
(1991) 11 DEL CK 0035

In the Delhi High Court

Case No : Civil Writ Appeal No. 1154 of 1991

L.R. Gupta and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 132

Citation : (1992) 101 CTR 179 : (1992) 46 DLT 14 : (1992) 22 DRJ 1 : (1992) 194 ITR 32 : (1991) RLR 551 : (1991) 59 TAXMAN 305

Hon'ble Judges : B.N. Kirpal, J;Arun Kumar, J

Bench : Division Bench

Advocate : H.N. Salve, P.R. Agarwal, Ashok Mathur, Mahendra Rana, Madan Lokur, G. Ramaswamy, Rajendra, D.N. Malhotra and Raj Panjwani, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The challenge in this writ petition is to the authorisation which had been issued by Director (Investigation), Income Tax Department (respondent No. 2) u/s 132(1) of the Income Tax Act, 1961 (for short the Act) and the subsequent conduct of search and seizure carried out by respondents 3 to 6 under the said Act.

(2) Ri L.R. Gupta (petitioner No. 1) is a Senior Advocate of this Court. The other petitioners are members of his family. Petitioner No. 2, bids son, is also an Advocate. Petitioner No. 3 is the younger son of Shri L.R. Gupta and petitioners 4 and 5 are the wife and daughter, respectively, of petitioner No. 1.

(3) It is averred in the writ petition that the petitioners, Along with some other persons had acquired Bhumidari rights in agricultural lands in Delhi. The said lands were acquired under the provisions of the Land Acquisition Act and awards in respect thereto were given. The amount of compensation awarded by the Land Acquisition Collector was claimed by three sets of claimants, (1) the Gaon Sabha

of the Village in which the land was situated, (2) the proprietors/owners of the land and (3) Bhumidars, including the petitioners.

(4) The dispute with regard to persons who were entitled to claim compensation was referred, u/s 30 and 31 of the Land Acquisition Act to the Court of the District Judge, Delhi. Claims were also filed by the three categories of claimants before the Addl. District Judge, for enhancement of the compensation which had been offered by the Collector in his awards.

(5) It is not necessary to give details with regard to the dispute under the Land Acquisition Act except to note that the Addl. District Judge decided that it was the Bhumidars who were entitled to receive compensation. The claims of the Gaon Sabha and the owners was rejected. The Addl. District Judge also enhanced the compensation and the total share of the petitioners, out of the sum awarded as compensation to the Bhumidars, was about Rs. 28.77 crores.

(6) Against the decision of the Addl. District Judge, who upheld the claim of the Bhumidars to receive compensation, appeals were filed in this Court by the Gaon Sabha and the owners of the land. Appeals were also filed by the Union of India against the decision dated 28th July, 1986 whereby enhanced compensation was awarded by the Addl. District Judge.

(7) On 23rd March, 1987 a Division Bench of this Court directed the Union of India to deposit with the Court of the Addl. District Judge the amount of compensation which had been decreed and the petitioners herein were allowed to withdraw the same on furnishing bank guarantee for restitution to the satisfaction of the Court after giving notice to the Union of India. According to the petitioners an agreement was entered into by them with the Union of India who agreed to furnish bank guarantees. On the bank guarantees being furnished, and the same being accepted by the Court, the petitioners withdraw the amount of compensation which had been awarded. In terms of the agreement which had been entered into between the petitioners and the bank, the money was received from the Court, infact, by the bank on behalf of the petitioners and it is alleged that the said money was utilised for the purchase of bonds bearing 9% interest free of Income Tax and Wealth Tax, With the arrangement with the Banks, Immovable properties were also purchased in and around Delhi by the petitioners. According to the petitioners. the amounts which were invested for the purchase of the Immovable properties were out of the compensation which had been received.

(8) It is further alleged that the petitioner No. 1 is an Income Tax and Wealth-tax assessed and petitioner No. 2 is also a regular Income Tax assessed. On 10th February, 1991 petitioner No. 3 got married in Delhi. Thereafter the Income Tax Department sought, from petitioner No. 1, Information regarding the expenses which had been incurred in his son's marriage. It is averred that the information, which was required, was furnished to the Income Tax Officers to their satisfaction.

(9) On 21st March, 1991 two Inspectors oaf the Income Tax Department are

alleged to have visited the residence of the petitioners at 6, Anand Lok, New Delhi and made enquiries and asked them to supply them documents regarding the award of compensation, orders of this Court with regard thereto which had led to the furnishing of the bank guarantees. It is alleged that photo-copies of the documents which were required by the Department were duly given to the aforesaid Inspectors who then served a notice u/s 131 on petitioner No. 4 requiring her to attend the Office of the Income Tax Officer on 22nd March, 1991 for giving information required from her.

(10) On 22nd March, 1991 search took place, initially, at the residence of the petitioners. According to the averments in the writ petition the house of the petitioners was surrounded by Police and a number of Income Tax Officers entered the house. Warrants of authorisation issued u/s 132(1) by respondent No. 2 were shown to petitioner No. 1 and thereafter the house was searched. The petitioners have also made grievance of the manner in which the search was conducted. In particular it is alleged that petitioner No. 1, who was sitting in his office-room at his residence when the raid started, was not even permitted to leave the room to attend to his ailing wife or to professional work. The Addl. Director of Inspection (respondent No. 4) examined and recorded the statement of petitioner No. 1. It is further alleged that even after recording of the statement of petitioner No. 1 had concluded at 10.30 A.M. he was not allowed to come to the High Court so as to attend to the cases in which he had been engaged.

(11) Statements of some other members of the family were also recorded. It is not necessary for us, for the view which we are taking, to examine in great detail the allegations made by the petitioners with regard to the behavior of the raiding party qua the other members of the family of petitioner No. 1.

(12) Petitioner No. 3 was also interrogated at his residence. Thereafter part of the raiding party went to the office of petitioner No. 3 where again search was conducted.

(13) According to the petitioners, as a result of the search which was carried out by the respondents, a total amount of Rs. 2.10 lakhs in cash and jewellery worth about Rs. 14 lakhs belonging to the four ladies in the house was found. Out of the cash amount the respondents seized a sum of Rs. 1.60 lakhs and a seizure memo was prepared. Jewellery worth about Rs. 10 lakhs was also seized. It is further alleged that respondents 4 to 6, during the course of the raid, committed theft and an FIR was lodged by petitioners 1 to 3 on 23rd March, 1991.

(14) In the reply, which has been filed on behalf of the respondents, it is admitted that an authorisation u/s 132 of the Act was issued and a search was conducted at the residential premises of petitioner No. 1 and in the office premises of certain concerns in which the petitioners had controlling interests. The search was stated to have been authorised consequent to the information which had been allegedly gathered to the effect that the petitioners had received

approximately Rs. 30 crores from Land Acquisition Department towards enhanced compensation for acquisition of land but none of the family members had filed any Tax return in respect thereto. It was further alleged that only petitioners I and 2 had filed their Income Tax returns and even in these returns there is no mention of any information/disclosure regarding the compensation received, any subsequent interest or other incomes earned from this amount and any assets acquired by them. According to the respondents the petitioners had not disclosed the capital gains earned by them in any of the relevant assessment years. Furthermore the petitioners had acquired a number of Immovable properties including a posh residential building at 14, Anand Lok, New Delhi. Discreet enquiries were stated to have been made and it was revealed to the Department that this house at Anand Lok was under demolition and an apartment building was proposed to be constructed on it for which some secret bookings were alleged to have been made and money received by the family members of the petitioner No. 1. The further allegation of the respondents is that the Explanation which had been offered with regard to the marriage expenses relating to petitioner No. 3 was of doubtful veracity. Another allegation is that the petitioners had purchased books from out of the compensation which had been received and they had obtained commission from certain agents for the purchase of the public sector bonds. The commission so received was stated to be to the extent of Rs. 38 lakhs and, according to the respondents, this Income had not been disclosed and nor the petitioners had any intention of disclosing the same and it would not have been unearthed but for the search u/s 132. There is also allegation of evasion of the Wealth Tax and particulars of the properties owned by the petitioners have been specified in the reply. According to the respondents the amount of Income Tax, Wealth Tax and Gift Tax, which had been evaded, comes to Rs. 18.09 crores. Further allegation is that In addition to this the petitioners are also liable for interest and prosecution for the various offences allegedly committed by them.

(15) In the reply which has been filed there is no denying of the fact that the police was present at the time when the search was conducted. According to the respondents the presence of police is a routine precaution taken in all searches so as to avoid any law and order problem and to secure the safety and security of the search team. The allegation of harassment against the petitioners has been denied. It is further alleged by the respondents that petitioner No. 2 never expressed the desire to go to the Court but it is admitted by the respondents that petitioner No. 1 was not allowed to leave the premises as the respondents had bona fide belief that if he was permitted to leave the premises, he would concoct information and fabricate/tamper with the evidence. Allegations of theft have, of course, been denied and it is contended that the gathered cash and jewellery were seized because no Explanation could be furnished by the petitioners in respect thereto.

(16) In view of the fact that the respondents had alleged that one of the Immovable properties viz., 14, Anand Lok, New Delhi was under demolition, an

application was filed by the petitioners for appointing a Local Commissioner to give a report whether the said building was under demolition. According to the petitioners the said building was intact and a false averment had been made by the respondents. The said application was allowed and a Local Commissioner was appointed. The Local Commissioner gave her report on 7th August, 1991 in which it was stated that the house looked old and was in dilapidated condition but 1st :

"THERE is no demolition in progress, infact the house is intact, and no effort has been made to conduct any kind of demolition." It is also stated in this report that :

"IN conclusion, the house is intact and no previous work of demolition is there. Even today at 3.30 P.M. no demolition of any kind is in progress".

(17) By our order dated 9th August, 1991 the respondents were directed to file a copy of the satisfaction note which had been recorded while issuing the authorisation u/s 132. This direction was issued subject to any claim of privilege which may be raised by the respondents. Initially an affidavit was filed claiming privilege but, subsequently, the Attorney General appeared on 30th September, 1991 and stated that he was not pressing the claim of privilege and that the respondents would be willing to show to the Court as well as to the petitioners the reasons which have been recorded for the issuance of the authorisation u/s 132(1) of the Act in the present case.

(18) Pursuant to the aforesaid contention of the Attorney General the petitioner No. 1 was accorded inspection of the file by the respondents. On the Court record notes of the officers of the Department as well as the satisfaction recorded by the Director (Investigation) have been filed.

(19) In the note dated 20th March, 1991 the Assistant Director of Investigation (respondent No. 4) has inter alias noted as under :

(1) the petitioners had received compensation of about Rs. 30 crores against acquisition of lands situated in and around Delhi but the same had not been disclosed to the Department towards Income Tax and Wealth Tax. (2) The family owns property worth crores of rupees in and around Delhi including in benami names without having disclosed the same to the Department. (3) The family is dealing heavily in un-accounted purchases/re-sale of properties including farm houses. (4) House No. 14, Anand Lok, New Delhi was purchased by petitioner No. 3 and lots of people were coming with cash towards booking in respect of the apartments to be constructed on that house. The demolition work was in progress and construction was to start very soon. (5) The family was in possession of huge unaccounted money, valuable assets etc. which has been accumulated without disclosing to the Department.

(20) Lastly it was stated in this note that lot of valuable assets, incriminating documents would be found at their residence which have not been disclosed to

the Department and would not be disclosed to the Department and would go un-audited unless search and seizure operations u/s 132 are carried out. The premises which were recommended for search were the residence of the petitioners and the office of petitioner No. 3 which was a flat in Building No. 10, Hailey Road, New Delhi. The note of the Assistant Director of Investigation (respondent No. 4) is followed by note of the Deputy Director of Investigation (respondent No. 3). He has inter alia stated that the petitioners had not disclosed income earned by them under the head "Capital Gains" and also interest income which has arisen to them. The fact of Wealth Tax Returns not having been filed was also mentioned. It was also stated that a watch had been kept over the petitioners house for a number of days and enquiries showed that many people were visiting petitioner No. 1 to invest in the flats proposed to be constructed at 14, Anand Lok. Reference was also made to the flat at Hailey Road and it was stated that it was apparent to respondent No. 3 that this office was being used for secret property deals. It is further noted that petitioner No. 3 had got married and more than Rs. 80 lakhs were spent. Enquiries are further alleged to have revealed that the disclosed expenditure of Rs. 5 lakhs has been made from questionable sources. The Director of Investigation (respondent No. 2), was asked to authorise action u/s 132 of the Act in respect of the persons and the premises mentioned above.

(21) Respondent No. 2, thereupon, recorded the following satisfaction note, pursuant to which authorisation was issued :

"DISCUSSED with Dd Shri Rajguru and Adi Shri Anil Mehta. I am satisfied that the assessed Shri L.R. Gupta and members of his family have not been disclosing their true incomes and wealth and accordingly action u/Sec. 132(1) of the It Act is necessary to discover and to take possession of the relevant documents of incriminating nature and unaccounted cash, valuables and other assets. Accordingly warrants of authorisation u/Sec. 132(1) of the It Act 1961 are issued under my seal and signature in respect of persons and premises set out in the note of the Adi at page 7. Dd to please ensure execution."

(22) On behalf of the petitioners, Mr. Harish Salve, the learned Counsel has vehemently contended that no reasonable person could have come to the conclusion that, on the facts of the present case, an authorisation u/s 132(1) should have been issued. He submitted that the ingredients of Section 132(1) were not satisfied in the present case and the authorisation which was issued was liable to be quashed. It was further contended by the learned Counsel that the respondents were also in error in passing orders u/s 132(3) in respect of the jewellery. It was lastly contended that the manner in which the raid was conducted was objectionable and the respondents had no jurisdiction to prevent petitioner No. 1 from attending to his work in Court.

(23) Shri Rajendra, the learned Counsel for the respondents submitted that there was sufficient material on the record on the basis of which the Director of Investigation could come to the conclusion that an authorisation u/s 132 should

be issued. It was Contended that respondent No. 2 had exercised these powers under the provisions of Section 132(l)(b)(c) of the Act. This Court, it is submitted, has no jurisdiction to see whether the material or evidence on record was sufficient to warrant satisfaction u/s 132(1). All that this Court could examine was whether any material existed on the basis of which the Director of Investigation could have come to the conclusion that the search should be conducted under the provisions of Section 132 of th(r) Act.

(24) It was submitted by Mr. Salve that petitioner No. 1 was a Senior Advocate and there could be no reason for the respondents to form a belief that the petitioner would refuse to supply any Information which may be sought for by the Income Tax authorities. He submitted that according to the petitioner the amount of compensation and interest which was received by the petitioners was not liable to tax in view of the decision of the Supreme Court in the case of Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd., . This was for the reason that appeal had been filed against the quantum of enhanced compensation by the Union of India which was pending in this Court. Appeal had also been filed by the Gaon Sabha and the owners challenging the right of the petitioners to get any compensation and till all these appeals were finally concluded, in favor of the petitioners, it could not be held that the petitioners had become the owner of this money or that they had earned any capital gains or income by way of interest or otherwise. It was submitted that because the receipt of this sum was not taxable, Therefore, the same was not included in the Income Tax return. Nor was this amount shown in the Wealth Tax return because it did not represent the wealth of the petitioners as the said money could not be said to be belonging to them unless and until all the Court proceedings relating to the land acquired were concluded in their favor. Merely because Wealth Tax returns had not been filed or alleged capital gain not disclosed in the Income Tax return, could not be a ground for the Department to conclude that If any information in respect to the said compensation or purchase of property or any other document was sought for, the same would not have been produced before the Income Tax authorities by the petitioners. In short the submission was that no material existed on the basis of which the respondents could have been satisfied under the provisions of Section 132(1)(b).

(25) On behalf of the respondents, Shri Rajendra drew our attention to the decision of the Mysore High Court in the case of C. Venkata Reddy and Another Vs. Income Tax Officer (Central) I, Bangalore and Others, it was observed that Section 132 was intended to achieve two limited objectives, (1) to get hold of evidence bearing on the tax liability of a person which the said person is seeking to withhold from the assessing authority and (2) to get bold of assets representing income believed to be undisclosed income and applying so much of them as may be necessary in discharge of the existing and anticipated tax liability of the person concerned. At page 238 the Court further held that :

"THE use of the words "has reason to believe" on the basis of information in his

possession excludes the possibility of any unreasonable exercise of the power. The basis for the exercise of the power, it should be noted, is not mere suspicion but a reasonable belief upon information already in possession of the appropriate officer. It would also, in our opinion, postulate that information in the possession of the officer is not a mere canard or an unverified piece of gossip but information which, in the circumstances, may be regarded as fairly reliable, because no belief can ever be said to flow reasonably from anything but information which may be regarded as fairly reliable. Hence, the careful selection of these words by the statute and the drastic nature of the powers necessarily point to a judicial application of the mind to some substantial material by the officer acting with a sense of responsibility."

(26) We cannot but agree with the aforesaid Explanation of the correct legal position.

(27) In V.K. Jain Vs. Union of India (UOI) and Others, , a Single Judge of this Court held that for effecting search and seizure u/s 132 it was not necessary for the officials of the Income Tax Department to have given to the person, whose account books and documents are sought to be seized, a notice to produce whatever the books or other documents are needed and that person should have failed to comply with such a notice. If the Commissioner of Income Tax was in possession of information that such a person was maintaining duplicate sets of account then such an information was relevant for formation of the necessary belief u/s 132 of the Act. What is, however, important to note is that there must be information about unknown or undisclosed documents.

(28) A search which was conducted pursuant to an authorisation issued u/s 132 was also challenged in the case of Chiranjilal and another Vs. Commissioner of Income Tax, Delhi-I and another, . A Division Bench of this Court upheld the action which was taken by the Department. In the judgment the satisfaction which was recorded is not indicated but the file was examined by the Court and it was observed that :

"from the file we find that there was some material on the record suggesting that there was concealed income. It also appears that after the information had been documented the Commissioner wanted certain further information and it was only then that the Commissioner made a note that this was a fit case for issuing a search and seizure warrant for un-earthing secret valuables and documents."

(29) Therefore, existence of tangible material, for formation of opinion Is a pre-requisite.

(30) Reference was also made to BALWANT SINGH AND OTHERS Vs. R. D. SHAH, DIRECTor OF INSPECTION, Income Tax, NEW DELHI, AND OTHERS., . A Division Bench of this Court held that the High Court could not test the adequacy of the grounds leading to the satisfaction which was recorded u/s 132 of the Act. It was, however, observed that the Director of Inspection or the Commissioner ought not to lightly or arbitrarily invade the privacy of a subject. If the grounds

on which the belief is founded are non-existent or are irrelevant or are such on which no reasonable person can come to that belief, the exercise of the power would be bad, but short of that, the Court cannot interfere with the belief bona fide arrived at by the Director of Inspection. It is, however, for the Court to examine whether the reasons for the belief have a rational connection or relevant bearing to the formation of the belief. Search warrant. It was further observed, could not be issued merely with a view to making a roving or fishing enquiry, but could be issued only when there existed a good ground for believing that further proceedings may have to be taken.

(31) Section 132, inter alia, contemplates the issuance of an authorisation u/s 132(1) empowering the authorised officer, inter alia, to search any building, place etc. and to seize books of account, other documents, bullion, jewellery etc. if the officer, issuing the authorisation has, reason to believe that:

"(A) any person to whom a summons Under-Section (1) of Section 37 of the Indian Income Tax Act, 1922 (11 of 1922), or under sub-Section (7) 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 proceedings under the Indian Income Tax Act, 1922 (II of 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, or would not be, disclosed for the purposes of the Indian Income Tax, Act, 1922 (II of 1922), or this Act (hereinafter in this Section referred to as the undisclosed income or property)."

(32) The basis of the exercise of the jurisdiction u/s 132(1) has to be the formation of a belief and the belief is to be formed on the basis of receipt of information by the authorising officer.

(33) The expression "information" must be something more than mere rumour or a gossip or a hunch. There must be some material, which can be regarded as information, which must exist on the file on the basis of which the authorising officer can have reason to believe that action u/s 132 is called for any of the reasons mentioned in Clauses (a), (b) or (c). When an action of the issuance of authorisation u/s 132 is challenged in a Court it will be open to the petitioner to contend that on the facts or information disclosed, no reasonable person could have come to the conclusion that action u/s 132 was called for. The opinion which has to be formed is subjective and, Therefore, the jurisdiction of the Court to interfere is very limited. A Court will not act as an Appellate Authority and

examine, meticulously, the information in order to decide, for itself, whether an action u/s 132 is called for. But the Court would be acting within jurisdiction in seeing whether the act of issuance of an authorisation u/s 132 is arbitrary or malafide or whether the satisfaction which is recorded is such which shows lack of application of mind by the Appropriate Authority. The reason to believe must be tangible in law and if the information or the reason has no nexus with the belief or there is no material or tangible information for the formation of the belief, then in such a case action taken u/s 132 would be regarded as bad in law.

(34) The provisions of sub-Clause (a) of Section 132(1) are not relied upon by the respondents In the present case. It is admitted that the petitioners are not guilty of non-production of documents or books of accounts etc. despite notice referred to in the said sub-Clause having been issued. We may, however, note that sub-clause (a) refers to facts which must actually exist before a belief is formed for taking action u/s 132(1).

(35) SUB-CLAUSE (b) of Section 132(1) refers to cases where there is reason to believe that if any summons or notice, as specified in the said subclause (a) has been issued or will be issued then that person will not produce or cause to be produced the books of accounts etc. In other words, the said provision refers to the belief which may be formed by the Appropriate Authority to the effect that the person concerned is not likely to voluntarily or even after notice produce documents before the Income Tax authorities. Where, for example, there is information that a person is hiding or likely to hide or destroy documents or books of accounts which are required or are relevant for the purposes of the Act then in such a case it can be said that unless and until search is conducted the said books of account or documents will not be recovered. The belief of the authority must be that the only way in which the Income Tax Department will be in a position to obtain books of accounts and documents from a person is by the conduct of a search and consequent seizure of the documents thereof. In our opinion some facts or circumstances must exist on the basis of which such a belief can be formed. For example, if the Department has information that a person has duplicate sets of account books or documents where hawala transactions are recorded then the Department can legitimately come to the conclusion that if a notice is sent then that person is not likely to produce the said documents etc. Duplicate books of accounts and such like documents are maintained primarily for the reason that they are not to be produced before the Income Tax authorities. To put it differently, the nature of the documents may be such which are not, in the normal course, likely to be produced before the Income Tax authorities either voluntarily or on requisition being sent. It may also happen that the documents may exist and be in the custody of a person which would show the existence of Immovable property which he may have acquired from money or income which has been hidden from the Income Tax Department. The past record of the assessed, his status or position in life are also relevant circumstances in this regard. Where, however, documents exist which are not secretly maintained by an assessed, for example pass books, sale deeds which

are registered and about the existence of which the Department is aware, then in such a case it will be difficult to believe that an assessed will not produce those documents.

(36) SUB-CLAUSE (c) refers to money, bullion or jewellery or other valuable articles which either wholly or partly should have been income of an assessed which has not been disclosed for the purpose of the Act. The said sub-clause pertains only to moveable and not Immovable assets. Secondly it pertains to those assets which wholly or partly represent what should have been income. The expression "which has not been or would not be, disclosed for the purposes of Income Tax Act" would mean that income which is liable to tax, but which the assessed has not returned in his Income Tax return or made known to the Income Tax Department. The sub Clause itself refers to this as "undisclosed income or property". In our opinion the words "undisclosed", in that context, must mean income which is hidden from the Department. Clause (c) would refer to cases where the assessed knows that the moveable asset is or represents income which is taxable but which asset is not disclosed to the Department for the purpose of taxation. Those assets must be or represent hidden or secreted funds or assets. Where, however, existence of the money or asset is known to the Income Tax Department and where the case of the assessed is that the said money or the valuable asset is not liable to be taxed, then, in our opinion, the provisions of sub-Clause (c) of Section 132(1) would not be attracted. An assessed is under no obligation to disclose in his return of income all the moneys which are received by him which do not partake of the character of income or income liable to tax. If an assessed receives, admittedly, a gift from a relation or earns agricultural income which is not subject to tax, then he would not be liable to show the receipt of that money in his Income Tax return. Non-disclosure of the same would not attract the provisions of Section 132(c). It may be that the opinion of the assessed that the receipt of such amount is not taxable, may be incorrect and, in law, the same may be taxable but where, the Department is aware of the existence of such an asset or the receipt of such an Income by the assessed then the Department may be fully Justified in issuing a notice u/s 148 of the Act, but no action can be taken u/s 132(1)(C). Authorisation u/s 132(1) can be issued if there is a reasonable belief that the assessed does not want the Income Tax Department to know about the existence of such Income or asset in an effort to escape, assessment. Section 132(1)(c) has been incorporated in order to enable the Department to take physical possession of those moveable properties or articles which are or represent undisclosed income or property. The words "undisclosed income" must mean income which is liable to be taxed under the provisions of the Income Tax Act but which has not been disclosed by an assessed in an effort to escape assessment. Not disclosed must mean the intention of the assessed to hide the existence of the income or the asset from the Income Tax Department while being aware that the same is rightly taxable.

(37) While interpreting the provisions of Section 132. A Division Bench of the Allahabad High Court in the case of Motilal and Others Vs. Preventive Intelligence

Officer and Others, observed in the language of R.S. Pathak, J (as he then was) as follows :

"IN my opinion the power conferred u/s 132(1) is contemplated in relation to those cases where the precise, location of the article or thing is not known to the Income Tax Department and, Therefore, a search must be made for made it, and where it will not be ordinarily yielded over by the person having possession of it and, Therefore, it is necessary to seize it.....I am unable to accept the contention on behalf of the Income Tax Department that Section 132(3) will Include a case where the location of the article or thing is known and where ordinarily the person holding the custody of it will readily deliver it up to toe Income Tax Department. Such article or thing, I think, requires neither search nor seizure."

(38) The aforesaid decision was approved by the Supreme Court in the case Commissioner of Income Tax v. Tarsem Kumar, 161 Itr 595 and it was held as fellows:

"THISaspect of the matter has been clearly dealt with by a judgment of the Division Bench of the Allahabad High Court in Motilal and Others Vs. Preventive Intelligence Officer and Others, , where the judgment was delivered by one of us (R.S. Pathak, J). There the Court held that the power conferred u/s 132(1) of the Act was contemplated in relation to those cases where the precise location of the article or thing was not known to the Income Tax Department and, Therefore, a search was necessary for it, and where it would not be ordinarily yielded over by the person having possession of it. The view that Section 132(3) of the Act would include a case where the location of the article or thing was known where ordinarily the person holding custody of it would readily deliver it up to the Income Tax Department was not correct, it was so held by the Division Bench of the Allahabad High Court."

(39) The aforesaid observations are dearly applicable to the present case,

(40) Coming to the facts of the present case we find that in the satisfaction note of the Director of Investigation, the only reason which is stated for issuing the authorisation is that the petitioners "have not been disclosing their true incomes and wealth and accordingly action u/Sec 132(1) of the It Act is necessary to discover and to take possession of the relevant documents of Incriminating nature and unaccounted cash, valuables and other assets."

(41) Respondent No. 2 has, Therefore, recorded his reason for issuing the authorisation u/s 132(1). Apart from this no other reason has been stated in the note. It is not as if the aforesaid reason is in addition to what was stated in the recommendation of respondents 3 and 4. It is the satisfaction of respondent No. 2, as recorded, which has to be examined and we bbve to see whether this satisfaction is in accordance with the provisions of Section 132(1).

(42) u/s 132(i) merely because a person does not file a return or does not

disclose true income and wealth, an authorisation u/s 132(1) cannot be issued. As already noted, according to the respondents action has been taken under Sections 132(i) (b) and (e). The satisfaction note of respondent No. 2 does not, in our opinion, comply with any of the said two provisions. An authorisation u/s 132(1)(b) can be issued if the satisfaction is that the person to whom summons or notice has been issued or will be issued will not produce or cause to be produced any book of account, documents etc. No such satisfaction is indicated in the aforesaid note of respondent No. 2. With regard to the documents, the note states that action u/s 132(1) is being taken to discover and take possession of the relevant documents of incriminating nature. The power of discovery is contained in Section 131 and not u/s 132. That apart, there must be material on which the mind has to be applied and opinion formed that the person concerned will not produce documents if asked to do so. The satisfaction note of respondent No. 2 is completely silent on this aspect. The note also does not satisfy the provisions of Section 132(l)(c). The note does not show that there is any information in his possession which has led respondent No. 2 to form an opinion that the petitioners had money, valuables etc., which represented income and which they had not been disclosing or would not have disclosed. We are aware of the fact that in this note respondent No. 2 has used the expression "unaccounted cash and valuables and other assets" but the note, read as a whole, makes it clear that the reference to cash, valuables and other assets being unaccounted is for the reason that according to respondent No. 2 the petitioners had not been disclosing their true incomes and wealth. What is the information on which the opinion has been formed that there is unaccounted cash or valuables has not been indicated in the said note. We do not find any tangible basis for respondent No. 2 to have reason to believe that provisions of Section 132(1)(c) were attracted in the present case.

(43) A search which is conducted u/s 132 is a serious invasion into the privacy of a citizen. Section 132(1) has to be strictly construed and the formation of the opinion or reason to believe by the authorising officer must be apparent from the note recorded by him. The opinion or the belief so recorded must clearly show whether the belief falls under sub-Clause (a), (b) or (e) of Section 132(l). No search can be ordered except for any of the reasons contained in sub-Clauses (a), (b), or (e). The satisfaction note should itself show the application of mind and the formation of the opinion by the officer ordering the search. If the reasons which are recorded do not fall under Clauses (a), (b) or (e) then an authorisation u/s 132(1) will have to be quashed. As observed by the Supreme Court in *Income Tax Officer v. Seth Brothers*, 74 Itr 836:

"SINCE by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the tax payer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorises it to be exercised. If the action of the officer issuing the authorisation or of the designated officer is challenged, the officer concerned must satisfy the Court about the regularity of his action. If the action is maliciously taken or per under

the Section is exercised for a collateral purpose, it is liable to be struck down by the Court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed".

(44) Even if the recommendations of respondents 3 and 4 are taken into consideration and are read Along with the satisfaction note of respondent No. 2, in our opinion no reasonable person could have come to the conclusion that action u/s 132(1) against the petitioners was called for.

(45) In the notes of respondents 2 and 3 it has been stated that there has been a failure on the part of the petitioners to disclose the compensation which has been received from the Land Acquisition Department in their Income Tax returns. According to the petitioners the money received, whether in the nature of compensation or interest thereon was not taxable. What is not denied, however, is that the receipt of the money by the petitioners was known to the respondents. Failure to return an income on the contention that the same is not taxable cannot be a ground for issuing an authorisation u/s 132(1). Non-filing of the return may give a right or jurisdiction to the respondents to invoke the provisions of Sections 147 and 148 of the income Tax Act in an effort to tax the same. This is not a case where money was received surreptitiously or that the Department did not have knowledge of the receipt of the money by the petitioners. The respondents have taken resourse to proceeding under Sections 147 and 148 and the provisions of Section 132(1) are not, in our opinion, a substitute for action under Sections 147

(46) With regard to the existence of alleged unaccounted cash and valuables, in the note of respondent No. 4 it is stated that lots of people are coming with cash towards booking in the apartments to be constructed at 14, Anand Lok, New Delhi. It is further stated that un-accounted cash received towards booking would be available at the residence of the petitioners. This conclusion was based on the assertion that "the demolition work is in progress and construction is to start very soon." Respondent No. 3 has echoed the same reason. In the counter-affidavit filed on behalf of respondent No. 2 it was stated that the house at 14, Anand Lok was under demolition. It is clear, Therefore, that the belief of the respondents that the petitioners had unaccounted cash and valuables emanated from the allegation that the house at 14, Anand Lok was under demolition and flats were going to be constructed there and people were coming with cash for booking flats. On an application being filed a Local Commissioner was appointed vide our order dated 7th August, 1991. The Local Commissioner visited the house at 14, Anand Lok, New Delhi and gave a report to the effect that the house was intact and there was no demolition bad either taken place or was in progress. Whether a house is being demolished or not could be apparent from viewing the house from outside. In the notes of the respondents, and in the counter-affidavit, it has been stated as a fact that demolition work was in progress. This statement of fact was obviously false. Action u/s 132 results in a serious in-toads into the privacy of an individual. When any information is

received on the basis of which an Appropriate Authority may form a reasonable belief that action u/s 132(1) is called for then the correctness or veracity of that information should be carefully and thoroughly examined. This does not appear to have happened in the present case. It was easy to determine and find out whether any demolition work was being carried on at 14 Anand Lok, New Delhi. The affidavits and the notes of respondents 3 and 4 falsely stated that the demolition work was in progress. It is on this premise that it has been noted that unaccounted cash was allegedly being generated from out of the proposed sale proceeds of flats which were to be constructed at 14, Anand Lok, which according to the respondents was under demolition. When the basis premise viz., alleged demolition of the house, is false, the entire super-structure must collapse. With reasonable amount of diligence it could have been found out whether the house at 14, Anand Lok was under demolition or not. It is evident that the information which was supplied to the respondents in this connection was incorrect. It appears that the respondents mechanically, and without application of mind, acted on the so-called information without any further verification. The rumour or gossip was treated as information and proceeded to form information u/s 132(1) and issued authorisation where none was called for. There is no other fact or reason or information mentioned in the notes on which the respondents could have formed an opinion, prior to the issuance of authorisation u/s 132(1), that the petitioners had unaccounted cash or valuables. The alleged satisfaction of respondent No. 2, of the existence of unaccounted cash, must have been formed on a fact which was falsely represented to him viz., that the house at 14, Anand Lok was underdemolition. Any opinion which is formed on such demonstratively false statement of fact or a non-existent fact will necessarily stand vitiated.

(47) Another reason which is contained in the notes of respondents 3 and 4, for recommending a search, was that the Explanation which was furnished with regard to the expenses on the marriage of petitioner No. 3 created serious doubts about the scale and extent of the expenditure and the bona fides of the accounts furnished. Merely because an allegedly lavish marriage had taken place can be no basis for forming an opinion u/s 132(1). Asurvey u/s 133A of the Income Tax Act was conducted, in the present case and a statement showing the expense which had been incurred was submitted to the Department. The source of the expense was also indicated. There is no noting on the file to indicate as to how respondent No. 3 could state "It has also been gathered that the marriage of Shri Sanjay Gupta was held very lavishly and more than Rs. 80 lakhs was spent." Rumour about the lavish expense cannot be regarded as information u/s 132(1).

(48) In our opinion no reasonable person, on the facts and Circumstances of this case, could have come to the conclusion that action u/s 132(1) in the instant case was called for. In their misplaced anxiety to proceed against the petitioners, respondents 2-4 have acted in a most arbitrary manner in utter disregard of their statutory duties and functions. Petitioner No. 1 is a Senior Advocate of this Court and it has not been alleged anywhere that there has been any lack of

cooperation from the petitioners prior to the issuance of authorisation. Whether information about the receipt of the compensation or acquisition of moveable or Immoveable properties was required was received by the Department. Information was gathered by them from Government Department. It has been alleged in the writ petition that the Income Tax Injectors started visiting the office of the petitioner at 10, Hailey Road, New Delhi for making enquiries. In this connection it is averred that "the petitioners Nos. 1, 2 and 3 gave the entire information about the same and showed all the relevant documents including the award and receipt of compensation under the bank guarantee as per the orders of the Hon"ble High Court and the disputes regarding title and also regarding amount of enhanced compensation pending in this Hon"ble Court being the subject matter of appeals." It is further alleged that on 21st March, 1991 two Inspectors of this Department visited the petitioners and asked the petitioners to supply them with copies of documents regarding award of compensation, orders of this Court under which compensation was allowed to be received on furnishing bank guarantee. It is alleged that photo-copies of the said documents were given to the Inspectors who thereafter served a notice u/s 131 of the Act and called upon the petitioner No. 4 to attend the office of the Income Tax Officer on 22nd March, 1991. In the affidavit in reply there is no denial of these averments. It is clear, Therefore, that whatever documents were sought for were supplied by the petitioners. The officers of the Income Tax Department were making enquiries and had information with regard to receipt of compensation as well as the acquisition of properties. The Department may be under a belief that the petitioners were liable to tax on the amount of compensation so received. Merely because this belief was formed could be no ground for taking action u/s 132(1). This is not a case where any Information was asked for but was not given. This is not a case where the petitioners refused to supply any document required by the Department. We are firmly of the opinion that none of the ingredients contained in Clauses (a), (b) or (e) of Section 132(1) were attracted to the present case and the respondents have acted in abuse of their powers.

(49) Two decisions which are clearly applicable to the facts of the present case are those of H.L. Sibal Vs. Commissioner of Income Tax and Others, and Dr. Nand Lal Tahiliani Vs. Commissioner of Income Tax and Others, . In H.L. Sibal's case at page 138 of the report, it was observed as follows:

"The applicability of Section 165, Criminal Procedure Code, to the searches made u/s 132(1) gives an indication that this Section is intended to apply in limited circumstances to persons of a particular bent of mind, who are either not expected to cooperate with the authorities for the production of the relevant books or who are in possession of undisclosed money, bullion and jewellery, etc. Take for instance, a particular assessed who has utilised his undisclosed income in constructing a spacious building His premises cannot be subjected to a search under this Section on this score alone. A search would be authorised only if information is given to the Commissioner of Income Tax that such a person is keeping 33 money, bullion, jewellery, etc., in this building or elsewhere. Further,

if an assessed has been regularly producing his books of account before the assessing authorities who have been accepting these books as having been maintained in proper course of business, it would be somewhat unjustified use of power on the part of the Commissioner of Income Tax to issue a search warrant for the production of these books of account unless of course there is information to the effect that he has been keeping some secret account books also. He has to arrive at a decision in the background of the mental make up of an individual or individuals jointly interested in a transaction or a venture. A blanket condemnation of persons of diverse activities unconnected with each other on the odd chance that if their premises are searched some incriminating material might be found is wholly outside the scope of Section 165, Criminal Procedure Code. This power has to be exercised in an honest manner and search warrants cannot be indiscriminately issued purely as a matter of policy."

(50) In *Dr. N.L. Tahilianiv. Commissioner of Income Tax and Others*, 170 Itr 592, search was conducted, pursuant to an authorisation u/s 132 of the Act in the premises of the petitioner who was an eminent Surgeon and a Professor of Surgery in the Allahabad Medical College. In that case the Court referred to the extract of the report which had resulted in the raid and formed the foundation for the action. The report had said that Mr. Tahiliani was a leading Surgeon of the town and was known for his roaring practice and also for his high rate of fees for operation. It was further alleged that he stayed in a posh house owned by him and that the allegation appeared to be correct on the basis of the local enquiries which had been made. It was further stated that there was reason to believe that action u/s 132 was called for because in the normal course he would not disclose to the Department his correct income and wealth. The Allahabad High Court held that the condition precedent for an action u/s 132 was possession of the Information mentioned in the said Section. If either of the conditions was missing or not adhered to then the authority was precluded from invoking the provisions of Section 132. In order that averment "of information must be in a good faith and not a mere pretence, it was necessary that information in consequence of which it was formed must be valid and linked with the ingredients mentioned in this Section. There must be a rational connection between the information or material and the belief about undisclosed income. While quashing the authorisation which had been issued, the Court referred to the note of satisfaction which had been recorded and observed that the reputation of roaring practice or rumour of charging high rate of fee could not be regarded as tangible material on the basis of which an opinion could be formed as contemplated by Section 132 of the Act. The satisfaction of the authorities u/s 132 may be subjective but it must be arrived at objectively and on material which is available.

(51) Before concluding we would like to advert on another aspect which has caused us some concern. On 22nd March, 1991 a large contingent reached the residence of the petitioners to conduct search and seizure. It is an admitted fact that the petitioner No. 1 made requests that he may be permitted to attend to his work in the High Court. This permission was not not granted. The Income Tax

Act does not give any power to the Income Tax Department to arrest an individual. The Department certainly has the power of recording the statement of a person in accordance with law. The petitioner No. 1 could, Therefore, be legitimately required to be present for the purpose of recording his statement. Once his statement was recorded there was no reason or justification for the Officers of the Department exercising jurisdiction which they did not possess viz., preventing the petitioner No. 1 from attending to his work. An authorisation which is issued u/s 132(1) only enables the officers of the Department to conduct search and seizure. u/s 131 they have, inter alia, the authority and the power to enforce the presence of a person for the purpose of examining him on Oath. There is no power contained in the Act or the Rules whereby the movement of a person against whom search is ordered can be restricted. By refusing to give permission to the petitioner to attend to his work in effect amounted to his confinement which is not permissible in law.

(52) While element of surprise may be vital or essential for a successful operation of search and seizure nevertheless unnecessary hardship or harassment should not be caused by the raiding party. Serious allegations in this regard have been made in the present case but as we are allowing the writ petition we do not propose to go into the correctness of the same. We, however, feel that while it is for the authorised officer to decide about the manner in which the search is to be conducted and statements recorded but before any seizure is effected or a restraint order passed some sort of an opportunity should be granted to the person from whose authority the seizure is effected. It is not every article which is found as a result of the search which has to be seized. Prima facie it is only those valuable articles which are seized or in respect of which a restraint order is passed with regard to which, ultimately, an order u/s 132(5) may be passed. Before any Seizure is effected then, if possible, statement of the person from whom the seizure is being effected should be recorded. He may have an effective Explanation with regard to items which are found as a result of the search. For example, there should have been no occasion to remove the files or documents of the clients of petitioner No. 1, in the absence of a valid authorisation in respect thereto. If an opportunity had been granted this would have been pointed out. Over-enthusiasm or over zealousness on the part of the raiding party should not cause unnecessary harassment. In the present case statement of petitioner No. 1 was recorded before the search commenced but, surprisingly enough, no statement was recorded after the search had concluded even though the said petitioner was not permitted to attend to the work in the Courts on the pretext that his presence may be necessary for recording of his statement. We hasten to add that non-recording of such statement will not invalidate a search but it will be prudent that one or more statements are recorded after the search is complete and the persons in possession of moveable articles or documents are asked questions so that the authorised officer is in a position to decide whether the seizure of all or any of the items is necessary or not.

(53) As we have come to the conclusion that, in the present case, no reasonable person could have come to the conclusion that the ingredients contained in Clause (a), (b) or (e) of Section 132 were attracted, Therefore, we issue a writ of mandamus quashing the impugned authorisation and also the further action which has been taken by the respondents pursuant to the said authorisation including the seizure of all documents, cash and jewellery. The respondents are directed to return the said documents, cash and jewellery, seized by them, to the petitioners within two weeks from today.

(54) The petitioners will also be entitled to costs. Counsel's fee Rs. 1000/-.