
(1986) 06 PAT CK 0002

In the Patna High Court

Case No : Taxation Case No's. 93 to 98 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Pushpa Devi

RESPONDENT

Date of Decision : 13-06-1986

Acts Referred:

Income Tax Act, 1961 — Section 263, 263(1)

Citation : (1986) 56 CTR 251 : (1987) 164 ITR 639 : (1986) 29 TAXMAN 377

Hon'ble Judges : Uday Sinha, J;Ashwini Kumar Sinha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; L.N. Rastogi and L.N. Khanna, for the Respondent

Judgement

Uday Sinha, J.—These are six references u/s 256(1) of the Income Tax Act, 1961 (hereinafter called "the Act"), and relate to the assessment years 1968-69 to 1973-74, The core question agitated in these references is whether the jurisdiction of the Commissioner of Income Tax to act u/s 263(1) of the Act was ousted by a scheme envisaged by the Central Board of Direct Taxes (hereinafter called "the Board"). A subsidiary question is whether the Tribunal had rightly held that the Commissioner of Income Tax had not followed the rules of natural justice and whether on that score his order was invalid.

2. In 1972, the Board envisaged a scheme to help new taxpayers in the small income group. This was a follow-up of a programme of mass communication. In terms of this scheme, no penalty u/s 271 or Section 273 was to be levied in the case of a person, who had not been assessed, if the return of income was filed voluntarily prior to January 1, 1973, and the income as declared or as assessed did not exceed Rs. 15,000. An order u/s 119(2)(a) of the Act had been issued by the Board authorising the Income Tax Officer not to initiate penalty proceedings u/s 271 or Section 273 of the Act. In terms of this scheme, the Income Tax Officers were required to visit specially selected areas to assist new taxpayers to fill in the returns of income and, as far as possible, to complete the assessments

on the spot. The areas were to be selected by the Commissioner of Income Tax. Two Income Tax Officers were to be deputed for the purpose for one area. Full complement of the staff was to accompany the Income Tax Officers so that all formalities relating to assessment may be completed on the spot. Crossed cheques were acceptable towards the payment of the tax liability. Paragraph 4 of the Scheme read as follows :

"4. New cases where the returned income does not exceed Rs. 15,000 and the capital invested including the borrowed capital does not exceed Rs. 25,000 should ordinarily be completed u/s 143(1). Returns of income filed in the names of minors and ladies should not, however, be accepted without proper enquiries. Where, however, after making the adjustments set forth in section 143(1)(b), the assessable income exceeds Rs. 15,000, the assessee shall not be entitled to the waiver of penalty in terms of the Board's order u/s 119(2)(a) and he may be advised to make an application to the Commissioner of Income Tax u/s 271(4A) of the Income Tax Act and the procedure outlined in para. 7 may be followed. The above instructions will also apply in relation to the "First year's assessment" and, to that extent, directions of the Board contained in para. 2(iv) of the Instruction No. 289 (F. No. 385/32/71-IIB), dated April 30, 1971, as revised by para. 2(ii) of Instruction No. 426 (F. No. 233/1/72-A & PAC), dated June 14, 1972, stand modified during the operation of this scheme."

The scheme of mass contact was given wide publicity by the Revenue Department. The Income Tax officials visited different places as a follow-up under instructions of the superior officers like the Inspecting Assistant Commissioners and the Commissioners. Assesseees who had taxable income were requested and persuaded to file their returns under the scheme which were accepted by the Income Tax Officers under the directions of the superiors u/s 143(1) of the Act.

3. In terms of the scheme, the assessee, a married lady, filed her returns of income for the assessment years 1968-69 to 1973-74. Income of Rs. 4,100 was returned for the assessment years 1968-69, 1969-70 and 1970-71. For the assessment years 1971-72 and 1972-73 she returned taxable income of Rs. 5,100 and for the assessment year 1973-74, filed return of income at Rs. 5,100. She declared her initial capital as Rs. 25,000 stating that she derived income from pawn broking and oil seeds business.

4. An Inspector of the Income Tax Department was deputed by the Income Tax Officer to make necessary enquiries into the affairs of the assessee. He reported that the assessee did carry on pawn broking and oil seeds business and that she derived income from these businesses. His report is as follows :

"Enquired into the case of the aforesaid assessee who is the wife of Shri Sita Ram Murodia, one of the partners of M/s. Mangal Chand Jai Narain of Raxaul. She carried on pawn broking business as well as she purchased oil seeds, etc. During the season time, she sells them if the market is favourable. When I

contacted the lady she immediately called a few gentlemen of Raxaul Bazar, who supported the fact of taking advance from her as loan on pledging of ornaments. They also supported the fact of casual business done by the lady. She has no money-lending licence. I estimate her annual income approximately at Rs. 5,000. Submitted."

The Income Tax Officer assessed the assessee at Rs. 4,100 for each of the years in an one-line order which reads as follows :

"Assessment is made on a total income of Rs. 4,100 as per Section 143(1)/147."

The enquiry and the assessment were completed at the spot on December 14, 1972 itself. For the years 1971-72 to 1973-74 (A.Y.), she was assessed on an annual income of Rs. 5,100 as returned by her. The assessment of the assessee having come to the notice of the Commissioner of Income Tax and the latter having considered it to be erroneous, he issued notice to the assessee in terms of Section 263(1) to show cause why the order of assessment be not modified or cancelled. Accordingly, the Commissioner being of the view that the assessments were prejudicial to the Revenue and since they were erroneous, set aside the assessments and remanded the case to the Income Tax Officer "with a direction to frame assessments after making a close scrutiny as to the extent of initial capital" and the actual income earned by the assessee for the years in question.

5. Being aggrieved by the order of the Commissioner, the assessee moved the Income Tax Appellate Tribunal. The Tribunal, presided over by a single member, by its order dated April 27, 1977, allowed the appeals in terms of an earlier decision of the Tribunal in ITA Nos. 1713 to 1715 of 1974-75. Hence, these references u/s 256(1) of the Act at the instance of the Revenue.

6. The questions referred for our opinion are the following :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the assessment orders, having been passed by the Income Tax Officer after necessary enquiries in pursuance of the scheme "to help the new taxpayers in the small income groups" launched by the Government, were not erroneous as to enable the Commissioner of Income Tax to assume jurisdiction u/s 263(1) of the Income Tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the Commissioner of Income Tax did not follow the principles of natural justice before passing the impugned order and so his order is not valid ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the impugned order of the Commissioner of Income Tax is based upon mere surmises and conjectures and is, therefore, not valid ?

(4) Whether, in view of the decision of the Income Tax Appellate Tribunal, Patna, in the case of Smt. Rambha Devi v. ITO (ITA Nos. 1713 to 1715 of 1974-75), the Tribunal has rightly held that the Commissioner of Income Tax, acting u/s 263(1)

of the Income Tax Act, 1961, could not legally set aside an order of assessment made u/s 143(1) in pursuance of the scheme " to help the new taxpayers in the small income groups " evolved by the Government ?

(5) Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the Commissioner of Income Tax acted in a mechanical manner in setting aside the assessment order for the assessment year 1973-74 and so his order for that year is invalid ? and

(6) Whether, on the facts and in the circumstances of the case, the Tribunal has rightly cancelled the consolidated order passed by the Commissioner of Income Tax u/s 263(1) of the Income Tax Act, 1961, for the assessment years 1968-69 to 1973-74 ?"

It appears that the Commissioner set aside the orders of assessment and ordered reassessments in the cases of several assessees like the one before us. One such was the case of Rambha Devi. That case was the subject-matter of appeals before the Appellate Tribunal. That related to the assessment years 1970-71, 1971-72 and 1972-73. The members of the Tribunal having divergent views in those appeals in regard to the correctness of the order of the Commissioner, the matter was referred to Mr. P.D. Mathur, Vice-President of the Appellate Tribunal, as a third Member, who, agreeing with the views of Mr. Sukh Dev Bahl, set aside the order of the Commissioner on various counts. The appeals of Rambha Devi were thus disposed of by the Tribunal in accordance with the views of Mr. Mathur by order dated October 27, 1976. The appeals of the present assessee were heard by the sole Judicial Member, Mr. M. R. Sikka, and were disposed of on April 27, 1977. The decision of the Tribunal in the case of Rambha Devi was followed by Mr. Sikka in the case of the present assessee. Learned senior standing counsel has assailed the decision of the Tribunal on various grounds. It is needless to say that Mr. Rastogi, learned counsel for the assessee, has supported the Tribunal for the reasons stated in the order of the Tribunal.

7. The order of the Income Tax Officer is an one-line order. From the order, it is difficult to gauge the stand of the assessee before him. If the report of the Inspector of Income Tax is of any indication, her case before the Income Tax Officer was that the income was earned by her by pawn broking business and by purchase and sale of oil seeds. Before the Commissioner, two affidavits were filed on behalf of the assessee, One was filed by Manu Lal Prasad (annexure B) and the other by Dewraj Agrawal (annexure C). The affidavits were shown on December 9, 1974. The three paragraphs in the affidavit of Manu Lal Prasad read as follows :

"1. That I carry on the business of brokerage in oil seeds in the town of Raxaul.

2. That Smt. Pushpa Devi w/o Sri Sita Ram Moredia Raval is known to me. She casually deals in oil seeds. I managed to purchase linseed in the past as detailed below and charged my brokerage:

Year Bags Commission charged

Rs. Ps.

1968 100 bags 50.00

1970 125 bags 62.50

1972 80 bags 40.00

3. That the aforesaid contents are true to the best of my knowledge and belief."

The five paragraphs in the affidavit of Dewraj Agrawal read as follows :

"1. That I carry on the business of cloth on retail basis in the town of Raxaul for the last several years.

2. That Srimathi Pushpa Devi w/o Shree Sita Ram Moradia is well known to me and I know that she is a regular money-lender.

3. That I used to take cash loan from her by pledging my cloth bales whenever I was in need of money.

4. That I still owe a sum of Rs. 3,500 to her which I had taken from her by pledging my two bales of cloth in January, 1974.

5. That the aforesaid contents are true to the best of my knowledge and belief."

Besides the affidavits, the assessee filed a written statement before the Commissioner which is annexure A to the statement of the case. In the written statement, she spelt out her stand fully. Her case was that she was married to Sita Ram Moradia of Raxaul, who was a man of good means and was an Income Tax assessee--being assessed on marginal income--for many years and that she had been married to him about 20 years back. To put it in her own words, it was further stated as follows :

"That the petitioner has got about Rs. 22,500 by way of cash gifts from parent's side as well as from father-in-law side including gift from family friends and relatives at the time of marriage and thereafter up to 1-4-1967."

The assessee also stated that her assessments had been effected after proper enquiry regarding the nature of income and the capital employed by the assessee. On this count, it was claimed that the proceeding u/s 263 of the Act should be dropped.

8. The Commissioner, after hearing the parties, observed that the order of the Income Tax Officer did not give the dates of investments or transactions and that there was no evidence to prove the same. The affidavits also did not impress the Commissioner. In regard to the claim of the assessee of having received gifts which formed the basis of her investments, the Commissioner observed that even if it were accepted that she had received such amounts, they could not have been kept idle for twenty years. The assessee could not have waited for

investing the sums till 1968-69. In the absence of any material as to where and how the sums received at the time of marriage were kept till 1968-69, the Commissioner held that the matter required a deeper probe. In his view, there was no material in regard to the initial capital investment and that the return was filed with the obvious purpose of accommodating or assisting her husband, who would otherwise have been assessed to a much higher rate of tax. They, in his view, were the undisclosed income of her husband or the firm. In paragraph 7 of his order, the Commissioner observed that the assessments had been completed by the Income Tax Officer "without making proper enquiry regarding the initial capital, the nature and the real extent of the income and its true ownership." Upon those findings, the Commissioner set aside the assessments and restored (he probably meant remanded) the matter to the of the Income Tax Officer with a direction to reframe assessments, if necessary after making a close scrutiny as to the extent of initial capital and the actual income earned by the assessee in all the assessment years.

9. The Tribunal, on appeal by the assessee, gave four grounds for reversing/cancelling, the order of the Commissioner. The grounds given by the sole Member Tribunal were :

(i) The observation of the Commissioner that the Income Tax Officer had completed the assessments without enquiry was not correct. Enquiry, had been held by the Inspector which was accepted by the Income Tax Officer.

(ii) The Commissioner of Income Tax did not follow the principles of natural justice inasmuch as the affidavits corroborated by the report of the Inspector filed before the Commissioner were rejected for no good reason." The Commissioner should have examined the deponents, if he was not satisfied with the affidavits. Not having called upon the assessee to produce the deponents before him, the Commissioner had not considered the objection of the assessee impartially.

(iii) The order of the Commissioner was based upon mere surmises and conjectures inasmuch as there was no material on the record to support his finding that the income in question belonged to the assessee's husband and that the assessee had declared the same to accommodate her husband ; and

(iv) The decision of the Tribunal in the case of Rambha Devi v. ITO (ITA Nos. 1713 to 1715 of 1974-75) held the field and, therefore, the order of the Commissioner u/s 263(1) of the Act was liable to be set aside.

We have heard counsel for the parties with all the patience that the case required although, in our view, the issues falling for consideration are short and simple. I shall consider the reasons advanced by the Tribunal seriatim. The Tribunal observed that due enquiry had been held and that the view of the Commissioner that the assessments had been completed without making proper enquiry was unsound. With respect, I must observe that the Tribunal failed to appreciate the main thrust of the order of the Commissioner, I shall, therefore, quote the

observation of the Commissioner at paragraph 7, so far as it is relevant which reads as follows :

"As the assessments have been completed by the Income Tax Officer without making proper enquiry regarding the initial capital, the nature and real extent of the income and its true ownership, the assessments made for all these years are considered erroneous and prejudicial to the interests of the Revenue."

The Commissioner was emphasising upon the source of the initial capital and that in his view there should have been proper enquiry as regards the initial capital. The Tribunal was labouring under the impression that the Commissioner was of the view that no enquiry has been held. That would be misreading the order of the Commissioner. In the case of a first assessee, the crucial thing to be appreciated is the source of the initial capital and the amount thereof. The stand of the assessee was that she was earning income from linseed business and from pawn broking business. She may well have been doing the businesses of buying and selling linseed and pawn broking, but if the funds for them were provided by her husband, who was also a businessman and partner of a firm, the income would be that of the husband or of the firm and not of the assessee. Such income would be liable to be added to the income of the assessee's husband in terms of Section 64 of the Act or of his firm. If the assessee claimed that the income had accrued to her from her own source de hors her husband or of the firm in which the husband was the partner, it was incumbent upon her to show that her initial capital came from independent sources and not from the husband or his firm. In the report of the Inspector which I have quoted earlier in paragraph 3 above, nothing was said about the initial capital investment of the assessee. The report was thus of no consequence. The returns were filed on December 14, 1972. The enquiry commenced and was completed on the same day and the assessment was effected on the same day. Nothing better could be expected of the Inspector, but that left the core question untouched. The Income Tax Officer could not have proceeded with the assessment on the report of the Inspector which had omitted to enquire into the primal question as to from where did the funds for initial investments come. I shall concede for the sake of argument that during the assessment years in question the assessee was doing the businesses as claimed by her and she was earning income, but the most important question which remained unanswered was where did the funds come from during the accounting year April 1, 1967, to March 31, 1968, the period when she started her investments. Thus no inquiry as required was held. The first reason given by the Tribunal for setting aside the order of the Commissioner was thus unsound. The order of the Tribunal suffers from serious infirmity on that score.

10. The second reason for cancelling the order of the Commissioner was that it was in contravention of the principles of natural justice. Let us examine this aspect of the matter. It cannot be disputed for a moment that any quasi-judicial authority--which I shall assume an Income Tax Commissioner to be--must decide

with an unbiased mind and impartially and that a judicial authority--which includes a quasi-judicial authority--cannot permit its judgment to be influenced by matters not disclosed to the assessee. In elaboration of this proposition, the Tribunal observed that there was no good reason to reject the affidavits which stood corroborated by the report of the Inspector. Let us examine this matter. The affidavits leave us high and dry in regard to the source of the initial capital investments. The affidavit of Manu Lal Prasad only shows that he had some dealing in linseed with Pushpa Devi--the assessee--in the years 1968, 1970 and 1972. He does not claim to have any connection with the assessee for the years 1967, 1969 and 1971. The affidavit of Dewraj Agrawal is much worse. He did not state in which accounting year he had pledged cloth and taken loan. Neither of these two affidavits showed from where Pushpa Devi got the capital to indulge in these investments. Conceding every word of what is said in the affidavits, yet they shed no light on the crucial questions thrown up in the case. Conceding that she was doing business of pawn broking and in linseeds, who provided the funds for them ? The affidavits were not worth the paper on which they were scribed. Can anybody deny that the Commissioner had the jurisdiction to reject the affidavits. If he had jurisdiction to accept, it must be conceded that he had also the jurisdiction to reject. If the affidavits had touched upon the core question, it may well have been said that the Commissioner could not have rejected them without calling upon the assessee to produce witnesses for cross-examination, but, as they did not impinge upon the real issue, the question of calling upon the assessee to produce the persons who had sworn the affidavits for cross-examination did not arise. In the view that I have taken, the decision of the Supreme Court in Mehta Parikh and Co. Vs. Commissioner of Income Tax, Bombay, has no relevance. That was a case where the affidavits had relevance to the main question.

11. The Tribunal also seems to have relied upon the written statement of the assessee. Two facts stated in her written statement are rather significant. The first is that the assessee had been married twenty years earlier. The second fact contained in paragraph 2(d), which I have quoted earlier, is that the petitioner (assessee) had about Rs. 22,500 by way of cash gifts from parent's side as well as from father-in-law's side at the time of marriage. In the first view, one is prone to accept the case of the assessee at its face value, but an analysis thereof shows that the assessee herself does not claim to be possessed of Rs. 25,000 but only of Rs. 22,500, A question which naturally stands out is, if those had been received by her at the time of her marriage, where and in which form were they kept till April 1, 1967, when she started earning the income. It is difficult to concede that in the house of a businessman the entire sum of Rs. 22,500, which was no mean sum in 1952-53 when she was married, remained a dead asset till 1968. I am inclined to agree with the Commissioner, in the view that he took in paragraph 4 of his order that the assessee would not have kept her money idle for such a pretty long time in the background of the fact that her husband was a businessman. Further, the explanation mentioned: in paragraph 2(d) of the

written statement saw the light of the day only on December 11, 1974. Neither the affidavits nor the written statements were before the Income Tax Officer. The Income Tax Officer had before him merely the ipse dixit of the assessee and the report of the Inspector. The Commissioner was thus amply justified in remanding the matter for examining the case of the assessee. He did not pass a, final order, but directed the Income Tax Officer to make "a close scrutiny as to the extent of initial capital". In my view, therefore, the second reason of the Tribunal for cancelling the order of the Commissioner was fallacious and untenable.

12. The third reason for the Tribunal to have cancelled the order of the Commissioner was that the order was based upon surmises and conjectures, as there was nothing on record to show that the sums belonged to the husband of the assessee and that she was merely a benamidar. I regret, I am unable to endorse the view of the Tribunal. What is sometimes dubbed as surmise and conjecture is nothing but application of common sense. A judicial authority or the Tribunal is not precluded from applying a little of its common sense. It is true that in the instant case, there was nothing to show that the initial capital came from the husband, but if the assessee failed to show the source of her initial capital investment, anybody would be justified in concluding that the funds must have been provided by the husband. This would be applying a little common sense and not surmises or conjectures. The Commissioner was permitted to apply his common sense. Whether the source of the funds which constituted the initial capital investment came from the husband would in most cases be a question of inference to be drawn from a totality of facts. The Revenue cannot produce direct evidence in that behalf unless the assessee or the; husband made a confession thereon before the Revenue or any other authority. It is not the law that in the absence of any confession, an inference in regard to the source of the initial capital investment--when the assessee is a married lady--cannot be drawn. I do , not intend to dilate upon this aspect in any greater detail, as the assessee is likely to be prejudiced in the assessment before the Income Tax Officer. Suffice it to say that the conclusion of the Commissioner was neither a surmise nor a conjecture. It was a pure application of common sense. It is, therefore, not necessary to advert to and distinguish the cases referred to by the Tribunal in paragraph 15 of its order.

13. We now come to the last ground advanced by the Tribunal, namely, the earlier decision of the Tribunal in the case of Shrimati Rambha Devi v. ITO. The decision in that case is the subject-matter of reference before this court in Taxation Cases Nos. 21 to 23 of 1978 Commissioner of Income Tax Vs. Smt. Rambha Devi, . It has, therefore, to be considered by us whether that case was rightly decided by the Tribunal. The issues which fell for consideration before the Tribunal in the case of Rambha Devi were the following :

"(1) Whether the Commissioner had passed his order after giving the assessee an opportunity of being heard?

(2) Whether from the materials on record it appeared that the assessments had

been completed after making proper enquiries as required under the instructions and whether the enquiry made could be held to be proper in respect of the claims made by the assessee in her covering letter as well as the returns filed ?

(3) Whether the orders of the Income Tax Officer were erroneous in so far as they were prejudicial to the interests of the Revenue ?

(4) Whether the Commissioner of Income Tax could revise the assessment orders passed u/s 143(1) if those orders were passed in pursuance of the scheme launched by the Board ?"

The first question does not arise in the instant case, as it is amply clear that notice had been issued to the assessee and in response thereto written statement and affidavits were filed. After the parties were heard, the Commissioner passed the impugned order.

14. The second issue in Rambha Devi's case was the same as ground No. 1 in the instant case, namely, whether the assessment orders had been passed with or without enquiry, as required under the instructions. I have already discussed that matter earlier and I am of the view that the Tribunal was not correct in the instant case in holding that it was not correct that the assessment orders had been passed without enquiry regarding the initial capital, the nature and real extent of the income and its true ownership. The decision of the Tribunal in Rambha Devi's case in this behalf was not correct. Mr. P.D. Mathur, Vice-President, Appellate Tribunal, observed in paragraph 18 of his order that the scheme of assessment envisaged by the order of the Central Board of Direct Taxes relaxed the rigours of enquiry and investigation to be made.

15. If the rigours of enquiry and investigation had been relaxed by the scheme of the Board, the order of the Tribunal would have been perfectly justified. Let us, therefore, pursue the scheme. I have quoted earlier the salient aspects of the scheme. In paragraph 4, it has been specifically stated that "returns of income filed in the names of minors and ladies should not, however, be accepted without proper enquiries". What is the content of this sentence? In my view, it clearly means that minors and ladies were not covered by the scheme. It applied to others and not minors and ladies. They not having formed part of the scheme, there was no relaxation for them. No spot assessment was to be done in the case of returns filed by minors and ladies. They must have been excepted precisely on the ground that unscrupulous assessee might endeavour to lessen the tax burden upon themselves by filing returns in the names of their wives and minor children. I must confess, I have some difficulty in appreciating that if the scheme did not apply to minors and ladies, how the rigour of enquiry and investigation was reduced in their case. It is well established that circulars of the Board issued in exercise of powers u/s 119 have a binding effect and the Revenue is bound to act upon them. It is not necessary to labour on that question, but the moot question is whether the scheme encompassed ladies and minors. I am clearly of the view that it did not. If it did not include them, any discussion on the binding

character of the orders of the Board has no relevance. The Vice-President, Mr. Mathur, took note of the fact that the scheme of the Board made a distinction between adult male assesseees and assesseees who are ladies and minors. He rightly observed that the distinction was made because Government found that some unscrupulous assesseees having huge incomes may be trying to reduce the rate of tax applicable to them by showing their income in the names of ladies and minors to whom a lower rate of tax was applicable. He rightly observed that in the case of ladies and minors, a proper enquiry required to be made was only to confirm whether the ladies and minors were benamidars of some other assesseees whose income was taxable at a higher rate of tax. Was that done ? Certainly not. Having missed the central point, the Tribunal fell into a grievous error in holding that the assessment had to be completed within the period, of grace. Not to complete it within that period would be denying to a lady or a minor assessee the benefit of the scheme. I regret, the majority conclusion of the Tribunal is fallacious. The law in regard to assessment was not modified so far as ladies and minors were concerned. In the course of mass communication, whenever a return was filed by a lady or a minor, it could have been accepted, but could not have been disposed of in terms of the Scheme. It should have been treated as an original assessment proceeding with all the rigours in regard to initial capital investment. No concession or amelioration of the procedure in their case was envisaged. These assessments had to be completed in terms of Section 143(3) and where it was prejudicial to the Revenue, the Commissioner would be fully justified in setting aside such assessments. In fact, in the course of mass communication, if a return was filed on behalf of a lady or a minor, the Income Tax Officer would have been fully justified in not accepting it at the spot and calling upon them to file the return in the Department as if the scheme did not exist. There is a slight distinction on facts between the case of Rambha Devi and the case of the present assessee. In the former case, the return had been filed on December 22, 1972, and the Inspector of Income Tax conducted inquiry on December 27, 1972. Thereafter, assessment was made. Thus, there was at least a gap of five days between the riling of the return and the assessment. What difference the gap of five days would have would be a matter to be considered when the reference in the case of Rambha Devi is taken up by this court. But, in the instant case, the return was tiled on December 14, 1972; and the Inspector's enquiry was completed on the same day and the assessment also was made on the very same day for all assessment years, except 1973-74, at the spot. Mr. P.D. Mathur distinguished the case of Thalibai F. Jain and Others Vs. Income Tax Officer, Assessment-4, Hubli and Another, of the Karnataka High Court, on the footing that the Income Tax Officer had made the assessment without enquiry and evidence and in undue haste. The situation in the instant case is exactly similar. The filing of a return, the enquiry and assessments were all done on the same day. I am, therefore, firmly of the view that the enquiry, if at all there was any, was conducted in undue haste. If any enquiry worth the name was conducted, the attention of the Inspector and the Income Tax Officer was not directed towards ascertainment of the core question, namely, when and

from where did the funds come and whether the case of the assessee in regard thereto was gullible. The enquiry not having been directed towards that question, it was no enquiry. The Scheme did not liberalise matters for the assessee who was a lady and wife of a trader. The assessment thus on the basis of such enquiry was clearly erroneous.

16. That brings us to the question of jurisdiction of the Commissioner u/s 263 of the Act to cancel the assessment and direct a fresh assessment. If the assessment is erroneous, it must be presumed to be prejudicial to the interests of the Revenue. The finding of the Commissioner in this case was that the order of assessment was prejudicial to the interests of the Revenue, as the assessee may have been a mere benamidar of her husband. It is true that the Commissioner did not record a concluded finding that she was a benamidar. But, if he had done so, he would have laid himself open to the charge that the dice had been loaded against the assessee. The Commissioner, therefore, rightly only ordered further investigation into the claim of the assessee. Upon this finding, if the funds had been provided by the assessee's husband, the income would be taxable in his hands over which a higher rate of tax may have been applicable. In that situation, the order of assessment of the wife would be per se prejudicial to the Revenue. It does not need much argument to convince that if the procedure adopted by an Income Tax Officer brings in lesser revenue than some other procedure, the order would obviously be prejudicial to the Revenue. If that is so, the order of assessment is prejudicial to the Revenue. It cannot be doubted that the Commissioner would then have the jurisdiction to act in terms of Section 263 and order cancellation of the previous assessment and direct fresh assessment. Reliance placed by learned senior standing counsel in this regard on Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta, , is well placed. The Supreme Court in that case observed that (at page 328):

"Even where an income has not been earned and is not assessable, merely because the assessee wants it to be assessed in his or her hands in order to assist someone else who would have been assessed to a larger amount, an assessment so made can certainly be erroneous and prejudicial to the interests of the Revenue."

The case of the Supreme Court in Rampyari Devi Saraogi Vs. Commissioner of Income Tax, West Bengal and Others, , also supports the Revenue. The majority view of the Tribunal distinguishes those cases on some misconception.

17. Reference may also be made to the case of Shakuntala Devi Vs. Commissioner of Income Tax, . That was also a case of a new assessee. The lady, for the assessee was a lady, filed returns for the assessment years 1955-56 to 1961-62. The Income Tax Officer completed the assessments after making a uniform addition of Rs. 1,200 in each of the assessment years. Thereafter, the Commissioner of Income Tax issued notice u/s 33B of the Indian Income Tax Act, 1922 (which is equivalent to Section 263 of the 1961 Act). The Commissioner cancelled the assessments holding that they were erroneous and prejudicial to

the Revenue for various reasons and directed the Income Tax Officer to assess afresh after making proper enquiry and investigation. The appeals by the assessee before the Tribunal were dismissed as being without merit. The Calcutta High Court took note of the observation of the Commissioner that the Income Tax Officer was not justified in accepting the claim in respect of initial capital investment without any enquiry or evidence whatsoever. In that connection, their Lordships at page 429 observed as follows :

"As we have observed before, the acquisition of the initial capital is a link, and a crucial link at that, in the chain of the assessee's explanations with regard to the incomes that she had received."

From the above, it will be seen that an enquiry into the source of the initial capital is crucial for the Income Tax Officer. If that is not done, the assessment is bound to be erroneous and hence prejudicial to the Revenue.

18. Let us for the time being forget the scheme. If there was no such scheme as in the present case and if the assessee had filed a return, would her return be accepted without proper investigation as to the source of her initial capital investment. The answer obviously would be in the negative. In such a situation, therefore, the order of assessment without enquiry would be clearly erroneous. Being erroneous, the Commissioner obviously would have jurisdiction to act in terms of Section 263 of the Act. The reply of the assessee is that the situation in the instant case is different because of the existence of the scheme. We have, therefore, to look to the contents of the scheme. I have elaborated earlier my views that the scheme did not cover ladies and minors. The Vice-President does not seem to dispute this position as may be seen from his observations at the end of paragraph 16 of the order. The scheme not being available to the assessee, a regular enquiry and investigation was a must. The assessments in the case of the assessee had to be done by the ordinary process. That being so, the Commissioner cannot be denied the jurisdiction to act in terms of Section 263 of the Act. In fact, it is obligatory upon him to exercise the jurisdiction where the order of assessment is erroneous and "prejudicial to the interests of the Revenue. Not being covered by the scheme, the assessee had to be assessed in terms of Section 143(3) and not in terms of Section 143(1) of the Act.

19. It is somewhat intriguing that the learned Vice-President having conceded in paragraph 16 that "the scheme made a difference between the adult males on the one hand and ladies and minors on the other, yet got divested of the scheme. The question whether the benefit of the liberalisation scheme would be available to the assessee or not became cadit quaestio. In paragraph 22, the learned Vice-President observed :

"In the instant case before me, I am concerned with the assessments which have been made u/s 143(1) in accordance with the scheme launched by the Central Board of Direct Taxes to help new taxpayers in small income group. In the said scheme, the procedure for assessment has also been prescribed. Thus, if the

assessments are made by the Income Tax Officer in accordance with the scheme of the Central Board of Direct Taxes to help new taxpayers in small income group, the question of filing an appeal to the Appellate Assistant Commissioner by the Department could not have arisen even if there was a legal provision in the Act for such an appeal. In other words, if the assessments made are on the lines suggested in the scheme to help new taxpayers, the said assessments cannot be considered by the Commissioner of Income Tax as erroneous in so far as they were prejudicial to the interests of Revenue."

I regret, I am unable to find the relevance of the above observation. Once it is conceded, as it must be, that the liberalisation scheme did not extend to ladies and minors, the entire observation of Mr. Mathur was irrelevant.

20. Upon consideration of the entire materials and law on the subject, I am clearly of the view that the Commissioner did not exceed his jurisdiction in exercising his power u/s 263 and cancelling the assessments. The law laid down in the case of Rambha Devi was incorrectly decided. The fourth ground, therefore, advanced by the Tribunal in the instant case also falls to the ground.

21. None of the grounds advanced by the Tribunal, therefore, have any substance. The Tribunal in the instant case must be held to have erred in setting aside the order of the Commissioner.

22. Learned senior standing counsel for the Revenue invited us to hold that even in cases falling within the scheme, the Commissioner was not divested of his jurisdiction u/s 263 of the Act. According to him, if an order of assessment was erroneous, it would obviously be prejudicial to the interests of the Revenue and, therefore, even in those cases, the Commissioner would have the jurisdiction to cancel the assessment: and order reassessment. It is not necessary for us to go into that larger question in regard to the jurisdiction of the Commissioner where there is a scheme. The instant case is an exception carved out by the scheme itself and, therefore, the larger question advanced by learned senior standing counsel for the Revenue need not be answered.

23. The assessment for the assessment year 1973-74 and the order of the Commissioner in that behalf is another chapter. Obviously, this was not within the scheme period. I have held earlier that the scheme did not apply to ladies and minors. This assessment year was outside the period of the scheme. The assessment for this year had, therefore, to be conducted in terms of Section 143(3) of the Act. The order of the Commissioner having been upheld in regard to the earlier assessment years, the order in regard to the assessment year 1973-74 also was perfectly valid. The Income Tax Officer had no jurisdiction to complete the assessment for 1973-74 (A.Y.) as if the scheme applied in terms of Section 143(1) of the Act.

24. In my view, therefore, the Tribunal was not right in holding that the assessment orders had been passed by the Income Tax Officer after necessary enquiries in pursuance of the scheme. It was not right in, holding that the order

of the Income Tax Officer was not erroneous so as to enable the Commissioner of Income Tax to assume jurisdiction u/s 263(1) of the Act. The first question must, therefore, be answered in favour of the Revenue and against the assessee.

25. In regard to the second question, the Tribunal was not right in holding that the Commissioner of Income Tax did not follow the principles of natural justice before passing the impugned order.

26. In regard to the third question, I bold that the Tribunal was not right in holding that the impugned order of the Commissioner of Income Tax was based upon mere surmises and conjectures and, therefore, not valid.

27. In regard to the fourth question, it has to be held that the Tribunal did not decide the case of Rambha Devi v. ITO (ITA Nos. 1713 to 1715 of 1974-75) correctly. The Tribunal was not right in holding that the Commissioner of Income Tax could not legally set aside the order of assessment made u/s 143(1) in pursuance of the scheme "to help the new-taxpayers in the small income groups" evolved by the Government.

28. In regard to the fifth question, it has to be held that the Tribunal was not right in holding that the Commissioner of Income Tax acted in a mechanical manner in setting aside the assessment order for the assessment year 1973-74. His order for this assessment year was not invalid.

29. The answer to question No. 6 must be, as a follow-up of other answers, that the Tribunal was not right in cancelling the consolidated order passed by the Commissioner of Income Tax u/s 263(1) of the Income Tax Act, 1961, for the assessment years 1968-69 to 1973-74.

30. All the questions referred to us are thus answered in favour of the Revenue and against the assessee. The references are thus answered against the assessee and in favour of the Revenue with costs. Hearing fee Rs. 250 (Rupees two hundred and fifty) payable by the assessee to the Revenue.

31. Let a copy of this judgment be transmitted to the Income Tax Appellate Tribunal in terms of Section 260 of the Income Tax Act, 1961.

Ashwini Kumar Sinha, J.

32. I agree.