Karnataka High Court Commissioner Of Income-Tax vs P.R. Metrani on 9 July, 2001 Equivalent citations: (2001) 169 CTR Kar 149, 2001 251 ITR 244 KAR, 2001 251 ITR 244 Karn, 2002 120 TAXMAN 612 Kar Author: R Gururajan Bench: M Saldanha, R Gururajan JUDGMENT R. Gururajan, J. 1. These references are at the instance of the Revenue as well as at the instance of the assessee. The facts and law involved in all these references are interrelated and hence we have heard all the three references together. A common order is passed in this order disposing of all these three references. The two references at the instance of the Revenue are I. T. R. C. Nos. 39 and 40 of 1996. Facts in I. T. R, C. No. 39 of 1996 : 2. This reference relates to the assessment in the case of P. R. Metrani, a Hindu undivided family (for short "the HUF") for the assessment year 1981-82. The assessment was initially concluded on September 17, 1984, in terms of Section 143(3) read with Section 144B of the Income-tax Act, 1961 (for short "the Act). The controversy relates to an income assessed for a sum of Rs. 19,95,117. A search was conducted by the Department in the residential premises of Metrani, viz., Ranganatha Nilaya, and during the search, documents were seized and based on the search documents two items were added, viz., Rs. 7,26,810 and Rs. 12,68,307, totalling to Rs. 19,95,117 as earned in business for the assessment year 1981-82. The assessing authority in the order dated September 17, 1984, referred to these additions by relying on PRMs 1 and 13. PRM 1 refers to a net profit of Rs. 7,26,810 from Bombay and Parel transactions and PRM 13 is based on other income, totalling Rs. 12,68,307 (Rs. 8,05,000 + Rs. 4,63,507). The assessing authority ordered a total income to the extent of Rs. 20,32,814 including Rs. 19,95,117. The Commissioner of Income-tax in terms of the power conferred on him under Section 263 of the Act interfered with the order dated September 17, 1984. He directed the assessing authority to pass a fresh order after giving an opportunity in the light of the documents seized in terms of the search and seizure carried out by the Department. Pursuant to the direction, the assessing authority issued a notice under the Act to Mr. P. R. Metrani, the karta of the Hindu undivided family in addition to issuing summons to the parties. The statements were recorded. An order dated June 30, 1987, under Section 143(3) of the Act was passed holding that in terms of the presumption granted to the Department under Section 132(4A) it was ordered that Rs. 4,30,131 (PRM 14) and Rs. 3,08,504 is assessable as unexplained expenditure. He revised the total income in his order dated June 30, 1987. Aggrieved by the order dated September 17, 1984, as initially concluded under Section 143(3) of the Act the assessee preferred an appeal before the Commissioner of Income-tax (Appeals) in Appeal No. I. T. A. 123/CC of 1984-85. The assessing authority has included a sum of Rs. 19,95,117 based on PRM 1 and 13. The assessee contested these additions as well. The assessee also preferred another appeal being Appeal No. I. T. A. 34/CC of 1987-88, with regard to the addition of Rs. 3,08,504 in terms of the order dated June 30, 1987, passed by the Assessing Officer for the assessment year 1981-82. The Commissioner finalised the appeal I. T. A. No. 123/CC of 1984-85, by his order dated September 12, 1988. The Commissioner also disposed of the other Appeal No. I. T. A. 34/CC of 1987-88, vide his order dated September 19, 1988. The Commissioner upheld

the addition of Rs. 19,95,117 in his order dated September 12, 1988. Further, he upheld the addition of Rs. 3,08,504 in his order dated September 19, 1988. 3. The assessee preferred an appeal before the Income-tax Appellate Tribunal (for short"the Tribunal"). 4. The Commissioner also passed an order dated October 29, 1986, in exercise of his revisional power under Section 263 in relation to the assessment year 1981-82 towards the expenditure in terms of PRM 14. The assessee preferred an appeal before the Tribunal against this order in I. T. A. No. 1285/Bang of 1986. The Tribunal dismissed this appeal vide its order dated October 18, 1993. The appeal in Appeal No. I. T. A. 41/Bang of 1989, was preferred by the assessee with regard to additions of Rs. 19,95,117 based on PRM Nos. 1 and 13. The Tribunal allowed the appeal in I. T. A. No. 41/ Bang of 1989, and ordered deletion of the additions based on PRM 1 and 13. The Department/Revenue has preferred this reference I. T. R. C. No. 39 of 1996, relating to the order of the Tribunal for the assessment year 1981-82. 5. The following questions of law are referred to us by the Tribunal :"(1) Whether the Income-tax Appellate Tribunal was correct in law in holding that the presumption under Sub-section (4A) of Section 132 of the Income-tax Act, 1961, is only for the limited purpose of passing an order under Sub-section (5) of the said section ? (2) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that the documents seized from the residential premises of the assessee-Hindu undivided family were not of the said Hindu undivided family and the entries therein did not pertain to it, particularly when the Income-tax Appellate Tribunal itself has accepted that the entries in the said documents culminating in the addition of Rs. 2,62,100 in the assessment for the assessment year 1982-83 pertained to the assessee-Hindu undivided family and upheld the said addition ?" Facts in I. T. R. C. No. 40 of 1996 : 6. I. T. R. C. No. 40 of 1996 is again at the instance of the Revenue in respect of the assessment in the case of P. R. Metrani, a Hindu undivided family (for short "the HUF") for the assessment year 1982-83. The assessment relating to the year 1982-83 was completed on February 25, 1986, by the assessing authority under Section 143(3) read with Section 144A of the Income-tax Act, 1961 (for short "the Act"). The total income computed by the assessing authority is Rs. 56,56,080 only. The disputed additions are again based on the search and seizure at the residential premises (Ranga-natha Nilaya). The disputed additions relating to the assessment year 1982-83 are as under : Additions made Based upon exhibit (i) Rs. 28,67,920 PRM 1 pages 20 and 21 and page 2 of PRM 7 (ii) Rs. 6,66,690 PRM 13 page 2 (iii) Rs. 9,43,649 PRM 13 page 4 (iv) Rs. 2,62,100 PRM 14 investment in Durgabail building (v) Rs. 8,33,526 PRM 14 (unexplained expenditure) 7. The assessing authorities added these additions on the basis of exhibits referred to above by an order dated February 25, 1986. An appeal was filed before the Income-tax Commissioner (Appeals) in Appeal No. I. T. A. 3/CC of 1986-87 against the assessment order dated February 25, 1986. The Commissioner by his order dated September 19, 1988, upheld the additions made by the assessing authority. The assessee preferred an appeal against the said appellate order for the assessment year 1982-83 before the Income-tax Appellate Tribunal (for

short “the Tribunal”) in Appeal No. I. T. A. 42/Bang of 1989. The Tribunal deleted all these additions relating to the assessment year 1982-83 by its order dated October 18, 1993, except a sum of Rs. 2,62,100 relating to investment in Durgabail building. This reference is preferred by the Revenue aggrieved by the deletion of additions by the Tribunal for the assessment year 1982-83. 8. The following questions are referred to us by the Tribunal : “(1) Whether the Income-tax Appellate Tribunal was correct in law in holding that the presumption under Sub-section (4A) of Section 132 of the Income-tax Act, 1961, is only for the limited purpose of passing an order under Sub-section (5) of the said section ? (2) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that the documents seized from the residential premises of the assessee-Hindu undivided family were not of the said Hindu undivided family and the entries therein did not pertain to it, particularly when the Income-tax Appellate Tribunal itself has accepted that the entries in addition of Rs. 2,02,100 in the assessment for the assessment year 1982-83 pertained to the assessee-Hindu undivided family and upheld the said addition ?” Facts in I. T. R. C. No. 38 of 1996 : 9. I. T. R. C. No. 38 of 1996, is a reference at the instance of the assessee for the assessment year 1982-83 with regard to the assessment in the case of P. R. Metrani, a Hindu undivided family (for short “the HUF”). The assessment for the year 1982-83 was completed on February 25, 1986, by the authorities under Section 143(3) read with Section 144A of the Income-tax Act. The assessing authority added the amounts based on exhibits seized during the course of search of the premises of the assessee. One such addition related to investment in Durgabail building in Hubli amounting to Rs. 2,62,100. The assessee preferred an appeal before the Commissioner of Income-tax in Appeal No. I. T. A. 3/CC of 1986-87. The assessee challenged the additions made by the assessing authority. The Commissioner (Appeals) vide order dated September 19, 1988, upheld the additions made by the assessing authority. The assessee preferred an appeal against the order in Appeal No. I. T. A. 42/Bang of 1989, for the assessment year 1982-83 before the Income-tax Appellate Tribunal (for short “the Tribunal”). The Tribunal by its order dated October 18, 1993, deleted the additions relating to the assessment year 1982-83 except the addition of Rs. 2,62,100 in regard to Durgabail building property. The Tribunal sustained the said additions based on Ex. PRM 14. Aggrieved by the same the assessee has preferred this reference in I. T. R. C. No. 38 of 1996, relating to the said order of the Tribunal in so far as the same relating to addition of Rs. 2,62,100 for the assessment year 1982-83. 10. The following questions are referred by the Tribunal : “(1) Whether, on the facts, the Tribunal was justified in holding that the applicant Hindu undivided family was liable to be taxed in respect of Rs. 2,62,100 being alleged unexplained investment in the property invoking the provisions of Section 69 of the Act ? (2) On the facts whether the Tribunal was justified in holding that the part of the entries in the seized documents could be attributed to the applicant Hindu undivided family when the applicant had denied the knowledge or ownership of the document ?” 11. All these cases were heard together by us. Elaborate arguments were addressed by Sri E.R. Indrakumar, learned senior standing counsel appearing

for the Revenue, and Sri G. Sarangan, learned senior counsel appearing for the assessee. Several judgments were pressed into service in respect of the contentions on either side. 12. Mr. E. R. Indra Kumar, learned counsel appearing for the Revenue, vehemently contends before us that the Tribunal in the case on hand is factually and legally wrong in rejecting the case of the authority. According to counsel in terms of the provisions of the Act, a search was validly conducted and incriminating material was obtained during the search. Based on this material the assessment was redone in consonance with the documents obtained during the course of seizure. Counsel contends that the very object of the seizure is to see that the unaccounted income of an individual is properly assessed. When the said order was challenged before the Commissioner (Appeals), he after hearing the parties and after meticulously analyzing the material including the documents and evidence came to the conclusion that the assessee is liable for additional tax in terms of his order. When this order was challenged before the Tribunal, according to counsel, the Tribunal has allowed the appeal of the assessee by holding that Section 132(4A) is applicable only for the purpose of passing an order under Section 132(5). Counsel contends that the limited jurisdiction granted to Section 132(4A) is legally unsustainable. It is also contended that the very Tribunal has accepted the case of the Revenue in regard to Durgabail building on the basis of the very material. Counsel concluded by saying that the matter has to be answered in favour of the Revenue. He relies on an unreported judgment of this court in Writ Petitions Nos. 14083-86 of 1985 and Collector of Customs v. D. Bhoormull, and Prem Dass v. ITO . 13. Per contra Sri Sarangan, learned senior counsel appearing for the assessee, with equal vehemence contended that the Tribunal is right in restricting the scope of Section 132(4A). According to counsel, the presumption available to Section 132(4A) has rightly been restricted to Section 132(5) and it cannot be extended further. He further argued that the material has not been personally possessed by the assessee and therefore even on legal presumption the assessee, viz., the Hindu undivided family, is not answerable for this claim. Counsel states that there should be a positive act on the part of the assessee warranting any proceedings under the Act. Counsel elaborates by contending that even assuming that such material could be made use of in terms of the presumption available under Section 132(4A), even then in the absence of any acceptable material the assessee cannot be held to ransom by the Department. He relies on the following judgments : (1) D. D. Kapoor v. CIT [1955] 27 ITR 348 (Patna). (2) Mangilal Rungta v. CIT [1955] 28 ITR 167 (Patna). (3) Jainarayan Balabakas of Khamgaon v. CIT [1957] 31 ITR 271 (Nag). (4) Chandmull Rajgarhia v. CIT [1967] 66 ITR 347 (Patna). (5) Seth Chunilal Parsram v. CIT [1968] 70 ITR 288 (Mys). (6) Anil Kumar Roy Chowdhury v. CIT . (7) Satinder Kumar (HUF) v. CIT . (8) Sir Shadilal Sugar and General Mills Ltd. v. CIT [1987] 108 ITR 705 (SC). (9) Pushkar Narain Sarraf v. CIT . (10) Chuharmal v. CIT . (11) Kilasho Devi Burman v. CIT . (12) Thiru Arooran Sugars Ltd. v. CIT . (13) K. Ravindranathan Nair v. CIT [2001] 247 ITR 178 (SC). (14) Collector of Customs v. D. Bhoormull, . (15) Ramesh Srinivnsa Jannu v. Srinivas Vittoba Jannu (Decd. by Lrs.) [2001] ILR 51 Kar 1215. 14. The admitted facts are

that the assessee is a Hindu undivided family and the karta is P. R. Metrani. They are brothers and they are divided. He even after division stayed in the same house. P. R. Metrani, HUF(S) is a partner in R. N. Metrani and Sons. A commercial building is constructed in Durgabail building admittedly belonging to P. R. Metrani HUF(S). Further, admitted facts are a search was made in Ranganatha Nilaya on June 30, 1982, and July 1, 1982, and the Department obtained incriminating material marked as PRM 1, PRM 7, PRM 13 and PRM 14. Based on this material for the assessment year 1981-82 an addition of Rs. 7,26,810 and a sum of Rs. 12,68,307 was added by the assessing authority. Rs. 7,26,810 is based on PRM 1. A sum of Rs. 12,68,307 is based on PRM 13. For the assessment year 1982-83, five additions were made based on PRM 1, 7, 13 and 14. A sum of Rs. 28,67,920 as per PRM 1 and 7 and Rs. 6,66,690 as per PRM 13 and Rs. 9,43,649 as per PRM 13, Rs. 2,62,100 and Rs. 8,33,525 as per PRM 14 were added. The Appellate Commissioner accepted these amounts based on the presumption in terms of Section 132(4A) and the evidence available on record, but the Tribunal has rejected all the additions except the addition of Rs. 2,62,100 in its order. 15. Broadly the questions framed in these cases are with regard to the presumptive value attached to Section 132(4A) of the Act. To appreciate the contention we would like to quote Section 132(4A) of the Act : "Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person ; (ii) that the contents of such books of account and other documents are true ; and (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested." 16. Section 132 provides for search and seizure. Sub-section (1) provides for issue of summons by the Director-General or the Director or the Chief Commissioner to enter and search any building etc. etc., 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, seize any books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search ; place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom ; make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing. Sub-section (2) provides for requisition of services of any police officer or of any officer of the Central Government or of both, for the purpose of search and seizure. Sub-section (3) provides for an order being issued in the event of an impracticability of seizure of all documents with a direction not to remove, part with or otherwise deal with it except with the previous permission of such officer. Sub-section (4) provides for a recording of

statement for the purpose of using the same in any evidence in any proceeding under the Act. The Explanation makes it further clear that the examination of any person under this sub-section is not merely in respect of books of account, but also in respect of matters relevant for the purpose of any investigation connected with any proceeding. Sub-section (4A) with which we are concerned in the case on hand provides for presumption with regard to accounts, documents, money, bullion, jewellery, etc., if found in the control and possession of any person. It also provides for a legal presumption with regard to the truthfulness of documents, books of account and the signature, etc. Sub-section (5) provides for an order being passed under the Act. 17. In the case on hand admittedly a search and seizure has taken place in terms of the said provision. Both the Assessing Officer and the appellate authority relied on these documents seized during the search and came to a positive conclusion with regard to the veracity of the documents and signature part of the documents in their order. The Tribunal, however, holds that the presumptive value of Section 132(4A) is applicable only for the purpose of an order under Section 132(5) of the Act. The Tribunal holds that looking to the scheme it appears that the presumption of Subsection (4A) is only for the limited purpose of passing an order under Subsection (5). According to the Tribunal the assessing authority was wrong in drawing an inference under Section 132(4A) in the proceedings. In that view of the matter, the Tribunal rejected the case of the Department. This finding in our view is not correct. The entire object of this Chapter is to levy tax with regard to an undisclosed income of an assessee. Search and seizure is one accepted method adopted by the Revenue authority with regard to digging out undisclosed income of an assessee. If the intention of the Legislature is only to give a limited presumption, under Section 132(4A) they would have said so in so many words. Even otherwise a reading of the entire Chapter would show that it was never the intention of the Legislature to restrict the presumption only to an order under Section 132(5) of the Act. In fact as we mentioned earlier, Sub-section (1) provides for entering, searching, breaking open, seizing, placing marks on the documents and Sub-section (2) provides for police help and Subsection (3) provides for retention by the owner subject to an order. Sub-section (4) which is a crucial provision categorically states that any books, documents, money, bullion, jewellery or any statement made by an assessee in the course of search or seizure can be made use of as evidence in any proceeding under the Income-tax Act. If Sub-section (4A) is read with Subsection (4) it is clear to us that there cannot be any restriction with regard to the presumptive value that can be attached to Section 132(4A) of the Act. Section 132(5) only provides for an order being made in the case on hand. That, by itself, does not take away the presumptive value attached to Section 132(4A) for other proceedings as held by the Tribunal. In fact Section 132(5) provides for an order being passed as a result of search initiated or requisition made before July 1, 1995. Even after this date the section is still available in the statute. Therefore, an inference can safely be drawn in the light of Sub-sections (4) and (5) of Section 132 itself that no limited presumption can be attached to Section 132(4A). At the same time we must also point out that the presumptive value is total in so far as Section

132(5) is concerned, but in so far as other proceeding's are concerned it is only a rebuttable presumption. Therefore, the finding of the Tribunal in this regard in our view requires our interference. 18. Mr. Indrakumar relies on a decision of the Supreme Court in the case of Collector of Customs v. D. Bhoormal, . There the court was considering with regard to Section 167(8) of the Customs Act. While considering the various provisions of the Act, the Supreme Court holds that in terms of Section 106 of the Evidence Act the Department is deemed to have discharged its burden if it adduces only so much evidence, circumstantial and direct as is sufficient to raise a presumption in its favour with regard to existence of the facts sought to be proved. The Supreme Court in the said case rules as under (page 867) : "43. If we may say so with great respect, it is not proper to read into the above observations more than what the context and the peculiar facts of that case demanded. While it is true that in criminal trials to which the Evidence Act, in terms, applies, this section is not intended to relieve the prosecution of the initial burden which lies on it to prove the positive facts of its own case, it can be said by way of generalisation that the effect of the material facts being exclusively or especially within the knowledge of the accused, is, that it may, proportionately with the gravity or the relative triviality of the issues at stake, in some special type of cases, lighten the burden of proof resting on the prosecution. For instance, once it is shown that the accused was travelling without a ticket, a prima facie case against him is proved. If he once had such a ticket and lost it, it will be for him to prove this fact within his special knowledge. Similarly, if a person is proved to be in recent possession of stolen goods, the prosecution will be deemed to have established the charge that he was either the thief or had received those stolen goods knowing them to be stolen. If his possession was innocent and lacked the requisite incriminating knowledge, then it will be for him to explain or establish those facts within his peculiar knowledge, failing which the prosecution will be entitled to take advantage of the presumption of fact arising against him, in discharging its burden of proof. 44. These fundamental principles, shorn of technicalities, as we have discussed earlier, apply only in a broad and pragmatic way to proceedings under Section 167(8) of the Act. The broad effect of the application of the basic principle underlying Section 106 of the Evidence Act, to cases under Section 167(8) of the Act, is that the Department would be deemed to have discharged its burden if it adduces only so much evidence, circumstantial or direct, as is sufficient to raise a presumption in its favour with regard to the existence of the facts sought to be proved. Amba Lal's case, AIR 1961 SC 264, was a case of no evidence. The only circumstantial evidence, viz., the conduct of Amba Lal in making conflicting statements, could not be taken into account because he was never given an opportunity to explain the alleged discrepancies. The status of Amba Lal, viz., that he was an immigrant from Pakistan and had come to India in 1947–before the Customs barrier was raised–bringing along with him the goods in question, had greatly strengthened the initial presumption of innocence in his favour. Amba Lal's case, AIR 1961 SC 264, thus stands on its own facts." Therefore, it is clear to us that the presumptive value to the documents is available in respect of an order to be passed under the Act including an order

under Section 132(5) of the Act. Therefore, a reading of the provision with regard to the seized documents clearly indicates that its presumptive value cannot by any stretch of imagination be restricted only to Section 132(5) as held by the Tribunal. It is a "non-rebuttable presumption" under section 132(5) of the Act and in other cases it is a "rebuttable presumption". 19. Mr. G. Sarangan, further has placed before us a judgment of the Allahabad High Court in the case of Pushkar Narain Sarraf v. CIT . With respect we are unable to subscribe to the view of the decision of the Allahabad High Court. We have carefully gone through the said judgment. We find in the said case that no reasons are forthcoming as to why the said presumption is to be restricted to Section 132(5) only. In fact that judgment on the other hand states that Section 68 cannot said to have been excluded for regular assessments, 20. We must also take notice of the latest judgment of the Supreme Court in Prem Dass v. ITO . That is a case of prosecution initiated against an assessee. The apex court noticed the application of Section 132(4A) with regard to criminal proceedings. The court ruled that the presumption in terms of Section 132(4A) is not available in view of the language used in Sections 276C and 277 of the Act to those proceedings. The court noticed that the wilful attempt to evade any tax under Section 276C is a positive act. The court ruled that in such circumstances mens rea is required to be established by the prosecution. Therefore, the court ruled that the same is not available in a matter arising under Sections 276C and 277 of the Act. The said judgment is distinguishable on facts. Therefore. we answer the first question in favour of the Revenue and against the assessee. 21. The second question is with regard to the applicability of PRM 1, 7, 13 and 14 to the facts of this case. Admittedly, all these PRMs have been recovered from the residence of the assessee. The same is not disputed. The said documents also mention various facts and figures. The assessing authority has passed an order on September 17, 1984, and came to a conclusion of a total income as Rs. 20,32,814 based on those documents. The said order of assessment was set aside under Section 263 for considering the expenditure of Rs. 4,30,131 mentioned in PRM 14. After remand the Assessing Officer has taken up the case for rehearing once again and issued summons to the parties. The parties attended on June 24, 1987, and the respondent was shown the seized documents PRM 14. The following questions were answered by the assessee as under : "Can you tell me the names of your family members, namely, coparceners as on June 30, 1982 ? Answer : Sri P. R. Metrani, (2) M. P. Metrani, (3) N. P. Metrani, (4) D. P. Metrani and (5) late B P. Metrani. Question : I am showing you the various pages of PRM 14 where the initials of the members of your family is put against various amounts. Do you still deny that the diary PRM 14 does not reflect transactions of your family ? Answer : I do not know what the initials, NPM, MPM, PRM, DPM stand for. Question : Can you tell me the name of your sister's husband ? Answer : Ramachandra Jeevansa Bakale. Question : In the Appolo Diary (PRM 14) I am showing you a page with the heading 'Ithara Karchu Madida Babathu', i.e., other expenses incurred. The initial 'RJB' is mentioned against certain amounts. In the same page initials NPM, MPM, PRM are also mentioned. Do you deny that RJB, does not stand for your brother in law's name

? Answer : I do not know what is RJB, NPM, MPM, PRM stand for. Many persons in Hubli with similar initials. It does not show the specific complete name. Question : I am showing you document PRM 13 consisting of nine (9) sheets of paper seized from your premises in PRM 14. In page 2 an amount of Rs. 5,000 is mentioned against the name Nagendrasa. Do you deny that it is not the name of your son N. P. Metrani ? Answer : My son's name is Nagendrasa Parusharamasa Metrani but I cannot say that a mention made in the document as Nagendrasa is my son's name." 22. With regard to the property in Durgabail he answered the questions in the following manner. Question : Do you have a building at Durgabail, Hubli, under construction ? Answer : I have got one building at Durgabail under construction. Question : I am showing you a page in the document PRM 14 under the head (Durgabail) where expenditure on steel and cement and amounts against initials RJB, PRM, MPM, DPM are shown. Do you deny that these do not represent the expenditure incurred in respect of the building under construction at Durgabail, Hubli ? Answer : I do not know." 23. In the light of these answers and the presumptive value available to the records the Assessing Officer has passed an order against the assessee. An appeal has been filed in Appeal No. 123/CC of 1984-85. We see from the proceedings that an advocate, represented the assessee along with the karta of the Hindu undivided family. The statements on oath have also been recorded in respect of the members of the Hindu undivided family by the Commissioner. The seized documents PRM 1 with red plastic cover was seized from the residence of karta. PRM 13 is again a document seized from the premises in which several transactions were noticed in green ink. The Commissioner notices that no acceptable explanation was given by the assessee as to why he was regularly noting the business details in cigarette packets and keeping them in safe custody. He also notices the statements made by the witnesses. All of them expressed their ignorance in the matter. The Commissioner specifically asked the members with regard to these documents, and they have stated that they have no other evidence or supporting document to show that these documents belong to them or to the Hindu undivided family of P. R. Metrani. They have no evidence to show to whom these documents belong. The Commissioner has obtained the written comments on the above statement from the Income-tax Officer. After noticing the impact of Section 132(4A) and in the absence of any rebuttal evidence forthcoming from the Hindu undivided family, he has drawn an inference against the assessee. Even before us counsel is unable to explain as to how these documents came into existence and were found in the residence belonging to the assessee. Only ignorance is pleaded. Documents admittedly are seized and in them the name of some of the members of the Hindu undivided family are found. Therefore, the Commissioner in our view is right in drawing an adverse inference against the assessee. As mentioned earlier these presumptions are rebuttable in character. Though the same was made known they have not chosen to give any possible explanation with regard to these documents. 24. When this matter was taken in appeal to the Appellate Commissioner, he has passed two orders in I.T. Appeal No. 123 and I.T. Appeal No. 34. I.T. Appeal No. 123 is with regard to the assessment of income at Rs. 20,32,814 I.

T. Appeal No. 34 is with regard to income assessed at Rs. 23,41,314. Again in this order he has noticed that PRM 14 proves factum of expenditure on Durgabail building for the relevant year. 25. Similarly, the Appellate Commissioner considered in ITA No. 1/CCA of 1986-87 that the Transactions found in PRM 14 belong to the appellant-Hindu undivided family. 26. When the matter went to the Tribunal, the Tribunal as mentioned earlier rejected the case for want of presumption under Section 132(4A) in the impugned order. Having noticed the same, the Tribunal in several places has ruled that the final position with regard to profit itself is a basic question for which no answer can be found. According to the Tribunal the question arises whether this profit is that of P. R. Metrani, Hindu undivided family(s) or P. R. Metrani, individual. The Tribunal in para. 21 deleted the addition of Rs. 7,26,810 and Rs. 12,68,307 based on PRM 1 and 13 by allowing I. T. A. No. 41 of 1989. For the assessment year 1982-83 on similar grounds the Tribunal allowed the appeal in I. T. A. No. 42 of 1989 in part. The Tribunal holds that an addition of Rs. 8,33,525 is added as an unexplained expenditure, the same is based on PRM 14. The Tribunal sustains expenditure of Rs. 4.60,000 towards Durgabail property. With regard to the addition it deletes the same. Again in the case on hand the Tribunal accepts that entries with regard to construction activity is doubtful as to PRM Hindu undivided family(s) and PRM, Hindu undivided family. It also states that even though there is no evidence in regard to authorship of the entries made in the sheets in PRM 14, but an inference is inescapable that a person who had knowledge of construction work might have written them. It further holds that with regard to other entries a suspicion has arisen and that they may not be substitute for proof. What we cannot understand is that the very Tribunal accepts PRM 14 in respect of one item and the same reasoning must hold good with regard to other PRMs as well, but unfortunately the Tribunal on the ground of non-availability of presumption has rejected these additions. In our view, the Tribunal has committed serious legal errors in failing to notice the principle of rebuttable presumption available in the case on hand. The initial onus has been rightly discharged by the Department and the assessee has failed to discharge his rebuttal burden inspite of an opportunity in the matter. Everybody is pleading ignorance and innocence in the matter. Mere plea of ignorance and innocence cannot constitute the proof of no income at the hands of the Hindu undivided family. A serious argument is advanced by Mr. Sarangan as to whether this income is of the Hindu undivided family or of any other individuals. The only possible answer in the absence of any contra rebuttal evidence is that the income is referable to the Hindu undivided family and no one else. If the argument of the assessee is to be accepted then the very object of seizure is defeated. The object of such a seizure is to bring home the unaccounted income at the hands of those who evade payment of tax. We cannot shut our eyes to these documents in the light of silence or ignorance on the part of the members of the Hindu undivided family. The Commissioner has, only to avoid this criticism, in addition to having the documents made available in search provided an opportunity to ascertain the truth or otherwise of the matter to the petitioner. If that opportunity has not been properly utilised by the assessee we have no

option but to draw an adverse inference against the assessee. Therefore, we.find force in the submissions of Sri Indrakumar that the order of the Tribunal is a finding not based on material which certainly requires our interference in these proceedings. 27. Sri Sarangan next contended that even assuming that Section 132(4A) is available, even then according to him the same is not recovered from the possession of the assessee. It is his further case that there is no nexus with this assessment to that of the Hindu undivided family income. He also relied on several cases. We make it clear in this order that the assessment based on search and seizure stands on a different footing in other proceedings. In the matter of search and seizure circumstantial evidence, inference and the seized material play a vital role. There cannot be any direct evidence and no direct evidence would be forthcoming in these matters. In the case on hand admittedly an inference is drawn against the Hindu undivided family in his carrying on certain undesirable activities like Matka, illegal possession of gold biscuits, etc. In such transactions we have to draw an inference based on circumstances where no direct evidence is forthcoming. 28. Sri Sarangan elaborated his argument by contending that there is no presumption in Hindu law that any business carried on by a member of the joint Hindu family is itself a joint family business. He relies on D. D. Kapoor v. CIT [1955] 27 ITR 348 (Patna). That was a case where the court was concerned with regard to the income of the eldest brother being shown in joint family accounts. The court ruled that that by itself is not sufficient to show that the income was of the joint family income. This case is clearly distinguishable in the light of the seized documents and the rebuttable presumption attached to it. The second judgment is Mangilal Rungta v. CIT [1955] 28 ITR 167 (Patna). That was a case with regard to burden of proof on the Department. That was not a case dealing with the presumption or rebuttable presumption as in the case on hand. The third judgment in Jainarayan Balabakas of Khamgaon v. CIT [1957] 31 ITR 271 (Nag). In that case the court was considering as to whether the mere fact that the joint family owned suitable funds is not sufficient to throw liability on the joint family, unless there is evidence to show that those funds were not used for the purpose of business. In the case on hand from the seized documents a presumption could certainly be drawn that the funds were used for the purpose of Matka business. The next judgment relied on by counsel is in Chandmull Rajgarhia v. CIT [1967] 66 ITR 347 (Patna). In the said case the court was considering as to whether the need of the circumstantial presumption of blending joint family property arises. The court was considering with regard to sufficient nucleus with regard to presumption. The case revolves round a new acquisition being made for the joint family. The court accepted the inference from circumstances. The next judgment was in the case of Seth Chunilal Parsram v. CIT [1968] 70 ITR 288 (Mys), the judgment of the jurisdictional High Court with regard to new business started by the karta. That case was also not one with regard to a shady transaction coming to light after search. The next judgment is in the case of Anil Kumar Roy Chowdhury v. CIT . In that case the Supreme Court reverses the judgment of the High Court (CIT v. Anil Kumar Roy Chowdhury . In that case the Supreme Court noticed that there was no evidence on record to show

that the property from which the income in question accrued was the property of the Hindu undivided family. The court ruled that in the absence of such evidence the burden was on the Department to prove affirmatively that the income in question belongs to the Hindu undivided family. This judgment shows that there must be some evidence with regard to the same. The present case cannot be said to be a case of no evidence as in the case cited supra. The next case is of Satinder Kumar (HUF) v. CIT . That was a case in which a karta becoming a partner in another firm doing some business. The question in the case was need of the circumstances before a case can be considered. In that case also the court noticed that there was no evidence. This case also is clearly distinguishable on facts. 29. Mr. Sarangan also placed reliance on the judgment of this court reported in Ramesh Srinivasa Jannu v. Srinivas Vittoba Jannu (Decd. by Lrs.) [2001] ILR 51 Kar 1215. On going through the judgment, we find that the said case deals with a presumption with regard to an existence of joint family on the facts of this case. In the said case this court has said as under (headnote): "The burden to prove that any item of property is joint rests on the person making such an assertion. Where however it is established that the joint family possess some property, which from its nature and relative value may have formed the nucleus, from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of any such joint family nucleus." 30. In the case on hand the Department in the light of the material placed has discharged its burden of joint status. Once that burden is discharged the further burden of self-acquisition gets transferred to those who allege self-acquisition. In the case on hand no evidence worthy of consideration is placed with regard to self-acquisition. In the circumstances, this decision is also not available to the petitioner. 31. In the case of Chukarmal v. CIT , the court ruled that what was meant by saying that the Evidence Act does not apply to proceedings under the Income-tax Act was that the rigour of the rules of evidence contained in the Evidence Act was not applicable ; but that did not mean that when the taxing authorities are desirous of invoking the principles of the Evidence Act in proceedings before them, they are prevented from doing so as contended by Sri Sarangan. 32. In fact the Supreme Court in that judgment rules as under (headnote): "(ii) That all that Section 110 of the Evidence Act, 1872, did was to embody a salutary principle of common law jurisprudence, viz., where a person was found in possession of anything, the onus of proving that he was not its owner was on that person. This principle could be attracted to a set of circumstances that satisfy its conditions and was applicable to taxation proceedings." 33. In the case on hand the salutary principle of common law is clearly applicable. We have also ruled that the seized documents were in the possession of the assessee, the onus of proving that the assessee is not the owner is on the assessee. The assessee has failed to discharge that onus and therefore the Tribunal in our view has misdirected itself in arriving at a conclusion contrary to the material resulting in a question of law referable to this court. 34. Lastly, Mr. Sarangan contended that this reference is in terms of Section 256 and we cannot go beyond the reference. He referred to the judgment in Sir Shadilal

Sugar and General Mills Ltd. v. CIT . In the said case the court was considering about the existence of evidence supporting the Tribunal's conclusion. In the absence of a finding the High Court is not entitled to take a different view in a reference matter. But in the very decision, the Supreme Court has ruied that non-appreciation of evidence may give rise to a question of law. In the case on band we have held in our earlier paragraphs, that the Tribunal had failed to appreciate properly the evidentiary presumptive value of PRMs 7, 14 and 13 and it is a perverse finding and therefore a question of law would certainly arise in the case on band. 35. Mr. Sarangan, relies on a latest judgment reported in K. Ravindranathan Nair v. CIT [2001] 247 ITR 178 (SC) to contend that the Tribunal is the final authority on finding of fact. The Supreme Court at page 180 reads as under : "As we read the judgment of the Tribunal, it extensively analysed the documents placed before it and came to the conclusion that the ten units run by the assessee constituted a single business, that the four units in Kerala did not constitute a separate business and that, therefore, the payment that was made was not on account of closure of business, which would not be allowable under Section 37. The Tribunal found, on the basis of the accounts placed before it, that only one set of accounts were maintained for all the ten units. It found that there was one central financing system, that all the units were financed by banks and that these accounts were operated from the head office and that the cashew was purchased for processing by the head office for all the units together. It was also found that there was unity of management and control. Accordingly, the Tribunal said that it was satisfied that all the units were fully interlinked and interlaced so that the inevitable inference was that all these units were one business alone. The Tribunal went on to hold that the facts were sufficient to establish a nexus between the payment of Rs. 4,18,107 and the business. Because a part of the business had been affected by labour disputes, for the industrial health of the business as a whole, it was thought just and necessary that the industrial dispute in that one part of the business be stopped. This was the purpose for which the payment was made and it was, therefore, incurred for the purposes of the business. The Tribunal noted, correctly, that it was for the assessee to decide how he would conduct his business. For the purposes of continuing his business, he had to reduce the number, of units from ten to six. Any incidental expense in reducing those units was an expenditure incurred in the course of conducting the business and allowable under Section 37. The High Court, surprisingly, threw out all the findings of fact that were reached by the Tribunal. It did so because, in the High Court's view, the Tribunal had misdirected itself in law in arriving at these findings. This was because, according to the High Court, the Tribunal had overlooked or ignored a clinching document and because it had wrongly cast the burden of proving the facts on a party. It is difficult to appreciate what that document was that the Tribunal had supposedly overlooked or how the High Court was entitled to look at it if it had not been placed before the Tribunal. It was erroneous to say that any burden had been incorrectly cast by the Tribunal because the Tribunal had evaluated all the material that was put before it, regardless of who had put it on the record. The High Court overlooked the cardinal princi-

ple that it is the Tribunal which is the final fact-finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the High Court. Unless and until a finding of fact reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it. The only jurisdiction of the High Court in a reference application is to answer the questions of law that are placed before it. It is only when a finding of the Tribunal on fact is challenged as being perverse, in the sense set out above, that a question of law can be said to arise." 36. This judgment on the other hand supports the Revenue. The Supreme Court ruled that when a finding of fact of the Tribunal is perverse, then a question of taw can be said to have arisen. In the case on hand the Tribunal's finding according to us is nothing but a perverse finding based on no evidence. 37. Before concluding we must also take notice of the fact that this very assessee in a writ petition filed by him sought for return of these documents in his capacity as the Hindu undivided family. In these circumstances, our answer to the reference is in favour of the Revenue and against the assessee and References Nos. 39 and 40 of 1996 are accepted. Reference No. 58 of 1996, is rejected. The order of the Tribunal in References. Nos. 59 and 40 of 1996, are set aside and the order of the assessing authorities and the appellate authorities are confirmed. Parties to bear their own costs.