

(1966) 05 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 269 and 270 of 1966

Chiranjilal Shrilal Goenka

APPELLANT

Vs

R. Prasad and Others

RESPONDENT

Date of Decision : 17-05-1966

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Defence of India Act, 1962 — Section 3, 43
Defence of India Rules, 1962 — Rule 126, 126L, 126U, 126W
Income Tax Act, 1961 — Section 121, 127, 132, 132(1), 132(5)
Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1965 — Section 8

Citation : AIR 1967 Raj 61 : (1967) RLW 415

Hon'ble Judges : D.S. Dave, C.J; Kan Singh, J

Bench : Division Bench

Advocate : A.K. Sen, P.R. Mridul, G.L. Sanghi, M. Mridul and H.K. Puri, for the Appellant; R.M. Hazarnavis, N.D. Kharkhanis, C.M. Lodha and M.M. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

1. We have before us two writ petitions under Article 226 of the Constitution by Chiranjilal Shrilal Goenka, a businessman of Bombay, who had his ancestral home at Ramgarh in the State of Rajasthan. By writ petition No. 270 of 1966, he questions the validity of an order dated 4-3-1966 passed by Income Tax Officer (Central) Section X, Bombay, u/s 132(5) of the Income Tax Act, 1961, and prays for a writ of certiorari or any other appropriate writ, order or direction. By writ petition No. 269 of 1966, he challenges the legality of a notice issued to him on 3-2-66 by the Deputy Collector of Land Customs and Central Excise. Rajasthan, Jaipur, whereby the petitioner was called upon to show cause why the gold recovered from the petitioner's premises and seized by the Excise authorities be not confiscated under Rule 126-M of the Defence of India Rules. In this behalf he prays for a writ of prohibition restraining the respondents from taking any further proceedings against him and also for ordering the release of seized gold and

ornaments to be returned to the petitioner.

2. As the two writ petitions raise some common questions of fact and law and 5 out of 10 respondents in writ petition No. 269 of 1966, also figure as respondents in the other writ petition No. 270 of 1966, it will be convenient to dispose of both the writ petitions together.

3. It is common ground between the parties that on 24-11-1965, the Income Tax authorities conducted searches at the petitioner's residence and offices at Bombay and thereafter from 1st to 13th December, 1965, searches of the petitioner's premises at Ramgarh in Rajasthan were made by the Income Tax Officers. In the course of these and other searches, which continued till January, 1966, the following articles were recovered from the various places searched :--

Date of seizure.

Nature of articles.

Place from where seized.

6/7 12.65

Gold (non-ornament) jewellery and cash.

Premises of Shri C. S. Goenka at Ramgarh (Sikar District. Raj.).

11-12-65

Jewellery ornaments and cash.

-do-

14-12-65

Jewellery ornaments and cash.

Looker No. 1397 of the Allahabad Bank Ltd., Bombay.

18-12-65

Cash of Rs. 3,125/-

333, Kalbadevi Road, Bombay-2.

19-12-65

Chemical Diamonds.

16, Waikeshwar Road Bombay-6.

20-12-65

Silver articles.

Ground-floor of 16, Waikeshwar Road Bombay-6.

21-22-25 &

27-1-66.

Documents evidencing loans advanced to various persons.

Bombay.

4. The Panchnamas were prepared by the Income Tax Officers in respect of these searches and seizures and copies thereof were supplied to the petitioner. The petitioner had also gone to Ramgarh on 1-12-65 and while he was there, he was shown an authorisation issued by the Commissioner of Income Tax (Central) Bombay, respondent No. 1, for taking the search. On subsequent dates when searches were conducted at Ramgarh, the warrant of authorisation was shown to Dhokal Singh, who was the Chowkidar at the petitioner's premises at Ramgarh. The gold and other valuables that were recovered from the petitioner's premises at Ramgarh were deposited with the State Bank of India at Jaipur. Later on, the Income Tax authorities handed over the custody of the primary gold that was recovered from the petitioner to the Excise authorities. On 18-12-1965, Shri Vanchinath, Income Tax Officer, Section X (Central), Bombay, issued notice to the petitioner under Rule 112-A of the Income Tax Rules to attend his office on 5-1-66 to explain or to produce evidence as to the nature of possession and the source of acquisition of seized assets. The petitioner was, however, not able to respond to the notice. A second notice was issued by Shri Vanchinath on 5-1-66 and he fixed 22-1-66 as the date of hearing. The petitioner was still not able to comply with the notice. He says that this was on account of his suffering from heart trouble. Some more notices were issued and dates were adjourned. It is not necessary to refer to all of them at this stage in detail. On 24-2-1966, the Income Tax Officer Shri Vanchinath reminded the petitioner of his failure to comply with the terms of the notices, issued to him under Rule 112-A (1) of the Income Tax Rules and he also informed him that if he had any explanation or evidence to produce he should do so. The petitioner, however, stated in reply to this communication that he would do so when his health would permit it. Eventually, the impugned order was passed on 4-3-1966. The Income Tax Officer determined the total value of the seized valuables u/s 132(5) of the Income Tax Act, as follows :--

(A) Gold (non-ornament) seized from the premises of Shri C. S. Goenka at Ramgarh 85617.8 grammes at the rate of Rs. 130 per 10 grammes.

. . . Rs. 11,13,031.

(B) Jewellery ornaments and cash seized from the assessee's premises at Ramgarh on 6/7th December 1968 and 11th December 1965 as per joint valuation made by the valuers on 2nd March. 1966

. . Rs. 1,36,138.

(C) Jewellery and ornaments etc., seized from the Allahabad Bank Lockers as per

the Joint Valuation done on 2-3-66.

. . Rs. 46,780.

(D) Silver articles seized from the ground-floor of 16, Walkeshwar Road on 20-12-65? 27.7 Kilos at Rs. 300 per Kg.

....Rs.8,310/-

(E) Cash seized from 333, Kalbadevi Road.

....3,125/-

(F) Amounts given by Shri C. S. Goenka to various persons as per list furnished to him along with notice under rule 112-A(1) dated 28-1-66

....4,60,515/-

Total Rs. 17,67,899/-

5. The Income Tax Officer accordingly estimated the undisclosed income from which the seized articles were acquired at the above figure and on that basis further estimated that the amount of tax on this income would work out to Rs. 14,13,443/-. As primary gold was at that time in the custody of Central Excise authorities the Income Tax Officer retained the remaining assets holding that in the circumstances no portion thereof could be released.

6. We may now briefly refer to the grounds on which the validity of the proceedings taken by the Income Tax Officer is challenged before us. The contentions raised are as follows:

1. The provisions of Section 132 of the Income Tax Act. 1961, and particularly Subsection (1) (c) thereof was violative of Article 14 of the Constitution in that this section conferred arbitrary, naked and drastic powers on the Income Tax Officers without, in any manner, providing under what circumstances this power was to be exercised. It is maintained that the law does not disclose any policy which may afford guidance to the Income Tax authorities in exercising their powers. It is further submitted that there is no provision in this section for giving any notice to the affected party to show cause against the exercise of such powers.

2. The Income Tax authorities had no jurisdiction to take any proceedings against the petitioner as, in pursuance of the gold-bond scheme sponsored by the Government of India by their Press Note dated 19-10-65, the petitioner had already made an application on 18-11-65, to the State Bank of India, Indore Branch, at Indore, whereby he made valid tender of the aforesaid gold and ornaments for the purpose of purchasing gold-bonds under the scheme, and thus the petitioner became entitled to the various immunities, concessions and exemptions mentioned in the aforesaid Press Note and the Taxation Laws (Amendment) Act. 1965. It is submitted that once the petitioner had made this tender, the Income Tax authorities were left with no jurisdiction whatsoever

either to take any search or seize his valuables in the manner they have done. Nor were they entitled to initiate any proceedings u/s 182 of the Income Tax Act and pass the impugned order on 4-3-66.

3. The first respondent, i.e., the Commissioner of Income Tax (Central), Bombay, had no jurisdiction whatsoever to issue any authorisation in favour of the Income Tax Officer to take a search of the premises at Ramgarh which fell outside his territorial jurisdiction and to seize the gold and ornaments there (i.e. at Ramgarh). The so-called authorisation, according to the petitioner, was consequently null and void and this defect vitiated the entire proceedings taken by the Income Tax Officer. It is similarly alleged that the Income Tax Officer Shri Vanchinath had no territorial jurisdiction.

4. The said searches and seizures were not conducted in accordance with the provisions of section 182 and/or in accordance with the provisions of the Code of Criminal Procedure relating to searches and seizures. It is pointed out that no reason for the said searches and seizures were recorded in writing or communicated to the petitioner.

5. The Income Tax Officers were not authorised to transfer the primary gold recovered by them to the Superintendent of Central Excise, Jaipur, and/or the Central Excise authorities at Jaipur. It is also submitted that once this transfer was effected by the Income Tax authorities the seizure made by the Income Tax authorities had lost its efficacy with the result that subsequent proceedings taken by them were without jurisdiction.

6. The respondent No. 2, Shri Vanchinath, Income Tax Officer, had made the searches without the valid approval of the Commissioner of Income Tax (Central), Bombay.

7. The authorisation issued by the Commissioner of Income-tax (Central), Bombay, had no efficacy in so far as the seizure of debts was concerned. Such debts being in the nature of choses in action were only intangible rights which could not be subject matter of a valid seizure. It is further submitted that the value of these debts amounting to Rs. 4,60,515/-could not have been taken into consideration in estimating the value of the seized assets.

8. It was the duty of the Income Tax Officer before making the impugned order to disclose to the petitioner all the grounds or materials on which he was to pass the impugned order.

7. In Writ Petition No. 269 of 1966, the position about searches conducted by the Income tax Officers and seizure of goods effected by them was reiterated and relying on the gold-bond scheme sponsored by the Government of India it was again submitted that, as the petitioner had gone to Indore on or about 18-11-65 and addressed a letter to the State Bank of Indore at Indore, informing them that he was in possession of 86118 grammes of primary gold and 12000 grammes of gold ornaments lying at his house at Ramgarh and as he had also

enclosed with that letter requisite application from duly signed by him. the proceedings taken by the Income Tax Officers were wholly without jurisdiction. It was also maintained that the making of this application immunised him against any proceedings under the Defence of India Rules relating to gold control as well. It was further pointed out that on 26-10-65, in exercise of the powers conferred under Rule 126-U of the Defence of India Rules, 1962, the Central Government had issued a notification that every person tendering gold on or after 27-10-65 as subscription for the issue of National Defence Gold Bonds, 1980, at any of the offices of the Reserve Bank or at the branches of State Bank of India and some other banks, shall be exempted from the operation of all the provisions of part XIIA (relating to Gold Control) or the Defence of India Rules in respect of such gold. The petitioner urges that in view of this order of the Government of India the Excise authorities were debarred from taking any proceedings against the petitioner under the Defence of India Rules relating to gold. The validity of the seizure of goods by the Excise authorities is further challenged on the ground that the mandatory provisions of Rule 126-L of the Defence of India Rules (Gold Control) were not complied with. It is pointed out that no proper authorisation had been issued in favour of the Superintendent of Excise for making the seizure either by the Central Government or the Administrator. It is submitted that such authorisation has to be in writing. It is next urged that the procedure prescribed under the Criminal Procedure Code was not followed by the Central Excise authorities. It was also strongly urged that no Panchnama or recovery memo was prepared by the Central Excise Officers. Indeed, according to the petitioner, there was neither a warrant nor authorisation for making any seizure under Rule 126-L of the Defence of India Rules, nor was there any seizure of the said gold or ornaments by the Excise Officers. Repeating some of the grounds taken in the other writ petition it was urged that the Income Tax authorities had no power to transfer the custody of gold to the Excise Officers. It was then urged that law did not empower the Excise Officers to seize goods which were already in possession or custody of the Income-tax Officers. In the light of this it is urged that as there was no valid seizure in accordance with Rule 126-L of the Defence of India Rules, the Excise authorities were not entitled to take any proceedings under Rule 126-M of the Defence of India Rules and it is thus maintained that the show cause notice issued to the petitioner by the Deputy Collector of Excise was bad. Without prejudice to the validity of the tender alleged to have been made by the petitioner on 18-11-65. the petitioner submits, that he had an unqualified right to make tender of gold even subsequently for getting the benefit of the gold-bond scheme and he proceeds to say that this he has done by issuing a notice to the respondents on 22-8-66. In the circumstances, he maintains that the Excise Officers cannot deprive him of the benefit of the gold bond scheme by taking, any proceedings under Rule 126-L or 126-M of the Defence of India Rules. Therefore, he prays that they should be asked to produce the gold before the State Bank so that the petitioner may be entitled to claim the immunities, concessions or exemptions arising under the gold bond scheme.

8. The writ petitions have been opposed by the respondents. It is denied by them that Section 182(5) of the Income Tax Act is violative of Article 14 of the Constitution or is otherwise invalid. They further maintain that the various searches of the petitioner's premises at Bombay and at Ramgarh were validly conducted and the goods were properly seized. They point out that there has been valid authorisation by competent authority in favour of the Income Tax Officer, who conducted the search or made the seizure of valuables in the first instance. The respondents maintain that the Excise Officer had made the seizure of prima: gold on 9th December, 1905 at Jaipur while such goods were in the custody of the Income Tax Authorities. They submit that at the request of the Superintendent of Excise, Jaipur the Income Tax Officer at whose instance the valuables were deposited with the Treasury Officer took out one of the scaled boxes and then the Excise Officer seized the same according to law and prepared a Panchanama evidencing the seizure. They proceed to say that the Excise Officer removed the seals of the Income Tax Officer on the box containing primary gold and then put his own seals thereon and then redeposited it with the Treasury Officer at Jaipur on his own account. According to the respondents just as the Income Tax Officer was properly authorised to conduct the searches at Ramgarh and to make the seizure, the Superintendent of Excise at Jaipur was duly authorised by a proper order under Rule 126-L of the Defence of India Rules to make the seizure. Again the respondents submit that an Excise Officer acting under the Defence of India Rules could validly seize the goods, if he found that there had been a contravention of the Defence of India Rules relating to Gold Control, even though earlier to that gold had come into the custody of an Income Tax Officer. As regards the application alleged to have been filed by the petitioner on 18th November, 1965 for tendering gold at the State Bank at Indore, the respondents submit that this application was a subsequent fabrication. According to them no such application was filed on 18th November, 1965 and with the connivance of some petty officials in the Bank such an application was smuggled in subsequently. In this behalf they draw attention to certain circumstances revealed in the case. They point out that though the searches of the premises of the petitioner both at Bombay and at Ramgarh in Rajasthan were conducted between the 24th November, 1965, and 13th December, 1965 for a fairly long period yet the petitioner never came forward with the story at that time that he having filed an application for tendering gold under the Gold Bonds Scheme had acquired Immunity against any proceedings whatsoever. According to the respondents if any such application were in existence by the time the searches and seizure were made the petitioner could not have kept quiet. According to the respondents even when the petitioner was called, from time to time, in pursuance of notices given to him he did not raise this plea that he had made a tender for the gold at the State Bank at Indore. The respondents further say that it was for the first time on 22nd March 1966 that he came forward with the story that he had made an application to the State Bank at Indore on 18th November, 1965 for tendering gold and gold ornaments for purchasing gold bonds under the Gold Bonds Scheme. This, the respondents point out, could not have been the

attitude of the petitioner if any application were really there in the bank by the time the gold was detected and seized by the Government Officials. This application dated 18th November, 1955 contains as its enclosure a pro forma of a proper application and this pro forma, according to the respondents, was not in vogue on 18th November, 1965 and came to be introduced much later. This according to the respondents shows that this application was brought in existence much later. This application bears an endorsement by the Senior Accountant of the Bank, Shri Vijai Vargi, who, according to the respondents, was on leave on 18th November, 1965 and was not even at Indore. On the basis of these averments, the respondents submit that the petitioner has not come before us with clean hands, and has indulged in fabrication and forgery by trying to create evidence of a tender under the Gold Bonds Scheme and therefore we should decline to entertain this writ application in exercise of our extra-ordinary jurisdiction under Article 226 of the Constitution of India. The respondents also submit that as the petitioner has an alternative remedy by way of an appeal and/or revision against the orders passed by the Income Tax Officer as well as against what might be passed by the Collector of Central Excise we should not exercise our discretion in favour of the petitioner under Article 226 of the Constitution and leave him to pursue the remedies under the Statute. We propose to refer to the several other contentions raised by the respondents in their replies while dealing with the various points arising for consideration at the appropriate places in our judgment.

9. It would be convenient to first deal with writ petition No. 270 of 1966. To start with, we may turn to the argument about the vires of section 182 of the Income Tax Act, 1961 on the ground that it is violative of Article 14 of the Constitution. Section 132 occurs in Chapter XIII of the Income Tax Act, 1961, which deals with Income Tax Authorities Section 131 of the Act defines the powers of the various Income Tax Authorities regarding discovery and production of evidence. That section reads as follows:

"131. Power regarding discovery, production of evidence etc.

1. The Income Tax Officer, Appellate Assistant Commissioner, Inspecting Assistant Commissioner and Commissioner shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (6 of 1908), when trying a suit in respect of the following matters, namely:

- (a) discovery and inspection;
- (b) enforcing the attendance of any person including any officer of a banking company and examining him on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.

2. Without prejudice to the provisions of any other law for the time being in

force. where a person to whom a summons is issue either to attend to give evidence or produce books of account or other documents at a certain place and time, intentionally omits to attend or produce the books of account or documents at the place or time, the Income Tax authority may impose upon him such fine not exceeding five hundred rupees as it thinks fit, and the fine so levied may be recovered in the manner provided in Chapter XVII-D.

3. Subject to any rules made in this behalf any authority referred to in Sub-section (1) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceedings under this Act:

Provided that an Income Tax Officer shall not-

(a) impound any books of account or other documents without recording his reasons for so doing, or

(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefor.

10. Section 182 contains the powers of the various authorities regarding search and seizure and runs as follows: 182. Search and Seizure:

(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 India 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 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 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, box, locker, safe, almirah or other receptacle for exercising the powers conferred by Clause (1) 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.

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) 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 book of account, other document, 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 the subsection.

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, or under this Act.

5. Where any money, bullion, jewellery or other valuable article or thing (hereinafter in this section and Section 132A 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 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) 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.

6. The assets retained under Sub-section (6) may be dealt with in accordance with the provisions of Section 182A.

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 (6) 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) 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 Commissioner for such retention is obtained :

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

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

10. If a person legally entitled to the books of account or other documents seized under Sub-section (1) objects for any reason to the approval given by 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 (6), he may, within thirty days of the date of such order, make an application to such authority, as may be notified in this behalf by the Central Government in the Official Gazette (hereinafter in this section referred to as the notified authority), stating therein the reasons for such objection and requesting for appropriate relief in the matter.

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

13. The provisions of the Code of Criminal Procedure, 1898 relating to searches and seizure shall apply, so far as may be, to searches and seizure under Sub-section (1).

14. The Board may make rule 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 such building or place to be searched where free ingress thereto is not available;

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

Explanation 1(tm) In computing the period of ninety days for the purposes of Sub-section (5), any period during which any proceeding under this section is stayed by an order or injunction of any Court shall be excluded.

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

11. From a perusal of Section 132, it can not be gainsaid that the powers given thereby to Income Tax Authorities are very wide and even drastic in nature, but we are not impressed by the argument that this section vests arbitrary or naked powers in the Income Tax Officers without affording them any guidance in the matter.

12. The main ground of attack challenging the vires of this section is that although the object of giving powers to an Income Tax Officer by Section 131 and Section 132 is the same, it is left to the arbitrary will of Income Tax Authorities to use drastic powers against certain persons u/s 132 and to use their

powers u/s 181 against others in similar circumstances. In our view this argument is not tenable. It is true that one of the purposes of both Sections 181 and 132 is to secure production of relevant evidence such as books of account and other documents so that the Income Tax Authorities may be properly aided in finding out the true income of a person. It is also true that the provisions of Section 182 are more stringent, but It is not correct to suggest that they operate in the same set of circumstances. An Income Tax Officer may feel in certain circumstances that the underlying purpose of Section 131 of the Act would not be achieved by the process that he might issue thereunder and therefore, Section 182 gives further powers to him so that he may go to the premises of the assessee after obtaining proper authority from the Commissioner of Income Tax to secure and obtain the necessary documents. When the Income Tax Officer believes that a particular person would not willingly produce the required documents and books of account apprehending that the production of documents might injure his interests, he may use his powers under this section. A person concerned cannot always be expected to produce the documents needed by the Income Tax Department. If to meet such a contingency, power has been conferred on Income Tax Authorities u/s 132 of the Act for making searches, then such power cannot be said to be arbitrary or naked as is sought to be made out. The law does afford guidance to the officer acting u/s 132 of the Act and it is only when a Senior Officer like the Director of Inspection or the Commissioner has reason to believe that the process that might be issued u/s 131 of the Indian Income Tax Act would not bring the desired result that he authorises the Income Tax Officer to conduct a search. Vesting of discretion for achieving certain specified purpose underlying the Act cannot in the circumstances, be said to be arbitrary as it is certainly guided by the policy underlying the section viz.. that of getting at the required information. We may mention that validity of Section 37 (2) of the Indian Income Tax Act of 1922 was challenged before the Calcutta High Court on similar grounds and the Calcutta High Court held in Surajmull Nagarmull and Others Vs. The Commissioner of Income Tax, that that section was not unreasonable or arbitrary and did not offend against any provision of the Constitution. Section 37 (2) of the Income Tax Act of 1922 was in pari materia with Section 132(1) of the Income Tax Act, 1961. The same view was taken by the Punjab High Court in Civil Writ No. 226 of 1964, Roshan Lal & Co. v. Commr., Income Tax, decided on 22-12-1964 (Punj). We respectfully agree with the view taken in the said cases and do not consider it necessary to repeat the reasons given in support of it since we adopt them. No new argument has been advanced on behalf of the petitioner in the present case. We, therefore, do not find any substance in the contention that Section 182 of the Income Tax Act is violative of Article 14 of the Constitution.

13. We may now turn to the plea raised by the petitioner that he having made an application to the State Bank of India, Indore Branch, Indore, on 18-11-66 wherein he disclosed the existence of his primary gold and other valuables lying at his house at Ramgarh, he had earned immunity against any proceedings

under the Income Tax Act. We have given our serious consideration to this aspect of the matter and we find it extremely difficult to accept, that before the searches were made at the premises of the petitioner or the gold came to be seized, he had filed the application which purports to bear the date 18-11-1966. A photostate copy of that application is available at p. 55 of the paper book filed by the respondents in D. B. Civil Writ Petition No. 269 of 1966. It runs as follows :--

"Date 18-11-65

The State Bank of Indore

Indore

Dear Sir

As I have come down to Indore to contact my clients, I learn that the Government has proclaimed a scheme of issuance of Defence Gold Bonds.

I am in possession of primary gold weighing about 86118 gms. & ornament weighing about 12,000 gms. kept at my house at Ramgarh, tehsil Sikar, district Jaipur. I want to invest the gold and ornaments in purchasing Defence Gold Bonds, so I am enclosing the required form for necessary action.

Kindly let me know the earliest convenient date on which I may tender the gold and ornaments to you.

Thanking you

Yours faithfully,

(Sd.) XX X . "

Generally it is not the practice of this Court to decide disputed questions of fact in proceedings under Article 226 of the Constitution, as for coming to the right conclusion all available evidence has to be properly appreciated but since it is the main basis of the writ application we must in the special circumstances of the case decide it on the material placed before us. It is really strange that when the searches of the petitioner's premises started, both at Bombay and at Ramgarh where he was certainly present when they so commenced, he did not raise any objection on the score that he had already made the tender of his gold by such an application and the officers there were consequently not entitled to seize it. He kept quiet for a long time even thereafter, though notices were served on him to show cause why action be not taken on the basis of the recovery of the gold. It also appears that at Ramgarh the petitioner was accompanied by Shri Y.M. Desai of his solicitor's firm Messrs Ambu Bhai & Diwanji. The explanation of the petitioner that he had not made the disclosure out of fear of one of the Income Tax Officers in the raid, Shri Jhun-Jhunwalla, cannot cut any ice. The petitioner could have easily sought intervention of authorities mightier than Shri Jhun-Jhunwalla that he be afforded protection and the application made by him to

the bank be made secure against apprehended tampering. Shri Vanchi Nath has filed an affidavit that Shri Jhunjhunwalla was not present at Ramgarh. Shri Jhunjhunwalla has stated in his affidavit that he had no illwill or animus against the petitioner.

14. Further, Bijawargi--the Senior Accountant, has inter alia, filed an affidavit that he was not present at the State Bank Indore on 18-11-65. We cannot ignore the affidavit of Bijawargi as it was he and one more undisclosed clerk who were responsible for bringing this application on the records of the Bank. There is also an application for leave by Bijawargi a photostat copy of which has been produced by the respondents in D. B Civil Writ Petition No. 269 of 1966. Its perusal shows that Bijawargi had filed the application on 17-11-65 for grant of leave from 18 11-05 to 20-11-65. Mr. Sen, learned counsel for the petitioner, points out that there appears to be some retouching on the dates "17-11-65 and "20-11-65" in this application. It is not enough to throw doubts about the correctness of the dates. There is no material before us to arrive at the conclusion that this application was presented by Vijayawargi later on to save his skin. If the petitioner had given his application to him on the 18th and if he had received it on that day, there was no reason for him to deny that fact. The Manager of the Bank has also stated that Bijawargi was on leave from 18th to 20th. We are not prepared to believe that the evidence has been tampered with by the respondents. Moreover, we have no doubt that the form that was found with the application purporting to be dated 18-11-1965 was issued much later, that is. on 16-1-66. The letter of the Secretary of the Reserve Bank of India to the Commissioner of Income Tax in reply to his query made under Commissioner of income tax's letter dated 16-4-1966 makes the position clear. The Reserve Bank's letter is available at page 61 of the respondent's reply in D. B. Civil Writ Petition No. 270 of 1966. It says that the Reserve Bank had referred the matter to Public Debt Office, Bombay, and it is learnt that the form enclosed to the Government Notification dated 19th October, 1965 (as amended upto 19th November, 1965) was received by them from the Government Press on 15th January, 1966. The form found with the disputed application, according to the affidavit of respondents Nos. 1 to 4, is the amended form which could not have been available on 18-11-65. Learned counsel for the petitioner has tried to explain this by saying that in the first instance the petitioner filed the old form but as later on the form was amended and he wanted to keep his tender up-to-date, he submitted the new form after it was released to subscribers. We are not satisfied that more than one form was filed by the petitioner with the Bank. The petitioner does not say that he had sent the 2nd form with any application. It is not believable how he could send the 2nd form without any forwarding letter and how he could dispense with the necessity of obtaining a receipt from the bank about its submission. The explanation offered by the petitioner appears to be false and is ridiculous. The respondents have further produced one cheque for a substantial amount of Rupees Four Lacs and odd, (2) a money order receipt, and (3) a postal acknowledgment receipt of a parcel bearing the date 18-11-65.

which according to them bear signatures of the petitioner, for showing that the petitioner was at Bombay on that date and not at Indore. An entry from the diary of the petitioner showing that he had booked a telephone trunk call on 18-11-65 at Bombay has also been produced. The learned counsel for the petitioner has, however, tried to explain all these. He submits that the petitioner had left certain signed cheques to be filled in by his employees as and when necessary, earlier to his leaving Bombay and the cheque in question was made use of during his absence. As regards the money order receipt and the postal acknowledgment form, it is pointed out that the originals have not been produced and on the basis of the photostat copies the petitioner was unable to say that they bore his signatures. Similarly, as regards the entry about the trunk telephone call, it is submitted that this could have been booked in his name by some of his employees or family member and entered in the diary which was kept in his name, We cannot give much importance to entries about trunk telephones but we cannot ignore the photostat and certified copies of money order receipts and acknowledgment forms. Prima facie they show the petitioner's presence at Bombay on 18-11-65. We do not think that the postal authorities would oblige the respondents by forging such receipts within a short time.

15. We ought to mention that the petitioner has also placed on record a photostat copy of a letter dated 14-3-1966 received by his solicitor Ambu Bhai Diwanji from the Agent, State Bank of Indore wherein the Agent has stated that the petitioner had made the application on 18-11-65 as mentioned in solicitor's letter to which Agent was replying. That letter is as follows :--

"State Bank of Indore

Indore City 14th March 1966

23rd Phalguna 1887 (Saka)

Ambubhai & Diwanji

Solicitors & Notary

Lentin Chamber

Dalai Street,

Fort,

BOMBAY

Dear Sir

With reference to your letter dated 10th March 1966 it is correct that your clients had made the application as mentioned therein, but in view of the circumstances referred by you in the said letter we are not in a position to do anything. We can only advice your client to make his own arrangements for tendering gold to us.

Yours faithfully

(Sd.) XXX

Agent."

The letter dated 10th March, 1966 to which the Agent's letter is a reply, has not been placed before us. This letter of the Agent is hardly sufficient for showing that the petitioner made the application really on 18-11-66 as it purports to have been so made. When the Agent was writing he was only referring to the date actually appearing on that application but he did not mean to say that it was in fact presented on that date. It is nobody's case that the Agent had gone into the question of the genuineness of the application or that he was personally aware of its presentation. He appears to be stating what was just appearing in his records. If the petitioner wanted to derive any help from this then an affidavit of the Agent should have been got filed. This letter, to our mind, has no evidentiary value.

16. As we have already observed, it is not the practice of this Court to decide questions of fact in exercise of its extraordinary jurisdiction but still we have examined the evidence of both the parties. From what has been placed before us, the petitioner has not been able to satisfy us by unimpeachable evidence that he had usually made the application on 18-11-66. On the contrary the material placed by the respondents on record goes to show that the application and form were smuggled in the Bank records long after the seizure of the property. The application was ante-dated to create evidence in favour of the petitioner but it did not strike him that the form which he was presenting therewith was of a later date and thus the trick sought to be played by the petitioner stands exposed.

17. It may be pointed out that there is yet another suspicious circumstance for which the petitioner has not given any explanation. Ramgarh is a place in Sikar District and there are branches of the State Bank at much nearer place, like, Jaipur, Bikaner and Jodhpur. We fail to understand why the petitioner thought of going to much farther place like Indore. Journey from Ramgarh to Jaipur should hardly take a few hours.

It may be further observed that even if the petitioner had presented the application on 18-11-65, it could not be taken as a valid tender of gold. This application embodied in the letter dated 18-11-66 has already been reproduced by us above. It only says that the petitioner was in possession of primary gold and ornaments, weight of which was also given therein, and that they were kept at his house at Ramgarh, Tehsil Sikar, district Jaipur. It further recites that the petitioner wanted to invest the gold in purchasing Defence Gold Bonds and that he was enclosing the required form for necessary action. We may reproduce the following words even at the risk of repetition :--

" I want to invest the gold and ornaments in purchasing Defence Gold Bonds, to I am enclosing the required form for necessary Action.

Kindly let me know the earliest convenient date on which I may tender the gold and ornaments to you."

This was nothing but at best, an intention to make a tender but by no stretch of reasoning could this letter be regarded as tender of gold itself. Mr. Sen contended that the various provisions relating to exemption on the basis of tender did not lay down any particular procedure for tender and as it was not convenient to carry gold from a distant place this application dated 18-11-66 should itself be taken to be a valid tender. We cannot bring ourselves to accept this submission. The Notification of the Government of India No. F. 4 (29) W & M/66 dated the 19th October, 1966, shows that it is the actual tender of gold, that is contemplated as a valid tender. Clause 10 of this notification lays down that applications should be accompanied by the tender of gold. Clause 11 provides that a provisional receipt for the gold tendered will be given by the receiving office, and after the gold has been assayed, a final receipt of the gold accepted in payment for the Bonds would be given at the time of the delivery of the Bonds. The form that is Appended to this Notification also indicates that the gold had to accompany the tender. The words "I/We. herewith tender . . . (particulars of the gold are to be mentioned after the word tender)" occurring in the prescribed form are pregnant with meaning. The words herewith tender show that it is the gold that has to be tendered. The application dated 18-11-66 can that hardly amount to a tender of gold delivered" as contemplated by the aforesaid notification of the Government of India.

18. We may now turn to the statutory provisions about exemption that may be earned as a result of a valid tender, the material portion of section 8 of the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1965, runs as under:--

" Section 8(1) Where a person who has acquired any gold out of his Income which has not been disclosed by him for the purposes of the Indian Income Tax Act, 1962, or the Income Tax Act, 1961, or the Excess Profits-Tax Act, 1940, or the Business Profits Tax Act, 1947, or the Super Profit Tax Act, 1963, or the Companies (Profits) Surtax Act, 1964, tenders such gold as subscription for the National Defence Gold Bonds, 1980, prior to the detection of such income by the Income Tax Officer or the seizure of such gold under any law for the time being in force, such income shall, notwithstanding anything contained in the said Acts, not be included in his income, profits or gains chargeable to tax under the said Acts in an assessment or re-assessment for any assessment year made under the said Acts on or after the 20th day of October, 1965."

A perusal of this section shows that exemption from tax in certain cases of undisclosed income can be earned only when such gold is tendered. The words tenders such gold as subscription for the National Defence Gold Bonds, 1980" show that it is the actual tender of gold that can result in any exemption and not otherwise. Apart from this the gold has to be tendered prior to the detection of such Income by the Income Tax Officer or the seizure of such gold under any law

for the time being In force. Thus, there being no tender of gold prior to the detection, search or seizure of gold by the Income Tax Authorities, section 8 cannot help the petitioner in earning the exemption.

19. We may now turn to Rule 126-U of the Defence of India Rules, 1962, and the Notification issued thereunder with a view to seeing whether they contemplate the actual ten-Bering of gold. Rule 126-U of the Defence of India Rules runs as under :--

Power to exempt--Whereon the recommendation of the Administrator or otherwise the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by order and subject to such conditions, if any, as it may specify in the order-

(a) exempt any dealer or any refiner or any other person from the operation of all or any of the provisions of this Part; and

(b) as often as may be, revoke any such order and again subject, by order any dealer or any refiner or any other person to the operation of such provisions."

Notification issued thereunder is as follows :--

"Published in Part II Section 8 (ii) of the Gazette of India Extraordinary dated the 26-11-1965.

Government of India

Ministry of Finance

(Department of Revenue)

ORDER

New Delhi, the 26th Oct. 1965. In exercise of the powers conferred by Rule 126-U of the Defence of India Rules, 1962 the Central Government being of the opinion that it Is necessary and expedient in the public interest so to do, hereby exempts evrv person tendering gold on or after the 27th October. 1966 at:

(i) the offices of the Reserve Bank of India at Bangalore, Bombay, Calcutta, Madras, Nagpur and New Delhi.

(ii) The branches of the subsidiary banks of the State Bank of India conducting Government treasury business, and

(iii) the branches of the State Bank of India at other places in India,

as subscription for the issue of the National Defence Gold Bonds, 1980, from the operation of all the Provisions of Part XII-A (relating to Gold Control) of the said Rules, in respect of such gold.

Sd. B.N. Banerji,

Assistant Secretary to the

Government of India."

A perusal of the Notification unmistakably shows that it is only the tender of gold at any of the Banks indicated therein as subscription for the issue of the National Defence Gold Bonds 1980 that will save the person concerned from the operation of the provisions of the Defence of India Rules relating to the Gold Control.

20. In the present case, therefore, it cannot be said that the petitioner has tendered gold for subscription to the gold bonds. What the law contemplates is the tender of gold itself and not mere disclosure of gold. We are, therefore, unable to hold that the jurisdiction of the Income Tax Authorities or for that matter that of the Excise Authorities to take proceedings under the Indian Income Tax Act and the Defence of India Rules respectively has been ousted on account of any tender of gold made by the petitioner by virtue of his application dated 18th November, 1965. This is apart from the question that such tender has to be made, to earn immunity against taxation prior to the seizure of the gold or the detection of undisclosed income. We have perused also the copy of the Press Note issued by the Government of India for sponsoring the gold bonds. The Press Note is available at page 13 of the Paper Book in D. B. Civil Writ No. 270 of 1966 filed by the petitioner. The Press Note too contemplates the actual tender of gold though we may make it clear that for interpreting statutory provisions Press Notes are hardly helpful.

21. We may now deal with the plea about the jurisdiction of the Commissioner of Income Tax (Central) Bombay to issue the authorisation in favour of the Income Tax Officer to take a search of the premises of the petitioner at Ramgarh which the learned counsel for the petitioner contends fell outside the territorial jurisdiction of the Commissioner and accordingly he had no power to issue the authorisation. Section 121 of the Income Tax Act, 1961, provides that the Commissioners shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of incomes or of such cases or classes of cases as the Board may direct. This section corresponds to Section 6(2) of the Income Tax Act, 1922, which ran as under :--

"Section 5(2). The Central Government may appoint as many Commissioners of Income Tax as it thinks fit and they shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of incomes or of such cases or classes of cases as the Central Board of Revenue may direct, and where such directions have assigned to two or more Commissioners of Income Tax, the same area or the same persons or classes of persons or the same Income or classes of incomes or the same cases or classes of cases, they shall have concurrent jurisdiction subject to any orders which the Central Board of Revenue may make for the distribution and allocation of work to be performed."

22. It will be seen that the present Section 121 is almost identical with the old Section 6 (2). Section 297 of the Income Tax Act, 1961, by which the Indian

Income Tax Act, 1922, was repealed saved the notifications or orders or rules issued under any provision of the repealed Act and they will be deemed to have been issued under the corresponding provisions of the new Act and shall continue in force accordingly. Section 121 of the new Act or for that matter Section 5 (2) of the old Act contemplates that the Commissioner may be authorised to perform the functions in respect of areas or such persons or classes of persons or of such incomes or classes of Income or of such cases or classes of cases as the Board may direct.

23. The respondents have placed before us a copy of order No. 56 (1) IT/58 of the Central Board of Revenue dated 16-7-1968, whereby the petitioner's case was assigned to the Commissioner of Income Tax (Central) Bombay. The relevant portion of that order runs as follows :--

"ORDER

Under Sub-section (8) of Section 6 of the Indian Income Tax Act, 1922 (XI of 1922), the Central Board of Revenue hereby assigns the following further cases to the Commissioner of Income Tax (Central) Bombay, namely :--

S. No.

Name

Address:

33

Shri Chiranjilal Shrilal

C/o M/s. Samnarain Chiranjilal, 19-21, Vithal Wadi, Bombay.

34

Shri Ramnarain Shrilal

-do-

35

Bai Bhagwandevi Chiranjilal

-do-

36

Bai Kamla Bai Ramnarain

-do-

37

Shri Mahaveer Prasad Ramkumar

C/o. M/s. Mahabir Prasad & Co., 47-51, Kalbadevi Road, Bombay.

Shri Shrilal Goenka

Ramgadh, Jaipur. Sd. K B Deb, Under Secretary Central Board of Revenue.

24. It appears from the affidavit of Shri Vanchi Nath. Income Tax Officer. Section X (Central) Bombay dated 11th May. 1966 that this case was entrusted by the Commissioner to the Income Tax Officer, Section VII (Central) Bombay in pursuance of the above notification of the Central Board of Revenue. A copy of the memo of transfer Ex. A-3 has also been placed on the record. According to Shri Vanchi Nath's affidavit, the Commissioner of Income Tax (Central), Bombay transferred the case from time to time from one Income Tax Officer to another under him for administrative convenience and finally it came to be assigned to the charge of Income Tax Officer (Central) Section X, Bombay. A perusal of these orders as also the previous orders Annexures A-1 and A-2, annexed to Shri Vanchi Nath's affidavit dated 11th May, 1966, leave no doubt in our mind that the case of the petitioner was first entrusted to the Commissioner of Income Tax (Central) Bombay who then transferred it to his subordinate Income Tax Officers and it eventually came to the charge of the Income Tax Officer (Central), Section X, Bombay. A perusal of explanation to Section 127 of the Income Tax Act which deals with the incidents of transfer shows that the word "case" in relation to any person whose name is specified in any order or direction issued u/s 121 shall mean all proceedings under the Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year. Similarly. Explanation II to Section 182, which we have already reproduced in the earlier part of our judgment shows that the word "proceeding" means any proceeding in respect of any year whether under the Indian Income Tax Act, 1922 or the new Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year. These provisions make it abundantly clear that once the Commissioner or the Income Tax Officer acquires jurisdiction in respect of any case then they will be competent to exercise powers u/s 132 of the Income Tax Act even in respect of subsequent years, concerning the particular person whose case is entrusted to them. The jurisdiction based on the entrustment of specified cases or specified persons cannot be said to be territorial in character According to Section 4 of the Income Tax Act. 1961, which is the charging section, Income Tax is to be charged for any assessment year in respect of the total income of the previous year or years of the person concerned. Therefore, the Income Tax Officer, who has to deal with the case or cases of a particular assessee will be competent to exercise his jurisdiction in assessing the total income of that person wherever the income may have accrued or been received in the country. Powers u/s 131 or for that matter u/s

132 of the Income Tax Act are incidental to the exercise of the jurisdiction to assess the total income of a person and, therefore, the processes of Income-tax Authorities under Sections 131 or 132 of the Act cannot be limited to any particular area specially when the jurisdiction is not exercised on the basis of area, but on the basis of the entrustment of any case to the Income Tax Authorities in accordance with Section 121 of the Income Tax Act.

25. Shri Sen, learned counsel for the petitioner, invited our attention to notification No. 20 (F. No. 35/1/63-IT) issued by the Central Board of Revenue defining the jurisdiction of the Commissioners of Income Tax. This notification is available at page 69 of the Paper Book of the Rejoinder (Writ No. 269) by the petitioner. He invited our attention to the fact that this notification was issued in supersession of previous notifications. He particularly invited our attention to serial No. 6, whereunder the Commissioner of Income Tax (Central) Bombay, has been assigned jurisdiction over central Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 18, 14 and Central Circles II-C and II-D at Bombay. From this Shri Sen argued that the jurisdiction of the Commissioner of Income Tax (Central) Bombay is now territorial and in particular emphasises the words " at Bombay ". We may note here that we have not been told by any of the learned counsel as to how these sections and circles are fixed. Even so, we are unable to construe this notification to mean that specified cases already entrusted to the Commissioner or the Income Tax Officers, subordinate to him, could not thereafter be dealt with by such authorities. The relevant portion of the notification is reproduced below for appreciating this argument properly :--

"No. 20 (F. No. 55/1/63-IT) : In exercise of the powers conferred by Sub-section (1) of Section 121 of Income Tax Act, 1961 (43 of 1961) and in supersession of all previous notifications in this regard, the Central Board of Revenue hereby directs that the Commissioners of Income Tax specified in column (1) of the Schedule hereto shall perform their functions in respect of such areas or of such persons or classes of persons or of such income or classes of income or of such cases or classes of cases as are comprised in the Income Tax Circles, Wards or Districts referred to in the said Column (8);

Provided that a Commissioner of Income-tax shall also perform his functions in respect of such persons or of such cases as have been or may be assigned by the Central Board of Revenue to any Income Tax authority subordinate to him;

Provided further that a Commissioner shall not perform his functions in respect of such persons or such cases as have been or may be assigned to any Income Tax authority outside his jurisdiction.

6. (Central) Bombay Central Sections I, II, III, IV, V, VI, VIII. IX, X, XI, XII, XIII, XIV and Central Circles II-C and II-D at Bombay."

The notification does contemplate that the Commissioners shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of incomes or of such cases or classes of cases as are

comprised in the various Circles, Wards or Districts as per schedule. But the first proviso makes it quite clear that the Commissioner shall also perform his function in respect of such persons or of such cases as have been or may be assigned by the Central Board of Revenue to any Income Tax Authority subordinate to him. In other words, cases already assigned or that may be assigned in future will have to be dealt with irrespective of territorial jurisdiction. Therefore, this notification cannot cut down the jurisdiction enjoyed by the Commissioner of Income Tax (Central), Bombay, or his subordinate Income-tax Officer in respect of such persons whose cases have already been assigned. Thus, both the Commissioner of Income Tax (Central), Bombay and the Income Tax Officer subordinate to him that is, the Income Tax Officer of Central Section X, Bombay, were competent to deal with the case of the petitioner. The words "At Bombay" denote the location of office and not territorial limits. This notification, in our view, does not have the effect of limiting the jurisdiction of these authorities to any particular territory. A perusal of the order of the Central Board of Revenue dated 16-7-1953, relevant extract of which we have already reproduced, shows that cases of the petitioner both for Bombay vide Items 33 to 36. and 38 at Ramgarh, Jaipur (Rajasthan) were entrusted to the Commissioner of Income Tax (Central) Bombay.

26. Learned counsel for the petitioner has referred to DAYALDAS KUSHIRAM Vs. COMMISSIONER OF INCOME TAX, (CENTRAL) AND ANOTHER., , in support of his argument that the Commissioner of Income Tax (Central) had no territorial jurisdiction over Ramgarh and, therefore, the authorisation given by him u/s 132 of the Income Tax Act, 1961 was invalid. In the said case, Dayaldas Kushiram was carrying on business in Bombay in C Ward, Section II, and under the provisions of the Indian Income Tax Act, as it stood prior to the 1st April, 1939, the proper officer to assess him u/s 64 of the Act was the Income-tax Officer of C Ward, Section II. After the coming into force of the Income Tax Amendment Act of 1939, on 1st April, 1939, the Central Government appointed a Commissioner of Income Tax (Central) u/s 5 of the Act without reference to area. This new Commissioner of Income Tax (Central) created six sections, styled Sections I to VI with headquarters at Bombay and directed that each of the officers appointed to the said Sections, should perform their functions only in respect of the area consisting of the Bombay Presidency, Sind and Baluchistan. The case of the applicant was in due course assigned to the Commissioner of Income Tax (Central). He directed the Income Tax Officer, Section II (Central) to deal with the assessment of the applicant in respect of the years 1937-38, 1938-39, and 1939-40. The applicant thereupon brought an application u/s 46 of the Specific Relief Act, 1877, asking the Court to direct the Commissioner of Income Tax (Central) and the Income Tax Officer, Section II (Central) to forbear from exercising jurisdiction, passing orders, and continuing assessment proceedings for the said years on the ground that the Income Tax Officer, Section II (Central) had no jurisdiction having regard to the provisions of Section 64 of the Income Tax Act. It was held by the learned Judges of the Bombay High Court that the

Income Tax Officer, Section II (Central) was not the Income Tax Officer, of the area in which the applicant's place of business was situate, and as there was such an officer in existence, namely, the Officer of Ward C, Section II, It was only the latter officer who could assess the assessee. It was further held that the right to transfer cases or classes of cases u/s 6 (2) covered pending assessments, but did not cover a case in which an assessment was completed. It was also observed that Section 64 of the Income Tax Act was intended to ensure that as far as practicable, an assessee should be assessed locally, and the area to which an Income Tax Officer is appointed, must so far as the exigencies of tax collection allow, bear some reasonable relation to the place where the assessee carries on business or resides.

27. It may be observed that the view expressed by the learned Judges in the above case did not hold good even before the Indian Income Tax Act, 1961 was enacted because Section 64 of the Indian Income Tax Act, 1922, was amended and Sub-section (5) was added in 1940. Since it was held in *Dayaldas Kushiram's case* (1940) 8 ITR 189 : AIR 1940 Bom 534 that the jurisdiction of the officer of the principal place of business was not ousted, Subsection (5) was added to meet the result of the said decision.

28. The case referred to by the petitioner's learned counsel is, therefore, of no avail now, being much out of date, and it appears that a reference was made to it by inadvertence. It may be further pointed out that u/s 5, Sub-section (7-A), the Explanation was added in 1966 with reference to the decision of their Lordships of the Supreme Court in *Bidi Supply Co. Vs. The Union of India (UOI) and Others*, . According to this Explanation, "case" in relation to any person whose name was "specified in the order of transfer, included all proceedings under the Act in respect of any year which might be pending on the date of the transfer, and included all proceedings under the said Act which might be commenced after the date of the transfer in respect of any year.

29. We, therefore, do not find any substance in the contention that the Commissioner of Income Tax (Central) Bombay, had no jurisdiction to authorise the Income Tax Officer concerned to take a search of the premises of the petitioner at Ramgarh.

30. We may now examine the argument that the said searches and seizures were not conducted in accordance with the provisions of Section 188 and/or in accordance with the Code of Criminal Procedure relating to searches and seizures. The Commissioner of Income Tax Shri O.V. Kuruvilla, has filed an affidavit saying that the searches and seizures were effected in pursuance of an order made by him on the basis of the information in his possession. Shri Sen, pointed out that the affidavit has not been properly affirmed and it has not been said as to what portion the Commissioner was affirming of his own personal knowledge. He has made similar comments regarding the other affidavits. It cannot be over-emphasised that affidavits have to be filed in proper form and have to conform to the provisions of Order 19 of the Code of Civil Procedure, as

far as possible in the matter of the affirmation, but para. 4 of Shri Kuruvilles affidavit specifically recites that the searches and seizures were effected pursuant to an order made by him on the basis of the information in his possession. The respondents then placed before us the search warrant issued by the Commissioner, a copy of which has been taken on record. We may pause to observe that the petitioner has admitted in his writ petition that the authorisation was shown to him and it was also read to his Chowkidar after he had left Ramgarh. The warrant of authorisation purports to be u/s 132 of the Income Tax Act and Rule 112 (1) of the Income Tax Rules, 1962. It bears the seal of the Commissioner and inter alia recites that "whereas information has been laid before me and on the consideration thereof I have reason to believe etc". Then the portions in the cyclostyled copy which were inapplicable have been cut out and the relevant portion which was applicable and made use of, was not struck off. It recites that if a summons be issued to Shri Chiranjilal to produce or cause to be produced the books of account etc., he would not produce or cause to be produced such books of account. Then the Commissioner has signed the authorisation warrant. The warrant, to our mind, is not defective in any manner and, therefore, it is legitimate to presume that recitals therein were correct particularly when the Commissioner has filed the affidavit wherein he says that he issued the warrant on the basis of Information in his possession. Shri Sen argues that this warrant is in cyclostyle form and the Commissioner has signed it mechanically. In particular, he points out that the words " reason to believe " are also in cyclostyle. We are, however, unable to find any substance in this plea. The cyclostyled form must have been utilised because the Income Tax Rules, 1962, prescribe a form for warrant of search and seizure u/s 132 of the Income Tax Act. The form of the warrant is given in form No. 45, appended to the Rules and the cyclostyled form has consequently been made use of and appears to be a faithful copy of the statutory form. The fact that the portions which were inapplicable have been cut out shows that the Commissioner had applied his mind to this matter before he signed the warrant and Information must have been laid before him on the consideration of which he had reason to believe that the petitioner would not produce the desired documents by an ordinary process u/s 181 of the Income Tax Act. For these reasons we are unable to hold that the warrant suffers from any flaw.

31. Shri Sen next pointed out that over and above Section 182, Rule 112 of the Income Tax Rules enjoins on the Commissioner to record his reasons which, according to the petitioner, has not been done. In our view, the search warrant does contain reasons. It is obvious that the reason was that on the basis of the information placed before him, the commissioner felt that the ordinary process that might be issued against the petitioner would not result in getting at the required documents and other materials. Thus, we do not find any force in this argument either.

32. We also do not find any force in the argument that the searches or seizures made by the Income Tax Officer were rendered defective or illegal for want of

compliance with the provisions of Section 132 and/or those of the Code of Criminal Procedure relating to searches and seizures. Proper Panchanamas were prepared and as the perusal of the warrant shows the Income Tax Officer was authorised, by the warrant, to take the search of the premises known as " Shrilal Building, Ramgarh (Rajasthan)" including out-houses and garages. In view of this specific authorisation it was thereafter unnecessary for the Income Tax Officer to record further that he had reason to suspect that the relevant documents and things may be available in the house. This argument about the conducting of search loses much of its efficacy as the recovery of gold, gold ornaments and other valuables from the house of the petitioner at Ramgarh is admitted. We, therefore, reject this plea about the invalidity of searches and seizures made by the Income Tax Officer.

33. We may next consider the submission whether the Income Tax Officer was authorised to transfer the primary gold recovered by him to the Superintendent of Central Excise, Jaipur, and whether as a result of this transfer, the seizure made by the Income Tax Officer would lose its efficacy with the result that any subsequent proceedings taken by him are rendered without jurisdiction. Inviting our attention to Sub-section (5) of Section 182 of the Income Tax Act, 1961. Shri Sen argued that this sub-section enjoined on the Income Tax Officer to 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 release the remaining portion. As these assets are to be utilised for meeting any tax liability, the Income-tax Officer had no jurisdiction, according to him to part with their custody in favour of another officer. To our mind, it is true that this section casts a duty on the Income Tax Officer to retain sufficient assets with him as may be necessary for the meeting of the tax liability but this cannot be construed to mean that if any other competent officer, in exercise of his lawful powers under any other law, wants to take the goods, the Income Tax Officer will not be free to hand over those goods to him. For example, in dealing with the case of an assessee the Income Tax Officer might seize very valuable fire arms as assets from certain person and a Police Officer requires such fire-arms in connection with a case under the Arms Act. Then, to our mind, the Police Officer will not be prevented from taking possession of the contraband fire-arms from the Income Tax Officer in exercise of his lawful powers. Section 132(5) only means that the Income Tax Officer cannot, of his own accord, part with the custody of the assets seized by him, but if he has to yield to any process of law, then it cannot be said that he has done anything which may impinge on his obligation u/s 132(5) of the Income Tax Act. If, therefore, the Superintendent, Central Excise at Jaipur was competent to take possession of the gold that had been recovered by the Income Tax Officer in exercise of his powers under the Defence of India Rules, then the Income Tax Officer cannot be taken to be debarred from taking further proceedings under the Income Tax Act. The pertinent question that calls attention at this stage is about the validity of the seizure made by the Excise authorities and, therefore, here we may advert to the other writ petition as this

question is common

34. In attacking the seizure made by the Superintendent, Central Excise, Jaipur, the petitioner submits that such seizure was bad because (1) no search warrant or authorisation as required by the mandatory provisions of Rule 126-L of the Defence of India Rules was issued In favour of the Superintendent, Central Excise, by any competent authority, (2) no search or seizure had at all been conducted or effected in respect of the said gold and ornaments in accordance with or under the provisions of Rule 126-L of the Defence of India Rules on 9th December, 1965, (3) no Panchnama or recovery memo was prepared by the Central Excise Officer, and (4) that according to Rule 126-W of the Defence of India Rules, gold having already come under the control of the Government as a result of the seizure made by the Income Tax authorities, was exempt from the operation of the provisions of the Defence of India Rules relating to gold control. We may deal with each of these four points in the order in which we have mentioned them.

35. Re. 1 : Mr. Sen took us through the correspondence that was exchanged between the respondents and the petitioner and pointed out that the respondents had taken the stand that the gold had been seized from the petitioner on 6th December, 1965 and, therefore, the respondents have subsequently fabricated the recovery of 9th December, 1965. He invites our attention to the show cause notice dated 3rd February, 1960 wherein it was mentioned that on 6th December, 1965 during the search of his residential premises at village Ramgarh gold was recovered from a safe secreted in a wall. Then he draws our attention to another letter written by the Deputy Collector of Customs and Central Excise, Jaipur, dated 18th December, 1965 (at page 57 of the second paper book filed by the petitioner in writ petition No. 270 of 1966). The very first line of that letter, the learned counsel points out, makes reference to the seizure of gold dated 6th December, 1965. Lastly, the learned counsel referred us to the letter of the Deputy Collector dated 28th December, 1966 (which is available at page 58 of the second paper-book filed by the petitioner in writ petition No. 270 of 1966). In this, it was mentioned that a quantity of 85617.800 grams of primary gold was seized on 6th December, 1965 from the petitioner's residence at Ramgarh, under the Defence of India (Amendment) Rules, 1968 relating to Gold Control. The learned counsel on the basis of these letters issued by the respondents themselves submits that in fact there was no seizure by Excise Officers and further, according to the learned counsel the respondents are wrongly trying to make use of the seizure made by the Income Tax Officer as a seizure made under Rule 126-L of the Defence of India Rules. The learned counsel for the petitioner is obviously not unjustified in directing his criticism against the officers for what they had written in these letters and, therefore, naturally we had to seriously consider the question whether there was any seizure by the Superintendent, Central Excise, Jaipur, on 9th December. 1966. Three affidavits have been filed before us by the respondents in this behalf. The first affidavit is by J.P. Bhargava, Inspecting Assistant Commissioner

of Income Tax, Jaipur, who has stated that he was with the search party at Ramgarh on 6th December, 1965 and that as a result of the search made on 6th December, 1966 primary gold, gold ornaments and other valuable were recovered from the petitioner's house at Ramgarh, On 7th December, 1965, he proceeds to say, gold and gold ornaments were deposited at the Government Treasury and the necessary entries were made in the treasury records. On 9th December, 1965, according to this affidavit, he was required by Shri G.K. Mehrotra, Superintendent of Central Excise & Customs, Jaipur, to withdraw primary gold from Government Treasury. Accordingly, he withdrew that box containing primary gold. Superintendent of Central Excise Shri G.K. Mehrotra then in his presence broke open the seals and then put his own seals and prepared a Panchanama which was signed by the two officers and two motbirs. After this was done, the box having the seals of the Central Excise Department was re-deposited with the treasury at Jaipur. The second affidavit is by Shri G.K. Mehrotra, Superintendent of Central Excise and Customs, Jaipur, who has stated that he was deputed to be present at the search conducted by the officers of the Income Tax Department at Ramgarh and he proceeded to say that on 6th December, 1965 gold was recovered from the petitioner's premises in his presence and that he was also a signatory to the Panchnamas prepared by the Income Tax authorities. He then stated that on 9th December, 1965 he asked Shri J. P. Bhargava to withdraw the sealed box containing primary gold from the Government Treasury. Accordingly Shri Bhargava withdrew the box and then after breaking the seals put by the Income Tax Department, he puts his own seals on that box, he having suspected that there was violation of the Defence of India Rules relating to Gold Control in respect of the gold that was seized. After his own seals were put by him, the sealed box was put back by him with the Treasury Officer. He also stated that he had prepared a Panchnama in respect of the seizure made by him on 9th December, 1965. The third affidavit is by Shri K. P. Jain, Treasury Officer, Jaipur. He, by his affidavit, corroborated what the other two officers had said. This witness clearly stated that sealed boxes had been deposited at the treasury on 7th December, 1965 by the Income Tax Officer, that on 9th December, 1965 Shri J. P. Bhargava made an application for withdrawing one box and on the basis of that application he delivered the box to Shri Bhargava under his acknowledgment. Thereafter, according to him one box, containing the seals of Shri G. K. Mehrotra, Superintendent of the Central Excise was produced before him with a letter dated 9th December, 1965 and accordingly, he verified the seals and made the necessary entries in the treasury records and accepted the sealed box. The receipt issued by the Treasury Officer, Jaipur, on 9th December, 1965, in favour of the Superintendent, Central Excise, Jaipur, has also been produced and it is available at page 17 of the supplementary paper-book submitted by the respondents in writ petition No. 269 of 1966. A copy of the Panchnama prepared on 9th December 1965 was produced in this Court when the respondents filed their reply to the stay application. We are, therefore, satisfied that the Superintendent of Central Excise had made the seizure of gold from the custody of the Income Tax authorities on

9th December, 1966 and he prepared a Panchnama evidencing the same. It is true that the Deputy Collector in his letters was making a reference to seizure made at Ramgarh on 6th December, 1965 and not to the formal seizure that the Excise authorities made subsequently on 9th December, 1965. Learned counsel for the respondent has argued that reference to the seizure of 6th December, 1965 was made in the said letters because the petitioner was not present at the time of the seizure of 9th December, 1965 and the Deputy Collector only wanted to draw the attention of the petitioner to the gold which was recovered from his house on the 6th December 1965. According to learned counsel, reference to the seizure of 6th December, 1965 did not necessarily suggest that no seizure was made on the 9th member.

36. We may observe that this controversy would not have arisen if the Deputy Collector had also referred to the subsequent seizure of 9th December along with that of 6th December. We do not think that so many officers have conspired to forge the seizure memo of 9th December. At least the Treasury Officer had no reason to file a false affidavit.

37. Having carefully considered the matter, we are satisfied that the gold had been formally seized by the Superintendent, Central Excise, on 9th December, 1965, since he had witnessed the search conducted by the Income Tax authorities on 6th December, 1965 at Ramgarh.

38. Re. 2 and 8 : The relevant portion of Rule 126-L of the Defence of India Rules is as follows :

" Rule 126-L :-- Power of entry, search, seizure to obtain information and to take samples.

(1) Any person authorised by the Administrator by writing in this behalf may-

(a) enter and search any refinery of which the refiner, or the establishment of a dealer who is licensed under this Part;

(b) seize any gold in respect of which he suspects that any provision of this Part has been, or is being, or is about to be, contravened, along with the package, covering or receptacle, if any in which such gold is found and thereafter take all measures necessary for their safe custody;

(c) seize any books of account, return or any other document relating to any gold in respect of which he suspects that any provision of this Part has been, or is being, or is about to be, contravened and thereafter take all measures necessary for their safe custody.

(2) Any person authorised by the Central Government by writing in this behalf may-

(a) enter and search any premises, not being a refinery or establishment referred to in Sub-rule (1), vaults, lockers or any other place whether above or below ground;

(b) seize any gold in respect of which he suspects that any provision of this Part has been, or is being, or is about to be contravened, along with the package, covering or receptacle, if any, in which such gold is found and thereafter take all measures necessary for their safe custody.

3. Any officer authorised by the Administrator by writing in this behalf may search any person if that officer has reason to believe that such person has secreted about Ms person

(a) any gold in respect of which such officer suspects that any provision of this part has been or is being, or is about to be contravened.

(b) any document relating to such gold.

4. When any such officer as aforesaid is about to search the person referred to in Subrule (3), he shall, if such person so requires, take such person to the nearest gazetted officer authorised by the Administrator or to the nearest magistrate

5. Any officer authorised by the Administrator by writing in this behalf may, if he suspects that any person has contravened, or is contravening or is about to contravene any provision of this Part, detain such person and take him to a gazetted officer or to a magistrate for a search of his person.

6. A gazetted officer or magistrate before whom any person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made."

39. Learned counsel for the petitioner submits, in the first instance, that the person who has to take the search or make the seizure has to be authorised in writing either by the Administrator or by the Central Government in each individual case and no general authorisation is contemplated. In reply, our attention has been invited, in this connection, to two Government Orders by the respondents. One is notification No. F. 25/1/6S-FC. I (2) dated 7th January, 1966 issued by the Central Government. It is available at page 65 of the paper-book submitted by the respondents in case No. 269 of 1966. The relevant portion of that notification is as under :--

"NOTIFICATION

In pursuance of Sub-rule (2) of Rule 126-L of the Defence of India Rules, 1962 the Central Government hereby authorises the officers of and above the rank of officers specified below to exercise all or any of the powers conferred by that rule.

I. (1) Sub-Inspector of the Central Excise Department.

(2) Preventive Officers of the Customs-Department for the time being employed for the prevention of smuggling;

Provided that the Sub-Inspector or the Preventive Officer shall obtain the written permission of a gazetted officer of the Central Excise Department or the Customs Department as the case may be. ..."

On the basis of this notification, it is submitted that since a Superintendent of Central Excise is an officer above the rank of a Sub-Inspector this notification empowers him to make search or seizure under Rule 126-L of the Defence of India Rules. The respondents also submit that this Notification is necessarily an authorisation in writing as contemplated by Rule 126-L of the Defence of India Rules. The second notification is S O. No. 188 issued by the Gold Control Administrator and which is available in the Gazette of India dated 16th January, 1965 Part II. The relevant portion thereof is as follows :

" S. O 183. - In pursuance of the provisions of the Defence of India Rules, 1962, specified in column (3) of the table below. I, B.D. Pande Gold Control Administrator, hereby authorise the officers of and above the rank of officers specified in column (2) of the said table to exercise the powers under the provisions referred in corresponding entry in column (3) of the said table to the extent specified in column (4) thereof.

TABLE

S.No.

Officers authorised to exercise the powers

Rule of the Defence of India Rules, 1962, to which the powers have reference.

Nature of the powers.

1

2

3

4

** ** *

4

(a) Sub-Inspector of the Central Excise Department.(b) Preventive Officer of the Customs Department for the time being employed for the prevention of smuggling.(c) Any officer of the Directorate of Revenue Intelligence other than. (i) The Administrative Officer, (ii) The Hindi Officer, and Officers. (iii) The Ministerial Officers.

126L (I)

Entry into and search of any establishment of any licensed dealer or refinery and seizure of gold or packages covering and receptacles containing gold and seizure of any books of accounts return or any other document relating to gold, where the officer suspects that any provision of Part XIIA of the Defence of India Rules, 1962 has been or is being or is about to be contravened

5.

(a) Sub-Inspector of the Central Excise Department;(b) Preventive Officer of the Customs Department for the time being employed lot the prevention of smuggling:

126L (8)

Search of any person suspected to have secreted about his person any gold in respect of which it is suspected that any provision of Part XIIA of the Defence of India Rules, 1962, has been, or is being, or is about to be contravened or any document relating to such gold.

(c) Any officer of the Directorate of Revenue Intelligence, other than?(i) the Administrative Officer, (ii) The Hindi Officer, and (iii) the Ministerial Officers.

** **

40. We have, therefore, BO doubt in our mind that the Superintendent of Central Excise was properly authorised to conduct search or seizure in respect of any contraband gold in accordance with Rule 126-L of the Defence of India Rules.

41. The learned counsel also submitted that the seizure was not male in accordance with the provisions of the Criminal Procedure Code We have, however, not been shown what provisions of the Criminal Procedure Code were disregarded in this behalf. The Superintendent of Central Excise was witnessing the search of the petitioner's premises and that could have reasonably led him to believe that the gold was contraband having not been declared in accordance with the provisions of the Defence of India Rules relating to Gold Control, and he may have very well thought that this gold was liable to confiscation. If under such a belief he seized the sold as he appears to have done, then we do not think that this was contrary to any provisions of the Criminal Procedure Code When the Excise Officer was making a seizure, he was not conducting any house search but he was only making a seizure. The learned counsel vehemently contends that Rule 120-L contemplates such seizure as is pursuant to a search and not seizure generally. In this regard he points out that where seizure had to be made from the person of any body that person has to be taken to a Magistrate or an officer authorised by the Administrator or a Gazetted officer for a search of the person and it is then left to the Gazetted officer or the Magistrate to see whether the personal search should or should not be allowed Learned counsel points out that wide powers of seizure were not intended to be conferred on the Government officers. In our view, the powers of (1) entry and search and (2) seizure are two distinct powers and are not necessarily to be exercised in conjunction. There is no word "and" between clauses (a) and (b) of rule 126-L. For the sake of comparison, we may refer to rule 148 of the Defence of India Rules where power has been conferred on the District Magistrate and other Magistrates of the First Class to issue search warrants and as between similar Clauses (a) and (b) the word "and" has been used showing that power of seizure

thereunder is only in respect of things found as a result of search. Even otherwise taking the powers of search and seizure under Rule 126-L to be distinct powers. It appears to us to be in keeping with the scheme of the Rules. If that were not so, underlying purposes of this rule might very well be defeated. For example, if a smuggler runs away after dropping any gold in the open it will not be possible, according to the contention raised, for the Excise Officer to seize such gold under Rule 126-L because in that case there will be no occasion for either a house search or personal search. Therefore in our view, the two Clauses (a) and (b) are to be read disjunctively and not cumulatively for advancing the underlying purposes of the Rule. As such, there is no warrant for holding that the Superintendent of Central Excise, Jaipur was not properly authorised in making the seizure.

42. Re. 4 : Rule 126-W of the Defence of India Rules is as follows :---

" 126-W. Part not to apply to Government. Nothing in this Part shall apply to or in relation to :

(a) any gold belonging to, or in the possession or under the control of the Government.

(b) any refinery owned or occupied, or any business of a dealer carried on, by the Government."

To our mind, the object of Rule 126-W is to put the gold belonging to or in possession or under the control of the Government out of bounds of the Defence of India Rules relating to Gold Control. The first question that thus arises for consideration is whether the gold which was in the custody of the Income Tax Officers in accordance with the provisions of the Income Tax Act and the Rules made thereunder was in the possession or under the control of the Government within the meaning of rule 126-W. In our view, the custody of the Income Tax Officer was in the nature of custodia legis as he was holding it for the purposes underlying the Act as a statutory functionary. There is no provision under the Income Tax Act or the Rules which empowers the Government to exercise control over assets seized by an Income Tax Officer. In the circumstances, we are unable to hold that rule 126-W applies in the facts and circumstances of the case. The Treasury Officer was holding the gold in his safe custody on behalf of the Income Tax authorities. Therefore, to our mind, it was competent for the Excise authorities to seize such gold in exercise of their own powers under the Defence of India Rules. We are, therefore, unable to hold that the seizure of gold by the Superintendent of Central Excise was in contravention of any provision of law and therefore, illegal on that account. It follows from this that the action of the Income Tax Officer in surrendering the gold to the Excise Officer on account of his superior will exercised under the Defence of India Rules cannot be said to be bad nor can it debar him from exercising his other statutory functions on the footing of the recovery already made by him. Moreover, Section 48 of the Defence of India Act gives overriding effect to any order made under the Defence

of India Act or any rule made thereunder and when the Excise Officer has acted under the Defence of India Rules, the provisions contained in the Income Tax Act cannot be held to stand in his way. Section 43 of the Defence of India Act provides that the provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. Shri Sen submits that this section may undoubtedly override enactments that were in force prior to the coming into force of the Defence of India Act but it cannot override enactments passed subsequently and he submits that the amendment in Section 132 of the Income Tax Act having been made subsequently, the same will not be affected by Section 43 of the Defence of India Act. Having considered the matter, we are unable to accept the point of view propounded by Shri Sen. When Section 43 talks of any enactment other than this Act it means all other laws that may be in force at the time any order is passed under the Defence of India Rules. The position might be different if any subsequent law were to contain provisions analogous to Section 43 of the Defence of India Act and then there would be a conflict. In that situation the later law might override the earlier law but this is not so here. We, therefore, do not accept the contention raised by the learned counsel for the petitioner in this regard.

43. Coming to the question whether the authorisation issued by the Commissioner of Income Tax could empower the Income Tax Officer to seize the debts which the petitioner had to realise from others, we have to observe that Section 132 authorises the Income Tax Officer to seize valuable articles or things representing either wholly or partly income or property which has not been disclosed for the purpose of Indian Income Tax Act which is referred to as undisclosed income or property. The documents evidencing the debts may be only intangible property being choses-in-action, but all the same they are certainly valuable articles or things which represent income or property in appropriate cases. Such documents evidencing the debts could, therefore, be taken in possession. A perusal of the search warrant shows that the Income Tax Officer was empowered to "seize any such books of account, documents, money, bullion, jewellery or other valuable articles or things." Thus to our mind the documents evidencing the debts could properly be seized.

44. The next question is whether the value of these debts could have been taken into consideration in estimating the value of the seized assets. Sub-section (5) of Section 182, in our view, is wide enough to enable the Income Tax Officer to estimate the undisclosed Income of the person concerned in a summary manner to the best of his judgment on the basis of such materials as are available with him. Consequently he could arrive at an estimate of undisclosed income on the basis of the debts that the petitioner had to realise from others. We have been told that the Income Tax authorities have also made recoveries of debts from persons who owed money to the petitioner. We have not been told by the respondents how such recoveries could have been made and under what

authority of law, Anyway, that is a matter between those other persons and the Income Tax authorities. So far as the estimate of undisclosed income is concerned, the Income Tax Officer could have certainly taken into consideration the material that was before him. Apart from this, the order that is passed u/s 132 is not an assessment of tax liability. Things or material collected u/s 132 as a result of search and seizure are in the nature of collection of relevant material or evidence. The estimate of undisclosed income is made u/s 132(5) with a view to keeping in custody sufficient assets from which the tax could eventually be recovered but for actual assessment of the tax, procedure under Chapter XIV of the Income Tax Act has to be followed and there has got to be a proper assessment. Thus, the proceedings u/s 132 of the Income Tax Act. being proceedings prior to the assessment proceedings, cannot ipso facto result in fastening any tax liability. The respondents' learned counsel has openly stated in unambiguous words before us in the Court that at the appropriate assessment proceedings the petitioner will be free to raise all his pleas and will be free to even show, how and in what year, the income pertaining to the assets seized from him was received by him. The respondents submit that by the impugned order the rights or liabilities of the parties have not been settled at all, and the order has only the effect of safeguarding payment by the assessee as and when assessment proceedings are taken. Shri Hajarnavis, learned counsel for the Union, termed these proceedings to be in the nature of attachment before judgment. In view of what the respondents' learned counsel has stated before us, we do not think the order of the Income Tax Officer for holding the assets by him would by itself be regarded to result in imposition of lax liability. If the assets more than required to meet the tax liability are found to have been detained, then the law imposes the liability on the respondents to pay interest. In view of all these considerations, we are not persuaded to hold that the impugned order suffers from any illegality.

45. We may now deal with the argument that the Income tax Officer should have apprised the petitioner of all the grounds or materials on which he was to pass the impugned order. Reliance is placed by the learned counsel for the petitioner on *Dhakeshwari Cotton Mills Ltd. v. Commr. of Income Tax. West Bengal.* AIR 1955 SC 65. It was a case where the Income Tax Officer had made a best judgment assessment u/s 28 (8) of the Income Tax Act, 1922 and in that connection their Lordships observed as follows :

"(8) As regards the second contention, we are in entire agreement with the learned Solicitor General when he says that the Income Tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a Court of law, but there the agreement ends; because it is equally clear in making the assessment under Sub-section (8) of Section 23 of the Act, the Income Tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment u/s 28 (8). The rule of law on this subject has, in our

opinion, been fairly and rightly stated by the Lahore High Court in the case of AIR 1944 Lah 353

(9) In this case we are of the opinion that the Tribunal violated certain fundamental rule of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company to rebut the material furnished to it by him, and lastly, it declined to take all the material that the assessee wanted to produce in support of its case. The result is that the assessee had not had a fair hearing. The estimate of the gross rate of profit on sales, both by the Income Tax officer and the Tribunal seems to be based on surmises, suspicions and conjectures."

This case is clearly distinguishable as it was a case of assessment. In the present case, as we have already discussed, the lax liability has not yet been determined and only the assets of the petitioner have been held in anticipation of proper proceedings. Apart from this, a perusal of the impugned order dated 4th March 1966, shows that in estimating the undisclosed income of the petitioner, the Income Tax Officer has been guided by (1) the recovery of assets to which we have already referred; (2) his not having declared these assets on any earlier occasion in the course of wealth assessment; (3) scrutiny of Income Tax returns and statement of account did not disclose that these assets were acquired from the income already disclosed; (4) the mode in which these huge assets were found secreted. Then the Income Tax Officer referred to the several notices that he gave to the petitioner from time to time. We are not impressed by the so-called secreting of the assets as that is a neutral circumstance. Valuables are to be secured against anti-social elements and there is nothing wrong in itself if an over-cautious person properly conceals or secretes his valuables in his house. But none of these circumstances are such as of which the petitioner can be said to be unaware. We are, therefore, satisfied that the order is not bad on the ground alleged by the petitioner.

46. Lastly we may refer to the petitioner's alternative plea that even if the gold cannot be said to have been tendered by his application to the State Bank of Indore purporting to have been made on 18th November, 1965, till 31st May, 1966 he is entitled to tender, that gold and earn the exemption and the Excise Officer cannot prevent him from doing so by taking any proceedings under rule 126-L (1) and (M) of the Defence of India Rules relating to gold assets. It is, therefore, prayed that the Excise Officer should be asked to produce the gold before the States Bank so that the petitioner may be entitled to claim the immunities, concessions or exemptions arising under the Gold Bonds Scheme. The learned counsel for the petitioner submits that whereas Section 8 of the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1965 requires that in order to earn the immunity from taxation the gold should be tendered prior to the detection of such income by the Income-tax Officer or seizure of such gold under any law, there is no such limitation under the Defence of India Rules.

He relies on Rule 126 (U) and the notification of the Government dated 26th October, 1965 which we have already quoted in this judgment. The learned counsel points out that any person can tender gold, be it declared or undeclared till 31st May, 1966 and, therefore, the petitioner is entitled to make this tender and claim the immunity against the Defence of India Rules. We are afraid, we have not been able to understand this submission at all. The apparent tenor of the order dated 26th October, 1965 and that of Rule 126 (U) of the Defence of India Rules is that if a person tenders gold then he acquires certain immunity, concession or exemption but, if the gold has already been seized from any person under a valid order and has thus gone out of his possession and control and is liable to be dealt with under the provisions of the Defence of India Rules, then it is not understandable how he will still be entitled to tender that gold under the Gold Bonds Scheme. The position may very well be different if the seizure is illegal. Then in that case, we may command the persons seizing the gold to release the same in favour of the petitioner so that he may tender it under the Gold Bonds Scheme, if he so likes. As the matter stands, we cannot order the release of gold.

47. The impugned notice dated 3rd February, 1966 issued by the Deputy Collector, Central Excise and Land Customs, Jaipur refers to the search and recovery of gold on 6th December, 1965 and it omits to mention the seizure made on 9th February, 1966. but it will be still open to the Collector of Central Excise, who is the adjudicating authority to see whether this is a sufficient notice or it needs to be amended. The jurisdiction of the Collector will be depending on the validity of the seizure and therefore, we cannot hold that he lacks jurisdiction to deal with the matter. It will be for him to pass an appropriate order in the light of all the facts and circumstances of the case after giving opportunity to the petitioner to have his say in the matter. We are not satisfied that he will not be entitled to act under Rule 126 (M) of the Defence of India Rules, and are therefore, not persuaded to forbid him from exercising his legal powers in the matter.

48. Learned counsel for the respondents contended that the petitioner had an alternative remedy and, therefore, this writ petition should not be entertained by us. It cannot be gainsaid that the petitioner has an alternative remedy and, the exceptional circumstances under which we should interfere have not been made out. When such a remedy is available we would have been normally inclined to dismiss the writ petition on this ground alone but as this plea was not raised when the arguments began and was raised only after the matter had been heard almost for three days at sufficient length we did not like to dismiss the writ petition only on this technical plea and we have examined all the contentions of the learned counsel for the petitioner. To summarise we hold :

(1) that the provisions of Section 132 of the Income Tax Act are not ultra vires on account of any violation of Article 14 of the Constitution;

(2) that, the Income Tax authorities and the Excise authorities had jurisdiction to

take proceedings against the petitioner under the Income Tax Act and the Defence of India Rules respectively as the so-called tender of gold made by the petitioner by his application dated 18th November, 1965 has not been established and that there was no valid tender as it was not presented along with the gold.

(3) That the Commissioner of Income-tax (Central) Bombay as well as the Income-tax Officer (Central) Section X, Bombay had jurisdiction to order the search of the petitioner's house at Ramgarh and to seize the several valuables found as a result of the search. The authorisation issued by the Commissioner of Income Tax was a proper one and did not suffer from any infirmity.

(4) That the search and seizures were not conducted in violation of any law.

(5) That the Superintendent of Central Excise, Jaipur had formally seized the gold from the custody of the Income Tax Officer on 9th December, 1965, and that he was entitled to do so.

6. That the transfer of custody resulting from the seizure of gold effected by the Superintendent of Central Excise, Jaipur on 9th December, 1965 cannot prevent the Income Tax Officer from taking further proceedings in the matter under the Indian Income Tax Act.

7. That the authorisation issued by the Commissioner of Income Tax (Central), Bombay was valid even in so far as it related to the seizure of documents concerning the loans advanced by the petitioner to other parties. The order dated 4th March, 1966 was not rendered illegal on the ground that the value of the debts was taken into consideration in estimating the value of the seized assets.

8. That the impugned order dated 4th March, 1966 was not bad on the ground that all the necessary materials on which it was founded were not brought to the notice of the petitioner.

9. The seizure by the Superintendent of Central Excise Jaipur is referable to a proper authorisation by a competent authority and is therefore, not illegal.

10. It cannot be said that the Collector of Central Excise will not be having jurisdiction to deal with the matter.

11. The petitioner is not entitled to tender the gold under the Gold Bonds Scheme in view of the fact that it has been seized by the Superintendent of Central Excise, Jaipur and as the seizure by him was not in contravention of any law.

49. In view of what we have discussed above, we do not find any force in either of the two writ petitions which we accordingly dismiss with costs to the respondents. The hearing fee of counsel appearing for the respondents will be assessed at Rs. 500 in each case.