
(1958) 10 BOM CK 0001

In the Bombay High Court

Case No : Misc. Application No. 222 of 1958 & Miscellaneous Application No. 222 of 1958

Radhakant Jagannath Prasad

APPELLANT

Vs

V.K. Johri and Another

RESPONDENT

Date of Decision : 04-10-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 22(2), 34, 34(1), 34(3), 54

Citation : AIR 1961 Bom 5

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Advocate : Nariman, for the Appellant; B.A. Palkhiwala, for the Respondent

Judgement

1. This is a petition under Article 226 of the Constitution challenging the validity of notice dated April 2nd, 1957 issued in pursuance of Section 34 of the Income Tax Act and for reliefs preventing the Respondents from proceeding with re-assessment in pursuance of that notice.

2. The main grounds on which the Petitioner has placed reliance are contained in sub-paragraphs (c), (d), (e) and (g) of paragraph 18 of the petition. The contentions of the Petitioner all converge into the argument that the Income Tax officer could not have reasonably and honestly believed that the income of the Petitioner for the relevant year had escaped assessment by reason of non-disclosure of material facts and should not have issued the notice. Under the circumstances the facts in this petition have to be approached so as to find the facts which were at the date of the notice present before the Income Tax Officer who issued the notice. The facts which were then present before the Income Tax Officer appear to me as follows :

3. The Petitioner belonged to a family consisting of about 18 members at the relevant period. The genealogy of the family as appearing from the analysis of the list Ex. A to the petition is as follows:

[illegible]

4. It appears that one Laxminarayan had four sons, Jagannath, Kedarnath, Badriprasad and Dwarkanath. These four brothers in their turn had their children whose names appear in the genealogy mentioned above. Between 1949 and 1953 Radhakant and Ramakant being the sons of Jagannath along with Kailasnath, a son of Badriprasad and Vishvanath, a son of Dwarkanath carried on partnership business in the firm name and style of Messrs. Khandelwal Metal and Engineering Works. During that period Hadhakant the Petitioner as a partner appeared to have made large profits. He was then also getting salary as an employee in the firm of Messrs. Durgaprasad Ramcharan Private Ltd. He had according to him during that period two sources of income. In accordance with the provisions of the Income Tax Act, he was duly assessed to Income Tax in respect of the said period.

5. Some time in 1956-57 the Income Tax Officer had information that in 1950 there were three home savings deposit accounts in Jodhpur Commercial Bank, Bombay, in which the Petitioner was directly concerned. One of the accounts stood in the name of the Petitioner, Another account stood in the name of Prabhadevi -- the minor daughter of the Petitioner. The third account was in the name of Jagannath Radhakant, viz., the name of the father of the Petitioner was put before his name. In each, of the account Rs. 20,000/- was deposited. These accounts had never been disclosed to the Income Tax Department during previous assessments. In connection with the assessment proceedings for 1955 when the Petitioner attended before him, the Income Tax Officer made enquiries about these accounts from the Petitioner. By an affidavit dated January 10, 1957 the Petitioner made certain statements as regards these three accounts and as regards other information which the Income Tax Officer had with reference to these accounts. It appears to me that the explanations given by the Petitioner by his affidavit were not acceptable to the Income-tax Officer. The Income Tax Officer appears to have made his own further enquiries and gathered diverse materials not only in respect of the deposits made in these three accounts but also in respect of diverse deposits made almost at the same time in other Home Savings Bank accounts in Jodhpur. Commercial Bank, Bombay, in the name of 18 members of the family appearing in the genealogy mentioned above.

6. From the materials thus come into his possession the Income Tax Officer was of the belief that the Petitioner had failed to disclose material facts necessary for

the assessment of the Petitioner's income for the year 1950-51 and that the Petitioner's income had escaped assessment. The Income Tax Officer was not satisfied with the explanations of the Petitioner and had to resort to such provisions in the Income Tax Act as were available for ascertaining the true facts regarding these three bank accounts relating to the aggregate sum of Rs. 60,000/-. The Income Tax Officer accordingly acting u/s 34 in the first instance issued a notice dated February 28, 1957. This notice was issued by mistake in connection with the wrong year. The Income Tax Officer issued another notice dated April 2nd, 1957 in pursuance of the provisions of Section 34 of the Act.

7. The relevant part of this notice runs as under: "Notice u/s 34 of the Indian Income Tax Act 1922 (XI of 1922).

10-r(ii)/57-58

Income Tax Office CCC-Ward Date 2nd April 1957.

X X X X X X X

Whereas I have reason to believe that your income assessable to Income Tax for the year ending 31st of March 1952 Asst Year 1951-52 has

(a) escaped assessment.

I therefore propose to assess the said income that has escaped assessment.

I hereby require you to deliver to me not later than or within 35 days of the receipt of this notice, a return in the attached form of your total income and total world income assessable for the said year ending 31st March 1952.

This notice is being issued after obtaining the necessary satisfaction of the Commissioner of Income Tax, Bombay City II.

x x x xxx Sd/- V. Savera. 11th Income Tax Officer III Ward Bombay."

8. Having regard to the existence of the aforesaid circumstances before the Income Tax Officer I have not appreciated the argument advanced on behalf of the Petitioner that the Income Tax Officer had in the matter of issuing this notice dishonestly and unreasonably formed belief that income had escaped assessment. I cannot appreciate the argument that the Income Tax Officer honestly and reasonably could not form a belief for the purposes of taking action u/s 34 of the Act, that the Petitioner's income for the year 1950-51 had escaped assessment.

9. It is relevant to point out a few further facts. In pursuance of the notice dated April 2, 1957, the Petitioner filed his return which is Ex. A in these proceedings. This return is on the face of it "a statement of total income and total world income during the previous year ending 31st March 1951". From time to time between May and August 1957 the Petitioner attended upon and gave further information to the Income Tax Officer in connection with the return filed by the Petitioner. In August 1957 the Income Tax Officer who gave notice dated April

2nd, 1957 was transferred and the 1st Respondent before me took charge of the further assessment proceedings. From August 1957 till April 1958 in pursuance of these assessment proceedings the Petitioner from time to time attended upon the 1st Respondent and gave him such information as desired. On January 6th, and 20th, 1958 the Petitioner produced Kedarnath (a paternal uncle of the Petitioner) before the 1st Respondent. It appears that Kedarnath informed the first Respondent that he had in November 1950 deposited an aggregate sum of Rs. 4,50,000/- in different savings Bank accounts in the Jodhpur Commercial Bank, Bombay. He had made these deposits in the name of 18 members of his family and other names coined out of the names of these 18 members. He had divided the sum of Rs. 4,50,000/- into different sums of Rs. 20,000/- each and deposited them in these bank accounts. Three of these accounts were the accounts of the Petitioner and his minor daughter. The Income Tax Officer was not bound to accept the statements made by Kedarnath as true. What this sum of Rs. 4,50,000/- was and why and how the same was in equal sums deposited in the names of the members of Petitioner's family was a mystery which remained to be investigated. The 1st Respondent had to gather details for ascertaining, the nature of the three amounts of Rs. 20,000/- deposited in the three bank accounts with which the Petitioner was directly concerned.

10. To prevent further investigations the Petitioner served two notices, one dated April 9, 1958 and another dated April 15, 1958 on the 1st Respondent copies of both of which are Ex. D to the Petition. By the first notice the Petitioner challenged the validity of the notice dated April 2nd, 1957 and by the second notice the Petitioner called upon the 1st Respondent to appoint time for giving inspection to the Petitioner of the record showing the reasons recorded by the Income Tax Officer in writing for enabling him to proceed u/s 34 of the Act.

11. On these facts the first contention urged before me for the Petitioner was under sub-paragraphs (d) and (e) of paragraph 18 of the Petition. The grounds contained in these two sub-paragraphs are based on the assumption that the notice dated April 2nd, 1957 was issued under the provisions of Sub-clause (b) of Section 34(1). There is no basis for such assumption. Under this Sub-section notice is issued when an assessee has not for himself been guilty of non-disclosure of material facts. The ground urged is that if the notice is issued under Sub-clause (b) of Section 34(1) it is out of time and barred by limitation as provided in this Sub-section and therefore is altogether without jurisdiction and invalid. Section 34(3) provides that reassessment cannot be made in cases falling under Sub-clause (b) of Section 34(1) after lapse of a period of 4 years from the year in which escaped income was earned. The other contention therefore was that having regard to the lapse of four years as provided u/s 34(3) no re-assessment was legally possible or permissible. I find that there is no allegation of facts to be found in the Petition on which these contentions can be founded. The petitioner does not aver and the Petitioner is not in a position to aver that the notice dated April 2nd, 1957 was issued under the provisions of Sub-clause (b) of Section 34 (1). Having regard to the existence of facts as

mentioned above I cannot imagine how it can be contended that the Income Tax Officer as a matter of fact was proceeding only under Sub-clause (b) of Section 34. Having regard to the existence of these facts to me it is apparent that the Income Tax Officer had issued the notice dated April 2nd, 1957 under Sub-clause (a) of Section 34(1); and not under Sub-clause (b) of that section.

12. Mr. Nariman however attempted to argue that this notice was in fact issued under Sub-clause (b). He relied for that purpose on the averments contained in paragraph 5 and sub-paragraph (h) of paragraph 18 of the Petition, as also the averments contained in paragraph 3 and paragraph 15 of the affidavit in reply made on behalf of the Respondents. He contended that the Petitioner had alleged that he had only two sources of income, viz., the income from salary and profits made by him as a partner in the firm of Messrs. Khandelwal Metal and Engineering Works. He stated that it was not denied in the affidavit in reply that he had only two sources of income. His argument was that since these were his only two sources of income and since he had already made his returns previously, the Income Tax Officer could not make any case that the Petitioner had failed to disclose truly the material facts necessary for his assessment for the relevant year.

13. It is relevant to point out that the Income Tax Officer is entitled to proceed to issue notice for reassessment proceedings under Sub-clause (a) of Section 34(1) in all cases where he believes that the income of the assessee has escaped assessment by reason, of failure to disclose truly or fully material facts. I cannot accept the contentions made by Mr. Nariman. I cannot understand why because the Petitioner had only two sources of income, it was not possible for the Income Tax Officer having regard to the facts before him to believe that the Petitioner had not disclosed fully and truly the material facts necessary for his assessment for the relevant year. The Income Tax Officer had with him information relating to the three accounts wherein deposits were made and which three accounts stood in the name of the Petitioner and/or his minor daughter. If explanations given to the Income Tax Officer prior to April 1957 in respect of these accounts were altogether insufficient I cannot understand why was it not permissible for the Income Tax Officer to believe that the amounts deposited in these accounts were the income of the Petitioner. The income might have been from these two sources. The income might have been the concealed profits of the partnership. It is not as if the Income Tax Officer is in a position to definitely state as to from which source the amounts deposited in these three accounts came into the hands of the assessee. Is it therefore to be held against him that the assessee had disclosed all material facts fully at the time when the assessment was made in respect of the income for that year? Is it on the contrary not to be assumed In favour of the Income Tax Officer that he was entitled to have reasonable belief that the assessee had "failed to disclose the material facts necessary for his assessment for that year" and to proceed further under the provisions of Section 34(1)(a)? These are the only facts on which Mr. Nariman has based the whole of his argument in proof of the allegation that I must assume in this Petition that

the Income Tax Officer had proceeded under Sub-clause (b) of Section 34(1) of the Act. On these facts it is impossible to proceed on the footing that the notice dated April 2nd, 1957 was issued under Sub-clause (b) of that section. On these facts the Petitioner is not entitled to contend that the notice was issued under Sub-clause (b) of that section and that therefore notice was beyond the period of limitation prescribed by the Act or without jurisdiction or invalid.

14. In matters like this under Article 226 of the Constitution the burden undertaken by the petitioners must be to prove the total absence of jurisdiction of the Income Tax Officer to proceed u/s 34 of the Act and this absence of jurisdiction must be apparent on the face of the record. For that purpose it was absolutely necessary for the Petitioners to prove that the Income Tax Officer did not have any reason to believe that the assessee had failed to disclose fully and truly all material facts, and that accordingly the Income Tax Officer was not entitled to proceed under Sub-clause (a) of Section 34(1). It is not denied by Mr. Nariman that he was in this Petition bound to show total absence of jurisdiction of the Income Tax Officer and that the absence of jurisdiction must be apparent on the face of the record. The only argument Mr. Nariman advanced to discharge the burden which was on him to prove want of jurisdiction was reliance on the allegation contained in paragraph 5 of the petition, viz., that the Petitioner had only two sources of income that the allegation had not been denied. As I have pointed out these facts are altogether insufficient to discharge that burden. There is nothing apparent on the notice in question to show that the Income Tax Officer was proceeding under Sub-clause (b) of that section. On the contrary if one refers to the statement in that notice, viz., "this, notice is being issued after obtaining the necessary satisfaction of the Commissioner of Income Tax, Bombay City II", it is apparent that the Income Tax Officer was proceeding under Sub-clause (a) of the Section. If one looks at the third proviso to Section 34(1) of the Act, the Income Tax Officer is bound not to issue a notice under Sub-clause (a) of Section 34(1) unless he has recorded his reasons for doing so and unless the Commissioner is satisfied on such reasons recorded that it was a fit case for the issue of such a notice. The impugned notice on the face of it makes mention of the fact that the Income Tax Officer had recorded his reasons for issuing this notice and that the notice was issued after obtaining the necessary satisfaction of the Commissioner. The satisfaction thus referred to in this notice is not required for issuing a notice under Sub-clause (b) of Section 34(1). There is thus clear material on the face of the record to show that the Income Tax Officer was proceeding under Sub-clause (a) of that section.

15. There is no time limit for issuing a notice under Sub-clause (a) of Section 34(1). The contention, of the Petitioner that this notice is beyond time and barred by limitation and therefore invalid must be negated. As the notice is not issued under Sub-clause (b) of Section 34(1) the contention that the reassessment would be time-barred u/s 34(3) of the Act must be negated.

16. It is in this connection relevant to observe that Section 34 of the Income Tax

Act imposes no charge on the citizen but merely creates machinery for reassessment. I am therefore bound to construe notices issued u/s 34 in a manner that would make the machinery of reassessment workable. If one looks at the provisions of Section 34 the condition precedent as to the belief which the Income Tax Officer must have to proceed under either of the Sub-clauses, viz.(a) or (b) of Section 34 (1) must be subjective satisfaction of the Income Tax Officer. The only difference in the provisions of Sub-clause (a) and Sub-clause (b) of Section 34(1) is that the proceedings under Sub-clause (a) refer to the case of an assessee who has not disclosed all facts truly while the provisions of Sub-clause (b) relate to an assessee whose-income has escaped assessment without any fault on his part. Whether a particular case of an assessee would fall within the provisions of Sub-clause (a) or Sub-clause (b) might be determined by a Court of Law only after findings as to facts are arrived at in the reassessment proceedings started by issuing notices u/s 34(1). The Court would then only having regard to the findings of facts be in a position to determine that the facts relating to a particular assessee could not fall within the provisions of Sub-clause (a) and in such event might be in a position to hold that the notice issued was invalid or time-barred at the date of the issue and that the proceedings were therefore not competent. In my view in a disputed matter it would be impossible for a Court of Law to come to a conclusion that the Income Tax Officer whilst issuing a notice was intending only to proceed under Sub-clause (b) and not under Sub-clause (a) at any stage before findings of facts are made in reassessment proceedings.

17. It is relevant to point out that an attempt to analyse the subjective satisfaction of the Income Tax Officer and to hold that in fact in the matter of the issue of a particular notice u/s 34(1) he was proceeding under Sub-clause (b) would require a detailed investigation of facts. It would not be competent or correct for the Court to determine such complicated and detailed facts in a Petition under Article 226 of the Constitution. In any view of the matter I am of the opinion that the Petitioner is not entitled to relief in this case on mere allegation or assumption that the notice dated April 2nd, 1957 was issued under Sub-clause (b) of Section 34(1) of the Act.

18. The next contention which Mr. Nariman made arises out of ground (c) in paragraph 18 of the Petition. He contends that the conditions precedent to the issue of notice u/s 34(1)(a) have not been complied with. He points out that under Proviso (iii) of Section 34(1) the Income Tax Officer is bound to record his reasons for proceeding under Sub-clause (a) of Section 34(1) and that these reasons must be such as must have satisfied the Commissioner. Unless these two conditions precedent are satisfied, a notice cannot be issued u/s 34(1)(a). In support of his contention he was bound to prove that the Income Tax Officer had not recorded any reasons for issuing the notice and that the Commissioner was not satisfied as required by the third proviso in Section 34(1). In proof of his contention he relies on one fact only viz., that by a notice dated April 15, 1958 the Petitioner's attorneys called upon the Income Tax Officer to give inspection

of the reasons recorded. He says that there was no response to this demand and I am therefore bound to assume in his favour that the Income Tax Officer had not recorded any reasons. In the affidavit in reply of the Respondents it is stated as follows :

"I deny that no reasons have been recorded for issuing the said notice. I deny that the Commissioner of Income Tax has not satisfied himself on the reasons recorded as alleged or otherwise. I deny that there has been any failure and/or neglect in complying with the provisions of Section 34 as alleged or otherwise."

The question before me is whether the Petitioner is not bound to prove the total absence of jurisdiction of the Income Tax Officer on the face of the record. If so, whether on a mere allegation in the Petition that reasons have not been recorded by the Income Tax Officer and that, the Commissioner was not satisfied I am bound to go into the evidence and insist that the Income Tax Officer is bound to produce before me the reasons recorded by him and the Commissioner's satisfaction in respect thereof. If anything what is apparent on the record is to be bound in the notice itself where it is mentioned in specific terms as follows:

"This notice is being issued after obtaining the necessary satisfaction of the Commissioner of Income Tax, Bombay City II".

Mr. Palkhiwala has contended that u/s 54 of the Act these reasons and the satisfaction of the Commissioner are privileged and that I should not therefore insist upon the same being produced. It is now well established that on questions of fact in matters under Article 226 the Court will not investigate into the facts unless compelled to do so for some compelling reasons. On the record it appears that the Income Tax Officer had recorded the reasons and the Commissioner was satisfied. There is also before me an affidavit in reply stating that these conditions precedent have been satisfied-The allegation of the Petitioner in this connection is apparently frivolous. I am of the opinion that there is complete proof that the conditions precedent have been satisfied and nothing further need be investigated as regards the allegation that these have not been satisfied. I, therefore, negative the contention of the Petitioner as contained in ground (c) of paragraph 18 of the Petition.

19. The next contention of the Petitioner arises from the ground (g) in paragraph 18 of the Petition. The Petitioner contends that the notice dated April, 2nd 1957 is vague and indefinite and that the Respondent has not at all applied his mind to the facts and circumstances of the case. Mr. Nariman contends that any notice u/s 34 must make a reference to the source or sources from which the escaped income according to the Income Tax Officer has arisen. Relying upon the language of Section 34(1) he also says that the notice must comply with the requirements contained in Sub-section (2) of Section 22 of the Act. He says that the notice in question does not refer to the source from which the alleged escaped income arose and mentions the year of assessment wrongly. He therefore says that the notice is altogether invalid.

20. If one looks at the provisions of Section 34, there is no statutory requirement at all for making any reference to the source from which the escaped income might have arisen. In my view in most of the cases it would be impossible for the Income Tax Officer to ascertain or determine and thereupon to mention in the notice u/s 34 the source from which the alleged escaped income must have arisen. In the contemplated further assessment proceedings it will be the business of the Income Tax Officer to find out the true nature and character of the income which might have escaped assessment. I for one am unable to appreciate how it would be possible to have recourse to the machinery of reassessment proceedings contained in Section 34 of the Act if it was absolutely essential for the Income Tax Officer to mention in the notice u/s 34 the source from which the alleged escaped income must have arisen. The whole question in the reassessment proceedings must be to find out the correct facts and to ultimately find out whether there was a case of "escaped income" and if so the Income Tax Officer would then find out the true source of such "escaped income". In my view considering the whole of the scheme of the Section 34 there is no statutory or other requirement that the source of income should be referred to or mentioned in notice issued u/s 34.

21. Mr. Nariman has drawn my attention to the case of *Chimanram Motilal v. Commissioner of Income Tax Central Bombay* 45 Bom. L.R. 125 : AIR 1943 Bom 132. For referring me to all the facts which were before the Court in that case Mr. Palkhiwala has drawn my attention to the fuller report of the case in *MESSRS. CHIMANRAM MOTILAL Vs. COMMISSIONER OF Income Tax, (CENTRAL), BOMBAY.* As appears from the statement of the case in that fuller report before the amendment of the Income Tax Act, 1939 a form was prescribed by the Revenue Board for notices issued u/s 34(1). This form contained the word "source" with reference to the escaped income and blank (space) was left after the word "source" for filling in the particulars of the source of escaped income. That was the form in which notice was served on the assessee in that case. The contention of the assessee in that case was that in the notice served on him the blanks in the form for filling in the particulars as to the "source" of the escaped income had not been filled, the requirement of the prescribed form was not complied with and accordingly the notice was invalid. In that case the question before the Court was

"Whether in the circumstances of this case the notice of reassessment issued to the applicant u/s 34 of the Income Tax Act was invalid or illegal for failure to specify that particular source of income that had escaped assessment?"

22. It is necessary before referring to the judgment of Beaumont C. J. in that case to observe that in 1939 Section 34 of the Income Tax Act was amended and that there is now no prescribed form containing the word "source" with reference to the escaped income. There is in existence only a printed form which is in practice used for issuing notices u/s 34, The notice in this case is admittedly issued in that printed form. There is nothing that is contained in this form which

is not complied with.

23. At page 127 (of 45 Bom LR); (at p. 132 of AIR), the learned Chief Justice observed as follows:

"It is said that notice ought to have specified the particular source or income which was alleged to have escaped assessment, and reliance is placed on the form of notice given in the Income Tax Manual, which does state the source of the income which is alleged to have escaped assessment. But that form is not statutory. All that is necessary u/s 34 is that a notice should be given which sufficiently draws the attention of the assessee to the case which he has to meet, and as, admittedly, the assessee in this case has only one source of income, namely, business, it seems to me plain that a notice saying that income from all sources had escaped assessment was quite sufficient to show them what the case was which they had to meet, namely, that some of their income from the Only source from which any income was derived had escaped assessment. The first question will, therefore, be answered by saying that the notice was valid."

24. The only question which arose before the learned Chief Justice was whether the notice was invalid or illegal for failure to specify particular source of income that had escaped assessment. The whole question arose because the form of the notice mentioned in the Income Tax Manual and prescribed by the Revenue Board contained the word "source" and provided blank space to be filled in as regards the source of income that had escaped assessment. If the prescribed form had not contained this word "source" and the particular blank space such a question could not have arisen. The observations made by the learned Chief Justice really were directed towards the necessity or requirement of filling in the blank space provided for mentioning the source of income for complying with the prescribed form. The learned Chief Justice was not construing the provisions of Section 34 but was construing the form prescribed. He construed the form very liberally. He in fact held that though nothing was filled in the blank space provided for the particulars of source of income since the Petitioner had only one source of income there was compliance with the form and notice was not invalid. He however, stated that u/s 34 the notice given should sufficiently draw the attention of the assessee to the case which he has to meet. On the facts of the case and the question which arose before him the learned Chief Justice made an observation which was not at all directed towards the construction of the provisions of Section 34. The learned Chief Justice referred to Section 34 because the notice was issued under that section and required mention of the source of escaped income. I am therefore unable to agree that the ratio of the decision in that case was that a notice u/s 34 must draw the attention of the assessee to the case which he has to meet. Before I hold that a notice u/s 34 must draw the attention of the assessee to the case which he has to meet, I must scrutinise in detail the language of that section and come to a finding that assessee was entitled to such notice. I however find that in the provisions of Section 34 there is nothing entitling an assessee to a notice of the case which he

has to meet. After a return is made for reassessment purposes u/s 34 the assessee would get information as to the case of the Department in connection with the alleged "escaped income". It is not at the initial stage of the notice that he is entitled to get the information. Such information could easily be got and would be available in the subsequent proceedings. In my view the source of the escaped income cannot always be specified and is not required to be specified in a notice u/s 34 of the Act.

25. In support of this contention that the notice was vague, Mr. Nariman referred me to the words in the notice, viz., "Whereas I have reason to believe that your income assessable to Income Tax for the year ending 31st March 1952 Assessment Year 1951-52 has escaped assessment". Mr. Nariman says that the words "for the year ending 31st March 1952" are contradictory of the words "assessment year 1951-52". He says that the year which ought to have been mentioned and in respect whereof subsequently the proceedings have been going on is the year ending 31st March 1951. He says that having regard to this contradiction the notice is vague and indefinite and I must accordingly hold that the respondents are not entitled to proceed further with the proceedings initiated by the notice.

26. Mr. Palkhiwala has rightly pointed out that there is no contradiction in the words "income assessable to Income Tax for the year ending 31st March 1952" and "assessment year 1951-52". He has referred me to the several sections of the Act and Finance Act and pointed out that the words "income for the year ending 31st of March 1952" have always been used with reference to the assessment year and have never been used with reference to the accounting year. He has also referred me to the notice of demand issued in pursuance of the provisions of the Income Tax Act wherein also the words "income for the year ending 31st March 1952" have been used with reference to the assessment year and not the accounting year. It is unnecessary to quote here all the aforesaid sections and Acts. There was in fact no contradiction in the contents of the notice and it is not invalid as contended by Mr. Nariman. It is important in this connection to point out that the Petitioner also never got confused by the alleged contradiction. In pursuance of the notice he made a return which is a statement "of total income and total world income during the previous year ended 31-3-1951". If there was contradiction in the phraseology of this notice as is contended by Mr. Nariman, it is impossible to understand how instead of making the return for the accounting year ending with 31st March 1952 he should have made the return for the accounting year ending 31-3-1951. In fact the Petitioner perfectly understood the contents of the notice. He attended to the further proceedings in relation to the accounting year ending with 31st March 1951 and assessment year 1951-52. He proceeded with these proceedings from April 1957 till April 1958 without raising any contention. The contention raised is Frivolous and made for the purpose of only a technical argument which is not sustainable. The notice complies with provisions of Section 22(2) of the Act and is valid.

27. The only contentions urged before me were the contentions contained in the grounds (c), (d), (e) and (g) mentioned in para 18 of the Petition. The other contentions contained in the Petition are not given up but no arguments have been advanced before me on these contentions as the Petitioners counsel was of the view that they were not substantial.

28. Having regard to my findings as herein before mentioned the Petition is dismissed with costs. The rule is discharged.

29. Petition dismissed.