

(1979) 09 RAJ CK 0022

In the Rajasthan High Court

Case No : Income Tax Reference No. 50 of 1969

Indra and Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-09-1979

Acts Referred:

Income Tax Act, 1922 — Section 22(2), 5(6), 64, 64(1), 64(2)

Citation : (1979) 12 CTR 97 : (1979) 12 WLN 674

Hon'ble Judges : C.M. Lodha, C.J.;Kanta Bhatnagar, J

Bench : Division Bench

Advocate : M.M. Vyas and S.K. Kakar, for the Appellant; L.R. Mehta, for the Respondent

Judgement

C.M. Lodha, C.J.—This is a reference u/s 256(1) of the I.T. Act, 1961, by the Income Tax Appellate Tribunal, Delhi Bench "C", New Delhi, at the request of M/s. Indra & Co., a partnership firm (hereinafter to be referred to as " the assessee "), carrying on business at Jodhpur.

2. The assessee is a registered firm of which Jeewan Lal is a partner (hereinafter referred to as " the assessee-partner "). The relevant assessment year is 1959-60. A notice u/s 22(2) of the Indian I.T. Act, 1922 (hereinafter referred to as " the Act"), was issued by the ITO, " D " Ward, Jodhpur, to both the assessees on May 9, 1959. The assessee filed its return with the ITO, " A" Ward, Jodhpur, who had jurisdiction over the place of business of the firm, on September 2, 1960. The assessee-partner filed his return before the same ITO on July 4, 1961. The assessment of the firm was completed on August 20, 1962, whereas the assessment of the partner was completed two days later, that is, on August 22, 1962.

3. The ITO, "A" Ward, Jodhpur, initiated proceedings for the imposition of penalty against both the assessees--the firm as well as the partner, for the late filing of returns of income by them. They raised a preliminary objection to the proceedings for the levy of penalty, inter alia, on the ground that the notice u/s

22(2) of the Act was not valid inasmuch as the ITO, " D " Ward, Jodhpur, who had issued the notices had no jurisdiction over the place of business of the assessees. The ITO by his orders dated August 12, 1968, overruled the contentions raised by the assessees and imposed penalties of Rs. 11,949.25 on the firm and Rs. 9,864.77 on the partner. The assessees then preferred appeals against the orders passed by the ITO, " A" Ward, Jodhpur, before the AAC, who allowed the same by his orders dated January 4, 1965, and set aside the penalties imposed by the ITO holding that the notices issued by the ITO, " D " Ward, Jodhpur, u/s 22(2) of the Act were not valid. The department then preferred appeals to the Tribunal, which by a common order dated April 13, 1967, in both the appeals, set aside the orders of the AAC, and remanded the case to the latter to dispose of the appeals on merits in accordance with law.

4. The assessees then made applications before the Tribunal requiring it to state a case and refer to this court the questions of law arising out of its order. These applications were allowed and the following question of law has been referred to us by the Tribunal:

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the place of assessment and jurisdiction are one and the same thing and as such the penalty proceedings were valid in law ? "

5. The arguments in the case commenced on August 29, 1979, and the case remained part heard. On September 3, 1979, an application was moved by the assessee that the question was not properly framed and did not bring out the real dispute between the parties. It was, therefore, prayed that the question may be reframed so as to bring out the real controversy between the parties arising out of the order of the Tribunal. This application was opposed by the counsel for the revenue. After having heard the learned counsel for the parties, we are satisfied that the points which the learned counsel have argued before us can be covered by our answer to the question. We have, therefore, refrained from resettling or reframing the question.

6. Before we embark upon a consideration of the contentions raised by the learned counsel, we would like to state a few findings arrived at by the Tribunal in its appellate order. The Tribunal has held in its appellate order dated April 13, 1967 (annex. "C") that the question of jurisdiction and the question of place of assessment are the same and that the objection to the place of assessment must be raised early and not in appeals. The Tribunal goes on to observe that the notices u/s 22(2) were issued by the ITO, "D" Ward, Jodhpur, and regular assessment was completed by the ITO, "A" Ward, Jodhpur, who was the proper ITO in the case of the assessees. It has further found that no objection was raised by the assessees at the time of assessment regarding the legality of the notices u/s 22(2). Lastly, in any event, on the facts of the case, it cannot be said that the notices u/s 22(2) were invalid.

7. A few more facts, though not stated in the order of the Tribunal, but regarding

which there is no dispute, and which have been mentioned in the order of the ITO, dated August 12, 1964, may also be usefully mentioned here. The ITO has observed that the notice u/s 22(2) for the assessment year 1956-57 was issued by the ITO, "A" Ward, Jodhpur, on June 5, 1956, but the return was filed on March 14, 1958, by the assessee in "D" Ward, Jodhpur, after giving the address of Mohanpura Mohalla. On receipt of the return, the ITO, "D" Ward, Jodhpur, issued a notice u/s 22(2) for the assessment year 1957-58 on March 18, 1958, and the return was filed before the ITO, "D" Ward, Jodhpur, on February 24, 1959. Similarly, for the subsequent two years 1958-59 and 1959-60, notices u/s 22(2) were issued by the ITO, "D" Ward, Jodhpur, but the returns were filed by the assessee before the ITO, "A" Ward, Jodhpur. The ITO has also noted that the assessee had filed applications for registration and renewal of registration u/s 26A in the case of the firm, M/s. Indra & Company, in "D" Ward, Jodhpur, on June 20, 1959, for the relevant assessment year.

8. Mr. M. M. Vyas, learned counsel for the assessee, has urged that the ITO, "D" Ward, Jodhpur, had no jurisdiction to issue notices u/s 22(2) of the Act to the assessee and, therefore, the notices are invalid. Consequently, argues the learned counsel, the penalty proceedings initiated on the basis of those notices are not maintainable. In this connection, he has further submitted that in these circumstances the assessee cannot be debarred from challenging the validity of the notices at the stage of initiation of the proceedings. In support of his contentions, he has relied upon DAYALDAS KUSHIRAM Vs. COMMISSIONER OF INCOME TAX, (CENTRAL) AND ANOTHER., Bidi Supply Co. Vs. The Union of India (UOI) and Others, M. Ramasamy Asari Vs. Second Income Tax Officer, Madurai., Commissioner of Income Tax Vs. Industrial Trust Ltd., Industrial Trust Ltd. Vs. Commissioner of Income Tax, Delhi (Central and Rajasthan), and Jaidayal Pyarelal v. CIT [1973] Tax LR 880 (All).

9. On the other hand, Mr. Lekhraj Mehta, learned counsel for the revenue, has strenuously urged that the assessee is estopped from challenging the jurisdiction of the ITO, "D" Ward, Jodhpur, to issue notices to them u/s 22(2) of the Act in view of the second proviso to Sub-section (3) of Section 64. It is submitted that in substance the question of lack of jurisdiction raised by the assessee tantamounts to an objection regarding the place of assessment. In this connection, he has placed reliance on the second proviso to Sub-section (3) of Section 64 of the Act and a number of authorities which we propose to discuss shortly.

10. For a correct appraisal of the contentions raised by the learned counsel we may, here, reproduce the relevant provisions of Section 64 of the Act:

"64. Place of assessment.--(1) Where an assessee carries on a business, profession or vocation at any place, he shall be assessed by the Income Tax Officer of the area in which that place is situate or, where the business, profession or vocation is carried on in more places than one, by the Income Tax Officer of the area in which the principal place of his business, profession or

vocation is situate.

(2) In all other cases, an assessee shall be assessed by the Income Tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more States than one, by the Commissioners concerned, or, if they are not in agreement, by the Central Board of Revenue:

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views:

Provided further that the place of assessment shall not be called in question by an assessee if he has made a return in response to the notice under Sub-section (1) of Section 22 and has stated therein the principal place wherein he carries on his business, profession or vocation or if he has not made such a return shall not be called in question after the expiry of the time allowed by the notice under Sub-section (2) of Section 22 or u/s 34 for the making of a return:

Provided further that if the place of assessment is called in question by an assessee the Income Tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under this subsection before assessment is made.

(4) Notwithstanding anything contained in this section, every Income Tax Officer shall have all the powers conferred by or under this Act on an Income Tax Officer in respect of any income, profits or gains accruing or arising or received within the area for which he is appointed.

(5) The provisions of Sub-section (1) and Sub-section (2) shall not apply and shall be deemed never at any time to have applied to any assessee-

(a) on whom an assessment or reassessment for the purposes of this Act has been, is being or is to be made in the course of any case in respect of which a Commissioner of Income Tax appointed without reference to area under Sub-section (2) of Section 5 is exercising the functions of a Commissioner of Income Tax, or

(b) where by any direction given or any distribution or allocation of work made by the Commissioner of Income Tax under Sub-section (5) of Section 5, or in consequence of any transfer made under Sub-section (7A) of Section 5, a particular Income Tax Officer has been charged with the function of assessing that assessee, or (c) who or whose income is included in a class of persons or a class of incomes specified in any notification issued under Sub-section (6) of Section 5,

but the assessment of such person, whether the proceedings for such assessment began before or after the 1st day of April, 1939, shall be made by the Income Tax Officer for the time being charged with the function of making

such assessment by the Central Board of Revenue or by the Commissioner of Income Tax to whom he is subordinate, as the case may be."

11. Section 5 of the Act mentions the different categories of I.T. authorities.

12. The provisions of Section 64 of the I.T. Act came up for consideration before the Bombay High Court in DAYALDAS KUSHIRAM Vs. COMMISSIONER OF INCOME TAX, (CENTRAL) AND ANOTHER., . Beaumont C.J. observed as follows (p. 146):

" In my opinion section 64 was intended to ensure that as far as practicable an assessee should be assessed locally, and the area to which an Income Tax Officer is appointed must, so far as the exigencies of tax collection allow, bear some reasonable relation to the place where the assessee carries on business or resides. There is no evidence that there was any difficulty in restricting the area to which the Income Tax Officer, Section II (Central), was appointed to something much narrower than the Bombay Presidency, Sind and Baluchistan. Therefore, in my opinion, the Income Tax Officer, Section II (Central), is not the Income Tax Officer of the area in which the applicant's place of business is situate, and as there is such an officer in existence, namely, the Officer of Ward C, Section II, in my opinion, it is only the latter Officer who can assess the assessee."

13. Kania J., as he then was, said (p. 149):

" A plain reading of the section shows that the same is imperative in terms. It also gives to the assessee a valuable right. He is entitled to tell the taxing authorities that he shall not be called upon to attend at different places and thus upset his business. "

14. In Bidi Supply Co. Vs. The Union of India (UOI) and Others, after having reproduced the above extracted passages from DAYALDAS KUSHIRAM Vs. COMMISSIONER OF INCOME TAX, (CENTRAL) AND ANOTHER., their Lordships observed (p. 722 of 29 ITR):

" ...that the learned judges treated the provisions of Section 64 more as a question of right than as a matter of convenience only. It was for the above decision that the Indian Income Tax Act, 1922, was amended by the Indian I.T. (Amend.) Act, 1940 (XL of 1940), by adding to Clause (b) of Sub-section (5) of section 64 the words " in consequence of, any transfer made under Sub-section (7A) to Section 5 "... ". The court went on to observe that (p. 722):

"It is thus clear from this amendment that the benefit conferred by the provisions of Sub-sections (1) and (2) are taken away and is to be deemed not to have existed at any time as regards the assessee with regard to whom a transfer order is made under Sub-section (7A) of Section 5 "

15. In Rai Bahadur Seth Teomal Vs. The Commissioner of Income Tax and The Commissioner of Excess Profits Tax, the assessee-appellant had to be assessed

by the ITO of Rangpur (now in Pakistan) within whose area he was carrying on business. The ITO, Rangpur (now in Pakistan) served notices on him u/s 22(4) and Section 23(2) for the production of books, etc., but the assessment was not finalised. The CBR assigned the appellant's case along with some other assessment cases to the Commissioner (Central), Calcutta, who assigned the same to the ITO, District N--C, who, in his turn, issued a notice again under Sections 22(4) and 23(2) of the Act, and finally passed the assessment order. One of the contentions raised by the assessee before the Supreme Court was that the assessment by the ITO of Calcutta was an illegal assumption of jurisdiction, and, therefore, he was entitled to have the order of assessment quashed. Dealing with this objection the court held that Sub-section (3) of Section 64 provides that if a question as to the place of assessment arises, it is to be determined by the Commissioner or the CBR, as the case may be. Under the first proviso to this sub-section before the question as to the place of assessment is to be determined the assessee has to have an opportunity of representing his views and under the second proviso the place of assessment cannot be called into question by the assessee, if he has made a return in response to the notice under Sub-section (1) of Section 22 and has stated therein the principal place where he carries on his business or if he has not made such a return, the time specified in the notice has expired. The third proviso to this sub-section is " provided further that if the place of assessment is called in question by an assessee the Income Tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under this sub-section before assessment is made ". Thus, u/s 64(3) the question of determination as to the place of assessment only arises if an objection is taken by the assessee and the ITO has any doubts as to the matter. The counsel for the assessee referred to Bidi Supply Co. Vs. The Union of India (UOI) and Others, but the court observed that that case did not deal with the matter before it and it was further held that the submission by the assessee's counsel that there was an illegal assumption of jurisdiction by the ITO of Calcutta was not well founded. As regards DAYALDAS KUSHIRAM Vs. COMMISSIONER OF INCOME TAX, (CENTRAL) AND ANOTHER., their Lordships held thus (p. 17 of 36 ITR):

" As a result of this judgment, Ordinance IX of 1939 was promulgated which subsequently was enacted as Sub-section (5) of Section 64 ". After the Ordinance the assessee, Dayaldas, was assessed by the same officer and the matter was again brought before the High Court by an application u/s 66(1) of the Act and it was held (p. 17): " that the assessment of the assessee was validly made by the ITO and the Ordinance removed the invalidity of the orders made prior to the passing of the Ordinance so far as they related to the assessee ".

16. Learned counsel for the assessee has placed strong reliance on the judgment of this court in Commissioner of Income Tax Vs. Industrial Trust Ltd., and has submitted that the decision of this court was upheld by the Supreme Court in Industrial Trust Ltd. Vs. Commissioner of Income Tax, Delhi (Central and Rajasthan), . In that case the appellant-company was incorporated in the then

Native State of Jaipur with its headquarters in Jaipur. For the assessment years 1946-47, 1947-48 and 1949-50 the ITO, Ajmer, issued notices u/s 34(1)(a) of the Act and in response thereto the appellant-company filed their returns. Pending those returns, the ITO, Central Circle IV, Delhi, issued fresh notices u/s 34 for those very years. The appellant-company did not submit any return but wrote to that officer saying that it had already submitted its returns to the officer at Ajmer and, hence, it could not be called upon to file fresh returns. The officer, however, rejected the objection and made the assessments, which were confirmed by the AAC. On appeal, the Appellate Tribunal held that since the officer at Ajmer had already initiated the proceedings u/s 34(1)(a), the ITO of the Central Circle could not initiate fresh proceedings and that the notices issued by him were invalid. It was held that in view of the notification dated July 1, 1952, the ITO, Ajmer, acquired jurisdiction over the residents of Jaipur after the issue of that notification, and that too only in respect of the assessments pending before him. Since no assessments of the appellant-company were pending before him, the ITO at Ajmer had no jurisdiction over the appellant and the notices issued by him and the returns submitted by the appellant pursuant to those notices were not valid. It was further held that the fresh notices issued by the ITO, Central Circle IV, Delhi, and the assessments made by him were valid.

17. It will be noticed that the contention of the assessee was that the ITO, Central Circle was not competent to initiate the proceedings against it in view of the notices issued by the ITO, Ajmer, and their Lordships have specifically observed that they had only to examine the correctness of that contention. In this connection, the court further observed that, ordinarily, an assessee has to be assessed by the ITO within whose territorial jurisdiction he resides but it is open to the CBR to assign any particular class of assessees or any particular type of assessments to an ITO of its choice. In view of the relevant notification, the ITO, Ajmer, had jurisdiction over the residents of Jaipur after the issue of that notification only in respect of the assessments pending before him, and not in respect of any other assessments. Admittedly, the assessee's assessment was not pending before the ITO, Ajmer. Consequently, the objection with respect to the jurisdiction of the ITO, Ajmer, to issue notice was not with respect to the place of assessment but with respect to his authority to assess him, and, therefore, issuance of the notices by him was held to be invalid. Moreover, at no stage before the authorities under the Act, the assessee had put forward the case that any ITO, other than the ITO, Ajmer, or the ITO, Central Circle, had jurisdiction over it in respect of the assessment years in question. It may be noted that it was on account of lack of authority to assess, that the ITO, Ajmer, was held to have no jurisdiction over the assessee in respect of the assessment years in question. The further argument, on behalf of the assessee, was, whether the ITO, Ajmer, had jurisdiction or not, since he had issued notices and the assessee had submitted its returns in response to those notices, the ITO, Central Circle, was not competent to initiate the assessment proceedings against the assessee. This argument was repelled by the court. Thus, the facts in the

Industrial Trust Ltd. Vs. Commissioner of Income Tax, Delhi (Central and Rajasthan), are altogether different and the principle laid down therein has no application to the facts and circumstances of the present case.

18. Thus, from the above authorities, it is clear that the place of assessment cannot be called in question by an assessee, if he has not made a return after the expiry of the time allowed by the notice under Sub-section (2) of Section 22 of the Act for making a return.

19. However, the contention of the learned counsel for the assessee is that the question of jurisdiction is different from the question of place of assessment and since the objection raised in the present case is regarding the jurisdiction of the ITO, "D" Ward, Jodhpur, the bar against raising an objection regarding place of assessment, at a later stage, does not apply to the present case. We are, however, unable to accept this contention. In DHRANGADHRA TRADING CO. PRIVATE LTD. Vs. COMMISSIONER OF Income Tax, BOMBAY CITY II., the Gujarat High Court held that there is no real difference between a question as to the place of assessment and the question which particular ITO has jurisdiction over the assessee and it has to be determined in accordance with the procedure set out in Sub-section (3) of Section 64. It cannot be disputed that if the question raised by this objection is a question within Sub-section (3) of Section 64, the ITO was right in refusing to consider the objection since it was raised beyond the time prescribed by this sub-section. When Section 64 speaks of the place of assessment, what it really does is to show which particular ITO shall have territorial jurisdiction to assess an assessee. The determination of the place of assessment u/s 64 decides which particular ITO, whether one situate at place " A " or one situate at place " B ", has jurisdiction to assess the assessee as the marginal note to Section 64 indicates that that section deals with the place of assessment. Sub-section (1) of Section 64 lays down that where an assessee carries on a business, profession or vocation at any place, he shall be assessed by the ITO of the area in which that place is situate or where the business, profession or vocation is carried on in more places than one, by the ITO of the area in which the principal place of his business, profession or vocation, is situate. In all other cases, Sub-section (2) of Section 64 provides that the assessee shall be assessed by the ITO of the area in which he resides. These two sub-sections may be the general rules as regards the place of assessment of an assessee, i. e, as regards which particular ITO shall have jurisdiction to assess the assessee. But in cases covered by Sub-section (5) of Section 64, the applicability of this general rule is displaced and the assessment in those cases has to be made by the ITO specified in the notification issued u/s 5(6). A question may be raised by an assessee, as has been done in the present case, whether he is liable to be assessed by an ITO specified in Sub-section (1) or Sub-section (3). That would clearly be a question as to the place of assessment and it would have to be determined in accordance with the procedure set out in Sub-section (3), provided an objection is raised by the assessee. It is, therefore, clear that there is no real difference between a question as to the place of assessment

and a question as to which particular ITO has territorial jurisdiction to assess the assessee. The objection raised in the present case, though styled as an objection to the jurisdiction of the ITO, was, therefore, in reality and substance, an objection as to the place of assessment and being covered by Sub-section (3) of Section 64, it could not be raised beyond the time-limit prescribed by that sub-section.

20. At this stage, we may deal with another branch of argument of the learned counsel for the assessee, and it is this--that in a case of inherent lack of jurisdiction of an authority, the objection regarding jurisdiction can be raised at any stage, as an order by such authority has to be treated as non est. The proposition is correct so far as it goes, but the objection based on territorial jurisdiction is not, in that sense, a fundamental question. Section 64 of the Act evolves a scheme with a view to work out such objections. A procedure is laid down therein as to how and at what stage an objection should be raised and what would be the consequence of not raising it. We are, therefore, of opinion that it is not open to the assessee to raise an objection regarding the territorial jurisdiction of an officer at subsequent stages of the proceedings under the Act.

21. In *Nund and Samont Co. (P.) Ltd. Vs. Commissioner of Income Tax*, the head office of the assessee's business was at Kodarma in the district of Hazaribagh. The Commissioner transferred his cases from ITO, Hazaribagh, to the ITO, Special Circle, Ranchi, who completed the assessment. A new objection by way of a preliminary objection was taken by the assessee before the Tribunal that the assessment proceedings were without jurisdiction on the ground that the ITO, Hazaribagh, alone had jurisdiction to deal with the relevant assessment. The same objection was taken before the High Court in a reference application u/s 66(1) of the Act. The court held that both, in form and substance, the grievance of the assessee that its income ought not to have been assessed by the ITO, Special Circle, Ranchi, but by the ITO, Hazaribagh, was a challenge with regard to the place of assessment and was not a matter of inherent lack of jurisdiction. The same view was taken in *Kakunuru Venkata Reddy Vs. Commissioner of Income Tax*, .

22. In *Wallace Brothers & Co. Ltd. v. CIT* [1945] 13 ITR 39 the Federal Court held that the provisions contained in Sub-section (3) of Section 64 of the Act clearly indicate that the determination of the place of assessment is a matter more of administrative convenience than of jurisdiction and that, in any event, it is not one for the adjudication by the court, but the second proviso to Sub-section (3) further enacts that the place of assessment shall not be called in question by an assessee, if he has made a return in response to the notice under Sub-section (2) of Section 22, or if he has not made such a return, it shall not be called in question after the expiry of the time allowed by the notice for the making of a return. It is, therefore, not open to the assessee to raise an objection as to the place of assessment, in an appeal against the assessment, after the assessment has been made. The same view was followed by this court in *Udaipur Distillery*

Company Vs. Commissioner of Income Tax, Rajasthan Industrial and Scientific Corporation v. Addl. CIT [1975] Tax LR 791 and Gajanand Phoolchand v. ITO [1976] Tax LR 48.

23. Following the view taken in Wallace Brothers & Co. Ltd. v. CIT [1945] 13 ITR 39 and SARUPLCHAND AND HUKUMCHAND Vs. UNION OF INDIA AND ANOTHER., the contention of the petitioner that the assessment is bad as the ITO did not follow the procedure laid down in Section 64(3), was repelled.

24. Learned counsel for the assessee urged that, in any case, the issue of notice u/s 22(2) of the Act is not a part of "assessment" and in the penalty proceedings, the assessee is not debarred from raising an objection as to the jurisdiction of the ITO, "D" Ward, Jodhpur, to issue a notice. In this connection, he has urged that the word "assessment" should be construed to mean the computation of income and not issue of a notice u/s 22(2) of the Act. He has also argued that penalty proceedings are altogether separate and, therefore, the objection as to the jurisdiction of the ITO, who issued the notice, can be questioned at that stage. In this connection, he has relied on Jaidayal Pyarelal v. CIT [1973] Tax LR 880 (All). In that case, it was held that a regular assessment order is not the final word upon the pleas taken therein or which might have been taken at that stage. The assessee is entitled to show cause, in penalty proceedings, and to establish by the material and relevant facts, which may go to affect his liability of the quantum of penalty. He cannot be held to be debarred from taking an appropriate plea simply on the ground that such a plea was not taken in the regular assessment proceedings. It may be noted that in that case the plea taken by the assessee in the penalty proceedings, was that there had been a partial partition in the family. The court held that simply because such a plea was not taken in the regular assessment proceedings, the assessee cannot be debarred from raising an appropriate plea in this respect in the penalty proceedings. In our opinion, this case does not help the assessee.

25. In Chatturam v. CIT [1947] 15 ITR 302 it was held that the Income Tax assessment proceedings commenced with the issue of a notice.

26. The issue or receipt of a notice is not, however, the foundation of the jurisdiction of the ITO, to make assessment or of the liability of the assessee to pay the tax. The jurisdiction to assess and the liability to pay the tax, however, are not conditional on the validity of the notice. The liability to pay the tax is founded on Sub-sections (3) and (4) of Section 22 of the Act, which are the charging sections. Sections 22, etc., are the machinery sections to determine the amount of tax.

27. In D.P. Wadia and Sons Vs. Commissioner of Income Tax, Poona, it was observed that the assessment proceedings can be said to be initiated when either a voluntary return is filed by the assessee, or an individual notice u/s 22(3) calling upon him to submit a return is issued by the ITO, whichever is earlier. The issue of a public notice u/s 22(1) of the Act does not mark the start

of assessment proceedings against any individual assessee. The public notice opens the arena as it were for the proceedings to commence and is anterior to the commencement of assessment proceedings against any individual assessee. On the other hand, a notice issued u/s 23(2) is in the course of assessment proceedings and does not mark their initiation.

28. In *Bisheshwar Nath and Co., In re BISHESHWAR NATH AND CO IN RE.*, it was held that the combined effect of Sub-sections (1) and (4) of Section 64 is that, where two or more ITOs have territorial jurisdiction in respect of the same income, they exercise concurrent jurisdiction in the matter of issuing notices to the assessee and where notices have been issued by one officer it is unnecessary for the other officer to issue the same notices again.

29. In support of his contention, learned counsel for the assessee has also relied upon *M. Ramasamy Asari Vs. Second Income Tax Officer, Madurai.*,

30. However, the facts of the case are completely distinguishable and the rationale of that decision has no application to the facts and circumstances of the present case.

31. Lastly, we may refer to another Division Bench authority of our own court: *Firm Rasulji Buxji Kathawala Vs. Income tax Commissioner, Delhi and Another*, which seems to be rather near to the facts of this case. In that case, the assessee-firm was carrying on business at Udaipur. The ITO, Ajmer, served a notice on the assessee u/s 34 of the Act, calling upon him to make a return of his income for assessment year 1945-46. The proceedings were later on transferred to the ITO, " A " Ward, Udaipur, who was also designated as Seventh Addl. ITO, Ajmer. In pursuance of the notice, the applicant filed his return on March 10, 1955. At the same time, he took an objection that the ITO, Ajmer, who had issued the notice u/s 34 had no jurisdiction to do so and, therefore, no proceedings could be taken against him. The assessee filed a writ petition under Article 226 of the Constitution before the High Court to quash the assessment and one of the grounds urged on his behalf was that the ITO, Ajmer, who had issued the notice, had no jurisdiction u/s 64 of the Act to issue such a notice to the applicant. The court repelled this contention of the assessee and observed as under (p. 595):

" The applicant is barred from raising the question of the place of assessment, (this is what he means by saying that the Income Tax Officer, Ajmer, had no jurisdiction to issue notice to him) by the second proviso to Section 64(3)."

32. The court further observed that where an assessee makes no return u/s 22(1) in response to a show-cause notice, but has received what may be called a special notice under Sub-section (2) Section 22 or u/s 34, the place of assessment can be called in question only up to the time mentioned in the notice u/s 22(2) or Section 34 for making a return and not thereafter. It was not in dispute that the applicant had not objected to the place of assessment (or what he calls the jurisdiction of the Income Tax Officer, Ajmer) within the time allowed.

It was, therefore, held that he could not be heard to object to the place of assessment or what he calls the jurisdiction of the ITO, Ajmer, after that date, as his objection as to the place of assessment was barred by the second part of the second proviso. It was further observed that the intention of the Legislature in making these provisions was that the place of assessment should be called in question only in a limited class of cases and within the limited time, and if it is not called in question within that time, the objection as to the place of assessment could not be taken at all. Wanchoo C.J., as he then was, observed as follows (p. 596):

" This is based on the principle that it makes no difference, provided a man is assessable, whether he is assessed by the Income Tax Officer at place " A " or the Income Tax Officer at place " B ", and that if he wants to object to his assessment at a particular place, he must do so within a very limited time. If he fails to do so within that limited time, he would not be heard to object to the place of assessment."

33. Learned counsel for the revenue urged that so far as the partner, Jeewan Lal, is concerned, notice u/s 22(2) was issued to him by the ITO, A-Ward, also and hence this objection is not open to him at all. But we do not propose to go into this question inasmuch as the Tribunal has not dealt with this point nor it falls within the purview of the question referred to us.

34. The result of the foregoing discussion is that it cannot be said that the ITO, " D " Ward, Jodhpur, had inherent lack of jurisdiction in issuing notices u/s 22(2) of the Act to the assesseees and the notices issued by him cannot be said to be void. The objection as to jurisdiction of the ITO, " D " Ward, to issue notices u/s 22(2) was, in fact and substance, an objection pertaining to the place of assessment. Consequently, on the facts and in the circumstances of the case, the Tribunal was justified in holding that what the assessee meant by raising the plea of lack of jurisdiction of the ITO, " D " Ward, was an objection as to the place of assessment. We are further of opinion that the issue of notices u/s 22(2) falls within the purview of the term " assessment " and since the assesseees did not object to the place of assessment within the time allowed by the notice, the place of assessment (or, according to the assesseees, the jurisdiction of the ITO, " D " Ward, to issue notices) cannot be called in question in the penalty proceedings.

35. Our answer to the question, therefore, is in the affirmative. There will be no order as to costs.