

M.S. Associates Vs. Uoi

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Court : Guwahati

Decided On : Mar-22-2005

Appeal No. : W.A. Nos. 239, 240, 306, 350 & 354 of 2004 22 March 2005

Appellant : M.S. Associates

Respondent : Uoi

Advocate for Def. : Mr. P. Upadhyaya

Judgement :

I.A. Ansari, J.

The five appeals enlisted above are being disposed of by this common judgment and order, for all these appeals have arisen out of the common judgment and order, dated 31-5-2004 (see M.S. Associates v. Union of India , whereby as many as nine writ petitions were disposed of ; all these appeals have posed the common questions of law based on identical facts and have been heard together.

2. We have heard Mr. KN. Choudhury, learned senior counsel, assisted by Mr. S. Shyam, learned counsel appearing on behalf of the writ petitioner-appellants in Writ Appeal Nos. 240 of 2004, 239 of 2004, 350 of 2004 and 354 of 2004, which have arisen out of W.P. (C) Nos. 1552 of 2000, 7008 of 2000, 6965 of 2000 and 137 of 2000, respectively, and Mr. K.P. Pathak, learned Additional Solicitor General, assisted by Mr. U. Bhuyan, learned counsel, appearing on behalf of the

respondents in the four appeals aforementioned. We have also heard Mr. K.P. Pathak, learned Additional Solicitor General, assisted by Mr. U. Bhuyan, learned counsel, appearing on behalf of the appellant in Writ Appeal No. 306 of 2004, which has arisen out of W.P. (C) No. 7008 of 2000 aforementioned, and Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. P. Upadhyaya, learned counsel for the respondents in Writ Appeal No. 306 of 2004.

3. For a better appreciation of the issues involved in the present set of writ appeals, we set out herein below, in brief, the facts of each of the writ petitions, the stand of the revenue and also the reasons, which have led to the preferring of these appeals by both the petitioners as well as the respondents.

FACTS

(i) WP. (C) No. 1552 of 2000 :

(a) The case of the petitioner in this writ petition is, in brief, as follows.

4. The petitioner, M/s. M.S. Associates, is a partnership firm, duly registered under the provisions of the Indian Partnership Act, 1931 with Smt. Jyoti Limbu and Smt. Tilmaya Chong as its two partners, having its registered office at Connaught Place, New Delhi, and branch office at GNB Road, Silpukhuri, Gauhati. The petitioner firm is engaged in the business of selling of State organised lottery tickets in various States, namely, Assam, Manipur and Meghalaya. The petitioner firm has been regularly filing income-tax returns before the income-tax authorities and the same have been finalized from time to time after due scrutiny. In pursuance of the warrants of authorisation issued under section 132 of the Income Tax Act (hereinafter referred to as 'the Act'), the business premises of the petitioner firm as well as the residential and official premises of the persons associated with the firm were searched on 17-6-1999 to 23-6-1999 and 29-10-1999, a large amount of cash, jewellery, investment certificates, fixed deposit receipts and other documents including books of account were seized. The search was carried out in the office premises of the petitioner firm at Gauhati, Tinsukia and at some other places. Though the warrants were issued in the name of Mr. M.K. Subba, Mr. A.K. Subba and Mr. S.R. Subba, the search was, in reality,

carried out against the petitioner firm. The warrants of authorisation were issued by respondent Nos. 2, 3 and 5 in violation of the provisions of section 132 of the Act and without any authority of law on the basis of various news items published in newspapers based on the draft and unsigned report of the Comptroller and Auditor General of India (hereinafter referred to as 'the CAG'). The report of the CAG, which had been acted upon, was in a draft form and had not acquired any legal status and, hence, this report of the CAG could not have been treated as 'information' within the meaning of sub-section (1) of section 132. This apart, the Nagaland State Assembly, later on, referred the report to the Public Accounts Committee, but the said Committee did not recommend any action against the petitioner firm. The petitioner firm is assessed to tax at New Delhi and respondent No. 5, who is based at Gauhati, issued, without any authority of law, the warrants of authorisation. The satisfaction for search and seizure in respect of the petitioner firm was that of the Director, Income-tax (Investigation), New Delhi. In fact, the CAG had carried out an audit pursuant to a complaint filed by one Mr. Munkala Krishna Rao, business rival of the petitioner firm. The report of the CAG contains sweeping adverse remarks against the petitioner firm indicating that the firm was involved in some sort of scam with the Directorate of Lotteries, Nagaland. The search and seizure were carried out during the period, when the CAG's report was pending with the State Legislature of Nagaland. The respondent authorities also initiated proceedings under section 158BB of the Act. Hence, the search and seizure conducted in the office premises of the petitioner firm at Tinsukia, Gauhati and some other places on 23-6-1999, be declared as illegal, unconstitutional and void ab initio and directions be given to the Income-tax Authorities not to take any action under the provisions of the Act and to return the documents /valuables seized in pursuance of the said search.

(b) The respondents resisted the prayers made by the writ petitioner, the case of the respondents being, in brief, as follows :

5. The search and seizure was carried out in consequence of the information, which was in the possession of the department and in full compliance with the provisions of section 132 of the Act. During the course of the search of the premises of Shri M.K. Subba at Silpukhuri, Gauhati, the office of M/s. Gauhati

Agencies was found functioning from the same premises and no office of M/s. M.S. Associates, of the petitioner firm, was found located at Silpukhuri. The income earned by M/s. Gauhati Agencies has neither been reflected in the regular books of account nor is it reflected in the returns filed by the petitioner firm. Both the partners, Smt. Jyoti Limbu and Smt. Tilmaya Chong, are the wives of Shri M.K. Subba and they are not aware of anything about the lottery business, for the entire business is under the control of Shri M.K. Subba and his brother. The proceeds of sale of lottery tickets were never deposited with the Government nor was the income derived therefrom disclosed to the respondents. The petitioner firm did not file the returns for the accounting , years 1998-99 and 1999-2000. The books of account for these two a counting years were also not audited as per law. Under the above circumstances and in consideration of the information in possession, the DIT (Investigation), Delhi, Kolkata and Gauhati, issued the warrants under section 132 of the Act of 1961. These searches were made on independent authorisation issued by the Directors of Income-tax (Investigation) against Shri Mani Kumar Subba and his groups/business concerns including the petitioner firm. Discreet inquiries had revealed evasion of taxes by the petitioner firm and other groups under the control of Shri M.K. Subba. The Directors of Income-tax (Investigation), Delhi, Kolkata and Gauhati, issued the warrants within their respective territorial jurisdiction after an honest evaluation of the information, which came into their possession. The report of the CAG is one of the sources of the information on the basis of which the satisfaction required under section 132 was founded. A draft report of the CAG may also provide legal or factual material for forming the requisite belief to the effect that the petitioner firm has acquired assets not disclosed to tax. The warrants of authorisation were issued in the name of the persons named in the warrants and in respect of identifiable premises. A prima facie case of tax evasion was found to have been made out on the information received by the authorities concerned and the report of the CAG only substantiated the above information.

6. (c) In their rejoinder affidavit, the petitioner asserted that it has a branch office at Silpukhuri, Gauhati, and Ws. Gauhati Agencies function as agent of the petitioner firm and sells lottery tickets, on behalf of the petitioner firm, in the State of Assam and income derived from such sales has been duly reflected in the books of

account.

(ii) W.P. (C) No. 137 of 2000 :

7. (a) By this writ petition, the petitioner Shri Ajoy Kumar Subba, challenged the search and seizure conducted by the Income-tax department under section 132 of the Act of 1961 at the residence of the petitioner at Tinsukia, the case of the petitioner in this writ petition being, briefly stated, thus : The petitioner is an employee of Ws. Jyoti and Company, an agent of lotteries organised by the State Government. In addition to his said employment, the petitioner is in the business of sale of cassettes under the name and style of M/s. A.B. Series. The petitioner has been regularly filing income-tax returns before the authority concerned and final assessment has been made thereon after due scrutiny and satisfaction. Though the petitioner is, ordinarily, a resident of Assam, yet in view of his employment, he has been residing at Ghaziabad, U.P., since 1996. The search was carried out in the month of June, 1999, and the Income-tax Authorities seized cash, investment certificates and books of account belonging to the writ petitioner and his wife, Smt. Archana Subba. The search was conducted, primarily because of his employment in the firm 611 Ws. Jyoti and Company, whose proprietor has business connections with M/s. M.S. Associates.

8. (b) The search and seizure were challenged by the petitioner on the same grounds as in W.P. (C) No. 1552 of 2000 mentioned hereinabove. According to the writ petitioner, the search and seizure conducted at his premises as well as those of his employer M/s. M.S. Associates, and Shri S.R. Subba are independent and cannot be treated as consequential. Respondent Nos. 4 and 5 issued the authorisation in violation of the provisions of law without having any legally sustainable information in their possession as required under section 132 of the Act of 1961. The action of respondent Nos. 4 and 5 in issuing warrants of authorisation for search and seizure is, therefore, void ab initio. Directions were accordingly sought for, inter alia, commanding the respondents to return the documents/ valuables seized during the search.

9. (c) The respondents filed their affidavit-in-opposition and contested the case based on similar grounds as had been taken by them in W. P. (C) No. 1552 of

2000 aforementioned.

(iii) W.P. (C) No. 6965 of 2000 :

10 (a) By this writ petition, the petitioner, namely, Smt. Jyoti Limbu, a partner of M/s. M.S. Associates, has challenged the legality and validity of the warrants of authorisation for search and seizure issued by the Income-tax Authorities at the office premises of M/s. M.S. Associates situated at Guwahati and New Delhi in June, 1999. The petitioner also challenged the legality and validity of the impugned notice, dated 13-11-2000, issued by respondent No. 4 in purported exercise of its powers under section 158BC of the Act. Cash, jewellery, investment certificates, fixed deposit certificates and other documents were seized by the Income-tax Authorities during the said search. The authorities had also conducted a search at the office premises of M/s. M.S. Associates situated at Gauhati and Tinsukia and various documents of account relating to M/s. M.S. Associates were seized. The warrants of authorisation were issued in the name of Mr. M.K. Subba, Mr. A.K. Subba, Mr. S.R. Subba, and the petitioner, 'but the search and seizures were, as a matter of fact, effected against the said firm and not the individuals named hereinbefore. The searches were conducted in violation of the provisions of section 132 of the Act inasmuch as no information had been in the possession of the authorities concerned as was required under the law. Thus, the search and seizure have been challenged in this writ petition too on the same grounds as in the writ petitions aforementioned.

11. (b) The case of the respondents, in brief, is as follows : No illegality had been committed by the authority in issuing the warrants of authorisation. The writ petitioner is a partner having 51 per cent shares in M/s. M.S. Associates with effect from 1-4-1994, which is the sole distributor of lottery tickets organised by the State of Nagaland. The petitioner firm also did not deposit the sale proceeds with the State Government. The search had to be conducted in pursuance of the information in possession of the department that documents and valuables representing income were not disclosed for assessment. The respondents denied that respondent No. 6, who had issued the warrants of authorisation, had no jurisdiction-The authority concerned was justified in taking consequential action

under sections 158BC and 158BD of the Act of 1961 for the purpose of finalising block assessment and that the assessee, if aggrieved by the block assessment, is entitled to file an appeal to the CIT (A) under section 246A of the Act.

(iv) W.P. (C) No. 7008 of 2000 :

12. (a) In this writ petition, the petitioners, Shri Sanjay Raj Subba and Shri Moni Kumar Subba, have challenged the legality and validity of the warrants of authorisation for search and seizure effected by the Income-tax Authorities at the office premises of M/s. M.S. Associates situated at New Delhi, Gauhati and Harmoti (North Lakhimpur) during June, 1999. These petitioners have also challenged the legality and validity of the impugned notice, dated 13-11-2000 (Annexure XI), issued by respondent No. 4 in purported exercise of powers under section 158BC of the Act and the note, dated 19-10-2000, made by the Deputy Commissioner of Income-tax, New Delhi, pursuant to the authorisation issued as aforesaid. Cash, jewellery, investment certificates, fixed deposit certificates and other documents were, accordingly, seized by the Income-tax Authorities during the search. In addition thereto, the authorities also conducted a search at the office premises of Ws. M.S. Associates situated at Gauhati and Tinsukia and various documents of account relating to Ws. M.S. Associates were seized. The warrants of authorisation were issued in the name of Mr. A.K. Subba, Smt. Limbu and the petitioners, but the search was, in fact, effected against the firm and not the individuals named hereinabove. The warrant of authorisation for search and seizure was issued by respondent No. 6 in violation of the provisions of section 132 of the Act, for, there was no information in his possession as was required under the law. The petitioners sought for declaration that the search and seizure was null and void, for quashing of the notices, dated 13-11-2000 and 19-10-2000, aforementioned and for a direction to the respondents to return the seized documents/valuables to the writ petitioners.

13. (b) The respondents resisted the writ petition on the same grounds as in the aforementioned writ petitions. According to the respondents, no illegality was committed by the authorities concerned in issuing the warrants of authorisation and that the wife of writ petitioner No. 2 has been, with effect from 1-4-1994, a

partner having 51 per cent share in Ws. M.S. Associates, which functions as sole distributor of lottery tickets on being so appointed by the State of Nagaland. The firm M/s. M.S. Associates did not deposit the sale proceeds with the State Government. The search was 'conducted in pursuance of the information, which the department had in its possession, to the effect that documents and valuables representing income had not been disclosed for assessment. In view of the seizure of the unaccounted valuables and documents, the authority concerned is justified in taking consequential action under sections 158BC and 158BD of the Act of 1961 for the purpose of finalising block assessment and if the assessee becomes aggrieved by the block assessment he may prefer an appeal to the CIT (A) under section 246A of the Act.

14. Altogether three issues were formulated by the learned Single Judge for decision in the writ petitions mentioned hereinabove, the issues being as follows M.S. Associates case (supra):

'(1) Whether the writ petition is maintainable for adjudication in this court on the face of the respondents' contention that no cause of action arose within the territorial limit of this court?

(2) Whether the draft report of the CAG taken into consideration by the respondent authorities for the purpose of determining the existence of circumstances under section 132(1) of the Act is legally permissible before the report was disposed of by the State Legislature?

(3) Whether the respondent authorities had, in addition to the draft report of the CAG, any other information in their possession to form reasons to believe as is required under section 132(1) of the Act?' (p. 132)

15. The learned Single Judge concluded that except in W.P. (C) No. 7008 of 2000 aforementioned, the writ petitioners could not show that any cause of action had arisen within the territorial limits of this court and, accordingly, held that while this court had the jurisdiction to entertain the writ petition, namely, W.P. (C) No. 7008 of 2000 aforementioned, the remaining writ petitions were not maintainable for lack of jurisdiction. Having held that the High Court has the territorial jurisdiction to

entertain the writ petition, namely, W.P. (C) No. 7008 of 2000 aforementioned, the learned Single Judge further concluded that the draft report, in question, of the CAG could not have formed the legal basis for the purpose of formation of 'belief' as required under section 132(1) of the Act. However, having held that this court had the jurisdiction to entertain the writ petition, namely, W.P. (C) No. 7008 of 2000 aforementioned, and also having concluded that the report aforementioned of the CAG could not have formed the basis for the purpose of issuance of warrant of authorisation for search and seizure, the learned Single Judge took the view that the action of the revenue did not, in the present cases, depend entirely on the said report of the CAG, but on a set of information including the report of the CAG, and even after keeping the report of CAG excluded from the purview of consideration, the remaining information in the possession of the authorities concerned was sufficient to lead them to form the 'belief' as was required under section 132(1) and the authorities concerned could have, therefore, legally acted upon the same. Having reached this conclusion, the learned Single Judge held to the effect that the issuance of warrants of authorisation suffered from no illegality. With the opinion so expressed, the learned Single Judge dismissed the writ petitions.

16. Aggrieved by the conclusion so reached, that the said report of the CAG could not have been acted upon for the purpose of taking action under section 132(1), the revenue has, in Writ Appeal No. 306 of 2004, impugned the said finding. However, so far as the writ petitioners are concerned, they, being aggrieved by the decision of the learned Single Judge that this court lacks jurisdiction to entertain the writ petitions except the writ petition, namely, W.P. (C) No. 7008 of 2000 aforementioned and that no case for interference could be made out by the writ petitioners warranting interference by the High Court, have preferred the remaining four appeals enlisted above, namely, 240 of 2004, 239 of 2004, 350 of 2004 and 354 of 2004, which have arisen out of W.P. (C) Nos. 1552 of 2000, 7008 of 2000, 6965 of 2000 and 137 of 2000 aforementioned.

17. Upon hearing the appeals, we find that broadly speaking, five questions have arisen for determination in the present set of appeals and these questions are as follows:

(i) Whether the High Court lacked territorial jurisdiction to entertain W.P. (C) Nos. 1552 of 2000, 6965 of 2000 and 137 of 2000 aforementioned?

(ii) Whether the said report of the CAG could have been taken into consideration by the respondent/ authorities concerned for the purpose of initiating action under section 132(1) of the Act before the same was disposed of by the Nagaland State Assembly and, if so, what could have been the scope of use of the CAG's report?

(iii) Whether the respondents/ authorities had, in their possession, within the meaning of section 132(1) of the Act, any 'information' other than the CAG's report, enabling them to initiate action(s) thereunder?

(iv) Whether there was any 'information' at all in the possession of the respondents /authorities concerned enabling them, legally and constitutionally, to act upon the same leading to the issuance of warrant(s) of authorisation for search and seizure in terms of section 132(1) of the Act?

(v) What relief(s), if any, the parties are entitled to?

Question No. (i) :

18. While dealing with the above aspect of the matter, it is pertinent to note that the expression 'cause of action' means a bundle of facts, which if traversed, a plaintiff must prove to entitle him to receive a judgment in his favour. The cause of action bears no relation to the defence, which may be set up by the defendant, nor does it depend upon the character of the relief(s) sought for. The cause of action is nothing, but the media upon which the plaintiff or the petitioner seeks the court to arrive at a conclusion in his favour. For determining, therefore, the question if the court has territorial jurisdiction, the court must take into account all the facts pleaded in support of the cause of action without, however, embarking upon an enquiry, as to the correctness or otherwise of the facts pleaded. Thus, the question as to whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the writ petition, the truth or otherwise whereof being immaterial. In *Election Commission, India v. Saka Venkata Rao* : [1953]4SCR1144 , while interpreting article 226, as it then

stood, the Supreme Court observed as under :

'The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under article 226, which makes no reference to any cause of action or where it arises, but insists on the presence of the person or authority 'within the territories' in relation to which the High Court exercises jurisdiction....' (p. 213)

19. Thus, in *Election Commission, India v. Saka Venkata Rao* : [1953]4SCR1144 , the Supreme Court had expressed the view, in no uncertain words, that in the absence of a specific provision in article 226 on the lines of the Code of Civil Procedure, the High Court could not have exercised jurisdiction on the plea that the whole or part of the cause of action had arisen within its jurisdiction. This view was followed in subsequent cases. The consequence was that only the High Court of Punjab could exercise jurisdiction under article 226 of the Constitution against the Union of India and other instrumentalities of the Union Government located in Delhi. To remedy this situation, clause (1A) was inserted by the 15th Amendment Act, 1963, conferring thereby on the High Court's jurisdiction to entertain a petition under article 226 against the Union of India or any other body or authority, located in Delhi if the cause of action arose, wholly or in part, within its jurisdiction. Clause (1A) was later on, renumbered as clause (2) of article 226.

20. Thus, clause (2) was introduced in article 226 of the Constitution to enlarge the scope of the writ jurisdiction of the High Court; hence, the power conferred by clause (1) of article 226 on the High Court can, now, be exercised by the High Court if the cause of action, wholly or in part, has arisen within its territorial limits. In other words, in the context of territorial jurisdiction, the maintainability or otherwise of a writ petition in a High Court now, depends on the answer to the question whether the cause of action or any part thereof has arisen within the territorial jurisdiction of that court. If the answer to this question is found in the affirmative, the court will have the territorial jurisdiction to entertain the writ petition and not otherwise.

21. In the case of *Oil & Natural Gas Commission v. Utpal Kumar Basu* : (1994)4SCC711 , the Apex court has held as follows :

'6. It is well settled that the expression 'cause of action' means that 'bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the court. In *Chand Kour v. Partab Singh* ILR (1889) Cal 98;15 IA 156 Lord Watson said:

' . . . the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive, at a conclusion in his favour.'

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words, the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.' (p. 717)

22. In the case of *Navinchandra N. Majithia v. State of Maharashtra* : AIR 2000 SC2966 , while relying, inter alia, on the decision in *Oil & Natural Gas Commission v. Utpal Kumar Basu* : (1994)4SCC711 , the Apex Court has observed as follows :

'17. From the provision in clause (2) of article 226 it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.

18. In legal parlance the expression 'cause of action' is stated generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a Tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person (Black's Law Dictionary).

19. In Stroud's Judicial Dictionary a 'cause of action' to be the entire set of facts that gives rise to an enforceable claim ; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

20. In 'Words and phrases'(4th edition), the meaning attributed to the phrase 'cause of action' in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf.

21. A Bench of three learned Judges of this court in this case of Oil & Natural Gas Commission v. Uptal Kumar Basu : (1994)4SCC711 considered at length the question of territorial jurisdiction under article 226(2) of the Constitution of India. Some of the relevant observations made in the judgment are extracted hereunder (SCC pages 716 and 717 paras 5-6):

5. Clause (1) of article 226 begins with a non obstante clause-notwithstanding anything in article 32-and provides that every High Court shall have power 'throughout the territories in relation to which it exercises jurisdiction', to issue to any person or authority, including in appropriate cases, any Government, 'within those territories' directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the

Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that court. This is at best its case in the writ petition.

6. It is well settled that the expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In *Chand Kour v. Partab Singh* ILR (1889) Cal 98; 15 IA 156 Lord Watson said:

'... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour.'

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.' (page 647)

23. In the light of what is indicated by the Apex Court in *Oil & Natural Gas Commission v. Utpal Kumar Basu* : (1994)4SCC711 and *Navinchandra N. Majithia v. State of Maharashtra* : AIR 2000 SC2966 , any controversy in a writ petition with regard to territorial jurisdiction has to be settled by the High Court on the basis of

the facts pleaded in support of the cause of action without, of course, embarking upon an enquiry as to whether the facts pleaded are correct or not. Taking note of this position of law and also bearing in mind as to what cause of action means, when we look into i.e. pleadings in the writ petition, we find that the clear averments of the writ petitioner are that the search and seizure operations had been conducted in the office premises of the petitioner firm situated at Gauhati and Tinsukia, though warrants of authorisation had been issued in the names of certain individuals, namely, M.K Subba, A.K Subba and S.R. Subba and that various documents and books of account relating to the petitioner firm were seized and that while issuing warrant of authorisation, respondent No. 5, namely, DIT (Investigation), Gauhati, had no material to form a belief about the existence of the situations warranting recourse to section 132(1). To these averments, the respondents reacted by claiming that the action was taken by respondent No. 5 in concert with the DIT (Investigation), New Delhi, and the DIT (Investigation), Calcutta, on the basis of shared information. These averments clearly show that respondent No. 5, even according to the case of the respondents, had acted on the basis of the information, which had been shared with him by the DIT (Investigation), New Delhi, and the DIT (Investigation), Calcutta, and it was his satisfaction derived on the basis of the information so received that he issued the war-rant of authorisation leading to the said search and seizure.

24. Situated thus, it is clear that the conclusion reached by the learned Single Judge that the submission made, on. behalf of the writ petitioners, that the DIT (Investigation), Gauhati, had issued warrants of authorisation stood belied by the materials available in the office file, we are constrained to hold, contrary to the averments made by the parties concerned and the admitted case of the respondents.

25. When respondent No. 5, namely, DIT (Investigation), Gauhati, who is one of the authorities within the territorial jurisdiction of this Court, issued warrants of authorisation on the basis of the belief, which he had so formed, and when the formation of this belief was based on the information shared with him by the DIT (Investigation), New Delhi, and the DIT (Investigation), Calcutta, there remains no escape from the conclusion that the search and seizure aforementioned took place

within the territorial jurisdiction of this court on account of the 'belief' formed by respondent No. 5 with regard to existence of facts warranting issuance of warrants of authorisation under section 132(1) of the Act and that a part of the case of action, thus, did arise within the territorial jurisdiction of this Court.

26. The learned Single Judge, we may note, did not perhaps, notice that the powers of the High Court to issue writs outside its jurisdiction is widened by the 42nd Amendment to article 226 and once a petitioner, establishes that a part of the cause of action has arisen within the jurisdiction of the High Court, a writ would lie even against a person or authority, who is residing within the jurisdiction of another High Court, provided, of course, that the reasons for issuing such a writ exists on record.

27. In view of what we have concluded above, we answer question No. 1 in the affirmative and reiterate that this court had territorial Jurisdiction to entertain the writ petitions aforementioned, namely W.P. (C) Nos. 1552 of 2000, 6965 of 2000 and 137 of 2000.

Question No. (ii) :

28. Let us, now, come to question No. (ii), namely, whether the said report of the CAG could have been taken into consideration by the respondent/authorities concerned for the purpose of initiating action under section 132(1) of the Act before the same was disposed of by the Nagaland State Legislative Assembly and, if so, what could have been the scope of use of the CAG's report ?

29. As we have already indicated hereinabove, the learned Single Judge concluded that a report of the CAG, particularly, when the same had not been considered by the State Legislature, was the property of the Legislative Assembly of the State of Nagaland and could not have formed the legal basis for the purpose of formation of 'belief' as is required under section 132(1) of the Act. Questioning the correctness of the conclusion, so reached, learned Additional Solicitor General has submitted that a careful reading of section 132 will show that if any of the authorities specified in sub-section (1) of section 132 has, in his possession, a piece of information or a set of information and if, in consequence of such

information, the authority concerned has reason to believe, inter alia, that any person is in possession of any money, bullion or jewellery or other valuable articles or things, which has not been, or would not be, disclosed for the purpose of the Act, he may issue warrant of authorisation for the purpose of search and seizure. If an information, as envisaged by section 132(1), is derived, contends the learned Additional Solicitor General, from a report of the CAG before the same is accepted or rejected by the State Legislature concerned, there is no limitation on the part of the authorities concerned, to act upon such information for initiating an action under section 132(1). Source of information, points out Mr. Pathak, is not material for the purpose of section and, hence, there can be no limitation, on the part of authorities specified in section 132, to act upon an information derived from a report of the CAG even if the report has not been discussed and no decision has been taken thereon by the State Legislature concerned. In other words, Mr. Pathak submits that the report of the CAG, in the present case, was a valid piece of information within the meaning of section 132(1) and could have been legally acted upon by the authorities concerned and having acted upon the said report, the authorities have not, in any way, violated any of the provisions of the Constitution or of the law contained in that behalf.

30. Mr. Pathak also contends that the learned Single Judge's observation to the effect that the use of the CAG's report, when the same was under consideration of the House, would amount to breach of privilege of the House is erroneous inasmuch as the writ petitioners could not have raised the question of privilege on behalf of the Nagaland Legislative Assembly, for, the writ petitioners do not represent the State Legislative Assembly of Nagaland. Mr. Pathak further contends that it is the CAG itself, which had made a copy of its report, available to the Finance Ministry and, on the instructions of the Finance Ministry, an independent investigation was carried out and it was on the basis of the materials, which were collected following such an investigation, that the Directorate of Income-tax (Investigation) had issued the warrant of authorisation and such action of the authorities concerned cannot be said to be illegal and/or unconstitutional.

31. It is submitted by Mr. Pathak, that while coming to the conclusion that the report of the CAG could not have formed the legal basis for the purpose of

formation of the 'belief' as is required under section 132(1) of the Act, the learned Single Judge recorded a finding that there is no dispute that the warrants of authorisation were issued during the period, when the CAG's report was under consideration of the Assembly. This finding, according to Mr. Pathak, is not correct, for, in the present case, points out Mr. Pathak, the warrants of authorisation were issued in June, 1999, whereas the CAG's report was forwarded to the Governor in August, 1999, the same was tabled in the Assembly in August 1999, and the Public Accounts Committee (hereinafter referred to as 'the PAC') submitted its report in March 2002. It is also submitted by Mr. Pathak that contrary to the learned Single Judge's conclusion that the CAG's report was a draft report, the CAG's report was, in fact not a draft or preliminary or unsigned report, but a final report duly signed by the Auditor General and countersigned by the CAG. The CAG's report, according to Mr. Pathak, is a public document as defined in section 74 of the Evidence Act read with section 2(17)(g) and (h) of the Civil Procedure Code, the CAG's report is available at website and a copy of its print-out was submitted to the court and a copy thereof was also furnished to the petitioners at the time of hearing of the writ petitions.

32. Controverting the submissions made on behalf of the revenue, Mr. K.N. Choudhury, learned senior counsel for the writ petitioners, submits that under article 151(2), the CAG's report has to be laid before the Legislature of the State concerned, but the respondents admit to have had in their possession the CAG's report long before the same was laid before the House. Hence, the use of the said report, according to Mr. Choudhury, as information, in the possession of the authorities concerned, is in violation of the provisions of article 151.

33. Elaborating his above submissions, Mr. Choudhury points out that in the present case, the CAG's report was used by the concerned officer for the purpose of forming their 'belief' under section 132(1) of the Act, though the CAG's report is the property of the House, which alone has exclusive jurisdiction to deal with the same, and, thus, the CAG's report, contends Mr. Choudhury, cannot be treated to have ever been in constitutional and legal possession of the officers mentioned in section 132 and no belief could have been formed on the basis of possession of such a report.

34. Mr. Choudhury points out that the expression 'possession' according to the Shorter Oxford Dictionary means 'hold as own property', 'actual holding or occupancy'. Parliament, according to Mr. Choudhury, did not intend that the concerned officer could use 'any' information ; rather the information 'in his possession' would mean the legal and constitutional possession of the concerned officer. If the concerned officer cannot in law or under the Constitution hold any information then, such an information cannot be said to be 'in his possession' and, hence, he cannot be said to have any reason to believe on such 'information'.

35. When the CAG's report, emphasises Mr. Choudhury, is the property of the House and the House has exclusive jurisdiction to deal with the same, no executive can use it even for any collateral purpose. When, in *B. L. Wadhera v. UOI* C.W.P. No. 1716 of 2000, dated 16-5-2001, the Division Bench of the Delhi High Court has held, points out Mr. Choudhury, that the courts cannot use or give any direction on the basis of the CAG report, then, the question of the executive, i.e., the concerned ITO using the said report for forming his 'belief' under section 132(1) does not, legally and constitutionally arise at all.

36. From an analysis of the Legislative Assembly Rules and the procedure, which normally, the Legislature of a State follows in respect of the CAG's report, it is clear, according to Mr. Choudhury, that the PAC examines the report and recommends the action to be taken on the basis of the materials laid before it by the officials. The respondents/authorities could not, thus, have had, contends, Mr. Choudhury, any authority or jurisdiction to form a 'belief' on the basis of the said CAG's report, for, permitting them to use the said report for the purpose of forming their 'belief' would, in fact, permit the authorities aforementioned to substitute their views in place of what the House or its Committee (PAC) may opine and this would amount to conducting a parallel investigation. Thus, according to Mr. Choudhury, if the respondents conduct any investigation in respect of the CAG's report, it would constitute an act of breach of privilege, for, the executive cannot assume jurisdiction and conduct investigation in respect ,of a matter, which is under investigation, by the House or its Committee, particularly when the House and its Committee have exclusive jurisdiction over such a matter. Viewed from this angle, no officer contends Mr. Choudhury, can form a 'belief', on the basis of the

CAG's report, for the purpose of taking action under section 132.

37. It is submitted by Mr. Choudhury that the PAC conducts a review of the report of the CAG under the Legislative Assembly Rules in the presence of the CAG (represented by the Accountant General in the case of States) and during the period of such review /investigation, no question on the audit report is permitted to be raised in the House till the PAC has considered the report. It is also submitted by Mr. Choudhury that if the PAC recommends an action to be taken and the same is accepted and acted upon by the Government, an action taken report is submitted before the House, which is discussed on the floor of the House. Situated thus, it is clear, contends Mr. Choudhury, that when the House or its Committee assumes exclusive jurisdiction even to the extent of taking follow-up action on the CAG's reports, no Government or executive authority can conduct a parallel investigation and undermine thereby the authority of the Committee and/or of the House to deal with such a report.

38. It is pointed out by Mr. Choudhury that the fact that the House of Commons is not subject to the control of the courts in its administration of that part of the statute law, which has relation to its internal procedure, was finally established in *Bradlaugh v. Gossett* (1884) 12 QB 271, wherein Lord Coleridge, CJ, said (page 275) : 'what is said or done within the walls of Parliament cannot be inquired into in a court of law... '. It is also pointed out by Mr. Choudhury that Lord Ellenborough observed, (pages 275 and 277) : 'They would sink into utter contempt and inefficiency without it... if injustice has been done, it is injustice for which the courts of law afford no remedy.'

39. Drawing this Court's attention to *Bradlaugh v. Gossett* (1884) 12 QB 271, Mr. Choudhury points out that Stephen, J., concurred with Lord Coleridge, CJ., and added that the House of Parliament was not a court of justice but the effect of its privilege to regulate its own internal concerns practically invested it with a judicial character, when it had to apply to particular cases the provisions of the Acts of Parliament, and if it came to a wrong conclusion, this resembled the error of a court, whose decision was not subject to appeal. Considered thus, according to Mr. Choudhury, the House can, as held in *Bradlaugh v. Gossett* (1884) 12 QB 271,

practically change or practically supersede the law'.

40. Mr. Choudhury points out that there is a difference between what is illegal and what is unconstitutional. A mere illegality in a search, according to Mr. Choudhury, may not vitiate the entire search proceeding, but an infraction of the provisions of the Constitution, according to Mr. Choudhury, is not the same thing as an infraction of the statute and if there is an infraction of the Constitution, the whole search and seizure would have to be set at naught and must be treated as non est. Mr. Choudhury also points out that the role of the CAG is limited to the auditing of the accounts of the State and not of the citizens and, hence, the report, in the present case, which was on the alleged non-payment of taxes by a citizen, was not on a subject-matter over which the CAG has any power and on the basis of such a report, no action could have been legally taken under section 132(4).

41. In our constitutional scheme, according to Mr. Choudhury, since the power of the CAG is limited only to the scrutiny of accounts of the State and not of any citizen or concern, its report cannot be accepted to be authentic and acted upon unless the same has been submitted to the Governor of the State and laid before the Legislature of the State for discussion. The CAG's report could not have, therefore, provided, contends Mr. Choudhury, any factual or legal material for forming the requisite 'belief' that the petitioner firm had earned any income or acquired any asset, which had not been disclosed to the Income-tax Authority.

42. Quoting extensively from Erskine May's Law, Privileges, Proceedings and Usage of Parliament (18th edition-Chapter V-page 64) Mr. Choudhury points out that according to May, 'Parliamentary privilege is the sum of the peculiar rights enjoyed by the House collectively as a constituent and by members of the House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies of individuals. Thus privilege, though part of the law of land, is to a certain extent an exemption from the ordinary law'.

43. Taking us also through the decision in *Stockdale v. Hansard* (1839) 9 Ad & El, Mr. Choudhury points out that in this case, Lord Denman, J., observed.-

"Whatever is done within the walls of either assembly must pass without question in any other place,' Patterson, J. observed,

'Beyond all dispute, it is necessary that the proceedings of each House of Parliament should be entirely free and unshackled, that whatever is said or done in either House should not be liable to examination elsewhere,' and

Coleridge, J. observed, 'That the House should have exclusive jurisdiction to regulate the course of its own proceedings, and animadvert upon any conduct there in violation of its rules or derogation from its dignity, stands upon the clearest grounds of necessity."

44. Mr. Choudhury has also drawn our attention to the observations of the Apex court made in *TeJ Kiran Jain v. M. Sanjiva Reddy* : [1971]1SCR612 , read as follows:

'... Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but is as it should be. It is of the essence of Parliamentary System of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament , the good sense of the members and the control of the proceedings by the Speaker. The courts have no say in the matter and should really have none.' (p. 1574)

45. Mr. Choudhury also drawn our attention to the decision in *P. V. Narsimha Rao v. State (CBI/SPE)* : 1998 CriLJ2930 , wherein the Supreme Court held at para 134, as follows:

'... The object of the protection is to enable members to speak their mind in Parliament and vote in the same way, freed of the fear of being made answerable on that account in a court of law. It is not enough that members should be protected against civil action and criminal proceedings, the cause of action of which is their speech or their vote. To enable members to participate fearlessly in

Parliamentary debates, members need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote. It is for that reason that a member is not liable to any proceedings in any court in respect of anything said or any vote given by him'....' (p. 2183)

46. In short, the sum total of Mr. Choudhury's submissions is this: In the present case, the CAG's report has to be laid before the House under article 151(2) of the Constitution and the same is, then, referred to the, PAC under rule 235 of the Legislative Assembly Rules, which has the exclusive jurisdiction to deal with the same in accordance with the internal procedure of the House. Thereafter, a report is submitted to the House and the action to be taken on the CAG's report is recommended to the House and the action taken report is submitted from time to time. Thus, the matter concerning the CAG's report begins and terminates within the walls of the House. The House has the exclusive jurisdiction over the CAG's report, the same being a matter of its own internal proceedings, and, as such, anything said or any proceeding undertaken by the House with regard to the CAG's report is wholly immune from scrutiny by the executive or the court. This is, according to Mr. Choudhury, the essence of the Parliamentary System of Government and the executive or the courts can have no say in the matter. Hence, the executive (ie., in the present case, the respondents) cannot rely on the said CAG's report and/ or form a belief for the purposes of initiating against the petitioner firm any action under section 132 of the Act. Moreover, the final report of the PAC is binding on the executive, particularly, that wing of the executive, which has the authority to investigate. Even assuming for the sake of argument that the respondents can form a 'belief' on the basis of the report of the CAG, yet when the matter is referred to the PAC, the very basis for formation of the 'belief' and the consequent assumption of jurisdiction under section 132 of the Act would disappear if the PAC were to find that the entire report or certain aspects thereof were untenable.

47. Before entering into the discussion of the merits of the rival submissions made before us on behalf of the parties, it is apposite to refer to, and ascertain, the scope and ambit of sub-section (1) of section 132 of the Act, for, it is section 132(1), which was invoked by the respondents/ authorities concerned in the

present case for issuing the warrant of 4uthorisation and it is the grievance of the writ petitioners that in the fact situation of the case at hand, the respondents/ authorities concerned could not have, legally and constitutionally, had recourse to section 132(1).

48. For the sake of brevity, we reproduce, hereinbelow, relevant portions of section 132(1) of the Act, which run as follows :

'132. Search and seizure.(1) Where the Director-General or Director or the Chief Commissioner or Commissioner or any such Joint Director or Joint Commissioner as may be empowered in this behalf by the Board, 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 subsection (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 subsection (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, or would not be, 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), then,

(A) the Director General or Director or the Chief Commissioner or Commissioner, as the case may be, may authorize any Joint Director, Joint Commissioner,

Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or ITO, or

(B) such Joint Director or Joint Commissioner, as the case maybe, may authorise any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer,

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to

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

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (1) where the keys thereof are not available;

(iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

(iib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;

(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 :

Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the

business;

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

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

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (t) is within the area of jurisdiction of any Chief Commissioner or Commissioner, but such Chief Commissioner or Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in section 120, it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the Chief Commissioner or Commissioner having jurisdiction over such person, may be prejudicial to the interests of the revenue :

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may 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 authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii):

Provided also that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business.'

49. A bare reading of sub-section (1) of section 132 shows that this subsection visualises three different situations in which the Director General, or the Director or the Chief Commissioner or Commissioner or Joint Commissioner may issue warrants of authorisation for search and seizure.

These three situations are available in clauses (a), (b) and (c) of sub-section (1) of section 132.

50. In the case at hand, we are concerned with the situation visualised by clause (c), for, in the case at hand, the conditions precedent specified in clauses (a) and (b) were, admittedly, not present, for invoking the powers of authorisation for search and seizure.

51. Let us, now, determine as to what are the conditions precedent prescribed in clause (c) of sub-section (1) of section 132, which can enable a person to invoke the power to issue authorisation for search and seizure.

A close reading of clause (c) of sub-section (1) of section 132, which is relevant for the purpose of the present appeals, envisages four conditions precedent, which must be fulfilled for invoking the powers under the said section. The conditions precedent are as under :

(i) There must be information in the possession of the Director General, etc.

(ii) In consequence of such information, the officer concerned must have a reason to believe.

(iii) The belief being that any person is in possession of any money, bullion, jewellery or other valuable article or thing,

(iv) The officer concerned must have further reason to believe that such money, bullion, jewellery, etc., represent either wholly or partially income or property, which has not been disclosed or would not be disclosed, for the purposes of the Act.

52. It is important to note that to enable an officer to issue the warrant of authorisation under section 132, he must be in possession of the kind of information, which clause (c) of section 132(1) envisages. Does this mean that if an officer specified in section 132(1) does not have in his possession the kind of information, which clause (c) perceives, he cannot even investigate into the information, which he has received, to find out if the conditions precedent for

invoking the powers under section 132(1) exist or not? The answer to this question has to be in the negative, for, any affirmative answer to the question, so posed, would put an embargo on the powers of the authorities concerned to make necessary investigation to check evasion of tax.

53. It is equally important to note that the power to issue warrant of authorisation for search and seizure in terms of section 132(1)(c) can be invoked only when the conditions precedent mentioned hereinabove are present; but this does not mean, we must hasten to add, that the Director General and other authorised officers, mentioned hereinabove, cannot initiate any investigation if they receive any information, which may not be sufficient to issue a warrant of authorisation, but which may be sufficient for the purpose of initiating investigation to ascertain if the power contained in section 132(1)(c) needs to be invoked. This subtle, but very fine and firm distinction between the power to issue a warrant of authorisation and the power to initiate investigation needs to be kept in mind, while we deal with the question as to whether the CAG's report could have at all been used by the Income-tax Authorities and, if so, what could have been the extent of its use.

54. Bearing in mind the scope and ambit of section 132(1)(c), we proceed to determine the issue at hand, namely, as to whether the CAG's report could have been taken into consideration by the respondent authorities concerned for the purpose of initiating action under section 132(1) of the Act before the same was disposed of by Nagaland State Legislative

Assembly and, if so, what could have been the scope of the role of the CAG's report. Before, however, we deal with the question, so posed, it is imperative to note, if we may reiterate, that section 132(1)(c) will come into play only when the authority concerned invokes the power contained in section 132(1) to issue authorisation for a search and seizure ; but for the purpose 'of initiating an investigation to determine as to whether requisite materials to form 'belief' exist or not or in order to decide if such authorisation should be issued or not, strict adherence to section 132(1)(c) is not imperative meaning thereby that while, for the purpose of issuing the authorisation, the officer concerned must have the requisite information as envisaged by section 132(1)(c) and cannot act on gossip

or rumour, or intuition on hunch, there is no such limitation, on the part of the officer concerned, to initiate investigation to unearth the truth even on the basis of gossip or rumour. To put it differently, while for issuing authorisation for search and seizure, the conditions precedent enumerated hereinabove must exist, what is of utmost importance to note is that for mere initiation of an investigation to determine if the gossip or rumour has any substance and can be believed or not, satisfaction of all the conditions laid down in section 132(1)(c) is not imperative.

55. Before examining the question as to whether a report of the CAG, which has not been discussed and finalised by the State Legislature, can or cannot be acted upon, it is pertinent to note that in India, the same as in England, but unlike what is the law in America, the test of admissibility of evidence lies in its relevancy and, hence, unless there is an express bar or necessarily implied prohibition in the Constitution or in any law, evidence collected or obtained as a result of illegal search or seizure cannot be stopped from being admitted into evidence (see *Pooran Mal v. Director of Inspection investigation*), Income-tax : [1974]93ITR505(SC) . In other words, unless the Constitution or the law prohibits the use of a piece of evidence obtained by illegal means, such evidence, if relevant, must be allowed to be admitted; whether the evidence, so admitted, can be relied upon or not will be a question of fact to be decided on the basis of the facts of the given case. This predominant aspect of our law needs to be borne in mind, while ascertaining the question under consideration before us.

56. Thus, what logically follows from the above discussion is that for attracting the provisions of section 132(1)(c), how the information has come to be in possession of the Directorate of Investigation (Income-tax) is quite immaterial. It is worth noticing that the provisions of section 132 were put to challenge in *Pooran Mal v. Director of Inspection (Investigation)*, Income-tax : [1974]93ITR505(SC) on the ground that these provisions were violative of articles 14, 19(1)(f), (g) and 31 of the Constitution of India. The Apex Court, however, held the said provisions to be in conformity with the requirements of the Constitution. The Apex court clarified that when no provision of the Evidence Act, 1872, which is a law consolidating, defining and amending the law of evidence, is challenged as violating the Constitution and when the Evidence Act permits relevancy as the only test of

admissibility of evidence and the income-tax Act or any other similar law in force does not exclude relevant evidence from being admitted on the ground that it was obtained under and illegal search and seizure, it will be wrong to invoke the supposed spirit of our Constitution for excluding such evidence.

57. Bearing in mind, thus, the fact that for the purpose of starting an investigation into evasion of tax, the source of information is not material, the fact that section 132 of the Act is constitutionally valid and that the test of admissibility of evidence, in India, lies in the relevancy of the evidence, sought to be admitted, and not in its legality and that the evidence, obtained by illegal means, can be refused to be admitted only when the Constitution or any other law prohibits use of such evidence, it is, to our mind, pertinent to point out as to why the learned Single Judge concluded that the CAG's report could not have formed the legal basis for formation of the 'belief' as is required under section 132(1)(c) of the Act. While dealing with the question as to whether the CAG's report could have been acted upon. by the authorities concerned, the learned Single Judge observed and held as follows :

'At this stage, it would be relevant to examine the status of the report of the CAG. The argument advanced on behalf of the petitioners is that the scope and power of the CAG is existent, as provided in the Constitution, only for the scrutiny of the accounts of the State and not of any citizen or concern. As such, the report of the CAG cannot be accepted as authentic and acted upon for initiation of consequential proceedings. The CAG report, till disposed of by the concerned Legislature, cannot provide factual or legal material for forming the requisite belief to the fact that an assessee has not disclosed any income or property in his return. Shri Ray, learned senior counsel further argued that the report of the CAG cannot be said to be 'in the possession of the concerned authority' till it is disposed of by the concerned Legislature and, therefore, this cannot form the basis on which belief can be formed. In support of this argument, reference has been made to the decisions in *Ajit Jain v. Union of India* : [2000]242ITR302(Delhi) ; *Coca-Cola Export Corporation v. ITO* : [1998]231ITR200(SC) ; *Vindhya Metal Corporation v. CIT* : [1985]156ITR233(All) and *Anand Swaroop v. CIT* .

The submissions advanced by Shri Ray, learned senior counsel with reference to the decisions quoted above leaves no scope for any confusion. The report of the Comptroller and Auditor General relating to the accounts of a State is required to be submitted before the Governor, who shall cause it to be laid before the Legislature of the State, (ref : article 151(2)). The requirement of laying down the report is not an empty formality. The State Legislature is to refer it to the Public Accounts Committee under rule 235 (volume 11) of the Nagaland Legislative Assembly Rules for examination and recommendations. The recommendations of the Public Accounts Committee have to be laid before the Legislative Assembly for disposal. In the instant case, the report of the CAG was placed before the Legislative Assembly, State of Nagaland, and it was referred to the Public Accounts Committee. The Public Accounts Committee examined the correctness of the report and submitted its report in the month of March, 2002, and this was discussed and accepted. Thus the recommendations of the Public Accounts Committee as accepted, bind the Government and the executive and its prior user would amount to infringement of the privilege of the House. In the instant case, as stated earlier, the Public Accounts Committee did not find reason to accept the report of the CAG and the matter thus stood disposed of. The report, during this period, being exclusively the property of the House could not be said to be in the possession of the revenue authorities within the meaning of section 132 of the Act. There is no dispute in the case at hand, that the warrants of authorisation were issued during the period when the CAG report was under consideration of the Assembly. This document could not be treated as a public document under section 75 of the Evidence Act read with section 2(17)(g) and (h) of the Code of Civil Procedure. This view gains support from the decision of the Delhi High Court in B. L. Wadhwa v. Union of India (C. W. P. No. 1716 of 2000 decided on 16-5-2001) in which case the Delhi High Court refused to issue any direction to the respondent authority to perform their Constitutional duty to ensure that all the Ministries/ departments submit respective replies/action taken notes on the report of the CAG. Therefore, any action taken by any authority during the period in which the report of the CAG was under consideration of a State Legislature cannot be sustained in law. The discussion above lead to the conclusion that the report of the CAG could not form the legal basis for the purpose of formation of the 'belief as

required under section 132(1) of the Act. Thus, in short, is the answer to the second question enumerated in para 23 of this judgment.'

58. From a close reading of the above observations made by the learned Single Judge, it is clear that according to the learned Single Judge, the CAG's report, until disposed of by the House, remains a property of the House, and during the period the House remains in seisin of the CAG's report, no one else can be in possession of the CAG's report and when the respondent/ authorities could not have been constitutionally in possession of the CAG's report, the respondent authorities could not be said to be in possession of the information, within the meaning of section 132, so as to enable them to issue the warrant of authorisation.

59. It has been pointed out, on behalf of the revenue, that the learned Single Judge's observations to the effect that the CAG's report, in question, was a draft report and/ or that the respondent authorities concerned took action under section 132(1)(c), when the CAG's report was under consideration of the State Legislature, are factually erroneous inasmuch as the report, in question, was a final one and the action was initiated by the Directorate of Investigation long before the report came to be laid before the Legislature of the State concerned. For the reasons, which we shall discuss shortly, it is not material as to whether the report in question was a final one or not and/ or as to whether the report in question was under consideration of the Legislature of the State, when action was taken by the respondent authorities concerned. The fact of the matter is that the report was a final report and the action was taken thereon before the report was laid on the table of the House, and could be considered by the Legislature of the State.

60. Notwithstanding the fact, as contended by the revenue, that the CAG's report in question was a final report, the question, however, is as to whether this report or any part thereof could have been used as a piece of information for the purpose of section 132 of the Act and, if so, how and to what extent.

61. Keeping in mind the reasons as to why the learned Single Judge has concluded that the CAG's report could not have formed the legal basis for issuance of warrant of authorisation, let us have a small survey of the various provisions of the Constitution, which may have a bearing in determining the

question raised before us.

62. Article 148 lays down that there shall be a Comptroller and Auditor General of India, who shall be appointed by the President. Under article 150, the accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the Comptroller and Auditor General of India, prescribe.

63. The duties and powers of the CAG are embodied in article 149, which is quoted hereinbelow:

'149. Duties and powers of the Comptroller and Auditor General-The Comptroller and Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the „Auditor General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.'

64. A bare reading of article 149 shows that the duty of the CAG is confined to the auditing of the accounts of the Union and of the States and of such other authority or body as may be prescribed by law. Under article 151(2), the report of the CAG relating to the accounts of a State shall be submitted to the Governor of the State, who shall, in turn, cause the same to be laid before the Legislature of the State. The State Legislature, then, is required to refer the report to the PAC for examination and recommendations, if any. The recommendations of the PAC are, then, laid before the Legislative Assembly of the State concerned and it is for the Legislative Assembly to decide what action it would take on the recommendations made by the PAC and/or the CAG's report. There is no expressed bar in our Constitution restraining any one other than the State Assembly concerned from taking any action on the report of the CAG. There is, however, an implied restraint maintained by the executive and the judiciary in taking any action on the CAG's report. This is done for the purpose of maintaining the concept of ,separation of the powers enshrined in our Constitution. Though we, in India, broadly speaking,

follow the Parliamentary System of governance as is followed in England, there is, though subtle, a well acknowledged difference between the two, the difference being that the functioning of the Parliamentary System in England reflects, to some degree, the supremacy of Parliament over the two organs of the State, namely, the Executive and the Judiciary. In India, however, it is the Constitution, which is supreme.

65. Since there is no expressed bar in the Constitution prohibiting the use of the report of the CAG by the Executive or the Judiciary, one has to closely analyze the provisions relating to the CAG's report as contained in the Constitution. When so analysed, it clearly transpires that the CAG's report is, initially, meant for the Legislature House-be it the Houses of Parliament or the Legislature of the State.

66. It has been pointed out, as already indicated hereinabove, on behalf of the writ petitioners that the CAG's role is confined to the auditing of the accounts of the State and the CAG cannot audit the accounts of a citizen and, hence, any observation made in a CAG's report against evasion of tax by a citizen cannot form the basis for initiating action under section 132(1)(c) of the Act.

67. While dealing with the above aspect of the matter, it needs to be noted that the CAG's report, generally speaking, is a report on the scrutiny of the accounts maintained by the State. Duty it is of the CAG to point out as to whether the State has maintained its accounts in accordance with the Rules framed under article 150. This report may include the amount, which is receivable by the State, but has not been realised by the State or the amount which is liable to be paid by the State, but has not been paid by the State, The report may also include financial transactions of the State, such as, expenses incurred by the State, which the State has not been able to account for. If any tax is deductible at source in consequence of any contract, which the State might have entered into with a citizen, the CAG will be within the ambit of its role if it points out that the taxes to be deducted at source from such a citizen have not been deducted by the State. Though the Legislature has the power to take or not to take action on the CAG's report and the House has the freedom to recommend what action shall be taken on the CAG's report, the fact remains that if the CAG reports evasion of tax by any citizen, while

such a citizen deals with the State, can the authorities responsible for collection of income-tax under the Act investigate into the question as to whether the citizen named by the CAG has really evaded payment of taxes or not ?

68. Assume, for a moment, that the Legislature of a State, upon discussion of the CAG's report, finds no reason to act on the CAG's finding that from the citizen named by the CAG, tax has not been deducted at source or that the citizen concerned has evaded payment of taxes. Can such a decision taken by the Legislature of a State not to act on the CAG's report prohibit or restrain the Directorate of Income-tax from making its own inquiry to find out if the citizen named by the CAG has really evaded tax or not. Was it the object of the founding-fathers of our Constitution that merely on the ground that the information has been received by the revenue authorities concerned from a piece of material, which was aimed for discussion in the House, the Legislature of the State can stop from making any inquiry or investigation any authority, civil or criminal, whose duty it is under the law to take action on the basis of any information, which it has received We would indicate, hereinbelow, our answer to these momentous questions.

69. There can be, no doubt, that the CAG's report, in terms of article 151(2), must be laid before the Legislature of the State. In the case at hand, the CAG, admittedly, forwarded a copy of its report to the Union Finance Minister. If the forwarding of the report to the Finance Minister by the CAG is treated as a breach of privilege of the Legislative Assembly of Nagaland, it is really for the Legislative Assembly of Nagaland to proceed with the matter; but it gives no right to the writ petitioners to claim that the privilege of the Legislative Assembly of Nagaland has been violated or breached by the CAG.

70. With regard to the above, it is noteworthy that neither the CAG nor the Speaker of the Nagaland Legislative Assembly is a party to the writ petitions. We are, therefore, not concerned as to whether the CAG committed any breach of privilege in forwarding the report to the Finance Minister. What, however, we are concerned with is as to whether the scheme, which the Constitution envisages for dealing with the CAG's report, has any room permitting the respondent/ authorities

concerned to take action on a report of the CAG, which alleged that the taxes liable the paid by Mr. M. K. Subba and others had not been paid, even though the report had not been laid before, and considered by, the Legislative Assembly of Nagaland.

71. The authorities, which Mr. Choudhury has relied upon, deal with the privilege of the House as regards its internal proceedings. The House has absolute power to regulate the business of the House in accordance with the procedure that it may choose to adopt. If in the process, any injustice is done, the law provides no remedy thereto and if a wrong conclusion is reached by the House, this will amount to nothing but an error, which even a court may commit in taking a decision, the difference, however, being that the decision of the House may not be subject to appeal. It is in this light that the decision in *Bradlaugh v. Gossett* (1884) 12 QB 271 needs to be read and viewed. Similarly, in *Tei Kiran Jain v. M. Sanjiva Reddy* : [1971]1SCR612 , which Mr. Choudhury relies upon, the Constitution Bench pointed out that anything said or done during the sitting of Parliament by a Member of Parliament within the House gives him an absolute immunity from being dragged to court for anything said or done by him within the House during its proceedings. In *P. V Narsinzha Rao v. State (CBI/SPE)* : 1998 CriLJ2930 too, the Apex court emphasised the need for giving complete freedom to the members of the House to participate fearlessly in Parliamentary debates and to protect them against any civil or criminal proceedings that may bear a nexus to their speech or word.

72. What emerges from the above discussion is that so far as the internal proceedings of the House are concerned, whatever is said or done by a member of the House, the same cannot be questioned in any court and no member can be prosecuted or sued for anything which has been said or done by him during the proceedings of the House. The decisions, relied upon by Mr. Choudhury, do not furnish any authority for the question which is raised before us, namely, as to whether an executive authority, who under the law has a duty cast upon him to take action on the basis of the information, which it may receive, can act upon a piece of information if the information happens to have been received by him from what has been said or done in the House or meant for the House. The CAG's

report is, undoubtedly, a property of the House until at least the time when it is published. The question is as to whether without the CAG's report having been published, or after it has been published, an action can be taken by a person or authority, which has a duty under the law to arrest evasion of taxes if the CAG's report gives indication of evasion of taxes by a citizen, while dealing with a department of the Government. This question in turn brings us to a more fundamental question and the question is as to what powers, immunities and privileges the House of a Legislature enjoys under the scheme of our Constitution.

73. Let us, therefore, determine now as to what powers, privileges and immunities the House of a Legislature enjoys under the scheme of the Constitution. A discussion on this aspect of the matter can be of no avail without referring to, and taking into account, what article 194 has to say in this regard. For the purpose of resolving the controversy raised in this appeal, we quote, hereinbelow, article 194, which runs as follows:

'194. Powers, privileges, etc., to the Houses of Legislatures and of the members and committees thereof.(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature. there shall be freedom. of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect or the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in and otherwise to take part in the proceedings of, a House of the Legislature of a State or any Committee thereof as they apply in relation to members of that Legislature.'

74. What needs to be carefully noted, while considering article 194, is that this article deals with the powers, privileges and immunities of the House of Legislature and its members. Similar provisions exist in article 105 in respect of the Houses of Parliament. In the present case, we are concerned with the privileges of the House of Legislature. What is necessary to bear in mind is that under article 194(3), until the Legislature of a State may, by law, define the privileges, it shall continue to enjoy such privileges as have been available to it immediately before the coming into the force of the Forty-fourth Amendment of the Constitution.

75. What is of utmost importance to note, while considering the question of privileges, is that a privilege has to be expressly or impliedly claimed for an authority, be it the Executive or the Legislature, who enjoys the privilege, may choose to waive its privilege in the greater interest of the general Public or for the welfare of the nation unless a legal or constitutional bar exists restraining the authority concerned, be it the Executive or the Legislature, from waiving or restricting its privilege. For example, article 74(2) provides that the question, if any, and, if so, what advice was tendered by the Ministers to the President shall not be inquired into in any court. Thus, article 74(2) contains an express bar restricting Parliament from waiving its privilege. So long as this Constitutional provision remains, Parliament cannot enact a law authorising courts to inquire into as to what advice the Council of Ministers had tendered to the President, for, such a statutory provision is not permissible in the face of the embargo imposed by article 74(2). However, in respect of those privileges, which the Constitution do not specifically bar the Legislature from waiving or not claiming, the Legislature may, by enacting law, give up its privilege. This fundamental aspect of the scope of 'privilege' of a Legislature has to be kept in mind in deciding the question which we are concerned with.

76. It is also of some significance to note that under clause (3) of article 194, the House of the Legislature of a State has the power to define, by making law, its privileges. In other words, the Legislature may, by making law, define the ambit of its own privileges. This shows that the Legislature may expressly define the ambit of its privileges by enacting a specific law in this regard or it may enact a statute in such a way that it reduces, by implication, the ambit of its own privileges, which it might have otherwise, enjoyed. It is in the backdrop of such a power, which the Legislature has, that one has to determine the real controversy in issue before us as posed by question No. 11.

77. Strictly speaking, even the budget, which is presented in the House, or the debate of the House on the budget, so presented, may be made a privileged proceeding of the House in the sense that Parliament or the State Legislature may, by law, choose to keep the discussion on the budget confined within the walls of the House ; but if Parliament or the State Legislature chooses to make its proceedings on the budget public, the information derived from such proceedings can indeed be acted upon for Parliament or the State Legislature concerned can be safely assumed to have, in such a case, waived its right or power to claim privilege in respect of the discussion which takes place on the presentation of the budget. It is for this reason that when a proceeding is telecast live, the House cannot stop discussion on such a proceeding or claim any privilege on any action, which may be taken by an authority which has the power under the law to take action on the basis of information gathered by it from the materials, which may even surface during the progress of such a live proceeding of the House, so long as taking of any such action does not, until the law is made otherwise, affect adversely the immunities enjoyed by the members of the House. Though very fine, yet a marked distinction exists between 'privilege' and 'immunity'. Hence, in respect of a statement, which is made by a Member of the House in the course of the proceeding, which is telecast live, the Member concerned would enjoy complete immunity from being sued or prosecuted. The reason is evident and the reason is that though the proceedings, on being telecast live, do not remain confined within the walls of the House, the immunity enjoyed by the Members remains still unabridged, unaffected and intact.

78. Let us assume a case in which X, a Member of the House, alleges that Y, another Member of the House, has evaded payment of taxes or X, a Member of the House, alleges that the Government has deliberately not deducted tax, at source, in a given case and has thereby allowed a citizen, Z, who dealt with the Government and who was liable to pay taxes, to evade payment of tax. Assume, for a moment, that this proceeding of the House is not made public; can the authorities, who are concerned with, and responsible for, ensuring that evasion of tax does not take place, be debarred from making any investigation into the question as to whether Y or Z, as the case may be, has evaded payment of tax or not. If the authorities concerned with the collection of tax, on coming to know of this accusation from any source whatsoever, decide to start an investigation, can Y or Z resist the investigation, if initiated by the Tax Department, merely on the ground that the information, which the tax authorities had happened to receive, was based on the proceedings of the House, which had not been made public and it was, therefore, constitutionally impermissible to be acted upon. The answer to this question has to be an emphatic 'no', for while it is undoubtedly for the House to decide whether it would take action on the information of non deduction of tax at source by the Government from a taxpayer, it is the duty of the Directorate of Investigation (Income-tax) to ensure that no one evades payment of tax. Since it is the duty of the Directorate of Investigation to ensure that no citizen evades payment of tax, it logically follows that if the Directorate of Investigation comes to know about evasion of tax through either a draft or final report of the CAG, there can be no impediment, on the part of the Directorate, to act upon such information, for the source of information through which the Directorate comes to know about the contents of such a report is inconsequential and immaterial.

79. In the case at hand, it is the Legislative Assembly of the State of Nagaland which could have perhaps claimed privilege in respect of the contents of the CAG's report in question; but neither the Speaker of the State Assembly was made a party to the writ petition nor has the State Assembly of Nagaland claimed any privilege in respect of the said report. In such a situation, the writ petitioners cannot contend that the information derived from the said report of the CAG could not have been legally acted upon by any authority specified in section 132.

80. Similarly, let us assume that X, a Member of the House, makes an accusation, on the floor of the House, that one Z has been killed by Y (who may or may not be a Member of the House) and an offence of murder has thus been committed by Y (who may or may not be a Member of the House), but the police has not taken any action whatsoever. The Member X, cannot be prosecuted for making such a statement even if the proceeding of the House is telecast live or the proceeding is made public by the House itself; but if the proceeding is not made public, will it absolve the Superintendent of Police of the district concerned from making inquiry as to whether an offence of murder has really taken place as is alleged by the Member of the House or not and, if so, whether Y (who may or may not be a Member of the House) is involved in the alleged murder or not. If the answer to this question is given in the negative, the *fallout will be that even if it is the duty of the officer-in-charge of a police station to investigate into the 'information' of a cognizable offence, he will be disentitled from making the investigation if the 'information' becomes available to him through a medium, which is not authorised to pass such an 'information' from inside the House to any outside agency or person. Assume, for a moment that the proceeding of such an accusation has not been made public, can the officer concerned be held to have lost his power to investigate into the matter and ascertain if the 'information' received is true or not. Assuming that the proceeding, in question, has not been made public, but the Home Minister or the Chief Minister of the State asks the officer-in-charge of the police station concerned to report as to whether the information with regard to commission of murder is correct or not. Can the officer-in-charge concerned, in such a case, use the proceedings of the House as a shield to say that since the matter has been raised on the floor of the House and is a privileged proceeding, he cannot make any investigation and/or inquiry into the matter. The answer to this question has to be in the negative, for, when it is the statutory duty of a police officer to make investigation into 'information' of cognizable offence and the officer concerned has not made such an investigation, on account of non-receipt of any information in this regard, he cannot be legally stopped from carrying out investigation to determine if Z has really been killed by Y merely because a Member of the House has, in the meanwhile, raised the question on the floor of the House. The conclusion drawn from such a situation is that when the law

enjoins upon the police officer to investigate the correctness of such an information, which he might have derived through any source, he cannot shirk his responsibility to investigate, no matter if the source of information is not legally and constitutionally authorised to pass out such an information. The police officer can be debarred only if the Constitution or any law, expressly or by implication, prohibits such an investigation. Assuming that the Member of a House makes a claim that there is an imminent threat to the life of any Member of the House; can the police authorities concerned refrain from taking action, in this regard, merely on the ground that the question of threat has been raised on the floor of the House and the same has not been made public. Whatever may be the source of information through which the police authorities concerned come to know about the information regarding the existence of threat to the life of a Member of the House, it is the duty of the police to ensure safety of the life of the individual concerned and they must discharge this legal duty fearlessly, no matter what is the source of their information.

81. When, in section 154 of the Criminal Procedure Code, the Legislature has knowingly and consciously used the word 'information' in relation to cognizable cases, it logically follows that by using the word 'information', the Legislature has given the liberty and has thereby made it, in fact, a duty of a police officer to act upon the 'information' if the same discloses commission of cognizable offence irrespective of the fact as to the source from which such an 'information' has been received, particularly, when the Constitution does not create, directly or indirectly, a bar to such investigation. In other words, even if the information is received from a document, which is, otherwise, a privileged document lying with a State Legislature, if such a document does contain any information with regard to commission of a cognizable offence, the information derived from such a document can be safely acted upon by a police officer under section 154 of the Criminal Procedure Code. This will not mean that there is any conflict of interest between the Executive and the Legislature, for, it is the Legislature itself, which authorises the Executive to take action in such a matter even if the information is derived from a document, which is the property of the Legislature and the Legislature had not made the same public. In other words, the information derived not merely on the basis of a public document, but also from a privileged document

can if need be, be acted upon under section 154 of the Criminal Procedure Code.

82. While dealing with the above aspects of the matter, one has to bear in mind that a person or authority, which enjoys a power, is equally liable to exercise that power as a matter of duty. An officer-in-charge of a police station is empowered to investigate into information of cognizable offence, at the same time, one can safely say that it is also the duty of such a police officer to investigate into the information of cognizable offence.

83. Similarly, though it is the power of the officers specified in section 132(1) to issue warrant of authorisation, the same provisions can also be construed as forming part of the duty of those officers to issue warrant of authorisation if the conditions precedent maintained in section 132(1) are satisfied. Lest the evasion of tax may bleed the economy white and make the Government bankrupt, the power to act even on 'information', which is believable, has to be conferred on the authorities concerned. It is, indeed, a power of great significance, yet it has been held to be constitutionally valid.

84. At this stage, the reasons as to why section 132 has been so liberally worded and why such liberally worded provision has been held to be constitutionally valid can be gauged from the decision of the Apex court in *Pooran Mal v. Director of Inspection (Investigation) Income-tax* : [1974]93ITR505(SC) , the relevant portions of which read as follows:

' . . .one cannot possibly ignore how such evasions eat into the vitals of the economic life of the community. It is a well known fact of our economic life that huge sums of unaccounted money are in circulation endangering its very fabric. In a country which has adopted high rates of taxation a major portion of the unaccounted money should normally fill the Government coffers. Instead of doing so it distorts the economy. Therefore, in the interest of the community, it is only right that the fiscal authorities should have sufficient powers to prevent tax evasion.. It is now too late in the day to challenge the measure of search and seizure when it is entrusted to Income-tax Authorities with a view to prevent large scale tax evasion.' (pp. 516 & 517)

85. Bearing in mind what we have pointed out hereinabove, let us now turn once again to section 132 of the Act.

86. A reading of section 132 clearly shows that the information, envisaged by section 132(1), does not restrict the source from which the information has been received. The question, therefore, would be as to whether the word 'information', occurring in section 132(1), would include the proceedings of a House. Assuming for a moment that 'X', a member of the House, alleges, during the course of the proceeding of the House, that 'Y', a member of the House, or 'Z', a member of the public, has evaded payment of tax. Is the Directorate of Income-tax debarred from taking any action on such a 'piece' of information only because the information has been derived from a statement made within the walls of the House and has not been made public or the source, which informed the Directorate, is not authorised by the House to leak out the information. When the Legislature has consciously used the word 'information' in section 132(1) without specifying that it is only information derived from legal and authorised source, which can entitle the authorities concerned to act upon the same, it will but be natural to infer that the legislative intendment is that if such an information, after conducting investigation or otherwise, can give rise to reasonable belief about the existence of the conditions warranting resort to issuance of warrant of authorisation for search and seizure, the authority/ authorities concerned shall suffer from no limitation and must act upon such information. By consciously using the word 'information' and by not specifically restricting the source from which the information is received or derived, the Legislature has, in fact, waived any privilege that it might have had in respect of such an information and has thereby made it possible for the authority/ authorities concerned to act upon such information. Had there been a constitutional bar on the part of the Legislature itself to waive such a privilege, then, the situation would have, perhaps, been a little different. Can information derived from such a statement, which has not been made public by the House, form the basis for an investigation to ascertain if 'Y' or 'Z' has or has not made payment of tax. Will the authority concerned be liable for breach of privilege of the House if, on coming to know about such an accusation made on the floor of the House, the authorities concerned decide to proceed with the matter? When the Legislature has wisely used the word 'information' in section 132 without specifying

the status of the source from which the information has to be received in order to enable the revenue authorities to act upon the same, the conclusion which is irresistible to draw is that the legislative intendment is that if on receiving information from any source including the proceedings of the House, which have not been made public, that a person (who may or may not be a Member of the House), is involved in evasion of tax and if the authorities concerned have reason to believe the information so received to be true, the authority/ authorities concerned will be duty bound to act upon such information. If the authority/ authorities concerned do not know whether the information so received and/or the accusation made on the floor of the House is true or not, can the authority/ authorities concerned be barred from making investigation to find out the truth or veracity of the information received by them as regards the fact as to whether the person, accused of having evaded payment of tax, has really evaded the payment of tax or not? We are unable to read into the language of section 132 any such restriction, for, the Legislature has, to our mind, purposefully and with great farsightedness used the word 'information' without restricting the source from which the information has been derived or received. By making the law, as has been done, the Legislature has in fact waived its privilege, if any, and* has thereby made it possible for the authority/ authorities concerned to act upon such information. If there were a constitutional bar, on the part of the Legislature itself to waive its privilege in this regard, then, the matter would have, perhaps, been, if we may repeat, a little different.

87. To put it differently, the Legislature may choose to waive a privilege that it may have under the Constitution unless there is something in the Constitution, which debars the Legislature from waiving the privilege. Thus, when the Legislature, being fully aware of what it intended, has used the word 'information' in section 132(1) and it has also deliberately chosen not to specify that the source of information has to be constitutional and legal, it logically follows that the Legislature has opted to waive its privilege, if any, in this regard and has thereby made it constitutionally and legally possible and permissible for the authorities specified in section 132(1) to act upon the 'information' received by them whatever may be the source of their information provided, of course, that the reasons to believe the information as envisaged by section 132 exist. Taking of such action

by the authority/ authorities cannot be dubbed, in such a case, illegal or unconstitutional.

88. What emerges from the above discussion is that when the Legislature itself, knowing as to what it was doing, has intentionally and dispassionately used the word 'information' and has not restricted the authorities concerned under section 132(1) from acting upon the information which may be derived by the authorities concerned from the report of the CAG, which has not been laid and discussed by the State Legislature, it would be, in our opinion, realistic to hold that the legislative intendment is that even if the authority concerned received the information about evasion of tax from the report of the CAG, which has not been laid in the House concerned or discussed in the House concerned, there is no legal impediment on the part of the authorities concerned to act upon such information; rather, it will be the duty of the authorities concerned, to act on such information.

89. Moreover, a bare reading of section 132 clearly shows that the authority specified in section 132(1) has to have in his possession 'information'; such an 'information' may be a piece of information or a set of different pieces of information. Since the Legislature has used the expression 'in consequence of information in possession', it means that it is the information, which has to be in the possession of the authority specified in section 132(1) and not the report /document from which the information is derived or received. Thus, even when the CAG's report remains the property of the House as has been contended on behalf of the writ petitioners, the fact remains that since section 132(1)g speaks of 'information', it implies that on the basis of a mere 'information' derived even from the report, which is in the possession of the Legislature or which is property of the Legislature, the authority specified in section 132(1) can act upon the same, for, what he must have in his possession is the 'information' and not the 'report' of the CAG. It is only when the report of the CAG is published that the same can come into the possession of any one including the authorities mentioned in section 132(1) ; but even if the authority concerned has no such report in his possession, yet if he has 'in his possession' the 'information' with regard to what such report contains, such an information can be acted upon, provided that the conditions precedents embodied in section 132 and warranting resort to such powers as are

specified in section 132, are otherwise present. In the case at hand, the report of the CAG was, admittedly, made available to the writ petitioners, but they do not claim that the contents of the CAG's report contained no material to initiate action under section 132(1)(c). Situated thus, the use of the CAG's report cannot be said to be unreasonable or unwarranted, especially when no legal or constitutional impediments to the use of the CAG's report could be shown by the writ petitioners.

90. Because of what has been discussed and pointed out above, we have no hesitation in holding that an information derived from any source as regards the contents of the report of the CAG, which has not been laid or discussed by the Legislative Assembly of the State concerned, can be acted upon by the authorities concerned under section 132(1), for the legislative intendment is that the evasion of tax is not allowed to continue for a moment even if the authorities concerned have received information about such an evasion from the report of the CAG, which has not been laid or discussed in the Legislative Assembly of the State concerned. Viewed from this angle, the fact that the CAG report in question had not been laid and/or discussed by the State Legislature could not have restrained the respondents from acting upon the same.

Question No. (iii) :

91. Turning to question No. (iii), namely, as to whether the respondents/ authorities had in their possession within the meaning of section 132(1) of the Act, any 'information' other than the CAG's report, enabling them to initiate action(s) thereunder, it is necessary to recall that at para 41 (page 528 supra) of this judgment, we have already clarified as to what the condition precedent are for invoking of the powers under section 132(1)(c). We have also stated therein that the conditions precedent are as under :

(i) There must be information in the possession of the Director General, etc.

(ii) In consequence of such information, the officer concerned must have a reason to believe,

(iii) The belief being that any person is in possession of any money, bullion, jewellery, or other valuable article or thing,

(iv) The officer concerned must have further reason to believe that such money, bullion, jewellery etc., represents either wholly or partially, income or property, which has not been disclosed or would not be disclosed, for the purposes of the Act.

92. It is important to note that to enable an officer to issue the warrant of authorisation under section 132(1)(c), he must be in possession of the kind of information which clause (c) of section 132(1) envisages.

93. It is now, pertinent to note as to what the expressions, 'information' and 'reason to believe', occurring in section 132(1), convey. 'Information', according to the Shorter Oxford Dictionary, means 'that of which one is apprised or told'. Webster's Encyclopaedic Unabridged Dictionary (1989 edition) states that 'information' means 'knowledge communicated or received concerning a particular fact or circumstance; knowledge gained through communication, research instruction, etc.' 'Information' may be oral or written.

94. The word 'information' must, therefore, be given wider meaning, for a narrower construction may defeat the object of section 132(1), which is directed against persons, who are believed on good grounds to have evaded payment of tax on their income and property, (see *Pooran Mal v. Director of Inspection (Investigation)*, Income-tax : [1974]93ITR505(SC) .

95. The words 'information in his possession' occurring in section 132(1), should be construed as some definite information in the possession of the authority/ authorities specified in section 132(1) and not any imaginary information. How that information comes to the possession of the revenue is quite immaterial. In *Maharaj Kumar Kamal Singh v. CIT* : [1959]35ITR1(SC) , the Supreme Court, while construing section 34(1)(b) of the Indian Income Tax Act, 1922, has held that the word 'information' appearing therein should be treated to mean not only facts or factual materials, but should also include information as to the true and correct state of the law. Subsequently, the Supreme Court in *CIT v. A. Raman & Co.* :

[1968]67ITR11(SC) , defined the expression 'information', occurring in section 147(b) of the Income Tax Act, 1961, as instruction or knowledge derived from an external source concerning facts or particulars or as to the law relating to a matter, which has bearing on the assessment.

96. What transpires from the above discussion is that the word 'information' is nothing but knowledge communicated or received concerning a particular fact or circumstance. The source of information is not material; but the 'information' must not be a mere gossip, rumour, hunch or intuition.

97. The expression 'reason to believe' is subjective as well as objective, but the area of objectivity is limited and the court cannot substitute its opinion for that of the authorities specified. No doubt, 'reasons to believe' is not akin to 'reasons to suspect' and, therefore, a higher test has to be fulfilled; but it is not necessary for the authorising authority to reach that 'belief' by a process akin to a judicial process. His 'reason' and his 'belief' do not constitute a judicial or a quasi-judicial act nor is the act of issuing authorisation a judicial or quasi-judicial function. Where the facts show that the authorising authority had bona fide reason for formation of the belief, the search can be held to be valid and the court would not substitute its own opinion as to the reasonableness of the 'belief' formed by the authority concerned.

98. Since the 'belief' is that of the authority concerned, the sufficiency of the 'reason' for forming of the 'belief' is not for the court to judge; but it is open to an assessee to show that there in fact existed no 'belief' or that the 'belief' was not at all a bona fide one or that the belief was based on vague, irrelevant or non-specific information. To that limited extent, the court may look into the conclusion arrived at by an authority and examine whether there was any material available on record to form the requisite 'belief' and, further, whether the material had a rational connection or live link with the formation of 'belief'. (See Phool Chand Bairang Lal v. ITO : [1993]203ITR456(SC) and Sri Krishna (R) Ltd v. ITO : [1996]221ITR538(SC)).

99. Let us, now, come to the question as to what the expression 'reason to believe' conveys. 'Reason to believe' is a common feature in taxing statutes. It has been

considered to be the most salutary safeguard on the exercise of powers by the authorities concerned. It is made of two components, namely, 'reason' and 'to believe'. The word 'reason' means cause or justification and the word 'belief' means to accept as true or to have faith in it. Before an officer attributes faith or accepts the fact to exist, there must be a justification for it. The 'belief' may not be open to scrutiny, for 'belief' is the final conclusion arrived at by the officer concerned as a result of the mental exercise made by him on the basis of the information received by him, but the 'reason' due to which the decision is reached can always be examined. 'Belief' may be subjective, but 'reason' is objective. The 'belief' of the officer should not be a product of imagination or speculation. There must be 'reason' to induce the 'belief'. The 'belief' must be of an honest, prudent and reasonable person and the same must be based on reasonable grounds. The officer may act upon direct or circumstantial evidence, but his 'belief' must not be based on mere suspicion, gossip or rumour (See *Sheo Nath Singh v. Appellate Assistant Commissioner* : [1971]82ITR147(SC)).

100. The formation of the 'belief', within the meaning of section 132(1) is an important step and a condition precedent to the issuance of authorisation of the search and seizure. It is basically a subjective step, which consists of essentially making up of one's mind as to whether on the basis of the 'information' presented before him or her, 'belief' can be formed or not. This 'belief', of course, cannot be a mere pretence nor can it be a mere doubt or suspicion.

101. The words 'has reason to believe' are stronger than the words 'Is satisfied'. The 'belief' entertained by the authority must not be arbitrary and irrational. As held by the Apex court in *Ganga Saran & Sons (P.) Ltd. v. ITO* : [1981]130ITR1(SC) , it must be 'reasonable' or, in other words, it must be based on reasons, which are relevant and material. The 'belief' must be held in good faith and it cannot be merely a pretence. It is open to the court to examine whether the reasons for the belief have a rational connection or a relevant bearing to the formation of a belief or not and whether the reasons for the belief are extraneous or irrelevant. The expression 'reason to believe' predicates that the authority holds the belief induced by the existence of reasons for such belief. It contemplates existence of 'reason' on which the 'belief' is founded and not merely a 'belief' in the existence of reasons

inducing the belief. Such a belief should not be based on mere suspicion and it must be founded upon information (see *Calcutta Discount Co. Ltd v. ITO* : [1961]41ITR191(SC) .

102. It is correctly pointed out by Mr. Choudhury that a mere report/ letter/note of a Government department sent to the Income-tax Authority cannot be regarded as information for the purposes of section 132 of the Act. Reference is made, in this regard, by Mr. Choudhury to *Ajit Jain v. Union of India* (2000) 242 ITR 3021 approved by the Apex court in *Union of India v. Ajit Jain* (2003) 260 ITR 802 wherein a note by the CBI to the Income-tax Authorities was not treated as information. In *Coca-Cola Export Corpn. v. ITO* (1998) 231 ITR 2001, the two letters written by the Government of India to the assessee were treated as no 'information' within the meaning of section 132(l) in the possession of the ITO. In *Vindhya Metal Corpn. v. CIT* : [1985]156ITR233(All) , approved by the Apex court in *CIT v. Vindhya Metal Corpn.* : [1997]224ITR614(SC) , the information given by the railway police that the person, to be proceeded against, was found carrying Rs. 4 lakhs was not regarded as 'information' sufficient for the purpose of search and seizure under the Income Tax Act.

103. What the decisions in *Union of India v. Ajit Jain* (2003) 260 ITR 801 ; *Coca-Cola Export Corpn. v. ITO* (1998) 231 ITR 2001 and *CIT v. Vindhya Metal Corpn.* : [1997]224ITR614(SC) go to show is that one must not believe an information merely for the reason that a statutory authority has given the 'Information', for 'information' may come from any source, but can be acted upon for the purpose of issuing the warrant of authorisation, only if the information has materials which can induce a prudent person to believe the correctness or truthfulness of the information. Thus, search and seizure cannot be authorised under section 132(l)(c) merely because accusation of evasion of tax by a citizen has been reported by a high constitutional appointee, such as, the CAG. Such a report can, indeed, be used, unless prohibited by law, to find out if there is substance in the accusation made by the CAG and if such, an enquiry made by the authorities concerned uncovers materials and if, based on such materials, the authorities concerned have 'reasons to believe' the

'information' as regards evasion of tax, resort to the issuance of authorisation under section 132(1)(c) cannot be barred unless there is any provision in the Constitution or in any other statute prohibiting use of such material(s) for the purpose of taking recourse to section 132(1)(c).

104. There can be no doubt that the existence or otherwise of the conditions precedent for the exercise of powers under section 132(1) of the Act is open to judicial scrutiny. The court can examine whether the authorised person had materials before him on which he could form the opinion and whether there is a rational connection between the information possessed and the opinion formed. The absence of the conditions precedent would have the effect of vitiating the authorisation. While the sufficiency or other-wise of the information cannot be examined by the court, the existence of information and its relevance to the formation of the belief can, undoubtedly be gone into (See *Vindhya Metal Corpn. v. CIT* : [1985]156ITR233(All)). (See also *C. Venkata Reddy v. ITO* : [1967]66ITR212(KAR)).

105. What is basic, while considering the legality or propriety of the issuance of warrant of authorisation, is the existence of the relevant material and the actual application of mind of the authorising authority, who issued the warrant (see *Kusum Lata v. CIT*).

106. Bearing in mind the principles of law mentioned hereinabove, when we revert to the question at hand, namely, as to whether the respondents/ authorities had, in their possession, within the meaning of section 132(1) of the Act, any 'information', other than the CAG's report, enabling them to initiate action(s) thereunder, what attracts our attention most prominently, is that the revenue had in their counter-affidavits, as correctly noted by the learned Single Judge, stated to the effect that the searches were an all-India affair in consequence of information in possession of the respondent authorities including report of the discreet inquiries and that these reports had led the authorities to conclude that the concerned group was in the possession of books of account, papers and documents, wherein undisclosed transactions had been recorded and that the same would never be produced before the Income-tax Authorities.

107. In view of what the revenue had averred in their affidavits, it had become essential for the learned Single Judge to scrutinise the office files/records produced by the respondent/ authorities concerned in order to determine if there really existed any information other than the information derived from the CAG's report. Taking into account the materials contained in the record including the note sheets, the learned Single Judge observed as follows :

'54. The file relating to the Directorate in Delhi contains various papers including the note of satisfaction. The DDIT (Investigation), New Delhi, classified the information received from various sources into three groups, namely, (a) information gathered by this Directorate, (b) information received from the DDIT (Investigation), East and (c) information received by the DDIT (Investigation), New Delhi, from the Comptroller and Auditor General of India. The information gathered by the Directorate as referred to in clause (a) above cite as many as eight instances of undisclosed property, of which the CAG report finds berth. The information under clause (b) received from the DDIT, Siliguri, relates to generation of unaccounted income from lottery business. Clause (c) is with regard to the CAG report- Besides this, the DDIT, New Delhi, has also in his possession a number of allegations of tax evasion against this concern which have been enumerated in detail in the note of satisfaction. The information in possession of the concerned authority received from various sources including discreet inquiries are overwhelming in volume which alone were sufficient to form the 'belief' as is required under section 132. The satisfaction note does not indicate that the 'reason to believe' was founded on the report of the CAG alone.

55. The file relating to Kolkata also contains a separate note of satisfaction based on various information obtained from the Delhi Directorate and discreet inquiries. The allegations of tax evasion are relatable to five instances and the discreet field inquiries reveal voluminous information relatable to tax evasion. The report of the CAG was also one of the sources of information, which was in addition to the aforesaid information collected from various sources. The note of satisfaction further shows that the authority was satisfied that the concerned group are not disclosing their true income to tax and, as such, even if a notice under section 131 is issued, the said group will not disclose the true income before the Income-tax

Authorities. The note of satisfaction does not indicate that the report of the CAG was the prime consideration of the Income-tax Authorities in forming the required 'belief'.

56. Similar is the decision with regard to the note of satisfaction of the authorities at Gauhati. The note of satisfaction at Gauhati was drawn on the report of the DDIT (Investigation), Siliguri, wherein information has been disclosed of accumulation of property undisclosed to tax. Though this note of satisfaction also refers to the report of the CAG, the satisfaction was drawn primarily on the basis of the information collected from various sources by the DDIT at Siliguri relatable to the concerned group at Gauhati.'

108. Reacting to the observations made by the learned Single Judge as quoted hereinabove, it has been submitted, on behalf of the writ appellants, that the learned Single Judge has derived his own satisfaction from the contents of the files without disclosing the same to the writ petitioners, though the revenue did not claim any privilege in respect of these documents.

109. Turning to the question as to whether the materials relied upon by the respondents /authorities concerned for issuing the warrant of authorisation under section 132(1) of the Act ought to have been disclosed to the writ petitioner or not, what is imperative to note is that in *ITO v. Seth Bros.* : [1969]74ITR836(SC) , the Apex Court, while considering the action taken under section 132 of the Income Tax Act, 1961, held as under :

'. . . If the action of the officer issuing the authorization or of the designated officer is challenged, the officer concerned must satisfy the court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed. But where power is exercised bona fide, and in furtherance of the statutory duties of the tax officers any error of judgment on the part of the officers will not vitiate the exercise of the power. Where the Commissioner entertains the requisite belief and for reasons recorded by him authorises a designated officer to enter and search premises for books of account and documents relevant to or useful for any

proceeding under the Act, the court in a petition by an aggrieved person cannot be asked to substitute its own opinion whether an order authorising search should have been issued. Again, any irregularity in the course of entry, search and seizure committed by the officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken, provided the officer has in executing the authorisation acted bona fide.' (p. 843)

110. From a careful reading of what has been observed by the Apex court in ITO v. Seth Bros. : [1969]74ITR836(SC) , what follows is that when the issuance of authorisation for search and seizure is challenged by a person, the revenue shall have the onus of satisfying the court that its action was justified under the law. Thus, it is the court, which has to be satisfied, that on the basis of the materials placed before it, the action taken under section 132 was in consonance with law. We are unable to read into the decision rendered in ITO v. Seth Bros. : [1969]74ITR836(SC) any requirement of law making it obligatory, on the part of the revenue, to disclose to the person, who approaches the court, the materials, which had been relied upon and/or information or set of information, which had been acted upon, for the purpose of issuing authorisation.

111. Though Mr. Choudhury has laid great emphasis on the fact that since the respondents /authorities concerned have not claimed any privilege, they ought to have disclosed to the writ petitioners the materials, which were relied upon for issuing warrant of authorisation, we, as already indicated hereinabove, find this submission, made on behalf of the writ petitioners, somewhat, misconceived in law, for, when the action of the authorities concerned is challenged, the respondents/ authorities, in the light of the decision in ITO v. Seth Bros. : [1969]74ITR836(SC) , are required to satisfy the court as regards the regularity of their action. It is not a part of the duty of the revenue authorities to disclose to the person, who challenges the warrant of authorisation, as to what materials were available against him, which had led to the issuance of warrant of authorisation. It is only when the authorities concerned resolve to impose tax or penalties, etc., that they would have to disclose to the person concerned as to why tax or penalty were being imposed.

112. While dealing with the question at hand, it is also important to bear in mind that the 'information' received or derived by the authority/ authorities concerned should be credible and if there is some such information, the court cannot go into the sufficiency of the information. In other words, there must be some materials, which can be regarded as 'information' and such 'information' must exist on the file/record on the basis of which the authorising officer can have 'reason' to believe that action under section 132 is called for. (See *Kusum Lata v. CIT* (1989) 180 ITR 3651).

113. At the initial stage of the search and seizure, it is sufficient if the revenue places the materials before the court for its examination as to whether the materials, on which the search and seizure stood ordered, were relevant to the exercise of the powers under section 132(1) or not. The materials placed for the court's, perusal cannot be disclosed to the petitioner (See *Southern Herbals Ltd. v. Director of Income-tax (Investigation)* : [1994]207ITR55(KAR)).

114. In *Sriram Jainval v. Union of India* (1989) 176 ITR 26 , it has been held that if in each and every case, the Income-tax Authority empowered to issue the warrant of search is called upon to disclose information on the basis of mere denial of valid information by the petitioner, then, the very scheme of section 132 would stand frustrated. It was, therefore, held that it was not proper to call upon the department to disclose the information received before the action under section 132(1) was taken and, hence, the uniform and consistent practice in such cases is that it is for the court to inspect the records to examine if the conditions precedent for the issuance of notice and/or taking of action, in fact, existed or not.

115. The proceedings before taking of any action under section 132 are only administrative in nature. Since the power of the court is only to examine as to whether there were materials and/or information before the authority and whether the 'reasons for the belief' have rational connection with, a relevant bearing to, the formation of the 'belief' and/ or whether the reasons were extraneous and irrelevant for the purpose of section 132, it is not necessary, while considering these facts by the court, that the information and the materials should be disclosed to the assessee.

116. In *K. S. Rashid & Son v. ITO* : [1964]52ITR355(SC) , the Apex court held that the assessee is not entitled to a copy of the reasons recorded at the time of issue of notice under section 34 of the Indian Income Tax Act, 1922. Again, in *S. Narayanappa v. CIT* : [1967]63ITR219(SC) , the Apex Court, while examining the proceedings under section 34 of the Indian Income-tax Act, 1922, held that the stage of the proceeding for recording of reasons by the ITO and obtaining of sanction of the Commissioner are administrative in character and are not quasi judicial. There is no requirement in any of the provisions of the Act laying down as a condition for initiation of the proceedings that the 'reasons' and/or material and/or information must be communicated to the assessee as and when a challenge is made before the court of law on the ground that such reasons and/or material and/or information did not exist.

117. Disclosure of the materials to the persons against whom the action under section 132(t) is taken is not mandatory, for, the very disclosure would affect or hamper the investigation. Further, many a time, the source of information could easily be inferred from the materials relied upon and it is not in the interest of the public that the authority concerned should reveal the source through which the authority received the information, for, the information might be collected by the promise of confidentiality; even otherwise, to avoid embarrassment to the persons conveying the information, the source of information cannot be revealed. The stage for disclosure of the materials is reached only when the revenue resolves to proceed to make an appropriate order imposing tax liability or penalty, etc., and at that stage, all relevant materials from which the liability of the person proceeded against is sought to be sustained shall have to be disclosed.

118. In the above backdrop, when we revert to the materials which had been considered by the learned Single Judge, we notice that the learned Single Judge, as mentioned hereinabove, took note of the various materials available in the files/records and made his observations with regard thereto. It is not agitated before us that what the learned Single Judge has quoted did not exist in the files/records produced by the revenue. Situate thus, we have no reason to disagree with the observations made by the learned Single Judge that the details of the information available in the relevant files, received from various sources,

were capable of leading the authorities to conclude that the writ petitioners were in possession of undisclosed property/ income, which they would never divulge even if a notice is served upon them under section 132(1) of the Act.

119. What, thus, surfaces from the above observations of the learned Single Judge, is that the notes of satisfaction, as noticed by the learned Single Judge, did reflect existence of requisite materials on record before the warrant of authorisation was issued.

120. Though it was not necessary, yet as a matter of abundant caution, we too have perused the materials available in the files and we find that a letter was received by the Union Finance Minister containing extracts of the audit report from the CAG. Consequent to the information so received by the Union Finance Minister, an independent investigation was launched by the revenue department and the investigation, so made, led to the preparation of reports by the DIT (Investigation), New Delhi, Gauhati and Calcutta. On the basis of the result of the investigation made by these three authorities, they shared the information with each other and on the formation of belief by each of them, the warrants of authorisation for search and seizure were issued. This shows that warrants of authorisation were not issued based solely on the contents of the CAG's 'report; rather, the information derived therefrom was investigated into. In the course of investigation, materials were collected and it was on these materials that the 'belief' of the authorities concerned rested. This is, therefore, not one of those cases, where one can say that the material was non-existent for the purpose of formation of belief. While dealing with this aspect of the matter, we have to keep in mind that it is the existence of the 'belief', which can be challenged by the assessee, but not the sufficiency of the 'reason' for the 'belief'. (See *S. Narayanappa v. CIT* : [1967]63ITR219(SC) .

121. In *Seth Bros.* : [1969]74ITR836(SC) , the Apex court has made it clear that the power exercised by the Commissioner under section 132 is not a judicial or quasi-judicial power and the court cannot substitute its own opinion for that of the Commissioner.

122. When there was information, the concerned authority had reason to believe upon such information and issued the authorisation, the court would not sit in appeal if such belief was formed in good faith. The existence of belief is necessary, but not the sufficiency of the belief. The court should not substitute its own reasons and thereby step into the shoes of the concerned authority. (See *Subir Roy v. S. K Chattopadhyay* (1986) 158 ITR 4721).

123. The Patna High Court in a recent decision in *Takshila Educational Society v. Director of Income-tax (Investigation)* : [2005]272ITR274(Patna) , while examining the provisions of section 132 of the Income Tax Act and the scope of judicial scrutiny, held as under:

'The provisions of section 132 of the Income Tax Act, 196 1, are directed against persons who are believed on good grounds to have illegally evaded payment of tax on their income and property. The 'reason to believe' is the mandatory requirement of law for search and seizure. Each case has to be independently established within the norm of 'reason to believe' under section 132(1)(c). 'Reason to believe' cannot be equated with positive proof. The material collected by the department in issuing the authorisation warrant must be taken into consideration to form an opinion or record reasons to believe whether a warrant of authorisation could be issued or not. The result of the search in fact would not be so material. The High Court examines the records with a judicial approach. If the High Court is prima facie satisfied that the administrative approach can be justified to a good extent, then, the High Court would not be required to substitute its opinion for the opinion recorded at the administrative side. The power of the High Court in its writ jurisdiction is limited to seeing whether the belief formed by the authority issuing the authorisation was a reasonable belief.' (pp. 274)

124. We find ourselves in complete agreement with the above observations made in *Takshila Educational Society v. Director Tax Income-tax (Investigation)* : [2005]272ITR274(Patna) .

125. Apart from the fact that adequacy of material is not to be looked into by this Court, the fact remains that the materials, which had been collected, as observed by the learned Single Judge, and noticed by this court also, could have made any

prudent man believe that the persons, against whom warrants of authorisation had been eventually issued, were in possession of money, bullion, jewellery or other valuable articles or things and that the same represented undisclosed income or property, which would not be disclosed. In a situation, such as the present one, this court finds no reason to hold that the action taken by the authorities concerned was illegal, impermissible and/or unconstitutional.

126. Mr. Choudhury has also laid emphasis on the fact that one of the documents relied upon by the revenue is allegedly an interview of Shri M. K. Subba published in a magazine called Roto Gham, but Shri Subba denied having given any such interview and in Writ Petition No. 7008 of 2000, the Sikkim High Court has held that the said magazine was a fake and fabricated one.

127. While dealing with the above aspect of the matter, it must be remembered that the object of article 226 of the Constitution is the enforcement and not the establishment of right or title and, hence, a petition under article 226 cannot be converted into a suit and the High Court cannot take up adjudication of the disputed facts. The High Court does not, generally, enter upon a determination of questions, which demand an elaborate examination of evidence to establish the right to enforce. There are sound reasons behind this rule. Remedies by way of judicial review under article 226 are fundamentally different from the other remedies. Instead of substituting its own decision for that of some other bodies, as happens when an appeal is allowed, the High Court, on review under article 226, is concerned only with the question whether the action or order under attack should be allowed to stand or not. It is often stressed by the court that judicial review is not against a decision under attack but against the decision making process. In *H.B. Gandhi Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons*, the Supreme Court observed as under :

' . . . Judicial review, it is trite is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which

it is authorised by law to decide, a conclusion which is correct in the eyes of the court, Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself. (p. 317)

The system of judicial review is radically different from the system of appeals. When hearing an appeal the court is concerned with the merits of the decision under appeal. When subjecting some administrative act or order to judicial review, the court is concerned with its legality. On an appeal the question is right or wrong? On review, the question is lawful or unlawful'.

128. One has to examine the materials considered by the authority at the time of passing of the order issuing authorisation. Thus, it is enough if the circumstances for the issuance of the authorisation existed on the date of such issuance (*Kalpaka Bazar v. CIT* : [1990]186ITR617(Ker)). The 'belief' for issuance of authorisation cannot be adjudged by taking note of the subsequent events or explanations, which may be furnished (See *Parasnath v. Union of India* : [1997]225ITR365(MP)). Thus, if incriminating materials are seized during a search, it will not justify the warrant of authorisation for search and seizure if no materials for forming 'belief' existed at the time of issuing the warrant of authorisation. Conversely, if no incriminating material is found or seized, it would not vitiate the warrant of authorisation if materials for 'belief' existed at the time of issuing the warrant of authorisation.

129. There is nothing in the materials on record to indicate that there was any finding from any court at or before the time when the authorisation was issued, in the present case, that the magazine *Roto Gham* was a fake and fabricated one. In such a situation, the mere fact that subsequent to the issue of the authorisation, a finding has been rendered that *Roto Gham* is a fabricated magazine, cannot evaporate the other incriminating materials, which were available on record.

130. If the action of the officer issuing the authorisation or of the designated officer is challenged, the officer concerned must satisfy the court about the regularity of his action. If the action is maliciously taken or power under section 132(1) is

exercised for a collateral purpose, it is liable to be struck down by the court. In other words, if the conditions for exercise of the power are not fulfilled, the proceeding is liable to be quashed; but where the power is exercised bona fide and in furtherance of the statutory duties of the tax officers, any error of judgment on the part of the officers, will not vitiate the exercise of the power. Where the DIT (Investigation) entertains the requisite 'belief' and, for reasons recorded by him, authorised a designated officer to enter and search premises for books of account and documents relevant to, or useful for, any proceeding under the Act, the court, on a petition made by an aggrieved person, cannot be asked to substitute its own opinion as to whether an order authorising search should have been issued. (Lan Eseda Steels Ltd. v. Assistant Commissioner : [1994]209ITR901(AP) .

131. In the case at hand, no material could be shown by the writ-appellants to show that the respondents/authorities issued warrants of authorisation mala fide or maliciously.

132. In the face of the materials available in the relevant office files, and upon considering the same, we have no reason not to hold, and we do hold, that the learned Single Judge's conclusion is wholly correct, reasonable and that even after keeping the CAG's report at bay, any man of ordinary prudence, even if not reasonably instructed in law, would have, on the face of the information available, come to the conclusion that there had been non-disclosure of huge property/income resulting in tax evasion.

133. In short, what transpires from the discussion held above is that there were, indeed, available in the office files with the authorities concerned different sets of information, other than the CAG's report, and these materials did justify resort to the provisions of section 132(1)(c) of the Act by the respondents /authorities concerned.

Question No. (iv)

134. We now turn to question No. (iv), namely, as to whether there was any 'information' at all in the possession of the respondents/authorities concerned enabling them, legally and constitutionally, to act upon the same leading to the

issuance of warrant(s) of authorisation for search and seizure in terms of section 132(1) of the Act?

135. In view our finding reached under question Nos. (ii) and (iii) that besides the CAG's report, other information's were also available on record for the respondents/ authorities concerned to initiate action under section 132(1) of the Act, we have no hesitation in holding that the respondents/ authorities concerned had, in their possession, information enabling them, legally and constitutionally, to act upon the same and issue warrants of authorisation for search and seizure.

136. In the result and for the foregoing reasons, we allow Writ Appeal No. 306 of 2004, but disallow and dismiss Writ Appeal Nos. 240 of 2004, 354 of 2004, 350 of 2004 and 239 of 2004.

137. No order as to costs.

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