
(1970) 07 CAL CK 0028
In the Calcutta High Court
Case No : Matter No. 135 of 1967

Ram Chandra Sarda

APPELLANT

Vs

Income Tax Officer, "B" Ward and Others

RESPONDENT

Date of Decision : 17-07-1970

Acts Referred:

Income Tax Act, 1961 — Section 271, 271(1), 274(2), 28(1)

Citation : (1970) 78 ITR 325

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : D. Pal and M. Seal, for the Appellant; K. Sen and Ajit Sen Gupta, for the Respondent

Judgement

1. The assessment of the petitioner, Ram Charidra Sarda for the assessment year 1963-64 was completed by the Income Tax Officer, "B" Ward, District 1(1), Calcutta, on the 31st March, 1965.

2. On the same day, i.e., 31st March, 1965, the aforesaid Income Tax Officer issued a notice u/s 274 of the Income Tax Act, 1961, (hereinafter referred to as the Act), read with Section 271 thereof. This notice is material for our purpose and is set out hereinbelow:

" NOTICE u/s 274 READ WITH SECTION 271 OF THE income tax ACT, 1961

No. PW/R. 340/B.

income tax Officer, Dt. I(I), Cal. Date: 31-3-1965

To

Sri Ram Chandra Sarda,

4, Dayahatta Street,

Calcutta.

Whereas, in the course of proceedings before me for the assessment year 1963-64, it appears to me that you have concealed the particulars of your income or deliberately furnished inaccurate particulars of such income and whereas the "penalty proceedings have to be referred to the Inspecting Assistant" Commissioner of Income Tax according to Sub-section (2) of Section 274 of the Income Tax Act, 1961; you are hereby informed that the case for levy of a penalty under Clause (c) of Sub-section (1) of Section 271 is being referred by me to the Inspecting Assistant Commissioner of Income Tax, Range XII (Cal.). Further proceedings in regard to the levy of a penalty will take place before the said Inspecting Assistant Commissioner of Income Tax as provided in Sub-section (2) of Section 274."

3. On the 24th February, 1967, i.e., after nearly two years from the completion of the assessment proceedings, the Inspecting Assistant Commissioner addressed the following notice to the petitioner:

" NOTICE u/s 274(2) READ WITH SECTION 271 OF THE Income Tax ACT, 1961

Office of the Inspecting Assistant Commissioner of Income Tax. Dated: 24-2-1967.

To

Sri Ram Chandra Sarda,

4, Dayahatta Street,

Calcutta.

Whereas the Income Tax Officer, "B" Ward, District 1(1), has, under Sub-section (2) of Section 274 of the Income Tax Act, 1961, referred your case to me in connection with the penalty proceedings under Clause (c) of Sub-section (1) of Section 271, and whereas it appears to me that you have concealed the particulars of your income or deliberately furnished inaccurate particulars of such income for the assessment year 1963-64.

You are hereby requested to appear before me at 11 a.m. on 2-3-1967 and show cause why an order imposing a penalty on you should not be made u/s 271(1)(c) of the said Act. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made u/s 271(1)(c)."

4. It is these notices dated the 31st March, 1965, and the 24th February, 1967, and the proceedings for the imposition of penalty initiated on the basis thereof which are challenged before me in this application.

5. Dr. Debi Pal appearing on behalf of the petitioner drew my attention to the provisions of Section 271(1) of the Act which, in so far as is material for the present application, runs as follows:

"(1) If the Income Tax Officer or the Appellate Assistant Commissioner, in the course of any proceedings under this Act, is satisfied that any person-

(a) has without reasonable cause failed, to furnish the return of his total income which he was required to furnish under Sub-section (1) of Section 139 or by notice given under sub section (2) of section , } .39 or Section 148 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by Sub-section (1) of Section 139 or by such notice, as the case may be, or

(b) has without reasonable cause failed to comply with a notice under Sub-section (1) of Section 142 or Sub-section (2) of Section 143, or

(c) has concealed the particulars of his ; income or deliberately furnished inaccurate particulars of such income, he may direct; that such person shall pay by way of penalty ..."

6. Reference is also made to the provisions of Section 274(2) of the Act, which are as follows:

"274. (2) Notwithstanding anything contained in Clause (iii) of Sub-section (1) of Section 271, if in a case falling under Clause (c) of that Sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

7. With reference to the above provisions of the Act it is submitted. that in penalty proceedings to which the provisions of Section 271(1)(a) and Section 271(1)(b) apply, i.e., where it is a case of failure to furnish the return without reasonable cause or non-compliance with notices mentioned in the above Sub-sections without reasonable cause, the Income Tax Officer is the appropriate authority to initiate and complete the penalty proceedings. In a case, however, which is governed by Section 271(1)(c), i.e. where the penalty is to be levied for concealment of income or deliberate furnishing of inaccurate particulars of income, the legislature has, introduced a different scheme for the imposition of penalty. In such a case, if. the minimum penalty imposable exceeds a sum of rupees one thousand, the Income Tax Officer has to refer the case to .the Inspecting Assistant Commissioner, who is a higher officer in the hierarchy, by virtue of the. provisions of Section 274(2) of the Act. Upon such a reference being made to the Inspecting Assistant Commissioner by the Income Tax Officer, the Inspecting Assistant Commissioner shall have all the powers conferred under Chapter XXI of the Act for the purpose of imposition of penalty.

8. Putting it in a slightly different way, it is submitted that in a case where the minimum penalty imposable exceeds a sum of rupees one thousand, the Income Tax Officer is under a statutory duty to refer the case to the Inspecting Assistant Commissioner. In such a case, the Income Tax Officer is a mere referring

authority. After the case has been referred to the Inspecting Assistant Commissioner, the Inspecting Assistant Commissioner stands substituted in place of the Income Tax Officer. In such a case the Inspecting Assistant Commissioner has to exercise all the powers and discharge all the functions of the Income Tax Officer for such imposition of penalty.

9. In answer to the contention raised on behalf of the revenue that the satisfaction of the Income Tax Officer " in the course of any proceedings under this Act " is sufficient compliance with the requirements of Section 271(1) of the Act, even in a case where Section 274(2) applies and the imposition of the penalty has to be made by the Inspecting Assistant Commissioner, it is pointed out by Dr. Pal that such a construction runs counter to the entire scheme of Chapter XXI of the Act. It is submitted that penalty is imposed on an assessee u/s 271(1)(c) of the Act, on the ground of his contumacious conduct. The imposition of penalty entails serious consequences and the relevant provisions are very stringent in nature. In a case where the amount of penalty is rupees one thousand or less, the legislature thought it fit to vest this power of imposition of penalty in the Income Tax Officer who is the assessing authority. In case, however, where the amount of penalty imposable exceeds rupees one thousand, the legislature thought it fit to vest the power in an officer of a higher rank, viz., the Inspecting Assistant Commissioner. In a case where the penalty is to be imposed by the higher authority in the hierarchy, viz., the Inspecting Assistant Commissioner, it is not permissible to introduce a dichotomy or bifurcation of the powers and functions and to hold that the imposition of the penalty is to be by the higher officer whereas the satisfaction which is a condition precedent to the exercise of that power should be left to the officer of the lower rank, viz., the Income Tax Officer. In other words, where a particular officer is the person designata vesta with the exclusive power to impose a penalty, viz., the Inspecting Assistant Commissioner in a case which is governed by Section 274(2) of the Act, the ordinary rules of construction of statutory powers and functions would require that the officer who has to exercise that power must also perform the functions which are conditions precedent to the exercise of that power.

10. Reference is made in this connection to a decision of the Supreme Court in the case of Daluram Pannalal Modi Vs. The Assistant Commissioner of Sales Tax etc., . In that decision, the Supreme Court quoted with approval a passage from the decision of the Judicial Committee of the Privy Council in the case of Mungoni v. Attorney-General of Northern Rhodesia [1960] A.C. 336 . The Supreme Court also observed that the decision of the Judicial Committee in Mungoni's case had been cited with approval in an earlier decision of the Supreme Court in the case of Hazrat Syed Shah Mastershid Ali Al Quadari Vs. The Commissioner of Wakfs, West Bengal, .

11. Reference was next made to the decision of the Judicial Committee of the Privy Council in the case of Mungoni v. Attorney-General of Northern Rhodesia. It

was held by Lord Denning in that case that where the powers and duties are interconnected ;and it is not possible to separate one from the other in such wise that powers may be delegated while duties are retained and vice versa, the delegation of powers taken with it the duties. The power and the duty or the conditions or limitations on the exercise of the power are so interwoven that it is not possible to split one from the other so as to put the duty or the conditions of the limitation for the exercise of the power upon one person, and the power in another person. Whosoever exercises the power, he it must be who has to carry out the duty or satisfy the condition or limitation on the exercise of the power.

12. Applying the above principles to the facts of the present case, it is submitted that the power of imposition of penalty and the condition or limitation to the exercise of that power, viz., "satisfaction in the course of proceedings under this Act" are so closely interwoven and interlinked that one cannot be separated from the other. Consequently, it cannot be postulated that the exercise of the power of imposition of penalty would be by the Inspecting Assistant Commissioner whereas the "satisfaction"" would be the satisfaction of the Income Tax Officer. In other words, since in a case governed by Section 274(2) of the Act the Inspecting Assistant Commissioner has to impose the penalty, it is he who alone will also be subject to the condition or limitation on the exercise of that power, viz., formation of a "satisfaction in the course of proceedings under this Act."

13. It was next submitted that the "satisfaction" of the. appropriate autho rity was to be arrived at "in the course of proceedings under this Act". The question was mooted what are the. "proceedings under this Act" to which Section 271(1) of the Act makes reference ? According to Dr. Pal, for the assessee, these "proceedings" must mean some "proceedings" other than the penalty proceedings, in the course of which the satisfaction has to be arrived at.

14. In support of this proposition, reference was made to a decision of the Madras High Court in the case of Sivagaminatha Moopnar and Sons Vs. Income Tax Officer, II Circle, Madurai and Another, . Reliance was placed by Dr. Pal on two sentences at page 612 of the report, which is in the following terms:

"The penalty proceedings should be "in the course of any proceedings" under the Act. In the context, therefore, the proceedings referred to in Section 28(1) are proceedings other than penalty proceedings "

15. On a close reading of the judgment, however, it appears that the above observation was merely a recording of the contention of a party and not the decision of the Madras High Court. This will be clear if the entire paragraph in which those two sentences occur is reproduced. The appropriate paragraph at pages 612 and 613 of the report is quoted below:

"The next point that"has been raised for argument is as regards the proper construction of Section 28 on the basis that the provision is valid. u/s 28(I)(a) the Income Tax Officer or the other authorities named have to be satisfied that the assessee has concealed the particulars of his income or deliberately furnished

inaccurate particulars of such income before he or they may levy the penalty. This satisfaction must be in the course of any proceedings under this section. Under Sub-section (3) the assessee should be heard or should be given a reasonable opportunity of being heard before a penalty is imposed. The points made in regard to these provisions are: The penalty proceedings should be "in the course of any proceedings" under the Act. In the context, therefore, the proceedings referred to in Section 28(1) are proceedings other than penalty proceedings, that is, assessment, reassessment or refund proceedings. As the penalty proceedings must be completed "in the course of any proceeding under this Act" the latter proceeding must be pending at the time when the penalty is levied. The attack on the penalty proceedings against the petitioner is grounded upon the assessment proceedings having been completed before the penalty was actually levied by the order of the Income Tax Officer, the contention being, (a) that there was no "other proceedings under the Act" pending before the Income Tax Officer on the date when he levied the penalty and (b) that in any event the other proceedings--the assessment proceedings--had finally terminated by the order of the Income Tax Commissioner or the Income Tax Appellate Tribunal in respect of the two sets of assessments."

16. Although the expression that the "proceedings" under the Act referred to in Section 28(1) of the Indian Income Tax Act, 1922, which, in so far as the portion is concerned, is identical with Section 271(1) of the Act, should be considered to mean proceedings other than penalty proceedings has been noted, their Lordships of the Madras High Court do not appear to have come to a definite or clear finding on this contention. This decision of the Madras High Court, therefore, in my view, is of no assistance to Dr. Pal.

17. Reference was made to a decision of the Supreme Court in this connection in the case of Commissioner of Income Tax, Madras, and Another Vs. S.V. Angidi Chettiar, . In that case, Section 28 of the Indian Income Tax Act, 1922, came up for consideration before the Supreme Court. It was contended on behalf of the assessee that not only had the Income Tax Officer to be satisfied in the course of the assessment proceedings, but he had also to initiate the penalty proceedings by the issue of a notice to the assessee prior to the completion of the assessment proceedings before he could assume power and jurisdiction to impose the penalty. Unless all these steps were taken before the assessment proceedings were completed, no penalty could be validly imposed. This contention was repelled by their Lordships of the Supreme Court. Their Lordships held that the satisfaction in the course of the assessment proceedings was sufficient for a valid initiation of the penalty -proceedings. The following observations of the Supreme Court, which are to be found at page 745 of the report, may be quoted:

"The power to impose penalty u/s 28 depends upon the satisfaction of the Income Tax Officer in the course of proceedings under the Act; it cannot be exercised if he is not satisfied about the existence of conditions specified in

Clauses (a), (b) or (c), before the proceedings are concluded. The proceeding to levy penalty has, however, not to be commenced by the Income Tax Officer before the completion of the assessment proceedings by the Income Tax Officer. Satisfaction before conclusion of the proceeding under the Act, and not the issue of a notice or initiation of any step for imposing penalty is a condition for the exercise of the jurisdiction."

18. According to Dr. Pal this decision of the Supreme Court is an authority for the proposition that the satisfaction of the appropriate authority should be in the course of the assessment proceedings. Therefore, it is submitted, that such satisfaction cannot be arrived at :in the course of the penalty proceedings.

19. In my view, this contention of Dr. Pal is well-founded. The decision of the Supreme Court referred to above seems to clearly indicate that the satisfaction of the appropriate authority, which was the Income Tax Officer u/s 28(1) of the old Act, and which satisfaction is a condition for a valid assumption of jurisdiction in penalty proceedings, should be in the course of the assessment proceedings.

20. Even on a plain reading and construction of Section 271(1) of the Act, I am of the view that the satisfaction in the course of "proceedings under this Act", must mean some proceedings other than the penalty proceedings. It may in a proper case be an assessment proceeding of reassessment proceeding or even proceedings in the course of which the penalty is imposed. Since the "satisfaction" is a condition precedent for the exercise of power u/s 271 of the Act, it must be arrived at, in my view, aliunde, before the penalty proceedings are commenced.

21. In my view, the principal contention of Dr. Pal for the assessee is also well-founded. The function or duty to form the satisfaction and the power to impose a penalty appear to be so closely interwoven and interlinked that it should be held to be a part of an integrated process. The formation of the satisfaction and the imposition of the penalty cannot, in my view, be bifurcated so that the satisfaction can be that of the Income Tax Officer, whereas the imposition of the penalty would be by the Inspecting Assistant Commissioner. Such a dichotomy or bifurcation of powers and functions is not warranted on the language of the statute.

22. It is to be further noted that in a case which is covered by Section 274(2) of the Act the Inspecting Assistant Commissioner has all the powers of the Income Tax Officer for the imposition of penalty. There can be no doubt that in a case where the penalty imposable is one thousand rupees or less, the duality of function and power, i.e., the formation of the satisfaction and the imposition of the penalty vests in the same person, i.e., the Income Tax Officer. In a case which is referred to the Inspecting Assistant Commissioner u/s 274(2) of the Act, this duality of function and power must necessarily also vest in the same person, i.e., the Inspecting Assistant Commissioner.

23. I make it clear, however, that this satisfaction of the Inspecting Assistant

Commissioner in a case which is referable to Section 274(2) of the Act and which satisfaction is to be arrived at "in the course of the proceedings, under this Act" must necessarily be of a tentative or prima facie nature. There can be no finality about the formation of such satisfaction. It is merely the satisfaction of the Inspecting Assistant Commissioner that the question whether the assessee may be held liable to a penalty or not under the Act requires investigation. Apart from this modicum of satisfaction the entire thing is wide open. It may be that, in the ultimate analysis, it will be found out that the case is not a fit one for the imposition of penalty. The final satisfaction on the question as to whether the penalty is to be imposed or not can only be arrived at after the proceedings have commenced and the assessee has been given a reasonable opportunity of being heard in the penalty proceedings according to the mandate of the statute.

24. But, then, it is said on behalf of the revenue, that to put this interpretation on Section 271 of the Act read with Section 274(2) thereof would be to make the scheme of imposing penalty unworkable. It is submitted that the Income Tax Officer can come to his conclusion about the question, whether the penalty is imposable or not and whether the amount is likely to exceed rupees one thousand or not, only towards the conclusion of the assessment proceedings. Unless the quantification as to the taxable income has been finally arrived at by the Income Tax Officer, it is not possible for him to ascertain as to whether the assessee has concealed the particulars of his income or has furnished inaccurate particulars of his income and, if so, what would be the quantum of possible penalty. In the view which the assessee wants the court to accept, it would be necessary for the Income Tax Officer to keep the assessment proceedings in abeyance and not pass the order of assessment until the case has been referred to the Inspecting Assistant Commissioner u/s 274(2) of the Act and the prima facie satisfaction of the Inspecting Assistant Commissioner has been arrived at. This would be casting a burden on the Income Tax authorities which it would be difficult, if not impossible, for them to discharge. Consequently, such an interpretation should not be accepted.

25. In my view, this contention on behalf of the revenue cannot possibly alter the construction or interpretation of statutory provisions. Hardship or difficulty is not a relevant consideration in the interpretation of a fiscal statute. It is true that such an interpretation would cast a duty of a greater co-ordination and greater vigilance on the part of the taxing authorities. But that is not a bad thing in the present administrative set up. It does not mean that the scheme cannot be worked out. Undoubtedly, in the interpretation that I have put on the sections, the Income Tax Officer in a case where the penalty imposable exceeds one thousand rupees has to defer the passing of the final order of assessment until the case has been referred to the Inspecting Assistant Commissioner u/s 274(2) of the Act and his tentative satisfaction as to whether the penalty proceedings should be commenced or not is arrived at.

26. It is well-settled that in the case of interpretation of the taxing provisions a

construction which is favourable and beneficial to the assessee has to be adopted.

27. If the legislature, in its wisdom, feels that this interpretation would work undue hardship or difficulty in the administration of the Act it is its own particular domain to take necessary steps to alleviate the hardships or remove the difficulties. After a careful and anxious consideration of the relevant statutory provisions, however, I am of the view that the only possible interpretation is that which, in this case, favours the assessee's contention.

28. In the instant case, the assessment was completed by the Income Tax Officer on the 31st March, 1965, as noted above. The notice issued by the Income Tax Officer u/s 274 read with Section 271 of the Act, which has been set out earlier and is dated the 31st March, 1965, merely states that the "case for levy of a penalty" is being referred to by the Income Tax Officer to the Inspecting Assistant Commissioner, Thereafter, the notice u/s 274(2) read with Section 271 of the Act is issued by the Inspecting Assistant Commissioner on the 24th February, 1967, nearly two years after the completion of the assessment proceedings.

29. There is nothing on record to show that, before the completion of the assessment proceedings, i.e., the 31st March, 1965, the Inspecting Assistant Commissioner had arrived at the modicum of satisfaction which, in my view-he was required to do under the mandate of the statute, and the nature and extent whereof has been discussed by me earlier. Consequently, it must be held that, in the absence of proper compliance with the provisions of Section 274(2) of the Act read with Section 271 thereof, the penalty-proceedings in the instant case are incompetent.

30. After the conclusion of the hearing of this case and at the time when I was about to deliver my judgment it was mentioned by counsel on behalf of the revenue that subsequent to the hearing of this case before me a judgment has been delivered by a Division Bench of this court in an Income Tax reference which, according to the revenue, concludes the question which I have to decide. Thereupon, I set down the matter for-further hearing. Full arguments have been advanced by both the parties on the basis of the judgment of the Division Bench.

31. That judgment of the Division Bench was delivered in the case of Commissioner of Income Tax v. A. K. Das (income tax Reference No. 44 of 1967, decided on the 27 and 28th August, 1969).

32. With reference to the judgment in the case of Commissioner of Income Tax Vs. A.K. Das, , Dr. Pal drew my attention to the two questions which fell for consideration in that case. The first question was referred to by the Tribunal at the instance of the Commissioner of Income Tax who was the applicant for reference in that case. The question which was referred at the instance of the Commissioner is in the following terms;

"Whether, on the facts and in the circumstances of the case, and on a proper

interpretation of a Section 271(1)(iii) and Section 274(2) of the Income Tax Act, 1961, the Tribunal was right in reducing the penalty imposed on the assessee below the minimum prescribed u/s 271(1)(iii) of the said Act? "

33. In the case before the Division Bench after the application for reference was made by the Commissioner of Income Tax in the prescribed form, the assessee in his reply to the Commissioner's application suggested the following question for reference to the High Court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the penalty proceedings were properly initiated and that the penalty orders passed by the Inspecting Assistant Commissioner were valid in law?"

34. This question was also referred at the instance of the assessee.

35. Dealing with the maintainability of a reference of a question by the Tribunal in a case at the instance of an assessee who is not the applicant for reference, P. B. Mukharji J. (as he then was), after a review of the authorities and the appropriate sections of the Income Tax Act, came to the following conclusion:

"We hold that Section 256 of the Income Tax Act, 1961, lays down the whole procedure how reference has to be made. That procedure, in our view, does not give the Appellate Tribunal any jurisdiction or power to admit cross-objections within the meaning of the CPC to raise a question of law not raised by an application in the prescribed form and not within the time prescribed and make a reference of the same to this court. We hold further that it is a course which can never be taken specially where it is beyond the express limitations stated, in Section 256 of the Income Tax Act. Our observations should not be understood as limiting any scope for argument on the question raised on the reference according to the procedure laid down in Section 256 even though that argument is not raised by way of a question. . . . But that is not the same as saying that a wholly unrelated question can be allowed to be raised which was not raised by way of an application in the prescribed form and within the statutory limitation."

36. On the basis of the above observations, it was submitted by Dr. Pal that since the Division Bench held that the reference of the second question at the instance of the assessee was incompetent and need not be answered, the observations in the judgment with regard to the merits of the second question were really obiter. Since the first question related to the quantum of penalty and the second question was held to be not competent and did not require an answer, Dr. Pal submitted that the decision of the Division Bench had no bearing on the question before me.

37. Alternatively, assuming that the observations on the second question by their Lordships of the Division Bench were not obiter but amounted to a decision, it was submitted on behalf of the assessee that the second question was quoted different from the question that I have to decide in the present case. The second

question, it was pointed out, was concerned with the point of time when the penalty proceedings can be said to commence within the meaning of Section 275 of the Act. The assessee contended that the penalty proceedings commenced when the Inspecting Assistant Commissioner issued a notice after the case has been referred to him u/s 274(2) of the Act. The revenue contended that the proceedings commenced when the Income Tax Officer referred the matter to the Inspecting Assistant Commissioner or when the Income Tax Officer issued a notice to the assessee u/s 271 of the Act communicating his decision to refer the matter to the Inspecting Assistant Commissioner. In the facts of the case before the Division Bench, both the reference of the case to the Inspecting Assistant Commissioner and the issue of the notice by the Income Tax Officer to the assessee were before the completion of the assessment proceedings. Hence, the penalty proceedings were held to be competent.

38. It was submitted on behalf of the assessee that in the present case we are not concerned with the question as to when the penalty proceedings commence. In fact, Dr. Pal fairly stated before me that he had no quarrel with the decision of the Division Bench on this point in the present application. Although the matter may require consideration on an appropriate occasion, this is not the occasion in the present case.

39. In my view, the submissions of Dr. Pali for the assessee should be accepted. The second question that their Lordships of the Division Bench had to consider was the point of time when the proceedings commenced as will appear from the discussion of P. B. Mukharji J. (as he then was) in the judgment. That is riot the question that I am concerned with here. The question of the "satisfaction in the course of proceedings under this Act" by the appropriate authority and the question as to who is the appropriate authority to arrive at the satisfaction in a case which is covered: by Section 274(2) of the Act do not appear to have been canvassed before or decided by their Lordships of the Division Bench. Therefore in my view, the decision of the Division Bench in the case of Commissioner of income tax v. A. K. Das (income tax Reference No. 44 of 1967) is of no assistance to the revenue in the present case.

40. That disposes of all the contentions raised, on behalf of the parties.

41. The contention of the petitioner, therefore, succeeds.

42. With regard to the reliefs claimed, there is, in my view, no infirmity attached to the notice dated the 31st March, 1965, which has been issued by the Income Tax Officer. In the view that I have taken, there is no infringement or contravention of any statutory duty with regard, to he issue of the notice. Therefore, the only notice that the petitioner is entitled to be relieved against is the notice issued by the Inspecting. Assistant Commissioner on the 24th February, 1967, u/s 274(2) read with Section 271 of the Act.

43. In the result, this application succeeds and the rule is made absolute to the extent indicated above. There will be a writ in the nature of mandamus directing

the respondent No. 2 to forthwith recall, cancel and withdraw the notice dated the 24th February, 1967, issued u/s 274(2) read with Section 271 of the Income Tax Act, 1961, for the assessment year 1963-64. There will also be a writ in the nature ;of prohibition restraining "the respondents to forbear from giving effect to or taking any steps in pursuance of the notice dated the 24th February, 1967, issued by the respondent No. 2.

44. There will be no order as to costs.