

CIVIL MISCELLANEOUS

Before M. L. Verma, J.

OM PARKASH JINDAL ETC.,—Petitioners

versus

THE UNION OF INDIA ETC.,—Respondents.

Civil Writ No. 6577 of 1974

July 17, 1975.

Income Tax Act (XLIII of 1961)—Section 132—Income Tax Rules, 1962—Rules 112 and 112-A—Information with Director of Inspection or Commissioner—Standard of belief of such officer before authorising raid—Section 132—Scheme of—Stated—Authorised officer having doubts that articles found on search are undisclosed property—Such articles—Whether can be seized—Recourse to section 132 (3)—Whether can be had—Retention of articles under section 132 (3)—Period of—Stated.

Held, that when in consequence of information in possession of the Director of Inspection or the Commissioner, he has reason to believe that any person is in possession of any money, jewellery, ornaments etc. of the nature contemplated by clause (c) of sub-section (1) of section 132 of the Income Tax Act, 1961, he may authorise, which would mean empower, any of the officers, including the Income-tax Officer, mentioned in the said sub-section (1), to enter and search any building or place where he has reason to suspect that such undisclosed property, consisting of money, bullion, jewellery etc., is kept and seize the same if found in the said search and make a note or inventory of the same. "Information" would mean statement of facts. It may be supplied to the Director of Inspection or the Commissioner in writing or orally, though when it is made orally to him, propriety demands that he should record notes of the same so as to assist him in coming to the conclusion that there are reasons to believe that there are undisclosed money, ornaments, etc., in possession of any person, and also to use it to justify the said conclusion in the event of necessity. The expression "has reason to believe" would mean that there are grounds for the necessary belief. The said belief is the assent of mind to the truth of what has been conveyed by the information. Whereas mere suspicion may not be sufficient, but then a conviction of the nature required in a criminal case cannot be insisted upon. The standard of belief should be that of a reasonable man. But at the same time it has to be remembered that it is the belief of the Director of Inspection or the Commissioner that counts and the courts cannot substitute their own opinion for his belief. It is only when the grounds on which the belief of the Director of Inspection or the Commissioner has been founded are

non-existent or are irrelevant or are such on which no reasonable man can come to that belief, that the exercise of the power to issue the warrant of authorisation by the Director of Inspection or the Commissioner would be bad, but short of that the courts would not interfere with the reason to believe *bona fide* arrived at by him. The object of power under clause (c) of section (1) of section 132 is not search for a particular ornament, jewellery or money, but is for jewellery, ornaments and money which are believed to be undisclosed property. At the time of issuing warrant of authorisation it may not be possible for the Director of Inspection or the Commissioner to predict or even to know in advance what particular jewellery, ornaments or money would be found in the search and which of the same, if found, would be undisclosed property. Therefore, the warrant of authorisation directs a general search. It is only when the search is made and the jewellery, ornaments or money, if discovered therein, are, on scrutiny, found to be undisclosed property that the same can be seized under clause (iii) of sub-section (1) of section 132. The word "such" occurring in clauses (i), (iii) and (v) of sub-section (1) and also in sub-section (3) of section 132 is of importance. It signifies that the jewellery, ornaments or money etc. to be seized must be the one as mentioned in clause (c) of sub-section (1) of section 132. That is to say that the same are found to be undisclosed property. Therefore, the scheme of section 132 of the Act postulates that the mind has to be applied by two officers at two different stages, i.e. firstly, by the Director of Inspection or the Commissioner while issuing the warrant of search to come to a finding that any person is in possession of any jewellery, ornaments or money etc., which are believed to be undisclosed property, and, secondly, by the authorised officer, when during the search any particular jewellery, ornament or money is found, to see that the same can be reasonably believed to be undisclosed property. (Para 8).

Held, that since the authorised officer has to form an opinion before seizing the particular ornaments, jewellery etc., found during the search, that the said particular ornaments etc. are undisclosed property, he will necessarily have to investigate the matter. The provisions contained in sub-section (4) of section 132 empowering the authorised officer to examine during the course of search the person who is found in possession or control of the said ornaments etc., lend assurance to the view that the authorised officer has that power and may inquire as to whether the particular ornaments etc. found during the search are undisclosed property. The said investigation may not be a full inquiry or of the nature as contemplated by sub-section (5) of section 132. It may be summary, oral or otherwise as permissible in the circumstances of a given case. The result of the said investigation or inquiry may be (a) that the authorised officer has reason to believe that the particular ornaments etc., found in the search, are undisclosed property, (b) that there are no grounds

Om Parkash Jindal etc. v. The Union of India etc. (M. L. Verma, J.)

to believe reasonably that the same are undisclosed property, or (c) that he has doubts respecting the said ornaments or jewellery being undisclosed property. It is only in the case of his satisfaction under (a) that the authorised officer would seize the aforesaid ornaments, jewellery, money etc. under clause (iii) of sub-section (1) of section 132. In the cases mentioned in (b) or (c), he would not be competent or empowered to seize the said ornaments, jewellery or money and he cannot take action under sub-section (3) of section 132 of the Act respecting those ornaments. The word 'practicable' occurring in sub-section (3) of section 132 cannot be extended to a case where the authorised officer on finding ornaments etc. on a search has doubts or is not certain that there are reasons to believe that the same were undisclosed property. It is only when he has reason to believe that such ornaments are undisclosed property but the seizure of the same is impracticable on account of the nature or location of the same or on any other ground rendering the seizure of the said ornaments etc. impossible or unsafe that the authorised officer can have recourse to the provisions contained in sub-section (3) of section 132 of the Act.

(Paras 8 and 13)

Held, that there is nothing in the Act or in the Income Tax Rules, 1962, to show that the authorised officer can keep the property found on search under his seal and retain the same for an indefinite period by having recourse to sub-section (3) of section 132. He may attach the said property under sub-section (3) of section 132 if so permitted by the provisions contained therein and retain the same for a reasonable period. When the provisions of rule 112-A of Rules require the Income-tax Officer to issue requisite notice within 15 days and provisions contained in sub-section (5) of section 132 require the Income-tax Officer to record necessary order within 90 days from the date of the seizure of the ornaments etc. it can be justly said that the said reasonable period during which the ornaments etc. can be retained, would not ordinarily exceed 90 days from the date of attachment of the same. Attachment of ornaments etc. under sub-section (3) of section 132 would necessarily deprive a citizen of use of the same as he pleases and thereby it is infraction of his liberty to free use of the said ornaments. Therefore, it is desirable that the authorised officer should decide the matter one way or the other and lift the attachment, effected by him under sub-section (3) of section 132, at the earliest. (Para 13).

Petition under Articles 226/227 of the Constitution of India praying that :—

(a) *the respondents herein be commanded by an appropriate writ, order or direction to transmit the entire material and record in their possession having a bearing upon or*

relating to, the search and seizure effected on the residential premises of the petitioners known as Jindal House situate at Hissar on 6th June, 1974 and July 12, 1974 to this Hon'ble Court for its examination and scrutiny;

- (b) the respondents herein be also called upon to show to the satisfaction of this Hon'ble Court the jurisdiction in law of their impugned actions of the issuance of authorisations under section 132 of the Income-tax Act, 1961 and the seizure effected in pursuance thereto on the premises of the petitioners;
- (c) a writ in the nature of mandamus and/or any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case be issued to the respondents declaring the impugned actions of the respondents consisting of the issuance of warrants of authorisation on both the occasions, the search and seizure made and effected in pursuance thereof and the retention of the assets seized to be illegal, unlawful, invalid, void, inoperative and a nullity in the eyes of law;
- (d) a writ of mandamus and/or any other appropriate writ, order or direction be issued to the respondents commanding them to return and restore to the petitioners all the items of the jewellery and ornaments etc., seized by them vide Annexures P-4, P-5, P-6, P-7 and P-8 to the writ petition;
- (e) by passing an appropriate ad-interim order, respondents Nos. 2 to 6 be commanded and directed to restore and return to the petitioners all the seized items of jewellery and ornaments even during the pendency of the final decision of the writ petition as the same are required inter alia in connection with the marriage about which mention has been made in paragraph 10 of this writ petition;
- (f) any other interim and/or final relief may be granted to the petitioners, as may appear to your Lordships to be just, fit and proper in circumstances of the case;
- (g) costs be also awarded to the petitioners against the respondents.

B. S. Gupta, Advocate, for the Petitioners.

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

Om Parkash Jindal etc. v. The Union of India etc. (M. L. Verma, J.)

JUDGMENT

Verma, J.—(1) The circumstances, relevant and as alleged by the petitioners, leading to this writ petition may be briefly stated as under :

(2) In pursuance of authorisation issued by the Director of Inspection (Respondent 2) under section 132 of the Income-tax Act, 1961 (hereinafter called the Act), Shri Rakesh Rattan, Income-tax Officer (Respondent 3) and Shri Kulwant Singh (Respondent 4) again an Income-tax Officer (hereinafter called the authorised officers) raided and searched the Jindal House (hereinafter called the premises), situate at Delhi Road, Model Town, Hissar, on June 6, 1974. The premises are the property of Shri Om Parkash Jindal, petitioner No. 1. He along with his wife Smt. Savitri Devi has been residing in the ground floor of the premises, while his son—Prithvi Raj Jindal along with his wife—Smt. Sachita Devi has been living in the upper storey of the premises. Each of the petitioners and their wives are income-tax assesseees. During the aforesaid search, 32 items of ornaments and jewellery were found in the bed-cum-store room of Shri Om Parkash Jindal. An inventory, the copy of which is Annexure D-1, was prepared for the same. Seventeen items of ornaments and jewellery (shown in Annexure D-III, contained in a separate receptacle as stated by the petitioners) were recovered from another portion of the ground floor occupied by Shri Om Parkash Jindal. Another five items of ornaments and jewellery and currency notes of the value of Rs. 108 and 18 silver coins of rupee one each (shown in Annexure D-IV and contained in another receptacle as represented by the petitioners) were also recovered from the portion of the premises in occupation of the petitioner—Shri Om Parkash Jindal. Four items of ornaments (shown in Annexure D-11) were found from the bed-room of Shri Prithvi Raj Jindal. The authorised officers placed all these ornaments and jewellery etc. in two boxes, sealed the same and then placed the said boxes in a Godrej almirah lying in the premises. It (Godrej almirah) was also locked and sealed. The keys of the said Godrej almirah as well as of the said two boxes were taken away by them, and they served the order (copy Annexure P-10) under section 132(3) of the Act upon Shri Om Parkash Jindal directing him not to remove, part with or otherwise deal with the said jewellery,

ornaments etc. without their previous permission. The statement of Shri Om Parkash Jindal (copy Annexure P-9) was also recorded by them under section 132(4) of the Act, wherein he represented that 32 ornaments of Annexure D-1 belonged to his wife and the four ornaments of Annexure D-II belonged to his son and daughter-in-law and 17 items of ornaments of Annexure D-III belonged to Shri Bajrang Lal, who had placed the same with him for safe custody, and the 5 ornaments, G. C. notes and silver coins of annexure D-IV belonged to Chuni Lal, who is brother of Bajrang Lal and had placed the same with him for safe custody. Shri S. Talwar (Respondent 5), again an authorised officer, and Shri Rattan Lal (Respondent 6), accompanied by a number of other officers and Shri B. K. Malhotra, approved Government Valuer, reached the premises on July 12, 1974, with warrant of authorisation issued by the Director of Inspection. Shri Om Parkash Jindal was then away and Shri Prithvi Raj Jindal was present at the premises. Under the directions of Shri S. Talwar, the seal of the Godrej almirah was broken and it was opened and the two sealed boxes were taken out. The seals of the said boxes were broken and the locks were opened. The ornaments and jewellery contained therein were valued by Shri B. K. Malhotra and after preparing the valuation of the same (vide Annexure P. 11) the said ornaments and jewellery were again put into two steel boxes which were locked and then the same were placed in a wooden almirah fixed in the premises and the said almirah was locked and sealed and the keys were taken away by Shri S. Talwar. An order under section 132(3) of the Act, directing that the aforesaid ornaments would not be removed or parted with or dealt with without his permission, was also served on Shri Prithvi Raj Jindal by Shri Talwar.

(3) Aggrieved by all this, the petitioners approached this Court through this writ petition for a writ of mandamus or any other appropriate writ, direction or order, directing the respondents to return and restore to them all the aforesaid items of jewellery, ornaments etc. They impeached the authorisation issued by Respondent 1 as illegal, stating that he had neither any credible information in his possession nor he had reason to believe that Shri Om Parkash Jindal petitioner was in possession of undisclosed jewellery or ornaments, and that he (Respondent 1) had issued warrants of authorisation to search the premises and seize the ornaments etc.

Om Parkash Jindal etc. v. The Union of India etc. (M. L. Verma, J.)

under the dictates of higher authorities for extraneous considerations, including political influences. They treated the acts of the authorised officers in placing the jewellery, ornaments etc. in two boxes and placing the same with locks and seals on, in the Godrej almirah on June 6, 1974 and then placing the same in two boxes with locks in the wooden almirah embedded in the premises and sealing the same on July 12, 1974, as seizure, and challenged it as illegal so far as it related to recovery of four items of ornaments (Annexure D-II) from the bed-room of Shri Prithvi Raj Jindal on the ground that his name did not figure in the warrant of authorisation. They impeached the acts of the authorised officers terming the same as seizure respecting the other ornaments, jewellery etc. on the ground that neither notice as envisaged by rule 112A of the Income-tax Rules, 1962 (hereinafter called the Rules) had been given to the petitioners or to any one of them, within 15 days of the aforesaid seizure, nor any inquiry as contemplated by section 132(5) of the Act was instituted and no order had been passed within 90 days of the seizure. They impugned the orders recorded by the authorised officers under section 132(3) of the Act as illegal on the ground that the same had been actuated by extraneous considerations and were *mala fide*.

(4) Written statement, duly supported by her affidavit, was put in by Mrs. Vijaya Mohan Ram, Assistant Director of Inspection (Investigation). The material facts were admitted. She, however, controverted the allegations that the authorisation had been issued by the Director of Inspection or the orders recorded under section 132(3) of the Act had been made by the authorised officers for extraneous considerations or that the same were *mala fide*. It was pleaded that there was no seizure as contemplated by sub-section (1) of section 132 of the Act and, therefore, the question of issuance of notice under rule 112A of the Rules or institution of inquiry under section 132(5) of the Act, or passing of an order thereunder did not arise and there had been credible information with the Director of Inspection warranting the issuance of authorisation to search the premises and seize the ornaments etc., and there was one warrant of authorisation and it was in pursuance of the same that the premises had been searched on June 6, 1974 and Shri S. Talwar had visited the same on July 12, 1974. The orders passed under section 132(3) of the Act could not be withdrawn, nor the seizure of the jewellery, ornaments etc. had been effected because Shri Om Parkash Jindal petitioner

did not co-operate for substantiating his statement that the 17 items of ornaments and jewellery of Annexure D-III belonged to Bajrang Lal and 5 ornaments, G. C. notes and silver coins of Annexure D-IV belonged to Chuni Lal, and that the premises (Jindal House) were one unit and the petitioners being father and son constituted one family and were residing therein as such.

(5) The submissions made by Shri B. S. Gupta, learned counsel for the petitioners, have four dimensions and these are :

- (1) That the authorisation issued by the Director of Inspection in favour of the authorised officers to search the premises and seize the ornaments etc. was illegal because the Director of Inspection had no information, much less credible, on the basis of which he could have reason to believe that Shri Om Parkash Jindal petitioner had in his possession ornaments and jewellery, which were undisclosed property.
- (2) That there had been, in fact, seizure of the ornaments, jewellery etc. and since neither notice of 15 days under rule 112-A of the Rules had been issued, nor inquiry as envisaged by section 132(5) of the Act had been instituted and no order had been passed thereunder within 90 days from the date of seizure, the retention of the ornaments, jewellery, etc., by the respondents had become illegal.
- (3) That even if the acts of the authorised officers in sealing the ornaments and jewellery in the Godrej almira first-ly on June 6, 1974, and secondly in the wooden almira embedded in the premises on July 12, 1974 are not considered as seizure, their aforesaid acts would be illegal having been actuated by extraneous and unlawful considerations.
- (4) That the search of the portion of the premises in occupation of Shri Prithvi Raj Jindal was illegal and, therefore, the recovery of four ornaments of Annexure D-II from there was unwarranted as the name of Shri Prithvi Raj Jindal was not mentioned in the warrant of authorisation.

Om Parkash Jindal etc. v. The Union of India etc. (M. L. Verma, J.)

(6) Shri D. N. Awasthy, learned counsel appearing for the respondents, countered the said submissions of Shri B. S. Gupta by making contrary presentations and maintained that the warrant of authorisation had been duly issued by the Director of Inspection on the basis of credible information with him, that there was no seizure of the jewellery, ornaments, etc. as contemplated by sub-section (1) of section 132 of the Act and, as such, the provisions of sub-section (5) of section 132 of the Act did not apply and no order could be recorded thereunder and no notice under rule 112-A of the Rules could be issued.

(7) In order to appreciate the contentions raised by the learned counsel for the parties it is necessary to examine the provisions, relevant to the case in hand, contained in section 132 of the Act, which are to the following effect :—

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

(a) * * * * *

(b) * * * * *

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income-tax Act, 1922, or this Act (hereinafter in the 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...money, bullion, jewellery or other valuable article or thing are kept ;

- (ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available,
- (iii) seize any such money, bullion, jewellery or other valuable article or thing found as a result of such search,
- (iv) * * * * *
- (v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.
- (2) * * * * *
- (3) The authorised officer may, where it is not practicable to seize any *such* money, bullion, jewellery or other valuable article or thing, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.
- (4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any 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

Om Parkash Jindal etc. v. The Union of India etc. (M. L. Verma, J.)

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 material 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 :

* * - * * * *

(6) * * * * * *

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

(8) It is manifest from the provisions, reproduced above, that when in consequence of information in possession of the Director of Inspection or the Commissioner, he has reason to believe that any person is in possession of any money, jewellery, ornaments etc., of the nature contemplated by clause (c) of sub-section (1) of section 132, he may authorise, which would mean empower, any of the officers, including the Income-tax Officer, mentioned in the

said sub-section (1), to enter and search any building or place where he has reason to suspect that such undisclosed property, consisting of money, bullion, jewellery etc., is kept and seize the same if found in the said search and make a note or inventory of the same. "Information" would mean statement of facts. It may be supplied to the Director of Inspection or the Commissioner in writing or orally, though when it is made orally to him, propriety demands that he should record notes of the same so as to assist him in coming to the conclusion that there are reasons to believe that there are undisclosed money, ornaments, etc., in possession of any person, and also to use it to justify the said conclusion in the event of necessity. The expression "has reason to believe" would mean that there are grounds for the necessary belief. The said belief is the assent of mind to the truth of what has been conveyed by the information. Whereas mere suspicion may not be sufficient, but then a conviction of the nature required in a criminal case cannot be insisted upon. The standard of belief should be that of a reasonable man. But at the same time it has to be remembered that it is the belief of the Director of Inspection or the Commissioner that counts and the Courts cannot substitute their own opinion for his belief. It is only when the grounds on which the belief of the Director of Inspection or the Commissioner has been founded are non-existent or are irrelevant or are such on which no reasonable man can come to that belief, that the exercise of the power to issue the warrant of authorisation by the Director of Inspection or the Commissioner would be bad, but short of that the Courts would not interfere with the reason to believe *bona fide* arrived at by him (Director of Inspection or the Commissioner). The object of power under clause (c) of sub-section (1) of section 132 is not search for a particular ornament, jewellery or money, but is for jewellery, ornaments and money which are believed to be undisclosed property. At the time of issuing warrant of authorisation it may not be possible for the Director of Inspection or the Commissioner to predict or even to know in advance what particular jewellery, ornaments or money would be found in the search and which of the same, if found, would be undisclosed property. Therefore, the warrant of authorisation directs a general search. It is only when the search is made and the jewellery, ornaments or money, if discovered therein, are, on scrutiny, found to be undisclosed property that the same can be seized under clause (iii) of sub-section (1) of section 132. The word "such" occurring in clauses

Om Parkash Jindal etc. v. The Union of India etc. (M. L. Verma, J.)

(i), (iii) and (v) of sub-section (1) and also in sub-section (3) of section 132 is of importance. It signifies that the jewellery, ornaments or money etc. to be seized must be the one as mentioned in clause (c) of sub-section (1) of section 132. That is to say that the same are found to be undisclosed property. Therefore, as I understand, the scheme of section 132 of the Act postulates that the mind has to be applied by two officers at two different stages, i.e. firstly, by the Director of Inspection or the Commissioner while issuing the warrant of search to come to a finding that any person is in possession of any jewellery, ornaments or money etc., which are believed to be undisclosed property, and, secondly, by the authorised officer, when during the search any particular jewellery, ornament or money is found, to see that the same can be reasonably believed to be undisclosed property. Similar view was expressed in *Balwant Singh and others v. R. D. Shah, Director of Inspection, Income-tax (1)*.

Since the authorised officer has to form an opinion before seizing the particular ornaments, jewellery etc., found during the search, that the said particular ornaments etc. are undisclosed property, he will necessarily have to investigate the matter. The provisions contained in sub-section (4) of section 132 empowering the authorised officer to examine during the course of search the person who is found in possession or control of the said ornaments etc., lend assurance to the view that the authorised officer has that power and may inquire as to whether the particular ornaments etc. found during the search are undisclosed property. The said investigation may not be a full inquiry or of the nature as contemplated by sub-section (5) of section 132. It may be summary, oral or otherwise as permissible in the circumstances of a given case. The result of the said investigation or inquiry may be (a) that the authorised officer has reason to believe that the particular ornaments etc., found in the search, are undisclosed property, (b) that there are no grounds to believe reasonably that the same are undisclosed property, or (c) that he has doubts respecting the said ornaments or jewellery being undisclosed property. It is, I think, only in the case of his satisfaction under (a) that the authorised officer would seize the aforesaid ornaments, jewellery, money etc. under clause (iii) of sub-section (1) of section 132. In the cases mentioned in (b) or (c), I do not

(1) A.I.R. 1969 Delhi 91.

think he (authorised officer) would be competent or empowered to seize the said ornaments, jewellery or money and it is also doubtful that he can take action under sub-section (3) of section 132 of the Act respecting those ornaments. It may be stated here that any act performed by the authorised officer under sub-section (3) does not tantamount to 'seizure' as contemplated by sub-section (1) of section 132. Rather, the words "where it is not practicable to seize any such money, bullion, jewellery or other valuable article" in sub-section (3) point out unmistakably that whatever is done or performed by the authorised officer under the powers given by the said sub-section (3) would not be reckoned as "seizure" under sub-section (1) and, therefore, the provisions contained in sub-section (5) would not be attracted to such a case. Though the word "practicable" has a number of significances, yet its meaning depends largely on context. Ordinarily, it means that which may be practised or performed, capable of being put into practice, done or accomplished. As indicated earlier, the word "such" appearing in sub-section (3) refers to the bullion, jewellery or other valuable articles mentioned in clause (c) of sub-section (1) of section 132. Therefore, the word "practicable" when read in the context would relate to those ornaments etc., found on search, which can be reasonably believed to be undisclosed property. So, in my view, it is only when the nature or the location of the particular ornaments etc. found on a search, which are reasonably believed to be undisclosed property, does not allow, or the circumstances of a given case do not permit the immediate seizure of the same, that the provisions of sub-section (3) may be resorted to. But, when the authorised officer is not satisfied or he has doubts to believe that the particular ornaments found on search are undisclosed property, he cannot, in my opinion, have recourse to the provisions contained in sub-section (3) of section 132.

(9) When the contentions of the learned counsel for the parties are examined in the background of the law discussed above. I feel that the submissions of Shri B. S. Gupta, stated at Nos. (1), (2) and (4), are not well-founded. The averments made by the petitioners in paras 12, 13 and 14 of the writ petition, that the Director of Inspection had no credible information in consequence of which he could have reason to believe that Shri Om Parkash Jindal petitioner was in possession of undisclosed jewellery, ornaments etc., that he did not apply his mind to the case and did not record reasons while issuing

Om Parkash Jindal etc. v. The Union of India etc. (M. L. Verma, J.)

the warrant of authorisation and that he issued the authorisation for search etc. for extraneous considerations, including political influence, were controverted in the written statement, which was verified by the affidavit sworn to by the Assistant Director of Inspection. At the instance of Shri B. S. Gupta, I asked Shri D. N. Awasthy to produce the record containing the information on the basis of which the Director of Inspection had issued the warrant of authorisation. Mr. Awasthy readily made the said record available to me. I went through it minutely and noticed that the information conveyed to the Director of Inspection through different sources was sufficient for believing that Shri Om Parkash Jindal was in possession of money, bullion, jewellery etc., which were undisclosed property. On enquiry of Shri B. S. Gupta, I informed him about the matters which could be disclosed, contained in the information on the basis of which warrant of authorisation had been issued. Having gone through the said record, I had the satisfaction that the information with the Director of Inspection was such as could induce any reasonable man to believe that action under section 132 of the Act was called for. There was nothing on the record produced by Mr. Awasthy, and there is nothing on the record of this case, which can show that the Director of Inspection was influenced by any collateral or extraneous matter in issuing the warrant of authorisation. He had duly recorded the reasons for issuing the warrant of authorisation. On the said state of things, I find no merit in the contention of Mr. Gupta mentioned at No. 1 under para 5 above and the same is overruled.

(10) True, the authorised officers placed the ornaments, jewellery, currency notes and silver coins of Annexures D. 1, D. II, D. III and D. IV in two boxes, sealed the same and put the same in a Godrej almirah with seals thereon and further sealed the said Godrej almirah on June 6, 1974, and had taken away keys of the boxes and of the Godrej almirah. The said ornaments, jewellery, money, G.C. notes and coins were again placed in two boxes with seals thereon and were put in a wooden almirah embedded in the premises on July 12, 1974. The said wooden almirah was also locked and sealed and keys were taken away by Shri S. Talwar. No doubt, the aforesaid acts of the authorised officers had the effect of disabling the petitioners from dealing with the aforesaid ornaments, jewellery, money etc. as they pleased, but at the same time, the same cannot amount to "seizure" as contemplated by sub-section (1) of section 132. Sub-rules (10), (11) and (12) of rule 112 of the Rules prescribe acts to be

performed by the authorised officer after seizure of the ornaments, jewellery etc. found on a search, believed by him to be undisclosed property. The authorised officers in the case in hand did not follow that procedure inasmuch as they did not, on search, deposit the boxes in which the ornaments had been placed and sealed, with the custodian, who could be an Income-tax Officer or of the rank above him. Non-performance of the said post-seizure acts by the authorised officers is indicative that they did not seize the ornaments, jewellery etc., under sub-section (1) of section 132. It was stated in the written statement, and was represented by Shri D. N. Awasthy, that the authorised officers attached the ornaments, jewellery, G.C. notes and coins found on search under sub-section (3) of section 132, for the reason that they felt the necessity of verification of the statement made by Shri Om Parkash Jindal on June 6, 1974, that 17 ornaments of Annexure D-III belonged to Bajrang Lal and 5 ornaments of Annexure D-IV belonged to Chuni Lal and they had placed the same with him for safe custody. Orders were also passed by the authorised officers under section 132(3) restraining Shri Om Parkash Jindal and Shri Prithvi Raj Jindal from removing or parting with or dealing with the ornaments, jewellery etc. found on search and were served upon them on June 6, 1974 and July 12, 1974, respectively. The acts of the authorised officers in placing the ornaments in two boxes and then putting the same with seals in the Godrej almirah on June 6, 1974 and on the second occasion in the wooden almirah on July 12, 1974, seem to be covered by the latter part of sub-section (3) of section 132, namely, "that such officer may take such steps as may be necessary for ensuring the compliance with this sub-section". The aforesaid acts of the authorised officers, of which much capital had been made by Shri B. S. Gupta, cannot, therefore, tantamount to seizure of ornaments, jewellery etc., as contemplated by sub-section (1) of section 132. Thus, having given my careful consideration to the entire circumstances of the case and to all what was said by Shri B. S. Gupta, I am of the opinion that the authorised officers had proceeded to seal the ornaments etc. in the manner, stated above, under an honest, though erroneous, belief that it was not desirable to seize the same till verification of the statement, referred to above, made by Shri Om Parkash Jindal on June 6, 1974 under sub-section (4) of section 132. As indicated above, action under section 132(3) is warranted when the authorised officer has reason to believe that the particular ornaments etc. found on search, are undisclosed property, but on account of the nature or location of the said ornaments

Om Parkash Jindal etc. v. The Union of India etc. (M. L. Verma, J.)

or the peculiar situation in a given case, the seizure of the same is impracticable. According to the stand taken in the written statement and also put forward at the time of arguments, the authorised officers had not come to the conclusion that the ornaments etc. found on search were undisclosed property and they wanted to verify the statement which was made by Shri Om Parkash Jindal on June 6, 1974, before coming to such a finding. In that situation, when the authorised officers had not come to the conclusion on June 6, 1974 or on July 12, 1974 that the said ornaments were undisclosed property, their acts of sealing the ornaments etc. on either of the said two dates cannot be covered by sub-section (3) of section 132. At the same time, the aforesaid acts of the authorised officers cannot be reckoned as "seizure" under sub-section (1) of section 132, for the obvious reason that they did not come to a finding that there were reasons to believe that the ornaments etc. were undisclosed property. So, when in the circumstances of the case it cannot be said that there had been seizure of ornaments, jewellery etc., under sub-section (1) of section 132, no notice of 15 days under rule 112-A of the Rules could be issued, nor any inquiry as envisaged under section 132(5) of the Act could be initiated. As such, the failure to issue such a notice or to record an order by the Income-tax Officer within 90 days after June 6, 1974 or July 12, 1974, can be of no consequence and does not render the retention of jewellery, bullion etc., illegal. So, in that view of the matter, the submission of Shri Gupta, mentioned at No. (2) of para 5 above, fails and the same is rejected.

(11) The warrant of authorisation empowered the authorised officers to enter and search the Jindal House. Admittedly, the portion of the premises occupied by Shri Prithvi Raj Jindal petitioner is a part of the Jindal House. Therefore, search of the said portion of the premises by the authorised officers, irrespective of the fact that it was in possession of Shri Prithvi Raj Jindal, as represented by the petitioners, cannot in any way be assailed as illegal. In that view of the matter, the contention of Shri B. S. Gupta, mentioned at No. (4) of paragraph 5, is without merit and is declined.

(12) Per discussion under para 10 above, the acts of the authorised officers in sealing the ornaments etc., in the boxes and putting the same firstly in Godrej almirah on June 6, 1974 and for the second time in the wooden almirah on July 12, 1974, and sealing the same

do not fall within the purview of sub-section (3) of section 132. Mr. Awasthy, taking a contrary view, justified their action and contended that since they wanted to verify the statement of Shri Om Parkash Jindal made on June 6, 1974, they thought it proper and desirable to seal the ornaments etc. in the manner stated above, and cited *Bhagwandas Narayandas v. Commissioner of Income-tax, Ahmedabad, and others* (2), *Director of Inspection of Income-tax (Investigation), New Delhi, and another v. Pooran Mall and Sons and another* (3), and *Mrs. Kanwal Shamsher Singh v. Union of India and others* (4) to support his view. I do not think that any one of the said judgment can be of any help to him. In *Bhagwandas's* case (supra), search could not be proceeded with on July 10, 1969, because the friends and well-wishers of Bhagwandas Narayandas had created uproar and made the situation tense. It was because of the sudden and dangerous development that had taken place at the spot that the authorised officers could not complete the search. No such situation had arisen in the case in hand. It is worthy of note that in *Bhagwandas's* case, the ornaments were attached under sub-section (3) of section 132 on July 11, 1969, not because the authorised officers had doubts about the ornaments being undisclosed property, but because the same could not be seized on July 10, 1969, on account of dangerous situation having been developed at the spot, which did not allow the search to proceed on. The silver bars in *Pooran Mall's* case (supra) were not in his possession, but were with two Banks, and the ornaments etc. in *Mrs. Kanwal Shamsher Singh's* case were in two lockers of the Delhi Safe Deposit Company and were not in possession of either Mrs. Kanwal Shamsher Singh or her daughter Mrs. Mala Singh at the spot. Anyway, the question as to whether the attachment of silver bars in *Pooran Mall's* case (supra) or of ornaments in *Mrs. Kanwal Shamsher Singh's* case (supra), was legal under sub-section (3) of section 132 was neither considered specifically nor decided. Therefore, the aforesaid judgments, relied on by Mr. Awasthy, do not render any assistance to the respondents. There is, however, no material on the record to substantiate the contention of Mr. B. S. Gupta that the authorised officers had acted with any extraneous or unlawful considerations in attaching the ornaments under sub-section (3) of section 132, of the Act either on June

(2) (1975) 98 I.T.R. 194.

(3) (1974) 96 I.T.R. 390.

(4) (1974) 95 I.T.R. 80.

Om Parkash Jindal etc. v. The Union of India etc. (M. L. Verma, J.)

6, 1974 or on July 12, 1974. So, his contention to that extent is devoid of merits being not borne out by either the material on record or the circumstances of the case, and the same is repelled.

(13) It appears that the authorised officers proceeded to attach ornaments etc. on June 6, 1974 and July 12, 1974 under sub-section (3) of section 132, believing that the same could not be said to be undisclosed property or otherwise without verification of the statement of Shri Om Parkash Jindal petitioner recorded on June 6, 1974. Therefore, I am of the view that the acts of the authorised officers in attaching ornaments etc. in the case in hand on June 6, 1974 or on July 12, 1974, had been committed in error of judgment, though I have no doubt in my mind that the same were not countenanced by the provisions of sub-section (3) of section 132.

Per discussion in para 8 above, the word "practicable" occurring in sub-section (3) of section 132 cannot, in my opinion, be extended to a case where the authorised officer on finding ornaments etc. on a search has doubts or is not certain that there are reasons to believe that the same were undisclosed property. It is only when he has reason to believe that such ornaments are undisclosed property but the seizure of the same is impracticable on account of the nature or location of the same or on any other ground rendering the seizure of the said ornaments etc. impossible or unsafe that the authorised officer can have recourse to the provisions contained in sub-section (3) of section 132. In the case in hand, the stand taken up by the respondents has been that they did not seize ornaments etc. found on search and opted to attach the same under sub-section (3) of section 132, because they could not make up their mind as to whether the same were undisclosed property without verification of the statement of Shri Om Parkash Jindal recorded on June 6, 1974. That means that on June 6, 1974 and also on July 12, 1974, the authorised officers felt reluctance in believing that the aforesaid ornaments etc. were undisclosed property. When that was their view, they could not, in my opinion, for the reasons already recorded above, legally attach those ornaments etc. under sub-section (3) of section 132. It is pertinent to note that Shri Om Parkash Jindal had disclosed in his statement recorded on June 6, 1974, that 32 ornaments of Annexure D-1 belonged to his

wife and 4 ornaments of Annexure D-II belonged to his son and daughter-in-law, and it were only 17 ornaments of Annexure D-III which belonged to Bajrang Lal and 5 ornaments, G. C. notes and silver coins of Annexure D-IV that belonged to Chuni Lal. Examination of Bajrang Lal and Chuni Lal might or might not afford verification of the aforesaid statement of Om Parkash Jindal as to whether 17 items of ornaments of Annexure D-III belonged to Bajrang Lal and 5 ornaments, G. C. notes and silver coins of Annexure D-IV were the property of Chuni Lal. Their examination could not have afforded any assistance to the authorised officers respecting 32 ornaments of Annexure D-1 or 4 ornaments of Annexure D-II. Smt. Savitri Devi, wife of Shri Om Parkash Jindal, and Smt. Sachita Devi, his daughter-in-law, were present on June 6, 1974 at the premises when the same were searched and inventory (Annexure B-II) had been prepared respecting the ornaments worn by them. So, verification of the statement of Shri Om Parkash Jindal respecting 32 ornaments of Annexure D-1 and 4 ornaments of Annexure D-II could be obtained from them. Shri Prithvi Raj Jindal was present at the premises on July 12, 1974 and verification of the aforesaid statement of Shri Om Parkash Jindal could be secured from him on that day. Therefore, there are no grounds to maintain that the authorised officers had any necessity of examination of Bajrang Lal and Chuni Lal for coming to a finding that there were reasons to believe that the aforesaid 32 ornaments of Annexure D-1 or 4 ornaments of Annexure D-II were undisclosed property. Further, there is nothing in the Act or the Rules to show that the authorised officer can keep the property, found on search, under his seal and retain the same for an indefinite period by having recourse to sub-section (3) of section 132. He may attach the said property under sub-section (3) of section 132 if so permitted by the provisions contained therein and retain the same for a reasonable period. When the provisions of rule 112-A of the Rules require the Income-tax Officer to issue requisite notice within 15 days and provisions contained in sub-section (5) of section 132 require the Income-tax Officer to record necessary order within 90 days from the date of the seizure of the ornaments etc. it can be justly said that the said reasonable period during which the ornaments etc. can be retained, would not ordinarily exceed 90 days from the date of attachment of the same. Attachment of ornaments etc. under sub-section (3) of section 132 would necessarily deprive a citizen of use of the same.

Om Parkash Jindal etc. v. The Union of India etc. (M. L. Verma, J.)

as he pleases and thereby it is infringement of his liberty to the free use of the said ornaments. Therefore, it is desirable that the authorised officer should decide the matter one way or the other and lift the attachment, effected by him under sub-section (3) of section 132, at the earliest. In the case in hand, the ornaments etc. were attached on June 6, 1974. No decision had been taken to seize the same for about six months, i.e., till December 3, 1974 when the present writ petition was filed. Therefore, in these circumstances, continuation of the attachment allegedly made by the authorised officers of the ornaments etc., of Annexures D-1, D-II, D-III and D-IV, especially when I am of the view that the same was not sanctioned by the provisions of sub-section (3) of section 132, will not be permissible. It is indisputable that this Court can, while exercising the powers under Article 226 of the Constitution, mould the remedy as it suits to the facts of a particular case. So, when it has been found that the attachment of ornaments etc., referred to above, was not countenanced by the provisions of sub-section (3) of section 132, and had been directed by the authorised officers in the error of judgment, the same has to be lifted. But at the same time the powers of the authorised officers to seize the same, if they have material with them to justify that action, cannot be taken away.

(14) For the reasons recorded above, I direct that the authorised officers would remove the seals and locks of the wooden almirah and also of the boxes contained therein and restore the ornaments, jewellery etc. of Annexures D-I, D-II, D-III and D-IV to Shri Om Parkash Jindal petitioner within 10 days from today. They may, if so advised by law, collect material and decide on the basis of it and the material already collected by them, within the said 10 days, as to whether they have reason to believe that the ornaments, jewellery etc. of the aforesaid four Annexures are undisclosed property. If they find it so, they would be at liberty to proceed in the matter according to law. It is added for the sake of clarity that if the authorised officers seize the aforesaid ornaments under clause (iii) of sub-section (1) of section 132, within the aforesaid 10 days, action would be taken under sub-section (5) of section 132 and the direction to restore the aforesaid ornaments, stated above, would lapse. So, the writ petition is allowed only to the extent, referred to above, but in the peculiar circumstances of the case the parties will bear their own costs.

H. S. B.