

(1985) 07 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No's. 16981 and 16982 of 1979

Deepchand Kishanlal

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 11-07-1985

Acts Referred:

Citation : (1986) 27 TAXMAN 379

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : G. Sarangan, for the Appellant; K. Srinivasan and H. Raghavendra Rao, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Puttaswamy, J.—Deepchand Kishanlal, a registered partnership firm, having its business office at present at No. 2, Ali Askar Road, Bangalore city, represented by one Vinay Kumar Poddar, one of the partners of the said firm is the common petitioner before me, The petitioner was originally an assessee on the file of the ITO, Calcutta (ITO-C), but is now borne on the file of the ITO, Bangalore (ITO-B). For the assessment years 1967-68 and 1968-69 relevant to the accounting years ending on 31-12-1966 and 31-12-1967, respectively, the petitioner filed its returns under the income tax Act, 1961 ("the Act") before the ITO-C, inter alia, disclosing a credit of Rs. 45,000 on 31-3-1964 from Karnataka Mining Co. (P.) Ltd. for payment to Murari Trading Co. of which one Murarilal Kedia was a partner and a sum of Rs. 67,500 as credit on 30-9-1967 from the mother of one Murarilal Kedia. On those credits, the petitioner claimed that they were not taxable on the plea that they were only recoveries of earlier written off bad debts of a partnership firm called Kishanlal Poddar (share) for the year 1949-50 which had been later taken over by it. For the assessment year 1967-68 the petitioner also claimed Rs. 18,585 under the head "Repairs to roads and buildings" as revenue expenditure. In his separate assessment orders made on 30-1-1972 and 8-3-1972 for the years 1967-68 and 1968-69, respectively

(exhibits E and F) the ITO-C rejected the claim of the petitioner not to subject the credits of Rs. 45,000 and Rs. 67,500 to tax and subjected them to tax under the Act. Under the head "Repairs to roads and buildings", the ITO-C disallowed a sum of Rs. 5,000 as capital expenditure. Against the said orders of the ITO-C, the petitioner filed appeals u/s 246 of the Act before the AAC who by his common order dated 31-7-1974 (exhibit J) dismissed them.

2. Without challenging the said orders of the AAC and ITO-C in second appeals u/s 253 of the Act in the right royal road before the income tax Appellate Tribunal, which allows an appeal on questions of fact and law and then seek for a reference u/s 256 of the Act to this Court on questions of law, for reasons best known to itself, the petitioner challenged them in revisions u/s 264 of the Act before the Commissioner who by his common order made on 20-1-1979 dismissed them. In these petitions under article 226 of the Constitution, presented on 17-10-1969 the petitioner has challenged the said orders of the Commissioner, the AAC and the ITO-C.

3. The respondents have resisted these writ petitions.

4. Shri G. Sarangan, the Learned Counsel for the petitioner has contended that the order made by the Commissioner in particular on the claims for Rs. 45,000 and Rs. 67,500 without a genuine consideration of the case urged before him and the relevant materials placed before him, was a perverse and illegal one which was even opposed to the principles of natural justice that justified this Court's interference under article 226.

5. Shri K. Srinivasan, the learned senior standing counsel for the income tax Department, appearing for the respondents in justifying the orders impugned, has urged that in revisions filed u/s 264 by passing the legal remedies of appeals and references that are frequently resorted to by parties, this Court, as a rule should decline to examine their grievance and cannot upset findings on questions of fact. In support of his contention, Shri Srinivasan has strongly relied on the ruling of Pendse, J. of the Bombay High Court in Rukminidevi Jalan Vs. Wealth Tax Officer, Circle-IX (Central), Bombay and another, In the very nature of things it is necessary to examine this later contention of Shri Srinivasan first and then the merits, if it becomes necessary.

6. Section 264(1) under which the petitioner approached the Commissioner for relief reads thus:

(1) In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding" under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

This section that corresponds to section 33A of the Indian income tax Act, 1922 ("the 1922 Act") provides for a revision by an assessee before the Commissioner apart from conferring suo motu power of revision on him subject to the constraints referred to in sub-section (4) of section 264, with which we are not concerned. The power of revision conferred on the Commissioner by this section is part of the appellate jurisdiction conferred by the Act- *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, . The power of revision conferred on the Commissioner by this section is not an administrative power but is a judicial or quasi-judicial power and is, therefore, subject to judicial review under article 226- *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, . This section does not also place any limitation on the extent of the exercise of power by the Commissioner. Hence, the power of the Commissioner is co-extensive with that of the original and the first appellate authority under the Act, which means that he can interfere both on questions of fact and law.

7. When an assessee moves the Commissioner in a revision petition u/s 264, within a period of one year from the date the order was communicated to him or the date on which he otherwise came to know of it, whichever is earlier, an unduly long and generous period with still more generous provision for condonation of delay, the Commissioner is bound to entertain and examine the grievance made by an assessee if the same is filed within time and is not barred under sub-section (4) of section 264. In cases of delay and condonation, if any sought, the Commissioner is bound to deal with that also judicially and legally. When once the Commissioner entertains and disposes of a revision petition of an assessee on merits and then that person approaches this Court under article 226, a fortiori this Court is bound to examine and decide the same as required by that article and not otherwise. After all this Court cannot tell an assessee that it will not exercise its jurisdiction under article 226 solely on the ground that he had approached the Commissioner in a revision u/s 264. Any such attempt by this Court will be a clear abdication of the duty enjoined on it by the Constitution.

8. On the necessity for section 263 of the Act there cannot be two opinions at all. But, on the necessity for section 264 one cannot say the same. Against an assessment order made by the ITO, the Act provides for two appeals both on questions of fact and law and a reference to the High Court on questions of law and then, an appeal by certificate to the Supreme Court. With all these generous provisions, there is hardly any justification to allow a revision also, that too with such a long period of limitation, which only enhances the work of the Commissioners, the High Courts and the Supreme Court. In my humble and considered view, by deleting section 264, nothing will be lost but everything will be gained and sooner that is done, it will be better for all. Whether that should be done or not is for the Parliament to decide. But, so long as this archaic and an incongruous provision is on the statute book, this Court is bound to decide the matters in accordance with law only and not otherwise. For all these reasons, I reject this contention of Shri Srinivasan.

9. The scope and ambit of the powers conferred on the High Courts by articles 226 and 227 of the Constitution is now well settled by a large number of rulings of the Supreme Court and it is too late in the day to refer to all of them and extract the relevant principles from all of them. In *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, Gajendragadkar, J., speaking for the majority of a Constitution Bench reviewing all the earlier cases has summarised them in these words:

(7) The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under the article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals; these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under article 226 to issue a writ of certiorari can be legitimately exercised- *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, , *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and *Kaushalya Devi and Others Vs. Bachittar Singh and Others*,

(8) It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ

has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened." (p. 479)

On this statement of law Subba Rao, J. (as his Lordship then was) did not express a different view, though his Lordship dissented on merits. This enunciation has been reiterated by the Supreme Court in all the later cases.

10. The distinction and difference between an appeal and a judicial review has been admirably brought out under the heading "Review and appeal contrasted" by Wade in his classic treatise *Administrative Law* ELBS, Fifth edn. in these words:

The system of judicial review is radically different from the system of appeals. When hearing an appeal the Court is concerned with the merits of the decision under appeal. When subjecting some Administrative Act or order to judicial review, the Court is concerned with legality. On an appeal the question is "right or wrong?". On review the question is "lawful or unlawful?"

Rights of appeal are always statutory. Judicial review, on the other hand, is the exercise of the Courts' inherent power to determine whether action is lawful or not and to award suitable relief. For this no statutory authority is necessary; the Court is simply performing its ordinary functions in order to uphold the rule of law. The basis of judicial review, therefore, is common law. This is nonetheless true because nearly all cases in administrative law arise under some Act of Parliament. Where the Court quashes an order made by a minister under some Act, it typically uses its common law power to declare that the Act did not entitle

the minister to do what he did.

Where the proceeding is an appeal, some superior Court or authority will reconsider the decision of some lower Court or authority on its merits. Sometimes any aspect of the lower decision is open to appeal but sometimes, statute will allow only an appeal on a point of law, as opposed to a question of fact. Rights of appeal exist only where conferred by statute; in modern law there is no inherent appellate jurisdiction in the Courts. Thus, appeals from the High Court to the Court of Appeal now lie under the Supreme Court Act, 1981, and appeals to the House of Lords lie under the Appellate Jurisdiction Act, 1876 and the Administration of Justice Act, 1969. Statutes have created many special appeal Tribunals, such as the Social Security Commissioners, the Lands Tribunal and Supplementary Benefit Appeal Tribunals. There are also many statutory rights of the appeal from one administrative authority to another, for example, from a local planning authority to the Secretary of the State for the environment and from a police disciplinary authority to the Home Secretary. The complex system of statutory Tribunal, explained later, has its own network of appeals. There is no automatic right of appeal from them to any Court, but the policy of recent legislation has been to allow any question of law to be taken to the High Court on appeal, save in a few exceptional cases.

Judicial review is a fundamentally different operation. Instead of substituting its own decision for that of some other body, as happens when an appeal is allowed, the Court on review is concerned only with the question whether the Act or order under attack should be allowed to stand or not. If the Home Secretary revokes a television licence unlawfully, the Court may simply declare that the revocation is null and void. Should the case be one involving breach of duty rather than excess of power, the question will be whether the public authority should be ordered to make good a default. Refusal to issue a television licence to someone entitled to have one would be remedied by an order of the Court requiring the issue of the licence. Action unauthorised by law and inaction contrary to law are equally subject to the Court's control. In the case of unauthorised action the Court's principal weapon is the doctrine of *ultra vires*, which as will be seen is the function of a large part of administrative law. If administrative action is in excess of power (*ultra vires*), the Court has only to quash it or declare it unlawful (these are in effect the same thing) and then no one need pay any attention to it.

It is an inevitable consequence of our concept of the separation of powers, and of our lack of administrative Courts, that there is a sharp distinction between appeal and review. It means that fine points of law, alleged to "go to jurisdiction", are sometimes put forward in support of what is a thinly disguised appeal on the merits. But, the Court's duty is to confine itself strictly to the question of legality. If the administrative authority has acted within its powers and according to law, it is no business of the Court to interfere. The law draws the boundaries within which the administration is a free agent.

Judicial control, therefore, primarily means review, and is based on a

fundamental principle, inherent throughout the legal system, that powers can be validly exercised only within their true limits. The doctrines by which those limits are ascertained and enforced form the very marrow of administrative law. Rights of appeal, on the other hand, have no such central place. They may or may not exist in any given case, and although it is often highly desirable that they should exist, this is a question of policy which can be reserved for the chapter on Statutory Tribunals.

What is expressed by Pendse, J. in *Rukminidevi Jalan's case* (supra) dealing with a case of revision u/s 25 of the Wealth-tax Act, 1957 which is somewhat analogous to section 264 of the 1961 Act is not in any way different. Bearing these principles it is now necessary to examine the order of the Commissioner.

11. On the receipts of Rs. 45,000 and Rs. 67,500 which are undoubtedly nerve racking if not strange and mysterious the petitioner pleaded before the Commissioner to borrow its own language, as hereunder:

Revision petition u/s 264

- Deepchand Kishanlal, Bangalore

- Assessment years 1967-68 and 1968-69.

Note

Reg: Assessment of credit balances written off in the cases of Murarilal Kedia and mother of Murarilal Kedia

- For the assessment years 1967-68 and 1968-69.

I. Credit of Murarilal Kedia:

Assessment year 1967-68:

Kishanlal Poddar (share) was a partnership firm. The last year of assessment for this firm was 1949-50. From the assessment year 1950-51 this firm's business became a branch of the assessee-firm. Thus, the assessee became successor in part to the firm of Kishanlal Poddar (share).

In the assessment year 1949-50 the old firm claimed as bad debt a sum of Rs. 46,929-12-0 due from Murarilal Kedia, having written it off in the books. This claim was not allowed by the income tax Officer who held that it was premature. At that time, Shri Murarilal Kedia was an income tax assessee and even today he is an assessee and his file number has been given in his confirmatory letter which is enclosed in the paper book at page No. 18.

Later in March 1964 a sum of Rs. 45,000 was received by the assessee from Karnataka Mining Co. (P.) Ltd. for payment to Murari Trading Co. of which Murarilal Kedia was a partner. And with his consent the amount was adjusted in 1966 against the sum of Rs. 46,929-12-0 which was due to Kishanlal Poddar (share). Copies of the relevant documents are in pages 18 to 24 of the paper

book. Since the amount due had already been written off in the books of Kishanlal Poddar (share) the adjustment was made by crediting Rs. 45,000 to the profit and loss account.

The income tax Officer did not accept this fact. He wanted to know whether this debt of Rs. 46,929-12-0 had been taken into account at the time of taking over the business of Kishanlal Poddar (share). The income tax Officer could not be satisfied on this point because the debt had already been written off in the books of Kishanlal Poddar (share) before it became a branch of the assessee. The income tax Officer farther wanted proof that this adjustment was towards that debt. At the time of hearing this could not be given. (Now a certificate from Murarilal Kedia is enclosed-page 18 of the paper book). The income tax Officer treated the credit as income of the assessee. On appeal, the Appellate Assistant Commissioner confirmed the order of the Income- tax Officer holding that in the absence of full details the credit must be treated as unexplained and taken as income.

As regards the business dealings of Murari Trading Co. and Karnataka Mining Co. (P.) Ltd., Karnataka Mining Co. (P.) Ltd. gave a contract for extraction of ore and had a running account with that company. Only in 1964 as per the instructions of Mr. Murarilal Kedia, Karnataka Mining Co. (P.) Ltd. had transferred to the assessee a sum of Rs. 45,000 and the assessee credited the same in the name of Mr. Murarilal Kedia. Further, as instructed by Murarilal Kedia in 1966 after having several oral discussions from time to time, and immediately after obtaining his consent, the amount standing to his credit in the assessee's book was adjusted as stated earlier.

It is submitted that on the facts stated above both the income tax Officer and the Appellate Assistant Commissioner have erred in treating the sum of Rs. 45,000 as the assessee's income. Further, since the claim for bad debt made in the case of Kishanlal Poddar (share) had not been allowed even the question of assessing the sum u/s 41(1) of the income tax Act, 1961 does not arise. Even if it is considered as a windfall the same cannot be subjected to tax in the hands of successor. Attention is invited to the decision of Commissioner of Income Tax, Madhya Pradesh Vs. Hukumchand Mohanlal, in which even u/s 41(1), the successor is not liable to income tax in respect of allowance made in the assessment of the predecessor. The question of taxing u/s 41(1) what has not been allowed to the predecessor, it goes without saying, has to be answered in favour of the assessee. Even if the contention of the assessee was not acceptable, the Appellate Assistant Commissioner ought to have excluded the amount from assessment since it is only of the nature of a capital receipt.

II. Mother of Mr. Murarilal Kedia:

Kishanlal Poddar (share) was a partnership firm. The last year of assessment for this firm was 1949-50. From the assessment year 1950-51 this firm's business became successor in part to the firm of Kishanlal Poddar (share)-(became a

branch of Deepchand Kishanlal).

In the assessment year 1949-50 the old firm claimed as bad debt a sum of Rs. 64,920-1-6 due from Ramratandas Murarilal, a registered firm, and assessed to income tax regularly at that time, having written it off in the books. This claim was not allowed by the income tax Officer, who held that it was premature.

The mother of Murarilal Kedia had an account with the assessee which showed a credit balance as on 30-9-1967 of Rs. 67,623-85. The mother was advancing money to the assessee-firm since 1958 and she was being paid interest from time to time on the credit balances. The amounts were borrowed from her for business purposes. The mother died and Murarilal Kedia had become the sole heir of her estate. The firm Ramratandas Murarilal belonged to Murarilal Kedia group, with the consent of Murarilal Kedia as sole heir to his mother a sum of Rs. 67,500 out of which credit balance was adjusted against the balance of Rs. 1,930 due from him and Rs. 64,920-1-6 due from Ramratandas Murarilal to Kishanlal Poddar (share) and the balance of Rs. 123-85 was paid in cash. Copies of the relevant documents are in pages 9 to 15 of the paper book. Since the amounts due were already written off in the books of Kishanlal Poddar (share) the adjustment was made by crediting the profit and loss account.

The income tax Officer did not accept this fact. He wanted to know whether the debt of Rs. 64,920-1-6 had been taken into account at the time of taking over the business of Kishanlal Poddar (share). The income tax Officer would not be satisfied in this regard since the amount had already been written off in the books of Kishanlal Poddar (share). Further the income tax Officer wanted proof that this adjustment was towards the debts. At the time of hearing this could not be given (now a certificate from Murarilal Kedia has been enclosed-page 9 of the paper book). The income tax Officer also pointed out a discrepancy. The amount written off by the branch firm was Rs. 64,920 whereas the adjustment is for Rs. 67,500. Actually the narration in the account of the mother of Murarilal Kedia shows that the adjustment was towards the sum of Rs. 64,920 as also the balance still due from Murarilal Kedia via Rs. 1,929. Thus, the excess adjusted towards the written off amounts is Rs. 651. However, because of this the income tax Officer treated the sum as amount forgone by Murarilal Kedia's mother and treated it as the assessee's income. The Appellate Assistant Commissioner confirmed this inclusion holding that in the absence of full details the credit must be taken as unexplained and treated as income. It is submitted that full details have been furnished. Only the confirmation about the consent of Murarilal Kedia could not be given earlier. Both the income tax Officer and the Appellate Assistant Commissioner have gone wrong in treating the sum of Rs. 67,500 as the assessee's income. Further, since the claim for bad debt made in the case of Kishanlal Poddar (share) had not been allowed even the question of treating the sum as income u/s 41(1) of the income tax Act, 1961 does not arise. There is no case at all for treating the amount as forgone by the mother of Murarilal Kedia. Even if it is considered as a windfall the same cannot be subjected to tax in the

hands of the successor. Attention is invited to the decision of *C1T v, Hukumchand Mohanlal* [1971] 82 ITR 624 (SC) in which even u/s 41(1), the successor is not liable to income tax in respect of allowance made in the assessment of predecessor. The question of taxing u/s 41(1) what has not been allowed to the predecessor, it goes without saying, has to be answered in favour of the assessee. Even if the contention of the assessee was not acceptable, the Appellate Assistant Commissioner ought to have excluded the amount from assessment since it is only in the nature of a capital receipt.

On a detailed examination of these claims, the Commissioner has rejected them by expressing, thus:

15. The last point pertains to the inclusion in the total income of an amount of Rs. 45,000 which represents a transfer entry from the account of Shri Murarilal Kedia to the profit and loss account. The facts regarding this amount of Rs. 45,000 are rather intriguing. It is explained that this individual had business dealings with a partnership firm Kishanlal Poddar (share) which existed prior to the assessment year 1949-50. This business was taken over by the assessee-firm from the assessment year 1950-51. It is explained that Kishanlal Poddar (share) has to receive Rs. 46,930. from Murarilal Kedia which was written off in the last year of their assessment when they were treated as a separate firm. This amount which was written off, it is explained, was not allowed for the purposes of the income tax assessment of the firm. Later it appears this gentleman had dealings with Karnataka Mining Co. (P.) Ltd. which was controlled by the partners of this firm and they gave a contract for extraction of ore to Murari Trading Co. of which Shri Murarilal Kedia was a partner. An amount of Rs. 45,000 owed to Mr. Murarilal Kedia appears to have been credited to his account in the books of account of the assessee-firm as on 31-3-1964. After carrying it forward till 31-12-1966, the firm transfers this amount to the profit and loss account treating it as a recovery of an old bad debt. What is inexplicable is the circumstance which made Kishanlal Poddar (share) old firm write off a debt owed by Shri Murarilal Kedia, then continue to have business dealings with him and gave him substantial work of mining, Karnataka Mining Co. (P.) Ltd., instead of paying the amount to Murari Trading Co., transferred the amount to the assessee-firm and credited it to the account of Shri Murarilal Kedia. The firm never realised till December 1966, that this gentleman owed the old firm more than Rs. 46,000 which had been written off and suddenly transferred the amount to the profit and loss account on 31-12-1966. As stated earlier, the entire transaction appears to be unbelievable. This amount can only represent some secret business transactions between Karnataka Mining Co. (P.) Ltd. and the assessee-firm who are controlled by the same persons. It is only when the amount became payable as income to the assessee-firm that it has been transferred to the profit and loss account and the amount has, therefore, been rightly treated as the income of the firm. The entire story of a bad debt of Shri Murarilal Kedia does not sound true for the simple reason that had the firm the intention of recovering the debt, they would have done it on 31-3-1964 itself.

16 and 17 *****

18. The income tax Officer has also brought to tax an amount of Rs. 67,500 which has been credited to the profit and loss account as bad debts recovered. The circumstances explained are practically the same as the alleged recovery of bad debt from Shri Murarilal Kedia with the only difference that this amount has been recovered from the account of the mother of Shri Murarilal Kedia. It appears the old firm had claimed as bad debt a sum of Rs. 64,920 due from a firm Ramratandas Murarilal of which Shri Murarilal Kedia was a partner. The assessee-firm was helped by the lady with the advances of funds on which interest was being credited by the firm and the entire amount was adjusted against the debt owed by Ramratandas Murarilal after getting the concurrence of Shri Murarilal Kedia. Here again the explanation is unacceptable. It is alleged that the amount is relatable to a debt written off. Why the amount was written off when the mother of one of the partners Ramratandas Murarilal could be so substantial as to advance loans to the assessee-firm is understandable. It is equally inexplicable why the amount allegedly due from a firm is recovered from one of the partners out of the funds he got after the demise of his mother. I refused to believe the explanation now offered regarding the amount credited to the profit and loss account under the cloak of realisation of an old debt. No acceptable evidence has been placed before me to hold that this amount of Rs. 67,500 did not represent the income of the firm.

Even a cursory or a careful reading of the order made by the Commissioner discloses that he had genuinely applied his mind to the claim made by the petitioner, examined every relevant aspect and has found that the claim made by it on the two receipts were not genuine and true. In reality and substance, the Commissioner has disbelieved the tall and somewhat artificial story set up by the petitioner and has concurred with the findings of fact recorded by his subordinates. Without any doubt the findings of the Commissioner are only on questions of fact. On the application of the principles noticed earlier, there is hardly any ground for this Court's interference under article 226.

12. Even otherwise, an examination of the order of the Commissioner, the orders of the AAC and the ITO show that they have taken into consideration all relevant principles and material bearing on the question and they have not been influenced by any irrelevant material to justify this Court's interference under article 226.

13. Assuming that the findings of the Commissioner, the AAC and the ITO on questions of fact are perverse, which do not appear to be so, then also, it is not open to this Court to interfere with their findings, in exercise of its extraordinary jurisdiction under articles 226 and 227.

14. In reaching his conclusions the Commissioner has only examined the very case pleaded by the petitioner and the materials placed by him. He has not relied on any fact or information that was in his position or knowledge and was not in

the knowledge of the petitioner. In these circumstances, it is even inconceivable to contend that the principles of natural justice are violated.

15. On the disallowance of Rs. 5,000 as capital expenditure under the head "Repairs to roads and buildings" the Commissioner has found against the petitioner applying the correct legal principles in the determination of the same. Even here also the finding of the authorities is essentially on a question of fact that cannot be upset by this Court. Assuming that there is an error of law on this aspect, then also that claim is a trifle amount on which ground only this Court should decline to interfere in exercise of its extraordinary jurisdiction under article 226. As all the contentions urged for the petitioner fail, these writ petitions are liable to be dismissed. I, therefore, dismiss these writ petitions and discharge the rule issued in the cases with costs of the respondents. Advocate's fee Rs. 250.