



IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Hearing : 3rd January, 2002

Date of Decision : १५ May, 2002

C.W.P. NOS. 2999, 2767, 4836, 4222 & 3336 OF 2001

DR. NALINI MAHAJAN IN CWP 2999 OF 2001 ... PETITIONER

RAM LAL MAHAJAN CHARITABLE TRUST
IN CWP 2767 OF 2001 PETITIONER

SHRI RAKESH MAHAJAN IN CWP 4836 OF 2001... PETITIONER

PAN FOODS LTD. & ORS. IN CWP 4222 OF 2001... PETITIONER

MAHAJAN INDUSTRIES PVT. LTD. & ORS.
IN CWP 3336 OF 2001 PETITIONER

THROUGH : MR. B.B. AHUJA,
SENIOR ADVOCATE WITH
MR. R.R. DWIVEDI,
ADVOCATE

- VERSUS -

DIRECTOR OF INCOME TAX (INV.) & ORS.RESPONDENTS

THROUGH : MR. SANJIV KHANNA WITH
MS. PREMLATA BANSAL,
ADVOCATES

CORAM :

THE HON'BLE MR. JUSTICE S.B. SINHA, CHIEF JUSTICE

THE HON'BLE MR. JUSTICE A.K. SIKRI

1. Whether reporters of local papers may be allowed to see the judgment?



S.B. SINHA, C.J.

1. Validity of searches and seizures, purported to have been made, in the premises of the petitioners is the subject matter of these writ petitions.

2. We would consider the fact of the matter in brief separately :-

CONTENTIONS OF THE PETITIONERS :-

C.W.P. Nos. 2999 & 2767 Of 2001 :-

3. One Ram Lal Mahajan Charitable Trust (in short, 'the Trust') was set up on or about 25.01.1968 wherefor an exemption in terms of Section 12A of the Income Tax Act, 1961 (hereinafter referred to as, 'the Act') was granted by the Commissioner of Income Tax. A trust deed was executed in terms whereof the objects of the original trust were elaborated. On or about 1.3.1979 a supplementary deed was also executed to conform to the provisions of Section 13(5) of the Act whereafter, the Commissioner granted exemption in terms of Section 80G of the Act by an order dated 01.01.1980. It is stated that such exemption had been continued and the claims made by the trust under Section 11 of the Act had been accepted.

4. For the assessment year 1997-98, the assessment proceedings were completed by the assessing officer ward No. 1, Panipat. Returns for the assessment years 1998-99 and 1999-2000 were also filed before the said Authority.

5. A survey purported to have been conducted inter-alia in the



employed. According to the petitioners, Dr. Nalini Mahajan does not have any other source of income except interest, dividend and salary. The assessment proceedings up to 2000-2001 had been completed by the assessing officer. During the course of survey operations, at the instance of the officers conducting the survey, search warrants were issued by the Additional Director (Inv.), Delhi. Pursuant to or in furtherance of the said purported search warrants, the premises of the petitioners were searched on 29.08.2000. Apart from the hospital, the residence of Dr. Nalini Mahajan as also her lockers were searched. From her residence allegedly some loose papers were seized. From locker No. 1093, the following items were seized :-


Total jewellery found	:	Rs.31,54,843/-
Jewellery seized	:	Rs.5,57,276/-
Cash seized	:	Rs.1,79,000/-

6. According to the petitioner, the third respondent prior to the search of the said locker asked her to inform as regard the contents thereof, which was complied with by a letter dated 15.09.2000 as containing jewellery belonging to herself, her daughter and her husband. Wealth-tax orders and valuation report had also allegedly been produced. It is alleged that the cash-in-hand had also been explained at Rs.1,67,239/- duly shown in the balance-sheet.

C.W.P. NO. 4836 OF 2001 :-

7. The petitioner is an individual and is the Managing Director of M/s. Mahajan Industries Pvt. Ltd., New Delhi and M/s. PAN Foods Ltd., Panipat. The petitioner is deriving income mainly from salary,



 filing his income-tax returns with the Assessing Officer, Panipat and accordingly the petitioner was assessed regularly.

8. On 28.08.2001, the respondent no. 1, i.e., Director of Income Tax (Inv.) issued search warrants under Section 132(1) of the Act in the name of the petitioner authorizing search of his residential premises situated at 31, Central Drive, Chhatarpur Farms, New Delhi.

9. The Commissioner of Income Tax, Rohtak transferred the jurisdiction of the petitioner's case from Assessing Officer, Panipat to the Assessing Officer, Central Circle 20, New Delhi vide order dated 14.02.2001.

10. On 22.02.2001, Deputy Director of Income Tax (Inv.), i.e., respondent no. 2 informed the petitioner that the Director of Income Tax (Inv.), i.e., respondent no. 1 has granted approval to him to retain the seized documents, books of accounts in the case of Mahajan Group of cases up to 30.06.2001.

11. On or about 05.03.2001, petitioner requested respondent no. 2 for copies of the reasons recorded for retention of the books of accounts and documents and copy of the approval granted by respondent no. 1. However, no reply to the above letter dated 05.03.2001 was received till 15.05.2001. The request, however, complied with only was on 15.05.2001 when this Court in the course of hearing of the civil writ petition No. 2999 of 2001 of Dr. Nalini Mahajan asked the respondents as to why reasons recorded by the statutory authority had not been supplied.



extension of retention of the books of accounts and documents has been asked for as the block assessments were to be initiated.

13. On 18.05.2001, respondent no. 4 issued a notice under Section 158-BC of the Act for framing block assessment for the past 10 years in the case of the petitioner.

C.W.P. 4222 OF 2001 :-

14. The petitioner company incorporated as a public limited company in the year 1967 having its registered office at Panipat (Haryana) under the name of M/s Craft Foods Ltd., which was later changed to M/s. Panipat Foods Ltd. On or about 09.04.1985, its name was again changed to "M/s. PAN Foods Ltd.". The petitioner company is engaged in the business of processing of food items, hydrated vegetables, etc.

15. On or about 07.12.1987, in case No. 142/87 initiated under Section 3(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short, 'SICA'), the petitioner company was declared a sick company by the Board of Industrial & Financial Reconstruction (in short, 'BIFR').

16. On 31.08.1988, revival scheme was approved by BIFR under Section 17(2) of SICA. However, the said scheme could not succeed mainly due to loss of export markets resulting from disintegration of erstwhile USSR in 1991 as the scheme was based on exports to USSR. Punjab National Bank was appointed as Operating Agency on 01.09.1992.



17. After a review of the position and upon consideration of the viability of the Rehabilitation Scheme, the BIFR vide its order dated 29.06.1994 recorded its opinion for winding up of the petitioner company in terms of Section 20 of SICA and forwarded the same to the High Court for necessary action.

18. The petitioner company filed an appeal before the Appellate Authority for Industrial & Financial Reconstruction (in short, 'AAIFR').

19. The Company Court of the Punjab & Haryana High Court passed winding up order on 11.08.1994 whereagainst the petitioner company preferred an appeal and obtained an order of stay.

20. On 28.11.1995, the Punjab & Haryana High Court set aside the order of winding up passed by the Company Judge and in the mean time AAIFR remitted the matter back to BIFR for consideration of the scheme of revival afresh.

21. BIFR considered a modified scheme for rehabilitation of the petitioner company and on 18.12.1996 reappointed the Punjab National Bank as Operating Agency under Section 18(5) read with Section 17(2) of SICA for finalizing the modified rehabilitation scheme.

22. On 11.11.1997, the modified rehabilitation scheme after certain modifications was approved by BIFR on OTS basis, which was also envisaged grant of certain concessions by the Income Tax Department under Sections 41(1), 72 & 80 of the Act.

23. After implementation of the said rehabilitation scheme, there



considering the matter and report of the monitoring agency, BIFR discharged the company from the purview of SICA.

24. On or about 14.02.2001, respondent no. 1, i.e., C.I.T., Rohtak transferred the case of the petitioner company from Rohtak to Central Circle - 20, New Delhi w.e.f. 22.02.2001. Thereafter, assessments for the assessment years 1995-96 to 1999-2000 were completed accordingly.

25. On 28.08.2000, respondent no. 1 issued an authorization warrant under Section 132(1) of the Act for carrying out search & seizure operations against the petitioners company's factory and office at G.T. Road, Panipat. The respondent nos. 1 and 2 also issued authorization for search & seizure operations at company's office at E - 1 & 2, NDSE - Part - II, New Delhi and at 27 K.G. Marg, New Delhi.

26. On 28.08.2000 to 30.08.2000, petitioner company's office and factory at G.T. Road, Panipat, were searched and a large number of books of accounts and documents belonging to the petitioner company were seized and inventories of materials and other articles were made. An inventory of plant and machinery and other equipments lying at the factory at G.T. Road, Panipat was also drawn up and only a cash amount of Rs.17,000/- was found at the office of the petitioner company at Panipat, which was not seized. Some of the documents and books of accounts belonging to Ram Lal Mahajan Charitable Trust and Mahajan Industries P. Ltd. lying in the premises were also searched and seized.

27. A joint Panchanama, in the name of PAN Foods Ltd.,



& 2, NDSE Part – II, New Delhi where also a number of documents and books and accounts and inventories of stocks, belonging to the petitioner company, were also made out. Similarly, on 29.08.2000, search operations were carried out at 27, K.G. Marg, New Delhi and certain documents and books of accounts belonging to the petitioner company were seized and also made inventories of stocks lying therein.

28. On or about 18.09.2000, inventories of finished product, packing material, raw material (Chemical & Conservatories) along with valuation as on 29.08.2000, were furnished to respondent no. 3 along with inventories of valuables like plant, machinery and equipments, with year of installation, as directed by him on 08.09.2000.

29. On or about 04.09.2000, the petitioner company requested respondent no. 3 to supply photocopies of the books of accounts and documents and other articles searched and seized during search operations, including the books of accounts relevant for the assessment year 2000-01 which were required to be audited and finalized by 30.09.2000.

30. On 22.02.2001, respondent no. 3 informed the petitioner company that it can start the process of obtaining photocopies of 26.02.2001.

31. On 26.03.2001, the petitioner company again requested respondent no. 3 to return the books of accounts and documents or to supply the photocopies thereof and made a reference to its earlier letters written in this behalf and in response thereto on 27.03.2001, respondent no. 3 informed the petitioner company that respondent No. 1 had



granted approval for retention of the books of accounts and documents till 30.06.2001.

32. On 01.06.2001, the petitioner company's representative appeared before respondent no. 5 and requested for photocopies and they were asked to come on 07.06.2001 on which date the process of grant of photocopies started.

33. The petitioner was asked to file a return for the block period starting 01.04.1990 to 09.11.2000 by respondent no. 5 vide notice under Section 158-BC of the Act.

CWP NO. 3336 OF 2001 :-

34. The first petitioner is a company registered and incorporated under the Companies Act. It is engaged in the business of investment and export of various commodities by sub-letting the properties, dealing in real estate, etc. Its assessment up to 1999-2000 was completed.

35. On 28.08.2000, the Director of Income Tax (Investigation) (in short, 'the Director') issued a warrant of authorization under Section 132 of the Act directing search and seizure operations in the matter of the petitioner company whereupon searches took place at E - 1 & 2, NDSE - II, New Delhi on 29.08.2000.

36. A large number of books of accounts and documents were seized. The books and documents seized by the Department included those, which were relevant for the assessment year 2000-01.

37. Allegedly on account thereof, it could not get its accounts



38. The petitioner had been requesting the third respondent to return the books of accounts to enable it to get the accounts audited and file the income-tax return and perform other statutory duties and functions. Even the company had not been permitted to take copies of its books of accounts. The third respondent granted approval for extension of retention of the said books of accounts by respondent no. 3 till 30.06.2001.

39. A request had also been made to the 3rd respondent for supplying all reasons recorded to get approval of the first respondent for retention of the said books of accounts up to 30.06.2001, but the same had not been furnished.

40. In view of an order dated 15.05.2001 passed by this Court in C.W.P. 2999 of 2001, only on 19.05.2001 a letter was received by the third respondent intimating all reasons recorded, but a copy of the reasons recorded in each case and the copy of the approval granted by the first respondent has still not been supplied.

CONTENTIONS OF THE RESPONDENTS :-

41. In their counter affidavit, the respondents have pointed out that on 29.08.2000, searches were conducted at the residential and business premises of Mahajan Group consisting of M/s. Mahajan Industries Pvt. Ltd., Dr. Nalini Mahajan, Mr. Rakesh Mahajan, Mr. Rajesh Mahajan, Ms. Sangeeta Mahajan and M/s. Pan Foods Ltd. Such searches were conducted on the basis of alleged definite information recording manipulation made by the petitioners herein to avoid payment of taxes by camouflaging the actual transactions by creating all



42. The respondents would contend that as they were of the opinion that by issuance of summons alone under Section 131 of the Act for production of documents and records and details of other evidence would not have achieved the result, the impugned searches and seizures were effected which were done upon compliance of requisite procedural safeguards.

43. The respondents would contend that the '*reasonable belief*' arrived at by the appropriate authority for the purpose of issuance of warrant in case of Section 132(1) of the Act was not irrational, mala fide or arbitrary, but the power exercised was bona fide by the appropriate authority, which was cogently supported by information and material.

44. It has been contended that 25% of the rights of property No. 27, Kasturba Gandhi Marg, New Delhi has been sold to M/s. Verka Investment Pvt. Ltd. for Rs.31 crores and they continued to share 35% share in the building even after receiving the payment.

45. It was contended that a notification has been issued by the Central Board of Direct Taxes (in short, 'the Board') on 06.09.1989 in terms whereof the Director has been authorized to perform functions in respect of the whole of India.

46. It has been contended that M/s. Pan Foods Ltd. and M/s. Mahajan Industries Ltd. have a common office in New Delhi.

47. According to the respondents, the assesses were offered to obtain photocopies of the documents on 26.02.2001 and 07.03.2001 by letters dated 22.02.2001 and 05.03.2001, but they did not attend the



were under the jurisdiction of Assessing Officer, Panipat and Director of Income Tax, Chandigarh and thus, the impugned authorization by the Additional Director must be held to be bad in law.

53. It was urged that there was nothing on records to show that relevant materials existed for the purpose of formation of opinion as is mandatorily required in law.

54. Mr. Ahuja further contended that a purported survey was being conducted as pursuant thereto or in furtherance thereof seizure of the books of accounts could not be made. He also pointed out that in the hospital nearly a sum of Rs.65,695/- in cash was found, but the same was not seized.

55. Referring to the statements made in the counter affidavit, the learned counsel contended that the purported searches had been made by conversion of survey operation, which is not permissible in law.

56. He would urge that the satisfaction must be based on the objective criteria and not the subjective satisfaction and the former is pre-condition to make search or seizure, which having been absent in the instant case, the entire proceeding must be held to be wholly illegal and without jurisdiction.

57. In support of the said contentions, strong reliance has been placed by the learned counsel on Balwant Singh & Ors. v. R.D. Shah, Director of Inspection, Income Tax, New Delhi, (1969) 71 ITR 550; Janak Raj Sharma v. Director of Inspection (Investigation) & Ors., (1995) 215 ITR 234; Harmel Singh & Anr. v. Union of India & Ors., (1993) 204 ITR 334;



48. It has been alleged that vide letter dated 13.03.2001 photocopies of voluminous records had been sent to the petitioner, but no reply and response thereto had been received.

49. So far as the allegation as regards retention of seized books of accounts under Section 328 of the Act is concerned, according to the respondents, permission to retain the said books of accounts after 180 days had been obtained before the expiry of period by Director, which was communicated to petitioner by their letter dated 22.02.2001 and the reasons recorded therefor have also been communicated to the petitioner by a letter dated 18.05.2001. It was urged that all the statutory requirements for conduct of searches and seizures had been complied with.

SUBMISSIONS OF THE PETITIONERS :-

50. Mr. Ahuja, the learned counsel appearing on behalf of the petitioner, would submit that the purported notification dated 06.09.1989 issued by the Board authorizing the Director to exercise power under sub-section (1) of Section 132 of the Act is illegal and bad in law as such the appointment is not authorised in law.

51. He submitted that as the assessment proceedings of the petitioners are made at Panipat, the Additional Director Unit - V, New Delhi could not have issued authorization in terms of Section 132 of the Act.

52. The learned counsel contended that having regard to the fact that at the relevant point of time, namely, on 29.08.2000 when the



Anr., (1999) 237 ITR 70; and Commissioner of Income Tax & Ors. v. K.v. Krishnaswamy Naidu & Co., (2001) 249 ITR 794 (SC).

SUBMISSIONS OF THE REVENUE :-

58. Mr. Sanjiv Khanna, learned counsel appearing on behalf of the Revenue, on the other hand, argued that issue of authorization under Section 132 of the Act being purely an administrative act in terms whereof no right of the parties is determined; the same should not be equated with quasi-judicial function. Reference in this connection has been made to State of Himachal Pradesh v. Raja Mahendra Pal & Ors., (1999) 4 SCC 43 and I.T.O. v. Seth Brothers & Ors., (1969)74 ITR 836.

59. Mr. Khanna further contended that authorization in terms of Section 132(1) of the Act can be issued, if any of the factors enumerated therein is satisfied. As regards authorization issued against Mahajan Group, the same according to the Mr. Khanna, would fall within the parameters of aforementioned clauses.

60. Existence of possibility to the effect that the documents or books of accounts, etc. may not be produced by the assessee may by itself give rise to issuance of authorization in terms of Section 132(1)(b) of the Act, Mr. Khanna would urge and in support of the said contention strong reliance has been placed on Pooran Mal v. Director of Inspection (Investigation), Income-tax, New Delhi & Ors., (1974) 93 ITR 505.

61. Our attention has also been drawn to the fact that Section 132(1)(c) of the Act was amended w.e.f. 1975 and in terms thereof search can be authorized, even in cases where money, assets and income would



according to Mr. Khanna, is indication of the fact that any apprehension in the mind of the authority concerned, would warrant authorization.

62. It was further submitted that authorization under Section 132(1)(c) of the Act can be issued even in cases where information exists as regards concealment of income/assets but despite thereof the authorizing authority feels that certain further information is required, in which event, search warrant can be issued for unearthing secret valuables and documents, wherefor strong reliance has been placed upon Chiranji Lal & Ors. v. Commissioner of Income-tax, (1982) 135 ITR 530.

63. Mr. Khanna further submitted that an error committed in seizing documents, which are ultimately not found useful and relevant would not vitiate the entire search operations nor the same can be construed to be mala fide. Similarly, urges Mr. Khanna, at the time of search, it may be necessary to seize books of accounts and other documents belonging to other persons connected with the person searched. It was contended that the documents, etc. seized may have a distinct bearing in case of evasion of income tax. Seizure of books of accounts and documents of these related/connected persons would not make the search illegal. In this regard, reliance has been placed on the decision of Seth Bros. (Supra) and Dr. Pratap Singh v. Director of Enforcement, (1985) 155 ITR 166 and Narayan R. Bandekar v. I.T.O., (1989) 177 ITR 207.

ISSUES :-

64. The principal questions, which arise for consideration, in



- (a) *Whether the Additional Director (Inv.) has the requisite jurisdiction to authorize any officer to effect search and seizure in purported exercise of its power conferred upon it under Section 132 of the Act; and*
- (b) *Whether there had been sufficient materials before the appropriate authority to satisfy itself that the authorization for search could be issued.*
- (c) *Whether the notification dated 06.09.1989 is valid in law?*
- (d) *Whether reasons for retention of books of accounts can be recorded after a period of 15 days?*
- (e) *Whether the provisions of Section 132(9)(A) are directory in nature?*

STATUTORY PROVISION :-

65. Before dealing with the aforesaid questions, some of the relevant provisions of the Act, may be noticed :-

"SECTION 2(21) :

"Director General or Director" means a person appointed to be a Director General of Income-tax or, as the case may be, a Director of Income-tax, under sub-section (1) of section 117, and includes a person appointed under that sub-section to be an Additional Director of Income-tax or a Joint Director of Income-tax or an Assistant Director or Deputy Director of Income-tax:

SECTION 2(28D) :-

"Joint Director" means a person appointed to be a Joint Director of Income-tax or an Additional Director of Income-tax under sub-section (1) of section 117;

SECTION 120 :-

- (1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers



- (2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.
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- (4) Without prejudice to the provisions of sub-section (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,—

(a) authorise any Director-General or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;

(b) empower the Director-General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or, as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.

SECTION 132(1) :-

Where the Director-General or Director or the Chief Commissioner or Commissioner or any such Joint Director or Joint Commissioner as may be empowered in this behalf by the Board, 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 (11 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



to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922) or under this Act, or

- (c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income-tax Act, 1922 (1 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

then, -

(A) the Director General or Director or the Chief Commissioner or Commissioner, as the case may be, may authorize any Joint Director, Joint Commissioner, Assistant Director, or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer, or

(B) such Joint Director or Joint Commissioner, as the case may be, may authorize any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer,.

(the officer so authorized in all cases being hereinafter referred to as the authorized officer) to-

- (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;
- (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;
- (iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorized officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;
- (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;

Provided that where any building, place, vessel, vehicle



referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in section 120 it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorization from the Chief Commissioner or Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue:

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorized officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorized officer and such action of the authorized officer shall be deemed to be seizure of such valuable article or thing under clause (iii).

... ..

SECTION 132(8) & (8A) :-

- (8) The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorized officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the [Chief Commissioner, Commissioner, Director-General or Director] for such retention is obtained:

Provided that the [Chief Commissioner, Commissioner, Director-General or Director] shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

- (8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order, except where the authorized officer, for reasons to be recorded by him in writing extends the period of operation of the order beyond sixty days, after obtaining the approval of the [Director or, as the case may be, Commissioner] for such extension:

Provided the [Director or, as the case may be, Commissioner] shall not approve the extension of the period for any period beyond the expiry of thirty days after the completion of all the proceedings under this Act in respect of the years for which the books of account, other documents, money, bullion, jewellery or other valuable articles or things are relevant.



- (9) The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1A) may make copies thereof, or take extracts therefrom, in the presence of the authorized officer or any other person empowered by him in this behalf, at such place and time as the authorized officer may appoint in this behalf.
- (9A) Where the authorized officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents or assets seized under that sub-section shall be handed over by the authorized officer to the Income-tax Officer having jurisdiction over such person within a period of fifteen days of such seizure and thereupon the powers exercisable by the authorized officer under sub-section (8) or sub-section (9) shall be exercisable by such Income-tax Officer.

SECTION 133A :-

- (1) Notwithstanding anything contained in any other provision of this Act, an income-tax authority may enter —
- (a) any place within the limits of the area assigned to him, or
 - (b) any place occupied by any person in respect of whom he exercises jurisdiction, or
 - (c) any place in respect of which he is authorized for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place,

at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession—

 - (i) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place,
 - (ii) to afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein, and
 - (iii) to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.



therein or not, in which the person carrying on the business or profession states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relative to his business or profession are or is kept.

- (3) An income-tax authority acting under this section may,
- (i) if he so deems necessary, place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom,
 - (ii) make an inventory of any cash, stock or other valuable article or thing checked or verified by him,
 - (iii) record the statement of any person which may be useful for, or relevant to, any proceeding under this Act.

SECTION 158BC :-

Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then, —

- (a) the Assessing Officer shall—
- (i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days;
 - (ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days,

as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block period :

Provided that no notice under section 148 is required to be issued for the purpose of proceeding under this Chapter:

Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return ;

- (b) the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158BB and the provisions of



- (c) the Assessing Officer, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment ;
- (d) the assets seized under section 132 or requisitioned under section 132A shall be retained to the extent necessary and the provisions of section 132B shall apply subject to such modifications as may be necessary and the references to "regular assessment" or "reassessment" in section 132B shall be construed as references to "block assessment".

SECTION 158BD :-

Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and the provisions of this Chapter shall apply accordingly."

FINDINGS :-

Req. Questions (a) and (c) :-

66. The question as to whether the said notification dated 06.09.1989 is valid or not must be judged having regard to the statutory provisions contained in Section 132 of the Act.

67. In terms of sub-section (1) of Section 132 of the Act, the Board is entitled to empower any Director General or Director or the Chief Commissioner or Commissioner. The power of the Board is a wide one. If a higher authority has been conferred with such a power for exercise of jurisdiction throughout India, the same per se cannot be said to be invalid in law. Cases are not unknown the searches and seizures are required to be carried out in various parts of the country



the same may not only lead to an anomalous situation, but also various unforeseen difficulties including the requirement to maintain secrecy therefor may be felt.

68. Keeping in view the fact that all such searches and seizures are to be conducted must be kept confidential, if it be held that the Board is empowered to authorize only one officer to exercise his jurisdiction under sub-section (1) of Section 132 of the Act within a specified territorial limit, the purport and object of the Act may be defeated.

69. We, therefore, see no reason as to why the said notification authorizing the Director should be held to be bad in law, particularly when the statute is not required to read in that context.

70. In that view of the matter, the authorization for search and seizure of the properties of M/s. Mahajan Industries Pvt. Ltd., Mr. Rakesh Mahajan and M/s. Pan Foods Ltd., could be issued by the Director (Investigation), who had the requisite jurisdiction therefor, and thus search and seizure made in their premises cannot be held to be bad in law.

71. However, the principal question, which would arise for consideration of this Court would relate to interpretation of the expression '*Director*' as contained in Section 2(21) of the Act. The interpretation clause as contained in Section 2 begins with the words "*Unless the context otherwise requires*". Definitions of '*Director General*' or '*Director*' are exhaustive ones.



body thereof, but where the context makes the definition given in an interpretation clause inapplicable, a defined word may have to be given a meaning different from that contained in the interpretation clause.

73. Before proceeding to deal with the questions raised, we may notice that the writ petitions of Mr. Rakesh Mahajan, M/s. Pan Foods Ltd. and M/s. Mahajan Industries Pvt. Ltd. have been filed after a long delay, i.e., on 08.08.2001, 13.07.2001, and 22.05.2001 respectively.

74. These writ petitions have been filed after the reasons for passing of an order under Section 132(9)(A) of the Act had been communicated. So far as correctness or otherwise of the said orders are concerned, appeals will be maintainable under Section 132(10) of the Act and in that view of the matter apart from the question of jurisdiction, we need not to go into the merit of the matter.

75. In Arti Gases v. Director of Income Tax (Investigation), (2001) 248 ITR 55, in the fact situation obtaining therein, it was held :-

"The learned advocate for the petitioners has also tried to show certain anomalies in the calculations made by the officers of the respondents. We do not desire to go into those anomalies because the petitioners can very well represent their cases before the Assessing Officer or the concerned officer as and when the assessment is to be made. We are sure that the Assessing Officer will give an opportunity to the petitioners to place the relevant facts on record and plead their case before the respondent authorities so that no injustice may be caused to them in the process of assessment. It is also pertinent to note that even after the assessment order is passed, it would be open to the petitioners to challenge the validity of the assessment order if they are aggrieved by the same."

76. In K.V. Muthu v. Anqamuthu Ammal, AIR 1997 SC 628, the Apex Court observed in as under :-

"10. Apparently, it appears that the definition is conclusive as the word "means" has been used to specify the members, namely, spouse, son, daughter,



that of "Family", which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of context and scheme of the Act as also the object for which the Act was made by the legislature.

11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted."

77. In terms of sub-section (1) of Section 132 of the Act, a statutory power had been conferred upon the authorities specified therein. Such statutory power must be exercised by the authority who had expressly been conferred therewith.

78. The provisions of the Income-tax Act clearly envisage hierarchy of the officers. Had the intention of the Parliament been to confer the power of issuing authorization or warrant upon all the officers, who come within the purview of the interpretation clause of the '*Director*' or the '*Director General*', it was not necessary to mention therein that where the Director or the Director General or the Chief Commissioner or the Commissioner or any such Joint Director or Joint Commissioner, as the case may be, empowered in this behalf by the Board inasmuch as the latter authorities would have also come within the purview of the definition of the Director General or the Director. If the contention of Mr. Khanna is accepted, then even an authority, who is lower in rank, may also issue authorization in favour an officer of higher rank, which situation cannot, in our opinion, be countenanced. Furthermore advisedly, the Parliament has used the article "The" before the authority



79. The words, which are used in declaring the meaning of other words may also need interpretation and the legislature may use a word in the same statute in several different senses. In that view of the matter, it would not be correct to contend that the expression as defined in the interpretation clause would necessarily carry the same meaning throughout the statute.

80. The question came up for consideration recently before the Apex Court in The State of Maharashtra v. Indian Medical Association & Ors., 2001 X AD (SC) 74 wherein the apex court was concerned with the term "management" occurring in Maharashtra University of Health Sciences Act, 1998. Therein a question arose as to whether the State Government is required to obtain the approval of the Medical Council of India for establishment of new medical college. "Management" as contained in Section 2(21) of the Act, which was in the following terms :-

"Section 2. In this Act, unless the context otherwise requires, -

(21) 'Management' means the trustees, or the managing or governing body, by whatever name called, of any trust registered under the Bombay Public Trusts Act, 1950 Bom. XXIX of 1950 or any society registered under the Societies Registration Act, 1860 21 of 1800 under the management of which one or more colleges or recognised institutions or other institutions are conducted and admitted to the privileges of the University.

Provided that, in relation to any college or institution established or maintained by the Central Government or the State Government or a local authority such as a Zila Parishad, municipal council or municipal corporation, it means, respectively, the Central Government or the State Government or the concerned local authority that is the Zila Parishad, municipal council or municipal corporation, as the case may be."

81. The question, which arose for consideration was as to whether the State Government would come within the purview of the said Act. The Apex Court held:



any statute apply in all possible contexts in which the word which is defined may be found therein. In *Printers (Mysore) Ltd. and another Vs. Assistant Commercial Tax Officer and others - 1994 (2) SCC 434*, it was held that it should be remembered that the provisions which define certain expressions occurred in the Act opens with the words "in this Act unless the context otherwise requires" which shows that wherever the word so defined occurred in the enactment, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in the definition clause. Ordinarily, where the context does not permit or where the context requires otherwise, the meaning assigned to it in the said definition need not be applied.

8. A bare perusal of Section 2 of the Act shows that it starts with the words "in this Act, unless the context otherwise requires—". Let us find out whether in the context of the provisions of Section 64 of the Act the defined meaning of the expression "management" can be assigned to the word management in Section 64 of the Act. In para 3 of the Regulations, the Essentiality Certificate is required to be given by the State Government and permission to establish a new medical college is to be given by the State Government under Section 64 of the Act. If we give the defined meaning to the expression "management" occurring in Section 64 of the Act, it would mean the State Government is required to apply to itself for grant of permission to set up a government medical college through the University. Similarly it would also mean the State Government applying to itself for grant of Essentiality Certificate under para 3 of the Regulation. We are afraid the defined meaning of the expression "management" cannot be assigned to the expression "management" occurring in section 64 of the Act. In the present case, the context does not permit or requires to apply the defined meaning to the word 'management' occurring in Section 64 of the Act. However, after the government run medical college is established, necessarily there has to be management or body of persons to run the affairs of the medical college and for such a situation the expression 'management' as defined in Section 2(21), is contemplated under Section 65 of the Act. In the context of the provisions of Section 65 of the Act, the management of the government run medical college has to apply for grant of affiliation to the University, which may be the State Government. It is not disputed that the State Government (Management) did apply for grant of affiliation to the University, which was granted. We are, therefore, of the opinion that the defined meaning of the expression 'management' cannot be assigned or attributed to the



a State Government for permission to establish the proposed medical college at proposed location to be decided by the State Government.”

82. Mr. Khanna, however, has placed reliance on a decision of the Punjab and Haryana High Court in Vinod Goel & Ors. v. Union of India & Ors., (2001) 252 ITR 29. With utmost respect to the learned Judges, we cannot subscribe to the views expressed therein. Mr. Khanna pointed out that Section 132 of the Act is a separate code in itself. If a broad meaning, as is sought to be contended by Mr. Khanna to the definition of 'Director' as contained in Section 2(21) of the Act is assigned, authorizing officer and assessing officer although may be different persons, would come within the purview thereof, which could never be the intention of the legislature.

83. Furthermore, had the Additional Director been covered within the purview of the definition of Director General or Director, there was no necessity of defining Joint Director again, as has been done in Section 2(28D) of the Act in terms whereof also a Joint Director would be an Additional Director.

84. Interpretation clause is not a positive enactment. It is also well settled that an interpretation clause, having regard to its limited operation, must be given a limited effect. While giving effect thereto, the Court must not forget that the scope and object of such a provision is subject to its applicability and it is used having relation to the context only.

85. In the instant case, on 6th September 1989, by reason of a Notification bearing No. S.O. 703(E) dated 6th September 1989 only the



Director of Investigation, Delhi has been empowered to issue authorization for search and seizure operation all over India.

86. A Statutory power is conferred by the Board in favour of a particular statutory authority. The scope and purport of the said definition, thus, cannot be extended to other authorities in whose favour the power has not been delegated. It is not in dispute that the Additional Director is also in lower rank than the Director.

87. It is now well settled that when a power is given to do a certain thing in a certain manner, the same must be done in that manner or not at all. All other proceedings are necessarily forbidden. (See Nazir Ahmad and The King-Emperor reported in L.R. LXIII IA 372; Viteralli v. Saton reported in 3 Law Ed. 1012; and Ramana Dayaram Shetty v. International Airport Authority of India & Ors. reported in (1979) 3 SCC 489.)

88. A delegation of power is essentially a legislative function. Such a power of delegation must be provided for by the statute. The Director himself for certain matters is the delegating authority. He, unless the statute expressly states, cannot sub-delegate his power to any other authority.

89. In A.K. Roy & Anr. v. State of Punjab & Ors., AIR 1986 SC 2160, the law is stated in the following terms :-

"10. A careful analysis of the language of S. 20(1) of the Act clearly shows that it inhibits institution of prosecutions for an offence under the act except on fulfillment of one or the other of the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government or a person authorized in that behalf by the Central Government or the State Government, or the prosecutions should be instituted with the written consent of any of the four specified categories of



contained in S. 20(1) of the Act does not contemplate the institution of a prosecution by any person other than those designated. The terms of S. 20(1) do not envisage further delegation of powers by the person authorized, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorised. The use of the negative words in S. 20(1) 'No prosecution for an offence under this Act..... shall be instituted except by or with the written consent of' plainly make the requirements of the section imperative. That conclusion ours must necessarily of follow from the well-known rule of construction of inference to be drawn from the negative language used in a statute stated by Craies on Statute Law, 6th edn., p. 263 in his own terse language :

"If the requirements of a statute which prescribe the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceedings."

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting S. 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise.

90. In any event, if an authority, which had no jurisdiction to issue such an authorization did so, the same would be liable to be quashed as ultra vires.

91. Sonu Systems Pvt. Ltd. v. Chairman, Central Board of Direct Taxes & Ors., (2001) 250 ITR 268 whereupon Mr. Khanna placed strong reliance, cannot be said to have any application in the instant case. Therein, having regard to an innocuous omission to delete the word "Deputy", it was held that the said defect did not vitiate entire search or seizure.

92. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. (See Union of India & Ors. v. Dhanwanti Devi & Ors.¹).



93. In Commissioner of Income Tax c. K. Ramakrishnan, 202 ITR

997, it has been stated :-

“The words used by judges in their judgments are not to be read as if they are words in an Act of Parliament. (see the judgment of Lord Reid in the appeal from the above decision - Goodrich v. Paisner [1957] AC 65 (HL) at page 88). We have to remember that the words in a judgment are not used after weighing the pros and cons of all conceivable situations that may arise. They constitute just the reasoning of the judges in the particular case, tailored to a given set of facts and circumstances. What is made relevant and binding is only the ratio decidendi and no more. The careful drafting - perhaps with reference to analogous statutes - the multiple reading in the Legislature and the discussion which go behind the making of a statute inject a certain degree of sanctity and definiteness of meaning to the words used by the Legislature. The same cannot be said of a judgment which deals only with the particular fact situation on hand. It will be too much to ascribe and read precise meaning to words in a precedent which the judges who wrote them may not have had in mind at all. Equally, it is not possible to impute an intent to render a decision on a point which was not before them and which they never intended to deal with, even though such an inference may seem to flow logically from the ratio decidendi of the case. That was why it was stated by Lord Halsbury LC in Quinn v. Leatham [1901] AC 495 (HL), at page 506 :

“.....there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

94. In Commissioner of Endowments, A.P. Hyderabad & Anr. v.

All India Sai Aeva Samaj, 2001 (6) ALT 539, it has been noticed :-

“37. In *C.I.T. v. Sun Engineering Works (P) Limited*¹⁶ Dr. A.S. Anand, J. (as the learned Judge then was) stated the law in the following terms :

...It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete ‘law’



be considered in the light of the questions which were before this Court....”

38. It is also a settled law that a decision is not an authority on a point which was not argued (see *Mittal Engineering Works (P) Ltd. v. Collector of Central Excise*¹⁷)

39. In *Dias on Jurisprudence*, Fifth Edition at page 143, it is stated—

Pronouncements of law, which are not part of the *ratio decidendi* are classed as *obiter dicta* and are not authoritative. Rationale and dicta tend to shade into each other. The former have law-quality and are binding on lower Courts; dicta, too, have law quality but are not binding at all. *Vis-à-vis* a higher Court even the *ratio decidendi* of a lower Court decision has only persuasive force like that of a dictum. It has been pointed out that some dicta are so authoritative that the distinction between ratio and dictum is reduced to vanishing point. Dicta, which have no force, are propositions stated by way of illustration or on hypothetical facts. Greater difficulties attend rulings of law which are subsequently relegated to the status of dicta by interpretation. The distinction in such cases between ratio and dictum is but a device employed by subsequent Courts for the adoption or rejection of doctrine expressed in previous cases according to the inclination of the Judges. An example would be the treatment of Lord Atkin's neighbour proposition in subsequent cases.

40. In *Salmond on Jurisprudence* 12th Edition, page 29, it is stated—

One of the essential features of the doctrine of precedent in the common law is that rules of law are developed in the very process of application. This means that they are created by judges and not by teachers and other academic lawyers. However, learned they may be. It also means that they are created by Judges only when acting as Judges i.e., when deciding cases and not for example when giving lectures or other addresses; statements made by Judges in their extra-judicial capacity, like other extra-judicial opinions, are without binding authority. For the fundamental notion is that the law should result from being applied to live issues raised between actual parties and argued on both sides.

In the course of his judgment, however, a Judge may let fall various observations not precisely relevant to the issue before him. He may for instance illustrate his general reasoning by reference to hypothetical situation and the law which he considers to apply to them. Here of course, since the issue is not one that arises between the parties, full argument by Counsel will be lacking, so that it would be unwise to accord the observation equal weight with that given to his actual decision. Or again, having decided the case on one point, the Judge may feel it unnecessary to pronounce on the other points raised by the parties, but he may nevertheless want to indicate how he would have decided these points if necessary. Here again we are not given the Judge's final decision on a live issue, so that once more it would be unwise to endow it with as much authority as



are without binding authority, but are nonetheless important; not only do they help to rationalize the law but they serve to suggest solutions to problems not yet decided by Courts. Indeed dicta of the House of Lords or of Judges who were masters of their fields, like Lord Blackburn, may often in practice enjoy greater prestige than the rationale of lesser Judges.

41. Referring to *Quinn v. Leathain*¹⁸, *Krishna Kumar v. Union of India*¹⁹, *Commissioner of Income Tax v. Sun Engineering Co. Ltd*²⁰, *Regional Manager v. Pawan Kumar Dubey*²¹ and *Municipal Corporation of Delhi v. Gurnam Kaur*²² it has been held by the Calcutta High Court in *Jaya Sen v. Sujit Kr. Sarkar*²³ —

It is now well-known that a decision is only an authority for what it decides and not what can logically be deduced therefrom. It is also well-known that even a slight distinction in fact or an additional fact may make a lot of difference in decision making process.

42. In *A-One Granites v. State of U.P.*²⁴ it is observed :

The first question which falls for consideration of this Court is as to whether the question regarding applicability of Rule 72 of the Rules in relation to the present lease is concluded by the earlier decision of this Court rendered in *Prem Nath Sharma v. State of U.P.* [(1997) 4 SCC 552 : AIR 1997 SCW 2121 : AIR 1997 SC 2252 : 1997 All L.J. 1201]. From a bare perusal of the said judgment of this Court it would be clear that the question as to whether Rule 72 was applicable or not was never canvassed before this court and the only question which was considered was whether there was violation of the said rule.

This question was considered by the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremth Ltd.* (1941) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents *sub silentio* and without arguments are of no moment.

43. In *Arnit Das v. State of Bihar*²⁵ the Apex Court observed :

A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the *ratio decidendi*. This is the rule of *sub silentio*, in the technical sense when a particular point of law was not consciously determined.

44. A decision, having regard to the aforementioned authoritative pronouncements of the Apex Court must, thus, be read in the context what has been rendered. A decision as is well-known cannot be read as a statute. The ratio must be culled

¹⁸ (1990-1993) AER (Rep. 1)

¹⁹ (1990) 4 SCC 207

²⁰ AIR 1993 SC 43

²¹ AIR 1976 SC 1766



out from a decision upon reading the judgment in its entirety and not in isolation. It is further well settled that a point which has not been considered in a decision shall not be an authority therefore.

95. Reference may also be made to Commissioner of Income-tax v. Smt. Kamla Devi Rathi, (1995) 213 ITR 177.

96. Mr. Khanna has brought to our notice Circular No. 772 dated 23rd December 1998, from a perusal whereof, it appears that there had been a change in the designation from Dy. Director to Joint Director.

The relevant portion of the said circular letter is as follows :-

"5.1 The Fifth Central Pay Commission had recommended a change in the designation of the Assistant Commissioner of Income-tax (Senior Scale). Consequently, it was decided to redesignate Assistant Commissioner of Income Tax (Senior Scale) as Deputy Commissioner of Income-tax and Deputy Director of Income-tax as Joint Commissioner of Income-tax and Joint Director of Income-tax respectively. The above changes in designation made it necessary to amend the various sections of the Income-tax Act so that the statutory powers continue to be exercised by the substituted authorities as a result of redesignation.

5.2 The following substitution of Income-tax authorities has been globally made in the Income-tax Act :-

From	To
Assistant Commissioner	Assistant Commissioner or Deputy Commissioner
Assistant Director	Assistant Director or Deputy Director
Deputy Commissioner	Joint Commissioner
Deputy Director	Joint Director"

97. It would, therefore, be evident that by reason of the said Circular letter also, it has been categorically stated that it would be necessary to amend the various sections of the Income-tax Act.

98. Thus, unless and until an amendment is carried out by



issue authorization to issue warrant. We, therefore, are of the opinion that the Additional Director (Investigation) cannot be said to have any power to issue any authorization or warrant to Joint director, New Delhi. Consequently, notification dated 06.09.1989 is not valid in law to the said extent.

Req. : Question (b) :-

99. 'Reason to believe' consequent upon receipt of information in his possession is *sine qua non* for the Director General or the Director or the Chief Commissioner or the Commissioner, as the case may be, to authorise any Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer, as the case may be, to do the acts specified in clauses (i) to (v), of Section 132(1)(B) of the Act.

100. The question, which would fall for our consideration, is as to whether a satisfaction can be said to have been arrived at by the said authority for conversion of survey into search and seizure, before in the premises of the trust and Dr. Nalini Mahajan.

101. The relevant note dated 29th August 2000 of the concerned authority is as follows:

"A survey operation is on at D-59, Defence Colony, Mother & Child Hospital run by Ramlal Mahajan Charitable Trust. Dr. Nalini Mahajan is the Director of this hospital & Shri Rakesh Mahajan her husband is Managing Trustee. Authorised Officer has reported that there are number of accounts and documents of incriminating nature indicating siphoning of fund from the hospital by Dr. Nalini Mahajan. These documents are required to be seized there for a warrant u/s 132 (1) should be issued in the name of Dr. Nalini Mahajan of Mother & Child Hospital.

The authorised officer at D-59 Defence Colony has further informed about a locker in New Delhi Vaults, D-70 Defence Colony, New Delhi. It is believed that locker contains some incriminating documents and undisclosed assets. Therefore a



“Shri Gulshan Raj, DDIT (Inv.) is in charge of 133A operation and he has reported that the hospital premise contains several incriminating books of accounts and documents which indicate that Dr. Nalini Mahajan is siphoning off huge amount from the hospital for personal use which have not been reflected in her return. A search operation in the premises of Mahajan group is already going on and, therefore, seizure of documents found in the hospital premise and in the room of Dr. Nalini Majajan will be necessary. I agree that action under section 132(1) in respect of Dr. Nalini Mahajan, Mother and Child Hospital, D-59, Defence Colony is necessary.

Shri Gulshan Raj has also reported a locker in the name of Dr. Nalini Mahajan in New Delhi Vaults, Defence Colony and it is possible that the locker may contain incriminating documents and undeclared assets. Therefore, action u/s 132(1) in respect of this locker is also necessary. Two warrants signed.”

102. From a perusal of the minutes dated 29th August 2000, it appears that the authorised officer has further been informed about a locker in New Delhi belonging to Dr. Nalini Mahajan and it was believed that the locker contained some incriminating documents and undisclosed assets.

103. The Additional Director merely agreed with the recommendations. Even the requisitioning officer did not disclose any material whereupon his ‘reason to belief’ was based. Not only no material was disclosed, the Additional Director did not ask for any. There has been no independent application of mind. No reason has been assigned as to why the survey operation would not serve the purpose and the same was required to be converted into a seizure. No reason to believe has been recorded that if the assessee is called upon to produce any document relevant to the proceedings under the Act, the same could not be complied with. Such a finding was required to be arrived at. Nothing has been indicated as to which sub-clause of Section 132 would be attracted in the matter.



found leading to issuance of the authorization for search of the premises of Dr. Nalini Mahajan on the ground that it was found necessary to seize the documents otherwise those would not have been produced and destroyed neither any such apprehension had been disclosed by the authorizing officer to the Additional Director nor such reason to believe have been recorded. Clauses (b) or (c) of sub-section (1) of Section 132 of the Act, could be taken recourse to only if sufficient materials existed therefor.

105. A search or seizure cannot be sustained unless it is clearly shown that it was done by an authority duly authorised therefor and all conditions precedent in relation thereto exist.

106. A search conducted under Section 132 of the Act invades the privacy of a citizen. Thus, formation of the opinion or reason to believe by the authorizing officer must be apparent from the records of the case. The opinion or the belief so recorded should clearly demonstrate that the case falls within any one or more clauses contained in sub-clause (a), (b) and (c) of sub-section (1) of Section 132.

107. In L.R. Gupta & Ors. v. Union of India & Ors., 194 ITR 32, the law is stated in following terms :-

“A search which is conducted under section 132 is a serious invasion into the privacy of a citizen. Section 132(1) has to be strictly construed and the formation of the opinion or reason to believe by the authorizing officer must be apparent from the note recorded by him. The opinion or the belief so recorded must clearly show whether the belief falls under sub-clause (a), (b) or (c) of section 132(1). No search can be ordered except for any of the reasons contained in sub-clause (a), (b) or (c). The satisfaction note should itself show the application of mind and the formation of the opinion by the officer ordering the search. If the reasons which are



108. In Seth Brothers's cae (Supra), the Apex Court has stated the law thus :-

"... The section does not confer any arbitrary authority upon the revenue officers. The Commissioner or the Director of Inspection must have, in consequence of information, reason to believe that the statutory conditions for the exercise of the power to order search exist. He must record reasons for the belief and he must issue an authorization in favour of a designated officer to search the premises and exercise the powers set out therein. The condition for entry into and making search of any building or place is the reason to believe that any books of account or other documents which will be useful for, or relevant to, any proceeding under the Act may be found. If the officer has reason to believe that any books of account or other documents would be useful for, or relevant to, any proceedings under the Act, he is authorised by law to seize those books of account or other documents, and to place marks of identification therein, to make extracts or copies therefrom and also to make a note or an inventory of any articles or other things found in the course of the search. Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorizes it to be exercised. If the action of the officer issuing the authorization or of the designated officer is challenged, the officer concerned must satisfy the court about the regularity of his action."

109. In Ajit Jain v. Union of India & Ors., (2000) 242 ITR 302, it has been observed thus :-

"... *"Information"* in consequence of which the Director General or the Chief Commissioner, etc., as the case may be, has to form his belief is not only to be authentic but capable of giving rise to the inference that a person is in possession of money, etc., which has not been or would not be disclosed for the purpose of the Act. In other words, it must necessarily be linked with the ingredients mentioned in the section. While the sufficiency or otherwise of the information cannot be examined by the court in writ jurisdiction, the existence of information and its relevance to the formation of the belief is open to judicial scrutiny because it is the foundation of the condition precedent for exercise of a serious power of search of a private property or person, and to prevent violation of the privacy of a citizen. The words *"reason to believe"*



opinion has to be in good faith and not a mere pretence. For the purpose of section 132 of the Act, there has to be a rational connection between the information or material and the belief about undisclosed income which has not been and is not likely to be disclosed by the person concerned. A bare intimation by the police or for that matter by any person, without something more, cannot be considered sufficient for action under section 132 of the Act, for it would be giving naked powers to the authorities to order search against any person and is prone to be abused. This cannot be permitted in a society governed by the rule of law."

110. In Vindhya Metal Corporation & Ors. v. Commissioner of Income Tax & Ors., 1985 156 ITR 233, it was observed at p.239 that :-

"It is settled that the existence or otherwise of the condition precedent to exercise of power under these provisions is open to judicial scrutiny. The absence of the condition precedent would naturally have the effect of vitiating the authorization made by the Commissioner in either of the two provisions and the proceedings consequent thereto. While the sufficiency or otherwise of the information cannot be examined by the court, the existence of information and its relevance to the formation of the belief can undoubtedly be gone into. Also, whether on the material available with the Commissioner, any reasonable person could have arrived at the conclusion that a search, seizure or requisition should be authorised is a field open to judicial review."

111. The said decision was affirmed by the apex court in Commissioner of Income-tax v. Vindhya Metal Corporation & Ors., (1997) 224 ITR 614 (618) in following words :-

"... Vinod Kumar Jaiswal, according to the information in the possession of the Commissioner, was not borne on the General Index Register of income-tax assesses of the Income-tax Officer at Mirzapur to which place he belonged. Obviously, therefore, there was no occasion for him to have disclosed the amount as his income in any assessment proceedings under the Act. Without anything more than what was actually there before the Commissioner, how could it have been assumed that he would not have disclosed it for purposes of any proceedings under the Act. There was nothing before the Commissioner to suggest that it was, in



Act. The mere fact that Vinod Kumar Jaiswal was in possession of this amount and did not have any documents with him regarding its ownership or possession could not be treated as appears to have been done by the Commissioner as information relating to a conclusion that it represented income which would not have been disclosed by Vinod Kumar Jaiswal for purposes of the Act. Mere unexplained possession of the amount, without anything more, could hardly be said to constitute information which could be treated as sufficient by a reasonable person, leading to an inference that it was income which would not have been disclosed by the person in possession for purposes of the Acts."

112. In the facts of this case, we are of the opinion that the decision of the apex court in the case of Seth Brothers's case (Supra), the decision of Delhi High Court in Balwant Singh's case (Supra) whereupon Mr. Khanna has placed strong reliance, cannot be said to be of much assistance for determination of the issues herein.

Req. : Question (d) and (e) :-

113. The question, which now falls for consideration, is as to whether the books of accounts and the documents belonging to the petitioner could be retained by the authorised officer/assessing officer. Sub-section (9A) of Section 132 mandates that where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents or assets seized under that sub-section shall be handed over by the authorised officer to the Income-tax Officer having jurisdiction over such person within a period of 15 days and thereupon, the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Income-tax Officer. In the instant case, the petitioner was being assessed at Panipat. Authorizing Officer



114. The submission of Mr. Khanna, however, is that the Madras High Court in K.V. Krishnaswamy Naidu & Co. v. Commissioner of Income-tax & Ors., (1987) 166 ITR 244 has held that the said provision is for the benefit of the Revenue to enable an assessing officer to pass order under Section 132(5) within statutory period but as the said provision is not applicable for searches after 1st July 1995, the object of the said provision has to be examined in the light of new provisions, in terms whereof, the provisions for block assessments have been made.

115. The submission of the learned counsel cannot be accepted for more than one reason. The seized documents are required to be handed over to the Income-tax Officer for certain purpose. The statute provides that the received documents should be returned to the assessee within the time specified therefor. The assessee would require the seized documents for different purposes. They may be liable to produce such documents before other statutory authorities. Book of accounts may be required for carrying on day-to-day business. By reason of the said provision, a duty has been cast upon the authorities concerned. The said provisions involve public interest. The court, in the absence of any express provision, cannot read any words in the statute to the effect that the same was enacted only for the benefit of the Revenue.

116. The question whether a provision shall be construed to be mandatory or directory, depends upon the scope and purport thereof. The expression "shall" has been used. Prima facie the said provision is mandatory in nature. The statutory provision uses a negative form, which also provides an indication that the provision is mandatory. By reason of such a provision, the authorities cannot be held to have been



accounts etc. An assessee is required in law to maintain its books of accounts for various purposes. Such books of accounts may be required for several other purposes. A statute must be construed having regard to the doctrine of 'justness'.

117. In Hindalco Industries Ltd. vs. Union of India & Ors. (2002 (2) SCC 578) it has been held that the word 'may' in the context of Sec. 25-O of the Industrial Disputes Act should be read as imperative. Furthermore, even a directory provision has to be substantially complied with.

118. The respondents, in the instant case, have not pleaded even substantial compliance of the said provision. Sub-section (9A) of Section 132 has been enacted for achieving a specific object, i.e., for making the assessment complete. It was, therefore, obligatory on the part of the authorities to comply with the said provision, if not within 15 days, within reasonable time thereafter.

119. In Commissioner of Income Tax, West Bengal III & Ors. v. Oriental Rubber Works, (1984) 145 ITR 477, it has been held :-

"On a plain reading of the aforesaid provisions it will be clear that ordinarily the books of account or other documents that may be seized under an authorization issued under sub-s. (1) of s. 132 can be retained by the authorised officer or the concerned ITO for a period of one hundred and eighty days from the date of seizure, whereafter the person from whom such books or documents have been seized or the person to whom such books or documents belong becomes entitled to the return of the same unless the reasons for any extended retention are recorded in writing by the authorised officer / the concerned ITO and approval of the Commissioner for such retention is obtained. In other words, two conditions must be fulfilled before such extended retention becomes permissible in law : (a) reasons in writing must be recorded by the authorised officer or the concerned ITO seeking the Commissioner's approval, and (b) obtaining of the Commissioner's approval for such extended



belong) acquires a right to the return of the same forthwith. It is true that sub-s. (8) does not in terms provide that the Commissioner's approval or the recorded reasons on which it might be based should be communicated to the concerned person but in our view since the person concerned is bound to be materially prejudiced in the enforcement of his right to have such books and documents returned to him by being kept ignorant about the factum of fulfillment of either of the conditions, it is obligatory upon the Revenue to communicate the Commissioner's approval as also the recorded reasons to the person concerned. In the absence of such communication the Commissioner's decision according his approval will not become effective.

Moreover, sub-s. (10) confers upon the person legally entitled to the return of the seized books and documents a right to object to the approval given by the Commissioner under sub-s. (8) by making an application to the Central Board stating therein the reasons for such objection and under sub-s. (12) it is provided that the Central Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit. It is obvious that without the knowledge of the factum of the Commissioner's approval as also of the recorded reasons on the basis of which such approval has been obtained it will not be possible for the person to whom the seized books or documents belong to make any effective objection to the approval before the Board and get back his books or documents. In our view the scheme of sub-ss. (8), (10) and (12) of s. 132 makes it amply clear that there is a statutory obligation on the Revenue to communicate to the person concerned not merely the Commissioner's approval but the recorded reasons on which the same has been obtained and that such communication must be made as expeditiously as possible after the passing of the order of approval by the Commissioner and in default of such expeditious communication may further retention of the seized books or documents would become invalid and unlawful. It is obvious that such obligation arises in regard to every approval of the Commissioner that might have been accorded from time to time."

120. In Commissioner of Income Tax & Ors. v. K.V. Krishnaswamy

Naidu & Co., (2001) 249 ITR 794, it has been held :-

"Having heard counsel for the parties and in view of the provisions of sub-section (9A) of section 132 of the Income-tax Act, 1961, we are in agreement with the judgment of the High Court (reported as (1987) 166 ITR 244) that the Assistant Director of Inspection, who was the authorised officer for the purposes of carrying out search and seizure but was not the Income-tax Officer who could pass an order under sub-section (5) of section 132 could not retain the seized documents etc. beyond 15 day



121. In Thanthi Trust v. Commissioner of Income Tax & Ors., (1981)

167 ITR 397, this court has observed :-

“It is clear from this judgment that the Supreme Court has spelt out the conditions which must be fulfilled before the extended retention of books or documents seized in a search conducted under section 132 of the Act becomes permissible in law. One of the conditions precedent mentioned in the aforesaid decision is that the reasons in writing recorded by the authorised officer or the Income-tax Officer concerned seeking the Commissioner’s approval must be communicated to the assessee from whom the books or documents have been seized. Admittedly, the reasons were not communicated and the petitioner had to go in appeal.

In view of the aforesaid decision, the further retention of the seized documents and the books of account thus becomes illegal and unauthorized.”


122. Yet again in Survir Enterprises v. Commissioner of Income Tax, Central Range-I, New Delhi & Ors., (1986) 157 ITR 206, it has been

held :-


“It is indeed unfortunate that we have to reach this conclusion in a case in which these books have been retained by the Department for taking some action which was stated to be pending before various authorities. Learned counsel for the respondent stated that even if we order the return of the books, we should give directions to the petitioner to keep them intact and direct that they may be produced before the Department as and when required. We find ourselves unable to give such a direction. Once the bar set out in section 132(8) operates, the Department has got to return the books of account and other seized documents to the person concerned.

123. Furthermore, the said provision has to be read in conjunction with Section 132(8) of the Act.


124. In terms of sub-section (8) of Section 132, in order to retain the seized documents for a period exceeding 180 days, the authorised



provision also goes to show that unless reasons are recorded, retention beyond the said period would be a nullity.



125. Another aspect of the matter may not also be lost sight of. The hospital premises belonged to the trust. It did not belong to Dr. Nalini Mahajan. Authorization to conduct survey was issued against Dr. Nalini Mahajan and not against this Trust. The Trust being itself an assessee and juristic person, the authorization ought to have been issued in respect of the Trust. We, therefore, are of the opinion that the search and seizure operation in the premises of the hospital and the residence of Dr. Nalini Mahajan were illegal.



126. So far as the submission of the learned counsel appearing for the petitioner that M/s. Pan Foods Ltd. has gone to BIFR is not a question, the effect of which would fall for consideration before this Court. The petitioners herein, in the proceedings, which have been initiated against them by the assessing officer may raise all contentions. Such contentions may also be raised before any other appropriate forum, if available in law.

127. In view of our foregoing discussions, we are of the opinion that whereas the search and seizure conducted in the premises of Dr. Nalini Mahajan and Ram Lal Mahajan Charitable Trust cannot be sustained, those made in the premises of Mr. Rakesh Mahajan, M/s. Pan Foods Ltd. and M/s. Mahajan Industries Pvt. Ltd. are good in law.

128. For the reasons aforementioned, the writ petitions filed by Mr. Rakesh Mahajan, M/s. Pan Foods Ltd. and M/s. Mahajan Industries Pvt. Ltd. are dismissed with the observations made hereinbefore



2001) and Ram Lal Mahajan Charitable Trust (C.W.P. No. 2767 of 2001),
are allowed. These writ petitions are disposed of accordingly, but the
parties shall pay and bear their own costs.

Deliv. order
CHIEF JUSTICE

May 14, 2002
am

A.K. Sikri
A.K. SIKRI, J.

← CM-5975/02



Sr. No.	Date	Orders
		<p>28.05.2002</p> <p>Present: Mr.R.R.Dwivedi for petitioner. Mr.Sanjiv Khanna with Ms.Prem Lata Bansal for the respondent.</p> <p><u>CM No.5975/2002 in CWP No.2999/2001</u></p> <p>This application is preferred by the petitioner seeking correction of the inadvertent mistakes in the common judgment and order dated 8th May, 2002 passed by this court in this writ petition as well as other connected writ petitions.</p> <p>In the first instance para 24 of the judgment was pointed, which reads as under:-</p> <p>"24. On or about 14.02.2001, respondent No.1, i.e. CIT, Rohtak transferred the case of the petitioner company from Rohtak to Central Circle -20, New Delhi, w.e.f. 22.02.2001. Thereafter, assessments for the assessment years 1995-96 to 1999-2000 were completed accordingly."</p> <p>It was submitted that respondent No.1 is not CIT, Rohtak. Hence, the words respondent no.1 be deleted from the afore-mentioned paragnaph. It was also pointed out that 'assessments for the assessment years 1995-96 and 1999-2000 were completed accordingly' is not correct. Learned counsel for the respondent also agrees that the aforesaid errors have crept in para 24 of the judgment. After perusing the case, necessary corrections are hereby made in para 24 of the judgment, which shall read as under:-</p> <p>"24. On or about 14.02.2001, CIT, Rohtak transferred the case of the petitioner company from Rohtak to Central Circle -20, New Delhi, w.e.f. 22.02.2001. By that time, assessments for the assessment years 1995-96 to 1999-2000 had already</p>



Sr. No.	Date	Orders
		<p style="text-align: right;">6</p> <p style="text-align: center;">-2-</p> <p>been completed."</p> <p>In the second place it was pointed out that in para 27 of the judgment also some mistakes have occurred inasmuch as authorisation for search and seizure were issued by respondent No.2-Additional Director, Income Tax (Investigation) and it is not at all mentioned in this para as to who issued this authorisation. It is for this reason that the applicant wants that para 27 be modified to include that authorisation was issued by Additional Director of Income Tax (Investigation). Since this is not a case of any correction of error, the same cannot be incorporated in the judgment.</p> <p>In the third place, it was pointed out that the first sentence of para 74 wherein it is stated that "These writ petitions have been filed after the reasons for passing of an order under Section 132 (9) (A) of the Act had been communicated." is not correct as no order was passed under this Section. Learned counsel for the respondent also agrees with this. The above sentence from para 74 of the judgment is accordingly deleted.</p> <p>Lastly it was contended that in para 116 of the judgment the expression "the authorities cannot be held to have been conferred with an unlimited power of releasing the seized book of accounts etc." does not appear to be correct and it appears that a typing mistake has occurred. According to the learned counsel</p>



Sr. No.	Date	Orders
		<p data-bbox="927 253 986 282" style="text-align: center;">-3-</p> <p data-bbox="427 383 1492 618">instead of the word "releasing" the word should have been 'retaining'. The learned counsel for the respondent agrees. This correction is therefore incorporated.</p> <p data-bbox="600 651 943 680" style="text-align: center;">CM is disposed of.</p> <p data-bbox="1114 819 1369 848" style="text-align: right;"><i>[Signature]</i> CHIEF JUSTICE</p> <p data-bbox="1098 949 1337 978" style="text-align: right;"><i>[Signature]</i> A.K. SIKRI, J.</p> <p data-bbox="427 949 679 1010">May 28, 2002 pd</p>