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Court : Chennai

Decided On : Jan-23-1979

Reported in : [1981]131ITR506(Mad)

Judge : Sethuraman and ;V. Balasubrahmanyam, JJ.

Acts : [Constitution of India](#) - Article 14; [Income Tax Act, 1961](#) - Sections 132, 132(1), 132(2), 132(3), 132(5) and 292B

Appeal No. : Writ Petition Nos. 828 and 2120 of 1977 and 3307, 4857, 4919 and 5992 of 1978

Appellant : i. Devarajan and ors.

Respondent : Tamil Nadu Farmers Service Co-operative Federation and ors.

Advocate for Def. : A.N. Rangaswami and ;Nalini Chidambaram, Advs., ;K. Parasaran, Adv. for ;P. Jayaraman, Adv. and ;S. Balathandapani, Adv. for ;Alwar Naidu, Adv.

Advocate for Pet/Ap. : K.K. Venugopal, Adv. for ;T.S. Viswanatha Rao, Adv., ;C.S. Vaidyanathan and ;S. Swaminathan, Adv. for ;S.A. Subramanian, Adv. and ;G. Mohan Gandhi, Adv.

Judgement :

Sethuraman, J.

1. These writ petitions raise certain common points and, therefore, they are taken together for consideration. W.P. No. 828 of 1977 has been filed by one Devarajan, a farmer in a village in Tirunel-veli District. He claims to be a member of the East Thathankulam Lift Irrigation Co-operative Society. The first respondent to the writ petition is the Tamil Nadu Farmers Service Co-operative Federation Ltd., a society registered under the Tamil Nadu Co-operative Societies Act, 53 of 1961, on 4th December, 1974, with the object of helping farmers particularly small and marginal farmers by providing them integrated credit and other services. The membership of the federation was open to all farmers' service co-operative societies, the Govt. of Tamil Nadu as well as any person of over 18 years of age. The total number of individual members was not to exceed 20. It is stated that the East Thathankulam Lift Irrigation Society is one of the co-operative societies, which are members of the first respondent-Federation. One of the other objects of the Federation is stated to be to encourage generally thrift, self-help and co-operation among the affiliated societies and the members, to raise funds by way of deposits from members and also to borrow money from members and non-members and to undertake such other activities as may be conducive to the promotion of the economic interests of the members of the affiliated societies. The Federation was taking deposits on payment of interest at 10% per annum. According to the said Devarajan, about 650 farmers had lent monies on interest to the Federation and he himself had advanced a sum of Rs. 18,500 on 20th September, 1975, through the East Thathankulam Lift Irrigation Co-operative Society. He heard in June, 1976, that the Federation had gone into problems with the I.T. Dept. as a result of which the Federation was not in a position to repay the loans made to it. He filed a suit in the City Civil Court for recovery of Rs. 19,877.50, being the principal and interest due on the promissory note under Order XXXVII, Rule 1 of the CPC. There was an application by the first respondent-Federation for leave to defend, which was dismissed, and there was a decree in favour of the petitioner, Devarajan, on 6th July, 1976, for a sum of Rs. 19,887.50, being the principal and interest and also for costs of Rs. 1,847.50. In his affidavit it is stated that certain other persons had also obtained decrees against the first respondent-Federation and that even where execution petitions were filed, the Federation was not in a

position to repay the amount, because its accounts in various banks had been frozen. He referred to certain searches conducted by the Assistant Director of Inspection on 2nd June, 1976, and the orders passed under Section 132(3) of the I.T. Act, 1961, freezing the amounts lying in the banks. It is alleged that because of this freezing order, the decrees obtained by him and other farmers, about 64 in number, were not being settled by the Federation. He alleged that the orders passed under Section 132(3) were illegal and invalid. Broadly stated, his contention was that Section 132(3) violated Articles 14 and 19 of the Constitution and, therefore, invalid, and that, in any event, Section 132(3) had not been properly applied in the present case. He, therefore, prayed for a writ of mandamus or any other appropriate writ, order or direction, restraining the respondents from acting upon or implementing the order dated 2nd June, 1976, issued by the Assistant Director of Inspection (Intelligence), Income-tax Department, Madras, under Section 132(3) of the Act. He impleaded as the first respondent the Federation. Respondents Nos. 2 to 4 are the banks in which the Federation had accounts, which were the subject of the orders of freezing in 1976. Respondents Nos. 5 and 6 are the Assistant Director of Inspection and Union of India, respectively.

2. The main respondent is thus the fifth respondent, the Assistant Director of Inspection, and he filed counter-affidavit in the application for injunction contesting the several allegations made by Devarajan. He took up also a point that Devarajan had no locus standi to file this writ petition for the issue of a writ of mandamus, as he was only in the position of a creditor or a decree-holder, and he could not have any interest, as such, in the properties of the Federation.

3. There was a miscellaneous petition for the release of the assets, which were the subject of the order under Section 132(3) of the Act. The said petition, W.M.P. No. 1396 of 1977, came to be heard by Koshal J., as he then was, on 29th April, 1977. He directed the fifth respondent to make within a period of one month from April 29, 1977, a provisional assessment of the probable maximum amount of income-tax which the Federation might have to pay and to release the rest of the first respondent's (Federation's) frozen accounts. If such an assessment was not made within the said period, then the writ petitioner would be entitled to have the amount

of the decree obtained by him against the Federation released by the fifth respondent subject to the writ petitioner furnishing security. If the tax due on the basis of the assessment was found to be not less than the amount, which had been frozen, then the writ petitioner would have to take further orders of the court and the matter was adjourned to 20th June, 1977. However, the matter came to be placed before Mohan J. during the vacation because of W.M.P. No. 1863 of 1977 and he passed a further order in which reference was made to the earlier order of Koshal J. It was directed that if the liability of the Federation was found to be less, even then, the amounts available in the bank accounts would continue to remain in the bank until further orders of the court. The writ petition itself was directed to be posted on 15th June, 1977, and in the meanwhile counter-affidavits were to be filed by respondents Nos. 5 and 6. The parties were also free to obtain necessary directions in regard to any amount that might be found to be in excess of the liability of the Federation as determined in the assessment. There would be no further proceedings by the I.T. Dept. in respect of the amounts lying with respondents Nos. 2, 3 and 4.

4. In pursuance of these orders, what was called a provisional assessment was completed on 27th May, 1977, and the amount due thereunder was more than the amount lying with the banks, with the result that there was no question of any payment to either the Federation or the decree-holder. Subsequent to the provisional assessment, the counter-affidavit in the main writ petition containing his objections to the issue of the writ was filed.

5. W.P. Nos. 3306 and 3307 of 1978 have been filed by one Datchina-murthi. He was also a creditor of the Federation. As there was a large body of creditors, he sought leave to file the writ petitions as the representative of the body of creditors under Order 1, Rule 8, CPC. One of the writ petitions was for the issue of a writ of certiorari and the other for mandamus. The other points in the writ petitions are identical with those raised in W.P. No. 828 of 1977. Similarly, the counter-affidavit of the fifth respondent was also on the same lines.

6. In view of the objections raised by the fifth respondent in W.P. No. 828 of 1977 as to the maintainability of the petitions filed by these creditors on the ground that

they had no interest in the assets of the Federation as such, and could not seek a writ, W.P. No. 2120 of 1971 has been filed by the Federation itself. The points raised by the Federation are also identical with those in the other two writ petitions and the fourth respondent, the Assistant Director of Inspection, has contested the several allegations in the writ petition of this petitioner in the counter-affidavit filed by him.

7. We may now set out facts which appear from the affidavits and records as placed before us. As mentioned already, the first respondent-Federation was registered as a co-operative society on 4th December, 1974. Towards the end of May, 1976, there was a report by the sub-inspector of CBI addressed to the Superintendent of Police, Madras, CBI, in connection with an enquiry made by them in respect of certain lift irrigation societies of Tirunelveli District. A copy of the raid report was sent by the CBI to the intelligence wing of the I.T. Dept. and according to the fifth respondent it was found from that report that the Federation ' through its managing director by name Chandrasekaran opened a savings bank account in Dena Bank, Mount Road, Madras, on 10th September, 1975, with a sum of Rs. 457,52. As on 26th May, 1976, the balance in the said account amounted to Rs. 30,41,569.16. According to the fifth respondent this information revealed certain peculiarities in the sense that a cooperative society starting a savings bank account with a balance amount of Rs. 457.52 in a bank had in the said account, within a short period of 8 months, accumulated over Rs. 30,00,000. It was also unusual that a co-operative institution should maintain such a huge bank account in a non-co-operative bank, as the funds of a co-operative society are ordinarily kept in a co-operative bank. The affairs of the lift irrigation societies, of which the East Thathankulam Lift Irrigation Co-operative Society was one, had come in for scrutiny by the Sarkaria Commission constituted on 3rd February, 1976. The Sarkaria Commission, as is well known, was constituted for the purpose of enquiring into several charges against the Ministry which was. in power prior to the imposition of the President's rule in this State in 1976. In the background of the facts which came before the department, the fifth respondent claimed to have made certain enquiries and discussed the matter with his superior authorities on 30th May, 1976. The enquiries revealed to him that the said deposits made by the Federation had arisen out of unaccounted business activities of the said

Federation. According to him, he placed those facts before the Deputy Director of Inspection (Intelligence) and the Director of Inspection. As a result of these discussions and the facts gathered, the Director of Inspection was said to have entertained the belief that the funds in the bank account represented undisclosed income or property of the Federation within the meaning of Section 132 of the I.T. Act of 1961. It was apprehended, he alleged, that if action under Section 132 was not taken immediately, the entire amount would be withdrawn and secreted. It was in those circumstances that a warrant of authorisation was issued to him on 31st May, 1976, in Form No. 45 as prescribed by Rule 112 of the I.T. Rules read with Section 132 of the I.T. Act, authorising him to search the Dena Bank, Mount Road Branch, Madras, in connection with the case of the Federation.

8. On 1st June, 1976, he found in the savings bank account in the name of the Federation a sum of Rs. 30,41,569.16. There were also four fixed deposits. One fixed deposit was of Rs. 12,52,270 carrying interest at 10% per annum for a period of 6 months. According to him as it was not practicable to seize the money in deposit, he invoked the provisions of Section 132(3) of the I.T. Act and served a prohibitory order thereunder on the manager of Dena Bank, Mount Road, Madras, on 1st June, 1976.

9. He further claimed that one Chandrasekaran was found to be the only person entitled to operate the bank account. This individual was shown to be resident of East Coast Neelangarai, Tiruvanmiyur. He (the fifth respondent) claimed to have proceeded to Tiruvanmiyur and made enquiries. There was no name board of the Federation anywhere in the area and from the postman, he learnt that there was a godown at Neelangarai belonging to Si. Pa. Aditanar, a former Minister. On contacting the watchman there, he found that Chandrasekaran had left the place by bus for Dinathanthi office and the watchman was asked to inform Chandrasekaran about the fifth respondent's visit to the place.

10. Chandrasekaran appeared at the office of the fifth respondent on 2nd June, 1976, and from him the existence of other bank accounts came to be gathered. Similar warrants were obtained from the Director of Inspection, and the accounts, in (i) the Bank of Madura Ltd., Godown Street, Madras, (ii) the Madras Central Co-

operative Bank Ltd., Mukkar Nalla-muthu Street, Madras-1, and (iii) the Dena Bank, Mount Road were subject-matter of orders under Section 132(3). It was these orders which are the subject of the challenge in the writ petition. Some of the facts stated above have been taken from the further affidavit filed by the fifth respondent during the course of the hearing before us, in respect of which there is also a further reply affidavit filed by the said Chandrasekaran.

11. The two main questions that arise for consideration are :

' (1) Whether the provisions of Section 132(3) of the I.T. Act of 1961 are invalid as contravening the provisions of Articles 14 and 19 of the Constitution and

(2) Whether there has been proper compliance in the present case with the provisions of Section 132 '

12. We would prefer to go into the question whether there was proper compliance with the provisions of Section 132 first before we proceed to consider the validity of the said provisions. At this stage, it may be useful to set out the genesis of Section 132 and also the way in which the Supreme Court has considered it in some of its decisions in order to see if the provision applied and if it was complied with properly. The Indian I.T. Act, 1922, did not originally contain any provision for search and seizure. The powers available to the I.T. authorities were the same as those exercised by civil courts under the CPC, such as the powers of discovery and inspection, enforcing attendance of witnesses, examining them on oath, compelling the production of books and documents, issuing commissions, etc. In 1938, a bill was moved in the Central Legislature to amend the Indian I.T. Act, 1922, so as to confer certain additional powers to enter business premises, seize books; etc. The bill was dropped on account of serious opposition to it. After the second world war, with a view to effectively tax vast profits said to have been made by certain category of persons, compendiously referred to as war-profiteers, the Taxation on Income (Investigation Commission) Act (No. 30 of 1954) was enacted setting up an investigation commission, which in its report recommended the conferment of special powers of search and seizure on the I.T. authorities subject to certain safeguards. Some rules were framed in 1948 under the 1922 Act including some powers in this behalf. These powers were apparently not adequate

to deal with the situation of tax evasion. In 1956 the Taxation Enquiry Commission was appointed by the Central Government and this Commission made a report recommending that, with a view to avoid or prevent evasion, it was essential to confer such powers on the I.T. authorities. Pursuant to the recommendation of the said Commission, Section 37 of the Indian I.T. Act, 1922, was recast. After the enactment of Section 37 in the form mentioned above, there was another enquiry committee called ' The Direct Taxes Administration Enquiry Committee ' and this Committee had also something to say about the special powers and their utility from the point of view of preventing evasion. When the Act of 1961 was enacted, the provisions contained in Section 37 were split into two main sections, viz., Section 131 and Section 132. The two provisions were not, however, materially different from the earlier one. There was an amendment of Section 132 by the Finance Act of 1964 and again by Central Act No. 1 of 1965, which came into force on 15th March, 1965, There were minor amendments in the year 1975.

13. From the summary of the above legislative history, which has been brought out in Venkata Reddy v. ITO : [1967]66ITR212(KAR) , it would be clear that the sole object of enacting these provisions was and continues to be prevention of tax evasion. The amendments were necessary in order to plug the loopholes which were discovered from time to time or which were brought to light in the course of the administration of these provisions, so that evasion of taxes became more unattractive and difficult.

14. Section 132(1) provides as follows:

'132. (1) Where the Director of Inspection or the Commissioner or any such Deputy Director of Inspection or Inspecting Assistant 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 (XI of 1922), or under Subsection (1) of Section 131 of this Act, or a notice under Sub-section (4) of Section 22'of the Indian Income-tax Act, 1922, or under Sub-section (I)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 (XI 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 (XI of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

then--

(A) the Director of Inspection or the Commissioner, as the case may be, may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income-tax Officer, or

(B) such Deputy Director of Inspection or Inspecting Assistant Commissioner, as the case may be, may authorise any Assistant Director of Inspection 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 ;

(ii-a) 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.....'

15. In the above provision Clause (a) contemplates a case where there has been non-compliance on the part of the assessee and Clause (b) contemplates a case where a summons or notice has been issued and the appropriate authority has reason to believe that the relevant account books, etc., called for would not be produced. Clause (b) takes in also a case where the issue of notice is under contemplation and the authority is satisfied that the person would not produce the relevant document. In the present case there has been no such issue of notice contemplated in Clause (a) or (b). It is common ground that the present case comes only within the scope of Clause (c) extracted above. Under that provision if the Director of Inspection in consequence of information in his possession has reason to believe that 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, then he can give the necessary authorisation to make a search and exercise all the powers contemplated under Sub-clauses (i) to (v) extracted above. Subsection (1A) provides for the exercise of the power by the Commissioner or the authorised officer to search the assets which are likely to be found in a place where the Commissioner who issued the authorisation may not have the territorial jurisdiction over the said area. Sub-section (2) enables the authorised officer to requisition the assistance of police, if necessary. Subsection (3) is material for our present purpose and it is, therefore, reproduced :

'(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, 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.'

16. The authorised officer has power under Sub-section (4) to examine on oath any person, who is in possession or control of the assets. Sub-section (4A) enacts a rule of presumption that books of account, documents or other assets found in the possession or control of any person in the course of any search belonged to that person. Sub-section (5) has been enacted for the purpose of making a provision as to what should be done with reference to the assets seized on a search. As some arguments turn on a comparison of this provision with Sub-section (3), it is better to reproduce it, and it runs as follows:

' (5) Where any money, bullion, jewellery or other valuable article or thing (he'reafter in this section and in Sections 132A and 132B referred to as the assets) is seized under Sub-section (1) or Sub-section (1A), the Income-tax Officer, after affording a reasonable opportunity to the person concerned of being heard and making such inquiry as may be prescribed, shall, within ninety days of the seizure, make an order, with the previous approval of the Inspecting Assistant 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 (XI of 1922), or this Act;

(ii-a) determining the amount of interest payable and the amount of penalty imposable in accordance with the provisions of the Indian Income-tax Act, 1922 (XI 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), (ii-a) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized;...'

17. The assets retained under Sub-section (5) are to be dealt with as shown by Sub-section (6), in the manner contemplated by Section 132B. If the ITO is satisfied that the seized assets or any part thereof were held by any such person for or on behalf of any other person, then he may proceed under Sub-section (5) against the other person and all the provisions of Section 132 would apply accordingly (see Sub-section (7)). The books of account or other documents seized under Sub-section (1) or Sub-section (1A) are not to 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 Commissioner for such retention is obtained. The Commissioner also has no power to extend the period of retention of the books of account beyond a period of thirty days after all the proceedings under the Act in respect of the years for which the books, of account or other documents are relevant were completed [see Sub-section (8)]. The person from whose custody any books of account or other documents are seized can take copies thereof or extracts therefrom under Sub-section (9). Where a person legally entitled to the books of account or other documents seized has any objection to the approval of the Commissioner for the retention of the books beyond the period of one hundred and eighty days, then he can apply to the board stating therein the reason for such objection and requesting for the return of the books of account or other documents [see Sub-section (10)]. Further, under Sub-section (11) any person objecting to an order under Sub-section (5) may, within 30 days of the said order, make an application to such authority as may be notified by the Central Government stating therein the reasons for such objection and requesting for appropriate relief in the

matter. The board or the other authorities authorised by the Central Govt. may, on receipt of such application, pass such orders thereon as it thinks fit. The provisions of the Cr.PC, 1973, are to apply to search and seizures conducted under Sub-section (1) or Sub-section (1A) of this provision. Sub-section (14) contemplates rules being made for this purpose. The procedure to be followed by the authorised officer for obtaining ingress into any building to be searched or for ensuring safe custody of any books of account or other documents or assets seized are to be prescribed by Rules. The assets retained under Section 132(5) may be applied in satisfaction of any existing liability to tax including penalty. There is also a provision for sale of assets other than money under Clause (iii) of Section 132B(1). Any assets remaining after the liabilities are satisfied have to be returned to the persons from whom they were seized. The Central Govt. has to pay simple interest at the rate of 12% per annum on the aggregate of the amount retained that exceeds the amount required to meet the liabilities to tax. The interest commences to run from the date immediately following the expiry of the period of six months from the date of the order under Sub-section (5) of Section 132 to the date of the regular assessment or reassessment, as the case may be.

18. It is in the context of this provision that we have to consider the contentions of the learned counsel for the writ petitioners. The Supreme Court had occasion to go into this provision in *ITO v. Seth Brothers* : [1969]74ITR836(SC) . It is unnecessary to go into the facts of this case. In the course of the judgment, their Lordships observed about this provision at p. 843 as follows:

' The Commissioner or the Director of Inspection must have, in consequence of information, reason to believe that the statutory conditions for the exercise of the power to order search exist. He must record reasons for the belief and he must issue an authorization in favour of a designated officer to search the premises and exercise the powers set out therein. The condition for entry into and making search of any building or place is the reason to believe that any books of account or other documents which will be useful for, or relevant to, any proceeding under the Act may be found. If the officer has reason to believe that any books of account or other documents would be useful for, or relevant to, any proceedings under the Act, he is authorised by law to seize those books of account or other

documents, and to place marks of identification therein, to make extracts or copies therefrom and also to make a note or an inventory of any articles or other things found in the course of the search. Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorizes it to be exercised. If the action of the officer issuing the authorization or of the designated officer is challenged, the officer concerned must satisfy the court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed. But where power is exercised bona fide and in furtherance of the statutory duties of the tax officers, any error of judgment on the part of the officers will not vitiate the exercise of the power. Where the Commissioner entertains the requisite belief and for reasons recorded by him authorises a designated officer to enter and search premises for books of account and documents relevant to or useful for any proceeding under the Act, the court in a petition by an aggrieved person cannot be asked to substitute its own opinion whether an order authorising search should have been issued. Again, any irregularity in the course of entry, search and seizure committed by the officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken, provided the officer has, in executing the authorisation, acted bona fide.

The Act and the Rules do not require that the warrant of authorisation should specify the particulars of documents and books of account: a general authorisation to search for and seize documents and books of account relevant to or useful for any proceeding complies with the requirements of the Act and the Rules. It is for the officer making the search to exercise his judgment and seize or not to seize any documents or books of account. An error committed by the officer in seizing documents which may ultimately be found not to be useful for or relevant to the proceeding under the Act will not by itself vitiate the search, nor will it entitle the aggrieved person to an omnibus order releasing all documents seized.'

19. Throughout in the above passage, reference is to the books of account or other documents, because the provision as it was in force at the time of the search

in that case, contained no power to take possession of any articles other than books of account or other documents. The provision has now been enlarged to take possession of assets, but is otherwise not different, and whatever observation has been made with reference to the books of account or other documents could equally be applied to other assets that are seized at the time of the search.

20. The background for the enactment of this provision has been set out by the Supreme Court in *Pooran Mal v. Director of Inspection (Investigation), Income-tax* : [1974]93ITR505(SC) , where the following passage occurs :

' Dealing first with the challenge under Article 19(1)(f) and (g) of the Constitution it is to be noted that the impugned provisions are evidently directed against persons who are believed on good grounds to have illegally evaded the payment of tax on their income and property. Therefore, drastic measures to get at such income and property with a view to recover the Government dues would stand justified in themselves. When one has to consider the reasonableness of the restrictions or curbs placed on the freedoms mentioned in Article 19(1)(f) and (g), one cannot possibly ignore how such evasions eat into the vitals of the economic life of the community. It is a well-known, fact of our economic life that huge sums of unaccounted money are in circulation endangering its very fabric. In a country which has adopted high rates of taxation a major portion of the unaccounted money should normally fill the Government coffers. Instead of doing so it distorts the economy. Therefore, in the interest of the community, it is only right that the fiscal authorities should have sufficient powers to prevent tax evasion.'

21. It is against the above background that we have to consider the contentions urged on behalf of the respective writ petitioners.

22. In this case, as mentioned already, on 1st of June, 1976, there was authorisation for search and seizure in respect of the assets in the Dena Bank. On 2nd June, 1976, after Chandrasekaran was examined, there was authorisation in respect of the assets in the other two banks mentioned already, viz., Bank of Madura and the Madras Central Co-operative Bank. The first contention urged on behalf of the writ petitioners by Mr. K.K. Venugopal, their learned counsel, was that any deposit made in a bank created only a relationship of debtor and creditor

between the bank and the depositor, and that such a debt is not comprehended by any of the expressions used in Section 132. Sub-section (1) of Section 132 has already been extracted and the expressions used in Clause (c) of Sub-section (1) are 'any money, bullion, jewellery or other valuable article or thing'. The section contemplates the authorising officer, i. e., the Director of Inspection and others, in consequence of information in his possession having reason to believe that any person is in possession of any money, etc., representing either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Act. His point was that a debt in favour of a depositor in a bank not being money, etc., Section 132(1)(c) would have no scope for application, so that there could be no order as contemplated by Sub-section (3) of Section 132.

23. As far as the law relating to banking is concerned, when a customer pays in money on deposit, the money paid in cannot be considered as a fund held by the banker in trust for the customer. It is merely a loan to the banker and the customer is entitled to no more than the repayment of an equivalent sum at the time which the agreement between the two parties specifies. As pointed out by Lord Cottenham L.C. in *Foley v. Hill* [1848] 2 H.L. Cas 28; [1843] All ER R16:

' Money, when paid into a bank, ceases altogether to be the money of the customer ; it is then the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it. The money paid into the bankers, is money known by the customer to be placed there for the purpose of being under the control of the banker ; It is then the banker's money ; he is known to deal with it as his own; he makes what profit on it he can, which profit he retains to himself, paying back only the principal, according to the custom of bankers in some places, or the principal and a small rate of interest, according to the custom of bankers in other places..... He is guilty of no breach of trust in employing it, he is not answerable to the customer if he puts it into jeopardy, if he engages in a hazardous speculation; he is not bound to keep it or deal with it as the property of the customer, but he is, of course, answerable for the amount because he has contracted, having received that money, to repay to the customer, when demanded, a sum equivalent to that paid into his hands. That has been the subject of discussion in various cases, and that has been

established to be the relative situation of banker and customer. That being established to be the relative situation of banker and customer, the banker is not an agent or factor, but he is a debtor. '

24. We do not find that this principle behind the relationship between the banker and the customer has any application to the question that arises in this case. The principle enunciated in this decision is that the banker is not liable to return the money in specie as deposited with him and that the banker is not in any fiduciary relationship with the customer. If there was any such fiduciary relationship any profit made by the banker with the funds of the customer would have to be accounted for to him; it is this aspect which is noticed in the passage extracted above. An amount, in credit with the banker, is always liable to attachment in execution of a decree. In para. 89 of Vol. 3 of Halsbury's Laws of England, 4th Edn., the law is stated as follows :

'For the purpose of satisfying a High Court or county court judgment for the payment of money, any sum standing to a person's credit in a deposit account in a bank is deemed to be a sum due or accruing due to that person, and to be attachable accordingly, notwithstanding that any condition applying to the account requiring that, before withdrawal, notice be given, or personal application be made, or a deposit book or a receipt for money deposited be produced, has not been satisfied. '

25. Even if a deposit is payable at a future date or after the lapse of a specified time it is liable to attachment and when the account is attached the whole amount is impounded irrespective of the sum recovered by the judgment unless the order otherwise directs. What is attached is the money in the deposit account. It being a debt due is of no significance as far as the law relating to attachment is concerned. Debts can always be attached.

26. The learned counsel drew our attention to the decision of the Court of Criminal Appeal in R. v. Davenport [1954] 1 All ER 602. That was a case in which the secretary of a company received cheques signed by the directors. His duty was to fill up the payees' names, countersign, and pay the amount to the company's creditors. He used a number of cheques to pay his own creditors, and he did this

by making the cheque payable to the creditors' bankers and handing it to the creditor. In some cases he encashed these cheques by making the cheques payable to the bank of one Samuel and getting from Samuel the proceeds of the cheques. The question was whether he was liable to be convicted for larceny. It is in this context that Lord Goddard C.J., applied the principle in *Foley v. Hill* [1848] 2 HL Cas 28 , considered already. It was pointed out that if the accused had been charged with the fraudulent conversion of the cheques, he would have had no answer. But he was charged with larceny, and the accused could not be convicted of larceny because he did not steal the company's money. He caused only their account to be debited, but that was not stealing of that money. The inference sought to be drawn, from this decision, that the money in deposit ceases to be money, appears to be farfetched. The credit balance in a bank account is money kept in the bank and does not cease to be money merely because the relationship between the banker and customer is only that of creditor and debtor. The danger to be avoided is to argue from one branch of the law to another.

27. Assuming that it is not money, we may consider the case in the light of the other expressions used in Section 132(1)(c). The amount will not be bullion or jewellery. We have to see whether it is comprehended by the other two expressions, viz., ' or other valuable article or thing '. Similar expressions are used in other provisions of the Act. In Section 69A identical words, except the word ' thing', are used and the provision runs as follows :

' 69A, Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year ' (underlined by us).

28. Section 69B provides for assessment of any unexplained investment made in bullion, jewellery or other valuable article. Originally there were only two provisions relating to cash credits and unexplained investment. Where any sum is found to be credited in the books of an assessee, and the assessee offered no explanation or the explanation offered by him was not satisfactory, then the sum so credited may be charged to income-tax as the income of the assessee of the relevant previous year (see Section 68). Similarly, under Section 69 where the assessee had made investments which are not recorded in his books and the assessee offered no explanation or the explanation is not satisfactory, then the value of the investment may be deemed to be the income of the assessee of the relevant financial year. In order to trace and bring to tax the evaded income in other shapes, Sections 69A and 69B have been enacted. It may be seen that Section 69A does not use the expression 'valuable thing' which is used in Section 132(1)(c) only because any amount deposited in the bank account is liable to be brought within the scope of Section 69 as investments. In other words, any debt due to the assessee from the bank would be covered by Section 69 and, therefore, Section 69A does not have to provide for the assessment of any such debt. Section 69A was introduced by the Finance Act of 1964 with effect from April 1, 1964, while Section 69B was inserted with effect from April 1, 1965, by the Finance Act of 1965. Section 132 containing the above expression, viz., bullion, jewellery or other 'valuable article or thing' was introduced by the I.T. (Amend.) Act, 1965, with effect from 12th March, 1965. The several provisions are more or less of simultaneous origin. The addition of the word 'thing' in Section 132(1)(c) as contrasted with Section 69A and Section 69B appears to be significant. What is not comprehended by the expression 'valuable article' which would refer to tangible assets, is sought to be brought in by using the expression 'valuable thing' in order to describe or bring in intangible assets also.

29. The word 'things' is shown in Earl Jowitt's Dictionary, Vol. 2, as meaning 'the subject of dominion or property as distinguished from persons'. 'They are of three kinds; things real or immovable, comprehending lands, tenements, and hereditaments; things personal or movable, comprehending goods and chattels; and things mixed, partaking of the characteristics of the two former, as a title deed, a term for years. The civil law divided things into corporeal and incorporeal.' See

Earl Jowitt's Dictionary of English Law, Vol. 2, p. 1746. Thus incorporeal items like debts would be things. Therefore, the word ' things' appears to comprehend incorporeal assets also. An article will be a corporeal thing and a debt will be an incorporeal thing. Thus, a debt is within Section 132(1)(c).

30. Mr. K.K. Venugopal submitted that the law makes a difference between ' chose-in-action' and ' choses-in-possession '. According to him, the word ' thing ' would come within the scope of only ' choses-in-possession ' and would not include ' choses-in-action'. In Jowitt's dictionary ' the thing in action ' is also taken as chose. Therefore, ' chose-in-action ' would also be a ' thing '. It is not possible to accept the submission that the money kept with a banker would not be a valuable thing so as to be covered by the provisions of Section 132.

31. In Chamber's Twentieth Century Dictionary, one of the meanings given to the word ' thing ' is ' a possession '. It cannot be disputed that a bank balance is a possession, and only because of its being a possession, it is liable to be inherited. Taking the meaning in popular parlance, the word ' thing ' would include the balance to the credit of a person in a bank. If money in bank deposit is not money, it would at any rate be 'valuable thing'.

32. At this stage, another contention urged on behalf of the writ petitioners may be considered. It was stated that part of the amounts covered by the order under Section 132(3) was represented by a fixed deposit and it was contended that, in any event, there could be no order under Section 132(3) as against such a fixed deposit. In this connection, reliance was placed on a decision of the Gujarat High Court in Bhagwandas Narayandas v. CIT : [1975]98ITR194(Guj) . In that case, there was a search of the premises of an assessee on 10th July, 1969, and some books of account and papers were seized. However, there was some disturbance in front of the premises and the officials, apprehensive of their safety, left the search incomplete and escaped from the premises by a back-door. The search was, however, continued on August 26, 1969, and cash and certain fixed deposit receipts were seized. On 29th August, 1969, the explanation of the assessee was called for in respect of the said cash and the fixed deposit. The ITO, thereafter, passed an order under Section 132(5) determining the total income of the

assessee from undisclosed sources at Rs. 2,64,500 and the cash of Rs. 59,000 seized was appropriated to discharge the tax liability so imposed. The other documents including the fixed deposit receipts were retained by the department. The assessee filed a petition for the issue of a writ of mandamus directing the return of the sum of Rs. 59,000 as well as the fixed deposit receipts. The contention was that these assets had been seized on 10th July, 1969, and that the provisions of Rule 112A which contemplated an enquiry within a period of fifteen days from the date of the seizure had not been complied with. The question was whether there was a seizure on 11th July, 1969, when there was an attachment under Section 132(3) of the cash, fixed deposits, etc., or on 26th August, 1969, when the search was completed. The contention for the revenue was that the fixed deposits and title deeds of immovable property were not valuable things or articles to which Rule 112A would apply. It was held that the fixed deposits merely represented evidence of the fact of deposit and had no intrinsic value by themselves. The fixed deposit receipts, it was pointed out, were not instruments and could not have been negotiated or assigned. It was, therefore, held that the said deposits were not valuable articles or things so as to be seized under Section 132(5). The point to be remembered with reference to this decision is that the attachment was in the hands of the depositor, who held in his hand the fixed deposit receipts. The receipt by itself was not a negotiable instrument and had no value, as these deposits generally carry a term that they are not transferable. Unless there is any specific contract with the bank, as such, the fixed deposit receipts cannot be assigned without the concurrence of the bank. Therefore, the receipt by itself could not be an asset. If the order under Section 132(3) had been addressed to the bank as here, then there would have been no difficulty in upholding the prohibitory order, as a debt as a thing could be attached. We do not, therefore, find this decision to be of any assistance to the contention of the assessee.

33. There is one other decision, which was also relied on in this context. That was of the Kerala High Court. In *Shajahan v. ITO* : [1976]104ITR265(Ker) , in the course of a search a bank pass book relating to an assessee was found. A prohibitory order was issued on the bank under Section 132(3) in respect of the said account. When the matter came before a learned single judge of the Kerala

High Court, he held, applying the principle that the deposit with a banker creates only a relationship of debtor and creditor between the banker and the customer, that no order under Section 132(3) could be passed against the bank. The decision was taken on appeal before the Division Bench of the same High Court and the Bench decision is ITO v. M. Shajahan : [1976]104ITR347(Ker) . The judgment of the learned single judge was reversed. It was pointed out that the bank had not challenged the issue of the prohibitory order under Section 132(3) and that a writ under Article 226 could not be issued so as to vacate the order. The writ petitions themselves were dismissed. From the judgment of the Division Bench, it is clear that the order under Section 132(3) could be passed in such a case because it would be impracticable to seize the monies deposited in a bank. The proper way in which the order should be worded was, it was stated, to address the customer, who had deposited the money in the bank, directing him not to remove or part with the money except with the previous permission of the authorised officer, and this was considered to be permissible, because, though he had no ownership or immediate possession of the money, he had the right at his will to withdraw the money from the bank and dispose of the same as he liked. It was also pointed out that if orders had been issued to the assessee, then those orders under Section 132(3) could not have been challenged successfully in proceedings under Article 226. Implicit in this decision is the conclusion that the authorised officer has power to pass a prohibitory order in respect of an amount lying in a bank. Thus, the decision of the Kerala High Court does not support the stand of the writ petitioners herein that no prohibitory order under Section 132(3) could be issued in respect of a bank balance.

34. The next contention of the learned counsel was that there could have been no reasonable belief as contemplated by Section 132(1) on the facts herein. Initially his attack was that there was no authorisation under Section 132(3) and that, therefore, Section 132(1), which is only an ancillary to the exercise of the powers of search authorised under Section 132(1) has no scope for application. We have looked into the records and we are satisfied that there was an authorisation under Section 132(1). The authorities have used Form No. 45 for the purpose of making the search. That form does not contain any reference to Section 132(1) and it is only because of this that there was no reference to authorisation under Section

132(1) in the warrants issued. But the warrant of authorisation in Form No. 45 itself refers to Section 132 as a whole. A separate reference to Section 132(1) would, therefore, be out of place in such a form. But the records bear out that there was an authorisation under Section 132(1).

35. The next question that was argued was that the grounds for the belief entertained by the authority issuing the authorisation should have been disclosed. As pointed out by the Supreme Court in *R.S. Seth Gopikisan Agarwal v. R.N. Sen*, : 1967 CriLJ1194 , there is no provision of law which requires reasons to be communicated. That was a decision under Section 105 of the Customs Act, 1962. There also the contention was that the Assistant Collector of Customs should give reasons, which led him to authorise the search. It was pointed out that Section 105 did not say that the Assistant Collector should give reasons and that though he could not make a search or authorise any officer to make a search unless he had reason to believe the existence of the facts mentioned in the section, the section did not compel him to give reasons. That such a disclosure is not necessary has also been decided by a Bench of this court in relation to the provisions of Section 147 where also the expression used is 'if the Income-tax Officer has reason to believe' in *Thanthi Trust v. ITO* : [1973]91ITR261(Mad) . After referring to several decisions of the Supreme Court and the Privy Council with reference to Section 34 of the Act of 1922 or Section 147 of the Act of 1961, it was held that such disclosure of the reasons for the belief was unnecessary. The court examined the contention whether such reasons could be required to be disclosed to the assessee in proceedings under Article 226 of the Constitution. It was pointed out that the proceedings under Article 226 did not confer any higher rights and that whatever applied under the particular statute would also apply to the proceedings under Article 226, as otherwise, it was only necessary for any assessee to file a petition under Article 226 to get at the reasons which he would not get in the proceedings under the Act. At p. 281 it was pointed out that on going through the materials there were reasons to believe that income had escaped assessment and that the proceedings could go on. On the particular facts of that case the proceedings were not allowed to go on and the notices were quashed because the information, on the basis of which the ITO started proceedings for reopening the assessment already completed, was not considered to be relevant; It is enough if

we are satisfied about the existence of the reasonable belief.

36. As belief in the present case could be entertained reasonably on the basis of the information received from the CBI, and as the information is material and relevant, the action of the concerned authorities in invoking the jurisdiction under Section 132 cannot be challenged.

37. At the initial stages when the hearing was going on, there was some complaint on the part of the petitioners that the warrants themselves were not shown to Chandrasekaran. As far as the banks are concerned, warrants were shown and the signatures of the bank officials were taken. However, in the case of Chandrasekaran himself, there is no signature in the warrants of authorisation that were issued in Form No. 45. From the deposition taken from him, a translation of which has been placed before us, it is clear that he was intimated about his not operating the bank accounts and he has stated :

' Without your knowledge and without your orders I will not draw any amount from the deposits in the name of the Tamil Nadu Farmers Service Co-operative Federation. With your permission only I will draw my amount. So long as the prohibition order given to me is in force, I will not draw any amount from any bank. I have received the prohibitory order. I will abide by the order.'

38. The warrant for the search was issued against the banks, while the prohibitory order was issued to him. In the above extracted deposition there is enough indication to show that he has received, or, at any rate, knew about the copy of the prohibitory order. The warrant of search of the bank premises has to be shown to the banks and they have taken note of the authorisation of search and have also complied with the requisition by disclosing all the materials. We do not consider that there is any substance in the complaints of the writ petitioners that the warrants were not even shown to Chandrasekaran. The other two writ petitioners were never in the scene. They had no interest in the assets of the Federation. There was no question of any disclosure to them. As far as the first respondent is concerned, it was acting through Chandrasekaran and Chandrasekaran had the prohibitory order with him and he was also aware of the search warrants being issued against the bank.

39. Another line of challenge against the proceedings under Section 132 was that there could be no reasonable belief that the amounts to the credit of the Federation in the bank represented undisclosed income, since the accounts to the credit of the Federation in the bank are open for anyone to see. It was also pointed out that the Federation had not been proceeded against in the present case earlier than June, 1976, and that there could be no belief that the Federation was not likely to disclose whatever income it had. As pointed out already, the Federation came into existence by registration under the Co-operative Societies Act on 4th December, 1974. It started with a deposit of Rs. 457.52 in the Dena Bank, Mount Road, Madras, on 10th September, 1975. The balance of the said account on 26th May, 1976, came to Rs. 30,41,569.16. The balances in the Madras Central Co-operative Bank Ltd., Madras-1, as on 2nd June, 1976, came to the following amounts:

Rs.(i)Savings bank account No. 15515,43,161.29(ii)Savings bank account No. 17116,27,948.30(iii)Savings bank account No. 17215,10,5560.00.'

40. In the Bank of Madura Ltd., there was a fixed deposit account dated 25th October, 1975, for Rs. 6,00,000 and there was a savings bank account No. 1624 with the credit balance of Rs. 74,033.18. The way in which such large amounts had accumulated in the banks was unexplained. Chandrasekaran when he gave statement on oath, gave the list of the four lift irrigation co-operative societies. He did not know the president and secretary of each society. According to him, it was one D. Aditan, who had established the four societies. D. Aditan's elder brother is Sri Si. Pa. Aditanar, a former Minister. It was this D. Aditan, who gave the information about the source of the funds deposited in the name of the Federation at various banks to the extent known to Chandrasekaran. A sum of Rs. 20,00,000 was said to have been advanced by the Government and there were also banana plantations, the yield from which were being deposited in the bank. Chandrasekaran, however, did not know the details as to how the amounts, which were deposited in the bank, were obtained and whether they were obtained by dealings in or sale of any property. When large amounts were deposited, Chandrasekaran himself was curious to know how these amounts were obtained. Even he was not given a clear picture, as according to him, he was never told all

the details of the sources of these amounts. Thus, the source of the deposits was somewhat mysterious.

41. It is in this background the question of the reasonableness of the belief that the amounts represented undisclosed income of the Federation has to be examined. The fifth respondent had himself made some enquiries in Thiruvananthapuram and he did not find any name board at the address given in the bank account. It is only after making some enquiries that he was able to locate the watchman with whom he left a word about his visiting the premises. Thereafter, Chandrasekaran appeared before the ITO and gave the statement. Even assuming that this version of the fifth respondent is not correct and that Chandrasekaran was taken to the ITO by some officials as stated by him, still the fact remains that there was no activity of the Federation in Thiruvananthapuram to be seen by the fifth respondent. The monies were kept in fixed deposit and savings bank account. It is common knowledge that any person carrying on business opens a current account, so that he could freely withdraw the amount as and when required. A savings bank account for a business of the scale indicated by these deposits is extraordinary, and keeping such balances, running into lakhs, in savings bank accounts is also out of the ordinary. The source of these deposits was not known even to the managing director-It is in the light of these features that the Director of Inspection considered that the Federation had undisclosed income in the shape of these deposits. As pointed out in several decisions, if there were reasonable grounds for the belief, that would be sufficient to give jurisdiction. Whether those grounds were adequate or not was not a matter for the court to investigate. It is, of course, open to the assessee to contend that the concerned authority did not hold the belief, which is essential for the exercise of the jurisdiction. In other words, the existence of the belief can be challenged, but not the sufficiency of the reasons therefor. So long as the belief is held in good faith and was not a mere pretence, the authority would be free to exercise his power. The court cannot sit in judgment over the same materials and substitute its belief for that of the concerned authority: See *Seth Brother's case* : [1969]74ITR836(SC) . The passage has already been extracted. As the jurisdiction has been conferred by the Legislature on the authority, it is this authority, who will have to exercise the jurisdiction and the court's duty is only to see that the jurisdiction is properly exercised and the legal

safeguards are not violated. These principles have been set out by the Supreme Court in more than one decision rendered under Section 147 of the I.T. Act of 1961 or its counterpart in the Act of 1922. See *Calcutta Discount Co. Ltd. v. ITO* : [1961]41ITR191(SC) , *Narayanappa v. CIT* : [1967]63ITR219(SC) and *Kantamani Venkata Narayana and Sons v. First Addl. ITO* : [1967]63ITR638(SC) . It is unnecessary to refer to the other authorities laying down the principles. On the facts, the reasonableness of the belief of the Director of Inspection cannot be open to question.

42. The fact that the bank is not likely to resist any order of the ITO is not really relevant. In more than one decision of this court, it has been held that such orders can be directed against the court as well as customs authorities who can be expected to comply without protest. For instance, in *Gulab and Company v. Superintendent of Central Excise (Preventive), Trichy* : [1975]98ITR581(Mad) , the warrant under Section 132 was addressed to the customs authorities and it was considered to be proper and legal. See also *Mohammed Kunhi v. Mohammed Koya* : [1973]91ITR301(Mad) .

43. There was also a contention that actual search should precede the seizure and that in this case there could have been no search of the bank premises as such. The warrant of authorisation was shown to the bank official who gave all the details and it is, therefore, submitted that the condition precedent, viz., the actual search preceding the seizure, had not taken place. This contention is without any substance. As pointed out by Maharajan J. in felicitous language in *Mohammed Kunhi v. Mohammed Koya* : [1973]91ITR301(Mad) :

'To say that the power of seizure is not exercisable unless it is preceded by the search of a building or breaking open of locks is to confuse the end with the means and to caricature the intention of the legislature, which, in order to facilitate the power of seizure, has provided also for the ancillary power of invading the privacy of people, by entering and searching their buildings and breaking open the receptacles where the thing to be seized might remain concealed. It would indeed be a captious and pernicious play on words to tell the Income-tax Officer, 'you have, no doubt, the power of seizure, but you cannot exercise it unless you go

through the physical motions of entering a building, searching it, breaking open the locks therein and then finding the thing you want to seize as a result of your searching efforts ' . '

44. It was further added 91 ITR 307:

' To say that such a seizure is illegal, because it is not the result of such a search as is contemplated in clauses (i) and (ii) of Sub-section (1) of section 132 of the Act is to indulge in a self-defeating piece of sophistry.'

45. This decision has been followed by a Bench of this court in *Gulab and Company v. Superintendent of Central Excise (Preventive), Trichy* : [1975]98ITR581(Mad) , We do not think that the matter requires any further discussion at our hands.

46. It was next contended that the warrant has only repeated the words in Section 132 and that there was no specification of the particular items to be searched for. In *ITO v. Seth Brothers* : [1969]74ITR836(SC) , it was observed by the Supreme Court as follows :

'Section 132 of the Income-tax Act does not require specific mention by description of each particular document which has to be discovered on search ; it is for the officer who is conducting the search to decide whether a particular document found on search is relevant for the purpose or not. '

47. In the nature of things, it would be difficult for any official to anticipate the form in which the undisclosed income had taken shape. It is common knowledge that tax evaders operate in the dark and the form in which they have 'undisclosed income' is known largely only to them. If the information were known to anyone outside, that would always lead to the danger of the matter reaching the ears of the taxing authorities. Thus, the shape in which undisclosed income is kept would be a closely guarded secret. In these circumstances, it would be unrealistic to expect the authorising authority to specify the particular forms which the undisclosed income has taken, so that a search may be made only with reference to such form. For instance, if in the present case, there was any locker in which

any other amount had been kept, it would have been necessary to examine it by taking recourse to the powers available under Section 132. There was no such locker and so it was not searched. The money was only in the shape of deposits. The shape of the assets by way of conversion of the undisclosed income would be evident only in the course of the search and the seizure would have to be resorted to only in the course of the search. Only then, whether it represents undisclosed income and has to be seized would have to be decided. What is necessary at the stage of the issue of authorisation is only a reasonable belief that some undisclosed income is there and that there are assets representing undisclosed income. So long as these requisites are satisfied, then the authorised officer can proceed against the assets to the extent and in the manner contemplated by Section 132. These requisites are satisfied in this case. We are, therefore, unable to hold that there was anything wrong in the authorisation in the present case to which exception can be taken.

48. It was next contended that Section 132(3) would have no scope for application to a case where according to the authorising authority the undisclosed income has taken the shape of a debt in a bank. Mr. K. K. Venugopal contended that the expression 'practicable to seize' occurring in Section 132(3) postulates the possibility of seizure. Where what can be called an incorporeal asset in the shape of a debt is available in a bank, there is no question of its being seized so that no order under Section 132(3) could have been passed in the present case. The words 'practicable to seize' appear to have been used in a wide sense. The capacity of the asset to be reduced to possession is not the postulate of the provision. The possession contemplated is such possession as the property is capable of. We have already seen that even incorporeal assets are within the scope of Section 132. It would be a curious situation, if Parliament gave the power to proceed under Section 132 with reference to such asset but did not really provide for effectively getting at such an asset. If learned counsel were right, it would be necessary only to deposit the undisclosed income in a bank, so as to keep such income out of the possibility of search and seizure. Sub-section (3) arises for application only if it is not practical to seize such an asset. It is obvious that it is not practicable to seize such an asset as a deposit. There is no valid reason why it should not be subjected to a prohibitory order. Wherever the asset

cannot be seized, it would be a case that it is not practicable to seize it. Whether the officer can take possession of any particular asset, which comes within the scope of Section 132 is to be determined when the power is exercised. If there is such an asset, which from its nature cannot be seized, then he can pass an order prohibiting from dealing with the said asset. The authorised official has only to find out for himself whether it would be practicable to seize the assets and if he does not find it practicable, then he is allowed the discretion to pass the order under Section 132(3). We are unable to read the postulate as contended for by the learned counsel for the petitioners that unless the asset is a tangible asset capable of being seized, it could not be the subject of an order under Section 132(3).

49. The learned counsel for the petitioners built up some argument on the use of the word 'kept' in Section 132(1)(i). The point urged was that the authorised officer was given a power to search any place where the valuable thing was kept and that it would not apply to any debt, as one does not keep a debt in any place. The word 'keep' means 'have charge of' (See Concise Oxford Dictionary). It is the money that is kept in the bank, though the relationship of the bank with the person keeping the money is that of a debtor and creditor. The bank having charge of the money keeps it or, at any rate, the debt.

50. The learned counsel then pointed out that Form No. 45 had not been properly filled up and that the exercise of power under Section 132 in the present case is invalid and illegal. What is pointed out is that in the whole body of the first page of Form No. 45, after the following words 'whereas information has been laid before me and on the consideration thereof I have reason to believe that.....' a part of the form has been left intact while the rest has been scored. This, according to the learned counsel, shows that the authorities did not apply their mind properly and that in a serious matter like this, where the right of property guaranteed under Articles 19 and 31 is interfered with under the powers conferred by the statute, then the provision of the statute would have to be strictly complied with, and any defect in compliance will render the whole action invalid and illegal. We do not find that the omission to score the whole of first page after the words extracted already, was such as to mislead anyone or that the search in pursuance thereof can be characterised as an illegal exercise of the powers. At the most, there may be some

irregularity in not scoring out that part of the form. But that does not in any way affect the exercise of the power by the authorities concerned. What is sought to be emphasised in the form is if summons were issued for production, then the required books or documents would not be produced, and that the assets represented by undisclosed income had not been or would not be disclosed. The fixed deposits, the savings bank account, etc., have been referred to in the authorisation. The authority has specified the assets, which required examination by a search. The form has been duly filled up. We are unable to find any infirmity in the authorisation as such. In addition, Section 292B provides that no proceeding taken in pursuance of any of the provisions of the Act shall be invalid by reason of any mistake or defect in the proceeding if it is in effect in conformity with or according to the intent or purposes of the Act. Thus, any defect in the form is cured by this provision, as the proceeding has been taken according to the intent or purpose of the Act. There is thus no substance in this contention also.

51. It was also submitted that the first accounting year of the Federation would end on 31st December, 1975, that with reference to the assessment year 1976-77, for which the year ended on 31st December, 1975, would be relevant as the previous year, the return itself would be due only on 30th June, 1976, and that the department could not have entertained any reasonable belief that the income or the assets would not be disclosed. While examining this contention, we have to put ourselves in the position of the authority as on 31st May, 1976, when the authorisation was issued. On that day there was nothing to show that the first previous year or accounting year of the Federation was to end only on 31st December, 1975, and that there was enough time for the submission of the return. Even in the statement of Chandrasekaran, there is nothing to show that the Federation, of which he was the managing director, was contemplating submission of a return within the prescribed time, so that it would be premature for the I.T. authorities to act under Section 132. The fact that the first accounting year was to end only on 31st December, 1975, came to be known only during the course of the present proceedings. Therefore, there was nothing unreasonable in the authorising officer entertaining a belief that these assets representing undisclosed income were not liable to be disclosed.

52. It was stated that these are some loans taken from several parties and that they cannot be taken to be undisclosed income. Even in the statement of Chandrasekaran taken down by the ITO, he had admitted that he did not know wherefrom these amounts came. There is enough power available under the Act to assess as income any asset, the source of acquisition (c)f which is unexplained. If, in the circumstances, the authorising officer considered that the Federation had undisclosed income and was not likely to disclose it, that would be nothing unreasonable.

53. It was also contended that there were no pending proceedings as against the Federation in the course of which there could be any authorisation. It has been held by the Delhi High Court in *Balwant Singh v. R.D. Shah, Director of Inspection, Income-tax* : [1969]71ITR550(Delhi) , that there was nothing in Section 132 to show that search and seizure under that section could be resorted to only if there were pending proceedings, and that the section did not require that proceedings should be imminent. If there was only a remote possibility of such summonses or notices contemplated by Section 132(1) being issued, the section would not be satisfied, not because there were no proceedings imminent, but because a reasonable person could not have reason to believe that the person concerned would not produce the documents if summonses or notices were issued to him. Thus, pendency of any proceeding in the course of which action can be taken under Section 132(1) is inconsistent with the principle laid down in this decision, which we follow in the present case. The issue of notices was imminent as is shown by the action of the authorities. The delay in the submission of the return by the Federation, and its submission just about the time when the 'provisional assessment' had to be made in pursuance of the orders of this court, shows that there was nothing wrong in the apprehension of the authorities that the income or assets would not be disclosed properly. Thus, this objection of the learned counsel is without substance.

54. There was also a contention that the attachment of debts due to the assessee had been separately dealt with in the other provisions of the Act and that if it was contemplated that such debts could be taken into account for the purpose of Section 132, then there would be a specific provision therefor. Section 226 is a

provision relating to collection or recovery of tax. Sub-section (5) thereof enables the ITO, if so authorised by the Commissioner, to recover any arrears of tax due from an assessee by distraint and sale of his movable property in the manner laid down in the Third Schedule to the Act. In the Third Schedule, reference is made to the Second Schedule, and in the Second Schedule attachment and sale of movable property is provided in Pt. II. Clause 26 of the Second Schedule deals with debts and shares. In the case of a debt not secured by a negotiable instrument, the attachment has to be made by a written order prohibiting the creditor from recovering the debt and the debtor from making payment thereof. Similarly, under Section 281B where, during the pendency of any proceeding for the assessment of any income, the ITO was of the opinion that for the purpose of protecting the interests of the revenue, it was necessary to do so, he may, with the previous approval of the Commissioner, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule. The contention is that both under Section 226(5) as well as Section 281B there is a specific provision for attachment of a debt, while in the case of Section 132, there was no such provision. It is, therefore, urged that Section 132 did not contemplate any debts being attached or seized. It is unsafe to argue from the existence of a special provision in the case of debts under Section 226 as well as Section 281B that a similar provision should be found under Section 132, and that in its absence there can be no attachment. Section 226 provides for the mode of recovery in respect of a completed assessment or in respect of the situation in which the assessee is deemed to be in default. Section 281B is a power to be exercised during the pendency of any proceeding for assessment, so that the assessee does not fritter away or secrete his resources out of the reach of the department when the assessment is completed. Having regard to the provisions of Sections 226 and 281B, it would be clear that Section 132 is intended to be invoked even in the absence of any pending proceeding. Having regard to the history of this provision, it is clear that it is intended to operate to see that the tax evader does not deal with his assets without making proper provision for the tax that may be due from him. Otherwise, the assessment made later would only remain on paper. If in the context of completed assessment or pending assessment, debts could be attached, it would be unreasonable to expect the

Legislature to leave the debts out of account in conferring the powers on the taxing authorities under Section 132, so as to safeguard realisation of the revenue. The whole idea is to see that effective steps are taken for the purpose of getting at the resources of tax evaders, so that their obligations under the Act are discharged, and to search for and seize the assets in whatever shape they may be, and that is why the language in a wide form as 'valuable things' has been used in Section 132. We see no reason to hold that debts are intended to be outside the operation of Section 132.

55. It is now necessary to examine whether the procedure contemplated by Clause (5) of Section 132 is also to be imported into Sub-section (3). In other words, where the assets are seized under Section 132(1) or Section 132(1A), the ITO has to afford a reasonable opportunity to the person concerned of being heard. He has to make an enquiry within ninety days of the seizure and make an order with the previous approval of the IAC estimating the undisclosed income, the tax due thereon, the interest payable on the tax due, and the total amount that would be required to satisfy any existing liability under the Act or any one or more of the other Acts in respect of which the 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 so required and release the remaining portion. Thus, the authority has to pass an order within ninety days and any order passed under this provision is subject to an application to the Central Govt. requesting for appropriate relief in the matter. According to the learned counsel, the process of attachment was completed on 1st and 2nd June, 1976, in the present case and nothing has been done under Sub-section (5), with the result that the prohibitory order would lack any force after the said period of ninety days. Just as in a given case arising under Sub-section (5), after the expiry of ninety days, the seized assets would have to be returned, similarly, in the case of attachment, the attachment would have, it is submitted, to go after the said period of ninety days. It was pointed out that it would be curious to find that the law relating to the seized assets would be different from the law in respect of the attached assets. If that were the position, it is urged that by merely stating that it was not practicable to seize the assets the authorised officers could circumvent the safeguards as indicated in Sub-section (5).

56. There is enough, indication in both Sub-section (3) and Sub-section (5) that the assets dealt with under the respective provisions were only to be temporarily subject to seizure of attachment, as the case may be. In the case of the seized assets, there is a specific provision made for seeing that the assets are not retained beyond the period of ninety days, after seizure. Within that period, the ITO will have to estimate the undisclosed income and provide for the tax as well as interest, etc. He can retain only that portion of the assets necessary to meet the said obligations and refund the balance. In the case of Sub-section (3), the position of the language is not very much different. In other words, that is also a provision intended to be operative temporarily. This is clear from the language of Sub-section (3) itself. It provides that the authorised officer may, where it is not practicable to seize the assets, serve an order on the owner, who is in immediate possession or control thereof, that he shall not remove, part with or otherwise deal with them except with the previous permission of the said officer and such officer may take such steps as may be necessary for ensuring compliance with the sub-section. The previous permission can be applied for at any time, even within the period of ninety days. When such an option was given, there was no need for fixing any time-limit. If the assessee satisfies the officer about his having to deal with the particular assets, then the permission of the officer would have to be granted subject to such safeguards as the officer may consider necessary. Thus, the non-specification of a time-limit under Sub-section (3) cannot be construed as showing that the authorised officer can subject the assets to attachment for an indefinite period of time. In the present case, no steps were taken by the Federation for the purpose of obtaining permission for dealing with the assets in any particular manner and, therefore, there was no scope for the authorised officer to allow it to deal with the assets subject to any safeguard that may be considered necessary. It is not possible to read the time-limit in Sub-section (5) into Sub-section (3) as Parliament has not imposed any such time-limit with reference to Sub-section (3) for good and valid reasons as seen already. It may be that Parliament considered a specific time-limit necessary in the case of seized assets, as the person concerned is deprived of the assets for the said period, while in the case of the attached assets there is no deprivation of assets. The assets continue to be in the possession or control of the said person subject to the prohibitory

order from removing it or dealing with it from the said place. The order of attachment cannot, in these circumstances, be construed as if it is indefinite.

57. Section 226, as already seen, applies to cases where there is an unsatisfied demand and the assessee is in default. Section 281B applies to the cases where the proceedings are pending. If after the completion of the assessment or even during the pendency of the assessment, the assessee, whose assets are subject to attachment, applies, it may be that the ITO may take recourse to Section 226 or 281B, or may think fit to release them if the assessee makes appropriate arrangement for payment of tax. Thus, the provision of Sub-section (3) cannot be utilised so as to continue the attachment indefinitely. If in any case any person whose assets are subject to attachment satisfied the court that Sub-section (3) has been utilised only for the purpose of circumventing the time-limit as specified in Sub-section (5), it would be open to him to approach the court, so that the matter can be examined and appropriate relief granted on proof of such a grievance. The possibility of Sub-section (3) being misused in such a manner cannot justify the importing of the time-limit as specified in Sub-section (5) into Sub-section (3) contrary to what Parliament has done. If Parliament really intended that the procedure contemplated by Sub-section (5) should be attracted to Sub-section (3), it could have so provided, as has been done in Sub-section (7).

58. Thus, having gone into the several objections put forward by Mr. K.K. Venugopal in relation to the attachment of the bank account, it is not possible to agree with him that the said attachment, in the circumstances of the case, is in any manner wrong.

59. Mr. S. Swaminathan, the learned counsel for the Federation, while supplementing the arguments of Mr. K. K. Venugopal on some of these aspects, submitted that an order was made in pursuance of the directions of Koshal J. and Mohan J. and that in the said order it is stated that it was not possible to discern that the money belonged to the farmers or lift irrigation society. His point was that even in the provisional assessment order as made by the ITO in pursuance of the court's direction on 27th May, 1977, the ITO had not been able to make up his mind whether the money belonged to the farmers or the lift irrigation society. He

argued that the ITO could not have, therefore, held that the money belonged to the Federation, so that the Federation would have to explain the source thereof. The learned counsel does not appear to be right in his view that the ITO was not in a position to connect the Federation with the monies and that he was in doubt as to whether the money belonged to the farmers or lift irrigation society so that the said farmers or the lift irrigation society would alone have to explain the source, and not the Federation. In the context in which this particular statement occurs in the provisional assessment order, it is clear that what the ITO has in mind is that there is nothing to show that the amount belonged to the farmers or to the lift irrigation society and that in the absence of facts showing the farmers or the lift irrigation society as being concerned with the amount, the Federation would not have to explain the sources thereof, as it would not be its undisclosed income. What is called the provisional assessment is not anything which is traceable to any of the provisions of the Act. The assessee had submitted returns on 24th May, 1977. However, Section 141 which enabled provisional assessment being made on the basis of the return has been repealed with effect from 1st April, 1971. Section 141A provides only for a provisional assessment for the purpose of granting a refund. There is no other provision on the basis of which a provisional assessment could have been made. Thus, it cannot be taken to be an order under this statute in which any finding is given. What this court appears to have pointed out in the respective orders of Koshal J. and Mohan J. was to direct the ITO to make an estimate of the undisclosed income in the same manner as he would be doing, if he had to apply Sub-section (5) and to provide for the tax so that the balance could be returned. The question as to whether the farmers or lift irrigation society were really entitled to the amount would have to be gone into in the course of the assessment proceedings and if the farmers or lift irrigation society satisfy the ITO that they are the persons concerned with the amount, then it would be open to the ITO to deal with them, rather than the Federation. As the assessment proceedings have been stayed by this court, the ITO could not proceed further beyond making what is called the 'provisional assessment' on 27th May, 1977. He would have to act in accordance with the provisions of the law in dealing with the explanation regarding the ownership of these funds when he completes the respective assessments in due course. We do not find that the ITO has in the provisional

assessment made any statement as if the assessee is not at all concerned with the amount and that only others are to be dealt with.

60. The only other submission made on the merits by Mr. Swaminathan was that, at any rate, the fixed deposit of Rs. 6,00,000 cannot be the subject of any attachment. He drew our attention to a decision in *Bagley v. Winsome and National Provincial Bank Ltd.* [1952] 2 QB 236 . In that case a creditor had obtained judgment against a debtor for a sum of 50. The judgment-debtor had money in excess of 50 lying on deposit with the National Provincial Bank. The judgment-debtor gave notice to the bank to withdraw his money, and the notice took effect on January 11, 1952, and on that date the judgment-creditor took out garnishee summons and the garnishee order was refused, because the condition on which the bank accepted the deposit amount included a personal application and production of pass book for withdrawal. Further, there was also notice of 14 days necessary before the withdrawal. It was held that in these circumstances there was no debt owing or accruing which could be the subject of garnishee proceedings. The learned counsel submitted that the said decision would hold good in the present case. It is not possible to accept this submission. There is nothing to show that the fixed deposit was subject to any condition like those appearing in the U. K. decision. In the present case there is only a prohibitory order requiring the Federation not to deal with the fixed deposit, as such. There is nothing in the order under Section 132(3) which requires the bank to pay the money to the authorised officer. Thus, the situation faced in the U. K. case is not present here. In the absence of anything to show that there was any condition which attached to the fixed deposit before it was to be repaid and having regard to the nature of the order passed in the present case, we do not consider that there is anything wrong in the order of attachment.

61. We have now to deal with only two other contentions, one of the writ petitioners contesting the validity of Section 132, and the other, of the respondents raising as it were a preliminary objection to the writ petition being maintained, at any rate, by the two creditors of the Federation. We did not deal with the respondents' preliminary contention earlier, only because there is a writ petition filed by the Federation itself with reference to which there is no such preliminary

objection. The issue raised in the present case had, therefore, to be considered, at any rate, in the Federation's writ petition. As far as the writ petitions of Devarajan and Dakshinamoorthy are concerned, the objection is that they had no interest in the assets of the bank and, therefore, they had no locus standi to file the writ petitions. As seen already, they are only creditors. Both Devarajan and Dakshinamoorthy had obtained decrees in their favour. From the facts disclosed in the affidavits, it is clear that all the suits were more or less simultaneously filed and decrees obtained against the Federation. There is nothing to show that any execution petition, as such, had been filed and in the course of such execution petition they became aware of any restrictions being placed on the bank accounts of the Federation, which is the judgment-debtor. Learned counsel for the petitioners was not in a position to show that the two decree-holders had any interest in the assets, which are now the subject-matter of attachment. They have not even taken out any application for attachment before judgment or after it. The decree-holders cannot be said to be interested in the assets of the judgment-debtor so as to prevent a third party from proceeding with his claims. It is now well settled that in a petition for the issue of a writ of mandamus the person who claims the writ should prove some interest. As the legal position is not in dispute, we do not think it necessary to go into this point further by referring to the decided cases, and we, therefore, hold that the two writ petitioners, viz., Devarajan and Dakshinamoorthy, cannot maintain their petitions and their writ petitions will have to be dismissed.

62. The only point that is now left for consideration is the objection to the validity of Section 132 based on Articles 14, 19 and 31. With reference to this aspect there is a decision of the Supreme Court holding the provision to be constitutionally valid in *Pooran Mal v. Director of Inspection (Investigation), Income-tax* : [1974]93ITR505(SC) , and its constitutional validity has been reaffirmed in *Bhupendra Ratilal Thakkar v. CIT* : [1976]102ITR531(SC) . In these cases, it was held that Section 132 did not offend Articles 14 to 19. While the learned counsel for the writ petitioners submitted that the Supreme Court in that case had no occasion to go into the validity of Section 132(3), the learned counsel for the respondents contended that the matter is no longer open for consideration by this court, as the Supreme Court has pronounced on the validity of Section 132, as a

whole, which would include Sub-section (3) thereof. Both sides supported their respective stands by reference to decisions of the Supreme Court.

63. It is enough for our present purpose to refer first to the latest decision cited on behalf of the respondents, which deals with the question whether the matter of the validity can be gone into subsequent to a decision of the Supreme Court. That decision is *Delhi Cloth and General Mills Ltd. v. Shambhu Nath Mukherji* : (1978)ILLJ1SC . In an earlier decision in *Niemla Textiles Finishing Mills Ltd. v. Second Punjab Industrial Tribunal* [1957] SCR 335; AIR 1957 SC 329, the Supreme Court had adjudicated on the validity of Section 10 of the Industrial Disputes Act, 1947, and had pronounced that it did not offend Article 14 of the Constitution. In the case of *Delhi Cloth and General Mitts Ltd. v. Shambhu Nath Mukherji* : (1978)ILLJ1SC , objection to the validity of the same provision was sought to be raised on a ground different from the one which had been considered in the earlier decision. At page : (1978)ILLJ170SC , it was observed as follows:

' If this court held section 10 as intra vires and repelled the objection under article 14 of the Constitution it would not be permissible to raise the question again by submitting that a new ground could be raised to sustain the objection. It is certainly easy to discover fresh grounds of attack to sustain the same objection, but that cannot be permitted once the law has been laid down by this court holding that section 10 of the Act does not violate article 14 of the Constitution. The ratio decidendi of *Niemla Textile Finishing Mills*, 1957 SCR 335 ; AIR 1957 SC 329, will apply while dealings with the objection under Article 14 of the Constitution in respect of the present reference under section 10(1)(c) of the Act. The submission of the learned counsel, is, therefore, devoid of substance. '

64. That was a decision where a matter was sought to be re-argued before the Supreme Court itself for getting the question of validity reconsidered. Whether a High Court can examine the validity of a provision whose validity had already been pronounced upon has been examined in *Ballabhdas Mathuradas Lakhani v. Municipal Committee, Malkapur*, : AIR 1970 SC1002 . The question considered in that case was whether the High Court was justified in considering the matter in the light of fresh submissions which, according to the High Court, had not been

considered by the Supreme Court. In that case, the Bombay High Court referred a question to a Full Bench whether in respect of the recoveries, which were in contravention of the prohibitions contained in Sub-section (2) of Section 142A of the Government of India Act, 1935, and Clause (2) of Article 276 of the Constitution, the provisions of Section 48(2) of the C.P. and Berar Municipalities Act, 1922, applied. The Full Bench, following the judgment of the Supreme Court in *Bharat Kala Bhandar v. Municipal Committee of Dhamangaon* : [1966]59ITR73(SC) , answered the question in the negative. An appeal was, thereafter, preferred for hearing on the questions not decided by the Full Bench. The High Court at that stage entertained and upheld an objection that the suit against the municipality for refund of tax was not maintainable. The High Court in its judgment observed as follows AIR 1970 SC 1003:

' We are bound to follow the decision in *Bharat Kala Bhandar v. Dhamangaon Municipality* : [1966]59ITR73(SC) , but in view of the fact that the relevant provisions were not brought to the notice of the court and in view of the fact that the decision in *Firm Radha Kishan's case*, : [1964]2SCR273 , holds that the remedy provided by similar provisions is adequate and a suit does not lie, we are constrained to hold that under the Act the suit is incompetent. '

65. The High Court accordingly set aside the decree for refund of tax and confirmed the injunction restraining the Municipality from recovering the tax. When the matter came before the Supreme Court, it was observed as follows AIR 1970 SC 1003:

' This court held that levy of tax on cotton ginned by the taxpayer in excess of the amount prescribed by article 276 of the Constitution was invalid, and since the Municipality had no authority to levy the tax in excess of the rate permitted by the Constitution, the assessment proceedings levying tax in excess of the permissible limit were invalid, and a suit for refund of tax in excess of the amount permitted by article 276 was maintainable. The decision was binding on the High Court and the High Court could not ignore it because they thought that 'relevant provisions were not brought to the notice of the court '.

We may also observe that the judgment in *Firm Seth Radha Kishan v. Administrator, Municipal Committee, Ludhiana*, : [1964]2SCR273 , on which reliance was placed by the High Court, has no relevance. '

66. It appears from the decision that this court cannot attempt to consider any argument on the validity of Section 132, as the matter has already been pronounced upon by the Supreme Court. We would not, therefore, be justified in going into the vires of Section 132.

67. Assuming that we are wrong in this view, we may examine the submissions. It was stated that there was discrimination between the two classes of assesseees, viz., those covered by Sub-section (3) and those covered by Sub-section (5). The discrimination that is pointed out is that there are safeguards, which are built into Sub-section (5) like having to pass an order within a particular time and to retain only those funds, which are necessary to meet the demand and the absence of any such limitations in Sub-section (3). It has already been seen that though, in a manner of speaking, Sub-section (3) does not contain any time limit, it would appear that the time-limit in Sub-section (3) would, in conceivable cases, be even less than the period contemplated by Sub-section (5), as the assessee is free to approach the authorised officer for return of the money for lifting the attachment even before the expiry of 90 days. In this view, there would be no adverse or hostile discrimination between a case coming within Sub-section (5) and a case coming within Sub-section (3), the discrimination being in favour of those covered by Sub-section (5). If in any case, the authority did not grant the permission, that would not invalidate the provision. We are not thus satisfied that there is any substance in the contention of the learned counsel for the petitioners that there was any discrimination. The proceedings in relation to the assets, which are seized, are different from those which are subject to attachment. The nature of the assets would justify the classification, so that, broadly speaking, in relation to those assets where it is not practicable to seize, they can be attached and those which can be seized can be taken possession of. In the case of the assets, which are subject to attachment, the period would, in any event, expire at the time of the completion of the assessment; thereafter, the matter would have to be dealt with under Section 226, if necessary. Even if attachment were to be continued, it would

have to be continued under Section 226, as otherwise there would be a multiplicity of provisions for the same purpose and it would be wrong to attribute to Parliament an intention to provide multiple provisions for the same purpose. Thus, there is nothing in Sub-section (3), which would justify its being construed as discriminatory or offending Article 14. As seen already, the provision for attachment has only a temporary effect and, therefore, this temporary interference with control over the property cannot be said to offend Article 19(1)(f). The Supreme Court, as already pointed out, held that such temporary interference cannot be taken as offending Article 19(1)(f) and (g). Even taking that decision to have been rendered in relation to Sub-section (5), the same reasons or grounds would support the validity of Sub-section (3) also.

68. The learned counsel referred us to Article 31 of the Constitution. Article 31 contemplates deprivation of property. This is not a case where any citizen is deprived of his property. The attachment, which is a prohibitory order, does not amount to the deprivation of property. Thus, there is no substance in the objection to the validity of Section 132(3).

69. The result is that W.P. Nos. 828, 2120 of 1977 and 3307 of 1978 are dismissed. There will be no order as to costs.

70. W.M.P. Nos. 4857 and 4919 of 1978 have been filed by Devarajan and the Federation, respectively, for permitting them to raise the additional grounds in W.P. Nos. 828 of 1977 and 2120 of 1977. We have considered all the grounds. They are ordered. W.M.P. No. 5991 of 1978 has been filed to fix an early date for the hearing of W.P. No. 828 of 1977. No order is necessary on this as the matter is disposed of now. W.M.P. No. 5992 of 1978 has been filed by the department for an injunction against respondent No. 1 and the writ petitioner in W.P. No. 828 of 1977, from interfering with the enquiries and investigations in connection with the assessment proceedings of the Federation pending W.P. No. 828 of 1977. No order is necessary on this, as W.P. No. 828 of 1977 has been disposed of. W.M.P. No. 5407 of 1978 has been filed to clarify the order dated June 24, 1977, made in W.P. No. 828 of 1977, which has already been ordered by his Lordship, the Chief Justice and Ramanujam J. on December 13, 1978. No costs.

