Pooran Mal

Vs

The Director of Inspection (Investigation), New Delhi and Others

Shri Hanuman Pershad Ganerwala

Vs

The Director of Inspection New Delhi

Jagat Ram Mago and Others

Vs

Shri R. N. Limaya and Others

Ramji Das Sharma and Others

Vs

Shri R. N. Limaya and Others

Writ Petitions 446 of 1971 and 86 of 1972

(CJI A. N. Ray, D. G. Palekar, A. Alagiriswami, Y. V. Chandrachud, P. N. Bhagwati, V. R. Krishna Iyer JJ)

14.12.1973

JUDGMENT

PALEKAR, J. -

1. In these proceedings - two of them writ petitions under Article 32 of the Constitution and two others which are appeals from orders passed by the Delhi High Court under Article 226 - relief is claimed in respect of action taken under Section 132 of the Income-tax Act, 1961 (hereinafter called the Act) by way of search and seizure of certain premises on the ground that the authorisation for the search as also the search and seizure were illegal. The challenge was based on constitutional and non-constitutional grounds. For appreciation of the constitutional grounds it is not necessary to give here the detailed facts of the four cases. It is sufficient to state that in all these cases articles consisting of account books and documents and in the writ petitions, also cash, jewellery and other valuables, were seized by the income-tax authorities purporting to act under the authorisation for search and seizure issued under Section 132 of the Act. Broadly speaking, the constitutional challenge is directed against sub-sections (1) and (5) of Section 132 of the Act and incidentally also against Rule 112-A on the ground that these provisions are violative of the fundamental rights guaranteed by Articles 14, 19(1) (f), (g), and 31 of the Constitution. The non-constitutional grounds of challenge are based upon allegations to the effect that the search and seizure were not in accordance with Section 132 read with Rule 112. This challenge will have to be considered in the

background of the facts of the individual cases.

2. Chapter XIII of the Act deals with Income-tax authorities, their powers and jurisdictions. The hierarchy of authorities as given in Section 116 shows that the class of authorities designated as Director of Inspection is shown below the Central Board of Direct Taxes and above the class of authorities known as Commissioner of Income-tax. The other authorities mentioned are Assistant Commissioners of Income-tax, Income-tax Officers and Inspectors of Income-tax. Section 117 shows by whom these various authorities are to be appointed. Section 118 deals with subordination and control. Section 119 deals with the powers of the higher authorities to give instructions and directions to subordinate authorities. Under Section 120, Directors of Inspection have to perform such functions of any other Income-tax authority as may be assigned to them by the Board. The Board, it is clear, might assign to the Director of Inspection the functions of any other authority under the Act.

3. We may then turn to part 'C' of this Chapter which deals with the powers. Section 131 says that the authorities from the Commissioner down to the Income-tax Officer shall have the same powers as are vested in a court under the Code of Civil Procedure in respect of several matters including the enforcing of attendance of any person or compelling the production of books of account and other documents. Section 132 provides for search and seizure. It appears that under Section 37(2) of the Income-tax Act, 1922, a limited power of search and seizure had been first given to the Income-tax authorities in 1956. The present Income-tax Act initially gave that power under Section 132 on the same lines as the old Section 37(2). But there were further amendments in Section 132 in 1964 and 1965. Under the amendment of 1965, two Sections namely Sections 132 and 132A were substituted for the original Section 132. We are concerned with these sections and it will be therefore, necessary in the first instance to reproduce the same :

> "Section 132. (1) where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that -
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> (a) any person to whom a summons under sub-section (1) of Section 37 of the Indian Income-tax Act, 1922 (XI 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, or
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> (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 (XI of 1922), or under this Act, or
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> (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 disclosed for the purposes of the Indian Income-tax Act, 1922 (XI of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),
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> he may authorise any Deputy Director of Inspection, Inspecting Assistant

Commissioner, Assistant Director of Inspection or Income-tax Officer (hereinafter referred to as the authorised officer) to -

(i) enter and search any building or place where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) bread open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory or any such money, bullion, jewellery or other valuable article or thing.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such books of account, other document, money, bullion, jewellery or other valuable article or thing, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922, (XI of 1922), or under this Act.

(5) Where any money, bullion, jewellery or other valuable article or thing (hereinafter in this section and Section 132-A referred to as the assets) is seized under sub-section (1), the Income-tax Officer, after affording a reasonable opportunity to the person concerned for being heard and making such enquiry as may be prescribed, shall, within ninety days of the seizure, make an order, with the previous approval of the Commissioner, -

(i) estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him;

(ii) calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian Income-tax Act, 1922 (XI of 1922), or this Act;

(iii) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (a) of sub-section (1) of Section 230-A in respect of which such person is in default or is deemed to be in default, and retain in his custody such assets or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (ii) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized :

Provided that if, after taking into account the materials available with him, the Income-tax Officer is of the view that it is not possible to ascertain to which particular previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized :

Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clauses (ii) and (iii) or any part thereof, the Income-tax Officer may, with the previous approval of the Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case.

(6) The assets retained under sub-section (5) may be dealt with in accordance with the provisions of Section 132A.

(7) If the Income-tax Officer is satisfied that the seized assets or any part thereof were held by such person for or on behalf of any other person, the Income-tax Officer may proceed under sub-section (5) against such other person and all the provisions of this section shall apply accordingly.

(8) The books of account or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Commissioner for such retention is obtained :

Provided that the Commissioner shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (XI of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) objects for any reason to the approval given by the

Commissioner under sub-section (8), has may make an application to the Board stating therein the reasons for such objections and requesting for the return of the books of account or other documents.

(11) If any person objects for any reason to an order made under sub-section (5), he may, within thirty days of the date of such order, make an application to such authority, as may be notified in this behalf by the Central Government in the Official Gazette (hereinafter in this section referred to as the notified authority), stating therein the reasons for such objection and requesting for appropriate relief in the matter.

(12) On receipt of the application under sub-section (10) the Board, or on receipt of the application under sub-section (11) the notified authority, may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

(13) The provisions of the Code of Criminal Procedure, 1898 (V of 1898), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1).

(14) The Board may make rules in relation to any search and seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer -

(i) for obtaining ingress into such building or place to be searched where free ingress thereto is not available;

(ii) for ensuring safe custody of any books of account or other documents or assets seized.

Explanation 1. - In computing the period of ninety days for the purposes of sub-section (5), any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Explanation 2. - In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (XI of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

Section 132A. Application of retained assets. - (1) The assets retained under sub-section (5) of Section 132 may be dealt with in the following manner, namely :- (i) The amount of the existing liability referred to in clause (iii) of the said sub-section and the amount of the liability determined on completion of the regular assessment or reassessment for all the assessment years relevant to the previous years to which the income referred to in clause (i) of that sub-section relates, and in respect of which he is in default or is deemed to be in default may be recovered out of such assets.

(ii) If the assets consist solely of money, or partly of money and partly of other assets, the Income-tax Officer may apply such money in the discharge of the

liabilities refereed to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied.

(iii) The assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Income-tax Officer under authorisation from the Commissioner under sub-section (5) of Section 226 and the Income-tax Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (a) The Central Government shall pay simple interest at the rate of nine per cent, per annum on the amount by which the aggregate of money retained under Section 132 and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (iii) of sub-section (5) of that section exceeds the aggregate of the amounts required to meet the liabilities referred to in clause (i) of sub-section (1) of this Section.

(b) Such interest shall run from the date immediately following the expire of the period of six months from the date of the order under sub-section (5) of Section 132 to the date of the regular assessment or reassessment referred to in clause (i) of sub-section (1) or, as the case may be, to the date of last of such assessments or reassessments."

4. Rule 112-A which is also challenged as it prescribes the procedure for the enquiry under Section 132(5) is as follows :

"112A. Inquiry under Section 132. - (1) where any money, bullion, jewellery or other valuable article or thing (hereinafter referred to as assets) are seized, the Income-tax Officer shall within fifteen days of the seizure issue to the person in respect of whom enquiry under sub-section (5) of Section 132 is to be made requiring him on the date to be specified therein (not being earlier than fifteen days from the date of service of such notice) either to attend at the office of the Income-tax Officer to explain or to produce or caused to be there produced evidence on which such person may rely for explaining the nature of the possession and the source of the acquisition of the assets.

(2) The Income-tax Officer may issue a notice to the person referred to in sub-rule (1) requiring him on a date specified therein to produce or cause to be produced at such time and at such place as the Income-tax Officer may specify such accounts or documents or evidence as the Income-tax Officer may require and may from time to time issue further notices requiring production of such further accounts or documents or other evidence as he may require.

(3) The Income-tax Officer may examine on oath any other person or make such other inquiry as he may deem fit.

(4) Before any material gathered in the course of the examination or inquiry under sub-rule (3) is used by the Income-tax Officer against the person referred to in sub-rule (1) the Income-tax Officer shall give a reasonable notice to that person to show cause why such material should not be used against him."

5. It will be seen in the first place that the power to direct a search and seizure is given to the Director of Inspection or the Commissioner. Secondly, the authorisation for such search and seizure must be in favour of officers not below the grade of an Income-tax Officer. Thirdly, the power to authorise search and seizure can be exercised only when the Director of Inspection or the Commissioner has reason to believe : (1) that in spite of the requisitions under the relevant provisions mentioned in Section 132(1) (a) the required books and documents have not been produced; (2) that any person, whether requisition under the above provisions is made or not, 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 Income-tax Act; or (3) that any person is in possession of any money, bullion, jewellery or any other valuable article or thing representing either wholly or partly undisclosed income or property. When the authorisation is given by the Director of Inspection or the Commissioner, as the case may be, it must be limited to the five purposes mentioned in sub-clauses (i) to (v) of sub-section (1). Sub-section (14) provides for the making of rules in relation to any search or seizure. Accordingly, Rule 112 has been framed which says that the powers of search and seizure under Section 132 shall be exercised in accordance with sub-rules (2) to (14) under rule 112. These are detailed rules setting out the procedure for making the search and seizure and for the custody of what has been seized.

6. Sub-section (5) of Section 132 deals with the special cases where, on search, money, bullion, jewellery and other valuables believed to be undisclosed income or property are seized. What is seized cannot be kept by the departmental authorities with them indefinitely. Sub-section (5) requires that a summary enquiry must be made by the Income-tax Officer with a view to ascertain how much of the seized valuables should be retained against unpaid tax dues. The balance must be forthwith released. The second proviso to sub-section (5) further shows that the money and valuables may not also be retained by the Income-tax Officer if the person concerned has paid or made satisfactory arrangements for payment of all the income-tax dues which are summarily estimated under sub-section (5). The summary enquiry under sub-section (5) must be finished within 90 days of the seizure and the order which is made thereunder is subject to the previous approval of the Commissioner. Under sub-section (6) of Section 132 the assets retained under sub-section (5) are to be dealt with in accordance with the provisions of Section 132-A which clearly goes to show that the Income-tax Officer shall proceed with the regular assessment or reassessment of the tax payable by the person concerned and after such assessment the amount of tax so held payable is to be recouped from the assets retained under sub-section (5) of Section 132. The balance, if any, is to be returned with interest at the rate of 9% if the assessment and reassessment is not completed within six months of the date of the retention order made under sub-section (5) of Section 132. Even in regard to the books of account and other documents which are seized the authorised officer is not entitled to retain the same for a period exceeding 180 days unless he records his reasons in writing for retaining the same and the Commissioner approves of the retention. The person from whose custody the books of account the other documents are seized is, however, entitled to receive copies or take extracts therefrom. Any person aggrieved by the retention of the documents is entitled to make a representation to the board which is also the authority to which a

representation could be made under sub-section (11) by any person objecting to the order passed under sub-section (5) retaining the assets. Broadly, it will be seen that Section 132 and Rules 112 and 112A deal with search and seizure and the disposal of articles seized after search. The challenge under Articles 19 and 14 is directed against sub-sections (1) and (5) of Section 132 and Rule 112A.

7. Dealing first with the challenge under Article 19(1) (f) and (g) of the Constitution it is to be noted that the impugned provisions are evidently directed against persons who are believed on good grounds to have illegally evaded the payment of tax on their income and property. Therefore, drastic measures to get at such income and property with a view to recover the Government dues would stand justified in themselves. When one has to consider the reasonableness of the restrictions or curbs placed on the freedoms mentioned in Article 19(1) (f) and (g), one cannot possibly ignore how such evasions eat into the vitals of the economic life of the community. It is a well-known fact of our economic life that huge sums of unaccounted money are in circulation endangering its very fabric. In a country which has adopted high rates of taxation a major portion of the unaccounted money should normally fill the Government coffers. Instead of doing so it distorts the economy. Therefore, in the interest of the community, it is only right that the fiscal authorities should have sufficient powers to prevent tax evasion.

8. Search and seizure are not a new weapon in the armoury of those whose duty it is to maintain social security in its broadest sense. The process is widely recognized in all civilized countries. Our own criminal law accepted its necessity and usefulness in Sections 96 to 103 and Section 165 of the Criminal Procedure Code. In M. P. Sharma v. Satish Chandra, the challenge to the power of issuing a search warrant under Section 96(1) as violative of Article 19(1) (f) was repelled on the ground that a power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. As pointed out in that case a search by itself is not a restriction on the right to hold and enjoy property though a seizure is a restriction on the right of possession and enjoyment of the property seized. That, however, is only temporary and for the limited purpose of investigation. Then the court proceeds to say : (p. 1081)

> "A search and seizure is, therefore, only a temporary interference with the right to hold the premises searched and the articles seized. Statutory regulation in this behalf is necessary and reasonable restriction cannot be considered to be unconstitutional. The damage, if any, caused by such temporary interference if found to be in excess of legal authority is a matter for redress in other proceedings. We are unable to see how any question of violation of Article 19(1) (f) is involved in this case in respect of the warrants in question which purport to be under the first alternative of Section 96(1) of the Criminal Procedure Code."

9. Similar powers entrusted to those whose duty it was to enforce taxation laws were upheld by this court in Commissioner of Commercial Taxes v. Ramkishan Shrikishan Jhaver and others. In that case Section 41 of the Madras General Sales Tax Act of 1969 was under challenge. It was held by this court that an officer empowered by the Government under sub-section (1) of Section 41 was entitled to effect a search and seize goods and articles as provided in that section. Dealing with the question of search and seizure in a taxing statute the court observed at page 158 :

> "Now it has not been and cannot be disputed that the entries in the various Lists of the Seventh Schedule must be given the widest possible interpretation. It is also not in doubt the while making a law under any entry in the Schedule it is competent to

> the legislature to make all such incidental land ancillary provisions as may be necessary to effectuate the law; particularly it cannot be disputed that in the case of a taxing statute it is open to the legislature to enact provisions which would check evasion of tax. It is under this power to check evasion that provision for search and seizure is made in many taxing statutes. It must therefore be held that the legislature has power to provide for search and seizure in connection with taxation laws in order that evasion may be checked."

It is, now too late in the day to challenge the measure of search and seizure when it is entrusted to Income-tax authorities with a view to prevent large scale tax evasion.

10. Indeed, the measure would be objectionable if its implementation is not accompanied by safeguards against its undue and improper exercise. As a broad proposition it is now possible to state that if the safeguards are generally on the lines adopted by the Criminal Procedure Code they would be regarded as adequate and render the temporary restrictions imposed by the measure reasonable. In the case just cited there was a proviso to sub-section (2) of Section 41 which prescribed that all searches under the sub-section shall, so far as may be, made in accordance with the provisions of the Code of Criminal Procedure. After pointing out that Section 165 of the Criminal Procedure Code would apply mutatis mutandis to searches made under sub-section (2), this court observed :

> "We are, therefore, of opinion that safeguards provided in Section 165 also apply to searches made under sub-section (2). These safeguards are - (i) the empowered officer must have reasonable grounds for believing that anything necessary for the purpose of recovery of tax may be found in any place within his jurisdiction, (ii) he must be of the opinion that such thing cannot be otherwise got without undue delay, (iii) he must record in writing the grounds of his belief, and (iv) he must specify in such writing so far as possible the thing for which search is to be made. After he has done these things, he can make the search. These safeguards, which in our opinion apply to searches under sub-section (2) also clearly show that the power to search under sub-section (2) is not arbitrary. In view of these safeguards and other safeguards provided in Chapter VII of the Code of Criminal Procedure, which also apply so far as may be to searches made under sub-section (2), we can see no reason to hold that the restriction, if any, on the right to hold property and to carry on trade, by the search provided in sub-section (2) is not a reasonable restriction keeping in view the object of the search, namely, prevention of evasion of tax."

11. We are, therefore, to see what are the inbuilt safeguards in Section 132 of the Income-tax Act. In the first place, it must be noted that the power to order search and seizure is vested in the highest officers of the department. Secondly, the exercise of this power can only follow a reasonable belief entertained by such officer that any of the three conditions mentioned in Section 132(1) (a), (b) and (c) exists. In this connection it may be further pointed out that under sub-rule (2) of rule 112, the Director of Inspection or the Commissioner, as the case may be, has to record his reasons before the authorisation is issued to the officers mentioned in sub-section (1). Thirdly, the authorisation for the search cannot be in favour of any officer below the rank of an Income-tax Officer. Fourthly, the authorisation is for specific purposes enumerated in (i) to (v) in sub-section (1), all of which are strictly limited to the object of the search. Fifthly, when money, bullion, etc., is seized the Income-tax Officer is to make a summary enquiry with a view to determine how much of what is seized will be retained by him to cover the estimated tax liability and how much will have to be returned

forthwith. The object of the enquiry under sub-section (5) is to reduce the inconvenience to the assessee as much as possible so that within a reasonable time what is estimated due to the Government may be retained land what should be returned to the assessee may be immediately returned to him. Even with regard to the books of account and documents seized, their return is guaranteed after a reasonable time. In the mean-time the person from whose custody they are seized is permitted to make copies and take extracts. Sixthly, where money, bullion, etc., is seized, it can also be immediately returned to the person concerned after he makes appropriate provision for the payment of the estimated tax dues under sub-section (5) and lastly, and this is most important, the provisions of the Criminal Procedure Code relating to search and seizure apply, as far as they may be, to all searches and seizures under Section 132. Rule 112 provides for the actual search and seizure being made after observing normal decencies of behaviour. The person in charge of the premises searched is immediately given a copy of the list of articles seized. One copy is forwarded to the authorising officer. Provision for the safe custody of the articles after seizure is also made in Rule 112. In our opinion, the safeguards are adequate to render the provisions of search and seizure as less onerous and restrictive as is possible under the circumstances. The provisions, therefore, relating to search and seizure in Section 132 and Rule 112 cannot be regarded as violative of Article 19(f) and (g).

12. A minor point was urged in support of the above contention that Section 132 contains provisions which are likely to affect even innocent persons. For example, it was submitted, an innocent person who is merely in custody of cash, bullion or other valuables, etc., not knowing that it was search and seizure. That cannot be helped. Since the object of the search is to get at concealed incomes, any person, who is in custody without enquiring about its true nature, exposes himself to search. Sub-section (4) of Section 132 shows the way how such an innocent person can make the impact of the search on him bearable. All that he has to do is to tell the true facts to the searching officer explaining on whose behalf he held the custody of the valuables. It will be then for the Income-tax Officer to ascertain the person concerned under sub-section (5).

13. It was next argued that the power for directing a search is given to an authority like the Director of Inspection who, it is submitted, is, in the very nature of things, incapable of forming any reasonable belief with regard to the requirements of Section 132(1) (a), (b) and (c). The contention was that the assessee has no contact in the matter of assessment with the director and, therefore, he can hardly entertain any belief, reasonable or otherwise. It is conceded that the Income-tax Officer or his superiors in the direct line, like the Inspecting Assistant Commissioner or the Commissioner, may be in a position to entertain the requisite belief on account of their having direct and first hand knowledge of the financial circumstances of the assessee, the defaults he has committed or is likely to commit, etc. But the Director of Inspection has no opportunity and is, therefore, thoroughly unable to form any opinion. This would only mean that any belief entertained by him would be an arbitrary belief and legislation reasonable. In our opinion, there is no substance in this argument. The Director of Inspection, as already seen in Section 116 of the Income-tax Act, is an officer in the income-tax department next only in authority to the Board of Direct Taxes. Section 118 shows that all Inspecting Assistant Commissioners and Income-tax Officers, besides being subordinate to the Commissioners, are also subordinate to the Director of Inspection. Under Section 119(2) every Income-tax Officer employed in the execution of the Act is required to observe and follow such instructions as may be issued to him for his guidance by the concerned Director of Inspection. Moreover, under Section 120, the Director of Inspection is required to perform such functions of any other Income-tax authority, apparently, including the Income-tax Officers and his direct superiors, as may be assigned to him by the Board. Under Section 135 the Director of Inspection is competent to make any enquiry under the Act and for that purpose he is invested with all the powers

that an Income-tax Officer has under the Act in relation to the making of enquiries. It would, therefore, follow that in the course of his duties the Director of Inspection has ample opportunities to follow the course of investigation and assessment carried on by the Income-tax Officers and to check the information received from his sources with the actual material produced or not produced before the assessing authorities. It is not, therefore, correct to argue that the Director of Inspection could hardly be expected to entertain, honestly, any reasonable belief for the purposes of Section 132(1) (a), (b) and (c).

14. A subsidiary point relating to the entertainment of reasonable belief under Section 132 was also raised by Mr. Karkhanis. He submitted that it was possible to say that the Director of Inspection or the Commissioner, as the case may be, could, in conceivable cases, entertain reason to believe the existence of conditions referred to in sub-clauses (a) and (c) of sub-section (1). For example, where the necessary requisition is made under sub-clause (a) the authority concerned may from the record ascertain whether the person to whom the requisition is issued has omitted or failed to produce or cause to be produced the required documents. Similarly, under sub-clause (c), if the authority has received any secret information which, in its opinion, was reliable, it may be possible for it to have reason to believe that any person is in possession of any money, bullion, jewellery, etc., which is undisclosed income or property and such property is secreted in some place. But Mr. Karkhanis submitted that so far as sub-clause (b) is concerned, it will be impossible for one to say that the authority can reasonably entertain the belief that if a requisition is made the person concerned will not or would not produce or cause to be produced the required documents. In his submission, the authority can entertain that belief only when a requisition is made and within reasonable time given the document is not produced. That is provided for in sub-clause (a). But to say that the authority can also have reason to believe that if a requisition is made the person concerned will not in future produce the document is, according to Mr. Karkhanis, a conclusion which is impossible to draw on any conceivable facts. We must say that if Mr. Karkhanis really thinks that there is substance in this argument, then he must be blissfully unaware of the manner in which income-tax is evaded. It is impossible to enumerate all the circumstances in which the necessary reasonable belief may be entertained under sub-clause (b). As an illustration, however, we may point out a case which falls completely under sub-clause (b). An assessee may be filling his returns from year to year regularly and his assessments may be also completed in due course over years. His books of account and documents have been duly checked from year to year and the assessing officer is also completely satisfied that the returns are correct. But it might so happen that this apparently honest assessee has invested large funds in properties and other financial deals, reliable information about which finds its way to the Director of Inspection. In such a case no oracle is needed to tell the Director of Inspection that if a requisition is made on the assessee to produce his documents in connection with these financial deals and investments, the assessee will most certainly omit to produce or cause to be produced such documents. On the other hand, there is danger that all these documents may; be destroyed because the very fact that a requisition is made with a view to investigate concealed deals would put the assessee on his guard and the relevant documents may either disappear or be destroyed. Indeed, it is possible that an assessee may, after knowing that the game is up, produce the requisite documents. But, in the nature of things, such an assessee would be rare. The question for us to consider is whether the authority under Section 132(1) may entertain the reasonable belief that in such circumstances the assessee will not or would not produce the documents. In our opinion, though in a very rare case a tax evader may comply with a requisition, the Director of Inspection who has reliable information that the assessee has consistently concealed his income derived from certain financial deals may be justified in entertaining the reasonable belief that the assessee, if called upon to produce the necessary documents, will not produce the same. There is no substance,

therefore, in the contention that sub-clause (b) has over-reached itself.

15. The argument that Section 132(5) is confiscatory in its effect has also no force. It must be remembered that the object of this provision is to expedite the return of the seized assets after retaining what is due by way of tax to Government and has been illegally withheld by the person concerned. The seizure of the assets has been; made in the belief, honestly held, that the assets represent undisclosed; income or property. But the Income-tax Officer cannot merely rest on this belief. He must make a summary enquiry after notice to the person concerned and the latter has an opportunity to show that he had duly disclosed this income. If he cannot do this the officer is entitled to proceed on the basis that it is undisclosed income and on the relevant material make a broad estimate of the tax withheld. The amount of such tax which truly belongs to Government is retained by the Income-tax Officer and the balance forthwith released. We do not see how this can be described as confiscation. In fact, the second proviso to sub-section (5) shows that the assessee can get a release of all the assets seized if he can make satisfactory arrangement for the payment of the estimated dues. Moreover, it must be noted that the enquiry under sub-section (5) is no substitute for regular assessment or reassessment. The Income-tax Officer, having jurisdiction, will proceed with the assessment in due course and determine the correct amount of tax payable. In the meantime the assets retained are only by way of sequestration to meet the tax dues found to be eventually payable. If by reason of the enquiry under Section 132(5), which is admittedly a summary enquiry, an amount in excess of the dues is retained, the same is liable to be returned with interest at 9 per cent, under Section 132A.

16. We are not, therefore, inclined to hold that the restrictions placed by any of the provisions of Section 132, 132A or Rule 112A are unreasonable restrictions on the freedoms under Article 19(1) (f) and (g).

17. It was next argued that Section 132(1) and (5) are violative of the fundamental right under Article 14 on the ground : (1) that they make unjust discrimination between evades of tax, distinguishing those who are believed to be in possession of undisclosed income or property from those evaders of tax who are not believed to be in possession, and (2) that although all evaders are liable to be proceeded against under Section 147 of the Act, yet only some of them who are found in possession of undisclosed income or property are liable to be subjected to the procedure under Section 132(5). We find no substance in this argument. All evaders of tax can be proceeded against under Section 132. Only in some cases the search may be useful; in others it may not be. If the Director of Inspection gets timely information about the undisclosed income and its location, he can direct a search and seizure. Otherwise, it is futile to direct a search and seizure because whole manoeuvre will be fruitless. The provision for seizure is designed with the object of getting at the income which has been concealed illegally by the assessee. Only when he is honestly satisfied that some undisclosed income of a person is likely to come to his hands if a search is directed, be will be in a position to issue the necessary authorisation. He cannot, however, direct a search in respect of an evader of tax who is astute enough to spend all his income or otherwise make it impossible to be traced. For the purposes of Section 147 of the Act all evaders of tax are subject to the same procedure for assessment of tax including those against whom action is taken under Section 132. Assessee whose assets could be seized for the recovery of their tax liabilities do not stand in a different class as such, but stand in a different situation from those others against whom the search and seizure process, though available, is futile. The finding of undisclosed income in the form of cash, jewellery and the like makes the provision of sub-section (5) imperative. The taxing authorities cannot keep the valuables with them indefinitely without trying to see how much of what is now seized will go to the Government by way of tax. Therefore, in fairness to the assessee, sub-

section (5) has been deliberately introduced. In the nature of things such an enquiry is impossible in the case of tax evaders from whom nothing is or could be seized on a search.

18. Sub-section (5) of Section 132 does not contemplate a different procedure in the matter of regular assessment. See Section 132-A which shows that those who are found in possession of undisclosed income on a seizure are liable to be regularly assessed or reassessed. Sub-section (5) only contemplates a provisional summary enquiry with a view to determine how much of the seized wealth can be legitimately and reasonably retained to cover the tax liability already incurred. Regular assessment follows under the law in the same manner as in the cases of tax evaders who are not found in possession of concealed income. The utmost that can be said is that by reason of the seizure the Government is in a position to secure its tax dues before the regular assessment is concluded. But that does not introduce any different procedure for the regular assessment of such an assessee's income which remains the same for all tax evaders. In one set of cases the fiscal authorities make sure of recoveries, in the other, they are unable to do so - not because the provisions of Section 132 do not operate on them, but because action under that section by search and seizure is futile. Therefore, there is no substance in the contention that two different procedures for assessment are adopted and, hence, there is a discrimination under Article 14. The plea on behalf of the assessees, in effect, only amounts to this : "It is true that we are tax evaders. But if other evaders successfully lodge the collection of the tax by causing their concealed income to disappear, why should we not get the same facility ?"

19. Some points of lesser substance were mentioned in the petition memos in support of the challenge under Articles 14 and 19(1) (f) and (g). They were, however, not urged at the time of the hearing, as on the other grounds urged, it was impossible to hold that the impugned provisions were violative of either Article 14, 19 or 31. We may, however, mention in this context that these points had been raised in C. Venkata Reddy v. Income-tax Officer, (Central) & Bangalore and Others and in Ramjibhai Kalidas v. I. G. Desai, Income-tax Officer, and others where they have been quite adequately dealt with and rejected.

20. Apart from the constitutional challenge there was also a further challenge on the ground that the actual search and seizure in all these cases, being in contravention of the requirements of Section 132 and Rule 112 was illegal. Several allegations have been made of mala fides, high-handedness, oppressive behaviour and the like and we shall have to deal with them on the facts of each case. But, so far as the two Civil Appeals are concerned, it appears to us that it is not necessary to enter into the question of the alleged illegalities. The High Court has not done so. The relief claimed in those petitions in the High Court was for the return of the account books and documents which had been seized and it would appear from the record that before the High Court disposed of that matter, the account books land documents had been already returned. However, there was another relief claimed in the petitions and that was for a writ of prohibition restraining the income-tax department from using as evidence any information gathered from the search of the articles seized. It would appear from the record the High Court was prepared to assume for the purposes of those cases that the search and seizure was illegal. Even so the question remained whether these victims of illegal search were entitled to a writ of prohibition that; the income-tax authorities shall not use any information gathered from the documents which had been seized. The High Court held that they were not, land proceeded to pass the following identical order in the two cases. It is as follows :

> "In this case all the documents seized in pursuance of the search warrant have been returned to the petitioners and the only question is whether the information gathered as a result of such search and seizure could be used in evidence if it be held that the

> search and seizure was illegal. In Balwant Singh v. Director of Inspection (Civil Writ No. 750-D of 1966), announced today, we have held that such information can be used. It is unnecessary, therefore, to pronounce upon the validity of the search and seizure. This petition, therefore, fails and is dismissed with no order as to costs."

21. Balwant Singh's case referred to above is reported in (1969) 71 I.T.R. 550. We understand that an appeal had been filled to this court but was not prosecuted. That decision not only upheld the constitutionality of Section 132 of the Income-tax Act, but also held that there was nothing in Article 19 of the Constitution which forbids the use of evidence obtained as a result of an illegal search. Consistently with that view the relief for a writ of prohibition was reject and hence the two Civil Appeals before us.

22. Dr. Singhvi who appeared on behalf of the appellants in the two appeals frankly conceded that there was no specific article of the Constitution prohibiting the admission of evidence obtained in an illegal search and seizure. But he submitted that to admit such evidence is against the spirit of the Constitution which has made our liberties inviolable. In this connection he referred to some American cases which seem to recognize the validity of his submission.

23. As to the argument based on "the spirit of our Constitution", we can do no better than quote from the judgment of Kania C.J. in A. K. Gopalan v. State of Madras :

> "There is considerable authority for the statement that the courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. Where the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the legislature we cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument. It is difficult upon any general principles to limit the omnipotence of the sovereign legislative power by judicial interposition, except so far as the express words of a written Constitution give the authority."

Now, if the Evidence Act, 1872, which is a law consolidating, defining and amending the law of evidence, no provision of which is challenged as violation the Constitution - permits relevancy as the only test of admissibility of evidence (see Section 5 of the Act) and, secondly, that Act or any other similar law in force does not exclude relevant evidence on the ground that it was obtained under an illegal search or seizure, it will be wrong to invoke the supposed spirit of our Constitution for excluding such evidence. Nor is it open to us to strain the language of the Constitution, because some American judges of the American Supreme Court have spelt out certain constitutional protections from the provisions of the America Constitution. In M. P. Sharma v. Satish Chandra, already referred to, a search and seizure made under the Criminal Procedure Code was challenged as illegal on the ground of violation of the fundamental rights under Article 20(3), the argument being that the evidence was no better than illegally compelled evidence. In support of that contention reference was made to the Fourth and Fifth Amendments of the American Constitution land also to some American cases which seemed to hold that the obtaining of incriminating evidence by illegal seizure and search tantamounts to the violation of the Fifth Amendment. The Fourth Amendment does not place any embargo on reasonable searches and seizures. It provides that the right of the people to be secure in their not be violated. Thus the privacy of a citizen's home was specifically safeguarded under the Constitution, although reasonable searches and seizures were not taboo, Repelling the submission, this court observed at page 1096 :

> "A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches."

It, therefore, follows that neither by invoking the spirit of our Constitution nor by a strained construction of any of the fundamental rights can we spell out the exclusion of evidence obtained on an illegal search.

24. So far as India is concerned its law of evidence is modelled on the rules of evidence which prevailed in English law, and courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure. In Babindra Kumar Ghose v. Emperor the learned Chief justice, Sir Lawrence Jenkins, says at page 500 :

> "Mr. Das has attacked the searches and has urged that, even if there was jurisdiction to direct the issue of search warrants, as I hold there was, still the provisions of the Criminals Procedure Code have been completely disregarded. On this assumption he has contended that the evidence discovered by the searches is not admissible, but to this view I cannot accede. For, without in any way countenancing disregard of the provisions prescribed by the Code, I hold that what would otherwise be relevant does not become relevant because it was discovered in the course of a search in which those provisions were disregarded. As Jimutavahana with his shrewd common sense observes - 'a fact cannot be altered by 100 texts' and as his commentator quaintly remarks : "If a Brahmana be slain, the precept "Slay not a Brahmana" does not annual the murder. " But the absence of the precautions designed by the legislature lends support to the argument that the alleged discovery should be carefully scrutinized."

In Emperor v. Allahdad Khan the Superintendent of Police and a Sub-Inspector searched the house of a person suspected of being in illicit possession of excisable articles and such articles were found in the house searched. It was held that the conviction of the owner of the house under Section 63 of the United Provinces Excise Act, 1910, was not rendered invalid by the fact that no warrant had been issued for the search, although it was presumably the intention of the legislature that in a case under Section 63, where it was necessary to search a house, a search warrant should be obtained beforehand. In Kuruma v. Queen, where the Privy Council had to consider the English law of evidence in its application to Eastern Africa, their Lordships propounded the rule thus :

> "The test to be applied, both in civil land in criminal cases, in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible land the court is not concerned with how it was obtained."

Some American cases were also cited before the Privy Council. Their Lordships observed at page 204 thus :

> "Certain decisions of the Supreme Court of the United States of America were also

> cited in argument. Their Lordships do not think it necessary to examine them in detail. Suffice it to say that there appears to be considerable difference of opinion among the judges both in the State and Federal Courts as to whether or not the rejection of evidence obtained by illegal means depends on certain articles in the American Constitution. At any rate, in Olmstead v. United States, [1928] 277 U.S. 438, the majority of the Supreme Court were clearly of opinion that the common law did not reject relevant evidence on that ground."

In Kuruma's case, (supra), Kuruma was searched by two police officers who were not authorised under the law to carry out a search and, in the search, some ammunition was found in the unlawful possession of Kuruma. The question was whether the evidence with regard to the finding of the ammunition on the person of Kuruma could be shut out on the ground that the evidence had been obtained by an unlawful search. It was held it could not be so shut out because the finding of ammunition was a relevant piece of evidence on a charge for unlawful possession. In a later case before the Privy Council in Herman King v. Queen, which came on appeal from a Court of Appeal of Jamaica, the law as laid down in Kuruma's case was applied although the Jamaican Constitution guaranteed the constitutional right against search and seizure in the following provision of the Jamaica (Constitution) Order in Council, 1962, Schedule 2, Section 19 :

> " (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises. " " (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required..... for the purpose of preventing or detecting crime....."

In other words, search and seizure for the purposes of preventing or detecting crime reasonably enforced was not inconsistent with the constitutional guarantee against search and seizure. It was held in that case that the search of the appellant by a police officer was not justified by the warrant nor was it open to the officer to search the person of the appellant without taking him before a Justice of the Peace. Nevertheless it was held that the court had a discretion to admit the evidence obtained as a result of the illegal search and the constitutional protection against search of person or property without consent did not take away the discretion of the Court. Following Kuruma v. Queen (supra) the Court held that it was open to the court not to admit the evidence against the accused if the court was of the view that the evidence had been obtained by conduct of which the prosecution ought not to take advantage. But that was not a rule of evidence but a rule of prudence and fair play. It would thus be seen that in India, as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law of evidence obtained as a result of illegal search or seizure is not liable to be shut out.

25. In that view, even assuming, as was done by the High Court, that the search and seizure were in contravention of the provisions of Section 132 of the Income-tax Act, still the material seized was liable to be used subject to law before the income-tax authorities against the person from whose custody it was seized and, therefore, no writ of prohibition in restraint of such use could be granted. It must be, therefore, held that the High Court was right in dismissing the two writ petitions. The appeals must also fail and are dismissed with costs.

26. The two writ petitions filed in this court now remain for consideration and what is to be considered is whether there has been any illegality in the search and seizure because of the alleged

contravention of the provisions of Section 132 of the Act or Rule 112.

WRIT PETITION NO. 446 OF 1971

27. The petitioner, Pooran Mal, is a partner in a number of firms - some of them doing business in Bombay and some in Delhi. His permanent residence is 12-A, Kamla Nagar, Delhi. His business premises in Delhi are A-14/16, Jamuna Bhavan, Asaf Ali Road, New Delhi. It would appear that on an authorisation issued by the Director of Inspection, his residence and business premises in Delhi were searched on 15th and 16th October, 1971. On the 15th, his premises in Bombay were also searched and at that time it appears the petitioner was present in Bombay. When his residence was searched on 15th and 16th, there were in his house the petitioner's wife, two or three adult sons and his father who is said to have been ailing. It was alleged on behalf of the petitioner that the search in the residential premises was mala fide, oppressive, excessive, indiscriminate and vexatious. The grounds for making these allegations seem to be, - (1) that the search and seizure in the house took place in spite of the wife's request to postpone the search; (2) it was Dhanteras day which is a festival day; (3) petitioner's wife was bit informed that there was any authorisation; (4) her father-in-law was suffering from paralysis; (5) even children's small boxes containing their pocket money were seized; (6) jewellery including that of the mother-in-law of the petitioner, Kailashbai, who had died six years earlier, was seized; (7) the panchas who helped in the search were unknown to the petitioner or the members of his family; (8) the search went on from 8.00 a.m. on October 15th till the early hours of October 16th and the search was again resumed on the evening of October 16. The grounds on which the wild allegations of mala fides, oppression, etc., had been made do not appear to be of any substance. It is undoubtedly true that search and seizure is a drastic process and is bound to be associated will some amount of unsavoury and inconvenient result. A sudden search and seizure may unnerve the inmates of the place where the search is made. But this is to be expected. When oppression and mala fides are alleged, we should have more substantial grounds than these. On the other hand, the allegations of high-handedness, mala fides, etc., are wholly denied in the affidavit filed on behalf of the department. That it was a Dhanteras day is denied. But assuming it was, there is no law which says that a search and seizure cannot take place on that day. It may be that the wife had requested that the search may be postponed till her husband's return but obviously the officers concerned could not agree to this request because the whole purpose of the search would have been defeated. It is denied that the inmates were not informed of the authorisation. In fact it is alleged that the petitioner's wife, Smt. Sharda Devi, was shown the authorisation and in token of the same she had put her signature thereon. That the petitioner's father was suffering from paralysis might be unfortunate but it does not appear that the officers concerned caused him the least inconvenience. All throughout the search, it is alleged, Sharda Devi and her two educated sons, Dinesh and Vinod, were present at the time of the search. It not denied that considerable jewellery was seized. The jewellery seized in the house was worth Rs. 37,043 and though it is the case of the petitioner that part of it belonged to his mother-in-law, Smt. Kailashbai, who is now dead, it is stated on oath on behalf of the department the in the statements recorded on 15th and 16th October, 1971, Smt. Sharda Devi had claimed the whole of the jewellery as her own, though in the last wealth-tax return she had valued her jewellery at Rs. 5,000 only. So far as the panchas are concerned, it is denied that they were not known to the inmates of the house. In fact, it is alleged by the department that pancha Mathuradas was a resident in the same house and had been called at the suggestion of Sharda Devi. It is not denied that the search went on for a long time because a number of documents and account books were seized in the course of the search and so also a lot of jewellery and cash. The allegation that the small boxes of the children containing their pocket money was seized is denied. We may say, therefore, on the whole that there is nothing in the petition inducing us to take the view that the search in the house was either mala fide, oppressive or

excessive, etc. etc.

28. The search in the business premises was made when a number of persons who usually worked there were present. Books of account, documents, some jewellery and a large amount of cash amounting to about Rs. 61,000 were seized.

29. On October 16, there was a search in the Branch Offices of the Laxmi Commercial Bank and the Punjab National Bank. 84 silver bars were seized from the Laxmi Commercial Bank and 30 silver bars were seized from the Punjab National Bank. The value of these silver bars comes to nearly 18 lakhs. It is the case of the petitioner that these bars belong to M/s. Pooranmal and Sons of Bombay who sent the same to the Motor and General Finance Company of which the petitioner is a partner and this Finance Company, it is alleged, kept these bars with the two banks 84 bars were kept in the account of M/s. Udey Chand Pooranmal for an alleged overdraft limit while the 30 silver bars were pledged with the Punjab National Bank in the account of the finance company. In all these aforesaid firms the petitioner is a partner and it is the department's case that all these bars are undisclosed assets of the petitioner. It appears that the Income-tax Officer made a summary enquiry as required by Section 132(5) after issuing notice to the petitioner and his order dated January 12, 1972 shows, of course prima facie, that all the assets which had been seized in the house, the business premises and the banks, except for the value of the ornaments declared by Mrs. Sharda Devi in her Wealth Tax Return, had to be retained for being appropriated against tax dues from 1969 onwards which amounted to nearly 42 lakhs. Indeed this prima facie liability was subject to regular assessment and re-assessment.

30. Mr. Karkhanis submitted that the petitioner had been very cooperative with the department before and, therefore, the Director of Inspection could have no possible reason to believe that if any requisition for documents and account books were made the same would not be produced. This allegation about co-operation is denied by the Department and in this connection the Department has produced a chart at Annexure R I showing how the petitioner has been throughout non-co-operative. Assessment for the year 1967-68 is still pending and no return has been filed for the year 1968-69 or for later years. We are not at all satisfied that the petitioner was co-operative, and, therefore, the Director of Inspection would have no possible ground for entertaining a reasonable belief as required by sub-clauses (a), (b) and (c) of sub-section (1) of Section 132. To satisfy ourselves we called for the grounds recorded by the Director before the authorisation was issued and we are quite satisfied that there were grounds for him to entertain reasonable belief as required under the sub-clauses. As already pointed out the summary enquiry made under sub-clause (5) of Section 132 discloses that the assets seized were for the most part undisclosed income and property. Indeed, the accident that undisclosed property is found on a search may not be a justification for the authorisation of a search if, in fact, there had been no grounds for entertaining reasonable belief. But finding of assets as expected by the Director of Inspection on the information received by him would at least support the view that the authority concerned had reliable information on which he could entertain the necessary belief.

31. On the whole, therefore, we are not inclined to hold that the search and seizure in this writ petition was vitiated by any illegality.

WRIT PETITION NO. 86 OF 1972.

32. The position in this writ petition is not different. The petitioner, Ganeriwala, is a businessman. His residence is No. 1, Raj Narain Road, Civil Lines, Delhi, and he runs a family business in

automobile parts in the name of Ganeriwala Trading Company. The business is at No. 1, Krishna Motor Market, Kashmeri Gate, Delhi. The family seems to be a partner in the firm of M/s. Bisheshwar Lal Brij Nath, Barielly, and is supposed to have income from ancestral agricultural and in Haryana State. It is alleged by the petitioner that his assessment of income had been completed up to the year 1970-71 and of wealth-tax up to 1969-70. The return for 1970-71 was also filed. Even so, it is alleged, on October 8, 1971, his residential house and also the business premises were searched and documents and books of account were seized. The search was started at 8.00 a.m. and continued till the evening and, thereafter, the business premises were searched. The petitioner stated that though the raiding party made a very detailed search, they did not come across any concealed income - cash or bullion, ornaments or jewellery. General allegations regarding the search being oppressive and excessive are made. But there is no substance in them. Objection was taken to the search on the ground that the authorities had deliberately selected panchas who are inimical to the petitioner. This is denied. It is stated in the affidavit on behalf on the department that one of the pancha witnesses, namely, Lt. Col. Raj Behari Lal, was actually sitting in the house of the petitioner even before the search party entered the premises. It is also stated that both the panchas are responsible persons of the locality and the immediate neighbours of the petitioner - one of them being a responsible officer in the Army. The petitioner says that he had told the authorities that he had been on inimical terms with these panchas. But that is denied. There is, therefore, no reason to think that respectable panchas were not taken for the search. Another objection was made that two cash books relating to the years 1970-71 and 1971-72 were removed by the income-tax authorities but they were not duly entered in the inventory. This allegation also is denied. In para. 21 of the counter-affidavit the Assistant Director of Inspection has stated that during the course of the petitioner's examination and the recording of his statement on October 8, 1971, the petitioner had stated that his Roker Bahis for the accounting years 1970-71 and 1971-72, did not contain any entries regarding the expenditure on the construction of the godown, land as such those Roker Bahis were not seized from the custody of the petitioner. The other reason was that the petitioner had requested that they; may not be seized as otherwise the petitioner would face difficulties in carrying on his business. It must be remembered that the search and seizure had been ordered because the petitioner had recently constructed a huge godown near his residential premises with the floor area of approximately 6,700 sq. ft. on which a large investment was estimated to have been made from income which had not been disclosed in the books of account produced or returns filed by the petitioner. Since the petitioner himself told the authorities that the Roker Bahis for the two years did not contain any entries regarding the expenditure on the construction, the authorities Inspected the Roker Bahis for the year 1971-72, and finding that it did not contain any entries for the past 30 days it was considered by the authorities not proper to take possession of the same. We are inclined to think that this objection by the petitioner is an after-thought with a view to malign the departmental authorities. It is not denied that the petitioner had been given a copy of the inventory of the documents seized from his custody on that very day. He did not raise the objection regarding the account books till November 5, 1971, i.e., nearly after one month. The petitioner is a businessman. He could not have been unaware that his Roker Bahis for the current year and the previous year were missing for such a long time.

33. It was next alleged that a very large number of documents were seized which were really irrelevant. The authorised officer has to seize books of account and other documents which will be useful for and relevant to any proceeding under the Income-tax Act. When in the course of a search voluminous documents and books of account are to be examined with a view to judge whether they would be relevant, a certain amount of latitude must be permitted to the authorities. It is true that when particular documents are asked to be seized unnecessary examination of other documents may

conceivably make the search excessive. But when the documents, pieces of paper, exercise books, account books, small memos etc., have all to be examined with a view to see how far they; are relevant for the proceeding under the Act, an error of judgment is not unlikely. At the most this would be an irregularity - not an illegality. Nor can it be a valid objection to the search that it continued for about 16 hours. By their very nature the search and seizure as shown above would consume a lot of time.

34. In this petition also it was alleged that the Director of Inspection could possibly have no reason to believe the existence of circumstances; required by sub-clauses (b) and (c) of sub-section (1) of Section 132 because the petitioner's assessment for the year 1970-71 had been already completed and so also the wealth-tax assessment for the year 1969-70. But this does not mean that on the information in the possession of the Director of Inspection he cannot entertain the necessary belief. The grounds for the belief recorded by the Director of Inspection before the authorisation were shown to us and we do not think that on the material the authority could not have entertained the belief. A big godown has been newly constructed by the petitioner but his books of account did not effect the expenditure on account of this construction. It is alleged on behalf of the department that, on search, certain documents in the nature of maps, etc., were seized which showed that the petitioner had constructed the building in the month preceding the date of search and the money with which the said building was constructed was unaccounted money. There is, therefore, no substance in the contention that the income-tax authorities could not have possibly entertained the required belief. The search and seizure, therefore, impugned in this writ petition cannot be regarded as illegal.

35. In the result the two writ petitions and the two appeals are dismissed with costs.

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