HIGH COURT OF MADRAS

Dr. P.G. Viswanathan

v.

Director of Income-tax (Investigation)

M. JAICHANDREN, J.
WRIT PETITION NOS. 20073 & 20074 OF 2003
AND 1279 TO 1282 OF 2005
W.P.M.P. NOS. 25070 & 25071 OF 2003, 3362, 3363
& 24563, 24564 OF 2005
JANUARY 4, 2013

ORDER

1. Since, the issues involved in all the writ petitions are similar in nature, they have been taken up together and a common order is being passed.

2. It had been stated that the petitioner, in W.P.No.20073 of 2003, namely, Dr .P.G. Viswanathan, is an assessee, as per the provisions of the Income Tax Act, 1961. The returns filed by him had been assessed by the Assistant Commissioner of Income Tax, Central Circle IV, Coimbatore. It had been further stated that the said petitioner is an E.N.T Surgeon. He is employed as a doctor in Vikram Hospital, Coimbatore, owned by his wife, V. Muthulakshmi. His daughters, Aruna and Anjana, are also employed in the said hospital and they are also having their private practice. His son, Vikram, is the owner of Vikram Audio Centre and he is also involved in textile business. Further, the petitioner had established a charitable institution, bearing the name 'Dr. P.G. Viswanathan Charitable Trust', wherein rehabilitation and treatment for hearing impaired children are done.

3. It had been further stated that, on 12.9.2002, raid operations had were commenced in the case of Dr. P.G. Viswanathan, the writ petitioner in W.P.No.20073 of 2003, and his wife, V. Muthulakshmi, the writ petitioner in W.P.No.20074 of 2003, in their residential premises, at Door No.20, Govind Singh Road, R.S. Puram, Coimbatore and in the premises of Vikram Hospital at No.69, West Venkatasamy Road, R.S. Puram, Coimbatore, under Section 132 of the Income Tax Act, 1961. During the search proceedings, the respondent department had seized a number of documents. They had also found a sum of Rs.10,82,850/-, in cash, in the premises of Dr. P.G. Viswanathan. They had seized a sum of Rs. 10,00,000/- from the said premises. On 8.11.2002, the department had found a sum of Rs. 2,20,560/- in the premises of Vikram Hospital. However, they had not seized the same. The respondent had also found 4303 grams of jewelry in the premises of Dr. P.G. Viswanathan and in the lockers maintained by his family members. The search conducted by the respondent department is arbitrary, illegal and invalid in the eye of law as none. None of the conditions specified in Section 132(1) of the Income Tax Act, 1961, had existed, for the issuance of the warrants, for taking action under Section 132 of the said Act.

4. The writ petition, in W.P.No.1279 of 2005, had been filed by one K. Viswanathan @ Kumar, an employee of Vikram Hospital, situated at No.69, West Venkatasamy Road, R.S.

Puram, Coimbatore. V. Muthulakshmi, the writ petitioner, in W.P.No.20074 of 2003, is the proprietrix of the said hospital.

5. The writ petitions, in W.P.Nos.1280 and 1281 of 2005, had been filed by Dr.Aruna Viswanathan and Dr.Anjana Viswanathan, who are the daughters of Dr. P.G. Viswanathan and V. Muthulakshmi. W.P.No.1282 of 2005 had been filed by Dr. Vikram Viswanathan, who is the son of Dr. P.G. Viswanathan and V. Muthulakshmi.

6. The main contention raised on behalf of the said petitioners is that the searches and seizures made by the respondent department in the residential premises, at Door No.20, Govind Singh Road, R.S. Puram, Coimbatore, and in the premises of Vikram Hospital, at No.69, West Venkatasamy Road, R.S. Puram, Coimbatore, on 12.9.2002 and 13.9.2002, are illegal and ultra vires the provisions of Section 132 of the Income Tax Act, 1961, as they had been done without jurisdiction. There were no materials available before the authorities concerned to believe that there were certain documents and other materials secreted at the premises concerned. Thus, the mandatory requirements of Section 132 of the Income Tax Act, 1961, had not been followed by the authorities concerned before issuing the orders for the searches and seizures. While so, notices, dated 11.2.2003, had been issued by the Assistant Commissioner of Income Tax, Central Circle-IV, Coimbatore, under Section 158-BD, read with 158-BC of the Income Tax Act, 1961, calling upon the petitioners to file their returns disclosing the undisclosed income for the block period 1.4.1996 to 12.9.2002. In spite of the fact that the petitioners had filed their returns they had been asked to appear before the said authority to give certain clarifications and details, in respect of the returns filed by them. It had been learnt, by the petitioners in the said writ petitioners, that the second respondent had issued the notices for the block assessment under Sections 158-BD read with 158-BC of the Income Tax Act, 1961, for initiating the relevant proceedings for the block assessment, for the period in question, based on the searches and seizures conducted, illegally, in the residential premises, at Door No.20, Govind Singh Road, R.S. Puram, Coimbatore, and in the premises of Vikram Hospital, at No.69, West Venkatasamy Road, R.S. Puram, Coimbatore. Therefore, it had been prayed that this Court may be pleased to declare the proceedings of the second respondent, pursuant to the notices issued under Section 158-BD, read with 158-BC of the Income Tax Act, 1961, as they had been issued by the said authority, without having the jurisdiction to do so.

6.1 In the counter affidavit filed on behalf of the respondents, in W.P.No.20073 of 2003, it has been stated that the petitioner had been filing the income tax returns, from the assessment year, 1990-91, onwards. It has been further stated that, during the course of the search, at the premises of the petitioner, a sum of Rs.10,82,850/- had been found out of which a sum of Rs.10,00,000 had been seized.

6.2 It had been further stated that the petitioner, being a medical practitioner, was required to maintain certain books of accounts and documents, as specified in sub-Rule 2 of 6F of the Income Tax Rules, 1962, including a cash book, a journal. If the accounts had been maintained according to the merchantile system of accounting, a ledger, carbon copies of bills, serially numbered and the original bills and receipts in respect of the expenditures, should have been maintained. The cash book should have a record of all cash receipts and payments kept and maintained, on a day-to-day basis. During the search, it was found that the prescribed registers had not been maintained, manually, and even the computerized

accounts had been found to be incomplete in nature. Since, the books of accounts did not reflect the cash balance, it was believed that the cash found at the residence of Dr. P.G. Viswanathan and V. Muthulakshmi, had not been accounted for in the books of accounts. Dr. P.G. Viswanthan and the other members of his family had stated that it is only V. Muthulakshmi, who could give a proper explanation for the cash found at the residence. However, V. Muthulakshmi, in turn, had stated that the amounts found during the search are professional receipts relating to Vikram Hospital for which she was the proprietrix. She had also admitted in her sworn statement, recorded in the course of the search, that the claim regarding the receipt of agricultural income was not genuine in nature. She had further admitted that the agricultural income shown in the income tax returns are not true and that a part of the undisclosed income from the hospital have been introduced, as agricultural income. She had also submitted that, out of the cash found in the residence, a sum of Rs.10,00,000/- may be seized and adjusted against the tax liability. In such circumstances, the seizure had been made by the authorities of the respondent department.

6.3 It has also been stated that the correctness of the seizure effected by the authorities of the respondent department is vindicated by the fact that, even under the proceedings initiated under section 132(b) of the Income Tax Act, 1961, V. Muthulakshmi could not explain before the assessing officer concerned the source of cash found at the time of the search. Even though she had stated that the cash found during the search had been received from a single patient, she could not furnish the details of the said patient, including the patient's name and address.

7. It had also been stated that the search conducted by the authorities concerned was not a mala fide attempt to adversely affect the petitioner, in any way. The seizure had been ordered, based on the information gathered during the pre search enquiries and on the evidence available in the income tax records relating to the petitioner. The enquiries made at the field level had also been taken into account for having the reason to believe that the petitioner was indulging in the suppression of professional receipts and in the inflation of the claims, by showing the agricultural income, in order to evade the payment of tax.

8. It had also been stated that the warrant issuing authority had applied its mind, fully, before issuing the warrants for the searches and seizures. It is a matter of record that the authority concerned had formed its belief, based on the materials collected in the course of its pre-search enquiry and after due application of mind, as per the requirements of Section 132 of the Act.

9. It has been further stated that, under Section 132(b)(1) of the Act the petitioner had the right to explain before the concerned assessing officer, the nature of the possession of the sources of acquisition of cash seized during the search. If the explanation submitted by the petitioner shows sufficient reasons for the availability of the cash, the assessing officer has the power to release the seized amount, with the prior approval of the Chief Commissioner. Further, the petitioner would also have the opportunity of explaining the sources of cash in the course of the block assessment proceedings, under chapter XIV B of the Act. The petitioner would also have the right of appeal to the Commissioner of Income Tax (Appeals), the Income Tax Appellate Tribunal, if it is found to be necessary. In such circumstances, the writ petitions filed by the petitioners are pre-mature in nature. They are also devoid of merits and therefore, the writ petitions are liable to be dismissed.

10. The learned counsels appearing on behalf of the petitioners had submitted that the search conducted, under Section 132 of the Income Tax Act, 1961, is a serious invasion on the privacy of a citizen. Section 132(1) of the Act has to be strictly construed and the formation of an opinion or a reason to believe, by the authorized officer, must be apparent from the notes recorded by the income tax department. The opinion or belief so recorded must clearly show the specific sub-clause or clauses of Section 132(1) of the Act. No search or seizure can be ordered except for the reasons contained in the said provisions. The note, based on which the satisfaction had been arrived at, should, in itself, show the application of mind and the resultant formation of opinion, by the officer ordering the search and seizure. If the reasons which are recorded do not fall under any one of the clauses in Section 132(1), then it would have to be quashed.

11. From a reading of clauses (a) to (c) of section 132(1) of the Income Tax Act, 1961, it clear that the basis of exercise of jurisdiction, under Section 132(1) of the said Act, has to be the formation of a belief and such a belief is to be formed on the basis of the receipt of information, by the authorizing officer. The expression 'information must be something more than a mere rumour, a gossip or a hunch. There must be some material which can be regarded as 'information' and it must exist on the file of the authority concerned, based on which he should have the reason to believe that action under Section 132 of the Act is called for. The reason to believe must be tangible in law and it should have a rational nexus with the belief. Otherwise, an order issued for the searches and seizures, by the authority concerned, would be arbitrary and illegal.

12. The learned counsel appearing on behalf of the petitioners had relied on the following decisions in support of his contentions.

12.1. In *Calcutta Discount Co. Ltd.* v. *ITO*, it has been held that if the conditions precedent for the exercise of the powers of the authority concerned do not exist the high court may exercise its jurisdiction, under Article 226 of the Constitution of India, to prohibit the action initiated by the authority concerned. The existence of an alternative remedy is not always a sufficient reason for refusing the relief sought by the petitioner to prohibit an authority acting without jurisdiction from continuing such action. The expression reason to believe, in section 34(1)(a) of the Income Tax Act, 1922, postulates belief and the existence of reasons for such belief. The belief must be held in good faith and it cannot be merely a pretence. The expression does not mean a purely subjective satisfaction of the officer concerned.

12.2 In *S. Narayanappa* v. *CIT* it has been held that the expression 'reason to believe', in Section 34 of the Income Tax, 1922, does not mean a purely subjective satisfaction of the officer concerned. It would be open to the court to examine the question as to whether the reasons for the belief has a rational connection or a relevant bearing to the information available and that the formation of the belief is not based on extraneous or irrelevant information.

12.3 In the *ITO* v. *Lakhmani Mewal Das* , it had been held as follows:

> "The reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as

to whether action should be initiated for reopening assessment. At the same time it must be remembered that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would arrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in Section 147 of the Act of 1961 would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence."

12.4 In *V.S.Kuttan Pillai* v. *Ramakrishanan* AIR 1980 SC 185, it had been held as follows:

"Issuance of a search warrant is a serious matter and it would be advisable not to dispose of an application for search warrant in a mechanical way by a laconic order. Issue of search warrant being in the discretion of the Magistrate it would be reasonable to expect of the Magistrate to give reasons which swayed his discretion in favour of granting the request. A clear application of mind by the learned Magistrate must be discernible in the order granting the search warrant."

12.5 In *Balwant Singh* v. *R.D. Shah*, Director of Inspection, it had been held as follows:

"Search and seizure is a serious invasion on the rights of the subjects. The search and seizure was really not known at earlier stages to common law. When it was for the first time introduced, it was confined only to stolen goods, but its usefulness soon forced its recognition and was, from time to time, extended to such like searches and seizures. It is true that sometimes the over-zealousness of the authorities led to its abuse and it appears that for this reason the Fourth Amendment was introduced in the American Constitution in recognition of the fact that a man's house is his castle not to be invaded by any general authority to search and seize his goods and papers. The only legal means that can be applied to search a person's abode is a search warrant and, in the absence thereof, neither any private person nor any officer can invade the privacy of a home and subject its occupants to indignity. It is, therefore, imperative that seizure should not be allowed to exceed the limits of absolute necessity and the over-zealousness of the searching officers is not permitted to cross the permissible limits. Such provisions must, therefore, be necessarily construed in the light of this background and when two alternatives, namely, to seize the books or place marks of identification and leave them with the persons concerned are available, the seizure will be struck down on the ground that it is arbitrary and not in the public interest. Every provision of the Act has to be construed in the light of Article 19 of the Constitution."

12.6 In *Vindhya Metal Corpn.* v. *CIT* it had been held as follows:

"Mere unexplained possession of the amount, without anything more, could hardly be said to constitute information which could be treated as sufficient by a reasonable person, leading to an interference that it was income which would not have been disclosed by the person in possession for purposes of the Acts. After all, the belief, for purposes of Section 132A, is to be belief entertainable by a reasonable man and is not the belief arbitrarily entertained on material or grounds which will not lead a reasonable man to that belief. There is no doubt, in our mind, that on the information in possession of the Commissioner in the present case, no reasonable person could have entertained a belief that the amount in

possession of Vinod Kumar represented income which would not have been disclosed by him for purposes of the Acts. Thus, the condition precedent for the exercise of power under Section 132 A was utterly lacking in the present case and the requisition made by the Commissioner was without jurisdiction.

It was urged for the Revenue that this court should leave the matter to be determined in proceedings under the Act itself, where the petitioners could, on proof of the fact, that the amount taken into possession from Vinod Kumar Jaiswal belonged to them and did not represent wholly or in part income which would not has been revealed for the purpose of the Act, get redress and more so, when, proceeded the submission, they has laid claimed to the amount on the footing that they had secured it by way of loan from various traders and had deputed Vinod Kumar Jaiswal to proceed with it to Calcutta to participate in an auction in connection with their business. We are not inclined to accept the submission, or, we feel that in a case like the present when the action is wholly without jurisdiction and is, consequently, not backed by any authority of law, denial of relief would encourage arbitrary action on the part of the authorities. As consistently held by this Court, noticeably in the case of *Manju Tandon* [1978] 115 ITR 473 (All), the plea of alternative remedy is of no avail where the action is wholly without jurisdiction and results in infringement of any fundamental right of the petitioners."

12.7 In *Dr. Nand Lal Tahiliani* v. *CIT*, it had been held as follows:

"In the instant case, the information given by the complainant was of a very general nature. What could have resulted in action against the petitioner under section 132 was a reasonable belief that he was in possession of any money, bullion or jewellery or any other valuable article representing wholly or partly income or property which had not been disclosed or would not be disclosed, and not the prima facie satisfaction that the petitioner was having a roaring practice and charging a high rate of operation fees. Further, this prima facie satisfaction had been arrived at on no material apart from the general complaint received as far back as 1985. Living in posh house or having a high standard of living alone cannot constitute a base for 'reasonable belief. Reasonable belief exists if the information is not only trustworthy but reasonable and sufficient in itself to warrant the conclusion that provisions of section 132 are being violated. Any complaint made by a person interested or disinterested should not be jumped upon and made an excuse to initiate proceedings unless it is thoroughly examined and the authorities are satisfied not only about its veracity and authenticity but it must be an information in consequence of which the authority must have reason to believe that income had not been disclosed as action under section 132 transgresses the liberty of a citizen. Such an adventure should be avoided as it not only frustrates the objectives sought to be achieved by such salutary provisions but spoils the reputation of the department and causes incalculable harm to the person concerned. Thus, the writ petition was to be allowed.

Sahai, J

3. Search and seizure are a common feature of fiscal statues. Its utility cannot be undermined in a civilised society. But it is capable of feeing abused as well. That is why the Legislation always provides inbuilt safeguards. For instance, the condition precedent for action under section 132 is the information in possession of the authority in consequence of which he may have reason to believe that any person was in possession of any money,

bullion or jewellery or other valuable articles which represented undisclosed income. How each of them should be understood and what they mean has been explained by Courts from time to time. If either of these conditions are missing or have not been adhered to, then the authority is precluded from invoking the powers under this section see *Ganga Prasad Maheshwari* v. *CIT* Information in consequence of which the Director or the Commissioner has reason to believe is the foundation for action. It sets the machinery in motion. Therefore, it has not only to be authentic but capable of giving rise to inference that the person was in possession of undisclosed income, which has not been or would not be disclosed. *Ganga Prasad Maheshwari's* case (*supra*), *Vindhya Metal Corpn.* v. *CIT*. In order that formation of opinion must be in good faith and not mere pretence it is necessary that information in consequence of which it is formed must be valid and linked with the ingredients mentioned in the section, that is, there must be rational connection between the information or material and the belief about undisclosed income.

4. Unfortunately the record produced by the learned standing counsel left us not only dazed but shocked.....

Prakash, J

Privacy is a very valuable right of a civilised society and violation thereof is not permissible except by authority of law and, therefore, the department should not only be slow but slowest in acting upon the information being given by an informer. Before acting upon the information, source of knowledge of an informer should be fully tested and unless the departmental authority make themselves doubly sure of the correctness of the information and the creditworthiness of informer, they should be loath to act upon information. A word of informer should not be taken for granted. How, in what manner and from whom information has been gathered, all this should be made clear beyond an iota of doubt by thorough examination of the informer. No action should be taken on information based on surmises or guess.

3..... Estimate being made by an informer cannot tantamount to 'information' within the meaning of section 132(1). If estimate alone can constitute information, then why to act upon the estimate of an informer, because that sort of estimate can be made by the departmental authorities themselves, looking to the standard of living, reputation of the person in the society and the asset being ostensibly possessed by him. Information within the meaning of section 132(1) should be as accurate as possible having reference to the precise assets of a person and not general nature and that should in all probabilities lead to the authorities to have unmistaken belief that money, bullion, jewellery or other valuable articles or things pointed out by the informer, would be found in possession of the person named by the informer. No doubt, it is difficult to have a direct evidence or a fool proof case before making a search, but all efforts must be made by the authorities to ensure the correctness of the information and they should assure and reassure the truthfulness and correctness of information before taking any action violating privacy of a citizen."

12.8. In *L.R. Gupta* v. *Union of India*, it had been held as follows:

"38. Under Section 132(1) merely because a person does not file a return or does not disclose true income and wealth, an authorisation under section 132(1) cannot be issued. As already noted, according to the respondents action has been taken under section 132(1)(b)

and. The satisfaction ote of respondent No.2 does not, in our opinion, comply with any of the said two provisions. An authorisation under section 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 books of account, documents, etc. No such satisfaction is indicted in the aforesaid note of respondent No.2 with regard to the documents, the ote states that action under section 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 31 of the Act and not under Section 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.....

39. A search which is conducted under section 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 (c) of section 132(1). No search can be ordered except for any of the reasons contained in sub-clause(a), (b) or (c) . 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 clause (a),(b) or) then an authorization under section 132(1) will have to be quashed. As observed by the Supreme Court in *ITO* v. *Seth Bros*.

"Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the taxpayer, 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 power under the section is exercised for a collateral purpose, it is liable to be struck down by the Court. If the conditions for the exercise of the power are not satisfied the proceeding is liable to be quashed...."

46..... There must be a rational connection between the information or material and the belief about undisclosed income..... The satisfaction of the authorities under Section 132 of the Act may be subjective but it must be arrived at objectively and on material which is available."

12.9. In *Janak Raj Sharma* v. *Director of Inspection* it had been held as follows:

"Section 132 infringes upon the privacy of a citizen. It even carries a social stigma. To a sensitive man, the consequences can be serious. The Legislature has consequently provided the in-built safeguards. These have to be satisfied before any order for search, etc., can be passed.

In the instant case, the department filed the inspection note and categorically stated that there is no information, document or evidence beyond the satisfaction note and the warrant of authorisation'. On a perusal of the above note, it was clear that according to the Assistant Director, information had been received regarding the factum of search by the CBI and the Income-tax Department on the premises of B. It was also observed that 'it is informed that B

had invested his ill-gotten funds with his relatives'. A further suspicion was expressed that he 'is very likely to have invested monies in the businesses of his father-in-law'. Without anything more, the request of the Assistant Director for action under Section 132 was endorsed by the Deputy Director and approved by respondent No.1. Repeated assertions had been made both, in the files of the department as well as in the pleadings before the Court, that information was available 'on record', the information had been laid before me' and 'that the conditions precedent for issuance of a search warrant existed...'. However, at the time of the hearing of the case and in spite of repeated opportunities, the department could not produce any record indicating the existence of any information. In the 'satisfaction note produced by the department, it had undoubtedly been stated that B was very likely to have invested monies in the business of his father-in-law. This was, however, a mere guess or a surmise. At best, it was a conjecture. Admittedly, there was no information. At least none was produced, in spite of various opportunities. Similarly, in the warrant of authorisation, it was claimed by the Director of Inspection (Investigation) that 'information had been laid before' him and that on the consideration thereof, he had reason to believe that 'if a summons under sub-section(1) of section 131 or notice under sub-section (4), was issued to the assessee to produce or cause to be produced, books of account or other documents.... he would not produce or cause to be produced, such books of account or other documents'. It was also observed that the 'assessee was in possession of money, bullion, jewellery or other valuable articles....' Clearly there was no information with the department and the conclusions were wholly unfounded. Factually, the Director of Inspection (Investigation) had no information available to him on 'record'. There was no material on the basis of which he could have reasons to believe that the conditions precedent for proceeding under section 132(1) were satisfied. The department, in fact, conceded, that there was no information, document or evidence beyond the satisfaction note. Admittedly, the 'note' did not constitute 'information' as contemplated under the law. It only embodied a conclusion. In the absence of foundation the edifice cannot stand. Without information, the order for search and seizure cannot be sustained."

12.10. In *Ajit Jain* v. *Union of India* it had been held as follows:

"12. By now it is well settled that while the sufficiency or otherwise of the information cannot be examined by the court in writ jurisdiction, the existence of information and its relevance to the formation of the belief is open to judicial scrutiny because it is the foundation of the condition precedent for exercise of a serious power of search of a private property or person, to prevent violation of privacy of a citizen. In *Balwant Singh & Ors.* v. *R.D. Shah, Director of Inspection, Income Tax* New Delhi & Ors., a Division Bench of this Court, while reiterating that the High Court cannot test the adequacy of the grounds leading to the satisfaction recorded, under Section 132 of the Act, observed that 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 power under the said Section would be bad; short of that, the Court cannot interfere with the belief bona fide arrived at by the Director of Inspection. But the Court could examine whether the reasons for the belief have a rational connection or relevant bearing to the formation of the belief and search warrant could not be issued merely with a view to making a roving or fishing enquiry.

13. The expression 'reason to believe' has been explained in various decisions by the Apex Court and High Courts while dealing with Sections 132 and 148 of the Act. It has been held that the

word "reason to believe" means that a reasonable man, under the circumstances, would form a belief which will impel him to take action under the law. The formation of opinion has to be in good faith and not on mere presence. For the purpose of Section 132 of the Act, there has to be a rational connection between the information or material and the belief about un-disclosed income, which has not been and is not likely to be disclosed by the person concerned."

12.11. In *Union of India* v. *Ajit Jain* it had been held as follows:

"The availability of an alternative remedy is not an absolute bar to the entertainment of a petition under article 226 though on account of availability of statutory remedies the Courts normally do not entertain writ petitions but where an action is wholly without jurisdiction and results in the infringement of any fundamental right, the plea of alternative remedy is of no avail. The instant case did fall in that category. Hence, the impugned authorisation issued under Section 132 and all further actions/proceedings in consequence thereof, including the block assessment, were quashed."

12.12. In *Dr. Sushil Rastogi* v. *Director of Investigation IT Deptt.* it had been held as follows:

"The reasons recorded under section 132 were only generalities based on rumours. The decision of the same High Court in *Dr. Nand Lal Tahiliani* v. *CIT*, and those of the Supreme Court in other cases, relied upon by the petitioner, squarely applied to the facts of the instant case. In view of that decision, the action under section 132 was clearly illegal and it could not be said that the Commissioner had reason to believe that the petitioner was concealing his income."

12.13. In *Union of India* v. *Azadi Bachao Andolan*, it had been held as follows:

"39. *Navnit Law C. Javeri* v. *K.K. Sen*, ACC and *Ellerman Lines Ltd.* v. *CIT* clearly establish the principle that circulars issued by the CBDT under section 119 of the Act are binding on all officers and employees employed in the execution of the Act, even if they deviate from the provisions of the Act."

12.14. In *Smt.Kavita Agarwal* v. *Director of Income-tax*, it had been held as follows:

"The law is well settled that a warrant of search and seizure under Section 132(1) can only be issued on the basis of some material or information on which the Commissioner/Director has reason to believe that any person is in possession of money, jewellery or other valuable articles representing wholly or partly income or property which has not been or would not be disclosed, under the IT Act. In the present case the respondents have not disclosed what was the material or information on the basis of which the Director/Commissioner entertained the belief that the lockers contained valuable jewellery or other articles representing undisclosed income. It is well settled that the satisfaction of the authorities under Section 132 must be on the basis of relevant material or information. The word used in Section 132(1) are "reason to believe" and not "reason to suspect". In the counter-affidavit it has been specifically stated in para. 18 that the authorized officer had reason to suspect and not reason to believe."

12.15. In *Spacewood Furnishers (P.) Ltd.* v. *Director General of Income Tax (Investigation),* it had been held as follows:

"Section 132 deals with search and seizure. It contemplates and springs to life when the various officers mentioned therein have, because of information in their possession, 'a reason to believe' that steps as prescribed in its clauses (a), (b) and thereof are necessary. Thus, this 'reason to believe' is required to be of the Director General or Director or the Chief Commissioner or the Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner."

12.16. The learned counsel appearing on behalf of the petitioner had submitted that a circular had been issued, bearing Instruction No.7 of 2003, dated 30.7.2003, relating to search and seizure, under Section 132 of the Income Tax Act, 1961, wherein, the Director Generals of Income-tax (Investigation), had been instructed that tax payers, who are professionals of excellence, should not be searched without there being compelling evidence and confirmation of substantial tax evasion.

12.17. In *Pradip J.Mehta* v. *CIT* it had been held as follows:

"28. This Court in a catena of decisions, has held that the circulars issued by the Department are binding on the Department. See: *K.P. Varghese* v. *ITO* [(1981) 4 SCC 173], UCO Bank v. CIT, W.B. [(1999) 4 SCC 599], *Collector of Central Excise Vadodra* v. *Dhiren Chemical Industries* [(2002) 2 SCC 127], etc. In all these cases it has been held that the circulars issued under the Income Tax Act or Central Excise Act are binding on the Department."

13. The learned counsel appearing for the petitioner had further submitted that, for initiating search proceedings, there must be sufficient information and it must not only be authentic but should also be capable of giving rise to the inference that the person was in possession of undisclosed income, as held by the Division Bench of the Allahabad High Court, in *DR. NAND LAL TAHILIANI* v. *CIT*. Satisfaction of the authorities may be subjective, but such satisfaction must be arrived at, objectively, on the materials available before the authorities concerned.

14. He had further pointed out that, in *VINDHYA MATEL CORPN.* v. *CIT*, a Division Bench of the Allahabad High Court had found that mere possession of an amount of money, without any document to show its ownership, cannot lead to the conclusion that it represented income which the party concerned would not have disclosed. Therefore, the consequent authorisation made by the Commissioner of the Income Tax, under Section 132A of the Income Tax Act 1961, and the proceedings initiated thereon had been quashed.

15. In *CIT* v. *VINDHYA METAL CORPN.*, the Supreme Court had held that a mere unexplained possession of an amount without any other relevant materials cannot be said to constitute information, which can be treated as sufficient by a reasonable person, to reach an inference that it was income which would not be disclosed by such person, from whom it has been found.

16. In the decision of the Division Bench of the Delhi High Court, in *AJIT JAIN* v. *UNION OF INDIA*, it had been held that for authorising action under Section 132 of the Income Tax Act, 1961, the conditions precedent are: (i) the information in the possession of the named authority and (ii) in consequence of which he may have reason to believe that the person concerned is in possession of money, bullion, etc., which represents, either wholly or partly, income which has not been or would not be disclosed for the purpose of the Act. If either of the conditions are missing or has not been adhered to, then the power under Section 132 cannot be invoked. Thus,

the basis of the exercise of the power under Section 132(1) has to be the formation of belief and such belief has to be formed on the basis of the receipt of the information, by the authorising officer concerned, that the person is in possession of the money etc. and the possession of money is disclosed. The information and on the consequence of which the authority concerned has to form its belief should not only be authentic but also capable of giving rise to the inference that a person is in possession of money etc., which has not been or would not be disclosed for the purpose of the Act. Even though it is well settled that, while the sufficiency or the otherwise of the information cannot be examined by the Court under its writ jurisdiction, the existence of the information and its relevance to the formation of the belief is open to judicial scrutiny, because it is the foundation of the condition precedent for the exercise of the serious power of search available in the authorities concerned for searching a private property or person, in order to prevent violation of the privacy of a citizen.

17. It has been further stated that the expression 'reason to believe' has been explained in the various decisions of the Apex Court and the High Courts, while dealing with Sections 132 and 148 of the Income Tax Act, 1961. It has been held that the words 'reason to believe' means that a reasonable man, under the given circumstances, would form a belief, which will impel him to take action under the law. The formation of the opinion has to be in good faith and not on a mere pretence. For the purpose of Section 132 of the Act, there has to be a rational connection between the information or material and the belief about the undisclosed income, which has not been and is not likely to be disclosed by the persons concerned.

18. It had been further stated that the availability of the alternative remedy is not an absolute bar to the entertainment of a writ petition, under Article 226 of the Constitution of India, though on account of the availability of statutory remedies, the courts, normally, do not entertain the writ petition. However, where an action is wholly without jurisdiction and results in the infringement of any fundamental right, the plea of alternative remedy is of no avail.

19. The learned counsel for the petitioners had relied on the decision of the Allahabad High Court, in *SMT. KAVITA AGARWAL* v. *DIT*, wherein, it had been observed that the law is well settled that a warrant of search and seizure, under Section 132(1), can only be issued on the basis of some material or information based on which the authorities concerned have reasons to believe that any person is in possession of money, jewellery or other valuable articles, representing wholly or partly income or properties, which has not been or would not be disclosed under the Act. A mere reason to suspect cannot be held to be sufficient for the issuance of a warrant of search and seizure, under Section 132 of the Income Tax Act, 1961.

20. In *PAWAN SOLVENT & CHEMICALS* v. *CIT*, the High Court of Patna had held that the action under section 132 of the Income Tax Act, 1961, for search and seizure, can be taken only in consequence of the information in the possession of the Department, for the authorities concerned to have reasons to believe that the persons concerned would not produce the books of accounts and other relevant materials, which may be said to be relevant for the purpose of assessment of the income of such persons. As such, the reasonable belief is the condition precedent for ordering the search and seizure. The belief of the authorities concerned must be a honest belief, based on cogent materials. It cannot be based on anonymous letters. It had also been held that the 'reasons' are matters of subjective satisfaction of the department concerned. However, when the matter is brought before the court of law, it must be shown as to what

objective materials were available before the authorities concerned, for arriving at the belief necessary for the issuance of the warrant of search and seizure.

21. In *SPACEWOOD FURNISHERS (P) LTD*. (supra), the Bombay High Court had observed that the satisfaction of the authorities concerned must be based upon contemporaneous materials available on record.

22. In *L.R.GUPTA* (supra), the Delhi High Court had observed that the expression 'information' must be something more than a 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 of the department, on the basis of which the authorising officer can have reason to believe that the action under section 132 is called for, for any of the reasons mentioned therein. However, the opinion, which had been formed by the authority concerned is a subjective matter, the jurisdiction of the court to interfere in such matters is very limited. The Court would not act as an appellate authority and examine the materials and the information available on record meticulously, in order to decide for itself as to whether the action under Section 132 is called for. However, the Court concerned would be acting within its jurisdiction in seeing whether the act of issuance of the authorisation, under Section 132 of the Income Tax Act, 1961, is arbitrary and mala fide in nature, or as to whether the satisfaction which is recorded is such which shows lack of application of mind of the appropriate authority. If the reason to believe is not tangible in law and if the information or the reason has no nexus with the belief, or if there is no material or tangible information for the formation of the belief, then, in such a case, the action under Section 132 would be regarded as bad in law.

23. The learned counsel for the respondents had submitted that the Taxation Laws (Amendment) Act, 1975, was aimed at devising measures for unearthing black money and for preventing its proliferation. Accordingly, the provisions of Section 132 of the Income Tax Act, 1961, had been amended, with effect from 1.10.1975. According to the Taxation Laws (Amendment) Act, 1975, the power of the income tax authorities had been increased for the purpose of the provisions of Section 132 of the said Act. The said fact is clear from the explanatory notes published, vide CBDT circular 179/1975, dated 30.9.1975. Pursuant to the amendment in the provisions of Section 132 of the Act, Rule 112 of the Income Tax Rules had also been amended by the Income Tax (4th Amendment) Rules 1975, with effect from 1.10.1975. As per the said amendment, Rule 112 of the Income Tax Rules, 1962, there is no necessity to record the reasons for ordering the search.

24. The learned counsel for the respondents had further stated that the authorities concerned had reasons to believe that the assessees were in possession of undisclosed income and properties, on account of the suppression of a large amount of professional receipts passed off as agricultural income, based on the information received in the form of various inquiries and reports. Based on the satisfaction note of the authorities concerned, the warrant of authorisation had been issued for the search and seizure of the premises in question, as per the provisions of Section 132(1) (c) of the Act.

25. It had also been stated that the satisfactory note for the search and the issuance of warrants for authorisation, by the Director of the Income Tax (Investigation), Chennai, the first respondent herein, is a simultaneous process. The satisfaction note of the department is not a public document, as per the provisions of Section 24, read with item 16 of the Right to Information Act, 2005. It has also been stated that the provisions of Section 147 of the Income Tax Act, 1961,

cannot be viewed in tandem, for the purpose of Section 132 of the said Act. For the purpose of reopening of the assessment, as per the provisions of Section 147 of the Income Tax Act, 1961,the formation of the reason to believe that certain income had escaped the assessment should be recorded by the assessing officer, prior to the issuance of the notice, under Section 148 of the Act. Whereas, the recording of reasons is not explicitly mentioned in the provisions of Section 132 of the Act. The said position is made clear by the Taxation Law (Amendment) Act, 1975. It is a well settled position in law that the non mentioning of the reasons shall not make the proceedings invalid or void, ab initio.

26. It has been further stated, by the learned counsels appearing for the respondents that, for the purpose of search and seizure, the information collected or obtained by the investigation directorate, by various means, and the reasonable belief formed by the Director of Income Tax (Investigation), based on such information collected or obtained, is sufficient for the initiation of the search and seizure proceedings.

27. It has been further stated that, in the present case, various informations had been collected and they had been analysed, along with the returns of income filed by the assessee. Thereafter, based on the discussions held by the Director of Income Tax (Investigation), with the officers concerned, a reasonable belief had been formed by the said authorities, by recording reasons that the assessee had indulged in suppression of their professional receipts and that large amounts of their professional income had been passed off as bogus agricultural income. Accordingly, the Director of Income Tax (Investigation), the first respondent in the present writ petitions, had concluded, in paragraph 3 of his notes that the assessees were in possession of undisclosed income or properties. Therefore, a warrant of authorization had been issued, as per the provisions of the section 132 of the Income Tax Act, 1961.

28. The learned counsel for the respondents had relied on the decision of the Supreme Court, in *POORAN MAL ETC* v. *DIRECTOR OF INSPECTION (INVESTIGATION) OF INCOME TAX*, wherein the Supreme Court had held that one has to consider the reasonableness of the restrictions or curbs placed on the freedoms mentioned in Article 19(1)(f) and (g) of the Constitution of India. One cannot possibly ignore the fact that such evasions relating to payment of tax eat into the vitals of economic life of the community. Therefore, in the interest of the community, it is only right that the fiscal authorities should have sufficient powers to prevent tax evasion. As a broad proposition, it can be stated that if the safeguards, while carrying out search and seizure, are generally on the lines adopted by the Criminal Procedure Code, they would be regarded as adequate and render the temporary restrictions imposed by the measures as reasonable. It had also been stated that the safeguards provided under Section 132 of the Income Tax Act, 1961 and Rule 112 of the Income Tax Rules, 1962, are adequate to render the provisions of search and seizure as less onerous and restrictive under the circumstances. Therefore, the provisions relating to search and seizure, in Section 132 of the Income Tax Act and Rule 112 of the Income Tax Rules, cannot be regarded as violative of Articles 19(1)(f) and (g) of the Constitution of India.

29. The learned counsel had also relied on the decision of the High Court of Bombay, in *HEMENDRA RANCHHODDAS MERCHANT* v. *DIT* wherein, it had been held that the formation of the reason to believe is the foundation of the authorisation, which is issued under section 132 of the Income Tax Act, 1961. The ambit and jurisdiction of the court is limited to a determination of whether the authorities concerned had a reason to belief, within the meaning of

Section 132(1). The sufficiency of the reasons cannot be questioned by the court, in the exercise of its writ jurisdiction, under Article 226 of the Constitution of India.

30. The learned counsel had also relied on the decision of the Gujarat High Court, in *DIPIN G.PATEL* v. *DIRECTOR GENERAL OF INCOME TAX (INVESTIGATION)*, in stating that sufficient materials were available for the authorities concerned, for the issuance of authorisation of search. If necessary care had been taken and the case had been properly scrutinised before the issuance of the authorisation, it cannot be stated that the search authorisation had been issued, hurriedly or perfunctorily.

31. In the decision, in *DY. DIT (INVESTIGATION)* v. *MAHESH KUMAR AGARWAL*, the Calcutta High Court had held that the court has to examine whether the authority concerned had before him materials to form an opinion whether there is rational connection between the information possessed and the opinion formed. However, the court cannot sit in appeal over the opinion formed, if there are materials, and when the opinion had been formed based on such materials. However, the court would not examine whether the materials possessed were adequate or sufficient to form an opinion. The court cannot go into the aptness or sufficiency of the grounds, upon which the satisfaction, which is subjective in nature, is based. If the belief is bona fide and is cogently supported, the court would not interfere with or sit in appeal over it.

32. The learned counsel appearing on behalf of the respondents had relied on the decision of a Division Bench of this Court, dated 23.12.2010, made in W.A.No.1205 of 2010, *Asstt. DIT* v. *Apparasu Ravi* wherein, the order of a learned Single Judge of this Court, dated 13.4.2010, made in W.P.No.921 of 2010, had been overruled.

33. The Division Bench, in its order, dated 23.12.2010, made in W.A.No.1205 of 2010, had held as follows:

> "51. In the decision of the Delhi High Court, wherein an earlier decision of the same High Court reported in (*L.R.Gupta* v. *Union of India*), has been pointed out wherein it is stated that there must be some material which can be regarded as information which must exist on the file and that the authority cannot proceed based on mere rumour or a gossip or a hunch. In the case on hand, the concrete information was furnished by the respondent himself which was exclusively known to him was revealed to the first appellant. Therefore, it will have to be found out whether based on the said information he had sufficient reason to believe for initiating an action under Section 132.
>
> 52. In that respect in that very decision it is pointed out that the opinion which has to be formed by the officers is subjective and the jurisdiction of the Court to interfere is very limited and that the Court will not act as an appellate authority and examine meticulously the information in order to decide for itself as to whether action under Section 132 was called for.
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> 53. The only other aspect which the Court can examine would be whether the reason to believe was tangible in law and if the information or the reason had no nexus with the belief or there was no material or tangible information for the formation of the belief, only then an action under Section 132 would be regarded as bad in law.
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> 54. Applying the above well laid down principles, when we examine the case on hand, there was an information and the first respondent who after collecting the information by

recording it in the form of statement, approached the competent authority for necessary authorisation to effect a search and thereafter made a search on the respondent and finding that the respondent was categoric in his information revealed earlier and having found the gold jewellery weighing 10 kgs held by him proceeded to seize the same under Section 132.

55. We are therefore convinced that there was absolutely no flaw in the action taken by the first appellant in effecting the search and seizure under Section 132 who had the necessary information and the said information had every nexus for formation of the belief.

56. Since the sufficiency or otherwise of the information cannot be examined by the Court in the writ jurisdiction, there is no scope to dissect the information which existed with the first appellant which formed the basis for his reason to believe that the respondent has not been or would not been disclosed for the purposes of the Act."

34. In view of the submissions made by the learned counsels appearing for the petitioners in the above writ petitions and the learned counsel appearing on behalf of the respondents, and on a perusal of the relevant records available before this Court, it is noted that one of the main issues raised on behalf of the petitioners is that the searches and seizures conducted by the respondents, in the premises in question, are arbitrary and illegal, due to lack of jurisdiction. As such, all the proceedings of the respondents, based on the illegal searches and seizures, would be void.

35. It is also noted that the petitioners had claimed that the respondents had not followed the procedures contemplated under the relevant provisions of law for ordering such searches and seizures, including the provisions contained in Section 132 of the Income Tax Act, 1961.

36. It is not in dispute that the respondent department had issued the search warrants, in question, for searching the premises at Door No.20, Govind Singh Road, R.S.Puram, Coimbatore, and in the premises of Vikram Hospital, at No.69, West Venkatasamy Road, R.S.Puram, Coimbatore.

37. The learned counsels appearing on behalf of the petitioners had submitted that none of the requirements prescribed in Clauses (a) to (c) of Section 132 (1) of the Income Tax Act, 1961, were existing at the time of the passing of the order, by the respondent department, to conduct the search and seizure operations in the premises in question. Since, the search and seizure operations, ordered under Section 132 of the Income Tax Act, 1961, is a serious invasion of the privacy of a citizen, the power to order such searches and seizures should be considered in a strict sense. The authority concerned, empowered to order the searches and seizures, should have the necessary information to form a belief that a search is necessary, as per the provisions of the said section. Thus, it is clear that extraneous reasons cannot be the basis for the issuing of an order of search and seizure by the authority concerned.

38. It had been further contended that the information, based on which an order for search and seizure is issued, must be something more than a mere rumor, a gossip or a hunch. There should be materials available on record, based on which a search and seizure could be ordered. The reason to believe that a search is necessary must be tangible in law and it should have a rational nexus with the belief formed in the mind of the authority concerned. If such reasons are available, the order for search and seizure cannot be said to be arbitrary and illegal. It is also noted that the respondent department had reasons to believe, based on the available information, that there was a necessity to issue an order for search and seizure, in respect of the premises in question. The said contention raised on behalf of the petitioners that there were no materials

available on record, for the respondent department to form such an opinion, cannot be countenanced.

39. It is clear, from the decisions relied on by the learned counsel appearing for the respondents, that it is not for this Court to indulge in the exercise of finding out the sufficiency or the relevance of the materials, which were available with the authority concerned, for arriving at his conclusion. If the authority had some materials for his belief that certain documents and other relevant materials were secreted, it would be sufficient for giving him a reason to order the search and seizure.

40. In the present cases, this Court is of the considered view that the respondent department was justified in having the reasons to believe that certain documents and other things had been secreted in the premises in question and that they would be relevant, in respect of the alleged evasion of payment of Income tax, said to be payable by the petitioners. Further, the authority concerned had also the reason to believe that such documents and things would not be produced by the persons concerned, in the normal course, to enable the respondent department to conduct necessary inquiries in the matter.

41. There is no doubt that appropriate proceedings could be initiated against the petitioners, for the alleged evasion of payment of Income tax, by the authorities having the jurisdiction to do so, as per the relevant provisions of law. As such, there is no perceptible impediment for the respondent department to issue the search warrants, based on which further proceedings may follow, in accordance with the procedures established by law. In such circumstances, it is premature on the part of the petitioners to stall further proceedings relating to the allegations of evasion of payment of Income tax, by the petitioners, by raising the issues relating to the jurisdiction of the respondent department to issue the search warrants. Of course, it would be open to the petitioners to defend themselves by showing, at the appropriate stage of the proceedings, that they are not liable to pay the Income tax, as assessed by the authorities of the respondent department. The belief of the authorities concerned that the petitioners had secreted certain documents relevant for the purpose of investigation of the matter relating to the alleged evasion of Income tax, by the petitioners, is based on certain materials available before the said authorities.

42. It is clear that the formation of the opinion, prior to the issuance of the search warrants, had been based on the materials available before the authority concerned. As such, it would not be appropriate for this Court to analyse, in detail, whether the decision of the respondent department to issue the warrants of search and seizure is perfect or logical in nature. It would be sufficient if there were certain materials, which could have prompted a prudent man to arrive at such a conclusion. When serious allegations of tax evasion by the petitioners, to the tune of several lakhs of rupees, have been made, it would not be appropriate for this Court to scuttle the process by placing undue emphasis on the hyper technical pleas put forth on behalf of the petitioners, with regard to the procedural formalities in the issuance of the search warrants.

43. From the decisions relied on by the learned counsel appearing on behalf of the petitioners there is no doubt that the authority concerned, who issues the warrant for searches and seizure, ought to have the necessary materials before him to have a reason to believe that an order for search and seizure is warranted. However, it is clear that if certain materials are available before the authority concerned to arrive at his conclusion, then it is not for this Court to examine as to whether there were sufficient materials or grounds to arrive at such a conclusion. Further, this

court cannot go into the question as to whether the materials available before the authority concerned were adequate to prompt him to believe that a search was necessary. There is no doubt that the satisfaction of the authority concerned is a subjective satisfaction. Therefore, this Court could only see whether the satisfaction of the authority is due to mala fide reasons or based on extraneous factors or mere rumours.

44. If there are some materials available for a reasonable and prudent man to believe that a search is warranted, then it is not for this Court to delve deeper into the subtle and complex intricacies involved in the process of the formation of the opinion in the mind of the authority concerned. In the present milieu, when transactions of a highly complicated nature could be carried out by using advanced technologies the issue relating to the jurisdiction of an authority to cause search and seizure, at a particular place, cannot be clear and distinct and there could be certain grey areas of doubt. Especially, when the petitioners have not been in a position to show that the respondents had acted in a mala fide manner, this Court is not inclined to accept the contention raised on behalf of the petitioners that the search and seizure operations, conducted by the authorities, are arbitrary, illegal and void.

45. In the present socio-economic scenario it becomes all the more important for the authorities concerned, authorized by law, to unearth and to bring to light large scale evasions in the payment of taxes and other such serious irregularities being committed with impugnity. Even if there had been certain minor irregularities committed by the authorities concerned, relating to the procedural aspects of the search and seizure operations, they cannot be held to be substantial or sufficient in nature to declare the search and seizure operations as illegal and void. Based on the specific directions issued to the respondents, they had placed before this Court the original records, based on which the respondent department had a reason to believe that there was a necessity to issue the warrants to search the premises in question. On a perusal of the said records this Court is inclined to hold that the opinion formed by the respondent department that there was a necessity to issue the warrants of search, to search the premises concerned, cannot be held to be arbitrary or void, as prayed for by the petitioners, in the present writ petitions.

46. There is no doubt that the personal liberty and the privacy of a citizen stands on a high pedestal in the scheme of things contemplated under the provisions of the Constitution of India. However, when certain private interests of an individual clashes with the common interests of the society at large, this Court would have to carefully weigh the same and arrive at its conclusions, with utmost care, keeping in mind the larger interests of the society, especially, when it is likely to have ramifications of a serious nature, relating to its economic health and welfare. However, it does not mean that the privacy of an individual could be infringed with impugnity. Therefore, it is of paramount importance that the authority concerned, who exercises the power vested in him by a statute, should take utmost care and exercise sufficient caution while making the decision to issue the warrant to search the premises of the persons concerned and to seize the necessary materials, during the search.

47. From the decisions cited supra it is clear that the authority concerned, before issuing the warrant of search and seizure, should have a reason to believe that it was necessary, as per the provisions of Section 132 of the Income Tax Act, 1961. In the cases on hand, it could be noted, from the records placed before this Court, by the respondents, that there were materials available before the authority concerned, for the formation of his belief to issue such a warrant.

48. It is also noted that the authority concerned, who had issued the search warrants, had the necessary information from the pre-search enquiries and from the available income tax records. Further, it is not in dispute that it would be open to the petitioners to raise all the grounds available to them in defending themselves during the enquiry and in the subsequent proceedings that may be initiated against them, based on the materials seized during the search. It would also be open to them to prove, by way of sufficient evidence, that there was no evasion of payment of Income tax, as alleged by the respondents. There is no doubt that the acts of search and seizure cannot be justified by the availability of incriminating materials in the premises in question, during such search, to support the decision made by the authority concerned, once it is found that the issuance of the warrants to search was invalid in the eye of law. However, in the present cases, the petitioners have not been in a position to show that the authority concerned had issued the warrants of search, arbitrarily, without following the procedures established by law or with a mala fide motive.

49. In such view of the matter, this Court is of the considered view that the contentions raised on behalf of the petitioners cannot be countenanced. As such, the writ petitions are liable to be dismissed, as they are devoid merits. Hence, they are dismissed. No costs. Consequently, connected writ petition miscellaneous petitions are closed.

50. However, it is made clear that the petitioners are entitled to the copies of the documents and records seized from the premises in question before further proceedings are initiated against them, by the respondents, pursuant to the searches conducted on 12.9.2002 and 13.9.2002. Further, it is made clear that it would be open to the petitioners concerned to make a claim for the return of the amount of rupees ten lakhs, said to have been seized from the premises in question and adjusted towards the liability payable by such petitioners. On such request being made, the said amount shall be returned by the respondent department, to the petitioners, within a period of eight weeks from the date of such request, as the said amount had been collected and adjusted towards the alleged income tax liability of the petitioners, without any assessment having been made by the tax authorities concerned, as per the relevant provisions of law. It would also be open to the petitioners to contest the claims made by the respondent department, with regard to the alleged income tax liability of the petitioners, before the authorities or the forum concerned, in the manner known to law.