

**SUPREME COURT OF INDIA**

Gopaldas Udhavdas Ahuja

Vs

Union of India

Civil Appeal No. 2335 of 1996

((Mrs.) Ruma Pal and S. H. Kapadia)

06/07/2004

**JUDGMENT**

**S.H.KAPADIA, J.**

1. This appeal by special leave is directed against the judgment and order of the Division Bench of the Bombay High Court dated 5.1.1994 passed in Appeal No. 19 of 1992, by which the Division Bench allowed the appeal preferred by the respondents, thereby setting aside the judgment and order passed by the learned Single Judge dated 11.9.1990 in Writ Petition No. 2406 of 1982 and consequently confirming the orders of the Adjudicating Authorities confiscating the primary gold, weighing 37,398.300 gms. and valued at Rs. 18.70 lacs, under section 71(1) of the Gold (Control) Act, 1968 (hereinafter referred to for the sake of brevity as 'the 1968 Act') with imposition of penalties on each of the appellants herein under section 74 of the said Act.

2. The undisputed facts are as follows:-

The appellants are the son and widow respectively of one Udhavdas Ahuja. Udhavdas had married twice - first to the mother of appellant no.1 who died on 19.2.1950 and next to appellant no.2 on 1.7.1950. Appellant no.1 was born on 16.2.1950. Udhav's grandmother Bhojibai died on 4.7.1951. On August 28, 1974, the Income Tax Commissioner issued an authorization under section 132 of the Income Tax Act, 1961 authorizing search and seizure at Gopi Kunj, situate at Shivaji Park,

Bombay, being the residential premises of appellant no. 1. Pursuant to the authorization, R.D. Mahadeshwar, Asstt. Director of Inspection, Income-tax department conducted the search and recovered primary gold and other gold items, more particularly described in the panchnama (at page 95 of Volume-II). At the time of search, appellant No.1 was present. The primary gold and the gold items collectively weighed 37,398.300 gms. valued at Rs. 18.70 lacs as on August 30, 1974. Thereafter, the Income Tax Authorities intimated the Gold Control Officer appointed under section 4 of the 1968 Act. On August 30, 1974, the said officer attended the Income Tax Officer and in the presence of appellant no.1, who was the Karta of Kewal Ram Ahuja, Hindu Undivided Family, took over the custody of the said gold from the Income-tax department. The Gold Control Officer also prepared the above panchnama. On 20.9.1974, the Gold Control Officer, Bombay served a show-cause notice on the appellants calling upon them to explain why the said primary gold should not be confiscated under section 71(1) of the 1968 Act and also why penalty should not be imposed on each of the appellants under section 74 of that Act. The show-cause notice inter alia alleged contravention of section 8(1) read with section 8(6) and section 16(1) read with section 16(5) inasmuch as the appellants had in their possession primary gold which they failed to dispose of within six months from 1.3.1967 as provided for in rule 126 H (1)(B) of the Defence of India Rules. By the said show-cause notice, it was further alleged that the appellants had failed to file the declaration in respect of gold articles, other than the gold bars which constituted contravention of Section 16(1) read with 16(5) of the said Act. The appellants claimed during the investigation that the seizure was illegal; that taking over of the gold from Income Tax Authorities did not amount to seizure in fact or in law. They contended that there was no contravention of the provisions of the Act as they were not in conscious possession of the said gold recovered from their residence. The appellants claimed that entire gold was recovered from a secret cavity/vault inside the dome of one cupboard in the eastern bedroom and that they were not aware of the secret cavity or the contents thereof. The appellants also claimed that they were not in possession of the keys of the secret vault. In the meantime, on 18.10.1975, Voluntary Disclosure of Income and Wealth Ordinance, 1975 was promulgated. It was replaced by Act No. VIII in 1976. On 27.12.1975, appellant no.1 as Karta filed a declaration under the said Voluntary Disclosure Scheme. To complete the chronology of the events, the Collector of Customs (Preventive), Bombay (hereinafter referred to for the sake of brevity as 'Authorized Officer') ordered confiscation of the gold bars, gold coins and sovereigns under the provisions of section 71(1) read with section 8(1) of the 1968 Act. However, the appellants were given an option to redeem the gold coins and sovereigns weighing 7,719.90 gms. on payment of fine of Rs. 1.5 lacs in lieu of confiscation. By the said order, the Authorized Officer imposed penalty of Rs. 1 lac on each of the appellants. This order of the Authorized Officer held that the entire gold was seized from one cupboard in the eastern bedroom. The order passed by the Authorized Officer on 26.6.1976 was, however, set aside by the Gold Control Administrator in appeal (hereinafter referred to for the sake of brevity as 'the Appellate Authority'). By order dated 21.11.1977, the Appellate Authority remanded the case for de novo adjudication by accepting the contention of the appellants herein that the order passed by the Authorized Officer on 26.6.1976 was in breach of principles of natural justice. On remand, the Authorized Officer once again came to the conclusion, after considering the evidence on record, that the gold seized was in conscious possession of the appellants. However, this time, the Authorized Officer held that the gold seized was recovered from cupboard in the eastern bedroom, from the cupboard in the western bedroom and from the cupboard in the telephone room. He, therefore, concluded that the appellants were in conscious possession of the seized gold. The Authorized Officer, therefore, held that there was contravention of section 8(1) read with section 8(6) as far as primary gold was concerned and since the appellants failed to file declaration with regard to other gold items, there was contravention of section 16(1) read with section 16(5) of 1968 Act. Therefore, by his order dated 14/28.2.1980, the

Authorized Officer directed absolute confiscation of the primary gold, gold sovereigns, gold coins and other gold items. He also imposed a personal penalty of Rs. 1 lac each on the two appellants. Being aggrieved by the said order, the appellants herein carried the matter in appeal once again to the Gold Control Administrator, New Delhi, being Appeal No. 91 of 1981. It was contended before the Appellate Authority that the entire gold was recovered from one place i.e. from a secret vault inside the dome of the cupboard in the eastern bedroom. The appellants relied upon the statements of two panchas. However, the Appellate Authority vide order dated 5.11.1981 found that the statements made by the officers from the Income-tax department that gold was recovered from different places were truthful. The Appellate Authority rejected the testimony of locksmith and the panchas. On the state of these findings, the Appellate Authority held that the appellants were in conscious possession of the said gold. The order passed by the Authorized Officer confiscating the said gold was upheld. However, the Appellate Authority ordered redemption of gold idols found in the pooja room on payment of Fine of Rs. 5000/-. The Appellate Authority also reduced the personal penalty of Rs. 1 lac imposed on each of the appellants to Rs. 50000/- each. Being aggrieved, the appellants herein preferred Revision application to respondent no.1 which was dismissed on 10.7.1982. At this stage, it may be mentioned that by order dated 5.6.1976, the Gold Control Officer found the appellants' declaration under Voluntary Disclosure Scheme unacceptable as according to him the declaration was filed by appellant no.1 as Karta after commencement of proceedings under the 1968 Act. Being aggrieved by the dismissal of revision application filed by the appellants, Writ Petition No. 2406 of 1982 was filed in the Bombay High Court for a declaration that the said gold was unlawfully seized and, therefore, the appellants were entitled to immunity from proceedings for prosecution, confiscation and penalty. The appellants also sought return of the said gold. The said writ petition was filed on 18.10.1982. In the meantime, the appellants who were charged for offences under section 85(1)(ii) read with section 8(1) of the 1968 Act were acquitted by the Addl. Chief Metropolitan Magistrate Bombay on 24.3.1983. The Criminal Appeal No. 443 of 1983 filed by the Gold Control Authorities against the order of acquittal was dismissed by the Bombay High Court on 8/9.3.1991. By judgment and order dated 11.9.1990, the learned Single Judge held in Writ Petition No. 2406 of 1982, mentioned herein above, that the appellants were innocent possessors of the said gold. Accordingly, the Trial Judge quashed the orders of penalty and confiscation passed by the Gold Control Authorities. Being aggrieved, the department herein, filed Letters Patent Appeal No. 19 of 1992 before the Division Bench of the Bombay High Court. By impugned judgment dated 5.1.1994, the Division Bench allowed the L.P.A. No. 19 of 1992 on the ground that the appellants were in conscious possession of the gold as it was found in several cupboards in the eastern bedroom, western bedroom and the telephone room. The Division Bench held that the findings of the Criminal court were not relevant for the purposes of adjudicating confiscation under section 71(1) of the said Act. Consequently, the Division Bench confirmed the orders passed by the Gold Control Authorities. Hence the appellants have filed this appeal by way of special leave. Lastly, it may be mentioned that by order dated 7.4.1994, this Court dismissed Special Leave Petition (Criminal) filed by the Assistant Collector of Customs, Bombay against the judgment of the Bombay High Court confirming the acquittal of the appellants by the learned Magistrate.

3. Mr. C.A. Sundaram, learned senior counsel appearing on behalf of the appellants submitted that the Gold Control Authorities took over the gold from Income-Tax department in contravention of section 132(5) of the Income Tax Act and consequently, there was no seizure in law and, therefore, the appellants were entitled to claim immunity under Voluntary Disclosure Scheme. In this connection, it was urged that in fact there was no seizure as the Gold Control Officer merely took

over the gold from Income-tax department and to get over this lacunae, respondent No.2 herein seeks to contend that gold was returned to the appellants by the Income-tax authorities and it was thereafter seized from the appellants by Gold Control Officer appointed under section 4 of the Act. In this connection, reliance was placed on the panchnama dated 30.8.1974 (Vol. II page 95) to show that the gold was seized by the Gold Control Officer from Income-tax department. It was submitted that such seizure was also contrary to section 132(5) of the Income Tax Act. In this connection, reliance was placed on the judgment of this Court in the case of Commissioner of Income Tax vs. Tarsem Kumar, reported in.

4. Learned senior counsel for the appellants next contended that though under the 1968 Act any primary gold held in contravention of section 8(1) was liable to be confiscated under section 71(1), the proviso thereto protected such gold from confiscation for contravention of the provisions of the Act in the absence of knowledge or connivance on the part of the owner in such contravention. In view of the said proviso, it was submitted that there was no absolute bar to the possession of the primary gold under the 1968 Act. In this connection, it was urged that mere possession of primary gold was an offence under sections 71(1) and 85(1) of the Act; that therefore, the word 'possession' in sections 8(1), 71(1) and 85(1) referred to conscious possession.

5. Learned counsel for the appellants next contended that the appellants were prosecuted by the Gold Control Authorities for offences under section 85(1)(ii) read with section 8(1) of the Act in respect of retention of possession of primary gold; that they were also prosecuted for not filing declarations under section 16(1) in respect of gold coins, sovereigns and gold idols; that on the first count the appellants proved beyond reasonable doubt that they had no knowledge of the primary gold bars, coins and sovereigns; that consequently, they were acquitted and, therefore, the appellants were entitled to the benefit of acquittal not only in criminal trial but also in the matter of confiscation of the said property. It was urged that that in the impugned judgment, the Division Bench of the High Court had erred in holding that findings recorded by the criminal court had no bearing on adjudication under section 71(1) and section 74 of the said Act. In this connection, reliance was placed on the judgment of this Court in the case of Pasupuleti Venkateswarlu vs. The Motor & General Traders reported in ); Rajesh D. Darbar vs. Narasingrao Krishnaji Kulkarni and others, reported in ); Ram Chandra Singh vs. Savitri Devi and others reported in ); and Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. reported in ). Learned counsel for the appellants further contended that the mens rea was a sine qua non for confiscation of gold under the Act; that the proceedings under the Act were quasi criminal in character and consequently, the judgment of the learned Magistrate acquitting the appellants was binding on the departmental authorities adjudicating the question of confiscation. In any event, it was urged, that the learned Single Judge in the writ petition had discussed the entire evidence and had come to the conclusion that the appellants were not in conscious possession of the gold; that the said gold was found only at one place, namely, in the cavity on the cupboard in the eastern bed room of the flat; that the locksmith had to prepare a key to open the locker in the cavity in which the gold was found, that the screws were rusted and they had to be cut to open the top which showed that the appellants were not in conscious possession of the said gold. It was submitted that the above facts were not considered by respondents No.2 and 3 herein and, therefore, their orders suffered from errors apparent on the face of the the record and consequently, the learned Single Judge of the High Court was right in exercising the power of judicial review. That the Division Bench had erred in ignoring the findings of the learned Single Judge. Lastly, learned counsel for the appellants submitted that in any event, an option of redemption should have been given to the appellants. That, in the present case, no

reasons have been given by the Collector for not exercising his discretion in the matter of grant of redemption. In this connection, reliance was placed on the judgment of this Court in the case of Hargovind Das and others vs. Collector of Customs & others reported in 2).

6. Per contra, Mr. N.K. Bajpai, learned counsel appearing on behalf of the department contended that the Income-tax authorities had recovered the said gold from the residence of the appellants during the search on 28.8.1974. That in accordance with a circular issued by the Central Board of Direct Taxes, the Gold Control Officer was informed about the seizure. That the said officer visited the office of Income-tax department around 30.8.1974 and in the presence of appellant no.1, took over the gold from the Income-tax department under section 66 of the 1968 Act. In this connection, reliance was placed on the panchnama dated 30.8.1974. It was urged that all the statutory authorities rejected the claim that the appellants were not in conscious possession of the gold on the ground that the recovery was made from more than one cupboard; that appellant no.2, on being asked, produced the keys with which the secret locker in the cavity on top of the cupboards in the western bedroom was opened; that the said keys were recovered from the cupboard in the western bedroom and, therefore, the appellants were in conscious possession of the said gold, which was rightly confiscated under section 71(1) of the Act.

7. Learned counsel for the respondent further submitted that section 66 of the Act empowered the Gold Control Officer to seize primary gold in respect of which he had reason to believe that any provision of the Act had been contravened. That in this case, the seizure of gold was made under a panchnama in presence of appellant no.1 in the reasonable belief that the provisions of the Act had been contravened. In this connection, reliance was placed on the copy of the panchnama (at page 95, volume-II), which bears the signature of appellant No.1 further, a circular had been issued on 30.8.1965 by CBDT addressed to all Commissioners of Income Tax & Wealth Tax stating that when the gold is seized in a search by Income-tax authorities, necessary information should be given to the Gold Control Officer. It was submitted that the circular issued by the CBDT was binding on the subordinate authorities. Therefore, it was urged that there was no illegality in making the seizure. It was further submitted that the judgment of this Court in Tarsem Kumar's case (supra) was not applicable as it was given prior to insertion of section 132A in the Income Tax Act. It was urged that section 66 of the said Act was a self contained Code and it was, therefore, not necessary to refer to the provisions of the Income Tax Act, 1961.

8. Learned counsel for the respondent next submitted that mens rea was not a necessary ingredient of sub-section (1) of section 71. That possession ipso facto, was an offence under the Act. That the appellants were found to be in possession of huge gold bars of primary gold contrary to section 8(1). They were also found in possession of undeclared gold articles in contravention of section 16. In such a case, it was submitted that the claim of the appellants that they were not in conscious possession of the primary gold as their defence was unbelievable. Learned counsel further submitted that in view of sections 8(1), 71(1) and 85(1), an absolute liability was imposed and, therefore, there was no merit in the argument advanced on behalf of the appellants that the gold was not liable to be confiscated till conscious possession thereof stood proved. Lastly, it was urged that the applicability of the proviso to section 71(1) had to be adjudged by the adjudicating authority and not by the officer who had seized the primary gold. It is for the adjudicating authority to decide the claim of the benefit under the proviso to section 71(1). Hence, it was urged that the seizure cannot be held to be illegal in the present case.

9. Learned counsel for the respondent no. 2 next submitted that under the 1968 Act, adjudication and prosecution were two independent proceedings and they were permissible on the same set of facts. That the possibility of different conclusions being reached by two different Authorities under the same Act cannot be ruled out. That adjudication and prosecution were independent of each other and the procedures to be adopted in the two proceedings were also different. In this connection, reliance was placed on the judgment of this Court in the case of *Tukaram G. Gaokar vs. R.N. Shukla* ). It was further submitted that the presumption of culpable mental state under section 98B of the Act had no relevance whatsoever to the proceedings for confiscation and penalty. That the factum of acquittal in prosecution proceedings cannot affect the findings of fact reached by the statutory authorities in adjudication. That there was no provision in the Act which gives a superior status to the outcome of the prosecution proceedings. In the circumstances, it was submitted that the factum of acquittal in prosecution proceedings cannot affect findings of fact reached by the Adjudicating Authority.

10. Learned counsel for the respondent lastly submitted that the voluntary disclosure scheme was introduced vide Voluntary Disclosure of Income & Wealth Ordinance, 1975. That under sub-section 5 of section 15A, primary gold which had been seized or confiscated under the 1968 Act was not entitled to immunity. That in the present matter, on 20.9.1974, the Gold Control Officer issued the show-cause notice calling upon the appellants to show-cause as to why the said gold should not be confiscated under section 71(1) whereas appellant no.1 filed the declaration as a Karta only on 27.12.1975. Therefore, the appellants were not entitled to immunity as prior to their declaration on 27.12.1975, proceedings for confiscation had been initiated. For the aforesaid reasons, it was urged that there is no merit in the civil appeal and the same deserves to be dismissed.

11. For the sake of clarity, we may point out that by order dated 10.7.1982 passed by the Appellate Authority, seven gold bars, one gold brick, gold coins and sovereigns (more particularly described in the panchnama dated 30.8.1974 - Vol. II page 95) stood absolutely confiscated with personal penalty on each of the two appellants herein, whereas the gold idols and pooja articles were ordered to be redeemed on payment of fine. This order of the Appellate Authority was confirmed in Revision by respondent no. 6 vide order dated 10.7.1982. By the impugned judgment of the Division Bench of the High Court, the orders passed by the Appellate Authority and the Revisional Authority were upheld. Consequently, our judgment is confined only to absolute confiscation of the aforesaid gold bars, gold bricks, gold coins and sovereigns.

12. Before examining the provisions of the 1968 Act, it is necessary to refer to the various provisions of law which existed prior to the Gold (Control) Act, 1968. On 12.12.1962, the Defence of India Act, 1962 was enacted replacing an Ordinance issued on 26.10.1962. Under Section 2 of the 1962 Act, the Central Government framed Defence of India Rules, 1962. In the 1962 Rules, as originally framed, there was no provision dealing with control of gold. By Defence of India (Amendment) Rules, 1963, a new Part XIIA was inserted w.e.f. January 9, 1963. By this amendment, rules 126A to 126Z were inserted. Rule 126A(d) defined 'gold' as, inter alia, including primary gold, ornament or any other article of gold. Rule 126H provided for restrictions on possession of gold. The effect of rule 126H was that, except in the manner provided under the said rule, no person could acquire or buy primary gold. Rule 126-I required declaration to be made of the possession of gold other than ornaments. It provided that every person, not being a dealer, shall,

within thirty days from the commencement of the 1963 Amendment Rules, make a declaration as to the quantity, description and other particulars of gold. Under rule 126 M, gold seized was liable to be confiscated. Under the said rules, power was given for search and seizure of gold in respect of which there has been contravention of the said rules. The net effect of the aforesaid rules was that acquisition, possession or control of primary gold, without declaration, became illegal.

13. On 1.3.1967, the Defence of India Rules, 1962 were further amended by Defence of India (4th Amendment) Rules, 1966, which imposed a ban on the possession of primary gold. Under the Amended Rules, on person, other than a dealer, was entitled to own or possess primary gold after expiry of six months from the commencement of Defence of India (4th Amendment) Rules, 1966. The effect of the said Amendment was that within six months from 1.3.1967 (i.e. by 1.9.1967), no person, other than a dealer, could be in lawful possession of the primary gold.

14. On 22.6.1968, Part XIIA of Defence of India Rules, 1962 was repealed and replaced by Gold (Control) Ordinance, 1968. The ordinance was itself repealed by Gold (Control) Act, 1968 w.e.f. 1.9.1968. The Act was enacted to provide for the control of the production, manufacture, supply, distribution, use and possession of gold ornaments and articles of gold. The basic object was to reduce the internal demand for the gold in India. Under section 2(j), gold was defined to mean gold, including its alloy in any shape or form including primary gold, gold articles and ornaments. Under section 2(r) primary gold was defined to mean gold in unfinished or semi-finished form including gold bars, ingots, slabs, pellets, sheets etc. Under section 4, the administration of the Act was placed in the overall charge of the Gold Control Administrator. Under section 5(2), price of the gold to be sold and bought was to be fixed by the administrator, in consultation with the Reserve Bank of India. Under section 8(1), retention of possession of gold was prohibited. Section 8(1), which is relevant for the present case, read as under:-

"8. Restrictions regarding acquisition, possession and disposal of gold. (1) Save as otherwise provided in this Act, no person shall ◆

(i) own or have in his possession, custody or control or

(ii) acquire or agree to acquire the ownership, possession, custody or control of, or

(iii) buy, accept or otherwise receive or agree to buy, accept or otherwise receive any primary gold."  
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15. Under section 8(1), possession of the primary gold after the Act came into operation was contrary to law unless the same was held in the manner as provided by the Act. An essential pre-condition for assumption of jurisdiction under section 8(1) was that the article must be primary gold. Section 8(1) placed an absolute embargo on retention of the possession of the primary gold on and after 1.9.1968 when the said Act came into operation. Under section 8(6), the Gold Control Administrator was empowered under special circumstances of any case to authorize any persons to

buy, acquire, receive, sell, transfer or otherwise dispose of primary gold or article. However, the normal rule was against the retention of the possession of primary gold. Chapter XII dealt with entry, search and seizure. Section 58 read with section 66 empowered the Gold Control Officer on reasonable suspicion to seize such gold in respect of which he holds a reasonable belief of contravention of the provisions of the Act. However, the Gold Control Officer who was a seizing officer was not required to decide the question of actual contravention which had to be decided by the Collector (hereinafter referred to as 'Authorized Officer') in the adjudication proceedings under sections 71(1) and 74 of the Act. If the Authorized Officer found such actual contravention, he could order confiscation under section 71(1) of the Act. Sections 66 and 71(1) are relevant for the purposes of this case and accordingly, they are quoted hereinbelow:-

"66. Power to seize (1) If any Gold Control Officer has reason to believe that in respect of any gold any provision of this Act has been, or is being or is attempted to be, contravened, then he may seize



(a) such gold along with the package, covering or receptacle, if any and the contents thereof, in which the gold is found;

(b) any other goods in which any quantity of such gold has been mixed.

(2) Any Gold Control Officer may seize 

(a) any document or other thing which, in his opinion, will be useful, for, or relevant to, any inquiry or proceeding for the contravention of any provision of this Act or any rule or order made thereunder; \*

(b) any conveyance or animal which has been, or is being, or is attempted to be, used for the transport of any gold in relation to which any provision of this Act or any rule or order made thereunder has been or is being, or is attempted to be contravened.

(3) Any document or other thing seized under sub-section (2) shall not be retained by the Gold Control Officer for a period exceeding six months from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Administrator for such retention is obtained;

Provided that the Administrator shall not authorize the retention of the document or other thing for a period exceeding thirty days after all proceedings, for which the document or other thing is useful or relevant, are completed.

(4) The person from whose custody any document or other thing is seized under sub-section (2) may

make copies thereof or take extracts therefrom in the presence of the Gold Control Officer or any other person empowered by him in this behalf, at such place and at such time as the Gold Control Officer may appoint in this behalf.

(5) If a person legally entitled to the document or other thing seized under sub-section (2) objects for any reason to the approval being given by the Administrator under sub-section (3), he may make an application to the Central Government stating therein the reasons for such objection and requesting for the return of the document or other thing.

(6) On receipt of the application under sub-section (5) the Central Government may, after giving the applicant an opportunity of being heard, pass such orders as it may think fit.

71. Confiscation of gold -- (1) Any gold in respect of which any provision of this Act or any rule or order made thereunder has been, or is being, or is attempted to be, contravened, together with any package covering or receptacle in which such gold is found, shall be liable to confiscation.

Provided that where it is established to the satisfaction of the officer adjudging the confiscation that such gold or other thing belongs to a person other than the person who has, by any act or omission, rendered it liable to confiscation, and such act or omission was without the knowledge or connivance of the person to whom it belongs, it shall not be ordered to be confiscated but such other action, as is authorized by this Act, may be taken against the person who has, by such act or omission, rendered it liable to confiscation." \*

16. Therefore, under the scheme of section 66 read with section 71, the officer seizing such gold was not to decide issues, such as, collusion, connivance, knowledge of possession etc. The belief that the officer had to form under section 66 was only in respect of the gold, whoever its owner be. The ownership of the gold or the person in whose possession the gold was kept was not relevant for the purposes of section 66. Before acting under section 66, existence of a reasonable belief that the provisions of the Act had been contravened was essential.

17. Chapter XIV dealt with adjudication and appeals. Section 83 gave power to the Authorized Officer to summon witnesses; to receive evidence on affidavits and issue commissions for examination of witnesses. Chapter XV dealt with offences and their trial. Section 85(1)(ii) inter alia provided that whosoever had in his possession any primary gold in contravention of the Act or rules thereunder shall be punished with imprisonment or fine, without prejudice to any other action that may be taken under the Act. Section 98B referred to circumstances in which the Court had to raise statutory presumption. For the purposes of deciding this case, sections 85(1) and 98B are relevant and they are quoted hereinbelow:-

"85. Punishment for illegal possession, etc. of gold ❖

(1) Whoever, in contravention of the provisions of this Act or any rule or order made thereunder:-

(i) makes, manufactures, prepares or processes any primary gold; or

(ii) owns or has in his possession, custody or control any primary gold; or

(iii) buys or otherwise acquires, or accepts or otherwise receives, or agrees to buy or otherwise acquire or to accept or otherwise receive, any primary gold; or

(iv) sells, delivers, transfers or otherwise, disposes of, or agrees to sell, deliver, transfer or otherwise dispose of, or exposes or offers for sale, delivery, transfer or disposal any primary gold; or

(v) melts, assays, refines, extracts, alloys or converts any gold or subjects it to any other process; or  
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(vi) makes, manufacturers, prepares, repairs, polishes or processes or places any order for the making, manufacturing, preparing, repairing, polishing or processing, of any article or ornament; or

(vii) buys or otherwise acquires, or accepts or otherwise receives or agrees to buy or otherwise acquire or to accept or otherwise receive, or sells, delivers, transfers or otherwise disposes of, or agrees to sell, deliver, transfer or otherwise dispose of, or exposes or offers for sale, delivery, transfer or other disposal, any article or ornament; or

(viii) owns or has in his possession custody or control any article or ornament; or

(ix) carries on any business or transaction in gold for which a licence or certificate is required to be obtained by or under this Act; or

(x) carries on business as a banker or money-lender; shall, without prejudice to any other action that may be taken under this Act, be punishable ♦

(a) if the offence is under Cl. (i), (ii), (iii), (iv) or (viii), (the offence under Cl. (viii) being a contravention of sub-section (3) of Section 55) and the value of the gold involved therein exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine;

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months;

(b) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.

98B. Presumption of culpable mental state - (1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state be open to the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation - In this section 'culpable mental state' includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact. \*

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability." \*

18. Section 98B of the 1968 Act was similar to section 138A of the Customs Act, 1962. It made a drastic change in the concept of mens rea as a necessary ingredient of an offence. According to the provisions of this section wherever mens rea, in the sense of knowledge of the wrongfulness, was a necessary ingredient of an offence under the Act, the Court shall presume its existence. However, such presumption was rebuttable. The explanation to sub-section (1) of section 98B provided for an inclusive definition of culpable mental state which included knowledge of the wrongfulness of an act or omission prohibited by the statute. Under section 98B(2), the accused was required to prove beyond reasonable doubt that he did not possess the requisite mental state. The provisions of sections 85(1) and 98B were similar to sections 9 and 10 of the Opium Act, which came for consideration before this Court in the case of Inder Sain vs. State of Punjab reported in ). In that case, the appellant got a parcel of apples released from the railway. While he was carrying the parcel, he was intercepted by the police and the parcel was found to contain opium. He was convicted under section 9. The only question was: whether the appellant was in possession of opium. It was held by this Court that if possession is an offence then there must be proof that the accused was knowingly in possession of the article. That knowledge involved in possession of the unauthorised article had to be proved. It was further held that the word 'possession' in such cases, connotes possession with knowledge. In the said judgment, this Court has drawn a dichotomy between the law pertaining to presumptions and the law relating to the burden of proof. It was held that though knowledge is an essential ingredient of the offence of possession, it is a different thing to say that the prosecution should prove that the accused was knowingly in possession. It was held that by virtue of section 10, similar to section 98B of the 1968 Act, the onus of proof was placed on the accused to prove that he did not knowingly possess the article. This is after the prosecution showing by evidence that the accused was in possession of the Article.

19. The analysis of the various provisions of the 1968 Act (repealed in 1990) show that the Act made possession of primary gold an offence. Under the Act, possession of primary gold was made an offence under section 85(1)(ii) read with section 8(1). The said Act provided for a special machinery for confiscation of unauthorised gold under section 71(1) and for trial of the person

concerned, under section 85(1). The word 'possession' finds place in all the above provisions. In the light of the judgment of this Court in the case of Inder Sain (supra), we have to read the word 'possession' as conscious possession. Under section 71(1), any gold in respect of which there existed contravention was liable to be confiscated. Provided, where it was established to the satisfaction of the Authorised Officer, that the owner had no knowledge of the act or omission on the part of the holder, which made it liable to confiscation, then it could not be confiscated. Therefore, reading sections 8(1), 71(1) including the proviso 85(1) with section 98B, it is clear that possession ipso facto was prohibited. It was an overt act which was made an offence not only for prosecution under section 85(1) but also in the matter of confiscation under section 71(1). Since possession was an offence, knowledge in possession of the unauthorised article was an essential ingredient of the said offence. Where a statute forbids an act, doing of that act itself supplies mens rea. In such a case, the prosecution need only to prove commission of the prohibited act and it is for the person concerned to bring himself within the statutory defence, which in the present case was provided for in the proviso to section 71(1). However, in view of section 98B, the accused had to prove beyond reasonable doubt that he had no knowledge in the possession of the unauthorised article. In the present case, the appellants were charged for offence of possession of unauthorized gold under section 85(1)(ii) read with section 8(1) of the Act. They were acquitted. The judgment of the trial court was confirmed by the High Court and by this Court. In the trial, they proved beyond doubt that they were not in conscious possession of the primary gold. In the circumstances, one of the points for determination in this civil appeals is - what is the effect of an order of acquittal in the prosecution under section 85(1)(ii) read with section 8(1) on the order of confiscation passed under section 71(1) read with section 8(1) by the Authorized Officer in respect of the primary gold. In both the proceedings, the basic facts were common. The recovery of incriminating articles was the same in both the proceedings. The same witnesses were examined in both the proceedings. The same charge of possession was there in both the proceedings. The said charges was sought to be proved by same set of officers in both the proceedings. The witnesses and the officers who saw the recovery were common in both the proceedings. However, the criminal court on consideration of the entire evidence came to the conclusion that both the accused had no knowledge of the gold concealed in the ornamental top of the cupboard in the eastern bedroom from where the entire gold was seized whereas the Authorized Officer in the proceedings under section 71(1) of the Act ordered confiscation on the ground that recovery was made from the cupboards in the eastern and western bedroom and from the telephone room; that appellant no.2 produced the key with the help of which the secret vault in the cupboard in the western bedroom could be opened, and, therefore, the appellants were in conscious possession of the said gold. It was further held by the Authorized Officer that when the gold in respect of which may provision of the 1968 Act had been contravened, such gold ipso facto, attracted confiscation.

20. In the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. reported in ) it has been held that where departmental and criminal proceedings are based on identical facts and where charges were sought to be proved by the police officers and the panchas who raided the house and effected recovery and where same set of witnesses were examined in both the proceedings but the criminal court on examination of the evidence came to the conclusion that no recovery was made from the house and that raid was not proved it would be unjust, unfair and oppressive to allow the findings recorded by the enquiry officer to stand against acquittal by judicial pronouncement. The present case is on the stronger footing than the case of Capt. M. Paul Anthony (supra). In the present case, in view of section 98B, a very heavy burden was placed on the appellants in the criminal proceedings. It was for the appellants to rebut the statutory presumption of the culpable mental state

placed on them by section 98B. Under section 98B, the appellants had to prove beyond reasonable doubt, which they did, that they had no knowledge of the gold hidden in the ornamental top of the cupboard in the eastern bedroom. Hence, it would be unjust, unfair and oppressive to allow the decision of the Authorised Officer in confiscation proceedings to stand against acquittal by the competent criminal court, which acquittal was confirmed by the High Court and by this Court.

21. We may clarify that our above observation should not be taken to mean that there is no difference between departmental proceedings under section 71(1) and prosecution for illegal possession under section 85(1). A combined reading of sections 8(1), 71(1) and 85 of the 1968 Act made it clear that the legislature intended to provide for two separate proceedings before two different forums and there is no conflict of jurisdictions between the Authorised Officer acting under section 71(1) to direct confiscation on being satisfied that an offence has been committed and the magistrate making an order on conviction of an accused under section 85(1) and that mere acquittal in the trial before the Magistrate, in every case, cannot result in setting aside, ipso facto, of the orders of confiscation passed by the competent authority under the Act. That merely because there was acquittal in the trial before the Magistrate, due to paucity of evidence or otherwise, would not entail nullification of the order of confiscation of the seized articles in every case (See. Divl. Forest Officer vs. G.V. Sudhakar Rao, reported in ). In any event, on a plain reading of sections 8(1) and 71(1) it is clear that the Authorised Officer was required to be satisfied that an offence under the Act had been committed. That the confiscation proceedings were separate and distinct from prosecution under the Act. However, that difference did not entitle the Authorised Officer to proceed arbitrarily in making an order for confiscation.

22. In the light of the above discussion, the first point for determination is - whether from the circumstances one can say that the appellants were in conscious possession of primary gold. As indicated above, the adjudication proceedings under section 71(1) concluded before the criminal case. The judgment of the criminal court was not before the Authorised Officer. However, the basic controversy before the Authorised Officer. However, the basic controversy before the Authorised Officer was - whether the entire primary gold (bars) was recovered from the ornamental top of the cupboard in the eastern bedroom as alleged by the appellants, or whether some of the gold bars were also recovered from the cupboards in the western bedroom and the room in which the telephone was placed as alleged by the department. According to the department, appellants were in conscious possession of the gold bars because some of the bars were found from the cupboards in the western room which were opened with the keys handed over by Ishwaribai, appellant no.2 herein. According to the department, since primary gold was recovered from western bedroom and telephone room in addition to the recovery from the ornamental top of the cupboard in the eastern bedroom, the appellants were in conscious possession. The orders of the Authorised Officer and the Gold Control Administrator show that even according to the department, gold bars hidden in the ornamental top of the cupboard in the eastern bedroom were not apparently visible but the fact that some of the remaining gold bars were recovered from the other rooms proved that the appellants had knowledge of the gold bars. Therefore, the key question to be answered is - whether recovery of the gold from western bedroom and telephone room was proved by the department. At the outset, it may be stated that the evidence on record shows that the officers who took part in the raid were officers from Income-tax department. They saw the collection of gold and not the place from which the gold was recovered. There was no exact record to show from where the items of gold were found. Each witness gave different versions. Their versions are self-contradictory and conflicting with each other. The original panchnama was not produced. The copy of the panchnama did not indicate the

place from which the items were recovered. Even the specific key supplied by appellant no.2 herein, Ishwaribai, with which the locker in the western bedroom was allegedly opened, was not separately seized. There was no contemporaneous record to show from which place what was recovered. In all, eight gold bars were seized. According to Mahadeshwar, one of the key witnesses from the Income-tax department, five of the bars were recovered from the ornamental top of the cupboard in the eastern bedroom. This statement was made before the Authorised Officer. However, later on in the criminal trial he has deposed that two to three bars were recovered from that place. Before the Authorised Officer, Mahadeshwar stated that two gold bars were recovered from the western bedroom whereas in the criminal trial he has deposed that one gold bar was recovered from the western bedroom. Before the criminal court, he deposed that two bars were found in the telephone room, whereas before the Authorised Officer he deposed that he was not sure. According to Ms. Thadani, one of the the witnesses in the raiding party from the Income-tax department, only one gold bar was recovered from the telephone room. No recovery memo was prepared by her. According to Kundalgaonkar, one of the witnesses to the recovery, one gold bar was recovered from the western bedroom. However, in his confidential report, he stated that two gold bars were recovered from that room. Similarly, in his report to Shri Vaidya, Kundalgaonkar has stated that Ishwaribai gave the keys to him whereas in the criminal trial he has deposed that she gave the keys to Mahadeshwar. All these contradictions have taken place because there was no contemporaneous record to prove the recovery and the panchnama prepared was faulty as it did not indicate the place from which the gold was recovered. In conclusion, none of the witnesses were able to give a coherent story as to where the primary gold was found. Therefore, recovery of three gold bars from the telephone room and western bedroom was not proved.

23. On the other hand, from the evidence, it stood established that the ornamental top of the cupboard in the eastern bedroom could not be opened. The screws were rusted and old. They had to be cut. The entire gold was found at this place. The opening of the ornamental top was difficult. That improvised keys had to be prepared by the locksmith, who was the witness for the department. That they were made to open to locker/ vault inside the ornamental top. The evidence shows that the appellant did not have the keys to open the said vault. The entire primary gold, except the idols, was found from the ornamental top of the cupboard in the eastern bedroom. At this stage, it may be mentioned that some of the gold bars had foreign markings for which proceedings were taken against the appellants under the Customs Act. They were exonerated of the charge of smuggling. However, in those proceedings, it was deposed by Mahadeshwar that the entire primary gold was recovered from one cupboard. Further, in his order dated 26.6.1976, the Authorized Officer held that entire gold was seized from one cupboard. In the circumstances, the appellants were not in conscious possession of primary gold and they were entitled to the benefit of the proviso to section 71(1).

24. The next point which we are called upon to decide concerns, legality of seizure of primary gold, more particularly described in the panchnama dated 30.8.1974 (at page 95 of Volume-II). On August 28, 1974, the residential premises of appellant no.1 Gopaldas was searched and primary gold was seized. A panchnama for the same was prepared by the officers of Income-tax department. The said search and seizure operations were carried out by R.D. Mahadeshwar, Assistant Director of Inspection, Income-tax department, Bombay, pursuant to authorization from Commissioner of Income Tax in terms of section 132 of Income Tax Act, 1961. Gopaldas appellant no.1, was present at the time of search. The Income Tax Authorities gave intimation of the concealed gold bars to the Gold Control Officer, who was informed about the recovery of huge quantity of gold from the

residence of the appellants. On August 30, 1974, the Gold Control Officer attended the Income-tax office and, in the presence of Gopaldas, took over the custody of the seized gold from the Income-tax department. Thereafter, the above panchnama was prepared, which was signed by appellant no.1 herein. On 20.9.1974, the Gold Control Officer served a show-cause notice on the appellants calling upon them to explain why proceedings under section 71(1) and section 74 of the 1968 Act should not be initiated. In the show-cause notice, it was alleged inter alia that the appellants had contravened section 8(1) read with section 8(6) and section 16(1) read with section 16(5) inasmuch as the appellants had in their possession, custody and control primary gold in the form of gold bars; that they had failed to dispose of the same within six months from 1.3.1967 in terms of rule 126H of Defence of India Rules and that they had failed to file a declaration in the prescribed form in respect of 682 gold sovereigns, one gold coin and four gold idols (hereinafter referred to as 'the gold articles'). The appellants submitted their reply to the show-cause notice vide letters dated 29.10.1974. They claimed that Bhojibai had purchased the said gold much prior to the Defence of India Act, 1962. They claimed that they were not aware of the existence of the said gold as it was concealed in the cavity under an ornamental top over the cupboard in the eastern bedroom from which the entire gold was recovered by the officers of the Income-tax department and consequently they were not in conscious possession of the said gold.

25. Mr. Sundaram, learned senior counsel appearing on behalf of the appellants submitted that the Gold Control Officer merely took over the primary gold from the Income-tax officers which did not constitute a seizure under the 1968 Act. That in any event, such take over was not permissible under section 132(5) of the Income Tax Act, 1961. He urged that there was no second seizure as alleged by respondents no.2 and 3 herein; that the said plea was taken to prevent the appellants from claiming immunity under voluntary disclosure scheme. In any event, it was submitted, that if there were two seizures one in the Income Tax Act on 28.8.1974 and the other under the 1968 Act on 30.8.1974, it would tantamount to the gold having been seized by the Gold Control Officer from Income Tax Authorities which would be no seizure in law. He relied upon the judgment of this Court in the case of Tarsem Kumar's (supra). He elaborated this point by alleging that in order to get over the judgment of this Court in Tarsem Kumar's case, the said respondents have sought to contend that the primary gold was returned to the appellants by Income-tax department and seized thereafter by Gold Control Officer from the appellants. That this contention was not possible as there was no document to establish that gold was returned by the Income-tax department to the appellants. That this stand of the respondents herein was self serving and incorrect as the panchnama (at page 95 of Volume-II) itself stated that primary gold was seized from Income-tax department by the Gold Control Officer. It was urged that inter-departmental seizure was impermissible under the Income Tax Act, 1961 as well as under the 1968 Act.

26. Learned counsel for the appellants next contended that even section 66 of the 1968 Act was not applicable as seizure connotes taking possession of the goods contrary to the wishes of the person from whom it is taken. In this connection, it was submitted that section 3 of the 1968 Act made the Act inapplicable to any gold in possession of the Government. It was contended that on and from 28.8.1974, the said gold was in possession of Income-tax department and, therefore, the said 1968 Act was inapplicable. It was urged, that in the circumstances, since there was no seizure in law or fact, the appellants were entitled to claim immunity under the Voluntary Disclosure Scheme, 1975 (hereinafter referred to as 'the VDS, 1975").

27. Per contra, Mr. Vajpai learned counsel appearing on behalf of the department submitted that section 66 empowered the Gold Control Officer to seize any gold in respect of which he had reason to believe that any provision of the Act had been contravened. That the seizure of gold in this case was made under a panchnama in presence of Gopaldas in the reasonable belief that the provisions of the Act had been contravened. In this connection, reliance was placed on the copy of the panchnama (at page no. 95 of Volume-II), which specifically recorded that the Gold Control Officer had reason to believe that the provisions of the Act had been contravened in respect of primary gold, gold sovereigns, and gold coins, in all weighing 37,398.300 gms. valued at Rs. 18.70 lacs, and seized from Income Tax Officer. Further, CBDT had issued a circular on 30.8.1965 addressed to all Commissioners of Income Tax and Wealth Tax stating that where gold was seized in a search or a raid by the Income Tax Authorities, necessary information should be given to the Gold Control Officer. It was submitted that the circular issued by the CBDT was binding on subordinate Income Tax Authorities. That it was in compliance with the said circular that the Income Tax Authorities informed the Gold Control Officer about the seizure of the said gold, in response to which the Gold Control Officer visited the Income-tax office and seized the gold under section 66 of the 1968 Act. Therefore, it was urged that there was no illegality in making the seizure. That, when the Gold Control Officer went to take over the gold, he had knowledge that in respect of such gold, certain provisions of the 1968 Act had been contravened. It was next submitted that section 3 of the Gold (Control) Act cannot apply to seized gold and if the interpretation placed on behalf of the appellants is accepted, it would render section 66 redundant. It was next urged that the judgment of this Court in Tarsem Kumar's case (supra) was given in relation to the provisions of the Income Tax Act. That the said 1968 Act was self-contained Act. In this connection, it was submitted that the power of seizure under section 132 of the Income Tax Act was limited to assets found as a result of search whereas the power under section 66 of the Gold (Control) Act was an omnibus power of seizure, which was not restricted by any preconditions. In this connection, it was urged that in case of a seizure under section 132 of the Income Tax Act, search was a precondition which requirement was not there in section 66 of the 1968 Act. Hence, it was contended that the judgment of this Court in the case of Tarsem Kumar (supra) did not apply to section 66 of the 1968 Act. Lastly, it was submitted that the adjudicating proceedings were separate and independent of the prosecution proceedings and in view of the concurrent findings of the Gold Control Authorities under section 71(1) and under section 74, no interference is called for.

28. The short point which we are called upon to decide is the validity of the seizure of primary gold on 30.8.1974, by the Gold Control Officer. For that purpose, we have to examine the scheme of the 1968 Act. Chapter XII made provisions for entry, search, seizure and arrest. Under section 58, any Gold Control Officer authorised by the Administrator may search the business premises of a dealer, if he had reason to suspect that any provision of the Act had been contravened. Section 66 conferred power on the Gold Control Officer to seize any gold if he had reason to believe that in respect of such gold, any provision of the Act had been contravened. It has been vehemently urged before us on behalf of the appellants that the Gold Control Officer had no authority to take over and seize the gold from Income-tax department. Under section 64(b), any Gold Control Officer may, during the course of enquiry in connection with the contravention of any provisions of the Act, require any person to produce or deliver any document or article useful or relevant to such enquiry. **In our view, the words 'any person' in section 64(b) included all revenue officers of the Government. This is borne out by section 105 under which all officers of the Government engaged in collection or prevention of evasion of revenue were required to assist the Gold Control Officer in execution of the provisions of the 1968 Act. Hence, the Gold Control Officer acted within his**

**authority when he took over the said gold from the Income-tax department on 30.8.1974.** # In the case of *The Collector of Customs, Madras vs. Nathella Sampathu Chetty* reported in the expression 'reason to believe' in section 178(1) of the Sea Customs Act came up for consideration. Section 178(1) prescribed that where goods to which that section applied were seized in the reasonable belief that they were smuggled, the burden of proving that they were not smuggled shall on the person from whose possession they were seized. It was held by this Court that where circumstances existed to raise a reasonable suspicion that goods seized had been obtained illicitly, that was sufficient to constitute 'a reasonable belief that the goods were smuggled'. In the case of *Narandas M. Kapadia vs. Union of India and others* reported in (1977 CrL. L.J. 1303), the Calcutta High Court has held that in order to seize goods liable to confiscation under section 110(1) of the Customs Act, the officer concerned must have reason to believe that goods were improperly imported. That when a challenge was thrown, it was necessary to find out whether the officer had in fact formed the belief and whether there was material relevant or germane upon which he could have formed the belief. If there existed some material upon which such a belief could be formed, the Court is not concerned with the propriety of the belief or sufficiency of the material.

29. Applying the above principles to the facts of the present case, we find that seizure in this case was made by the officers of Income-tax department on 28.8.1974 and all that the Gold Control Officer did was to take over the seized gold. When the Gold Control Officer on 30.8.1974 went to take over the said gold, he had knowledge of the huge quantity of gold seized by the Income-tax department. He had the knowledge that the seized gold was illegally possessed by the appellants, which by itself was a contravention of the 1968 Act. The circumstances were so eloquent that they themselves presented 'reason to believe' that the provisions of 1968 Act had been contravened. Some of the gold bars had markings and even stamp of purity embossed on them. These writings also provided reason to believe that the provisions of the Act had been contravened. In the circumstances, there existed grounds upon which the belief of contravention of the Act was entertained by the seizing officer. It was urged before us on behalf of the appellants that 'seizure' connotes taking possession of the goods contrary to the wishes of the person from whom it is taken. It was submitted that in the present case, the seized gold was taken from the Income-tax department and not from the appellants and consequently, there was no seizure in law or in fact. In this connection, reliance was placed on the judgment of this Court in *Tarsem Kumar's case* (supra). We do not find any merit in these arguments. Firstly, as stated above, the Gold (Control) Act, 1968 is a self contained Act. Under section 64(b), the Gold Control Officer was empowered to call upon 'any person' to produce any document or thing relevant to his enquiry into contravention of the provisions of the Act. Under Section 105, all officers engaged in collection or prevention of evasion of revenue were required to assist the Gold Control Officers in the execution of the provisions of the said Act. Under section 111, the said Act was given an overriding effect over all other laws inconsistent thereto. That mere possession was an offence punishable under section 85(1)(ii) of the Act. On the other hand, the purpose of seizure under section 132(5) of the Income Tax Act is not to punish the assessee but to assess his tax liability. Section 132 of the Income Tax Act confers power on Income Tax Authorities to realize the income tax dues of the assessee from his assets. After realizing the dues, the balance value is returned to the assessee. On the other hand, when gold was seized from the possession of the person concerned, it was not only liable to confiscation under the 1968 Act but he was liable to be prosecuted for the offence of possessing gold. Further, the object behind section 132 of the Income Tax Act is to ascertain the source of income with which the assessee acquires an undisclosed asset. Consequently, search under section 132(1) is made a precondition to seizure under section 132(5) (as it stood at the material time). Lastly, as stated

above, possession ipso facto was made an offence under the said 1968 Act, which not only provided for prosecution for possessing gold on the appointed date but it also provided for confiscation under section 74(1). The power of seizure under section 132(5) of the Income Tax Act was limited to the assets found as a result of the search, whereas the power under section 66 of the Gold (Control) Act was omnibus. It was not restricted by any preconditions. In the circumstances, we hold that the scheme of section 132(5) of the Income Tax Act, as it stood at the relevant time, was different from the scheme of the Gold (Control) Act, 1968. Therefore, the judgment of this Court in Tarsem Kumar's case (*supra*) has no application to the facts of the present case. Secondly, it may be pointed out that on 30.8.1965, the CBDT had issued a circular to all Commissioner of Income Tax and Wealth Tax stating that where gold was seized in a search/raid by Income Tax Authorities, necessary information should be given to the Gold Control Officer. This circular was binding on all subordinate Income Tax Authorities, in terms of section 119 of the Income Tax Act, 1961. This circular has to be read in the light of sections 64(b) and 105 of the Gold (Control) Act. As stated above, section 64(b) conferred power on Gold Control Officer to ask any person which included Income Tax Officer, to produce before him the primary gold which the Income Tax Officer had seized. Under Section 105, the Income Tax Officer as a revenue Officer, had to assist the Gold Control Officer. It is, therefore, clear that under the provisions of the Gold (Control) Act, the officer was empowered to call upon the Income Tax Officer to produce the seized gold before him for taking action under the Gold (Control) Act. In the circumstances, we are of the view that there was no illegality in the matter of seizure of primary gold on 30.8.1974 by the Gold Control Officer.

30. In the case of Vasantlal Ranchhoddas Patel vs. Union of India reported in (68 BLR 223), the Assistant Enforcement Officer obtained a search warrant from Chief Presidency Magistrate, Bombay, on 23.7.1964 under section 19 of FERA, authorizing him to search shop no. 157 situate at Mumba Devi Road, Bombay and to seize incriminating documents, foreign exchange, account books etc. In pursuance of this warrant, the Assistant Enforcement Officer searched the premises on the same date. No incriminating documents or other material were found. The appellant was present in the shop. He was searched by the officers of the Enforcement Directorate in the presence of panchas and four packets containing diamonds were found on his person. They were, therefore, seized. There was a safe in the shop which was also sealed by the said officers. One of the Enforcement Officers thereafter informed a Customs Officer about the seizure of the diamonds. On 23.7.1964, Customs Officer went to the shop but as the panchnama had already been made and as the diamonds had been recovered by the Enforcement Officers, the Customs Officer did not once again seize them. On 24.7.1964, the safe was opened. It was found to contain seven packets of diamonds. These articles were seized by the officers of the Enforcement Directorate. All the packets of diamonds remained in the custody of the Enforcement Directorate till 4.9.1964, when the Customs Officers took charge of the diamonds from the Enforcement Directorate and seized them under section 110 of the Customs Act. The appellant applied to the Chief Presidency Magistrate for orders directing the officers of the Enforcement Directorate to return the diamonds. On behalf of the Enforcement Directorate, it was urged that the diamonds had not been seized under the search warrant issued by the learned Magistrate but they had been seized under section 151 of the Customs Act, 1962. This contention was accepted by the learned Magistrate who held that as the Customs Authorities had taken charge of the diamonds according to law, he could not order their return. The appellant thereafter filed Misc. Writ Petition on the original side of the Bombay High Court praying for return of the diamonds. The writ petition was summarily dismissed. Being aggrieved, the matter came before the Division Bench of the High Court. It was held that under section 110 of the Customs Act, before any action could be taken, it was necessary that the proper officer should

entertain the belief that the goods were liable to confiscation under the Act. That the belief must be entertained at the time when the goods were seized. It was held on facts that the goods were seized by the Enforcement Directorate on 23rd and 24th July, 1964 and they were taken over by the Customs Authorities on September 4, 1964. The Division Bench rejected the argument advanced on behalf of the appellants that the transfer of custody of the goods by the officers of the Enforcement Directorate to the Customs Officers did not constitute seizure under section 110 of the Customs Act. It was held that section 110 of the Customs Act does not place any limitation as to the person from whose possession the goods believed to be liable to confiscation can be seized. As stated above, the Gold (Control) Act, 1968 was a self-contained Act; that under section 64(b) the Gold Control Officer had wide powers to direct any person to produce the document or thing relevant to the enquiry into contravention of the provisions of the Act; that section 66 did not place any limitation as to the person from whose possession the goods liable to confiscation could be seized and under section 105, all revenue officers were duty bound to assist the Gold Control Officer in execution of the provisions of the Act. In the circumstances, the judgment of this Court in the case of Gian Chand vs. State of Punjab reported in has no application. For aforesaid reasons, the take over of the gold on 30.8.1974 constituted lawful seizure under section 66.

31. The last point which we have to decide is - whether the appellants herein were entitled to claim immunity from confiscation of gold and imposition of penalty under the Voluntary Disclosure of Income and Wealth Ordinance, 1975? In this connection, the following facts may be noted. On 8.10.1975, the President of India promulgated Voluntary Disclosure of Income and Wealth Ordinance, 1975. The said Ordinance was repealed subsequently by the Voluntary Disclosure of Income and Wealth Act (No. VIII of 1976). The Act conferred complete immunity from proceedings for confiscation penalty and prosecution. On 27.12.1975, appellant no.1 as Karta herein filed the declaration under the VDS, 1975 and claimed immunity. On 5.6.1976, the Officer took the decision that the declaration in respect of the seized gold could not be accepted. It was further held that as the show-cause notice was issued under the 1968 Act on 20.9.1974 and as the declaration was filed on 27.12.1975, the appellants were not entitled to immunity. Learned counsel appearing on behalf of the appellants urged that in the present case, proceedings were not pending on the relevant date and in support of his submission he contended that the initial order dated 26.6.1976 passed by the Collector was set aside by the Appellate Authority on 21.11.1997 and the proceedings were remanded for de novo trial and, therefore, till the commencement of de novo adjudication, there were no proceedings pending and consequently, the appellants were entitled to immunity. We do not find any merit in this argument. As stated above, proceedings were initiated vide show-cause notice dated 20.9.1974 whereas the Ordinance came to be promulgated on 18.10.1975 and appellant no.1 filed his declaration on 27.12.1975. Under the Ordinance, a declarant was entitled to claim immunity from penalty, confiscation and prosecution under Gold (Control) Act, if before making the declaration the gold was not seized and no proceeding was pending in respect of that gold before any authority under the Act. **Since, proceedings were pending at the time of filing of the declaration, the appellants were not entitled to immunity. #**

32. It was next contended on behalf of the appellants that since there was no seizure in fact or in law, the appellants were entitled to claim immunity under the VDS, 1975. In this connection, it was argued that seizure in the present case was not in accordance with sections 58, 59 and 66 of the Gold (Control) Act and consequently, it was void and, therefore, the appellants were entitled to claim immunity under the VDS, 1975. It was submitted that in the present case, the declaration of appellant no.1 was refused only on the ground that there was seizure of gold but once this fact is

demonstrated to be incorrect then ipso facto the reason for depriving the appellants of the benefit of the scheme would fail. In this case, we have held that the seizure of the gold in 30.8.1974 was in accordance with the provisions of the 1968 Act and since the declaration was filed after the said seizure, the appellants were not entitled to claim immunity.

**33. To sum up, we find that the seizure of the gold on August 30, 1974 was lawful and in accordance with Section 66 of the 1968 Act. However, in the absence of any evidence of recovery of primary gold from the western bedroom and the telephone room and in the absence of any material to show that the appellants had knowledge of the said gold hidden in the ornamental top of the cupboard in the eastern bedroom, the contravention of the provisions of the 1968 Act is not established against the appellants and consequently the orders of confiscation and penalty are not sustainable. #**

34. For the aforesaid reasons, the appeal is allowed and the impugned judgment and order of the Division Bench of the High Court dated 5.1.1994 is set aside. The order of the Appellate Authority dated 5.11.1981 confirmed in Revision vide order dated 10.7.1982 to the extent of absolute confiscation of seven gold bars, one gold brick, gold coins and sovereigns, more particularly described in the panchnama dated 30.8.1974 (page 95 of Vol. II) with personal penalties on each of the two appellants herein are set aside. Consequently, we direct that the said gold, if not disposed of so far, shall be returned to the appellants within two months from the date of the receipt of the copy of this judgment and order by the Collector of Customs (Preventive), Bombay. If, however, the said gold is disposed of, its sale price shall be paid to the appellants with interest @ 6% p.a. from the date of disposal till payment. In the facts and circumstances of this case, there will be no order as to costs.