by one spouse after the death of the other. Every application under section 11 of the Act is cognizable by the Court having jurisdiction under the Act and not any other Court. We are, therefore, of the opinion that a suit in a civil court was barred and the petition under section 11 of the Act filed by Smt. Krishni Devi was competent and it had been wrongly rejected by the learned trial court.

(5) For the reasons given above we find no merit in this appeal which is dismissed with costs.

B. S. G.

LETTERS PATENT APPEAL

Before Prem Chand Pandit and Bhopinder Singh Dhillon, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, JAMMU AND KASHMIR AND CHANDIGARH AT PATIALA, ETC.,—*Petitioners.*

versus

RAMESH CHANDER, ETC.,—*Respondents.*

Letters Patent Appeal No. 244 of 1972.

November 22, 1972.

Income-Tax Act (XLIII of 1961)—Section 132—Search and seizure warrants under—When can be issued—"Reason to believe", as envisaged in section 132(1)—Adequacy of—High Court—Whether can go into—Scrutiny by the Court—Whether limited—Location of the articles known to the Commissioner—Warrants for search and seizure thereof—Whether can be issued—Articles already seized by another statutory authority—Income-tax authorities—Whether can seize the same—Assessee not given opportunity to take extracts from the seized account books—Whether prejudiced—Final order under section 132(5)—Whether can be quashed on this score—Code of Criminal Procedure (Act V of 1898)—Sections 46 and 54—Police Officer—Whether can detain a person without arrest.

Held, that before the search and seizure warrant can be issued by the Director of Inspection or by the Commissioner under section 132(1) of Income-tax Act, 1961, there must be information in his possession and the information should lead to a belief in case of

sub-clause (c) of section 132(1) of the Act that any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purposes of the Act. The moment these ingredients, on the basis of the information, are fulfilled, the Director of Inspection or the Commissioner, as the case may be, is within jurisdiction to issue the search and seizure warrants. The information, however, must have a nexus with the said two ingredients and it should be such that it must lead to a belief in the mind of Director of Inspection or the Commissioner.

Held, that the adequacy of grounds, on which the "reason to believe" entertained by the Commissioner is based, cannot be gone into by the High Court in a writ petition. If the Director of Inspection or the Commissioner is satisfied that there is a 'reason to believe' that a person is in possession of money, etc., which is undisclosed for the purposes of the Act, and the said belief is based on the information in his possession, which information has got nexus with the two questions that is, regarding the possession of money, etc., and that the said money, etc., relates to undisclosed income, the Court cannot sit in appeal over the decision of the Director of Inspection or the Commissioner. The scrutiny of the Court into the reason of belief is within the limited area of objectivity within which it can operate.

Held, that from a perusal of section 132 of the Act, it is apparent that it is not necessary that the articles to be searched and seized under this section should be in a hidden form or that the exact place where the articles are being placed, should not be known to the Commissioner. The word "search" in the section is used because in the nature of the things, when section 132 of the Act applies, the articles to be searched and seized have been concealed by the person concerned from the Income-Tax Department for the purposes of assessment of the income-tax. The word "search" is used in this sense and not in any other sense. Hence search and seizure warrants can be issued where the location of the articles to be searched and seized is exactly known to the Commissioner.

Held, that each of the authorities, who is vested with the powers of search and seizure under any statute is bound by law to deal with the articles so seized in accordance with the mandate of their respective statutes. The statutes are to be interpreted in a harmonious manner so as to avoid any conflict. Hence search and seizure warrants under section 132(1) of the Act cannot be issued for seizing the articles which are already in possession of another statutory authority. By this the purpose of the enactment of the provisions of section 132 of the Income-Tax Act is also not frustrated because in such cases proceedings under section 69-A of the Act

can be appropriately taken, which provisions can effectively deal with such a situation.

Held, that the provisions of sub-section (9) of section 132 of the Act provide in clear terms that the person from whose custody any books of accounts or other documents are seized under sub-section (1) of this section, may make, copies thereof or take extracts therefrom in the presence of the authorised officer or any other person empowered by him in this behalf at such place or time as such authorised Officer may appoint in this behalf. When this mandatory provision is violated, the assessee is no doubt prejudiced. But where the seizure warrant is with jurisdiction, the final order passed under section 132(5) of the Act, cannot be quashed for the reason that it is not in accordance with section 132(9). In such a case, a direction can be issued to the Income Tax Officer that after allowing the extracts and copies of the account-books and other documents to be taken by the assessee, he should proceed further to pass an order under section 132(5).

Held, that any police officer without an order from a Magistrate and without a warrant can arrest any person if the situation as envisaged under section 54 of the Code of Criminal Procedure prevails. If he forms an opinion that a person has to be taken into custody, then he is to comply with the provisions of section 46 of the Code, for affecting the arrest. If the person concerned may himself submit to the police officer, and, therefore, in that case, the police officer need not actually touch or confine the body of that person. In such a case also, the arrest will be complete. But a police officer cannot detain a person against his will. This is against the Code and the provisions of the Constitution. The liberty of a citizen in a free country is all important and the same can only be jeopardised in accordance with the provisions of law. If a person has to be detained, he can only be detained by the authority of law and to presume that the police officer has got power to detain a person otherwise than effecting his arrest even though no provision of law authorises him to do so, would be against the fundamentals.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment, dated 25th May, 1972, *passed by Hon'ble Mr. Justice Bal Raj Tuli, in Civil Writ No.* 4106 *of* 1971.

D. N. Awasthy and Mr. B. S. Gupta, Advocates, *for the appellants.*

J. N. Kaushal, Advocate, with G. R. Sethi, and Ashok Bhan, Advocates, *for the respondents.*

JUDGMENT

DHILLON, J.—The facts giving rise to this Letters Patent Appeal may be briefly stated.

(2) Balwant Singh, Traffic Inspector of Punjab Police, along with some other police officials, was present about one mile from Kartarpur towards Jullundur on 6th August, 1971 at 11.00 a.m. He received secret information that an ambassador car of white colour was coming from Jullundur side in which some smugglers were travelling. The information was that the smugglers had a big amount of currency notes with them and they were going to distribute the same illegally amongst the persons of Police Station Kartarpur whose relations were living in England. Banke Lal and Hazara Singh, two persons mentioned in the first information report, also reached the spot. They were associated with the police party. In the meantime, car No. PNO-3070, Ambassador, white colour, came from Jullundur side. The car was stopped by Balwant Singh and his party. Three persons seated in the car were Ramesh Chander, Subash Chander and Radha Kishan. The car was driven by Charan Singh, driver. Ramesh Chander, writ-petitioner, was holding one bag in his one hand, the another small bag was in his other hand. Balwant Singh asked him as to what was contained in the bags. Ramesh Chander disclosed that the big bag contained the currency notes worth Rs. 1,61,000 and the small bag contained the business papers. Balwant Singh interrogated him in order to satisfy as to how he was in possession of such a big amount, but no satisfactory explanation could be given by Ramesh Chander. Balwant Singh, then took the car and its occupants to Police Station Kartarpur, where he contacted the Income-Tax Officer, Jullundur on phone in order to find out whether Ramesh Chander was a man of such big means or not. He was informed that Ramesh Chander was not a man of substance. He then rang up the Commissioner of Income Tax, Patiala, and informed him that a sum of Rs. 1,61,000 had been recovered from Ramesh Chander. The details of the talk which took place between Balwant Singh, Traffic Inspector of the Punjab Police, and the Commissioner of Income Tax, Patiala, are not available, but whatever facts are on the record. will be narrated at the relevant place.

(3) Shri Nathu Ram, Income-Tax Officer, Jullundur, immediately visited the business premises of Ramesh Chander, in order to sign

the books of the firm. It may be pointed out at this stage that Ramesh Chander, writ petitioner, is a partner of the firm Messrs Shiv Iron Traders, Tanda Road, Jullundur City and the said firm comprises of the following partners:—

(1) Diwan Chand Aggarwal, father of Ramesh Chander ... 50 per cent.

(2) Roshan Lal, brother of Ramesh Chander ... 25 per cent

(3) Ramesh Chander ... 25 per cent.

Ramesh Chander is also a partner of another firm Messrs Katak Ram-Ramji Dass, Tanda Road, Jullundur, which has the following partners:—

(1) Diwan Chand Aggarwal, father of Ramesh Chander ... 76 per cent.

(2) Siri Krishan Dass ... 12 per cent.

(3) Ramesh Chander ... 12 per cent.

The business premises of both these firms are situate at Tanda Road, Jullundur. The writ petition was filed by Ramesh Chander and the two firms, namely, M/s. Shiv Iron Traders and M/s. Katak Ram-Ramji Dass, of which Ramesh Chander is the partner.

(4) According to the statement of Shri J. S. Cheema, Income Tax Officer, Special Investigation Branch, Patiala, whose statement was recorded by the learned Single Judge, when the Commissioner of Income-Tax, Patiala, received a telephonic call from Balwant Singh, Traffic Inspector of the Punjab Police, at about 12.30 p.m. on 6th August, 1971 at his residence, he (Shri Cheema) was called by the Commissioner and the Commissioner dictated a note to Shri Cheema. In consequence of the said order of the Commissioner, three search and seizure warrants were issued. By means of one warrant the Commissioner of Income-Tax, Patiala, authorised Shri P. R. Gupta, Income-Tax Officer, Jullundur to search the precincts of Police Station, Kartarpur and to seize the currency notes,

which, according to the warrant, were in possession of Ramesh Chander. Another search and seizure warrant was issued for searching the business premises of both the firms on Tanda Road, Jullundur, and Shri Nathu Ram, Income-Tax Officer, Jullundur, was authorised to do so. The third warrant was issued for searching the residences of the partners of the firms and the said search was to be effected by Shri Kuldip Raj Chopra, Income-Tax Officer, Jullundur. All the three warrants were brought by Shri Cheema from Patiala to Jullundur by car and were entrusted to the respective Income-Tax Officers, referred to above, who were authorised to conduct the searches.

(5) In obedience to the search and seizure warrant, Shri P. R. Gupta, Income-Tax Officer, Jullundur, seized a sum of Rs. 1,61,000, which was lying on the table in the office of the S.H.O., Police Station, Kartarpur, in the presence of Ramesh Chander and other police officers. He also seized the ledger and other account-books which were found in another bag. The statements of many persons including those of Ganga Krishan Shukla, Charan Singh driver, Subash Chander, etc., etc., were recorded by the Income-Tax Authorities. The copies of the statements of Ganga Krishan Shukla, Charan Singh driver and Subash Chander are Annexures 'B', 'C' and 'D' respectively with the writ petition. After this was done, Balwant Singh, Traffic Inspector, then recorded a Ruqa at 8.00 p.m. on the basis of which the first information report against Ramesh Chander was recorded at 8.05 p.m. in Police Station, Kartarpur, under sections 411, 413 and 414 of the Indian Penal Code, and sections 4, 5 and 6 of the Foreign Exchange Act, 1947 and Foreign Exchange Regulation Amendment Act, 1957. The copy of this first information report is attached as Annexure 'A-1' with the writ petition. The other two Income-Tax Officers executed the warrants and searched the business premises of the two firms and also the residences of the partners and took into possession certain documents which were also seized. Since no grievance is made for the search and seizure of the business premises and that of the residences of the partners by the writ-petitioners, therefore, the details in that connection need not be given.

(6) The Income-Tax Officer, Jullundur, then continued the proceedings as envisaged under section 132 of the Income-Tax Act, 1961, with a view to pass a final order under sub-section (5) of section 132 of the Income-Tax Act.

(7) The writ-petitioners filed a writ petition in this Court on 19th October, 1971, challenging the search and seizure made by the Income-Tax Officer, Jullundur (Shri P. R. Gupta) of the precincts of Police Station, Kartarpur, and the said writ petition was admitted on 20th October, 1971. Shri Nathu Ram, Income-Tax Officer, Jullundur, passed an order under sub-section (5) of section 132 of the Income-Tax Act on 22nd October, 1971, which necessitated the amendment of the writ petition and then the petitioners filed the amended writ petition challenging the order of Shri Nathu Ram, Income-Tax Officer, Jullundur, dated 22nd October, 1971, passed under sub-section (5) of section 132 of the Income-Tax Act also. It may be pointed out that Shri Nathu Ram, Income-Tax Officer, Jullundur, while passing the final order under section 132(5) of the Act came to the conclusion that a sum of Rs. 8,53,190.00 was the undisclosed income of the petitioners including the cash amount of Rs. 1,73,000.00 on which he assessed the income-tax of Rs. 7,55,932.00. He passed an order that the entire cash amount of Rs. 1,61,411.00, seized in the search, be retained. It may be pointed out that the person of Ramesh Chander was also searched by the Income-Tax Officer when he searched the precincts of the Police Station, Kartarpur and from his person a sum of Rs. 411 was also seized. Therefore, the total amount seized came to be Rs. 1,61,411.00.

(8) The learned Single Judge came to the conclusion that the Commissioner of Income-Tax, Patiala, had no information that the amount recovered from Ramesh Chander was undisclosed income for the purposes of section 132 of the Income-Tax Act. The learned Judge following the two authorities, one of the Allahabad High Court, reported in *Moti Lal and others* v. *Preventive Intelligence Officer, Central Excise and Customs, Agra and others* (1) and the other of the Calcutta High Court reported in *Laxmipat Choraria* v. *K. K. Ganguli and others* (2), came to the conclusion that since the money and the account books were known to be at a place in the custody of another department of the Government, that is, Shri Balwant Singh, Traffic Inspector of the Punjab Police, the warrant

(1) (1971) 80 I.T.R. 418.
(2) (1971) 82 I.T.R. 306.

for search and seizure could not be issued. The learned Judge, therefore, recorded the following findings:—

> "I, therefore, hold that in this case, the Commissioner of Income-Tax had no jurisdiction to issue the warrant of authorisation for search and seizure of the money and the documents which had been recovered from Ramesh Chander, petitioner, by Balwant Singh, Traffic Inspector and which were lying in the office room of the Station House Officer, Kartarpur. The proceedings for search and seizure were wholly illegal and void as the sole object of issuing the warrants of authorisation was to somehow obtain possession of the sum of Rs. 1,61,000 and the document already recovered from Ramesh Chander by Balwant Singh without there being any basis for the belief that he had evaded the payment of tax under the Income-Tax Act, 1922 or the Income-Tax Act, 1961 or any other allied Act."

(9) The learned Judge came to the conclusion that the cash amount of Rs. 1,61,000 had already been recovered from Ramesh Chander by the police and when the search and seizure warrants were issued and executed, this amount was not in possession of Ramesh Chander and was in fact in possession of the police authorities. The learned Single Judge, therefore, quashed the search and seizure warrant regarding Police Station, Kartarpur but did not quash the search and seizure warrants regarding the business premises of the two firms and also regarding the residences of the partners of the firms.

(10) The learned Single Judge also came to the conclusion that the provisions of sub-section (9) of section 132 of the Income-Tax Act, were violated inasmuch as the petitioners were not given an opportunity to take the extracts and copies from the ledger and the account books and other records seized from them by the Income-Tax Officer and, therefore, the petitioners had been greately prejudiced in defending themselves before the Income-Tax Officer, while the latter was finalising the proceedings under sub-section (5) of section 132 of the Income-Tax Act. It was, therefore, held that the final order passed under sub-section (5) of section 132 of the Income-Tax Act was illegal and the same was liable to be quashed.

(11) Aggrieved against the judgment of the learned Single Judge, the Commissioner of Income-Tax, Patiala, has now come up in Letters Patent Appeal. Mr. Awasthy, the learned counsel for the appellants, raised the following contentions during the course of arguments:—

(1) That the finding recorded by the learned Single Judge that the Commissioner had no material before him while issuing the search and seizure warrants so as to satisfy the ingredients of sub-section (1) of section 132 of the Income-Tax Act, 1961, is not sustainable in the eyes of law because the material on record would amply show that the provisions of section 132(1) of the Income-Tax Act were fully satisfied when the Commissioner of Income-Tax issued the search and seizure warrants in question. His contention is that this Court has no jurisdiction to go into the adequacy of the reasons for coming to the belief as envisaged under section 132(1) of the Income-Tax Act.

(2) That the finding recorded by the learned Single Judge that when the search and seizure warrants were executed, Ramesh Chander was not in possession of the amount and the ledger and other account books and in fact it was the police who was in possession of the same, is incorrect factually and in law both and, therefore, the same be set aside.

(3) That the finding of the learned Single Judge that the article to be searched and seized should be in concealed form and where the whereabouts of the articles to be searched and seized are already known, the search and seizure warrants connot be issued, is incorrect. It is contended that the view taken by the learned Single Judge after following the authorities reported in *Moti Lal's case* and *in Laxmipat Choraria's case* (supra), that if the material which has to be seized under sub-section (1) of section 132 of the Income-tax Act, is in possession of another department of the Government, no search and seizure warrants can be issued because the said articles which are sought to be searched and recovered are already in possession of the Government department which could

be made available on a request being made by the Income-Tax Department, and therefore, there is no question of search and seizure in that case, is not sustainable and the interpretation of section 132 of the Income-tax Act in the authorities referred to above is foreign to the provisions of section 132 of the Income-Tax Act, and, therefore, this finding of the learned Single Judge be set aside.

(4) That the final order under sub-section (5) of section 132 of the Income-Tax Act was validly passed by the Income Tax Officer and the finding that since the petitioners were not given an opportunity to get the extracts and copies from the account books seized by the Department and, therefore, the final order is vitiated, is not sustainable in the eyes of law.

(12) Now, I shall deal with the contentions of the learned counsel for the appellant pointwise.

(13) In order to appreciate the contentions, the provisions of sub-section (1) of section 132 of the Income-Tax Act, 1961, may be reproduced below:—

"132. *Search and Seizure*:—

(1) Where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that—

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (XI of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-Tax Act, 1922 or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not,

produce or cause to be produced, any books of account or other documents which will be useful for or relevant to, any proceedings under the Indian Income-tax Act, 1922 (XI of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income-tax Act, 1922 (XI of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

he may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income-tax Officer (hereinafter referred to as the authorised officer) to—

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

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

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

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

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

(2) * * * *

(14) From the reading of this section it is obvious that before the search and seizure warrant can be issued by the Director of Inspection

or by the Commissioner, there must be information in his possession and the said information should lead to believe in case of sub-clause (c) that any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income Tax Act. Therefore, it is obvious that the information must relate to two matters, firstly, that any person is in possession of money etc. and secondly, that the said money etc. represents either wholly or partly income or property which has not been disclosed for the purposes of the Income Tax Act. The moment these ingredients are fulfilled, the Director of Inspection or the Commissioner, as the case may be, would be within jurisdiction to issue the search and seizure warrants. The adequacy of grounds, on which the reason to believe entertained by the Commissioner is based, cannot be gone into by the Court in a petition under Article 226 of the Constitution of India. But one thing is clear, that the information must relate to the possession of the money etc. to the effect that the said money etc. is either wholly or partly undisclosed income for the purposes of the Income Tax Act. The information should have nexus with these two grounds and the information should be such which leads to a belief in the mind of the Director of Inspection or the Commissioner. Keeping in view these ingredients of sub-section (1) of section 132 of the Income Tax Act, the facts of the present case have to be examined.

(15) The only contention of Mr. Kaushal, the learned counsel for the writ-petitioners is that the Commissioner had no information that the amount which was reported to be in possession of Ramesh Chander was the undisclosed money for the purposes of the Income Tax Act. As regards the information regarding the possession of the amount with Ramesh Chander, it is conceded that the said information with the Commissioner is evident from the note recorded by the Commissioner. In order to appreciate this point in my opinion, a number of factors, keeping in view the facts of this case, have to be kept in mind. It is not denied that the commissioner of Income Tax received the information from Balwant Singh, who is a Police Inspector. The credibility of the information given by the Police Inspector to the Commissioner cannot be doubted because it was not an unknown person or a person in the street who was giving information to the Commissioner. It was a Police Inspector giving information from the Police Station itself. After having had a telephonic

talk with Balwant Singh, Police Inspector, the Commissioner called Shri Cheema, Income Tax Officer, and got recorded the following note :—

> "One Shri Balwant Singh, Traffic Inspector, Police Station, Kartarpur, has given a ring to me. He has told that the police authorities have recovered a sum of Rs. 1,61,000.00 from Shri Romesh Chander son of Shri Dewan Chand Aggarwal of Tanda Road, Jullundur. I have reasons to believe that the aforesaid money has not been disclosed for the purposes of the Indian Income Tax Act, 1922 or the Income Tax Act, 1961. I have also reasons to believe that Romesh Chander is in possession of books of accounts and documents which will be useful for the Income Tax Proceedings in his case and if asked to produce them, he would not produce them.
>
> I, therefore, authorise Shri P. R. Gupta, Shri Nathu Ram and Shri Kuldeep Raj Chopra, Income Tax Officers to take action as per authorisation issued in this behalf under section 132 of the Income Tax Act, 1961 read with Rules, 112 of the Income Tax Rules, 1962.
>
> I am, satisfied that Police Station, Kartarpur, business premises and residence of the partners should be searched. Authorisation issued accordingly."

(16) The last paragraph of this note was written by the Commissioner in his own hand while the earlier part of this note had been written by Shri Cheema, Income Tax Officer, in his hand at the dictation of the Commissioner. This note clearly shows that Shri Balwant Singh, Inspector of Police, had informed the Commissioner of Income Tax that a sum of Rs. 1,61,000.00 was recovered from Ramesh Chander son of Shri Dewan Chand Aggarwal of Tanda Road, Jullundur. The only contention of the learned counsel for the writ-petitioners is that this note does not mention about the business premises and the residence of the partners of the firms and there is no information given that the said firms are of no means and, therefore, the possession of this huge amount with Ramesh Chander was undisclosed money for the purposes of the Income Tax Act. This contention, in

my opinion, is without any force. It is clear and cannot be denied that the Commissioner after having got the said note recorded, signed the search and seizure warrants, not only of Police Station, Kartarpur but also of the business premises of the two firms situate at Tanda Road, Jullundur, and the premises of the residences of the partners of the said firms. If the Commissioner was not in possession of the information as to who this Ramesh Chander was and with which firm he had the connection no search and seizure warrants giving the description of all the premises to be searched, could be issued by the Commissioner. The issuance of the search and seizure warrants clearly goes to show that the Commissioner had the knowledge as to with which firm Ramesh Chander had the connection and as to of what status and substance Shri Ramesh Chander was. It is again clear that Shri Balwant Singh, before having a telephonic talk with the Commissioner of Income Tax, Patiala, had talked to the Income Tax Officer, Jullundur in order to verify the status of Ramesh Chander and he was informed that Ramesh Chander was not a man of such means so that he could possess the cash worth Rs. 1,61,000.00. As to what actual talk took place between the Commissioner of Income Tax, Patiala, and Shri Balwant Singh, Police Inspector, first-hand information is not available because neither Balwant Singh nor the Commissioner was examined in this case at any stage. It is also pertinent to note that the order of the Commissioner referred to above, clearly shows that he had the information that Ramesh Chander was also in possession of the books of accounts and other documents which will be useful in the tax proceedings in this case.

(17) In addition to this, the contents of the first information report, which was lodged by Balwant Singh, Police Inspector, are also to be taken into consideration, because the whole basis on which he apprehended Ramesh Chander and his companions, is contained in the first information report itself and it was in this background that he had a telephonic talk with the Commissioner of Income Tax at Patiala. It is clearly mentioned in the first information report that Ramesh Chander, on interrogation could not reply satisfactorily about the possession of the currency notes of such a huge amount. In addition to this, we have got the statement of Shri Cheema, Income Tax Officer, Patiala, who recorded the above referred to note on the dictation of the Commissioner. According to his statement, the Commissioner had a chit in his hand from which he had dictated the note. This chit had been prepared by the Commissioner from the telephonic message received by him from Shri Balwant Singh, Police Inspector.

In his cross-examination, Shri Cheema stated that the Commissioner of Income Tax after dictating to him the note, expressed that in his opinion the amount in question was a part of compensatory payment-racket. He further went on saying that he had no information about Ramesh Chander being involved in this racket but he could not say as to whether the Commissioner had such information or not. Thus keeping in view the circumstances about which the Commissioner had complete information from Shri Balwant Singh, Police Inspector, and keeping in view the note of the Commissioner, referred to above, the fact that the Commissioner issued search and seizure warrants of the business premises of both the firms and the residences of the partners and keeping in view the contents of the first information report, it is difficult to hold that the Commissioner had no information which led him to believe that the amount in question was undisclosed income for the purposes of the Income Tax Act. The Commissioner in his note clearly recorded the finding that he had reason to believe that the said amount has not been disclosed for the purposes of the Income Tax Act, 1922 or the Income Tax Act, 1961. The omission in the note to state the grounds on which he came to entertain this belief, would not vitiate the issuance of search and seizure warrants as from the facts enumerated above it is clear that the ingredients of sub-section (1) of section 132 of the Income Tax Act are fully satisfied.

(18) As to what is the scope and power of the Court in analysing as to whether the power under sub-section (1) of section 132 of the Income Tax Act was properly exercised or not, it was held by a Division Bench of the Gujrat High Court in a case reported in *Ramjibhai Kalidas* v. *I. G. Desai, Income Tax Officer, and others* (3) as follows :—

> "It is apparent that search and seizure can be effected by an officer under sub-section (1)(c)(iii) only if he is authorised to do so by the Director of Inspection or the Commissioner, and the Director of Inspection or the Commissioner can authorise search and seizure only if he has in consequence of information in his possession reason to believe that any person is in possession of money, bullion, jewellery or other valuable article or thing which represents undisclosed income or property. The condition precedent to

(3) (1971) 80 I.T.R. 721.

the exercise of the power to issue authorisation for search and seizure is that the Director of Inspection or the Commissioner must have the requisite reason to believe in consequence of information in his possession. The power to authorise search and seizure is hedged in by the requirement of this condition precedent and it is only if this condition is fulfilled that the power can be exercised. Of course, it is for the Director *of Inspection or the Commissioner to be satisfied that there is reason to believe and the Court cannot sit in appeal over the decision of the Director of Inspection or the Commissioner regarding the existence of the reason to believe nor can the court examine the adequacy of the grounds on which the reason to believe entertained by such officer is based. But there is a limited area within which the reason to believe entertained by the Director of Inspection or the Commissioner, can be scrutinised by the Court. This area now stands clearly demarcated by several decisions of the Supreme* Court and its extent and limit are no longer open to doubt or controversy. The Supreme Court while dealing with the same expression as used in section 34 of the old Income-tax Act, pointed out in *S. Narayanappa* v. *Commissioner of Income-tax* (4):

Again the expression 'reason to believe' in section 34 of the Income-tax Act does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The belief must be held in good faith; it cannot be merely a pretence. To put it differently it is open to the Court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceeding under section 34 of the Act is open to challenge in a court of law.

Hidayatullah J., as he then was, also said much to the same effect in *Barium Chemicals Ltd.* v. *Company Law Board* (5):

'No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the *sine*

(4) (1967) 63 I.T.R. 219.
(5) A.I.R. 1967 S.C. 295.

qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exist, the action might be exposed to interference unless the existence of the circumstances is made out ...... Since the existence of circumstances is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least *prima facie*. It is not sufficient to assert that the circumstances exist and give no clue to what they are, because the circumstances must be such as to lead to conclusions of certain definiteness.'

So also Shelat J. observed in the same decision:—

'Therefore, the words, 'reason to believe' or 'in the opinion of', do not always lead to the construction that the process of entertaining 'reason to believe' or the 'the opinion' is an altogether subjective process not lending itself even to a limited scrutiny by the Court that such 'a reason to believe or 'opinion' was not formed on relevant facts or within the limits, or, as Lord Radcliffe and Lord Reid called, the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative.'

These decisions of the Supreme Court make it clear that if the grounds on which 'reason to believe' is founded are not relevant to the subject-matter of the inquiry or are extraneous to the scope and purpose of the statute or are such as no rational human being can consider connected with the fact in respect of which the belief is to be entertained so that no reasonable person can come to such a belief, the exercise of the power would be bad. The Court would say in such a case that the reasons for the belief have no rational connection or relevant bearing to the formation of the belief and the belief is, therefore, not truly held but it is merely a pretence. It would, therefore, be seen that though the concept denoted by the words 'reason to believe' is a subjective one, there is a limited area of objectivity within which the Court can operate."

(19) I am in respectful agreement with the observations of the learned Judges of the Gujrat High Court referred to above. If the Director of Inspection or the Commissioner is satisfied that there is a 'reason to believe' that a person is in possession of money etc., which is undisclosed for the purposes of the Income-tax Act, and the said belief is based on the information in his possession which information has got nexus with two questions that is, regarding the possession of money, etc., and that the said money, etc., relates to undisclosed income, the Court cannot sit in appeal over the decision of the Director of Inspection or the Commissioner regarding the adequacy of the grounds on which the 'reason to believe' entertained by such officer is based. The scrutiny by the Court is limited and the same is properly defined in the above mentioned observations of the learned Judges of the Gujrat High Court. In this view of the matter, I am of the opinion that it is difficult to sustain a finding recorded by the learned Single Judge that the Commissioner had no grounds of belief with him when he issued search and seizure warrants that Ramesh Chander, who was in possession of a sum of Rs. 1,61,000, had evaded the payment of tax under the Indian Income-tax Act, 1961 or any other allied Act. The circumstances under which Ramesh Chander was detained and the subsequent events which have already been narrated above, clearly go to show that the Commissioner of Income-tax had the information, that the said amount was the undisclosed income of Ramesh Chander for the purposes of the Income-tax Act, and the Commissioner entertained belief to that effect and consequently issued the search and seizure warrants. Therefore, the first contention of Mr. Awasthy is correct and the search warrants cannot be quashed on this ground.

(20) As regards the second contention, I am of the opinion that there is no merit in this contention of the learned counsel for the appellants. It is apparent that in the search warrants it was mentioned that Ramesh Chander was in possession of a sum of Rs. 1,61,000 and it cannot be denied that the search warrants can be executed only against him. It is in this background that it is to be seen as to whether at the time when the search warrants were issued and when they were executed, Ramesh Chander was in possession of this amount or not. If he had already been divested of the possession of this amount by the police, the said amount could not be taken possession of by the Income-tax Authorities in pursuance of the search and seizure warrants issued on the basis that Ramesh

Chander was in possession of the said amount. Therefore, it is important to find out as to who was in possesion of the amount in question at the time when Balwant Singh, Police Inspector, gave information to the Commissioner, and at the time when the search and seizure warrants were executed. I am inclined to agree with the view taken by the learned Single Judge, that even though the first information report was registered at 8.05 p.m., still the police had already arrested Ramesh Chander and his companions and had taken possession of the amount and the account books. The contention of Mr. Awasthy, the learned counsel for the appellants, that even though Ramesh Chander was detained by the police, yet it be held that he was not arrested and the amount in question and the account-books continued to be in possession of Ramesh Chander, cannot be accepted in view of the overwhelming evidence on the record to the contrary. Shri Balwant Singh, Police Inspector, had information that some persons, in an white coloured Ambassador car, were coming and were in possession of a huge amount which related to a comepnsatory racket and the same was to be paid to the persons in the area of Police Station Kartarpur whose relations were living in England. It was in consequence of this information that he stopped the car in which Ramesh Chander and his companions were travelling, and he then actually found Ramesh Chander in possession of Rs. 1,61,000.00. He then took all of them and also the car in which they were travelling to Police Station Kartarpur, where he contacted the Income-Tax Authorities on telephone. In fact, Balwant Singh, wrote a Ruqa stating all these facts at 8.00 p.m. and got the first information report lodged at 8.05 p.m. The order of the Commissioner of Income-tax, Patiala, which has been referred to in the earlier part of the judgment and which was dictated by him to Shri Cheema, clearly mentions that Balwant Singh had informed the Commissioner that he had *recovered a sum of Rs.* 1,61,000.00 *from Ramesh Chander.* Furthermore, when Shri Gupta, Income-Tax Officer, Jullundur, went to search the precincts of Police Station, Kartarpur, the statements of many persons were recorded by the Income-Tax Authorities. The statement of Ganga Krishan Shukla, who was the companion of Ramesh Chander, was also recorded at the same time, copy of which is Annexure 'B' with the writ petition. In his statement, Ganga Krishan Shukla, clearly stated that the bag containing the currency notes and the bag containing the account-books were seized by the

police authorities who raided the car. To the similar effect is the statement of Charan Singh, driver, copy of which is Annexure 'C' with the writ petition, wherein he stated that both the bags were taken into custody by the police. The statement of Subash Chander, copy of which is Annexure 'D' with the writ petition, also shows that at the time of the raid, the police party took into possession one bag containing the currency notes from Ramesh Chander and the other bag containing the account-books was recovered from the possession of Ganga Krishan Shukla. These statements were recorded by the Income-Tax Authorities at the time of the search and seizure and it cannot be said that these statements were recorded after sometime so that the petitioner could manipulate such statements. The statements were recorded at a time when there was no question of any manipulation and the straight facts were being given out.

(21) According to the first information report Balwant Singh stopped Ramesh Chander and his party as he had the information that they were involved in a compensatory racket. This information was corroborated when Ramesh Chander was found in possession of Rs. 1,61,000.00. Ultimately a case under sections 411, 413 and 414 of the Indian Penal Code and sections 4, 5 and 6 of the Foreign Exchange Act, 1947 and Foreign Exchange Regulation Amendment Act, 1957 was also registered. Therefore, Balwant Singh, in these circumstances, cannot be said to have not arrested Ramesh Chander and taken into possession the currency notes and the account-books. It is provided in section 46 of the Code of Criminal Procedure that in making an arrest the police-officer shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. In this view of the matter, when the car was stopped and the Police Officer took into possession the two bags and took Ramesh Chander and his companions to the Police Station, there is no doubt left that Balwant Singh had effected the arrest of Ramesh Chander and his companions.

(22) Section 60 of the Code of Criminal Procedure provides that if a police officer arrests a person without a warrant, he shall without unnecessary delay and subject to the provisions contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the Officer-in-charge of a Police Station. When Balwant Singh, Traffic Inspector, took Ramesh

Chander and his companions to Police Station, Kartarpur, he complied with the provisions of section 60 of the Code of Criminal Procedure. It is a different matter that he delayed for some time the lodging of the first information report. In fact, he was trying to contact the Income-Tax Authorities in order to ascertain the status of Ramesh Chander and of the firms of which Ramesh Chander was the partner. This information he might be needing in order to verify his suspicion against Ramesh Chander. But the fact remains, that he did take into custody Ramesh Chander and his companions and also took into possession the currency notes and the account-books. This finding further finds corroboration from the statement of Shri Cheema. When Shri Cheema reached back, Patiala, he wrote a note on 9th August, 1971 in the following terms:—

> "On reaching Jullundur Sarvshri Gujjar Mal and G. S. Sidhu, Income-Tax Officers told me that they had already requested the D.I.G. and the Superintendent of Police, Jullundur, to hand over the money to our Department. On their persuasion the police authorities agreed to hand over the money to our Department."

This would show that the money and the account-books were in possession of the police authorities and the Income-Tax Authorities had to persuade the Deputy Inspector-General of Police and the Superintendent of Police at Jullundur to ask the police authorities at Kartarpur to deliver this amount and the account-books to the Income-tax Department. If Ramesh Chander continued to be in possession of the currency notes and the account-books, as is contended by the learned counsel for the appellants, there was no need for the Income-Tax Authorities to have contacted the D.I.G. and the Superintendent of Police to get hold of the currency notes. Therefore, it is quite apparent that when the search warrant was issued and the same was executed, Ramesh Chander was not in possession of this amount and the account-books. It was in fact the police authorities who were in possession of the same and with the consent of the higher police officers of the rank of D.I.G. and Superintendent of Police, the Income-Tax Authorities could get hold of the money in pursuance of the search and seizure warrant issued in the name of Shri P. R. Gupta, Income-Tax Officer.

(23) Mr. Awasthy, the learned counsel for the Commissioner, places main reliance on *Harbans Singh-Sardar Lenasingh and another* v. *The State* (6), in support of his contention and contends that Ramesh Chander and his companions were under surveillance when they were being detained by Balwant Singh and the other police party and had not actually been arrested, therefore, he contends that the possession of the currency notes and the account books continued to be with Ramesh Chander, during the period of detention when he was not taken into custody legally by Balwant Singh. No doubt the authority relied upon by the learned counsel supports his argument, but I am inclined to take a different view of the matter. Firstly, the question before the Bombay High Court in that case was as to whether the statement made by the accused persons was hit by section 24 of the Evidence Act and while examining this question the finding that the accused were not legally arrested and were only detained, was recorded and this question had not arisen in this case. In that case, the Bombay High Court was considering the provisions of Evidence Act *vis-a-vis* the provisions of the Code of Criminal Procedure. As far as the present case is concerned, the provisions of Evidence Act are of no relevance because the provisions of section 24 of the Evidence Act are not attracted at all as there is no question of any statement being made by the accused in police custody. Secondly, I feel that the view taken by the Bombay High Court that a person may be in custody of the police in other ways than having been arrested under the express terms of section 46 of the Code of Criminal Procedure, cannot be subscribed. As I look at the provisions of the Code of Criminal Procedure, any police officer without an order from a Magistrate and without a warrant can arrest any person if the situation as envisaged under section 54 of the Code of Criminal Procedure prevails. In a given case if a police officer has got information which leads him to form an opinion that the ingredients of section 54 of the Code of Criminal Procedure are attracted, he can proceed in two ways. Firstly, if he relies on the information so firmly, he can straightway arrest the person by complying with the provisions of section 46 of the Code of Criminal Procedure. Secondly, if he is still suspicious about the authenticity of the information, he may conclude to further verify the information by asking the person concerned to stop and answer the queries with a view to satisfy the police officer. If the said person voluntarily undertakes to satisfy the police officer

(6) A.I.R. 1970 Bom. 79.

with a view that the police officer may get satisfied by dispelling the suspicion from his mind, in that case, the person concerned voluntarily stops to answer certain questions with a view to avoid arrest by satisfying the police officer that the information given to him is not correct. But if the said person makes up his mind not to voluntarily satisfy the police office, in that case, the police officer has to make up his mind as to whether he is to allow the said person to go away or he is to arrest the said person in consequence of the information received by him. If the police officer allows him to go away, in that case, no difficulty arises, but if the police officer immediately forms the opinion that the said person has to be taken into custody, then he is to comply with the provisions of section 46 of the Code of Criminal Procedure for effecting his arrest and according to the provisions of section 46 of the Code, if the person concerned himself submits to the police officer, in that case, the police officer may not actually touch or confine the body of that person. In that case also, the arrest will be complete. To hold that a police officer can detain a person against his will, without arresting him, would be against the provisions of the Code of Criminal Procedure itself and would be against the provisions of the Constitution. The liberty of a citizen in a free country is all important and the same can only be jeopardised in accordance with the provisions of law. If a person has to be detained, he can only be detained by the authority of law and to presume that the police officer has got power to detain a person otherwise than effecting his arrest even though no provision of law authorises him to do so, would be against the fundamentals. Keeping in view the facts of the present case, it is apparent that Balwant Singh, Police Inspector, had information that the persons in the car were coming with huge currency notes and that the said persons were involved in a compensatory racket which fact and the information were corroborated when he (Balwant Singh) found Ramesh Chander in possession of the currency notes worth Rs. 1,61,000.00. He actually took Ramesh Chander and his companions into custody and took them to the Police Station where he ultimaetly got the case registered at 8.05 p.m. on the same day. *Merely by delaying the lodging of the first information report or preparing the papers showing the arrest of Ramesh Chander at a late stage, it cannot be held that the police officer had not arrested them.* It is apparent from the facts that Ramesh Chander and his companions submitted themselves to the custody by word and action

both and, therefore, the provisions of section 46 of the Code of Criminal Procedure were complied with. The mere fact that the personal search of Ramesh Chander was not taken and a sum of Rs. 411.00, which was subsequently recovered by the Income-Tax Authorities from his person, was not taken into possession by the police, would not warrant a finding that Ramesh Chander was not taken into custody and that the police had not taken into possession the currency notes of Rs. 1,61,000 and the account books in two bags. Therefore, the authority reported in *Harbans Singh's case* (6) (supra), relied upon by the learned counsel for the Commissioner, is of no assistance to him.

(24) In this view of the matter, since the money and the account books were in possession of the police authorities and were not in possession of Ramesh Chander the search and seizure warrant issued on the presumption that this amount and the account books were in possession of Ramesh Chander, could not be executed against the police authorities. Therefore, the seizure of the currency notes and the account books was illegal because of the fact that the amount and the account books, which were said to be in possession of Ramesh Chander in the search warrant, were recovered in fact from the possession of the police authorities.

(25) As regards the next contention of Mr. Awasthy, I am inclined to agree with the first part of the third contention of Mr. Awasthy, the learned counsel for the appellants, that it is not necessary that the articles to be seized should always be in concealed form and it is only then that the search and seizure warrants can be issued. The contention of Mr. Kaushal that no search and seizure warrants can be issued where the location of articles to be searched and seized is exactly known to the Commissioner or if it is not hidden, is fallacious at the face of it. Supposing in a given case the Commissioner has got the information that 'A' is in possession of currency notes which relate to undisclosed income and he is also informed about the exact amount and the exact place where the said currency notes are being kept and the Commissioner issues search and seizure warrants in consequence of the said information which he believes to be true, if the contention of Mr. Kaushal is accepted, then it would mean that if after the search and seizure the exact amount is recovered from the same place regarding which the Commissioner had the information, in that case, the search and

seizure would be bad in law, but if the amount is not exactly the same or the place is not the same as was the information with the Commissioner, in that case, the search and seizure warrants will be good. By glancing through the provisions of section 132 of the Income-tax Act, it is apparent that it is not necessary that the articles to be searched and seized under this section should be in a hidden form or that the exact place where the articles are being placed, should not be known to the Commissioner. The word "search" is used because in the nature of the things, in a given case, when section 132 of the Act applies, the articles to be searched and seized have been concealed by the person concerned from the Income-Tax Department for the purposes of assessment of the income-tax. The word "search" is used in this sense and not in any other sense. With due respect to the learned Judges of the Allahabad High Court, I am inclined to disagree with the reasons given by them in arriving at the conclusions *in Moti Lal's case* (1) (supra), which has been relied upon by the learned Single Judge. While dealing with the said case, Pathak J., took the view that since it was known to the Commissioner of Income-tax that the silver and the account-books to be searched and seized were lying with the Assistant Director Revenue, New Delhi, therefore, the location of the silver was known, to the Income-Tax Department and as such no search and seizure warrants could be issued. In my opinion, this is not the correct approach to the problem. It is a different matter that if the same conclusion is reached on different grounds as I shall presently mention that no search and seizure warrants could be issued for seizing the articles which were already in possession of another statutory authority, but the ground that since the exact location of the articles was known, therefore, no search and seizure warrants could be issued, is of no merit. The other reason given in the said judgment that since the articles which were ordered to be searched and seized under section 132 of the Income-Tax Act, in that case, were already in possession of the Customs Authorities, which was another department of the Central Government and from whom the Income-Tax Department could, on proper requisition, take possession of the articles in that case, has also not appealed to me. I am unable to subscribe to this reason given by the learned Judges. Chapter XIII, which consists of sections 100 of the Customs Act, 1962, deals with searches, seizure and arrest. Chapter XIV of the said Act deals with confiscation of goods and conveyances and imposition

of penalties. Sub-section (2) of section 110 of the Customs Act provides that where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession, they were seized. Proviso to this sub-section gives power to the Collector of Customs, on sufficient cause being shown, to extend the period not exceeding another six months. The various provisions of the Customs Act referred to above clearly go to show that when the Customs Authorities seized certain goods under Chapter XIII, the same are either liable to confiscation if they are proved to be liable to confiscation or in case it is found that the provisions of law were not violated by the owner of the said goods, the same have to be returned to the person from whom they were seized. Therefore, the view that the Income-Tax Department could take possession of the articles seized by the Customs Department by merely writing a letter of request, is not correct. The Customs Authorities seized the goods under the statutory provisions of the Customs Act and they are bound to comply with the provisions of the said Act, which also provides the mode of disposal of the goods so seized either by way of confiscation or by returning the same to the person from whom they were seized. The Customs Authorities are bound by the mandate of the Customs Act and are also bound to deal with the goods so seized in accordance with the provisions of that Act. No amount of requests from the Income-Tax Department can absolve them of their responsibility, which the statute, that is, the Customs Act, enjoined upon them. Therefore, even though the Customs Department is a Department of the Government of India, the silver and the account books could not be sent by the said Department to the Income-Tax Department on a requisition having been made. There is no question of any co-operation between the departments in that sense because the Income-Tax Department and the Customs Department when empowered to search and seize certain goods are duty bound under the relevant law to deal with the said goods in the manner prescribed. Similarly, in the present case, if Balwant Singh, Police Inspector had taken the possession of the goods and had seized them in accordance with the provisions of the Code of Criminal Procedure, he was duty bound to produce the goods so seized before the Court in accordance with the Code of Criminal Procedure. If the goods were recovered under section 51 of the Code of Criminal Procedure, the same were to be produced before a Magistrate, who was to dispose of the said goods under section 523 of the Code of Criminal

Procedure. If the currency notes and the accounts books were the subject matter of a criminal offence, as in the present case subsequently, a case under sections 411/413/414 of the Indian Penal Code and sections 4, 5 and 6, of the Foreign Exchange Act, 1947, and Foreign Exchange Regulation Amendment Act, 1957 was registered, the same shall become the case property and had to be produced before the Court trying the case and it would again depend upon the ultimate decision of the Court, in that behalf, regarding the said goods that the same have to be disposed of in accordance with the mandate of the Court. Therefore, the argument that the articles could be requisitioned by the Income-Tax Department, cannot prevail. However, the question will still remain whether the Income-Tax Authorities can search and seize the articles from another authority which came into possession of the said articles because of the powers given by the statutory provisions with which the said authority is clothed. In my opinion, each of the authorities, who is vested with the powers of search and seizure, either under the Customs Act or under the Income-Tax Act or under the Code of Criminal Procedure, is bound by law to deal with the said articles so recovered in accordance with the mandate of the respective statute and to hold, while interpreting section 132 of the Income-Tax Act, that the Income-Tax Authorities could search and seize the articles from the possession of the other statutory authorities, would be unreasonable because that will be bringing into conflict the two sets of statutes. For instance, if Balwant Singh, as a police officer, is duty bound to deal with the goods so recovered in accordance with the Code of Criminal Procedure and if it is held that the Income-Tax Authorities could issue search and seizure warrants under section 132 of the Income-Tax Act, in that case, there will be a clear conflict in the provisions of the Code of Criminal Procedure, which enjoin upon Balwant Singh, Police Inspector, to produce the case property in Court, and in the provisions of section 132 of the Income-Tax Act, which empower the Income-Tax Authorities to finally seize the amount for being deposited for unpaid income-tax. In such an exigency the police officer, who is duty bound to produce the amount so recovered in Court under the manate of the Code of Criminal Procedure, would be obstructed from doing its duty if it is held that the Income-Tax Authorities could seize the amount from the police authorities under section 132 of the Income-Tax Act. The statutes are to be interpreted in a harmonious manner so as to avoid any conflict. Therefore, I conclude that the search and seizure warrants cannot be issued under

section 132 of the Income-Tax Act, for seizing the articles which are already in possession of another statutory authority. By taking this view, the purpose of the enactment of the provisions of section 132 of the Income-Tax Act is also not frustrated because in such cases proceedings under section 69-A of the Income-Tax Act can be appropriately taken which provisions can effectively deal with such a situation.

(26) The conclusion as arrived at by Pathak J., was confirmed by Gulati J., but the learned Judge further took the view that the provisions of section 132 of the Income-Act were in a way attachment before judgment. In my opinion, this is not the correct approach to the problem. In fact the provisions of section 132 and also those of section 69-A of the Income-Tax Act were enacted by the Legislature to unearth the hidden wealth which was being used as a black money by avoidance of the payment of income-tax. If the hidden wealth in the form of currency notes is being not shown on any record and cannot be traced except otherwise if it is actually taken into possession, in that case, the provisions of section 69-A of the Income-Tax Act cannot be brought into operation. Therefore, section 132 or the Incme-Tax Act was enacted giving power to the Income-Tax Authorities to search and seize and get hold of the hidden wealth in the manner prescribed and on the basis of such seizure, a notice had to be given to the person concerned that he should explain the possession of such hidden wealth but if the actual hidden wealth is not recovered, no proceedings could possibly be taken under any other provision of the Income-Tax Act. However, if from some public documents and other relevant records, it can be found that there is some wealth which is undisclosed for the purposes of section 69-A of the Income-Tax Act, proceedings under that section can be taken irrespective of the fact that the proceedings under section 132 of the Income-Tax Act were not taken. Therefore, in my opinion, in a case where the articles in question, somehow or the other, have been mentioned in other records of another department, in that case proceedings under section 69-A can be taken and the Income-Tax Authorities cannot be said to be prejudiced in any manner. For instantce, as in the present case, the police record would show that a sum of Rs. 1,61,000/- was recovered from Ramesh Chander on 6th August, 1971, if Ramesh Chander is tried and he is acquitted and ultimately this amount is returned to Ramesh Chander by the orders of the Court, it will be open to the Income Tax Authorities to take proceedings under section 69-A of the Income

Tax Act against Ramesh Chander or any other person claiming this amount so as to explain away this amount for the purposes of the Income Tax Act, and if it is found that this amount had not been assessed to income tax and it related to the undisclosed income, the income tax can be levied on this amount and recovery made under the provisions of the Income Tax Act. If, on the other hand, Ramesh Chander is not challaned and the police finds that there is no *prima facie* case to prosecute him and returns the amount to him as the same was recovered from him, even in that case the records of the police would show that Ramesh Chander was in possession of this huge amount, the proceedings under section 69-A of the Income Tax Act could be taken against him, but in case where the amount is not shown in any Government or other authenticated record and a notice is issued to a person that he is in possession of undisclosed wealth, which may be in the form of currency notes, he can straightway come with the plea that he has not got any such undisclosed wealth, in that case there will be no proof available for coming to the conclusion that he was in fact in possession of such undisclosed wealth. It is to meet such an exigency that the provisions of section 132 of the Income Tax Act were enacted by the Legislature. The said provisions, in addition to the fact that when a search and seizure is made, the fact of possession of the undisclosed wealth is proved beyond hilt, further give power to the Income Tax Authorities to retain the amount seized for the satisfaction of the unpaid income tax for which summary proceedings are to be held under section 132 (5) of the Income Tax Act for the purpose of determining as to whether the amount so seized should be kept as a whole or not at all and then a regular assessment has to be made and if in the regular assessment it is found that the assessee is liable to pay the tax and the same is due from him, the amount so seized could be adjusted against the said income tax. Therefore, in my opinion, the grounds on which the learned judges of the Allahabad High Court came to the conclusion that the search and seizure warrants in that case were illegal, are not available. But the ultimate question whether the Income Tax Authorities under the provisions of section 132 of the Income Tax Act can issue search and seizure warrants in a case where the undisclosed wealth is in possession of another statutory authority, which came into possession of the same under the relevant provisions of law, has to be replied in the negative, as, in my opinion, if the interpretation is given that the Income Tax Authorities could

issue such warrants, that will lead to contradiction between the different statutes, which conflict has to be avoided in every case.

(27) The authority relied upon by Mr. Awasthy, the learned counsel for the Commissioner, reported in *Durga Prasad etc.* v. *H.R. Gomes, Superintendent (Prevention) Central Excise Nagpur and another etc.*, (7) also goes to show that the search and seizure warrants issued by the Collector of Customs for legalising the possession of the account books, though the account books had already been recovered by the Customs Department itself, were validly issued. This authority would only show that the argument that if the articles are already known and not hidden, no search and seizure warrants can be issued, is fallacious at which conclusion I have already reached. In that case, there was no statutory conflict coming in between the authority who had earlier seized the account books and the authority who subsequently seized the same by issuing the seizure warrants as both the authorities belonged to the Customs Department. Therefore, this authority cannot be taken to lay down that the Customs Authorities could seize the account-books which were already in possession of another statutory authority under the provisions of a particular statute.

(28) There is no merit in the last contention of Mr. Awasthy. The provisions of sub-section (9) of section 132 of the Income Tax Act provide in clear terms that the person from whose custody any books of accounts or other documents are seized under sub-section (1) of this section, may make copies thereof or take extracts therefrom in the presence of the authorised officer or any other person empowered by him in this behalf at such place or time as such authorised Officer may appoint in this behalf. Admittedly the writ-petitioners were not allowed to take extracts from the account books which were seized in consequence of the search and seizure warrants. It is averred in para 23 of the writ petition that the Income Tax Officer allowed inspection to the petitioners on 6th and 8th of September, 1971, did not allow them to copy out the extracts from the account books or other documents. An application, copy of which is Annexure 'L' with the writ petition, was made by the counsel for the assessee on 8th September 1971 in which a grievance was made out that the Income Tax Officer had instructed the counsel not to have extracts or notes from the account books and the permission had only been granted

(7) A.I.R. 1966 S.C. 1209.

to see the account books. A prayer was made that the assessee be allowed to take notes and extracts from the said account books, but curiously enough no order was passed on this application. When the writ petition was filed in this Court, this Court passed an order on 20th October, 1971 that the assessee be allowed to inspect the documents seized from the petitioners and, if required, give copies thereof, but the order under section 132(5) of the Income Tax Act was pronounced by the Income Tax Officer on 22nd October 1971 before the order passed by this Court was conveyed to the Income Tax Authorities. In the return filed by the State in reply to the allegations mentioned in para 23 of the writ petition, the only ground mentioned for not allowing the copies and the extracts to be taken, is that the assessee wanted to delay the proceedings and therefore, the extracts were not allowed to be taken. This stand at the face of it is fallacious. The assessee was allowed the last inspection on 8th October 1971 whereas the final order was pronounced on 22nd October 1971. If the Income Tax Officer had allowed the assessee to take the extracts and the copies of the account-books, it might have hardly taken a day or two. The Officer concerned had only to get the extracts and copies prepared in his presence. In no circumstances it can be held that the assessee would have taken months together in getting the extracts copied out. It is apparent that the assessee was prejudiced in the passing of the final order because the final order is passed on the basis of the account books so seized from the assessee of which the assessee was not allowed to take the extracts and the copies thereof. The contention of Mr. Awasthy that the assessee could not explain the source of Rs. 1,61,000.00, which amount was found in cash with Ramesh Chander and, therefore, he has not been prejudiced, is without any merit. In the order passed under sub-section (5) of section 132 of the Income Tax Act, the assessee has been assessed to the tune of Rs. 8,53,190.00, which assessment is based on the entries made in the account books. Therefore, this contention is without any merit. Therefore, the finding arrived at by the learned Single Judge that the provisions of sub-section (9) of section 132 of the Income Tax Act have been violated and the assessee was prejudiced has to be affirmed but in my opinion even if this finding is maintained, and if the search and seizure warrants were held to be with jurisdiction, the order under sub-section (1) of section 132 of the Income-Tax Act cannot be quashed on the ground that the final order under sub-section (5) was not in accordance with the provisions of sub-section (9) of section 132 of the Income Tax Act. In that

case, a direction has to be issued to the Income Tax Officer that after allowing the extracts and copies of the account-books and other documents to be taken by the petitioners, he should proceed further to pass an order under sub-section (5) of section 132 of the Income-Tax Act.

(29) The contention of Mr. Kaushal, that the assessment under section 132 of the Income-Tax Act, has to be completed within 90 days of the seizure, therefore, this Court has no power to direct the Income-Tax Officer to pass the final order under sub-section (5) of section 132 of the Income-Tax Act as 90 days had already passed since the account-books and the currency notes were seized, is without any merit. The provisions of sub-section (5) of section 132, which provide that the final order under sub-section (5) has to be passed within 90 days from the seizure, were fully complied with by the Income-Tax Officer, when he passed the said order within 90 days of the seizure. If he is to pass a fresh order under sub-section (5) of section 132 because of the directions issued by this Court, and this Court, while issuing such directions, has got power to issue all other necessary directions which may be fair, proper and just in the circumstances of the case, if the search and seizure warrants issued under sub-section (1) of section 132 of the Income-Tax Act, are valid and with jurisdiction, merely because while passing the final order, illegality crept in, the proceedings under sub-section (1) of section 132 of the Income-Tax Act cannot be allowed to be set aside. If the contention of Mr. Kaushal is taken to be correct, in that case, if the order passed under sub-section (5) by the Income-Tax Officer is legally valid from all view points, in that case alone, the proceedings under section 132 of the Income-Tax Act can be successfully resorted to, but if some legal lacuna is found in the final order, and not at the stage when the order was issued under sub-section (1) of section 132 of the Income-Tax Act, in that case, the whole proceedings shall have to be set aside, which is not the intention of the Legislature. It is further to be noted that the period of 90 days, as mentioned in sub-section (5) of section 132 of the Income-Tax Act is not final as under sub-sections (11) and (12) of the same section a power is given to the Board, after hearing the aggrieved party, to pass such orders as it may deem fit. Therefore, the Board in its discretion can, in proper cases, remand the case after setting aside the final order passed under sub-section (5) of section 132 of the Income-Tax Act and direct the Income-Tax Officer to pass the order afresh. If this power can be exercised by the Board, it is not understood as to why this Court under its jurisdiction under Artciles 226 and 227

of the Constitution of India cannot issue directions which are just and proper in this case. Therefore, If I had come to the conclusion that the search and seizure warrants issued under sub-section (1) of section 132 of the Income-Tax Act were valid, I would have certainly issued directions to the Income-Tax Officer to pass the final order under sub-section (5) of section 132 of the Income-Tax Act afresh after allowing the assessee an opportunity of getting the extracts and copies of the account books, but since I have come to the conclusion that the search and seizure warrants issued under sub-section (1) of section 132(1) of the Income-Tax Act were illegal, firstly because the search and seizure warrants were issued in the name of Ramesh Chander and he was in fact not in possession of either the currency notes or account-books and secondly the Income-Tax Authorities could not seize the currency notes and account-books from the police officer who is duty bound to proceed with the case property in accordance with the provisions of the Code of Criminal Procedure, therefore, there is no use of giving that direction.

(30) The judgment of the learned Single Judge has to be varied to the extent that the amount of Rs. 1,61,411, which has been found by him to have been recovered from the possession of the police authorities of Police Station, Kartarpur has to be returned to the police authorities alone and not to Ramesh Chander. It is evident that this Court has to issue directions to the Income-Tax authorities to return the said amount to the police authorities and not to Ramesh Chander, because this amount was seized by the Income-Tax Authorities from the police authorities of Police Station, Kartarpur, where a case under sections 411, 413 and 414 of the Indian Penal Code and sections 4, 5 and 6 of the Foreign Exchange Act, 1947 and Foreign Exchange Regulation Amendment Act, 1957 stands registered against Ramesh Chander. The said currency notes and the account books are the case property which is the subject matter of the first information report and the said case property has to be dealt with by the appropriate orders of the Court having jurisdiction to try the said case. It is open to the Income-Tax Authorities to approach the Court of competent jurisdiction to get proper orders passed if the Income-Tax Authorities are legally entitled to get this amount adjusted for the unpaid income-tax. This amount cannot be ordered to be paid to Ramesh Chander. The Court of competent jurisdiction has yet to see whether this amount relates to a stolen property or to the compensatory racket regarding which the first information report

stands lodged. The said currency notes and the account-books have to be disposed of by the final orders of the Court of competent jurisdiction. Mr. Kaushal conceded that if this Court comes to the conclusion, which is the case of the petitioners themselves, that the currency notes and the account-books were taken by the Income-Tax Authorities from the possession of the police authorities, in that case, the same shall have to be returned to the police authorities and not to Ramesh Chander.

(31) For the reasons recorded above, this Letters Patent Appeal is accepted to the extent that the direction issued by the learned Single Judge that the amount of Rs. 1,61,411 be returned to Ramesh Chander along with the ledger-book and other documents alleged to have been seized from him at Kartarpur, is modified to the extent that the said amount and the ledger-book and other documents be returned by the Income-Tax Authorities to the S.H.O. Police Station, Kartarpur, who will proceed in accordance with law. It is, however, made clear that it will be open to the Income-Tax Authorities to approach the Court of competent jurisdiction to get this amount, if so permissible in law, by way of satisfaction of unpaid income tax due from the petitioners, if any. Keeping in view the circumstances of the case, there will be no order as to costs.

(32) Before parting with this judgment, it may be made clear that anything said by the learned Single Judge against Shri Balwant Singh, Traffic Inspector of the Punjab Police, during the course of the judgment, will be considered to be washed away for the simple reason that Shri Balwant Singh was not a party to these proceedings and it would not be appropriate to pass any strictures against him without he being given any opportunity of being heard and placing his view point before the Court.

Pandit, J.—(33) I agree to the order proposed by my learned brother. It is undrestood that if and when in the Criminal Case registered against Ramesh Chander a stage is reached, that the Court is of the opinion that the currency notes and the account-books should be returned to Ramesh Chander, it will take a final decision in this regard only after issuing notice to the Income-Tax Authorities and hearing them.

N. K. S.