Sikkim High Court Sikkim Subba Associates vs Union Of India (Uoi) And Ors. ... on 31 May, 2005 Equivalent citations: 2005 276 ITR 456 Sikkim Bench: N S Singh JUDGMENT N. Surjamani Singh, Actg. C.J. 1. These two writ petitions involved almost the same and similar common question of facts and law and, as such, this Court proposes to dispose of these two writ petitions by this common judgment. 2. These two writ petitions are directed against the issuance of warrant of authorisation dt. 17th June, 1999 to 23rd June, 1999, including warrant of authorisation dt. 18th June, 1999, by the respondents against the petitioners under Section 132 of the IT Act, 1961, hereinafter referred to as the "Act", for conducting search and seizure in the premises of the petitioners and the consequent issuance of impugned notice dt. 20th Feb., 2001 under Section 158BC of the Act directing the petitioners to file returns, etc., by treating the search and seizure operations as valid; for which the petitioners have, inter alia, prayed that such warrant of authorisation and the impugned notices dt. 20th Feb., 2001 issued under Section 158BC of the Act, be quashed as the same is unconstitutional, illegal and void ab initio and consequently, the petitioners have also prayed that the documents/valuables, etc., recovered from them during the impugned illegal search and seizure operations carried out by the respondents be returned to them. 3. In Writ Petn. No. 10 of 2004, the petitioner has averred that it is a partnership firm duly registered under the Sikkim Act and having its registered office at Subba Building, Syari, Gangtok, Sikkim. The respondent No. 1 is the Union of India; the respondent No. 2 is the Secretary, Income/Sales-tax Department, Gangtok, who collects income-tax under the Sikkim Act from the residents. Respondent Nos. 3 to 5 are Directors of IT (Inv.) situated at Kolkata, New Delhi and Guwahati, exercising jurisdiction collectively by issuing search warrants on the petitioner and other persons/firms, etc., allegedly connected with one firm M/s M.S. Associates. It is stated that these authorities had acted in concert on the basis of shared information and conducted search and seizure operations at the premises of the petitioner-firm at Gangtok. It was further averred that during the relevant period, Shri Moni Kumar Subba was one of the partners of the petitioner firm and his wife Smt. Jyoti Limbu was/is the managing partner of the firm, M/s M.S. Associates. The said firm, M/s M.S. Associates carries on business of selling State organised lotteries and in the past, the said M/s M.S. Associates had been the sole distributor of lotteries organised by various State Governments, namely, Assam, Meghalaya, Nagaland, etc. Since 28th Sept., 1993, M/s M.S. Associates was the sole distributor of the lotteries of the State of Nagaland and the role of the firm was limited to the extent of assisting the concerned State Government to sell its lottery in accordance with the laws laid down by the Hon'ble Supreme Court in the matter of State of Haryana v. Suman Enterprises (1994) 4 SCC 217. It is further stated that on different dates in the month of June 1990, namely, 17th to 23rd by different warrants of authorisation issued by the respondent Nos. 3 to 5 purportedly acting under Section 132 of the Act, the business premises of M/s M.S. Associates as well as the residence and official premises of persons allegedly associated with the said firm including the petitioner firm were searched and amount of cash, jewellery, investment certificates, fixed deposit receipts and

other documents were seized. In respect of the petitioner firm, the said searches were also conducted at Gangtok pursuant to the warrant of authorisation dt. 18th June, 1999 issued by the respondent No. 3, which fact is evident from Panchnama dt. 23rd June, 1999. 4. In Writ Petn. No. 11 of 2004, the facts whereof are identical, it is stated that the petitioner-company is a private limited company incorporated and registered under the Registration of Company Act (Sikkim), 1961, and is having its registered office at Syari, Gangtok, Sikkim. The petitioner-company was incorporated with the object of undertaking hotel construction at Gangtok. It is stated that during the relevant period, Smt. Jyoti Limbu, Shri S.R. Subba (brother of Shri M.K. Subba) and Shri M.K. Subba were directors of petitioner-company. Smt. Jyoti Limbu is wife of Shri M.K. Subba and was/is the managing partner of the firm, M/s M.S. Associates. M/s M.S. Associates carries on business of selling State organised lotteries. Since 28th Sept., 1993, the said M/s M.S. Associates was the sole distributor of lotteries organised by State of Nagaland. In this case also, on different dates in the month of June 1999, namely, 17th to 23rd by different warrant of authorisation issued by the respondent Nos. 3 to 5 purportedly acting under Section 132 of the Act, the business premises of M/s M.S. Associates as well as the residence and official premises of persons allegedly associated with this firm including the petitioner-company were searched at Gangtok pursuant to the warrant of authorisation dt. 18th June, 1999 and amount of cash, jewellery, investment certificates, fixed deposit receipts and other documents were seized, which is evident from the Panchnama dt. 23rd June, 1999. 5. In both these matters, it is averred that the search and seizure operations against M/s M.S. Associates and the persons allegedly associated with them including the petitioners were made on the basis of a preliminary draft and unsigned report of the Comptroller and Auditor General of India (hereinafter referred to as "the CAG") with regard to the business of lotteries of the State of Nagaland in which M/s M.S. Associates had acted as sole distributor. 6. Chapter XIV-B consisting of Sections 158B to 158BH were inserted by the Finance Act, 1995. Relevant portion of Section 158BA of the Act reads as follows : "158BA(1)–Notwithstanding anything contained in any other provisions of this Act, where after the 30th day of June, 1995 a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132A in the case of any person, then, the AO shall proceed to assess the undisclosed income in accordance with the provisions of this Chapter. (2) The total undisclosed income relating to the block period shall be charged to tax, at the rate specified in Section 113, as income of the block period irrespective of the previous year or years to which such income relates and irrespective of the fact whether regular assessment for anyone or more relevant assessment years is pending or not. . . ." Sub-section (a) of Section 158B defines "block period" as the period comprising previous years relevant to six assessment years preceding the previous year in which search was conducted under Section 132 or any requisition was made under Section 132A and also includes the period upto the date of the commencement of such search or date of such requisition in the previous year in which search was conducted or requisition was made. The expression "undisclosed income" is defined by

Sub-section (b) of Section 158B of the Act. 7. Thus, if the search and seizure is valid and legal, assessments can be made by the AO by invoking the provisions of Section 158BC of the Act. However, if the search and seizure are invalid and illegal, then assessment cannot be made by taking recourse to the provisions of Section 158BC of the Act. 8. In respect of the petitioners, the respondent No. 6 issued two separate notices both dt. 20th Feb., 2001 under Section 158BC of the Act, purporting to make block assessments of the petitioners for the period ending 1st April, 1989 to 23rd June, 1999. By the said impugned notices, the petitioners were directed to prepare true and correct return of their total income including the alleged undisclosed income for the block period in respect of which the petitioners are alleged to be assessable for the block period. 9. Being aggrieved by the issuance of the impugned notice dt. 20th Feb., 2001, the petitioners preferred two separate writ petitions being Writ Petn. (Civil) No. 2890 of 2001 and Writ Petn. (Civil) No. 2889 of 2001, before the Gauhati High Court. The Gauhati High Court by orders dt. 21st April, 2001, was pleased to issue Rule and pass orders staying further proceedings pertaining to search and seizure, if any, against the petitioners and the operation of the impugned notice dt. 20th Feb., 2001. In these matters on 6th June, 2002, before the Gauhati High Court, one Shri Manjit Singh, Dy. Director of IT (Inv.), Guwahati, who was not the concerned officer filed separate affidavit-in-opposition and admitted that one of the information in possession of the respondents was the report of CAG and that in the present group of cases including the petitioners no separate satisfaction note is required to be prepared and one satisfaction note is sufficient. The High Court of Gauhati by a common final judgment and order dt. 31st May, 2004, dismissed both these writ petitions on the ground of lack of territorial jurisdiction, which led the petitioners filing the present two writ petitions before this Court. 10. In both these writ petitions, identical averments are made. It is stated that information in possession of the concerned officer on the basis of which the warrants of authorisation was issued and search and seizure operations were carried out was the draft and unsigned audit report of CAG against the working of the Directorate of Lotteries of the State of Nagaland for the period from October, 1993 to November, 1997, when M/s M.S. Associates was sole distributor of lotteries organised by the State of Nagaland. It is further stated that the report of CAG did not acquire legal authenticity and cannot be construed as "information" within the meaning of Section 132(1) of the Act, as the said CAG report under Article 151(2) of the Constitution of India has to be submitted to the Governor who is required to lay it before the Legislature of the State. As such, the report of CAG is the property of the House, i.e., Legislative Assembly of the State of Nagaland under Article 151(2) of the Constitution and the said report cannot be construed or treated as "information" on the basis of which authorisation under Section 132 of the Act can be issued, as such an act would be, inter alia, violative of Constitutional mandate. It is further stated that the respondent authorities used CAG report in June, 1999, much prior to the same being laid before the House, i.e., in August, 1999. 11. The CAG report was laid by the Government before the Legislative Assembly in August, 1999, and the Legislative Assembly referred the said CAG report in terms of Rule 235

of the Rules of Procedure and Conduct of Business in Nagaland Legislative Assembly to the Public Accounts Committee (PAC). In March, 2002, the PAC has submitted its report to the Legislative Assembly of the State and with regard to the CAG report regarding the working of the Directorate of State Lotteries, has held the said CAG report to be unsustainable on facts. The case of the petitioners in the writ petitions is that the executive including the respondents cannot assume jurisdiction and conduct investigation over a matter over which the House or its Committee is investigating. It is stated that in any event the final report of PAC is binding on the executive. It is further averred that the CAG report has become non est in view of the PAC report in March 2002, as the CAG report begins and terminates within the walls of the House and is a matter relating to internal procedure of the House. In short, the case of the petitioners is that the respondents cannot rely on the CAG report either in full or in part for the purposes of conducting search and seizure operations on the petitioners on the basis that there are some allegations in the said report in respect of the firm, M/s M.S. Associates in which one of the directors is related to the petitioners by treating the petitioners as a part of the group of M/s M.S. Associates. It is further averred that the "information" in possession of the designated authority was CAG report on the basis of which the said authority formed "reasons to believe". It is further stated that the CAG report could not be in possession of the said authority, cannot be used by it on account of the Constitutional embargo and as such the entire search and seizure operations against the petitioners are unconstitutional, illegal, non est and void ab initio. It is further stated that, if the searches are declared as illegal, then the impugned notices issued under Section 158BC both dt. 20th Feb., 2001, were liable to be quashed as they could be issued only if the search and seizure operations are held to be legal and valid. 12. In both these matters, one Shri Raju Lepcha, Asstt. Director of IT (Inv.), Siliguri, a subordinate of the designated authority who had issued the impugned warrants of authorisation, filed separate counter-affidavits. In the counter-affidavit, it is mentioned that the petitioners are fronts opened by Shri M.K. Subba having their main business in New Delhi. In paras 3(vii), 3(xi), 9, 15, 18 to 21, it is admitted that report of CAG was in the possession of the authorities and was used for forming the belief but it was further stated that CAG report was only a portion of information available with the authorities which led to a reasonable belief that the conditions precedent for action under Section 132(1) of the Act were fulfilled. It is further stated that the CAG report was not the only basis for the action under Section 132(1) of the Act and apart from the CAG report, the concerned officers had enough material in their possession from which they could form reason to believe for proceeding under Section 132(1) of the Act. Similar admissions have been made in paras 15, 19 to 21 of the counter-affidavit. It was further admitted that the said report was used as part of information prior to its being placed in the House, i.e., in August, 1999. It was further admitted that the search operation at Gangtok was pursuant to the warrant of authorisation dt. 18th June, 1999, and was just a part of the nationwide search conducted against the group. 13. Thus the admitted facts are that the concerned officer who had formed the requisite belief that condi-

tions exist for the purposes of initiating action under Section 132 of the Act was also guided by the CAG report which was in his possession prior to the same being laid before the Legislative Assembly of the State of Nagaland in August, 1999. The said CAG report was thus part of the information in possession of the designated authority for the purposes of initiating action under Section 132 of the Act and one of the basis for forming the requisite belief. As such, prior to the CAG report being placed on the floor of the Nagaland Legislative Assembly in August 1999, the respondents obtained a copy of the draft and final report of CAG and based on the said CAG report and other information, which is not disclosed in the counter-affidavit, the concerned officer formed a belief that conditions exist for the purposes of resorting to the provisions of Section 132 of the Act and conducting search and seizure operations on the petitioners. 14. Apart from the CAG report, it is stated during arguments that one of the information in possession of the concerned officer was an alleged interview published in some magazine "Rato Gham" wherein Shri M.K. Subba is alleged to have made tall claims about his wealth/position/status. It was submitted that the said newspaper report was also with the designated authority and was used by the authority to form "reasons to belief" that conditions exist for the purposes of issuance of the warrants of authorisation under Section 132 of the Act. In the written submissions filed by the petitioners, it is submitted that a Writ Petn. No. 508 of 1998 was filed by one Niran Rai before this Court seeking declaration that the said publication "Rato Gham" was fake. In the Writ Petn. No. 508 of 1998, interim orders dt. 13th Nov., 1998, were passed by this Court directing for a CBI inquiry. Although interim orders were passed and this Court seized of the matter regarding the genuineness of the said magazine "Rato Gham", the respondents despite the pendency of the writ petition and the orders passed took cognizance of the said newspaper reports much later, i.e., in June, 1999, (paying scant regard to the earlier directions issued) and used the said information for purposes of forming the requisite belief under Section 132 of the Act. It is further submitted that finally this Court by judgment and order dt. 11th Oct., 2001, held that the said publication was fake and fabricated and issued various directions to authorities. 15. The case of the respondents that a finding in the CAG report can be used against the citizen as there is no bar to such user under the Constitution. It was further submitted that a copy of the CAG report was forwarded by the CAG to the Union Finance Ministry and as such the concerned officer came into possession of the said CAG report and used the same for forming the requisite belief and as such there is no breach of privilege as the said report was obtained legally. It was further submitted that if CAG report gives indication of evasion of tax, then the same can be used by the concerned officer. It is further submitted that the word "information" should be given a wide and not restricted meaning and the executive can use all the "information" from legislative documents or proceedings in Legislative Assembly, etc. in a civil or a criminal matter and the proceedings before the Legislative Assembly would not be a bar to investigation in any matter. It is further submitted that as there are no legal or constitutional impediments to the use of the CAG report, the action of the respondents cannot be said to

be unreasonable or unwarranted. It is further the case of the respondents that they had information other than CAG report and even if CAG report could not be relied upon, the other information was sufficient on the basis of which it can be said that the concerned officer rightly formed the requisite belief and issued the warrants of search and seizure under Section 132 of the Act. Thus, the contention of the respondents is that the information can be segregated i.e., CAG report and "other information" and the warrants of authorisation under Section 132 cannot be found fault with if it is based on "other information" even if it were to be held that CAG report cannot be said to be information in possession of the concerned officer. 16. I have heard the learned counsel for the parties to the various issues raised in the pleadings and those specifically argued before me. I have also gone through the written submissions filed by the parties pursuant to the directions issued by this Court. 17. Shri Chaudhary, learned senior counsel and Shri P. Aggarwal, learned counsel for the petitioners, inter alia, made the following submissions : (a) The information on the basis of which the designated authority has formed "reasons to believe" should be legal and constitutional and further the possession over such information of the concerned authority should also be legal and constitutional. The CAG report, which is the property of the House and had to be dealt by the House only, cannot constitute a piece of legal and constitutional information to generate the requisite belief to the designated authority for initiating action under Section 132 of the Act. Further, no reliance can be placed on newspaper reports i.e., Rato Gham, as firstly, the newspaper reports do not constitute "information" in the eye of law and secondly, the said magazine Rato Gham was found to be fake by this Court in Writ Petn. No. 508 of 1998. '(b) The extent of reliance on the report and other information for the purposes of formation of belief cannot be segregated between relevant, legal and constitutional and irrelevant, illegal and unconstitutional. In cases of search and seizure, the ground is one i.e., on the basis of the information in his possession, the concerned officer could form the requisite belief that conditions contained in Section 132 exist for issuing search and seizure warrants. As the satisfaction of the concerned officer is "subjective satisfaction" based on the information i.e., documents, etc. before him on which he forms belief, the same cannot be segregated. As such if the designated authority has relied upon the CAG report, which it could not have relied upon, then the entire action is unconstitutional, illegal and unsustainable. (c) As the respondents have neither claimed privilege nor disclosed the other information in their possession (other than CAG report), they are required to provide inspection and give copies of the information in their possession to the petitioners. (d) The counter-affidavit has not been filed by persons/authority who had issued the warrants of authorisation and as the formation of belief being a mental satisfaction of the concerned superior officer of the rank as mentioned in Section 132 of the Act, it is that officer only who ought to file an affidavit and explain the link between the information in his possession and formation of belief thereon. Further, the affidavit filed on behalf of respondent Nos. 3 to 6 is totally vague and does not disclose as to how there is a live link between the information in possession of the authority and the formation of

the belief on the basis of the information. (e) There is a distinction between unconstitutional and illegal search and in respect of unconstitutional search as in the present case, the documents, property, etc. seized has to be returned. Reliance was placed on Commr. of Commercial Taxes and Ors. v. Ramkishan Shrikishan Jhaver and Ors. AIR 1968 SC 59(Constitution Bench)–para 19. The decision reported in Pooran Mal v. Director of Inspection AIR 1974 SC 348 was sought to be distinguished. 18. Apart from the arguments of the respondents noted hereinabove that there is no bar in relying on the CAG report and that the information could be segregated i.e., if it is held that CAG report does not constitute valid piece of information, the authorities had sufficient other information on the basis of which the warrant of authorisation could be sustained on facts and in law. As regards the contention of the petitioners that "other information" which was in the possession of the authorities and which has been disclosed in the counter-affidavit should be given by the authorities to them, the respondents submitted that there is no requirement in law that the information which led to the formation of the belief of the satisfaction note should be given to the petitioners. As regards the argument of the petitioners that the counter-affidavit ought to have been filed by the concerned officer only to explain the live link between the information and the formation of the belief, the respondents contended that there is no such requirement of law and further affidavit can be filed by a person who is authorised to file the same. The counsel for the respondents further defended the affidavit filed and stated that the same is not vague. The counsel for the respondents further relied on the judgment of the apex Court in AIR 1974 SC 348 (supra) and stated that even if the search is declared illegal, the documents, property, etc. recovered in such search can be relied upon by the authorities for any other purpose under the Act and that there is no distinction between unconstitutional and illegal search as is being attempted to be made by the petitioners. 19. During the hearings in these matters, the counsel for the respondents supporting their case, handed to the Court three files, which contained information in possession of the concerned officer on which the requisite belief was formed for the purposes of issuance of the warrant of authorisation under Section 132 of the Act. 20. Before dealing with the contentions of the parties, it is pertinent to mention that in these writ petitions, the petitioners had averred that the provisions of the Act are not enforced in the State of Sikkim and that the residents of the State of Sikkim are paying income-tax under the Sikkim IT Manual to the authorities in Sikkim and are not required to pay income-tax under the Act of 1961. It was stated that as such the question of the petitioners being amenable to the provisions of the Act of 1961 does not arise and consequently, the entire search and seizure operations are void, illegal and non est. In this regard, the counsel for the respondent No. 2 i.e., the Secretary, Income/Sales-tax Department, drew my attention to a communication dt. 19th July, 2004, of the CBDT, Ministry of Finance, North Block, New Delhi, addressed to the Chief CIT, Jalpaiguri, West Bengal, for constitution of a Committee to resolve the differences between the Government of India and the Government of Sikkim on the implementation of direct tax laws in the State of Sikkim. It is further mentioned that the first

meeting of the said Committee was held on 20th Sept., 2004, under the chairmanship of Shri Berjender, Member (Inv.), CBDT. In the counter-affidavit filed by the Government of Sikkim it is, inter alia, stated in this regard as follows : "Therefore, it is factually incorrect to state that the direct tax laws has already been enforced and implemented in the State of Sikkim. It is submitted that the Direct Tax Laws has not yet been enforced/implemented in the State of Sikkim and, therefore, to resolve this difference the above Committee has been constituted by the Ministry of Finance, Government of India. Therefore, the said subject-matter is at present before the Committee." 21. When pointed out, the learned counsel for the petitioners stated that, at present, they are not pressing the argument as to whether the provisions of the Act of 1961 are applicable in Sikkim and reserve their rights to do so at an appropriate time either before the authorities or by filing another writ petition, if required, and sought liberty from this Court in this regard, as at present the petitioners are confining their arguments to the legality and validity of the search and seizure operations and all consequential actions. I have granted liberty to the petitioners to initiate appropriate action before the authorities or by filing another writ petition, if required, and argue that the provisions of the Act of 1961 are not applicable to the State of Sikkim as admittedly the residents of Sikkim are not paying any income-tax to the Central Government under the Act of 1961 but are paying income-tax to the State Government under the State Manual. As such, in the present petitions I am only deciding the issues with regard to the legality and validity of the search and seizure operations and all consequential actions as prayed for without deciding the issue of the applicability of the Act of 1961 to the State of Sikkim in the present proceedings. 22. Relevant portion of Section 132 of the Act of 1961 reads as under: "Section 132. Search and seizure–(1) Where the Director General or Director or the Chief CIT or any such Jt. Director or Jt. CIT 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 IT 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 IT 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 sommons or notice, or (b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for or relevant to any proceeding under the Indian IT 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 purpose of the Indian IT Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property), then– (A)... (14)...after such date in respect of any year." 23. Under Section

132 of the Act, it is obligatory that the prescribed authority is in consequence of information in his possession has reason to believe that the situation enumerated in either of Clauses (a), (b) and (c) exists before issuing the warrant of authorization. Thus, the action of the concerned officer has to be founded on information, which induces the formation of the belief. The question whether there is information of a quality, which induces reasonable belief, is a question of jurisdiction. The requirement of law as laid down in several decisions of the apex Court is that the designated authority must on the basis of information have reason to believe. The said expression "reason to believe" means a genuine satisfaction arrived at upon a honest and reasonable evaluation of information coming to authority. Furthermore, there must be a reasonable nexus between the satisfaction and the situation contemplated in any of the Clauses (a), (b) and (c). 24. The power under Section 132 of the Act has to be exercised strictly in accordance with the provisions of law as it is a serious invasion made on the rights of the citizens as held in case of ITO v. Seth Bros. and Ors. AIR 1970 SC 292–para 8. It is further held that 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 and if the conditions for exercise of the power are not satisfied, the proceeding is liable to be quashed. In Dr. Nand Lal Tahiliani v. CIT (1988) 170 ITR 592 (All) it was held that privacy is a very valuable right of a civilized society and violation thereof is not permissible except by authority of law and, therefore, the Department should not only be slow but slowest in acting upon the information being given by an informer. 25. For invoking Section 132 of the Act the authority concerned must be in "possession" of "information". The expression "information" has been held to be not rumour, gossip or other irrelevant information. Further, the information should be legal and constitutional i.e., the authority concerned can under the law or the Constitution not only retain such information but can also use the same for any purpose. Thus, rumour, gossip, intuition or irrelevant information cannot be termed as "information" as no reasons to belief can be formed on such information. In L.R. Gupta and Ors. v. Union of India and Ors. (1992) 194 ITR 32 (Del) at p. 45, it was held that the expression "information" must be something, more than a mere rumour or a gossip or a hunch and there must be some material which can be regarded as information which must exist on the file on the basis of which the authorizing officer can have reason to believe. In Dr. Nand Lal Tahiliani v. CIT (supra) wherein the information was that doctor was having "roaring practice" and was charging high fees for operation, the warrants were quashed and it was held that "information" within the meaning of Section 132(1) should be as accurate as possible having reference to the precise assets of a person and not of general nature and that such information should in all probability, lead the authorities to have the unmistaken belief that money, bullion, jewellery or other valuable article or thing pointed out by the informer, would be found in the possession of the person named by the informer. It was further held that before acting upon the information, source of knowledge of an informer should be fully tested and unless the Departmental authorities make themselves doubly sure of the information and the creditworthiness of the

informer, they should be loath to act upon the information. It was further held that the word of an informer should not be taken for granted and how and in what manner and from whom the information has been gathered – all this should be made clear beyond an iota of doubt by a thorough examination of the informer and that no action should be taken on information based on "surmises or guesses". In Harmel Singh and Anr. v. Union of India and Ors. (1993) 204 ITR 334 (P&H) at pp. 346-7, it was held that the existence of relevant material for taking action under Section 132 of the Act is a condition precedent for the exercise of power and that if action of the IT authorities does not fall within the purview of Section 132 of the Act, then the consequential action would be arbitrary, unreasonable and capricious and would be violative of Article 14 of the Constitution of India. 26. The word "reason" means cause or justification and the word "believe" means to accept as true or to have faith in it. In Ganga Prasad Maheshwari and Ors. v. CIT (1983) 139 ITR 1043 (All) at p. 1050, it is held that– "'Reason to believe' is a common feature in taxing statutes. It has been considered to be the most salutary safeguard on the exercise of power by the officer concerned. It is made of two words 'reason' and 'to believe'. The word 'reason' means cause or justification and the word 'believe' means to accept as true or to have faith in it. Before the officer has faith or accepts a fact to exist there must be a justification for it....But the reason due to which the decision is reached can always be examined. When it is said that reason to believe is not open to scrutiny what is meant is that the satisfaction arrived at by the officer concerned is immune from challenge but where the satisfaction is not based on any material or it cannot withstand the test of reason, which is an integral part of it, then it falls through and the Court is empowered to strike it down.... It is the formation of opinion and not the issuing of Form No. 45 which is fundamental...." Further in C. Venkata Reddy and Anr. v. ITO and Ors. (1967) 66 ITR 212 (Mys) at p. 238 it was held that : "... The basis for the exercise of power, it should be noticed, is not mere suspicion but a reasonable belief upon information already in possession of the appropriate officer. It would also, in our opinion, postulate that information in the possession of the officer is not a mere canard or an unverified piece of gossip but information which, in the circumstances, may be regarded as fairly reliable, because no belief can ever be said to flow reasonably from anything but information which may be regarded as fairly reliable. Hence, the careful selection of these words by the statute and the drastic nature of the powers necessarily point to a judicial application of mind to some substantial material by the officer acting with a sense of responsibility." 27. Reports/letters/notes of one Government Department to the IT authority cannot be regarded as information for the purposes of Section 132 of the Act. Reference is made to Ajit Jain v. Union of India and Ors. (2000) 242 ITR 302 (Del) at pp. 309-311–approved by apex Court in Union of India v. Ajit Jain and Anr. (2003) 260 ITR 80 (SC) wherein a note by CBI to income-tax was not treated as information. In Coca Cola Export Corporation, Etc. v. ITO and Anr. (1998) 231 ITR 200 (SC), the two letters written by Government of India to the assessee are not "information" in possession of ITO. In Vindhya Metal Corporation and Ors. v. CIT (1985) 156 ITR 233 (All) at p. 242 ap-

proved by apex Court in CIT v. Vindhya Metal Corporation and Ors. (1997) 224 ITR 614 (SC) seizure on the information of Government Railway Police of carrying of Rs. 4 lacs and above was not regarded as information for purposes of search and seizure under the Act. 28. The other requirement of Section 132 of the Act is that the information on the basis of which the concerned officer forms "reason to believe" should be in possession of the concerned officer. The expression "possession" according to Shorter Oxford Dictionary means, "hold as own property", "actual holding or occupancy". It was submitted before me by the petitioners that Parliament did not intend that any or all information can be used for the purposes of forming belief under Section 132 of the Act. It is only that information which could be in the constitutional and legal possession of the concerned officer that belief can be formed. Thus the words "in his possession" are of great significance. If the concerned officer cannot in law or under the Constitution hold any information then such an information cannot be said to be "in his possession" and as such he cannot form reasons to believe on such "information". 29. It is further well-settled that the expression "reason to believe" as decided by the apex Court means a genuine satisfaction arrived at upon a honest and reasonable evaluation of information coming to authority. Furthermore, there must be a reasonable nexus between the satisfaction and the situation contemplated in any of the Clauses (a), (b) and (c). Meaning of the expression "reasons to believe" is stronger than satisfaction. There should be reasons to believe and such reasons to believe must be on the basis of the "information" which is "in the possession of" the concerned officer. It is further well-settled that there must be live link between the information and the formation of belief. In Sheo Nath Singh v. AAC and Ors. (1971) 82 ITR 147 (SC) at p. 153, it was held in para 10 that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the ITO would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. In ITO and Ors. v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC) at pp. 437-438, it was held that the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief and rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of his belief and the live link or close nexus which should be there between the material before the ITO in the present case and the belief which he was to form. Further, in Ganga Saran & Sons (P) Ltd. v. ITO and Ors. (1981) 130 ITR 1 (SC), it was held that the AO must have reasons to believe which is stronger than the word "satisfied" and that the belief must not be arbitrary and irrational. In Calcutta Discount Co. Ltd. v. ITO and Anr. (1961) 41 ITR 191 (SC) it was held that the belief must not be based on mere suspicion but should be based on information. 30. It is further well-settled that the Courts can interfere if information is nonexistent or irrelevant or the belief is dishonest. In ITO v. Seth Bios, (supra), it was held that if the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the Court.

In Vindhya Metal Corporation and Ors. v. CIT (supra) at p. 239 approved by apex Court in (1997) 224 ITR 614 (SC) (supra), it was held that the existence or otherwise of condition precedent to exercise of power under these provisions is open to judicial scrutiny and the absence of the condition precedent would naturally have the effect of vitiating the authorization made by the CIT and the proceedings consequent thereto. It was further held that the existence of information and its relevance to the formation of the belief can undoubtedly be gone into by the Court. Further, in Ganga Prasad Maheshwari and Ors. v. CIT (supra) at pp. 1053-4 it was held that if action has been taken by the public authorities without there being actual reasons to believe about the existence of relevant facts, such action is without jurisdiction and it is open to the person impugning the action to question the very existence of the belief and to contend that the authority actually did not entertain any such belief.1 31. It is thus well-settled that under Article 226 of the Constitution, the High Court while exercising its jurisdiction examines the existence of the information on which belief is said to be formed and as to whether the information was of such a nature that there was a live link or a rational connection between the "information" and the formation of the belief. In this jurisdiction, the Court examines the satisfaction of the concerned authority on the information in his possession and does not substitute its own satisfaction by evaluating the information and/or material before it. 32. The principal argument of the petitioners is that the CAG report cannot be "information" for the purposes of Section 132 of the Act and in any event the CAG report cannot be said to be "in possession of" the concerned officer. It is submitted that CAG report can never come or be in the possession of the concerned officer under the Constitution or the statute as this is a legislative paper, which is to be placed before the House and is to be dealt by the House being the property of the House. According to the petitioners, there can be no legal and constitutional possession of the concerned officer on the said CAG report and in any event the concerned officer cannot use the CAG report for the purpose of forming the "reasons to believe" under Section 132 of the Act. Even if the concerned officer, somehow or the other got the possession of the said report (as contended by the respondents) by illegal or other means then also the concerned officer could not have used the said report as it was the property of the House. It is not the knowledge of the CAG report, which is relevant but its user for a collateral purpose, which is constitutionally impermissible. It is further submitted that the report of the CAG regarding the working of a Government Department cannot be construed as "information" within the meaning of Section 132(1) of the Act. 33. Article 148 of the Constitution of India provides that there shall be a Comptroller and Auditor General of India who shall be appointed by the President. Article 150 provides that the accounts of the Union and the States shall be kept in such form as the President, on the advice of the CAG, prescribes. Article 151(2) of the Constitution provides that– "151(2). The reports of the Comptroller and Auditor General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.". 34. In the present case, the CAG prepares a report

regarding the working of the Directorate of Lotteries of the State of Nagaland. The report at the stage of preparation is draft, preliminary and unsigned. The respondents somehow or the other get a copy of the report in June, 1999 or earlier. The said CAG report is to be submitted by the CAG to the Governor who is to lay the same before the Nagaland Legislative Assembly. 35. It is stated that the said CAG report was laid before the Nagaland Legislative Assembly by the Governor on or about 16th Aug., 1999. But before the report could be laid before the Nagaland Legislative Assembly, the same was somehow obtained by the concerned officer and used by the- said officer for the formation of the belief that conditions exist which warrant action under Section 132 of the Act and consequently search and seizure operations were carried out on the basis of the said CAG report. 36. After the CAG report is laid before the Assembly, it is dealt with by the Rules and procedure of the Legislative Assembly, which govern and provide the manner in which the said report has to be dealt with. Rule 235 of the Nagaland Legislative Assembly Rules provides for the examination of the report of the CAG by the Public Accounts Committee (hereinafter referred to as "PAC"). The report of the CAG in relation to the audit of the accounts of the Directorate of Lotteries, State of Nagaland, and other matters for the period from October, 1993 to November, 1997, was placed before the Legislative Assembly of the State of Nagaland on 16th Aug., 1999 and in terms of Rule 235 of Legislative Assembly Rules, it was referred to PAC of the Legislative Assembly. Thereafter, the PAC examines the correctness of the CAG report. Chapter XXVI of the Legislative Assembly Rules deals with procedure to be followed by the Assembly Committees. Rule 201 provides that the sittings of a Committee shall be in private. Rule 210 provides that the Committee may direct that the whole or a part of evidence or a summary thereof may be laid on the Table and no part of the evidence, oral or written, report or proceedings of a Committee which has not been laid on the Table shall be open to inspection by anyone except under the authority of the Speaker. Rule 210(3) further provides that the evidence given before the Committee shall not be published by any member of the Committee or by any other person until it has been laid on the Table. Rule 212 provides for presentation of report of the Committee, which may be either preliminary or final and be signed by the Chairman on behalf of the Committee. Rule 214 provides that the Chairman shall present the report of the Committee to the Assembly and Rule 215 provides for the presentation of the report of the Committee by the Speaker. Rule 216 provides that the Committee shall have power to pass resolutions on matters of procedure and Rule 217 provides that the Committee may with the approval of the Speaker detailed rules of procedure to supplement the provisions contained in the rule. 37. It is thus evident that the CAG report is a legislative paper and is the property of the House and its members. The CAG report can only be possessed by the Governor who is required to lay the same before the House. It is the exclusive prerogative of the House and its members to deliberate on the same as the said report falls within the special jurisdiction of the House or its Committee. This being the position, no officer, executive or judiciary can be in legal and/or constitutional possession of the said report. Even if any executive comes into possession of

the said report, he cannot use the contents of the same for any purpose as it is the exclusive prerogative of the House to deal with the same. Parliamentary or legislative papers cannot be dealt with by the executive or any officer for any other collateral purpose as it would lead to conflict with regard to the findings recorded in respect of the reports which is within the exclusive domain of the Legislative Assembly. In this connection, it may be pertinent to mention that if the executive or judiciary can interfere with the legislative papers at any stage, then the same would lead to a conflict in many spheres e.g., when the Bill is being debated to make a law, various resolutions are being passed, etc. can it be said that in all such cases, it would be open to anyone to approach the Courts or any officer to use any such information against anyone when the said information is to be dealt with and disposed of by the House. The answer to this question has to be in the negative. 38. Article 212 of the Constitution of India reads as under: "212. The validity of any proceedings in the Legislature of the State shall not be called in question on the ground of any alleged irregularity of procedure." In respect of the matter which is pending before the Legislative Assembly and which is to be dealt with by the House, the same cannot be subject to scrutiny by the executive or Courts. In Tej Kimn Jain and Ors. v. M. Sanjiva Reddy and Ors. AIR 1970 SC 1573, a Constitution Bench of the apex Court in para 8, inter alia, held and observed : "8. . . .Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court. This immunity is not only complete but it is as it should be. It is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of the proceedings by the Speaker. The Courts have no say in the matter and should really have none." 39. Kashyap in his Parliamentary Procedure 2000 Edn. at p. 673 opined that normally no question on audit reports is permitted to be raised in the House till PAC has considered the CAG Report. At p. 2004, Kashyap says that CAG reports stand referred to PAC as soon as they are laid on the Table and the PAC after examining the replies and hearing the evidence given before them by the representatives of the Government come to their own conclusions and report to Parliament. At p. 2199, Kashyap further states that certain papers–documents, reports, statements, etc. are laid on the Tables of the House to fulfil the requirement of the constitutional provisions. It is further stated that once any paper is laid on the Table of the House, it becomes part of the official records of the Parliament. In the present case, the search and seizure was conducted on 23rd June, 1999 and the CAG report was laid in the House on 16th Aug., 1999. As such, even before the CAG report could become "public document", the same was illegally and unconstitutionally used by the concerned officer. Further, at p. 2275, Kashyap says that unless the Speaker otherwise permits, papers required to be laid on the Table under a statutory obligation should not be circulated to the members before being so laid. At p. 2335, Kashyap says as follows : "(a) No member or officer of the House should give evidence in a Court of law in respect of any

proceedings of the House or any Committee of the House or any document connected with the proceedings of the House or in the custody of the Secretary of the House without the leave of the House being first taken." As such, even if the Courts require any evidence, then it should take leave of the House. In the present case, no leave of the House was taken by the concerned officer as there was no occasion to do so as the CAG report was taken cognizance of much prior to the same being placed before the House. Could the concerned officer take into account the CAG report while the same was being deliberated upon by the Assembly or its Committee. The answer to this question has to be an emphatic "no". If the concerned officer could not have dealt with the said CAG report when it was debated before the House or its Committee, can the concerned officer use the said report prior to it being laid before the House. The answer to this question has to be also in the negative. It is well-settled that what cannot be done directly cannot be permitted to be done indirectly. In any event, the concerned officer cannot conduct parallel inquiry into the CAG report once the Legislative Assembly under the Rules is to debate the said report and is to take action thereon. It is pertinent to mention that under the Constitution that PAC examines cases involving losses, nugatory expenditure and financial irregularities. The CAG is an important adjunct of the Committee. The PAC calls officials to give evidence in connection with the examination of accounts relating to a particular ministry. When the PAC is examining official witnesses, the CAG (in the case of the State, the Accountant General) sits to the right of the Chairman and assists him as to the evidence being taken and with the permission of the Chairman, the CAG may ask a witness to clarify a point and he may further make a statement on the facts of the case. The CAG or any of his senior officers is also present at the other sittings of the PAC and clarifies to the members important points arising out of the accounts to be examined by them. After the examination of the audit reports is completed and all relevant information obtained from the Government, the draft report is prepared by the Secretariat based on evidence, oral and written, given before the Committee by the Departmental Representatives. The draft report is then submitted to the Chairman for approval and a copy thereof is forwarded to the CAG for factual verification. When the PAC sits to consider the draft reports as approved by the Chairman, the CAG (in the case of the State, the Accountant General) is also present at the sitting to point out changes in the facts and figures where necessary. The report of the Committee contains a summary of main conclusions and recommendations. The report is placed before the House and is discussed on the floor of the House. As such, the respondent-authorities would have no authority or jurisdiction to form belief on the basis of the said CAG report as in doing so they would be substituting their wisdom with that of the House or its Committee (PAC) and/or, to conduct parallel investigations inasmuch if the respondents conduct any investigation either in respect of the Government or form a belief in respect of a stranger on the basis of the said CAG report, it would be a matter without jurisdiction as it would tantamount to conducting investigation over a matter over which the House or its Committee which has exclusive jurisdiction is investigating. 40. The PAC conducts a review of the

report of the CAG under the Legislative Assembly Rules. During the period of such review/investigation, no question on audit reports is permitted to be raised in the House till PAC has considered the report. If the PAC recommends an action to be taken, the same is accepted and acted upon by the Government and action taken report is thereafter submitted before the House, which is discussed on the floor of the House. When the House or its Committee assumes exclusive jurisdiction even to the extent of follow-up of the action taken on its reports by the Government, no Government authority can conduct parallel investigations. The executive and for that matter even the Courts will have no jurisdiction to base their belief or use the information contained in CAG report for the purposes of initiating any action. Thus, it is only the Legislative Assembly, which has the exclusive jurisdiction over the CAG report. 41. The CAG report which had to be submitted to the Governor to be laid before the House in terms of Article 151(2) of the Constitution of India, was given (laid before) the respondents or the respondents got hold of them somehow. The fact that the said report of CAG was in the possession of the respondents before the same was laid before the House is an admitted position. Papers are laid on the Table of the House in order to supply authoritative facts and information with a view to preparing ground for discussion pertaining to various matters. The report of CAG is laid before the House under Article 151(2) of the Constitution. Where a document is presented to the House or furnished to any of its Committees of the Secretariat, it forms part of the records of the House and is the property of the House. The report of the CAG is referred to the PAC under Rule 235 of Legislative Assembly Rules and the House would have exclusive jurisdiction to deal with this report being a matter concerning its internal proceedings. Thus, the CAG report is the property of the House and as such the same cannot be in possession of the respondents for formation of a belief and/or taking an action as envisaged under Section 132 of the Act. 42. The question of the scope of CAG reports and the intervention of the Courts came up for consideration before the Division Bench of the Delhi High Court (Hon'ble Mr. Justice Arijit Pasayat, C.J. and Hon'ble Mr. Justice D.K. Jain) in B.L. Wadhera v. Union of India (CWP No. 1716 of 2000) which was decided on 16th May, 2001. In this case, the petitioner had on the basis of the CAG reports asked the respondents to perform their constitutional duty to ensure that all the Ministries/Departments submit their respective replies/actions taken notes on each paragraph of the CAG report and also sought direction from the respondent to file status report indicating action taken or proposed to be taken on the basis of the irregularities/illegalities, etc. pointed out by the CAG. The issue arose in this case was as to whether the Courts can take any action on the basis of the CAG reports. The High Court, inter alia, after considering the Constitutional provisions, provisions of the Act of 1971 and the decided cases held and observed in paras 9 and 10 as under: "9.... no Court can go into those questions which are within the special jurisdiction of the Legislature itself which has the power to conduct its own business. It was further opined that the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privilege, and in

this regard, the Legislature is vested with competent jurisdiction to carry on its proceedings in accordance with its rules of business and mere non-compliance with the rules and procedures cannot be a ground for issuing a writ. In this connection, it was also observed that Courts have always recognised the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. 10. . . .The two aspects regarding the action to be taken in the report and follow-up action, if any, are closely interlinked and it would not be desirable to dissect them. It is within the domain of the parliamentary power to work out the modalities and procedures." Thus, if Courts cannot take any action on the basis of the CAG report, then as a corollary, the executive cannot also take any action on the CAG reports and as such any action taken would be totally illegal and unconstitutional. 43. In re, under Article 143 of the Constitution of India AIR 1965 SC 770, the Constitution Bench of 7 Judges at para 70, inter alia, observed that while considering the question of the powers, privileges and immunities of English Parliament it would be quite safe to base ourselves on the relevant statements which have been made in May's Parliamentary Practice. In May's Parliamentary Practice it is stated that one of the collection rights of the House is to settle its own code of procedure. This is such an obvious right – it has never been directly disputed – that it is unnecessary to enlarge upon it except to say that the House is not responsible to any external authority for following the rules it lays down for itself, but may depart from them at its own discretion. This is equally the case whether a House is dealing with a matter which if finally decided by its sole authority, such as an order or resolution, or whether like a bill. This holds good even where the procedure of a House or the right of its members or officers to take part in its proceedings is dependent on statute (May's 18th Edn. pp. 82). The declaration of Article 9 involved the rights of each House to be the sole Judge of the lawfulness of its own proceedings even where the procedure of a House, or the right of its members to take part in its proceedings was dependent on statute. That the House of Commons is not subject to the control of the Courts in its administration of that part of statute law which has relation to its internal procedure, was finally established in Bradlaugh v. Gossett (1884) 12 O.B. 271. Lord Coleridge, C.J. said : "What is said or done within the walls of Parliament cannot, be inquired into in a Court of law. . . ." Lord Elleriborough said – "They would sink into utter contempt and inefficiency without it. . . . If injustice has been done, it is injustice for which the Courts of law afford no remedy." For such purpose, the House can as held in Bradlaugh (supra), "practically change or practically supersede the law." Further at pp. 278, Stephen, J., concurred and added that the House of Parliament was not a Court of justice but the effect of its privilege to regulate its own internal concerns practically invested it with a judicial character when it had to apply to particular cases the provisions of the Acts of Parliament, and if it came to a wrong conclusion, this resembled the error of a Court whose decision was not subject to appeal. 44. In Stockdale v. Hansard (1839) 9 Ad & El, it was held that : Lord Denam : "Whatever is done within the walls of either Assembly must pass without question in any other place." Littledate, J. : "It is said the House of Commons is the sole Judge of its own privileges;

and so I admit as far as the proceedings in the House and some other things are concerned." Patterson, J. : "Beyond all dispute, it is necessary that the proceedings of each House of Parliament should be entirely free and unshackled, that whatever is said or done in either House should not be liable for examination elsewhere." Coleridge, J. : "That the House should have exclusive jurisdiction to regulate the course of its own proceedings, and advert upon any conduct there in violation of its rules or derogation from its dignity, stands upon the clearest grounds of necessity." 45. In P.V. Narshima Rao v. State (CBI/SPE) AIR 1998 SC 2120, the Constitution Bench of the Hon'ble Supreme Court while interpreting the expression "in respect of" occurring in Article 105(2) through majority, inter alia, held at para 134 as follows : "134. . . .The object of the protection is to enable members to speak their mind in Parliament and vote in the same way, freed of the fear of being made answerable on that account in a Court of law. It is not enough that members should be protected against civil action and criminal proceedings, the cause of action of which is their speech or their vote. To enable members to participate fearlessly in parliamentary debates, members need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote. It is for that reason that a member is not liable to any proceedings in any Court in respect of anything said or any vote given by him. . . ." 46. In the present case, the CAG report is to be laid before the House under Article 151(2) of the Constitution and thereafter referred to PAC under Rule 235 of Legislative Assembly Rules which has the exclusive jurisdiction in respect of the same. Thereafter a report is submitted to the House and an action to be taken on the CAG report is recommended to the House and as such action taken reports are submitted from time-to-time. Obviously, the matter concerning the CAG report begins and terminates within the walls of the House. Moreover, the business of the PAC is being transacted in relation to the CAG report in accordance with the internal procedure of the House as per the Legislative Assembly Rules. The PAC is to examine the officers of the Government and thus the CAG report is within the special and exclusive jurisdiction of the House and its Committee. The CAG report thus becomes a part of the business of the House and as such anything said or any proceeding undertaken during the course of that business was immune from proceedings before any executive (including the respondents in the present case) or before any Court. This is the essence of parliamentary system of Government. The executive and Courts have no say in the matter [See Tej Kiran Jain (supra)]. As such, in the present case the respondents cannot rely on the said CAG report at all and form a belief for the purposes of initiating an action under Section 132 of the Act against the petitioners. 47. The final report of the PAC is binding on the executive particularly any investigating authority that undertakes to perform an investigative function that is to be discharged and/or has already been discharged by the PAC. The very basis of the formation of a belief and the consequent assumption of jurisdiction under Section 132 of the Act disappears as the PAC finds that the entire CAG report is untenable. The respondents could not have formed reason to believe on the basis of the said CAG report for the purposes of initiating action under Section 132 of the Act against the peti-

tioners inasmuch as firstly, the possession of the said report is unconstitutional being violative of Article 151(2) of the Constitution of India (as on the said date of the possession of the said report, the same being the property of the House was not even laid before the House) and secondly, no belief could be formed on such a report as an inquiry into the same had to be conducted by the House or its Committee (PAC in the present case) being the prerogative of the House or its Committee (PAC). 48. In British Railway Board v. Pickin (1974) AC 765, the Courts had shown an anxiety not to create a conflict between Parliament and the Courts. In this case, the Law Lords held as follows : Lord Reid : "For a century or more both Parliament and the Courts have been careful not to act so as to cause conflict between them. Any such investigation as the respondent seeks could easily lead to such a conflict and I would only support it if compelled to do so by clear authority. But it appears to me that the whole trend of authority for over a century is clearly against permitting any such investigation." Lord Morris : "It would be impracticable and undesirable for the High Court of Justice to embark upon an inquiry concerning the effect or effectiveness of the internal procedures in the High Court or Parliament or an inquiry whether in any particular case those proceedings were effectively followed." Lord Wilberforce : "This analysis of what the plaintiff's contentions involve, demonstrates in my opinion, and validates the reasons for the Court's firm refusal to embark on any inquiry of this kind. To do so involves them both in a potential clash with Parliament and in a series of steps which can lead to no result." Lord Simon : "So, far many years Parliament and the Courts have each been astute to respect the sphere of action and the privileges of the other. Parliament, for example, by its subjudice rule, the Courts by taking care to exclude evidence which might amount to infringement of parliamentary privilege. [For a recent example, see Dingle v. Associated Newspapers Ltd. (1960) 2 QB 405]....I am quite clear that the issues would not be fairly tried without infringement of the Bill of Rights and of the general parliamentary privilege which is part of the law of the land." 49. It is established that the House of Commons is not subject to the control of the executive or the Courts in its administration of that part of statute law which has relation to its internal procedure, was finally established in Bradlaugh v. Gossett (supra). Lord Coleridge, C.J., said "What is said or done within the walls of Parliament cannot be inquired into in a Court of law...." Lord Ellenborough said – "They would sink into utter contempt and inefficiency without it....If injustice has been done, it is injustice for which the Courts of law afford no remedy." For such purpose, the House can as held in Bradlaugh (supra) "practically change or practically supersede the law". Further, at pp. 278, Stephen, J., concurred and added that the House of Parliament was not a Court of justice but the effect of its privilege to regulate its own internal concerns practically invested it with a judicial character when it had to apply to particular cases the provisions of the Acts of Parliament, and if it came to a wrong conclusion, this resembled the error of a Court whose decision was not subject to appeal. 50. The saying that every wrong has a remedy was demonstrably incorrect; the correct position was that where there was no legal remedy, there was no legal wrong. Bradlaugh v. Gossett (supra)

was applied and followed in Dingle v. Associated Newspapers Ltd. (1960) 2 QB 405 that to impugn the validity of the report of a select Committee of the House of Commons especially one which has been accepted by the House by being printed in the House of Commons Journal was contrary to Section 1, Article 9 of the Bills of Rights, 1688, and no such attack can properly be made outside Parliament. Following this analogy, the executive cannot act on the CAG report as firstly, the CAG report is to be discussed by the House–is to be dealt with by PAC. Secondly, the report binds the House and thus binds the Government and the executive. Thirdly, if PAC report were to be binding on executive, its prior user would tantamount to adjudication in respect of a matter, which would be the special and exclusive concern of the House or its Committee. 51. Under the constitutional scheme, the CAG report right from its inception is the property of the House and is as such in legal and constitutional possession of the House only. The executive cannot in any circumstance deal with the property of the House, by treating it to be its own property and as such the said document cannot be in possession of the executive. In this view of the matter, the CAG report cannot constitute information of the concerned officer and cannot be said to be "in his possession" of that officer within the meaning of Section 132 of the Act and as such no belief can be formed on the basis of the CAG report. 52. Petitioners are not claiming privilege but are only questioning the act of the executive to rely on parliamentary papers for information in respect of a matter, which falls within the exclusive domain of the House. Manner of CAG report, its laying and dealing with the House clearly shows that such a report is made for the House, is to be dealt by the House and disposed of by the House itself in the form of action taken reports. Thus, the executive cannot use the said report for any purpose much less for extracting information for the purposes of Section 132. As such, CAG report begins and terminates within the House and as such the bar of Articles 122 and 212 would be applicable to such a report. 53. The CAG report cannot be treated to be information for the purposes of Section 132 or be in possession of the concerned officer and as such the respondents could not have used that information for the purposes of forming the belief. The use of the CAG report and the formation of the belief thereupon would itself vitiate the authorisation in totality as the said CAG report cannot in any event be relied upon by the authorities being a subject within the exclusive domain of the State legislature. 54. Adverting to the contentions of the respondents in the light of the foregoing discussions on various legal and constitutional issues, it is contended that the CAG report was forwarded to the Union Finance Ministry and such was legally obtained. The CAG report cannot come in (the possession) of the Department prior to its being laid before the House. The fact that CAG forwarded the report to the Union Finance ministry was to facilitate the same to be laid before the House and not to be used by the Ministry or its officials for collateral investigations or purpose. The obligation of the CAG was to forward his report to the Governor who had to lay it to the House and not to forward it to various Government Departments. Documents received in Legislative Assembly are routed through the Government or the executive, do not empower the Government or the executive to use the papers and

documents which fall within the exclusive jurisdiction of the Legislative Assembly to be used for any other purpose. This would tantamount to usurpation of jurisdiction over the matter over which the House has exclusive and special jurisdiction. 55. The question is not of the privilege of the Legislative Assembly or its members and how the privilege is to be invoked but the manner in which the property of the House has to be dealt under the rules and procedures, practice and convention of the Legislative Assembly. If the Government officials use documents, etc. which have to be submitted to the House then it would lead to a conflict and undermine the supremacy of the House to deal with its own property. This could not be the intent of the founding fathers to let the officials and executive to play foul with the Parliament/Assembly and do what they could not otherwise do. Such interpretation would further be contrary to the well-settled principle that the Parliament/Assembly is supreme and thus its property and/or functioning cannot be subjected to the Government officials, etc. either directly or indirectly. The report of the GAG is meant for the House to be dealt with by the House or its Committee, as CAG was constituted for that purpose only by the Constitution. The CAG reports under the Constitution are to be laid before the Legislative Assembly as it deals with the working of the State or its Department. Merely because the CAG report contains certain remarks against citizens, can such remarks constitute "information" and can such remarks become the basis for further investigation. In short, can the executive conduct parallel investigation in a matter exclusively reserved in the Assembly and/or its Committee. Let us consider that a finding in CAG report about evasion of tax is treated as a piece of information by the Department to proceed against a citizen. The PAC who is only constitutionally empowered to judge the report later finds that the finding against the citizen about evasion of tax is totally wrong and unsustainable. Can the Department of Income-tax still find and hold to the contrary stating on the basis of CAG report that the citizen did evade tax and is proceeded against thereby leaving the citizen without any remedy if the limitation, etc. had expired to reopen or review the orders, etc. The answer would be emphatic "no" as such parallel investigations and findings would lead to a conflict between the two reports i.e., one by PAC and another by the executive in respect of the citizen. Can it be said that the report or finding of the Department would gain supremacy. Saying this would undermine the supremacy of the Parliament/Legislative Assembly and this result ought to be avoided. If the contention of the respondents were to be accepted then, although in the illustration, the PAC report would assume supremacy but still the Department's report recording contrary finding would co-exist. Such situations could have been avoided, if initially the Department were not permitted to use the CAG report for any collateral purpose. This is what led to the Division Bench of the High Court of Delhi in B.L. Wadhera case (supra) to hold that CAG reports are within the special and exclusive jurisdiction of the Assembly and the Courts cannot issue directions on that basis. In the present case also, a similar situation has arisen. The CAG had made certain allegations against the working of the Directorate of Lotteries of the State of Nagaland and while doing so made certain remarks against M/s M.S. Associates. The

said CAG report, as stated above, was somehow procured by the Department of income-tax. Based on that information and some other information, warrants of authorisation were issued in June, 1999, and search and seizure operations were carried out against M/s M.S. Associates and various persons/companies, etc. associated with them. However, the PAC after detailed scrutiny and examination of the CAG report held in its report in March, 2002, that the CAG report is unsustainable. Now based on the initial report, the Department took action – can such action ought not to be reversed, if the PAC findings are reversed. If the Department can use the findings of the CAG report, unlike other discussions, etc., with immunity, the same would lead to conflict and empower the Department to scrutinize the CAG report for a collateral purpose. Such conflicting situations ought to be avoided particularly when the executive is not empowered under the Constitutional scheme to review the CAG report and as a corollary to use it for any purpose. 56. In view of the foregoing discussions, in my opinion, the CAG report cannot be used against a citizen as it is to be laid before the House and thereafter referred to PAC. As such, the CAG report is within the special jurisdiction of the Legislature and it is the House, which has to work its own modalities and procedures. The CAG report thus cannot be used against the citizens as unlike other pieces of information, the CAG report falls within the exclusive jurisdiction of the Legislative Assembly to be dealt with by it only. Reference to information in a civil or criminal matter is totally misconceived. In the present case, the issue is not of the knowledge of the CAG report but its user against the citizen when it is to be laid before the House to be dealt with by PAC. Unlike other civil and criminal jurisdiction, which has to be dealt with by authorities constituted under law of the Parliament/Assembly, the report of the CAG cannot be dealt with by other authorities under other laws and as such analogy to criminal (civil) and criminal cases, etc. is totally misconceived. In any event, in criminal and civil cases, if any evidence is required, leave of the House has to be sought and obtained as stated by Kashyap to be a parliamentary practice and procedure at p. 2335 of his book Parliamentary Procedure, 2000 Edn. (extracted at para 38 hereinabove). 57. As regards the alleged interview of Shri M.K. Subba which is allegedly published in some magazine "Rato Gham" wherein Shri M.K. Subba is alleged to have made tall claims about his wealth/position/status, which interview was later published in various other magazines in India, it is submitted by the counsel for the petitioners that Shri M.K. Subba denied having given any such interview and further this Court itself vide its judgment and order dt. 11th Oct., 2001, in Writ Petn. No. 508 of 1998, inter alia, held that the magazine Rato Gham where the interview was published for the first time is fake and fabricated magazine and no such magazine was in fact published. It was contended that the alleged interview of Shri M.K. Subba, being a newspaper report, cannot be relied for the purposes of initiating action under Section 132. According to me, newspaper reports are second-hand secondary evidence. I find merit in the contention of the petitioners. The newspaper reports are hearsay evidence and at best second-hand secondary evidence and the respondents cannot use the same for any purpose. In the present case, the said newspaper reports were

subsequently found to be fake and its genuineness was inquired by this Court and interim orders were passed on 13th Nov., 1998, much prior to the user of the said information by the concerned officer in June, 1999(by paying scant regard to the pendency of the petition and the orders passed by this Court). No reliance can be placed on the said newspaper reports. As such, neither on CAG report nor on interview of Shri M.K. Subba reliance can be placed, as they do not constitute information and/or evidence and as such no reasons to believe can be formed on the said information, as the same is non-existent. 58. A perusal of the files submitted before me by the respondents during the arguments shows that the respondents did have information other than CAG report and the alleged interview of Shri M.K. Subba in Rato Gham. But whether the said information was sufficient to induce the formation of the belief is negated from the very fact that although the "other information" according to the files was "in possession of" the concerned officer for quite a number of years/months, but no action was taken on the said information as it was not considered sufficient to induce the requisite belief to the concerned officer. In fact, the timing of the impugned action of search and seizure operations i.e., in June, 1999, would show that not only supremacy was given to the CAG report but also the same was being used to justify the formation of the requisite belief for the purposes of initiating the impugned action under Section 132 of the Act. It is pertinent to mention that the CAG report came in possession of the concerned officer in May/June, 1999, and thereafter the satisfaction notes were prepared and warrants of authorisation were issued in June, 1999. This clearly shows that the "other information" was not considered sufficient by the concerned officer and it was only the CAG report which was given supremacy and which led the officer to form the requisite belief. 59. From the 3 (three) original files produced by the IT Department, it is seen that the Directorate had collected certain information in the form of 'confidential' and the same contains about the allegations and information against the personal life of Shri M.K. Subba and tax evasions allegations against his group. So it appears to me that the action taken by the respondent authority as discussed above will be definitely illegal and unconstitutional and it is too much for the respondent-authority to initiate the related proceedings on the basis of the said allegations including the alleged personal character and life of Shri M.K. Subba as seen in the related original file No. I "Delhi". According to me, it is a case of bias based on non est and unestablished facts. This Court does not like to highlight and reproduce this information gathered by the IT Directorate, particularly, the information "A" contained in the confidential file No. I as it is not wise on the part of the respondent-authority to take action under Section 132 read with Section 158BC of the Act on the basis of such information including the information as seen in "A" of the original file. 60. According to me, the respondents could not be in possession of the CAG report before it was laid before the House and as such could not have used the same for the purposes of forming the requisite belief under Section 132 of the Act. As such, the warrants of authorisation dt. 18th June, 1999, issued by the respondents are illegal and unconstitutional and are hereby set aside and quashed. Consequently, the impugned notices dt. 20th

Feb., 2001, in the present cases are also hereby set aside and quashed. 61. The respondents have in the counter-affidavit stated that CAG report is not the only basis on which the authorities are alleged to have formed the "reasons to believe" for the purposes of invoking the provisions of Section 132 of the Act. Although, I have held that the CAG report was given supremacy and led the concerned officer to form the requisite belief, I shall still deal and dispose of this argument made by the parties. 62. It is well established that if any of the substantial grounds is bad, vague, irrelevant, unconstitutional or extraneous or not existing, the whole action is bad and illegal. In Dhirajlal Girdharilal v. CIT AIR 1955 SC 271 at p. 273, a case under the IT Act, the Constitution Bench of the apex Court in para 5, inter alia, held and observed as under : "5. . . .The learned Attorney-General frankly conceded that it could not be denied that to a certain extent the Tribunal had drawn upon its own imagination and has made use of a number of surmises and conjectures in reaching its result. He, however, contended that eliminating the irrelevant material employed by the Tribunal in arriving at its conclusion, there was sufficient material on which the finding of fact could be supported. In our opinion, this contention is not well founded. It is well established that when a Court of facts acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises." 63. In Ram Manohar Lohia v. State of Bihar AIR 1966 SC 740, para 15 at pp. 747-8, the Constitution Bench of the apex Court in para 15, inter aha, held and observed as under: "15. . . .order mentions two grounds one of which is in terms of the rule while the other is not. What then is the effect of that ? Does it cure the illegality in the order that I have earlier noticed ? This question is clearly settled by authorities. In Shibban Lal Saksena v. State of Uttar Pradesh AIR 1954 SC 179, it was held that such an order would be a bad order, the reason being that it could not be said in what manner and to what extent the valid and invalid grounds operated on the mind of the authority concerned and contributed to the creation of his subjective satisfaction which formed the basis of the order. The order has, therefore, to be held illegal though it mentioned a ground on which a legal order of detention could have been based. . . ." The respondents made an attempt to distinguish these authorities by stating that the first is in case of a question of law and other is a case of detention where there is an amendment to the said Act. It is stated that the said principle of law is valid and subsisting and is applicable in the facts of the present case inasmuch as unlike the detention laws, there is no amendment of Section 132 of the Act providing that the concerned officer can form belief even if one ground is relevant and the other being irrelevant or non-existent. 64. The satisfaction of the concerned officer is "subjective satisfaction" as the same is based on the information i.e., documents, etc. before him and it is after evaluating these documents, etc. that he forms a belief. As the satisfaction is subjective the principles laid down in Dhirajlal Girdharilal v. CIT (supra) at p. 273, Zora Singh v. J.M. Tandon AIR 1971 SC 1537 at para 10 (p. 1540) and Union of India v. Parma Nanda (1989) 2 SCC 177 at p. 24 are applicable. In

these cases, it is held that in a matter of subjective satisfaction where the authority acts on material partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at its finding, that such finding is vitiated because of the use of inadmissible material. 65. As such, the fact that the respondents were in possession of the other information other than the CAG report would not be of any consequence as I have firstly held than the timing of the possession of the CAG report and the impugned search and seizure action would show that the authorities gave supremacy to the said CAG report and it was primarily on that basis that belief was formed and warrants of authorisation were issued. In any event, I hold that additionally it is not permissible to segregate the information between the constitutional, legal and valid and the unconstitutional, illegal and invalid as no segregation as to what influenced the mind of the concerned officer can be made in the light of the settled legal position. 66. The petitioners further submitted that the information leading to the formation of belief under Section 132 has to be shown to the person concerned. It was contended that in various cases, the Department has itself shown the documents to the petitioners and no specific claim of privilege has been made in those cases. It is contended that in the present case, the respondents had neither claimed privilege nor shown or demonstrated in the affidavit or otherwise as to what other information (other than CAG report which they claim to be in their possession) was in their possession which led them to form the belief for the purposes of invoking Section 132 of the Act.. In this respect, reliance was placed on L.R. Gupta and Ors. v. Union of India and Ors. (supra) wherein it was stated that the Department had filed an affidavit and claimed privilege but subsequently, the Attorney General appeared on 30th Sept., 1981, and stated that he is not pressing the claim of privilege and that the respondents would be willing to show to the Court as well as to the petitioners the reasons which have been recorded for the issuance of the authorization under Section 131(1) of the Act. In Vindhya Metal Corporation and Ors. v. CIT (supra) at p. 240 wherein in the affidavit filed on behalf of the Department, the Department specifically claimed privilege under Section 123 of Evidence Act from disclosing the records to the petitioners. In H.L. Sibal v. CIT (1975) 101 ITR 112 (P&H) at p. 128 (P&H), the respondent-Department claimed privilege in respect of two files marked as I and II, which was turned down by the Court by means of a separate order. 67. I do not agree and reject this contention of the petitioners that the documents/information in possession of the respondents have to be shown to them in the absence of the claim of privilege. In cases where there was no claim of privilege by the Departments, Courts have held that the information is secret and is not to be shown to the petitioners. In this respect, reference is made to Kamal Khosla and Anr. v. Director of IT (Inv.) (2002) 258 ITR 43 (Del), Ram Swamp Sahu and Ors. v. CIT and Ors. (1992) 196 ITR 841 (Pat); Kalpaka Bazar and Ors. v. CIT and Anr. (1990) 186 ITR 617 (Ker); Dr. Pratap Singh and Anr. v. Director of Enforcement and Ors. (1985) 155 ITR 166 (SC) wherein it was held that documents useful for or relevant to investigation or proceedings are secret and need not be disclosed in the search warrant or shown to the petitioners. 68. The next

argument of the petitioners is that the counter-affidavit filed in the present case is vague and the same is liable to be ignored. Additionally, it is argued that the said affidavit is not filed by the concerned officer who had formed the belief and issued the warrant of authorization. It is contended that the counter-affidavit is filed by one Shri Raju Lepcha – Asstt. Director of IT, who was not the concerned authority and as such the said affidavit is not admissible and is liable to be ignored. It is submitted that in the cases where search and seizure has been challenged for want of information and/or the formation of the belief, it is the concerned officer who has filed detailed affidavit to show to the Court the live link between the information in his possession and formation of the belief on the basis of the information in his possession. It is submitted that if the concerned authority himself does not file the affidavit, it cannot be ascertained as to what led to the formation of the belief. The petitioners relied on Biju Patnaik v. ITO (1976) 102 ITR 96 (Cal) at pp. 104-105 wherein it was held that "We cannot help observing that it was the clear duty of the ITO who affirmed the affidavit-in-opposition in this particular proceeding to set out properly the reasons which led to the formation of the belief on his part. The object of filing an affidavit is to convey to the Court all necessary relevant materials and facts and such materials and facts have necessarily to be stated on oath in the affidavit. . . ." Reliance was also placed on C.S. Rowjee v. State of A.P. AIR 1964 SC 962 (CB), para 22; Dulal Roy v. Distt. Magistrate AIR 1975 SC 1508, para 9 and Sadhu Roy v. State of W.B. AIR SC 919, para 12. It was further contended that in the present case, the affidavit is totally vague and the language of the section has only been reproduced in the said affidavit and that in similar circumstances in the case of Dr. Nand Lal Tahiliani v. CIT (supra) at p. 597, the Court was pleased to quash the proceedings under Section 132 of the Act as the affidavit was vague. I do not find force in the argument of the petitioners and accordingly, I reject the same. I have held hereinabove that the information in possession of the concerned officer need not be disclosed to the petitioners and further it is the Court and not the petitioners who have to be satisfied of the impugned action of the concerned officer. Further, the respondents can always authorize any officer to file the, affidavit, who can file the same on the basis of the records.
69. The next argument of the petitioners is that in cases of unconstitutional search as in the present case, the property illegally seized has to be returned back to the petitioners. It is submitted that in the present case, not only the events on the date of receipt of information and formation of belief are important i.e., date of issuance of warrants under Section 132 of Act for authorizing the search and seizure operations, but the events subsequent thereto are equally important as any action taken by the respondents pursuant to the CAG report would not only be illegal and unconstitutional but would also undermine the findings of the PAC as PAC has not accepted the CAG report. As such, not only the impugned action of the respondents would be nullified but also whatever is being retained i.e., account books, jewellery, etc. pursuant to the impugned action would have to be returned. This is because no belief could be formed on the CAG report once the findings of the said CAG report have not been accepted by the House and/or its Committee. To hold otherwise would negate

the report of the PAC, which is not permissible. The counsel for the petitioners referred to the judgment of the apex Court in Commr. of Commercial Taxes v. Ramkrishan Shrikishan Jhaver (supra), wherein the constitution Bench of the Hon'ble Supreme Court in para 19, held and observed as under : "19.... It follows, therefore, that anything recovered from the search of the residential accommodation on the basis of this defective warrant must be returned. It also follows that' anything confiscated must also be returned as we have held that Sub-section (4) must fall. As to the accounts, etc. said to have been seized, it appears to us that the safeguards provided under Section 165 of the Cr.P.C. do not appear to have been followed when the search was made for the simple reason that everybody thought that that provision was not applicable to a search under Sub-section (2). Therefore, as the safeguards provided in Section 165 of the Cr.P.C. were not followed, anything recovered on a defective search of this kind must be returned...." 70. However, the respondents would contend that even if the search and seizure is declared illegal then also the respondents could in law use the evidence collected in such illegal search and seizure against the petitioners. In support, the respondents, inter alia, relied upon the judgment of the apex Court in Pooran Mai v. Director of Inspection (supra). In this case, the apex Court was, inter alia, dealing with the question as to whether the provisions of Section 132 of the Act are violative of Article 19(1)(f) and (g) of the Constitution of India. It was held that the provisions of Section 132 of the Act are not violative of Article 19(1)(f) and (g) of the Constitution and are not confiscatory. Another question raised in respect of illegal searches was as to whether the IT authorities are prohibited from using any information gathered from the documents, which had been seized. 71. The counsel for the petitioners contended that in Pooran Mal (supra), the apex Court was not dealing with unconstitutional searches but illegal searches and as such in that case the counsel conceded that there is no specific Article of the Constitution prohibiting the admission of evidence obtained in illegal searches (see para 23). In that view of the matter, the apex Court held in that case that by invoking the spirit of the Constitution, they cannot spell out exclusion of evidence obtained on an illegal search. The counsel for the petitioners sought to distinguish Pooran Mal case (supra) by arguing that in the present case the search and seizure operation is unconstitutional whereas in Pooran Mal case (supra), the search and seizure was illegal. It was contended that the respondents cannot use any evidence obtained in the present case as the search herein is unconstitutional. It was further argued that Pooran Mal case (supra) did not consider the earlier law laid down by the Constitution Bench of the apex Court in AIR 1968 SC 59(supra). 72. The High Court of Calcutta in Bishnu Krishna Shreshta v. Union of India (1987) 168 ITR 815 (Cal), inter alia, held at pp. 840 and 843 as follows : "The principles that were enunciated by the Supreme Court in the case of Commr. of Commercial Taxes v. Ramkrishna Shrikishan Jhaver (1967) 20 STC 453 (SC) : AIR 1968 SC 59, which were followed by this Court in some cases, have not been overruled by the Supreme Court in any subsequent decision....(p. 840). I am entirely unable to uphold this contention. A Court of law does not suffer a wrong to be without a remedy. If a legal wrong has been committed against

the petitioner, why should not that be undone by passing an appropriate order. In the case of Commr. of Commercial Taxes v. Ramkrishna Shrikishan Jhaver (1967) 20 STC 453 (SC) : AIR 1968 SC 59, this was precisely what was done by the Supreme Court. The documents that were unlawfully seized were directed to be returned to the petitioner in that case. I see no reason why such an order should not be passed in the instant case." 73. I find force in the contention of the petitioners. In R.S. Jhaver case (supra), the search was constitutional and the Constitution Bench of the Supreme Court directed return of the documents as the same cannot be used. The case of Pooran Mal (supra) is firstly on concession and secondly on illegal search (and not unconstitutional search). This case is distinguishable as held by the Calcutta High Court in Bishnu Krishna Shreshtra case (supra). 74. For the reasons and observations made above, I am of the view that the writ petitioners could make out a case and accordingly, these two writ petitions are allowed thus declaring the impugned warrants of authorisation dt. 17th June, 1999 and 23rd June, 1999, including warrant of authorisation dt. 18th June, 1999, issued under Section 132 of the Act issued by the respondents as well as authorisation of search and seizure of documents, etc. of the petitioners as illegal, unconstitutional and void ab initio. Consequently, the impugned notices, both dt. 20th Feb., 2001 issued under Section 158BC against the petitioners in these two matters are hereby quashed as this Court held that the search and seizure operations are unconstitutional, illegal and void ab initio. I further direct the respondents/authority concerned to return to the petitioners the articles, cash, jewellery, books of account, FDRs, etc. seized during the impugned search and seizure operations within two weeks from today. No order as to costs.