
(1965) 12 CAL CK 0004

In the Calcutta High Court

Case No : Appeal from Original Order No. 186 of 1965

Bagsu Devi Bafna

APPELLANT

Vs

Commr. of Income Tax, W.B. and Others

RESPONDENT

Date of Decision : 23-12-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 298

Citation : 70 CWN 431

Hon'ble Judges : Bose, C.J;B.C. Mitra, J

Bench : Division Bench

Advocate : A.C. Bhabra, for the Appellant;E.R. Meyer, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—This is an appeal from a judgment and order of Banerjee, J., dated July 6, 1964, whereby a rule nisi obtained by the appellant on a petition under Article 226 of the Constitution, was discharged. The facts leading up to this appeal are briefly as follows:-- On March 23, 1961, and January 17, 1982, several assessment orders were passed by the Income Tax Officer, "B" Ward, 24-Parganas, on the income tax returns filed by the appellant. The appellant filed the returns voluntarily and the assessment years covered by these returns were 1953-54 to 1961-62. For the year 1953-54 the appellant was assessed to a total income tax of Rs. 5000/- and the order made by the Income Tax Officer was as follows :--

Seen returns. In response to notice u/s 23(2) authorised representative Shri C.M. Chopra appears and the case is discussed. Evidences produced are also examined. Assessee was married about 30 years ago and received certain gifts and presents in cash, which is customary. With that she did pawn-broking business. A/Cs are not maintained properly. She has no bank account. Assessed under S. 23(3) as below :--

Income from businesses estimated

Rs. 3,000/-

Out of initial capital, in the absence of conclusive proof taken as income from other sources.

Rs. 2,000/-

Total

Rs. 5,000/-

2. Similar assessment orders were made for the subsequent assessment years, namely, 1954-55 to 1961-62. It is to be noticed, however, that the assessment for the year 1961-62 was heard by a different Income Tax Officer and not by the Officer who made the assessment for the years 1953-54 to 1960-61.

3. On February 28, 1963, the appellant received a notice u/s 33B of the Income Tax Act, 1922 (hereinafter referred to as the Act). This notice related to the said assessment orders for the years 1953-54 to 1961-62. In this notice it was pointed out that the assessment orders passed by the Income Tax Officer on March 23, 1961, & January 17, 1962, regarding the assessments for the years mentioned above, were erroneous, being prejudicial to the interest of revenue. It was also pointed out that it had been found on enquiries that the appellant did not either reside or carry on business at 19, Purna Mitra Place, Calcutta. It was next pointed out that the Income Tax Officer was not justified in accepting the initial capital, the income from business etc., without any enquiry. The notice concludes by saying that the Commissioner of Income Tax, the Respondent No. 1 herein proposed to pass such orders as the circumstances justified, after giving the appellant an opportunity of being heard under the powers conferred upon the Commissioner u/s 33B of the Act. The date and time of the hearing are also mentioned in the notice and it is also pointed out that no adjournment of the hearing will be granted.

4. The notice mentioned above was answered by the appellant on March 7, 1963, and in the answer it was pointed out that the appellant did reside at 19, Purna Mitra Place, Calcutta, and such residence at this address was for the months of January, 1961 to June, 1961, both inclusive. The rent receipts in the name of the appellant's son were forwarded with the answer. The statements in the notice relating to initial capital etc. were controverted, and certificates, alleged to have been obtained from several persons to support the appellant's case that interest was earned in respect of amounts advanced on security of ornaments, was also forwarded. On March 8, 1963, the Commissioner passed the order which was the subject-matter of the writ petition, out of which this appeal arises. It is noted in the order that nobody appeared in person on behalf of the appellant. By this order the Commissioner held that the assessments were made "post-haste without making any enquiry or investigation into the antecedents of the assessee, whether the assessee was actually carrying on any business, whether

the jurisdiction was correct and other facts relevant for making correct and proper assessment" It is recorded that it was ascertained that the Income Tax Officer, "B" Ward, 24-Parganas had no jurisdiction over the assessee and for that reason all the assessments were ab initio null and void. It was further recorded that on local enquiries it was ascertained that the assessee never resided nor carried on any business at 19, Purna Mitra Place, Calcutta, which was the address given in the returns for the income for the assessment years 1953-54 to 1960-61. In the return for the assessment year 1961-62 the address given by the appellant was P-536(57) Raja Basanta Roy Road, Calcutta. In Part III of the return for the year 1960-61 the assessee had given her address as 772, 5th Road, Sodarpore, Jodhpur. The Respondent No. 1 noted that for that reason all the assessments made were without jurisdiction and ab initio void. The order also dealt with the question of initial capital and also appellant's claim to have earned income from a pawn-broking business. The appellant's contention regarding initial capital and income from pawn-broking business was also rejected by the Respondent No. 1. It was further held that the appellant's husband was a well-known industrialist and business man, who lived in East Pakistan till 1957, that he was the managing director of accompany known as Coventry Spring and Engineering Co. Pvt. Ltd., and also a partner of Kankroli Khandsari Mill, Rajasthan. It was found that the investments made by the appellant were in the firms in which her husband was interested. The investment in shares of the said company was of the value of Rs. 30,400/- and the investment in the said partnership firm was Rs. 12,500/-. It was held that the address given by the appellant was a fictitious address and the story of carrying on pawn-broking and money lending business was also false. The Commissioner further held that even if the investments made in the name of the appellant were considered as belonging to her, the value of the assets should have been brought to tax in the years in which they were acquired and if this was done, the total tax payable by the appellant for 1959-60, 1960-61, and 1961-62 would have been Rs. 4190/-. As against this tax liability, the assessee was granted a refund of Rs. 486/-, taking into consideration the assessment years from 1953-54 to 1961-62. Mainly on the grounds mentioned above the Commissioner cancelled the assessments for the years 1953-54 to 1960-61, which was made by H. Upadhaya on March 23, 1961, and for the year 1961-62 which was made by A.K. Banerjee on January 17, 1962.

5. The order made by the Respondent No. 1, on March 8, 1963, mentioned above was followed by a notice dated May 6, 1963, by the appellant's advocate calling upon the Commissioner to withdraw or cancel the said order. This notice was followed by the petition on which a rule nisi was issued, which however, was discharged by the order of Banerjee, J., as mentioned above.

6. In the petition the said order was challenged principally on the ground that the proceedings against the appellant were initiated u/s 33B of the Act, which was repealed on and from April 1, 1962, and for that reason the Commissioner in initiating the said proceedings and also in passing the said order had acted

without jurisdiction and without authority of law. The next ground was that in making the said order the Respondent No. 1, relied upon materials collected behind the back of the appellant without giving her an opportunity of being heard in rebuttal of those materials and had, therefore, violated the principles of natural justice and also the express provisions of Section 33B of the Act. The other grounds taken were that the Respondent No. 1 had relied on conjectures, surmises and suspicions, and on irrelevant consideration and had rejected the evidence submitted by the appellant, that the Respondent No. 1 had no evidence from which he could come to the conclusion that the order made by the Income Tax Officer on March 23, 1961, and January 17, 1962, were erroneous, that the Income Tax (Removal of Difficulties) Order, 1962, was ultra vires the Constitution, as the said order was delegated legislation in excess of the power permissible under law and was also ultra vires Section 298 of the Income Tax Act, 1961.

7. In dealing with the appellant's said contention regarding Section 33B of the Act, Banerjee, J., held that as this point was covered by his judgment in *Kalawati Debi Haralalka Vs. Commissioner of Income Tax, West Bengal*, Mr. A.C. Mitter, learned advocate for the appellant submitted before him that he would not argue that point, but would not give it up so that it might remain open to the appellant to argue the point further. This Bench dealt with the appeal in *Kalawati Debi Haralalka v. Commissioner of Income Tax* being Appeal from Original Order No. 281 of 1963 and my Lord the Chief Justice dismissed the appeal and upheld the judgment and order of Banerjee, J., on the questions raised regarding Section 33B of the Act and also rejected the contentions of the appellant in that appeal that the Income Tax (Removal of Difficulties) Order, 1962, was ultra vires the Constitution, as the said Order was delegated legislation in excess of the limits permissible by law and was also ultra vires Section 298 of the Income Tax Act, 1961. Having regard to the decision of this Bench in *Kalawati Debi Haralalka*, (supra), Mr. Bhabra learned advocate for the appellant, confined his contentions to the other ground mentioned above, namely, that the Commissioner of Income Tax in passing the impugned order had relied on materials collected behind the back of the appellant without giving her an opportunity of being heard in rebuttal of those materials and had, therefore, violated the principles of natural justice.

8. It was argued that it is now well settled that if an order was made relying upon materials collected behind the back of a party, and without giving the party an opportunity of contesting the legality or binding effect of such materials, the order must be treated as bad for having been made in violation of the principles of natural justice. If a party is to be condemned, Mr. Bhabra argued, on materials which he had no opportunity of contesting, the order should be struck down, as it violated the principles of natural justice. In this case, Mr. Bhabra argued that the impugned order made it clear that the Respondent No. 1 relied on certain materials, namely, that the appellant's husband was a well known business man who carried on business in Pakistan till 1957, that he had large business interest in concerns in East Pakistan and that the investments made by the appellant

were in concerns in which her husband was interested. Mr. Bhabra argued that these materials were collected behind her back and no notice was given to her by the letter dated February 28, 1963, that the Respondent No. 1 was going to rely on these materials in making the order. It was argued that opportunity should have been given to the appellant to deal with these materials, which admittedly were used against her. Such opportunity was not given to the appellant and therefore, it was argued, the order was clearly bad for violating the principles of natural justice.

9. In support of this contention reliance was placed upon the observations of Lord Loreburn, L.C., in *Board of Education v. Rice and others*, 1911 A.C. 179 at page 182 where it was observed that in cases where departments or officers of State were called upon to determine matters requiring discretion to be used, involving questions of law, they could obtain information in any way they thought best but "always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their views." Relying upon these observations Mr. Bhabra argued that all that his client demanded was a fair opportunity to deal with the materials collected behind her back by the Income Tax Department. This opportunity was denied to the appellant and for that reason the impugned order clearly violated the principles of natural justice.

10. Mr. Bhabra next relied upon the decision of the Supreme Court in *Union of India v. T.R. Varma*, (1958) S.C.A. 110. The passage relied upon by Mr. Bhabra is at page 117 of the report and is as follows :--

The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of law. Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

11. Mr. Bhabra also relied upon another decision of the Supreme Court in *State of Mysore Vs. S.S. Makapur*, in which it was held "that tribunals exercising quasi-judicial function are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it."

12. Reliance was next placed on another decision of the Supreme Court in *C. Vasantlal and Co. Vs. Commissioner of Income Tax, Bombay City*, in which it was held that it was open to an Income Tax Officer to collect materials to facilitate assessments even by private enquiry. But if he desired to use the materials so collected, the assessee must be informed of the materials and must be given an adequate opportunity of explaining it. The next case relied upon by Mr. Bhabra in support of his contention was also a decision of the Supreme Court in *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal*, (1955) S.C.A. 96. The observations relied upon by Mr. Bhabra at p. 70 of the report are as follows :--

In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company to rebut the material furnished to it by him, and lastly, it declined to take all the material that the assessee wanted to produce in support of its case.

Relying upon the decisions discussed above Mr. Bhabra contended that there was no indication in the notice dated February 20. 1953, that the Respondent No. 1 in making the impugned order was going to rely upon the materials collected by the department regarding her husband's residence in East Pakistan till 1957 and his interest in business in Pakistan. Mr. Bhabra argued that these materials undoubtedly influenced the decision of the Respondent No. 1 and his client was entitled to an opportunity to rebut the evidence collected behind her back and used against her.

13. Mr. Bhabra, however, sought to distinguish the decision of the Supreme Court in *State of Orissa v. Murlidhar Jena*, AIR 1963 S.C. 404, in which it was held that if there was some evidence for the conclusion arrived at by a tribunal, such conclusions could not be condemned by the Court in a petition under Article 226 of the Constitution. Mr. Bhabra contended that the decision of the Supreme Court did not consider the question if opportunities were given by the tribunal to a party, with regard to materials collected behind a party's back. The question discussed by the Supreme Court was confined to the narrow point, namely, that if there was some evidence for arriving at the conclusion, the tribunal's findings could not be challenged on the ground that there was no evidence and that it was not for the Court to appreciate the evidence for itself and further that the tribunal's findings could be challenged only if there was no evidence at all.

14. Mr. Bhabra next sought to distinguish the decision of the Supreme Court in *S.N. Namasivayam Chettiar Vs. The Commissioner of Income Tax, Madras*, . In that case the Supreme Court upheld the use of materials undisclosed to a party on the ground that those materials did not form the basis of the decision. It was contended that the decision in *S.N. Chettiar's* case, (supra), had no application because in this case very much reliance was placed on the materials collected by the Department, namely, that the appellant's husband resided in Pakistan till

1957 and had large business interest there in which the appellant herself had made considerable investments.

15. Mr. Meyer, learned counsel for the Respondent No. 1, on the other hand contended that there was neither substance nor force in Mr. Bhabra's contentions. He argued that the impugned order could be, and was in fact made by the Respondent No. 1, on materials supplied by the appellant herself in her income tax returns. He argued that the most material question was whether the Income Tax Officers, who made the assessment orders, had the jurisdiction to make the same. He firstly drew our attention to the notice dated February 28, 1963, in which it was pointed out that enquiries made had revealed that the appellant neither resided nor carried on business at 19, Purna Mitra Place, Calcutta. He next referred to the reply being the letter dated March 7, 1963, given by the appellant to the said notice, in which it was asserted that the appellant resided at No. 19, Purna Mitra Place, Calcutta and that such residence was during the months of January, 1961, to June, 1961, both inclusive. Mr. Meyer argued that it was significant that although the appellant asserted that she resided at the said address, and denied the allegation that she did not reside at that address, she did not deny the allegation in the said notice dated February 28, 1963, that she did not carry on business at 19, Purna Mitra Place, Calcutta. This omission, on the part of the appellant, Mr. Meyer argued, was very significant.

16. Mr. Meyer next drew our attention to Part III of Rule 19 of the Act, which is to be filled up by persons engaged in a business. It was argued that Part III of the return for the year 1960-61 was filled up by the appellant herself and she had given the business address as 772, 5th Road, Sodarpore, Jodhpur.

17. Mr. Meyer next drew our attention to Sub-sections (1) and (2) of Section 64 of the Act. Sub-section (1) provides that where an assessee carries on a business, profession or vocation at any place, he shall be assessed by the Income Tax Officer of the area in which that place is situate, and Sub-section (2) provides that in all other cases an assessee shall be assessed by the Income Tax Officer of the area in which he resides. Mr. Meyer argued that on the appellant's own statement, till the assessment year 1960-61 she was carrying business at the address given by her in Part III of the return, and therefore u/s 64(1) of the Act, the Income Tax Officer of Jodhpur alone had jurisdiction and the assessment orders made up to 1960-61 were void for want of jurisdiction, as the Income Tax Officer, who purported to make the order, acted without jurisdiction. Mr. Meyer argued that in coming to this conclusion, and in setting aside the assessment orders up to 1960-61, the Respondent No. 1 did not act on any information collected by the Income Tax Department at all. The statements furnished by the appellant herself in the returns, made it abundantly clear that the assessment orders were made without jurisdiction and for that reason they were void. The Respondent No. 1, therefore, acted perfectly within his jurisdiction in declaring the assessment order up to 1960-61 void and in setting

aside the same. Mr. Meyer further argued that the assessment orders must be condemned on the admission made by the appellant herself in the returns filed by her. It was not necessary, Mr. Meyer argued, for the Respondent No. 1 to travel beyond the statements made by the appellant in the return filed by her.

Dealing with the assessment order for the year 1961-62, Mr. Meyer argued that in the reply dt. March 7, 1963, by the appellant to the notice of the Respondent No. 1, it was stated that she resided at 19, Purna Mitra Place, from January, 1961 to June, 1961. But that was not the address given by her in the return for the year 1961-62. The assessment order for the year 1961-62 was made on January 17, 1962, on which date, Mr. Meyer argued, admittedly she did not reside at 19, Purna Mitra Place. u/s 64 (2) of the Act, it was argued, even if she did not carry on business in the assessment year 1961-62, the jurisdiction u/s 64(2) to make the assessment order was that of the Income Tax Officer having jurisdiction at the place where the appellant resided, at the time when the assessment order was made. The assessment for the year 1961-62 was made in January 1962, when she was not admittedly residing at 19, Purna Mitra Place and therefore, A.K. Banerjee, the Income Tax Officer who purported to make the assessment order had no jurisdiction to make that order, which must, therefore, be held to be void.

18. In our opinion Mr. Meyer's contentions are well founded. If the Income Tax Officer had no jurisdiction to make the order, that by itself is enough to uphold the order of the Respondent No. 1 in setting aside the same and on the materials before the Respondent No. 1 there is no scope for doubt that the two Income Tax Officers who purported to assume jurisdiction with regard to the assessment of the appellant had no such jurisdiction. For the purpose of coming to this conclusion on the question of jurisdiction, it was not necessary for the Respondent No. 1 to rely upon and take note of any materials, other than those furnished by the appellant herself. It was not necessary at all for the Respondent No. 1 to rely upon the appellant's or her husband's residence in East Pakistan. It is true that in the order the Respondent No. 1 had recorded that the appellant, resided with her husband in East Pakistan. That may be or may not be the evidence on which the Respondent No. 1 acted. It is not for this Court in exercise of its writ jurisdiction to appreciate evidence on which the Respondent No. 1 acted. That question is now well settled. If there is evidence which entitles the Respondent No. 1 to come to the conclusion to which he did, this Court will not question the sufficiency of the evidence as it is not sitting in appeal over the decision of the Respondent No. 1. In our opinion, there were ample materials before the Respondent No. 1 to come to the conclusion that the assessment orders were made by the two Income Tax Officers without jurisdiction and were, therefore, void. Indeed the Respondent No. 1 has made that clear in the impugned order. He has noticed that in the return for the assessment year 1961-62 the address given by the appellant is P 536(57), Raja Basanta Roy Road and in Part III of the return for the year 1960-61 the appellant gave her address as 772, 5th Road, Sodarpore, Jodhpur and relying on these materials he held

that all the assessments made in this case were without jurisdiction and ab initio null and void. That being his conclusion, and these being the grounds on which the conclusion was based, we have no hesitation in holding that the Respondent No. 1 was justified in making the order.

19. Mr. Bhabra strenuously contended that having regard to the judgment of the Supreme Court in *Dhakeswari Cotton Mills Ltd. v. Income Tax Officer*, (supra), and *C. Vasantalal & Co. v. Commissioner of Income Tax*, (supra), the impugned order must be declared to be void for violation of the rules of natural justice. He argued that the materials relied on by the respondent No. 1 were not disclosed to the appellant, who therefore had no chance of explaining away such materials. He further argued that no opportunity was given to his client to rebut the materials collected by the department, and relied upon by the Respondent No. 1, in making the order. It was argued that the Respondent No. 1 had referred to the residence of the appellant in East Pakistan up to 1957. Quite plainly, therefore, Mr. Bhabra argued, he had taken the fact of the appellant's residence in East Pakistan into consideration.

20. We are, however, not impressed by the above contention of Mr. Bhabra. It is true that the Respondent No. 1 mentioned in the impugned order that the appellant for sometime resided in East Pakistan where her husband had considerable business interest. It is also recorded in the order that the appellant's husband resided in East Pakistan till 1957. But the Respondent No. 1, in dealing with the question of jurisdiction of the two Income Tax Officers who passed the orders, had clearly relied on the statements made by her in the returns. The Respondent No. 1 also made it clear in the order that he relied on the statements made in the returns regarding the appellant's residential address for coming to the conclusion that the assessments made by the Income Tax Officers were without jurisdiction. Furthermore, as has been noticed by us earlier in this judgment, the appellant carried on business, and for that reason it is the place where the business was carried on, that should determine the jurisdiction of the Income Tax Officer to make the assessment orders. Even if she ceased to carry on business in the year 1961-62 the order of the Income Tax Officer with regard to the assessment for that year could not be sustained as the address mentioned by the appellant in the return was P536(57) Raja Basanta Roy Road, Calcutta. The statements made by the appellant in her income tax returns could not be ignored or overlooked. These statements must be held to be decisive in determining the question of jurisdiction of the Income Tax Officers to entertain the assessment of the appellant and pass orders thereon.

21. Before passing I should over again point out that it is not for this Court in exercise of the writ jurisdiction to enter into the question of sufficiency of the evidence on which the Respondent No. 1 came to the conclusion. If there was some evidence to justify the conclusion arrived at by the Respondent No. 1, it is not for this Court to interfere with such conclusion. On the materials in this case there can hardly be any doubt that the Respondent No. 1 acted on the

statements made by the appellant. If in coming to the conclusion, the Respondent No. 1 had referred to the appellant's residence in East Pakistan, it cannot be said that the impugned order is bad or void for violation of the principles of natural justice.

22. Mr. Bhabra next contended that the decision of the Supreme Court in *State of Orissa Vs. Bidyabhushan Mohapatra*, , on which reliance was placed by Banerjee, J., had nothing whatsoever to do with the question of violation of the principles of natural justice. He argued that the only question dealt with by the Supreme Court in that case was if the High Court was right in directing the Government to reconsider the question of punishment. He, therefore, submitted that the trial Court was in error in relying upon this decision as one involving the question of the violation of the principles of natural justice.

23. Mr. Meyer, on the other hand, contended that the trial Court was entirely right in relying upon the observations of the Supreme Court in the said decision in support of its conclusion that there was no violation of the principles of natural justice. He argued that in that case the High Court had held that there was evidence to support the findings on heads (c) and (d) of charge 1 and of charge 2. With regard to heads (a) and (e) of charge 1 the opinion of the High Court was that the rules of natural justice had been violated. Although the High Court came to the conclusion that there was evidence to support the findings on heads (c) and (d), it directed that the Government of Orissa should decide whether on the basis of those charges, the punishment of dismissal could be maintained or whether a lesser punishment should be inflicted. Dealing with this question the Supreme Court held as follows :--

If the order of dismissal was based on the findings on charges 1(a) and 1(e) alone the Court would have jurisdiction to declare the order of dismissal illegal but when the findings of the Tribunal relating to the two out of five heads of the first charge and the second charge was found not liable to be interfered with by the High Court and those findings established that the respondent was prima facie guilty of grave delinquency, in our view the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal.

Relying upon these observations Mr. Meyer contended that this decision is an authority for the proposition that if there was some evidence on which the Tribunal could come to a conclusion to which it had, such conclusion could not be assailed or condemned merely because it could not be sustained on certain other grounds which the Tribunal took into consideration. In this case, Mr. Meyer argued, that the Respondent No. 1 had come to the conclusion that the Income Tax Officer had no jurisdiction on the statements made by the appellant herself. Even if the conclusion can be attacked on the ground of violation of the principles of natural justice because the appellant was not given an opportunity to rebut the allegations regarding her residence in East Pakistan, Mr. Meyer argued, the order of the Respondent No. 1 could be condemned or struck down because there were ample materials before the Respondent No. 1 to hold that the Income

Tax Officer had no jurisdiction to make the orders which they did. In our opinion, Mr. Meyer's contentions are well founded. The appellant, it is true, had no notice or knowledge of the fact that the department had collected materials which showed that the appellant for sometime resided in East Pakistan. The fact of such residence has been recorded in the impugned order itself. But the question is, can the impugned order be supported and upheld even if the evidence regarding her residence in East Pakistan is completely ignored ? I have already discussed the materials on which the Respondent No. 1 came to the conclusion that the Income Tax Officers had no jurisdiction to make the order of assessments. Those materials, in our opinion, are sufficient to justify the conclusion of the Respondent No. 1 that the assessment orders were made without jurisdiction.

24. Mr. Meyer next contended that the order of the Tribunal must be read as a whole and the order should not be examined minutely, sentence by sentence, so as to discover lapses. He argued that the Respondent No. 1 had indeed referred to the question of the appellant's residence in East Pakistan. But the conclusion of the Respondent No. 1 was not based only on that material. There were other materials, Mr. Meyer argued, which amply justified the order made by the Respondent No. 1, in support of this contention Mr. Meyer relied upon the decision of the Supreme Court in *Bhaichand Amoluk and Co. Vs. Commissioner of Income Tax, Bombay City I.*, . In our opinion, this contention of Mr. Meyer is sound. The impugned order must be read as a whole to find out if it is valid and according to law. Observations made by a Tribunal cannot be picked out for the purpose of criticising its order on the ground that principles of natural justice have been violated. Indeed if the order cannot be supported, except on grounds with regard to which it may legitimately be urged that the principles of natural justice had been violated, the order must be struck down. But if the order can be supported on grounds, apart from those which may be held to be bad for violating the principles of natural justice, it cannot and should not be interfered with.

25. The next question to be considered is the second charge in the said notice dated February 28, 1963, namely, that the Income Tax Officer was not justified in accepting the initial capital, the income from business etc. without any enquiry or evidence whatsoever. With regard to this charge, Mr. Bhabra contended that the Respondent No. 1 had relied on the fact that the appellant's husband was a well known business man who formerly carried on business in East Pakistan till 1957. It has been recorded in the order that the appellant's husband was a managing director of Coventry Spring and Engineering Co. Pvt. Ltd., and besides salary, the appellant's husband had also dividend and interest income. It has been further recorded that he was a partner in Kankroli Khandsari Mill, Rajasthan, and that the investments made by the appellant were in the concerns in which the appellant's husband was interested. In 1960-61 the appellant had investments in shares of the value of Rs. 30,400/-, and in addition she had investments of Rs. 12,500/- in the said Mill. The Respondent No. 1 also found that there was no evidence that the assessee carried on money lending and pawn-broking business

as claimed by her. Referring to these findings of the Respondent No. 1 Mr. Bhabra contended that no opportunity was given to his client to rebut the materials mentioned above which were collected by the department and were used against his client. He argued that it was clear that so far as the findings of the Respondent No. 1 on this aspect of the case was concerned, it was clearly based on materials collected by the department of which no notice was given to the appellant. The evidence so collected, Mr. Bhabra argued, was not disclosed to the appellant or her representative, with the result that the appellant had no opportunity of controverting or at any rate dealing with the same.

Mr. Meyer on the other hand argued that the order made by the Respondent No. 1 cannot be said to have been based only on the materials collected by the department and not disclosed to the appellant. There were other cogent materials, Mr. Meyer argued, which justified the conclusion arrived at by the Respondent No. 1 with regard to the initial capital and the income earned by the appellant from other business. It was found, Mr. Meyer argued, that the appellant did not maintain proper books of account, that there was no evidence that she carried on pawn-broking business, that she had not taken out licence for such a business. The Respondent No. 1 in the order has held as follows :--

In the absence of books of account and details of transactions and the interest earned from year to years, it is not possible to accept the assessee's statement of having carried on any pawn-broking or money lending business. Even if some loans were advanced in the assessee's name, she was merely a benamdar of her husband who was the owner of the amounts so lent.

It was argued that on the materials the Respondent No. 1 came to the conclusion that the claim of large investments made by the appellant and also of initial capital, the claim regarding pawn-broking and money lending business could not be accepted as there was no evidence to support such claims. Books of account were not produced, nor was there any evidence to prove that interest was earned from year to year. The order was made by the appellant on the ground that there was no evidence to support the claim regarding initial capital and investment in business made by the appellant. The claim made by the appellant, Mr. Meyer argued, with regard to initial capital and income earned from business could be proved only by proper books of account. No such books of account were produced to support the claim. Furthermore, the Respondent No. 1 found that voluntary returns of income for all the years 1953-54 to 1959-60 were all dated March 20, 1961, and for the assessment year 1960-61, was dated March 6, 1961. The dates of receipt of the returns for the assessment years 1953-54 to 1959-60 were not recorded anywhere. Notices u/s 23(2) in respect of the assessment years 1953-54 to 1959-60 were issued on March 20, 1961, fixing March 23, 1961, as the date of hearing. With regard to the assessment year 1960-61 the notice u/s 23(2) was issued on March 18, 1961, fixing the date of hearing on March 20, 1961. Upon examination of the orders made by the Income Tax Officer, the Respondent No. 1 found that the Income Tax Officer arrived at

the conclusion off hand post haste and without enquiry. It is relying on these materials that the Respondent No. 1 came to the conclusion that the order of the Income Tax Officer could not be sustained and must be set aside. Mr. Meyer argued that there can be no doubt that the Income Tax Officers had completed the assessments post haste without making enquiries into investments which, he submitted, should have been made particularly because the returns were filed by the appellant voluntarily and the assessments were made for the first time.

26. The question to be considered is whether the appellant was aware of the grounds relating to the second charge in the notice on which the Respondent No. 1 proposed to take action. These grounds were that the records showed that the appellant filed returns of income for 1953-54 to 1959-60 all dated March 20, 1961, and for 1960-61 dated March 6, 1961. The dates of filing of the returns for the years 1953-54 to 1959-60 were not recorded though with regard to the return for 1960-61, the date of filing the same was recorded as March 17, 1961. Notices u/s 23(2) regarding the years 1953-54 to 1959-60 were issued on March 20, 1961, fixing the date of hearing on March 23, 1961, and for the year 1960-61 the notice u/s 23(2) was issued on March 18, 1961, fixing the date of hearing on March 20, 1961. On March 20, 1961, the appellant's representative attended at the office of the Income Tax Officer when the case for 1960-61 was discussed and the matter was postponed to March 23, 1961, on which date the assessments regarding all the other years were disposed of and orders were made regarding the assessments for the years 1953-54 to 1960-61. H. Upadhaya, the Income Tax Officer, B-Ward, 24-Par-ganas, made the assessment order for the years 1953-54 to 1960-61. The return for the year 1961-62 was dated July 24, 1961, and was received at the Income Tax Office on August 12, 1961. On September 20, 1961, notice u/s 23(2) was issued for the year 1961-62 and September 30, 1961, was fixed for hearing, when however no one attended on behalf of the appellant. On January 17, 1962, the appellant's representative discussed the case with A.K. Banerjee, Income Tax Officer, B-Ward, 24-Parganas, and the order was made on the same date. From these materials there can be no doubt that the Income Tax Officers made the assessment in great haste and the dates of issue of notice u/s 23(2) and of the hearing of the assessment cases and the orders made thereon can leave no room for doubt that no investigation or enquiry was made, and indeed none could be made in the short time within which the assessments were completed, after issue of notice u/s 23(2) of the Act. The facts relating to the filing of the returns, the issue of the notices u/s 23(2) of the Act and the hearing of the assessment cases within a few days thereafter, were all within the knowledge of the appellant. These facts appear from the records and were not collected by the Respondent No. 1 by enquiries made behind the back of the appellant. It is not open to the appellant to contend that she had no notice or knowledge of the manner in which the assessment orders were made within a short time after the filing of the returns. There were ample materials on the record, of which the appellant had full knowledge, which justified the Respondent No. 1 in coming to the conclusion that the assessment

orders were made post haste and without making the enquiries and investigation which were incumbent upon the Income Tax Officers to make. As I have noticed earlier, the Supreme Court in *S.N.N. Chettiar v. Commissioner of Income Tax*, (supra), upheld the use of undisclosed materials by a Tribunal on the ground that those materials did not form the basis of the decision. In this case the Respondent No. 1 had in the impugned order referred to the appellant's investment in various concerns in which her husband was interested and he drew the inference that even if some loans were advanced in the appellant's name she was merely a benamdar of her husband who was the owner of the amounts so lent. This inference cannot be treated as a material which has been used against the appellant, but must be treated as an inference drawn by the Respondent No. 1 from the materials before him.

27. The question of violation of the principles of natural justice by the Commissioner of Income Tax in a proceeding u/s 33B of the Act was considered by this Bench in Appeal from Original Order No. 264 of 1963, *Rampyari Debi Saraogi v. Commissioner, Income Tax, W.B.* In that case my lord the Chief Justice following the decision of the Supreme Court in *S.N.N. Chettair v. Commissioner of Income Tax*, (supra), held on the facts of that case, which so far as this aspect of the question is concerned were almost identical, as follows :--

It may be pointed out that in the case before us the materials disclosed the fact that the Income Tax Officer made the assessments in post-haste : a new assessee was assessed by the Income Tax Officer without making enquiries as to the truth or otherwise of her case as disclosed in the Returns and in the Declaration, and the assessment orders were passed on the basis of estimates and conjectures and on assertions unsupported by any reliable evidence. No books of account or bank account were produced by the assessee. These in our view furnish sufficient grounds justifying action to be taken by the Commissioner u/s 33B.

Regarding use of materials which were not disclosed to the appellant in that case but were referred to by the Commissioner in his order, it was held that such materials were supporting materials and they did not constitute the basic grounds on which the final order u/s 33B was made by the Commissioner and the final order so made was not vitiated by reason of the violation of the principles of natural justice. The judgment of Banerjee, J., now in appeal before us, was approved by my lord the Chief Justice. I have no hesitation in accepting the principles laid down in *Rampyari Debi Saraogi's* case.

28. In our opinion the trial Court was right in holding that there were ample materials before the Respondent No. 1 to justify the order made by him setting aside the assessment orders made by the Income Tax Officers. The trial Court came to the conclusion, and we think rightly, that there had been no violation of the principles of natural justice in making the impugned order, as with regard to the first charge in the said, notice dated February 28, 1963, namely, that the appellant neither resided nor carried on business at 19, Purna Mitra Place, the

statements made by the appellant in the returns furnished ample materials to the Respondent No. 1 for coming to the conclusion that the assessment orders were made by the Income Tax Officers without jurisdiction and were, therefore, void. Regarding the second charge also in the said notice, namely, initial capital, income from business, the trial Court was right in holding that there were ample materials on the record to justify and uphold the impugned order. Before concluding I should refer to one other matter. At the hearing before the trial Court as well as before us reliance was placed on a judgment of Sinha, J. in Rampiyari Khemka Vs. Commissioner of Income Tax, West Bengal and Others, . The trial Court had considered the effect of this judgment at great length. But as the judgment of Sinha, J., is the subject-matter of a separate appeal now pending before us being Appeal from Original Order No. 274 of 1964, we do not think, we should deal with the judgment of Sinha, J., at present.

For the reasons mentioned above, this appeal fails and is accordingly dismissed with costs.

Certified for two Counsel.

Bose, C.J.

I agree.