
(1976) 11 AHC CK 0041

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1541 of 1974

Phool Chand Bajrang Lal and Another

APPELLANT

Vs

Income Tax Officer, "B"-Ward and Another

RESPONDENT

Date of Decision : 24-11-1976

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1977) 110 ITR 834

Hon'ble Judges : R.M. Sahai, J;D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; Deokinandan and Ashok Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Chandrashekhar, J.—In this petition under article 226 of the Constitution, the petitioner has prayed for issue of a writ quashing the notices issued to it (the petitioner) u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for the assessment years 1963-64 to 1968-69, and for issue of a writ of prohibition restraining respondent No. 1, the Income Tax Officer, " B " Ward, Azamgarh (hereinafter referred to as " the ITO "), from proceeding with the reassessment proceedings in pursuance of such notices.

2. At the outset, certain material facts which are not in dispute may be stated. The petitioner is a firm which was assessed to Income Tax. In the assessment year 1963-64, the petitioner claimed that it had borrowed a sum of Rs. 50,000 on May 19, 1962, from M/s. Jain Finance Distributors (India) (Private) Ltd., having its registered office at Calcutta (hereinafter referred to as the " Calcutta company "). This alleged borrowing was shown in the entry dated May 25, 1962, in its (the petitioner's) books of account and in the balance-sheet as liability. In the interest account produced before the ITO interest on this amount of Rs. 50,000 was shown for each of the relevant previous years. At the" instance of the ITO, it (the petitioner) filed a copy of the account of the Calcutta company

with it. It also produced before the ITO a letter dated November 15, 1963, written by the Calcutta company confirming this alleged loan of Rs. 50,000 to the petitioner on May 19, 1962. In the assessment of the petitioner for each of the years 1963-64 to 1968-69 the ITO allowed deduction of interest claimed to have been paid by the petitioner to the Calcutta company on this sum.

3. On August 26, 1971, the ITO issued a notice to the petitioner in which it was stated, *inter alia*, that the deposit of Rs. 50,000 appearing in the name of the Calcutta company was not genuine, that it (the petitioner) failed to disclose fully and truly all the material facts necessary for its assessment for the year 1963-64, that thus its income chargeable to tax had escaped assessment and that he proposed to reopen the case for the assessment year 1965-66 u/s 147(a) of the Act. The petitioner was asked to file its objections within a week from the date of the receipt of that notice where to it (the petitioner) sent on November 25, 1972, a reply in which it contended, *inter alia*, that there was no non-disclosure on its part in respect of the loan of Rs. 50,000 and that since all the primary facts had been disclosed at the stage of the original assessment, the provisions of Section 147(a) were wholly inapplicable.

4. Thereafter, the ITO issued to the petitioner notices under Sections 148 of the Act proposing to reassess the income of the petitioner for the years 1963-64 to 1968-69 and calling upon it to file its returns for those years within 30 days from the date of service of the notice.

5. On June 26, 1972, the petitioner filed its return for the year 1963-64 under protest. In pursuance of the notice issued by the ITO it appeared before him on September 26, 1973.

6. The petitioner has alleged that the notice u/s 148 in respect of the assessment year 1963-64 was issued on February 10, 1972, though it was purported to have been issued on February 10, 1971, and that the proposal of the ITO for taking action u/s 147(a) was sent to the Commissioner of Income Tax on January 1, 1972. The ITO has, in his counter-affidavit, admitted that the said notice was issued on February 10, 1972, and that the date, February 10, 1971, appearing in the notice was erroneous and was due to a clerical error. The ITO has asserted that his proposal to reopen the assessment was submitted to the Commissioner on January 1, 1972, and that the sanction of the Commissioner had been received on February 7, 1972.

7. The law on the subject of reassessment u/s 147(a) of the Act has been succinctly stated thus by the Supreme Court in *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, :

"...two conditions have to be satisfied before an Income Tax Officer acquires jurisdiction to issue notice u/s 148 in respect of an assessment beyond the period of four years but within a period of eight years from the end of the relevant year, viz., (1) the Income Tax Officer must have reason to believe that income chargeable to tax has escaped assessment, and (2) he must have reason

to believe that such income has escaped assessment by reason of the omission or failure on the part of the assessee (a) to make a return u/s 139 for the assessment year to the Income Tax Officer, or (b) to disclose fully and truly material facts necessary for his assessment for that year. Both these conditions must co-exist in order to confer jurisdiction on the Income Tax Officer. It is also imperative for the Income Tax Officer to record his reasons before initiating proceedings as required by Section 148(2). Another requirement is that before notice is issued after the expiry of four years from the end of the relevant assessment years, the Commissioner should be satisfied on the reasons recorded by the Income Tax Officer that it is a fit case for the issue of such notice...the duty which is cast upon the assessee is to make a true and full disclosure of the primary facts at the time of the original assessment. Production before the Income Tax Officer of the account books or other evidence from which material evidence could with due diligence have been discovered by the Income Tax Officer will not necessarily amount to disclosure contemplated by law. The duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that, his duty ends. It is for the Income Tax Officer to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the Income Tax Officer with regard to the inference which he should draw from the primary facts. If an Income Tax Officer draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment.

The grounds or reasons which lead to the formation of the belief contemplated by Section 147(a) of the Act must have a material bearing on the question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Once there exist reasonable-grounds for the Income Tax Officer to form the above belief, that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not a matter for the court to investigate. The sufficiency of the grounds which induce the Income Tax Officer to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. The existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section, To this limited extent, the action of the Income Tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law."

8. Sri R.K. Gulati, learned counsel for the petitioner, contended that the first condition precedent for the Income Tax Officer exercising jurisdiction to issue a

notice u/s 148 of the Act, was not satisfied in the present case inasmuch as there was no material which could form the basis for the Income Tax Officer having reason to believe that the income of the petitioner had escaped assessment. It was also contended by Sri Gulati that the material on which the Income Tax Officer purported to act, did not have any rational connection with, or relevant bearing to, the formation of the belief that the income of the petitioner had escaped assessment.

9. In support of his contention Sri Gulati relied on the decision of the Supreme Court in *Chhugamal Rajpal Vs. S.P. Chaliha and Others*, . There, the ITO had initiated reassessment proceedings on the basis of a circular issued from the office of the Commissioner of Income Tax, Bihar and Orissa, merely stating that the three persons named in that circular were merely name-lenders, that their transactions were bogus and that proper investigation regarding those loans were necessary. The Supreme Court held that the aforesaid circular, by itself, could not form a basis for the ITO forming a reasonable belief that the income of the assessee had escaped assessment. The Supreme Court observed thus at page 607 of the report:

"All that he (the ITO) says is that from those communications "it appears that these persons (alleged creditors) are name-lenders and the transactions are bogus". He has not even come to a prima facie conclusion that the transactions to which he referred are not genuine transactions."

10. On the other hand, the learned standing counsel contended that the above case was clearly distinguishable from the present case inasmuch as the ITO there had acted merely on a general circular issued by the Commissioner of Income Tax as to the bogus nature of transactions of certain creditors, but that in the present case, the ITO, Azamgarh, had himself entertained a doubt about the genuineness of the alleged borrowing of Rs. 50,000, by the petitioner from the Calcutta company, had made an enquiry from the ITO, Calcutta, and, on the basis of the information so gathered, had initiated reassessment proceedings. In order to appreciate the contention of the learned standing counsel it is necessary to set out the letter of the ITO, Calcutta, which is annexure "A" to the counter-affidavit. That letter reads :-

" OFFICE OF THE Income Tax OFFCER, "K" WARD, COMPANIES DIST. III, P-7,

Chowringhee Square, Calcutta. No. C-III/J-46/A/606, dated 7-7-1970 Income Tax Officer, "A" Ward, Azamgarh.

Sub.: M/s. Jain Finance Distributors (India) Private Ltd., 34/IB, Sudhir Chatterji St., Calcutta.

Ret: Your Letter No. P 306/A, dated 19-5-1970, addressed to ITO, "I" Ward, Companies Distt. III, Calcutta.

Please refer to your above letter asking for some information about Jain Finance Distributors India Private Ltd, This company is now assessed to tax in my ward. I

have however to inform you, that according to the Confession of Shri Tara Chand Surana, managing director of the company, it appears that the so-called company is really a dummy concern of Shri Surana. The company never actually advanced any loans to any person and according to the confession of Shri Surana the business of the company consisted entirely of name-lending. The company lent its name to enable different parties to bring into their books "black money" under the guise of loan from Jain Finance Distributors India (P.) Ltd. No "finance was ever distributed" ; only the name of the concern was lent.

This position has been accepted in the assessments of the company for 1962-63, 1963-64 and 1964-65. In the circumstances you are requested not to treat any transaction with this concern as genuine.

I can furnish further information to you if you send me full particulars of transactions which you may be enquiring about. Sd. A.R. Das Gupta Income Tax Officer, K Ward, Companies District-III, Calcutta."

11. The learned standing counsel drew our attention to mention in the letter of the ITO, Calcutta, of the reference number of the letter dated May 19, 1970, of the ITO, Azamgarh, namely, P-306/A. The learned standing counsel has explained that the letter " P " was the first letter in the name of the assessee, i.e., Phoolchand, that the letter "A" after the number 306, indicated the ward of the Income Tax Officer, Azamgarh, and that the number 306 was the general index number of the petitioner in the assessment records. The learned standing counsel produced the assessment records of the petitioner for the years 1965-66/1966-67 and 1969-70 which bear the number P. 306.

12. The learned standing counsel is right in his submission that the letter of the ITO, Calcutta, dated July 7, 1970, was not in the nature of a general circular by the ITO, Calcutta, giving information to all ITOs, about the affairs of the Calcutta company, but that the letter was in reply to a specific enquiry by the ITO, Azamgarh, who had in mind the alleged borrowing by the petitioner from the Calcutta company and that hence the ITO, Azamgarh, could not be said to have acted merely on vague and general information as was done by the ITO in Chhugamal Rajpal Vs. S.P. Chaliha and Others, .

13. However, Sri Gulati contended that even if the letter of the ITO, Calcutta, dated July 7, 1970, was in reply to an enquiry made by the ITO, Azamgarh, the fact -remained that the latter had not disclosed in his letter dated May 19, 1970, to the former the name of the petitioner nor had he made any specific enquiry as to whether the Calcutta Company had lent to the petitioner any amount and much less the amount of Rs. 50,000 on or about May 19, 1962. Sri Gulati submitted that the information conveyed in the letter of the ITO, Calcutta, to the effect that the Calcutta company did not actually lend any money to any person but was lending its name, could not be said to be a specific information relating to the alleged borrowing of Rs. 50,000 by the petitioner from the Calcutta company on or about May 19, 1962. Sri Gulati maintained that the aforesaid

information in the letter of the ITO, Calcutta, was no better than the information in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, which the Supreme Court characterised as " wholly vague, indefinite, farfetched and remote. "

14. To appreciate the above contention of Sri Gulati, it is necessary to set out briefly the facts of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, . There, in the assessment for the year 1958-59, the ITO allowed deduction of certain sums by way of interest on the alleged borrowings by the assessee one of which was from Mohansingh Kanayalal who was shown as one of the assessee's creditors. In the report to the Commissioner of Income Tax seeking sanction for reopening the assessment of the assessee, one of the grounds stated by the ITO for his belief that the income of the assessee had been under-assessed; was that Mohansingh Kanayalal, had since confessed that he was doing only name-leading. Considering the question whether the confession of Mohansingh Kanayalal could constitute the basis for the ITO entertaining a reasonable belief that the assessee's income had escaped assessment for the year-1958-59, the Supreme Court observed thus (pages 447, 448):

" There is nothing to show that the above confession related to a loan to the assessee and not to someone else, much less to the loan of Rs. 2,500 which was shown to. have been advanced by that person to the assessee-respondent. There is also no indication as to when that confession was made and whether it relates to the period from April 1, 1957, to March 31, 1958, which is the subject-matter of the assessment sought to be reopened. The report was made on February 13, 1967. In the absence of the date of the alleged confession, it would not be unreasonable to assume that the confession was made a few weeks or months before the report. To infer from that confession that it relates to the period from April 1, 1957, to March 31, 1958, and that it pertains to the loan shown to have been advanced to the assessee, in our opinion, would be rather farfetched.

As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in Section 147 of the Act of

1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite farfetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence."

15. The learned standing counsel contended that in the present case the information which the ITO, Calcutta, conveyed by his letter dated July 7, 1970, was distinguishable from the information in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, which the Supreme Court held to be vague and indefinite. The learned standing counsel laid particular stress on the sentence in the letter of the ITO, Calcutta: "This position has been accepted in the assessment of the company for 1962-63, 1963-64 and 1964-65" which according to him (the learned standing counsel) was specific with reference to the point of time, namely, the years 1962-63 to 1964-65. But in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, the Supreme Court observed that the confession of Mohansingh Kanayalal did not specify the period to which it (the confession) related. The learned standing counsel submitted that since the alleged borrowing by the petitioner from the Calcutta company purported to be on May 19, 1962, the statement of the ITO, Calcutta, that the Calcutta company did not do money-lending during the accounting years relevant to the assessment years 1962-63 to 1964-65 would clearly show that on or about May 19, 1962, the Calcutta company did not lend any money to the petitioner.

16. In Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, the Supreme Court considered the following three circumstances :

- (i) The confession of Mohansingh Kanayalal did not specify the name of the assessee (Lakhmani Mewal Das), the alleged borrower ;
- (ii) The confession did not specify the loan of Rs. 2,500 which the assessee claimed to have borrowed from Mohansingh Kanayalal; and
- (iii) The confession did not specify the period during which Mohansingh Kanayalal was doing only name-lending.

17. In the present case also the information furnished by the ITO, Calcutta, in his letter dated July 7, 1970, did not state that the confession of the managing director of the Calcutta company related to the alleged borrowing by the petitioner and much less to the alleged, borrowing of Rs. 50,000 by him. As rightly pointed out by the learned standing counsel, the ITO, Calcutta, has stated that the confession of the managing director of the Calcutta company had been accepted in the assessment of the company for the years 1962-63 to 1964-65. In other words, the alleged confession of the managing director of the Calcutta company had been particularised with reference to time, but not with reference to the petitioner or the loan of Rs. 50,000.

18. Thus, the confession in the present case is distinguishable from the confession in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das,

inasmuch as the former was particularised with reference to time, but the latter was not. In *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, it was the cumulative effect of all the aforesaid three circumstances that led the Supreme Court to hold that the confession there was too vague and indefinite. But, in the present case, the confession of the managing director of the Calcutta company is less vulnerable inasmuch as it was particularised with reference to time. Even so, Sri Gulati maintained that the particularisation with reference to time, by itself, is not sufficient to distinguish the confession in the present case from that in the aforesaid Supreme Court case *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, . On the other hand, the learned standing counsel maintained that this particularisation with reference to time is sufficient to so distinguish and that such particularisation must be said to establish a live link between the confession and the formation of belief by the ITO that there was escapement of income of the petitioner.

19. After carefully considering the rival contentions we are inclined to accept that of the learned standing counsel as sound. The confession of the managing director of the Calcutta company to the effect that his company actually never advanced any loans to any person, and acceptance of such confession by the ITO, Calcutta, for the assessment of that company for the years 1962-63 to 1964-65 could, in our opinion, form a reasonable basis for the ITO, Azamgarh, entertaining a reasonable belief that the Calcutta company had not advanced any money to the petitioner on or about May 19, 1962. Hence, we reject the contention of Sri Gulati that there was no material for the ITO, Azamgarh, entertaining a reasonable belief that the income of the petitioner had escaped assessment.

20. Sri Gulati next submitted that the petitioner had furnished all primary facts relating to his having borrowed Rs. 50,000 from the Calcutta company on May 19, 1962, and had also furnished the address and the general index number of the Calcutta company and had even produced the letter of confirmation of the Calcutta company about this loan, that it was for the ITO, Azamgarh, to draw the appropriate inference from those primary facts and that there was no further obligation on the petitioner to advise or assist the ITO in drawing the appropriate inference from, those primary facts. Sri Gulati maintained that if the ITO had drawn from those primary facts an inference which subsequently appeared to him to be erroneous, such mere change of opinion would not justify his reopening the assessment.

21. On the other hand, the learned standing counsel contended that the petitioner could not be said to have disclosed to the ITO fully and truly all the material facts about the alleged borrowing of Rs. 50,000 if the same was false and not true and that if the ITO subsequently came to know that there was, in fact, no such borrowing, it could not be said that there was mere change of opinion on the part of the I.T.O. which led to initiation of the reassessment proceedings.

22. In support of their respective contentions Sri Gulati and the learned standing counsel relied on several decisions of the Supreme Court and of the High Courts.

23. Sri Gulati strongly relied on the decision of the Supreme Court in *The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd.*, . There, the facts were these : In the assessment for the year 1949-50 the assessee had submitted a profit and loss statement showing that in the previous year a sum of Rs. 1,75,875 was earned as profits from a joint venture in H. Manory Ltd. but claimed that a sum of Rs. 87,937 (half such profits) was paid to one Ratiram Tansukhrai under a partnership agreement with him for financing the business of H. Manory Ltd. The ITO accepted such claim and treated only Rs. 87,937 as the assessee's share of profits from the business of Manory Ltd. In the assessment year 1950-51 the assessee filed a return accompanied by a profit and loss statement showing a total profit of Rs. 1,62,155 in the relevant accounting year from H. Manory Ltd., but claimed to have transferred Rs. 81,077 to the account of Ratiram Tansukhrai as his share of profits. On an examination of the transaction, the ITO came to the conclusion that the alleged agreement of October, 1948, between the assessee and Ratiram Tansukhrai was bogus and was merely a devise to reduce the profits received from H. Manory Ltd. In that view the ITO treated the entire income of Rs. 1,62,155 as the income of the assessee. Later, the ITO issued a notice to the assessee u/s 34 of the Indian Income Tax Act, 1922, to reopen the assessment for the year 1949-50 and to assess the amount of Rs. 87,937 allowed in the assessment of that year as the share of profits paid to Ratiram Tansukhrai. The assessee challenged the notice issued by the ITO. The Supreme Court, while upholding the contention of the assessee that the ITO could not reopen the assessment for the year 1949-50, observed thus (page 612):

"The Income Tax Officer had, in consequence of information in his possession that the agreement with Ratiram Tansukhrai was a sham transaction, reason to believe that income chargeable to tax had escaped assessment. Such a case would appropriately fall u/s 34(1)(b).....

The assessee had disclosed his books of account and evidence from which material facts could be discovered : it was under no obligation to inform the Income Tax Officer about the possible inferences which may be raised against him. It was for the Income Tax Officer to raise such an inference and if he did not do so the income which has escaped assessment cannot be brought to tax u/s 34(1)(a)."

24. Following the aforesaid decision of the Supreme Court, some of the High Courts have held that in the case of an alleged borrowing by an assessee, if he had disclosed details thereof to the ITO at the time of original assessment, ne (the assessee) is under no obligation to inform the ITO further that such loan was a bogus one, that whether such loan is genuine or bogus, is a matter of inference which the ITO has to draw on the facts so disclosed after proper verification and that if the ITO had treated such loan as genuine, he cannot

reopen the assessment merely because he has subsequently reason to believe that such loan was not genuine. On the other hand, certain other High Courts have taken the view that if on the basis of the representation made by an assessee, the ITO. had treated certain loans as genuine and subsequently came to know that such representation was either false or incorrect, the ITO would have jurisdiction to initiate reassessment proceedings because the assessee cannot be said to have disclosed the material facts truly and fully. The latter view is put forcefully by Arun, K. Mukherjea J., who delivered the majority opinion of the Full Bench in Lakhmani Mewal Das Vs. Income Tax Officer, "I" Ward and Others, . After referring to the decision of the Supreme Court in The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., his Lordship observed thus--See Lakhmani Mewal Das Vs. Income Tax Officer, "I" Ward and Others, :

" We have not found anything in the judgment of the Supreme Court in The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., , to suggest that their Lordships would disallow a reopening of the assessment even where the assessing officer who seeks to reopen has reason to believe that at the time of the original assessment the assessee had made false statements and had failed or omitted to give true particulars regarding his income."

25. We are in respectful agreement with the above observations of his Lordship.

26. In our opinion the facts of the present case are distinguishable from those of The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., as set out in the judgment of the Supreme Court. There, apart from the ITO holding in the assessment of the same assessee in the subsequent assessment year that the alleged agreement between the assessee and Ratiram Tansukhrai was bogus, there was no other information from any external source which came to the notice of the ITO to form a reasonable belief that the income of the assessee had escaped assessment in the earlier year. But, in the present case, the ITO, Azamgarh, after making enquiry, came to know from the ITO, Calcutta, that the Calcutta company from whom the petitioner claimed to have borrowed, was not really lending money but was merely lending its name to cover up certain bogus transactions. Hence, the decision of the Supreme Court in The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., cannot be understood as laying down that even where the ITO gets subsequently some fresh information which was not available at the time of the original assessment, which may lead him to a reasonable belief that the income of the assessee has escaped assessment, he cannot reopen the assessment.

27. As the information furnished by the ITO, Calcutta, could form the basis for a reasonable belief on the part of the ITO, Azamgarh, that as a result of a false representation made by the petitioner as to his having borrowed money from the Calcutta company, his income had escaped assessment, the ITO, Azamgarh, could take action u/s 147(a) of the Act.

28. Lastly, it was contended by Sri Gulati that the Commissioner of Income Tax had mechanically accorded permission to the ITO to issue notice u/s 148 of the Act and that the Commissioner had not applied his mind and had not satisfied himself whether this was a fit case for according such permission. Sri Gulati drew our attention to the fact that the order made by the Commissioner on the report of the ITO merely contained the word " yes " below which he had put his signature.

29. Sri Gulati referred to the decision of the Supreme Court in *Chhugamal Rajpal Vs. S.P. Chaliha and Others*, . There also the Commissioner had just noted the word " yes " on the report of the ITO and had affixed his signature thereunder. The Supreme Court observed that the important safeguard provided by Section 151 of the Act was treated lightly by the Commissioner. But this observation must be read in the context of the finding by the Supreme Court earlier in the judgment that the report of the ITO did not disclose that he had any relevant material before him which could satisfy the requirement of either Clause (a) or Clause (b) of Section 147. It was in those circumstances that the Supreme Court said (page 608):

"We are of the opinion that if only he (the Commissioner) had read the report (of the ITO) carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice u/s 148."

30. Hence, the observations of the Supreme Court in *Chhugamal Rajpal Vs. S.P. Chaliha and Others*, cannot, in our opinion, be understood as laying down that the Commissioner should write an elaborate order setting out the reasons for according permission to the ITO to issue notice u/s 148.

31. As the report of the ITO disclosed that he had sufficient materials to reopen the assessment, it cannot be said that the Commissioner had mechanically accorded permission without applying his mind merely because he did not give reasons for it in his order.

32. All the contentions urged by Shri Gulati are rejected.

33. In the result we dismiss this petition with costs.