparent in exchanging the information. Salient features of the affidavit filed on behalf of the Director General of Income Tax (Investigation) dt. 15.7.2017, are quoted hereunder :-

"At the end of the meeting, DGIT(Inv.), Jaipur and covener REIC, Jaipur, gave the following suggestions to make the REIC platform more result oriented:-

(a) A manual for sharing of information that was last published in 2015 is being shared with all participant members. The manual has comprehensive guidelines on sharing of information. Copies of the manual were handed over to all the members requesting them to go through it afresh.

(b) It is suggested that from now on all the members are to attend the Meetings personally and not to nominate their representatives. Attendance by all the members should be ensured. Defaulters would be reported to Central Economic Intelligence Bureau(CEIB).



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(c) The Meetings could not be held regularly for the last couple of months due to the absence of a regular DGIT (Inv.). It is proposed that the meetings would now be held regularly.

(d) The REIC Guideline that "whenever considered necessary, the information and case details be shared between the concerned

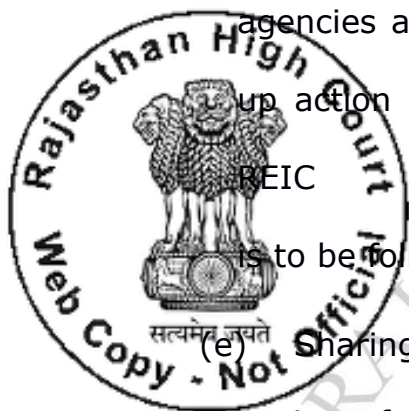
agencies at the first possible opportunity giving full details for follow up action and the information shared be reported to the Convener, REIC thereafter in the next meeting" is to be followed by all members.

(e) Sharing of information should be followed up with sharing of copies of relevant documents. The supporting documents, on the basis of the information provided, may be obtained by the recipient agency after inspection of documents. The Guideline that "In case the sponsoring agency has any inhibition in providing copies of documents, then concerned member agency may be allowed to peruse the said records" is to be followed.

(f) The Guideline that "investigating agencies identified for taking further action need to complete the investigations within a reasonable time frame and submit the action taken report to the REIC" should be followed by all members. It is also suggested that action on shared information should be taken immediately by the concerned agency without waiting for limitation date.

(g) It is to be ensured that the progress of action taken should be intimated to the REIC Secretariat before the date of REIC Meeting.

(h) The information which is to be shared in the REIC Meeting should be in prescribed form i.e. REIC-I. Similarly, closure report should also be in form REIC-II. In most of the cases, it is seen that simple letter is endorsed to the Secretariat for this purpose.



- (i) The meeting of Nodal Officers of REIC should be held regularly before every REIC Meeting.
- (j) There should also be a mechanism amongst Departments on how to share information in REIC regarding the GST.

Suggestions of participant members were discussed and the members

agreed to bring the following into action:

1. Date for the regular meeting for REIC was fixed for 29th of June with the consent of all the participant members.

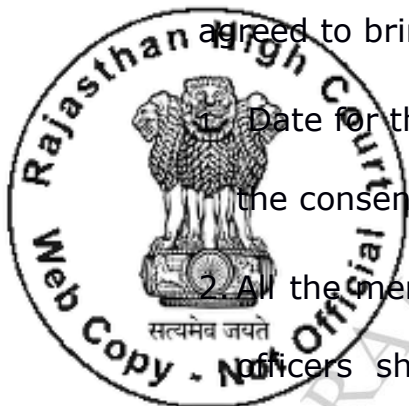
2. All the members agreed that from now on the meetings of the nodal officers shall also be held regularly. It was also decided by the members that the meetings of Nodal Officers and REIC members would now be held alternatively every two months. Hence, the REIC member meetings would now be held bi-monthly for better follow up of the cases.

3. The possibility of having an online mechanism for sharing of information may also be explored.

4. It was also mutually decided that in future, the sharing of documents may be done at the nodal officers level, which will result in real time action and the members need not wait for the REIC meeting to happen.

5. In case if two departments have mutually shared information, then the same may be shared with other members at the next REIC meeting.

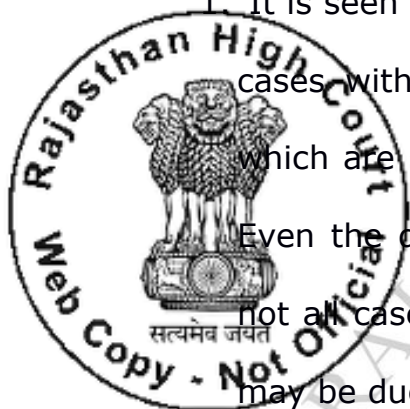
6. Each department to modify their internal formats for sharing of information."



12.1 Salient features of the letter from the Office of Director General, State Directorate of Revenue Intelligence Rajasthan, Jaipur dt. 9.6.2017, reads as under :-

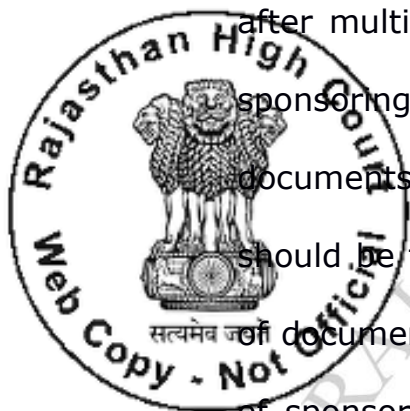
"In view of the directions given by the Honorable High Court the following suggestions are being given:-

1. It is seen that most of the participating organizations are not sharing cases with other participating agencies. In fact even the agencies which are sharing their cases, are doing it on pick and choose basis. Even the departments which are sharing, in those departments also not all cases are being shared with other participating agencies. This may be due to the absence of any monitory criterion. A monitory limit should be fixed and in case any department is having a case having a Revenue implication exceeding that monitory limit then it should be mandatorily shared with other participating agencies.
2. It is also important that all participating agencies are sensitized about the needs of other agencies. Most of the time field officers are not aware as to what is required by the other agencies and what kind of evidence is to be collected. It is proposed that in every meeting one member should give a brief presentation about his organization. There should also be a mechanism through which field officers may also be sensitized about each other's working ad needs.
3. In Revenue departments a matter can be barred by limitation so it is imperative that any actionable information should be shared on real time basis and not after all the proceedings have finished leaving little time for further action by accepting agencies. Sharing of information in real time is all the more important as it is seen that in cases of Multi Level Marketing and other ponzi schemes the offenders run

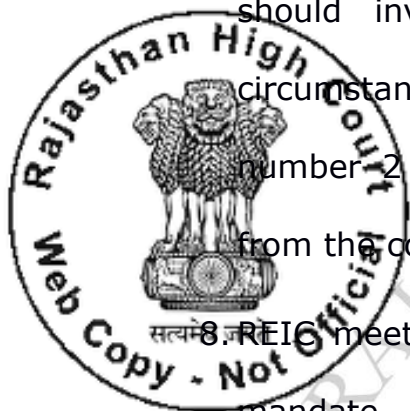


away after their scam has been detected by any of the investigating agencies.

4. The most important point which defeats the very purpose of exchange of information by REIC is non furnishing of relevant documents by the sponsoring department. It has been seen that even after multiple attempts, the documents are not handed over by the sponsoring agencies mainly because of the reason that these documents are required for its own proceedings. It is proposed that it should be the responsibility of the sponsoring agency to furnish copy of documents relied by it for sponsoring a particular case at the time of sponsoring that case before REIC. The photocopies may be kept with the nodal officers of the sponsoring agency from where the accepting agencies can get a copy.
5. The REIC may think of conducting at least one joint operation during a financial year involving different participating organization. In case it is not possible to do so because of secrecy or logistic reasons then after an organization have secured premises and before leaving it, after it has completed its work, it may call an agency for further action if it can be beneficial for that agency.
6. There is no fixed time limit set for the completion of cases by accepting agencies. It is an agreed fact that different participating agencies have different time limit for completion of a particular case and some case may not be actionable at all. However, a time limit should be fixed and adhered for providing a preliminary report. The sharing of information and feedback mechanism should be preferably online for which an effective website like FIU-IND needs to be developed which will also ensure effective monitoring and time saving.



7. REIC is the nodal agency for economic intelligence and it can work effectively when members and nodal officers participate on regular basis. It has been seen in the past that many members do not attend the meeting and instead send their nodal officers or representatives, thus diluting the sanctity and relevance of the meeting. Member should invariably participate and in case due to unavoidable circumstances if the member is unable to attend the meeting then number 2 of the organization may attend after taking permission from the convener of the REIC.



8. REIC meeting should be convened regularly in accordance with the mandate and schedule as fixed by CEIB (Central Economic Intelligence Bureau) it's parent organization. It is proposed that calendar of meeting for a financial year be prepared before the end of the Financial year and circulated to all the participating agencies so that they have a fair idea regarding the meeting dates and the members and nodal officers can plan their schedule accordingly.

9. It is also proposed that any good case done by a participating agency on the basis of information shared in the REIC meeting must be sent to CEIB for circulation to other REIC of the country if it is deemed fit by it.

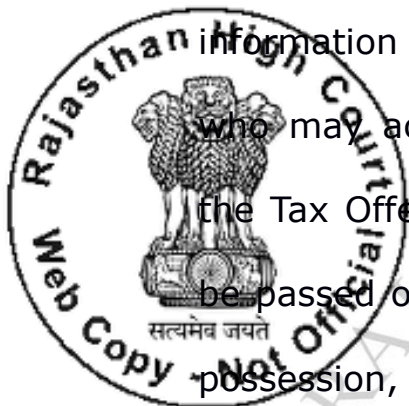
10. It is also proposed that secretariat of REIC should be strengthened and it should not act as a mere post office. Instead it should act as a facilitator for exchange of information. It should have adequate manpower which is exclusively devoted for the work of secretariat."

13. The other Departments have also on these very line given their own suggestions, however, by & large the above would

cover the intent and purpose of coordinating with the various Tax Agencies.

14. Taking into consideration the aforesaid, all the suggestions given by the various Tax Agencies in their own affidavits, shall be acted upon by the various Agencies and such information would be immediately transmitted to other Agencies, who may according to their needs and requirement use against the Tax Offenders. It is directed that not only information would be passed on, but the Officer concerned having information in his possession, is duty bound to transmit even the incriminating material collected during the course of search / survey so that other Tax Department, without wasting further time, acts on such incriminating material rather than calling again and again from the official concerned under whose possession the said incriminating material is lying seized.

15. The purpose would be served of constituting REIC by the Union Government when such information is transmitted by all the Agencies in their possession. Accordingly, it is directed that no sooner a search / survey is conducted wherever necessary, let the Agency who has conducted the search / survey pass on not only the information of search / survey being conducted of the person searched, but also the incriminating material / information gathered will also be transferred / transmitted in a confidential seal cover for use to the Chief / Head of the other Departments after putting a seal & signature by the Officer from whose possession these documents are being sent. Let a direction be



given that such information lying in possession be forwarded/transmitted within a period not later than 3 months and in case information is not passed than the said officer would be held personally liable of the consequences which may follow.

16. Taking into consideration the aforesaid, let all the Tax departments and other members in REIC act in tandem of the mandate for which REIC is constituted and act in accordance with law, catch hold and effectively dealing an economic offender.

17. No further directions are needed for the affidavits and suggestions and mandate of REIC is sufficient, but it has to be now made a part of day-to-day exercise by the officials concerned.

18. It is also expected that in REIC, the Heads of various Tax / or other Departments should be available in meetings rather than junior officials of some of the Departments, which came to notice of this court on perusal of the earlier reports provided by the Commissioner, Commercial Taxes.

19. It may also be well advised of joint search / survey or after a search/survey being conducted to involve the other Tax Department to have a joint search / survey of an economic offender, and this suggestion came up during the course of hearing on 18.7.2017 and most of the Heads suggested that an exercise can be made of a joint search / survey or later-on during the course of search / survey joining by the other Departments and this is also mandated and intention of the Government as well. Let the same be also effectively taken into consideration henceforth.



20. I have noticed that under various laws power of imposing penalty is there so also prosecution can be launched in an appropriate or suitable case where the authorities feel that there is huge undisclosed income and sufficient material has been found which is within the knowledge of the tax payer but not disclosed on the records then prosecution power is also available to the authorities under the various acts but it is noticed that this power though available in statute books under all the Acts but is rarely or sparingly used rather not used at all. The power of prosecution plays a deterrent effect not only on the tax payer who has evaded the tax but it goes a long way and would be deterrent on the society / other tax payers at large. It is true that it should be sparingly used and not in a routine manner wherever evasion takes place but at-least in cases where it is noticed that there is huge evasion of taxes over the years, that such power should certainly be used by the authorities respectively. Therefore, direction is given that as and when needed though sparingly such power of prosecuting the person / tax evader should be used. Therefore, this need to be taken care of henceforth by all the authorities concerned.

21. Let copy of this order be forwarded to :

1. The Chairman, Central Board of Direct Taxes, New Delhi
2. The Chairman, Central Board of Excise & Customs, New Delhi

3. Secretary, Revenue, Ministry of Finance, Govt. of India,
New Delhi
4. Principal Secretary, Revenue, Govt. of Rajasthan,
Jaipur
5. Director General of Police, Rajasthan, Jaipur,
6. Secretary, Regional Economic Intelligence Council
(REIC), Income Tax Department, NCRB, Jaipur – the said
Secretary would also send a copy of this judgment to all members
of REIC at the earliest.

The above authorities at S. Nos.1 to 5 will circulate amongst their officials, the judgment and directions contained is applicable through out the State of Rajasthan and if the Chairman of above authorities feel appropriate it could be circulated to all officials in India so that mandate of REIC and CEIB is made effective.

22. With the aforesaid, the petitions stand disposed of.

(JAINENDRA KUMAR RANKA),J

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