

# DELHI HIGH COURT

Balwant Singh

Vs.

Director of Inspection, I. T.. (Delhi)

Civil Writ No. 750.

(S. K. Kapur and S. N. Andley, JJ.)

22.3.1968

## JUDGEMENT

**S. K. Kapur, J.**

1. It will not be an unfaithful summary of the history to say that for ages searches and seizure of documents and objects alleged to be incriminating have been responsible for many a battle at the bar. The safeguards of liberty of the subjects in this behalf have been forged out of conflicts between overzealous prosecutors on the one hand and not very nice people on the other. In preserving this liberty of the subjects the Courts always bear in mind that under our Constitution the concept of liberty is wider and the prisoner's dream of freedom from custody alone is not liberty. The present writ petition is directed against searches conducted on 10th August, 1966 at the residence of the petitioners at 35 Rajpur Road, Delhi, and other places occupied by the petitioners in connection with their business by a group of officers headed by Shri Rajendra Mohan, Income-tax Officer, respondent No. 2. The search was held in pursuance of the various authorizations issued by the Director of Inspection (Investigation) under Section 132 of the Income-tax Act, 1961, and Rule 112 (1) of the Income-tax Rules, 1962. It is sufficient to reproduce one of the authorization forms signed by the Director of Inspection (Investigation) as all other forms are exactly in the same language: "

(See Rule 112)

Warrant of Authorization under Section 132 of the Income-tax Act, 1961 and Rule 112 (1) of the Income-tax Rules, 1962.

The Income-tax Officers, S/Shri R. P. Gautam, P. K. Sharan, Rajendra Mohan, Govind Ram, S. N. Tandon, P. L. Madan, P. Ranganathan, R. R. Gupta, Miss S. Ghosh and Miss M. Sehgal, I. T. Os. Delhi.

Whereas information has been laid before me and on the consideration thereof, I have reason to believe that:-

If a summons under sub-section (1) of Section 37 of the Indian Income-tax Act, 1922 or under sub-section (1) of Section 131 of the Income-tax Act, 1961 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 the Income-tax Act, 1961 is issued to S. Balwant Singh to produce, or cause to be produced, books of account or other documents which will be useful for, or relevant to proceedings, under the Indian Income-tax Act, 1922 or under the Income-tax Act, 1961, he would not produce, or cause to be produced such books of account or other documents as required by such summons or notice;

S. Balwant Singh 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 or the Income-tax Act, 1961:

And whereas I have reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing have been kept and are to be found at the premises of S. Balwant Singh at Bawa House, 35, Rajpur Road, Delhi including outhouses, garages and other appurtenances thereto;

This is to authorize and require you as overleaf (name of the Inspecting Assistant Commissioner of Income-tax or the Income-tax Officer).

- a. to enter and search the said premises;
- b. to place identification marks on such books of account and documents as may be found in the course of the search and as you may consider relevant to or useful for the proceedings aforesaid and to make a list thereof together with particulars of the identification marks;
- c. to examine such books of account and documents and make or cause to be made, copies or extracts from such books of account and documents;
- d. to seize any such books of account, documents, money, bullion, jewellery or other valuable article or thing found as a result of such search and take possession thereof;

- e. to make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing;
- f. to convey such books of account, documents, money, bullion, jewellery or other valuable article or thing to the office of the Inspecting Assistant Commissioner of Income-tax or any other authority not below the rank of the Income-tax Officer employed in the execution of the Income-tax Act, 1961; and
- g. to exercise all other powers and perform all other functions under Section 132 of the Income-tax Act, 1961 and the rules relating thereto.

You may requisition the services of any Police Officer or any Officer of the Central Government, or of both, to assist you for all or any of the purposes specified in sub-section (1) of section 132 of the Income-tax Act, 1961.

Sd/- R. D. Shah

22-7-66.

Seal.

Director of Inspection (Investigation).

2. In pursuance of the said authorization a number of Income-tax Officers went to the various premises set out in the authorization forms, searched the said premises and seized a large number of documents. There has been some controversy at the bar as to how many people were comprised in the raiding party and that controversy will be dealt with later. There has, however, been no dispute about the documents seized.

3. Petitioners 1 to 5 are brothers and petitioner No. 6 is their mother. All the petitioners live at 35-Rajpur Road, Delhi. Petitioners 1 to 5 have another brother who is not a petitioner. It is alleged that petitioners 1 to 4 and 6 carry on business while the fifth petitioner is engaged in cultivating land. There was no authorization for search and seizure of any documents belonging to the fifth petitioner. It is also not in dispute that assessments of the petitioners were completed in some cases up to the assessment year 1962-63 and in some cases up to the assessment year 1963-64. The assessments were completed at Calcutta as the petitioners gave Calcutta address to the Revenue and the respondents assert that it was a 'ghost address' as in fact the petitioners neither resided nor had any office in Calcutta and that was done to facilitate the petitioners escaping assessment or detection of various activities not disclosed to the Revenue. The respondents have to their affidavit dated 24th October, 1966, sworn by Shri R. D. Shah, Director of Inspection (Investigation), annexed various charts showing *inter alia* as to which assets and income had been disclosed and which concealed. It has also

been asserted by the respondents that the petitioners all along maintained that they had no banking account while, according to the information received by the respondents, the petitioners had a large number of accounts with banks. The petitioners have by their writ petition raised several points challenging the search and seizure and even the constitutionality of section 132 of the Income-tax Act. They have also challenged the right of the respondents to retain the books and documents illegally seized or to use any information derived there from. I will deal with the various points raised one by one.

4. Mr. Veda Vyasa, the learned counsel for the petitioners, first contended that the search and seizure was bad in law as the condition precedent to the applicability of Section 132, namely, the existence of "reason to believe" in the mind of the Director of Inspection was missing. Since admittedly section 132, as amended by Act 1 of 1965, applies to this case, I propose to confine myself to that section except to the extent it may be necessary to refer to the legislative history in aid of its interpretation. The said section reads -

:(1) Where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that -

(a) any person to whom a summons under sub-section (1) of section 137 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of Section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922 (11 of 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  
(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 (11 of 1922), or under this Act, or

(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 purpose of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property), he may authorise any Deputy Director of Inspection,

Inspecting Assistant Commissioner, Assistant Director of Inspection or Income-tax Officer (hereinafter referred to as the authorized 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) break 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 there from;

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

(2) The authorized 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 authorized officer, may, where it is not practicable to seize any such book of account, other document, money, bullion, jewellery or other valuable article or thing, serve an order on the owner of 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 authorized 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 (11 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 (11 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 arrangement 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 132-A.

(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 authorized 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 authorize 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 (11 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 there from, in the presence of the authorized officer or any other person empowered by him in this behalf, at such place and time as the authorized 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), he may make an application to the Board stating therein the reasons for such objection 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 (1) 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 (5 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 or 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 authorized 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 (11 of 1922) or this Act, which may be pending on the date on which a search is authorized 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."

5. Section 131, which had section 37 (1) as its predecessor in the Indian Income-tax Act, 1922, gives power to the Income-tax Officer, Appellate Assistant Commissioner, and Commissioner of Income-tax, regarding discovery and production of evidence etc. Section 132-A prescribes the mode of application of the assets retained by the Revenue under section 132 (5). Section 135 provides that the Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner shall be competent to make any enquiry under this Act, and for this purpose shall have all the powers that an Income-tax Officer has under this Act in relation to the making of enquiries. Section 37 (2) of the Indian Income-tax Act, 1922, conferred powers on the Income-tax Officers specially authorized by the Commissioner to search any building or place and seize any books of account or documents. Section 37 (2) was as under:

:(2) Subject to any rules made in this behalf, any Income-tax Officer specially authorized by the Commissioner in this behalf may, -

(i) enter and search any building or place where he has reason to believe that any books of account or other documents which in his opinion will be useful for, or relevant to, any proceeding under this Act may be found and examine them, if found;

(ii) Seize any such books of account or other documents or place marks of identification thereon or make extracts or copies there from;

(iii) make a note or an inventory of any other article or thing found in the course of any search under this section which in his opinion will be useful for, or relevant to, any proceeding under this Act;

and the provisions of the Code of Criminal Procedure, 1898, relating to searches shall apply so far as may be to searches under this section."

6. Mr. Veda Vyasa, the learned counsel for the petitioners, presented two alternative arguments regarding the scope of the expression "has reason to believe" in Section 132. He said:

"(1) In view of the fact that provisions of the Criminal Procedure Code relating

to searches and seizures apply "so far as may be" to searches and seizures under sub-section (1) of section 132, even the sufficiency of the grounds leading to the reason to believe are justifiable; and

(2) in any case, even if the scrutiny by Courts as to the existence of reason to believe is limited in any manner the Courts can still strike down search and seizure carried out in pursuance of an authorization if the Court finds that -

(a) the reason to believe was not bonafide;

(b) there are no grounds justifying the existence of the reason to believe;

(c) The grounds given in support of such existence of the reason to believe are extraneous to the cause; and

(d) At least some of such grounds are irrelevant or extraneous to the matter in issue.

7. The arguments on the justifiability of the sufficiency of grounds were put by Mr. Veda Vyasa thus; Under sub-section (13) of section 132 of the Income-tax Act, 1961, the provisions of the Code of Criminal Procedure, relating to searches and seizure, apply, so far as may be, to searches and seizure, under section 132 (1). Sub-section (2) of section 4 of the Criminal Procedure Code provides that "all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code."

The expression "reason to believe" has not been defined in section 26 of the Indian Penal Code which section reads -

"A person is said to have reason to believe a thing if he has sufficient cause to believe that thing but not otherwise." Whether or not a person has reason to believe is fully justifiable and even the sufficiency of grounds can be gone into by Court where such question arises under the Indian Penal Code, and consequently the same meaning should be attributed to the said expression in section 132 (1). This argument of Mr. Veda Vyasa suffers from several fallacies

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(1) "Reason to believe" in section 26 of the Indian Penal Code and the various provisions thereof, such as Sections 202, 411, 412, 413 and 414, has been used in the Penal Code in a different context; that is to say, in the context of mensrea for the purpose of finding out whether or not a person has committed an offence, while in section 132 of the Income-tax Act, 1961, power has been given to an authority to authorize the search and seizure subject to certain conditions if he has reason to believe that it is necessary so to do under section

132.

(2) Under section 26 of the Indian Penal Code a person is said to have reason to believe a thing if "he" has sufficient cause to believe that thing. In this context, therefore, the Courts have to see whether the person concerned had sufficient cause to believe. Take a case where grounds exist on which two views may reasonably be possible. The Court will not hold a person guilty if it comes to the conclusion that though the grounds may provide to the offender sufficient cause to believe but the Court holds a different opinion. This section, therefore, is confined to finding out whether an alleged offender could have sufficient cause to believe and, therefore, could be said to have "reason to believe". Such a provision cannot obviously be equated with a provision like section 132 (1); and (3) the search and seizure provisions of the Criminal Procedure Code apply only "so far as may be", which means that those provisions should be applied only consistently with the scheme and the purpose of section 132 of the said Act. When so applied the power to issue search warrants has been, subject to fulfillment of certain conditions, made dependent on the reason to believe of the specified authorities.

8. Mr. Veda Vyasa referred to *K. Hoshide v. Emperor*,<sup>1</sup> and said that even the adequacy of the grounds on which Courts issue search warrants under section 96 of the Criminal Procedure Code is justifiable. I prefer not to express any opinion on the question whether the adequacy of grounds on which the Court issues search warrants under the Code of Criminal Procedure is open to scrutiny by Courts particularly in such collateral proceedings and I would rather decide this question assuming that it is so. For the purposes of this case, it is sufficient to say that the language of section 132 does not permit the interpretation suggested by Mr. Veda Vyasa. I cannot also lose sight of the fact that we are not sitting in appeal over the decision of the Director of Inspection regarding the existence of the reason to believe for none has been provided and when exercising writ jurisdiction the Courts cannot, in my opinion, test the adequacy of grounds as a court of appeal. The existence of "reason to believe" in section 132 is subject only to a limited scrutiny and the Courts cannot substitute their own opinion for that of the Director of Inspection. Of course, the Director of Inspection must not lightly or arbitrarily invade the privacy of a subject. Before he acts, he must be reasonably satisfied that it is necessary to do so but the decision must still remain his and not that of the Courts. If the grounds on which reason to believe is founded are non-existent or are irrelevant or are such on which no reasonable person can come to that belief, the exercise of power would be bad; but short of that, the

Courts cannot interfere with the reason to believe *bonafide* arrived at by the Director of Inspection. It is also open to the Courts to examine whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief. In that sense the expression "reason to believe" is both subjective and objective but the area of objectivity is limited.

In *S. Narayanappa v. Commissioner of Income-tax* <sup>2</sup> their Lordships of the Supreme Court while dealing with the same expression as used in section 34 of the Indian Income-tax Act, said -

"Again the expression 'reason to believe' in section 34 of the Income-tax Act does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The belief must be held in good faith; it cannot be merely pretence. To put it differently, it is open to the Court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceedings under section 34 of the Act is open to challenge in a Court of Law."

In *Barium Chemicals Ltd. v. Company Law Board*, <sup>3</sup> Hidayatullah, J. (as he then was) observed -

"No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the *sine qua* for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exist, the action might be exposed to interference unless the existence of the circumstances is made out. As my brother Shelat has put it trenchantly:

'It is not reasonable to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist. . .' Since the existence of 'circumstances' is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least *prima facie*. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness."

Similarly, Shelat, J., while dealing with the expression "reason to believe", observed-

"Therefore, the words, 'reason to believe' or 'in the opinion of' do not always lead to the construction that the process of entertaining 'reason to believe' or 'the

opinion' is an altogether subjective process not lending itself even to a limited scrutiny by the court that such 'a reason to believe' or 'opinion' was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative."

9. Mr. Veda Vyasa also referred to *Shibban Lal Saksena v. State of Uttar Pradesh*,<sup>4</sup> and said that even if some of the grounds leading to the formation of the opinion are extraneous or irrelevant, the exercise of power must be struck down. It is unnecessary to resolve this controversy as I am satisfied on perusal of the ground that there is no extraneous ground on which the opinion has been formed. I, therefore, propose to scrutinize these grounds within the area of objectivity mentioned by me.

10. The Director of Inspection has filed his affidavit supported by the charts about which I have mentioned already. In the said affidavit, it is stated that -

- (a) the statements of account filed before the Income-tax Officer in support of the income-tax returns of the petitioners who were being assessed clearly show that the books of account containing their complete and true financial affairs and income have never been produced before the Income-tax Officer;
- (b) The petitioners, who were being assessed, had been filing returns and getting assessed by giving a fictitious address at Calcutta though their principal place of business was in Delhi;
- (c) A person connected with the affairs of the petitioners gave information making various allegations of extensive tax evasion and he made the following points -
  - (i) The petitioners have acquired wealth, and have been spending, on a scale quite disproportionate to their declared incomes;
  - (ii) The petitioners have filed returns before an Income-tax Officer of Calcutta though they do not have their business at the address given at Calcutta and have extensive business in Delhi and elsewhere;
  - (iii) The petitioners have not disclosed large transactions through bank accounts;
  - (iv) The petitioners have not disclosed business activity in various names; and
  - (v) The petitioners have been closely connected with other persons for making manipulations by virtue of which they could make extensive secret profits for themselves and such other persons;
- (d) the assessment records of the petitioners 1, 2, 3 and 4 disclosed certain

peculiar features such as declaration of income almost entirely from brokerage, denial of any bank accounts and failure to disclose assets proportionate to apparent wealth;

(e) the ghost address in Calcutta was adopted so as to keep the Income-tax authorities in the dark as to the real extent of their financial activities and income;

(f) "independent enquiries were also made by the officers of the Directorate of Inspection (Intelligence), New Delhi which showed the following:

(i) The petitioners were carrying on extensive business at various places which had apparently not been disclosed;

(ii) The petitioners had acquired several licenses in several scarce commodities and had disposed them of secretly and at fantastic profits;

(iii) The petitioners had been incurring lavish expenditure which was quite inconsistent with their declared resources;

(iv) The petitioners had acquired assets worth several lakhs of rupees which is also inconsistent with their declared resources;

(v) The petitioners were co-accused in a certain case filed by the Special Police Establishment, Central Bureau of Investigation and some of their books of account were still in the custody of the Special Police Establishment, Central Bureau of Investigation. Scrutiny of these books of account had disclosed that while the petitioners had acquired quotas in Stainless Steel in a number of trading names and the books of account kept for this purpose showed substantial profits, these activities and this income had not been disclosed to the Income-tax authorities. Moreover, there were hundi loans of about Rs. 10,50,000/- introduced in these books of account and there was reason to believe that these were really a disguise for introduction of secret monies of the petitioners; and

(vi) It was gathered that Shri Balwant Singh in particular had been instrumental in organizing affairs in such a manner that in violation of normal laws and rules secret profits could be made by him and a number of persons associated with him in the matter of import of 'Nylon' yarns in Bombay against entitlements for export promotion quota, and import of motor spare parts, brandy, pharmaceutical goods etc., against Customs Clearance Permits obtained by various persons of Pondicherry. The profits made by the syndicate formed for such purposes were reported to be enormous; running into crores of rupees. Enquiries also showed that the petitioners, their brothers, their mother and other

relatives had been freely intermingling their financial affairs and adopting one another's name for various activities of benami trade names";

(g) On the basis of the information mentioned above, the 1st respondent came to the following conclusion:

i) The petitioners had been completely misleading the Income-tax authorities and there was no occasion for the assessing Income-tax Officer to suspect that the real state of financial affairs and the real books of account and documents which would show, the same were being withheld from his knowledge. There was no occasion, therefore, for the Income-tax Officer to call for any such books of account or documents;

ii) The petitioners had been deliberately following the policy of not producing before the Income-tax Officer, the books of account and documents which would show their real state of financial affairs and their income. It was also evident that if called upon to produce such books of account and documents, the petitioners would not comply and would, on the contrary, destroy all such evidence; and

iii) The petitioners were in possession of money, bullion, jewellery and other valuable articles and things which represent wholly or partly the income or property which was not disclosed for the purpose of assessment to income-tax."

11. Mr. Veda Vyasa strenuously urged that "reason to believe" must exist when authorizations were issued under Section 132 and formulation of the reasons in the counter-affidavit could be of no avail to the Revenue. It was for this reason that we directed the Revenue to file the grounds in Court and Mr. Desai, the learned Counsel for the Revenue, immediately, on our enquiry, expressed complete willingness to do so. We were taken through the grounds and I find that they are such as could lead any reasonable man to believe that action under Section 132 was called for. It is not necessary to discuss them in detail as they are now part of the record and it is sufficient to say that the reasons would meet even the scrutiny of adequacy. Reasons and the counter-affidavit further show that the Director of Inspection fully applied his mind to the matter before issuing the authorizations.

12. Mr. Veda Vyasa next contended that the Director of Inspection and the Income-tax Officers did not apply their minds to the various aspects which required their attention. Before I deal with this argument, it is necessary to consider the scope of Section 132 in so far as this has a bearing on this question. Under Section 132, the Director of Inspection or the Commissioner can authorize search and seizure, if he has reason to believe that any person to whom a summons or notice under any of the provisions of

Income-tax Act, 1961, mentioned in sub-section (1) (a), has been or might be issued, will not or would not, produce or cause to be produced, any books of account or documents which will be useful for or relevant to any proceedings. The reason to believe must, therefore, be that the person concerned will not produce any books or documents and those books and documents will be useful or relevant to any proceedings. This aspect of the matter will be considered further when dealing with the argument regarding specification of documents in the authorizations. The authorization may authorize certain officers specified in the section to enter and search any building or place where the authorized officer has reason to 'suspect' that such books of account or other documents etc., that is to say, books of account and documents etc. which will be useful for or relevant to any proceedings are kept. While conducting the search the authorized officer has, therefore, necessarily to apply his mind and look for only such books of account and documents which will be relevant or useful to any proceedings. This scheme of the section shows that mind has to be applied by two officers at two different stages -

(1) By the Director of Inspection or the Commissioner when authorizing an officer to search. Such application of mind extends to two matters - (a) that the person concerned will not produce the books of account; and (b) he will not produce the books which will be useful or relevant to any proceedings and (2) by the authorized officer that the books searched or seized will be useful or relevant to any proceedings. That follows from the use of the words "such books of account" etc. in clauses (i) and (iii) of sub-section (1) of Section 132. The question, therefore, is, whether or not, the Director of Inspection in this case applied his mind as expected of him under the provisions of sub-section (1) of Section 132. The extracts from the Counter-affidavit of the Director of Inspection and the reasons for search quoted above clearly show that the Director of Inspection did apply his mind and could have reason to believe that search and seizure was necessary.

13. Mr. Veda Vyasa, the learned counsel for the petitioner, emphasized two aspects in this behalf - (1) the assessments up to 1962-63 having been completed there could have been no occasion to issue any notices under Section 37 of the Indian Income-tax Act, 1922 or sub-section (4) of Section 22 of the Income-tax Act and yet in the authorization quoted above these sections have been mentioned which shows that the Director of Inspection blindly quoted the authorization form, being Form No. 45, prescribed under the Rules without applying his mind as to which provisions could be attracted in the case. Mr. Veda Vyasa drew our attention to Section 297 of the Income-

tax Act, 1961, and said that even if action is to be taken against any persons for escaped assessment the sections applicable would be Sections 147 and 148 of the 1961 Act and, therefore, Sections 37 and 22 (4) of the 1922 Act could, in no case, apply. And (2) the respondents had failed to show that the Director applied his mind and came to the conclusion that relevant or useful books existed and were likely to be withheld.

14. Mr. Desai, the learned counsel for the Revenue, on the other hand, drew our attention to the following:-

- (a) The authorization has been issued in Form 45, the prescribed form;
- (b) Sub-rule (14) of rule 112 provides that the authorization "shall be in Form 45" and
- (c) In the cyclostyled form of authorization two inapplicable clauses have been struck off indicating the care bestowed upon the matter by the Director of Inspection;
- (d) Even in the part of authorization retained the section cyclostyled is "137" but figure "1" has been struck off; and
- (e) Merely because Sections 37 and 22 have been added to avoid the possibility of any omission, it does not show that the Director of Inspection did not apply his mind.

The fact that authorization has been issued in the statutory form in accordance with the requirements of sub-rule (14) of rule 112 does not, however, necessarily lead to the conclusion that the Director of Inspection applied his mind as the mandate of sub-rule (14) of Rule 112 extends to no more than reciting only the applicable provisions in the Form. But the other factors pointed out by Mr. Desai read with the grounds and the counter affidavit do lead me to the conclusion that the Director of Inspection applied his mind. On the second aspect also there is abundant material on the record to show that the Director considered the matter and came to the conclusion that search and seizure was necessary.

15. So far as the authorized officers are concerned, various circumstances were relied on by both sides in support of their respective pleas. Mr. Veda Vyasa said that - (1) the seizure list showed that bundles of papers were seized without scrutiny; (2) papers like medicine bills, prescriptions, writ petitions, and copies of the judgments of Courts had been seized, although merely signing them or putting on them marks of identification and leaving them with the petitioners would have served the purpose because such like records could never have been destroyed or withheld by the petitioners, and (3)

even plan of a building to be made in Faridabad was seized, showing that the authorized officers searched and seized all the papers upon which they could lay their hands without considering whether or not they were useful or relevant. According to Mr. Veda Vyasa it was impossible for an authorized officer to scrutinize thousands of papers in one day. The authorized officers have filed affidavits in which they say that the seizure was made under a reasonable belief that the papers seized belong to the petitioners and were relevant or useful for the "income-tax purposes". They have also denied that the seizure was indiscriminate.

16. Shri Rajinder Mohan, respondent No. 2, in his affidavit also stated that petitioners Nos. 2 and 3 were present at the time of the search, the authorizations were shown to them and he took their signatures thereon. The fact that the authorizations are signed by them has not been denied.

17. Mr. Desai, the learned counsel for the respondents, in support of his plea that there was a proper application of mind, mainly relied on the circumstance that some of documents were not seized while on some, marks of identification were put and the documents left with the petitioners and that showed that the authorized officers considered their relevance or usefulness before seizing them. With respect to the bundles of papers and several files, Mr. Desai contended that it was sufficient compliance with the Act and the Rules if the authorized officer broadly looked into the files and found that some of the papers, in any event, were relevant or useful and the entire file should be taken so that the order of the papers of the petitioners was not disturbed and the files not dismantled. Mr. Desai conceded that looking into the contents of each and every paper was practically impossible but said that the authorized officers did broadly look into every file and bundle and seized the same only when satisfied that they had a bearing on the proceedings pending or proposed to be taken.

18. Before I proceed to answer the question, it is important to mention the particular papers seized which, according to Mr. Veda Vyasa, would have not even a remote connection with any assessment proceedings taken or even to be taken. He underlined in the list of seizures the following :-

- (1) One file styled Dass Commission Inquiry containing some correspondence in the case regarding A. S. Kalia.
- (2) Papers regarding Mars, Rubber and General Industries - Shifting of factory.
- (3) File - Metro Engineering and Metal works - Electricity.

- (4) Metro Engineering and Metal Works writ petition.
- (5) List of photostat copies 12 - Import licence application.
- (6) Several files containing statements and documents in the case - N. S. Giani.
- (7) Petition under Article 226 in the Punjab High Court - *Baldeo Singh v. Director General*, Development Wing.
- (8) File containing correspondence with Chief Settlement
- (h) One bundle of papers showing transactions of Roshan Lal Jali for the years 1952-56, which includes general power of attorney and various petitions addressed to civil Court and share certificates; and
- (i) Copy of the letter from Chief Controller of Imports and Exports addressed to Shri Sadhu Singh, Advocate.

19. Mr. Desai said that in the petition there was only a general allegation that some irrelevant papers were seized and, therefore, the respondents had no opportunity to deal with specific items. He, however, sought to justify the seizure of each and every document. He said that, for instance, A. S. Kalia was an ex-partner of the petitioners. Similarly, petitioners 1 and 3 and N. S. Giani are being prosecuted in connection with Stainless Steel quota. Files containing the names of different firms would be relevant to show that the petitioners were engaged in business under the name and style as one of the allegations against the petitioners is that they have been carrying on business in various names without disclosing the income there from. Books of 1949 and of other earlier years as well as the note-book relating to poultry would be relevant to arrive at the capital structure of the petitioners and find out whether the expenses on their living are within their available disclosed resources.

20. According to Mr. Veda Vyasa, however, it was enough for the petitioners to allege that irrelevant papers were seized and it was always for the respondents to justify the seizure of each and every document. Once I am satisfied that the authorized officers applied their mind to the usefulness or relevance of the documents the matter assumed a different shape. For, then the decision will have to be left to the authorized officers to see, whether or not, the documents were useful or relevant.

If the conclusion is that a reasonable man acting *bonafide* could believe that the documents were useful or relevant, it will not be open to the Courts to substitute their own opinion or sit in appeal over the judgment of the authorized officer. Of course, if the Courts come to the conclusion that the documents have no connection with any proceedings the seizure would be bad. Similarly if the seizure is held to be not *bonafide* it will be struck down. Looking from that angle, a reasonable man acting

*bonafide* could, in the circumstances of this case, come to the conclusion that books and files relating to several years back would be useful and relevant for constructing the capital structure or the income accumulations of the petitioners. Similarly, the writ petitions and judgments of the Courts may be useful sources of information. Papers relating to quota licenses would also indicate the extent of business done by the petitioners or other concerns in which they were interested. Even the signatures of some persons on blank papers may serve a useful clue to several relevant matters. There may be a few documents - one or two - like prescriptions and medicine bills which may have no bearing, but such seizure cannot and does not go to show that there was a complete absence of the application of mind. At the most the appropriate order may be in such cases to return those documents. Mr. Veda Vyasa also showed us some of the documents which have been returned and used that fact to show that even the department did not consider those documents relevant or useful. That may not be necessarily so, for they may have returned them after gathering the necessary information. In any case, where, by and large, all the documents seized appear to be such as could lead a reasonable man to believe that they were useful and relevant, the search and seizure itself cannot be struck down on the ground of absence of application of mind. Mr. Desai expressed his inability to show the relevance of each and every document by reference thereto as the documents are lying sealed under the orders of this Court. In these circumstances, it must be held that the authorized officers also properly applied their minds.

21. Mr. Veda Vyasa then contended that although a few Income-tax Officers had been authorized yet a large number searched and seized the documents. This argument bears no merit because the affidavits filed by the authorized officers show that they conducted the search and seizure and applied their minds to the documents to be seized. Regarding the contention that even copies of the official records such as writ petitions and judgments were seized showing the arbitrariness at the hands of the authorized officers. Mr. Desai contended that it was entirely for the authorized officers under clause (3) of sub-section (1) of Section 132 to decide which of the relevant or useful books and documents should be seized and which left with the petitioners by only placing marks of identification. I am not prepared to accept that broad proposition. Search and seizure is a serious invasion on the rights of the subjects. The search and seizure was really not known at earlier stages to common law. When it was for the first time, introduced it was confined only to stolen goods, but its usefulness soon forged its recognition and was, from time to time, extended to such like searches and seizures. It is true that sometimes the Over zealousness of the authorities led to its

abuse and it appears that for this reason the Fourth Amendment was introduced in the American Constitution in recognition of the fact that a man's house is his castle not to be invaded by any general authority to search and seize his goods and papers. The only legal means that can be applied to search a person's abode is a search warrant and in the absence thereof neither any private person nor any officer can invade the privacy of a home and subject its occupants to indignity. It is, therefore, imperative that seizure should not be allowed to exceed the limits of absolute necessity and the Over zealotness of the searching officers is not permitted to cross the permissible limits. Such provisions must, therefore, be necessarily construed in the light of this background and when two alternatives, namely, to seize the books or place or place marks of identification and leave them with the persons concerned are available, the seizure will be struck down on the ground that it is arbitrary and not in the public interest. I say so because every provision of the Act has to be construed in the light of Article 19 of the Constitution. My conclusion is that when two alternatives are equally possible, namely, either to seize the books or to leave them with the petitioners after placing marks of identification, the latter course must be resorted to. But whether or not seizure is the only alternative depends on the facts and circumstances of each case. For instance, there may be cases where immediate information is necessary to avoid destruction of relevant materials by the assessee, or to avoid any assessments becoming time-barred. In that situation, even the seizure of such like documents would be justified. Similarly, if the authorized officers are of the opinion that obtaining records from different Courts will be difficult and/or would cause delay thereby frustrating the object of search, they may seize the documents. Mr. Veda Vyasa did not press for the return of any particular document possibly because both the parties were handicapped in view of the fact that the documents are lying sealed with the Commissioner of Income-tax and none of them could have access thereto. He merely underlined certain documents to show that the search was arbitrary, high-handed and without the authorized officers applying their minds.

Mr. Veda Vyasa strongly relied on a decision of the Punjab High Court in *N. K. Textile Mills v. Commissioner of Income-tax, New Delhi* <sup>5</sup> In the circumstances that obtained in that case it was held that the search and seizure was illegal as being arbitrary and an abuse of power. That case was decided having regard to the fact that all documents were seized indiscriminately and there was no proper affidavit showing that the authorized officers applied their minds. That is not the case here. In the circumstances of this case and in the light of the discussion hereinbefore it must be held that the authorized officers did apply their minds. In searching or seizing the documents they

may have erred slightly here or there and seized the documents which on closer scrutiny may ultimately turn out to be irrelevant but that cannot vitiate the search.

22. That takes me to the next contention of Mr. Veda Vyasa that search and seizure under section 132 (1) can be resorted to only if there are pending proceedings and not merely a remote possibility of some proceedings being taken at a later stage. The argument of Mr. Veda Vyasa was this:

Section 131 applies only to pending proceedings and so does section 132 (1) (a). Clause (b) of sub-section (1) of Section 132 is only in aid of section 131 and Section 132 (1) (a) and must necessarily be limited within the area of sections 131 and 132 (1) (a). When faced with the second Explanation to section 132 that the word "proceeding" includes proceedings which may be pending on the date of the search or which may have been completed on or before such date and includes also all proceedings which may be commenced after such date in respect of any, Mr. Veda Vyasa sought to overcome this difficulty by suggesting that though the proceedings might be commenced after the date of the search but those proceedings must be in a pending case. That, in my opinion, would be cutting down the scope of the second Explanation. From the Explanation it is obvious that the proceedings may not be pending. In terms the Explanation expands the meaning of the word "proceeding" and extends the power to issue search warrants where proceedings "have been completed". The words "have been completed" obviously show that there may be no proceeding pending when the search warrant is issued. Mr. Veda Vyasa emphasized the words "a summons or notice as aforesaid has been or might be issued" and said that the summons or notice refers to summons or notices mentioned in clause (a) of sub-section (1) of section 132 which are all in pending proceedings. That again is not the correct reading of clause (b) of sub-section (1) of section 132. Clause (a) refers to, for instance, a notice under Section 142 (1). That notice may be issued not only when proceedings for assessment are pending with respect to a particular assessment year but even when action is taken for reassessment for that assessment year by resort to sections 147 and 148. Consequently, even if assessment for a particular year has been made a notice under section 142 may still issue for that very year after reopening of the assessment. Similarly, there may be cases where a person has not filed a return and the income has escaped assessment as a result thereof. In that case also a notice under section 148 may have to be issued followed by a notice under section 142. Read with the second

Explanation clause (b) of section 132 (1) would necessarily mean that a warrant for search or seizure can issue even in a case where any proceedings have been closed or may be commenced later. Mr. Dang, who followed Mr. Veda Vyasa for a short while, suggested that, in any case, the proceedings must be imminent and a remote possibility of the taking of proceedings will not suffice. The section however, does not require that the proceedings should be imminent. All that is necessary is that the Director of Inspection or the Commissioner must in consequence of the information have reason to believe that the notices or summonses as mentioned in clause (a) of sub-section (1) of section 132 might have to be issued. If there is only remote possibility of such summonses or notices being issued the section would not be satisfied not because there are no proceedings imminent but because a reasonable person could not have, in those circumstances, reason to believe that the person concerned will not produce the documents if summonses or notices are issued to him. In that sense it may be said that search warrants cannot be issued merely with a view to making a roving or fishing enquiry, but can be issued only when there exists a good ground for believing that further proceedings may have to be taken. Having regard, however, to the facts of this case it cannot be said that search warrants were issued when there was not even a remote possibility of further proceedings.

23. The next argument urged on behalf of the petitioners was that the Director of Inspection or the Commissioner must specify the documents to be searched or seized. This argument was based again on the existence of the words "to whom a summons or notice as aforesaid has been or might be issued" in clause (b) of sub-section (1) of Section 132. Mr. Veda Vyasa said that the reason to believe must be that the assessee concerned will not produce relevant or useful books of account etc. when summoned to do so under any of the provisions mentioned in section 132 (1) (a) and since notices and summons mentioned in section 132 (1) (a) must necessarily specify the books and documents the authorization must also do so and that the authorization has to be confined only to useful and relevant books and documents etc. and therefore, the authorized officer must be told exactly what those useful and relevant books and documents are. According to Mr. Veda Vyasa, the Director of Inspection or the Commissioner must firstly be satisfied having regard to the particular documents that they will be useful or relevant to any proceedings and are such as could be called for by notices or summonses mentioned in clause (a) of sub-section (1) of Section 132. Mr. Veda Vyasa sought to seek further support from the use of the expression "such

books of account" in Section 132 (1) (i). I am not convinced that any such specification is necessary. Sections 22 (4) and 142 (1) themselves do not require precise specification of the documents, to be produced. For instance, under section 142 (1) the Income-tax Officer may require an assessee to produce all books of account and even require the production of documents generally showing that the assessee was carrying on business in a particular name and style. Such notice would be in compliance with Section 142 (1). That apart, it appears to me that Section 132 has been made wider still and the Director of Inspection or the Commissioner is expected only to have reason to believe that the person concerned will not, or would not, produce or cause to be produced any books or documents, which will be useful for or relevant to any proceedings. In other words, the authority concerned must show that he had reason to believe on the materials before him that the person concerned is likely to withhold books and documents and those books and documents will be useful or relevant to the proceedings. Take a case where the Director of Inspection or the Commissioner of Income-tax has information that someone is carrying on business in 20 different names and that he has not disclosed those businesses to the Revenue. There can be no doubt that section 132 is intended to meet such a situation as well and yet it will be impossible for the authorities to specify the documents. All that the authority issuing authorization must believe is that there are useful and relevant documents available in the premises to be searched. In *Durga Prasad v. Supdt. (Prev.) Central Excise, Nagpur* <sup>6</sup> the Supreme Court construed section 105 of the Customs Act, which reads -

"105. (1) If the Assistant Collector of Customs, or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorize any officer of customs to search or may himself search for such goods, documents or things.

(2) The provision of the Code of Criminal Procedure 1898, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate" wherever it occurs, the words "Collector of Customs" were substituted."

Their Lordships observed -

"It was further submitted on behalf of the appellant that the power of search under section 105 of the Customs Act cannot be exercised unless the authorization specifies a document for which search is to be made. In other words, it is contended that the power of search under section 105 of the Customs Act is not of general character. We do not accept this argument as correct. The object of grant of power under section 105 is not search for a particular document but of documents or things which may be useful or necessary for proceedings either pending or contemplated under the Customs Act. At that stage it is not possible for the officer to predict or even to know in advance what documents could be found in the search and which of them may be useful or necessary for the proceedings. It is only after the search is made and documents found therein are scrutinized that their relevance or utility can be determined. To require, therefore, a specification or description of the documents in advance is to misapprehend the purpose for which the power is granted for effecting a search under section 105 of the Customs Act. We are, therefore, of opinion that the power of search granted under section 105 of the Customs Act is a power of general search. But it is essential that before this power is exercised, the preliminary conditions required by the section must be strictly satisfied, that is, the officer concerned must have reason to believe that any documents or things, which in his opinion are relevant for any proceeding under the Act, are secreted in the place searched. We have already mentioned the reasons for holding that this condition has been satisfied in the present case." Mr. Veda Vyasa relied on *R. S. Seth Gopikisan Agarwal v. R. N. Sen, Assistant Collector of Customs and Central Excise, Raipur*,<sup>7</sup> which was again a case *inter alia* under section 105 of the Customs Act, and referred to the following observation:

"Doubtless he has to indicate broadly the nature of the documents and the goods in regard to which the officer authorized by him should make a search, for without that his mandate cannot be obeyed."

The above observation has to be read in the context. Their Lordships said - "Obviously, no question of giving of particulars arises if he himself makes the search, but if he authorizes any officer to do so, he cannot give the particulars of the documents, for they will be known only after the search is made. Doubtless he has to indicate broadly the nature of the documents and the goods in regard to which the officer authorized by him should make a search for without that his mandate cannot be obeyed. The authorization issued by the Assistant Collector of Customs in this case

clearly mentioned that on information received it appeared that the appellant was in possession of contraband goods and documents relating thereto and also described the office and the residential premises wherein those goods and documents would be found. In the circumstances of the case we are satisfied that the specifications are sufficient to enable the officer authorized to make the search."

In this case also the authorization said that the person concerned will not produce or cause to be produced books of account or other documents which will be useful for or relevant to the proceedings under the Income-tax Act, 1922, or the Income-tax Act, 1961. That specification was, in any case, sufficient so far as the requirements of section 132 go.

24. Mr. Veda Vyasa then contended that provisions of section 165 of the Criminal Procedure Code had not been complied with inasmuch as -

(1) The search and seizure was not conducted in the presence of Panchas as required by sub-section (4) of section 165;

(2) Copies of the records made at the time of search and seizure were not sent to the nearest Magistrate as required by sub-section (5) of section 165.

In the alternative, Mr. Veda Vyasa said that even if under the Income-tax Act, 1961, the copies may not be required to be sent to the nearest Magistrate, sub-section (5) must be applied mutatis mutandis to the searches under the Income-tax Act and, therefore, copies of the record made should have been sent to some higher authority such as the Director of Inspection or the Commissioner of Income-tax; and

(3) no reasons were recorded by the authorized officer.

25. Regarding the search being conducted in the presence of witnesses, Mr. Veda Vyasa relied on the various affidavits filed by the witnesses to the search. There is no firm allegation in the petition that the search or seizure was not conducted in the presence of the witnesses. Subsequently, however, affidavits were filed on behalf of the witnesses to the search wherein it has been stated that at the time of the search the witnesses were made to sit in one room from where it was practically impossible to keep a watch on the search and that the members of the search party were constantly coming in and going out of the premises searched. The facts alleged in these affidavits have been denied and on the basis of the material it is impossible to conclude that the petitioners are right, particularly having regard to the fact that there is no controversy between the parties that the list contains an accurate statements of the documents searched and seized. Regarding the reasons to be recorded by the authorized officers,

there is no such requirement in Section 132 or Rule 112. The section and the rule merely require the authorizing officer to give reasons. Mr. Desai did not dispute that having regard to the provisions of section 165 Criminal Procedure Code, and rule 112 the authorizing officer must record reasons. He, however, disputed the contention that even the authorized officer must record reasons. Mr. Veda Vyasa suggested that under section 165 (1) of the Criminal Procedure Code the officer in charge of a police-station etc. is required to record in writing the grounds of his belief and applying section 165 it must be held that the authorized officers must also record reasons in writing.

There is no warrant for this proposition. Under section 132 of the Income-tax Act the search warrants can be issued upon reason to believe by the Director of Inspection or the Commissioner. The section does not require the Director or the Commissioner to record reasons though he may have to do so because if the action is challenged in court the authorizing officer will have to justify his action within the limited area of objectivity. Rule 112, however, provides this safeguard in terms and requires the Director of Inspection or the Commissioner to record reasons for authorizing the search or seizure. Section 165 of the Criminal Procedure Code applies only "so far as may be" and at the most it can be said that the effect of section 165 (1) is that the person issuing the authorization must record reasons. The said section 165 cannot be held to require the authorized officer to record reasons. Under the said section the police officer concerned may either make the search or cause it to be made. Even there the officer, who is authorized to make the search by the police officer concerned, need not record reasons. All that is to be seen under section 132 of the Income-tax Act is that the authorized officer searches or seizes only such documents and books of account etc. which are useful or relevant to any proceedings.

So far as sending of the copies of the record to the nearest Magistrate or to a senior official of the Income-tax Department is concerned, sub-section (5) of section 165 cannot in terms apply because that sub-section requires copies of the record made under sub-section (1) of section 165, that is, record of search or seizure conducted in pursuance of the belief that anything is necessary for the purpose of an investigation into any offence to the court. In investigations like the present there is no investigation into any offence. Under sub-rule (2) of Rule 112 a list of all the things taken possession of has to be prepared and copies thereof sent to the Director of Inspection or the Commissioner, as the case may be. There is no allegation on behalf of the petitioners that this sub-rule was not obeyed and even if the argument of Mr. Veda Vyasa is to be accepted that by applying section 65 mutatis mutandis the copies must

be sent to a senior official, it must be held that was complied with. Again, in sub-section (5) of section 165 of the Criminal Procedure Code the copies of the record have to be forwarded to the nearest Magistrate empowered to take cognizance of the offence. For this reason also no copies can be sent to any Magistrate. This argument of the learned counsel for the petitioners must also, therefore, fail. It may, however, be pointed out that search being carried out in the presence of witnesses and the reasons to be recorded by the authorizing officer are the requirements of rule 112 itself and, therefore, it is unnecessary to take recourse to section 165 of the Criminal Procedure Code for that purpose.

Mr. Desai wanted leave to file an affidavit, which he actually did, showing that the authorized officers were properly briefed on the merits of the case so that they could apply their minds to the documents to be searched or seized. The petitioners filed a counter-affidavit and then Mr. Desai stated that "in view of the lengthy and irrelevant contents of the counter-affidavit I do not press for filing of the affidavit and want to withdraw the same." Mr. Veda Vyasa contended that the affidavit having been placed on the record it could not be withdrawn and relied on *In re Quartz Hill and C. Company; Ex parte Young*, (1882) 21 Ch. D. 642. No permission was given to Mr. Desai to place the affidavit on the record and the matter had yet to be decided when the affidavit was withdrawn. In view of my decision that the authorized officers did apply their minds it is unnecessary to go into this question. Mr. Veda Vyasa also pressed on us to permit him to cross-examine the deponents on behalf of the respondents. He said that apart from the fact that the affidavits were vague and not properly verified he would be able to show that the statements made therein are not correct and neither had the Director of Inspection reason to believe nor did the authorized officers apply their minds. I see no justification for allowing that request. Paragraph 10, sub-paragraphs (a), (c) and (e) of paragraph 13, and sub-paragraphs (e) and (g) of paragraph 14 have been sworn by R. D. Shah as true to his knowledge. Paragraph 10 of the affidavit deals with the protest letters etc. by the petitioners and the offer by respondent No. 1 that the petitioners might approach the officers concerned for inspecting the books and documents. In sub-paragraph (c), which has been mentioned in detail above, respondent No. 1 swears to the conclusions that he arrived at on the basis of the information mentioned in the earlier paragraphs. In sub-paragraph (e) of paragraph 13 he says that he had sufficient information in his possession to give him reason to believe that action under section 132 was necessary, and these paragraphs have been sworn as true to the knowledge of the Director of Inspection. Having regard to the nature of scrutiny by the Court into the question of

reason to believe, these are the relevant paragraphs and have been properly sworn.

26. Mr. Veda Vyasa's principal objection was that the Director of Inspection had, with respect to some of the paragraphs, stated that "they are true to my knowledge based on official record and believed to be true" without disclosing the said records. We have been taken through those paragraphs at length and I am not satisfied that cross-examination should be allowed. Similarly, in the affidavits by Rajinder Mohan, V. S. Rastogi, V. P. Mital, P. N. Malik and R. C. Narang, the facts have been sworn as true to their knowledge. I am not unmindful of the fact that if a proper case is made out, this Court has power to direct cross-examination of the deponents but in the light of the discussions on various aspects I am satisfied that this is not a case where such permission should be accorded.

27. I then proceed to discuss the contention of Mr. Veda Vyasa that section 132 of the Income-tax Act is unconstitutional being violative of Articles 14 and 19. In support of this contention he relied on the majority judgment of the Assam High Court in *S. Doongarmal Agency v. K. E. Johnson*,<sup>8</sup> In that case a majority of their Lordships held that section 37 (2) of the Indian Income-tax Act, 1922, was violative of Articles 14 and 19 (1)(g) of the Constitution. The majority of the learned Judges in coming to that conclusion expressed dissent from *Surajmull Nagarmull v. Commissioner of Income Tax*,<sup>9</sup> So far as Article 14 is concerned, the ratio of the Assam decision is that section 37(1) and section 37 (2) are two distinct, different and independent powers and the power under Section 37 (2) is much more drastic and onerous with the result that if action is permitted under section 37(2) instead of section 37 (1), it would involve discrimination. Regarding Article 19 the majority view is that there were no guidelines provided as to when and in what circumstances the power in question was to be exercised or for the purpose or object of the exercise of the power. The power could be exercised without notice to the person concerned and there was no provision for an aggrieved party to make a representation and, therefore, the restriction imposed on the fundamental rights was not reasonable. In AIR 1961 Calcutta 578 (SB), the Special Bench of the Calcutta High Court, however, came to the conclusion that section 37 (2) did not violate either Article 14 or Article 19 of the Constitution. In *Board of Revenue, Madras v. R. S. Jhaver*,<sup>10</sup> their Lordships of the Supreme Court upheld the validity of section 41 (2) and (3) of the Madras General Sales Tax Act relating to search and seizure of accounts and documents on the ground that there were sufficient safeguards provided particularly in view of the applicability of section 165, Criminal Procedure Code, and, therefore, Article 19 was not violated. One of the factors taken by their

Lordships of the Supreme Court into consideration was that the officer seizing the books of account etc. had to record his reasons. I have mentioned this fact specifically because Mr. Veda Vyasa sought to distinguish this decision on the ground that if the authorized officers are not expected to record their reasons that safeguard, which existed in section 41, did not exist in section 132. Again, in AIR 1967 Supreme Court 1298, their Lordships of the Supreme Court held that section 105 of the Customs Act, 1962, did not violate Article 14 of the Constitution and observed -

"The legislative policy reflected in the section is that the search must be in regard to the two categories mentioned therein, namely, goods liable to be confiscated and documents relevant to a proceeding under the Act. No doubt the power can be abused. But that is controlled by other means. Though under the section the Assistant Collector of Customs need not give the reasons, if the existence of belief is questioned in any collateral proceedings, he has to produce relevant evidence to sustain his belief. That apart, under section 165 (5) of the Code of Criminal Procedure, read with section 105 (2) of the Act, he has to send forthwith to the Collector of Customs a copy of any record made by him. The Collector would certainly give necessary directions if the Assistant Collector went wrong, or if his act was guided by mala fides."

28. In *C. Venkata Reddy v. Income-tax Officer (Central) I. Bangalore*,<sup>11</sup> a Division Bench of the Mysore High Court held that Section 132 of the Income-tax Act, 1961, did not violate Article 14 or 19 of the Constitution. Mr. Veda Vyasa contended on the lines of the Assam decision AIR 1964 Assam 1 (FB) that section 132 violated Articles 14 and 19 of the Constitution because it had been left to the absolute discretion of the authorities concerned to either take recourse to section 131 or to section 132, which is more drastic provision and no criterion had been laid down as to in which cases section 132 had to be applied. Section 131 is a general power given to the Income-tax Officer etc. for enforcing the attendance of persons, for issuing commissions or compelling the production of accounts or other documents. Under section 131, for instance, the Income-tax Officer may even compel a witness to produce books of account and other documents which he may consider to be helpful to the enquiry. Section 132, on the other hand, is directed to compel compliance with notices already issued or which may be issued. Section 131, therefore, gives power to compel production of persons and books while section 132 is intended to give power to search or seize documents which the persons concerned are likely to withhold. There is, therefore, a valid classification and a distinction based on the reason to believe by senior officials, which reason is to a certain extent subject to judicial scrutiny, that the

books will not be produced, cannot be struck down as discriminatory particularly when sufficient safeguards have been provided. The object of the Legislature in enacting section 132 is both to avoid tax evasion and facilitate enquiry in proceedings. Search warrants may be issued against an assessee who has filed a return or has failed to file a return and the apprehension is that he will destroy the books so that the proper income-tax is not assessed against him. It can also be issued to witnesses who are possessed of books and documents which may help the assessee in arriving at a correct assessment but it is apprehended that *inter alia* out of vindictiveness or ill-will or even indifference towards the assessee such person, if summoned as a witness, will not produce the documents or may destroy the same. There is, therefore, in my opinion, a valid classification of persons against whom proceedings under section 132 may be taken.

29. It was then contended by Mr. Veda Vyasa that search and seizure may be ordered at the sweet will of the Director of Inspection or the Commissioner. That is not so. The director of Inspection and the Commissioner are very senior officials. They must have reason to believe that relevant or useful books or documents will not be produced. The existence of reason to believe is, to a certain extent, justifiable, as discussed hereinbefore. The search and seizure is confined to relevant or useful books of account. The provisions of the Criminal Procedure Code have been made applicable and by virtue thereof and of rule 112 the search has to be conducted in the presence of witnesses and the Director of Inspection or the Commissioner has to record reasons. No official below the rank of Income-tax Officer can be authorized to search or seize and that also only the useful and relevant books. Under sub-section (8) of section 132 the books of account or other documents cannot be retained by the authorized officer for a period exceeding 180 days except after recording reasons in writing and taking the approval of the Commissioner, and the Commissioner cannot authorise the retention for a period exceeding 30 days from the completion of the relevant proceedings. The persons concerned are entitled to object to the order of the Commissioner by an application to the Board of Direct Taxes. They are also entitled to make copies or take extracts from the books or documents seized. Search of a premises by itself no doubt offends the right of a subject to hold property guaranteed under article 19 but searches necessitated for avoiding tax evasion or facilitating the making of assessment cannot but be termed as reasonable restrictions on the rights of the subjects. Similarly, seizure of documents for a limited period for the purposes of assessment would also constitute reasonable restriction. It follows that the section is not hit either by Article 14 or by Article 19 of the Constitution.

30. Having come to the conclusion that the search and seizure in this case was legal I need not decide the question as to whether the documents searched and seized in violation of Article 19 or of section 132 can be retained or not. It is, however, necessary to decide one other question, namely, whether the information collected by the Department in pursuance of an illegal search can be used as evidence and this is so because in two other writ petitions, being writ petitions Nos. 798-D of 1966 and 800-D of 1966, we heard arguments only on this question and not on the question whether the search or seizure in those cases was legal or illegal, while Civil Writ No. 58 of 1966 was compromised without prejudice to the contention of the petitioners that such evidence cannot be used, and, therefore, if the conclusion is that such documents can be used, it will be unnecessary to decide the question of legality of the search in those cases.

In *Weeks v. United States*,<sup>12</sup> it was held that the Federal Court could not use as evidence something unreasonably seized by a Federal Officer. In *Burdeau v. Mc.Dowell*,<sup>13</sup> however, it was decided that if something was seized by someone acting without complicity on the part of the United States and gives that to the Government the prosecution was entitled to use it. The exception made to the Federal exclusionary rule in Mc Dowell's case, (1921) 256 US 465 to the effect that the evidence obtained by an illegal search made by the State officers without Federal participation is admissible was, however, repudiated in a later decision. Similarly, it has been held in several cases that documents or things seized in violation of the Fourth Amendment could not be used in evidence even in State Courts. Mr. Veda Vyasa relied on *Dollree Mapp. etc. v. Ohio*<sup>14</sup> and *Winston Massiah v. United States*,<sup>15</sup> in support of his proposition that any document seized in violation of the Fourth Amendment in United States and Articles 14 or 19 in India could not be used in evidence. The reason of the rule, according to Mr. Veda Vyasa, is that unless forbidden, the overzealous prosecutors or the investigators will cease to have any regard for the Constitution and seize documents in violation thereof believing that even if the seizure is held to be illegal, they will at least be entitled to use the evidence. It was, therefore, necessary, according to Mr. Veda Vyasa, to exclude such evidence wherever the seizing officer blundered so that the Constitution and the laws were obeyed. Mr. Veda Vyasa reminded us that the Courts are the guardians of the Constitution and protection against arbitrary searches and seizures was to give effect to the determination by the people that they would for ever be secure in the persons and effects from intrusion by the State except under a proper warrant and if use of such evidence were to be allowed it will create a big hole in the Constitution.

Mr. Desai, on the other hand, relied on *Kuruna v. Queen*,<sup>16</sup> where it was held that the law did not reject relevant evidence on the ground that it had been obtained by illegal means. Lord Goddard C. J., referring to some of the American decisions, said -

"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*,<sup>17</sup> the majority of the Supreme Court were clearly of opinion that the common law did not reject relevant evidence on that ground."

31. Though in Ohio's case, (1961) 6 L. Ed. 2d. 1081 the Supreme Court of the United States said that the rule which excludes unconstitutional evidence from being admitted is an essential part both of Fourth and Fourteenth Amendments, Mr. Veda Vyasa suggested that the said rule as developed in the United States was not only a command of the Fourth Amendment but also a judicially created rule of evidence and there was no reason why the same rule of evidence should not be created by the Courts in India because Article 19 in our Constitution is intended also to serve the same purpose as the Fourth Amendment in the United States. There are two ways of looking at the American decisions. One way of looking at those decisions may be, as suggested by Mr. Veda Vyasa that the exclusionary rule is a judicially created rule of evidence. If that be so then it would be open to the Legislature to override that rule and permit use of evidence illegally obtained. In that situation the matter will depend on the provisions of the Indian Evidence Act. Of course, it would be a different matter as to what value should be attached to an evidence illegally seized. No provision of the Evidence Act has been shown to us by Mr. Veda Vyasa which excludes such evidence. It is the other angle which creates difficulty. If it be held that the exclusionary rule is based on the Fourth Amendment then an illegal seizure would be inasmuch violation of Article 19 in India as it would be in violation of the Fourth Amendment in the United States.

Even so Article 19 does not, in my opinion, forbid the use of evidence obtained as a result of an illegal search. It may be argued in support of the exclusionary rule that the Article 19 makes the right to acquire and hold property sacred and any property seized in violation of Article 19 should be completely restored. There is no restoration unless the parties are placed in a position in which they stood before the seizure and that

unless such evidence is completely excluded there will not be any perfect restitution. It is true that in appropriate cases the Court may order restoration of the property illegally seized but so far as the use of information gathered as a result of such seizure is concerned, the Court, or the appropriate authority, has in any case, acting within the law, the power to call for such information and property and use the same in evidence. If it is done in accordance with law, no violation of Article 19 arises. The information gathered, therefore, can otherwise be reached by the Courts or other concerned authorities. That information gathered serves as a check on the person subjected to search and seizure that he will not destroy the records or conceal the information. If he produces it in pursuance of summons or notice it can undoubtedly be used. If, on the other hand, he withholds it, it cannot be said that Article 19 will exclude such evidence because he has no fundamental right to withhold the records and information. My conclusion, therefore, is that information gathered as a result of illegal search and seizure can be used subject to the value to be attached to it or its admissibility in accordance with the law relating to evidence.

I will take an extreme case where documents are illegally seized and not only is the information kept in the minds of the concerned authorities but complete copies thereof are kept. On the one hand, Article 19 may be construed to mean that complete restitution of property would require restitution of those copies as well. On the other hand, it may be said that since the Court or the authority has still the power to call for that information, the authority may use those copies if the information or the documents are not produced. In that situation it cannot be argued that Article 19 forbids the use of such copies completely. What will be the situation if there is no power in law in the authority concerned to call for such information or documents does not arise before us and I need not consider that. I would like to make it clear that I am expressing no opinion on the impact of article 20 on the use of such information.

32. In the circumstances, this petition fails and is dismissed but with no order as to costs.

**S. N. Andley, J.** :- I entirely agree.

Petition dismissed.

Cases Referred.

1. AIR 1940 Calcutta 97
2. (1967) 63 ITR 219 : (AIR 1967 SC 295)

3. AIR 1967 Supreme Court 295,
4. 1954 SCR 410 : (AIR 1954 SC 179)
5. (1966) 62 ITR 58 (Punj).
6. AIR 1966 Supreme Court 1209,
7. AIR 1967 Supreme Court 1298,
8. AIR 1964 Assam 1 (FB).
9. AIR 1961 Calcutta 578 (SB).
10. AIR 1968 Supreme Court 59,
11. (1967) 66 ITR 212 (Mys)
12. (1914) 232 US 383,
- 13.(1921) 256 US 465
14. (1961) 6 L. Ed. 2d. 1081,
15. (1964) 12 L. Ed. 2d. 246,
16. (1955) A. C. 197,
17. (1928) 277 US 438,