
(1959) 05 CAL CK 0010
In the Calcutta High Court
Case No : Matter No. 139 of 1958

Daulatram Rawatmal

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 21-05-1959

Acts Referred:

Income Tax Act, 1922 — Section 34(1A)

Citation : AIR 1959 Cal 682 : 63 CWN 788 : (1960) 38 ITR 301

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.N. Sinha, J.—The facts in this case are shortly as follows : For many years the petitioner's firm "Daulatram Rawatmal (hereinafter referred to as the "firm") has been carrying on business at No. 178, Harrison Road. Calcutta. For the assessment years 1940-41 to 1945-46 the firm has been assessed in normal course and has paid the amount found due. On or about 30th November, 1954 the case of the petitioner firm was transferred u/s 5 (7A) of the Indian Income Tax Act to the Income Tax Officer, Central Circle VI, Calcutta, being respondent No. 1 in this application. On or about 21st March, 1956 the respondent No. 1 issued notice u/s 34 (1A) of the Indian Income Tax Act for the assessment years 1940-41 to 1945-46 upon the partners of the said firm, on the ground that the said Income Tax Officer had reasons to believe that the income, profits or gains assessable to income tax for several years mentioned in the said notices have partly or wholly escaped assessment and the income, profits, or gains, of the previous years which fall wholly or partly within the period beginning from 1st September, 1939 and ending on 31st March, 1946 and which have escaped assessment, amount to or are likely to amount to Rs. 1,00,000/-or more. Copies of the said notices are annexed to the petition and marked with the letter "A". By the aforesaid notices, the partners of the said firm were requested to deliver to the said Income Tax Officer a return of the total income and the total world

income assessable for the respective years mentioned in the said notices. On or about 2nd July, 1956 the petitioner firm made an application to this court under Article 226 of the Constitution, inter alia, for quashing the proceedings initiated by the said notices u/s 34 (1A), on the ground that Section 5 (7A) and Section 34 (1A) of the Indian Income Tax Act were ultra vires of the Constitution, particularly Articles 14 and 19 thereof. Thereupon this court issued a rule and granted an interim stay of proceedings. The application came up for hearing before me and on the 9th January, 1958 the application was dismissed and the rule was discharged. In fact, what had happened was that in the meanwhile the Supreme Court held the said sections intra vires. I myself have decided similarly. Thereafter, on the 25th February, 1958 the petitioner wrote to the Income Tax Officer, Central Circle VI, asking for production or inspection of the following documents :

"(1) The order of satisfaction of the Central Board of Revenue, as referred to in the said notices u/s 34 (1A)

(2) The materials on which the Income Tax Officer had reasons to believe that income during the said period has escaped assessment.

(3) The basis on which the Income Tax Officer came to be of the opinion that the amount of the escaped income was likely to amount Rs. 1,00,000/-or more."

(2) On the 28th February, 1958 the respondent No. 1 informed the petitioner that the reasons recorded for starting the proceedings u/s 34 (1A), could not be given to the petitioner, and the Income Tax Officer could not also grant inspection of the records as requested. Thereafter, there was correspondence between the petitioner and the respondent No. 1, but the said respondent persisted in expressing his inability to grant copies of the reasons or inspection of the records as requested. This rule was issued on the 8th July, 1958 upon the respondent to show cause why an order should not be made quashing and/or cancelling the said notices and/or directing the respondent No. 1 to withdraw or recall the said notices and to forbear from giving any further effect thereto. The point that has been taken in this case by the learned Standing Counsel on behalf of the petitioner is a very short one. In order to appreciate it, it would be necessary to set out the relevant part of Section 34 (1A) of the Indian Income Tax Act (hereinafter referred to as the "Act").

"(1A) if, in the case of any assessee, the Income Tax Officer had reason to believe-

(i) that income, profits or gains chargeable to income tax have escaped assessment for any year in respect of which the relevant previous year falls wholly or partly within the period beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1946;

(ii) that the income, profits or gains which have so escaped for assessment for any such year or years an amount, or are likely to amount to Rs. 1,00,000/- or

more; he may serve on the assessee a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 22 and may proceed to assess or reassess income, profits or gains of the assessee for all or any of the years referred to in Clause (i), Provided that the Income Tax Officer shall not issue a notice under this sub-section unless he has recorded his reason for doing so, and the Central Board of Revenue is satisfied of such reasons recorded that it is a fit case for the issue of such notice;

Provided further that any such notice shall be issued after the 31st day of March, 1956."

3. The learned Standing Counsel argues that the condition precedent for issuing notice u/s 434(1A) of the Act is that the Income Tax Officer has "reason to believe" that certain facts exist which have been set out above. He must have reason to believe that income, profits or gains chargeable to income tax within a specified period have escaped assessment and that the income, profits or gains which have so escaped assessment amount to, or are likely to amount to, Rs. 1,00,000/- or more. Another condition precedent is that the Income Tax Officer before issuing the notice must record his reasons for doing so and the Central Board of Revenue must be satisfied on such reasons recorded, that it is a fit case for the issue of such notice. The argument is that the expression "reason to believe" is a well-known expression in law and it means that the assessee can come to court and require the Income Tax Officer to satisfy the court upon sufficient evidence that in fact, there did exist reasons which would induce a reasonable man to believe that the conditions precedent for the issue of a notice u/s 34(1A) had been satisfied. In other words, if the expression used is "if in the opinion of the Income Tax Officer" certain facts existed, then the matter would be left to the subjective satisfaction of the Income Tax Officer and would not be justiciable, and the court could not go into the matter. On the other hand, where the expression used is "has reason to believe", it means that such reason must exist objectively. It is conceded that if the Income Tax Officer honestly came to the belief that the conditions precedent, as set out in Section 34(1A) were satisfied, then the court cannot hold that he should not have done so. It is, however, argued that the assessee is entitled to ask the court to compel the Income Tax Officer to disclose the reasons and the materials upon which it is based, so that the court may consider whether upon such materials, a reasonable man could arrive at that conclusion. The object in making this application is, therefore, quite plain, namely to compel the Income Tax Officer to disclose the reasons which induced him to arrive at the opinion that income, profits and gains etc. had escaped assessment during the specified period and/or that the amount thereof would exceed Rs. 1,00,000/- or more. It is an attempt also to have an inspection of the order of the Central Board of Revenue. The attitude taken on behalf of the respondents as disclosed in the affidavit originally filed was that the petitioners have no right to inspect the records or any evidence produced before the Income Tax Officer. This was Stated in an affidavit in

opposition filed by S. K. Sarma, Income Tax Officer, Central Circle XXII, Calcutta, who had no personal knowledge of the facts of the case and was not the Income Tax Officer who issued the notices or obtained sanction for the issue thereof. Indeed, the affidavit was partly based on information derived from the records and the rest being submissions to the court. Subsequently, however, the Income Tax Officer who actually issued the impugned notices and obtained sanction thereof from the Central Board of Revenue has affirmed an affidavit dated 28th January, 1959 and an affidavit dated 23rd March, 1959. In the said affidavits he has stated as follows : --

(1) That at the material time he had in his possession considerable materials which led him to believe that income, profits and gains of the petitioner firm amounting to several lacks of rupees chargeable to income tax, had escaped assessment for the years 1940-41 to 1945-46.

(2) That he recorded his reasons for the aforesaid belief in writing and on the said reasons the Central Board of Revenue was satisfied that the present case was a fit case for issue of notice u/s 34(1A) of the Income Tax Act. A copy of the relevant memorandum regarding the satisfaction of the Central Board of Revenue dated 9-3-1956 is annexed to the affidavit affirmed on the 28th January, 1959.

(3) That disclosure of the said reasons to the assessee at any stage prior to his compliance, with the notice u/s 24(4) and Section 23(2) of the Indian Income Tax Act would be highly detrimental to the interests of the Income Tax Department and will completely frustrate the very object underlying the initiation of proceedings under the aforesaid impugned notices.

(4) That the relevant records relating to the petitioner will be made available only to the court for inspection of the said records if the court so desires.

(5) That the adequacy of the said reasons for the purpose of issuing the said notice is not a matter for consideration of the court.

(6) That he had formed his belief on the basis of the reasons aforesaid as an honest and reasonable person and not arbitrarily, illegally or mala fide,

(4) In his second affidavit dated 23rd March, 1959 he has stated in paragraph 5 as follows ; --

"I say that for the reasons recorded by me as required by first proviso to Section 34 (1A) of the Indian Income Tax Act and on which the Central Board of Revenue expressed its satisfaction that the present case was a fit case for the issue of a notice u/s 34 (1A) of the said Act, the facts are enumerated which show that there has been a concealment of assets by the petitioner and nondisclosure of income by a Benami transaction entered into by the petitioner. I had, therefore, reasons to believe that income, profits and gains of the petitioner firm had escaped assessment for assessment years 1940-41 to 1945-46."

5. Before I deal with the legal aspect of the case", I must record certain events

as they transpired during the course of the hearing of this application. As will appear from what has been stated above, the dispute between the parties is now within a very small compass. The position at present is that the Income Tax Officer has asked for production of Books of Account and other documents. The assessee wishes to compel the Income Tax Officer to disclose the reasons upon which he has based his belief, which is a condition precedent for issue of the notice, and upon the basis of which the Board of Revenue has sanctioned the same. It is not that the Income Tax Officer is unwilling to disclose the reasons altogether. He is, however, unwilling to disclose the reasons before the books and documents are produced. On behalf of the respondents Mr. Meyer has frankly informed me that his apprehension is that if the reasons are disclosed, the whole proceedings will be rendered infructuous because the books and documents will be removed and/or altered and most of them will not see the light of day. I, therefore, tried my best to see whether a solution could be reached. On the 27th February, 1959 the parties agreed to my giving certain directions. I directed that the respondents will send a list of the papers, documents and books of account which they require to be produced to the solicitor for the petitioner, and on the next day for hearing the petitioner should inform the court as to which of the books, papers and documents mentioned in the list they are in a position to produce in court. The idea was that these books, papers and documents were to be produced in court and when produced the Income Tax Officer would be willing to hand over the particulars asked for. In other words, if the books and documents were produced, then the authorities were willing to give inspection of all the records, including the reasons recorded in writing by the Income Tax Officer and the sanction of the Board thereon. Pursuant to the directions given, the respondents sent a list to the solicitor for the petitioner. At the adjourned hearing however, the learned Standing Counsel informed the court on behalf of the petitioner that his instructions were that the petitioner was not willing to produce the books and documents. The learned Standing Counsel said that the books and documents required were voluminous and indeed they relate to the books and documents of the petitioner's branches all over India and it would be physically impossible to produce them in Calcutta. It is quite true that the books and documents that have been asked for are likely to be voluminous and it might be that some of them are not in the possession or power of the petitioner. I therefore, suggested that only such books and documents may be produced as were in the possession, custody or control of the petitioner and the petitioner may state in an affidavit as to the books and documents which were not in their possession, custody or control. Further, that sufficient time should be allowed for the petitioner to have the books and documents brought to Calcutta. Upon both these points the respondents agreed. The learned Standing Counsel stated on instructions that nevertheless his clients were unwilling to follow the course suggested and his instructions were further to rest on the legal rights of the parties. This of course, brought the matter back to the stage where we started, and it therefore, remains for me to consider the legal position. I have already stated the position in law which has been taken by the petitioner. The argument

is that Section 34(IA) of the Act uses the word has reason to believe and this makes the matter justiciable. According to the learned Standing Counsel, if the matter is justiciable then inasmuch as the petitioner has made an application to the court, the respondents are bound to disclose all the reasons in court. I have already stated that the respondents are willing to produce all the records in court and give inspection to the court, but they are unwilling to disclose the same to the petitioner at this stage. The learned Standing Counsel argues that if the matter is justiciable then the law is that the reasons must not only be disclosed to court but also to the petitioner, in court, and that there was "no half-way house". I shall now proceed to consider the position. The expression "reason to believe" has been interpreted in various decisions. The first case cited is AIR 1946 123 (Privy Council) . Rules 26 and 129 of the Defence of India Rules (1939), in so far as they are relevant run as follows :

"Rule 26.--(1) The Central Government or the Provincial Government if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order, His Majesty's relations with foreign powers or Indian States, the maintenance of peaceful conditions in tribal areas, or the efficient prosecution of the war, it is necessary so to do, may make an order : (b) directing that he be detained;

Rule 129.--(1) Any police officer may arrest without warrant any person whom he reasonably suspects of having acted (a) in a manner prejudicial to the public safety or to the efficient prosecution of the war."

6. On 21st August, 1944 the detainee Purushottam Yeshwant Deshpande was arrested pursuant to an order given by the Deputy Inspector General of Police, under Rule 129. A report of the arrest was made to the Provincial Government which had directed that the detainee be detained in police custody for a period expiring on 4th September, 1944. This period was subsequently enlarged. In the meantime, the detainee's wife made an application to the High Court u/s 491, Criminal P. C. complaining that the detention of the detainee was illegal and improper. The High Court ordered that the detainee be set at liberty. One of the questions that arose was the interpretation of Rule 129 (1) of the Defence of India Rules. The question was as to whether a police officer who makes an arrest, was bound to prove to the satisfaction of a court before whom the arrest was challenged, that he had reasonable grounds of suspicion, and what would happen if he failed to discharge the burden laid upon him? Their Lordships of the Privy Council pointed out the difference in the language of Rule 26 and Rule 129. It was held that the burden rested upon the police officer to show to the court that his suspicion was reasonable and his act was therefore, justified. So far as section (Rule?) 26 is concerned, it was for the Government to be satisfied and there existed no qualifying adverb such as "reasonably" or "honestly" attached to the word "satisfied". It was held that in the case of Government, mere suspicion was not enough, but it was for the Government to be satisfied. On the

other hand, a police officer under Rule 129 could arrest on mere suspicion, but the suspicion must be reasonable. The onus was on the police officer to prove to the satisfaction of the court that the suspicion was reasonable. The decision of the High Court was upheld and the appeal dismissed. Reliance was placed on a judgment in an English case *Shearer v. Shields* 1914 AC 808. This is a decision of the House of Lords which had to construe a provision in the Glasgow Police Act authorising constables to arrest if they had "reasonable grounds for suspicion" and it was held that the burden rested upon the constable concerned to show that his suspicion was reasonable and his act therefore justified. It was held that the burden must be discharged upon proper evidence. At this stage I might refer to another English case which is always cited in a case like this, namely, *Liversidge v. Anderson* 1942 AC 206. In that case, the Secretary of State, acting under Regulation 18B of the Defence (General) Regulations 1939, made an order in which he had stated that he had "reasonable cause to believe" a person to be of hostile association, and by reason thereof it was necessary to exercise control over him, and directed that the person should be detained. It was held that a Court of law could not enquire whether in fact the Secretary of State had reasonable grounds for his belief. The matter was one for executive discretion of the Secretary of State. In the Regulation concerned, there were two kinds of expressions used. In several places the Secretary of State was only required to be "satisfied" by something before he could take action. On the other hand, he could take action under Regulation 1A or 18B if he had "reasonable cause to believe" that a person was a member of a certain organisation and that it was necessary to exercise control over him. In his dissenting judgment which has become classical Lord Atkin pointed out that these two different expressions would not have been used if they meant the same thing. The majority judgment admitted that the argument was not without weight, but decided in the manner set out above. It has subsequently been pointed out that *Liversidge's* case 1942 AC 206 (supra) was a war-time decision and could only be supported because of the existence of an emergency. In (1940) 8 ITR 442 (Privy Council), the Judicial Committee was dealing with the point as to what circumstances should exist to enable the Income Tax Officer to initiate proceedings u/s 34 of the I. T. Act. It was held that it was enough that the Income Tax Officer had before him some information and in good faith, he considered that he had good grounds for believing that the assessee's profits have escaped assessment, or had been assessed at too low a rate. It is not necessary for the Income Tax Officer to hold a quasi-judicial enquiry at this stage nor is it necessary to convene the assessee or to intimate to him the nature of the alleged escapement or to give him an opportunity of being heard. In *Pannalal Binjraj Vs. Union of India (UOI)*, the Supreme Court was dealing with Sub-section (7A) of Section 5 of the I. T. Act. That Sub-section enabled the Commissioner to transfer pending cases from one file to another. It was pointed out that it would be next to impossible for the assessee to challenge an order made by the Commissioner and the Central Board of Revenue, because the reasons for making the order will not be known to the assessee not having been recorded in the body of the order or communicated to

the assessee. It was held that the assessee may point out the circumstances which prima facie, and without anything more, would make out the exercise of the power as arbitrary. It will then be incumbent on the authority to explain the circumstances under which the order has been made. The Court will in that event, scrutinise the circumstances, regard being had to the object sought to be achieved by the enactment and come to its own conclusion as to the bona fides of the order, and if not satisfied will certainly quash the same. This case has really no bearing on the point I am called upon to determine. There is no question of mala fides raised in this case. The only point to be determined is as to whether at this stage the Income Tax Officer should disclose his reasons for issuing notice u/s 34, The next case cited is Bhimraj Panna Lal Vs. The Commissioner of Income Tax, . In this Divisional Bench judgment of the Patna High Court, Prasad, J. said as follows :

"By the amendment in 1948 the words "definite information" and "discoveries" have been deleted, and have been substituted by the words "has reason to believe" in Section 34(1) and by the words "in consequence of information in his possession" in Clause (B) of Section 34(1). These words in the amended Section 34(1) suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds, and that the Income Tax Officer may act under this section on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. Powers in the present section are wide, but they are not plenary; the words of the section are "reason to believe" and not "reason to suspect"".

7. It will be observed that in this case, conditions have been laid down for the exercise of the discretion provided in Section 34, by the Income Tax Officer in issuing a notice thereunder. It is however of no direct assistance on the point namely, as to whether and if so to what extent the reasons must be disclosed if an assessee comes to Court and challenges the exercise of such discretion.

8. In an unreported decision of the Madhya Pradesh High Court, Keshrichand v. Income Tax Officer, Khandwa, delivered by Bhutt, J., (judgment dated 10-3-1958), the point arose directly as to whether, even though an assessee may not be entitled to know the reason for issuing the notice, it could be withheld from the Court. It was held that at that stage the assessee had no justiciable cause and that any other interpretation would in-effectuate the charging-section, and the machinery sections, of the Act. These being the authorities cited before me, it appears to me that none of them have completely decided the issue that has arisen in this case. Most of them have decided the condition that must exist for the issue of a notice u/s 34(1) of the Indian Income Tax Act. It has been decided that the Income Tax Officer must have certain information before him and cannot act on mere suspicion, that if upon the facts before him, he bona fide believed that it was necessary to issue a notice, then the Court will not interfere, and would not take upon itself the task to decide as to whether upon such facts the Income Tax Officer should have come to that

belief. These are propositions which are not contested by either party. The short point raised in this case is as to whether the petitioners having come to Court, the Income Tax Officer could be compelled to disclose the reasons to the Court at this stage. As I have stated above, the respondents have in fact produced all records in Court, including the reasons recorded by the Income Tax Officer and the sanction of the Board of Revenue, and have no objection to the Court looking into it. The sole question for determination is as to whether, if the Court looks into it, the assessee must also be given an opportunity to look into the same. From the decisions cited above, it is clear that the expression "reason to believe" makes the matter justiciable. It is not wholly dependent on the subjective satisfaction of the Income Tax Officer, and he must, upon a challenge being thrown, satisfy the court that his belief is based upon facts which would induce a reasonable person to arrive at the conclusion which had been arrived at by the Income Tax Officer. It inevitably follows that the facts, that is to say, the particulars of information upon which the Income Tax Officer has relied, must be disclosed to Court. The next question that arises, and a question which is not free from difficulty is, as to whether if the Court looks into it, it must also be disclosed to the assessee. The learned Standing Counsel has strongly argued that in such a matter there cannot be a procedure, which he picturesquely described as a "hole-and-corner" policy. He argues that the English case regarding the police constable (ibid) shows that upon a challenge being thrown, the constable would have to prove by evidence adduced in Court that his suspicion was reasonable. Similarly, it is argued that upon a challenge being thrown, the Income Tax Officer must adduce evidence in Court to show that his belief was based on reasonable grounds. If it is a question of adducing evidence in Court it cannot be ex parte evidence because that procedure would be violative of the rules of natural justice. Plausible as this argument sounds, let us see the implication thereof. After the assessment is complete, a notice could only be issued u/s 34(1A), if the Income Tax Officer has reason to believe that income, profits and gains have escaped assessment and it amounts or is likely to amount to a sum of Rs. 1,00,000/- or more. Normally, this would mean that the assessee had suppressed disclosure of his real income. The Income Tax authorities might have various sources of knowledge and without an investigation it would be impossible to determine finally as to how the matter stood. If at this stage; the available information had to be disclosed to the assessee, it might be disastrous for the proceedings and would defeat the very object for which the notice was given. It has been constantly held that at this stage the assessee is not entitled to look at the reasons recorded by the Income Tax Officer or compel the Income Tax Officer to disclose to him the reasons. Re-opening of an assessment u/s 34 is always a very serious affair. Therefore, the Income Tax. Act has not left the matter entirely to the discretion of the Income Tax Officer but has provided for certain safeguards. It has laid down that the Income Tax Officer must record his reasons in writing and get the sanction of the Commissioner or the Board of Revenue as the case may be. But if at this stage of the proceedings, these reasons have to be disclosed to the assessee, then he will be put on his

guard and in most cases the very object of reassessment will be frustrated. The books will be removed and/or destroyed, and evidence generally, which would enable the Income Tax Officer to establish that the original assessment was not complete would disappear. If the law is that at this stage the assessee is not entitled to such information or disclosure, then it is obvious that in this application the assessee wishes to achieve the same end by an indirect process. If by merely coming to the Court and challenging the notice, it would be incumbent on the Income Tax Officer to make public the reasons and the documents relating to it, then indeed, there is no point in saying that the assessee was not entitled to know the same at this stage. That object could be achieved in any case by simply making an application to Court. In my opinion, the law cannot possibly enable the assessee to do something indirectly which he cannot do directly, and no such interpretation should be given to a provision of law which would entirely destroy the object for which it was promulgated. I have therefore come to the conclusion that the matter being justiciable, and the Income Tax authorities having been called upon to satisfy the Court that facts existed which would make the order or the belief upon which it is based reasonable, they should disclose to Court the reasons, but these reasons should in the first instance be looked at by the Judge and not by the assessee. If the Judge thinks that the contention of the Income Tax authority, namely that disclosure at this stage to the assessee would be prejudicial to the realisation or the revenue, or destructive of the proceedings altogether, then it should not be disclosed to the assessee at this stage, although the Court may order that such reasons may be disclosed at a subsequent stage, that is to say, after the books and documents called for have been produced, or any other stage. As regards the point as to whether the Court at this stage could look into the records without disclosing them to the assessee, I see no insuperable objection. There are many instances in which the Court is entitled to do so. Reference may be made to the provisions of Order 11 Rule 19(2) of the Civil Procedure Code. That provision lays down that where, on an application for an order for inspection, privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege. This power has been explained in a Privy Council case AIR 1931 254 (Privy Council) . In that case the plaintiff asked for discovery and inspection of certain state documents in the Court of Australia, for which the State claimed privilege. Lord Blanesburgh said as follows :--

"The power of the Court to call for the production of documents for which this privilege is claimed and to determine the validity of the claim for itself was much discussed in argument. The result of the discussion has been, as their Lordships think, to confirm the view of Griffiths, C. J., in *Marconi's Wireless Telegraph Co. v. The Commonwealth* (1913) 16 CLR 178, where in effect he concludes that the Court has in these cases- always had in reserve the power to inquire into the nature of the document for which protection is sought, and to require some indication of the nature of the injury to the State which would follow its

production. The existence of such a power is in no way out of harmony with the reason for the privilege provided that its exercise be carefully guarded so as not to occasion to the State the mischief which the privilege, where it exists, is designed to guard against.

In the time of *Beatson v. Skene* (1860) 8 WR 544, any examination of a document would apparently have had to take place in public and the mischief resulting from such publicity is the reason given by the Chief Baron for his acceptance there of the Minister's word without making it The existence of the power, nevertheless is affirmed and its exercise encouraged not only by judicial pronouncement, but by widespread practice and may it not be added, by the reason of the thing? There seems little, if any reason why the Court in relation to this privileged class of its documents, should have any less power than it has to inspect any other privileged class of its documents, provided of course that such power be exercised so as not to destroy the protection of the privilege in any case in which it is found to exist They are much impressed by the observations of Starke, J., in his dissenting judgment in *Griffen v. State of South Australia* (1925) 36 CLR 378, in course of which at p. 402, he says, speaking of the papers now again in question, No one has suggested that the interests of the public are such that a Judge ought not to see the documents" In these circumstances it only remains to consider whether the circumstances here are such that the power should now be exercised."

9. In the present case, it cannot be denied that the law has firmly established that at this stage the assessee is not entitled to look into the reasons recorded by the Income Tax Officer. The reason why the assessee is not entitled to do so is that the powers invoked relate to a machinery section and if the assessee is able to look at the reasons at this stage, the whole proceedings would be frustrated. If that be so, it is certainly not in the public interest that the reasons should be disclosed to the assessee by an indirect method; simply because, the Court has been given power to see as to whether these reasons exist or could justify the issue of a notice. After all, the Court is not deciding the matter for itself. If the Income Tax Officer has come to a conclusion bona fide the Court will not interfere. But simply because it is necessary for the Court to satisfy itself in this behalf it does not follow that such reasons should be disclosed to the assessee. Such a course would destroy the very object and the provision of law in question, and therefore cannot be a reasonable interpretation of it. In this case I must record that the reasons and the sanction of the Board of Revenue have both been produced before me and I have looked into them. Having looked into them, I arrived at the opinion that it would be extremely prejudicial to the respondents if the particulars contained therein are disclosed to the assessee at this- stage. I might mention here that the Income Tax Authorities have not totally refused to disclose the reasons but object to doing so before the books and documents are disclosed. They apprehend that the books and documents will disappear if the particulars are disclosed at this stage. In my opinion it is a reasonable

apprehension. I, therefore, suggested that the respondents should disclose the main headings, without giving away particulars which would prejudice them and this suggestion has been accepted and carried out by filing an affidavit of D. G. Pradhan affirmed on the 23rd March, 1959. The deponent in this affidavit is the Income Tax Officer who recorded his reasons and issued the notice. An extract from his affidavit has been set out above. In my opinion, this is a sufficient disclosure to the assessee, and no further disclosure should be permitted at this stage. In my opinion, the Income Tax Officer had reasonable grounds to believe that the income, profits and gains chargeable to income had escaped assessment during the relevant years and that the notice issued by him u/s 34(1A) of the I. T. Act was valid and proper and that the petitioner is not entitled to any further disclosure at this stage. 10. The application is therefore dismissed. The Rule is discharged. Interim orders, if any, are vacated. There will be no order as to costs.