

Jaln and Jaln and Others Vs. Union of India and Others

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Court : Mumbai

Decided On : Mar-05-1981

Reported in : (1981)22CTR(Bom)17; [1982]134ITR655(Bom);
[1982]8TAXMAN48(Bom)

Judge : S.C. Pratap, J.

Acts : [Income Tax Act, 1961](#) - Sections 37, 41, 131, 132, 132(1), 132(3), 132(5), 132(13), 132A and 295

Appeal No. : Writ Petition No. 202 of 1981

Appellant : Jaln and Jaln and Others

Respondent : Union of India and Others

Advocate for Def. : Mr. Joshi

Advocate for Pet/Ap. : Mr. N. H. Gursahani, Mr. Gursahani

Judgement :

S.C. Pratap, J.

1. Invoking this court's jurisdiction under art. 226 of the Constitution, this petition seeks various writs and reliefs in respect of proceedings initiated and actually on the move against the petitioners under s. 132 of the I.T. Act, 1961 (hereinafter 'the

Act').

2. Petitioner No. 1, M/s. Jain and Jain, is a firm of chartered accountants, with petitioners Nos. 2 to 5 as partners who are closely related to one another, petitioner No. 4 being the uncle of the other petitioners. On the morning (10.30 a. m.) of February 12, 1981, respondent No. 4, C. B. Thadani, ITO, along with other officers and staff, went to the petitioners' office situated at Alankar Building, 208, Samuel Street, Bombay, premises being then closed. Thadani and his party waited there for some time when petitioner No. 3, B. C. Jain, arrived. On his opening the office, Thadani disclosed his identity and produced the warrants of authorisation under s. 132 of the Act read with r. 112 of the rules thereunder. B. C. Jain perused them and signed, with endorsement 'seen and read', sixteen of these out of a total of thirty-five in all. Search then commenced. It closed for the day at 21.00 hours. Search was resumed the next day, February 13, 1981, at 11.15 a. m. While it was still going on, Kapoorchand Champalal, petitioner No. 2, rushed to the High Court, contacted his lawyers and presented at 5 p. m. on the same day (which was a Friday) the present writ petition on which the following interim order was passed:

'In view of the extreme urgency of the matter, I find, as at present, no immediate alternative but to entertain the petition as it is presented today. The same, however, is being entertained subject to the above said undertaking.

Hearing Mr. N. H. Gursahani, learned counsel for the petitioner, i/b Mr. V. Z. Kankaria and Mr. R. A. Shaikh for the petitioners, and considering the extreme urgency of the matter, I pass the following order, which in my view protects the interest of the respondents and does not jeopardise their rights in the matter of the proceedings which the respondents appeared to have taken in the matter of search of the office (and the records, etc., therein) of the petitioners. Pending further orders of this court, on the above petition, the respondents should put in their own lock or locks and put in their own seal or seals, but under an appropriate panchnama, the entire office premises of the petitioners herein, situate at 208, Alankar, Samuel Street, Bombay-3, together with files, records, papers, documents, etc., lying in the aforesaid office premises.

Pending further orders of this court, the aforesaid seal or seals and lock or locks shall be maintained intact and the entire aforesaid records in the office hereinabove shall also be maintained intact in the office premises and shall not be removed therefrom. It will also be open to the respondents to post their watchman outside the premises in question.

The petitioners' advocate to serve a copy of the petition on the respondents.

This petition be placed for further orders on Monday the February 16, 1981, and to be first on board on that day.'

3. Copy of this order was served on one H. V. Phatarphode, a member of the search party, at about 8.10 p. m. the same day. Thereupon, Thadani who was leading this party directed it to stop further work, arranged the closing of the search and sealed the entire premises.

4. On notice being served on the respondents, three affidavits-in-reply have been filed-one by respondent No. 2, M. L. C. D'Souza, Director of Inspection (Income-tax), Government of India, another by one K.K. Gupta, Assistant Director of Inspection (Intelligence), and a third by respondent No. 4, C. B. Thadani, ITO, in charge of the search. This petition was heard at length and in extenso akin to final hearing thereof with full opportunity to argue all such questions as the parties desired. On February 20, 1981, I passed an order dismissing the petition (with reasons to follow) and permitting the search in question to continue.

5. It may be useful to refer at the outset to the relevant provisions contained in Chap. XIII of the Act and Pt. XV of the Rules under the Act. Chapter XIII is divided into Parts A, B, C and D. Part A relates to appointment and control of the I.T. authorities, viz., the CBDT, Directors of Inspection, Commissioners of Income-tax, Assistant Commissioners of Income-tax who may be either AACs or IACs, ITOs and Inspectors of Income-tax. Part B relates to jurisdiction, powers and functions of the aforesaid authorities. Part C deals with powers, inter alia, regarding discovery, production of evidence, etc., search and seizure, power to requisition books of account, etc., power to call for information, etc., Part D deals with disclosure of information. Part XV of the Rules deals, inter alia, with search and

seizure (r. 112), inquiry under s. 132 (r. 112A), release of articles under s. 132(5) (r. 112B) and other rules.

6. One is here primarily concerned with s. 132 and r. 112. Under the repealed Indian I.T. Act, 1922, there was s. 37 (which itself was first enacted in 1956) conferring a limited power of search and seizure. The I.T. Act, 1961 (Act 43 of 1961), retained this power by virtue of s. 132. In 1964, the then s. 132 was substituted by a new s. 132 by virtue of s. 30 of the Finance Act, 1964. In 1965, s. 132, as it then stood, was substituted by ss. 132 and 132A by virtue of s. 2 of the I.T. (Amend). Act, 1965. About ten years later, in 1975, further amendments were made in the said s. 132 by virtue of s. 35 of the T.L. (Amend.) Act, 1975. Suffice it to note that there has been a world of change between s. 37 of the old Act and s. 132 (as it now stands) of the new Act. There have also been considerable changes between s. 132 as originally enacted and as it now stands through a series of amendments. The same, albeit to a lesser extent, is the position qua r. 112 framed by the CBR by virtue of its powers in that behalf under s. 295 of the Act.

7. The contention raised by Mr. Gursahani, learned counsel for the petitioners, is that the Director of Inspection had no information in his possession for a formation of the belief within the meaning of s. 132(1) of the Act and which belief was a condition precedent to issue an authorisation for search and seizure. Alternatively, it was urged that even assuming that there was information in the possession of the Director of Inspection, it was not possible to form therefrom the necessary belief to constitute the foundation for a warrant of authorisation for search and seizure. In reply, Mr. Joshi, learned counsel for the respondents, submitted that there was ample information and material before the Director of Inspection so as to result in his having the reason to believe, in fulfilment of the condition precedent to his issuing an authorisation for the impugned search and seizure.

8. Now, before indicating the information, the relevant portion from the affidavit of M.L.C. D'Souza, Director of Inspection, may be extracted:

'I say that investigations carried out by the departmental officers by study of various files and collecting market intelligence showed that M/s. Jain & Jain,

Chartered Accountants, were filing a number of returns in the names of several persons claiming certain business activity which did not really exist, that for a number of concerns the trading address given was the same as the C.A. firm's address or the partners' address or the address of close relatives, that in the statements filed in these files it has been claimed that purchases were all made on credit, sales were all made for cash and the net proceeds were all advanced as loans to persons not connected by trade or relationship, that the various advances made in these names represented the undisclosed income of the firm of chartered accountants themselves, that a number of bank accounts in these names were operated under the control of the chartered accountants mostly in Vaibhav Co-operative Bank wherein one of the partners of the chartered accountant firm was a vice-president, that the pass books, cheque books, etc., relating to these accounts are likely to be found in the office of the chartered accountant or in the residence of the partners or on the person of the partners...'

9. Apart from this affidavit, the record produced before the court indicates thus:

Investigations by the Intelligence Wing showed that most of the cases of bogus nature were represented by Chartered Accountants, M/s. Jain & Jain, petitioner No. 1, herein; that about twenty-five concerns had given their business addresses as 208, Samuel Street-the same as that of the aforesaid chartered accountants' firm; that about eight to ten concerns had given the address 71/89, Third Bhoiwada, which belonged to Gianchand R. Jain, the brother of T. R. Jain, petitioner No. 4 herein and partner of petitioner No. 1; that about fifteen persons had given their address as Nandadeep, Cama Galli, Hansoti Lane, Ghatkopar (West), which is the residence of the said T. R. Jain; that after laborious and careful scrutiny of the various information and materials collected by the Intelligence Wing as also after discreetly collecting a number of files from the various ITOs made available for study by the Intelligence Wing and after secret and confidential inquiries about the petitioners, it was found that some of the tax consultants including the petitioners herein were filing returns in the names of various bogus hawala-givers and that the ruse of fictitious trading activity, viz., bogus credit purchases and bogus cash sales, had been enrolled in the names of several trusts, ladies and minors. Information further indicates that bogus

assesseees were many times seen to advance loans through a chain of inter se credits amongst themselves perhaps with a view to prevent the department in reaching the ultimate assessee during normal scrutiny. Intelligence gathered further showed that the master mind behind the circulation of undisclosed income of a few crores of rupees in the names of a large number of bogus assesseees or assesseees with some genuine activity but with a large share of bogus trading activity was the firm of M/s. Jain and Jain, Chartered Accountants, petitioner No. 1 herein. Secret investigation and inquiries further revealed that at none of the places, viz., either at the office premises of the petitioners or at the residential premises of either of the petitioners Nos. 2 to 5 herein, there was any name-board of any of the several concerns identified by the Intelligence Wing or any business activity whatever of the type declared qua the various bogus assesseees. Information further disclosed that petitioner No. 3 was an important office bearer of the Vaibhav Co-operative Bank, and taking advantage of the said position he and petitioner No. 1 firm were liberally misusing the bank facilities for circulating undisclosed and untaxed funds. Several savings and current accounts were opened in fictitious and dummy names and unaccounted and undisclosed funds to the extent of several crores were rotated in a surreptitious manner. The petitioners herein had been circulating their own unaccounted and undisclosed income in the form of loans in the names of various bogus assesseees and/or in the names of their close relations in the form of loans, etc., purported to be advanced.

10. Mr. Joshi, learned counsel for the respondents, who placed the record before this court, also willingly extended the said privilege to Mr. Gursahani, learned counsel for the petitioners. In the light of this record, there could hardly be any debate on the point that there was ample information before the Director of Inspection. Persuing the same, the learned counsel for the petitioners found it very difficult to pursue any further his earlier contention that there was no information before the Director of Inspection for the formation of the requisite belief.

11. The learned counsel for the petitioners, however, did pursue his alternate submission that it was not possible from the said information to form the necessary belief constituting the foundation for the impugned warrant of authorisation. I am afraid, it is not possible to accept even this alternate contention. In the first place,

we have, in this behalf, the affidavit of M. L. C. D'souza, the Director of Inspection, as follows:

'... I had perused the information made available to me, applied my mind to the same and I had discussion on the subject with Shri V. M. Sivasubramaniam, Deputy Director of Inspection, respondent No. 3. After taking into consideration the said information and after having the benefit of discussion with respondent No. 3, I came to a positive conclusion that these were fit cases in which action under section 132 of the said Act was absolutely necessary. I say that the said power to issue the said warrant has been exercised with care and caution and the information in my possession fully justified its user in the instant case.'

12. Now, formation of belief within the meaning of s. 132 is an important step and a condition precedent to the authorisation of search and seizure. It is nevertheless basically a subjective step. It is one essentially of making up one's mind-in this case by the Director of Inspection himself-as to whether on the information presented he had or had not formed the reason to believe. This belief, of course, cannot be mere pretence nor can it be mere doubt or suspicion. It is something much more than that. Section 132 speaks of 'reason to believe' and not 'reason to suspect' or 'reason to doubt'. 'Reason to believe' is thus a higher test to be fulfilled. Considering the extensive information here and its detailed scrutiny and analysis, the conclusion is irresistible that the belief formed by the Director of Inspection was a belief genuine and authentic. It was not a mere doubt or mere suspicion. It was, however, not necessary for him to reach that belief by a process akin to a judicial process. His reasons and his belief do not constitute a judicial or a quasi-judicial act nor is issue of authorisation a judicial or a quasi-judicial function. And the matter, though to an extent justiciable, extremely limited and circumscribed are the court's power of scrutiny and review in that behalf. One may not like the belief of the Director of Inspection. But if the belief is bona fide, if the same is in good faith, if it is not a pretence and if it is cogently supported-in this case also overwhelmingly-by the information as of the nature here, this court will not interfere therewith or sit in appeal over it. Indeed, there would, in such circumstances, be no jurisdiction to interfere. As was held by the Allahabad High Court in *ITO v. Firm Madan Mohan Damma Mal* : [1968]70ITR293(All) , the issue of a search warrant

was not a judicial or a quasi-judicial act and even if the Commissioner is enjoined to issue a warrant only when in fact there is information in his possession in consequence of which he may form the necessary belief, the matter is not thereby subject to scrutiny by the court. This statement of the law was approved by the Supreme Court in *ITO v. Seth Brothers* : [1969]74ITR836(SC) , further observing (p. 844):

'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.'

13. In these circumstances, the alternate contention of the learned counsel, Mr. Gursahani, based on the ingredient of 'reason to believe' embodied in s. 132 of the Act fails and is rejected.

14. It was next contended that the respondents wrongly failed to supply the petitioners with a copy each of the several warrants of authorisation. He submitted that the Director of Inspection was a court and consequently, the warrants of authorisation issued by him were public documents and, consequently, therefore, the petitioners were entitled to have copies thereof. In support, he relied upon a Division Bench ruling of this court in *Mulji Manilal v. State* : AIR1963 Bom70 , the ratio whereof has been correctly and succinctly set down in its headnote:

'An Income-tax Officer, while holding proceedings under s. 23 of the Indian Income-tax Act, 1922, is a court within the meaning of s. 195(1)(b) of the Criminal Procedure Code, 1898. '

15. Now, the well-settled position is that the ratio of any decided case has to be considered basically in the light of the facts of that particular case and in the light of the point actually arising for determination in that case and in the light of the point actually decided. The facts and circumstances in the aforesaid Division Bench ruling are indeed altogether different from those in the present petition. An ITO holding proceedings under s. 23 of the repealed Indian I.T. Act, 1922, is a

situation altogether different from the Director of Inspection acting under s. 132 of the Act. In fact, it has already been seen that the function of the Director of Inspection under s. 132 of the Act was not a judicial or a quasi-judicial function. This position has been reiterated by the Supreme Court in Seth Brother's case : [1969]74ITR836(SC) . Much less, therefore, will the Director of Inspection be a court. The Division Bench ruling relied upon by Mr. Gursahani is clearly distinguishable and has no application to the instant case.

16. That apart, Mr. Joshi, the learned counsel for the respondents, has invited my attention to a ruling of the Delhi High Court in V. K. Jain v. Union of India : [1975]98ITR469(Delhi) , holding, inter alia, that there is no requirement in the I.T. Rules, 1962, providing for the copy of a warrant of authorisation to be given to the person whose books are sought to be searched and seized before the search starts. In this context, it may be noted that the present warrants of authorisation were issued under s. 132 of the Act read with r. 112, and when we turn to rule 112, we find in sub-rule (3) the following:

'Any person in charge of or in any building, place, vessel, vehicle or aircraft authorised to be searched shall, on demand by the officer authorised to exercise the powers of search and seizure under section 132 (hereinafter referred to as the authorised officer) and on production of the authority, allow him free ingress thereto and afford all reasonable facilities for a search therein.'

17. There is no provision either in the Act or in the rules providing for the supply of a copy of the warrant of authorisation. All that the law requires is that the authority must be produced before the commencement of the search and/or the seizure. That it was so done here is not in dispute. Indeed, a number of original warrants of authorisation produced before petitioner No. 3, B. C. Jain, were even signed by him with the endorsement 'seen and read'. There is thus no merit in the afore said contention. The same is rejected.

18. Mr. Gursahani, the learned counsel for the petitioners, further submitted that the authorisations were illegal and invalid because the same did not relate to any specific item, document, book or paper, but were of general nature. There is no merit in this contention. No provision in the Act or the Rules requires the mention

of a specific item, document, book, etc. Indeed, in the very nature of things, that would hardly be possible. It would be well nigh impossible for the Director of Inspection to know the exact documents, papers, accounts, etc., from which the discovery or discoveries are intended to be made. It would be for the authorised officer conducting the search to apply his mind and to decide, in the course of the search, as to which articles, documents, papers, accounts, etc., etc., he will seize or will not seize. There cannot, in this behalf, be any hard and fast rule. In a given case, the authorised officer may ultimately seize only very few documents or materials, while in another given case he may seize voluminous materials and documents. Whether the seizure is of the nature of the one or the other, that, by itself, cannot invalidate the warrants of authorisation. Certain materials and documents may have a direct relation with the person concerned, while certain materials and documents may be impliedly or indirectly connected with him. It may even be that in a given case or qua a given document there might be, on the part of the authorised officer, an error of judgment. The point to be noted is that law does not require a warrant of authorisation to mention any specific document or paper, etc. In the absence of mala fides, the judgment of the authorised officer should be accepted and the search and/or seizure cannot be invalidated by the mere fact that the warrant of authorisation was in terms general and not specific and/or that the authorised officer, in the course of search, seized materials and documents which were ultimately, on analysis and further investigation, found to be not that relevant.

19. It was then contended that the order passed under sub-s. (3) of s. 132 of the Act was illegal and unsustainable and thus liable to be set aside. Now, under sub-s. (3) of s. 132, the authorised officer is empowered (where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable articles and things) to serve an order on the owner or the person in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and the said officer is further empowered to take such steps as may be necessary for ensuring compliance with this provision. In his affidavit, K.K. Gupta, the Assistant Director of Inspection (Intelligence), has averred as follows:

'In the course of search at the premises of M/s. Jain and Jain, C. As., at 208, Samuel Street, Bombay-3, authorised by the Director of Inspection, Bombay, certain bank pass books, cheque books, blank signed cheque leaves, paying-in-slips, etc., were found in various names. These pertained to accounts with the Vaibhav Co-operative Bank Limited, Atmaram merchant Road, Bombay-400 003. In the background of the information, this firm of C. As. was operating with their own undisclosed income, a number of bank accounts in benami names. I, as authorised office, entertained a prima facie belief that these accounts represented or evidenced transactions of the C. As. themselves with their undisclosed income and that the monies lying in credit in these accounts represented undisclosed income. A list of such accounts operated through banking channel of Vaibhav Co-operative Bank Limited was, therefore, drawn up and the Manager of the above Co-operative Bank was restrained from allowing the operation of the said bank accounts and fixed deposit accounts by these persons by issuing of prohibitory order u/s. 132(3) of the I.T. Act, 1961, on the Bank Manager.'

20. If such were the circumstances and if in the light thereof the Assistant Director of Inspection issued prohibitive order under s. 132(3) of the Act, I do not see how such an order can be characterised as illegal or unsustainable. On the contrary, if such be the facts and circumstances coming to light, absence of an order under s. 132(3) may, in a given case, be characterised as dereliction of duty on the part of the officer concerned. The concerned officer here has well performed his task and duty by serving the order in question under s. 132(3) of the Act. I see nothing illegal nor anything capricious or arbitrary therein.

21. It is undoubtedly true that the effect of such an order would be to bring to a dead halt all further operations of the various bank accounts in question. But that, in the very nature of things, cannot be helped, and again, that, indeed, is the very object of such an order. The concerned officer has only preformed his duty by seeing to it that the amounts in the bank accounts are not, after the prohibitive order, dealt with in any manner adverse to the interest of the revenue. Mr. Gursahani, however, relied upon a ruling of a single judge of the Kerala High Court in *Shajahan v. ITO* : [1976]104ITR265(Ker) , which, undoubtedly, supports the learned counsel's contention. But this very ruling stood expressly reversed by a

Division Bench of the said court, judgment whereof is reported in the very same volume of the Income-tax Reports at p. 347 [ITO v. Shajahan : [1976]104ITR347(Ker) . After observing that money deposited in an account in a bank by a customer, after such deposit, would belong to the bank which would have full control and right to use the money as it liked, the Division Bench has further stated that if that money, though by virtue of the legal relationship between the customer and the banker, had become the money of the bank and was consequently, in its control or possession, will nevertheless be answerable to tax if it is ultimately found that the concerned person was liable to pay income-tax. In the face of this Division Bench ruling of the Kerala High Court, it became extremely difficult for the learned counsel for the petitioners to place reliance on a single judge's ruling of the said court but expressly overruled as aforesaid. Moreover, the very object of search and seizure could stand frustrated if, in the face of such cogent material relating to the various bank accounts, an order under s. 132(3) of the Act is not issued. The said bank accounts, an order under s. 132(3) of the Act is not issued. The said bank accounts cannot obviously be seized as such, but operation thereof can certainly be prohibited for the time being. I see nothing illegal in the said action.

22. It was also urged that the action of the respondents was vitiated by mala fides. There was, however, no amplification of the said contention nor any particulars of mala fides urged in the course of hearing. Averments of mala fides made in the petition have been emphatically denied in the affidavits-in-reply. It is not the case of the petitioners that the respondents have any malice against any of the petitioners. Nor is it the case of the petitioners that any particular officer of the search party had any animus against any of the petitioners. On this aspect (mala fides) the department's record produced before the court is also above board. There is no good reason for even any doubt or suspicion against the department on the question of mala fides.

23. It was, however, contended that mala fides can be seen from the fact that though the petitioners were originally assessed from year to year, there was no complaint against the returns filed and the particulars disclosed. But even so, search and seizure was ordered. I, however, find no substance in this contention.

The fact that returns were filed and assessments made and completed cannot, by itself, preclude the department from ordering such a seizure if reliable information reaches the concerned authorities regarding large undisclosed income of the assessee, vide Pooran Mal's case : [1974]93ITR505(SC) before the Supreme Court. One cannot, in such circumstances, overrule the possibility that the returns and the assessments did not represent the true picture and that the same reflected only the tip of the iceberg. Filing of returns and completion of assessments will, in the face of voluminous information and materials as in the instant case, not preclude the department from taking action under s. 132 of the Act if the same is otherwise warranted.

24. As part of his submission on mala fides, Mr. Gursahani urged that the search itself was excessive. On the facts of this case, I find myself unable to agree. Petitioner No. 1 is a firm of chartered accountants, and petitioners Nos. 2 to 5 are chartered accountants. The said firm is in existence for the last several years. Search of the premises in question indicated as many as about 2,500 files of various parties and persons. As a result of the search, the department seized only about 150 files and, of course, some books of account, documents, papers, etc. If this be the position, how is it possible to hold that the search was excessive. On the contrary, the search party does appear to have acted with restraint and reasonableness. There does not appear to be any element of arbitrariness in their action. There also does not appear to be any excess whatever on their part. In this context, one may refer to the observations of the Supreme Court in Pooran Mal's case : [1974]93ITR505(SC) , viz.:

'The authorised officer has to seize books of account and other documents which will be useful for and relevant to any proceeding under the Income-tax Act. When in the course of a search voluminous documents and books of account are to be examined with a view to judge whether they would be relevant, a certain amount of latitude must be permitted to the authorities. It is true that when particular documents are asked to be seized unnecessary examination of other documents may conceivably make the search excessive. But when the documents, pieces of paper, exercise books, account books, small memos, etc., have all to be examined with a view to see how far they are relevant for the proceeding under the Act, an

error of judgment is not unlikely. At the most this would be an irregularity - not an illegality.'

25. In this case, however, I do not see any irregularity, much less any illegality.

26. It was also contended that this was, at the highest, a matter where the department could have exercised its power under s. 131 of the Act, viz. the power regarding discovery, production of evidence, etc. It is not possible to agree. In the first place, we have the affidavit of Mr. L. C. D'Souza, Director of Inspection, wherein he states as follows:

'I say, that in consequence of the said information in my possession I had reason to believe that if summons (under section 131) were issued to the petitioners herein, the petitioners would not produce or cause to be produced any books of account or other documents which would be useful for or relevant to any proceedings under the Income- tax Act, 1961, hereinafter referred to as the said Act, and that the petitioners were in possession of any money or valuable articles or things and such money, articles or things represented income or property which had not been disclosed or would not be disclosed for the purpose of assessment under the said Act. I, therefore, issue a warrant of authorisation under section 132 of the said Act read with rule 112 of the Rules framed under the said Act.'

27. The records of the petitioners produced before this court shows that P. R. Jain, the brother of petitioner No. 4, T. R. Jain, had in fact been issued summons under s. 131 of the Act and notices calling upon him to produce the books of account, purchase bills, sale bills, stock registers, etc., for verification of the genuineness of the claims, but he avoided appearance on one pretext or the other, and in spite of repeated opportunities failed to produce any material, not even the normal books of account expected to be maintained in the ordinary course of business. Record further shows that in spite of various appointments being fixed in the aforesaid behalf, the assessee did not care to appear, not even for seeking an adjournment. Record further shows that though requested to co-operate, the assessee failed to do so.

28. In fact, the chartered accountants, M/s. Jain and Jain, petitioner No. 1 herein, have themselves on their own letter-head written to the ITO with reference to the summons above referred to under s. 131 of the Act and notices that as the assessee had gone to Rajasthan since last more than two months it was not possible to produce the books of account for the moment and that the assessee was filing voluntary petition for settlement with the CIT, City VII, within about ten days. In spite thereof, however, no such petition was filed nor did the assessee ever appear before the concerned authority nor were any books, documents and records produced in compliance with the summons under s. 131 of the Act and the notices indicated above. Considering this background, the Director of Inspection rightly inferred that the petitioners were not likely to produce their documents, papers, accounts, etc., if a summons under s. 131 of the Act was issued and in all the circumstances, therefore, this was a fit case for taking action under s. 132 of the Act. In this entire background, it is not possible to conclude that this was not justified. Contention based on s. 131 of the Act, therefore, fails.

29. In the petition, contention is also raised to the effect that the provisions relating to search and seizure under s. 132 r. 112 were violative of art. 19(1)(f) and (g) of the Constitution. The said contention was, however, not urged at the hearing, and rightly so, as the same stands concluded by virtue of the Supreme Court ruling in Pooran Mal's case : [1974]93ITR505(SC) , holding that the aforesaid provisions cannot be regarded as violative of art. 19(1)(f) and (g) of the Constitution. In this context, reference may be made to the pertinent observations of the Supreme Court at pp. 515 and 516 of the aforesaid ruling:

'Dealing first with the challenge under article 19(1)(f) and (g) of the Constitution it is to be noted that the impugned provisions are evidently directed against persons who are believed on good grounds to have illegally evaded the payment of tax on their income and property. Therefore, drastic measures to get at such income and property with a view to recover the Government dues would stand justified in themselves. When one has to consider the reasonableness of the restrictions or curbs placed on the freedoms mentioned in article 19(1)(f) and (g), one cannot possibly ignore how such evasions eat into the vitals of the economic life of the community. It is a well-known fact of our economic life that huge sums of

unaccounted money that 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.

Search and seizure are not a new weapon in the armoury of those whose duty it is to maintain social security in its broadest sense. The process is widely recognized in all civilized countries.'

30. In support of his contentions Mr. Gursahani relied upon a ruling of the Supreme Court in *CCT v. Ramkishan Shrikishan Jhaver* : [1967]66ITR664(SC) . I, however, do not find the said ruling relevant to the question raised in the present petition. That was a case under the Madras General Sales Tax Act involving, inter alia, the construction of s. 41 of the said Act which provided only for inspection and not expressly for search. Contention was that no search could take place when the law provided only for inspection. Such question does not arise in the present case. Yet another contention in the said ruling related to the validity of the said s. 41 qua art. 19(1)(f) and (g) of the Constitution. The validity of the said s. 41 qua the said article also does not arise here.

31. Reliance was also placed upon a ruling of the Allahabad High Court in *New Kashmir and Oriental Transport Co. (P.) Ltd. v. CIT* : [1973]92ITR334(All) . Even this ruling does not come to the aid of the petitioners. Indeed, it was, in the said case, expressly conceded for the department that before taking action under s. 132 of the Act no reasons had been recorded by the Commissioner. The impounded documents had also been returned to the assessee, obviously because the search and seizure was illegal.

32. Yet another ruling relied upon on behalf of the petitioners was that of the Punjab and Haryana High Court in *H. L. Sibal v. CIT* . The said case turned on the very peculiar and rather gross facts therein. Indeed, the Commissioner of Income-tax there was convicted for contempt of court and sentenced to be detained in civil prison for a period of two weeks and also to pay fine. Furthermore, the authorisation by the Commissioner was found to be in pursuance of a general

policy decision qua lawyers and professionals. Observations made in the context of the peculiar and gross facts of the said case can hardly avail the petitioners herein against whom the facts and circumstances are altogether different.

33. Reliance placed on yet another ruling of the Punjab and Haryana High Court, viz., *Anand Swaroop v. CIT*, is also, in my view, of no relevance. The said case also turned on its own facts which showed that there was no justification for the Commissioner there to authorise the impugned search of the premises of the petitioner, Anand Swaroop. The reasons recorded by the Commissioner for authorising search under s. 132 in the said case were as follows:

'Submits returns on estimate, does not co-relate fees with briefs. One of the top lawyers. Strange he is not a wealth-tax assessee. There is no jewellery. This needs looking into along with the fees earned by him.'

34. It was rightly observed that action under s. 132 of the Act could not be sanctioned on such considerations and that the above reasons showed that the object of the search was to make a probe into the cause why the petitioner was not wealthy enough to possess jewellery or to become a wealth-tax assessee and that such inquisitorial searches cannot be justified under any system of civilized laws.

35. Mr. Gursahani also relied upon a ruling of the Supreme Court in *State of Kerala v. Mathew* [1978] 42 STC 348, with particular reference to the following observations therein (headnote):

' Strong suspicion, strange coincidences and grave doubts cannot take the place of legal proof. To establish the charges against the respondents, it was essential for the prosecution to establish that the secret books of account related to the business transactions carried on by the respondents and none else. The prosecution could have established it in a variety of ways...'

36. The said observations, however, have hardly any application to the instant case. In the first instance, that case arose out of a criminal prosecution under s. 46 of the Kerala General Sales Tax Act, 1963. The Trial Magistrate acquitted the

accused under s. 46(2)(c) of the said Act but recorded conviction under ss. 46(1)(a) and 46(1)(c) of the said Act. This conviction was, however, set aside by the sessions judge, and an order of acquittal was recorded even in that behalf. Appeal against this acquittal was dismissed by the High Court, and the matter went to the Supreme Court by way of special leave petition. And it is in the context of a criminal prosecution and conviction and acquittal in that behalf that the aforesaid observations came to be made.

37. To understand the said observations more effectively it is best to quote certain earlier observations of the Supreme Court from the said judgment (p. 352):

'The offences with which the respondents were charged have not, in our opinion, been brought home to them. There is absolutely no evidence on the record to prove that the secret books of account, the seizure of which was effected by or under the orders of the Inspecting Assistant Commissioner, were recovered from a place which formed part of the business premises of the respondents or was in their exclusive possession and control. The members of the inspecting party themselves have admitted that these books were found lying on the table in the room adjacent to the show-room of the respondents and they could not say whether that room belonged to the respondents or not. It is also not denied by the prosecution that the said room is accessible through Kallupalam auto Stores also. That apart, no cogent and convincing proof has been adduced by the prosecution to establish that the secret books of account were maintained by the respondents or that they had any link or connection with them. No witness on behalf of the prosecution has come forward to testify that the secret books of account did not contain any entry relating to the business dealings of Kallupalam Auto Stores which stands registered in the name Marykutty and which is also housed in the same building in which Kallupalam Lad's Jewellery Mart is housed. It is true that there are certain entries in the secret books of account which tally in certain respects with the entries in the books of account intended for official purposes which were produced by the respondents in response to the demand made by the Inspecting Assistant Commissioner which raises a strong suspicion against the respondents, but that circumstance alone is not sufficient to warrant their conviction for the aforesaid offences.'

38. And it is thereafter that the observations supra on which reliance is placed follow. I do not see how this case can be relied upon by the petitioners in support of their contentions in their present petition. Observations torn out of context and de hors the facts and circumstances in which they are made cannot avail the petitioners herein.

39. It was also contended that the provisions of the Code of Criminal Procedure, made applicable to the impugned search and seizure by virtue of sub-s. (13) of s. 132 of the Act, have not been complied with in this case. There is, however, no foundation laid in support of the said submission. Though the position certainly is that under sub-s. (13) of s. 132 the provisions of the Code of Criminal procedure relating to searches and seizures shall apply, so far as may be, to searches and seizures under sub-s. (1) or sub-s. (1A), no particular violation or breach in that behalf has been brought to my notice. That apart, and as observed by the Supreme Court in Seth Brother's case : [1969]74ITR836(SC) , by applying the provisions of the Code of Criminal Procedure to search and seizure under s. 132 of the Act (p. 844):

'Thereby it is only intended that the officer concerned shall issue the necessary warrant, keep present respectable persons of the locality to witness the search, and generally carry out the search in the manner provided by the Code of Criminal procedure.'

40. In the absence of any specific breach being pin pointed, the contention advanced in general terms can have no significance. The same fails.

41. Towards the close of his arguments, counsel for the petitioners referred to the decision of the Court of Appeal (England) in R. v. IRC [1980] 2 WLR 1; [1979] 3 All ER 385. Now, apart from the fact that leave to appeal to the House of Lords has been granted in that case, we have in this country a direct ruling of our Supreme Court in Pooran Mal's case : [1974]93ITR505(SC) . Furthermore, the very judgment of the Court of Appeals, per Lord Denning M. R., embodies the pertinent observations: vide p. 399 of All ER (see also p. 19 of WLR):

'Many will ask: why has Parliament done this Why have they allowed this search and seizure by the revenue officers It did it here because the Board of Inland Revenue were very worried by the devices used by some wicked people, such as those - and we often see such cases in our courts - who keep two sets of books: one for themselves to use; the other to be shown to the revenue. Those who make out two invoices: one for the customer; the other to be shown to the taxman. Those who enter into fictitious transactions and writ them into their books as genuine. Those who show losses when they have in fact made gains. In the tax evasion pool, there are some big fish who do not stop at tax avoidance. They resort to frauds on a large scale. I can well see that if the legislation were confined - to people of that sort, it would be supported by all honest citizens. Those who defraud the revenue in this way are parasites who suck out the life-blood of our society.'

42. In this context, it is well to note that in s. 132 of our Act and r. 112 of the Rules thereunder there are several in-built checks and safeguards. These in turn have been succinctly set forth by our Supreme Court in Pooran Mal's case (p. 518 of 93 ITR):

'In the first place, it must be noted that the power to order search and seizure is vested in the highest officers of the department. Secondly, the exercise of this power can only follow a reasonable belief entertained by such officer that any of the three conditions mentioned in section 132(1)(a), (b) and (c) exists. In this connection it may be further pointed out that under sub-rule (2) of rule 112, the Director of Inspection or the Commissioner, as the case may be, has to record his reasons before the authorisation is issued to the officers mentioned in sub-section (1). Thirdly, the authorisation for the search cannot be in favour of any officer below the rank of an Income-tax Officer. Fourthly, the authorisation is for specific purposes enumerated in (i) to (v) in sub-section (1), all of which are strictly limited to the object of the search. Fifthly, when money, bullion, etc., is seized, the Income-tax Officer is to make a summary enquiry with a view to determine how much of what is seized will be retained by him to cover the estimated tax liability and how much will have to be returned forthwith. The object of the enquiry under sub-section (5) is to reduce the inconvenience to the assessee as much as

possible so that within a reasonable time what is estimated due to the Government may be retained and what should be returned to the assessee may be immediately returned to him. Even with regard to the books of account and documents seized, their return is guaranteed after a reasonable time. In the meantime the person from whose custody they are seized is permitted to make copies and take extracts. Sixthly, where money, bullion, etc., is seized, it can also be immediately returned to the person concerned after he makes appropriate provision for the payment of the estimated tax dues under sub-section (5), and, lastly, and this is most important, the provisions of the Criminal Procedure Code relating to search and seizure apply, as far as they may be, to all searches and seizures under section 132. Rule 112 provides for the actual search and seizure being made after observing normal decencies of behaviour. The person in charge of the premises searched is immediately given a copy of the list of articles seized. One copy is forwarded to the authorising officer. Provision for the safe custody of the articles after seizure is also made in rule 112. In our opinion, the safeguards are adequate to render the provisions of search and seizures as less onerous and restrictive as is possible under the circumstances.'

43. In these circumstances, I do not see how the ruling in *R. V. IRC* [1979] 3 All ER 385; [1980] 2 WLR 1 can help the petitioners. Indeed, to the contrary. For, applied to the facts here, the said ruling and in particular the observations therefrom extracted above renders the petitioners' efforts to avoid search and seizure all the more a difficult task.

44. One parts with this case with a sense of remorse. The professionals, such as the chartered accountants here, become involved should be a matter of concern not only to the profession itself but also to the community at large. No reform, no law, no administration can succeed without the co-operation of citizens with responsible avocations in different walks and fields of life. Misuse of intellectual ingenuity and financial wizardry can well frustrate efforts at revival of economy and can only encourage not the decline and fall but the rise and growth of underground economy thriving with underhand dealings and eating into the very vitals of the economic life of the country fracturing the very foundations of a sound economic structure. Parallel economy stands before us all like a colossus. Serious efforts are

on to weaken the same and to ultimately (if possible) obliterate it. Though measures in that behalf in the past have been, more or less, lessons in futility, that is no reason at all to give up. On the contrary, that itself is a warrant for injecting more blood, more vigour and more dynamism to control and cure the cancerous growth. The reasons and the compulsions behind the search and seizure provisions are too obvious to all. Though not a talisman, these powers do serve in their own way to reach and get at the secreted profits, concealed wealth and tax-evaded amounts - in the process of bridging up, at least to an extent, the gap between evasion and compliance and, albeit indirectly, between poverty and affluence.

45. Considering the facts and circumstances of this case as also the respondents' Intelligence Wing's record against these petitioners produced before this court and also shown to Mr. Gursahani, learned counsel for the petitioners, and bearing in mind the objectives behind the search and seizure provisions, the end result of this petition and the final order there-on can be but only one, viz., this petition

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