

(1963) 12 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No's. 370 to 374 of 1962

Mathurdas Govinddas

APPELLANT

Vs

G.N. Gadgil, Income Tax Officer, Special Investigation Office,
Ahmedabad

RESPONDENT

Date of Decision : 19-12-1963

Acts Referred:

Income Tax Act, 1961 — Section 34(1), 34(1A)

Citation : (1964) 5 GLR 746 : (1965) 56 ITR 621

Hon'ble Judges : P.N. Bhagwati, J; J.M. Shelat, J

Bench : Division Bench

Advocate : I.M. Nanavati, for the Appellant; J.M. Thakore, for the Respondent

Judgement

Bhagwati, J.—These petitions involve common questions of law and are founded on the same facts and it could, therefore, be convenient to

dispose them of by a single judgment. Certain notices were issued against the petitioners by the Income Tax Officer, Special Circle, Ahmedabad,

on 31st January, 1962, u/s 34(1)(a) of the Income Tax Act, 1922. The reason for issuing the notices was that, according to Income Tax Officer,

the following income of each petitioner had escaped assessment in the assessment year mentioned against the respective incomes by reason of the

omission or failure to disclose fully and truly all material facts necessary for his assessment for such assessment year :

Rs. 41,000 in the assessment

year 1943-44.

)

Each of the petitioners in)

Special Civil Applications) Rs. 91,575 in the assessment
Nos. 370, 371 and 372 1962.) year 1946-47.

Rs. 36,535 in the assessment
year 1950-51

) Rs. 84,520 in the assessment

The petitioner in Special) year 1943-44.

Civil Application No. 373)

of 1962.) Rs. 1,40,370 in the assessment
year 1946-47.

Rs. 55,122 in the assessment
year 1950-51.

The petitioner in Special)

Civil Application No. 374)

of 1962.) Rs. 1,60,740 in the assessment
year 1943-44.

and the Income Tax Officer, therefore, proposed to reassess such escaped income by reopening the assessment of each petitioner for the

respective assessment years. There were separate notices to each petitioner in respect of each assessment year and it was stated in each of the

notices that it was issued after obtaining the necessary satisfaction of the Commissioner of Income Tax, Gujarat, or the Central Board, of Revenue,

New Delhi, as the case may be. The petitioners were of the view that the notices were illegal and void and they, therefore, preferred the present

petitions challenging the validity of the respective notices issued against them.

2. The notices were admittedly issued under sub-section (1)(a) of section 34 and the main ground on which the validity of the notices was

challenged was that, having regard to the provisions of sub-section (1A) of the section 34, the Income Tax Officer, had no jurisdiction to issue

notices to the petitioners under sub-section (1)(a) of section 34 in respect of the assessment years 1943-44 and 1946-47 for which the

corresponding previous years fell wholly within the period 1st September, 1939, to 31st March, 1946, and that so far as the assessment year

1950-51 was concerned, the condition precedent to the jurisdiction of the Income Tax Officer to issue notice under sub-section (1)(a) of the section 34 was not satisfied and the Income Tax Officer had, therefore, no jurisdiction to issue notices to the petitioners in respect of that assessment year. Now this ground depended primarily on the determination of the true scope and ambit of sub-sections (1)(a) and (1A) of section 34 as they stood at the material time but in order to appreciate the implications and consequences of various arguments which have been addressed to us on this question of the construction, it is necessary to trace briefly the history of section 34 and to see how it stood at different points of time. Section 34, prior to its amendment in 1939, provided for a period of one year of bringing to tax income, profits or gains escaping assessment in any year. In 1939 the whole section was substituted by another section which provided for the first time the limits of eight years and four years but it is not necessary to refer to the same since the section with which we are concerned is the section after its amendment by the Income Tax and Business Profits tax (Amendment) Act, 1948. This Act was passed on 8th September, 1948, and it substituted a new section in place of the old and the material part of the material part of that section as subsequently amended by the Income Tax (Amendment) Act, 1953 (which came in force 1st April, 1952), was as follows :

34. (1) If -

(a) the Income Tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income

u/s 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to

Income Tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of

excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income Tax Officer has in

consequence of information in his possession reason to believe that income profits or gains chargeable to Income Tax have escaped assessment for

any year, or have been under-assessed, or assessed at too low a rate, or have

been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed, he may in cases falling under clause (a) at any time within eight years in cases falling under clause (b) at any time within four years end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or reassess such income, profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that -

(i) the Income Tax Officer shall not issue a notice this sub-section, unless he has recorded his reasons for doing so and the Commissioner is

satisfied on such reasons recorded that it is fit case for the issue of such notice;...

Provided further that nothing contained in this section limiting the time within which any action may be taken or any order, assessment, or

reassessment may be made, shall apply to a reassessment made u/s 27 or to an assessment or reassessment made on the assessee or any person in

consequence of or to give effect to any finding or direction contained in an order u/s 31, section 33, section 33A, section 33B, section 66 or

section 66A.

Now simultaneous with section 34 there was in operation taxation on income (Investigation Commission) Act, 1947, being Act XXX of 1947,

passed by the Central Legislature in April, 1947. Section 5(1) of the Act empowered the Central Government to refer to the Commission

established under the Act for the investigation and report any cases in which it had prima facie reason for believing that a person had to a

substantial extent evaded payment of taxation on income. The date for making the reference was originally 30th June, 1948, but it was

subsequently extended to 1st September, 1948. The Central Government could also refer to the Commission u/s 5(1), if after investigation, the

commission made a report to that effect. The procedure prescribed by the Act for making investigation under its provisions was of a summary and

drastic nature. It constituted a departure from the ordinary law of procedure and in certain important aspects was detrimental to the persons

subjected to it and as such was discriminatory. The validity of section 5(4) was, therefore, challenged in *Suraj Mall Mohta v. A. V. Visvanatha*

Sastri and the Supreme Court struck down that provision as infringing the guarantee of the equal protection of the laws contained in article 14 of

the Constitution. During the course of the discussion in *Suraj Mall Mohta's* case in the Supreme Court certain defects were pointed out in the

classification made u/s 5(1). Parliament, therefore, tried to remedy these defects when it enacted, consequent upon the decision in *Suraj Mall*

Mohta's case, the Indian Income Tax (Amendment) Act, 1954, introducing by way of amendment the following sub-sections as sub-section (1A)

and (1B) in section 34 :

(1A). If, in the case of any assessee, the Income Tax Officer has reason to believe -

(i) that income, profits or gains chargeable to Income Tax have escaped assessment for any year in respect of which the relevant previous year falls

wholly or partly within the period beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1946; and

(ii) that the income, profits or gains which have so escaped assessment for any such year amount, or are likely to amount to one lakh of rupees or

more;

he may notwithstanding that the period of eight years or, as the case may be for years specified in sub-section (1) has expired in respect thereof,

serve on the assessee, or, if the assessee is a company, on the principal office thereof, a notice containing all or any of the requirements which may

be included in notice under sub-section (2) of section 22, and may proceed to assessee or reassess the income, profits or gains of the assessee for

all or any of the years referred to in clause (i) and thereupon the provisions of this Act excepting those contained in clauses (i) and (iii) of the

proviso to sub-section (1) and in sub-sections (2) and (3) of this section shall, so far as may be, apply accordingly :

Provided that the Income Tax Officer shall not issue a notice under this sub-section unless he has recorded his reasons for doing so, and the

Central Board of Revenue is satisfied on such reasons recorded that it is a fit

case for the issue of such notice :

Provided further that no such notice shall be issued after the 31st day of March, 1956.

(1B). Where any assessee to whom a notice has been issued under sub-section (1A) applies to the Central Board of Revenue at any time within

six months from the receipt of such notice or before the assessment or reassessment is made, whichever is earlier, to have the matters relating to his

assessment settled, the Central Board of Revenue may, after considering the terms of settlement proposed and subject to the previous approval of

the Central Government, accept the terms of such settlement, and, if it does so, shall make an order in accordance with the terms of such

settlement specifying among other things the sum of money payable by the assessee...

3. This Act by which sub-section (1A) and (1B) were added in section 34 received the assent of the President on 5th September, 1954, but it was

brought into effect from, 17th July, 1954. and sub-section (1A) and (1B), therefore, came into force from 17th July, 1954. By this Act certain

other sub-sections, namely, sub-sections (1C) and (1D), were also added in section 34, but it is not necessary to refer to them since they have no

bearing on the determination of the problem before us. This state of affairs continued up to 1st April, 1956, when certain further amendments of a

rather far-reaching character were made in section 34 by the Finance Act, 1956. The time-limit of eight years in sub-section (1) in respect of the

cases falling within clause (a) was removed and the following provisions were substituted for the existing proviso in sub-section (1) :

Provided that the Income Tax Officer shall not issue a notice under clause (a) and sub-section (1) -

(i) for any year prior to the year ending on the 31st day of March, 1941;

(ii) for any year, if eight years have elapsed after the expiry of that year, unless the income, profits or gains chargeable to Income Tax which have

escaped assessment or have been under-assessed or assessed at too low a rate or have been made the subject of excessive relief under this Act,

or the loss or depreciation allowance which has been computed in excess, amount to, or are likely to amount to, one lakh of rupees or more in the

aggregate, either for that year, or for that year and other year or years after

which or after each of which eight years have elapsed, not being a year or years ending before the 31st days of March, 1941;

(iii) for any year, unless he has recorded his reasons for doing so, and, in any case falling under clause (ii), unless the Central Board of Revenue, and in any other case, the Commissioner, is satisfied on such reasons recorded that it is fit case for the issue of such notice;...

4. Sub-section (1B) was also amended by the substitution of the words ""to whom a notice has been issued under clause (a) of sub-section (1) or under sub-section (1A) for any of the years ending on the 31st day of March of the years 1941 to 1948, inclusive"" for the existing words ""to whom a notice has been issued under sub-section (1A)"". On the section so amended the question arose whether after the deletion of the time-limit of eight

years in cases involving escapement of income exceeding Rs. 1 lakh, a notice could issue under sub-section (1)(a) even though such notice was

time-barred by reason of the period of eight years at the date when the amendment made by the Finance Act, 1956, came into force. The High

Court of Calcutta held in *Debi Dutt v. Belan*, that once the right of the Income Tax Officer to proceed under sub-section (1)(a) as it stood prior to

its amendment by the Finance Act, 1956, was barred by reason of the expiration of the period of eight years, it was not revived by the deletion of

the time-limit of eight years from sub-section (1)(a). This decision led to the passing of an ordinance and later the Indian Income Tax (Amendment)

Act, 1959. This Amending Act added sub-section (4) to section 34, providing for issue of notice under sub-section (1)(a) at the any time

notwithstanding the expiration of the period of eight years provided under the section as it stood prior to its amendment by the Finance Act, 1956,

and also enacted section 4 in the following terms for validation of notices issued prior to the commencement of the Amending Act :

No notice issued under clause (a) and sub-section (1) of section 34 of the principal Act at any time before the commencement of this Act and no

assessment, reassessment or settlement made or other proceedings taken in consequence of such notice shall be called in question in any court,

tribunal or other authority merely on the ground that at the time the notice was issued or at the time the assessment or reassessment was made, the

time within which such notice should have been issued or the assessment or

reassessment should have been made under that section as in force

before its amendment by clause (a) of section 18 of the Finance Act, 1956 (18 of 1956), had expired.

5. These were the relevant provisions of section 34 as they stood from time to time after undergoing various amendments which we have set out above.

6. Now the impugned notices were issued by the respondent on 31st January, 1962, and the question which, therefore, arises for consideration is

whether after the amendment by the Finance Act, 1956, a notice can be issued under sub-section (1)(a) of section 34 for reopening an assessment

for any of the assessment years covered by sub-section (1A) of section 34 when no notice for reopening such assessment was issued under sub-

section (1A) of section 34 on or before 31st March, 1956. In order to arrive at a proper determination of the question, it is necessary first to

consider the scope and ambit of sub-section (1)(a) and (1A) of section 34 as they stood immediately prior to the amendment by the Finance Act,

1956, and then to examine the effect of the amendment on those sub-sections.

7. Section 34, as it stood immediately prior to its amendment by the Finance Act, 1956, was the section as amended on 17th July, 1954, by the

insertion, inter alia, of sub-sections (1A) and (1B). The effect of the amendment of 17th July, 1954, was that with effect from that date we had two

sub-sections in section 34 empowering the Income Tax Officer to reopen assessments in certain cases. One was sub-section (1) which consisted

of two clauses, namely (a) and (b) - and we are here concerned with only clause (a) - and the other was sub-section (1A). The argument of Mr. I.

M. Nanavati based on the provisions of these two sub-sections was that sub-section (1)(a) was general provisions applicable to all assessment

years while sub-section (1A) was a special provision applicable only to those assessment year in respect of which the relevant previous years fell

wholly or partly within the period 1st September, 1939, to 31st March, 1946, and that the general provision in sub-section (1)(a) must, therefore,

in accordance with the maxim generally specialibus non derogant be held applicable only to those cases which were not covered by the special

provision in sub-section (1A). He contended that the scope and ambit of sub-section (1)(a) did not extend to escaped income of what may be

conveniently described as the war years for which special provision was made in sub-section (1A) and that consequently sub-section (1)(a) could

not be invoked by the revenue for bringing to tax escaped income of war years which could be caught at only by proceeding escaped income of war

years which could be caught at only by proceeding under sub-section (1A). The learned Advocate-General did not dispute the correctness of the

rule of interpretation embodied in the maxim *generalia specialibus non*

derogant but he contended that there was no scope for the application of that rule of the interpretation in the present case because neither sub-

section (1)(a) was general provision nor was sub-section (1A) a special provision. He urged that both sub-sections operated simultaneously and if

at any point of time the conditions of either sub-section were fulfilled, and sub-section could be availed of by the Income Tax Officer for reopening

the assessment of the assessee, even if the conditions of the other sub-section were not satisfied and the Income Tax Officer could not, therefore,

proceed under that sub-section. The question raised by these rival contentions was rather crucial question for, as we shall point out later, if sub-

section (1A) was a special provision which excluded the applicability of sub-section (1)(a) to cases covered by sub-section (1A) as contended on

behalf of the petitioners, it is difficult to see how any removal of the time-limit of eight years in sub-section (1)(a) could alter the position and bring

within the scope and ambit of sub-section (1)(a) cases covered by sub-section (1A) when sub-section(1A) still continued on the statute book as a

valid provisions. The question was, therefore, seriously debated and considerable argument was expended upon it.

8. On an analysis of the provisions of sub-sections (1)(a) and (1A) it is clear that sub-section (1)(a) is a general provision and sub-section (1A) is a

special provision. Once an assessment is made and it has become final and conclusive it is elementary that, in the absence of an express provision

to the contrary, it cannot be reopened. Section 34 was, therefore, enacted to give power to the Income Tax Officer to reopen an assessment

which had already become final and conclusive. The power was conferred under sub-section (1) by two clauses, namely, (a) and (b). We are

concerned in these petitions with sub-sections (1)(a) and we will, therefore, refer only to sub-section (1)(a) but what we say here in regard to sub-

section (1)(a) must apply equally to sub-section (1)(b). Sub-section (1)(a) empowered the Income Tax Officer to reopen the assessment of any assessment year without limiting it to any particular assessment year or years and it was clearly a general provision intended to apply to every assessment year. Of course, certain conditions were prescribed which were required to be fulfilled before action could be taken under sub-section (1)(a) but they operated in respect of every assessment year and so did the period of limitation of eight years provided by the sub-section. The assessment in respect of any assessment year including the assessment years for which the relevant previous years fell wholly or partly within the war period could be reopened under sub-section (1)(a) provided the conditions specified in the sub-section were satisfied and notice was issued within the prescribed period of eight years. There was also no limitation as regards the amount of income which should have escaped assessment before action could be taken under sub-section (1)(a) for reopening the assessment. Sub-section (1A), however, operated on a narrower field and was limited in its application to certain specified assessment years in respect of which the relevant previous years fell wholly or partly within the period of 1st September, 1939, to 31st March, 1946, being the period of the second world war and that too only in those cases where the income alleged to have escaped assessment amounted or was likely to amount to Rs. 1,00,000 or more. Sub-section (1A) enacted a self-contained provision for bringing to tax escaped income amounted or was likely to amount to Rs. 1,00,000 or more, providing distinct conditions on its own for taking action for assessment or reassessment of such escaped income and provided its own distinct period of limitation for initiating such action. The restrictive conditions which were required to be fulfilled for taking action under sub-section (1)(a) or (1)(b) were omitted from sub-section (1A) and no condition precedent was prescribed for taking action under sub-section (1A) beyond the broad general requirement that the Income Tax Officer must have reason to believe that the income chargeable to Income Tax has escaped assessment. The limitation of time to be found in sub-sections (1)(a) and (1)(b) was also removed and instead an outside limit was provided, namely, 31st March, 1956, outside of which no action could be taken under sub-section (1A). This outside limit was so inexorable that the second proviso to sub-section (3) which relaxed the time-limit

for taking action in certain cases was by the express terms of sub-section (1A) not made applicable to cases covered by sub-section (1A) and the outside limit could not, therefore, under any circumstances be infringed. The safeguard provided to the assessee against unnecessary harassment was also improved in the sense that instead of the satisfaction of the Commissioner of Income Tax required for taking action under sub-section (1) (a) or (1)(b), the satisfaction of a higher revenue authority, namely, the Central Board of Revenue, was required to be obtained before taking action under sub-section (1A). An additional facility was also given to the assessee against whom notice was issued under sub-section (1A) and such an assessee could under sub-section (1B) apply to the Central Board of Revenue for settlement of the matters relating to assessment unlike an assessee proceeded against under sub-section (1)(a) or (1)(b). It is clear from these circumstances that sub-section (1A) constituted a self-contained code dealing with a special class of tax-evaders, namely, those who had evaded payment of tax on income exceeding Rs. 1,00,000 earned by them during the war years and for that class special conditions were prescribed and special treatment was given by the sub-section. Sub-section (1A) was, therefore, clearly a special provision as against the general provision contained in sub-section (1)(a).

9. We must also in this connection refer to another circumstance relied on by Mr. I. M. Nanavati in support of his contention that the provision contained in sub-section (1A) was a special provision. He contended that whereas sub-section (1)(a) empowered the Income Tax Officer to take action when he had reason to believe that income had escaped assessment, or had been under-assessed or assessed at too low a rate, or had been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance had been computed, action under sub-section (1A) could be taken only in cases where income had escaped assessment. He, of course, agreed that a case of under-assessment resulting from escapement of a part of the income from assessment was covered by sub-section (1A) because what was escapement of a part of the income from assessment was also under-assessment from the point of view of the total income. He, however, urged that other cases of under-assessment which did not involve escapement of a part of the income from assessment and cases where income was assessed at too low a rate or had been

made the subject of excessive relief under the Act or where excessive loss or depreciation allowance had been computed, were not within the compass of sub-section (1A) and sub-section (1A) inasmuch as it operated on a field more limited than that occupied by sub-section (1)(a) was a special provision. This contention would have involved an interpretation of the true connotation of the expression "income, profits or gains chargeable to Income Tax have escaped assessment" in sub-section (1A), but we do not find it necessary to do so in the present cases since it was also the contention of the learned Advocate-General that that expression did not include within its scope and ambit cases where income had been assessed at too low a rate or had been made the subject of excessive relief under the Act or where excessive loss or depreciation allowance had been computed. The learned Advocate-General as a matter of fact argued that escapement of income from assessment within the meaning of sub-section (1A) did not include even a case of under-assessment and that it referred only to cases where income had escaped assessment by reason of not having suffered taxation. This last contention of the learned Advocate-General is, however, not right for it is clear that under-assessment of total income resulting from a part of the income having escaped assessment would be covered by sub-section (1A) because though it is under-assessed when looked at from the point of view of total income, it is certainly escapement from assessment so far as the part of the income which escapes assessment is concerned. In view of this position adopted by the parties we propose to proceed on the basis that sub-section (1A) applied only to cases in which there was escapement of income from assessment whether such escapement resulted in under-assessment or not. But if this be so, it certainly supports the contention of Mr. I. M. Nanavati that sub-section (1A) was a special provision inasmuch as it dealt with a more limited class of cases than those covered by the general provision contained in sub-section (1)(a). We may, however, point out that this is only one of the many factors which we have taken into account for the purpose of reaching the conclusion that sub-section (1A) was a special provision and we do not wish to place any undue reliance on it or to over-emphasize its importance.

10. The preamble of the Indian Income Tax (Amendment) Act, 1954, which introduced sub-section (1A) in section 34, also leads to the same

conclusion. The preamble stated that the Act was intended to provide for assessment or reassessment of persons, who, to a substantial extent, had evaded payment of tax during a certain period and for matters connected therewith and with that object in view the Act introduced sub-section (1A) in section 34. The period referred to in the preamble as "certain period" was particularized in sub-section (1A) as the war period, namely, 1st September, 1939, to 31st March, 1946, and what was meant by the word "substantial" was made clear in the sub-section by providing that it should apply where the Income Tax Officer had reason to believe that the income which has escaped assessment amounted or was likely to amount to Rs. 1,00,000 or more. It is, therefore, clear that sub-section (1A) was introduced for the purpose of providing for assessment or reassessment of persons who had evaded payment of tax on income of Rs. 1,00,000 or more earned by them during the war period. This would certainly constitute sub-section (1A) a special provision in regard to assessment or reassessment of those persons.

11. The circumstances under which sub-section (1A) came to be introduced in section 34 also lend strong support to the view which we are taking. Sub-section (1A) was introduced as a result of the decision of the Supreme Court in *Suraj Mall Mohta's case*. Now at the date when sub-section (1A) was introduced, section 5(1) of Act XXX of 1947 was on the statute book. The vires of section 5(1) was challenged before the Supreme Court in *Shree Meenakshi Mills Ltd. v. A. V. Visvanatha Sastri*. On the ground that it subjected the same class of persons who were dealt with by sub-section (1A) to the discriminatory procedure provided by Act XXX of 1947. The challenge was upheld and the Supreme Court held that sub-section (1A) dealt with the same class of persons who came within the scope of section 5(1) and section 5(1) had, therefore, become void on the introduction of sub-section (1A) in section 34 as violating the guarantee of article 14 of the Constitution. Mahajan C.J., speaking on behalf of the Supreme Court, observed :

Further it seems that this very class of persons is now included within the ambit of the amended section 34 of Act XXXIII of 1954..... It is thus clear that the new sub-section inserted in section 34 by the provisions of Act XXXIII of 1954 is intended to deal with the class of persons who

were said to have been classified for special treatment by section 5(1) of Act XXX of 1947.

12. The Supreme Court in the subsequent decision, *Thangal Kunju Musaliar v. Venkatachalam Potti*, after referring to the decision in *Shree*

Meenakshi Mills's case, said :

Section 34(1A) purported to meet two criticisms which had been, in the main, offered against the constitutionality of section 5(1) of the Act in

Suraj Mall Mohta's case. One criticism was that the classification made in section 5(1) of the Act was bad because the word "substantial" used

therein was a word which had no fixed meaning and was an unsatisfactory medium for carrying the idea of some ascertainable proportion of the

whole, and thus the classification being vague and uncertain, did not save the enactment from the mischief of article 14 of the Constitution. That

alleged defect was cured in section 34(1A) inasmuch as the legislature clearly indicated there what it meant when it said that the said object of Act

XXX of 1947 was to catch persons who, to a substantial extent, had evaded payment of tax, in other words, what was seemingly indefinite within

the meaning of the word "substantial" had been made definite and clear by enacting that no evasion below a sum of one lakh was within the

meaning of that expression. The other criticism was that section 5(1) did not necessarily deal with the persons who, during the war, had made huge

profits and evaded payment of tax on them. Section 34(1A) remedied this defect also. It clearly stated that it would operate on income made

between the 1st September, 1939, and 31st March, 1946, tax on which had been evaded.

Section 5(1) was again attacked in the case of *Shree Meenakshi Mills Ltd. v. A. V. Visvanatha Sastri*. This was a petition under article 32 of the

Constitution filed on the 16th July, 1954, after the decision in *Suraj Mall Mohta*'s case had been pronounced. Section 5(1) of the Act was

attacked on the very same grounds which were mentioned in the judgment in *Suraj Mall Mohta*'s case, but had not been dealt with by this court, it

being considered sufficient to strike down section 5(4) of the Act without expressing any opinion on the vires of section 5(1). Even in this case,

section 5(1) was not struck down as void on a comparison of its provisions with those of section 34(1) of the Indian Income Tax Act as was done

in the case of section 5(4) in Suraj Mall Mohta's case. By the time this petition came to be heard by this court, Parliament had enacted Act

XXXIII of 1954 which, as stated above, introduced section 34(1A) in section 34 of the Indian Income Tax Act and this court came to the

conclusion on a comparison of the provisions of section 5(1) of the Act with section 34(1A) of the Indian Income Tax Act that the new sub-

section inserted in section 34 by Act XXXIII of 1954 was intended to deal with the class of persons who were said to have been classified for

special treatment by section 5(1) of Act XXX of 1947.

13. These observations of the Supreme Court clearly show that the class of assesseees which was selected for special treatment by section 5(1) of

the Act XXX of 1947 was dealt with by sub-section (1A) after the introduction of that sub-section in section 34 with this modification that defects

of classification which were alleged to exist in section 5(1) were cured by the basis of classification being made more definite and if that be so, the

conclusion is irresistible that sub-section (1A) was enacted as a special provision and must be construed as such.

14. Mr. I. M. Nanavati also cited a decision of the Allahabad High Court in *Jai Kishan Srivastava v. Income Tax Officer*. In that case the vires of

sub-section (1A) was challenged on the ground that it was discriminatory and violated the constitutional guarantee contained in article 14 of the

Constitution. The validity of the sub-section was however upheld by the Full Bench of the Allahabad High Court and Bhargava J., in the course of

his judgment, made the following observations in regard to the scope and purpose of the sub-section :

It is to be noticed that, even though there is a common class of assesseees who can be proceeded against under both section 34(1) as well as

section 34(1A) of the Act, the latter provision is applicable to a limited class of persons. That class of persons are those whose income, profits or

gains had escaped assessment for any year in respect of which the relevant previous year fell wholly or partly within the period beginning on the 1st

day of September, 1939, and ending on March 31, 1946. Then there was a second limitation that the income, profits or gains, which have so

escaped assessment, must be believed by the Income Tax Officer to be likely to amount to one lakh of rupees or more. It seems to me that, having

picked out such a narrow class, the legislature made a special provision u/s 34(1A) of the Act for taking proceedings against that class of persons

without being limited by any period of limitation and by this all that the legislature did was to enlarge the period of limitation in their cases. Once it

has been held that proceedings for assessment u/s 34(1A) has to be read as an exception to section 34(1) of the Act whereby the limitation

applicable to the larger class of persons who could be dealt with u/s 34(1) of the Act, has been done away with for a smaller class of persons. It is,

therefore, in the nature of an exception specifically for the purpose of enlarging the period of limitation or doing away with the limitation in the case

of a limited and narrower class. This narrower class, as indicated by the language of section 34(1A) of the Act, consisted of assesseees who had

earned income during the war period and who had evaded payment of tax on incomes of one lakh of rupees or more, and the purpose of

introducing this provision was to subject their escaped income to tax.

15. We are in entire agreement with these observations and they completely support the contention of Mr. I. M. Nanavati that sub-section (1A)

contained a special provision as against the general provision contained in sub-section (1), clauses (a) and (b). The decision of the Calcutta High

Court in *M. M. Ispahani Ltd. v. Union of India*, which was the other decision cited by Mr. I. M. Nanavati also contains observations to the same

effect and it is, therefore, not necessary for us to make a detailed reference to the same.

16. If sub-section (1A) was a special provision in regard to reopening of assessment of assessment years in respect of which the relevant previous

years fell wholly or partly within the war period where income that had escaped assessment was Rs. 1,00,000 or more, and sub-section (1)(a)

was a general provision in regard to reopening of assessment of all assessment years, on what principle of interpretation must the scope and ambit

of the two provisions be determined ? The answer is supplied by the maxim *generalia specialibus non derogant*. This maxim has been the subject of

an almost bewildering mass of authorities and the reasons given in support of it have differed somewhat in expressing from time to time probably

because more reasons than one can be given. But it is now well settled that where there is a special provision as well as a general provision in a

statute, and the case is covered by the special provision, it is the special provision which must govern the case and not the general provision. The

rule springs from the common understanding of men that when the same person gives two directions, one covering a large number of matters in

general and another only some of them, his intention is that the latter direction should prevail as regards these while as regards all the rest, the

earlier direction should have effect (J. K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of Uttar Pradesh). Quain J. stated the rule thus in

the following passage from his judgment in *Dryden v. Overseers of Putney* which has now become classical and is oft quoted :

It may be laid down as a rule for the construction of statutes that, where a special provision and a general provision are inserted which cover the

same subject-matter, a case falling within the words of the special provision must be governed thereby, and not by the terms of the general

provision.

17. Now, in the present case, as we have already pointed out above, the general provision in sub-section (1)(a) covered the entire field occupied

by the special provision in sub-section (1A) inasmuch as it applied to all assessment years including the assessment years dealt with by sub-section

(1A) irrespective of the question whether the income that had escaped assessment was less than Rs. 1,00,000 or Rs. 1,00,000 or more. The

general intention expressed in sub-section (1)(a) being that no assessment in respect of an assessment year should be reopened unless the

conditions therein specified were fulfilled and notice was issued within a period of eight years, if sub-section (1)(a) applied to escaped income of

assessment years dealt with by sub-section (1A) when such escaped income amounted to Rs. 1,00,000 or more, the consequence would be that

assessment in respect of those assessment years could not be reopened if the conditions specified in sub-section (1)(a) were not fulfilled or the

period of eight years had expired before issue of notice. But sub-section (1A) declared that such consequence should not ensue and that though

the conditions specified in sub-section (1)(a) were not fulfilled and though the period of eight years had expired before issue of notice, assessment

in respect of those assessment years should be liable to be reopened if certain other conditions were fulfilled and notice was issued before 31st

March, 1956. Sub-section (1A) thus clearly indicated a particular intention incompatible with the general intention expressed in sub-section (1)(a)

and this incompatibility was emphasized by the non-obstanted clause in the opening part of sub-section (1A). The general provision in sub-section

(1)(a) was, therefore, having regard to the aforesaid rule of interpretation, inapplicable to cases covered by the special provision in sub-section

(1A). Such cases were governed exclusively by sub-section (1A) and the general words of sub-section (1)(a) could not be availed of for the

purpose of reopening assessment in such cases (vide *Koka Ram v. Salig, Bhana Makan v. Emperor, Vithalji Madhavji v. Commissioner of Income*

Tax and Subodh Chandra Popatlal v. Commissioner of Income Tax.

18. The next question that arises is as to what is the effect of the amendment made by the Finance Act, 1956 ? The argument of Mr. I. M.

Nanavati on this part of the case was that, even after the amendment, sub-section (1A) continued on the statute book as a valid provision and

operated in all its fullness and since it was a special provision, so long as it continued to operate, sub-section (1)(a) which was a general provision

could not be availed of for taking action in cases covered by sub-section (1A) by the amendment nor did the amendment have the effect of

abrogating sub-section (1A) and sub-section (1A) therefore continued as an operative provision and excluded the applicability of sub-section (1)

(a) to cases covered by sub-section (1A). The learned Advocate-General, in answer, reiterated the same contention which he had urged in regard

to the period prior to the amendment and said that neither sub-section (1)(a) was a general provision nor sub-section (1A) a special provision and

there was, therefore, no question of the latter operating to the exclusion of the former. He also contended that in any view of the matter sub-section

(1A) ceased to be operative effectively from and after 1st April, 1956, and, though it remained on the statute books as a valid provision, it could

not be availed of for future action against an assessee in respect of the escaped income of war years and the new sub-section (1)(a) could,

therefore, be utilised for taking action against an assessee in respect of the escaped income of war years. He also relied on sub-section (1B) and

particularly the substitution of the words "clause (a) of sub-section (1) or under sub-section (1A) for any of the years ending on the 31st day of

March of the years 1941 to 1948"" in that sub-section and contended that those words clearly indicated that after the amendment a notice under

sub-section (1)(a) could be issued even in respect of the assessment years covered by sub-section (1A). This, he submitted, was the only possible

view of the provisions in sub-sections (1)(a) and (1A) on the principle of harmonious construction. These were broadly the rival constructions and

what we have to decide is which of them is correct.

19. One thing is clear that sub-section (1)(a) which was a general provision prior to the amendment continued to be a general provision even after

the amendment, for all that the amendment did was merely to remove the time-limit of eight years in certain cases depending upon whether the

income that had escaped assessment beyond the period of eight years amounted to Rs. 1,00,000 or more, and sub-section (1)(a) as amended

applied generally to all assessment years including the assessment years dealt with by sub-section (1A) and, provided certain conditions were

satisfied, only the assessment years prior to the assessment year ending on 31st March, 1941, could be reopened under that sub-section at any

time regardless of any time-limit. Sub-section (1A) which was a special provision in regard to reopening of assessment of assessment years for

which the corresponding previous years fell wholly or partly within the war period where income that had escaped assessment was Rs. 1,00,000

or more, was not repealed but was continued on the statute book and if it was a special provision prior to the amendment, for the same reasons it

must be regarded as a special provision subsequent to the amendment. The result was that after the amendment, we had two provisions in section

34 for reopening assessments, one a general provision in sub-section (1)(a) and the other a special provision in sub-section (1A). In regard to the

assessment years for which the corresponding previous years fell wholly or partly within the war period where the escaped income of the war

years was Rs. 1,00,000 or more, the position was that if the general provision in sub-section (1)(a) applied, assessment in respect of any of these

assessment years could be reopened at any time from and after 1st April, 1956, provided the conditions specified in sub-section (1)(a) read with

the proviso were fulfilled, but if the special provision in sub-section (1A) applied, such assessment could not be reopened after 31st March, 1956.

The general intention expressed in sub-section (1)(a) was thus clearly incompatible with the particular intention indicated in the special provision in sub-section (1A) and the general provision in sub-section (1)(a) must, therefore, be construed as operating on cases other than those covered by the special provision in sub-section (1A) on the principle of interpretation embodied in the maxim *generalia specialibus non derogant* to which we have already referred. The construction suggested by the learned Advocate-General would not only involve a disregard of this principle of interpretation but would also have the effect of rendering sub-section (1A) meaningless and superfluous. If the legislature did not intend that after the amendment sub-section (1A) should continue to have any force or vitality, the legislature could have easily repealed that sub-section. The pending proceedings under that sub-section would not have been affected because section 6 of the General Clauses Act, 1897, would have saved them and even if there was any such apprehension, it could have been laid at rest by enacting a saving proviso which is a legislative device not altogether unfamiliar to the legislature. It is, however, significant that the legislature continued the special provision in sub-section (1A) and the only reason which can be attributed to the legislature for doing so is that the legislature intended that sub-section (1A) should continue as an operative provision in regard to cases covered by it. Sub-section (1A) did not cease to be in force or become a dead letter after the amendment. It may be that the outside limit of 31st March, 1956, having elapsed, assessment could not be reopened in cases covered by sub-section (1A) but that would be a very much different thing from saying that sub-section (1A) ceased to be operative on the coming into force of the amendment. As a matter of fact it is because sub-section (1A) continued to be operative after the amendment that assessment in cases covered by sub-section (1A) could not be reopened after 31st March, 1956, and apparently it was with a view to achieving this result that the legislature continued sub-section (1A) as an operative provision. Since sub-section (1A) continued as an operative enactment making a special provision in regard to cases covered by it, full meaning and effect must be given to it and the only way in which this can be done is by reading the general provision in sub-section (1)(a) as applicable to cases other than those covered by the special provision in sub-section (1A).

20. This question can also be looked at from another point of view. When amendment was made in sub-section (1)(a), the effect was as if sub-section (1)(a) was re-enacted in the amended form. Did the re-enactment of sub-section (1)(a) in the amended form have the effect of impliedly repealing sub-section (1A) ? Though the learned Advocate-General stated that he did not rely on the principle of implied repeal but based his argument only on the principle of harmonious construction, the effect of the argument must be that sub-section (1A) was impliedly repealed by the amendment made in sub-section (1)(a), i.e., by the re-enactment of sub-section (1)(a) in the amended form. Whether it is said that sub-section (1A) was abrogated by the amended sub-section (1)(a) or that it ceased to be operative after the amendment of sub-section (1)(a) or that it was impliedly repealed by the amendment made in sub-section (1)(a) is one and the same thing. Now it is well-settled that "..... where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so" (Earl of Selborne L.C. in *Seward v. Vera Cruz*. In such a case the general words are presumed to have only general cases in view and not particular cases which have already been otherwise provided for by the special legislation. Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language or there be something which shows that the attention of the legislature had been turned to the special legislation and that the general one was intended to embrace the special cases provided for by the previous one. In the absence of these conditions the general enactment must be read as silently excluding from their operation the cases already provided for by the special one (see Maxwell on the Interpretation of Statutes, eleventh edition, page 169). Examining the question in the light of these principles, it is clear that there was no implied repeal or abrogation of sub-section (1A) by the general words of the amended sub-section (1)(a). The general words of the amended sub-section (1)(a) must be read as silently excluding from their operation the

cases already provided for in the special provision contained in sub-section (1A). We do not find any indication of an intention on the part of the legislature that the general provision in the amended sub-section (1)(a) should override or prevail against the special provision in sub-section (1A) in cases covered by the latter sub-section. On the contrary, as we have already pointed out above, the indication is the other way round and that is manifested clearly by the continuance of the special provision in sub-section (1A).

21. We must then consider as to whether the substitution of the words "clause (a) of sub-section (1) or under sub-section (1A) for any of the years ending on the 31st day of March of the years 1941 to 1948" in sub-section (1B) had the effect of setting at naught the provisions of sub-section (1A). It is no doubt true that sub-section (1B) talks of a notice issued under sub-section (1)(a) for any of the years ending on the 31st day of March of the years 1941 to 1948 and that some meaning must be given to those words. But if those words can be given a reasonable and sensible application without rendering them meaningless or ineffective, then they cannot be relied upon as indicating a legislative intent to abrogate sub-section (1A). If the effect of accepting the construction contended for on behalf of the petitioners were to render those words totally meaningless and superfluous and unnecessary or whether from the mere use of those words a legislative intent should be gathered that sub-section (1A) was intended to be abrogated though it was continued on the statute book, but we find that there are at least two cases in which the terms of sub-section (1B) could be satisfied by the issue of a notice under sub-section (1)(a) even on the construction of the petitioners. The first in the case of an assessment year covered by sub-section (1A) where it is found that the income was assessed at too low a rate or had been made the subject of excessive relief or loss or depreciation allowance had been computed at an excessive amount; such a case would not be covered by sub-section (1A) and a notice could be issued in such a case under sub-section (1)(a). Equally if there was escapement of income from assessment for the accounting year 1946-47 for which the assessment year would be 1947-48 and the escaped income for the assessment years beyond the period of eight years amounted to or was likely to amount to Rs. 1,00,000 or more, notice could be issued under sub-section (1)(a) for bringing to tax

escaped income of the assessment year 1947-48 and such a case would not be covered by sub-section (1A) since the accounting year 1946-47

would not fall wholly or partly within the war period. These are certainly two cases in which the assessee would be entitled to approach the Central

Board of Revenue for settlement under sub-section (1B) and the words substituted in sub-section (1B) would have meaning and effect. It is,

therefore, not possible to say that these words in sub-section (1B) would be rendered meaningless or superfluous if the construction contended for

on behalf of the revenue should, therefore, be preferred. We may also in this connection refer to the following passage from the decision given by

the Madhya Pradesh High Court on 25th November, 1963, in Miscellaneous Petition No. 385 of 1962 (Rustomji v. Income Tax Officer, which in

our opinion provides an effective refutation of the present condition of the learned Advocate-General : ""If Parliament did really intend that even

after 31st March, 1956, a notice for the reopening of an assessment should be given under clause (a) of sub-section (1) for any of the years ending

on 31st March of the years 1941 to 1946, then they would have expressed their intention clearly by suitably amending section 34(1) for that

purpose or by repealing sub-section (1A), and not concealed it with a more than Baconian obscurity in a provision dealing with settlement of

assessments."" This contention of the learned Advocate-General based on the substitution of words effected in sub-section (1B) by the Finance

Act, 1956, must therefore be rejected.

22. There is also another circumstance which strongly supports the contention of Mr. I. M. Nanavati. It is now settled by the decision of the

Calcutta High Court in Debi Dutt v. T. Belan and the decision of the Bombay High Court in S.C. Prashar v. Vasantsen, that if the right of the

Income Tax Officer to reopen an assessment is barred under the law for the time being in force, no subsequent enlargement of the time can revive

such right in the absence of express words or necessary intendment. The decision of the Bombay High Court was of course taken in appeal and

was reversed by the Supreme Court, but on this point, out of five judges, two judges expressed one view, two judges expressed another view and

the fifth judge did not express any opinion at all with the result that the decision of the Bombay High Court stands so far as this point is concerned.

In order to get over this difficulty, when it was pointed out by the Calcutta High Court in *Debi Dutt v. T. Belan*, the legislature added sub-section

(4) to section 34 providing that a notice under sub-section (1)(a) may be issued at any time notwithstanding the expiration of the period of eight

years specified in that sub-section as it stood prior to its amendment by the Finance Act, 1956. The effect of this provision was that even if the

right of the Income Tax Officer to reopen an assessment under sub-section (1)(a) as it stood prior to its amendment by the Finance Act, 1956,

was barred by reason of the expiration of the period of eight years at the date when the amendment came into force, the Income Tax Officer

could, after the amendment, issue notice at any time for reopening such assessment under sub-section (1)(a). Now it is significant that while adding

sub-section (4) the legislature did not introduce any provision reviving the right of the Income Tax Officer to reopen an assessment in cases

covered by sub-section (1A). Reopening of assessment in such cases being governed exclusively by sub-section (1A) as already held by us, the

right of the Income Tax Officer to reopen assessment in such cases would be barred on the midnight of 31st March, 1956, that being the outside

limit beyond which action could not be taken under that sub-section. The newly added sub-section (4) could not be relied upon by the revenue for

reviving the right of the Income Tax Officer to take action in such cases, because that sub-section operated to revive the right to reopen

assessment which was barred by reason of the expiration of the period of eight years specified in sub-section (1)(a) before its amendment by the

Finance Act, 1956, and not by reason of the expiration of the outside limit of 31st March, 1956, specified in sub-section (1A). If, therefore, the

legislature intended that notwithstanding the expiration of the outside limit of 31st March, 1956, specified in sub-section (1A) the Income Tax

Officer should be able to issue notice under the amended sub-section (1)(a) in cases covered by sub-section (1A), the legislature would have

enacted a provision similar to sub-section (4) providing for issue of notice under sub-section (1)(a) at any time notwithstanding the expiration of the

outside limit of 31st March, 1956, specified in sub-section (1A). No such provision was, however, made by the legislature and far from making

such provision the legislature retained sub-section (1A) along with the second proviso which prescribed the outside limit of 31st March, 1956. This

circumstance is clearly indicative of the legislative intent that no notice in respect of cases covered by sub-section (1A) should be issued under sub-

section (1)(a) even after its amendment by the Finance Act, 1956. If any such notice is issued it would be barred by time and therefore beyond the

jurisdiction of the Income Tax Officer.

23. Before we part with this point, we must refer to three decisions which were cited at the Bar and which deal with the present point in

controversy between the parties. From out of these three decisions, the first decision to which we must refer is a decision of a Full Bench of the

Punjab High Court in *Shahzada Nand and Sons v. Central Board of Revenue*. We refer to this decision first because it represents the first judicial

pronouncement on the question, but it is not necessary to refer to it in detail for we find that in it the Punjab High Court has taken the identical view

which we are taking in the present case. This decision completely supports the contention of Mr. I. M. Nanavati and the only attack which the

learned Advocate-General could level against it was that the Punjab High Court had fallen into an error in regarding sub-section (1)(a) as a general

provision and sub-section (1A) as a special provision. This attack is, however, for reasons which we have already given, futile.

24. The next decision in point of time is the decision of the High Court of Bombay in Special Civil Application No. 1458 of 1962. This decision

was given on 2nd May, 1963, and is as yet unreported. The view taken in this decision was that assessment for the assessment year ending on

31st March, 1941, and subsequent assessment years falling within sub-section (1A) could be reopened by issue of a notice at any time under sub-

section (1)(a) after its amendment by the Finance Act, 1956. This view was of course favourable to the revenue but the learned Advocate-General

was not prepared to subscribe to the line of reasoning on which this view was based and in our opinion rightly so. The Bombay High Court

apparently did not dispute the proposition that sub-section (1)(a) was a general provision and sub-section (1A) was a special provision but it

sought to negative the applicability of the maxim *generalia specialibus non derogant* by saying that sub-section (1)(a) and sub-section (1A) did not

operate together simultaneously over the escaped income of war years at any time either before the amendment by the Finance Act, 1956, or after

and there was, therefore, no conflict between the two provisions which required to be resolved by the application of the maxim. This line of reasoning does not commend itself to us and with the greatest respect to the learned judges of the Bombay High Court who decided this case, we find ourselves unable to accept it. We cannot assent to the proposition that sub-section (1)(a) and sub-section (1A) did not operate simultaneously over the escaped income of war years either prior or subsequent to the amendment by the Finance Act, 1956. We are of the view that both before and after the amendment by the Finance Act, 1956, sub-section (1)(a) covered the entire subject-matter of sub-section (1A) and we have already given our reasons for taking this view. The fallacy in the argument which found favour with the Bombay High Court lies, if we may say so with great respect, in treating the period of limitation provided for taking action under sub-sections (1)(a) and (1A) as defining and delimiting the ambit and coverage of those sub-sections. This fallacy will become immediately apparent if we consider the following cases. Take the case of assessment year 1946-47 for which the relevant previous year was the calendar year 1945. The previous year in this case fell wholly within the war period and yet action for reopening assessment could, on the plain terms of sub-section (1)(a), be taken under that sub-section between 17th July, 1954, and 31st March, 1956, being the period during which sub-section (1A) was in force. Equally, if sub-section (1)(a) stood alone, action for reopening assessment in respect of the assessment year 1947-48 for which the relevant previous year was the calendar year 1946 could be taken under sub-section (1)(a) between 17th July, 1954, and 31st March, 1956, even though the calendar year 1946 fell partly within the war period and so also action for reopening assessment in respect of other assessment years for which relevant previous years fell wholly or partly within the war period could be taken under sub-section (1)(a) between 17th July, 1954, and 31st March, 1956, notwithstanding the expiration of the period of eight years, provided the case fell within the second proviso to sub-section (3). It is, therefore, not correct to say that the areas of operation of sub-section (1)(a) and (1A) did not overlap and that consequently the principle of interpretation embodied in the maxim *generalalia specialibus non derogant* was not attracted.

25. The last decision cited was the decision of the Madhya Pradesh High Court to which we have already made a reference. This decision

completely supports the contention of Mr. I. M. Nanavati and we are wholly in agreement with the line of reasoning adopted in the decision.

26. We are, therefore, of the opinion that no notice for assessment or reassessment of escaped income of the assessment years in respect of which

the relevant previous years fell wholly or partly within the war period could issued under sub-section (1)(a) after the amendment by the Finance

Act, 1956 if no such notice was issued under sub-section (1A) on or before 31st March, 1956. The notices in respect of the assessment years

1943-44 and 1946-47 were therefore illegal and invalid.

27. That takes us to the question relating to the validity of the impugned notices in respect of the assessment year 1950-51. Now since the relevant

previous year in respect of the assessment year 1950-51 did not fall wholly or partly within the war period, it is obvious that a notice for reopening

the assessment in respect of that assessment year could issue under sub-section (1)(a) even after the expiration of the period of eight years, if the

other conditions of the sub-section were satisfied. One of the conditions was that set out in clause (ii) of the proviso to sub-section (1) and it

required that the escaped income should amount or be likely to amount to Rs. 1,00,000 or more in the aggregate either for the assessment year in

respect of which the notice was issued or for that assessment year and any other assessment year or years after which or after each of which eight

years had elapsed at the date of the notice, excluding the assessment year or years ending before 31st March, 1941. Mr. I. M. Nanavati on behalf

of the petitioners contended that this condition was not satisfied in the present case and the reason he gave was that for the purpose of computation

of the amount of Rs. 1,00,000 or more mentioned in the condition, the escaped income of the only those assessment years was liable to be taken

into account in respect of which notice for reopening assessment could be issued under sub-section (1)(a) and since, as held by us, no notice for

reopening assessment could be issued under sub-section (1)(a) in respect of the assessment years 1943-44 and 1946-47, the escaped income of

those assessment years was not liable to be taken into account and if that was so, the escaped income admittedly, did not amount to Rs. 1,00,000

or more and the condition was, therefore, not fulfilled. We cannot accept this contention. It is based on a construction of clause (ii) of the proviso

to sub-section (1) which is contrary to the plain language of the enactment and involves the addition of the words "in respect of which notice can be

issued under clause (a) of sub-section (1)" for the purpose of qualifying the assessment year or years of which escaped income is liable to be taken

into account in determining whether escaped income amounts to or is likely to amount to Rs. 1,00,000 or more. The scheme of sub-section (1)(a)

read with clause (ii) of the proviso to sub-section (1) appears to be that if income has escaped assessment in any assessment year beyond the

period of eight years, the Income Tax Officer can resort to the machinery of sub-section (1)(a) for assessing or reassessing such escaped income

only if he finds that the aggregate income that has escaped assessment in the assessment years preceding the period of eight years amounts to Rs.

1,00,000 or more. It is not necessary that there should be aggregate escaped income amounting to Rs. 1,00,000 or more which is liable to

assessed or reassessed under Rs. 1,00,000 or more which is liable to be assessed or reassessed under sub-section (1)(a). The only requirement to

clause (ii) of proviso is that there should be aggregate income amounting to Rs. 1,00,000 or more which has escaped assessment in the assessment

year beyond the period of eight years. It may be that a part of such aggregate income which has escaped assessment in any particular assessment

year is not assessable or reassessable under sub-section (1)(a) but that is not a relevant consideration once it is found that the aggregate income

that has escaped assessment in the assessment years beyond the period of eight years amounts to Rs. 1,00,000 or more, the Income Tax Officer

can proceed to assess or reassess the escaped income of any of those assessment years under sub-section (1)(a). The object of a clause (ii) of the

proviso is that if there is an escaped income of Rs. 1,00,000 or more, the Income Tax Officer should be entitled to get at such part of it as he can

under sub-section (1)(a) and not that the machinery of sub-section (1)(a) should be available only if the Income Tax Officer can get at escaped

income of not less than Rs. 1,00,000. The argument of Mr. I. M. Nanavati comes to this that either the Income Tax Officer should be able to get

at the entire amount of escaped income of Rs. 1,00,000 or more or he should be able to get at nothing. This is certainly not a construction which

we can accept as the right construction. Not only is it not supported by the language of clause (ii) of the proviso but it does not even accord with the object of the clause. Moreover, there is inherent indication in the clause itself showing that the construction contended for on behalf of the petitioners is not a correct construction. If the language of the clause carried the meaning which Mr. I. M. Nanavati wants to place, upon it, it was hardly necessary for the legislature to provide expressly in the clause that the assessment year or years of which escaped income may be taken into account shall not be the assessment year or years ending before 31st March, 1941. On Mr. I. M. Nanavati's construction, even without this express provision, the escaped income of those assessment years would have been liable to be excluded from consideration since admittedly no notice for reopening assessment in respect of those assessment years could be issued under sub-section (1)(a) by reason of clause (i) of the proviso. The construction suggested on behalf of the petitioners thus leads to superfluity and it is an elementary principle of interpretation that the court should not be prompt to ascribe and should not without necessity or some sound reason impute to the language of the statute tautology or superfluity and should be rather at the outset inclined to support every word intended to have some effect or be of some use. We cannot, therefore, agree with Mr. I. M. Nanavati when he says that the escaped income of the assessment years 1943-44 and 1946-47 was not liable to be taken into account for the purpose of determining whether the escaped income amounted to or was likely to amount to Rs. 1,00,000 or more within the meaning of clause (ii) of the proviso, since no notice could be issued in respect of those assessment years under sub-section (1)(a). If the escaped income of those assessment years be taken into account, as we hold it must be, it is clear that the escaped income amounted to or was likely to amount to Rs. 1,00,000 or more within the meaning of clause (ii) of the proviso and the condition set out in that clause was satisfied. The notices in respect of the assessment year 1950-51 cannot, therefore be successfully challenged on this ground.

28. Mr. I. M. Nanavati, when he opened his case also tried to attack the validity of the notice in respect of the assessment year 1950-51 on the

ground that there was no omission or failure on the part of any of the petitioners to make a return or to disclose fully and truly all material facts

necessary for his or her assessment. But when the statement made in the affidavit in reply were pointed out to him, he agreed that those statements would give rise to disputed questions of fact which we would not ordinarily entertain on a petition under article 226 of the Constitution and he, therefore, stated that he would not press this particular objection to the validity of the notices but would take it up before the Income Tax Officer himself. Since this objection was not pressed before us, it is necessary for us to say anything in regard to the same.

29. The result, therefore, is that in each of the petitions the rule will be made absolute and a writ of mandamus will issue quashing and setting aside

the notices dated 31st January, 1962, in respect of the assessment years 1943-44 and 1946-47. The rule will stand discharged in respect of the

notices dated 31st January, 1962, in respect of the assessment year 1950-51. The respondent will pay the costs of the petition to each petitioner.

Costs in Special Civil Application No. 370 of 1962 will be fixed at Rs. 500. In the other petitions, costs will be the usual costs.