
(1970) 03 CAL CK 0016

In the Calcutta High Court

Case No : Income-tax Reference No. 136 of 1966

Commissioner of Income Tax

APPELLANT

Vs

Panna Devi Saraogi

RESPONDENT

Date of Decision : 02-03-1970

Acts Referred:

Income Tax Act, 1922 — Section 33B, 5(5)

Citation : (1970) 78 ITR 728

Hon'ble Judges : P.B. Mukharji, Acting C.J.;T.K. Basu, J

Bench : Division Bench

Advocate : B.L. Pal and A. Sen Gupta, for the Appellant;K. Roy and S. Bhattacharjee, for the Respondent

Judgement

P.B. Mukharji, Actg. C. J.

1. In the statement of the case the three following questions are set out at the instance of the Commissioner of". Income Tax for answer by this court:

"(1) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the order of the Commissioner of Income Tax u/s 33B was vitiated as it was passed on an erroneous finding that the Income Tax Officer had no jurisdiction over the assessee ?

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in setting aside the order of the Commissioner of Income Tax u/s 33B on the ground that the Commissioner had used materials against the assessee without giving the assessee an opportunity to rebut the same ?

If the answer to either of the above questions is in the negative, then

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in setting aside the order of the Commissioner u/s 33B?"

2. These questions arise out of nine applications u/s 66(1) of the Income Tax Act,

1922, of the Commissioner of Income Tax requiring the Tribunal to refer as many as nine common questions of law said to arise on the Tribunal's consolidated order in I.T.A. Nos. 11728 to 11736 of 1962-63 dated the 22nd December, 1965.

3. The facts are briefly as follows: The assessee is Smt. Panna Devi Saraogi, wife of Shri Narsingdas Saraogi, an employee of M/s. Thakurdas, Suerka Iron Foundry Ltd. The assessee filed voluntary returns of income all dated 14th December, 1960, for the assessment years 1953-54 to 1960-61 before the Income Tax Officer, D-Ward, Howrah, giving her address as 37, Bazalpara Lane, Salkia, Howrah. The Income Tax Officer took cognizance of the returns on the 19th December, 1960, when he purported to serve notices u/s 23(2) of the Income Tax Act, 1922; in respect of these years on the assessee's authorised representative, Shri D. R. Saboo, who was present before him. The Income Tax Officer made the assessments for these years on the 29th December, 1960. The return for the assessment year 1961-62 was dated the 9th August, 1961, and was filed before the Income Tax Officer on the 28th August, 1961. The assessment for that year was made on that very day. In the returns filed the assessee showed income from business in speculation and income from interest. In the assessment year 1953-54, the assessee had introduced an initial capital of Rs. 14,500 for the purpose of her business. At the time of the assessment a declaration was filed by the assessee before the Income Tax Officer in which it was explained that the assessee belonged to a well-to-do family and she had received dowries and gifts at the time of her marriage amounting to Rs. 15,000. With this amount she started money-lending business and later on speculation business. It is found as a fact that no proper books of account were kept. It was further declared that the assessee had purchased shares worth Rs. 5,000 of M/s. Thakurdas Sureka Iron Foundry Ltd., in 1957-58, and that the assessee never maintained any banking account and also did not keep proper books of account except a home chest account; The declaration has been fully quoted in the order of the Commissioner u/s 33B. The Income Tax Officer accepted Rs. 9,500 as income from undisclosed sources for assessment year 1953-54. For the assessment years 1954-55 to 1960-61 the Income Tax Officer accepted the returned income after making small additions thereto. The assessee's investment of Rs. 5,000 in the shares of Thakurdas Sureka Iron Foundry Ltd., in which her husband was employed, in the assessment year 1958-59 and her further investment, viz., a deposit of Rs. 35,000 with M/s. Geokay Transport Corporation in which her husband was directly interested, and a further sum of Rs. 15,000 invested in the firm of M/s United Syndicate in which also her husband was a partner in the assessment year 1960-61 were accepted by the Income Tax Officer in the respective assessment orders. A further deposit of R. 10,000 with M/s. Thakurdas Sureka Iron Foundry Ltd., in the assessment year 1961-62, appears to have been accepted by the Income- tax Officer. The total incomes assessed for these nine years were respectively Rs. 6,290, Rs. 4,195, Rs. 4,477, Rs. 4,600, Rs. 5,145, Rs. 5,455, Rs. 6,343, Rs. 6,720 and Rs. 7,777.

4. The Commissioner of Income Tax called for the records of the assessment for

the relevant years and upon an examination thereof he considered that the assessment orders passed by the Income Tax Officer on the 29th December, 1960, and the 28th August, 1961, for the assessment years 1953-54 to 1961-42, were erroneous in so far as they were prejudicial to the interest of the revenue. He, therefore, issued a consolidated notice to the assessee by his letter dated 19th December, 1962, stating that he considered the assessment orders as erroneous in so far as they were prejudicial to the Interest of the revenue. In that notice he further stated that he considered the assessment orders of the Income Tax Officer as erroneous in so far as, they are prejudicial to the interest of revenue "for the following reasons amongst others".

"2. The Income Tax Officer was not justified in accepting the initial capital, the income from business, etc., without any enquiry or evidence whatsoever. Also the said Income Tax Officer did not have jurisdiction over your case.

3. I therefore propose to pass such orders thereon as the circumstances of the case justify after giving you an opportunity of being heard under the powers vested in me u/s 33B of the Income Tax Act, 1922. The cases will be heard at 11 a.m., 26th December, 1962, at my above office when you are requested to produce the necessary evidence in support of your contention. Objections in writing accompanied by the necessary evidence, if any, received on or before the appointment for personal hearing will also be duly considered.

4. Please note that no adjournment of the hearing will be granted." On the 26th December, 1962, Shri C.R. Banerjee appeared before the Commissioner and put in a written statement on behalf of the assessee where after stating that the notice was bad, void, illegal, inoperative and after stating that no reason has been given in the notice why the Income Tax Officer's orders were erroneous in so far as the same were prejudicial to the interests of the revenue, this answer proceeded to show cause as follows:

"5. That it is not correct to state that the Income Tax Officer has accepted the initial capital or the income from business without any enquiry or evidence, on the contrary, the Income Tax Officer completed the assessments, after hearing your petitioner, as contemplated in law, and did not accept your petitioner's returns of income or statement but using his discretion, as vested in him by law, resorted to estimate in each year.

6. That a gist or substance of facts which have been found by you on enquiry, as alleged, on which you intend relying for the purported action, u/s 33B of the Income Tax Act, 1922, may please be communicated to your petitioners so that she could get an opportunity for rebuttal of the same.

7. That your petitioner, if given sufficient opportunity, will be able to satisfy you that she received money from her grand mother-in-law and father-in-law, Sri Ram Gopal Saraogi of Sadulpur, P.O. Rajasthan and others at the time of her marriage.

8. That your petitioner being a small assessee her income was computed as per directives issued by you pursuant to the policies framed by the Central Board of Revenue, New Delhi. And hence the action contemplated by you is entirely misconceived in the facts and circumstances of the case of your petitioner.

9. That in so far as your petitioner carried on business from the place of business disclosed by her and as the Income Tax Officer, Howrah, having jurisdiction over her, completed the assessments exercising cautious discretion along with income from investments, as disclosed in the statements filed at the time of assessment, the same should not be assailed as erroneous or prejudicial to the interest of revenue.

10. That your petitioner carried on business and had income from other sources are matters of record."

5. It will be clear from the above that this reply does deal with the question of the petitioner carrying on business and asserts that she had income from other sources and although she says they are matters of record before the Income Tax Officer, she did not comply with paragraph 3 of the notice of the Commissioner dated the 19th December, 1962, quoted above, namely "objections in writing accompanied by necessary evidence, if any, on or before the appointment for personal hearing, will also be duly considered." No evidence was enclosed with the answer of the assessee. It will be seen also from her answer that she also asserted that she had received money from her grand mother-in-law and father-in-law and others at the time of her marriage, but there is no evidence.

6. On the 26th December, 1962, the Commissioner gave Shri C.R. Banerjee advocate for the assessee, the opportunity to make his submissions on the assessee's behalf. After having heard him for the assessee the Commissioner passed a consolidated order u/s 33B cancelling the assessment made for the aforesaid years and directing the Income Tax Officer to make fresh assessments according to law "after making proper enquiry and investigation with regard to the jurisdiction, carrying on of the business, possession of initial capital and the sources of moneys invested in the name of the assessee."

7. The assessee, Smt. Panna Devi Saraogi, appealed before the Tribunal. The Tribunal allowed the appeals and quashed the order, of the Commissioner. It is against that order of the Tribunal that the Commissioner has come up on a reference before this court on the questions set out above and as framed by the Tribunal itself.

8. In the last paragraph of the Tribunal's order, namely, paragraph 10 the Tribunal summarises its order in the following manner :

""In view of the fact that the Commissioner based his order on wrong premises, namely, that the assessee did not reside at the address given in the returns and that the Commissioner has used materials against the assessee without giving the assessee an opportunity to rebut the same, his consolidated order must be

vacated."

9. Reverting now to the question asked and set out above, the first question challenges the Tribunal's order for finding that the Commissioner had no jurisdiction over the assessee. The first question is based on the Commissioner's finding that the Income Tax Officer had no jurisdiction over the assessee. The second question is directed against the order of the Income Tax Appellate Tribunal which, came to the finding that the Commissioner had used materials against the assessee without giving, an opportunity to rebut the same. The third question is asked that if the answers to the first two questions are in the negative, then whether the Tribunal was right in setting aside the order of the Commissioner u/s 33B of the Income Tax Act, 1922. Analysing these questions it appears that the first question relates to the jurisdiction of the Income Tax Officer over the assessee in the facts and circumstances of the case. The second question related to the principle of natural justice in the sense whether the Commissioner had used materials against the assessee without giving the assessee an opportunity to rebut the same. But, fundamentally, the third question remains, which raises the real controversy in this proceeding, namely, whether the Tribunal was right in setting aside the order of the Commissioner u/s 33B, no matter whether on this reason or on that reason.

10. We shall first deal with the first question about jurisdiction of the Income Tax Officer over the assessee. On a perusal of the records we are satisfied that the Income Tax Officer in this case had no jurisdiction whatever over the assessee and he arrogated to himself a jurisdiction which was not vested in him under the law. This question of jurisdiction has been argued on two foundations, one alphabetical and the other geographical. It is said on behalf of the assessee that the name "Panna Devi Saraogi" is a name with "S". On behalf of the Commissioner of Income Tax it has been argued that the name "Panna Devi Saraogi" as it begins with "P". The controversy is between "S" and "P". For if it is "S" then the Income Tax Officer had jurisdiction, but if it was "P" then the Income Tax Officer had no jurisdiction. The Income Tax Officer felt this difficulty and therefore the name of the assessee in the Income Tax order was set out as Shrimati Saraogi Panna Devi.

11. On the facts on this point, the matter in our view is beyond dispute and controversy. It is found as a fact by the Commissioner of Income Tax, who is the allocating authority u/s 5(5) of the Income Tax Act, 1922, that the Income Tax Officer, D-Ward, Howrah, had no jurisdiction over the assessee because "the name of the assessee is "Panna Devi Saraogi" and as the Income Tax Officer who had made the assessment had only jurisdiction over cases of new assesseees whose names began with the alphabets from "S" to "Z", the assessee's name was intentionally wrongly worded, her surname "Saraogi" being put first and her first name "Panna Devi" being put last".

12. The Tribunal instead of relying on the Commissioner's order of allocation took recourse to a G.I.R. No. of a file and came to the conclusion that the

surname of the assessee being " Saraogi ", the Income Tax Officer had jurisdiction in her case and relied on the case of the learned single judge in Rampiyari Khemka Vs. Commissioner of Income Tax, West Bengal and Others, but failing to observe-that this case was overruled and set aside by the Division Bench in Commissioner of Income Tax v. Rampyari Khemka. The Tribunal's finding therefore is clearly bad and cannot be sustained. How G. I. files are kept is not material in determining the question where the allocating authority is the Commissioner of Income Tax. A brief reference to Section 5 of the Income Tax Act, 1922, is relevant. Particularly relevant to Section 5(5) of: the Income Tax Act, 1922, which, inter alia, reads follows :

"income tax Officers shall perform their functions in respect of such persons or classes of persons or of such incomes or classes of income or in respect of such areas as the Commissioner of Income Tax may direct, and, where such directions have assigned to two or more Inspecting Assistant Commissioners of Income Tax or Income Tax Officers, the same persons or classes of persons or the same incomes or classes of income or the sama area, in accordance with any orders which the Commissioner of Income Tax, may make for the distribution and allocation of the work to be performed."

13. It is plain from Section 5(5) of the Income Tax Act, 1922, that the Commissioner of Income Tax is the authority for distribution and allocation, of work to the Income Tax Officer in respect of assesseees or classes of assesseees in respect of particular areas. In our view, the method of file keeping or a G.I.R. record, therefore, cannot override the order of the Commissioner of Income Tax. In this respect the Tribunal, in our view, was milled by relying on the decision in Rampyari Khemka v. Commissioner of Income Tax. The Tribunal's decision is dated December 22, 1965. But, unfortunately, immediately thereafter on December 23, 1965, the Division Bench in COMMISSIONER OF Income Tax, WEST BENGAL, AND OTHERS Vs. RAMPIYARI KHEMKA., set aside on appeal the previous judgment on which the Tribunal relied.

14. In this view of the matter, the Income Tax Officer was clearly beyond jurisdiction in dealing with this assessee. This answers the alphabetical point on the issue of jurisdiction raising the controversy between "P" and "S".

15. The next part of the issue of jurisdiction relates to geographical confusion. The Commissioner came to the finding that the assessee never resided nor carried on any business there at 37, Bajalpara Lane, Salkia, Howrah, but, in fact, she resides with her husband, Shri Narsingdas Saraogi, at 37, Matrumal Lohia Lane, Salkia, Howrah. On this question, the answer is that in these days of fast changing names of roads and lanes what has actually happened is that Bajalpara Lane has been renamed as Matrumal Lohia Lane. The Tribunal came to that finding because Sri C. R. Banerjee for the assessee produced a true copy of a resolution of the meeting of the Municipal Commissioners of Howrah, held on September 4, 1953, being resolution No. 92(12), showing that Matrumal Lohia Lane is another name for Bajalpara Lane. Naturally, the Tribunal came to the

conclusion that the finding of the Commissioner was wrong in respect of geography. If the assessee or her advocate had "produced this before the Commissioner himself, when in paragraph 2 of the Commissioner's notice he specially said "also the said Income Tax Officer did not have jurisdiction over your case", then this trouble would not have arisen.

16. But geography really cannot help the assessee in this case unless the name in the alphabet was correct to grant jurisdiction to the Income Tax Officer. The residence or the carrying on of business by the assessee within the particular geographical area would not invest the Income Tax Officer with jurisdiction, unless the assessee is also alphabetically within his jurisdiction.

17. On this view and finding, we are bound to answer question No. 1 in the negative. We hold that the Tribunal was wrong in holding that the order of the Commissioner u/s 33B was visited as stated. We further hold that the finding of the Commissioner that the Income Tax Officer had no jurisdiction over the assessee was correct. We, therefore, answer question No. 1 in favour of the Commissioner and in the negative.

18. Coming now to question No. 2 raising the principle of natural justice, it must be stated at the outset that the Tribunal did not set out in the order specifying the materials alleged to have been used by the Commissioner against the assessee without giving the assessee an opportunity to rebut the same. In dealing with this point, the Tribunal makes the observation in paragraph 9 of its order as follows :

"Furthermore, the Commissioner has also in his order stated that there had been prejudice to the revenue because the entire sum of Rs. 50,000 was not treated as the undisclosed income of the assessee for the assessment year 1960-61 and he also stated that he was satisfied that the said amount really belonged to her husband, Sri Narsingdas Saraogi. The assessee was not, however, allowed an opportunity to meet this aspect of the case which appears to have influenced the mind of the Commissioner very considerably, As already noted, nothing was said in the show cause notice about these investments with the result that the assessee could not say anything in rebuttal in her written submission to the Commissioner dated 24th December, 1962,"

19. In paragraph 2 of the Commissioner's notice dated 19th December, 1962, the Commissioner expressly stated, "the Income Tax Officer was not justified in accepting the initial capital, the income from business, etc., without any enquiry or evidence whatsoever" and he also asked for necessary evidence to accompany objections in writing to this notice u/s 33B of the Income Tax Act. Nothing was done by the assessee. In fact, the finding is that the assessee does not maintain any bank account, nor any proper books of account. The undisclosed income, to begin with, is an admitted fact so far as this assessee is concerned and in the notice given by the Income Tax Officer.

20. In the facts of this case this question of the principles of natural justice has

to be decided. As the Division Bench of this High Court in Commissioner of Income Tax v. Rampyari Khemka had laid down the principle :

"The concept of natural justice cannot be put in a straight jacket. The essence of natural justice is rendering justice. It is not merely a dogma or ritual to be adhered to and observed without regard to consequences; and, unless a statute so requires, a violation of the concept of natural justice would not invalidate a decision irrespective of its merits, and if the court was satisfied that the decision was essentially just, it should not be set aside on the ground that the principles of natural justice had not been observed."

21. Now in this context the first thing to remember is that all that the Commissioner has to do is to cancel the assessment and ask the Income Tax Officer to make a fresh assessment according to law after making proper enquiries and investigations with regard to the jurisdiction, carrying on of the business, possession of initial capital and the sources of money invested in the name of the assessee. Therefore, the assessee will again get full opportunity to produce evidence, if any, in support of her case. Natural justice should not be treated in the abstract. It should be treated in the practical context of administration of justice and what is natural or not, depends a good deal on the particular facts and circumstances of each case. This consideration was emphasised by the Supreme Court in Rampyari Devi Saraogi Vs. Commissioner of Income Tax, West Bengal and Others, where the following observations occur :

"The assessee, in our view, has not in any way suffered from the failure of the Commissioner to indicate the results of the enquiries; mentioned above. Moreover, the assessee will have full opportunity of showing to the Income Tax Officer whether he had jurisdiction or not and whether the income assessed in the assessment orders which were originally passed was correct or not."

22. This decision of the Supreme Court in Rampyari Devi Saraogi v. Commissioner of Income Tax, has some significant similarities of facts with the instant reference before us, namely, (1) stereotyped assessment order made for each assessment year, (2) no evidence in respect of money-lending business done and interest income shown, (3) no bank account or any proper books of account maintained, and (4) no names given of parties to whom the loans were advanced with amounts and rates of interest. But the Supreme Court decision in Rampyari's case is also important from another point of view because it points out the distinction between the "supporting material" and the "basic ground." At page 88 of that report of Rampyari Devi Saraogi Vs. Commissioner of Income Tax, West Bengal and Others, the following observations were made by the Supreme Court:

"We agree with the High Court that all this material was supporting material and did not constitute the basic grounds on which the orders u/s 33B were passed by the Commissioner. There was ample material to show that the Income Tax Officer made the assessments in undue hurry.""

23. We are satisfied on the records of this case that the "basic grounds"" of the order of the Commissioner u/s 33B in the instant reference are sound and unassailable and are also contained in the notice that he gave dated the 19th December, 1962.

24. In the facts and circumstances of this case and in the light of the principles laid down by the Supreme Court we must answer the second question also in the negative in favour of the Commissioner.

25. In view of our conclusion it is therefore not necessary to discuss the case of Smt. Bagsu Devi Bafna Vs. The Commissioner of Income Tax and Others, ". That authority lays down the well-settled principle that where an order of the Tribunal is impugned before the High Court, the order must be read as a whole to find out if it is valid and according to law, and the observation made by the Tribunal cannot be picked out for the purpose of criticising its order on the ground that principles of natural justice have been violated. 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.

26. What remains is the third and the last question which raises the issue, whether the Tribunal was right in setting aside the order of the Commissioner u/s 33B. The answer to this question follows from what we have already said. That answer is that the Tribunal was wrong in setting aside the order of the Commissioner u/s 33B in the instant case and in the facts and circumstances of such case. The "basic ground" of the Commissioner's order u/s 33B of the Income Tax Act was his finding that the Income Tax Officer's assessments were erroneous because they were "prejudicial to the interest of the revenue" within the meaning of that expression used in Section 33B of the Income Tax Act. That is the "basic ground", to use the expression used by the Supreme Court in the case quoted above. That "basic ground" was delay stated in the Commissioner's notice dated the 19th December, 1962, dealt with by the assessee's reply dated the 24th December, 1962, and after all reasonable opportunity of hearing and producing evidence had been given to the assessee, the Commissioner came to the clear conclusion that the Income Tax Officer's orders of assessment were "prejudicial to the interest of the revenue" in his order u/s 333 of the Income Tax Act.

27. Section 33B deals with the powers of the Commissioner to revise the Income Tax Officer's orders. Section 33B, inter alia, reads as follows :

"(1) The Commissioner may call for and examine the record of any proceeding under this Act and if he considers that any order passed therein by the Income Tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and

after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

28. The following features of this power of revision in the Commissioner of Income Tax must be emphasised. In the first place, the Commissioner may call for and examine the records of any proceeding under this Act. For this purpose, he does not need to show any reason. It is a part of his administrative control to call for records and examine them. As administrative authority, he has this power in the interest of administration to call for and examine the record's of any proceeding under the Income Tax Act. The second feature is that he may consider that any order passed under this Act by the Income Tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue. This consideration, having regard to the language of Section 33B, apparently is a consideration which he exercises by calling for and examining the records as indicated above. During this particular stage of consideration, there is no question of the assessee appearing or making any submission. If after calling for and examining the records the Commissioner "considers" that the order of the Income Tax Officer is erroneous, in so far as it is prejudicial to the interests of the revenue, then the third feature of Section-33B comes into operation. After these two stages, which we think are purely administrative, the proceeding in the next stage, which is the third stage, acquires quasi-judicial character. This third stage requires him to do what is stated in the statute, "he may, after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify". This requires that the Commissioner must give the assessee an opportunity of being heard. It also confers the power on the Commissioner to cause or make such enquiry as he deems necessary as expressly provided by the statute.

29. It is this opportunity of being heard which introduces the principle of natural justice. The opportunity, no doubt, must be reasonable and effective opportunity. It should not be a mere paper opportunity or any illusory opportunity.

30. We do not consider it necessary to discuss in detail the authority in *ELECTRO HOUSE Vs. COMMISSIONER OF Income Tax, WEST BENGAL II.*, where a Division Bench of this court lays down the rule that in a notice u/s 33B of the Income Tax Act the Commissioner must disclose to the assessee the grounds on which he proposed to revise, to enable the assessee to show cause and that the notice must be such as would not leave the assessee in doubt and speculations as to the nature of the charge he has to meet. That test, in our view, in the facts and circumstances of this instant reference, is amply satisfied.

31. In the facts of this case, we do not think that there has been any violation of the principles of natural justice on the question of opportunity being given to the assessee. That opportunity was reasonably given, reasonably stating the basic

grounds, in which the Commissioner thought that the Income Tax Officer's order was erroneous and gave such reasonable opportunity to the assessee even to produce evidence along with her written objections.

32. The fourth feature u/s 33B is the power of the Commissioner u/s 33B. The Commissioner can enhance or modify the assessment. He has not done it in the sense that he has not made any assessment himself. He has also the power to cancel the assessment and directing fresh assessment as provided in Section 33B. That he has done. That means the assessee will again get the fullest opportunity of making her case at that stage, when a "fresh assessment" as directed will be made. We are, therefore, satisfied that there has been no violation of any principle of natural justice in the instant reference.

33. The central problem is the basic ground about the prejudice to the revenue. Mr. Roy for the assessee drew our attention to the meaning of the expression "prejudicial to the interest of the revenue" as laid down in DAWJEE DADABHOY and CO. Vs. S. P. JAIN AND ANOTHER., the decision of a learned single judge, where, at page 881, it has been said :

"The words " prejudicial to the interests of the revenue" have not been defined, but it must mean that the orders of assessment challenged are such as are not in accordance, with law, in consequence whereof the lawful revenue due to the State has not been realised or cannot be" realised. It can mean nothing else:"

34. At this stage Mr. Roy for the assessee also tried to introduce the principle already mentioned by us before, and for which he relied on the decision of the Supreme Court in Dhirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay, which lays down the law that :

"When a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises."

35. This doctrine, as we have said before, has no application having regard to our findings and conclusions stated above. We do not consider that the Commissioner took any material, which were partly relevant and partly irrelevant and his findings were mixed up in such a way that his whole order was vitiated.

36. In conclusion, the expression "prejudicial to the interests of the revenue" was plainly demonstrated in the order of the Commissioner. In paragraph 9 of the Commissioner's order, this is made manifest. The Commissioner came to the finding that "the point at issue is quite clear that the Income Tax Officer, without making any enquiry or investigation and calling for any documentary or satisfactory evidence, has accepted in 1953-54 that the assessee had an initial capital of Rs. 9,500 as against Rs. 14,500 claimed by her." Therefore, "the assessments made by the Income Tax Officer in question were plainly erroneous and prejudicial to the interests of revenue inasmuch as the entire sum of Rs.

50,000 invested in 1960-61 assessment year should have been brought to tax in that year and the partial acceptance of initial capital and the spread-over given for alleged income earned from speculation and money-lending business should not have been allowed". The Commissioner further notices that "the assessee has also submitted that if he was not carrying on any business then it was not understood as to how the assessments made were prejudicial to the interests of revenue, as, on the contrary, certain amount of tax had been realised by the department". The Commissioner then points out that "in the absence of any documentary and satisfactory evidence with regard to alleged carrying on of the money-lending and speculation business, the Income Tax Officer should not have given the spread-over claim by the assessee and made the assessments from 1953-54 to 1961-62, but she should have made the assessment for one year only, i.e., 1960-61 and brought to tax the entire sum of Rs. 50,000 in that year as income from undisclosed sources and the tax in that event would have been about Rs. 16,000 as against Rs. 475". If this is not prejudicial to the interests of the revenue, then one fails to understand what it is. The Commissioner then proceeds to say that "in the absence of any evidence with regard to the acquisition of initial capital and carrying on of money-lending and speculation business, a valid and justifiable presumption can be drawn that the investment made in the name of the assessee really pertained to the moneys of her husband, Narsingdas Saraogi, who has got various sources of income as stated above and who himself has made a disclosure in the petition and had assessments made on him for the assessment years 1951-52 to 1959-60". The Commissioner also finds that ""the assessee's husband has invested in M/s. Thakurdas Sureka Iron Foundry Ltd. and M/s. United Syndicate in which the assessee has also made investments". The total assets of her husband aggregate to over a lakh of rupees and it is upon These materials that the Commissioner came to the view, "I am satisfied in the facts and circumstances of the case that the income disclosed in the name of the assessee and money deposited in her name really belong to her husband, Shri Narasingdas Saraogi. If the amounts in question are brought to tax in the hands of her husband, the gain to revenue would have been more than Rs. 20,000". Here the Commissioner is clearly demonstrating by facts and figures the prejudice to the revenue by these assessment orders of the Income Tax Officer.

37. It is not merely a question of one year's assessment but it is also linked up with the whole question of the initial capital, the carrying on of the business in money-lending and speculation, the undisclosed income whose source was doubtful and the linking is done through the spread-over given for the alleged income earned from speculation and money-lending business. This in our view is the basic ground on which the Commissioner of Income Tax "considers" within the meaning of Section 33B of the Income Tax Act, 1922, that the orders of assessment of the Income Tax Officer are prejudicial to the revenue. The assessee in spite of opportunities to produce evidence, never chose to meet these considerations.

38. It is only thereafter in paragraph 12 that the commissioner comes to the question of jurisdiction. It is therefore a wrong interpretation of the Commissioner's order to say that the Commissioner's order was based on "only two reasons". As indicated above the Commissioner's order should be read as a whole and passages should not be picked and chosen at random.

39. For these reasons, we answer the third question also in the negative and in favour of the Commissioner and hold that the Tribunal was not right in setting aside the order of the Commissioner u/s 33B.

40. Therefore, we answer all the three questions in the negative and in favour of the revenue as stated above. The assessee will pay the costs of this reference.

Questions answered in the negative.