CIVIL MISCELLANEOUS

Before R. S. Narula, Chief Justice and M. R. Sharma, J.

H. L. SIBAL,—*Petitioner*

versus

THE COMMISSIONER OF INCOME-TAX, PUNJAB, PATIALA etc.,—*Respondents.*

Civil Writ No. 150 of 1975

July 15, 1975.

Income Tax Act (XLIII of 1961)—Section 132—Scope of—Stated.

Held, that before the Commissioner of Income Tax can exercise the jurisdiction under section 132(1) of the Income Tax Act, 1961, he must have information on the basis of which he should come to a reasonable belief for any of the requisite purposes mentioned in clauses (a), (b) or (c) of that sub-section. The Commissioner of Income Tax while acting under section 132(1) of the Act must come into possession of some new material before he can take resort to the drastic measure of issuing a search warrant. When he receives some relevant new information, it would be permissible for him to look into the old record for his satisfaction but he cannot give his own interpretation to the circumstances on the basis of which assessments have been framed against the assessee in the previous years for the purposes of issuing search warrant. It is in public interest that judgments and orders finally passed by judicial and quasi-judicial tribunals should be regarded as sacrosanct unless there is a positive mandate of the Legislature to the contrary. The applicability of section 165 Criminal Procedure Code to the searches made under section 132(1) gives an indication that this section is intended to apply in the limited circumstances to persons of a particular bent of mind, who are either not expected to co-operate with the authorities for the production of the relevant books or who are in the possession of undisclosed money, bullion and jewellery etc. If an assessee has been regularly producing his books of account before the assessing authorities who have been accepting these books as having been maintained in proper course of business, it would be unjustified use of power on the part of the Commissioner of Income Tax to issue a search warrant for the production of these books of account unless of course there is information to the effect that he has been keeping some secret account books also. He has to arrive at a decision in the background of the mental make up of an individual or individuals jointly interested in a transaction or a venture. A blanket condemnation of persons of diverse activities unconnected with each other on the odd chance that if their premises are searched and some

incriminating material might be found is wholly outside the scope of section 165 Criminal Procedure Code. This power has to be exercised in an honest manner and search warrants cannot be indiscriminately issued purely as a matter of policy.

(Paras 48, 50 and 51).

Petition under Articles 226/227 *of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus, Prohibition or any other appropriate writ, order or direction be issued to the following effect :—*

(*i*) *That the respondents be restrained from passing the final order and taking any further proceedings;*

(*ii*) *that the documents and money seized from the petitioner be ordered to be returned forthwith;*

(*iii*) *that the search and seizure and all subsequent proceedings thereto be declared illegal;*

(*iv*) *that the notice dated 24th October,* 1974 *issued to the petitioner be declared illegal and quashed;*

That the following ad interim *orders be issued* :

(*v*) *that the respondents be directed to produce forthwith the warrants of search against the petitioner as also against Shri Gurdial Singh Mann and the same be sealed;*

(*vi*) *that the respondents should also be directed to immediately produce the records including records relating to information against the petitioner resulting in issuance of search warrants and the same be sealed;*

(*vii*) *that the records in relation to the case of the petitioner with respondents Nos.* 1, 2, *and* 4 *be immediately ordered to be sealed and produced before this Hon'ble Court.*

(*viii*) *that the records of the proceedings before Miss R. K. Chanal, Income Tax Officer, respondent No.* 4 *be called forthwith and sealed and further proceedings be stayed meanwhile.*

It is further prayed that :—

(*a*) *Since the period of* 90 *days is going to expire on the* 15*th January,* 1975, *the issuance of notices of Motion at this stage be dispensed with;*

(b) *that the production of certified copies of the documents, Annexures P/1 to P/12 be dispensed with at this stage as the same are not readily available with the petitioner.*

It is further prayed that any other suitable writ, order or direction which will meet the ends of justice in this case be issued.

J. N. Kaushal, Senior Advocate with Kuldip Singh, R. S. Mongia and Kapil Sibal, Advocates, *for the appellant.*

Mr. D. N. Awasthy, Advocate with Mr. B. K. Jhingan, Advocate, *for the Respondents.*

Sharma, J.—(1) The petitioner Shri H. L. Sibal is an Advocate of this Court. On October 17, 1974, while he was working in his office at about 7.30 a.m,. respondent No. 3 entered his office and showed him a warrant under section 132 of the Indian Income Tax Act, 1961 (hereinafter called the Act), authorising him to search the premises of the petitioner Respondent No. 3 was at that time accompanied by respondent No. 4 and some other officials of the Income Tax Department. He also brought Major D. S. Brar and Shri P. L. Verma, retired Chief Engineer—Panch witnesses—to witness the search.

(2) The case of the petitioner is that he informed respondent No. 3 that he had to appear in some cases before this Court including a part-heard case in which he was to represent the Punjab State and the Punjab State Electricity Board, but he was ordered by respondent No. 3 not to leave his premises. The reason given was that the latter had been ordered by his superior officers in that behalf.

(3) The son of the petitioner, Shri Kapil Sibal Advocate, was coming by air from Delhi and the wife of the petitioner was preparing to leave by car to receive him but she was also not allowed to leave the house.

(4) Shri Gurdial Singh Mann, a retired P.C.S. Officer, and his wife had been staying with the petitioner for the last 4/5 days, because the father of the former was lying ill in the Post-Graduate Institute of Medical Education and Research (P.G.I.), Chandigarh. They had been lodged in the Guest Room of the house in which their luggage was also kept. Shri Mann, wanted to leave the premises for some work, but the raiding party did not allow him to do so.

(5) The search of the premises was commenced at about 8.30 a.m. and it concluded at about 5.30 p.m. The raiding party also wanted to make a search of the luggage of Shri Mann and his wife to which Shri Mann objected. The petitioner also requested respondent No. 3 that it was unfair to conduct a search of the luggage of a guest because this action tantamounted to insulting the guest as well as the host. Upon this, respondent No. 3 is stated to have told them that he would like to take instructions from his superior officers in the matter. Consequently he rang up respondent No. 2, who in turn asked him the name and address of the guest. These particulars having been supplied on telephone, the warrant authorising the search of the luggage of Shri Mann was also received within about half an hour. The petitioner alleges that blank warrants of search signed by the Commissioner were available at Chandigarh, which were filled in at this place and were issued against Shri Mann. From this, he infers that there could possibly be no information with the Commissioner against Shri Mann and that the former had not applied his mind before issuing the search warrants. The result of the search also revealed that Shri Mann had no such connection with the petitioner which could be taken notice of by the Income Tax authorities.

(6) During the course of the search, the raiding party took into possession a cash amount of Rs. 10,000 and some documents. Panchnama Exhibit P. 1, in respect of this search, was prepared by respondent No. 3 and signed by the two Panch witnesses and the petitioner. The list of the documents seized by respondent No. 3 is contained in Exhibits P. 2 and P. 3. The list of cash and jewellery found from the premises is given in Exhibit P. 4.

(7) At about 5.00 p.m. on the same day, respondent No. 2 came to the premises when the money, gold ornaments and silver utensils had all been placed in the bed room. The raiding party asked him whether they should seize any money or not. He ordered that a sum of Rs. 10,000 out of Rs. 14,070 belonging to the petitioner be seized. When the petitioner objected that the sum of Rs. 14,070 was a small amount and did not represent any undisclosed income, respondent No. 2 remarked that Rs. 10,000 had to be seized as per instructions.

(8) On October 24, 1974, a notice was served on the petitioner calling upon him to appear before the Income Tax Officer on

November 18, 1974, to explain and to produce the evidence on which he might rely for explaining the nature of the possession and the sources of acquisition of the assets—both seized and unseized mentioned in the notice.

(9) On November 6, 1974, the petitioner submitted a reply to this notice stating therein that a search warrant could be issued only if the Commissioner or the Director of Inspection had information or reasons to believe that any person had in his possession money, bullion, jewellery or other valuable articles, which represented wholly or partly income or property which had not been disclosed for the purposes of the Act. He also requested that he should be furnished information in the possession of the authorities as to how any of the articles represented undisclosed income of a particular year. Further, he contested the value put on these articles by the Department. The other plea raised was that the notice was issued with a view to conducting a fishing enquiry by placing burden on the assessee to prove everything, which was not the intention of the Legislature as manifested in section 132 of the Act. Towards the end, it was submitted, "In order to enable me to give a satisfactory reply to this notice, it is requested that the information asked for may kindly be supplied to me within a week."

(10) On November 12, 1974 respondent No. 4, informed the petitioner,—*vide* Annexure P. 8 that the value of the jewellery and the luxury articles had been taken on the basis of the market value, that the two cars which the petitioner possessed had also been taken into consideration and that if the petitioner disputed the value adopted by her, he was at liberty to adduce evidence in that behalf. She further informed him that under section 132 of the Act, it was for him to explain the sources as well as the year of acquisition of the cash, the jewellery and other valuable articles found in his possession. The relevant information was ordered to be supplied on or before November 18, 1974, because an order under sub-section (5) of that section had to be passed within 90 days of the search.

(11) On November 18, 1974, the petitioner made a detailed reply to the above letter of respondent No. 4 through Shri Brij Mohan Khanna, Advocate. It was pointed out that the petitioner was an eminent Advocate of Northern India having twice held the office of Advocate-General, Punjab. He had also been elected the President of the High Court Bar Association, Punjab and Haryana. From the

assessment year 1965-66 onwards, his net taxable income amounted to Rs. 45,000 to Rs. 1,25,000 per year. He was also a wealth tax assessee for about a decade and the tax paid by him on his individual professional income during the last assessment year amounted to nearly Rs. 90,000. The manner in which the search of his premises and the luggage of his guests was conducted was also objected to. It was asserted that no house-holder was expected to keep vouchers or to maintain exact records of the purchase of various household effects, which were not liable to wealth tax. Out of the total cash amount of Rs. 40,070 found in his possession, Rs. 26,000 had been entrusted to him by a client for effecting a compromise in a civil case. The balance of Rs. 14,070 consisted of his savings out of the current year's income till October 16, 1974, including the cash in hand of Rs. 8,268 at the end of the earlier assessment year. It was also pointed out that up to the date of the search, the petitioner had received over a lac of rupees as his fees but the exact figure could not be indicated because the relevant registers had been taken into possession by respondent No. 3 at the time of the search. About the jewellery and the silver utensils, it was submitted that these items constituted *Istridhan* of Mrs. Sibal and had been given to her at the time of her marriage by her parents and parents-in-law. Some explanation about the timber and electric fittings and other articles was also given. Towards the end, it was stated since the acquisition of all the assets had been duly explained, the sum of Rs. 10,000 seized from his possession might be refunded or adjusted against the next instalment of advance tax payable by his client.

(12) On January 6, 1975, Shri Brij Mohan Khanna, Advocate of the petitioner, addressed another letter (Annexure P. 10) to the Income Tax Officer, in which it was stated that since the Department had not asked for further clarifications, it was presumed that they were satisfied with the reply. It was further averred that if any inference adverse to the interests of the petitioner was to be drawn on the basis of the information supplied by him and the statement made by him, the same may be brought to his notice so that he may be able to satisfy the authorities by adducing evidence, if necessary. The learned counsel also demanded a reasonable opportunity of being heard and reserved his right to challenge the legality of the search and seizure in question.

(13) On the following day, the learned counsel addressed another letter (Annexure P. 11) to respondent No. 1 drawing his attention

to the fact that an order under section 132(5) of the Act had to be passed with his approval. It was prayed that before according approval to such an order, the petitioner should be afforded an opportunity to rebut the evidence on the basis of which the approval, if any, was to be given.

(14) On January 9, 1975, the petitioner's counsel wrote still another letter (Annexure P. 12) to the Income Tax Officer regretting the non-supply of the material on the basis of which action was going to be taken against the petitioner. The request for the supply of this material was reiterated and it was mentioned that "if it is not supplied immediately and a reasonable opportunity is not given to the petitioner to defend himself, he will presume that the Department has no material and any order sought to be passed in the circumstances would be arbitrary."

(15) On January 9, 1975, the petitioner filed affidavits of Shri Kapil Sibal and Shri Baikunth Lal explaining some points.

(16) On January 13, 1975, the petitioner filed the instant petition questioning the legality of the impugned search and seizure with an interim prayer that the respondents be restrained from taking further proceedings in the matter. The petition came up before my Lord the Chief Justice and M. L. Verma J., on the same day when notice of motion was issued for January 20, 1975 at about 2.00 p.m. It was also ordered that no order be passed under section 132(5) of the Act and the operation of any order already passed, but not by then communicated to the petitioner be also stayed.

(17) Civil Miscellaneous Petition No. 157 of 1975 filed by the petitioner shows that Shri S. C. Sibal Advocate, noted down the order passed by the Motion Bench and showed this order and the copy of the petition to respondents Nos. 2 and 4 sometime thereafter. After Shri S. C. Sibal had returned to the High Court, a Peon of the office of the Income Tax Officer approached the petitioner with a duplicate notice issued by the said officer asking him to produce his witnesses on January 14, 1975, at 10.00 a.m. in her office. The petitioner kept one copy of the notice and made an endorsement on the other copy that this Court had stayed further proceedings in the matter. On the following day, a news-item appeared in the Daily Tribune to the effect that this Court had stayed further proceedings in the matter. On January 17, 1975,

the petitioner received a registered envelope from the office of respondent No. 4, which appeared to have been despatched from Patiala. The envelope contained an order passed by respondent No. 4 on January 14, 1975, at Camp Patiala with the approval of respondent No. 1. It was prayed that since this order had been passed in disregard of the injunction issued by this Court, the same should be quashed. In support of the allegations made in this Civil Miscellaneous Petition, the petitioner filed his own affidavit and an affidavit sworn by Shri S. C. Sibal, Advocate.

(18) This petition and the main case came up for hearing before My Lord the Chief Justice and Verma J., on January 20, 1975. On that day, the learned counsel for the respondents fairly and frankly conceded that in view of the facts disclosed in the affidavits of the petitioner and Shri S. C. Sibal, Advocate, the order might be annulled. The Bench ordered accordingly. The Bench also made some observations about the departmental files and allowed the learned counsel for the petitioner to inspect the record. At the instance of Mr. Awasthy, the learned counsel for the respondents, it was clarified that the stay order issued by the Motion Bench would continue to operate till the final disposal of the petition. The main case was admitted to a regular hearing.

(19) An affidavit sworn by Shri Gurdial Singh Mann has also been filed in support of the petition. In this affidavit, it has been mentioned that he was posted as an Additional District Magistrate in 1952 at Simla, when he came to know the petitioner. He and his wife had social relations with the petitioner and his family. Before this occasion, he never stayed with the petitioner. On October 14, 1974, he and his wife called on Mr. Sibal who insisted that they should stay with him. Since his father was lying seriously ill in the P.G.I., Chandigarh, he and his wife had been staying in the M.L.A., Hostel, Haryana, Chandigarh, from 2/3 October, 1974 up to October 11, 1974. He denied to have ever had any financial dealings with the petitioner in his whole life. According to him, his luggage and the luggage of his wife had been searched because they happened to be staying at the petitioner's residence. Further, the search party did not allow the petitioner to attend to his work in the High Court nor did it allow the petitioner's wife to go to the airport. With great reluctance, the search party allowed the car belonging to the petitioner to leave the premises along with the driver for the airport. He himself wanted to see Shri R. S. Talwar, Chief Secretary

to Government Punjab, but he was not allowed to leave the premises by the Income Tax Officer. When respondent No. 3 wanted to search his luggage, he told him that the same could not be searched without a proper warrant. He pressed into service his own experience as a judicial officer and objected to the search being made of his luggage. According to him, the petitioner also submitted that it was highly improper to search the luggage of his guests. Upon this, respondent No. 3 rang up his superior officer and told him that the guests of the petitioner objected to their luggage being searched. Upon this, the superior officer asked respondent No. 3 to tell him the name of the guest so that the warrant authorising the search of his luggage might be issued. Respondent No. 3 then asked his full name and conveyed it on telephone to the superior officer. Within about half an hour, a warrant of search against him was also received but the actual search was started after lunch. He has also asserted that there could possibly be no information against him with respondent No. 1 justifying the issuance of the search warrant.

(20) Respondent No. 4 filed the main return to the petition on February 11, 1975. It was denied that the petitioner was disallowed to leave the premises. He was only requested to be present at the time of the search and he agreed to this request. It was also denied that the wife of the petitioner was disallowed to receive her son at the airport. It is further submitted that the car of the petitioner was allowed to go to the airport to bring his son. The placing of unnecessary restrictions on the movements of Shri Mann were also denied. It was further averred that since the room occupied by Mrs. and Mr. Mann was a part of the house of the petitioner, the luggage placed in that room had also to be checked up. In spite of the aggressive attitude of Mr. Mann, no insult was meted out to him or to his wife. Regarding the search warrant issued against Shri Mann, it is submitted that respondent No. 1 did have information that Shri Mann was staying with the petitioner. The information was further to the effect "that there was a close inter-connection between the petitioner and Shri Mann". The remaining pleas on this point may be reproduced as under:—

> "The Commissioner was, therefore, satisfied that in case Shri Mann was still there with the petitioner he would have to be included in the search operations. But a warrant of authorisation against him could not be given to the authorised officer inasmuch as had Shri Mann left

the premises before the date of the search, there would have been an unnecessary and premature disclosure of the fact that his search was also contemplated. However, to meet the eventuality a signed warrant of authorisation was placed with respondent No. 2 who was in over-all charge of the search operations in Chandigarh with authority from respondent No. 1 to use against Shri Mann, if necessity arose.

It so happened that when the authorised officer started searching the room occupied by Shri Mann and his wife they objected to the search. Since Mann was behaving in a very aggressive manner, the authorised officer rang up respondent No. 2 and acquainted him with the situation. Respondent No. 2 thereupon advised the authorised officer to wait for the warrant of authorisation before proceeding with the search of the luggage of Mr. and Mrs. Gurdial Singh Mann. The warrant of authorisation was then sent to the authorised officer who completed the search accordingly.

Since the warrant of authorisation was filled in under the clear authority of respondent No. 1 and prior to giving this authority, respondent No. 1 had duly recorded his reasons about Shri Gurdial Singh Mann as well, there could be no objection in blank warrant of authorisation duly signed by respondent No. 1 being placed at the disposal of respondent No. 2 to be utilized under certain contingency. As submitted above, the name of Shri Mann was not filled up originally for reasons of secrecy. The allegations, in the para under reply that respondent No. 1 could have nothing against Shri Gurdial Singh Mann is denied as incorrect. In any case since no action has been taken against Shri Gurdial Singh Mann and he has nothing to do with this writ petition, the contents of the para under reply are wholly irrelevant so far as the disposal of this writ petition is concerned.

(21) In paragraph 26 of the written statement it has been specifically stated that proceedings under section 132 were initiated by Shri M. K. Dhar.

(22) The plea of the petitioner in paragraph 13 that respondent No. 1 had issued the impugned warrant without any basis has been controverted in the following terms:—

> "It is incorrect to say that the issuing of the warrant of authorisation against the petitioner was in furtherance of what is mentioned as 'a matter of policy'. In fact, information was received by respondent No. 1, that the petitioner had not been disclosing his correct income for the purposes of the Income Tax Act. It was further reported that the petitioner possessed undisclosed assets and thus was systematically evading payment of tax. He was following a systematic course whereby his wealth was considerably understated. It was also reported that the petitioner had in his possession money, bullion, jewellery and other valuable articles and things which represented income or property which were not disclosed for the purposes of Income Tax Act.
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> For sometime past tax evasion by business-community and professionals like doctors, advocates, etc., has been engaging the attention of the department. A close watch was being kept regarding the business activities and professional income and the returns made and assessments finalised in the past. A careful analysis of this information was duly processed in the Intelligence Wing in the office of respondent No. 1. Material was collected and facts were sifted. Thereafter, the matter was discussed with the various high functionaries working at various places in the charge of respondent No. 1. After carefully going into the matter, respondent No. 1 was satisfied that immediate action was necessary in the case of some of the members of the business community and the various professionals including the petitioner. Respondent No. 1 was satisfied that considering the business affairs of the petitioner he was in possession of accounts and papers which he would not produce before the Income Tax authorities, if called upon to do so in the normal way. That is how the warrant of authorisation came to be issued by respondent No. 1 after duly recording his reasons therefor".

Paragraph No. 12 of the petition in which it is asserted that the sum of Rs. 10,000 was seized under orders of respondent No. 2 has been replied to in the following terms :—

> "That para 12 of the petition is admitted. As already submitted above, respondent No. 2 was in overall charge of the search operations at Chandigarh. In this connection he went round the various premises where these searches were going on to resolve any difficulty which might be faced by the authorised officers at different places. It is, however, not correct that any item was seized at his instance or under his instructions. Throughout the search and while deciding what to seize and what not to seize, the authorised officer exercised his own judgment in the light of the departmental instructions on the point. These instructions were nothing, but what is embodied in the Act and the Rules made thereunder."

(23) It was also asserted that the action of the Commissioner under section 132 of the Act was an administrative action which was not open to detailed judicial scrutiny or review. In paragraph No. 19 of the return, it has been stated that the proceedings were started against the petitioner by the predecessor of respondent No. 1. It has also been asserted that the petitioner was afforded full opportunity to prove his case, but he failed to adduce any satisfactory evidence explaining the nature of his possession and the sources of his acquisition of the various goods found in his residential house. Furthermore, the proceedings under section 132(5) of the Act being time-bound proceedings, the petitioner was himself trying to prolong them so as to make it impossible for respondent No. 1 to finish them in time. It was admitted that the premises of the lawyers were searched at various places on the same day but it was also asserted that on this ground alone the searches could not be held to be indiscriminate.

(24) The affidavit sworn by respondent No. 1 gives the following account of the circumstances under which the luggage of Shri Gurdial Singh Mann was searched:—

> "However, at the time of recording his reasons for the search of the premises of the petitioner, the deponent had information that Shri Gurdial Singh Mann was staying with the petitioner. The information was further to the effect

that there was a close inter-connection between the petitioner and Shri Mann. The Commissioner was, therefore, satisfied that in case Shri Mann was still there with the petitioner he would have to be included in the search operations. But a warrant of authorisation against him could not be given to the authorised officer inasmuch as had Shri Mann left the premises before the date of the search, there would have been an unnecessary and premature disclosure of the fact that his search was also contemplated. However, to meet the eventuality a signed warrant of authorisation was placed with respondent No. 2 who was in overall charge of the search operations in Chandigarh with authority from respondent No. 1 (deponent) to use against Shri Mann, if necessity arose.

It so happened that when the authorised officer started searching the room occupied by Shri Mann and his wife they objected to the search. Since, as already submitted in the written statement in para 6, Shri Mann was behaving in a very aggressive manner, the authorised officer rang up respondent No. 2 and acquainted him with the situation. Respondent No. 2 thereupon advised the authorised officer to wait for the warrant of authorisation before proceeding with the search of the luggage of Mr. and Mrs. Gurdial Singh Mann. The warrant of authorisation was then sent to the authorised officer who completed the search accordingly.

Since the warrant of authorisation was filled in under the clear authority of the deponent and prior to giving this authority, the deponent had duly recorded his reasons about Shri Gurdial Singh Mann as well, there could be no objection in blank warrant of authorisation duly signed by the deponent being placed at the disposal of respondent No. 2 to be utilized under certain contingency. As submitted above, the name of Shri Mann was not filled up originally for reasons of secrecy. The allegation in the para under reply that the deponent could have nothing against Shri Gurdial Singh Mann is denied as incorrect. In any case since no action has been taken against Shri Gurdial Singh Mann and he has nothing to do with this writ petition the contents of the para under reply are wholly irrelevant so far as the disposal of this writ petition is concerned."

(25) The issuance of the search warrants against the petitioner persuant to some matter of policy was denied and it was stated:—

> "In fact, information was received by the deponent that the petitioner had not been disclosing his correct income for the purpose of the Income Tax Act. It was further reported that the petitioner possessed undisclosed assets and thus was systematically evading payment of tax. He was following a systematic course whereby his wealth was considerably understated. It was also reported that the petitioner had in his possession money, bullion, jewellery and other valuable articles and things which represented income or property which were not disclosed for the purpose of Income Tax Act.
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> For some time past tax evasion by business community and professionals like doctors, advocates, etc., has been engaging the attention of the Department. A close watch was being kept regarding the business activities and professional income and the returns made and assessments finalised in the past. A careful analysis of this information was duly processed in the Intelligence Wing in the office of the deponent. Material was collected and facts were sifted. Thereafter the matter was discussed with the various high functionaries working at various places in the charge of the deponent. After carefully going into the matter, the deponent was satisfied that immediate action was necessary in the case of some of the members of the business community and the various professionals including the petitioner. The deponent was satisfied that considering the business affairs of the petitioner he was in possession of accounts and papers which he would not produce before the Income-tax authorities, if called upon to do so in the normal way. That is how the warrant of authorisation came to be issued by the deponent after duly recording his reasons therefor."

(26) It was further asserted that no assessee was entitled to the disclosure of information or the sources of information on the basis of which action under section 132 of the Act is taken.

(27) The petitioner filed replication to the reply-affidavits filed on behalf of respondents Nos. 1 and 4 and reiterated with some clarifications the stand taken in the writ petition.

(28) Immediately before the commencement of the hearing of the case, an affidavit sworn by respondent No. 3 Shri R. K. Bali was filed in Court. In this affidavit, it was stated that respondent No. 4 visited the house-cum-office of the petitioner on October 17, 1974, under a warrant of authorisation signed by respondent No. 1 sanctioning the search of the premises of the petitioner. When he intended to make a search of the room occupied by Shri Gurdial Singh Mann and his wife, Shri Mann took a great deal of offence. The petitioner also expressed his strong feelings on the subject and wanted him to leave out Shri Mann and his belongings from the search. Considering the strong objections raised by the petitioner and Shri Mann, he thought it better to get instructions from respondent No. 2. When contacted on telephone, respondent No. 2 enquired from him as to who the guest was ? On his reply that it was Shri Gurdial Singh Mann, respondent No. 2, so far as he recollected, said, "Oh, is it him. Now wait. I have got a warrant of authorisation against him which I am sending straightaway." Further proceedings regarding search were held up by him till the messenger sent by respondent No. 2 brought the warrant, after the receipt of which the luggage of Shri Mann was searched and some documentary evidence of some information regarding the financial transactions made by Shri Mann and his wife regarding movable and immovable properties at various places, including their investments in flats at the Nehru Place at New Delhi was recovered and seized under a separate *Panchnama*.

(29) In the course of arguments, one question of fact cropped up whether Shri Gurdial Singh Mann was actually residing in the house of the petitioner on October 7, and 8, 1974. The record of the Commissioner of Income Tax reveals that information was conveyed to him on October 7, 1974, that Shri Gurdial Singh Mann was living as a guest with the petitioner. A reference has already been made to the affidavit of Shri Mann in which he had affirmed that he never lived in the house of the petitioner prior to October 14, 1974, and as a matter of fact he had been living in the M.L.As'. Hostel (Haryana) with effect from October 2, to October 11, 1974. Shri G. S. Mann is stated to have some links and connections with the petitioner. We were of the view that if Shri Mann had not been

living with the petitioner on October 7 and 8, 1974 the relevant entries in the file of the Commissioner of Income Tax about this point would have to be looked upon with a certain amount of suspicion. The learned counsel for the petitioner also brought to our notice a photostat copy of the relevant entry in the register Exhibit CW1/1 maintained at the M.L.As'. Hostel, Haryana. In view of the importance of the question involved, we summoned Shri H. R. Minhas, Guide-cum-Clerk, Haryana Tourism Department, with the relevant register and recorded his statement. At the request of the learned counsel for the petitioner, we also examined Shri Mahant Ram, Watchman of the Hostel, and Shri Hardwari Lal, M.L.A. with whose good offices Shri Mann was permitted to occupy a room in the said Hostel. A reference to this evidence will be made at the appropriate stage.

(30) On behalf of the respondents, a claim for privilege in respect of two files marked by us as I and II was made, which was turned down by us by means of a separate order. Mr. Awasthy was pointedly asked by us to address additional arguments, if any, on the assumption that the claim for privilege had been disallowed but he had nothing to add.

(31) To sum up, the case of the petitioner is that as a successful Advocate, he had been paying a large amount of income-tax every year. His returns were never doubted by the Income Tax Department nor did he ever decline to produce any document when called upon to do so. Neither there was nor there could possibly be any information with the Commissioner for initiating proceedings under section 132 of the Act. The Commisioner did not apply his mind to the facts of the case and issued the search warrant as a matter of policy. The authorised officer was in fact satisfied that he had no concealed income, but he seized Rs. 10,000 at the behest of respondent No. 2. This is obvious from the fact that no question about this matter was put to him by the authorised officer. The enquiry under section 132(5) of the Act was also vitiated because—

(i) the same was conducted with regard to seized and unseized assets;

(ii) no proper opportunity was granted to him by the Income Tax Officer, which was his due, and

(iii) he was pre-determined to pass the order in violation of the stay order granted by this Court by going to the extent of changing the official record.

(32) The case of the respondents is that the Commissioner acted on proper information and it was open to him to take into consideration the old income-tax returns filed by the petitioner. It is not open to this Court to go into the question whether the Commissioner could or could not form the requisite opinion so long as there was some information before him for ordering action under section 132 of the Act. It is also asserted that the record depicted the correct picture and no part of it was altered or forged.

(33) In order to appreciate the points of law involved, it becomes necessary to notice the following portions of section 132 of the Act:—

"132(1) Where the Director of Inspection or the Commissioner, in consequence of information in his possession has reason to believe that:—

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income Tax Act, 1922 or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income Tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

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

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income

Tax Act, 1922, or this Act (hereinafter in this section referred to as the undisclosed income or property), he may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income Tax Officer (hereinafter referred to as the authorised officer) to—

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

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

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

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

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

* * * *

* * * *

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

(5) Where any money, bullion, jewellery or other valuable article or thing (hereinafter in this section and section 132-A referred to as the assets) is seized under sub-section

(1), the Income Tax Officer, after affording a reasonable opportunity to the person concerned for being heard and making such enquiry as may be prescribed, shall, within ninety days of the seizure, make an order, with the previous approval of the Commissioner.

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

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

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

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

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

* * * * * * * *

* * * *

(13) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches and seizure shall apply, so

far as may be, to searches and seizure under sub-section (1)."

The Scheme of section 132(1) shows that—

(1) the Commissioner of Income-Tax must have some information ;

(2) the information should be relevant to the requisite belief of the Income Tax Commissioner; and

(3) this belief should be entertained for a statutory purpose mentioned in sub-section (1) clauses (a), (b) or (c) of section 132.

(34) The word 'information' has been defined in the Shorter Oxford Dictionary as "that of which one is apprised or told". The word 'reason' has been defined as "a statement of fact employed as an argument to justify or condemn some act". On the other hand, the word "conclusion" is defined as "a judgment arrived at by reasoning: an inference; deduction etc." In other words, when the information received or the basic facts are harnessed in support of an argument, the resultant effect assumes the shape of a reason and when a number of reasons are considered in relation to each other, the final result of this consideration assumes the shape of a conclusion. A necessary concomitant of this approach is that the facts constituting the information must be relevant to the enquiry. They must be such from which a reasonable and prudent man can come to the requisite belief or conclusion. If either of the afore-mentioned elements is missing, the action of the authority shall be regarded as lying outside the ambit and scope of the Act. Such an action would be liable to be struck down on the basis of what is commonly known as "legal malice."

(35) Because of the applicability of section 165, Criminal Procedure Code, to the searches and seizures by virtue of sub-section (13) of section 132 of the Act, the tax-payer has been provided with important safeguards against arbitrary action. These safeguards, according to the observations made by their Lordships of the Supreme Court in *Commissioner of Commercial Taxes, Board of*

Revenue Madras, and another, v. *Ramkishan Shrikishan Jhaver, etc.*, (1), are—

> "(i) the empowered officer must have reasonable grounds for believing that anything necessary for the purpose of recovery of tax may be found in any place within his jurisdiction
>
> (ii) he must be of the opinion that such thing cannot be otherwise got without undue delay.
>
> (iii) he must record in writing the grounds of his belief, and
>
> (iv) he must specify in such writing so far as possible the thing for which search is to be made.
>
> After he has done these things, he can make the search. These safeguards, which in our opinion apply to searches under sub-section (2) also clearly show that the power to search under sub-section (2) is not arbitrary."

(36) Even if the above matters are not expressly mentioned in section 132(1) of the Act, they have assumed statutory character by the force of sub-section (13) of the same section. The important words of section 165, Code of Criminal Procedure, are 'such officer may after recording in writing the grounds of his belief and specifying in such writings so far as possible the thing for which search is to be made'. Consequently, it cannot be argued with any justification that the statute does not require the Commissioner of Income Tax to record his grounds of the requisite belief. It is needless to point out that section 165, Code of Criminal Procedure, does not authorise a general search on the off chance that something might be found. See in this connection *Divakar Singh* v. *A. Ramamurthi Naidu*, (2) *and Paresh Chandra Sen Gupta* v. *Jogendra Nath Roy Chowdhury and another* (3).

(37) In *Pooran Mal* v. *Director of Inspection (Investigation) of Income Tax, New Delhi, and others*, (4), while repelling the attack

(1) A.I.R. 1968 S.C. 59.
(2) A.I.R. 1919, Madras 751.
(3) A.I.R. 1927, Calcutta 93.
(4) A.I.R. 1974 S.C. 348.

against the constitutional validity of section 132 of the Act, the Court observed as under:—

"We are, therefore, to see what are the inbuilt safeguards in section 132 of the Income Tax Act. In the first place, it must be noted that the power to order search and seizure is vested in the highest officers of the department. Secondly, the exercise of this power can only follow a reasonable belief entertained by such officer that any of the three conditions mentioned in section 132(1)(a), (b) and (c) exists. In this connection it may be further pointed out that under sub-rule (2) of Rule 112, the Diretcor of Inspection or the Commissioner, as the case may be, has to record his reasons before the authorisation is issued to the officers mentioned in sub-section (1). Thirdly, the authorisation for the search cannot be in favour of any officer below the rank of an Income Tax Officer. Fourthly, the authorisation is for specific purposes enumerated in (i) to (v) in sub-section (1) all of which are strictly limited to the object of the search. Fifthly, when money bullion, etc., is seized the Income Tax Officer is to make a summary enquiry with a view to determine how much of what is seized will be retained by him to cover the estimated tax liability and how much will have to be returned forthwith. The object of the enquiry under sub-section (5) is to reduce the inconvenience to the assessee as much as possible so that within a rasonable time what is estimated due to the Government may be retained and what should be returned to the assessee may be immediately returned to him. Even with regard to the books of account and documents seized, their return is guaranteed after a reasonable time. In the meantime the person from whose custody they are seized is permitted to make copies and take extracts. Sixthly, where money, bullion, etc., is seized it can also be immediately returned to the person concerned after he makes appropriate provision for the payment of the estimated tax dues under sub-section (5) and lastly, and this is most important, the provisions of the Criminal Procedure Code relating to search and seizure apply as far as they may be, to all searches and seizures under section 132. Rule 112 provides for the actual search and seizure being

made after observing normal decencies of behaviour. The person in charge of the premises searched is immediately given a copy of the list of articles seized. One copy is forwarded to the authorising officer. Provision for the safe custody of the articles after seizure is also made in rule 112. In our opinion, the safeguards are adequate to render the provisions of search and seizure as less enerous and restrictive as is possible under the circumstances. The provisions, therefore, relating to search and seizure in section 132 and rule 112 canot be regarded as violative of Articles 19(1)(f) and (g)".

It was further observed that the measure would be objectionable if its implementation is not accompanied by safeguards against its undue and improper exercise. In case the safeguards were on the lines adopted by the Criminal Procedure Code, they were to be regarded as adequate.

(38) When the Revenue defends the validity of taxing a statute on the basis of the safeguards accepted as adequate by the highest Court of the land, then it is bound to provide all these safeguards in their letter and spirit to those against whom action is taken under that statute. Any departure from this principle would be regarded as fraudulent exercise of power by the Revenue for, nobody, including the Revenue, can be allowed to approbate and reprobate or to take different stands about the interpretation of a statute according to the exigencies of the occasion.

(39) In *Income Tax Officer, Special Investigation Circle B Meerut* v. *M/s. Seth Brothers and others* (5), while interpreting section 132 of the Act, the Court observed as under:—

"The section does not confer any arbitrary authority upon the Revenue Officers. 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 authorisation 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

(5) A.I.R. 1970 S.C. 292.

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 proceeding 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 tax payer, the power must be exercised in accordance with the law and only for the purposes for which the law authorises it to be exercised. If the action of the officer issuing the authorisation, or of the designated officer is challenged the Officer concerned must satisfy the Court about the regularity of his action. If the action is maliciously taken or power under 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 the 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.*"

(40) In *N. K. Textile Mills and another* v. *Commissioner of Income Tax, New Delhi, and others* (6), a Division Bench of this

(6) (1966) I.T.R. 58.

Court while interpreting the words "reasons to believe" occurring in section 132(1) of the Act observed that the belief must be held in good faith. The existence of the belief and the reasons for the belief will be justiciable. Further, such belief should not be based on some suspicion. It must be based on information.

(41) In *Balwant Singh and others* v. *R. D. Shah, Director of Inspection, Income Tax, New Delhi, and others* (7), a Division Bench of Delhi High Court held that before the Commissioner acts under section 132(1) of the Act, he must be reasonably satisfied that it is necessary to take the action contemplated by that section. If the grounds on which the belief is founded are non-existent or are irrelevant, or are such on which no reasonable man can come to that belief, the exercise of the power would be bad. It was further held that two officers at two different stages had to apply their minds. Firstly, the Commissioner of Income Tax when authorising an officer to search, his application of mind extends to two matters—

(a) that the person concerned will not produce the books of account, and

(b) that such books would be useful or relevant to any proceeding under the Act.

Secondly, the authorised officer would apply his mind at the time of the seizure of the books about the relevance and usefulness of these books in any proceedings. He cannot grab at the articles which would not be relevant or useful to any proceeding. The same considerations would apply in respect of undisclosed wealth.

(42) In *The Commissioner of Income Tax, Punjab, Jammu and Kashmir and Chandigarh at Patiala and others* v. *Ramesh Chander and others* (8), another Division Bench of this Court followed with approval the following passage appearing in a Division Bench judgment of the Gujrat High Court in *Ramjibhai Kalidas* v. *I. G. Desai, Income Tax Officer* (9):—

"It is apparent that search and seizure can be effected by an officer under sub-section (1) (c) (iii) only if he is authorised

(7) (1969) 71 I.T.R. 550.
(8) 1973 P.L.R. 374.
(9) (1971) 80 I.T.R. 721.

to do so by the Director of Inspection or the Commissioner, and the Director of Inspection or the Commissioner can authorise search and seizure only if he has in consequence of information in his possession reason to believe that any person is in possession of money, bullion, jewellery or other valuable article or thing which represents undisclosed income or property. The condition precedent to the exercise of the power to issue authorisation for search and seizure is that the Director of Inspection or the Commissioner must have the requisite reason to believe in consequence of information in his possession. The power to authorise search and seizure is hedged in by the requirement of this condition precedent and it is only if this condition is fulfilled that the power can be exercised. Of course, it is for the Director of Inspection or the Commissioner to be satisfied that there is reason to believe and the Court cannot sit in appeal over the decision of the Director of Inspection or the Commissioner regarding the exercise of the reason to believe nor can the Court examine the adequacy of the grounds on which the reason to believe entertained by such Officer is based. But there is a limited area within which the reason to believe entertained by the Director of Inspection or the Commissioner can be scrutinised by the Court. This area now stands clearly demarcated by several decisions of the Supreme Court and its extent and limit are no longer open to doubt or controversy".

(43) This matter is now firmly established that the condition precedent to the exercise of power to issue authorisation is that the Commissioner of Income Tax must have the requisite reasons to believe in consequence of some information in his possession. He must arrive at this decision in an honest manner. If the conclusions are arrived at on the basis of no evidence or irrelevant evidence, the action taken would be struck down by the Court.

(44) Section 34 of the Indian Income Tax Act, 1922, and section 147 of the Act lay down that if an Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment, he may, subject to the provisions of sections 148 to 153 of the Act assess or reassess such escaped income.

(45) In *Sheo Nath Singh* v. *The Appellate Assistant Commissioner of Income Tax (Central) Calcutta, and others* (10), the Court while discussing the scope of section 34 of the Indian Income Tax Act, 1922, observed—

> "In our judgment, the law laid down by this Court in the above case is fully applicable to the facts of the present case. There can be no manner of doubt that the words 'reason to believe' suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court."

(46) In *M/s. Chhugamal Rajpal* v. *S. P. Chaliha and others* (11), a notice issued to an assessee under section 148 read with section 151(2) of the Act was quashed with these observations—

> "In his report the Income Tax Officer does not set out any reason for coming to the conclusion that this is a fit case to issue notice under section 148. The material that he had before him for issuing notice under section 148 is not mentioned in the report. In his report he vaguely refers to certain communications received by him from the C.I.D., Bihar and Orissa. He does not mention the facts contained in those communications. All that he says is that from those communications 'it appears that these persons (alleged creditors) are name lenders and the transactions are bogus.' He has not even come to a *prima facie* conclusion that the transactions to which he referred are not genuine transactions. He appears to have had only a vague feeling that they may be bogus transactions. Such a conclusion does not fulfil the requirements of section 151(2). What that

(10) A.I.R. 1971 S.C. 2451.
(11) A.I.R. 1971 S.C. 730.

provision requires is that he must give reasons for issuing a notice under section 148. In other words he must have some *prima facie* grounds before him for taking action under section 148."

"We are not satisfied that the Income Tax Officer had any material before him which could satisfy the requirements of either clause (a) or clause (b) of section 147. Therefore, he could not have issued a notice under section 148. Further the report submitted by him under section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under section 148. To question No. 8 in the report which reads 'Whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148', he just noted the word 'Yes' and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under section 148. The important safeguards provided in sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under these provisions as of little importance. They have substituted the form for the substance."

(47) In *S. Narayanappa and others* v. *The Commissioner of Income Tax, Bangalore* (12), it was held—

"In our opinion, there is no substance in any one of these arguments. It is true that two conditions must be satisfied in order to confer jurisdiction on the Income Tax Officer to issue the notice under section 34 in respect of assessments beyond the period of four years but within a period of eight years from the end of the relevant year. The first

(12) A.I.R. 1967 S.C. 523.

condition is that the Income Tax Officer must have reason to believe that the income, profits or gains chargeable to income tax had been under-assessed. The second condition is that he must have reason to believe that such 'under-assessment' had occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income under section 22, or (ii) omission or failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income Tax Officer acquires jurisdiction to issue a notice under the section. But the legal position is that if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any non-disclosure as regards any fact, which could have a material bearing on the question of under-assessment that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notice under section 34. Whether these grounds are adequate or not is not a matter for the Court to investigate. In other words, the sufficiency of the grounds which induced the Income Tax Officer to act is not a justiciable issue. It is of course open for the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. Again the expression 'reason to believe' in section 34 of the Income Tax Act does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The belief must be held in good faith; it cannot be merely a pretence. To put it differently it is open to the Court to examine the question whether the reasons for the belief have a rational connection or relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Income Tax Officer in starting proceedings under section 34 of the Act is open to challenge in a Court of law".

(48) From the cases decided under section 34 of the Indian Income Tax Act, 1922, and section 147 of the Act, additional support can be obtained for the conclusion that before the Commissioner can exercise jurisdiction under section 132(1) of the Act, he must have information

on the basis of which he should come to a reasonable belief for any of the requisite purposes mentioned in clauses (a), (b) or (c) of that sub-section.

(49) So far as section 34 of the Indian Income Tax Act, 1922, and section 147 of the Act are concerned, it has been repeatedly held that power to act on information is not to be confused with the power to revise the earlier conclusion. The Income Tax Officer is not permitted to apply his mind afresh to the same issue or to correct his or his predecessor's errors of judgment. In *Income Tax Officer. Income Tax-cum-Wealth Tax Circle II. Hyderabad* v. *Nawab Mir Barkat Ali Khan Bahadur* (13), it was observed as under:—

> "The High Court was right in holding that the Income Tax Officer had no valid reason to believe that the respondent, had omitted or failed to disclose fully and truly all material facts and consequently had no jurisdiction to reopen the assessments for the four years in question. Having second thoughts on the same material does not warrant the initiation of a proceeding under section 147 of the Income Tax Act, 1961".

(50) On a parity of reasoning, it must be held that the Commissioner of Income Tax, while acting under section 132(1) of the Act must come into possession of some new material before he can take resort to the drastic measure of issuing a search warant. When he receives some relevant new information, it would perhaps be permissible for him to look into the old record for his satisfaction but it is extremely doubtful if he can give his own interpretation to the circumstances on the basis of which assessments have been framed against an assessee for the previous years for the purpose of issuing a search warrant. It is in public interest that judgments and orders finally passed by the judicial and quasi-judicial tribunals should be regarded as sacrosanct unless there is a positive mandate of the Legislature to the contrary. In the very nature of things, the provisions for revision or for reassessing a finally settled assessment have to be strictly construed. The matters which have been determined finally cannot be allowed to be tinkered with on lighter grounds.

(13) A.I.R. 1975 S.C. 703.

(51) The applicability of section 165, Criminal Procedure Code, to the searches made under section 132(1) gives an indication that this section is intended to apply in limited circumstances to persons of a particular bent of mind, who are either not expected to co-operate with the authorities for the production of the relevant books or who are in possession of undisclosed money, bullion and jewellery etc. Take for instance, a particular assessee who has utilised his undisclosed income in constructing a spacious building. His premises cannot be subjected to a search under this section on this score alone. A search would be authorised only if information is given to the Commissioner of Income Tax that such a person is keeping money, bullion jewellery, etc. in this building or elsewhere. Further, if an assessee has been regularly producing his books of account before the assessing authorities who have been accepting these books as having been maintained in proper course of business, it would be somewhat unjustified use of power on the part of the Commissioner of Income Tax to issue a search warrant for the production of these books of account unless of course there is information to the effect that he has been keeping some secret account books also. He has to arrive at a decision in the background of the mental make up of an individual or individuals jointly interested in a transaction or a venture. A blanket condemnation of persons of diverse activities unconnected with each other on the odd chance that if their premises are searched some incriminating material might be found is wholly outside the scope of section 165, Criminal Procedure Code. This power has to be exercised in an honest manner and search warrants cannot be indiscriminately issued purely as a matter of policy. The case of the petitioner will have to be examined in the light of these principles.

(52) It has been held in *Messrs Seth Brothers case* (supra) that if the action of the Commissioner in issuing a search warrant under section 132(1) of the Act is challenged, the burden lies on him to satisfy the Court that he had taken action on proper and relevant material. The reasons which impel the Commissioner to take this action may not necessarily be mentioned in the search warrant itself but when the matter comes before the Board under section 132(12) or this Court in proceedings under Article 226 of the Constitution, he has to produce the record to show that he formed the requisite belief on the basis of relevant information. There is a presumption of correctness in favour of the acts done and the record prepared contemporaneously by a public servant, in normal course of

business, but this is not an irrebuttable presumption. Those who challenge the correctness of the official record have to prove this fact by bringing before the Court the necessary material on the basis of which a finding in their favour can be given. It has been held that by virtue of the application of section 165, Criminal Procedure Code, the Commissioner of Income Tax has to record his reasons before issuing a search warrant. These reasons are given in the official files and naturally enough, the first thing to be determined is whether these files can be implicitly relied upon or not. In this context, the search of the luggage belonging to Shri Gurdial Singh Mann, who was alleged to be staying as a guest in the house of the petitioner, assumes considerable importance. The plea raised by the petitioner is that Shri Mann never stayed in his house prior to October 14, 1974. On the other hand, the respondents have urged that there was information with the Commissioner of Income Tax that Shri Mann was staying with the petitioner on October 7, 1974. A reference has already been made to the affidavits sworn by Shri Mann, the petitioner and the respondents on this point. The evidence led on the point may now be examined.

(53) Shri M. R. Minhas, C.W. 1 is working as a Clerk in the office of the Haryana Tourism Department, Chandigarh, since 1967. He brought the Visitors' Register in Court and stated on oath that Shri Gurdial Singh Mann, occupied room No. 7 with effect from October 2 to October 11, 1974. He paid Rs. 63 as the rental charges for the occupation of this room for 9 days. Enquiry No. 1736 made in the Register was signed by Mr. Mann in his presence. He gave a receipt for the sum of Rs. 63 paid by Shri Mann, a photostat copy of which is Exhibit C.W. 1/2. He was allowed to be cross-examined by Mr. Awasthy, the learned counsel for the respondents. In cross-examination, this witness has stated that Mahant Ram, Watchman of the Hostel, stated before him that he knew that Shri Gurdial Singh Mann was Shri Hardwari Lal's man and on this account the room was alllowed to be occupied by him. When questioned, whether he could tell the time when Shri Mann arrived at the hostel, the witness replied that the time was mentioned in the Register and he could not orally remember the time of his coming in and leaving the Hostel. By and large, the testimony of this witness remained unshattered.

(54) Shri Mahant Ram P.W. 1 has stated that he was employed as a Chowkidar in the Haryana M.L.As.' Hostel at Chandigarh and

his duty was to give keys of the rooms to the members of the Haryana Legislature and to collect back the same from them at the time of their departure. A register had been maintained showing the period containing the entries relating to the arrival and departure of M.L.As. from the Hostel. The Work Inspector sends copies of the statement made out from this register to various offices including the office of the Haryana Vidhan Sabha for realising the charges due from the M.L.As. in respect of their stay in the Hostel. The register brought by him showed that Shri Hardwari Lal stayed in room No. 8 of the hostel with effect from 3.30 p.m. on August 25, 1974 to 3.00 p.m. on October 24, 1974. According to this witness, for about 5 to 7 days during the period when Shri Hardwari Lal stayed in room No. 8, one Mann Sahib or Mann Singh and his family stayed in room No. 7 as guests of Shri Hardwari Lal. Room No. 7 was given to him as the guest of Shri Hardwari Lal. In cross-examination, he stated that he had no particular concern with Mr. Mann apart from asking the sweeper to clean his room.

(55) Shri Hardwari Lal M.L.A., appeared as P.W. 2. He has also stated on oath that from August 25, 1974 to October 24, 1974, he stayed in room No. 8 of the Haryana M.L.As.' Hostel and the relevant entry bore his signatures. At his instance room No. 7 was allotted to Shri Gurdial Singh Mann, who occupied it along with his family. This witness also stated that he spent most of his time with Mr. Mann, because of the latter's father's illness. He also used to accompany him from the M.L.As.' Hostel daily to the Postgraduate Institute of Medical Sciences, which was under the charge of Dr. Chhuttani. Shri Mann, used to wake him up early in the morning and they used to go out for a walk. According to him, it was impossible that Shri Mann slept outside on any of the nights during his stay in room No. 7 during the period in question. This witness further stated that he used to sit with him till late in the night. In cross-examination, he was particularly asked whether he could exclude the possibility of Mr. Mann having visited his friends in Chandigarh outside the Hostel, during those days. The witness answered that Mr. Mann was in fact so much worried in those days that he did not feel like going anywhere except being in the Hostel or in the hospital. Since the witness tried to ensure that he could be of maximum help to him, he remained with him during most of the days.

(56) A perusal of this evidence shows that Shri Hardwari Lal M.L.A., stayed in the M.L.As.' Hostel from August 25, 1974 to

October 24, 1974. Through his good offices, Shri Mann was allowed to occupy room No. 7 with effect from October 2 to October 11, 1974. The statement made by Shri Hardwari Lal, P.W. 2 leaves no doubt in our mind that during this period Shri Mann remained with him for most of the period either in the M.L.As.' Hostel or in the hospital. He is duly corroborated on all material particulars by Shri M. R. Minhas, C.W. 1 and Shri Mahant Ram, P.W. 1, apart from the authentic documentary evidence referred to above. On May 5, 1975, we had particularly asked Mr. Awasthy, the learned counsel for the respondents whether he would like to call any of the persons whose affidavits had been filed by the petitioner for cross-examination touching this point. On that date he informed us that he would make a statement on this point on the next date of hearing. On May 7, 1975, we particularly questioned Mr. Awasthy whether he wanted to cross-examination, Mr. Hira Lal Sibal or Shri Gurdial Singh Mann on this point or not. Mr. Awasthy, indicated that he had no such intention at that time. He also stated that he had no instructions to lead any evidence in rebuttal. The result is that though the respondents were given an opportunity to rebut the evidence about the stay of Shri Mann and his family in room No. 7 of the Haryana M.L.As.' Hostel with effect from October 2 to October 11. 1974, yet they declined to avail of the same. In the circumstances it stands established beyond any shadow of doubt that Shri Mann did not stay at the house of the petitioner on October 7/8, 1974, as indicated by the respondents. Nor is there any rebuttal to the assertion made by Shri Mann and the petitioner in their respective affidavits that prior to October 14, 1974, Shri Mann never stayed at the house of the petitioner. We feel no hesitation in believing the petitioner and Shri Mann on this point.

(57) The circumstances in which the search warrant of Shri Mann's luggage was issued reveal quite interesting story. The case of the petitioner is that when Shri Mann indicated on the basis of his own experience as a judicial officer that his luggage could not be searched without a proper warrant, Shri R. K. Bali, the authorised officer sought instructions from Shri J. S. Dulat, respondent No. 2, who in turn enquired the name of Mr. Mann on telephone and said that the warrant would follow. This warrant was received within about half an hour even though the Commisioner of Income Tax was at

Patiala at a distance of 35 miles. The relevant portions of the warrant read as under:—

"Shri R. K. Bali, I.T.O., Chandigarh.

Whereas information has been laid before me and on the consideration thereof I have reason to believe that—

a summons under sub-section (1) of section 37 of the Indian Income Tax Act, 1922, or under sub-section (1) of section 131 of the Income Tax Act, 1961 or a notice under sub-section (4) of section 22 of the Indian Income Tax Act, 1922, or under sub-section (1) of section 142 of the Income Tax Act, 1961, was issued by the Deputy Director of Inspection/Inspecting Assistant Commisisoner of Income Tax/ Assistant Director of Inspection/the Income Tax Officer to Shri Gurdial Singh Mann on 17th October, 1974 to produce, or cause to be produced, books of account or other documents specified in the relevant summons or notice and he 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;

* * * * *.

Sarvshri/Shri/Shrimati Gurdial Singh Mann are in possession of any money, bullion, jewellery, or other valuable article or thing and such money, bullion, jewellery, or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income Tax Act, 1922, or the Income Tax Act, 1961;

And whereas I have reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing have been kept and are to be found at House No. 29, Sector 5, Chandigarh. This is to authorise and require you Shri R. K. Bali, I.T.O....."

8th October, 1974.
Commissioner of Income Tax, Patiala.

(Sd.) . . .,
S. N. Mathur,
Commissioner of Income Tax,
Patiala-1.

(58) The record shows that no summons under sub-section (1) of section 37 of the Indian Income Tax Act, 1922, or under sub-section (1) of section 131 of the Indian Income Tax Act, 1961, or any notice had been issued to Shri Mann, for producing books of account, etc., on October 17, 1974. Furthermore, the warrant purports to have been issued by the Commissioner of Income Tax on October 8, 1974, because Shri Mann failed to comply with some notice issued to him on October 17, 1974, and yet responsible officers of the Income Tax Department have chosen to justify this action. According to respondent No. 1, warrant of authorisation against Shri Mann could not be given to the authorised officer inasmuch as "had Shri Mann left the premises before the date of the search, there would have been unnecessary and premature disclosure of the fact that a search was also contemplated." According to him, there was nothing improper in entrusting a blank signed warrant to respondent No. 2 with authority to fill the name of Shri Mann, therein for utilising it for searching his luggage if an eventuality arose. Now, it is the case of the respondents that all the warrants had been entrusted to respondent No. 2, who holds the rank of Inspecting Assistant Commissioner of Income Tax, Chandigarh. If this officer had been entrusted with the warrant regarding some other persons, it looks absurd that he was not being entrusted with same type of warrant against Shri Gurdial Singh Mann. Furthermore, a perusal of the record shows that respondent No. 2 alone reported that Shri Mann was residing at the premises occupied by the petitioner and he had been indulging in tax evasion. Respondent No. 1, consciously handed him over a signed blank warrant with an oral authority to fill in the name of Shri Mann, before using the same. This warrant was not handed over by respondent No. 2 to the Authorised Officer in the very beginning and was sent to him when the latter sought instructions on telephone. In this situation, it cannot be imagined how respondent No. 1 entertained the fear that if he gave a complete warrant to respondent No. 2, there would have been an unnecessary and premature disclosure of the fact that the search of the luggage of Shri Mann was also contemplated. This explanation is wholly unnatural and false. Had there been any information in possession of respondent No. 1 about the fact that Shri Mann had been residing at the premises of the petitioner prior to October 7/8, 1974. and had there been any doubt about the activities of Shri Mann, respondent No. 1 would have certainly handed over to respondent No. 2 a warrant complete in all respects for conducting the

search of the luggage belonging to Shri Mann. The only legitimate inference which can be drawn from these circumstances is that the record has been falsely prepared to justify the action taken against Shri Mann.

(59) The plea that respondent No. 1 did not act improperly by entrusting a blank signed warrant to respondent No. 2 with authority to him to insert the name of Shri Gurdial Singh Mann therein for pressing it into service for searching the luggage of Shri Mann, if an eventuality arose, is also devoid of any force. Rule 112 of the Rules framed under the Act expressly provides that the authorisation to make a search and seizure issued by the Commissioner shall be in writing under his signatures and bearing his seal. This rule implies that the authorisation should be complete in all respects before the Commissioner appends his signatures and puts his seal to it. One cannot imagine that the Commissioner was unaware of the true meaning and import of this important statutory provision. This plea also appears to have been raised to cover up the wrong action taken by respondent No. 2 in the situation resulting from his unexpected presence at the premises of the petitioner on the date of the search.

(60) On page 2 of file No. II marked by us, a list of 32 persons appears which purports to have been prepared pursuant to a note recorded by respondent No. 1 on October 1, 1974. A detailed reference to these documents will be made in the later part of the judgment. In this list, the name of the petitioner appears at No. 7, of his brother Shri S. C. Sibal appears at No. 8 and that of Shri G. S. Mann appears at No. 32 at the end of the list written in a different ink. It is the case of the respondents that the activities of the petitioner and those of Shri Mann were inter-connected. Had it been so, the name of Shri Mann would have appeared at S. No. 9, immediately after the name of the brother of the petitioner.

(61) When the three circumstances mentioned above are cumulatively taken into consideration, it becomes obvious that the record relating to the authorisation for the search of the premises of the petitioner was prepared after the search conducted on October 17, 1974, when for the first time the respondents came to know that Shri Mann happened to be residing with the petitioner. This record does not represent the contemporaneous thinking and the activities of the respondents. It has already been noticed that the Commissioner of Income Tax has to record in writing the reasons of his

belief for any statutory purposes mentioned in clause (a), (b) or (c) of sub-section (1) of section 132 of the Act before authorising the search of the premises of an assessee. Since respondent No. 1 failed to do so, his action cannot be justified in the eyes of law.

(62) The result would be the same if some part of the record was made earlier and additions were made to it after conducting the search for, in such a situation the condition precedent of recording reasons based on information before issuing an authorisation for search would be violated.

(63) We may now come to the questions whether the Commissioner authorised the search of the premises of the petitioner on the basis of some tangible information or pursuant to a policy decision.

File No. II—marked by us—relating to Search and Seizures—Doctors and Advocates, starts with the following note:—

> "The matter of action against Patiala lawyers was discussed with S/Shri Kulkarni and Sharda, I.A.Cs. when the A.D.I. was present. It was learnt that large scale tax evasion was being practised by them as most of them were submitting estimated incomes and no a/cs or fee books or briefs to support the gross receipts were maintained. They were also living in a good style and had assets which were not disclosed to the Department and which according to both the I.T.O./I.A.Cs. were not to be disclosed by them unless action under section 132 was taken against them. A.D.I. has been asked to process these cases with others at Chandigarh/Ludhiana/Ambala/Rohtak ranges where this matter has already been discussed with the I.A.Cs. and they are submitting proposals (except I.A.C. Rohtak, who handed it over to me on 28th September, 1974 and the proposal of I.A.Cs. at Patiala). A.D.I. should also prepare separate folders for the professional persons for different ranges, where authorisations, etc., may be kept along with my directions.
>
> (Sd.) . . . ,
>
> S. N. Mathur,
> 1st October, 1974."

(64) To begin with, some action was contemplated against the Patiala lawyers, because the Commissioner learnt that large scale tax evasion was being practised by them. This conclusion was not derived from any external source and was inferred from the fact that most of them were submitting estimated incomes and no accounts or fee-books, or briefs to support the gross receipts were maintained. The fact that they were submitting estimated incomes was already known to the Department because the concerned Income Tax Officers had framed assessments on that basis. If respondent No. 1 was not satisfied with this state of affairs he could have directed his Income Tax Officers to deal with such cases more carefully or he could have got these assessments reviewed by filing appeals, if the law permitted this course; but he could not apply his mind afresh to the same set of facts for initiating action under section 132 of the Act. If he had realised that those who were living at Patiala, including the Advocates, had inherited the princely traditions of pomp and show, and if he had applied his mind to the language of section 132 of the Act he would perhaps have taken a more charitable view. The Income Tax Officers and Inspecting Assistant Commissioners would always state before an over-zealous Commissioner of Income Tax that the assessees were not likely to disclose their assets unless action under section 132 of the Act was taken against them. On such complaints alone, the Commissioner of Income Tax cannot authorise searches of the premises of the assessees. In such a situation, the proper course for him is to ask his subordinate officers to bring forth concrete information against every individual assessee on the basis of which a reasonable man could come to the conclusion that the assessee concerned was not disclosing his income for purposes of income-tax. A conglomerate of two or more irrelevant surmises cannot take the place of relevant information on the basis of which statutory action can be initiated.

(65) The note recorded by the Commissioner of Income Tax is in the nature of a declaration of a policy intended to rope in people residing in Chandigarh, Ludhiana, Ambala and Rohtak ranges because the lawyers at Patiala were submitting estimated incomes and were living in high style. In other words, a firm decision to initiate action was taken before there was any evidence on the point and the Assistant Director of Intelligence was asked to hunt out evidence for this purpose. A complete go by was given to the safeguards formulated by their Lordships of the Supreme Court in *Commissioner of Commercial Taxes, Board of Revenue Madras case* (supra).

(66) The next development relevant to this case is the proposal dated October 7, 1974, made by respondent No. 2. It is a part of file No. 1 marked by us and appears to have been placed in that file pursuant to the directions of respondent No. 1 to the Assistant Director of Intelligence asking him to prepare separate folders for professional persons for different ranges. It reads as under:—

"*Proposal for action under section* 132 *of the Income Tax Act,* 1961.—Whereas I have reason to believe that the undermentioned persons, all Punjab leading Advocates of Chandigarh, practising in the High Court of Punjab and Haryana at Chandigarh, and the Supreme Court of India at New Delhi, are not showing their total income correctly from year to year, but are understating the same and whereas they also have in their possession money, bullion, jewellery and other valuable articles and things which represent either wholly or partly income or property not disclosed for purposes of the Income Tax Act, 1922, or 1961. I, therefore, request the Commissioner of Income Tax, Patiala-1, Patiala, to authorise action under section 132 of the Income Tax Act, 1961, in respect of the said persons:—

(1) Shri H. L. Sibal.

(2) Shri Bhagirath Dass.

(3) Shri Anand Swarup.

(4) Shri Mulkh Raj Mahajan and his sons S/Shri M. K. Mahajan, B. K. Mahajan and J. K. Mahajan.

(5) Shri S. C. Sibal.

I also understand that one Shri Gurdial Singh Mann, at present residing within the premises occupied by Shri H. L. Sibal at Chandigarh, is also in possession of unaccounted valuables and certain documents tending to prove the concealment of taxable income. I, therefore, request the Commissioner of Income Tax, Patiala, to authorise action under

section 132 of the Income Tax Act, 1961, in respect of that person also.

(Sd.) . . .,
J. S. Dulat,
I.A.C. of I.T.,
Chandigarh.
7th October, 1974".

(67) It has been held that the respondents came to know about Shri Gurdial Singh Mann only on October 17, 1974, at the time of the search of the petitioner's premises. This note was obviously recorded after that date with a view to justify the action taken against Shri Mann. Assuming while not admitting that this note was written on the date when it purports to have been recorded, it does not carry the case of the respondents any further. It indicates that respondent No. 2 had reasons to believe that the leading Advocates of Punjab mentioned therein were not showing their total income correctly from year to year, etc. etc. There is no indication whatsoever, of the information on the basis of which this officer had formed the aforementioned belief. At best, he was a reporting officer to convey the relevant information on the basis of which respondent No. 1 might have taken the action. There is no indication in the note that the persons mentioned therein had any inter-connection. Even regarding Shri Gurdial Singh Mann, it was mentioned that he himself was in possession of unaccounted valuables and documents tending to prove concealment of taxable income. It was quite natural for respondent No. 2 to come to such sweeping conclusions because respondent No. 1 had already decided that the houses of some of the assessees had to be searched come what may.

(68) On page 5 of file No. 1 marked by us, the names of the petitioner and his four sons are mentioned. One of them is said to be a Deputy Secretary in the Cabinet Secretariat, the second is working as Joint Textile Commissioner, Bombay, the third is a Deputy Secretary, Foreign Affairs, and the 4th is working as an Advocate in the Supreme Court of India and the Delhi High Court. His wife is stated to be in I.F.S. Respondent No. 1 had noted in the margin that as regards the sons he would like to consider the matter further only when further information is available. Down-below there is another note which reads as under :—

"Discussed with I.A.C. Who is Gurdial Singh Mann to Shri H. L. Sibal ? Is he one of the name lenders or a person

who is helping Shri Sibal in divesting of his income surreptitiously and thus evading I.T./W.T. etc.

What about this person's own position ? His services could be utilised in shifting valuables of all types from Shri Sibal's place. His place would also need coverage.

A. O. to please verify this at the time of Search.

Sd/-
S. N. MATHUR.
Dated the 7th October, 1974.

Sd/-
S. N. MATHUR.
Dated the 7th October, 1974.

"See remarks of I.A.C. in this note.

re. this matter.

Sd/-
S. N. MATHUR.
Dated the 7th October, 1974."

(69) The original record of file No. 1 shows that respondent No. 1 had given the date as October 8, 1974, and had later on changed it to October 7, 1974. The important thing, however, is that at that time respondent No. 1 himself was not certain about the activities of Shri Mann. The authorised officer was being directed to verify the facts at the time of the search but the warrant had been issued in advance. This shows the type of mind which respondent No. 1 did apply to the case. The action taken by respondent No. 1 is clearly hit by the observations made by their Lordships of the Supreme Court in *M/s Chhugamal Rajpal's* case (supra).

(70) The marginal note quoted above and purported to have been recorded by respondent No. 1 directed the authorised officer to make an on the spot enquiry about the manner in which the petitioner utilised the services of Shri Mann. The authorised officer did not put any question on this point either to Shri Sibal or to Shri Mann

when they were examined by him. He could not have disregarded such an important direction issued by the Commissioner. This fact also conclusively establishes that so-called inter-connection between the petitioner and Shri Mann was created by the respondents and this note was recorded by respondent No. 1 after the search.

(71) The note dated October 7, 1974, reproduced above was seen by respondent No. 1 on the same day. Strangely enough, he also construed it as containing the necessary information on the basis of which he could form the statutory belief and passed the following order :—

"The cases of the lawyers at Chandigarh and Simla were discused earlier with the I.A.C., Chandigarh in September, 1974, when he had brought to my notice data as to why action under section 132 (1) be taken in these cases. But before passing an order, I had asked him to put up proposals for consideration and my satisfaction.

Since then the I.A.C. has also discussed the matter on 1st October, 1974 with A.D.I. and had suggested the names of the following parties at Chandigarh :—

1. Shri H. L. Sibal, Advocate.
2. Shri Satish Sibal, Advocate.
3. Shri Bhagirath Dass, Advocate.
4. Shri Anand Swarup, Advocate.
5. Shri Mulkh Raj Mahajan, Advocate (and also his sons).

The proposal now sent shows that there is a large scale tax evasion and abetment by lawyers. Looking to all factors, I am satisfied that action under section 132(1) may be taken in these and other similar cases as and when this is mooted. We may then cover the sons of Shri M. R. Mahajan, named Sarvshri M. M. Mahajan, B. M. Mahajan

and J. M. Mahajan, Chandigarh, as well as Shri Gurdial Singh Mann who is residing in the premises of Shri H. L. Sibal to guard against removal of valuables (including documents) from Shri Sibal to his portion of the house as well as his own material of unaccounted valuables and documents.

Sd/-

S. N. MATHUR,
Dated the 7th October, 1974."

(72) Respondent No. 1 has nowhere mentioned in the above order with regard to any specific matter mentioned in section 132(1)(a), (b) or (c) that he was satisfied on the basis of any information received by him. Did he want the Authorised Officer to recover books of account or bullion and money, etc., or both, and which thing from which of the persons mentioned ? The whole thing is as vague as can be. He merely acted on the proposal which in turn contains the mere conclusions of his subordinates instead of the necessary facts constituting information. By acting upon the conclusions arrived at by his subordinates instead of coming to his own conclusions, he has practically abdicated his statutory functions in their favour. This course is wholly unknown to law.

(73) At page No. 6 of file No. 1 some figures showing the returns submitted by the petitioner during the last five years and wealth tax returns for two years have been scribed with the following note appearing on the right margin:—

"Return on estimate basis. List of briefs and co-relation of the same with fees not submitted. Top lawyers—fees vary between Rs. 1,000 to 3,000. Normal fee is Rs. 1,650 per hearing. If he works even for 200 days, gross receipts should be more than Rs. 3 lakhs per year.

Gross shown		*Net shown.*
1970-71	1,09,548	75,601
1971-72	1,29,594	1,02,952
1972-73	1,48,669	1,03,810
1973-74	1,70,500	1,20,300.

"Gross receipts show low. Needs investigation by getting records of briefs.

Wealth showing a downward trend.

1969-70	3,30,622	Reason for this fall.
1973-74	91,267	

(Sd.) . . .,
S. N. MATHUR.

The total information relied upon has been derived from the record which was already in possession of the respondents. This could not have been formed the basis of the impugned action on the analogy of the principle of law laid down by their Lordships of the Supreme Court in *Nawab Mir Barkat Ali Khan Bahadur's case* (supra).

(74) Whether the premises of the petitioner were searched on the basis of valid reasons or the action was taken against him on the basis of some policy decision can be determined by considering the totality of the attendant circumstances. The direction in which the minds of the respondents had been working has to be judged on the basis of their conduct prior to and after the search. From the very beginning, the case of the petitioner was clubbed with many other Advocates and professional men. The allegation against the Advocates was that most of them were submitting estimated income. The petitioner has alleged (in his replication, dated 24th March, 1975) that he had been regularly submitting returns which had invariably been accepted. This allegation has not been denied. In other words, he was tagged on to a category of persons to which he could not have necessarily belonged. When Shri Gurdial Singh Mann, who happened to be present at his premises, objected to his luggage being searched, an illegal warrant was produced within about half an hour for conducting the search of his luggage. Though there is no indication on the record that Shri Gurdial Singh Mann had any objectionable dealings with the petitioner, a case has now been set up that he had some inter-links and inter-connections with the petitioner's activities relating to evasion of tax. The name of Shri Gurdial Singh Mann was falsely introduced in the official record to give the semblance of truth to the action taken against him and the petitioner. There was no relevant information against the petitioner

within the meaning of section 132(1) of the Act and respondent No. 1 acted on the conclusions arrived at by his subordinates instead of himself deciding the question on information. At best, the information was derived from the returns submitted by the petitioner and even then returns were not properly scrutinised for judging the validity and reasonability of the conclusions drawn. As a consequence of the search, the petitioner was found to be in possession of cash which was quite commensurate with his position and status as a leading Advocate. Even though the authorised officer was satisfied that no money was to be seized yet Rs. 10,000 were retained at the instance of respondent No. 2 on the basis of some instructions issued by the superior officers. On this point, we may observe that the petitioner's allegation that Rs. 10,000 had been seized on the orders issued by respondent No. 2 has not been denied either by Shri R. K. Bali, the authorised officer, or respondent No. 2 even though they did file affidavits in Court on some other points. The sum of Rs. 10,000 had been seized because in the absence of any seizure no order under section 132(5) of the Act could be passed. The petitioner had been making repeated requests for being supplied the information on the basis of which action under section 132(5) of the Act was contemplated and yet in spite of the clear provisions of rule 112A(4) of the Rules, he was not supplied this material. In spite of the fact that the Motion Bench had issued an injunction against the respondents restraining them to finalise the proceedings under section 132(5) of the Act, such an order was passed after respondents had the knowledge of this fact. This matter has been dealt with separately in our judgment in Criminal Original No. 16 of 1975 decided today. Suffice it to mention that when Shri Satish Sibal approached respondent No. 4 with a copy of the ad-interim stay order passed by this court, she remarked that had this order been passed earlier she would have been saved from the trouble of processing the case. When she made this remarks, she was obviously satisfied that this Court had stayed further proceedings. On the following day, she proceeded to Patiala, passed an order under section 132(5) of the Act, and obtained the approval of the Commissioner. In order to conceal the fact that she had information about the injunction issued by this Court she tore off the original order sheet of the file of proceedings under section 132(5) of the Act and wrote down another order sheet in its place. These proceedings were initiated against the petitioner by her predecessor-in-office on October 24, 1974. On the order sheet, the zimni order of that date is

in the handwriting of respondent No. 4. When all these circumstances are taken together, it becomes obvious that the premises of the petitioner have been searched pursuant to a policy decision and the dominant object of the respondents was to pass an order under section 132(5) of the Act regardless of the fact whether such an order could or could not have been passed in the eyes of law.

For the reasons mentioned above, we hold—

(i) that there was no information with the Commissioner of Income Tax on the basis of which he could form the requisite belief under section 132(1)(a), (b) or (c) of the Act, on the basis of which he issued the search warrant of the premises of the petitioner to be conducted by the authorised officer. The power under section 132(1) of the Act had been exercised for a collateral purpose ;

(ii) that the authorised officer did not apply his mind before seizing the sum of Rs. 10,000 and did so under the extraneous orders of respondent No. 2; and

(iii) since the seizure of Rs. 10,000 is not legal, no enquiry could be held against the petitioner under section 132(5) of the Act.

(75) Towards the fag end of arguments, Mr. Awasthy, prayed that even if we allow the petition we should allow the respondents to keep the record for a reasonable period for allowing them to inspect the same. This record remained with the respondents till at least the date when the present petition was filed. Failure on the part of respondents to inspect the same shows the scant respect they had for the merits of the case.

(76) In any event no provison of law has been brought to our notice authorising the retention of seized documents by the respondents after action taken against an assessee under section 132 of the Act is quashed. On the other hand rule 112-B of the Rules lays down that if proceedings under section 132(5) of the Act culminate in favour of an assessee the articles seized have to be returned to the person from whose custody they were seized.

(77) For the reasons mentioned above, we quash the warrant, dated October 8, 1974, issued by respondent No. 1, for conducting search of the premises of the petitioner, and the proceedings pending against him under section 132(5) of the Act. We also order that

the documents seized from the petitioner be returned to him forthwith. The sum of Rs. 10,000 seized from his possession shall also be returned to him unles this amount stands adjusted with his consent against any lawful demand of the Revenue. The petitioner will also be entitled to costs.

(78) This is not all. The learned counsel for the petitioner has submitted that a complaint under section 193, Indian Penal Code, should be filed against the respondents on the basis of the findings arrived at by this Court. In brief, it is submitted that the filing of a complaint against the respondents and the Assistant Director of Intelligence is called for on account of the following salient facts:—

(1) The proposal under section 132 of the Act purported to have been recorded by respondent No. 2 on October 7, 1974, was in fact recorded by him after the premises of the petitioner had been searched on October 17, 1974, when for the first time the respondents came to know that Shri Gurdial Singh Mann, happened to be residing at the premises of the petitioner. Respondent No. 1 fabricated false evidence by recording a note on the same date authorising action under section 132 of the Act against the petitioner. An offence under section 193, Indian Penal Code, was *prima facie* proved against them.

(2) Respondent No. 4 by changing the order sheet of the file in proceedings under section 132(5) of the Act had also committed the same offence.

(3) The Assistant Director of Intelligence attached to the office of respondent No. 1 by recording a note that the proposal of respondent No. 2 mentioned at (1) above had been received on October 7, 1974, had also fabricated false evidence.

After hearing the learned counsel for the petitioner and Mr. Awasthy, we are tentatively of the view that it is expedient in the interest of justice that an enquiry be held into this matter. Let notices be issued to respondents Nos. 1, 2 and 4 and the Assistant Director of Intelligence working in the office of respondent No. 1 to show cause why a complaint under section 193, Indian Penal Code, be not filed against them. R. S. Narula, Chief Justice.—I agree.

N. K. S.