

(1974) 08 MAD CK 0047

In the Madras High Court

Case No : Writ Petition No. 1870 of 1973

Gulab and Company and Another

APPELLANT

Vs

Superintendent of Central Excise (Preventive) and Others

RESPONDENT

Date of Decision : 02-08-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 132, 132(1), 132(11), 132(3), 132(5)

Citation : (1975) 98 ITR 581

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : M.R.M. Abdul Karim and M.M. Abdul Razack, T. Vadivel, for the Appellant; V. Balasubrahmanyam and J. Jayaraman, for the Respondent

Judgement

Ramaswami, J.—This is a petition under Article 226 of the Constitution of India for the issue of a writ of mandamus or any other appropriate writ directing such of those respondents who are in possession to return the sum of Rs. 2,38,000, seized from the second petitioner, Shahul Hameed. The facts leading to the filing of this writ petition are these :

2. On information laid before the Inspector of Central Excise, Customs (Preventive), Trichy, that contraband gold was kept concealed in the premises at 3A, Estate Candy Street, Bheemanagar, Trichy, two inspectors of the Central Excise, Customs (Preventive) entered the said premises at or about 4-30 p.m. on November 1, 1972, arming themselves with an authorisation u/s 105 of the Customs Act, 1962. The Superintendent of Central Excise also joined them a little later and the search was completed by about 9 p.m. A sum of Rs. 2,38,500 was found in an open almirah in the room. On the reasonable belief that out of the said sum of Rs. 2,38,500, a sum of Rs. 2,38,000 was not accounted for and that the said currency related to the sale proceeds of contraband gold, the excise authorities effected the seizure u/s 121 of the Customs Act. The premises was in the occupation of A. Shahul Hameed of Kayalpatnam, the 2nd petitioner herein.

The search and seizure were made in the presence of two independent witnesses. One Anwar, a relation of the second petitioner, was also present throughout the search. The mahazar prepared was attested by two independent witnesses. A copy of the mahazar was given to the 2nd petitioner and an acknowledgment was obtained. On November 2, 1972, statements of the 2nd petitioner herein and the said Anwar were recorded. One Jamal Mohammed, an advocate at Trichy, sent a telegram on November 3, 1972, to the Superintendent, Customs (Preventive), Trichy, stating that the said amount seized belonged to his client, Gulab & Co., Coimbatore, the 1st petitioner herein, and requesting for return of the same to his clients. On November 4, 1972, another telegram was received from the counsel, appearing for the petitioners herein, Thiru M.R.M. Abdul Karim Razack, which stated that his client, Shahul Hameed, the second petitioner herein, had instructed him to state that the informer of the Customs department, one Basheer, took Rs. 500 and the Superintendent, Central Excise, seized a sum of Rs. 2,38,500, on November 1, 1972, from his client, that no warrant was shown to his client, that the action was wholly illegal, that a statement was obtained from the 2nd petitioner by threats and intimidation, that a copy of the statement was not given to him, that the entire amount belonged to Gulab Abdul Kader Malick & Co., and that unless the money is returned within two days legal proceedings will be taken against the Superintendent of Central Excise.

3. The Central Excise authorities could not get any evidence to prove that the currency under seizure was the sale proceeds of contraband gold. Therefore, the Superintendent of Central Excise (Preventive), the 1st respondent herein, sent a report to the Assistant Collector, Central Excise, Madurai, dated November 5, 1972, intimating him about the lack of evidence and requesting that the amount may be ordered to be released to the bona fide claimant as Sahul Hameed has stated that he is only a custodian of the currency and not its real owner. In the meanwhile, the intelligence wing of the Income Tax department having got a scent of the matter informed the Commissioner of Income Tax, Madras, that a sum of Rs. 2,38,500 was found in the possession of the 2nd petitioner, that there is no satisfactory explanation available about the source of the money, that the same, prima facie, appears to be wholly or partly income or property which is not disclosed for the purpose of Income Tax and that the cash is kept in the custody of the Superintendent, Customs (Preventive), Trichy. On this information, the Commissioner of Income Tax, the 2nd respondent herein, entertained a reasonable belief that the amount seized was the second petitioner's undisclosed income, issued a warrant u/s 132 of the Income tax Act, 1961 (hereinafter called "the Act"), on November 6, 1972, authorising the Income Tax Officer, Trichy, who is the 4th respondent herein, to seize the said sum of money to be dealt with according to law. This warrant was executed and the amount was seized by the Income Tax Officer, Trichy, on November 7, 1972, and this was intimated by the 1st respondent to the Assistant Collector of Central Excise, Madurai, is a further report to him on this matter.

4. A notice under Rule 112A of the Income Tax Rules, 1962 (hereinafter called "the Rules"), was sent by the Income Tax Officer, Trichy, to the 2nd petitioner requiring him to appear before the Income Tax Officer, Trichy, on November 24, 1972, at 11 a.m. and to explain or to produce or cause to be produced evidence on which he may rely fo'r explaining the unaccounted cash. This notice could not be served on the 2nd petitioner in person but it was served by affixture on November 9, 1972. There is no dispute in this writ petition that such a notice was served on the 2nd petitioner. On November 17, 1972, the 2nd petitioner filed a petition and a vakalat in favour of the learned counsel for the petitioner herein. In this petition he had stated that he had no claim over the money, that the money belonged to M/s. Gulab & Company, Coimbatore, and that Gulab, son of Abdul Khader, who is the managing director of the company, entrusted the said sum of Rs. 2,38,000 to him and that the money was seized on November 1, 1972, and not on November 6, 1972. He also enclosed therein a copy of his statement before the Income Tax Officer, Coimbatore, and requested the Income Tax Officer, Trichy, to issue a notice to Gulab & Co. for accounts and evidence. On the same day Gulab & Co. also gave a petition to the Income Tax Officer, Trichy, claiming that the amount was entrusted by them to the 2nd petitioner herein, that the money belonged to the company, that the same is fully accounted for, that they have produced all the account books before the Income Tax Officer, Coimbatore, that the account books and files are partly with the Income Tax Officer, Coimbatore, and mostly with the Additional Commissioner, Income Tax Department, Madras, in connection with a revision petition pending with him and that they may be called for. They had also requested that out of the said sum of Rs. 2,38,000, a sum of Rs. 26,000 may be paid towards advance tax for 1973-74 and the balance may be made over to them. Though the enquiry was posted to November 24, 1972, the 2nd petitioner along with his counsel appeared on November 22, 1972, and an enquiry was held on that day and the 2nd petitioner gave a statement before the Income Tax Officer, Trichy, in the presence of his advocate. The advocate also examined him by way of cross examination. On November 23, 1972, the advocate along with his letter dated November 23, 1972, sent a copy of the statement of the 2nd petitioner given before the Income Tax Officer, Coimbatore, on November 16, 1972. The Income Tax Officer issued another notice on November 25, 1972, to the advocate informing him that certain points of clarification had to be obtained from him in view of the receipt of materials after the last hearing and that he wanted to re-examine the 2nd petitioner, fixing the date of hearing on December 2, 1972.

5. The 2nd petitioner and his counsel appeared on December 2, 1972, and his further statement was recorded from him. A further notice was issued to the second petitioner on January 19, 1973, requiring him to appear on January 23, 1973, and requesting him to produce whatever evidence he has got in his possession to explain the source of Rs. 2,38,000, seized from his premises by the Central Excise authorities. On January 23, 1973, he and his counsel appeared for an enquiry and the further statement of the second petitioner was recorded.

As in his statement the second petitioner had stated that the statement given by him before the excise authorities was under coercion, the Income Tax Officer, Trichy, wrote a letter to the Superintendent of Central Excise, Customs (Preventive), the 1st respondent herein, to confirm that the recording of the statement was done by him without resorting to any compulsion or coercive circumstances. He had also asked him to state whether any advocate was allowed to defend the party or any cross-examination was made in the customs proceedings. By a letter dated January 24, 1973, the 1st respondent intimated the Income Tax Officer, Trichy, that the statement was recorded before two independent witnesses, that it was voluntarily given by the party on his own free will and no advocate was present and no cross-examination was made.

6. In the meanwhile, the second petitioner through his counsel filed petitions before the Commissioner of Income Tax to direct either the Income Tax Officer, Trichy, to call for their files and records from the Coimbatore office and the Commissioner's Office or the Income Tax Officer Coimbatore, may be directed to bear the case. Copies of these petitions were also sent to the Income Tax Officer, Trichy, and the Income Tax Officer, Coimbatore. Extract from the accounts relevant to these amounts were sent to the Income Tax Officer, Trichy. On a consideration of the entire evidence the Income Tax Officer, Trichy, came to the conclusion that the sum of Rs. 2,38,000, seized, represented the undisclosed and concealed income of Shahul Hameed, the 2nd petitioner herein. He thereafter proceeded to calculate the tax thereon in accordance with the proviso to Section 132(5) of the Income Tax Act, 1961, and arrived at the figure of Rs. 1,88,945, as the total tax payable. He accordingly ordered in his proceedings dated February 3, 1973, that a sum of Rs. 1,88,945, out of the amount seized, will be retained towards the tax liability and the balance will be returned. Though at the time when this writ petition was filed the balance amount was not paid it is not now in dispute that the balance amount as per the order dated February 3, 1973, had been paid to the 2nd petitioner. It may also be mentioned at this stage that the second petitioner had also filed an appeal to the Central Board of Revenue u/s 132(11) against the order of the Income Tax Officer, Trichy, dated February 3, 1973, and that appeal is stated to be still pending disposal.

7. It is relevant to note certain proceedings taken by the Income Tax Officer, Coimbatore, who is the assessing authority of Gulab & Co., the 1st petitioner herein. On November 16, 1972, the 1st petitioner wrote a letter to the Income Tax Officer, Coimbatore Circle, the 3rd respondent herein, requesting them to issue an estimate form for advance tax for the year 1973-74. The letter proceeded to state that on October 30, 1972, they entrusted a sum of Rs. 2,38,000, to the 2nd petitioner with an intention of starting a new business, namely, film distribution in Trichy. This amount is entered in their account books ; the customs authorities seized the money from the said Shahul Hameed on November 1, 1972, and handed over the same to the Income tax Officer, Trichy; the said Shahul Hameed had declared that the said money did not belong to him. They also produced a statement from Shahul Hameed to the effect that

the money did not belong to him and that it belonged to Gulab and Co. They further requested that since the entire amount is with the Income Tax Officer, Trichy, the advance tax payable by them may be collected from the Income Tax Officer, Trichy. The Income Tax Officer, Coimbatore, issued a notice u/s 132(5) and Rule 112 A(2) to the 1st petitioner stating that a cash amount of Rs. 2,38,500 has been seized from their people at Trichy and that he had reason to think that the money belonged to the 1st petitioner. He had also required the 1st petitioner to furnish particulars regarding the source and whether they are shown in the accounts and if so to produce evidence in support of the same on November 22, 1972. The 1st petitioner replied to this notice on November 21, 1971, stating that they had entrusted the sum of Rs. 2,38,000, to the 2nd petitioner that the sum is fully accounted for in their accounts, that the seizure was bad and illegal and requested for release of the money to them. It was also stated in this letter that the balance of Rs. 500 belonged to the 2nd petitioner herein. On information that the Income Tax Officer, Trichy, had passed an order on February 3, 1973, holding that the money seized really belonged to the 2nd petitioner and that it represented his concealed income, the Income Tax Officer, Coimbatore, in his proceedings dated February 5, 1973, dropped the proceedings initiated by him against Gulab and Company u/s 132(5) of the Act.

8. The learned counsel for the petitioners contended that the whole proceedings initiated u/s 132 are illegal and that the said provision could not have been invoked at all on the facts and circumstances of this case. According to the learned counsel, the powers under this Section could be invoked only when the person against whom the warrant is issued is in actual or physical possession of the assets for the seizure of which the power was invoked. Further, a search could be authorised only when the Commissioner or the Director of Inspection has reason to suspect that such assets are kept in any building or place and not when he certainly knows that such assets are kept in a particular place. It was also contended that the word "seizure" implies forcible taking of possession and that is wholly inappropriate in the case where the assets are in the hands of another department of Government. In other words, the fact that the goods are in the custody and possession of the customs and excise department is known to the Commissioner who issued the warrant. There would be no need for "seizure" of the assets from the excise department which is another department of the Union of India as the Income Tax department. Therefore, the issuing of warrant for search and seizure in such circumstances is inappropriate and would not be covered by the provisions of Section 132. In support of this argument, the learned counsel has relied on certain decisions rendered in similar circumstances. Before considering the decided cases we would like to test the argument with reference to the relevant provisions of the Act and the Rules. The relevant provisions are Sections 132, 132A of the Act and Rules 112, 112A 112B and 112C of the Rules. Section 132(1) which empowers the Director of Inspection or the Commissioner to authorise any of the designated officers to enter, search and seize books and accounts or other documents, money, bullion, jewellery or other

valuable article or thing, is in two parts. The first portion deals with the condition precedent for the issue of a warrant and the latter portion sets out the purpose for which it may be issued. The first part of the section imposes certain limitations. If in consequence of information in his possession the Commissioner has reason to believe that any person to whom summons under the relevant provisions of the Income Tax Act was issued to produce or cause to be produced any account books has omitted or failed to produce or cause to be produced such books of account as required by such summons or notice or any person to whom 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 which will be useful for or relevant to any proceedings under the Act or any person in possession of any money or other assets and such money or other assets represent either wholly or partly income or property which has not been disclosed for the purpose of the Income Tax Act, he may issue a warrant. It may be seen from Clause (c) that in case of money or other asset the conditions necessary for the issue of warrant are :

(1) the Commissioner must in consequence of information in his possession have reason to believe that any person is in possession of any money or other asset; and (2) such money or other asset represents undisclosed income or property. The Commissioner is interested only in the undisclosed income or property and if that is so he must have reason to believe that it is the undisclosed income of a particular individual. The section is intended to unearth the hidden or undisclosed income or property and bring it to assessment. Naturally, therefore, it is directed against the person from whose assessment the particular money or asset is believed to have been omitted to be included. Thus, the words "reason to believe" u/s 132(1)(c) refer to a belief that the money or other asset belongs to a particular individual and such money or other asset represents undisclosed income of that individual. If these two conditions are satisfied a warrant could issue. We are of the view, therefore, that if the Commissioner has reason to believe that the money or other asset is the undisclosed income of a particular individual, he could authorise the Income Tax Officer to seize such money or other asset as that of that individual wherever it may be found and whoever may be in actual physical control or possession. The action is against the person who is believed to have not disclosed that money or other asset in his income and against such undisclosed money or asset. If the money or other asset is ultimately proved in the enquiry as not belonging to the person whom the Commissioner believed to be the owner and has not disclosed the same in his income then, unless proceedings are taken against such other person to whom the money is found to belong, it will have to be returned to the person from whose physical custody or control the same was seized. That is obviously for the reason that the person from whom the actual seizure was effected may have a rightful claim in respect of the property against any person who may claim the same. It is because of this, that Section 132A [Sub-section (3)] and Rule 112B direct that the goods shall be released to the person from whose custody they

were seized. It is for the same reason in cases where it is not practicable to (sic) Sub-section (3) of Section 132 authorises an officer to allow a person who is in immediate possession or control thereof to remain in such possession but prohibit him not to remove or part with or otherwise deal with it except with the previous permission of such officer. Sub-section (3) of Section 132, having regard to the context and collocation of the words "immediate possession or control", deals with the person in physical possession or control who may be a person who is the owner thereof and who is suspected of having not disclosed his income or any other person holding on behalf of the owner or a person who has a claim or some right over the same. What is important and relevant, therefore, is the reason to believe that it is the undisclosed income of a person and not in whose physical possession the same is. The meaning which is attributable to the words "custody", "possession" and "immediate possession or control" in the procedural part of the section relating to implementation of the warrant could not and shall not be projected in understanding the meaning of the words "any person is in possession" in Section 132(1)(c). Having regard to the scheme of the entire provision we have no doubt that the words "any person in possession" in Clause (c) of Section 132(1) refer to a person to whom the undisclosed income belonged or owner of the same and they are not used in the restricted sense of only a person in physical or actual possession and control.

The purposes for which a warrant could be issued are set out in Sub-clauses (i) to (v) of Section 132(1) which read as follows :

"(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 (i) where the keys thereof are not available ;

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

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

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

9. The first clause refers to entering and searching a building or place where the Commissioner has reason to suspect that such books of account, money or other asset are kept. It, is argued by the learned counsel for the petitioners that the use of the words "search" and "reason to suspect" implied that the provision will apply only where there was no definite knowledge of the existence of the money or the asset or other account books in that particular place or building and the Commissioner has only reason to believe that it would have been hidden or

concealed there. It was also contended that breaking open of locks and seizure of such money or other asset referred to in the section show that the warrant could be issued only when the person who is in physical possession is expected to resist and would not yield possession voluntarily and a department of the Government such as the central excise department who is in possession could not have been contemplated within the mischief of the section.

10. In support of these contentions, the learned counsel relied on the decision in *Motilal and Others Vs. Preventive Intelligence Officer and Others*, . Shortly stated, the facts in this case are : On June 5, 1969, the central excise authorities seized silver bars and currency from the petitioners on a search of their residential and business premises. During the search and seizure an Income Tax Officer accompanied the searching party of the excise authorities. On September 4, 1969, a writ petition was filed against the excise authorities for the return of the silver. Notice was served on the respondents on September 22, 1969. On September 27, 1969, the Inspecting Assistant Commissioner of the Central Excise wrote to the Commissioner of Income Tax requesting him that certain Income tax Officers be authorised u/s 132(1) of the Act to search and seize the silver and other articles seized by them from the petitioners. On September 28, 1969, the Commissioner issued a warrant u/s 132(1). On the next day the Income Tax Officer in whose favour an authorisation was given purporting to act u/s 132(3) made an order prohibiting the Assistant Collector of Customs and Central Excise from removing or parting with or otherwise dealing with the silver seized. This was done when the writ petition was pending. Thereafter, the order u/s 132(3) was challenged by the petitioners in a separate writ petition. It was held that the order made u/s 132(3) was illegal. The reasoning of the learned judges in that case was as follows:

"Articles or things referred to in Section 132(3) are those which the authorised officer was empowered to search for and seize and no other. These are articles which may be necessary to search for before they can be seized. Section 132(1) (c)(i) refers to the Commissioner having reason to suspect that the thing or article is kept in a particular place or building. Obviously, this would not include a case where it is already known that the article or thing is kept in a certain place. The warrant also contemplates a power to break open and seize which implies that the warrant will not be yielded up voluntarily. Therefore, the power u/s 132(1) contemplated only those cases where the precise location of the article or thing is not known to the Income Tax authorities and they have reason to believe that anybody who may be found to be in possession would not yield possession of the same and, therefore, a warrant for search and seizure is necessary."

11. With great respect to the learned judges, we are unable to agree with this reasoning. It would be preposterous to hold that a warrant for search and seizure could be issued only when it was not known to the Income Tax department that the articles or books are kept in a particular place or building and could be issued only if the Commissioner has reason to suspect that the article or books are kept

in a particular place and for which a search is, therefore, necessary. Even the phrase "reason to suspect" in Section 132(1)(c)(1) implies that the Commissioner must have reasonable grounds for thinking that the goods are kept in a particular place which would also include a case where it is known for certain that the goods are kept in a particular place. If the Commissioner could issue the warrant to enter and search a building where he has reason to suspect that such assets are kept it would be absurd to state that he could not issue such warrant if he knows for certain that the money or other assets are kept there or that there was no secrecy in the keeping of the goods. While it is necessary, in order to invoke the power u/s 132, that a reasonable belief should exist that the money or other asset is the undisclosed income of any particular person, the warrant must state the place or building where the same are kept or suspected to be kept so that they could be seized by the authority. The place may be determined on reasonable suspicion or definite information or knowledge. In this connection we may also compare the provisions of Section 132(1)(a). That section deals with a case where a notice to produce or cause to be produced any account books or other documents is issued and the person to whom such notice was issued has omitted or failed to produce or cause to be produced such books of account or other documents as required by the summons or the notice. Here is a fact which is known to the Commissioner that he had not produced, but still a warrant for search and seizure could be issued and there was no need for him to entertain a belief that he would not produce the accounts as that has happened already. It is true that search and seizure is normally associated with "individuals, firms or companies. In fact, as already noticed, the section is applied only in case of such persons. When the money or other asset is believed to be the undisclosed income of such persons certainly the warrant must be able to reach wherever such assets are kept or found- Therefore, when an authorisation is given all possible contingencies are contemplated and full power is given in order to effectively enforce the authority under the warrant. In many cases there may not be any necessity to break open the lock or gain forcible entry but that does not mean that warrant in such cases could not be issued. We do not find any inherent incompatibility in issuing a warrant for seizure when the goods are known to be in the possession of another Government department. We are also unable to share the view that because the excise department is another wing or a separate department of the Government of India it would be inappropriate to authorise seizure. Even though the central excise department is a department of the Union of India, in respect of the articles or goods in their possession the responsibility is on them which in fact is imposed on" the individual officer holding it. They could not part with the same to another department without authority of law. Certainly they will be answerable to the person from whom they got possession or to the real owner. It is, therefore, necessary for the Income Tax department to take power to seize the goods from the excise department. Though the word "seizure" normally implies taking possession forcibly it also means taking possession under the authority of law. That the person who is in possession may not object to the handing over is no

criterion for holding that such an authority is not necessary to deprive a person of his right to be in possession. Even if such other department is holding the property in its own right and in enforcement of any other provision of law, still on the authority of a warrant, Sub-section (3) of Section 132 could be invoked and such other department prohibited from handing over the same to any other person when the purpose for which they were holding the same was no longer available. We are, therefore, unable to agree with the reasoning that because the goods are known to be in a particular place and in the custody of another department of the Government the power u/s 132 could not be invoked. With great respect, therefore, we are unable to agree with the judgment in *Motilal v. Preventive Intelligence Officer, Central Excise and Customs, Agra*. But, on the facts of *Motilal's* case, probably the ultimate order may be sustained because the Income Tax Officers themselves accompanied the search party of the excise department and as pointed out in the judgment the later action of the Income Tax department only amounted to an attempt to comply with the form of the law to enable them to make an order u/s 132(3). This would amount to a colourable exercise of power which would certainly vitiate the order itself."

12. The facts in the decision in *Laxmipat Choraria Vs. K.K. Ganguli and Others*, are also similar to the one in *Motilal's* case. Even in that case at the time of search by the customs authorities the officers of the Income Tax department were also present. In that case, which was confirmed in appeal in *K.E. Johnson and Others Vs. Laxmipat Choraria and Another*, an additional reasoning is given. According to the learned judges, Section 132 will apply only to a case where the documents or money or assets are in possession of the person from whom seizure is directed. We have already held that the words "any person in possession" in Section 132(1)(c) does not refer to the person in physical or actual possession but a person who is reasonably believed to be the owner or to whom the money or asset belonged.

13. The decisions in *Motilal's* case and *Laxmipat Choraria v. K. K. Ganguli* were followed by the Punjab High Court in *Ramesh Chander and Others Vs. Commissioner of Income Tax and Others*, , *Commissioner of Income Tax and Others Vs. Ramesh Chander and Others*, and *Tarsem Kumar Vs. Commissioner of Income Tax and Others*, . In some of these cases reliance has been placed on the decision in *Gian Chand and Others Vs. The State Of Punjab*, , In that case, with reference to the presumption u/s 178-A of the Sea Customs Act, 1878, and the burden of proof in respect of an article which was originally seized by the police and handed over to the authorities of the customs department, the Supreme Court observed:

"A "seizure" under the authority of law does involve a deprivation of possession and not merely of custody and so when the police officer seized the goods, the accused lost possession which vested in the police. When that possession is transferred, by virtue of the provisions contained in Section 180, to the customs authorities, there is no fresh seizure under the Sea Customs Act. It would,

therefore, follow that, having regard to the circumstances in which the gold came into the possession of the customs authorities, the terms of Section 178-A which requires a seizure under the Act were not satisfied and consequently that provision cannot be availed of to throw the burden of proving that the gold was not smuggled, on the accused."

14. As pointed out by the Supreme Court in *Durga Prasad v. Supdt. (Prevention), Central Excise, Nagpur* AIR 1966 SC 1209 that decision was concerned with the burden of proof u/s 178-A of the Sea Customs Act and whether the presumption under that section would arise in the special circumstances of the case. The ratio of that case is of no assistance in determining the authority of the Commissioner u/s 132 of the Income Tax Act. With great respect to the learned judges, for the reasons stated before, we are unable to agree with these decisions, which, took the same view as *Motilal v. Preventive Intelligence Officer, Central Excise & Customs, Agra*. We are fortified in our view by a decision of the Madhya Pradesh High Court in *Pannalal Vs. Income Tax Officer, B-Ward and Others*, . In that case also the customs and central excise authorities seized certain currency notes, gold ornaments and coins. Finding that the currencies and gold ornaments had not offended any provisions of the Gold Control Act, the Collector of Customs and Central Excise ordered them to be released. Before their release a warrant u/s 132(1) of the Act was issued by the Commissioner of Income Tax authorising the Income Tax Officer and other officers to search and seize the money, bullion, jewellery, etc., which was to be found at the office of the Collector of Customs and Central Excise, In pursuance of the said authorisation the customs authorities were by an order u/s 132(3) prohibited from removing or parting with the currencies. The person from whom the currency notes were seized by the customs authorities challenged this action of the Income Tax authorities under Article 226 of the Constitution of India by way of a writ petition praying to direct the Income Tax authorities to release the currencies in favour of the petitioners. During the pendency of the petition the Income Tax Officer passed an order u/s 132(5) of the Act specifying the tax on the estimated undisclosed income and directing the retention of the entire amount. This order also was challenged in the writ petition. It was argued that "search and seizure" envisaged u/s 132(1) can only be of that property, the exact location of which is not known to the Income Tax authorities and it would not apply to a case where they know that the currencies were in possession of the Collector of Customs and Central Excise. It was also argued that an order u/s 132(3) can only be issued after a search and since there was no need for a search no valid order was issued u/s 132(3). It was further argued that the expression "search and seizure" implies a belief that the person in possession would not part with the same willingly and as such the powers u/s 132 would not apply to a case where the goods are in possession of a department of the Government. Repelling these contentions the learned judges held :

"In our opinion, there is nothing in the requirements of Section 132 which may support the view that if the Commissioner has definite knowledge that the books

of account, documents, money, bullion, etc., sought to be searched and seized are in the possession of a particular person, he cannot issue an authorisation for search and seizure of the same. The expression "has reason to believe" itself signifies that the Commissioner has reason to be satisfied that the things to be searched are in the possession of a particular person. It would be anomalous to hold that if the Commissioner is not sure about the possession of money, bullion, etc., he can exercise his powers u/s 132 for search and seizure, but when he is sure that the undisclosed income in the shape of money, bullion, etc., is in the possession of a person, he cannot exercise his powers of search and seizure. The object of Section 132 is not merely to get information of the undisclosed income, but also to seize the money, bullion, etc., representing the undisclosed income and to retain them for purposes mentioned u/s 132(5). The construction that the learned counsel for the petitioners wants us to accept gives no importance to the words "has reason to believe" and to the object of the section and depends solely on the literal meaning of the word "search". We are unable to accept it.

We are also unable to accept the contention that the power u/s 132(1)(c) cannot be exercised where the thing to be seized is in possession of a person who may willingly part with his possession. There is no such condition contained either expressly or impliedly in Section 132(1)(c) and it would not be proper to read such a requirement by implication. Indeed, it would be impossible for the Income Tax authorities to know whether the person in possession is going to willingly part with his possession or not. There is no obligation on any one, not even on Government officers of other departments, to deliver anything to the Income Tax authorities except when the law requires them to do so. Authorisation to search and seize u/s 132(1)(c) enables the Income Tax authorities to seize a thing even when the person in possession is unwilling to part with it. After the Income Tax authorities have armed themselves with a warrant of authorisation u/s 132(1), it may be that a law abiding person in possession of the thing to be seized may easily yield up his possession, but that will not affect the validity of the warrant of search and seizure. If that were so, every warrant of search and seizure may be frustrated by yielding up possession after the issue of a warrant. It cannot be supposed that the Collector of Customs and Central Excise would oblige the Income Tax authorities and hand over anything in his possession even if these authorities are not authorised to take over possession under compulsion of law ".

15. With reference to the argument that the person against whom the Warrant is issued should be actually in possession, the learned judges observed:

"We do not also accept the contention that Clause (c) of Section 132(1) contemplates that the person who has not disclosed his income or property for the purposes of the Income Tax Act should himself be in possession of the money, bullion, jewellery, etc., representing such income which is sought to be searched and seized. Clause (c) speaks of "any person who is in possession" and it does not specifically refer to the possession of a person who has not disclosed his income. All that this clause requires is that the money, bullion, etc., should be

such which represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income Tax Act and such money, bullion, etc., should be in possession of any person. The person in possession may be that person who has not disclosed the income or may be someone else. This construction is also supported by the use of the words "immediate possession" in Section 132(3). The immediate possession contemplated under Sub-section (3) may or may not be of the owner of the thing which is required to be searched and seized. Again, Section 132(7) also shows that the person in possession from whom the thing is seized may be holding it on behalf of any other person and it is against that other person that proceedings would, be taken u/s 132(5)."

16. In holding this view, the learned judges expressly dissented from Motilal's case and Laxmipat Choraria's case.

17. In this connection we may also refer to a decision of this court in Mohammed Kunhi Vs. Mohammed Koya and Others, . In that case one Mohammed Koya who arrived at the Madras Central Station by West Coast Express on suspicion was searched by the inspector of railway police and currency notes of the value Rs. 1 lakh were found on his person. Suspecting him of commission of an offence cognizable by the police, the inspector arrested him and produced him before the Second Presidency Magistrate, Madras, along with the amount seized. Mohammed Koya was remanded to custody and released on bail subsequently. Later on, the investigation disclosed that no cognizable offence had been made out and, therefore, the proceeding against Mohammed Koya was dropped. But the inspector of railway police intimated the Income Tax department about the seizure of money from Mohammed Koya and the deposit of the money. The Commissioner of Income Tax, Madras, authorised the Vth Income Tax Officer, Madras, u/s 132(1) of the Act and issued warrant against Mohammed Koya with authorisation to search and seize the money in court deposit. Thereupon, the Income Tax Officer filed a petition before the Second Presidency Magistrate to hand over the amount to him. On the other hand, one Mohammed Kunhi filed a petition before the court praying for the return of the amount to him on the ground that the amount in court deposit belonged to him. Koya supported the application of Kunhi and stated that he was entrusted with the money by Kunhi for being paid to a third party at Bombay, This application was dismissed. On revision before this court, it was argued that the Income Tax Officer who was authorised u/s 132(1) cannot be regarded as a person entitled to possession of the amount within the meaning of Section 523, Criminal Procedure Code. The learned judge held that if the court is convinced that, the Income Tax Officer has the power u/s 132 of the Income Tax Act to seize the money in court deposit, it would be a wholly needless and empty ritual to ask him to wait till after the court has refunded the amount to Mohammed Koya or Mohammed Kunhi and then to allow the Income Tax Officer to seize the amount from either of them the moment it is handed over to them, and that on a proper application made by the Income Tax Officer moving the court for handing over possession the same could

be handed over to him. It was also argued in that case that the Income Tax Officer has no power to seize the amount in court deposit because he has not found the money as a result of search as has been contemplated u/s 132 of the Act. With reference to this argument the learned judge observed :

"The argument is that as the discovery of money in court deposit is not claimed to be the result of search of any building or place referred to in Clause (iii) of Sub-section (1) of Section 132 of the Act, the question of applying the provisions of Clause (iii) of Section 132(1) cannot arise. This argument, it is true, has found favour with two learned judges, one of the Orissa High Court (K. Ahmad C.J.) in Union of India (UOI) Vs. Hadibandhu Das and Others, and the other of the Kerala High Court (K. Baskaran J.) in Cr. Revision Petition No. 306/72 K. Choyi, Income Tax Officer, Assessment-IV Vs. Syed Abdulla Bafakki Thangal and Another, . With great respect to the two learned judges, I find myself unable to frustrate the legislative intent by putting too narrow a construction upon the language of Section 132 of the Income Tax Act. The primary power conferred by Parliament upon the Income Tax Officer is the power of seizure. The power to enter and search any building or break open the lock of any door, box, locker, safe, almirah or other receptacle, is only an incidental power, the exercise of which will be only a means to the primary end, viz., the seizure. To say that the power of seizure is not exercisable unless it is preceded by the search of a building or breaking open of locks is to confuse the end with the means and to caricature the intention of the legislature, which, in order to facilitate the power of seizure, has provided also for the ancillary power of invading the privacy of people, by entering and searching their buildings and breaking open the receptacles where the thing to be seized might remain concealed. It would indeed be a captious and pernicious play on words to tell the Income Tax Officer "you have, no doubt, the power of seizure ; but you cannot exercise it unless you go through the physical motions of entering a building, searching it, breaking open the locks therein and then finding the thing you want to seize as a result of your searching efforts". It is conceivable that the thing to be seized is lying at the threshold of the building and without entering the building and searching and breaking open the locks, the Income Tax Officer may seize the thing straightaway. To say that such a seizure is illegal because it is not the result of such a search as is contemplated in Clauses (i) and (ii) of Sub-section (1) of Section 132 of the Act is to indulge in a self- defeating piece of sophistry. After all, what is the meaning of the word "search"? The Concise Oxford Dictionary says that it means "look for" or "seek out". What the Income Tax Officer has done in this case is to enter the building of the court of the Second Presidency Magistrate and to look for or seek out the amount kept in court custody and ask that it may be paid over to him, because it represents wholly or partly undisclosed income of Mohammed Koya. Be it noted that the section does not say that the Income Tax Officer can enter and search only the building of the person who had failed to disclose his income for the purposes of the Indian income tax Act. What the section says is that where any person is in possession of any money which represents wholly or partly

undisclosed income, the Income Tax Officer can enter and search any building or place where he has reason to suspect that such money is kept. This means that seizure can be effected even from the custody of a person other than the person who has failed to disclose his income and from a building belonging to any person other than the defaulter."

18. This passage is in consonance with our view already expressed.

19. We may also refer to a case where in fact the Supreme Court had approved of the action of one department seizing the goods in the possession of another department. *Durga Prasad v. Supdt. (Prevention), Central Excise, Nagpur*, is the case where the Assistant Collector of Customs and Central Excise under the Defence of India (Amendment) Rules, 1963, granted an authorisation to the Superintendent of Customs and Central Excise to seize and take possession of all gold ornaments which were believed to have been kept in contravention of the Gold Control Rules and also the account books and documents from the premises of one Durga Prasad. The documents were sent to Delhi temporarily for translation by the departmental Hindi officer. On the assumption that the documents were with the Superintendent of Central Excise, Nagpur, the Collector of Customs, Nagpur, made an order of seizure on September 6, 1963, u/s 110(3) of the Customs Act. On coming to know that the Superintendent of Central Excise had already made over the documents to the custody of the Assistant Collector of Central Excise, Nagpur, the Collector of Customs made a second order on September 11, 1963, with regard to the same documents. It was argued by the appellant in that case that the order of search and seizure dated August 19, 1963, by the Superintendent, Central Excise and Customs, Nagpur, under the Defence of India (Amendment) Rules, 1963, was illegal. This argument of the learned counsel was accepted by the Supreme Court and it was held that the authorisation-under the Defence of India Rules was without jurisdiction. But, all the same, no relief was granted to the appellant on the ground that the second order of seizure made by the Collector of Customs on September 11, 1963, was a valid order u/s 110 of the Customs Act. We are referring to this only to show that it is not unusual for one department to act in exercise of the powers under a particular enactment in respect of the goods or articles in the possession of another department which were seized in exercise of the powers under an entirely different enactment.

20. *Collector of Customs v. Soorajmull Nagarmull*, AIR 1966 SC 1209 is another important case which we have to notice at this stage. In that case in two suits filed by the respondent-firm decrees were passed against the Union of India for refund of customs duty charged in excess. Some Income Tax amounts were also due from the firm. The Income Tax Officer issued a notice u/s 46(5A) of the Indian Income Tax Act, 1922, calling upon the Collector of Customs to pay the amount due under the decree to him and stating that his receipt would constitute a good and sufficient discharge of the liability for refund to the firm. After remitting the amount in the Reserve Bank, the Collector of Customs applied to

the High Court under Order 21, Rule 2, of the Code of Civil Procedure, for adjustment of the decree by this payment to the Income Tax Officer. The High Court held that the adjustment of the decree could not be granted because the decrees were against the Union of India and not against the Collector of Customs, that the sums were held by the Collector of Customs on behalf of the Union of India and not on behalf of the firm. Reversing this judgment the Supreme Court held that the payment made by the Collector of Customs ought to be certified under Order 21, Rule 2. While holding so the Supreme Court made the following observations which are very apposite and may be quoted :

"The contention of the respondents in these appeals is that the decrees were not passed against the Collector of Customs but against the Union of India and that payment by the Collector of Customs was not a payment by the judgment-debtor. In our judgment this plea is highly technical. The amount was recovered by the Collector of Customs from the firm and was being held by the Union of India through the Collector of Customs. The Collector of Customs paid the money not on behalf of himself but on behalf of the Union of India and it must be treated as a proper payment of the amount to the firm. The objection of the respondent that it amounts to a payment by one department of the Government to another does not, in our opinion, hold much substance. It is also extremely technical. The Union of India operates through different departments and a notice to the Collector of Customs in the circumstances was a proper notice to issue because it was the Collector of Customs who had in the first instance recovered this money and held it from the firm.

The Collector of Customs had recovered this money and under the decrees of the court the Union of India was liable to refund it to the firm. A garnishee order is issued to a debtor not to pay to his own creditor but to some third party who has obtained a final judgment against the creditor. By a parity of reasoning this amount, which was with the Collector of Customs, could be asked to be deposited with the Income Tax authorities u/s 46(5A). The argument is extremely technical for that the firm is entitled to get a double benefit of the decree, first by having the decretal amount paid to the benefit of the firm and then to recover it again from the Union of India."

21. The learned counsel for the petitioners also relied on the words "person concerned" used in Section 132(5) and contended that the words refer only to the person from whom the goods were seized and, therefore, the section could not be invoked unless the person who is believed to have not disclosed the income or other asset is in physical or actual possession or the possession of any other person was on his behalf and not in their own right or authority. We are unable to see any substance in this contention also. That sub-section refers to seizure of the assets under Sub-section (1) of Section 132 and giving all opportunity to the person concerned for being heard. We have already seen that the words "any person in possession" in Section 132(1)(c) refer to the person to whom the money belonged and from whose income the same had not been

included for the purpose of the Income Tax Act. Therefore, the words "person concerned" in Section 132(5) could refer only to the person against whom a warrant is issued and not the person who was in actual possession. This does not mean that the person who was in physical possession and from whom the actual seizure was effected need not be given any opportunity of being heard. He is of course a person who is entitled to be heard both under the provisions, of the Act and under the principles of natural justice. We are supported in this opinion by the decision of the Gujarat High Court in *Ramjubhai Kalidas Vs. I.G. Desai Income Tax Officer and Others*, . We may usefully quote the passage from the judgment which is as follows :

"What is the true connotation of the expression "person concerned" ? Mr. Pathak on behalf of the petitioners contended that the words "person concerned" referred only to the person from v/hose possession the undisclosed income or property was seized and they had no reference to the owner of the undisclosed income or property in cases where the person in possession was other than the owner. This contention does not appeal to us. The words used are "person concerned" and not "person from whose custody or possession the assets were seized." We find that in Sub-section (5) itself, the legislature has used two different expressions, namely, "person concerned" and "person from whose custody they were seized". To equate one expression with the other would be to attribute looseness of language to the legislature. The ordinary canon of construction is that when the legislature has used two different expressions in the same section, the legislature must have intended to convey two different meanings. The words "person concerned" in the context in which they occur clearly refer to the person who would be concerned or affected by the making of the order and retention of the seized assets under Sub-section (5). Ordinarily, having regard to the nature of the undisclosed income or property the person found in possession of it would be the owner and in the absence of any information to the contrary, the Income Tax Officer would presume him to be the owner and proceed against him under Sub-section (5). Where such is the case, the person in possession would be the " person concerned " for the purpose of Sub-section (5).

But, if, as a result of examination of the person in possession under Sub-section (4) or otherwise, the Income Tax Officer comes to know that someone other than the person in possession is the owner of the undisclosed income or property, he may proceed to take action "against such person under Sub-section (5) and in that event such person and not the person in possession would be the "person concerned". The "person concerned" would be the person in respect of whom the Income Tax Officer proposes to make an order under Sub-section (5). Such person has to be given a reasonable opportunity to be heard before an order is made against him and the assets seized are retained for satisfaction of his existing and estimated tax liability."

22. For the foregoing reasons, we are unable to accept the contention that the

proceedings initiated u/s 132 of the Act are illegal or otherwise invalid.

23. It is next contended by the learned counsel for the petitioners that there were no grounds for the Commissioner to entertain a belief that the sum of Rs. 2,38,000 was the undisclosed income of the second petitioner and that he was in possession. We have already seen that the Commissioner came to know that a large sum of Rs. 2,38,000 was found in the possession of the second petitioner which was seized by the excise authorities and there was no satisfactory explanation available about the source of money. The second petitioner was not an assessee of Income Tax and there was no evidence of any known source for such income. In the circumstances, it is stated by the Commissioner that he entertained a reasonable belief that, prima facie, the money wholly or partly appeared to be the income or property which is not disclosed for the purpose of Income Tax. Of course, the words "reason to believe" in Section 132(1) does not mean purely a subjective satisfaction on the part of the Commissioner. The court could examine the question with reference to the materials available with the Commissioner and whether they have a rational connection or relevant bearing to the formation of the belief. If the reasons were extraneous or irrelevant having regard to the purposes of the section, the action would be without jurisdiction. The belief also must be entertained in good faith and not by a colourable exercise of power. Subject to this, the opinion of the Commissioner is final and not open to question. On the facts we are satisfied that the Commissioner was not actuated by any extraneous or irrelevant consideration or that it was a colourable exercise of power. The order is, therefore, not liable to be questioned on this ground of the petitioners.

24. The order of the Income Tax Officer, Trichy, made u/s 132(5) is also challenged in this writ petition on various other grounds. It was contended by the learned counsel for the petitioners that the Income Tax Officer ignored whatever materials that were available and taken into account, materials which were gathered by the Income Tax Officer behind the back of the petitioners, thereby vitiating the principles of natural justice. u/s 132(5) before making an order the Income Tax Officer shall offer a reasonable opportunity to the "person concerned" for being heard. Rule 112 enjoins on the Income Tax Officer who is holding the enquiry u/s 132(5) to issue a notice to the person in respect of whom the enquiry is to be made requiring him either to attend in person to explain or to produce or cause to be produced evidence on which such persons may rely for explaining the nature of the possession and source of the acquisition of the money. Sub-rule (3) of this rule also enables him to examine on oath "any other person or make such other enquiry as he may deem fit". Sub-rule (4) requires the Income Tax Officer, before any material gathered in the course of examination or enquiry under Sub-rule (3) is used against the person in respect of whom enquiry u/s 132(5) is made, to give a reasonable notice to that person to show cause why such material should not be used against him. The learned counsel contended that these rules have been violated. His first ground in this connection was that the Income Tax Officer had relied on the statement recorded

by the central excise authorities, which, according to him, was not a voluntary statement, but was obtained under duress. In the impugned order it is stated, firstly, that the 2nd petitioner had not raised before the central excise authorities at any time that the statement was obtained under duress or that it was not voluntary ; secondly, the Superintendent, Central Excise, to whom a reference was made had confirmed that the statement was given by the party voluntarily and on his own free will in the presence of two independent witnesses; and, thirdly, the 2nd petitioner had not adduced any proof before the Income Tax Officer in support of his allegation that the statement was not voluntary and that it was obtained under duress. Further, the detailed particulars given in the statement could not have been in the knowledge of the central excise authorities. The Income Tax Officer, therefore, concluded that there is no reason to doubt the veracity of the statement recorded by the central excise authorities and there is no reason why he should not place reliance upon such a testimony. The learned counsel vehemently contended that the Income Tax Officer erred in relying on the statement recorded by the excise authorities without giving the 2nd petitioner an opportunity of contradicting the statement of the Superintendent, Central Excise, that the statement was given by him voluntarily and out of his own free will. There could be no doubt that an involuntary statement or a statement obtained under duress is no statement at all and could not be relied on for any purpose even if it contained a true statement of fact which is in favour of the party who gave it. But we have no doubt in this case that neither the provisions of Section 132(5) or Rule 112A nor any principle of natural justice have been violated by the Income Tax Officer. As already noticed, the 2nd petitioner gave two statements before the Income Tax Officer, Trichy, on November 22, 1972, and December 2, 1972. The learned counsel for the petitioners also produced before the Income Tax Officer, Trichy, a statement of the 2nd petitioner given by him to the Income Tax Officer, Coimbatore, on November 16, 1972. The question for consideration before the Income Tax Officer, Trichy, was whether these statements are reliable and not whether the statement before the central excise authorities is reliable. At this stage we have to notice the material points at which these statements differed from the statement recorded by the central excise authorities. In the statement before the central excise authorities, the 2nd petitioner had stated that he came into acquaintance with one A. Kader of Kayalpatnam on October 30, 1972, but in the later statement before the Income Tax Officer he had stated that he had acquaintance with this Kader since many years. In the earlier statement before the central excise authorities the 2nd petitioner had stated that A, Kader of Kayalpatnam brought the money on October 30, 1972, and gave it to him but in the statement before the Income Tax Officer he had stated that Gulab Kader had come and gave him the money. In the statement before the central excise authorities when asked the purpose for which the amount was given, the petitioner had stated that there was no particular purpose but simply the money was given to him and the person who gave the money said that he would come in a day or two. But in the statement before the Income Tax Officer it was stated

that it was for the purpose of a new film industry intended to be started. In the statement before the central excise authorities he had stated that he met once about two months prior to the incident and acquainted himself with A. Kader, who had brought money, and he had not met him before. In the statement before the Income Tax Officer he had stated that he was known to him for many years. All these contradictions were put to him specifically when he was examined on December 2, 1972, by the Income Tax Officer, Trichy. He had stated generally for every one of these questions that he had not stated so and that the statement was recorded by the excise authorities under compulsion and intimidation. So far as the difference in name is concerned, he said that because of beating by the excise authorities he had mixed up the names.

25. After this questioning, a further notice was issued on January 19, 1973, to the 2nd petitioner requiring him to produce whatever evidence he has in his possession, to explain the source of Rs. 2,38,000 after particularly inviting his attention to the statement made on December 2, 1972, and fixing a further enquiry on January 23, 1973. His further statement was recorded on January 23, 1973, and this statement related to his association with Gulab & Company, Coimbatore, and their accounts, But the 2nd petitioner did not offer or produce any evidence to show that the prior statement given by him before the excise authorities was not voluntary. In those circumstances, the Income Tax Officer could have proceeded on the basis that the statement recorded by the excise authorities had not been proved to be involuntary. But, by way of abundant caution, the Income Tax Officer has asked for a confirmation that the statement was recorded by him without resorting to any compulsion or coercive circumstance and the Superintendent of Central Excise has confirmed that the statement was recorded without any compulsion. In the counter-affidavit by the 1st respondent in this case it is stated that the statements were voluntary and not obtained under threat or extortion. There is no admission or other statement to the effect that the amount belonged to him and that it was his undisclosed income in the prior statement on which the Income Tax Officer could rely. We are also of the view that though the Income Tax Officer had in the impugned order stated that there is no reason why he should not place reliance on that statement, it is seen from the subsequent paragraphs in the order that only the contradictory portions which were specifically put to the 2nd petitioner were relied on and that too only for the purpose of testing the veracity of his present statement, that the amount belonged to Gulab & Company and that it is not his undisclosed or concealed income. That, in our opinion, the Income Tax Officer is entitled to do on the facts of this case especially when the specific portions of the contradictions were put to the 2nd petitioner for an explanation when he was examined on December 2, 1972. We have to also observe that nothing prevented the petitioners from examining any witnesses or producing such evidence which will prove or show that the statement before the central excise authorities was not voluntary.

26. The learned counsel for the petitioners next pointed out that in the impugned

order it is stated that a careful perusal of the various statements given by "various parties" as well as the scrutiny of the account books of M/s. Galab & Company would leave none in doubt as to the fact that the seized sum represented the undisclosed income of Shahul Hameed. The 2nd petitioner was not aware of any statements obtained by the 1st respondent from various parties. We do not find anything on record or the file to show that any statement was recorded by the Income Tax Officer except those statements given by the 2nd petitioner himself and the statement of Gulab, the partner of the 1st petitioner-company, given to the Income Tax Officer, Coimbatore, on January 22, 1973. This statement was given voluntarily by the 1st petitioner in the presence of such counsel. We have no doubt that the Income Tax Officer refers only to these statements of the petitioners as statements given by various parties and none else. So far as the account books are concerned, it is the 1st petitioner's own account-books which he wanted the Income Tax Officer, Trichy, to look into that were referred to in the order. The learned counsel for the petitioner was not able to show that any other statement or account books of anybody else was relied on by the Income Tax Officer. We do not, therefore, think there is any substance in this ground raised by the learned counsel. Many of the other statements which the learned counsel took exception to in the impugned order are in the nature of inferences arising from the facts and circumstances of the case and no specific evidence is available. It is true that at one place there is some reference to Gulab travelling in the State Transport Bus from Coimbatore to Trichy and reaching there at 10"30 a.m. and there is also a statement to the effect that there is no State Transport Bus arriving at Trichy at 10"30 a.m. from Coimbatore. The learned counsel submitted that the Income Tax Officer had assumed that because in the time-table for State buses printed in the telephone directory there is no reference to any bus arriving at 10"30 a.m., the Income Tax Officer has assumed that there is no such transport bus. But even if it was so, the learned counsel was not able to show with reference to any evidence that the Income Tax Officer's relying on the time table printed in the telephone directory was wrong or that in the printing there was any omission. It might or might not be that there are transport buses owned by private companies or individuals plying between Coimbatore and Trichy at that time. But the statement of Gulab was to the effect that he went by a State Transport Bus. In those circumstances, we are unable to see any reason why the Income Tax Officer could not have relied on the time-table published by the State Transport Department to discredit the statement of Gulab.

27. Apart from all these circumstances, even assuming that there is a violation of the principles of natural justice, we are not persuaded to invoke our jurisdiction under Article 226 of the Constitution and interfere with the order at this stage. The enquiry u/s 132(5) is of a summary nature limited for the purpose of a temporary estimation of undisclosed income and retention of that portion of the money which is in his opinion sufficient to satisfy the amount of tax on the income so estimated. The impugned order to the effect that the amount

represented undisclosed income is not final and it could be reconsidered if sufficient evidence is produced in the regular assessment or reassessment proceedings. There is no confiscation of the properties involved. Only a temporary deprivation of possession of money with a view to facilitate the recovery of the amount of tax that may be found due from the person is contemplated in the provision. Further, Section 132(5) requires the enquiry to be completed and the order of retention to be made within 90 days of the seizure. Any finding of violation of the principles of natural justice would not mean that there is no case against the party. It would only entitle him for a fresh hearing and disposal. But, unfortunately, if the order is set aside after the expiry of 90 days on any ground of violation of natural justice a fresh enquiry might not be possible even if this court were to direct such enquiry. It would be arguable, on which we do not express any opinion, whether the Income Tax Officer would in such a case have jurisdiction to make any order relying on the directions of the court. In fact, in *Pooran Mal and Sons and Another Vs. Director of Inspection (Investigation) of Income Tax and Another*, where the court issued a writ of certiorari quashing the order on the basis of violation of the principles of natural justice and directing the Income Tax Officer to make a fresh order after giving opportunity, an order made in pursuance of the High Court's order was challenged on the ground that it was made beyond 90 days from the date of seizure. It was held that the Income Tax Officer had no jurisdiction to make that order in spite of the fact that it is only the High Court that passed the earlier order which directed a fresh enquiry to be made and order passed thereon. As already stated, we are not expressing any view on this point. It may also be pointed out that a regular appeal is provided against the impugned order to the Central Board of Directives u/s 132(11). Being an appeal the petitioners could raise all the objections which they had raised in this writ petition relating to the reasonable opportunity of being heard and adducing fresh evidence. The power of the appellate authority being co-extensive with that of the lower authority, it could give him fresh opportunity to even examine witnesses in the appeal, and whatever defects there are in the enquiry could be rectified and opportunity given. In fact, the petitioners will not in any way be prejudiced in this case as such a regular appeal is stated to have been filed and it is still pending.

28. In this connection we may also refer to one decision of the Supreme Court on the scope of interference by this court under Article 226 of the Constitution when there is an equally efficacious remedy by way of appeal or otherwise. In *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, it was held :

"It is a well-established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, as observed by this court in *Rashid Ahmed Vs. The Municipal Board, Kairana*, the existence of an

adequate legal remedy is a thing to be taken into consideration in the matter of granting writs" and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self-imposed limitation, a rule of policy and discretion rather than a rule of law and the court may, therefore, in exceptional cases issue a writ such as a writ of certiorari notwithstanding the fact that the statutory remedies have not been exhausted."

29. But the Supreme Court qualified this with two exceptions. In the words of the Supreme Court:

"There are at least two well-recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well-settled that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the High Court under Article 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice."

30. In the present writ petition, as originally filed, a number of grounds had been taken that Section 132 of the Income Tax Act was violative of Article 14 and Article 19(1)(f) and (g) of the Constitution of India. But the learned counsel did not advance any argument on the constitutional validity of Section 132. The learned counsel for the petitioners relied on the second exception referred to above relating to the violation of the principles of natural justice. It is seen from the decision of the Supreme Court in *State of Uttar Pradesh v. Mohammad Nooh*, AIR 1958 SC 86 which was relied on in support of this second exception that there is no such absolute rule enunciated in that case that in every case without exception this court shall have to interfere under Article 226 of the Constitution irrespective of any other consideration when there is a violation of the principles of natural justice. The Supreme Court had only stated in these judgments that, if this court were to interfere with an order on the ground of violation of the principles of natural justice even in a case where there is an effective alternative remedy, it could not be characterised as not a sound exercise of jurisdiction under Article 226. As we have seen already in this case, not only the petitioners have an effective alternative remedy by way of appeal but interference at this stage may result in allowing a person to escape the provisions of law as the department might not be able to continue the enquiry from the stage where the principles of natural justice have been violated, It is also stated by the learned counsel for the revenue that there are no other known assets in the name of the second petitioner and, if the order has to be interfered with on any such technical ground, grave mischief would be done which could not be remedied at any later stage. These are certainly circumstances, in our opinion, to be taken into account

in imposing a self-restriction on ourselves from interfering with such orders under Article 226 of the Constitution. For the foregoing reasons, we are unable to interfere with the order of the Income Tax Officer on this ground of attack.

31. In the result, the writ petition is dismissed with costs of the 4th respondent. Counsel's fee Rs. 250.