(1994) 08 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No. 441 of 1988

Bajranglal APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 09-08-1994

Acts Referred:

Income Tax Act, 1961 — Section 120, 132, 132A, 132B, 230A

Citation : (1994) 2 RLW 594 : (1994) 2 WLN 139

Hon'ble Judges : P.K. Palli, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Palli, J.—On 29.7.1987 the Customs authorities raided the residence of the petitioner and took the search of his house. Ornanments i.e. Silver weighing 61.775 Kgs. and gold ornaments weighing 2150 gms. were seized vide Panchnama Annex. 1. The above said ornaments were seized on the gound that the petitioner had violated Sections 16 and 71 of the Gold (Control) Act, 1968. It is said in the petition that till date no action has been taken by the respondents nor any case has been made out after investigation and these articles are lying with the respondents.

2. The petitioner has averred that these ornaments are duly entered in the regularly maintained books with the slips of the owners and these are pledged with the petitioner and his son and the property belongs to the debtors. On 3.2.1988 a notice was served by the petitioner for the release of the property. This is Annex. 2. It is further stated that on 8.9.1987, respondent No. 4 who is the Commissioner of Income Tax issued a notice which is Annex. 3. The petitioner prays that the seizure of the ornaments by invoking the power u/s 66 of the above said Act is illegal and without jurisdiction and there is no violation on the pail of the petitioner of any provisions particular Sections 16 and 71 of the Act. The petitioner says that the seized articles do not belong to him and are only pledged by certain persons as security and thus not liable for confiscation or

seizure. No notice as required u/s 79 of the Act was given and no proceedings are stated to be pending. The detention of these articles for over six months was illegal. No further action under any provisions of the Act including Section 79 has been taken against the petitioner by the respondents. The order passed by the respondent No. 4 was bad in law inasmuch as the seized good already stood disclosed and were with the Customs authorities, therefore, u/s 132A of the Income Tax Act, the respondent No. 4 had no authority or jurisdiction to issue notice Annex. 3. The Customs authorities were not supposed to hand-over the seized articles to the Income Tax authorities.

3. In the reply filed on behalf of the respondents it is said that the ornaments were recovered from the personal boxes of the family members and silver ornaments and coins were recovered in gunny bags hidden in 3 earthen cavities and since the weight of the pawned gold ornaments was more than 2000 gms. for which a declaration u/s 16(3) of the Gold (Control) Act, 1968 was not filed therefore they were seized u/s 66(1) for violation of the provisions of Section 16(3) of the Act. It is further said that the silver ornaments weighing 96.275 kgs. were also taken into possession for handing over the same to the Income Tax authorities for necessary action. The ornaments were seized under the reasonable belief that the petitioner had violated the provisions of Section 16 of the Gold (Control) Act, 1968 and the property was liable for confiscation u/s 71 of the said Act. The respondents are further stated in the reply that on 20.1.1988 an order was passed by the respondent No. 2 who is the Collector Customs and Central Excise releasing the gold ornaments and the petitioner was requested to ascertain the net weight of the gold ornaments and to receive the same but he did not turn up and the staff of Income Tax department took over the gold ornaments on 29.2.1988 u/s 132A of the Income Tax Act, 1961. The silver ornaments had already been taken by the Income Tax authorities on 12.9.1987 under the same provisions. On examination of the seizure report it was found that the gold ornaments were not liable to confiscation under proviso to Section 17 as the same were pledged with by the actual owners and the petitioner had not committed any offence under the Gold (Control) Act and, therefore, the ornaments were ordered to be released on 24.2.1988. The silver ornaments and coins are with the Income Tax authorities and since the petitioner failed to take over the gold ornaments these have also been taken possession of by the Income Tax department.

4. In view of the reply submitted by the respondents, learned Counsel appearing for the petitioner has no grievance left as against the Customs authorities since they have made an order releasing the goods and also taken care to inform the petitioner to take away the same but in the mean-time the goods have been taken away by the Income Tax authorities and that the challenge is now made to the authority of the respondent No. 4 and the notice issued in this respect is Annex. 3. This notice Annex. 3 purports to have been issued u/s 132A of the Income Tax Act, 1961 and is dated 8.9.1987.

5. Mr. K.N. Joshi, learned Counsel appearing for the petitioner, argues that the notices was not in accordance with Section 132A read with Rule 112 D as the contents of the notice neither disclosed the name of the authorized person and has further stressed that whether the goods lying with the Customs authorities can be taken over by the Income Tax authorities and in such a situation and whether the power was rightly invoked u/s 132A of the Income Tax Act. It is stressed that the goods were already in the custody of the Customs department and thus, no action for search and seizure can be taken. The articles thus could not be handed over by the Customs authorities and the Income Tax authorities transgressed their power and jurisdiction to take away these articles where after the impugned notice was issued.

6. Mr. D.S. Shishodia, learned Counsel appearing for the respondent No. 4 has submitted in the reply that the notice was self explanatory and records reasons for its issuance and that Section 132A lays down the total procedure and the scope has been widened after the amendment made in the year 1975 and there was no violation of any provisions of the Income Tax Act or any rules, and thus, the writ petition is liable to be dismissed.

7. On a perusal of Annex. 3 I find that the same is issued under the authority and signatures of respondent No. 4 and is addressed to the Deputy Director of Inspection Shri S.N. Soni and Assistant Director of Inspection and some other names are given against the column underlined Assisan Director of Inspection and Income Tax Officer. On the next page it says that the asset taken into custody by Shri Kishan Singh, Dy. Collector (AS) Customs and Central Excise Collector and then there is another name which is not legible but there is authorisation to the Deputy Director of Inspection/Inspecting Assistant Commissioner, of income tax/Assistant Director of Inspection/income tax Officer requiring the said officer or authority to deliver to you the books of account and other documents or assets as aforesaid. This document is in the shape of a cyclostyled proforma and against blank columns the names of the officers and designations incorporated. It would be quite useful to reproduce hereunder these two sections in order to appreciate the matter in controversy. Section 132 of the Income Tax Act, 1961 reads as under:

132. Search and Seizure.-(1) Where the Director General or Director or the Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as may be empowered in this behalf by the Board, in consequence of information in his possession has reason to believe that-(a) any person to whom a summons Under Sub-section (1) of Section 37 of the Indian Income- tax Act, 1922 (11 of 1922), or Under Sub-section (1) of Section 131 of this Act, or a notice Under Sub-section (4) of Section 22 of the Indian Income Tax Act, 1922, or Under Sub-section (1) of Section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice or (b) any person to whom a

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

(c) any person is in possession of any money, bullion, jewelry or other valuable article or thing and such money, bullion, jewelry or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income Tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property), then,

(A) the Director General or Director or the Chief Commissioner or Commissioner, as the case may be, may authorise any Deputy Director, Deputy Commissioner, Assistant Director, Assistant Commissioner or Income Tax Officer, or

(B) such Deputy Director or Deputy Commissioner, as the case may be, may authorize any Assistant Director, Assistant Commissioner or Income Tax Officer,

(the officer so authorized in all cases being hereinafter referred to as the authorized officer) to

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

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

(ii-a) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

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

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

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

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any Chief Commissioner or Commissioner, but such Chief Commissioner or Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in Section 120, it shall be competent for him to exercise the powers under this Sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the Chief Commissioner or Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue:

provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii).

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

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

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

Explanation-For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this Sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (Hi) of Sub-section (1).

4 The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of

account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act.

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

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

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

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

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

5 Where any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) is seized Under Sub-section (1) or Sub-section (1A), the Income Tax officer, after affording a reasonable opportunity to the person concerned of being heard and making such inquiry as may be prescribed, shall, within one hundred and twenty days of the seizure, make an order, with the previous approval of the Deputy Commissioner,

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

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

(ii-a) determining the amount of interest payable and the amount of penalty impossible in accordace with the provisions of the Indian Income Tax Act, 1922 (11 of 1922), or this Act, as if the order had been the order of regular assessment;

(iii) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (a) of Sub-section (1) of Section 230A in respect of which such person is in default or is deemed to be in default, and retain in his custody such assets or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (ii), (ii-a) and (Hi) 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 and may also determine the interest or penalty, if any, payable or impossible accordingly:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) The Board may make rules in relation to any search or seizure under this

section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer

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

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

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

Explanation 2.-In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indain Income Tax Act, 1922 (11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under thin Act which may be commenced ater such date in respect of any year.

8. Section ton 132A deals with the powers to requisition books of account and it reads as under:

132A. Powers to requisition books of account, etc.-(1) Where the Director General or Director or the Chief Commissioner or 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 (11 of 1922) or under subsection (1) of Section 131 of this Act, or a notice Under Sub-section (4) of Section 22 of the Indian Income Tax Act 1922, or Under Sub-section (1) of Section 142 of this Act was issued to produced 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 and the said books of account or other documents have been taken into custody by any officer or authority under any other law for the time being in force, or (b) any books of account or other documents will be useful for, or relevant to, any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act and 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, such books of account or other documents on the return of such books of account or other documents by any officer or authority by whom or which such books of account or other documents have been taken into custody under any other law for the time being in force, or

(c) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of the Indian Income Tax Act. 1922 (11 of 1922), or this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force,

then, the Director General or Director or the Chief Commissioner or Commissioner may authorise any Deputy Director, Deputy Commissioner, Assistant Director, Assistant Commissioner or Income Tax Officer (hereafter in this section and in Sub-section (2) of Section 278D referred to as the requisitioning officer) to require the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

(2) On a requisition being made Under Sub-section (1), the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, of that Sub-section shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to cetain the same in his or its custody.

(3) Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of Sub-sections (4A) to (14) (both inclusive) of Section 132 and Section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized Under Sub-section (1) of Section 132 by the requisitioning officer from the custody of the person referred to in clause (a) or Clause (b) or claluse (c), as the case may be, of Sub-section (1) of this section and as if for the words "the authorised officer" occurring in any of the aforesaid Sub-sections (4A) to (14) the words "the requisitioning officer" were substituted.

9. Learned Counsel appearing for the petitioner has referred to three decisions to support his contention: MANJU TANDON AND ANOTHER Vs. T. N. KAPOOR, DY. SUPDT. OF POLICE, AND OTHERS., : Ganga Prasad Maheshwari and Others Vs. Commissioner of Income Tax, ; Commissioner of Income Tax, Haryana, Himachal Pradesh and Delhi and Others Vs. Tarsem Kumar and Another,

10. Manju Tandon (supra), a Division Bench judgment of the Allahabad High Court deals with the oranmanents seized by the C.B.I. and later requisitioned by the Commissioner of Income Tax and the conditions under which the Commissioner can requisition such a property u/s 132 (5) of the Income Tax Act. It was held that u/s 132A, the jurisdiction of the Commissioner to authorise an officer to requisition assets which have been taken into custody by an officer or authority under any other law and thereafter to proceed with the assets in the manner proscribed under Sections 132 and 132B arises only where the Commissioner has in consequence of information in his possession reason to believe that such assets represent either wholly or partly income or property has not been disclosed for the purses of Income Tax Act by a person from whose possession and control such assets have been taken into custody by the officer or authority from whom it was requitioned. This authority deals with the points pressed by the learned Counsel in respect of authorisation.

11. Ganga Prasad Maheshwari''s case (supra) which is again a Division Bench decision of the Allahabad High Court deals with the warrants issued u/s 132A. It was held that under the Act of 1922 the only circumstance in which the commissioner could authorise search of any building or place u/s 37(2) was when the had reason to believe that books of account or other documents which may be found would be useful in proceedings pending under the Act. This section was replaced by Section 132 of the Act of 1961. Section 132 was amended in the year 1964 and then in 1965 and in 1975 and in the year 1975 Section 132A was added which widened the scope of the provisions. The widening was, however, in respect of items in respect of which authorisation could be issued to seize them. It did not expand the power in respect of the ground or material on which it could be exercised. The conditions precedent for action u/s 132 or Section 132A are (i) information in the possession of the Director of Inspection or Commissioner; (ii) in consequence of which he should have reason to believe: (iii) that, any person is in possession of any money, bullion, jewellery or other valuable article or thing: (iv) and such jewellery, bullion, etc. must represent either wholly or partly undisclosed income. If any of these conditions is not fulfilled the officer concerned can have no jurisdiction to proceed. After analyzing these provisions, it was further held as under:

The mere fact that an authorisation has been issued in form 45 does not amount to having a reason to believe that the person against whom it was being issued was in the possession of jewellery or bullion which represented his undisclosed income. If the mere issue of the authorisation warrant in form 45 is sufficient, then the entire purpose of Sections 132 and 132A and the provision for the formation of an opinion in consequence of the information would become redundant. Form 45 is a follow up action as a result of the formation of an opinion in the circumstances enumerated. It is the formation of the opinion and not the issuing of form 45 which is fundamental.

12. In the judgment delivered in the case of Tarsem Kumar, their Lordships were dealing with search and seizure under xxx Section 132 of the Income Tax Act. There in that case the money was in the custody of the Customs Department and it was in respect of the same money that search and seizure warrants were issued by the Income Tax department. The proceedings were held to be illegal and the Income Tax department was directed to return the money.

13. It was further held that the Income Tax authorities would not seize such amount from the Customs authorities u/s 132 of the Act and further the authorisation was illegal if issued in the name of the person who did not have the possession of the article in respect of which it was issued. In paragraph 7 their Lordships of the Supreme Court while dealing with these provisions further held that on construction of the section read with Rule 112 the words ''search'', ''possession'' and ''seizure'' have been used in the section and the rules indicate that there cannot be an order in respect of goods or moneys or papers which are in the custody of another department under legal authority.

14. After having given my thoughtful consideration to these decisions I am unable to accept the view point of the learned Counsel appearing of the petitioner. The cases considered in these decisions involved the interpretation and scope of Section 132 as it stands. However, the present case is absolutely on a different footing as the warrant of authorisation in this case which is Annex. 3 has been issued u/s 132A of the Income Tax Act, 1961. Though the column immediately before the authorisation is left blank but a reading of the warrant reveals that the officers mentioned therein have been duly authorised Instead of putting their names right in front of the dotted lines, the names appear earlier. No fault, thus, can be found in so far as the authorisation is concerned and there is no force left in the argument raised by the learned Counsel that this warrant of authorisation has to be struck down as the names of the officers is not mentioned against the authorisation. It appeals to be a case of inadvertent Commission and this omission does not in any situation makes out this warrant of authorisation as invalid.

15. In order to examine the second contention of the learned Counsel whether the Income Tax authorities were justified in issuing this warrant or not. The position has been made clear with the insertion of Section 132A under the provisions of which this warrant of authorisation has been issued. The provisions of Section 132A have been enacted and are in force with effect from October, 1975. Identical powers were vested in the authorities u/s 132 of the Act previously. There was lot of divergence of opinion amongst the various High Courts on the question whether a requisition or warrants could be issued by the Commissioner or not as in the present case. It was to clarify this proposition of law that this new section i.e. Section 132A was introduced and the power has been conferred on the officers of the department who requisitioned the property or documents from the custody of other authorities in case the conditions laid down there in the section are satisfied. Section 132A as it stands how, gives power to the requisitioning officer to rtequisition the books of account, assets and documents from the custody of the officers, court or other Governments authorities under the provision of Sub-section (1) of the section which has already been reproduced above. The Income Tax Officer authorised by the Director General or Director or Chief Commissioner or Commissioner may require the authority or court to deliver the books of account, other documents or assets which are in his custody to the requisitioning officer. The word ''court'' has not been used in this section. The argument raised by the learned Counsel had certainly carried weight in case the matter was examined under the provisions of Section 132A of the Act.

16. Tarsem Kumar (supra) is a case much nearer to the point where their Lordships of the Supreme Court, examined an identical question but under the provisions of Section 132 of the Act, 1961. In this case an amount was seized from one Tarsem Kumer by the Customs authorities and was in their custody and this amount had to be returned to Tarsem Kumar in sequence to an order of the High Court in a writ petition. Before the amount, could be returned the Income

Tax Officer served a warrant of authorisation u/s 132 of the Act on Tarsem Kumar as well as on the Customs authorities and the Income Tax authorities took possession of the amount. On a writ petition having been filed the High Court held that the Income Tax authorities could not seize the amount from the Customs authorities u/s 132 and the search and seizure warrants are liable to be quashed and the money returned; to the Customs department. Affirming the view of the High Court and after examining the meanings of the words ''search'', ''possession'' and ''seizure'' it was held that where the authority or a person had retention and custody with the legal sanction behind it, it was not the intention of the Legislature to say that he was not in possession as contemplated in Section 132. Physical possession was with the Customs authorities whereas the title was with Tarsem Kumar. It was in this situation, their Lordships of the Supreme Court held that where the exact location of the property was known to the Government it could not be said that one Government department could search any other department of the Government and seized the documents, money etc.

17. It, therefore, follows that in so far as the scope of Section 132 is concerned the power cannot be invoked for seizure of any money, which is not in possession of the person proposed to be assessed. This view was approved by the Hon''ble Supreme Court in the case of Income Tax Officer Vs. Bafna Textiles,

18. The entire controversy has, thus, put a? rest after the induction of Section 132A by the Taxation Laws (Amendment) Act, 1975 and now under this provision a warrant of authorisation can be issued by the authorising authority for the purposes of requisitioning the books of account, money etc. in the custody of other authorities. Therefore, in my opinion, in view of the position of law having been settled no fault can be found in the warrant of authorisation Annex. 3 in this case and with it falls the second limb of the argument raised by the learned Counsel.

19. In view of what has been said above the petition is wholly misconceived and is accordingly dismissed with no orders as to costs.

