

(1966) 04 BOM CK 0003

In the Bombay High Court

Case No : Miscellaneous Petition No. 554 of 1965

Burmah Shell Refineries Ltd.

APPELLANT

Vs

G.B. Chand (Income Tax Officer) and Another

RESPONDENT

Date of Decision : 18-04-1966

Acts Referred:

Income Tax Act, 1961 — Section 108, 139, 141, 141(1), 143

Citation : (1966) 61 ITR 493

Hon'ble Judges : Y.S. Tambe, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : A.G, for the Appellant; G.N. Joshi, for the Respondent

Judgement

1. The petitioner before us is the Burmah Shall Refineries Ltd., a company registered under the Indian Companies Act. The first respondent is the Income Tax Officer, Companies Circle II (1), Bombay, and the second respondent is the Union of India. In this petition under article 226 of the constitution of India, the petitioner seeks to get quashed the order of 12th October, 1965, made by the first respondent provisionally assessing the petitioner-company to tax u/s 141 of the Indian Income Tax Act (Act XLIII of 1961), hereinafter referred to as the Act, and the notice of demand of the same date issued pursuant thereto as calling upon the petitioner to pay the balance of the tax payable amounting to Rs. 31,74,806.70. The petitioner further prays for issuance of a writ in the nature of mandamus or other merit or direction directing the first respondent to rectify the provisional assessment by granting to the petitioner rebate of Income Tax at the rate of 35 per cent. instead of 30 per cent. actually allowed by him. And lastly, the petitioner prays for issuance of a writ or order restraining and prohibiting the respondents, their officers, servants and agents from taking any steps or proceeding in enforcement or implementation of the first respondent's provisional assessment order of 12th October, 1965, and the notice of demand issued pursuant thereto.

2. Facts in brief are : The petitioner is carrying on business of refining crude oil.

We are here concerned with the assessment year 1965-66, the relevant accounting period being the calendar year 1964, ending with 31st December, 1964. It would be necessary to state the previous history as to the assessment for the earlier year 1964-65, inasmuch as some arguments have been advanced before us on the basis of the said assessment. The relevant accounting period for the assessment year 1964-65 was the calendar year 1963, ending with 31st December, 1963. The petitioner filed its returns of income for the assessment year 1964-65 for the purpose of assessment of Income Tax and also for assessment of surtax under the Companies (Profits) Surtax Act, 1964 (hereinafter referred to as the Surtax Act), on 30th June, 1964, and 13th November, 1964, respectively. In its return under the Surtax Act the petitioner had calculated its chargeable profits by deducting from its total Income Tax at the rate of 25 percent. and surtax at the rate 20 per cent. On the basis that the petitioner was a company engaged in the manufacture or production of mineral oil. The first respondent by his provisional assessment order for the said year 1964-65 u/s 141 of the Act assessment order for Income Tax and super-tax. In his assessment order for Income Tax the first respondent granted the petitioner a rebate at 30 per cent. and after the grant of this rebate the petitioner was charged to super-tax at the rate of 25 per cent. By its letter dated 26th August, 1964, addressed to the first respondent the petitioner informed him that, since the petitioner was a mineral oil concern, rebate should have been granted at the rate of 35 per cent. instead of 30 per cent. allowed by the first respondent and to rectify the assessment and the demand accordingly. In the meantime the first respondent had completed the provisional assessment under the Surtax Act also and in his provisional assessment under the Companies (Profits) Surtax Act the petitioner was assessed to tax on the basis that the petitioner was not engaged in the manufacture or production of mineral oil. The petitioner was, therefore, assessee to surtax at the rate of 40 per cent instead of 32 per cent., being the rate applicable to a company engaged in the manufacture or production of mineral oil. By its letter dated 12th February, 1965, addressed to the first respondent, the petitioner pointed out the following mistakes which according to the petitioner were apparent in the provisional assessment under the Surtax Act :

(1) The Income Tax and super-tax had been deducted at the rate of 50 per cent. while the rate applicable to the company was 45 per cent.; and

(2) the surtax should have been charged at the rate of 32 per cent. instead of 40 per cent.

3. The petitioner pointed out that if these mistakes were rectified, the petitioner's liability to surtax would be increased. By his order dated 15th February, 1965, the first respondent rectified the provisional assessment order for the assessment year 1964-65 under the Surtax Act on the footing that the rates applicable to the petitioner-company were the rates applicable to a company doing the business of manufacture and production of mineral oil. After rectifying the order, the first respondent demanded from the company payment

of additional surtax amounting to Rs. 3,93,478. Thereafter, the petitioner against by its letter of 4th March, 1965, requested the first respondent to rectify the provisional assessment order u/s 141 of the Act and to grant to the petitioner rebate of 35 per cent. On the basis that the petitioner was a company engaged in the business of manufacture or production of mineral oil. By his reply dated 3rd July, 1965, the first respondent refused to rectify the order. In other words, for the year 1964-65, the petitioner-company has been provisionally assessed to Income Tax on the footing that the petitioner was not a company doing business of manufacture or production of mineral oil, while the provisional assessment under the Surtax Act was made on the footing that the petitioner was a company engaged in the business of manufacture or production of mineral oil.

4. Now on 22nd June, 1965, the petitioner filed its return under the Act. The first respondent by his order dated 12th October, 1965, made a provisional assessment u/s 141 of the Act. In the provisional assessment the rebate of Income Tax granted to the petitioner was at 30 per cent., that is on the footing that the petitioner-company was not engaged in the business of manufacture or production of mineral oil. The first respondent also by a notice of demand issued on the same day u/s 156 of the Act demanded the payment of the balance of the tax payable amounting to Rs. 31,74,806.70. The petitioner by its attorney's letter dated 21st October, 1966, requested the first respondent to rectify the aforesaid mistake, viz., granting of the rebate at 30 per cent. and not at 35 per cent. By his reply dated 28th October, 1965, the first respondent informed the petitioner that he saw no reason either to cancel the provisional assessment or to rectify it. The petitioner through its attorneys' notice of dated 5th November, 1965, informed the first respondent that unless redress is granted to him within a reasonable time it would institute appropriate legal proceedings including proceedings for a suitable writ. No reply appears to have been given by the first respondent to this notice. The petitioner filed this writ petition in this court on 16th November, 1965, praying for the aforesaid reliefs.

5. Before we proceed to deal with the arguments advanced by counsel for the parties, it would be convenient to refer to certain relevant provisions of the Act in order to appreciate the contentions raised. Section 4 of the Act provides :

"(1) Where any Central Act enacts that Income Tax shall be charged for any assessment year at any rate or rates, Income Tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year or previous years, as the case may be of every person."

6. A company is a unit of assessment under the Act. u/s 4 the petitioner-company, therefore, is liable to pay Income Tax at the rate or rates prescribed by the Central Act, viz., the Finance Act, in accordance with and subject to the provisions of the Act. Sub-section (1) of section 2 of the Finance Act, 1965, provides :

"Subject to the provisions of sub-sections (2), (3), (4) and (5), for the assessment year commencing on the 1st day of April, 1965, Income Tax shall be charged at the rates specified in Part 1 of the First Schedule...."

7. Part 1 of the First Schedule is divided into various sub-paragraphs, and we are concerned with paragraph F. The material part thereof reads :

"In the case of every company, other than the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), -

Rate of Income Tax

On the whole of the total income 80 per cent.

provided that a rebate shall be allowed in the case of such companies on such income at such rate or rates as are specified hereunder :-

8. Now, the combined effect of all these provisions is that the petitioner admittedly being a company whose income exceeds Rs. 25,000 would be in the first instance liable to pay Income Tax at the rate of 80 per cent. on its total income. But the company also would be entitled to get a rebate at the rate of 35 per cent. If it be a company whose income or profits are attributable to the business of manufacture or production of mineral oil. If, on the other hand, the company's profits are not attributable to the business of manufacture or production of mineral oil, the company would be entitled to a rebate only at 30 per cent. and not at 35 per cent. As we would presently show, the assessment of a company to Income Tax and the assessment of a company to surtax are inter-dependent in the sense that the rate at which Income Tax is charged to the company affects the determination of the total amount of surtax payable by it. It is not necessary to go into detail, but a few relevant provisions of the Surtax Act may be mentioned. Section 4 is the charging section and it provides :

"Subject to the provisions contained in this Act, the shall be charged on every company for every assessment year commencing on and from the first day of April, 1964, a tax (in this Act referred to as the surtax) in respect of so much of its chargeable profits of the pervious year or previous years, as the case may be, as exceed the statutory deduction, at the rate or rates specified in the Third Schedule."

"Chargeable profits" has been defined by sub-section (5) of section 2 as follows :

""Chargeable profits" means the total income of an assessee computed under the Income Tax Act, 1961 (43 of 1961), for any previous year or years, as the case may be, and adjusted in accordance with the provisions of the First Schedule."

9. The material part of the First Schedule is in the following terms :

"Rules for computing the chargeable profits

In computing the chargeable profits of a previous year, the total income

computed for that year under the Income Tax Act shall be adjusted as follows :

1. Income, profits and gains and other sums falling within the following clauses shall be excluded....

2. The balance of the total income arrived at after making the exclusions mentioned in rule 1 shall be reduced by -

(i) the amount of Income Tax and super-tax payable by the company in respect of its total income under the provisions of the Income Tax Act after making allowance for any relief, rebate or deduction in respect of Income Tax and super-tax to which the company may be entitled under the provisions of the said Act of the annual Finance Act, and after excluding from such amount -"

and then follow certain other items, It would thus be seen that the mode of determining the chargeable profits on which the surtax is payable is in the first instance to ascertain the total income determined under the Income Tax Act, then to deduct from the said sum income, profits and gains and other sums falling under certain clauses and then further from the balance so arrived at deduct the amount of Income Tax and super-tax to which the company has been charged. It would thus be seen that if the company is taxed to a larger amount of Income Tax, its chargeable profits for the purpose of surtax would in its turn be reduced. If, on the other hand, the company is charged to a lesser amount of Income Tax, the chargeable profits in its turn would increase. The other relevant provision of the Act is section 141, which relates to the provisional assessment, and section 143 and 144 which relate to the regular assessment. To these provisions we would advert when we deal with the contentions raised on behalf of the parties.

10. The learned Advocate-General who appears for the petitioner, contends that the petitioner-company was at the material time engaged in manufacture or production of mineral oil and therefore was entitled to rebate at 35 per cent. The Income Tax Officer was clearly in error in not allowing rebate at the rate of 35 per cent. The mistake is apparent on the face of the record and therefore should be rectified. Secondly, he contends that at any rate the petitioner-company had been claiming in its return and the company accounts as well as other documents that the company was engaged in the business of manufacture or production of mineral oil, and therefore the Income Tax Officer was bound to proceed in making a provisional assessment on that basis and assess the assessee-company on the footing that it was engaged in the business of manufacture or production of mineral oil. In proceeding to hold the contrary to the case put forward by the petitioner-company, the Income Tax Officer has acted in excess of his jurisdiction. The Advocate-General also argued that on the averments made by the first respondent in his affidavit in reply to the petition, the first respondent has not denied that the petitioner was a company engaged in the business of manufacture or production of mineral oil, nor has the first respondent denied that the petitioner-company had claimed that it was a company engaged in the

manufacture or production of mineral oil. Thus, according to the Advocate-General, the admitted position was that the petitioner was a company engaged in the business of manufacture or production of mineral oil. The Income Tax Officer was therefore in error in granting rebate only at 30 per cent. and not at 35 per cent. Mr. Joshi, learned counsel for the revenue, on the other hand, contends that the petitioner is not a company engaged in the manufacture or production of mineral oil. On the other hand, the petitioner is a company doing business of refining crude oil. It is the argument of Mr. Joshi that the expression "mineral oil" means crude oil and not its products. Crude oil is supplied to the petitioner. The petitioner is not either manufacturing or producing crude oil. Crude oil is imported from abroad or is brought from Ankleshwar. The petitioner only by refining the crude oil manufactures the products from the crude oil. The business of the petitioner-company therefore is not either the manufacture or the production of crude oil. The Income Tax Officer therefore was right in granting rebate at 30 per cent. It is also the argument of Mr. Joshi that nowhere, either in the return or in the accounts or the documents which have been filed by the petitioner alone with its return, any claim was made by the petitioner that it was a company engaged in the business of manufacture or production of mineral oil. It is only after the assessment had been completed that the petitioner for the first time in its application dated 21st October, 1965, for rectification has claimed that it was a company engaged in the manufacture or production of mineral oil. That letter is of no relevance. According to Mr. Joshi no claim was made at the time of the assessment either in the return or in the documents accompanying it. The Income Tax Officer therefore was entitled to deduce from the material before him as to whether the petitioner was a company engaged in the business of manufacture or production of mineral oil, and he has decided that the petitioner-company was not so engaged. There is no error therein.

11. The first question that arises is whether it could at this stage be said that the company *prima facie* appears to have been engaged in the business of manufacture or production of "mineral oil" or whether it could at this stage be said that the company *prima facie* does not appear to have been so engaged. We are formulating this question in this manner because, in our opinion, it would not be legitimate for us at this stage to decide the question one way or the other finally as further debate on the question would be permissible under law at the stage of final assessment after full inquiry into facts. It cannot be lost sight of that we are dealing with a writ petition, wherein a provisional assessment order has been impugned. The provisional assessment order has no binding effect. As we would be presently showing, the provisional assessment order is made without hearing the parties and without there being any inquiry preceding it. The matter still has to be gone into at the time of the final assessment proceedings when the parties would have an opportunity of leading evidence, fully stating their case before the Income Tax Officer and arguing their case. The assessee would be having a further right of appeal before the Income Tax authority, viz., the Appellate Assistant Commissioner, and would also have a right of second

appeal before the Income Tax Tribunal, and it is only ultimately when the facts are finally found by the Tribunal that the matter would be coming before this court in a reference in accordance with the procedure which has been prescribed by the Income Tax Act. We have at this stage to see whether the matter is abundantly clear one way or the other.

12. The expression "mineral oil" has not been defined anywhere in the Act. In Webster's Third New International Dictionary (volume II, page 1438), the meaning of "mineral oil" has been given as :

"Mineral oil, n. : a liquid product of mineral origin that is within the viscosity limits recognised for oils (as petroleum, shale oil, or any oil obtained from them by refining), esp. liquid petroleum - compare Hydrocarbon oil, Paraffin oil."

13. In Oxford English Dictionary, edited by Murray (volume 6, page 467), the meaning of "mineral oil" is given as :

"Mineral oil - a general name for petroleum and the various oils distilled from it."

14. In Petroleum Dictionary by Lalia Phipps Boone (page 199), the meaning is :

"Mineral oil"

1. Crude petroleum and its products.

2. Liquid petroleum.

15. In the Illustrated Petroleum Dictionary and Products Manual - compiled and edited by the editorial staff of the Petroleum Educational Institute (page 269) the meaning is :

"Mineral oil. - Petroleum as it comes from the ground is frequently called mineral oil because it comes from a mineral surrounding; also to distinguish it from oil secured from vegetable and animal sources. It may refer to (1) crude oil coming naturally from the ground or secured from coal, shale or any other natural source; (2) any one of the many products secured from the crude oil or secured from coal, shale or other natural sources."

16. From the meaning of the word "mineral oil" as given in Webster's and Oxford Dictionaries as well as in the technical dictionaries, viz., the Petroleum Dictionary and the Illustrated Petroleum Dictionary, it is clear that the expression "mineral oil" is wide enough to include both the petroleum in its crude form as well as the products secured or obtained from the crude oil by refining. We have already stated that in the petition the business of the petitioner-company has been given as "refining crude oil". The dictionary meaning of the word "crude oil" in Webster's Dictionary (page 546), (volume 1) is :

"Crude oil or crude petroleum, n. : petroleum as it occurs naturally, as it comes from an oil well, or after extraneous substances (as contained water, gas and minerals) have been removed."

17. In the Illustrated Petroleum Dictionary and Products Manual - by petroleum Educational Institute, California - it has been mentioned :

"Crude oil. - See petroleum.

Petroleum. - Describes crude oil as it comes from the ground in its natural state or when secured from coal, shale and other sources. Its origin is not definitely known. The word is derived from the two Latin words, *petra*, meaning rock and *oleum* meaning oil and frequently called rock oil or earth oil. Sometimes found oozing from the surface and called seepage, but usually found far below the surface and in every continent on earth. Also known as mineral oil, crude oil and crude naphtha." (page 311).

18. In the Petroleum Dictionary by Lalia Phipps Boone (page 104), it has been mentioned :

"Crude mineral oil - petroleum. Designated crude to distinguish it from the refined oils manufactured from it.

Petroleum, n. : An inflammable liquid, oily of a great many hydrocarbons found in the earth. The quality and quantity of the deposits of pools vary almost as widely as the localities in which they are found."

19. The same dictionary also gives so many other names by which petroleum is referred to, such as black gold, black gold of Transylvania, blackjack, black oil, etc. Reading the aforesaid definition of "crude oil" it is apparent that petroleum as it comes from the ground is generally understood or generally referred to as crude oil and the expression "mineral oil" is wide enough to include not only the crude oil but also any oil is wide enough to include not only the crude oil but also any oil obtained from it by refining, or any products secured from the crude oil.

20. We have already stated that the combined effect of the various provisions of the Act to which we have already made reference is that if the company is engaged in doing the business of manufacture or production of mineral oil, then it is entitled to 35 per cent. rebate. We have referred to the meaning given to the terms "mineral oil" and "crude oil" in the aforesaid dictionaries, which indicate that the crude oil means petroleum in its raw form as it comes from the ground, and the expression "mineral oil" is wide enough to include both petroleum as well as the products produced from petroleum by refining, or the products secured from raw petroleum or crude oil. Prima facie, therefore, the company appears to have been engaged in the business of manufacture or production of "mineral oil". Mr. Joshi, however, has argued that it may be that the expression "mineral oil" by itself may have a wider meaning by including both petroleum and petroleum products, but in the context in which it has been used it must be given the limited meaning of petroleum or crude oil. The argument of Mr. Joshi is that the expression "mineral oil" has to be understood in the limited sense in view of the words that precede it in the third item of the list of articles and things in part III. He contended that all the articles preceding, such as coal, lignite, iron ore,

bauxite, manganese ore, dolomite, limestone and magnesite, precede the words "mineral oil". All these articles or things are raw materials; the expression "mineral oil" therefore must be understood as referring to the raw material, viz., crude oil or petroleum and not its finished products. It is difficult to accept the interpretation which Mr. Joshi wants us to put on this expression, especially because when we read other items in the list of articles and things appearing in the various clauses of Part III, we do not find that the intention of the legislature was to restrict the benefit only where raw material was protected or extracted. For instance, look at item No. 1 which is iron and steel, ferro-alloys and special steels. Clearly, steel ferro-alloys and special steels are not articles which could be termed as raw material. However, as already stated, it is not necessary at this stage to go into detail in this matter. Suffice it to say that it is difficult by merely reading item No. 3, to hold that the legislature intended to restrict the meaning of the word "mineral oil" to "crude oil". There is also another difficulty in the way of Mr. Joshi and that is the language used in the relevant provisions. The language used is "On so much of the total income as consist of profits and gains attributable to the business of manufacture or production of mineral oil." According to Mr. Joshi the rebate of 35 per cent. is allowable only to such companies which do the business of extracting crude oil from earth and not to companies that do the business of refining. If we accept that contention it would be completely rendering the word "manufacture" redundant. The rebate is allowable to a company that does the business either of manufacture or production of mineral oil. Prima facie "manufacture of mineral oil" could mean mineral oil produced by refining process from crude oil. Both crude oil as well as products produced from it have its origin in or have its basic substance as mineral oil. It has also been argued by Mr. Joshi that wide words used in the statute have to be understood in the limited sense in order to give effect to the true intention of the legislature. According to Mr. Joshi, the concession provided by the aforesaid relevant provisions of the Act are concessions provided for those companies which produce the raw material of which India is in need, and therefore the meaning of the word "mineral oil" will have to be construed as confined to the crude oil. He read to us certain passages in support of his contention that the words of the statute have not to be construed in the abstract but in the context of the intention of the legislature. He referred us to Maxwell and certain observations in *Bradlaugh v. Clarke*, as well as certain observations in *Halsbury's Laws of England* in support of his contention. The proposition is well known, but the question that has to be considered is : what exactly is the intention of the legislature. Is it clearly the intention of the legislature that it intended to grant some benefit and thus encourage companies that were producing raw material ? It would equally be said that the intention of the legislature was to grant certain concessions and thus encourage companies that would produce good or manufacture goods which are essential for the basic needs of India, in other words, which would produce or manufacture basic goods. However, as we have stated already, we are not finally decessing the matter. Suffice it to say that it is not impossible to say with certainty that the petitioner-

company is not engaged in the business of manufacture or production of mineral oil. On the other hand, the contention of the petitioner that it is engaged in the business of manufacture or production of mineral oil *prima facie* appears to be well founded. The question is one of considerable difficulty requiring through investigation into facts, particularly as to the exact nature of the goods that are produced by the refining process in which the petitioner-company is engaged, what exactly is the nature of the business of the petitioner-company, and various other things. These matter could be gone into only when the proceedings for final assessment would commence.

21. The question next to be considered is whether the petitioner-company had in the assessment year 1965-66 claimed before the Income Tax Officer that it was a company engaged in the business of manufacture or production of mineral oil. The learned Advocate-General contended that the petitioner-company had claimed that it was engaged in the business of manufacture and production of mineral oil. In fact, according to him, the petitioner-company had been contending since even the earlier years that it was so engaged, and the claim of the petitioner-company was well known to the Income Tax Officer. He further argued that even in the return the petitioner-company had made such a claim, inasmuch as depreciation was claim by it on the basis that it was a mineral oil concern. Lastly, it is his contention that in the petition the petitioner-company had averred that it had claimed before the Income Tax Officer that it was engaged in that business and there has been no denial on the part of the Income Tax Officer about that position. Mr. Joshi, on the other hand, contends that it may be that in the earlier year, i.e., in the assessment year 1964-65, the petitioner-company might have claimed that it was engaged in that business and the claim might have been accepted by the Income Tax Officer for the purposes of surtax. But the assessment proceedings both for Income Tax and surtax for the earlier years are wholly irrelevant in considering the question for the assessment year 1965-66. Those proceedings are to be completely ignored and no reference thereto could be made. As regards the assessments proceeding for the year 1965-66, neither in the return nor the documents accompanying it, the petitioner-company had made any such claim. It is only after the assessment proceedings were complete that in the letter for rectification written by the petitioner-company to the Income Tax Officer on the 21st October, 1965, the petitioner-company had made that claim. Mr. Joshi further argued that there was clearly a denial of the averments in the first respondent's affidavit in reply. We have the earlier year, viz., the assessment proceedings for the year 1964-65. To sum up, the Income Tax Officer initially had provisionally assessed the assessee-company both for Income Tax as well as for surtax on the footing that it was a company not engaged in the business of manufacture or production of mineral oil. The assessee-company had written letters to the Income Tax Officer to rectify the Income Tax assessment as well as the surtax assessment. On 15th February, 1965, the Income Tax Officer had rectified the surtax assessment accepting the contention of the assessee that it was a company engaged in the manufacture or

production of mineral oil and on that footing had also claimed from the company additional payment of surtax. The Income Tax Officer, however, had given no reply to the assessee-companying respect of his claim for rectification of the Income Tax assessment till the assessee-company had filed its return before the Income Tax Officer on 22nd June, 1965. The position thus that prevailed at the time the return was filed by the assessee-company was that the Income Tax Officer had accepted the claim of the assessee-company in the matter of rectification of the surtax assessment that it was a company engaged in the business of manufacture or production of mineral oil. The question to be considered is whether all these proceedings have to be completely ignored in considering the issue whether the assessee-company had claimed before the Income Tax Officer or was claiming before the Income Tax Officer for the assessment year 1965-66 that it was a company engaged in the business of manufacture or production of mineral oil. According to Mr. Joshi, it is to be completely ignored. It is indeed true that each year of assessment is a separate and distinct units and the principle of *res judicata* has no application to Income Tax proceedings. Neither the Income Tax authorities nor the assessee is estopped from taking in subsequent assessment proceedings a stand different from the one it had taken in the earlier years. But that is altogether a different matter than saying that what happened in the previous years is altogether an irrelevant consideration. The true position has been pointed out by Chagla C.J. in *H. A. Shah & Co. v. Commissioner of Income Tax*, where it has been held :

"As a general rule the principle of *res judicata* is not applicable to decisions of Income Tax authorities. An assessment for a particular year is final and conclusive between the parties only in relation to the assessment for that year and the decisions given in an assessment for an earlier year are not binding either on the assessee or the department in a subsequent year. But this rule is subject to limitations, for there should be finality and certainty in all litigations including litigation arising out of the Income Tax Act and an earlier decision on the same question cannot be reopened if that decision is not arbitrary or perverse, if it had been arrived at after due inquiry, if no fresh facts are placed before the Tribunal giving the later decision, and if the Tribunal giving the earlier decision has taken into consideration all material evidence..."

22. The view of this court thus had been that though the Income Tax Officer is not bound by the rule of *res judicata* or estoppel on record, he can reopen a question previously decided only if fresh facts come to light which on investigation would entitle the officer to come to a conclusion different from the conclusion previously reached or if the earlier decision had been rendered without taking into consideration material evidence. It is abundantly clear that what had happened in the previous assessment proceedings of an assessee is not totally irrelevant in his assessment proceedings for subsequent years, though the Income Tax Officer would not be bound by the decisions previously taken. We are just now not concerned with the question as to whether the Income Tax Officer could or could not have taken a view different from that he had taken in

the surtax provisional assessment of the assessee for the year 1964-65. The question to be considered is whether the said proceedings have any relevance in considering the question as to whether the Income Tax Officer knew the stand of the assessee in respect of the nature of its business. We have also shown on the basis of the decision of this court that those proceedings have relevance.

23. The question next to be considered is as to the nature of the claim of the assessee about depreciation, and it would be convenient here to refer to the relevant provisions relating to depreciation allowance. Section 32 of the Act provides :

"(1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of section 34, be allowed -

(ii) in the case of buildings, machinery, plant or furniture, other than ships covered by clause (i), such percentage on the written down value thereof as may in any case or class of cases be prescribed...."

24. Section 295 empowers the Board to frame rule on various matters including the aforesaid matter referred to in section 32. Rule 5 relates to depreciation and it provides :

"Subject to the provision of sub-rules (2) and (3), the allowance under clause (i) or clause (ii) of sub-section (1) of section 32 in respect of depreciation of buildings, machinery, plant or furniture shall be at a percentage of the actual cost or the written down value, as the case may be, equal to (i) 100 per cent., (ii) fifty per cent. or (iii) nil per cent. of the number shown in the corresponding entry in the second column of the statement in Part I of Appendix I to these rules according as the buildings, machinery, plant or furniture have been used by an assessee in his business or profession during the previous year (i) for a period of 180 days or more, (ii) for a period of less than 180 days but more than thirty days or (iii) for a period of thirty days or less than thirty days, respectively."

25. This brings us to Part I of Appendix I to the said rules. We are here concerned with Class III - Machinery and Plant. Clause (ii) under this class relates to the special rates to be applied to the whole of the machinery and plant used in certain concerns, and then follows the detailed list of certain concerns. Clause (iii) provides :

26. The aforesaid various provisions clearly indicate that depreciation at a special rate provided in Part I of Appendix I annexed to the rules is allowable for certain machinery used in mineral oil concerns. It is an admitted position that depreciation at these special rates had been claimed by the petitioner-company in its return and depreciation had been allowed to the petitioner-company by the Income Tax Officer at those rates. It is the argument of the learned Advocate-General for the petitioner that in clear terms in its return the petitioner-company

had claimed than it was carrying on business of manufacture or production of mineral oil. On the other hand, it is the argument of Mr. Joshi that the claim made by the petitioner only indicated it was a mineral oil concern. But that is altogether a different position than saying that the petitioner was doing the business of manufacture or production of mineral oil. The petitioner-company was refining crude oil and crude oil is mineral oil. The petitioner company's concern thus was a mineral oil concern, by that does not mean that it was doing the business of manufacture or production of mineral oil. With respect we find it difficult to appreciate the distinction which Mr. Joshi seeks to draw. The claim of the petitioner was that it was a mineral oil concern. In other words, its business was connected with mineral oil and normally the business of any concern would be in respect of goods, articles or things either produced or manufactured by it. Refining is a process towards the production or manufacture of the finished product. However, again we wish to be clearly understood that we are not deciding the question finally.

27. This brings us to the consideration of the next branch of the argument whether the petitioner had pleaded in its petition that it had contended before the Income Tax Officer that it was doing the business of manufacture and production mineral oil. We would reproduce the material part of the pleas raised by the parties. In paragraph 12 of the petition two grounds on which it was challenging the order made by the Income Tax Officer u/s 141. In clause (b) of the said paragraph the petitioner avers :

"In any event the petitioner submits that the first respondent had no jurisdiction to go into the merits of the petitioner's claim, namely, that it was a company engaged in the manufacture or production of mineral oil, in a provisional assessment and that the provisional assessment could only be made on the basis of the petitioner's claim that it was a company engaged in the manufacture or production of mineral oil."

28. The affidavit in reply has been filed by the first respondent. It appears that by the time the reply was filed, the first respondent, Mr. G. B. Chand, had become the Appellate Assistant Commissioner. It is not in dispute that Mr. G. B. Chand was the Income Tax Officer who had made the provisional assessment orders of the petitioner-company both for Income Tax and surtax for the earlier year, viz., 1964-65, as well as the present impugned Income Tax order of the year 1965-66. In paragraph 8 of the affidavit the first respondent avers :

"With reference to ground (b) of paragraph 12 of the said petition, I deny the correctness of the contentions and submissions therein made..... I submit that in making the provisional assessment under the said section 141, the assessment of tax has to be made in accordance with and subject to the provisions of the Act and that it is open to the Income Tax Officer to scrutinise the return and the statements of account and documents accompanying the return and to see whether any claim made by the assessee is admissible in accordance with the provision of the Act or not. According to the accounts and documents

accompanying the return of the petitioner relating to the assessment year 1965-66, it is quite clear that the petitioner is engaged in the business of refining of crude oil and I submit that a company which is engaged in the business of refining of crude oil cannot be said to be engaged in the business of manufacture or production of "mineral oil" being one of the articles or things specified in the list in Part III of the First Schedule to the Finance Act, 1965."

29. Reading the averments of the petitioner and the reply given thereto, in our opinion there is n clear denial of the factual position pleaded. Having regard to the aforesaid facts and the background and having regard to the fact that the first respondent was the Income Tax Officer who had made the provisional assessment order relating to the petitioner-company for Income Tax and surtax in the earlier year as well as the provisional assessment order for 1965-66, it appears to us that the first respondent was well aware of the claimed by the petitioner that it was a company engaged in the business of manufacture or production of mineral oil. The Income Tax Officer has not accepted this claim because in his view the business of the petitioner-company was refining crude oil and that according to the first respondent was not the business of manufacture or production of mineral oil.

30. The question next to be considered is whether it was open to the first respondent to go into and decide the said question at the stage of making a provisional assessment of Income Tax u/s 141 of the Act. The material part of section 141 reads :

"141. (1) The Income Tax Officer may, at any time after the receipt of the return made u/s 139, proceed to make, in a summary manner, a provisional assessment of the tax payable by the assessee, on the basis of his return and the accounts and documents, if any, accompanying it.

(2) In making any assessment under this section due effect shall be given to -

(a) the allowance referred to in sub-section (2) of section 32; and

(b) any loss carried forward under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) of section 74."

31. Sub-section (3) relates to the assessment of a partner of a firm and sub-section (4) relates to the assessment of a firm. It provides :

"(4) A firm may be assessed under sub-section (1) as an unregistered firm, except in the following cases, where it shall be assessed as a registered firm...

(b) where no regular assessment has been made on the firm for any assessment year preceding the assessment year for which the provisional laid down in Chapter XVI-B filed its application for registration, or declaration as aforesaid, for the assessment year for which the provisional assessment is to be made."

32. Sub-section (5) to (7) provide :

"(5) After a regular assessment has been made, any amount paid or deemed to have been paid towards the provisional assessment made under sub-section (1) shall be deemed to have been paid towards the regular assessment; and where the amount paid or deemed to have been paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

(6) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall be prejudice the determination, on the merits, of any issue which may arise in the course of the regular assessment.

(7) There shall be no right of appeal against a provisional assessment made under sub-section (1)."

33. To summarise, these provisions indicate that, in the matter of making a provisional assessment, three limitations have been place on the powers of the Income Tax Officer. In the first instance, a provisional assessment could be made only when a return has been filed, in the second instance it has to be made on the basis of the return filed and the accounts and documents, if any, accompanying it, and in the third instance it is to be done in a summary manner. The provisional assessment does not come in the way either of the assessee or the Income Tax Officer in the matter of making a final assessment after considering the various contentions raised on the merits. If the tax collected in the provisional assessment is less, the revenue can demand the balance from the assessee after making the final order of assessment. If, on the other hand, the tax collected from the assessee as a result of the provisional assessment is more than what is payable by him, the excess is refundable to him. The provisional assessment is made ex parte against the assessee and the assessee has no right of appeal. It is in this context and having regard to the aforesaid limitations placed on the powers of the Income Tax Officer, we have to consider the aforesaid question which falls for our consideration. But before we proceed to deal with the arguments advanced before us on this aspect of the case by counsel for the parties, it would be convenient to bear in mind the difference between the provisional assessment and the regular assessment.

34. Sections 143 and 144 of the Act relate to the regular assessment. Sub-section (1) of section 143 empowers the Income Tax Officer to determine the sum payable by the assessee on the basis of his return, if the Income Tax Officer is satisfied without requiring the presence of the assessee or without production of any evidence by him that the return filed is a correct and a complete one. If, on the other hand, the Income Tax Officer is not satisfied with the return and desires that the assessee should produce evidence in support of his return, sub-section (2) empowers the Income Tax Officer to serve a notice to that effect, and sub-section (3) provides that after the evidence and the material has been produced by the assessee, the Income Tax Officer should after making an inquiry complete the assessment. It may be stated in this connection that section 144 empowers the Income Tax Officer to issue a notice a notice to the assessee

requiring him to produce various documents including accounts, etc., for the purposes of making an inquiry. Now, cases may arise where a person, though liable to pay tax, does not choose to file a return. A person who has filed a return and who has been asked to produce his account books and/or documents or other evidence in support of his return may fail to produce those accounts or documents or evidence. Sub-section (2) of section 139 empowers the Income Tax Officer to call upon a person to file his return if the Income Tax Officer is of opinion that the income earned by that person would be one assessable to tax, and the person on whom the notice is served is required to file his return. Section 144 empowers the Income Tax Officer to make an assessment to the best of his judgment and determine the amount of tax payable by an assessee in cases where a person who has been called upon to file a return fails to file a return and who has been called upon to produce evidence and documents or appear before the Income Tax Officer, fails to comply with the notice issued to him. Without going elaborately into detail, an assessee has a right of appeal, if he feels dissatisfied with the assessment order, in the first instance to the Appellate Assistant Commissioner, and thereafter if he still feels dissatisfied to take a further appeal to the Income Tax Appellate Tribunal. The assessee as well as the department has a right to file an application before the Tribunal to make a reference to the High Court on any question of law arising out of the order of the Tribunal which either the assessee or the department wants to be raised. Thus it would be seen that in a regular assessment the assessee has an opportunity and a right to be heard. In support of his return or his claim he could lead evidence and has an opportunity of satisfying the Income Tax authorities. He further has a right to agitate the matter in appeals and also agitate the matter here before this court a question of law. There is no such opportunity to the assessee when he is provisionally assessed u/s 141. As already stated, the provisional assessment is made ex parte and against that assessment order there is no right of appeal. It is not in dispute that the object with which the provisions relating to the provisional assessment have been introduced on the statute book for the first time in the year 1949 is acceleration of collection of Income Tax. With the same object also the provisions relating to deduction of tax at source and the provisions relating to advance payment of tax by the assessee are introduced. The argument of the Advocate-General is that a provisional assessment has to be made on the basis of the return. The return filed by the petitioner-company is the foundation and the return indicates that the claim of the assessee was that it was engaged in the business of manufacture or production of mineral oil. The Income Tax Officer, therefore, acted in excess of jurisdiction in not making an assessment on that basis, but in proceeding to reject the claim of the assessee in the provisional assessment. It was also his argument, and we have already referred to it, that not only in the return but the petitioner-company had also in earlier years claimed that it was engaged in the business of manufacture and production of mineral oil. The Income Tax Officer was well aware of its claim and had no jurisdiction to decide that matter. He also read to us certain observations from the speeches of Viscount Haldane, Viscount Cave and Lord Dunedin in

Dawsons Limited v. Bonnin, wherein the learned Law Lords have considered the meaning of the word "basis" occurring in an insurance contract. Mr. Joshi, on the other hand, referring us to the provisions of section 4 of the Act, contends that both the provisional assessment as well as the final assessment has to be made by the Income Tax Officer "in accordance with and subject to the provision of the Act." The Income Tax Officer no doubt has been directed to make the provisional assessment on the basis of the return and that only means that the income shown by the assessee from his business has to be taken as the income of the assessee and on that basis proceed to decide whether the claim made by the assessee as to the deductions or as to the rate of tax applicable could be upheld or rejected. The Income Tax Officer has jurisdiction in making the provisional assessment to decide the rates of tax applicable to the income returned by the assessee. The Income Tax Officer has done so and on the material on record has come to the conclusion that the business of the assessee was not a business of manufacture or production of mineral oil. He acted perfectly within his jurisdiction in doing so. The assessee also is not in any manner prejudiced. It is still open to the assessee to contend and establish at the time of the final assessment that the assessee is engaged in the business of manufacture or production of mineral oil and will be entitled to get relief at that stage. It had also been the contention of Mr. Joshi that at no stage, either in the return or in any of the documents accompanying the return, the petitioner-company had claimed that it was engaged in the business of manufacture or production of mineral oil. In support of his contention he has placed reliance on certain observations in Jaipur Udyog Ltd. v. Commissioner of Income Tax. In our opinion, it is not necessary to read the observations of the learned Law Lords as to the meaning of the word "basis". The ordinary meaning of the word "basis" is a foundation or that on which a thing rests. There is a provision that an assessment should be made on the basis of return even in the case of a final assessment and that is where the Income Tax Officer is satisfied with the return without calling upon the assessee to produce evidence in support of his return, and that is sub-section (1) of section 143 of the Act. It is only in this sense, it appears to us, that the identical expression has been used in sub-section (1) of section 141 of the Act. The said sub-section in substance directs that the Income Tax Officer for the purposes of making a provisional assessment has to remain satisfied with the return. The correctness or otherwise of the return as to the factual position stated therein has not be gone into or inquired into at that state, and it is on this basis that the assessment has to be made. It is indeed true, and there can hardly be any dispute about it, that even a provisional assessment has to be made in accordance with and subject to the provisions of the Act as provided in section 4 of the Act. Reading section 4 and section 141, the combined effect is that the Income Tax Officer is directed to make the assessment in accordance with and subject to the provisions of the Act, but on the basis of the return filed and in a summary manner. It would be convenient at this stage to see what is the import of the expression "assessment" occurring in section 141. That expression has been understood in different senses in different

contexts. But, having regard to the object of section 141, there can hardly be any doubt that the expression "assessment" used in section 141 means (a) determination of total income, and (b) determination or quantification of tax payable thereon; and the Act directs that these two processes have to be made on the basis of the return filed and in a summary manner. Determination of the total income of a business of an assessee would in the first instance involve the true and correct amount of income which the assessee has derived from the various sources of income which he has. In the next instance it would involve the determination of the amount of various allowances or deductions to which the assessee is entitled in accordance with law from the said amount of income derived from the various sources, for instance, deductions on account of depreciation on building, plant, machinery and furniture used in the business or set off of carried forward losses of the business permissible under law, and thus determining the amount of total income after allowing the deduction permissible under the Act. After determination of the amount of total income, the second process, viz., determination of the amount of tax payable on the said total income or the question of quantification of the tax payable on the said total income arises, and that again may involve, as the provisions of the Act may be, determination of certain facts which are necessary to be determined for the purposes of determination of the rate at which tax is to be computed. All these processes undoubtedly have to be followed in accordance with and subject to the provisions of the Act. Section 141 is one of the provisions of the Act and that section directs that the aforesaid processes have to be followed on the basis of the return and in a summary manner. So far as determination of the amount of total income is concerned, we are here not concerned. It is an admitted position that the total income has been determined by the Income Tax Officer after allowing the deduction claimed by the assessee-company and depreciation has been allowed to the assessee-company as claimed by it on the footing that it is a mineral oil concern. We are here concerned only with the second process, viz., determination of the quantum of amount of tax payable by the assessee-company, or to be exact, determination of the quantum of rebate to which the assessee-company would be entitled, and this question would generally involve determination, firstly, whether the assessee-company in one whose income is below Rs. 25,000 or exceeds Rs. 25,000. If the income is below Rs. 25,000, the company would be entitled to a rebate at 37 per cent. Admittedly, the assessee company's income exceeds Rs. 25,000. Then arises the question whether the company is engaged in any one of the various business specified in Paragraph F of Part I of the First Schedule of the Act, which we have reproduced above, that is, in the present instance, the Income Tax Officer had to decide whether the company was engaged in the business of manufacture or production of mineral oil. The determination of this question has to be done on the basis of the return and the documents accompanying it and in a summary manner. The determination of this question is determination of this question is determination of a mixed question of fact and law. As already stated, it had been the contention of the assessee-company that it had claimed to be so engaged in its return itself

by claiming depreciation as a mineral oil concern. Not only that, but according to the assessee-company, it had been consistently claiming to be so engaged even since the earlier years and the Income Tax Officer was well aware of the claim made by the assessee-company. We have already referred to these contentions and also have recorded our finding that the Income Tax Officer knew that the assessee-company had been claiming that it was engaged in the business of manufacture and production of mineral oil. The assessee-company had not only claimed that it was engaged in the manufacture and production of mineral oil, but even otherwise the Income Tax Officer knew that such was the assessee company's claim. In these circumstances, the provisional assessment being on the basis of the return and in a summary manner, in our opinion, the Income Tax Officer acted in excess of his jurisdiction to determine this mixed question of fact and law at this stage. We have already pointed out that the determination of this question, if there be any dispute about it, would involve an elaborate inquiry into various questions of fact as to the exact nature of the business of the assessee-company, the nature of the various products which the assessee-company produces by the process of refining and so on and so forth. The assessee-company had no opportunity to lead evidence at this stage and it is for reasons of this nature that the legislature has placed a limitation on the powers of the Income Tax Officer and has directed him to proceed to provisionally assess an assessee on the basis of the return and in a summary manner. In other words, what section 141 aims at is to determine the amount of tax, in accordance with and subject to the provisions of the Act, on a clearly admitted factual position by the by the assessee. It does not mean that the Income Tax Officer has no power at all to scrutinise the claim made by the assessee. Cases may arise where the claim is clearly, without there being any controversy about it, untenable in view of the admitted position on facts. But cases may arise where the position is not so clear and the determination of the claim would involve inquiry into the questions of fact. It is in respect of these later class of cases that the section directs that in the matter of the basis of the return. Even considering the case on an assumption that the assessee-company had not in clear terms claimed that it was a company engaged in the business of manufacture or production of mineral oil, in our opinion, a presumption would arise that the assessee-company had pleaded a case which was to its best advantage, unless there could be a clear intention or clear evidence or a statement made by the assessee-company to the contrary. The normal presumption would be that a party pleases a case to his best advantage and does not admit a position which is to his disadvantage. So even assuming that the assessee-company had not in clear terms claimed that it was engaged in the business of manufacture and production of mineral oil and the Income Tax Officer was required to decide the question whether the business of refining crude oil was a business of manufacture and production of mineral oil or not, the Income Tax Officer ought to have proceeded to determine the quantum of rebate permissible to the assessee-company on the footing which was to its best advantage in view of the highly controversial nature of the question which was to its best advantage in view of the highly controversial

nature of the question which he had to decide. The question which he was deciding was a mixed question of law and fact and that decision was being taken or was required to be taken ex parte in the absence of the assessee-company and without the assessee-company having any opportunity to lead evidence in support of its case. It is in these circumstances that, in our opinion, the provisional assessment should have been on the footing that the assessee-company was engaged in the business of manufacture or production of mineral oil, and in proceeding to decide this question the Income Tax Officer acted in excess of his jurisdiction conferred on him by section 141 of the Act.

35. To appreciate the correct import of the observations, on which reliance has been placed by Mr. Joshi, made in *Jaipur Udyog Ltd. v. Commissioner of Income Tax*, it would be necessary to state a few facts. The assessee-company had submitted its return and in its returns it was claiming to carry forward a certain loss. It was an admitted position that the amount of loss which the assessee-company was carrying forward in its return was not the one determined by the Income Tax Officer in any assessment. The Income Tax Officer did not allow the loss to be carried forward in making a provisional assessment u/s 141. The order of the Income Tax Officer making the assessment disallowing the amount of loss was challenged by a writ petition. The contention on behalf of the assessee-company was that on a plain language of section 141 the Income Tax Officer was bound to compute the tax on the basis of the figures given in the return and he had no jurisdiction to trade beyond the return or the documents accompanying it. The assessee-company had claimed the carried forward loss as a deduction and the Income Tax Officer was bound to allow the assessee-company that deduction and make an assessment on that basis. On a construction of sub-section (2) of section 141, the learned judges held that the Income Tax Officer was not in error in disallowing the deduction, and it is in this context that the observations have been made on which Mr. Joshi has placed reliance. They are :

"Therefore, while section 141 contemplates that the necessary facts about the income of an assessee have to be taken by the Income Tax Office from the return and the documents accompanying it and he is not entitled to travel beyond that, at the same time he is not entitled to ignore the other statutory provisions. In other words, he is required to apply the law correctly to admitted facts as per return. Thus, it will be within his province to see whether any claim is admissible in accordance with the provisions of the Act or not. Section 80 of the Act, to our mind, lays down a conditions about the admissibility of a claim of the set-off in respect of a loss of a previous year. This section begins with a non-obstante clause and to our mind it rates a bar against carrying forward of losses of for being set off against the income of subsequent years unless the loss has been first determined in pursuance of the return. Section 72 of the Act also lays down that a loss shall be carried forward to the following assessment year subject to the other provisions of this chapter, namely, Chapter VI, and section 80 occurs in Chapter VI. The combined effect of the two sections, namely, sections 72 and 80 of the Act, is that a business loss can be carried forward to the subsequent

assessment years only when it has been determined in pursuance of a return filed u/s 139 of the Act. In these circumstances, we are unable to hold that the petitioner are entitled to the benefit of carry-forward losses of previous years merely because they have shown such losses in the returns. It cannot be said that the Income Tax Officer is not acting on the basis of the return, the accounts and documents accompanying it for the purposes of making the provisional assessments merely because he is applying the relevant provisions of the Act to the uncontroverted facts found in the return or the documents accompanying it."

36. It would be noticed that the learned judges were considering the question as to the construction of sub-section (2) of section 141. We are here not concerned with that question. It is indeed true that there are observations that it is open to the Income Tax Officer to apply the law to the facts found in the return. But those observations have to be read in the context of that case and I think the observations read as a whole make the position abundantly clear that it is open to the Income Tax Officer to consider the opposite provision of law applicable to the uncontrovertibly facts of the case. The basic fact, which was necessary to be established for the purposes of determination of the question of law as to whether the petitioner in that case was entitled to set off the carried-forward loss against the income of that year, was whether the carried forward loss was a determined one, that is, determined by any order of the Income Tax Officer, or not, and on that question of fact it was an admitted position that it was not a determined loss. Here what the Income Tax Officer has done is not determination of a pure question of law as to the application of the opposite law to the uncontroverted facts of the case. He has proceeded to decide the question of fact, namely, as to whether the petitioner was engaged in the business of manufacture or production of mineral oil or not, and it is after the determination of this question that the Income Tax Officer has held that it was not entitled to the rebate of 35 per cent. but was entitled to the rebate of 30 percent. For the reasons already stated, in our opinion, the Income Tax Officer was not entitled to enter into that question at this stage. It is these reasons that in our opinion the petition will have to be allowed.

37. In the result, the rule is made absolute with costs in terms of prayer (a) of the petition. The order of 12th October, 1965, and the notice of demand are hereby quashed.

38. Before parting with the case, it may be stated that Mr. Joshi informs us that Mr. G. B. Chand, the first respondent hereto, who was at the time of the filing of the petition the Income Tax Officer, has now become the Appellate Assistant Commissioner and the Income Tax Officer of that Circle is now M. A. Ajinkya and his name be substituted in place of the first respondent. Mr. Kaka on the other hand contends that his name may be added, as Mr. Chand was the officer concerned at the relevant time and as its is his order that has to be quashed, he should remain as a party on the record. Let the name of Mr. Ajinkya be added.

39. Rule made absolute.

40. Order and notice of demand quashed.