

Article 14 itself, a classification which is not arbitrary and has a reasonable nexus with the object sought to be achieved is permissible. In this situation, if the State feels that persons engaged in the professions of scavenging etc. deserve to be classified as a special provision is required to be made for their advancement, no provision of the Constitution can be said to have been violated. The fact that scavengers, country shoemakers, bone collectors etc. are not as well placed in life as those belonging to other classes is well known and recognised in this part of the country. In such a situation, the classification introduced by the letter dated October 12, 1965 and the sanction of an amount of Rs. 28.00 lacs for construction of houses for this class of persons does not in any way infringe any enforceable right of the petitioners.

(4) Accordingly, I find no merit in this petition. It is dismissed. In the circumstances of the case, the parties are left to bear their own costs.

R.N.R.

Before Hon'ble A. L. Bahri & V. K. Bali, JJ.

M/S JAI BHAGWAN OM PARKASH,—Petitioner.

versus

THE DIRECTOR OF INSPECTION NEW DELHI AND
OTHERS,—Respondents.

Civil Writ Petition No. 6460 of 1987.

March 30, 1992.

Income Tax Act, 1961—S. 132—Income Tax Rules, 1962—Power to order search—Such power to be exercised strictly in accordance with law—Search warrant issued against firm A—Search of premises of Firm B—Letter of authorization containing name of partners of firm B as well—Validity of such search.

Held, that the exercise of power under section 132 of the Act of 1961, 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 conditions for the exercise of the power are not satisfied the proceedings would be liable to be quashed.

(Para 12)

Further held, that warrant of authorisation was to search the premises of all the persons mentioned in the file. It is clearly mentioned in the letter of authorisation that all such persons as have been mentioned and their premises could be searched. The books of account and other documents in respect of other businesses carried on by the partners of the firm of assesseees would certainly be relevant because they would tend to show inter-relation between the dealings and supply materials having a bearing on the case of evasion of income-tax by the firm. The fact that the officers had made a search and seized the books of accounts and documents in relation to business carried on in the names of other firms and companies, the search could not be held to be illegal.

(Para 14)

B. S. Gupta, Sr. Advocate with Sanjay Bansal, Advocate. *for the Petitioner.*

R. P. Sawhney, Advocate with Aradhna Sawhney, Advocate, *for the Respondent.*

JUDGMENT

V. K. Bali, J.

(1) Warrant of authorization issued under Section 132 of the Income Tax Act, 1961 and Rule 112 (1) of the Income-Tax Rules, 1962 (hereinafter to be referred as the Act of 1961 and the Rules of 1962 respectively,) by commissioner of Income-tax on 7th July, 1987, the search and seizure sequel to aforesaid warrant of authorization resulting into recovery of 4 Kgs. of gold ornaments, 119 Kgs. of silver ornaments, cash to the tune of Rs. 1,25,000, preparation of *Panchanama* (*Annexure P3*), list/inventory of jewellery and other items, as also inventory of cash found seized, list/inventory of account books seized, and the notice under Rule 112-A of the Rule of 1962, have been challenged by M/s Jai Bhagwan Om Parkash, a partnership concern consisting of Om Parkash, Som Parkash, Avinash Chander and Viney Kumar. The warrants of authorization and the proceedings initiated on the force of the said warrants have been styled by the petitioner to be wholly illegal and without jurisdiction. It is stated that there was no warrant of authorization for searching the premises of the petitioner inasmuch as the said authorization was against M/s Om Parkash Som Parkash which was an HUF assessee. It is further stated that the jewellery and cash which was found and seized, stands mentioned in the regular accounts books maintained by the assessee, supported by the entries in the Gold Control Register, and also that there was a complete confusion in the mind of the raiding party as to the premises which were to be searched in pursuance of warrant of authorization against

M/s Om Parkash Som Parkash. The petitioner M/s Jai Bhagwan, Om Parkash is stated to be a registered firm under Section 185 of the Income-tax Act, and hence warrants of authorization which were issued against M/s Om Parkash Som Parkash could not be utilized for the purpose of searching the premises of the petitioner, is the clamour of the petitioner. Before, however, the matter is dealt in light of the relevant provisions of the Income-tax Act and the rules framed thereunder, it shall be useful to gloss through the facts that have necessitated the petitioner to rake up the aforesaid issue by filing the present petition under Articles 226/227 of the Constitution of India.

(2) M/s Jai Bhagwan Om Parkash is a registered firm consisting of the partners stated above. This firm is duly registered under Section 185 of the Income-tax Act and also under the Partnership Act. The petitioner-firm had been assessed upto the assessment year 1986-87 by the Income-tax Officer, B-Ward, Karnal. On 7th July, 1987, warrants of authorization under Section 132 of the Act of 1961 were issued in favour of the authorized officers, namely, Sarvshri S. P. Mahajan, Income-tax Officer, Hisar, and S. C. Sabharwal, Income-tax Officer, Rewari, to search the premises of M/s Om Parkash Som Parkash. The case of the petitioner-firm is that instead of carrying out the search operation of M/s Om Parkash Som Parkash, the premises of which firm were only to be searched as per the warrants of authorization, the operation was carried in the premises of the petitioner M/s Jai Bhagwan Om Parkash. In so far as firm M/s Om Parkash Som Parkash is concerned, the same is only an HUF and does not carry on any business except that it is assessed under the Wealth-tax Act in the status of HUF. A copy of the assessment order under the Wealth-Tax Act, passed with respect to the assessment year 1986-87, pertaining to the aforesaid HUF, has been placed on the record of this petition, and is annexed as P1. A *Panchnama* was prepared, wherein the name of M/s Om Parkash Som Parkash in respect of the business under the name and style of Jai Bhagwan Som Parkash, Sarafa Bazar, Karnal, was mentioned. As per the case of the petitioner, there was no indication of warrants of authorization with respect to the business of M/s Jai Bhagwan Om Parkash. A list/inventory of jewellery was prepared, which mentions the name of Om Parkash Som Parkash in respect of the business styled as M/s Jai Bhagwan Om Parkash. The items which were taken into possession, and of which a list was prepared, as per the case of the petitioner, find mention in the stock register of the petitioner, as also in the Gold Control Register,

which is maintained in the regular course of business by the petitioner. The main business of the petitioner is to advance money against pawning of gold and silver jewellery, besides the manufacture and sale of gold and bullion ornaments, either studded with stones or otherwise. Another inventory of cash found and seized was prepared, in which the name of Om Parkash Som Parkash is mentioned, as carrying on the business of M/s Bhagwan Das Som Parkash. In the manner aforesaid, there is, thus, a difference in the *panchnama* as also in the inventory of cash copy. 4 Kgs. of gold ornaments and 119 Kgs. of silver ornaments were seized and out of the total cash found in the premises, i.e., Rs. 1,32,173, a sum of Rs. 1,25,000 was seized. The books of accounts were also seized, of which another inventory was prepared. On 30th July, 1987, a notice under Rule 112-A of the Rules of 1962 were issued in the name of Om Parkash Som Parkash, Jorian Kuan, Karnal by the Income-tax Officer, A-Ward, Karnal. A reply to the aforesaid notice was sent by the petitioner on 31st July, 1987 by mentioning therein that M/s Om Parkash Som Parkash does not carry on any business at Jorian Kuan, Karnal, nor it maintains any shop, and that no operation under Section 132 of the Act of 1961 was conducted on any of the premises of M/s Om Parkash Som Parkash. Immediately on receipt of the reply aforesaid, a new notice was issued by the Income-tax Officer, B-Ward, Karnal, under Rule 112-A of the Rules of 1962, to produce or cause to be produced the account books to explain the assets and jewellery which were found and seized. A reply was sent to this notice as well on 6th August, 1987, wherein it was mentioned that there were no warrants in the name of M/s Jai Bhagwan Om Parkash and that the entire search which was conducted in the petitioner's premises, was illegal and that from the different notices, one issued by the Income-tax Officer, A-Ward, Karnal, on 30th July, 1987, and the other sent by the Income-tax Officer, B-Ward, Karnal, on receipt of the reply to the notice, it was evident that there was no justification for conducting the search in the premises of the petitioner. With a view to get clarification, a copy of the warrants of authorization was demanded. On 16th August, 1987 the petitioner addressed a letter to the Commissioner of Income-tax, Rohtak, drawing his attention to the provisions of Section 132 of the Act of 1961, and apprising him the facts under which the search and seizure as per the case of the petitioner, was illegal. A demand for the return of all the articles, which were seized the relevant time, was made by the petitioner. It is also mentioned in the letter aforesaid that no such warrants had been issued in the name of the petitioner-firm, and that being so, there was no justification for the Income-tax Authorities to have

either seized the goods or refused to return them. In spite of the reminders that were given later when the grievance of the petitioner was not redressed by the Income-tax authorities, the present writ petition was filed in this Court.

(3) This petition has been opposed by the respondent by filing a written statement, wherein by way of preliminary objections it has been stated that the petition deserves to be dismissed on account of availability of alternative remedy, which has not been availed of by the petitioner. It is stated that the under Section 132(10), as also under Section 132(11), of the Act of 1961, the petitioner has remedy for the return of the books of account of other documents, and regarding order made under Section 132(5) of the said Act, respectively, and that even though a specific remedy is provided under the statute for the very relief that has been claimed in the present petition, the petitioner has chosen to give a go-bye to the said remedy; thus, disentitling it to any relief from this Court under Articles 226/227 of the Constitution of India. On merits the case of the respondents is that the firm styled as Jai Bhagwan Om Parkash is a partnership concern, and is comprised of two partners, namely, Om Parkash and Som Parkash, having equal shares upto the assessment year 1985-86. As per Income-tax records, Sarvshri Avinash Candher and Vijay Kumar were taken as partners with effect from 1st April, 1985, relevant to the assessment year 1986-87. The firm is treated as registered firm under the Income-tax Act,—*vide* order dated 26th September, 1986, and there is nothing on the Income-tax record to show that the firm is registered under the Partnership Act. It is further stated that the Income-tax Officers, i.e., respondents 3 and 4, were issued warrants of authorization under Section 132 of the Income-tax Act. The search warrant was issued to search the business premises of M/s Om Parkash Som Parkash, Sarafa Bazar, Karnal, and not merely premises Om Parkash Som Parkash, as stated by the petitioner. The authorised officers carried out search of business premises of Om Parkash Som Parkash, Sarafa Bazar, Karnal, duly indicated on the display board fixed on the premises that were searched. It is also stated that no protest was lodged by any one either in writing or verbally and the search was conducted without any protest from any quarter whatsoever. The warrant of authorization was duly shown to Shri Som Parkash, who appended his signatures on the same and during the course of proceedings, Som Parkash made a statement by specifically saying that the business premises searched were being run by Om Parkash Som Parkash. It is also stated that the business premises are being run by M/s Om Parkash Som Parkash is proved from the fact that

during the course of search and seizure proceedings, a statement of one Mahadev Bombaywala was also recorded, who had categorically stated that he is melting silver on behalf of M/s Om Parkash Som Parkash. It is also stated that as per statement of Shri Kailash Chand, son of Shri Om Parkash, recorded on 2nd March, 1977, before Shri G. D. Thaper, Superintendent (Prevention), and which statement was affirmed on oath, it is clearly made out that the name of the firm is M/s Om Parkash Som Parkash and the business is being done for the last 30 to 35 years. The respondents are stated to have acted on an information that M/s Om Parkash Som Parkash is doing business of Sarafa at Sarafa Bazar, Karnal. The search of the above-mentioned place was carried out by the raiding party in the presence of panchas in an orderly manner and no untoward event happened during the search. In the course of search, the authorised officers recorded the statement of Som Parkash on solemn affirmation in the presence of the Panchas. The statement was read over and explained to Shri Som Parkash, who signed the same in token of its correctness, and specifically stated that his statement had been correctly recorded. From the perusal of the statement made by Som Parkash during the search operation it was made out that the business was being run by Om Parkash Som Parkash styled as Jai Bhagwan Om Parkash, Karnal. It is on account of this fact that the name of M/s Om Parkash Som Parkash in respect of the business in the name of Jai Bhagwan Om Parkash came to be mentioned in the *Panchnama*. So far as the case of the petitioner with regard to items found and mentioned in the account books is concerned, it is stated that the same is absolutely incorrect and even as per statement of Shri Som Parkash, which was recorded by the authorised officer during the course of search, it came to be admitted by him that the stock reflected on 16th July, 1987, as per the books of accounts maintained, the gold ornaments were of the value of Rs. 4,88,297.87, old silver ornaments were of the value of Rs. 34,500, silver dalli was of the value of Rs. 35,300, whereas the silver ornaments were of the value of Rs. 5,345. In addition to the aforesaid ornaments, pawned jewellery of Rs. 2,10,282.89 P. was found at the time of search. As against the stocks reflected in account books, as given above, following stocks were found on physical verification at the time of search of premises :—

<i>Items</i>	<i>Weight</i>	<i>Amount</i> (Rs.)
Silver Ornaments	1 Ctl. 98 kgs. 880 gms.	5,50,000
Gold Ornaments	6 kgs. 821 Gms.	16,00,000
Diamond Jewellery		20,000

The claim of the petitioner that the stock found tallied with the stock as per the books of account, has been, thus, emphatically denied. Shri Som Parkash, during the course of search surrendered a sum of Rs. 4 lacs as his undisclosed income in the form of cash and silver jewellery. This offer was subsequently revised to Rs. 6 lacs. The undisclosed income as per the statement was in the form of gold and silver ornaments. As per the case of the respondents, this conclusively establishes that stock found during the course of search was not the explained stock. Som Parkash further admitted in his statement, reference of which has been made above, that gold ornaments of the HUF in the shop were not recorded in the regular books of account. When it was pointed out to him that the ornaments found during the course of search were the new ornaments and not the old ornaments, as allegedly belonging to HUF, then Shri Som Parkash stated that he is unable to identify the gold ornaments belonging to the HUF. As per record, there was nothing to suggest that the HUF got converted its ornaments. In so far as notice issued under Rule 112-A of Rules of 1962 is concerned, the case of the respondents is that notice issued to firm Jai Bhagwan Om Parkash, clearly mentions the name of M/s Om Parkash Som Parkash. The *panchnama*, inventory of jewellery etc. and inventory of account books were all signed by Shri Som Parkash, which also shows the name of M/s Om Parkash Som Parkash in respect of business under the name and style of M/s Jai Bhagwan Om Parkash. This fact is further confirmed from the documents seized from the business premises of M/s Om Parkash and Sons, Sarafa Bazar, Karnal, which is stated to be a sister concern of the petitioner, wherein the entires are as "Om Parkash Som Parkash, Sarafa Ka Jama and Om Parkash Som Parkash Sarafa Ka Nama." In the statement that was made by Som Parkash at the time of search and seizure, it was made out by him that the business run by M/s Om Parkash Som Parkash is styled as Jai Bhagwan Om Parkash. With a view to prove the aforesaid fact, the respondents have also pleaded that an amount of Rs. 3,500, imposed as fine by Central Excise Authorities on M/s Om Parkash Som Parkash, was debited to the profit and loss account of M/s Jai Bhagwan Om Parkash for the assessment year 1974-75. Further, the refund of Rs. 3,250 out of the above penalty allowed by Gold Control Administration was again credited to the profit and loss account of M/s Jai Bhagwan Om Parkash. Shri Om Parkash as partner of M/s Jai Bhagwan Om Parkash,—vide his letter dated 6th June, 1977, addressed to Income Tax Officer, had himself requested that refund of Rs. 3,250 credited to the profit and loss account should not be treated as income

because the fine of Rs. 3,500 was already disallowed. From the aforesaid facts, as also the conduct of Som Parkash, it is stated by the respondents that it was clearly established that the searched premises were being run by M/s Om Parkash Som Parkash in respect of the business in the name and style Jai Bhagwan Om Parkash.

(4) From the facts that have been narrated above, Mr. B. S. Gupta, learned counsel for the petitioner, vehemently contends that there was no warrant of authorization for searching the premises of the petitioner i.e. M/s Jai Bhagwan Om Parkash and inasmuch as the warrants of authorization were against M/s Om Parkash Som Parkash, which was an HUF assessee, the proceedings from inception were wholly unauthorised and illegal. He further contends that in any case, there was a confusion in the mind of the raiding party as to premises which should have been searched in pursuance of the warrants of authorization issued to them to search the premises of M/s Om Parkash Som Parkash. He further contends that there was neither any information before the competent authorities nor there was an application of mind and the warrants of authorization issued in the absence of information and on account of non-application of mind would vitiate the very order of warrant of authorization as also subsequent proceedings that have been taken later. In alternate, the learned counsel also contends that even if there was information available with the competent authorities and there was an application of mind, then also all the facts and circumstances that necessitated the passing of an order with regard to issuance of warrants for search and seizure, as also the basis on which the proceedings came in offing, were required to be made known to the petitioner, so that the case of the Department could be properly met with and inasmuch as nothing at all has been disclosed in the written statement it shall be presumed that the very essentials of conducting search and seizure, as envisaged under Section 132 of the Act of 1961 were lacking.

(5) Mr. R. P. Sawhney, learned counsel for the respondents, on the other hand, refutes all the contentions that have been noticed above. On the question that the warrant of authorization was in the name of M/s Om Parkash Som Parkash, whereas the business premises of Jai Bhagwan Om Parkash were searched, the case of the Department, as put up by Mr. Sawhney, is that the real business being carried out at Sarafa Bazar, Karnal, is of Om Parkash Som Parkash, and the name of firm Jai Bhagwan Om Parkash is only a camouflage. He further contends that before

the warrant of authorization was issued by the competent authority, there was sufficient information available with the Department and on *bona fide* belief, the authorities had come to the conclusion that the assessee was in possession of money, jewellery or other valuable articles, which had not been disclosed for the purpose of Income Tax Act. In so far as the contention of the counsel for the petitioner that nothing has been mentioned in the petition with regard to the information available with the Department, and the material on which the authorities had come to *bona fide* belief, the contention of Mr. Sawhney is that in the entire petition not a word was mentioned with regard to there being no formation of opinion on the material available, and, therefore, it was not possible to disclose the same in the written statement. However, he contends that on the asking of the Court, the entire file culminating into an order of issuance of warrants of authorisation, can be produced and, in fact, during the course of arguments, the same was produced for the perusal of the Court.

(6) After hearing the learned counsel for the parties, we are of the opinion that unless the relevant file pertaining to the case of the petitioner while issuing the warrant of authorization is perused, it shall be difficult to answer the questions that have been posed in the present case. However, before that is done, it shall be useful also at this stage to extract the provisions of Section 132 of the Act of 1961, in so far as they have a bearing upon the facts of the present case. The relevant extract of Section 132 runs thus :—

“132. (1) Where the Director of Inspection or the Commissioner (or any such Deputy Director of Inspection or Inspecting Assistant Commissioner as may be empowered in this behalf by the Board, in consequence of information in his possession has reason to believe that—

(a) xx xx xx xx

(b) xx xx xx xx

(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 (11 of 1922), or this Act (hereinafter in this Section referred to as the undisclosed income of property), then

(A) the Director of Inspection or the Commissioner, as the case may be, may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income-tax Officer, or

(B) xx xx xx xx

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

xx xx xx xx."

(7) The file pertaining to the petitioner with regard to issuing the relevant warrants, starts with a note made by A.D.I. of 9th March, 1987, which says that on a complaint against M/s Om Parkash Som Parkash Saraf, Old Sarafa Bazar, Karnal, the complainant had come present and he was asked to collect further information regarding location of shellers and residential premises of the party. It is further stated by the Officer that he was going to Karnal on 30th March, 1986 and would meet the complainant at a particular place and particular time, and that the file would be resubmitted after obtaining complete details. The next note available on the file is of 3rd April, 1987, which states that the file concerning——— M/s Om Parkash Som Parkash Saraf, Old Sarafa Bazar, Karnal, has been handed over to the person who made the note and that the complainant had levelled against Om Parkash Som Parkash and its allied concerns various allegations. It was stated by the complainant that Om Parkash Som Parkash had their shop at Sarafa Bazar, Karnal, and other family members of Shri Om Parkash were also doing the business of Sarafa at Karnal. These persons included Shri Prem Chand Saraf and Gupta photographer, the brothers of Shri Om Parkash, Shri Bhagat Ram *alias* Bhagtu Saraf son of Shri Om Parkash. Shri Om Parkash, it is stated, is also alleged to have an accountant, named Om Parkash, in whose house documents and goods are lying. It is further stated that these persons have amassed huge wealth and have earned income in crores. As per the officer who made the note, the facts as made out by the complainant, reveal that cash in crores, over and above jewellery items of gold and silver, are lying with them. They have got their rice shellers and substantial amount of land near Karnal. They also have three shops at Kunipura Road, Karnal, which have been rented out. The other allegation made by the complainant against these persons was that they were in the habit of purchasing stolen items and

were also dealing in money lending. Many bank lockers, apart from having accounts in the names of various persons, were also there. It is also stated that these persons have at least two crores rupees in cash, apart from diamonds, and gold/silver jewellery. In view of the officer making the note, it was a case which required orders to be passed under Section 132 of the Income Tax Act. The complainant had given full particulars of persons, who were dealing with the business and more information was needed in the case. The complainant was once again called and as per note dated 8th April, 1987, he vehemently repeated the allegations levelled against Om Parkash Som Parkash, Karnal. He was asked to collect more information. Thereafter there is a detailed note, which was made on 16th April, 1987. Entire history of the matter has been traced. It requires to be mentioned that the matter has been dealt with right from the date when the written complaint dated 9th March, 1987 was received by the Assistant Director of Inspection. The complaint was against a group of family persons. The allegations of tax evasion were levelled against the following persons :—

1. M/s Om Parkash Som Parkash, Old Sarafa Bazar, Karnal;
2. Shri Prem Chand Saraf (Brother of Shri Om Parkash);
3. Shri Bhagat Ram *alias* Bhagtu son of Shri Om Parkash;
4. Gupta Photographer (brother of Shri Om Parkash);
5. Om Parkash accountant of Shri Om Parkash Som Parkash.

The allegations as made out in the complaint was with regard to the aforesaid persons having amassed huge wealth in crores, which has been earned by them by carrying on business of unaccounted gold and silver jewellery. The note also makes a mention of various meetings with the complainant and seriousness of the allegations that were made against the persons, reference of whom has been made above. The matter was not left there only and it was discussed with the Deputy Director of Inspection and even the person who made the note had even visited Karnal himself to verify and ascertain the correctness and truthfulness of the allegations levelled by the complainant. The details of visiting Karnal and meeting various people and going to various places with a view to seek requisite information have also been mentioned. The Officer concerned has even mentioned the various pieces of information that were made available to him from various persons that

he had contracted. The details of the properties that are owned by them is also mentioned, which was so found by the Officer concerned by making personal inquiries into the matter. The Officer made his own assessment by recording that it was clear that these persons had not disclosed their true and full income to the Department and heavy tax evasion had been done by them. They were keeping cash, valuables gold etc. worth lacs of rupees, apart from the incriminating books of accounts and documents. The list of the persons as mentioned in the note aforesaid is as follows :—

1. Shri Om Parkash C/o M/s Om Parkash Som Parkash.
2. Shri Som Parkash C/o —as above—
3. Shri Prem Chand Saraf.
4. Shri Bhagat Ram *alias* Bhagtu son of Om Parkash.
5. M/s Om Parkash Som Parkash, Sarafa Bazar, Karnal.
6. M/s Om Parkash Saraf and Sons, Sarafa Bazar, Karnal.
7. Business concern of Shri Prem Chand and Shri Bhagat Ram.
8. Books of accounts and valuables are kept by these persons in the shop named Gupta Photographer, Sarafa Bazar, Karnal, and residence of Shri Madan Lal account.
9. M/s Haryana Cold Stores, Hansi Road, Karnal.

In the ultimate analysis it is mentioned that this case was mature for action under Section 132 of the Act of 1961, and that on approval authorization should be prepared and the case be put up for search. There is yet another note of 23rd April, 1987, wherein it is mentioned that the case was discussed with the Commissioner of Income-tax, Rohtak, and the Deputy Director of Inspection, Rohtak, and as directed by the Commissioner of Income Tax, the officer concerned, who made the note, had visited Karnal on 22nd April, 1987, to make further inquiries. As per note aforesaid, further inquiries were also made, which reiterated the view of the Officer that search should be conducted. *Vide* another note of the even date, the case was discussed with the Director of Inspection, New Delhi, and Deputy Director of Inspection, Rohtak, and it appears that as per the discussion that took place, the officer was to make further inquiries regarding purchase of land by the aforesaid persons. As per note dated 25th April, 1987, further inquiries were made by visiting Karnal on 25th April, 1987 and the inquiries revealed that this group of persons had purchased land a few years back and they had invested black money in purchase of the said

land. The Deputy Director Inspection made yet another note on 27th of May, 1987, wherein it is recorded that the facts stated in the preceding paras had been perused and the complainant had levelled allegations against the following persons :—

1. Shri Om Parkash, residence—Sheesh Mahal, Karnal.
2. Shri Som Parkash, residence—Jorian Kuan, Karnal, near Sewak Sangh.
3. Shri Bhagat Ram *alias* Bhagtu S/o Shri Om Parkash—residence—Chaura Bazar, Karnal.
4. Shri Parveen Kumar, residence—Jorian Kuan, Karnal C/o Shri Prem Chand.
5. Shri Gian Chand, residence—Jorian Kuan, Karnal.
6. Madan Lal, Accountant.
7. M/s Om Parkash Som Parkash, Sarafa Bazar, Karnal.
8. M/s Om Parkash and Sons, Sarafa Bazar, Karnal.
9. Business premises of Shri Bhagat Ram *alias* Bhagtu Sarafa Bazar, Karnal.
10. Business premises of Shri Parveen Kumar S/o Shri Prem Chand, Sarafa Bazar, Karnal.
11. M/s Gupta Photographers, Sarafa Bazar, Karnal.
12. Haryana Cold Storage, Hansi Road, Karnal.

It is also mentioned in the aforesaid note that the nature and evidence in respect of the allegations have been separately mentioned in Annexure 'A'. The aforesaid annexure pertains to allegations with regard to purchase of stolen jewellery items and purchase and sale of gold jewellery outside the account books, non-release of pawned jewellery items, to the owners during the course of pawning business, huge quantity of gold and silver (Gold about 20 to 25 Kgs.), purchase of land at higher rates and getting the sales registered at the lower rates, unaccounted cash in lacs, having lockers in banks, maintenance of duplicate set of accounts for gold business and other business, and investment in Cold Storage business (Haryana Cold Storage, Hansi Road, Karnal) by way of advance payment to persons who keep their goods in cold storages, not disclosed fully in account books. The result of verification has been separately noted and it has been mentioned that secret inquiries have been made by A.D.I. independently from various quarters and allegations levelled in respect of the nature of business,

availability of cash with the aforesaid persons was found to be satisfactorily correct. It is also mentioned in the aforesaid note that all the allegations with regard to purchase of land, and under-estimation of consideration regarding one piece of land was found to be substantially correct, and as regards other two pieces of land, the allegations could not be specifically verified from secret inquiries, and detailed inquiries were not made to avoid suspicion, but people had impression that the aforesaid persons had lot of unaccounted money, which they invest in purchase of land. It has also been mentioned in the aforesaid note that the parties aforesaid were living in decent and well built houses and had busy schedule of business, as also conditions mentioned in Section 132(1)(c), that is, they are in possession of cash, jewellery and other valuable articles, which had not been accounted for and had not been disclosed to the Department, had been made out. With regard to particulars of the members of the family involved in actual conduct of business, it has been mentioned that the matter has been discussed by A.D.I. at various preceding pages, and, therefore, particulars of premises to be searched have been mentioned at page 21 from serial No. 1 to 12, of the file. The file was then put up before the Commissioner. The Commissioner,—*vide* his order dated 7th July, 1987 mentioned as under :—

“I have perused the complaint and the statement of the informant (name of the informant is also mentioned but is being specifically ignored to be mentioned in this judgment). The reports of enquiries done by A.D.I. and D.D.I. go to show that the taxpayers against whom allegations have been made are doing substantial business in gold, silver etc. and are likely to be in possession of unaccounted income and assets. Keeping in view the enquiries made, I have reason to believe that such income, assets etc. as also connected documents will only become available for assessment purposes, if a search and seizure operation under section 132 of the Income Tax Act, 1961 is carried out. Accordingly, this is a fit case for search.

(8) The premises to be covered are as per list at page 21 of these notes. Necessary authorization issued.” As per note dated 14th July, 1987 the search could not be conducted on account of abnormal situation in Haryana towns as a result of mass killings by terrorists at Fatehabad etc. It is mentioned that the action could not be taken as per schedule. It is apparent that thereafter search and seizure operation did take place on 16/17 July, 1987.

(9) After having scrutinised the way and manner, the search operation came into existence, it shall be appropriate at this stage to find out the procedure that is required to be followed for action which is taken under Section 132 of the Act of 1961. Such procedure has been elaborately laid down under the provisions of Rule 112 of the Rules of 1962. Sub-rules (2), (2A), (3), (4B), (5), (6), (7) and (9), which may have some bearing on the controversy that is required to be adjudicated in the present case, are reproduced as under :—

- “(2) (a) The authorisation under sub-section (1) of Section 132 (other than an authorisation under the proviso thereto) by the Director-General or Director or the Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as is empowered by the Board in this behalf shall be in Form No. 45;
- (b) the authorisation under the proviso to sub-section (1) of section 132 by a Chief Commissioner or Commissioner shall be in Form No. 45A;
- (c) the authorisation under sub-section (1A) of section 132 by a Chief Commissioner or Commissioner shall be in form No. 45B.
- (2A) Every authorisation referred to in sub-rule (2) shall be in writing under the signature of the officer issuing the authorisation and shall bear his seal.
- (3) Any person in charge of or in any building, place, vessel, vehicle or aircraft authorised to be searched shall, on demand by the officer, authorised to exercise the powers of search and seizure under section 132 (hereinafter referred to as the authorised officer) and on production of the authority, allow him free ingress thereto and afford all reasonable facilities for a search therein.
- (4B) The authorised officer may require any person who is the owner, or has the immediate possession, or control, of any box, locker, safe, almirah or any other receptacle situate in such building, place, vessel, vehicle or aircraft, to open the same and allow access to inspect to examine its contents, and, where the keys thereof are not available or where such person fails to comply with any such

requirement, may cause any action to be taken including the breaking open of such box, locker, safe, almirah or other receptacle which the authorised officer may deem necessary for carrying out all or any of the purposes specified in the authority issued under sub-rule (2).

- (5) Any person referred to in clause (iia) of sub-section (1) of section 132 may be searched by the authorised officer with such assistance as he may consider necessary. If such person is a woman, the search shall be made by another woman with a strict regard to decency.
- (6) Before making a search, the authorised officer shall :-
 - (a) where a building or place is to be searched, call upon two or more respectable inhabitants of the locality in which the building or place to be searched is situate, and
 - (b) where a vessel, vehicle or aircraft is to be searched, call upon any two or more respectable persons, to attend and witness the search and may issue an order in writing to them or any of them so to do.
- (7) The search shall be made in the presence of the witnesses aforesaid and a list of all things seized in the course of such search and of the places in which they were respectively found shall be prepared by the authorised officer and signed by such witnesses; but no person witnessing a search shall be required to attend as a witness of the search in any proceedings under the Indian Income Tax Act, 1922 (11 of 1922) or the Act unless specially summoned.
- (9) Where any person is searched under clause (iia) of sub-section (1) of section 132, a list of all things taken possession of shall be prepared and a copy thereof shall be delivered to such person. A copy thereof shall be forwarded to the Chief Commissioner or Commissioner, and, where the authorisation has been issued by any officer other than the Chief Commissioner or Commissioner, also to that officer."

Time is now ripe to scrutinise the contentions that have been raised by the learned counsel appearing for the petitioner. Based

on the conditions precedent envisaged under the provisions of section 132 of the Act of 1961, as also Rule 112 of the Rules of 1962, it is sought to be made out that there was absolutely no information available with the authorities, nor on the information that might be available, the authorities had applied their mind. The contention aforesaid is endeavoured to be buttressed on judicial precedents rendered in *Income-Tax Officer, Special Investigation Circle "B", Meerut v. Seth Brothers and others* (1), *H. L. Sibal v. Commissioner of Income-tax, Punjab, and others* (2), (D.B. of this Court); *Jagmohan Mahajan and another v. Commissioner of Income-tax, Punjab, and others* (3), (D.B. of this Court); *Manmohan Krishan Mahajan v. Commissioner of Income-tax, Patiala, and others* (4), *Balwant Singh and others v. R. D. Shah, Director of Inspection, Income-tax, New Delhi, and others* (5), *Pooran Mal v. Director of Inspection (Investigation), Income-tax, New Delhi, and others* (6), and *Equitable Investment Co. (P) Ltd. v. Income-Tax Officer, G. Ward, and others* (7). It is required to be mentioned here that out of the judgments, referred to above, the respondents have also placed reliance upon *Om Parkash Jindal and another v. Union of India and others* (8), and upon *Equitable Investment Company's case* (supra). In *Pooran Mal's case* (supra) it was held that the provisions relating to search and seizure envisaged under Section 132 of the Act of 1961, and Rule 112 of the Rules of 1962, do not violate the fundamental rights under article 19(1)(f) and (g) of the Constitution of India, and that the restrictions placed by any of the provisions of section 132, section 132 A or rule 112 A are reasonable restrictions on the freedom under article 19(1)(f) and (g) of the Constitution of India. It was also held that the said provisions are also not discriminatory, and, therefore, are not violative of Articles 14 and 19 of the Constitution of India. While dealing with the matter, the Supreme Court held that :—

“(i) The provisions of section 132 are evidently directed against persons who are believed on good grounds to

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- (1) (1969) 74 I.T.R. 836 S.C.
 - (2) (1975) 101 I.T.R. 112.
 - (3) (1976) 103 I.T.R. 579.
 - (4) (1977) 107 I.T.R. 400.
 - (5) (1969) 71 I.T.R. 550.
 - (6) (1974) 93 I.T.R. 505.
 - (7) (1988) 174 I.T.R. 714.
 - (8) (1976) 104 I.T.R. 389.

have illegally evaded payment of tax on their income and property. Therefore drastic measures to get at such income and property with a view to recover the Government dues would stand justified in themselves. When one has to consider the reasonableness of the restrictions or curbs placed on the freedoms mentioned in article 19(1)(f) and (g), one cannot possibly ignore how such evasions eat into the vitals of the economic life of the community. It is a well-known fact of our economic life that huge sums of unaccounted money are in circulation endangering its very fabric. In a country which has adopted high rates of taxation a major portion of the unaccounted money should normally fill the Government coffers. Instead of doing so it distorts the economy. Therefore, in the interest of the community it is only right that the fiscal authorities should have sufficient powers to prevent tax evasion.

- (ii) Search and seizure are not a new weapon in the armoury of those whose duty it is to maintain social security in its broadest sense. The process is widely recognised in all civilized countries.
- (iii) It is now too late in the day to challenge the measure of search and seizure when it is entrusted to income-tax authorities with a view to prevent large scale tax evasion. Indeed, the measure would be objectionable if its implementation is not accompanied by safeguards against its undue and improper exercise. As a broad proposition it is now possible to state that if the safeguards 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 measure reasonable."

It was, however, observed that though in a very rare case a tax evader may comply with a requisition, the Director of Inspection who has reliable information that the assessee has consistently concealed his income derived from certain financial deals may be justified in entertaining the reasonable belief that the assessee, if called upon to produce the necessary documents, will not produce the same. It is thus, clearly spelt out that there must be a reliable information before the competent authorities and the measure of search and seizure would be objectionable if its implementation is not accompanied by safeguards against its undue and improper

exercise. It is also clear from a reading of the other judgments cited, and a reference of which has been made above, that the Commissioner while acting under Section 132 of the Act of 1961 must come into possession of some material before he can resort to the drastic measures of issuing such warrants. The aforesaid judgments, however, cannot possibly come to the rescue of the petitioner on the question of availability of material before the authorities concerned because in the facts and circumstances of this case it is more than amply made out that there was a requisite information before the authorities, and not only that the Department had completely satisfied itself with regard to the authenticity of the information available before it but had even made independent inquiries into the matter from time to time. The matter was discussed by the authorities, as has been clearly made out from the narration of facts given above and it is only when the Department was of a *bona fide* belief that the concerns, in which the petitioner is engaged, were not showing the correct income and that it is search and seizure alone which could unearth the unaccounted assets, that action was taken.

(10) The facts of *H. L. Sibal's case* (supra) would show that the matter was initiated on a note made on 1st October, 1974 in the matter of action against Patiala lawyers. On discussion by the Commissioner of Income-tax with other Officers, it was learnt that large scale evasion was being practised by the Patiala lawyers as most of them were submitting estimated incomes and no accounts or fee-books or briefs to support the gross receipts were maintained. The said lawyers were living in a good style and had assets which were not disclosed to the department and which according to both the I.T.O./I.A.Cs. were not to be disclosed by them unless action under section 132 was taken against them. A.D.I. had been asked to process these cases with others at Chandigarh, Ludhiana, Ambala and Rohtak ranges where the matter had already been discussed with the I.A.Cs. and they were submitting proposals by just noting what has been stated above. The A.D.I. was asked to prepare separate folders for the professional persons for different ranges, where authorisation may be kept along with the directions. It is, thus, that some action was contemplated against the Patiala lawyers, because the Commissioner learnt that large-scale tax evasion was being practised by them. The aforesaid conclusion was not derived from any external source and was inferred from the fact that most of them were submitting estimated incomes and no accounts or fee-books, or briefs to support the gross receipts

were maintained. It was a kind of general impression gathered by the department. As is rightly observed by the Division Bench of this Court in the aforesaid case, the note recorded by the Commissioner of Income-tax was in the nature of a declaration of a policy intended to rope in people residing in Chandigarh, Ludhiana, Ambala and Rohtak ranges. There was absolutely no information, nor any evidence, and the action was rightly struck down.

(11) The case of *Jagmohan Mahajan v. Commissioner of Income-tax* (supra) was also decided on the basis of the judgment rendered in *H. L. Sibal's* case (supra). It is significant to mention that the raid against Jagmohan Mahajan and others, as also Mr. H. L. Sibal, were conducted simultaneously, and the same information was available as in the case of Mr. H. L. Sibal. In fact, blanket warrants of authorisation were issued in which the names of the petitioners in those cases were filled at the time when the search was being conducted in the house of Mr. Mulkh Raj Mahajan, an Advocate practising in this Court. The petitioners in the aforesaid case were living with Shri Mulkh Raj Mahajan. The facts of *Manmohan Krishan Mahajan's* case (supra) were also the same as were available in the cases of *H. L. Sibal* and *Jagmohan Mahajan* (supra). In fact, Mr. Manmohan Krishan Mahajan was also an Advocate practising in this Court, and the same kind of information that was available in the case of H. L. Sibal, that his house along with that of Shri Mulkh Raj Mahajan, Advocate, was searched. All that has been held in the case of *Om Parkash Jindal* (supra) is that the scheme of section 132 of the Act postulates that the mind has to be applied by two officers at two different stages. i.e., firstly, by the Director of Inspection or the Commissioner while issuing the warrant of search to come to a finding that any person is in possession of any jewellery, ornaments or money etc., which are believed to be undisclosed property, and, secondly, by the authorised officer, when, during the search, any particular jewellery, ornament or money is found, to see that the same can be reasonably believed to be undisclosed property. In so far as the question of application of mind prior to or at the time of issuance of search warrants is concerned, we have no hesitation in holding that there was sufficient material before the department and it was a case where the officers concerned had applied their mind. In so far as the application of mind subsequent to issuance of search warrant or during the currency of such proceedings is concerned, no arguments, whatsoever, had been raised by Mr. B. S. Gupta, learned counsel for the petitioner, so as to say that the officers concerned had not seen that the jewellery, ornaments or money found could

reasonably be believed to be undisclosed property. On the other hand, it has been made out in the written statement that the stock found at the time of search and seizure did not tally with the stock in the books of account produced and shown. The gold ornaments mentioned in the books and even, as per the statement of Som Parkash recorded on 16th July, 1987, depict that the same were of the value of Rs. 4,88,297, whereas the quantity found at the time of search were of the value of Rs. 16 lacs. Such is the case with regard to silver ornaments, diamond jewellery etc.

(12) In *Balwant Singh's case* (supra) it was held that 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, and it is open to the court to examine whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief. There cannot be any dispute to this proposition of law nor any such dispute has been raised by the learned counsel for the respondents, but as mentioned above, there were sufficient grounds on which the belief, as required under Section 132 of the Act of 1961, was founded. The case of *Pooran Mal* (supra) has already been discussed above, and we are of the considered view that the aforesaid judgment far from going in favour of the petitioner, rather turns against it. In *Seth Brothers' case* (supra) it was held that since the exercise of power under Section 132 of the Act of 1961, 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 conditions for the exercise of the power are not satisfied the proceedings would be liable to be quashed. But in our considered view, requisite power in the present case was exercised *bona fide* and in furtherance of the statutory duties of the Income-tax Officers. The said judgment far from going in favour of the petitioner, in fact, turns against it. On the second question that has been raised by the petitioner, and which we shall presently discuss, the aforesaid judgment also turns against the petitioner.

(13) The other contention that has been raised by Mr. B. S. Gupta, learned counsel for the petitioner, is that inasmuch as there was no authorisation against the petitioner-firm, known as M/s Jai Bhagwan Om Parkash, and, in fact, the said authorisation was

against M/s Om Parkash Som Parkash, the action of the respondent-authorities in conducting search and seizure proceedings at the premises where the business of M/s Jai Bhagwan Om Parkash was going on, was wholly illegal and without jurisdiction. On the first flush, the contention raised by the learned counsel appears to be very attractive, but on deeper examination, we find no substance in the same. It is true that M/s Jai Bhagwan Om Parkash is a partnership concern, consisting of partners, namely, Om Parkash, Som Parkash, Avinash Chander and Viney Kumar, and this firm was duly registered under Section 185 of the Income-tax Act, whereas M/s Om Parkash Som Parkash is an HUF and does not carry on any business, except that it is assessed under the Wealth Tax Act in the status of HUF. It is also true that the warrant of authorisation is in the name of M/s Om Parkash Som Parkash, Sarafa Bazar, Karnal. But that alone in view of the peculiar facts and circumstances of this case would not invalidate the warrant of authorisation. The information that was available with the Department practically pertained to most of the partners, and with regard to all the business premises that were run by the partners of M/s Jai Bhagwan Om Parkash or M/s Om Parkash Som Parkash. It is, thus, to be seen that as to whether in such circumstances the warrant of authorisation issued in the name of M/s Om Parkash Som Parkash, Sarafa Bazar, Karnal, at which bazar alone, admittedly, the business premises of M/s Jai Bhagwan Om Parkash is established would be illegal. Admittedly, Om Parkash is one of the partners of firm M/s Jai Bhagwan Om Parkash. The warrant of authorisation was to search the premises of all the persons as have been detailed above, while noting down as to how the file with regard to such proceedings started, it is clearly mentioned in the letter of authorisation that all such persons as have been mentioned and their premises could be searched. The name of Om Parkash, Som Parkash, Bhagat Ram *alias* Bhagtu, Parveen Kumar, Gian Chand and Madan Lal are individually mentioned along with their places of residence. Then comes the mention of M/s Om Parkash Som Parkash, Sarafa Bazar, Karnal; M/s Om Parkash and Sons, Sarafa Bazar, Karnal; business premises of Shri Bhagat Ram *alias* Bhagtu, Sarafa Bazar, Karnal and the business premises of Parveen Kumar, Sarafa Bazar, Karnal. The board displayed at the premises where M/s Jai Bhagwan Om Parkash is carrying on the business of Saraf in the Sarafa Bazar, mentions M/s Om Parkash Som Parkash, and it is amply made out from the records of this case that the business run by M/s Om Parkash Som Parkash is styled as Jai Bhagwan Om Parkash. Not only that, Som Parkash at the time of such proceedings admitted the aforesaid fact, but it is also

made out from the imposition of fine of Rs. 3,500 by the Central Excise Authorities on M/s Om Parkash Som Parkash, which was debited to the profit and loss account of M/s Jai Bhagwan Om Parkash for the assessment year 1984-85. Further, a refund of Rs. 3,250 out of the above penalty, allowed by the Gold Control administration, was again credited to the profit and loss account of M/s Jai Bhagwan Om Parkash. Om Parkash who is a partner of M/s Jai Bhagwan Om Parkash,—vide letter dated 6th June, 1987, addressed to the Income-tax Officer, himself requested that a refund of Rs. 3,250 be credited to the profit and loss account of M/s Jai Bhagwan Om Parkash. It is, thus, clearly established that the searched premises were being run by M/s Om Parkash Som Parkash in respect of the business in the name and style of M/s Jai Bhagwan Som Parkash. The statement of Som Parkash, recorded by the authorities at the time of search puts the matter beyond any pale of controversy when he as a partner in the firm styled as M/s Jai Bhagwan Om Parkash, Sarafa Bazar, Karnal, with Shri Om Parkash, who is his real brother and equal partner admits that firm was dealing in the sarafa business. The relevant part of the statement runs as follows :—

“Stated that I am partner in the firm styled as M/s Jai Bhagwan Dass Som Parkash, Sarafa Bazar, Karnal, with Shri Om Parkash, my real brother as equal partner. The firm deals in sarafa business. We are assessed to Income-tax at Karnal in B-Ward, Karnal, P.A. No. FY. 9173. The business run by Som Parkash Om Parkash styled as M/s Jai Bhagwan Dass Som Parkash, Karnal.”

(14) The statement has been produced by the Department as Annexure R1/1. The signatures of Som Parkash appearing on the aforesaid statement have been admitted during the course of arguments. There is some overlapping and confusion, but it is amply made out that Som Parkash was a partner in the firm M/s Jai Bhagwan Om Parkash. He had clearly stated to a question put to him at the time of search that he will answer the question after consulting his partner. Another question was put to him that he had earlier stated that there were only two partners in the firm, but there are four partners in this firm. To this specific question he stated that he had nothing to say. Further, if Som Parkash was not a partner of M/s Jai Bhagwan Om Parkash, it was expected that he would have raised some objections on that account. when the search operation was going on and admittedly, he was present

at the shop. Further there was no question for him to have offered an amount of Rs. 4 lacs, which offer was revised to Rs. 6 lacs later, if he was not a partner of firm M/s Jai Bhagwan Om Parkash. With regard to other questions put to him regarding the period when he had acquired the assets, he answered that he had earned such assets after March 1987. Further, the statement of Mahadev Bombaywala also shows that the said persons were melting silver on behalf of M/s Om Parkash Som Parkash. The matter does not rest there and it is further made out from the statement of Shri Kailash Chand, son of Om Parkash before Shri G. D. Thapar, Superintendent (Prevention), on 2nd March, 1977, where he stated that the name of their firm is M/s Om Parkash Som Parkash, which business is being run for the last 30 to 35 years. On the aforesaid material, the surviving contention of the learned counsel for the petitioner is only that there was no material, nor any application of mind before issuing warrants of authorisation that M/s Jai Bhagwan Om Parkash, a partnership concern, premises of which were located at Sarafa Bazar, Karnal, were stealthily or surreptitiously doing the business in the name of M/s Jai Bhagwan Om Parkash, but in reality the business was of M/s Om Parkash Som Parkash. The facts of the case of *Seth Brothers* (supra) would go to show that there was an authorisation in the name of Seth Brothers, whereas the books of accounts and other documents in respect of the other business carried by the partners of the firm or the assesseees were also searched and seized. While dealing with the case, the Supreme Court held that the suggestion that the books of accounts and other documents, which could be taken possession of should only be those which directly related to the business carried on in the name of M/s Seth Brothers had no substance. The books of account and other documents in respect of other businesses carried on by the partners of the firm of the assesseees would certainly be relevant because they would tend to show inter relation between the dealings and supply materials having a bearing on the case of evasion of income-tax by the firm. The fact that the officers had made a search and seized the books of accounts and documents in relation to business carried on in the names of other firms and companies, the search and seizure were held to be not illegal. The warrant of authorisation certainly refers to Om Parkash, who is admittedly, a partner in the firm Jai Bhagwan Om Parkash. It also refers to the place where the business of Sarafas is being carried out. Admittedly, firm Om Parkash Som Parkash is not doing any business at Sarafa Bazar, Karnal, nor at any other place in that town. On the records of the present case it has been proved that

even though at Sarafa Bazar, Karnal, it is firm M/s Jai Bhagwan Om Parkash, which is carrying out the business on paper, but for the purposes of income-tax etc. the real business is that of Om Parkash Som Parkash. The mere fact that before issuing warrant of authorisation it was not specifically mentioned anywhere that, in fact, the business carried on at Sarafa Bazar, Karnal, pertains to M/s Om Parkash Som Parkash, and it is only with a view to evade the revenue and hood-wink the authorities, the name of Jai Bhagwan Om Parkash has been created, in the peculiar facts and circumstances of this case would not make any difference. The unaccounted or black money, as it may be called, is fast eating upon the economy of this country. Unscrupulous persons cannot be permitted to endanger the economic life, and as has been curtly said by the Supreme Court in *Pooran Mal's case* (supra) that it is a well-known fact of our economic life that huge sums of unaccounted money are in circulation endangering its very fabric and in a country which has adopted high rates of taxation, a major portion of the unaccounted money should normally fill the Government coffers. Instead of doing so it distorts the economy. Therefore, in the interest of the community it is only right that the fiscal authorities should have sufficient powers to prevent tax evasion.

(15) The contention of Mr. Gupta that the information that was available with the Department as also the material and the reasons on the basis of which the action against the petitioner was taken ought to have been made available to the petitioner and lack of pleadings to that effect in the written statement would vitiate the action does not impress us. In the entire petition, no challenge has been made to the impugned action on the grounds as made out above. Once the pleadings on the aforesaid grounds were totally lacking we do not find any obligation on the part of the respondent-authorities to supply the material and the reasons on which the order of authorisation of search was issued by the Commissioner of Income-tax. On the oral submission made by the learned counsel for the petitioner during the course of arguments, the Department did not feel shy in bringing to our notice the facts that constitute application of mind by the authorities. Mr. Gupta however, for his aforesaid contention has relied upon the decision of the Supreme Court in *Income-tax Officer, I-Ward Hundi Circle, Calcutta v. Madhani Engineering Works Ltd.* (9), as also a decision rendered

by the Calcutta High Court in *Biju Patnaik v. Income-tax Central Circle, Cuttack* (10), and a Division Bench decision of Delhi High Court reported as *L. R. Gupta v. Union of India* (11).

The facts of *Madnani Engineering Works Ltd. case* (supra) will reveal that in the original assessment of the respondent of the said case for the assessment year 1959-60 certain interest paid by it to creditors from whom it claimed to have borrowed Hundis was allowed as deductible expenditure. Later, after a lapse of four years, a notice was issued to reopen the assessment of the respondent on the ground that the transactions of loan represented by Hundis were bogus and no interest was paid by the respondent to any of the creditors and that it was wrongly allowed. The validity of the notice aforesaid was challenged by way of writ petition in the High Court. The Income-tax Office in the counter affidavit, declined to disclose the facts on the ground that if such facts were disclosed, it would cause a grave prejudice to the interests of the Revenue and would frustrate the object of reopening the assessment. However, he thereafter filed yet another affidavit stating therein that in the course of the assessment of the respondent for the assessment year 1963-64 it was discovered that various items shown as loans against the security of Hundis in the respondent's books of account for the assessment year 1959-60 were, in fact, fictitious and credits against the names of certain persons were found not to be genuine and in that premises it appeared to the Income-tax Officer that the respondent had failed to disclose fully and truly all material facts necessary for the assessment and that by reasons of such failure, a portion of its income had escaped assessment. On the aforesaid facts it was held by the Supreme Court that the stand taken by the Income-tax Officer in its first affidavit was obviously untenable because of the existence of reasons to believe on the part of the ITO was a justiciable issue and it was for the Court to be satisfied whether, in fact, the ITO had reasons to believe that income had escaped assessment by reason of failure of the respondent to make a full and true disclosure. (Emphasis supplied). It was further held that as the ITO had, in the second affidavit, merely stated his belief but not set out any material on the basis of which he had arrived at such a belief, there was nothing on the basis of which the court could be satisfied on the affidavit that he had reason to believe that a part of the income of the respondent had escaped assessment by reasons of his failure to make a true and full disclosure of the material facts. It shall be seen

(10) 102 I.T.R. 96.

(11) 1991 Vol. 59 Taxman 305.

from the narration of facts given from the aforesaid reports that it was specifically mentioned in the writ petition that the Income-tax Officer had no reason to believe that any part of the income of the respondent had escaped assessment by reasons of his failure to make a true and full disclosure of the material facts. As mentioned above, in the present case, there is no such challenge made anywhere in the writ petition. However, as has been mentioned above, the respondents have laid entire material before this court and the court after going through the entire record, culminating into issuance of warrants of authorization, is satisfied that there was sufficient information before the authorities, the facts as made out by the complainant were verified and a lot of discussion and secret enquiries were held before ultimately the action was taken against the petitioner.

(16) The facts of the case *Biju Patnaik* (supra) will also reveal that the case of the assessee therein was that there was not and could not be material which could lead to information of any belief on the part of the Income-tax Officer that the income of the assessee for the relevant assessment year had escaped assessment due to failure on his part to disclose fully and truly all the material facts which were necessary for his assessment. It is on questioning of the petitioner of the said case that the court held that the existence of belief can be challenged by the assessee although sufficiency of reasons for the said belief cannot be so challenged and that there was a clear duty of the Income-tax Officer to set out properly in his affidavit in opposition to the writ petition the reasons which led to the formation of the belief on his part and that the object of filing an affidavit is to convey to the court all necessary and relevant material and facts and that such material and facts have necessarily to be stated on oath and affirmation. It is true that the power of the court to call for and look into the record does not relieve the Income-tax Officer of his responsibility to place all relevant and material facts in the affidavit but before it is so done, there has to be a necessary foundation laid for inviting such an affidavit in the petition itself. Once the Department has forthrightly shown as the entire material, of course, only withholding the name of an informant, we do not find any reason for it not to have disclosed the material and the reasons on which the action was taken if pleadings in that direction were made in the writ petition itself. On parity of the same reasoning, we do not find any solace for the petitioner from the judgment in *L. R. Gupta v. Union of India* (supra).

(17) Mr. Gupta has also relied upon *N. K. Textile Mills v. Commissioner of Income-tax, New Delhi* (12), as also *Dr. Nand Lal v. Commissioner of Income-tax* (13), and, *Ganga Saran and Sons Pvt. Ltd. v. Income-tax Officer* (14), and on the basis of these authorities it is sought to be made out that the words "has reason to believe" in section 132 of the Income-Tax Act postulate belief and existence of reasons for that belief and that the belief must be held in good faith. On the detailed facts that have been enumerated in the earlier part of this judgment we find that there was sufficient material on which the belief and existence of reasons for that belief could be formed as also that it was *bona fide* belief. The aforesaid three judgments also, thus, provide no assistance to the petitioner."

(18) The relevant provisions of Rule 112 of the Rules 1962 have been quoted in the earlier part of the judgment. Admittedly the warrant of authorization was issued by Commissioner of the Income-tax who was empowered to issue the search warrant. The authorization was in writing and under signatures of the Officer issuing authorization. Under the provisions contained in Sub Rule 4-B of Rule 112 the authorised Officer could require any person who was owner, or had the immediate possession, or control of any box, locker, safe, almira or any other receptacle situate in the building, place, vessel, vehicle or aircraft, to open the same and allow access to inspect to examine the contents thereof. It is thus made out from the aforesaid Sub Rule that the authorised Officer had the power to ask any person who might have been the owner or had immediate possession to make available to the officer concerned, the building or place in the building to conduct the search in pursuance of warrant of authorization. Before making the search, the respectable inhabitants of the locality in which the building was located. There were two witnesses available who had witnessed the *panchanama*. The search was conducted in the presence of the witnesses aforesaid and list of all the things seized in the course of search was prepared and copy thereof was given to Som Parkash one of the partners of M/s Jai Bhagwan Om Parkash. The procedure was thus meticulously followed. The learned counsel for the petitioner could not point out anything that might have violated any of the procedural safeguards provided under Rule 112 of 1962 Rules.

(12) LXII I.T.R. 58.

(13) 170 I.T.R. 592.

(14) 130 I.T.R. I(S.C.)

(19) Besides relying on the judgments that have been referred to earlier, Mr. Sawhney appearing for the Department also relies upon *Narayan R. Bandekar v. Second Income-tax Officer* (15). The facts of this case would reveal that 'B' and his wife had floated several private limited companies which were registered in the State of Jammu & Kashmir although the entire business was carried on by these companies in Goa where 'B' and his wife lived. The residential as well as the business premises of 'B' and his wife were searched by the income-tax authorities. During the search, fixed deposit receipts in the names of private limited companies held by 'B' and his wife and in the names of some other persons for a sum of Rs. 30 lacs and cash and jewellery of the value of 12.6 lacs were recovered. The Income-tax Officer issued show cause notice under rule 112A of the Income-tax Rules, 1962, to 'B' and his wife and after hearing them passed an order under section 132(5) of the Income-tax Act, holding that the tax and penalty for the assessment years 1977-78 to 1986-87 was more than the value of the assets seized and, therefore, the assets seized were required to be retained. In the writ petition filed by the assesseees, it was *inter alia* contended that the warrant of authorization issued by the Commissioner of Income-tax was invalid as there was no material or information in possession of the Commissioner from which he could have reasons to believe that the conditions pre-requisite for directing a search existed, as also that the provisions of section 132 (9A) of the Act were violated on the ground that the authorised officer did not hand over the assets seized to the Income-tax Officer and, therefore, the order passed under section 132(5) of the Act could not be sustained. On perusal of the file it was held that the exercise of power by the Commissioner was proper. The Commissioner had considered the note submitted by the Assistant Director of Inspection on the basis of three anonymous petitions, perused the anonymous petitions held conference with the Assistant Director of Inspection before coming to the conclusion that the exercise of power under section 132(5) of the Act was necessary. It was also held that it was not possible to accept that in any case the powers could be exercised on the strength of information received through anonymous petitions and that on considering the extensive information and detailed scrutiny undertaken, the conclusion was inescapable that the belief formed by the Commissioner was genuine and authentic and, therefore, the exercise of power by the Commissioner under section 132(5) was not defective and that the search

carried out was not illegal. As has been demonstrated above, the matter came to the fore on receipt of a detailed complaint and the depositions made by the complainant in person in support of his allegations made against the petitioner, various partners and concerns in which the petitioner or his associates were partners. The Income-tax Officer was not satisfied with that and he personally went to Karnal where the matter was further probed. A sufficiently long time was spent in making enquiries by the officer by visiting various places at Karnal and meeting various persons by collecting evidence. The matter was threadbare discussed with higher officers from time to time who had been asking the officer concerned to collect more information. It is on information authenticated by the officers who made enquiries into the matter that the Commissioner of Income-tax came to the conclusion that the pre-requisites of Section 132 were adequately made out. The action in the present case, in our considered view, was wholly justified and cannot be faulted on any ground whatsoever. The last submission of Mr. Gupta that in the first notice issued under Section 132(5), a different name/address is mentioned whereas on the reply furnished by the petitioner, immediately a change was made and a second notice under section 132(5) was served with the correct name has been explained away by the counsel for the respondent to be an inadvertent mistake. The first notice dated 31st July 1987 under Rule 112-A of the Rules 1962 was issued in the name of M/s Om Parkash Som Parkash, Jorian Kuan Karnal by the Income Tax Officer, A-Ward, Karnal. When in pursuance of the notice aforesaid, it was brought to the notice of the Income-Tax authorities that the firm M/s Om Parkash Som Parkash was not carrying on any business at Jorian Kuan, Karnal nor it maintained any shop and that no operation under Section 132 of the Act was conducted on any of the premises of M/s Om Parkash Som Parkash, immediately a new notice was issued by the Income-Tax Officer under Rule 112-A of the Act wherein the correct name i.e. M/s Om Parkash Som Parkash with regard to business of Jai Bhagwan Om Parkash Karnal etc. was mentioned. The warrant of authorization admittedly being in the name of Om Parkash Som Parkash, Sarafa Bazar, Karnal, Panchnama and inventories prepared at the spot, in the name of Om Parkash Som Parkash, Sarafa Bazar, Karnal with regard to business of M/s Jai Bhagwan Om Parkash would leave no one in doubt that in the first notice mention of the name of Om Parkash Som Parkash at Jorian Kuan was clerical or typographical mistake. On the detailed facts and circumstances that have been reproduced above, we are inclined to accept the

aforsaid explanation furnished by the learned counsel for the respondent.

(20) Nothing else has been argued in this case by the learned counsel for the petitioner. Thus, finding no force in this petition we dismiss the same. The parties are however, left to bear their own costs.

S.C.K.

Before Hon'ble R. K. Nehru, J.

LASHMAR SINGH, -Appellants.

versus

BAKSHISH Kaur AND ANOTHER,--Respondents.

Regular Second Appeal No. 1547 of 1979.

October 12, 1993.

Code of Civil Procedure, 1908—Order 39—Suit for declaration that plaintiff appellant is owner of suit land to the extent of 2/3 on basis of Will—Validity of Will challenged—Whether Will was validly executed—Guidelines laid for appreciating the evidence in matter of Wills—Will found to be of highly suspicious nature.

Held, that it is in the light of the principles laid down in the above judgments that the evidence in this case is to be appreciated to find out whether the Will in dispute can be said to be a valid instrument executed by Atma Singh testator with his free, sound and disposing mind. In case the execution of the Will appears to be surrounded by suspicious circumstances, in that case, it is incumbent upon the propounder to dispel all those circumstances attending the Will by leading satisfactory evidence. From the evidence on record, the court is required to find out whether at the relevant time of the execution of the Will the testator was in his sound disposing state of mind and he had put his signatures or thumb-impression thereon, of his own free Will. In case the aggrieved person challenges the very validity of the Will, it becomes incumbent upon the propounder to establish by leading satisfactory evidence that this instrument of Will in fact was signed or thumb-marked by the testator.

(Paras 17 and 18)

H. S. Toor, Sr. Advocate with I. S. Toor, Advocate, for the Appellants.

N. S. Minhas, Advocate, For the Respondent.