

(1974) 09 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 1643 ot 1649 of 1971 and 1222 to 1224 of 1972

Mahendra Kumar Agrawalla

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 12-09-1974

Acts Referred:

Income Tax Act, 1961 — Section 139, 147, 148, 3, 4

Citation : (1976) 103 ITR 688

Hon'ble Judges : S.N.P. Singh, J;Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : T.P. Mukherjee, H.R. Gutgutia and Krishna Mohan, for the Appellant; Rama Kant Varma and C.B. Belwariar, for the Respondent

Judgement

S.N.P. Singh, J.—These ten writ applications under Articles 226 and 227 of the Constitution have been heard together as the facts are common and identical questions of law have been raised in all of them. All the ten writ applications are, therefore, being disposed of by this common judgment.

2. The petitioner, Shri Mahendra Kumar Agrawalla, has filed these writ applications for quashing the notices, copies whereof have been made annexure "3" to the writ applications, issued by the Income Tax Officer, Ward B, Colliery Circle, Dhanbad, u/s 148 of the Income Tax Act, 1961, for the assessment years 1960-61, 1961-62, 1962-63, 1963-64, 1964-65, 1965-66, 1966-67, 1967-68, 1968-69 and 1969-1970. The notices in respect of the assessment years 1960-61, 1961-62, 1962-63, 1963-64, 1964-65 and 1965-66 were issued on the 31st March, 1969; the notices in respect of the assessment year 1966-67 were issued on the 31st March, 1971, and the notices in respect of the assessment years 1967-68, 1968-69 and 1969-70 were issued on the 3rd of December, 1971.

3. There is a colliery in Jharia which is known as "Central Sulunga Colliery". One Sri Arjun Agrawalla was the owner of the said colliery. On the 1st January, 1953, Sri Arjun Agrawalla executed a deed of gift in respect of the said colliery in the

names of petitioner, Sri Mahendra Kumar Agrawalla, and his brother, Sri Yogendra Kumar Agrawalla. According to the petitioner, by the deed of gift he was given half share in the colliery whereas his brother, Sri Yogendra Kumar Agrawalla, was given the remaining half share. It appears that even after the execution of the deed of gift by Sri Arjun Agrawalla, the Central Sulunga Colliery continued to be assessed to Income Tax as an "association of persons" till the assessment year 1956-57. It further appears that on the 18th of February, 1958; the petitioner and his brother made an application before the Inspecting Assistant Commissioner of Income Tax, Southern Range, Ranchi, for treating them as tenants-in-common and assessing them as "individuals". The learned Inspecting Assistant Commissioner on perusing the records of the cases sent instructions to the Income Tax Officer, "B" Ward, Colliery Circle, Dhanbad, to treat the petitioner and his brother as tenants-in-common and to make separate assessments on them in respect of the shares deemed to have been received by them. The petitioner and his brother thereafter began to submit returns of income in the status of "individuals" and from the assessment year 1957-58, they were being assessed as "individuals". Annexure "1" of all the writ applications are copies of the assessment orders passed by the Income Tax Officer and they show that the petitioner has been assessed in the status of an "individual".

4. In the writ applications the petitioner has alleged that there was never any omission or failure on his part to disclose fully and truly all material facts necessary for the assessment of the petitioner's income but nevertheless the Income Tax Officer, Ward B, Colliery Circle, Dhanbad (respondent No. 1), issued notices purporting to be u/s 148 of the Income Tax Act, 1961, to M/s. Central Sulunga Colliery, Jharia. The petitioner has further alleged that the notices were not served on him or on his brother but were delivered to one R. P. Sinha, who was a mere clerk employed in connection with the colliery business and had no authority to receive the notices. The petitioner has challenged the validity of the notices (annexure "3" to the writ applications) on the aforesaid ground as well as on some other grounds.

5. Mr. T. P. Mukherjee, learned counsel appearing for the petitioner, raised the following contentions :

(1) The petitioner and his brother being minors up to the assessment year 1964-65 were incapable of exercising any volition to associate themselves to produce income and as such they were incapable of forming an "association of persons", and the mere fact of common management is no justification for assessment as "association of persons".

(2) Even assuming that the petitioner and his brother, Sri Yogendra Kumar Agrawalla, constituted an "association of persons" since their minority, the Income Tax Officer having realised tax from them individually cannot now proceed to assess them on the same income as "association of persons".

(3) The Income Tax Officer had no jurisdiction to issue the notices u/s 148 inasmuch as his jurisdiction came to an end when he made the assessment against the petitioner and his brother.

(4) The requisite conditions to reopen the assessment being not present, the Income Tax Officer had no jurisdiction to issue the impugned notices.

(5) The Commissioner of Income Tax mechanically granted sanction for issuing the notices without applying his mind and as such the notices are invalid.

(6) The notices u/s 148 having not been validly served, no reassessment proceeding can be started on the basis of the notices (annexure "3" to the writ application).

Before dealing with the contentions which have been raised on behalf of the petitioner, I would briefly indicate the stand which has been taken by the respondents. In the counter-affidavits, which have been filed on behalf of the respondents in the ten cases, an assertion has been made to the effect that the assessee to whom the notices have been issued as the "association of persons" is M/s. Central Sulunga Colliery Company, Jharia, and not its members, Sri Mahendra Kumar Agrawalla and Sri Yogendra Kumar Agrawalla, because M/s. Central Sulunga Colliery Company did not file any return of its income for the various assessment years. As the Income Tax Officer had reason to believe that income in the hands of the "association of persons", namely, M/s. Central Sulunga Colliery Company, Jharia, had escaped assessment, he recorded reasons for starting a proceeding u/s 147 and after obtaining the requisite sanction of the Commissioner of Income Tax, issued notices u/s 148 of the Income Tax Act, 1961. It has also been asserted that even after the deed of gift, M/s. Central Sulunga Colliery continued to be run as one unit as before. Regarding the service of notices it has been asserted that the notices were properly served. Alternatively, the stand has been taken that even if the service of notices was not proper, Sri Yogendra Kumar Agrawalla having filed certain petitions before the Income Tax Officer in pursuance of those notices accepted the service of notices as valid and waived the irregularity, if any. The other facts which have been stated in the counter-affidavits will be referred to subsequently.

6. Now, I proceed to consider the points which have been raised by learned counsel appearing for the petitioner. Neither in the Indian Income Tax Act, 1922, nor in the Income Tax Act, 1961, the term "association of persons" has been defined. In the case of Commissioner of Income Tax, Bombay Vs. Smt. Indira Balkrishna, , it was held by the Supreme Court that the word "associate" means "to join in common purpose, or to join in an action". Therefore, "association of persons" must be one in which two or more persons join in a common purpose or common action. It was further held that as the words occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profits or gains. Mr. Justice S. K. Das, who spoke for the court, however, added some words of caution by observing as follows:

"There is no formula of universal application as to what facts, how many of them and of what nature, are necessary to come to a conclusion that there is an association of persons within the meaning of Section 3; it must depend on the particular facts and circumstances of each case as to whether the conclusion can be drawn or not."

7. In that case it was suggested on behalf of the revenue that "the real test is the existence of a common source of income in which two or more persons are interested as owner or otherwise and it is immaterial whether their shares are specific and definite or whether there is any scheme of management or not". It was further submitted that "if the persons so interested come to an arrangement, express or tacit, by which they divide the income at a point of time before it emanates from the source, then the association ceases ; otherwise it continues to be an "association". It was held by the Supreme Court that the test suggested by learned counsel for the revenue was neither conclusive nor determinative of the question before it. In that case the facts were as follows. The co-widows of a Hindu governed by the Mitakshara law inherited the estate of the deceased which consisted of immovable properties, shares, money lying in deposit and share in a registered firm. The question was whether the widows could be assessed in the status of an "association of persons" within the meaning of Section 3 of the Indian Income Tax Act, 1922, in regard to the income derived from the properties inherited by them. The Appellate Tribunal had found that they had not exercised their right to separate enjoyment and that except for receiving the dividends from the shares and the interest from the deposits jointly, they had done no act which had helped to produce the income. It was held by the Supreme Court that as there was no finding that the three widows had combined in a joint enterprise to produce income and as they had done no act which had helped to produce the income, it could not be held that they had the status of an "association of persons" within the meaning of Section 3 of the Indian Income Tax Act, 1922. Learned counsel, appearing for the petitioner, strongly relied on the decision of the Supreme Court in the above-mentioned case and submitted that in the absence of any material to show that the petitioner and his brother, Sri Yogendra Kumar Agrawalla, had combined in a joint enterprise to produce income, it cannot be held that they had the status of an "association of persons". In my opinion, the question whether there has been a combination on behalf of the petitioner and his brother to produce income, profits and gains or not is a pure question of fact. There is nothing in the decision of the Supreme Court on the basis of which it can be urged that an "association of persons" to produce income cannot be formed on behalf of a minor. In the case of J.V. Saldhana v. Commissioner of Income Tax [1932] 6 ITR 114 (Mad) the Madras High Court held that where a guardian or trustee carried on a business, though the persons ultimately deriving the benefit of the business may be some wards or beneficiaries or partly the guardian and partly the minors, the business can be regarded as a business carried on by the trustees or guardian and can be assessed as a single business., In a case, however, where no business is carried

on and the trustees or guardians act as bare trustees or guardians merely receiving the incomes and handing them over to the wards or beneficiaries, these considerations will not be available.

8. In the counter-affidavits filed on behalf of the respondents it has been asserted that the business of the colliery is being done under the style of M/s. Central Sulunga Colliery Company and the colliery is being run as one colliery. It has also been stated therein that the raising and despatches of coal are being done together; expenses are incurred jointly; monthly statements of raising and despatches for the entire colliery are submitted to the mining department; royalties are paid on the entire sales and cess is also paid together. It is also stated in the counter-affidavits that though the petitioner has been filing his returns in the status of "individual" from the assessment year 1956-57, he has shown half share from the firm of M/s. Central Sulunga Colliery Company. It has been stated in paragraph 8 of the counter-affidavit that one Sri H. L. Varma was taken as a partner. A reference has been made in that connection to the Appellate Assistant Commissioner's order dated November 21, 1966, in Appeal No. 62/CCD/65-66 in the case of Shri Mahendra Kumar Agrawalla for the assessment year 1964-65. The relevant portion of the order reads as follows :

"As per a letter dated 29-3-1958 Shri H. L. Varma was taken as a partner in the above firm by Shri. B. L. Agrawalla who is the father and guardian of the appellant. One of the terms embodied in the said letter was as under :You will be paid a fixed profit of Rs. 1,500 yearly as your share only when there is a profit in the business....."

9. It was submitted before us on behalf of the revenue that the above extract from the order of the Appellate Assistant Commissioner clearly shows that the business was being run on behalf of the minors by their father and guardian and Shri H. L. Varma was taken as a partner in the firm as joint enterprise. Learned counsel appearing for the petitioner, however, urged that the facts stated in the counter-affidavits would only show that there was a common management of the entire colliery. According to his submission, the mere fact of common management of the colliery would not make the owners liable to be assessed as an "association of persons". In support of this contention he relied on a Bench decision of the Madras High Court in the case of State of Madras Vs. S. Subramania Iyer and Other, . In that case the Madras High Court after reviewing a number of decisions held that in order that persons owning lands may be assessed to tax as an "association of individuals" the essential requirement is that, as between themselves, they should have associated together and decided upon the common exploitation of the lands for their common benefit. The mere fact that all of them had appointed the same person as manager or given the lands on lease to the same person and the manager or lessee was jointly cultivating all the lands would not make the owners liable to be assessed as an "association of individuals". That was a case under the Madras Agricultural Income Tax Act, 1955. Learned counsel is correct in his submission that the mere

fact of common management of the colliery would be no justification for the assessment of the owners as an "association of persons". It appears from the counter-affidavits filed on behalf of the revenue, however, that the mere fact of common management is not the basis for issuance of notices u/s 148 of the Income Tax Act, 1961, to the colliery. On the contrary, from the facts stated in the counter-affidavits it is clear that the basis for the issuance of notices is a number of factors. It would be for the petitioner to show before the Income Tax Officer that the facts stated in the counter affidavits are not sufficient to justify assessment of M/s. Central Sulunga Colliery as an "association of persons" and to establish that the petitioner and his brother did not join in any common action under the guardianship of their father with the object of producing income, profits or gains. As the question, whether there is an "association of persons" or not, is a pure question of fact depending upon the facts and circumstances of each case, it will not be proper for this court to express any final opinion on the question when all the materials are not available.

10. The next point which falls for consideration is whether the Income Tax Officer can legally assess M/s. Central Sulunga Colliery as an "association of persons" having already assessed the petitioner and his brother, Yogendra Kumar Agrawalla, in the status of individuals. It was submitted on behalf of the petitioner that once the income of the association was charged to Income Tax in the hands of the members individually and the assessment of the members remained valid assessments, there could be no fresh assessments of the income in the hands of the association because that would amount to double taxation of the same income. In support of this contention learned counsel relied on the decisions in Joti Prasad Agarwal and Others Vs. Income Tax Officer (B) Ward Mathura, , Commissioner of Income Tax, U.P., Lucknow Vs. Kanpur Coal Syndicate, and Commissioner of Income Tax v. Murlidhar Jhawar and Purna Ginning and Pressing Factory [1966] 66 ITR 95. In Joti Prasad Agrawal's case, one of the points which was raised was that u/s 3 of the Indian Income Tax Act, 1922, Income Tax was chargeable for a particular year in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually, and once an income has been charged to tax in the hands of one of the entities mentioned in Section 3, it could not be charged in the hands of another of these entities subsequently. In that case the income which was earned by the association had been assessed and charged to tax in the hands of the members of the association individually under one of the alternatives provided u/s 3 of the Indian Income Tax Act, 1922. The Allahabad High Court on construing the provisions of Section 3 of the Indian Income Tax Act, 1922, which was the main charging section, held that the Income Tax Officer having exercised the discretion to assess Income Tax in the hands of the individual members of the association could not make fresh assessment of tax on that income in the hands of the association. In the case of Commissioner of Income Tax v. Kanpur Coal

Syndicate, it was held by the Supreme Court that Section 3 of the Indian Income Tax Act, 1922, impliedly gave an option to assess the total income of either an "association of persons" or the members of the association individually. In the case of Commissioner of Income Tax v. Murlidhar Jhawar and Purna Ginning and Pressing Factory, referred to above, it was held that the partners of an unregistered, firm might be assessed individually or they might be assessed collectively in the status of an unregistered firm but the Income Tax Officer could not assess the one income twice, once in the hands of the partners and again in the hands of the unregistered firm. That was also a case in which the charging section was Section 3 of the Indian Income Tax Act, 1922.

11. In the Income Tax Act, 1961, the charging section is Section 4, which reads thus:

"4. (1) Where any Central Act enacts that Income Tax shall be charged for any assessment year at any rate or rates, Income Tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year or previous years, as the case may be, of every person :

Provided that where by virtue of any provision of this Act Income Tax is to be charged in respect of the income of a period other than the previous year, Income Tax shall be charged accordingly.

(2) In respect of income chargeable under Sub-section (1), Income Tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act."

12. The new Section 4 imposes Income Tax upon "every person" in respect of his income. The definition of "person" has been given in Section 2(31). According to that definition, "person" includes an "individual" as well as "an association of persons or a body of individuals, whether incorporated or not". It was submitted on behalf of the revenue that the decisions relied upon by the petitioner were based on the language of Section 3 of the Indian Income Tax Act, 1922, which gave the option to the Income Tax Officer to assess either the association of persons or the members of the association individually but no such option having been given to him u/s 4 read with Section 2(31) of the Income Tax Act, 1961, the Income Tax Officer has jurisdiction to initiate a proceeding u/s 147 and to issue a notice u/s 148 if the association of persons has escaped assessment. There is substance in the above contention. In the cases referred to above, in the terms of Section 3 of the Indian Income Tax Act, 1922, it was held that the Income-tax Officer had the option to assess either of the two units of assessment and once having exercised the option to assess one unit, it was not open to him to assess the other unit. In the charging Section 4 of the Income Tax Act, 1961, no such option of election between the two taxable units has been given to the Income Tax Officer and as such he is quite competent to initiate proceedings u/s 147 of the Act with a view to tax the income of an assessable unit if it has

escaped assessment. I am fully fortified in the above view by a decision of the Supreme Court in the case of Income Tax Officer, A-ward, Lucknow Vs. Bachulal Kapoor, . In that case the members of a Hindu undivided family had been assessed to tax as individuals for the various assessment years including the assessment year 1955-56. Subsequently, on March 24, 1960, the Income Tax Officer issued a notice u/s 34 of the Indian Income Tax Act, 1922, to the karta of the Hindu undivided family requiring him to file a return within the prescribed time of his world income on the ground that the income chargeable to tax for the assessment year 1955-56 had escaped assessment and also was under-assessed. The Allahabad High Court had held the notice to be invalid on the ground that it offended the principle against double taxation. The decision of the Allahabad High Court was challenged by the revenue in an appeal to the Supreme Court by special leave. Before the Supreme Court it was contended on behalf of the respondent that u/s 3 of the Indian Income Tax Act, 1922, the Income Tax Officer had the option to assess either the Hindu undivided family or the members separately and that as the said officer, in exercise of the option, had assessed the individual members of the family, he had no longer any jurisdiction to assess the Hindu undivided family. Reliance was placed on the decision of the Supreme Court in the case of Commissioner of Income Tax v. Kanpur Coal Syndicate, which I have already referred to. The Supreme Court repelled that contention and it was held that it was not a case of election between two alternative units of assessment but an attempt to bring to tax the income of an assessable entity which had escaped assessment. Subba Rao J. (as he then was) observed as follows:

"That apart, u/s 3 of the Act, in the matter of assessment, there is no question of any election between a Hindu undivided family and a member thereof in respect of the income of the family. If a Hindu undivided family exists, u/s 3 of the Act the Income Tax Officer has to assess it in respect of its income. Indeed, u/s 14(1) of the Act, any part of the income received by its members cannot be assessed over again. While Section 3 confers an option on the Income Tax Officer to assess either the association of persons or the members of the association individually, no such option is conferred on him thereunder in the case of a Hindu undivided family, as its existence excludes the liability of its members in respect of the income of the former received by the latter."

13. From the above observation it is absolutely clear that u/s 3 of the Indian Income Tax Act, 1922, the Income Tax Officer had an option to assess either the association of persons or the members of the association individually but there was no such option in the case of a Hindu undivided family and the members thereof. In that case it was argued before the Supreme Court that the above view would be "subversive of the doctrine of "double taxation". The Supreme Court rejected that contention also by making the following observation I

"It was said that as the orders of assessment on the individual members of the said family had become final, if the Income Tax Officer was permitted to assess

the Hindu undivided family for the same assessment year, tax would be imposed on the same income twice over. It is true that the Act does not envisage taxation of the same income twice over "on one passage of money in the form of one sort of income", It is equally true that Section 14(1) of the Act expressly debars the imposition of tax on any part of the income of a Hindu undivided family received by its members. The fact that there is no provision in the Act dealing with a converse position does not affect the question, for the existence of such a converse position is legally impossible under the Act. So long as the Hindu undivided family exists, the individuals thereof cannot separately be assessed in respect of its income. None the less, if, under some mistake, such income was assessed to tax in the hands of the individual members, which should not have been done, when a proper assessment was made on the Hindu undivided family in respect of that income, the revenue had to make appropriate adjustments ; otherwise, the assessment made in respect of that income on the Hindu undivided family would be contrary to the provisions of the Act, particularly Section 14(1) of Act. We, therefore, hold that if the assessment proceedings initiated u/s 34 of the Act culminates in the assessment of the Hindu undivided family, appropriate adjustments have to be made by the Income Tax Officer in respect of the tax realised by the revenue in respect of that part of the income of the family assessed on the individuals of the said family. To do so is not to reopen the final orders of assessment, but in reality to arrive at the correct figure of tax payable by the Hindu undivided family."

14. As provided u/s 86(v) of the Income Tax Act, 1961, Income Tax is not payable by an assessee, who is a member of an association of persons, in respect of the income which he is entitled to receive from the association on which Income Tax has already been paid by the association. Thus, under Clause (v) of Section 86 the income received by the member from the association is eligible for rebate. In view of the decision of the Supreme Court referred to above, if the assessment proceedings initiated u/s 147 of the Income Tax Act, 1961, would culminate in the assessment of the association of persons, appropriate adjustments will have to be made by the Income Tax Officer in respect of the tax realised by the revenue for that part of the income of the association which has been assessed on the members of the association. There will, therefore, be no question of double taxation in respect of the same income to the prejudice of the petitioner.

15. The Income Tax Act, 1961, came into force on the 1st of April, 1962. The provisions of the Income Tax Act, 1961, therefore, became applicable from the assessment year 1962-63. As the provisions of the Income Tax Act, 1922, were applicable in respect of the assessment years 1960-61 and 1961-62, it has to be held that the Income Tax Officer has no jurisdiction now to assess M/s. Central Sulunga Colliery as an association of persons because he had exercised his option to assess its members, namely, the petitioner and his brother, individually, for these two years. C.W.J.C. No. 1647 of 1971 relates to the assessment year 1960-61 and C.W.J.C. No. 1643 of 1971 relates to the assessment year 1961-62.

These two writ applications, therefore, will have to be allowed. This disposes of the second and third contentions which have been raised on behalf of the petitioner.

16. Now, I proceed to consider the fourth contention which has been raised on behalf of the petitioner, namely, that the requisite conditions to reopen the assessment being not present, the Income Tax Officer had no jurisdiction to issue the impugned notices.

17. The impugned notice issued u/s 148 of the Income Tax Act, 1961, reads as follows:

"To

M/s. Central Sulunga (A.O.P.) Colliery, Jharia.

Whereas I have reason to believe that your income chargeable to tax for the assessment year (1966-67) has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

I therefore, propose to reassess the income for the said assessment year and I hereby require you to deliver to me within 30 days from the date of service of this notice a return in the prescribed form of your income for the said assessment year.

2. The notice is being issued after obtaining the necessary satisfaction of the Commissioner of Income Tax, Bihar, Patna.

(Sd.) Illegible, Income Tax Officer."

Although in the notice it is not indicated as to whether the proceedings have been initiated u/s 147(a) or u/s 147(b) of the Income Tax Act, 1961, in the counter-affidavits it has been clearly stated that the Income Tax Officer, Dhanbad, had reason to believe that the income of the association of persons, M/s, Central Sulunga Colliery, for the relevant years had escaped assessment by reason of its failure to file the returns. According to the statements made in the counter-affidavits, the proceedings have been initiated u/s 147(a) of the Income Tax Act, 1961. As provided in Section 147(a), the requisite conditions for initiating a proceeding are: (1) that the Income Tax Officer must have reason to believe that income chargeable to tax has escaped assessment for the relevant year ; and (2) that the escapement has been due to (i) the omission or failure on the part of the assessee to make a return of the income u/s 139 for the year in question, or (ii) the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the year in question. It was submitted by learned counsel appearing for the petitioner that there was no material before the Income Tax Officer to show that the income chargeable to tax had escaped assessment for the various years due to the failure on the part of the petitioner and his brother to disclose fully and truly all the material facts necessary for their assessment for the years in question. That

may be so but the fact that separate returns on behalf of M/s. Central Sulunga Colliery as association of persons had not been filed for the assessment years in question is not in dispute. Thus, there was an omission or failure on the part of the assessee to make a return u/s 139 for the years in question. The only question which is in dispute is whether M/s. Central Sulunga Colliery constituted an association of persons during the years in question. As I have already held, it is a pure question of fact which is to be decided by the Income Tax Officer after due enquiry. I must, however, observe that in view of the facts stated in paragraphs 4, 6, 7, 8 and 9 of the counter-affidavits I am satisfied that it will not be a fishing enquiry. The belief of the Income Tax Officer that the income in the hands of M/s. Central Sulunga Colliery as association of persons has escaped assessment appears to be based upon reasonable grounds and not on mere suspicion. That being the position, it is difficult to hold that the requisite conditions for initiating proceedings u/s 147(a) were not present and as such the notices u/s 148 are invalid. Thus, there is no substance in the fourth contention which has been raised on behalf of the petitioner.

18. Now it remains to consider the last two contentions which have been raised on behalf of the petitioner. In the writ applications it has been stated that to the best of the belief of the petitioner, the Commissioner of Income Tax mechanically granted sanction for issuing the notices without applying his mind to the facts and circumstances of the case. Mr. Mukherjee appearing for the petitioner, at the close of his argument asked us to direct the department to produce before the court the original order of sanction passed by the Commissioner to find out whether the Commissioner had applied his mind before granting the sanction or he had mechanically done so. As we are satisfied on the statements made in the counter-affidavits that the Commissioner did not pass the order mechanically, we did not ask for production of the original order of sanction. In paragraph 22 of the counter-affidavit filed in C.W.J.C. No. 1645 of 1971, it has been stated that the Income Tax Officer, "B" Ward, Colliery Circle, Dhanbad, while submitting his report for starting proceedings u/s 147(a) stated the facts of the case in his letter dated March 19, 1969, addressed to the Commissioner of Income Tax, Bihar, Patna. A copy of that letter has been made annexure "F" to that counter-affidavit and it reads as follows:

"Government of India

Office of the Income Tax Officer, Colliery Circle,
Dhanbad.

----- No. Con. B. CC/68-69/2752 Dated Dhanbad the 19th March, 1969.

To

The Commissioner of Income Tax, Bihar, Patna.

Sir,

Sub: M/s, Central Sulunga Colliery--proposal u/s 147. -----

I beg to submit herewith proposal u/s 147(a) for assessment years 1960-61 to 1965-66, in respect of the above assessee.

On going through the records of the case it is found that Sri Yogendra Kr. Agrawalla and Sri Mahendra Kr. Agrawalla have been shown as equal partners of M/s. Central Sulunga Colliery. But there is no separate file of the aforesaid firm, rather income of the colliery was computed and it was allocated among the two aforesaid partners in equal shares and assessed separately although there does not exist any partnership deed or any agreement to that effect. I am of opinion that in the absence of any partnership deed M/s. Central Sulunga Colliery should have been assessed as "A.P." and share of the members of the "A.P." should have been allocated to their respective files. On going back to the history of the case it is found that Shri Arjun Agrawalla gifted Central Sulunga Colliery to his two minor nephews, Sri Mahendra Kumar Agrawalla and Yogendra Kumar Agrawalla, by a deed of gift executed on 1-1-53 who took the colliery in equal shares without executing any partnership deed among themselves. Evidently the status of Central Sulunga Colliery should have been taken as "A.O.P." instead of allocating the shares of income from the said colliery to the separate owners. The colliery is being worked out as one unit and all accounts of the colliery are as a whole and not separately for both the alleged partners.

Yours faithfully, (Sd.) S. P. Varma, income tax Officer, Ward-B, Colliery Circle, Dhanbad."

19. It is stated in the counter-affidavit that the Commissioner after considering the facts of the case mentioned in the letter granted the sanction. In my opinion, the facts as disclosed in the letter were sufficient to justify the sanction of the Commissioner. It is, therefore, difficult to hold that the Commissioner granted the sanction mechanically. Thus, there is no merit in the fifth contention which has been raised on behalf of the petitioner.

20. Now, I will examine the question whether the impugned notices u/s 148 were validly served, and, if not validly served, whether it will affect the jurisdiction of the Income Tax Officer to proceed with the assessments u/s 147.

21. It is stated in the applications that the notices were not served on the petitioner and on enquiry the petitioner also learnt that the notices were not served on his brother, Sri Yogendra Kumar Agrawalla. The notices were delivered to one Sri R.P. Sinha, who is a mere clerk employed in the colliery, and he had no authority to receive the notices on behalf of the petitioner or his brother, Sri Yogendra Kumar Agrawalla. Therefore, there was no valid service of the notices. The fact that notices u/s 148 were served on Sri R. P. Sinha is admitted in the counter-affidavits but it has been asserted that they were served on him at the instance of either the petitioner or Sri Yogendra Kumar Agrawalla. Section 282(1) of the Income Tax Act, 1961, provides that a notice or requisition under the Act may be served either (1) by post, or (2) in any other way a summons issued by

a court can be served under the Code of Civil Procedure. As provided under Sub-section (2) of Section 282, any such notice or requisition may be addressed in the case of an association or body of individuals to the principal officer or any member thereof. "Principal Officer" has been defined in Section 2(35) of the Income Tax Act, 1961, and it means:

"(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(b) any person connected with the management or administration of the local authority, company, association or body upon whom the Income Tax Officer has served a notice of his intention of treating him as the principal officer thereof." It was submitted on behalf of the petitioner that Sri R. P. Sinha was admittedly not a member of the association. He was neither the secretary nor treasurer nor manager nor agent of M/s. Central Sulunga Colliery. The Income Tax officer having not served notices of his intention of treating him as the principal officer of the association, he could not be deemed to be a principal officer under Clause (b) of Section 2(35) of the Income Tax Act, 1961. In my opinion, it is not necessary to go into those questions and to refer to the decisions cited by the learned counsel appearing for the petitioner. In the instant cases though the notices in respect of the assessment years 1960-61, 1961-62, 1962-63, 1963-64, 1964-65 and 1965-66 were received by Sri R. P. Sinha, Sri Yogendra Kumar Agrawalla, a member of the association, accepted those notices and acted upon them. It appears that in pursuance of those notices he made applications for time to enable them to reply. As a sample, the application which he sent for the assessment year 1962-63 (annexure "D-3" to C. W. J. C. No. 1645 of 1971) is reproduced below :

"Central Sulunga Colliery Co.

P.O. Jharia (Dhanbad), Dated May 6, 1969.

Ref. No..... The Income Tax Officer, Ward-B, Colliery Circle, Dhanbad.

Sub: Your notice dated 31-3-69 u/s 148 of the I.T. Act, 1961, for the assessment year 1962-63. Dear Sir,

With reference to your above-quoted notice, we beg to inform you that the file relating to the above assessment year is lying with our lawyer at Calcutta in connection with the above notice. The same could not be completed for various reasons beyond our control.

We, therefore, pray that at least one month's time may kindly be granted to enable us to reply in the matter.

And for this act of grace, we shall pray.

Yours faithfully, For Central Sulunga Colliery Co. (Sd.) Yogendra Kumar Agrawalla. Co-Partner."

22. The above letter clearly shows that he accepted the notice on behalf of M/s. Central Sulunga Colliery and acted upon it. With respect to the assessment year 1966-67 though the notice dated the 31st of March, 1971, was served upon Sri R. P. Sinha, it was also acted upon and the same objections had been filed. The Income Tax Officer overruled those objections and sent the reply dated the 26th of October, 1971, a copy whereof has been made annexure "4" to C.W.J.C. No. 1646 of 1971. With respect to the assessment years 1967-68, 1968-69 and 1969-70, the notices were delivered to one Sri Nalin Vaisnab. According to the petitioner, he was also not authorised to receive the notices on behalf of the association of persons and the service of notices on him was also invalid. It appears, however, that the petitioner and his brother acted on those notices and made a joint application on the 22nd of August, 1972, praying therein to stay the proceedings till the disposal of C.W.J.Cs. Nos. 1643 of 1971 to 1649 of 1971. A copy of that letter has been made annexure "E" to the counter-affidavit in C.W.J.C. No. 1224 of 1972. It is clear from what I have stated above that action has been taken in all the cases on behalf of the association of persons in pursuance of the impugned notices issued u/s 148 of the Income Tax Act, 1961. It is, therefore, idle to contend that the invalid service of notices would affect the jurisdiction of the Income Tax Officer to proceed with the assessment u/s 147 of the Income Tax Act, 1961.

23. I may refer in this connection to the two decisions of the Bombay High Court in the case of K.C. Tiwari and Sons Vs. Commissioner of Income Tax, Bombay, and in the case of Commissioner of Income Tax, Gujarat I, Ahmedabad Vs. Bhanji Kanji's Shop, . In the case of K.C. Tiwari & Sons, there was a procedural irregularity in serving the notice inasmuch as notice was served on the manager who had no written authority to accept service. It was held in that case that the mode of service of notice or requisition provided in Section 63(1) of the Indian Income Tax Act, 1922, was not exhaustive and it was permissible to have the notice effected in a way other than the two modes mentioned in Section 63(1). It was further held that if the assessee admits that he has received the notice and asks for adjournment, the assessee cannot subsequently be allowed to plead that there was no valid and legal service. In the case of Commissioner of Income Tax v. Bhanji Kanji's Shop, a notice u/s 34(1)(a) of the Indian Income Tax Act, 1922, was served on a temporary agent of an assessee, who was not an authorised agent for receipt of notice on behalf of the assessee. The assessee filed a return in pursuance of the notice and an order of reassessment was passed. In an appeal against the order the assessee contended that the notice of reassessment had been improperly served and so the order of reassessment was bad in law, The Bench of the Bombay High Court held that in view of the fact that a return had been filed by the assessee in pursuance of the notice served on his temporary employee, it was clear that the notice had been received by him. The reassessment proceedings had, therefore, been properly instituted. The decisions in the aforesaid two cases fully support the view which I have taken with regard to the service of notices u/s 148 of the Income Tax Act, 1961. Thus, there is no

substance even in the last contention which was raised on behalf of the petitioner.

24. Having considered all the points raised on behalf of the petitioner, I am of the view that there is no valid ground to quash the notices in respect of the assessment years 1962-63, 1963-64, 1964-65, 1965-66, 1966-67, 1967-68, 1968-69 and 1969-70. The notices in respect of the assessment years 1960-61 and 1961-62 must, however, be held to be invalid for the reasons already stated.

25. In the result, C.W.J.C. No. 1647 of 1971, which relates to the assessment year 1960-61, and C.W.J.C. No. 1643 of 1971, which relates to the assessment year 1961-62, are allowed and the impugned notices (annexure "3" to the two writ applications) are quashed. The other writ applications, namely, C.W.J.Cs. Nos. 1644, 1645, 1646, 1648 and 1649 of 1971 and C.W.J.Cs. Nos. 1222, 1223 and 1224 of 1972 are dismissed. There will be no order as to costs in any of the applications.

Nagendra Prasad Singh, J.

26. I agree.