**MYSORE HIGH COURT**

C. Venkata Reddy

Vs

Income Tax Officer

Writ Petn. No. 2310 of 1966

(A. Narayana Pai and Ahmed Ali Khan, JJ.)

03.01.1967

**JUDGMENT**

**Narayana Pai, J.**

1. The 2nd petitioner, the Madras Bangalore Transport Company, is a firm of four partners P. V. S. Mani, C. Munireddy, C. Venkatareddy and J. Ramakrishniah. Of these, C. Venkatareddy is the 1st petitioner.

2. The firm has its principal place of business at Nos. 36-37, Second Line Beach, Madras City, and is an assessee to income tax within the jurisdiction of the Income-tax Officer, Central Circle VIII, Madras. The Firm carries on extensive business as a road transport operator and common carrier with over 200 offices situated in various parts of the country including the Mysore State. One of its branch offices is at No. 34, Infantry Road, Bangalore, and another at No. 14, Second Main Road, Taragupet, Bangalore. Two out of the partners are residents of Bangalore. C. Munireddy resides on Nanjappa Road, Shantinagar; Venkatareddy, the 1st petitioner resides at No. 20 (1), Sir M. N. Krishna Rao Road, Basavangudi, Bangalore. The Partners also are assessees to income-tax in their individual capacity.

3. So far as the firm is concerned, the assessments for four years 1962-63, 1963-64, 1964-65 and 1965-66 are pending, that is to say, the returns having been filed they are awaiting scrutiny by the Department. It is not clear from the affidavits filed whether the firm has filed its return for the current assessment year 1966-67. The accounting year of the firm is the year commencing from 1st July and ending with the 30th of the immediately succeeding month of June.

4. On 11-10-1966, searches were conducted at various offices of the firm and residences of its partners by the officers of the Income-tax Department pursuant to authorisations by the Commissioner of Income-tax (Central), Madras, the 3rd respondent in the petition, issued under Section 132 of the Income-tax Act, 1961. The residence of the 1st petitioner Venkatareddy at No. 20 (1), Sir M. N. Krishna Rao Road, Basavangudi, Bangalore, was searched by C. R. Sundararajan, Income-tax Officer, Central Circle I, Bangalore, the 1st respondent in the petition. The search of the business premises of the firm at No. 14 Second main Road, Taragupet, was

conducted by M. M. Kurup, Income-tax Officer, Central Circle II, Bangalore, the 2nd respondent in the petition. The search at the residence of Munireddy on Nanjappa Road, Shantinagar, Bangalore, was conducted by G. Sarangan, Income-tax Officer, Company Circle, Bangalore, and the search at the branch office of the firm at No. 34, Infantry Road, Bangalore, was conducted by S. P. Narayanappa, III Income-tax officer, City Circle II, Bangalore; these two officers are not impleaded as respondents in the petition.

5. Thereafter, this writ petition was presented to this court on 7th November 1966, the principal prayers in which are to quash by the issue of appropriate writ the warrants or authorizations said to have been issued by the 3rd respondent, the Commissioner of Income-tax, under Section 132 of the Income-tax Act and to direct the return of all books and documents taken possession of at the searches conducted as stated above. The preliminary orders were passed on the writ petition on 10th November 1966 admitting the petition and directing the respondents to deposit into this Court all books and papers seized from the Bangalore premises of the petitioners, with the further direction that neither side should have access to the books and papers or inspection thereof without an order of this Court. A further direction was also made requiring the production of authorization issued by the 3rd respondent.

6. Immediately on service of the copies of the order, the respondents appeared by counsel. On 17-11-1966, having obeyed the directions of this court in the aforesaid preliminary order, the respondents filed I. A. No. III praying for the return of books and papers put into Court with an undertaking to produce them whenever called upon by this Court. The application was supported by the affidavit of C. R. Sundararajan. With that affidavit he produced five authorizations issued by the Commissioner of Income-tax authorizing the searches at the four places mentioned above and another business place of the firm at 23-24, Basavaraja Street, Avenue Road, Bangalore. The last mentioned place, however, was not searched because it appears that the firm had closed down its business in the said premises about two years ago. To the affidavit were also annexed the lists of books and documents seized at the four places actually searched. Annexure F relates to the search at Venkatareddy's residence at 20 (1), M. N. Krishna Rao Road, Annexure G to the search at business premises of the firm at Taragupet. Annexure H to the search conducted at the business premises of the firm at the Infantry Road, and Annexure J to the search conducted at the residence of Munireddy on Nanjappa Road, Shantinagar, Bangalore. Items Nos. 76, 77 and 78 in Annexure F were three sealed packets containing documents of which a detailed inventory could not be prepared at the search for want of time. They were subsequently opened under orders of this Court dated 5-12-1966, made on I. A. No. IV filed on 2-12-1966, in the presence of the III Deputy Registrar of this Court, and a detailed inventory was prepared and filed into Court. In terms of the order, one copy of the inventory was given to the Department and another to the petitioners. The prayer in I. A. No. III was also granted with the direction that books and papers should be produced at the hearing and whenever called upon by this Court, recording at the same time the undertaking of the Department that till the disposal of this Writ petition, there will be no interrogation of the petitioners in respect of the contents of those documents.

7. Pursuant to the direction of this Court and the undertaking given by the Department, the books and papers were brought to court at the hearing of the Writ petition on 16th, 19th, 20th and 21st December, 1966. At the close of the arguments, we told the counsel for the respondents that the Department may retain the books and papers with it subject to the undertaking stated above, until

we produced orders in this Writ Petition.

8. The arguments in support of the prayer may be considered under two principal heads, viz.,-

(1) that section 132 of the Income-tax Act, 1961, is ultra vires and unconstitutional,

and

(2) that even otherwise, the impugned searches are liable to be struck down because the circumstances contemplated in Section 132 of the Income-tax Act as constituting sufficient justification for the issue of an authorisation to search do not exist in this case, and also because the searches have been conducted in a high-handed manner without regard for the rights of the petitioners or the safeguards provided by the law.

9. The second contention bears more upon the facts and circumstances of the case than upon any question which can be regarded as pure question of law. It will be convenient to deal with this at a later stage.

10. On the first question, it is not the contention that Parliament has no legislative competence whatever to enact Section 132 in the Income-tax Act, it being conceded that the impugned section can be related not only to the general topic of taxes on income enumerated in Entry 82 of the first list in the Seventh Schedule to the Constitution but also to the accepted incidental power of providing against evasion of taxes. The attack is on the ground that the impugned section is violative of the fundamental rights guaranteed under Article 19 (1) (d), (f) and (g) and Article 14 of the Constitution. In the course of the arguments on behalf of the petitioners, the fundamental rights guaranteed by Articles 21 and 31 (1) were also invoked and relied upon to invalidate Section 132 of the Income-tax Act.

11. The power of search and seizure was not originally one of the powers conferred on the assessing authorities under the Income-tax Act. Such powers were statutorily conferred on them only in 1956 in circumstances, to which we shall make a reference at a later stage. But such a power of search and seizure is and has been regarded in all systems of jurisprudence as an over-riding power of the State for protection of social security and other public interests, - the said power, however, being controlled or regulated by law.

12. In India, the best example we have of the statutory power of search and seizure and the regulation thereof by the statute is the power under certain sections of the Code of Criminal Procedure. Apart from the power of search and seizure in relation to particular matters or in special circumstances, the general provision we have is the one made in Section 96 of the Code of Criminal Procedure. Under the said section, where any Court has reason to believe that a person to whom a summons or order or a requisition has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition, or where such document or thing is not known to be in the possession of any person, or where the Court considers that the purposes of any enquiry, trial or other proceeding under the Code will be served by a general search or inspection, it may issue a search warrant. Section 97 empowers the Court which issues a search warrant to restrict the same in such manner as it may think fit.

Section 103 of the Code contains detailed provisions regarding the manner in which a search could be conducted. All such searches are searches conducted pursuant to and in accordance with the terms of a warrant issued by a Magistrate. The documents or things searched are also produced before the Magistrate whereafter they will be used as evidence in connection with some proceeding in accordance with the provisions, general or special, of the Evidence Act. With special reference to investigation into offences. Section 165 of the Code authorises a search by an investigating police officer even without obtaining a search warrant from a Magistrate in cases of emergency subject to certain strict conditions, such as the previous recording of the reasons by the investigating officer and subsequent submission by him of a report of the result of the search to the jurisdictional Magistrate. Such searches are also governed by the general provisions contained in Sections 102 and 103 of the Code.

13. The Code of Criminal Procedure is a pre-Constitution law. After the promulgation of the Constitution, questions were raised as to whether the provisions relating to search contained in the Code of Criminal Procedure were and if so, to what extent violative of any of the fundamental rights guaranteed under the Constitution.

14. The earliest case on the topic is the one decided by the Supreme Court and reported in *M. P. Sharma v. Satish Chandra*[1], The search in that case was conducted pursuant to a warrant issued under Section 96 of the Code of Criminal Procedure. The ruling is of importance not merely from the point of view of the specific questions decided in that case as to alleged violation of the fundamental rights guaranteed under Article 19 (1) (f) and Article 20 (3) of the Constitution but also from the point of view of the general content of the said fundamental rights themselves in comparison with the provisions of the IV Amendment of the Constitution of the United States of America.

15. According to the American IV Amendment,-

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the places to be searched, and the persons or things to be seized."

[1] AIR 1954 SC 300

The Supreme Court pointed out that the whole idea conveyed or all the ideas conveyed by the American IV Amendment has not or have not been incorporated in our Constitution and that therefore there is no justification to import it into a totally different fundamental right by some process of strained construction. It may, however, be noted that the first part of the IV Amendment providing against what are described as unreasonable searches and seizures may be regarded as sufficiently dealt with or accepted by the formulation and statement of fundamental rights under Articles 14, 21 and 31 (1) and also certain attributes of personal liberty enumerated in Article 19 as fundamental rights, as appears from certain subsequent rulings of the Supreme Court, to which we shall presently refer. The specific decision in that case was that searches under or pursuant to a warrant under section 96 of the Code of Criminal Procedure did not involve any violation of the protection against testimonial compulsion guaranteed by the fundamental right under Article 20 (3) or of the fundamental right of acquiring, holding and

disposing of property guaranteed under Article 19 (1) (f) of the Constitution. As to the latter, their Lordships observe as follows in para 2 of the judgment at page 302 of the Report :

> "So far as the contention based on Article 19 (1) (f) is concerned, we are unable to see that the petitioners have any arguable case. Article 19 (1) (f) declares the right of all citizens to acquire, hold and dispose of property subject to the operation of any existing or future law in so far as it imposes reasonable restrictions, on the exercise of any of the rights conferred thereby in the interests of general public. It is urged that the searches and seizures as effected in this case were unreasonable and constitute a serious restriction on the right of the various petitioners, inasmuch as their buildings were invaded, their documents taken away and their business and reputation affected by these large-scale and allegedly arbitrary searches and that a law (Section 96 (1), Criminal Procedure Code) which authorizes such searches violates the constitutional guarantee and is invalid.

But, a search by itself is not a restriction on the right to hold and enjoy property. No doubt a seizure and carrying away is a restriction of the possession and enjoyment of the property seized. This, however, is only temporary and for the limited purpose of investigation. A search and seizure is, therefore, only a temporary interference with the right to hold the premises searched and the articles seized. Statutory regulation in this behalf is a necessary and reasonable restriction and cannot 'per se' be considered to be unconstitutional. The damage, if any, caused by such temporary interference if found to be in excess of legal authority is a matter for redress in other proceedings. We are unable to see how any question of violation of Article 19 (1) (f) is involved in this case in respect of the warrant in question which purport to be under the first alternative of section 96 (1) of the Criminal Procedure Code."

16. The cases of *Wazir Chand v. State of Himachal Pradesh*[2] and *State of Rajasthan v. Rehman*[3] were cases of searches either without any authority of the law or without proper compliance with the relevant provisions of the law, which were struck down as illegal by the Supreme Court. In the former, the court held that the search was bad

[2] AIR 1954 SC 415

[3] AIR 1960 SC 210

because it had no authority of any law at all to support it; in thelatter, it was held that an obstruction to the search conducted by an Excise Officer in disregard of the provisions of section 165 of the Code of Criminal Procedure which applied to the situation did not constitute any offence whatever. In *Durga Prasad v. H. R. Gomes*[4]

the Supreme Court examined the legality of a search conducted under Section 105 of the Customs Act. That section empowers the Assistant Collector of Customs either himself to search or authorise an officer to search for goods, documents or things, if he 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 proceedings under the Act are secreted in any place; the provisions of the Code of Criminal Procedure are made applicable to such searches so far as may be, with the modification that in sub-section (5) of Section 165, the word 'Magistrate' wherever it occurs is substituted by the words Collector of Customs". Their Lordships rejected the argument that any specification or description of the documents in advance in the authorisation was essential but held that the search may be regarded as a general search (like one under Section 96 of the Code of Criminal Procedure), and that what was essential was that before such power was exercised,

the preliminary condition required by the section must be strictly satisfied, i. e., the officer concerned must have reason to believe that any documents or things which, in his opinion, are relevant for proceedings under the Act are secreted in the place searched.

17. In *Kharak Singh v. State of Uttar Pradesh*[5], while examining the constitutionality or otherwise of certain of the provisions of Regulation 236 of the U. P. Police Regulations providing for surveillance of persons suspected of subversive activities their Lordships made certain observations about the applicability of the principle underlying the American IV Amendment. While observing that our Constitution does not in terms confer any like constitutional guarantee their Lordships state that the principle could nevertheless be regarded as constituting the ultimate essential of ordered liberty and that the American IV Amendment embodies an abiding principle which transcends mere protection of property rights and expounds the concept of personal liberty. Their Lordships, of course, did not depart from the statement of law as to the content of the fundamental rights under our Constitution made in the case of AIR 1954 SC 300.

18. From the principles discussed in the above cases, it would follow that searches and seizures are in any jurisprudence an aspect of the overriding power of the State exercised in public interests either for ensuring social security or for protecting some public interests, but that the power is not to be exercised merely on what may be called an executive fiat. It is a power whose exercise has to be regulated and controlled by law. Law undoubtedly means a valid law which stands the test of competence and constitutionality under the Fundamental Law of the land - the Constitution. Under our Constitution, the tests of competence and constitutionality are twofold; In the first place, the law must be within the legislative competence of the legislature which enacts it, whether it be Parliament or a State legislature: secondly, the law should not be violative of any fundamental right guaranteed under part III of the Constitution.

[4](1966) 2 SCJ 665 : AIR 1966 SC 1209

[5] AIR 1963 SC 1295

19. The said two tests are applicable to all laws including the laws relating to taxation. At one time, there was no doubt a general impression that the taxation laws were controlled only by Article 265 of the Constitution and that the said Article did not enshrine any fundamental right. But the position has been clarified by the Supreme Court in later decisions and the principle clearly laid down that the taxation laws are also laws which must pass the test of being in accord with, and not violative of, the fundamental rights guaranteed under Part III of the Constitution.

20. In dealing with taxation laws inclusive of provisions not merely for assessment and collection of taxes but also of such provisions as those for searches and seizures the principal Articles in Part III of the Constitution which arise for consideration are Articles 14, 19, 21 and 31 (1). Article 14 guarantees to every person throughout the territory of India equality before the law or equal protection of the laws. Article 21 states that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 19 enumerates certain special attributes of larger right of personal liberty. Article 14, it is now well established does not prohibit class legislation or legislation governing a particular defined class but requires that the classification should be based on intelligible criteria distinguishing persons or things placed within a class from those left out of it and that the criterion or criteria selected must have a reasonable nexus or relationship with the object of the legislation. Of the attributes of personal liberty enumerated in Article 19 (1), those that are likely to be affected by particular provisions of the laws relating to taxation, - and those which it is alleged have been infringed in the present

case, - are the rights to move freely throughout the territory of India, to acquire, hold and dispose of property and to practise any profession or to carry on any trade, occupation or business enumerated in clauses (d), (f) and (g) of Article 19 (1). All these are subject to reasonable restrictions imposed in the interests of general public, - vide clauses (5) and (6) of Article 19.

21. Whereas Article 14 insists upon what is commonly described as a reasonable classification (i.e., reasonable in the sense explained above) and the fundamental rights under Article 19 (1) may be validly subjected to reasonable restrictions in the interests of general public, the fundamental rights under Article 31 (1) and Article 21 are that a person shall not be deprived of his property save by authority of law nor can he be deprived of his life or personal liberty except according to the procedure established bylaw. The law referred to in the said Articles, we need hardly repeat, should be a valid law. If a law is valid, in the sense that it is a law enacted by a legislature competent to enact it and is not violative of any of the fundamental rights guaranteed under other Articles - particularly Articles 14, 19 (1) (d), (f) and (g) for our present purpose, then the said law would be a good law for the purpose of Articles 21 and 31 (1) also. With special reference to taxation laws, we should mention, they are placed outside the purview of clause (2) of Article 31, because clause (5), inter alia, states that nothing in clause (2) shall affect any law for the purpose of imposing or levying any tax or penalty.

22. What is stated above is the effect of the decision of the Supreme Court reported in *Jaganath Baksh Singh v. State of Uttar Pradesh*[6] We might also refer in this

[6](1962) 46 ITR 169 : AIR 1962 SC 1563

connection to what the Supreme Court has stated, with reference to the application of Article 14 to taxation laws, in the case reported in *Khandige Sham Bhat v. Agricultural Income Tax Officer Kasaragod*[7], of the Report (ITR) their Lordships state :

> "But in the application of the principle, the Courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the legislature in the matter of classification so long it adheres to the fundamental principles underlying the said doctrine. The power of the legislature to classify is of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways."

23. In the case of Kharak Singh, AIR 1963 SC 1295, there was a difference of opinion among the learned Judges as to the relative position of Articles 19 and 21 of the Constitution the majority taking the view that Article 21 deals with the residue of personal liberty after carving out from its general content the particular instances of personal liberty set out in Article 19, and the minority expressing the opinion that there is no such carving out of a portion from out of the general right set out in Article 21 but that the two Articles must be regarded as two independent provisions, both equally important with the difference that the particular attributes of personal liberty set out in Article 19 can be controlled only by imposition of restrictions which are reasonable in the interests of general public. But there is not, so far as we are able to gather, any difference of opinion on the general question that the law referred to in Article 21 is a valid law; that is to say, a law which does not infringe any of the fundamental rights such as those enshrined in Articles 14 and 19.

24. We have therefore to examine, in the light of these principles, in the first instance, whether

Section 132 of the Indian Income-tax Act, 1961, is to any extent violative of the fundamental rights guaranteed under Articles 14 and 19 (1) (d), (f) and (g).

25. Before doing so, we might very briefly refer to the legislative history behind the present section 132 of the Income-tax Act.

26. As already stated, the authorities under the Income-tax Act did not originally possess the power of searching and seizure; they had only the powers normally exercised by Civil Courts under the Code of Civil Procedure, such as the powers of discovery and inspection, enforcing attendance of witnesses, examining them on oath, compelling the production of books and documents, issuing commissions, etc. In 1938, a Bill was moved in the Central Legislature to amend the Income-tax Act so as to confer certain additional powers to enter business premises, seize books, etc. The Bill was, however dropped on account of serious opposition to it. After the first World War, with a view to effectively tax vast profits said to have been made by certain category of persons compendiously referred to as war profiteers, the Taxation on Income (Investigation Commission) Act No. 30 of 1947 was enacted setting up an Investigation Commission with vast powers to which we shall refer presently. The said Commission in its report recommended the conferment of special powers of search and seizure on the Income-tax authorities subject to certain safeguards. In

[7](1962) 48 ITR (SC)21 : AIR 1963 SC 591. At p. 27

1948, some rules were framed under the said Act including such powers. Thereafter, certain of the sections of the said Act were declared ultra vires by the decisions of the Supreme Court, to which we refer presently. In 1956, a Commission called the Taxation Enquiry Commission appointed by the Central Government made a report and recommended that with a view to avoid or prevent evasion, it was essential to confer such powers on the Income-tax authorities. It is pursuant to their recommendation that Section 37 of the Income-tax Act, 1922, was recast. The section so recast reads as follows :

> "37 Powers of income-tax authorities -
> (1) The Income-tax Officer, Appellate Assistant Commissioner, Commissioner and Appellate Tribunal shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :
> (a) discovery and inspection.
> (b) enforcing the attendance of any person including any officer of a banking company and examining him on oath;
> (c) compelling the production of books of account and other documents; and
> (d) issuing commissions.
> (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 (5 of 1898), relating to searches shall apply so far as may be to searches under this section.

(3) subject to any rules made in this behalf, any authority referred to in sub-section (1) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act;
"Provides that an Income-tax officer shall not -
(a) impound any books of account or other documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefor.
(4) Any proceeding before any authority referred to in this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860)."

It will be noticed that the new powers are those defined in sub-section (2). The old powers which may be referred to as normal powers are those set out in the first sub-section. In 1958-59, there was another Enquiry Committee appointed by the Government called the Direct Taxes Administration Enquiry Committee. This Committee also had something to say about the special powers and their utility from the point of view of preventing evasion.

27. When the Income-tax Law was thoroughly revised and a fresh Act was enacted in 1961 (i.e., the present Act), the provisions of sub-sections (1) and (3) of Section 37 of the 1922 Act were re-enacted as Section 131 of the new Act and the provisions of Section 37 (2) of the 1922 Act were re-enacted in Section 132 of the present Act. There is not much difference between the old Section and the new one. A further amendment of Section 132 took place pursuant to the Finance Act of 1964. It was later amended once again by Ordinance No. 1 of 1965 which came into force on 6-1-1965 which was replaced by Central Act No. 1 of 1965 which came into force on 15-3-1965. The Act also made certain further changes in the Section. The Section as it now stands, which is the one for detailed consideration in this case, reads as follows :

"132 Search and seizure.-
(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 37 of the Indian Income-tax Act, 1922 (11 of 1922) or under Sub-section (1) of Section 131 of this Act, or a notice under Sub-section (4) of Section 22 of the Indian Income-Tax Act, 1922 or under sub-section (1) of Section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce or cause to be produced, such books of account, or other documents as required by such summons or notice, 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 purposes 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 authorize 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 power 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 of copies therefrom;

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

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

(3) The 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 or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

(4) The 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 132A 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 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 part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part, were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized.

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

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

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

(8) The books of account or other documents seized under sub-section (1) shall not be retained by the 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 authorized 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 places and time as the authorised officer may appoint in this behalf.

(10) If a person legally entitled to the books of account or other documents seized under

sub-section (1) objects for any reason to the approval given by the Commissioner under sub-section (8), 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 objections and requesting for appropriate relief in the matter.

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

(13) The provisions of the Code of Criminal Procedure, 1898 (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 purpose 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 of which may have been computed 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.

28. From this brief summary of the legislative history, two things become quite clear: The first is that the principle or the sole objective of enacting these special provisions was and continues to be prevention of evasion. The second is that the obvious purpose of amending the section from tune to time was to plug the loopholes, from time to time discovered or brought to light, with a view to make evasion of taxes more difficult, and simultaneously so to shape the law as to be in consonance with, and not violative of, the fundamental rights. Whether or not tax evasion has been made more difficult is a matter for the legislature itself to consider based on the experience gained by the actual working of the statutory provisions. But the question whether the attempts made to meet the challenge to the law on the ground of infringement or unreasonable abridgement of the fundamental rights is successful is a question for the courts to examine.

29. From that point of view, the one circumstance which is of considerable importance is the clear identification of the objective of the special provision, viz., prevention of tax evasion. That is of importance because it is with reference to it that the reasonableness of the classification for

purposes of Article 14 of the Constitution has to be examined. In fact, it is on this footing that the arguments on both sides have been addressed on the question of the constitutionality of section 132 of the Act under or in relation to Article 14 of the Constitution.

30. The arguments on behalf of the petitioners in this regard are principally two-fold. In the first place, it is contended that the impugned section deals with the same class of tax evaders as are sought to be dealt with under other relevant provisions of the Income-tax Act like section 147 of the Act of 1961, corresponding to Section 34 of the Act of 1922, and that because the impugned section picks out for special treatment some assessees from out of the general class of tax evaders and imposes on them a more drastic and more onerous type of procedure, the section must be struck down as manifestly discriminatory and thus violative of Article 14 of the Constitution. Secondly, it is stated that the section is wholly devoid of any guidance to the authorities functioning under the statute, on the basis of which they could pick out persons for special treatment under the section, and that, therefore, the said section should be struck down as conferring naked, unguided and arbitrary discretion on the authorities of such a type as to authorize unconstitutional discrimination.

31. Before dealing with these arguments which have special reference to present Section 132 of the 1961 Act, we might refer to two cases dealing with the constitutionality of Section 37 (2) of the 1922 Act, viz., *Surajmull v. Income Tax Commissioner*[8], and *S. Doongarmal Agency Ltd. v. K. E. Johnson*[9], In the former, all the three learned Judges constituting the Special Bench, which decided the case, unanimously held that Section 37 (2) was not violative of either Article 14 or Article 19 of the Constitution. In the latter, two out of the three learned Judges constituting the Full Bench held that the said Section 37 (2) was violative of Article 14 as well as Article 19 (1) (f) and (g), the other learned Judge holding that the said section was perfectly constitutional and involved no violation of any of the Articles mentioned above.

32. The said rulings have been cited not as having a direct bearing on the constitutionality of Section 132 of the 1961 Act but only as indicating or as containing a fairly full statement of the arguments in support of the opposing views on the constitutionality of the said old section, which may be regarded as proceeding on, more or less, the same lines as the arguments in support of the opposing view on the constitutionality of the present Section 132. Viewed in that light, the only considerations or propositions which may be regarded as basic considerations or propositions underlying the approach made to the question are the following :-

33. The general approach was whether sub-sections (1) and (2) of Section 37 dealt with the same topic or same class of persons and whether, for the purpose of making a choice between the two in relation to any given case, the section did or did not contain sufficient guidance to the authorities. All the Judges who decided the two cases, appear to proceed on the assumption that the object of Section 37 (2) was to prevent tax evasion. Although the argument that some sort of unreasonable classification from out of the larger class of tax evaders was sought to be made by the section appears to have been mooted before the Court, it does not appear that the argument was developed or pursued except against the background of the relative positions of sub-sections (1) and (2) of Section 37. The learned Judges, who upheld the constitutionality of the said section, were clearly of the opinion that the powers under sub-section (2) were intended to be exercised and could properly be exercised only in cases where it was apprehended that the exercise of normal powers under sub-section (1) would not yield the desired result of subjecting

to tax income, the tax in respect of which was sought to be evaded or was apprehended might be evaded. At the time the action impugned in the Calcutta case was taken, the rules referred to in section 37 (2) had not been framed; nevertheless, the Calcutta High Court rejected the argument that the power under Section 37 (2) could not be exercised in the absence of the rules and held that even in the absence of the rules, the section, in the light of the obvious policy or objective underlying the same, contained sufficient guidance to the

[8] AIR 1961 Cal 578

[9] AIR 1964 Ass 1 (FB)

authorities in the matter of deciding whether a particular case was a fit one for the exercise of special powers under Section 37 (2). The two learned Judges of the Assam High Court who took a different view proceeded on the footing that sub-sections (1) and (2) of section 37 covered the same field, that the former dealt with judicial powers and the latter with what the learned Judges call the police powers, and that the section was wholly devoid of any guidance to the authorities and must therefore be held to authorize discrimination violative of Article 14.

34. We have already copied Section 37 of the 1922 Act as well as present section 132 of the 1961 Act. On a mere reading of the two sections, one will not fail to notice that although the objective has remained the same, there are certain material differences in the details of the scheme under the two sections. It may not, therefore, be quite necessary to express our opinion about the two opposing views regarding Section 37 (2) arising out of the decisions cited above. As, however, the matter has been argued at some length and each side has tried to derive assistance from the lines of arguments considered and reasoning set out in the judgments, we will briefly indicate our views in the matter to the extent they are necessary for our discussion on the constitutionality of the present section 132.

35. Once it is recognized that the objective of the impugned provisions of the Act is prevention of evasion, the reasonableness of the classification, if any, sought to be made by the said provisions has to be examined only with reference to the said objective and not with reference to any other. If this central factor is borne in mind, it will become clear that the special provisions of sub-section (2) of Section 37 necessarily proceed upon the assumption that the normal powers under sub-section (1) might in certain circumstances be ineffective from the point of view of preventing evasion. That itself would indicate that circumstances, in which the exercise of special powers under sub-section (2) becomes necessary, are special circumstances incapable of being effectively dealt with under sub-section (1), - which means that the field of operation of the two is different and that the invoking of the powers under sub-section (2) can arise and can be justified only upon an opinion reasonably justifiable on peculiar circumstances of a case that the exercise of the normal powers under sub-section (1) would not help to achieve the purpose of preventing evasion. If we may say so with respect, the following observations made by Naidu, J. of the Assam High Court appear to miss the above essential feature bearing upon the reasonableness of the classification for the purpose of Article 14:

> "It is clear that both sections 37 (1) and 37 (2) of the Act deal with the production of the documents, account books, etc., required in connection with any proceeding under the Act, for the purpose of the Act, namely, the proper assessment of the income-tax leviable on and payable by any person liable for such levy and payment. Both the provisions cover the same subject and answer the same purpose and are capable of being employed against

probable income-tax assessees fulfilling the policy of the Act namely to secure correct assessment of the income-tax payable and to prevent the evasion of income tax."

(Vide para 55 at page 16 of AIR 1964 Assam 1 (FB)).

We are also unable to see the logic of the reasoning in the next succeeding paragraph of the judgment wherein it is stated that whereas for purpose of exercising the powers under sub-section (1) guidance can be sought from the Code of Civil Procedure which is not referred to in said sub-section, there is no guidance so far as the second sub-section is concerned in spite of the fact that it is expressly declared that the provisions of the Code of Criminal Procedure relating to searches shall apply, so far as may be, to searches under the sub-section.

36. It is unnecessary to say more about these rulings because the more serious argument in relation to present section 132 before us on the question of unreasonable classification is based not so much on the choice between the present section 131 (corresponding to old section 37 (1)) and the present Section 132 (corresponding to old Section 37 (2) ) as on the effect of the impugned section 132 in relation to the provisions of the present Section 147 (corresponding to old section 34). The reference to the powers under Section 131 in the argument before us is not of the type which found acceptance with Naidu, J. of the Assam High Court in relation to old Section 37 (1). The central point of the contention is that both Section 147 as well as Section 32 deal with the same class of assesses called the tax evaders and that the application of the more drastic and more onerous procedure under Section 132 to some only of such evaders leads to discrimination violative of Article 14 of the Constitution.

37. In developing the said argument and in support of it, reliance is placed on three rulings of the Supreme Court dealing with section 5 of the Taxation on Income (Investigation Commission) Act 30 of 1947, viz., *Suraj Mall Mohta and Co, v. Visvanath Sastri*[10]*, Sri Meenakshi Mills Ltd. v. Vishvanath Sastri*[11]*,* and *Muthiah v. Income Tax Commissioner, Madras*[12]*,*

38. The object of the said Act 30 of 1947 was to ascertain whether the actual incidence of taxation on income during the years immediately preceding its promulgation had been in accordance with the provisions of the law and whether the procedure for assessment and recovery of tax was adequate to prevent evasion thereof. Sub-sections (1) and (4) of Section 5 of the Act which were the subject of discussion in the above cases read as follows:

"5 (1) The Central Government may at any time before the first day of September 1948 refer to the Commission for investigation and report any case or points in a case in which the Central Government has 'prima facie' reasons for believing that a person has to a substantial extent evaded payment of taxation on income, together with such material as may be available in support of such belief and may at any time before the first day of September 1948 apply to the Commission for the withdrawal of any case or points in a case thus referred....

5(4) If in the course of investigation into any case or points in a case referred to it under sub-section (1), the Commission has reason to believe:

(a) that some person other than the person whose case is being investigated has evaded payment of taxation on income, or

[10] AIR 1954 SC 545 [12] AIR 1956 SC 269

> (b) that some points other than those referred to it by the Central Government in respect of any case also require investigation, it may make a report to the Central Government stating the reasons for such belief and, on receipt of such report, the Central Government shall, notwithstanding anything contained in sub-section (1), forthwith refer to the commission for investigation the case of such other person or such additional points as may be indicated in that report."

Other sections of the Act gave vast powers to the Commission set up under section 3 of the Act. Apart from being authorised to collect material from different sources against the assessee behind his back with liberty to the assessee to look only such portion thereof as the Commission considered relevant, the most drastic provision was that in all assessment or re-assessment proceedings taken in pursuance of a direction of the Commission, the findings recorded by the commission, were to be final, without any right to the assessee to get them corrected by appeal or other proceedings directed against the findings of the Commission.

39. In the case of Suraj Mall Mohta and Co., reported in AIR 1954 SC 545 which was a case of a reference made pursuant to sub-section (4) of Section 5 of the Act, the principal arguments on behalf of the assessee were that sub-section (1) of Section 5 was not based on any valid classification, the word 'substantial' being vague and uncertain and having no fixed meaning so as to furnish a basis for any classification at all, and the sub-section (4) had no independent existence and should therefore fall along with sub-section (1). On behalf of the Department, the principal answer was that sub-section (1) of Section 5 was based on a broad and rational classification taking in persons who had made vast profits on account of war conditions during an identifiable or ascertainable period and who may be briefly described as war profiteers, and that sub-section (4) referred to the same class and not to any other classes. The Supreme Court did not pronounce on the arguments relating to sub-section (1), proceeding on the assumption that the argument of the Department in relation thereto may be correct, held that sub-section (4) on its language cannot be restricted in its operation to war profiteers alone but to all persons who had evaded tax and who could be brought within the ambit of sub-section (1) of Section 34 of the Indian Income-tax Act, 1922, and that therefore the imposition on some out of those evaders of the drastic procedure under Act 30 of 1947, while leaving the rest to be governed by the more humane provisions of Section 34 of the Income-tax Act, 1922, with the right of appeal, etc., amounts to a discrimination in contravention of Article 14 of the Constitution. Hence, sub-section (4) of Section 5 was struck down as unconstitutional.

40. After the decision, - and obviously with a view to meet the criticisms addressed against the constitutionality of Section 5 (1) of Act 30 of 1947, - Indian Income-tax Amendment Act, 1954 (33 of 1954), was passed whereby Section 34 of the Indian Income-tax Act was amended by inserting new sub-sections (1-A) to (1-D). These amendments made it possible to ascertain the class of substantial evaders referred to in sub-section (1) of Section 5 of Act 30 of 1947.

41. The result of this amendment was that the class of assessees evading tax sought to be dealt with under sub-section (1) of Section 5 of Act 30 of 1947 became incorporated into Section 34 of the Indian Income-tax Act, 1922. Consequently, on the reasoning in Mohta's case, AIR 1954 SC

545 cited above, sub-section (1) of Section 5 was struck down as unconstitutional in the case of Shree Meenakshi Mills Ltd. reported in AIR 1955 SC 13. The same view was taken by the majority in the case of Muthiah reported in AIR 1956 SC 269.

42. The difference in principle becomes clear from another decision of the Supreme Court reported in *T. K. Musaliar v. Venkatachalam*[13], In that case, their Lordships dealt with the Travencore Taxation of Income (Investigation Commission) Act which was pari materia with the Indian Act 30 of 1947. But the position in the Travencore case was that whereas Section 34 of the Indian Income-tax Act, 1922, underwent the amendments of 1955 referred to above, the corresponding Section 47 of the Travencore Income-tax Act continued to be pari materia with the unamended Section 31 (1) of the Indian Income-tax Act, 1922. Their Lordships, taking up for decision the point which was left open in the case of Mohta, AIR 1954 SC 545 regarding Section 5 (1) of the Investigation Commission Act, held that the class of substantial evaders mentioned therein was not a vague, indefinite or undefinable category but in the light of the attendant circumstances, could be clearly recognized as the class described as war profiteers and quite different from the general class dealt with under Section 47 of the Travencore Income-tax Act corresponding to unamended section 34 (1) of the Indian Income-tax Act, 1922. In that view, their Lordships upheld the constitutionality of Section 5 (1) of the Travencore Investigation Commission Act.

43. The general effect of the decisions discussed above relating to the Investigation Commission Act is that Section 34 of the Indian Income-tax Act, 1922, corresponding to Section 147 of the present Act is a provision intended to prevent evasion of tax and that therefore to subject persons who can be dealt with under the said provisions to a different and more drastic or more onerous procedure for the same purpose of preventing evasion is discriminatory, because it would amount to applying two standards to the same class. The question now is whether the impugned Section 132 of the 1961 Act is open to such a criticism or attack.

44. Now, Section 132 of the 1961 Act is directed against three types of persons –

> "(1) those who have omitted or failed to produce books or documents as required by any summons or notice issued to them; '
> (2) those who, whether so summoned or not to produce documents, will not or would not produce books of account or documents, and
> (3) those who are believed to be in possession of money, bullion, jewellery or other valuable article or thing representing, either wholly or in part, income or property which has not been disclosed for purposes of taxation."

When the Director of Inspection or the Commissioner of Income-tax in consequence of information in his possession has reason to believe that any person falls under any one or more of the three categories mentioned above, he may authorize one of the

[13] AIR 1956 SC 246

officers of the Department mentioned in the section to conduct a search and seize any such books of account or documents, money, jewellery or other valuable article or thing found as a result of the search. The searching officer is also empowered by the section to examine any person on oath at the time of the search who is found to be in possession or control of any book, document, money, etc. The provision made in the section for the period of retention of the books or

documents goes to show that they are to be used in evidence in connection with any assessment proceedings under the Act and that they are to be returned after the said purpose is served. The money, bullion, jewellery or other valuable article or thing seized at the search is to be dealt with under sub-sections (5) and (6) of the Section. The general effect of the said sub-sections is that an estimate of undisclosed income is to be made in a summary manner to the best of his judgment by the assessing Income-tax Officer and that only so much of the said assets are to be retained as are in his opinion sufficient to satisfy any existing liability for payment of tax and an estimated liability for payment of tax in respect of the undisclosed income; the balance has to be returned. Section 132-A referred to in sub-section (6) of Section 132 contains detailed provisions regarding the manner in which the seized assets are to be applied, all of which go to show that they are to be applied in discharge of tax liability or estimated tax liability.

45. The impugned Section 132 is therefore intended to achieve two limited objectives, - (1) to get hold of evidence bearing on the tax liability of a person which the said person is seeking to withhold from the assessing authority and (2) to get hold of assets representing income believed to be undisclosed income and applying so much of them as may be necessary in discharge of the existing and anticipated tax liability of the person concerned.

46. Apart from the reasonableness or otherwise of this provision which we will separately consider in connection with the arguments about the alleged infraction of the fundamental rights under Article 19, the point to note at this stage is that Section 132 does not purport to substitute a procedure of assessment and final quantification of tax liability for the procedure provided by section 147 of the 1961 Act relating to income which has escaped assessment or the normal procedure of assessment under the Act. The books and documents seized, as already pointed out, are intended to be used and can only be used as evidence in connection with a pending normal assessment or a proposed reopening of assessment or reassessment under Section 147 of the Act. The seizure of assets is for the satisfaction of any tax liability in respect of which the person concerned is in default or is deemed to be in default and for satisfaction of any anticipated liability which may arise upon a reassessment in respect of undisclosed income.

47. So far as the seizure of material in the nature of evidence is concerned, like books of account and/or documents, it cannot be said either that a different procedure for assessment or reassessment is being pursued or applied in the case of persons who can be normally dealt with under Section 147 or that a person to whom the provisions of Section 132 are applied is sought to be deprived of his normal right of appeal, second appeal and reference to High Court as a last resort. Although some special powers are exercised with a view to get hold of evidence which is sought to be withheld, once the evidence is made available it is dealt with in the same way as evidence produced in the normal way.

48. The only question is whether a further classification of evaders for the purpose of exercising special powers of eliciting evidence as aforesaid is a classification which is not sanctioned by Article 14 of the Constitution. For this purpose, as already stated, the starting point of enquiry is what is the object of this legislation. The answer, as already given, is prevention of evasion. That attempts to prevent evasion are or may be in the nature of what is called plugging the loopholes in the law is not and cannot be disputed. The way in which the law seeks to prevent evasion is to make it impossible or more difficult for evaders to pursue several ways in which tax could be evaded. One of the ways certainly is the withholding of evidence on the basis of which a correct

computation of income for, assessment may be made and the correct amount of tax ascertained. Steps taken therefore to prevent or frustrate attempts to withhold evidence and to get hold of evidence which is sought to be withheld from or made unavailable to the assessing authority would surely be one of the legitimate methods in which the law could seek to prevent evasion of tax. The powers under Section 132 are not to be used unless the Director of the Inspection or the Commissioner of Income Tax in consequence of information in his possession has reason to believe that the assessee in question has withheld or is attempting to withhold valuable evidence relevant for the purpose of correct assessment. If there is such belief reasonably, entertained by the appropriate officer on the basis of information in his possession, that belief itself would furnish the criterion for a reasonable classification for Article 14 because the criterion has a direct and perfectly reasonable relation with the object of the legislation, viz., prevention of evasion of tax.

49. So far as the dealing with the assets seized at the search pursuant to Section 132 is concerned, the argument strongly pressed before us was that the relevant provisions of the section prescribe a distinct, different and more onerous procedure, any errors committed in reation to which are subject to correction only by means of a petition of objection presented to the prescribed authority under sub-section (11). But upon a closer scrutiny of the provisions in the course of the arguments this extreme position had to be and was given up. It is clear that the estimation of undisclosed income and of the anticipated tax liability in respect of it is only for the purpose of determining the extent of the assets to be retained, the purpose of retention being the satisfaction of existing or anticipated tax liability. The section does not, in our opinion, authorize or empower the Income-tax Officer to complete any assessment in a summary manner to the best of his judgment depriving the assessee of the benefit of other normal provisions of the statute relating to assessment or reassessment. The provision was compared in the course of the arguments with the provisions of Section 69A of the Act and the point was made that the relevant provisions of the impugned section were sought to be substituted for Section 69A. We find it difficult to accept the contention. Section 69A forms part of the general scheme for the computation of income and provides for a presumption in the case of money, bullion, jewellery, etc., of which the assessee is found to be the owner in any financial year and in respect of which he is not in a position to offer any explanation about its nature or the source of its acquisition. No such actual computation on the basis of the presumption is permissible under sub-section (5) of the impugned Section 132. The estimation, as already pointed out, is only for the purpose of determining the amount to be retained to go in satisfaction of the existing or anticipated tax liability.

50. Regarding the application of the assets towards existing liability, it is contended that the assessee is sought to be deprived of the benefit of a notice of demand under Section 156 and of the time for payment provided under Section 220 of the Act. But the argument is unavailable because the existing liability referred to in sub-section (5) of Section 132 is a liability in respect of which the person concerned is already in default or can be deemed to be in default which clearly gives him the benefit of Section 220.

51. As to the provision made for retention of the assets to go in discharge of anticipated tax liability in respect of undisclosed income, the question is whether there is any departure from the normal procedure in disregard of the mandate of Article 14. In one sense, it appears to be not far different from the normal provisions for advance payment of tax. But to the extent it can be regarded as a departure from the normal procedure, it is, in our opinion, capable of being

supported as proceeding upon a classification reasonable for the purposes of Article 14. Here again, we must remember that the object of the statute is preventing evasion of tax. One of the ways in which payment of tax is evaded is by not disclosing income and converting undisclosed income into bullion, jewellery, etc., or by simply secreting money. The steps taken to get at that money or other things into which money is converted, would be one of the methods of preventing evasion and of collecting taxes sought to be evaded. This power is to be exercised, be it remembered, only when the appropriate authority has in consequence of information in his possession reason to believe that the money, bullion or the like in the possession of the person concerned represents either wholly or partly undisclosed income or property. That belief reasonably entertained on the basis of information in possession of the appropriate officer would furnish the criterion for classification, which criterion clearly bears a direct and reasonable relationship with the object of the law.

52. The result of this discussion is –

(1) that the impugned section 132 does not to any extent do away with the applicability of the normal procedure prescribed under the statute for assessment or reassessment of income, nor does it therefore deprive the assessee concerned of his normal rights of appeal, second appeal and reference to High Court;
(2) that the provisions of the impugned section 132 made with the object of preventing evasion of payment of tax are limited to getting hold of evidence sought to be withheld from the assessing authorities and getting at income believed to have been undisclosed with a view to bring it under assessment and ensure recovery of tax evaded or sought to be evaded; and
(3) that the application of the special provisions of the impugned section is possible only when the appropriate authority on the basis of information in his possession has reason to believe that the assessee is withholding or attempting to withhold evidence or is in possession of undisclosed income either in the shape of money or in the shape of bullion, jewellery or the like, which belief furnishes the criterion for making a separate classification having a reasonable relation with the object of the law.

53. This answers the first part of the arguments in relation to Article 14 of the Constitution.

54. We shall now proceed to examine the second part of the argument dealing with the alleged arbitrary nature of the powers under Section 132 and the alleged absence of guidance therein leading to unconstitutional discrimination.

55. This second part of the arguments appears to us to be weaker than the first one. Even with reference to old Section 37 (2) which did not clearly specify the circumstances in which the powers thereunder may be validly exercised, the Calcutta High Court had, as already stated, taken the view that the policy of the statute and the clear purpose underlying the special provisions were sufficient to indicate that those special powers were expected to be and could validly be exercised only in cases where it was apprehended that the exercise of the powers under sub-section (1) of Section 37 would not yield the desired result of preventing evasion of tax. The present section 132 clearly states the circumstances in which and the conditions subject to which

the powers thereunder are to be used. There can be little doubt that the entertainment of a reasonable belief of the type mentioned in the first sub-section by the appropriate officer is the condition precedent to the exercise of the powers under the section. That such is the position in law and that the essential pre-requisite to the exercise of the special power is the strict compliance with the preliminary conditions prescribed by the section follows not only from the normal rule of interpretation applied to provisions of this nature but also from a direct decision of the Supreme Court in regard to Section 105 of the Customs Act already referred to by us, viz., 1966 (2) SCJ 665 : AIR 1966 SC 1209. It should be noted further that the preliminary conditions set out in the first sub-section of the section are analogous or similar to the conditions stated in Section 96 of the Code of Criminal Procedure as necessary for the issue of a search warrant by the Magistrate.

56. In view of the said detailed provisions of the section, it is difficult to contend that the Director of Inspection or the Commissioner of Income-tax is without any guidance in the section for deciding when and in what circumstances the authorisation for conducting a search should be issued. The use of the words "has reason to believe" on the basis of information in his possession excludes the possibility of any unreasonable exercise of the power. The basis for the exercise of the power, it should be noticed, is not mere suspicion but a reasonable belief upon information already in possession of the appropriate officer. It would also, in our opinion, postulate that information in the possession of the officer is not a mere canard or an unverified piece of gossip but information which, in the circumstances, may be regarded as fairly reliable, because no belief can ever be said to flow reasonably from anything but information which may be regarded as fairly reliable. Hence, the careful selection of these words by the statute and the drastic nature of the powers necessarily point to a judicial application of the mind to some substantial material by the officer acting with a sense of responsibility. If so much can be gathered from the wording of the section, - and we feel convinced that it is the only reasonable and fair way of reading the same, - the suggestion that the section gives no guidance or that it authorizes or renders possible arbitrary exercise of the power becomes difficult of acceptance.

57. The further argument that the section does not make it necessary or obligatory for the authorizing officer to specify or particularize the documents or that it permits of the issue of an authorization for what may be regarded as a general search need not necessarily lead to arbitrary exercise of the power. In the first place, it may not be possible in the nature of things to give a clear description of the books or documents, item by item; secondly, the books and documents to be searched for are described in the section itself as those which will be useful for or relevant to any proceeding under the Act; and thirdly the searching officer is also authorized to seize only such books or documents, that is to say, books or documents which will be useful for or relevant to any proceedings under the Act, which means that the searching officer is also required to apply his mind to the question of usefulness or relevance of the books of account or documents, as the case may be.

58. The same or similar application of the mind by the searching officer is required when he makes up his mind to seize any money, bullion or jewellery or the like. He could do so only if he believes prima facie that the said money or articles represent either wholly or partly undisclosed income or property. Any statement on oath of any person which he is empowered to record under sub-section (4) of Section 132 can, according to the said sub-section, be used as evidence in any proceeding under the Act, but cannot, in our opinion, be said to be immune from the test of

cross-examination at the stage of hearing or trial of the proceeding referred to. The retention of any part of the seized assets under sub-section (5) is to be done only after affording a reasonable opportunity to the person concerned of being heard and after making such enquiry as may be prescribed. The nature of enquiry is prescribed in Rule 112A of the Income-tax Rules 1962. The rule requires the issue of a notice to the person concerned fixing a date for enquiry, giving him an opportunity to explain his position or to produce or cause to be produced evidence on which he may rely for explaining the position or the source of acquisition of the assets. While sub-rule (3) thereof states that –

> "The Income-tax Officer may examine on oath any other person or make such other enquiry as he may deem fit."

Sub-rule (4) expressly provides that before any material gathered in the course of the examination or enquiry under sub-rule (3) is used by the Income-tax Officer against any person, the person concerned or person affected should be given reasonable notice to show cause why such material should not be used against him. It has been argued that the use of the expression "such other enquiry as he may deem fit" in sub-rule (3) in effect fails to prescribe the nature of the enquiry as required by the section by leaving it to the officer to proceed in his own way uncontrolled by any rules. The first suggestion that no enquiry is prescribed is not correct, because sub-rules (1) and (2) make sufficient provision for the issue of notice to the person concerned and the affording of an opportunity to him to adduce evidence. The further enquiry referred to in sub-rule (3) is obviously intended to empower the officer to test the veracity of the material, if any, already placed on record by the person concerned. But the use of such material against the said person is made conditional upon the person concerned being given reasonable notice to show cause why such material should not be used against him. While showing such cause, we are clearly of the opinion that the person concerned will be entitled to ask for an opportunity to cross-examine any person whose statement on oath has been recorded by the officer in the course of further enquiry under sub-rule (3) and also to call as a witness any person from whom the officer might have gathered material or any other person who may be in a position to speak to the value or veracity of such material.

59. An order made by the officer under sub-section (5) is subject to correction by the prescribed authority under sub-section (11) of Section 132.

60. Over and above all these safeguards, the action taken or orders made under Section 132 are really in the nature of interlocutory orders in aid of the ultimate order of assessment or reassessment which may be made under the other normal provisions of the statute, in respect of which the assessee has the normal right of appeal, second appeal, and reference to High Court.

61. So far as the conduct of the search itself is concerned, there is the general provision in sub-section (13) of Section 132 to the effect that the provisions of the Code of Criminal Procedure relating to searches and seizures shall apply, so far as may be, to searches and seizures under sub-section (1) of Section 132 of the Income-tax Act. One of those provisions would certainly be Section 103 of the Code of Criminal Procedure which contains salutary provisions, the value of which has always been recognized.

62. With such clear indication of the policy and the objective of the statute specifying all preliminary conditions on the satisfaction of which alone an authorization for search could issue, and with all the safeguards as to the manner in which the search has to be conducted and enquiries in relation to it are to be held or made with full opportunity to the person concerned to explain away the suspicious circumstances appearing against him, we do not think it is possible to argue that the impugned section suffers from the vice of either lack of guidance or authorizing arbitrary executive action.

63. The only argument strongly pressed on this part of the case is that the initial authorization of the search is left in the hands of an officer of the Department and not in the hands of an independent person like the Magistrate under Section 96 of the Code of Criminal Procedure. It is urged that an officer of the Department, however high, cannot be said to be wholly free from an interest in the result in the same way as a judicial Magistrate may be said to be and that therefore it may not be quite safe to proceed upon the assumption that the departmental officer will bring to bear on the question an independent, judicial, unbiased mind. It is further stated that an order by a Magistrate directing the issue of a warrant is amenable to correction by the High Court on revision and that there have been instances in which the High Courts have quashed the warrants issued by the Magistrates without proper application of the mind and without ascertaining whether the circumstances justifying the issue of a warrant actually exist.

64. It is no doubt true that an officer of the Department cannot be said to be wholly free from some interest in the result as a Magistrate can be said to be. But the result that he is interested in is the same as, and not different from, the object of the statute itself, viz., bringing under assessment all income liable to tax and preventing evasion of tax. Such an interest cannot be said to disable an officer from performing the statutory duties impartially and with a sense of responsibility, unless of course any personal bias is alleged and is proved. Ordinarily, in the case of high ranking officers functioning under statutes and discharging statutory duties, bias is not to be presumed because they are expected to act with a sense of responsibility appropriate to their position and duties which the statutes impose on them. Wherever personal bias is proved and wherever an officer acts in disregard of his statutory responsibility and issues an authorization without satisfying himself about the preliminary conditions required by the particular statute, such whimsical act on his part is certainly open to correction by the High Court under Article 226 of the Constitution.

65. We are not therefore satisfied that the safeguards provided in Section 132 of the Income-tax Act are ineffective, illusory for reason only for the fact that the original authorizations for search are issued by an officer of the Department and not by an independent authority like the Magistrate.

66. We therefore hold that Section 132 of the Income-tax Act, 1961, is not violative of the fundamental right guaranteed under Article 14 of the Constitution.

67. Regarding Article 19, the line of reasoning in the judgment of the Supreme Court in the case of M. P. Sharma, AIR 1954 SC 300 furnishes, in our opinion, an almost complete answer to the argument that the impugned Section 132 of the Income-tax Act imposes unreasonable or excessive restrictions on the fundamental right under the said Article.

68. As pointed out by their Lordships in that case, search by itself does not constitute an invasion of any fundamental right, and the seizure of books is temporary and so also the seizure of the assets. When the assets are to be applied only in discharge of tax liability, the excess over which is to be returned, there is also no deprivation of property in contravention of the constitutional provisions in that regard. That restrictions, if any, are imposed in public interests is clear from the fact that it is certainly in the interests of the public that taxes legitimately exigible are recovered and not evaded.

69. The two arguments in support of the theory of unreasonableness are that the distinguishing feature of Sharma's case, AIR 1954 SC 300 is that the independent mind of a judicial Magistrate is interposed between the executive action and the citizen who is the object of such action and that the seizure of material under Section 8 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, was struck down as unconstitutional by the Supreme Court in the case of *Hamdard*

*Dawakhana v. Union of India*[14]*,*

70. Regarding the interposition of a Magistrate's mind, we have already discussed the matter at some length. The reason for the decision in the case of Dawakhana relied upon was the opinion of their Lordships that the impugned portion of the section went far beyond the purpose for which the Act was enacted and the absence of safeguards which the legislature has thought it necessary and expedient to provide in other statutes like the Indian Drugs Act, made the restrictions quite unreasonable (Vide paragraph 36 of the judgment at page 568 of the Report). In the present case, it cannot be said that there are no safeguards at all. We have already expressed our opinion that the section itself provides adequate safeguards.

71. So far as the seizure is concerned, it cannot certainly be said to be excessive in the case of assets for the reasons already stated. In the case of books and documents; an argument is advanced that the period of retention may conceivably be excessive in view of the definition of the word 'proceeding' in connection with which the books and papers may be retained, contained in the second Explanation to the section. In the said Explanation the proceedings are said to include not merely proceedings pending on the date of the search or completed prior thereto but also proceedings which may be commenced after the date of such search in respect of any year. So far as the pending proceedings are concerned, the retention of books for their purpose may not be and is not to be excessive. The proceedings referred to as those which may be commenced after the date of the search are apparently those relating to reopening of closed proceedings under Section 147 initiated in the light of the result of the search. The only basis for the argument that the period of retention may be conceivably excessive is the use of the words "in respect of any year" occurring at the end of the Explanation. At first sight, it would appear that the expression 'any year' may take in every subsequent year without any limitation whatever. We do not think, however, that such an extended meaning can be given to the expression as suggested. A reasonable construction should always be placed upon the provisions of law, - an interpretation which subserves the purpose of the law and does not reduce it to an absurdity. What is obviously intended in this case is that the books and papers seized should be available as evidence for the purpose of completing pending assessments, for bringing under assessment income discovered at the search to have been omitted to be disclosed within the period of limitation prescribed by the statute for reopening of assessments already closed and for completing the assessments so

reopened consequent upon information gathered at the search. It also appears obvious from the context that the expression "in respect of any year" occurring at the end of the Explanation should have the same meaning as the same expression occurring at the commencement of the Explanation which, there is not doubt, refers to years relevant to assessments pending at the time of the search or already closed by that time. That such is the intention is also clear from the fact that sub-section (8) prescribes a period of 180 days from the date of seizure as the maximum for retention of books and papers, requires the seizing officer to record his reasons in writing for extending the period and obtain the approval of the Commissioner for further retention, and impose a further limit to the extension in relation to proceedings for which the said books and papers may be relevant. The Commissioner's approval for retaining the books and

[14] AIR 1960 SC 554

papers beyond the period of 180 days is also subject to control and correction by the Central Board of Revenue under sub-section (10) of the Section.

72. We are therefore of the opinion that the restrictions imposed by Section 132 on the fundamental rights guaranteed under Article 19 (1) (f) and (g) are reasonable and are in the interests of the general public.

73. As to the fundamental right under Article 19 (1) (d) the restriction of movement is limited to the period of search, and further the presence of the person at the search is really in his interest. The restriction is temporary and perfectly reasonable.

74. If therefore the law is thus a valid law involving no infringement of Article 14 or Article 19 of the Constitution, there is no violation of the fundamental right of personal liberty under Article 21 either, because to the extent a person is deprived of his personal liberty by reason of the search, such deprivation is in accordance with a valid law.

75. For all these reasons, we hold that the impugned Section 132 of the Income-tax Act, 1961, is neither incompetent nor invalid as infringing any of the fundamental rights guaranteed under Articles 14, 19, 21 and 31 of the Constitution.

76. We come now to the second point in the case, viz., whether the search itself has been conducted without justification and in a high-handed manner.

77. The first point for consideration under this is whether the Commissioner, in issuing the authorizations, can be said to have entertained such reasonable belief as is required by the first sub-section of Section 132.

78. The statement in the authorizations is that he has reason to believe that the circumstances mentioned in clauses (b) and (c) of the first sub-section of Section 132 exist; that is to say, the Commissioner believes that the assessee in this case would not produce or cause to be produced books of account or other documents which will be useful for or relevant to proceedings under the Act, if required or summoned to produce the same, and also that the assessee is in possession of money, bullion, jewellery, etc., which either wholly or partly represents income or property not disclosed. The authorization also states that the Commissioner has reason to suspect that such books, documents, money, bullion, etc., have been kept and are to be found at the various places authorized by him to be searched.

79. The Commissioner has filed a counter-affidavit to which he has annexed a record of the reasons made by him pursuant to the relevant rules before issuing the authorizations. He stated therein that he has perused certain reports of the Assistant Director of Inspection relating to the assessee, that there are several circumstances indicating that the assessee and his partners have not been declaring their correct income, that their statement regarding the absence of books or loss of books is not believable and that there is information furnished by some informants that though the books are said to have been lost, several statements and documents written in the course of the business are still available which may be of considerable help in determining the correct income. He also states that he has received reports that the assessee was bundling up some of the statements probably with a view to place them beyond the reach of the Department. He therefore states that "it is clear that the assessee will not produce these papers if called for". He also refers to the existence of several loans on Hundis believed to be bogus Hundis and to the reports that the assessee and its partners have lot of unaccounted wealth in the form of cash, jewellery, etc.,

80. In the affidavit, he had taken up the stand that the reports received from his subordinate officers were confidential documents in respect of which he could claim privilege. This position was, however, later given up when we indicated that the position taken up by him may not be quite correct, specially in view of the powers of this Court under Article 226 of the Constitution. The Original reports were later placed before us for our perusal and authenticated copies thereof placed in the record of this petition, and copies furnished to the petitioners' counsel.

81. A perusal of these reports submitted by the Assistant Director of Inspection (Intelligence) to the Commissioner of Income-tax go to show that considerable material had been collected in respect of the alleged loss of books and nondisclosure of income and accumulation of wealth not explicable on the basis of the income actual returned for assessment. The reports also record information made available to the Department by certain informants. Such information is to the effect that the reported loss of books by fire on two different occasions made by the assessee is not completely true that all the books have not been lost, that some books and papers which may be useful for assessment were still available and secreted at certain places. It was also mentioned that a secret circular had been issued to all the branches of the assessee-firm immediately to send up to the Head Office all papers and documents in their possession, offering cash bonuses for those who did the work briskly. The informants also pointed to the vast growth of wealth of the firm and its partners and alleged that cash, gold, jewellery, documents relating to purchases of properties, etc., could be found either in the residences of the partners or in bank lockers.

82. The information given by informants to the officers of the Department which was reduced to writing and got signed by them was also made available to us in original. But we do not propose to make use of it for our decision. We looked into it only for the purpose of satisfying ourselves that the informants are persons who may be reasonably said to have personal knowledge about the matters they are speaking about.

83. We have already stated what, according to us, is the meaning and effect of the expression "on the information in his possession had reason to believe" occurring at the commencement of the section, and it is unnecessary to repeat the the same here.

84. We should now refer to a short-note of the decision of the Supreme Court in *Civil Narayanappa v. Commissioner of Income Tax*[15], Bangalore published at page 9 of the short note section of part 3 of 1967-63 ITR 219 : AIR 1967 SC 523. Dealing with the similar expression "The Income-tax officer has in consequence of information in his

[15] Appeal No. 562 of 1965

possession reason to believe" occurring in Section 34 (1) (b) of the Income-tax Act, 1922, their Lordships explained the legal position as follows:

> "But the legal position is that if there are in fact some reasonable ground for the Income-tax officer to believe that there has been any non-disclosure as regards any fact, which could have a material bearing on the question of under-assessment, that would be sufficient to give jurisdiction to the Income-tax Officer to issue the notice under Section 34. Whether these grounds are adequate or not is not a matter for the Court to investigate. In other words, the sufficiency of the grounds which induced the Income-tax officer to act is not a justiciable issue. It is of course open for the assessee to contend that the Income-tax Officer did not hold the belief that there had been such non-disclosure. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. Again, the expression "reason to believe" in section 34 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 a 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."

We think the same principles would apply to the same expression occurring in Section 132 of the Income-tax Act and would indicate the extent of judicial review of the action of the Commissioner of Income-tax in issuing the authorizations for search under the said Section.

85. What the High Court has to examine in such a case would be whether there was in fact information in possession of the Commissioner and whether there is a rational connection between the information and the belief entertained by him. As already explained by us, the information itself, will have to be of a fairly reliable character - whatever may be the source of it, - because unless the information is of such a character, it cannot furnish a reasonable basis for entertaining the belief that any of the circumstances mentioned in the section exists. Secondly, the information must have relevant bearing on the formation of the belief and must not be extraneous or irrelevant to the purpose of the section. If the High Court is satisfied on these two matters, the adequacy or sufficiency of the grounds will not be a matter for the High Court to investigate.

86. Viewed in this light, the position in this case is that there was in possession of the commissioner a considerable body of information originally received by his subordinate officers from persons who may be said to have personal knowledge about the matters they were speaking

to, and sifted or checked by officers of the Department whose duty it is to collect such intelligence. He had also had access to the assessment record of the assessee. That record showed, among other things, that out of the returns in respect of four years which are now pending scrutiny, two were supported by regular balance sheets or similar statements of account whereas the other two were prepared only on the basis of estimated figures. The assessee had also reported that as a result of an accidental fire on one of its premises, all the books of account kept at those premises were destroyed by fire.

87. In the light of this information, we do not think it can be said that the belief stated by the Commissioner that the assessee will not produce books or documents useful for or relevant to proceedings under the said Act, if called upon to do so, and that they had in their possession undisclosed wealth can be said to be wholly impossible or wholly unreasonable. When the assessee carries on extensive business in various places with over 200 branches and all its transactions are in the usual course of business evidenced by regular papers prepared for the purpose and in the light of the information furnished by the informants, the assessee's report that all books and papers have been lost is open to suspicion or is not readily believable, it may not be unreasonable to state that the loss of books, even if true, may not be so crippling and that the assessee may still be in possession of many papers which would be useful and relevant for the purpose of computing the correct income. Against that background, the statement of estimated figures and the report of loss of books and papers could reasonably furnish the basis for the belief that the assessee, even if called upon to produce such books and papers as might still be in his possession, would omit or fail to produce the same.

88. We are satisfied therefore that the attack by the petitioner that the Commissioner has not had relevant information in his possession or that such information was insufficient to support a reasonable belief of the type stated by him in the authorizations issued by him or that the circumstances justifying the issue of such authorizations did not at all exist in this case is not well founded.

89. Regarding the manner in which searches themselves had been conducted by the respondents in this case, the allegations contained in the principal affidavit are a little vague and also are not quite accurate.

90. In paragraph 8 of the affidavit it is stated:

> "In respect of the search carried out in my business premises, the first respondent seized about 78 items of documents and about 31 items of articles, and things consisting of jewellery and other items of Bank pass books, and cheque books, etc., consisting of 23 items. The items of jewellery taken by him were also sought to be valued by him." The first respondent in his counter-affidavit stated that he did not search the business premises of the first petitioner at all but only his residence on Krishna Rao Road. He denied as absolutely false the statement that 31 items of articles and things consisting of jewellery and other items of pass books and cheque books consisting of 23 items were seized by him. He also denied the statement that he had seized or taken personal correspondence of the petitioner of a purely private nature. In Annexure F to his affidavit in support of I. A.

No. III to which we have already made a reference, he has given a detailed list of 78 items seized by him. The contents of the three sealed packets, items 76, 77 and 78, were also inventoried in the presence of the III Deputy Registrar of this Court. The list fully supports the statements and denials made by the 1st respondent in his affidavits and bring out the inaccuracies in the statements made by the petitioner in his affidavit. No reply has been filed on behalf of the petitioners to the affidavits of the 1st respondent Sundarajan although we told the counsel for the petitioner that if his clients would like to file a reply, they could do so. The other searching officers have also filed affidavits to which also no replies have been filed.

91. In all the counter-affidavits filed by the searching officers, it has been stated that the searches were conducted quite peacefully and with restraint, that no obstruction or objection was offered by the petitioners or any one on behalf of the petitioners, and that the seizures by them were restricted and confined only the books and documents which were believed to be useful for and relevant to the proceedings. In this connection, we might also refer to the set of instructions issued by the commissioner while sending his authorizations, the original of which was produced for our perusal and an authenticated copy thereof placed in the record of this petition. In the said instructions, the Commissioner has pointed out what the searching officer should look for and appended a note to the effect that great restraint should be exercised in seizing documents and every attempt made to sift the material and seize only those which are important.

92. To further satisfy ourselves that the seizing officers had applied their mind to the usefulness or relevancy of the documents seized, we have had an analysis prepared of the papers seized at the four searches in questions detailed in the annexures to the affidavit in I. A. No. III and the inventory prepared in I. A. No. IV. It is seen therefrom that of the 256 papers seized at the residence of the 1st petitioner, 120 are documents evidencing investments in property and money lending relating to the period 1-7-1960 onwards, 71 are similar documents relating to the previous period 1-7-1949 to 30-6-1960, 56 relate exclusively to the firm and the remaining 9 are described as documents such as partition deeds, gift deeds, which may be relevant to or useful for examining the first mentioned 120 and 71 documents. Of the 53 documents seized at the business premises at Taragupet, 16 are accounts relating to pending assessment, 4 relate to the years 1957 to 1960 showing monetary transactions which may be useful to reopen those earlier assessments, 33 are hundis, payment and receipt sheets, loose sheets showing profits and loss account, etc., none of which relates to a period prior to 1955. 8 out of 11 items, books and documents, seized at the Infantry Road premises, relate to pending assessment and all the 11 relate to the business of the assessee-firm. At the residence of Munireddy at Shantinagar, only 8 papers were seized, of which 7 relate to pending assessments for the year 1962-63 and one relates to the assessment for 1961-62. The last mentioned one consists of four sheets containing inter-branch transfers to the tune of about ₹ 40,000/-.

93. The above analysis shows that the searching officers did apply their mind generally to the question of usefulness or relevancy. By saying so, we do not of course mean that every one of the documents may ultimately be shown to be fully and completely relevant. What the section requires is that documents should be useful for or relevant to the proceedings under the Act. In the context of the section, the usefulness or relevancy referred to could only be usefulness or

relevancy of the type appropriate to the stage of investigation but not to an actual trial or enquiry. It would only suggest or require an application of the mind to make out a prima facie case of usefulness or relevancy and not a final or absolutely correct decision about the relevancy. The point really is that the searching officer should act with restraint and should not seize documents unless, on a prima facie examination, he honestly feels that they may be useful for or relevant to the proceedings under the Act.

94. Viewed in that light, we are not persuaded that there is any strength in the case suggested on behalf of the petitioners that the searching officers gone about their work in a high-handed manner and seized documents without any regard whatever for their usefulness or relevancy.

95. In the cases cited on behalf of the petitioners one decided by the Allahabad High Court and reported in *Seth Brothers v. Commissioner of Income Tax, U. P*[16]*.,* and the other decided by Punjab High Court and reported in *N. K. Textile Mills v. Commissioner of Income Tax*[17]*,* the constitutionality of section 132 was upheld but the searches were struck down as illegal on the peculiar facts of each case.

96. For the reasons stated above, we hold that no case has been made out of any failure to comply with the provisions of section 132 or of any disobedience or disregard thereof either in the matter of the issue of authorisations for search or seizure or in the matter of actual searches and seizure of documents.

97. The Writ Petition therefore fails and is dismissed.

98. The respondents may therefore retain the books and papers with them and will deal with them strictly in accordance with the provisions of Section 132 of the Income-tax Act. The Department is relieved of the undertaking given by it in I. A. Nos. III and IV.

99. We make no order as to costs.
Petition dismissed.

[16](1966) 62 I. T. R. 44: AIR 1965 All 487

[17](1966) 62 I. T. R. 58 (Punj)