

Arjun Singh and anr. Vs. Assistant Director of Income-tax (investigation) and ors.

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Court : Madhya Pradesh

Decided On : Nov-23-1998

Reported in : [2000]246ITR363(MP)

Judge : D.P.S. Chauhan, J.

Acts : [Income Tax Act, 1961](#) - Sections 131, 131(1), 132, 132(1), 143(3), 144A, 147, 148, 148(2), 151 and 282; [Wealth Tax Act, 1957](#) - Sections 16(3), 17 and 17(1); [Constitution of India](#) - Article 226; Indian Penal Code (IPC) - Sections 120B; [Prevention of Corruption Act, 1947](#) - Sections 5(1) and 5(2); [Prevention of Corruption \(Amendment\) Act, 1988](#) - Sections 7, 11, 12, 13(1) and 13(2)

Appeal No. : Writ Petition Nos. 2593 of 1997 and 1723 of 1998

Appellant : Arjun Singh and anr.;ajay Singh

Respondent : Assistant Director of Income-tax (investigation) and ors.;commissioner of Income-tax and ors.

Advocate for Def. : V.K. Tankha and ;J.P. Sanghi, Advs. for respondent No. 7 in W.P. No. 2593 of 1997

Advocate for Pet/Ap. : Kapil Sibbal, ;B.L. Nema and ;Ravinder Shrivastava, Advs.

Judgement :

D. P. S. Chauhan, J.

1. Threatened with the invasion of their rights, the petitioners, in these two writ petitions, numbered 2593 of 1997 and 1723 of 1998, approached this court invoking jurisdiction under Article 226/227 of the Constitution, seeking protection against illegal and arbitrary action against them which tin being heard together are decided conjointly.

2. The controversy in these petitions centres round the construction of the house known as 'Dev Shree' and in that regard, the following facts are relevant :

Shri Arjun Singh and his wife, Smt. Saroj Singh, who are the petitioners in Writ Petition No. 2593 of 1997, and Shri Ajay Singh, their son, who is the petitioner in Writ Petition No. 1723 of 1998, after purchasing an agricultural land near Kerwa Dam in village Mandora, Tahsil Huzur, District Bhopal, constructed a house over a portion thereof, named as 'Dev Shree' and which being in the vicinity of Kerwa Dam, was also known as 'Kerwa House' for brevity, is hereinafter referred to as 'the house', the construction of which commenced in the month of July, 1984 and completed in the month of March 1987.

Shri Arjun Singh, who was having income from sources other than agriculture also, was assessed to income-tax by the Income-tax Officer, 'B' Ward, Bhopal, under Section 143(3) read with Section 144A of the Income-tax Act, 1961 (for brevity, hereinafter referred to as 'the Act'), for the financial years 1985-86, 1986-87 and 1987-88 (GIR No. S-1225) vide order dated September 28, 1987, and also for wealth-tax by the Assistant Commissioner of Wealth-tax, Additional Circle, Bhopal, under Section 16(3) of the Wealth-tax Act, 1957 (for brevity, hereinafter referred to as the Wealth-tax Act), for the assessment years 1981-82, 1982-83, 1983-84, 1984-85, 1985-86, 1986-87, 1987-88, 1988-89, 1989-90, 1990-91 and 1991-92 (P. A. N. No. 18-100-PT-0292) vide assessment order dated April 3, 1992. Smt. Saroj Singh was having income only from agriculture, which was non-taxable. Shri Ajay Singh, who was having income from sources other than agriculture also, was assessed to income-tax by the Income-tax Officer 'B' Ward, Bhopal, under Section 143(3) of the Act (GIR No. VIII-S-155) for the assessment year 1987-88 vide order dated September 28, 1987, as well as for wealth-tax by the Wealth-tax Officer, B-

Ward, Bhopal, under Section 16(3) of the Wealth-tax Act vide order dated September 28, 1987. These assessments included the valuation relating to the land as well as the cost of construction of the house. The Income-tax Officer before making the assessments, made a reference to the Inspecting Assistant Commissioner of Income-tax, Bhopal, Range-I, who, after receipt of answer, completed the assessment proceedings and relying on the same, the Wealth-tax Officer also completed the proceedings for wealth-tax. The said reference was made in the background of hue and cry by the media in regard to the cost of the said land purchased by the petitioners as well as the cost of construction of the house. The Inspecting Assistant Commissioner of Income-tax, while answering the reference, found that the land was purchased at the rate of Rs. 8,000 per acre without paying any amount over and above the sale price to the vendor as alleged in the press reports and the claim of the assessee, Shri Arjun Singh, and his family members, in regard to agricultural income and its investment in the construction of the house, was found genuine and the cost of construction of the house, as supported by the report of the authorised valuer, was found fair and reasonable and any reference to the valuation cell was found unnecessary. It was also found that all the assets owned by the assessee and his family members were acquired out of the known sources of income, negating the media cry regarding acquisition of assets out of income from undisclosed sources.

3. Shri Arjun Singh, a political leader having held important positions, such as Chief Minister of the State of Madhya Pradesh (which office he held twice), Cabinet Minister in the Central Government (which office he held twice), the office of Governor of the State of Punjab and Haryana and the office of Vice President in the organisational set up of the Congress (I) party, to which he belonged, had his political antagonists, who were after him.

4. Shri Kailash Joshi, one of his political rivals, belonging to Bhartiya Janta Party (for brevity, hereinafter referred to as 'the BJP'), having held the office of the Chief Minister of the State as well as the Office of Vice President of the State in the organisational set up of his party, approached this court by way of public interest litigation through Miscellaneous Petition No. 3909 of 1987 Shri Kailash Joshi v. State of Madhya Pradesh, which related to the affairs of Churhat Children Welfare

Society and the matter of lottery run by it, alleging hypothetically, that the society which earned a guaranteed profit of one crore of rupees may be only at the surface and the loss of crores of income to the State went to the promoters and agents unnoticed and unaccounted for and also making personal allegations against Shri Arjun Singh and his family members regarding investment and cost of construction of the house near about the time or after the lotteries were conducted by the said society. The petition was decided on January 20, 1989, directing that an enquiry be made by a high power agency into the affairs of the Churhat Children Welfare Society and how the share of its profits derived from the draws had been utilised and, in a casual way, observations were made concerning Shri Arjun Singh that he owes an explanation to the nation to show at what costs/sources he has constructed the Kerwa house. Before the pronouncement of this decision, the Income-tax Officer, while completing the assessments, in relation to the income and investment in the purchase of the land and construction of the house, under Section 143(3) read with Section 144A of the Act on September 28, 1987, found that the assessee and his family members did not pay any amount over and above the sale price to the vendor and the cost of construction of the house, supported by the report of the authorised valuer, was found fair and reasonable and the assets were found to have been, acquired by them out of known sources of income, negating the mediocrity regarding acquisition of assets out of income from undisclosed sources. In view of the above decision, an enquiry commission was set up by the State Government for enquiring into certain issues relating to the affairs of the Churhat Children Welfare Society and conduct of lottery which subsequently, on the coming into power of the BJP Government in the State in the year 1990, was modified and enlarged by the State Government vide Notification dated March 29, 1990, mainly with a view to enquire as to at what cost the house was constructed which on being challenged by Shri Arjun Singh by means of Miscellaneous Petition No. 1681 of 1990 before this court, was struck down on March 4, 1992, finding that there was no material, at all, with the State Government to direct such an enquiry into the aforesaid aspect of construction of house, *Arjun Singh v. State of Madhya Pradesh* [1992] MPLJ 693. Against it, the State Government went in appeal to the Supreme Court where the judgment of this court was maintained with the observation that it will not preclude the State

Government from appointing any commission of enquiry according to law after applying its mind to any fresh or further material placed before it in State of Madhya Pradesh v. Shri Arjun Singh : AIR 1993 SC1239 but since there was no fresh or further material before the State Government in regard to the aforesaid aspects of the matter relating to the construction of the house, no step, in this regard, for setting up any commission of enquiry was taken and the matter relating to the purchase of the land and construction of the house stood foreclosed. The matter, obviously, may be for political reasons, did not rest here and in efforts to resuscitate the concluded issues, it was agitated by one the members of the Rajya Sabha belonging to the BJP on the floor of the House inviting a statement from the Union Government in relation to the enquiry in the wake of the aforesaid observations of the High Court in relation to construction of the house whereon the Union Government through the Ministry of Finance, was called upon to reply to the question which, as per the established practice and procedure, was replied to by making the following statement on the floor of the House on March 10, 1992, by the Minister of State (Finance) after gathering all necessary facts, making necessary enquiries and having clearance from the highest authority under the Department of Income-tax :

'The High Court of Madhya Pradesh in its judgment dated January 20, 1989, in the case of Kailash Joshi v. State of Madhya Pradesh had made certain observations regarding the building, constructed near Kerwa Dam, Bhopal, by the former Chief Minister of Madhya Pradesh, Shri Arjun Singh.

The cost of construction and sources of investment in the said building' were examined by the Income-tax Department in the course of relevant assessment proceedings and it was found that the sources of investment were satisfactorily explained and the cost declared in the return was also reasonable.'

Though the above statement before the Rajya Sabha, the sovereign body, clinched and concluded the controversy relating to the investment in the land and construction of the house as well as the sources of income for all times to come, on account of the Central Bureau of Investigation, Investigation of Crime Case No. RC-5(S) of 1991-SIU(V)/CBI, New Delhi, under Section 120B of the Indian Penal

Code, Sections 3 and 4, Terrorist and Disruptive Activities (Prevention) Act, 1987, and Section 56 read with Section 8(1) of the Foreign Exchange Regulation Act, 1973, which was taken over by it from P. S. Chandni Mahal, Delhi on April 20, 1991 (for brevity hereinafter referred to as 'the hawala case', where two diaries (for brevity hereinafter referred to as 'the Jain diaries') and two files were recovered, during searches, on May 3, 1991, from the residence of the accused J. K. Jain besides some other articles, files which contained entries about various payments amounting to Rs. 65.47 crores during the year 1988 to 1991 to 115 persons who included political leaders, some of whom were working as public servants during the relevant period, certain officials of the Government and other public sector organisations, companies employees and friends of J. K. Jain and others and a major portion of the said amount was found to have been illegally transferred from abroad to India through hawala channels and the entries recorded in the Jain diaries contained the names of the persons in an abbreviated form, a new turn took place. During the course of investigation of the aforesaid case, one Shambhudayal Sharma, a hawala agent of Delhi, who on being inter-rogated, disclosed the names of several recipients of various hawala amounts and the investigation disclosed that during the years 1988 to 1991, the accused S. K. Jain, J. K. Jain, B. R. Jain and N. K. Jain, entered into a criminal conspiracy among themselves with the object to receive unaccounted money and to disburse the same among themselves and also to their companies, friends, close relatives, and various other persons including the public servants and political leaders.

5. On the basis of the charge-sheet, as filed by the Central Bureau of Investigation before the Special Judge, Delhi, against Madhav Rao Scindia, Arjun Singh, Narayan Dutt Tiwari and R. K. Dhawan, cases CC. No. 12 of 1996, CC No. 16 of 1996, CC No. 42 of 1996 and CC No. 43 of 1996 were registered against them, respectively. Case CC No. 16 of 1996 related to Arjun Singh where charge-sheet was under Section 120B of the Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the [Prevention of Corruption Act, 1947](#), and Sections 7, 11, 12 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, containing allegations that Arjun Singh was also one of the recipients who worked as a public servant in the capacity of Chief Minister of Madhya Pradesh from February 13, 1988 to January 23, 1989, and Member of the Legislative Assembly

(M.P), from June, 1988 to June 1991, and the Jain diaries and files seized from the residence of accused J. K. Jain showed the payment of Rs. 10.5 lakhs to him during the period from April, 1988, to March 1990 and August 1990, as per diary (MR 71 of 1991), small note book (MR 70 of 1991), File (MR 72 of 1991) and file (MR 73 of 1991) and it had nothing to do so far as the assessment year 1987-88 was concerned. During the course of investigation in the hawala case, public interest litigation was brought before the Supreme Court by means of a writ petition registered as Writ Petition (Criminal) Nos. 340-343 of 1993 (Vineet Narain v. Union of India : [1996]1SCR1053 alleging failure of the Government agencies in the performance of their duties and discharge of their obligations, as they failed to properly investigate the matters arising out of the seizure of the Jain diaries, wherein the Supreme Court on January 30, 1996, passed the following order at the stage when some charge-sheets were filed before the Special Judge, Delhi (page 3386) :

'The true scope of this writ petition has been indicated during' the earlier hearings. At this stage, when some charge-sheets have been filed in the special court and there is considerable publicity in the media regarding this matter. With some speculation about its true scope, it is appropriate to make this order to form a part of the record.

The gist of the allegations in the writ petition are that Government agencies, like the Central Bureau of Investigation and the Revenue authorities, have failed to perform their duties and legal obligations inasmuch as they have failed to properly investigate matters arising out of the seizure of the so-called 'Jain diaries' in certain raids conducted by the Central Bureau of Investigation. It is alleged that the apprehending of certain terrorists led to the discovery of financial support to them by clandestine and illegal means by use of tainted funds obtained through 'hawala' transactions ; that this also disclosed a nexus between several important politicians, bureaucrats and criminals, who are also recipients of money from unlawful sources given for unlawful considerations ; that the Central Bureau of Investigation and other Government agencies have failed to fully investigate into the matter and take it to the logical end point of the trial and to prosecute all persons who have committed any crime ; that this is being' done with a view to

protect the persons involved, who are very influential and powerful in the present set up ; that the matter discloses a definite nexus between crime and corruption in public life at high places in the country which poses a serious threat to the integrity, security and economy of the nation ; that probity in public life, to prevent erosion of the rule of law and the preservation of democracy in the country, requires that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against each and every person involved, irrespective of the height at which he is placed in the power set up.

The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this court to ensure that all Government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law : 'Be you ever so high, the law is above you'. Investigation into every accusation made against each and every person on a reasonable basis irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the Government agencies.

In this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the Government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law.

In case of persons against whom a prima facie case is made out and a charge-sheet is filed in the competent court, it is that court which will then deal with that case on merits, in accordance with law.

However, if in respect of any such person the final report after full investigation is that no prima facie case is made out to proceed further, so that the case must be closed against him, that report must be promptly submitted to this court for its satisfaction that the concerned authorities have not failed to perform their legal obligations and have reasonably come to such conclusion. No such report having

been submitted by the Central Bureau of Investigation or any other agency till now in this court, action on such a report by this court would be considered, if and when that occasion arises. We also direct that no settlement should be arrived at nor any offence compounded by any authority without prior leave of this court.

We may add that on account of the great public interest involved in this matter, the Central Bureau of Investigation and other Government agencies must expedite their action to complete the task and prevent pendency of this matter beyond the period necessary. It is needless to observe that the results achieved so far do not match the available time and opportunity for a full investigation ever since the matter came to light. It is of utmost national significance that no further time is lost in completion of the task.'

On the basis of the charge-sheet so filed against Shri Arjun Singh Case CC No. 16 of 1996 was registered but no charges were framed and he was discharged honourably on May 28, 1997, as there was no material against him, obviously even prima facie it could not have established that any hawala money was disbursed to him or in any way he was recipient of hawala money.

6. Heard learned counsel for the petitioners Shri Kapil Sibbal, B. L. Nema, senior advocate and Ravinder Srivastava, advocate and for respondents Nos. 1 to 6 in Writ Petition No. 2593 of 1997 and respondents in Writ Petition No. 1723 of 1998, Shri V. K. Tankha, and Sri J. P. Sanghi for respondent No. 7 in Writ Petition No. 2593 of 1997.

7. At the outset, Shri V. K. Tankha raised a preliminary objection in regard to territorial jurisdiction of this court qua the maintainability of Writ Petition No. 2593 of 1997 as it stood prior to its amendment consequent upon issuing of notices dated March 31, 1998, against the petitioners under Section 148 of the Act and Section 17 of the Wealth-tax Act, saying that this court may not have jurisdiction to adjudicate the matter involved in the petition, as both the petitioners permanently reside at Delhi where the following order for investigation/enquiry under Section 131(1A) of the Act was passed by the Assistant Director of Income-tax (Investigation), Unit-I, New Delhi [for brevity hereinafter referred to as 'the ADIT (Inv.), Delhi'] requiring the District Valuation Officer, Income-tax, Bhopal (for brevity

hereinafter referred to as 'the Valuation Officer') for determining the cost of construction of the house :

'You are requested to determine the cost of construction of the property completed on March 31, 1987, you are also requested to find out the cost of construction, improvements, additions, alterations, etc., made, if any, after March 31, 1987, specially during period April 1, 1987 to March 31, 1993.'

The Valuation Officer, exercising power under Section 131(1)(d) of the Act issued conjoint notices dated May 30, 1997, and June 9, 1997 to the petitioners for the determination of cost of construction of the house, requiring the filing of the documents with details along with parawise reply to the various queries and for providing necessary facilities for inspection of the house to Shri D. P. Sahu, junior engineer-cum-assessor authorised for inspecting the property, and to support the allegation, submission was advanced that the petitioners, in the writ petition, have given their permanent address as '10, Canning Lane, New Delhi' and, on this basis that since both the petitioners and the basic agency, which took the task of investigation enquiry, according to him, were in Delhi where the cause of action arose, the Delhi High Court had the jurisdiction and the impugned notice issued from Bhopal for the determination of valuation of the house by the valuation officer was only consequential subordinate action to give effect to the basic investigation/enquiry commenced under Section 131(1A) of the Act at Delhi in pursuance of the aforesaid order of the Supreme Court dated January 30, 1996, in Writ Petition (Criminal) Nps. 340-343 of 1993--Vineet Narain v. Union of India : [1996]1SCR1053 which could be executed anywhere including Bhopal where the property and assets were located and under such circumstances, the petitioners are not free to approach this court for relief against consequential action, thwarting the basic investigation/enquiry initiated under the order of the Supreme Court. It contained nothing for execution as it related to the hawala case only. Though, consequent upon passing of the aforementioned order under Section 148 of the Act and Section 17 of the Wealth-tax Act and amendment of the petition, the objection lost its significance but it is dealt with as it was raised.

8. The submission of learned counsel for the petitioners was that the so-called preliminary objection is devoid of substance and deserves to be rejected, The impugned notices, which were without jurisdiction, issued in the joint names of the petitioners by the Valuation Officer from Bhopal purporting to exercise power under Section 131(1)(d) of the Act for the purpose of determination of the valuation of the house, are by way of positive action so far as the petitioners are concerned and which has given rise to the cause of action, so far as the petitioners are concerned. The permanent address of the petitioners is not of Delhi but is of Bhopal, as the petitioners in the description of their address in the array of the petitioners in the writ petition clearly stated their address as r/o Dev Shree, Near Kerwar Bhopal, which is their permanent address and '10, Canning Lane, New-Delhi' was shown as present address as Shri Arjun Singh is a Member of Parliament. In view of it, it ill comes from the mouth of the respondents' that the permanent address of the petitioners is of Delhi, and as such, this court has no territorial jurisdiction. Further various orders relating to assessment to income-tax and wealth-tax, as aforesaid, and also the impugned notices issued by the Income-tax Officer under Section 148 of the Act and the Wealth-tax Officer under Section 17 of the Wealth-tax Act indicate the permanent address of the petitioners, which, undisputedly, is within the jurisdiction of this court. Thus, the objection regarding residence criteria, as submitted by the respondents for the purpose of territorial jurisdiction of this court, fails and so far as the action undertaken by the Valuation Officer by issuance of notices is concerned, it is not consequential/subordinate action as the order of the Assistant Director of Income-tax (Investigation), Delhi, only equipped the Valuation Officer though illegally with the authority for exercising power under Section 131(1)(d) of the Act, which, he, otherwise under the facts and circumstances of the present case, was not possessed of. It cannot, in any manner, be the factor for the ouster of territorial jurisdiction of this court as, so far as the matter relating to the order of reference by the Assistant Director of Income-tax (Investigation), Delhi, issuing direction to the Valuation Officer is concerned, it was between them and not between the petitioners and the Assistant Director of Income-tax (Investigation), Delhi, as the order of the Assistant Director of Income-tax (Investigation), Delhi, was neither addressed to nor was served or communicated to the petitioners nor its cause was effected at Delhi with which

they have no direct concern. The concern of the petitioners arose on the basis of the notices issued by the Valuation Officer, which, in fact, so far as the petitioners are concerned, gave rise to the cause of action to them. The preliminary objection, in view of the above, is sans substance and is rejected and it is held that, so far as the petitioners are concerned, the cause of action to them has arisen within the territorial jurisdiction of this court in regard to which this court has jurisdiction.

9. Learned counsel for the respondents in the same breath, while raising the question of territorial jurisdiction of this court, developed the argument relating to the question of jurisdiction of convenience for ouster of territorial jurisdiction of this court, which argument centres round the fact that the investigation wing of Income-tax Department, which is looking into the allegations, relating to the hawala money and its investment in the house, is at Delhi and the starting point for investigation/enquiry is by virtue of the order of the Supreme Court dated January 30, 1996, passed in Writ Petition (Criminal) Nos. 340-343 of 1993 (Vineet Narain v. Union of India : [1996]1SCR1053 .

10. The order of the Supreme Court dated February 22, 1996, obviously, relates to curbing the multiplicity of similar public interest litigation petitions in the Supreme Court as well as in the various High Courts so to save time. Para. III of the said order dated February 22, 1996, which is relevant in the context, is as extracted below :

'III. In view of the fact that this matter has been entertained in public interest and the role assigned to Anil Diwan is in substance of an amicus curiae, we direct that no other matter however described, pertaining' to the subject-matter of this proceeding would be entertained in this court or in any other court. This direction is necessary to avoid any overlaying proceeding which would not be conducive to public interest, since one proceeding in public interest is sufficient to cover the entire scope of the sub-ject-matter of this proceeding. Multiplicity of proceedings or parties would delay the progress of this matter and tend to diffuse the focus on the significant aspects of the case which is not conducive to the larger public interest.'

This order did not stop any individual from approaching the High Court or the Supreme Court qua his individual grievances or invasion of or attempt for invasion

of personal rights. Apart from it, the said PIL petition in the Supreme Court does not deal with the rights of an individual and no probe in the matter was made or to be made by the Supreme Court except to direct proper investigation of the crime in the hawala case by the Central Bureau of Investigation. The order is directed against investigation and prosecution and the said criminal case, however, did not direct or permit for reopening of the closed chapter of finalised assessment or for making an investigation/enquiry blindly under Section 131(1A) of the Act in relation to the matter in respect of which, as stated above, assessment was completed long back and as per charge-sheet in CC No. 16 of 1996, hawala money was alleged to have been disbursed during the period April, 1988 to March 1990 and August 1990, whereas the construction of the house was completed much anterior to this period, i.e., in March, 1987, and the income-tax assessment wherein investment in and cost of construction of the house was also involved, completed on September 28, 1987, wherein all the allegations, including the allegations about the investment of unaccounted money were considered by the Inspecting Assistant Commissioner of Income-tax on a reference from the Income-tax Officer under Section 144A of the Act which were found false and the finding was recorded that there was no truth in the allegations against the assessee that he has acquired huge assets out of the income from undisclosed sources.

11. So far as the High Court is concerned, it is a creation of the Constitution and its jurisdiction cannot be made dependent upon the convenience of any person or authority, howsoever high or low, and its jurisdiction cannot be excluded for the purpose of convenience that the investigation wing of the Income-tax Department which is at New Delhi is also looking into the complaint. The principle that the jurisdiction of a constitutional court cannot, in any manner, be made subservient to the convenience of any party, however high or low it may be including the Government or its Department to the lis ; and it can also not be ousted on the basis of the convenience so to create, in such a situation, a new type of jurisdiction called the jurisdiction of convenience.

12. The Supreme Court in its said order dated February 22, 1996, stopped all the High Courts from entertaining PIL petitions in relation to the hawala case in which, in fact, the direction was for avoiding the overlap-ing proceedings in the name of

public interest litigation.

13. Thus, this subsidiary submission in regard to ouster of territorial jurisdiction of this court on the plea of jurisdiction of convenience is sans substance and is rejected, holding that, in the facts and circumstances of the case, there cannot be jurisdiction of convenience for the respondents to the detriment of the petitioners for curtailment of their rights. Learned counsel for the petitioners next submitted that the impugned notice dated May 30, 1997 (annexure P-5 to the petition), jointly issued to Shri Arjun Singh and his wife, Smt. Saroj Singh, under Section 151(1)(d) of the Act by the Valuation Officer, on the basis of reference made to him by the Assistant Director of Income-tax (Investigation), Delhi, for determination of the cost of construction of the house as on construction period, requiring them for submitting documents and parawise replies to the various queries, is without jurisdiction which, under the law, could not be issued for the purpose of fishing out the material for reopening the assessment completed and foreclosed long back having attained finality. The submission was that the power under Sub-section (1) of Section 131 of the Act is the power, co-extensive with that of a civil court trying a suit under Section 30 read with rules 12, 14 and 15 of Order 11 of the Code of Civil Procedure, 1908, which empowers the authorities mentioned therein to act for the purpose of the Act and the same is available only during the course of pending proceedings and in this regard the reliance was placed on the case of *Dwijendra Lal Brahmachari v. New Central Jute Mills Co. Ltd.* : [1978]112ITR568(Cal) . The authorities who are empowered to exercise power under Sub-section (1) of Section 131 are : Assess-ing Officer, Deputy Commissioner (Appeals), Deputy Commissioner, Com-missioner (Appeals) and Chief Commissioner or Commissioner, who are vested with the authority in regard to judicial proceedings under subsection (1) or (2) of Section 120 of the Act or any other provision of the Act in itself indicates that the power under Sub-section (1) of Section 131 of the Act, in fact, is exercisable as adjunct to judicial power available during the pendency of judicial proceedings, before him against an assessee, and cannot be exercised merely for obtaining documents/information in the manner of fishing enquiry and/or to ascertain, if any, action, if at all, is to be taken in future or for merely exploring the possibility, if any, of re-opening of the concluded assessment, and the authorities as mentioned therein are other than those mentioned in Sub-

section (1A) of Section 131, whereas the authorities mentioned in Sub-section (1A) of Section 131 of the Act, i.e., the Director General or Director or Deputy Director or Assistant Director or the authorised officer, are the authorities not included in subsection (1) of Section 131 of the Act and the comparison of the two provisions, i.e., Sub-section (1) and Sub-section (1A) of Section 131 leads to the irresistible inference that the officers mentioned in Sub-section (1) of Section 131 of the Act can exercise power thereunder only if a proceeding for assessment is pending before him against an assessee but the authorities mentioned in Sub-section (1A), viz., Director-General or Director or Deputy Director or Assistant Director or the authorised officer, can exercise such power notwithstanding that no assessment proceedings for assessment are pending, where he has reason to suspect that any income has been concealed or is likely to be concealed by any person or class of persons obviously other than the assessee against whom assessment proceedings are pending as for him the power is already available under Sub-section (1). So far as this proposition is concerned, the matter is no more res integra.

14. The case of respondent No. 1, Assistant Director of Income-tax (Investigation), Delhi was that the power was exercised by him under the aforesaid order of the Supreme Court dated January 30, 1996, under Sub-section (1A) of Section 131 of the Act. In para. 10 of the preliminary reply filed on behalf of respondent No. 1, Assistant Director of Income-tax (Investigation), Delhi, and respondent No. 2, Valuation Officer, dated July 10, 1997, it is clearly stated that the starting point of the present investigation/enquiry is by virtue of public interest petition filed before the Supreme Court in respect of S. K. Jain hawala case and the Bench of it is monitoring the investigations and enquiries in the Jain hawala case conducted by the Central Bureau of Investigation, and in order to file status report, the income-tax authorities have to conduct investigation/enquiries as permitted by law in respect of the alleged hawala recipients to meet the direction of the Supreme Court issued on January 30, 1996. Section 131(1A) is as extracted below :

'(1A) If the Director-General or Director or Deputy Director or Assistant Director, or the authorised officer referred to in Sub-section (1) of Section 132 before he takes action under Clauses (i) to (v) of that Sub-section , has reason to suspect that any

income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under Subsection (1) on the income-tax authorities referred to in that Sub-section , notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.'

Learned counsel for respondent No. 1 submitted that the power under Sub-section (1A) was available to the authorities as mentioned therein by virtue of the non obstante clause, notwithstanding that no proceeding with respect to any person or class of persons was pending before him or any other authority for assessment. According to him, mention of the words 'person or class of persons' in the non obstante clause by the Legislature gives an indication that it relates to the person other than the assessee also. The purpose of the power under Sub-section (1) of Section 131 of the Act is in aid of some power for action under some provision under the Act and it is a well settled principle of law that all statutory bodies must act for the purpose of statute even though the term 'for the purpose of the Act' be not expressly stated. The purpose of exercise of power under subsection (1) and Sub-section (1A) is not the same, as the power under Sub-section (1) operates in the field where the person is an assessee and the proceedings are pending against him ; whereas, the power under Sub-section (1A) operates in the field where there is no proceeding for assessment pending and the enquiry/investigation is necessary against any such person or class of persons, for the purpose of making any enquiry/investigation on the basis of having reason to suspect about concealment or likelihood of concealment of income by such person or class of persons.

15. Learned counsel for the petitioners submitted that in the present case, the petitioners come under the category of assessee within the meaning of Clause (7) of Section 2 of the Act and Section 147 of the Act empowers the Assessing Officer, if he has reason to believe that any income chargeable to tax for any assessment year, has escaped assessment, then he may, subject to the provisions of Sections 148 to 153, assess or reassess income-tax and also any other income chargeable to tax which has escaped assessment and which came

to his notice subsequently in the course of proceedings under this Section i.e., Section 147, and in view of this, the order of the Assistant Commissioner of Income-tax (Investigation), Delhi, which is as disclosed in the counter affidavit and is extracted earlier, passed under Sub-section (1A) as well as the impugned notice dated May 30, 1997, issued thereupon under Section 131(1)(d) by the Valuation Officer, are without jurisdiction.

16. Learned counsel for the petitioner submitted that by the Direct Tax Laws (Amendment) Act, 1987, amendments were made, inter alia, in Sections 131 and 132 of the Act and the scope and effect of these amendments have been elaborated in the departmental Circular No. 551 (see [1990] 183 ITR 7), dated January 23, 1990, which reflected the department's stand that under the old provisions of Sub-section (1A) of Section 131, the power of a civil court in certain matters like enforcing the attendance of witnesses and examining them on oath, compelling the production of books of account and documents, etc., which are normally exercised by the Assessing Officers and appellate or revisionary authorities under the provisions of Sub-section (1), were also conferred on an Assistant Director of Inspection, who generally deals with searches and seizures, and enabled him to exercise the powers even when no proceedings were pending. However, these powers were not available to the Directors and Deputy Directors, who are generally associated with investigation of cases and intelligence work in connection with searches and seizures under Section 132. Another difficulty felt was that an authorised officer could record a statement on oath only during the course of search under the provisions of Section 132(4). Some times it becomes necessary to record a preliminary statement before the commencement of the search for proper investigation. This was not possible, as the courts had held that such a preliminary statement before the commencement of the search could not be recorded under the provisions of Section 132(4). To overcome these difficulties, the Amendment Act, 1987, has amended the said Sub-section (1A) to extend similar powers to the Director-General or Director. As per the new definition of 'Director-General or Director' in Section 2(21), the term also includes Deputy Director and an Assistant Director. Thus, the powers have been extended to the Director-General, Director, Deputy Director and the Assistant Director. The Amendment Act, 1987, has further extended the powers to an authorised officer

under Sub-section (1) of Section 132 before he takes search and seizure action under Clauses (i) to (v) of that Sub-section .

17. The Finance Act, 1988, further amended Sub-section (1A) to specially mention Deputy Director and Assistant Director also in the Sub-section , eliminating any doubt in the matter and in view of it, it is not necessary to trace out the history of the amendment, beginning to end.

18. Learned counsel for the petitioners next submitted in regard to the jurisdiction of the Assistant Director of Income-tax (Investigation), Delhi, that he has no jurisdiction to issue any such order in respect of finding out the cost of the house situated in Bhopal in the State of Madhya Pradesh, beyond his territorial jurisdiction and, as such, the basic order of the Assistant Director of Income-tax (Investigation), Delhi, as extracted above, as well as the impugned notices suffer from infirmity and are bad in law, as the Assistant Director of Income-tax (Investigation), Delhi, had no jurisdiction in respect to or over the property, i.e., the house situated in the district of Bhopal.

19. The petitioners in para. 5.8 of the petition have clearly stated that respondent No. 1 is neither the Assessing Officer nor has any jurisdiction to make a reference to respondent No. 2 for any purpose under the provisions of the Act. This statement has not been denied specifically by respondent No. 1 in the counter affidavit filed by him and it has not been disclosed that he had been conferred the jurisdiction for the purpose of making enquiry or investigation throughout the territory of India or throughout the territory of the State of Madhya Pradesh. Sub-section (1A) of Section 131 of the Act clearly speaks of the jurisdiction in regard to the authority/officer who has reason to suspect that any income has been concealed or is likely to be concealed by a person or class of persons within his jurisdiction and, as such, the concealment must exist within the jurisdiction of the authority/officer who has reason to suspect. Firstly, the valuation of the house, the construction of which was completed in the month of March, 1987, and subsequent thereto, no additions or alterations were made, could not, in the circumstances of the present case, come within the meaning of concealment of income or likelihood of concealment. In the the present case, the entire allegation

is that the income as invested in the house was not disclosed to the income-tax authorities at Bhopal. Even in view of it, the Assistant Director of Income-tax (Investigation), Delhi, had no jurisdiction to issue any such direction to the Valuation Officer at Bhopal for determining the valuation of the house as on construction period and even subsequent thereto.

20. The other requirement under Sub-section (1A) of Section 131 of the Act is that the authorities/officers mentioned therein in whose jurisdiction the income is alleged to have been concealed or is likely to be concealed, must have reason to suspect which in fact, is a condition precedent for the exercise of power and such reason or suspicion must be based on tangible material on the record and legally cognizable and not merely some hearsay accusation, conjectures and surmise. In the present case, respondent No. 1 has stated that he had the reason to suspect on account of the order of the Supreme Court dated January 30, 1996, passed in Writ Petitions (Criminal) Nos. 340-343 of 1993 (Vineet Narain v. Union of India : [1996]1SCR1053 but the perusal of the order of the Supreme Court clearly indicates that it has not, at all, given any such reasons which may, in any case, form reason to suspect against Shri Arjun Singh and/or against his wife Smt. Saroj Singh or any other person against whom the criminal investigation proceeded on the basis of the Jain diaries wherein even the name of Smt. Saroj Singh did not, at all, find mention and in its order dated January 30, 1996, the Supreme Court clearly stated without any ambiguity, to the following effect (at page 3387):

'In this proceeding, we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the Government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law.'

21. Thus, it is found that the said order of the Supreme Court cannot be treated under Section 131(1A) and respondent No. 1 had no reason to suspect on the basis of any material on the record what to say of tangible material legally cognizable and the allegations which find place in the charge sheet in the hawala case fall in the category of hearsay-accusation based on conjectures and

surmises, as the Special Court, Delhi, not finding them even prima facie material, discharged Arjun Singh in C. C. No. 16 of 1996 on May 28, 1997.

22. Thus, the investigation in the aforesaid hawala case wherein on the basis of the Jain diaries, seized during the investigation, charge-sheet filed after investigation before the Special Judge, Delhi, on the basis whereof Case No. C. C. No. 16 of 1996 was registered, cannot constitute reason to suspect for respondent No. 1 under Section 131(1A), as it was only at the investigation stage and on charge-sheet being filed before the Special Judge, Delhi, no material was found even for the purpose of framing any charge against Arjun Singh, as a consequence whereof, discharged him as there was no tangible material and under the circumstances, the shelter under the order of the Supreme Court for the purpose that the ADIT (Inv.), Delhi, had reason to suspect, is misfounded as the Supreme Court even did. not consider the aspect of disbursement of any money to Arjun Singh, what to say of concealment or likelihood of concealment and did not express its opinion in either way ; which, establishes beyond doubt that respondent No. 1 had no reason to suspect that any income has been concealed or is likely to be concealed by petitioner No. 1, Arjun Singh and his wife, Smt. Saroj Singh. Sub-section (1A) has provided the manner and it is a well-settled principle of law that either the thing should be done in the manner provided or not at all. The charge-sheet filed on the basis of the Jain diaries contained no material, what to say of tangible material and at that time, there was no such material before the Assistant Director of Income-tax (Investigation), Delhi on the record, except the bald accusation founded on some entries in the Jain diaries, which contained the names in abbreviated form, on the basis of which the CBI filed the charge-sheet before the Special Judge, Delhi, who after considering the matter on the merits, did not consider the same as material even for the purpose of framing the charge-sheet against Arjun Singh who was discharged and for the purpose of reason to suspect it could, at all, not be the material. Thus, the position boils down that whatever may be the interpretation of Sub-section (1A) of Section 131 of the Act in regard to its scope, it is held that the Assistant Director of Income-tax (Investigation), Delhi, had no tangible material on his record for the purpose of reason to suspect before passing the said order directing the Valuation Officer for valuing the cost of the house and the order passed by him was without jurisdiction.

23. Apart from this, the expression 'has reason to suspect that any income has been concealed, or is likely to be concealed' clearly refers to a pre-assessment stage and in the present case, where true and full facts and particulars and material facts were duly disclosed as regards the cost of construction of the house and source of income and its investment, there could arise no question of concealment of income or likelihood of concealment and it was not even the case of respondent No. 1 that the income has been concealed by petitioner No. 1, Arjun Singh.

24. Learned counsel for the petitioners next submitted that the power under Section 131(1A) of the Act is not an independent power but is the power exercisable in aid of proceedings under Section 132 of the Act which relate to the undisclosed income of property by any person or class of persons and the impugned action/notice admittedly not being' in reference to and in accordance with the requirement of Section 132 of the Act, is null and void.

25. Learned counsel for respondent No. 1 submitted that the impugned action was taken in pursuance to the direction of the Supreme Court in the case of Vineet Narain v. Union of India : [1996]1SCR1053 wherein the Supreme Court said that the authorities failed to discharge their statutory duties and obligations and on the basis of which, respondent No. 1 took the impugned action for finding out, on the basis of the CBI Investigation in the hawala case against J. K. Jain wherein Arjun Singh was suspected to have been disbursed the hawala money, and he in the same breath, also submitted that the enquiry under Section 131(1A) of the Act is independent of Section 132 and there has not yet reached the stage of issuance of notice for action under Section 147 or 148 of the Act. Thus, according to the case of the respondents the stage for issuance of notice for action under Section 147 or 148 of the Act has not arisen yet as no enquiry under Section 131(1A) has yet been completed.

26. So far as the order of the Supreme Court is concerned, it has not said anything on the merits about hawala money, its disbursement or its recipients as the order was passed by the Supreme Court out of anxiety for proper investigation in the hawala case (Crime Case No. RC-5(S)/91-SIU(V)/ CBI, New Delhi) by the CBI

wherein the Jain diaries disclosed the names of various categories of persons, inter alia, the politicians who were alleged to have been the recipients of hawala money, placed a check on the investigation authority therein in regard to the submissions of final report. The charge-sheet against Arjun Singh was submitted in the said case by the CBI in the court of the Special Judge, Delhi, that Arjun Singh along with others was also alleged one of the recipients of hawala money during' the period April, 1988, to March, 1990, and August, 1990. It was stated in the charge-sheet by the CBI that according to the entries in the Jain diaries and files seized from the residence of accused J. K. Jain that a payment of Rs. 10.5 lakhs was made to Arjun Singh during April, 1988, to March, 1990, and August, 1990 as per diary (MR 71 of 1991), small note book (MR 70/91) file (MR 72/91) and file (MR 73/91) on the basis of which a case being CC No. 16/96 was registered wherein he was discharged as there was no material, whatsoever, against him even for framing of the charge-sheet. In view of it, it cannot be said that the charge-sheet in the hawala case or the order of the Supreme Court, in any way, be the material for reason to suspect by the Assistant Director of Income-tax (Investigation), Delhi, that Arjun Singh and his wife, Smt. Saroj Singh, have concealed the income or even income is likely to be concealed by them.

27. For the purpose of the controversy as to whether the power under Section 131(1A) of the Act was exercisable independently or in aid of the proceedings under Section 132 of the Act, it is relevant to extract out the provisions of Section 131(1A) and Section 132 of the Act :

'131. (1A) If the Director-General or Director or Deputy Director or Assistant Director, or the authorised officer referred to in Sub-section (1) of Section 132 before he takes action under Clauses (i) to (v) of that Sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under Sub-section (1) on the income-tax authorities referred to in that subsection, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.'

'132. Search and seizure.--(1) Where the Director-General or Director or the Chief Commissioner or Commissioner or any such Deputy Director or Deputy 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 Sub-section (1) of Section 131 of this Act, or a notice under Sub-section (4) of Section 22 of the Indian Income-tax Act, 1922 (11 of 1922), or under Sub-section (1) of Section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account, or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, 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 authorise any Deputy Director, Deputy Commissioner, Assistant Director, Assistant Commissioner or Income-tax Officer, or

(B) such Deputy Director or Deputy Commissioner, as the case may be, may authorise any Assistant Director, Assistant 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 (i) where the keys thereof are not available ;

(iii) 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 ;

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search ;

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

(1A) Where any Chief Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the Director-General or Director or any other Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as may be empowered in this behalf by the Board to take action under Clauses (i) to (v) of Sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under subsection (1), such Chief Commissioner or Commissioner may, notwithstanding anything contained in Section 120 authorise the said officer to take action under any of the Clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

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

(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to Sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section .

Explanation.--For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable

article or thing under Clause (iii) of Sub-section (1).

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

Explanation.--For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person ;

(ii) that the contents of such books of account and other documents are true ; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(5) Where any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in Sections 132A and 132B referred to as the assets) is seized under Sub-section (1) or Sub-section (1A), as a result of a search initiated or

requisition made before the 1st day of July, 1995, the Assessing Officer, after affording a reasonable opportunity to the person concerned of being heard and making such enquiry as may be prescribed, shall, within one hundred and twenty days of the seizure, make an order, with the previous approval of the Deputy Commissioner,--

(i) estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him ;

(ii) calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act ;

(iia) determining the amount of interest payable and the amount of penalty imposable in accordance with the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act, as if the order had been the order of regular assessment ;

(iii) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in Clause (a) of Sub-section (1) of Section 230A in respect of which such person is in default or is deemed to be in default, and retain in his custody such assets or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in Clauses (ii), (iia) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized :

Provided that if, after taking into account the materials available with him, the Assessing Officer is of the view that it is not possible to ascertain to which particular previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rate in force in the financial year in which the assets were seized and may also determine the interest or penalty, if any, payable or imposable accordingly :

Provided further that where a person has paid or made satisfactory arrangements, for payment of all the amounts referred to in Clauses (ii), (iia) and (iii) or any part

thereof, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case.

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

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

(8) The books of account or other documents seized under Sub-section (1) or Sub-section (1A) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Chief Commissioner or Commissioner for such retention is obtained :

Provided that the Chief Commissioner or Commissioner shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

(8A) An order under Sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order, except where the authorised officer, for reasons to be recorded by him in writing, extends the period of operation of the order beyond sixty days, after obtaining' the approval of the Director or, as the case may be, Commissioner for such extension :

Provided that the Director or, as the case may be, Commissioner shall not approve the extension of the period for any period beyond the expiry of thirty days after the completion of all the proceeding's under this Act in respect of the years for which the books of account, other documents, money, bullion, jewellery or other valuable articles or things are relevant.

(9) The person from whose custody any books of account or other documents are seized under Sub-section (1) or Sub-section (1A) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

(9A) Where the authorised officer has no jurisdiction over the person referred to in Clause (a) or Clause (b) or Clause (c) of Sub-section (1), the books of account or other documents or assets seized under that subsection shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of fifteen days of such seizure and thereupon the powers exercisable by the authorised officer under Sub-section (8) or Sub-section (9) shall be exercisable by such Assessing Officer.

(10) If a person legally entitled to the books of account or other documents seized under Sub-section (1) or Sub-section (1A) objects for any reason to the approval given by the Chief Commissioner or Commissioner under Sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents.

(11) If any person objects for any reason to an order made under Sub-section (5), he may, within thirty days of the date of such order, make an application to the Chief Commissioner or Commissioner, stating therein the reasons for such objection and requesting for appropriate relief in the matter.

(11A) Every application referred to in Sub-section (11) which is pending immediately before the 1st day of October, 1984, before an authority notified under that sub-section as it stood immediately before that day shall stand transferred on that day to the Chief Commissioner or Commissioner, and the Chief Commissioner or Commissioner may proceed with such application from the stage at which it was on that day:

Provided that the applicant may demand that before proceeding further with the application, he be reheard.

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

(13) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under Sub-section (1) or Sub-section (1A).

(14) The Board may make rules in relation to any search or seizure under this section ; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer-

(i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available ;

(ii) for ensuring safe custody of any books of account or other documents or assets seized.

Explanation 1.--In computing the period referred to in Sub-section (5) for the purposes of that sub-section any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Explanation 2.--In this section, the word 'proceeding' means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.' Chapter XIII of the Act contains three parts. Part A deals with the appointment and control of the income-tax authorities. Part B deals with the jurisdiction of income-tax authorities and part C deals with the powers of the income-tax authorities. Section 131 deals with the power regarding discovery, production of evidence, etc., Section 132 deals with the power of making search and seizure. Section 132A deals with powers to requisition books of account, etc.,

by the authorities in circumstances subject to the reasons to believe. Section 133 deals with the power to call for information, Section 133A deals with the power of survey and Section 133B deals with the power to collect certain information, etc.

Section 132(1) of the Act provides that where the Director General or Director or the Chief Commissioner, or Commissioner or any such Deputy Director or Deputy Commissioner, as may be empowered, in this behalf by the Board, in consequence of information in his possession has reason to believe that any person to whom a summons/notice under Sub-section (1) of Section 142 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--any person to whom summons/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 Act; or 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 Act, which is described as the undisclosed income or property), then, the Director General or Director or the Chief Commissioner or Commissioner, as the case may be, may authorise any Deputy Director, Deputy Commissioner, Assistant Director, Assistant Commissioner or Income-tax Officer, or such Deputy Director or Deputy Commissioner, as the case may be, may authorise any Assistant Director, Assistant Commissioner or Income-tax officer, (i) for making entry 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) for breaking open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by Clause (i) where the keys thereof are not available ; (iii) for search of 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 ; (iv) for seizure of any

such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search ; (v) for placing marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom ; (vi) for making a note or any inventory of any such money, bullion, jewellery or other valuable article or thing ;

But, under Sub-section (1A) of Section 131 of the Act, the statutory officer or the Director General, or Director or Deputy Director empowered by the Board or Assistant Director or the authorised officer referred to in Sub-section (1) of Section 132 of the Act, before he takes action under Clauses (i) to (v) of that sub-section, if he has reason to suspect that any income has been concealed or is likely to be concealed by any person or class of persons within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under Sub-section (1) on the income-tax authorities referred to in that sub-section notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority. The officers, i.e., the officers mentioned in Sub-section (1) of Section 131 are also possessed of the power of the civil court regarding discovery, production of evidence, etc., in relation to the judicial proceedings before them in regard to the assessment and there was no question of repetition of those officers performing judicial function in Sub-section (1A) of Section 131 of the Act, but the power under Section 131(1A), is exercised notwithstanding that no proceeding's with respect to such person or class of persons are pending before him or any other income-tax authority, for the purpose of the items enumerated in Clauses (i) to (v) mentioned therein. But under the power of such search and seizure under Section 132 of the Act, the concerned authority cannot exercise power as enumerated in Clauses (a), (b), (c) and (d) of Section 131(1) of the Act, on the basis of the reasons to believe consequent upon information in his possession in regard to the undisclosed income or property in regard to the income or property which is concealed or is likely to be concealed. Sub-section (1A) of Section 131 of the Act empowers him or makes him competent for exercise of power, in his jurisdiction, as conferred under Sub-section (1) of Section 131 on the authorities mentioned under Sub-section (1A) for proceeding against such person or class of persons for making enquiry or

investigation relating to concealed income provided he has reason to suspect.

28. Thus, the power under Section 131(1A) cannot be said to be an independent power in itself but is the power for the purpose of making enquiry and investigation relating to any income which has been concealed or is likely to be concealed by any person or class of persons, equipping him with the powers regarding discovery, production of evidence, etc., as provided under Sub-section (1) of Section 131 of the Act. The expression 'before he, i.e., authorised officer, takes action under Clauses (i) to (v) of Section 132(1) of the Act' is material and relevant, that is the power regarding discovery, production, etc., as provided under Sub-section (1) of Section 131 can be exercised by the authorised officer before exercise of the power of search and seizure in Clauses (i) to (v) of Section 132(1) of the Act.

29. In fact, it is in the process of search and seizure if concealment of the income by some or other person or group of persons is found. The power under Sub-section (1A) of Section 131 is only an enabling power regarding discovery, production of evidence, etc., before entering into the actual exercise of search and seizure under Section 132 of the Act. Such a power under Section 131(1A) cannot be exercised for the purpose of reopening of the assessment under Section 147 of the Act.

30. Learned counsel for the respondents submitted that the argument of the learned counsel for the petitioners is fallacious for two reasons: (1) to accept the interpretation of the petitioner that the power under Section 131(1A) can be only exercised after recording satisfaction for search and seizure under Section 132(1) would render, nugatory the substitution of and incorporation by the Amendment Act, the four categories of officers under Section 131(1A), namely, Director General, Director, Deputy Director and Assistant Director (Investigation) apart from the authorised officers, as the effect of this interpretation of the petitioners could have been squarely met by retaining the word 'authorised officers' in Section 151(1A) omitting the four categories of other authorities. The authorities mentioned are the authorities who, consequent upon information in his possession has reason to believe that the person to whom a notice/summons under Section

132(1) of the Act was issued for production of books of account or other documents, omitted or failed to produce as required under the summons, and/or on the basis of the notice/summons so issued, such person will not or would not produce the books of account or other documents which will be useful for, or relevant to, any proceeding under the Act or the person in possession of any money, bullion, jewellery or other valuable article or thing represents either wholly or partly the income or property of the person for the purposes of the Act, has not been disclosed, then, the officers mentioned, can enter into the process of search and seizure and they are mentioned in Section 131(1A) of the Act as they have formed the opinion having reasons to believe about the existence of things enumerated in Clauses (a), (b) and (c) of Sub-section (1) of Section 132 of the Act. The matter relating to amendment in Sections 131(1A) and 132 of the Act has already been dealt with and requires no repetition.

31. Under Section 132(1) the Director General, or Director or such Deputy Director as may be authorised in this behalf by the Board, in consequence of information in his possession, has reason to believe about items in Clause (c), i.e., undisclosed income or property, then, Director-General or Director or Chief Commissioner or Commissioner may authorise any Deputy Director, Deputy Commissioner, Assistant Director or Assistant Commissioner of Income-tax or such Deputy Director or Deputy Commissioner, empowered by the Board, as the case may be, authorise Assistant Director or Assistant Commissioner, to enter. Since under Section 131(1A) the power is exercised by the authorities not acting in a judicial manner for that reason, the authorities to act judicially as mentioned in Section 132(1), i.e., Chief Commissioner or Commissioner, Deputy Commissioner, Assistant Commissioner, Income tax Officer are not mentioned. In Section 131(1A) the Assistant Director is the person who is vested with the relevant jurisdiction by virtue of directions or orders issued under Sub-section (1) or Sub-section (2) of Section 120 of the Act but the power on the Assistant Director could be conferred by the Board having regard to the criteria of-

(a) Territorial area ;

(b) Persons or class of persons ;

(c) Income or classes of income ; and

(d) Cases or classes of cases.

32. Learned counsel for the petitioners next submitted that the department has been taking shifting, inconsistent and oscillating stands, retracting its stand as regards the purpose of the intended revaluation of the house, which doubts the bona fides and fairness of the whole action, as at one place stand in regard to revaluation was to find out only additions and alterations made subsequent to April 1, 1987, and not to reopen the assessment In the reply filed on July 11, 1998, respondent No. 1 completely retracted the said stand stating' that it was intended to find out the cost of construction of the house as on March 31, 1987 which indicated for evaluation of the house afresh, in respect whereof exercise was already done during the course of the assessment proceedings. But the stand in the reply to the rejoinder affidavit reflects that the object was to find out 'certain furnishing items' after March 31, 1987, which were not covered by the report of the approved valuer and from all this what comes out is that the assessment already made on the basis of the report of the valuer will be reopened though legally not permissible and in this context, reliance was placed in the case of Haji Abdul Gaffar v. ITO : [1985]154ITR1(MP) where the court held that two conditions have to be satisfied before the Income-tax Officer acquires jurisdiction to issue notice under Section 148 of the Act in respect of an assessment beyond the period of four years but within a period of eight years from the end of the relevant year, i. e., (1) The Income-tax Officer must have reason to believe that income chargeable to tax has escaped assessment, and (2) he must have reason to believe that such income has escaped assessment by reason of the omission or failure on the part of the assessee, (a) to make a return under Section 139 for the assessment year, or (b) to disclose fully and truly material facts necessary for the assessment for that year. Reasonable belief that income has escaped assessment is the sine qua non for initiation of reassessment proceedings. Such a belief must be that of an honest and reasonable person based upon reasonable grounds and the Income-tax Officer may act under the Section on direct or circumstantial evidence, but not on mere suspicion, gossip or rumour. In the present case, facts and circumstances show that the position is so. Apart from this, it is worth noticing that nothing new

has come out except manipulation and putting old wine in new bottles. It is a settled principle, including that of law, that the greater includes the smaller and if the revaluation of the house was to be done then, why it was not done within four years and the concerned person has failed to discharge its burden and has not acted in coming to reason to believe that of an honest man and reasonable person disclosing the fact the assessee failed to disclose fully and truly material facts necessary for the assessment of that particular assessment year, i.e., 1987-88. The assessment having been completed after reference under Section 144A of the Act In the present case accepting the report of the valuer who in his valuation report submitted by the assessee in support of the return and thereafter a lapse of about ten years the valuation of the property, i.e., the house to be done through the valuation cell that too not on any new material or foundation qn the basis that some report is obtained from the patwari regarding income from agricultural properties when in the proceeding the report of the Tahsildar who is a superior class, i.e., Gazetted Officer, was relied on and accepted or obtaining of the affidavit of the same valuer after about ten years, who is under the thumb of the department making some deviation though no such material was supplied along with notice , under Section 148 or under Section 17 of the Wealth-tax Act to the petitioners. The position of law both under the Act and the Wealth-tax Act is merely the same as well as the context in the present case. The obtaining of the valuation report in respect of the house afresh about after about ten years from the valuation cell is ex facie not bonafide one even under the law. Such valuation report from the valuation cell cannot be taken into account for reopening of assessment. The case of Modi. Spinning and Weaving Mills Co. Ltd. v. ITO : [1970]75ITR367(SC) ; Smt. Amala Das v. CIT and Tulsidas Kilachand v. D. R. Chawla : [1980]122ITR458(Bom) can be taken notice of as cited. Even the change of opinion by the patwari, who is subordinate person from that of earlier opinion of Tahsildar in regard to agriculture income in respect of which, accepting the report, finding of correctness recorded about ten years earlier and it could not even otherwise fall within the category of non-disclosure of material facts by the assessee.

33. In the written submissions dated February 9, 1998, filed by the respondents in paras. 26 and 28, it has been clearly stated by the department that the purpose of

investigation/enquiry is to collect primary facts against the petitioners and to find out primary facts about the expenditure on construction. The admission of the department that it was to collect primary facts clearly follows that 'it has no reason to suspect' and the entire exercise -is devoted towards a fishing and roving enquiry, not otherwise permissible under the law, as it has been held by the Supreme Court in the case of *Madhya Pradesh Industries Ltd. v. ITO* : [1965]57ITR637(SC) .

34. Learned counsel for the petitioners next submitted that the hawala case of the Supreme Court has no concern, bearing or relevance for the issues pending adjudication in the present case. The Department in the preliminary reply dated July 10, 1998, stated that the starting point of the present investigation or enquiry was, by virtue of public interest petition before the Supreme Court in respect of the S. K. Jain hawala case wherein on January 30, 1996, the authorities were directed to investigate into every accusation made against each and every person on a reasonable basis expeditiously. It, by itself cannot amount to 'reason to suspect' within the meaning of Section 131(1A). However, even if such accusation could be treated as 'reason to suspect', even then, the same stands obliterated and loses its significance subsequent to the order of discharge dated May 28, 1997, passed by the Special Judge, New Delhi, before whom the charge-sheet was submitted by the Central Bureau of Investigation (C. C. No. 16 of 96) wherein the court found no material and evidence to even frame the charge-sheet ; which led to discharge of Shri Arjun Singh from the charges as were levelled against him. Since the entire genesis for starting the enquiry/investigation against petitioner No. 1 and his wife which was on the premises of charge-sheet filed in the hawala case by the Central Bureau of Investigation, completely stands wiped out, and even the alleged nexus between petitioner No. 1 and the hawala accusation vanished. On this ground as well, the notices of the Valuation Officer which, according to the Department, were issued with a view to submit status reports in the Supreme Court monitoring the hawala case, are bad and the subsequent stand taken by the Department where they have tried to independently justify the enquiry/investigation by taking subterfuge to Section 131(1A) deserves to be rejected both as an afterthought as well as untenable in the eyes of law, as there was no material as well as authority in law to hold such enquiry/investigation. So far as the said aspect of submission is

concerned, it has merit and on the basis of charge-sheet in hawala case (C. C. No. 16 of 1996) no investigation or enquiry under Section 131(1A) could be made by the Assistant Director of Income-tax (Investigation), Delhi, and no valuation of the house can be made now by the Valuation Officer as the very alleged allegation of charge becomes non est on the discharge of Arjun Singh.

35. Learned counsel for the respondents submitted that the petition under article 226 of the Constitution is to prevent investigation against concealed income for which the Department has reasons to suspect, may not be entertained, as the assessee has got the remedy for redress, depending upon initial action to be taken. It has no substance. The petitioners are always free to approach this court and the petition under article 226 of the Constitution can be presented not only after the petitioner's rights have been invaded but also when they have been threatened with immediate peril. The very foundation of concealment of hawala money ceased to survive and even otherwise in the hawala case, allegations of disbursement of the amount are subsequent to the construction of the house. This argument is accordingly sans substance and is rejected.

36. Now, the subsequent aspect which led to amendment of Writ Petition No. 2593 of 1997 and also, filing of the fresh Writ Petition No. 1723 of 1998 by Shri Ajay Singh relates to the notices dated March 31, 1998, issued under Section 148(2) of the Act separately to Arjun Singh and Smt. Saroj Singh, the petitioners in Writ Petition No. 2593 of 1997 as well as the notice dated March 31, 1998, issued separately to Shri Arjun Singh as well as to Smt. Saroj Singh under Section 17 of the Wealth-tax Act for the assessment year 1987-88 by the Assistant Commissioner of Wealth-tax, Circle Bhopal. The submission of learned counsel for the petitioners was that the said notices are without jurisdiction and authority of law as there was no material, whatsoever, in the eye of law which could lead to reasons to believe, which is the condition precedent for exercise of the power under Section 148(2) of the Act as well as under Section 17 of the Wealth-tax Act and in this context it was emphasised that the burden was on the Department to show that the income chargeable to levy of tax, has escaped assessment by reason of failure on the part of the assessee to disclose material facts timely truly and fully in the next assessment year which burden, the Department, in the

present case, failed to discharge as there existed no material at all on the record of the petition to show such non-disclosure. The further submission was that though the duty of the assessee was only to disclose the primary facts and after disclosure of the primary and material facts, the assessee stands absolved from such duty and, if the Assessing Officer did not enquire and draw correct inferences by making enquiry, for that neither the liability can be fastened on the assessee nor can he be blamed by saying that the income chargeable to levy has escaped assessment. From the order under Section 144A of the Act of the Inspecting Assistant Commissioner and the assessment orders, both in respect of the income-tax as well as wealth tax, it cannot be attributed that the petitioners did not disclose the primary and material facts, and as such, in this regard no liability can be fastened on the petitioners in both the petitions. The basic question before the Inspecting Assistant Commissioner in the reference under Section 144A of the Act was as to whether the valuation report be accepted or reference be made to the Departmental Valuation Cell which the Inspecting Assistant Commissioner, after considering the matter on the merits, considering the primary and material facts as disclosed by the assessee, came to the conclusion that the valuation report was fair and correct, based on relevant consideration and material and no reference to the valuation cell was necessary and by issuing the notices in question an unsuccessful attempt is made for reviewing the earlier orders simply by changing the opinion which is impermissible under the law. The materials under the law which can be the basis for reason to believe should be such materials which are definite, precise, based on solid, factual foundation and not merely hearsay, gossip, surmises and conjectures. The Legislature acts by keeping in consideration the principles of law judicially propounded. The abuse of power is inevitable, if uncontrolled power is conferred. If the Government Department is given a blank cheque, the day will certainly come when they will overdraw. Thus, limitations on the exercise of power are put on the principle that the unbridled, uncontrolled and unlimited power will put an end to rule of law. On the said principle, Parliament did not give a blank cheque rather to the income-tax authorities to appropriate while exercising power under the Act. The powers which are given by Parliament to the public authority are given to them as it were upon the trust that it is not for the personal benefit of the official concerned but for the

benefit of the public that of course is assumed upon which Parliament may grant such power at all, though the statute need not say so. It is a general principle (like the principles of natural justice) which, the court takes for granted wherefrom it follows that every power conferred on the public authority is conferred upon the condition that it will be used only for good and sufficient reasons in the public interest. If the reasons are irrelevant, ununderstandable or based upon mistake of law or facts or inspired with malice, latent or apparent, then, the power is being exercised outside the arena within which the Legislature intended that it should be confined and the doctrine of ultra vires is enough to establish illegality. In the case of *Ajantha Industries v. CBDT* : [1976]102ITR281(SC) wherein the phrase 'recording of reasons' as provided under Section 127(1) was interpreted. It may be seen the expression 'recording his reasons for doing so' under Section 148(2) and 'reasons to believe' under Section 147(1) are synonymous in character as both are to be recorded in writing and if the reasons to believe that the income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped and if reasons to believe in respect of escapement of assessment is empowered to assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this Section then if the reasons for making the order are reduced, however briefly, to writing, it will also help the assessee in appreciating the circumstances which make the very foundation for assessment or reassessment and it will also help the court in determining the bona fides of the order/notice for action if and when the same is challenged in court as mala fide not for good and sufficient reason in the public interest or not for the purpose of the Act or having been exercised out of the arena or purpose within which the Legislature intended that it should be confined or for irrelevant undesignable considerations or based upon the mistake of law or fact and will also help the court in determining the bona fides of reasons to believe in which case the doctrine of ultra vires sufficiently establish illegality. Thus, when law requires reasons to believe under Section 147 affecting prejudicially and assessee who can challenge it in court, it ceases to be mere administrative action as it is for opening or

reopening the assessment already done and the vice or violation of principles of natural justice on account of omission to communicate the reasons to believe is not expiated. The following purpose about the requirement of reasons to believe under Section 147 of the Act can be propounded as hereunder as the exercise thereunder is after the close of the assessment proceedings and in the present case, after reference under Section 144A of the Act : . . . that the assessee, the aggrieved party, in the proceeding before the Assessing Officer acquires knowledge of the reason and in a proceeding before the High Court or Supreme Court, since there is no right of appeal or revision, it has an opportunity to determine that the reasons which persuaded the authority to pass an order adverse to his interest were erroneous, irrational or irrelevant and the obligation of reason to believe and conveyed to the party concerned operates, as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers. The phrase 'reasons to believe' is much stronger both in intent and content as compared to the words 'reasons to suspect'.

37. Further the reasons to believe must be based on objective and relevant materials and not those which are extraneous and merely opinion or ipse dixit by the officer, vague, farfetched, fanciful, remote information or only allegation and in this context references cited are : Calcutta Discount Co. Ltd. v. ITO : [1961]41ITR191(SC) ; ITO v. S. K. Habibullah : [1962]44ITR809(SC) ; ITO v. Lakhmani Mewal Das : [1976]103ITR437(SC) ; Parashuram Pottery Works Co. Ltd. v. ITO : [1977]106ITR1(SC) Chhugamal Rajpal v. S.P. Chalika : [1971]79ITR603(SC) ; Sheo Nath Singh v. AAC of I. T. : [1971]82ITR147(SC) and Asoke Kumar Sen v. ITO : [1981]132ITR707(Delhi) . It is a settled position that there should be a clear nexus between material and reasons to believe. In the instant case, on the basis of material placed it is clear that there is no definite material amounting to be the nexus between the material and reasons to believe that the income chargeable to tax escaped assessment, or it may be said that there is no material available with the department to hold that the petitioners failed to disclose material facts truly and fully. It cannot be said that there was definite material whatsoever. For the assessment year 1987-88 the non-disclosure of which may amount to reasons to believe in regard to which the department owes the burden to show and establish that such facts amounting to undisclosed income

were in existence during the relevant period covered by the assessment year 1987-88 and the material in respect thereto were not disclosed by the assessee. The present is a case where there was no such material or evidence, whatsoever, on the record. Apart from this, there exists no material of any definite and precise nature as to what was the quantum of the alleged income escaped during the relevant assessment year 1987-88 from assessment on the basis whereof the maximum period of limitation as provided under Section 149 of the Act could be invoked. Reference may be had to Ved Parkash Prabhudayal Agarwal v. ITO : (1984)ILLJ76Bom . The counter affidavit as filed in response to the amended petition does not disclose any material which may amount to reasons to believe, as is required as per law laid down by the Supreme Court in ITO v. Madnani Engineering Works Ltd. : [1979]118ITR1(SC) and not only this, the reports of the materials on which reasons to believe are founded, should also be disclosed in the counter affidavit as per the requirement of law laid down in Rajeshwari Birla (Smt.) v. WTO : [1979]119ITR629(Cal) and in the present case, the Department failed to disclose any such cogent and definite material which could be the basis for reason to believe as per the requirement of law. The materials should be in existence at the time of the formation of the opinion in regard to 'reasons to believe'. At the time of initiation of proceedings under Section 148 of the Act, as well as under Section 17 of the Wealth-tax Act, only the reasons recorded under Section 148(2) of the Act and Section 17(2) of the Wealth-tax Act on the basis of cogent and definite material would be seen to ascertain whether the reasons to believe based on material exist or do not exist. The department cannot therefore justify or rely upon the additional materials for forming part of reasons to believe of the Assessing Officer in which regard references cited are : Mohinder Singh Gill v. Chief Election Commissioner : [1978]2SCR272 ; M. S. Ramaraj v. CAIT : [1981]131ITR429(Ker) ; Asa John Devinathan v. Addl. CIT : [1980]126ITR270(Mad) and Equitable Investment Co. (P.) Ltd, v. ITO : [1988]174ITR714(Cal) .

38. Learned counsel further submitted that the report of the Income-tax Officer, Rewa, his inspector in regard to the agriculture income, dated March 24, 1998, referred to the Assistant Director of Income-tax (Investigation), Delhi, dated March 27, 1998, and the Assistant Director of Income-tax, New Delhi, dated March 28, 1998, have not been made part of the 'reason to believe 'nor made available to the

Commissioner of Income-tax/Wealth-tax under Section 151 of the Act and under Section 17 of the Wealth-tax Act nor are they brought on the record of the petition by means of counter affidavit and thus alleged reasons to believe are mainly and certainly conjectural inferences and as such the same cannot amount to 'reasons to believe' and the so-called reasons of belief of the Assessing Officer ex facie are not such materials which may appropriately be described as material for reasons to believe, as they are : firstly, false, nonexistent and misleading assumption of facts without any solid and concrete foundation of materials based on facts. Secondly, those are only in the nature of inference of remote nature, not based on any cogent material having any relevance. At the best, they could be categorized only as hearsay, gossips, rumours, conjectures and surmises, and also mala fide, but cannot be categorized as material for the purpose of treating as reason of belief. The Department has admitted that the revaluation was being sought so that the material may be collected and in the written submissions filed before this court, it was further specifically admitted that the exercise of revaluation was to collect primary facts so that the action of reopening of assessment may be considered, which apparently on the date of formation of the reasons to believe and recording of reasons under sections 147 and 148(2), did not constitute material for making revaluation. Since they had a preconceived mind to somehow reopen the assessment, they have cited all sorts of flimsy, frivolous and untenable reasons, which on their own admission are not based on material or facts which have been taken aid of.

39. Further the requirement of obtaining sanction from the Commissioner of Income-tax/Wealth-tax under Section 151 of the Act and under Section 17 of the Wealth-tax Act is of extreme importance constituting' safeguards and not only the Assessing Officer has formed these reasons to believe in the most mechanical manner without application of mind as the sequence of events and the timings would conclusively demonstrate but the materials were also not made available to the Commissioner of Income-tax whose powers to grant sanction for reassessment process sought to be invoked. The two page letter/annexures enclosed with the format, would show that merely vague unspecific conjectures and surmises styled as 'reason to believe' alone were forwarded to the Commissioner and not the alleged three reports on which the Assessing Officer is

said to have based his reasons. The Commissioner had no opportunity to apply his mind to the actual materials and, accordingly, the sanction accorded by him is vitiated. The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter .of recording sanction as he merely wrote on the format 'Yes, I am satisfied' which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material. The reference may be had to *Equitable Investment Co. (P.) Ltd. v. ITO* : [1988]174ITR714(Cal) *Ladhuram Laxmi Narayan v. ITO Chhugamal Rajpal v. S. P. Chaliha* : [1971]79ITR603(SC) and *Sheo Nath Singh v. A A C. of I. T.* : [1971]82ITR147(SC) . The assessee disclosed all the primary facts in his return which were subjected to detailed and exhaustive enquiry, when the original assessment was made and it could not be said to be a case where it could be said that the facts were not disclosed.

40. The petitioners' case is that there was absolutely no material to show that the facts constituting the reasons to believe were in existence during the period of relevant assessment year and there was no question of non-existence of the material facts. If the Department were to suggest that subsequently, some more addition, alteration, improvement, installations, developments as alleged, when the same being admitted by the petitioners, have been made out in subsequent period of time, following the assessment year, the assessee could not have been expected to disclose those materials in his return or for that matter, the approved valuer in his valuation report. The specific challenge is given by the petitioners that the reasons to believe based on record are not material at all when tested on the anvil of legal principles evolved by the Supreme Court in the various decisions aforementioned. The petitioners' case is not that those reasons are not sufficient or adequate, but their case is that the said reasons are not reasons at all. Apart from this, there is absolutely no material as to the quantum of income alleged to have escaped from assessment during the assessment year 1987-88 and there is absolutely no basis for material in support of the imaginary fanciful inflated amount shown for the reason of belief in a stereo-typed manner. There is absolutely no basis or material to support the same and unless there is definite germane

material to show the actual quantum of income alleged to have escaped, the Department is not justified to assume for the sake of its benefit for having the maximum period of limitation prescribed under Section 149 of the Act and Section 17 of the Wealth-tax Act. It could not be the material that some affidavit is obtained from the private valuer who is under the influence, thumb and control of the department or any report is obtained from the Patwari in the face of evidence and the certificate in regard to the agricultural income given by the Tahsildar, who is a gazetted and higher Revenue Officer, and which was accepted by the Inspecting Assistant Commissioner during the course of proceedings pending before him under Section 144A of the Act, and also by the Assessing Officer and the same was not challenged by way of revision or otherwise during the span of about ten years.

41. In view of the above discussion, the notices under Section 148 of the Act and Section 17 of the Wealth-tax Act cannot be allowed to sustain as they suffer from legal infirmity and they deserve to be quashed.

42. The objection of the petitioners was that the notice dated March 31, 1998, under Section 148 of the Act for the assessment year 1987-88 as well as the notice under Section 17 of the Wealth-tax Act, dated March 31, 1998, for the assessment year 1987-88 issued to the petitioners in Writ Petition No. 2593 of 1997 and the petitioner in Writ Petition No. 1723 of 1998 were barred by time in view of the provisions of Section 149 of the Act as well as Section 17(1A) for two reasons of the Wealth-tax Act. In this context, learned counsel for the petitioners firstly submitted that the earlier notices under the Act as well as under the Wealth-tax Act--annexures P-11 and P-12, clearly indicate that the same were issued by the registered post on April 1, 1998, as per own document of the Department at the address 'Dev Shree, near Kerwa Dam, Bhopal' whereas the respondents' case was that the petitioners in Writ Petition No. 2593 of 1997 are residents of No. 10, Canning Lane, New Delhi, where they are living, which were served on April 1, 1998. It has been stated in the counter affidavit by respondents Nos. 3 to 6 that the said notices were sent by registered post on March 31, 1998, but no copy of the postal receipts sending the notices by registered post to the petitioners in the writ petitions have been filed along with the counter affidavit and the same, even

otherwise also, have not been brought on the record, when it is the specific case of the respondents that the notices were sent by registered post. In the counter affidavit filed on behalf of respondents Nos. 3 to 6, a defence has been taken that Section 149 of the Act only lays down the limitation for issue of notice under Section 148 and not about service. Under Section 149(1)(a)(iii), in a case where an assessment under Section 143(3) or 148 of the Act has been made for any assessment year, notice under Section 148 of the Act can be issued up to ten years from the end of the relevant assessment year, if the income chargeable to tax which has escaped assessment, amounts to or is likely to amount to rupees one lakh or more for that year ; and likewise, under Section 17(IA)(a)(iii) of the Wealth-tax Act in a case where an assessment under Section 16(3) of the Wealth-tax Act has been made for any assessment year, notice under Section 17 can be issued up to ten years from the end of the relevant assessment year, if wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs. 10 lakhs or more for that year, and relying on the decision reported in CIT v. Major Tikka Khushwant Singh : [1995]212ITR650(SC) it was submitted that the aforesaid provision of law provided for the time limit for notice to be issued within ten years from the end of the assessment year in question but it does not require for service of the notice within ten years from the end of the assessment year in question--R. K. Upadhyaya v. Shanabhai P. Patel : [1987]166ITR163(SC) . So far as the legal position in regard to service of notice is concerned, the same is not res integra.

43. The question regarding the factual position, whereon the question of jurisdiction hinges, is whether the notice, as alleged, was issued by registered post within ten years from the end of the assessment year 1987-88 which is sine qua non criteria. Here, in the present case, no material has been brought on the record that the notice was sent by registered post as alleged, on March 31, 1998. The annexures P-10 and P-11 indicate that the same were issued on April 1, 1998, and the respondents have failed to establish the fact by filing the postal receipt regarding the despatch of the notice by registered post to all the three petitioners in the two writ petitions, on March 31, 1998. It requires for drawing adverse inference and the case of the respondents cannot be accepted unless the same is proved beyond doubt by bringing cogent material in that regard, on the record of

the petition, but since it has been stated on affidavit that notices were sent by registered post acknowledgment due on March 31, 1998, which fact has not been denied in rejoinder affidavit it is held that the notices were issued to all the petitioners by registered post on March 31, 1998, and as such, notices: so issued were not barred by time on this ground. In consequence thereupon, action could be initiated or taken against the petitioners in both the petitions on the basis of such notices if, in fact, issued on March 31. 1998.

44. The service of the notice under the Act is provided under Section 282 of the Act which is as extracted below :

'282. Service of notice generally.--(1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) Any such notice or requisition may be addressed-

(a) In the case of a firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family ;

(b) in the case of a local authority or company, to the principal officer thereof ;

(c) in the case of any other association or body of individuals, to the principal officer or any member thereof;

(d) in the case of any other person (not being an individual) to the person who manages or controls his affairs.'

45. Thus, it is clear that the notice is to be served on the person named therein either by post or as if it were summons issued by a court under the Code of Civil Procedure, 1908.

46. So far as the issuance of notice by post is concerned, as is already stated, the respondents have failed to establish that the same was issued on March 31, 1998 by filing postal receipts. Rather, contrary, it is established that the same was issued on April 1, 1998 ; as annexures P-11 and P-12 state that the copy of the said notice is being sent by registered post and the same contains the date on the

left side of the signature of the issuing authority as April 1, 1998, and it also indicates that another copy is being served through the income-tax inspector and the third copy is being served through counsel, Shri P. N. Gupta, chartered accountant. Then, the notice being sent to Shri P. N. Gupta, chartered accountant, under the provisions of Section 282, was not the mode of service and so the sending of the notice through the income-tax inspector is also not in consonance with the requirement of Section 282 of the Act as the same were not issued and served as if it were the summons issued by the court under the Code of Civil Procedure, 1908. Since the statement is made on affidavit that the notices were issued on March 31, 1998, by registered post, the sending of notices are accepted in the absence of denial.

47. In continuation of the same context it was next submitted that the impugned notices issued under Section 148 of the Act and Section 17 of the Wealth-tax Act are wholly without jurisdiction and authority of law, in view of the prohibition contained in Sections 147 and 149 of the Act as well as Section 17 and 17(1A) of the Wealth-tax Act.

48. The impugned notices under the Act, dated March 31, 1998, issued to all the petitioners, i.e., Shri Arjun Singh, Smt. Saroj Singh and Shri Ajay Singh, related to the assessment year 1987-88 and, so far as Shri Arjun Singh and Shri Ajay Singh are concerned, they are assessed to income-tax as well as to wealth-tax but so far as Smt. Saroj Singh is concerned, she was not assessed either under the Income-tax Act or the Wealth-tax Act. The notices to Shri Arjun Singh and Shri Ajay Singh for the purposes of time limit for notices under Section 148 of the Act are alleged to have been covered by Sub-clause (iii) of Clause (a) of Sub-section (1) of Section 149 of the Act, as their assessment was done under Section 143(3) of the Act. Sub-clauses (i), (ii) and (iii) of Clause (a) of Sub-section (1) of Section 149 are extracted below :

'149. (1) No notice under Section 148 shall be issued for the relevant assessment year,--

(a) in a case where an assessment under Sub-section (3) of Section 143 or Section 147 has been made for such assessment year,--

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under Sub-clause (ii) or Sub-clause (iii) ;

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year ;

(iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees one lakh or more for that year.'

49. And likewise is the position under the Wealth-tax Act where the time limit for the notice under Section 17 of the Wealth-tax Act is covered by Sub-clause (iii) of Clause (a) of Sub-section (1A) of Section 17, which is as extracted below :

'17. (1A) No notice under Sub-section (1) shall be issued for the relevant assessment year,--

(a) in a case where an assessment under Sub-section (3) of Section 16 or Sub-section (1) of this Section has been made for such assessment year,--

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under Sub-clause (ii) or Sub-clause (iii) ;

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees five lakhs or more for that year ;

(iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees ten lakhs or more for that year.'

50. But, so far as the position of Smt. Saroj Singh is concerned, she was not an assessee for income-tax or wealth tax and, as such, her case for the purposes of time limit for notice under Section 148 is to be covered by Sub-clause (iii) of Clause (b) of Sub-section (1) of Section 149 of the Act, which is extracted below, in so far as it relates to the income tax :

'149. (1) No notice under Section 148 shall be issued for the relevant assessment year,-- . . .

(b) in any other case,--

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under Sub-clause (ii) or Sub-clause (iii) ;

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees twenty-five thousand or more for that year ;

(iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year.'

51. And likewise, her case for the purpose of wealth-tax would be covered by Sub-clause (iii) of Clause (b) of Sub-section (1A) of Section 17 of the Wealth-tax Act, which is as extracted below :

'17. (1A) No notice under Sub-section (1) shall be issued for the relevant assessment year,-- . . .

(b) in any other case,--

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under Sub-clause (ii) or Sub-clause (iii) ;

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees two lakhs and fifty thousand or more for that year ;

(iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees five lakhs or more for that year.'

52. Indisputably, the impugned notices under the Act as well as the Wealth-tax Act, were issued for the assessment year 1987-88 and the date on the notice is March 31, 1998. The question which has cropped up, even on assumption that the impugned notices were issued on March 31, 1998, is whether the same are within the frame of time limit for notices as provided under the Act as well as under the Wealth-tax Act ?

53. The provision as extracted above under the very Section 149 of the Act makes a prohibition that no notice under Section 148 shall be issued for the relevant assessment year in the case where the assessment under section 143(3) has been made for such assessment year, after four years unless the case falls under Sub-clauses (ii) and (iii). Thus, the condition under Sub-section (1), Clause (a) of Section 149 of the Act is that one must be an assessee and his assessment must have been done under Sub-section (3) of Section 143 of the Act and this condition, so far as Shri Arjun Singh and Shri Ajay Singh are concerned, is satisfied but the question arises, according to the time limit and for that time limit, Sub-clause (iii) of Clause (a) of Sub-section (1) of Section 149 of the Act says that no notice under Section 148 be issued for the relevant assessment year in case where an assessment under Sub-section (3) of Section 143 of the Act has been made for such assessment year if four years have elapsed from the end of the relevant assessment year. Here in the present case, four years have elapsed and, as such, under the said clause, no such notices were issuable but the requirement under Sub-clause (i) of Clause (a) of Sub-section (1) of Section 149 is subject to Sub-clauses (ii) and (iii) and it has to be analysed whether the case of the petitioners

falls under Sub-clause (iii) of Clause (a) of Section 149(1) of the Act which says--if seven years but not more than ten years have elapsed from the end of the relevant assessment year unless the income chargeable to tax has escaped assessment amounts to or is likely to amount to rupees one lakh or more for that year. The notice related to the period--assessment year 1987-88 and the ten years from March 31, 1987, are completed on March 31, 1997, whereas the notices impugned are alleged to have been issued on March 31, 1998.

54. Likewise is the position of Shri Ajay Singh, provided the quantum of the amount which has escaped assessment from the assessment year 1987-88 amounts to or is likely to amount to rupees one lakh or more for that assessment year. In the impugned notice, neither it has been disclosed as to under which Clause and sub-clause, the power is exercised nor the amount has been disclosed. Even in the counter affidavit filed no amount, on which jurisdiction is depended, separately in the notices has been disclosed qua these two individual assessees, i.e., Arjun Singh and Ajay Singh, for the assessment year 1987-88 regarding which the allegations of escapement of income is made.

55. The position of Smt. Saroj Singh is different, as she was not assessed to income-tax and in her case Clause (b) of Sub-section (1) of Section 149 of the Act could be made applicable provided the requirements of Clause (iii) thereof are satisfied. It speaks that no notice under Section 148 shall be issued for the relevant assessment year in any other case if four years have elapsed from the end of the relevant assessment year, unless the case falls under Sub-clause (ii) or Sub-clause (iii). The relevant assessment year shown is 1987-88 and the period should not be more than ten years from the end of the relevant assessment year. But even in her case, the amount on which the jurisdiction is dependent, has not been disclosed that the income chargeable to tax which has escaped assessment for that assessment year amounts to or is likely to amount to rupees fifty thousand or more for that year, i.e., the assessment year 1987-88.

56. The house was the joint house constructed jointly on the basis of joint contribution and the sources of income of Smt. Saroj Singh was only agricultural whereas the sources of income of Shri Arjun Singh and Ajay Singh were other

than agriculture also. Even in her case, the ten years' period expired on March 31, 1997, from the end of the relevant assessment year 1987-88 and the end of the relevant assessment year is March 31, 1987. Likewise is the position under the Wealth-tax Act. Shri Arjun Singh and Ajay Singh were assessed to wealth-tax and the relevant assessment year in their case in the impugned notice was 1987-88 and ten years' period expired on March 31, 1997. The words used are 'not more than ten years' which signifies within ten years and so is the position of Smt. Saroj Singh, under Sub-clause (iii) of Clause (b) of Sub-section (1A) of Section 17 of the Wealth-tax Act but here also, the impugned notice does not disclose the quantum of the amount which has escaped assessment and the limit whereof which confers jurisdiction is rupees ten lakhs.

57. In view of the above, the impugned notices issued under Section 148 of the Act and Section 17(1) of the Wealth-tax Act are without jurisdiction and no action thereupon can be taken as the same are without jurisdiction for the reasons stated above.

58. The next question raised was the non-setting of the material on the basis of which the belief was arrived at under Sections 147 and 148 of the Act, in the counter affidavit and it was submitted by learned counsel for the respondents that in the counter affidavit, the facts and material were not disclosed as it would cause great prejudice to the interests of the Revenue and would presume the object of reopening of the assessment. Thereafter when the arguments were concluded, an application on behalf of respondents Nos. 1 to 6 (I. A. No. 2938-W/98) was moved before the court for taking certain facts and documents on the record. The respondents in the application I. A. No. 2938-W/98, have merely stated the belief but did not set out the material on the basis of which he has arrived at such belief and there was nothing on the basis of which the court could satisfy on the affidavit that he has reason to believe that there has been escapement of income or that the income had escaped assessment by reason of failure of the petitioners to make a full and true disclosure of material facts. In this context, a reference may be had to the case of ITO v. Madnani Engg. Works Ltd. : [1979]118ITR1(SC) .

59. In the present case, no privilege was claimed by the Department and, as such, it was obligatory on the Department to have disclosed by means of counter affidavit all the materials to the petitioner. It has been stated in para. 6 of the application, which is supported by the affidavit of SalilKhare, Assistant Commissioner of Income-tax, Circle-I, Bhopal, that 'in order to be fair to all concerned including the petitioners, the answering respondents are disclosing the reasons recorded in the file which are based upon cogent material available on record such as :

(i) Report of the Income-tax Officer, Rewa, and his inspector that the agricultural income shown by the petitioners was overstated in the return of income,

(ii) Report of the Assistant Director of Income-tax (Investigation), Delhi, on his discreet enquiries that investment of at least rupees five lakhs has been made in constructing the boundary wall of Kerwa Dam property which was not shown by the approved valuer in his report as affirmed by him in his statement,

(iii) Statement of approved valuer,

(iv) Report of the Assistant Director of Income-tax (Investigation) and Additional Director of Investigation about discreet enquiries.'

60. It may be mentioned that the record of item No. (i), i.e., the report of the Income-tax Officer, Rewa, and his inspector that the agricultural income shown by the petitioners was overstated in the return of income, has not been filed by the respondents even along with the said application and the contents of the report have not been disclosed for no reasons even though it was not a privileged document and no privilege was claimed regarding it. It amounts to the non-disclosure of the report to the petitioners. Further, the alleged reason is stated to be the reasons of belief of the Assistant Commissioner of Income-tax, Circle-I, Bhopal, under Section 147/148 of the Act and the same is based on the report of the Income-tax Officer, Rewa, pursuant to the commission under Section 131 of the Act and in regard to it, it was submitted by learned counsel for the petitioner that no commission under Section 131 can be issued as no assessment proceedings were pending and the assessment of the petitioner having been

concluded and closed, the power under Section 131 of the Act was neither available nor could be exercised, at that stage ; and, as such, the report, if any, is, therefore, void ab initio and in law it has to be treated as non est, though the same has not been brought on the record of the writ petition.

61. The said report does not constitute reasons to believe whatsoever as the same is absolutely vague, utterly conjectural and speculative. The report could not be based on facts which might be misleading as regards cultivation of 11 years ago and there is no reasonable scientific, definite and objective method by which the said officers could have so ascertained the same after the lapse of long period of about a decade. This cannot be said to be a material whatsoever, as to what was the extent of cultivation during the previous year relevant to the concerned assessment year 1987-88, especially in the background that regarding it, at the time of original assessment for the year 1987-88, a report of the assessment done under Section 143(3) read with Section 144A of the Act was submitted wherein the material facts regarding the agricultural income was shown and in respect whereof, the certificate of the Tahsildar who was also the Revenue Gazetted Officer, was filed and the same was accepted by the Inspecting Assistant Commissioner of Income-tax to whom a reference under Section 144A of the Act was made and also by the Income-tax Officer who made the assessment and also on the basis of the answer to the reference under Section 144A of the Act, the Wealth-tax Officer also relied on. Further, the Income-tax Officer, Rewa, has not and indeed could not have vouchsafed about the extent of agricultural operations and agricultural income of ten years past in the year 1987-88 as he is presumed to have conducted his enquiry only in the month of March, 1998. The agricultural income of petitioner No. 2, Smt. Saroj Singh, was truly and correctly disclosed in relation to the subsequent assessment years, i.e., 1988-89 to 1995-96, and the same has been accepted by the Assessing Officer which are matters of record and, therefore, ex facie, the report of the Income-tax Officer, Rewa, is false and misleading and irrelevant, not constituting the material. The calculation of the quantum of agricultural income made by the Assessing Officer is wholly conjectural, without any rational basis, speculative and based on hearsay. From the contents of the reasons recorded by the Assistant Commissioner of Income-tax in his note dated August 30, 1998, it clearly appears that the report of the

Income-tax Officer, Rewa, was based on certain subsequent events which took place much after the relevant previous years, and he appears to have based his report on the basis of land appearing now to be covered by plantation but the same has been done only recently and there was no plantation during the concerned previous year relevant to the assessment year 1987-88 and the entire land was under cultivation during that year.

62. Regarding the report of the Assistant Director of Income-tax (Investigation), Delhi, which was alleged to have been made by him on the basis of so-called discreet inquiries alleging investment of at least Rs. 5 lakhs made in constructing the boundary wall of the Kerwa Dam property which was not shown by the approved valuer in his report as affirmed by him in his statement, it was submitted by learned counsel that the said report has not been placed on the record. But it has been alleged that at least investment of Rs. 5 lakhs has been made in constructing the boundary wall, and the same has not been shown by the approved valuer in his report, which is false and baseless assumption of facts which do not exist at all and is therefore misleading. The petitioner categorically submitted that there is no boundary or compound wall whatsoever constructed around the house and the land appurtenant thereto and consequently, the question of its non-mention in the report of the approved valuer does not arise. Not only this, in the report, the valuer has specifically stated in annexure Form 01 against column No. 16 that no compound wall has been constructed and no boundary wall whatsoever was constructed around the house or land appertaining thereto. The Assistant Director of Income-tax (Investigation), Delhi, has assumed the existence of boundary wall without any basis whatsoever and the question of making any undisclosed investment in the construction of boundary wall does not arise, at all. The report of the Assistant Director of Income-tax (Investigation), the 'reasons to believe' of the Assessing Officer and the affidavit before this court are therefore false and not at all based on facts. In view of this, and as a necessary corollary, the question of construction of boundary wall and investment on the same during the previous year relevant to the assessment year 1987-88 also does not arise. This factor cannot be called to be a basis for 'reasons to believe' or to be the material for the basis for reasons to believe within the meaning of Section 147 of the Act as well as under Section 17 of the Wealth-tax Act. It may be stated that

in the affidavit filed on behalf of respondents Nos. 3, 4, 5 and 6, it has been stated in para. 2 by Shri Salil Khare, Assistant Commissioner of Income-tax, Bhopal, that the respondents belong to the assessment wing of the Department at Bhopal and the investigation wing of the Department concerned with the investigation and enquiry under Section 131(1A) is at New Delhi. These are distinct and independent authorities operating and functioning separately as per rules and law applicable to them. The answering respondents are not required under law to consult the investigation wing of the Department while arriving at a statutory decision under Section 147/148 of the Act and under Section 17 of the Wealth-tax Act which is based on the material available on record. The position of the evidence collected by the investigation wing under Section 131(1A) or otherwise is similar to evidence collected by any other authority under Section 119 of the Act and further it was stated that it is denied that any roving or fishing enquiry was made either by the Assistant Commissioner of Income-tax, Circle-I, Bhopal, or the Commissioner of Income-tax, Bhopal. The Assistant Commissioner of Income-tax/Assistant Commissioner of Wealth-tax, Circle-I, Bhopal, is the Assessing Officer holding jurisdiction over the petitioners and thus was fully empowered to issue notices under Section 148 of the Act and under Section 17 of the Wealth-tax Act in their cases. On the basis of material available on record, he has reasons to believe that income chargeable to tax has escaped assessment in the assessment year 1987-88 in the case of the petitioners, and after independently and objectively applying his mind to the material available on record, the Assessing Officer duly recorded the reasons within the meaning of Section 147 of the Act and submitted a proposal for obtaining the sanction of the Commissioner of Income-tax, Bhopal, as provided for in Section 151 of the Act. In the affidavit filed by respondent No. 7, Shri D. C. Agrawal, in reply to the amended petition, in para. 2, it was stated that respondent No. 7, Shri D. C. Agrawal, neither directed nor proceeded nor prevailed upon any officer much less the Assessing Officer to initiate proceeding's under Section 147/148 of the Act and other allied provisions. The Assistant Commissioner of Income-tax, Bhopal, who recorded his satisfaction for initiating proceeding's under Section 147/148 of the Act, thus, did so independently after forming' opinion in respect of the subject-matter and with the approval of the Commissioner of Income-tax, Bhopal, and so far as the action taken by the

assessment wing at Bhopal is concerned, it is an independent action taken by the Commissioner of Income-tax, Bhopal, and his officers under the provisions of the Act in view of the independent satisfaction recorded by them in their files, and these facts indicate that the Assistant Director of Income-tax (Investigation), Delhi, was instrumental in the initiation of the proceedings under Section 147/148 of the Act. In para. 6 of the aforesaid application, the material is shown to have been available on the record and the statement of the approved valuer has not been filed even with the said application and has not been brought on the record of the writ petitions and it is denied that the statement of the approved valuer furnishes any material much less 'reasons to believe' under Section 147 of the Act. Moreover, the statement is said to have been recorded after a lapse of ten years and that too in a most suspicious and surreptitious manner as the approved valuer is the person allowed to function by the Department and further since there were no assessment proceedings pending, there was no question of recording of the statement of the approved valuer on oath under Section 131 of the Act. The respondents were obliged to disclose all the materials and reasons to believe when specific challenge is made by the petitioners for its non-existence in the petition and particularly in view of the nature of the allegations of malice. The respondents cannot take subterfuge to the plea of confidentiality of the identity and the names of the informants and source of information. This only shows the suspicious character of the information, which is bound to be in the nature of hearsay, gossip, and conjectures, without any definite and cogent materials. The respondents are not entitled to rely upon and press into service any information or material, which has not been disclosed by them along with their counter affidavit and the same having not been brought on the record, cannot be used behind the back of the petitioners, without giving them an opportunity of examining their truthfulness, authenticity and relevance, so as to fall in the category of 'reasons to believe' under Section 17 of the Wealth-tax Act and under Section 147/148 of the Act.

63. So far as the question of construction of boundary wall or compound wall is concerned, it has already been stated that the reply has already been given. The respondents have deliberately not disclosed the note on which the alleged statement of the approved valuer is said to have been recorded. If it has been

recorded after February 10, 1998, without the disclosure of the date, the same cannot be treated as material in the eye of law as the interim order of this court was in operation after February 10, 1998. Since no boundary wall has been constructed the question of investing Rs. 3 lakhs in the construction of the boundary wall and fencing in the previous year relevant to the assessment year 1987-88 does not arise and further the question of the registered valuer not disclosing' the same also does not arise. The water pump, RCC work for overhead storage tank, filling up and levelling of the land for construction of the main building has already been dealt with in the approved valuer's report. As regards tubewell, there is absolutely no evidence that the same was dug and installed in the previous year relevant to the assessment year 1987-88. Further, there is no material to show prima facie any investment on filling and levelling of land other than that covered in the main building and also there is absolutely no material of any investment in the alleged filling and levelling of the land in the previous year relevant to the assessment year 1987-88 so also of the plantation. There are no servant quarters at all. The rear portion of the garage is being used as servant quarters. These are merely hearsay and baseless assumptions and therefore do not constitute material and so not amount to 'reasons to believe' and there is no material regarding investment of more than Rs. five lakhs in the property over and above the declared cost of construction. The report of the Assistant Director of Income-tax (Investigation), Delhi, dated March 28, 1998, is not based on facts and the same is false and baseless and misleading, apart from being absolutely vague, not disclosing even the bare minimum facts and cannot therefore amount to 'reasons to believe'. There was no separate building of office ever constructed or existing besides the main building and this assumption is totally baseless without any material and no such material has been brought on the record. The allegations not founded on facts are mala fide and they cannot be imaginary, arbitrary or fanciful only with a view to cover up the case within the period of limitation as provided under the Act and the Wealth-tax Act. Regarding the electrification by underground lines and H. T. lines, there is no material whatsoever and the allegations of investment of more than Rs. 10 lakhs on the same does not arise. The usual concealed wiring in the building has been provided for which the valuer has already made valuation according to the fixed norms, and the same has been

considered in the valuer's report and accepted in the assessment proceedings and also about the allegations of laying of the pipeline from Kerwa Dam after the purchase and occupation of the land. There is an open pipeline from Kerwa Dam which existed at the time of purchase of land. Therefore, it does not constitute material much less reasons to believe. There is no material on the record regarding installation of any mode of telecommunication system for which underground lines have been fitted worth Rs. 5 lakhs. The usual internal telephone wiring has already been considered in the approved valuer's report. However, an EPABX system has been installed in February/March, 1993, at a cost of Rs. 24,875 for which payment was made by DD No. 048305 dated February 10, 1993, and DD No. 048460 dated March 30, 1993. The expenditure was incurred by Shri Ajay Singh, one of the co-owners which is duly accounted for. The allegation of making more than Rs. 5 lakhs investment on this system is not only false but also baseless and mischievous. Further, there is no material whatsoever suggesting plantation involving investment of more than Rs. 5 lakhs, though subsequent to the construction and occupation of the house, some plants from time to time over a period of nearly ten years were planted by incurring only nominal expenditure, but there is absolutely no material whatsoever much less 'reasons to believe' that the plantation worth Rs. 5 lakhs was done and that too in the previous year relevant to the assessment year 1987-88.

64. Thus, it is clear that there has been total non-compliance of the provisions of Section 147/148 of the Act and also the provisions of Section 151 of the Act and Section 17 of the Wealth-tax Act, in relation to approval. Both, the Commissioners of Income-tax and Wealth-tax have mechanically purported to grant approval for reassessment and his satisfaction is neither legal nor objectively based on relevant and full material, as is established that all relevant materials including reports were not even placed before nor'did he have time to apply his mind independently and objectively, as it was done so without the delay for sending his approval as the file was sent to him on March 31, 1998, and the approval was given the same day and the file reached back the office of the Assessing Officer the same day.

65. Learned counsel for the petitioners submitted that the point of difference in the case of the petitioner in the subsequent Writ Petition No. 1723 of 1998, i.e., Shri Ajay Singh, is that he was never alleged to be involved in the crime in the hawala case and in relation to being a recipient of hawala money but he was an independent assessee having his own sources of income and he was not having, in any manner, any connection, close or remote, with the hawala case as was investigated by the CBI though the controversy relating to the same has come to an end even in the case of Shri Arjun Singh who was discharged from the charges submitted against him in Case C. C. No. 16 of 1996. Further no notice for fresh valuation of the house by the valuer was issued to the petitioner, Ajay Singh, under Section 131(1)(d) of the Act consequent upon an authorisation by the Assistant Director of Income-tax (Investigation), Delhi, under Section 131(1A) of the Act. So was the position of this petitioner in relation to his assessment under the Wealth-tax Act. Further, so far as petitioner No. 2, Smt. Saroj Singh (in Writ Petition No. 2593 of 1997), is concerned, she was also never alleged to be involved and no accusations were found or made against her by the CBI during investigation or otherwise in the said hawala case as she was not made accused and no charge-sheet was submitted against her and she was having no connection, either close or remote, with the hawala case and she was not an assessee under the Act and the Wealth-tax Act. The strong features in this case are in the background of the statement of fact as has already been stated earlier. The authorities at one time took shelter of the order of the Supreme Court in PIL matter in Writ Petition (Criminal) Nos. 340-343 of 1993, dated January 30, 1996 (Vineet Narain v. Union of India : [1996]1SCR1053), as against Arjun Singh and Smt. Saroj Singh which was taken as ground for suspicion and on the basis whereof, the Assistant Director of Income-tax (Investigation), Delhi, directed the Valuation Cell, Bhopal, for finding out the valuation of the house and also the subsequent addition, alteration, etc., made subsequent to the completion of the house on March 31, 1987, whereupon the Valuation Officer issued joint notices to Arjun Singh and Smt. Saroj Singh but no such notice was issued to Ajay Singh which was itself indicative of the fact that the entire case was on the basis of the charge-sheet in the hawala case against Arjun Singh which after his discharge from the Case C. C. No. 16 of 1996, dated May 28, 1997, becomes non est and,

as such, no proceedings on the basis of the said notice could be allowed to be proceeded with further. The issuance of the notices under Section 148 of the Act and Section 17 of the Wealth-tax Act to Arjun Singh, Smt. Saroj Singh and Shri Ajay Singh clearly establishes the non-bona fide on the part of the respondents as they did so after having realised after discharge of Arjun Singh from the hawala case, the Department would not be successful in carrying out the enquiry/investigation against Arjun Singh and therefore, the order was passed for reopening of the long closed and finalised assessment in respect of income-tax as well as wealth-tax. Thus, if the Department wanted to proceed on some objective material then, it has not been explained as to why it took such a long span of about ten years and if there was some such substance and material, the same could have been opened within four years and the quantum of limit for four years would not have come in the way of the Department as assessment could be opened for the greater amount during this limit of four years' period. Further, it is an attempt to destroy the finality as envisaged by the Legislature and in this connection learned counsel for the petitioner placed reliance on the case of Parashuram Pottery Works Co. Ltd. v. ITO : [1977]106ITR1(SC) where the court observed (page 10) :

'... we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.'

66. In the present case, the facts and circumstances clearly go to indicate that an attempt has been made to violate the said policy of law especially in the circumstances that there has been no omission or failure on the part of the assesseees in the present case to make full and true disclosure. The obtaining of the information regarding agricultural income after about ten years, cannot be treated as material leading to the omission or failure on the part of the assessee as it is not unusual that the people often differ as regards what inference can be drawn from given facts. In the case of Calcutta Discount Co. Ltd. v. ITO : [1961]41ITR191(SC) the Supreme Court answered the question whether the duty,

however, extends beyond the full and truthful disclosure of all primary facts, in the negative. The two orders of the Supreme Court in the said PIL petitions are dated November 30, 1996, and February 22, 1996, and also the hawala receipts were subsequent to these orders and subsequent to July 3, 1997, which also indicates that the hawala case had no relevance. The facts indicate that the two proceedings are being attempted by way of action under Section 131(1A)/131(1)(d) read with Section 132 of the Act and under Section 148 of the Act and under Section 17 of the Wealth-tax Act and two simultaneous proceedings cannot be initiated as they pertain to different objects. It is also interesting to note that upto April 3, 1992, when the matter was agitated before the Rajya Sabha, the case of the Department was that there has not been any escapement of income from assessment and in this background, it was for the department to have established beyond reasonable doubt that what necessitated the Department in the year 1998 to proceed for reopening of the assessment relating to the income-tax as well as wealth-tax and also proceeding against Smt. Saroj Singh who was neither assessed to income-tax nor wealth-tax as she was not assessable being the recipient of agricultural income. The hawala money transaction charge against Shri Arjun Singh related to the period April, 1988, to March, 1990, and August, 1990, and the wealth-tax assessment which included the house tax, was done on April 3, 1992, i. e., subsequent to the hawala case transaction of money charges and the reply of the respondent was that the Jain hawala case before the Supreme Court was a subsequent development and it vanished on discharge of Shri Arjun Singh from charges.

67. Learned counsel for the petitioners next addressed the court on the mala fides and the gross abuse of the statutory powers especially by respondent No. 7, Shri D. C. Agrawal, Assistant Director of Income-tax (Investigation), Delhi, who also moved an application for expunction of the allegations made against him in the writ petition, which application was dismissed by this court, wherein he stated that he has got the highest regard for the majesty of law and the judiciary including this court and has never made nor could dare to make any attempt to interfere with the proceedings before this court or act in defiance of any orders passed by this court.

68. On July 22, 1997, learned counsel for respondents Nos. 1 and 2 in Writ Petition No. 2593 of 1997 Shri V. K. Tankha made a statement after consultation with Shri D. C. Agrawal, Assistant Director of Income-tax (Investigation), Delhi, that no steps would be taken by the Department in pursuance of the impugned notice dated May 30, 1997, till further orders of this court. He subsequently made an application for withdrawal of the said undertaking and the court on February 10, 1998, allowed the withdrawal of the said undertaking and passed a restraint order, restraining respondents Nos. 1 and 2 from taking any action in connection with the proceedings in question against the petitioners till further orders. This order continued upto September 18, 1998, on which date the S. L. P. (Civil) against the said interim order was allowed (see [1998] 234 ITR 73).

69. Learned counsel for the petitioners submitted that Shri D. C. Agrawal, Assistant Director of Income-tax (Investigation), Delhi, acted in breach of the interim order passed by this court on February 10, 1998. This order was challenged by way of special leave petition in the Supreme Court together with civil appeal and the Supreme Court while issuing a notice on the special leave petition, made it clear by saying that 'we however make it clear that issue of this notice will not prevent the High Court from hearing of the writ petition.'

70. The question involved here is not in regard to the hearing of the writ petition but the question is regarding supply of the following material to the Assistant Commissioner of Income-tax, Circle-I, Bhopal :

'(i) Report of the Income-tax Officer, Rewa, and his inspector that the agricultural income shown by the petitioners was overstated in the return of income,

(ii) Report of the Assistant Director of Income-tax (Investigation), Delhi, on his discreet enquiries that investment of at least rupees five lakhs has been made in constructing the boundary wall of Kerwa Dam property which was not shown by the approved valuer in his report as affirmed by him in his statement,

(iii) Statement of approved valuer,

(iv) Report of the Assistant Director of Income-tax (Investigation) and Additional Director of Investigation about discreet enquiries.'

and in regard to which he submitted in his reply that he mainly submitted his status report about the investigation/enquiry including the present status of the writ petition pending before the Madhya Pradesh High Court to the Director of Income-tax, Commissioner of Income-tax, Bhopal, and the Deputy Commissioner of Income-tax Bhopal. This is a normal procedure followed in submitting the enquiry by the investigation wing of the Department to the higher authorities and the assessing authority has to report about the progress of investigation/enquiry in such cases where enquiries are undertaken under Section 131(1A) and also to obviate any point of limitation which may arise in the opinion of the Assessing Officer. He further submitted that the interim order of the High Court, dated February 10, 1998, and subsequent orders could not have protected limitation from expiring in respect of such other material available against the petitioners which did not form the subject-matter of challenge before the High Court in the case of the petitioners or other co-owner.

71. It establishes that the material was supplied by Shri D. C. Agrawal to the Assistant Commissioner of Income-tax, Circle-I, Bhopal, and the Assessing Officer who by virtue of the aforesaid interim order of this court dated February 10, 1998, could not have done anything as even after vacation of the said order by the Supreme Court on September 18, 1998, the undertaking given by the Assistant Director of Income Tax (Investigation), Delhi, dated July 22, 1997, revived, and it was to the effect that no steps were to be taken by the Department in pursuance to the impugned notice dated May 30, 1997, till further orders of this court.

72. Though it reflects against the concerned officer that he at least should not have supplied the material to the Assistant Commissioner of Income-tax, Circle-I, Bhopal, and his such conduct was not proper. The submission of learned counsel for the petitioners was that on this basis the impugned notices were nullity and he placed reliance on the case of *Mulkraj v. Moti Ram* AIR 1987 SC 1386, mid-part of left in column.

73. It is not necessary to consider this aspect as the Supreme Court vacated the stay order dated February 10, 1998, on September 18, 1998, and, as such, I do not find that the conduct of Shri D. C. Agrawal was contemptuous. He might have acted in the anxiety that the limitation for issuance of the notices under Section 147/148 of the Act and Section 17 of the Wealth-tax Act may not expire but he should have brought the matter to the notice of the court in advance and this conduct of Shri D. C. Agrawal could also not be appreciated. However, in view of the above, I am not inclined to take any action against him.

74. The assessment of income-tax of Shri Arjun Singh, which included the matter relating to the cost of the land and valuation of the house and the source of income and reference to the valuation cell was duly considered in the reference under Section 144A of the Act in relation to the assessment years 1985-86, 1986-87 and 1987-88 by the Inspecting Assistant Commissioner of Income-tax, Bhopal, and the assessment was made by the Income-tax Officer, Bhopal, under Section 143(3) read with Section 144A of the Act on September 28, 1987, which not having been challenged in any forum by the Revenue became final. Likewise, relying on the answer to the above reference under Section 144A of the Act in the case of Shri Arjun Singh the assessment of Shri Ajay Singh in respect of income-tax was completed on September 28, 1987, by the Income-tax Officer, B-ward, Bhopal, under Section 143(3) of the Act and Smt. Saroj Singh since was not having income from the taxable source, i.e., other than agriculture, was not assessed. Likewise Shri Arjun Singh was also assessed to wealth-tax for the assessment years 1981-82, 1982-83, 1983-84, 1984-85, 1985-86, 1986-87, 1987-88, 1988-89, 1989-90, 1990-91 and 1991-92 by the Assistant Commissioner of Wealth-tax, Additional Circle, Bhopal, on April 3, 1992, under Section 16(3) of the Wealth-tax Act holding that the reference to the valuation cell was not necessary and also Shri Ajay Singh was also assessed to wealth-tax for the assessment year 1987-88 by the Wealth-tax Officer, B-ward, Bhopal, on September 28, 1987, under Section 16(3) of the Wealth-tax Act and these assessments relating to wealth-tax not having been challenged by the Department in any forum available under the law, became final. The political status and rivalry time and again landed Shri Arjun Singh and his family members in trouble as he faced harassment when a public interest petition was filed in the High Court (M. P. No. 3909 of 1987) by his political

rival Shri Kailash Joshi relating to the affairs of Churhat Children Welfare Society and the matter of lottery run by it wherein this court on January 20, 1989, directed for a high power enquiry into the said affairs on the basis whereof an enquiry commission was appointed but after the coming into power of the BJP-led Government in the State, the terms of reference were amended vide notification dated March 29, 1990, with a view to enquire as to at what cost the house was constructed, which was struck down in Writ Petition No. 1681 of 1990 on March 4, 1992, finding that there was no material with the State Government to direct such an enquiry into the aspect relating to the construction of the house, which on being challenged before the Supreme Court by the State Government was maintained with the observation that it will not preclude the State Government from appointing a commission of enquiry according to law after applying its mind to any fresh or further material placed before it, but no such commission of enquiry in the matter relating to the cost of construction, etc., was appointed obviously as there was no material. He hardly could breathe, the member of the BJP in the Rajya Sabha raised the issue before the House of Parliament in relation to the enquiry in the wake of observations of the High Court in its judgement dated January 20, 1989, in the case of Kailash Joshi v. State of Madhya Pradesh that Shri Arjun Singh owes an explanation to the nation to show at what cost/sources he constructed the house and after full fledged enquiry and deliberation and clearance from the authorities under the Income-tax Act, the Finance Minister on March 10, 1992, made the statement that the High Court of Madhya Pradesh in its judgement dated January 20, 1989, in the case of Kailash Joshi v. State of Madhya Pradesh made certain observations regarding building constructed near Kerwa Dam, Bhopal, by the former Chief Minister of Madhya Pradesh, Shri Arjun Singh. The cost of construction and sources of investment in the said building were examined by the Income-tax Department in the course of relevant assessment proceedings and it was found that the sources of investment were satisfactorily explained and the cost declared in the return was also reasonable. Thus, the matter was clinched for all time to come before the sovereign body, but things did not stop even here and onward march continued getting opportunity on account of the CBI investigation of some crime in Crime Case No. RC-5(S)/91-SIU(V)/CBI, New Delhi, under Section 120B of the Indian Penal Code, Sections 3 and 4 Terrorist and Disruptive Activities

(Prevention) Act, 1987, and Section 56 read with Section 8(1) of the Foreign Exchange Regulation Act, 1973, referred to as the hawala case which was directed against J.K. Jain but the Jain diaries led to involvement of the political leaders, inter alia, others on the basis of the names in the Jain diaries in abbreviated form, and the matter may not be hushed up in the said case measures were taken by filing final report PIL petitions (Criminal) Nos. 340-343 of 1993 (Vineet Narain v. Union of India : [1996]1SCR1053), in the Supreme Court alleging failure of the Government agencies in the performance of their duties investigating crime arising out of Jain diaries wherein the Supreme Court on January 30, 1996, passed an order at the stage when some charge sheets were filed before the Special Judge, Delhi, including Shri Arjun Singh (C. C. No. 16 of 1996) where charge-sheet was under Section 120B of the Indian Penal Code, and Section 5(2) read with Section 5(1)(d) of the [Prevention of Corruption Act, 1947](#), and Sections 7, 11, 12 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act; 1988, containing allegations that Shri Arjun Singh was also one of the recipients to whom the Jain diaries showed payment of Rs. 10.5 lakhs during the period from April, 1988, to March, 1990, and August, 1990, and the Department taking' opportunity chose to proceed against Shri Arjun Singh and his wife, Smt. Saroj Singh, on the basis of the aforesaid accusations in the investigation process in the said hawala case taking shelter of the order of the Supreme Court dated January 30, 1996, in the said PIL case that the Assistant Director of Income-tax (Investigation), Delhi, passed an order directing the valuation cell for determining the cost of construction of the house, the construction whereof was completed on March 31, 1987 and to find out the cost of construction, improvements, additions, alterations, etc., made, if any, thereafter whereupon the District Valuation Officer issued joint notice dated May 30, 1997, to Shri Arjun Singh and Smt. Saroj Singh, which along with other notice dated June 9, 1997, was challenged before this court by means of W. P. No. 2593 of 1997 wherein on the query a statement was made before the court that the enquiry by the valuation cell was not with a view to reopen the assessments and the notices dated May 30, 1997, and June 9, 1997, were issued only to find out whether there has been any addition to or alteration in the house which had earlier been valued by the Department, as Shri Arjun Singh allegedly figured in the case as per the

Jain diaries as hawala money recipient, but the Department drifted away from this stand by saying that the person who supplied information from Bhopal was not possessed of record or material in this regard but no such person came forward to file his personal affidavit. In the meantime, the Special Court, Delhi, not finding even prima facie material against the petitioner, Shri Arjun Singh, for framing charge against him in C. C. No. 16 of 1996, discharged him on May 28, 1997, as a result whereof the very foundation or basis for impugned action vanished as the Supreme Court neither passed any order on the merits nor directed any enquiry under the Income-tax Act by way of reopening of the assessments of the petitioner, Shri Arjun Singh, and his son, Ajay Singh.

75. The matter relating to the purchase of land and cost of construction of the house and sources of investment in the house were raised before the sovereign body--Rajya Sabha by means of a question by one of the members and the same was replied to by the State Minister for Finance on March 10, 1992, which was to the following effect :

'The High Court of Madhya Pradesh in its judgment dated 20th January, 1989, in the case of Kailash Joshi v. State of Madhya Pradesh had made certain observations regarding building constructed near Kerwa Dam, Bhopal, by the former Chief Minister of Madhya Pradesh, Shri Arjun Singh.

The cost of construction and sources of investment in the said building were examined by the Income-tax Department in the course of relevant assessment proceedings and it was found that the sources of investment were satisfactorily explained and the cost declared in the return was also reasonable.'

76. In para. 13 of the preliminary reply filed on behalf of respondents Nos. 1 and 2, it was stated that the Jain hawala case before the Supreme Court is a subsequent development in point of time. It by itself indicates that the Department proceeded against the petitioners on the basis of the Jain hawala case and not on satisfying the requirement under Section 131(1A) of the Act and in this view of the matter also, since the hawala case has come to an end, so far as Shri Arjun Singh is concerned, the same has nothing to do, as he was discharged in the case C. C. No. 16 of 1996 on May 28, 1997. Apart from this, it needs to be noticed that

neither Smt. Saroj Singh nor Shri Ajay Singh had any concern with the hawala case and the aforesaid pretext in para. 13, even otherwise, cannot be taken in aid against Smt. Saroj Singh and Shri Ajay Singh. Thus, the impugned notices are invalid, null and void.

77. After the order dated May 28, 1997, in C. C. No. 16 of 1996, there remained nothing to think even against Shri Arjun Singh. The Department, for reasons best known to the concerned officers, unfairly, illegally and without jurisdiction, issued notices under Section 148 of the Act dated March 31, 1998, against Shri Arjun Singh, Smt. Saroj Singh and Shri Ajay Singh as well as under Section 17 of the Wealth-tax Act.

78. In the facts, circumstances and legal position, the present petitions are classic examples of arbitrary and mala fide action on the part of the persons in whom the Legislature reposed confidence that the power shall be exercised fairly, bona fide and uninfluenced by extraneous considerations.

79. In view of the above, Writ Petitions Nos. 2593 of 1997 and 1723 of 1998 deserve to be allowed and are hereby, accordingly, allowed with costs.

80. The impeached order/notice dated May 30, 1997, and June 9, 1997, as passed by the District Valuation Officer, Bhopal under Section 131(1)(d) of the Act jointly against Shri Arjun Singh and Smt. Saroj Singh together with the order of the Assistant Director of Income-tax (Investigation), Delhi, authorising him for determining the cost of construction of the house (Kerwa house) completed on March 31, 1987 (annexures Nos. P-6, P-7 to Writ Petition No. 2593 of 1997), as well as the cost of construction, improvements, additions, alterations, etc., made, if any, after March 31, 1987, and also the notice dated March 31, 1998, issued to Shri Arjun Singh, dated March 31, 1998 issued to Smt. Saroj Singh (annexures P-10 and P-11, respectively, to Writ Petition No. 2593 of 1997) and dated March 31, 1998, issued to Shri Ajay Singh (annexure P-2 to Writ Petition No. 1723 of 1998) under Section 148(2) of the Act together with the notices dated March 31, 1938, issued to Shri Arjun Singh and Smt. Saroj Singh (annexures P-12 and P-13 to Writ Petition No. 2593 of 1997) and dated March 31, 1998, issued to Shri Ajay Singh (annexure-P-2 to Writ Petition No. 1723/98) as passed by the Assistant

Commissioner of Wealth-tax, Circle-I, Bhopal, are hereby quashed and the respondents and/or all other authorities under the Act and the Wealth-tax Act, concerned with or authorised in the matter are restrained from proceeding or taking any step or action against the petitioners in both the writ petitions, in any manner, whatsoever, in connection with or in respect of the land and the house known as 'Kerwa House" belonging to them jointly, by reopening their assessments, already made under Section 143/144A of the Act and Section 16(3) of the Wealth-tax Act.

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