(1953) 02 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 36 of 2-5-1952

Roller Flour Mills APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 06-02-1953

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 24
Civil Procedure Code, 1908 (CPC) — Order 30 Rule 1
Constitution of India, 1950 — Article 226
Government of India Act, 1935 — Section 226
Income Tax Act, 1842 — Section 106 , 108
Income Tax Act, 1922 — Section 22(2), 34, 45, 64, 66
Income Tax Act, 2001 — Section 34
Taxes Management Act, 1880 — Section 57(3)

Citation : AIR 1953 P&H 88

Hon'ble Judges : Teja Singh, C.J;Gurnam Singh, J

Bench : Division Bench

Advocate : Jagan Nath and Achhru Ram, for the Appellant; Chandan Ram Yogi and S.M. Sikri, for the Respondent

Judgement

Teja Singh, C.J.—This is a petition under Article 226, Constitution of India for issue of a writ of certiorari or "any other kind of writ or writs or orders as may be appropriate in the circumstances" against the Income Tax Officer, A-Ward, Patiala, The Petitioner is described as Messrs. Roller Flour Mills, Patiala and it is stated in the petition that it was a firm carrying on business of running the Flour Mills and Rice Mills. The reason why it became necessary for the Petitioner firm to make the petition was that the respondent issued a notice on 26-3-1952 calling upon the firm to file a return within 35 days of the receipt of the notice of the total income and of the total world income assessable for the year ending Chet, 2004, B. The respondent resisted the petition.

2. Before I deal with the merits of the petition I consider it desirable to dispose of a preliminary point that has arisen because of the allegations contained in the petition regarding the dissolution of the firm. The petition was signed and

submitted by Mr. J.N. Kaushal who described himself as "Advocate for the Petitioner''s firm Messrs Roller Flour Mills, Patiala". The power of attorney in favour of the counsel was signed by one H.R. Modi. It is common knowledge that only a natural or a juristic person can move a Court of Law. A partnership or a firm is neither a natural person nor a legal entity and Order 30, Rule 1, which enables any two or more persons claiming or being liable as partners and carrying on business in British India to sue or be sued in the name of the firm is an exception to the rule. This rule does not apply to petitions under Article 226 of the Constitution as they are not suits. Nor do I think it was open to the partners of the Petitioner firm to make the petition in the name of the firm after it had been dissolved on the analogy of Order 30, Rule 1. The perusal of the rule goes to show that persons who wish to take'' advantage of it and bring a suit in the name of a dissolved firm must be partners on the day the cause of action accrued. This means that the partnership must be in existence on the day of the accrual of the cause of action. In the present case, on the Petitioner''s own showing the cause of action to make a earthier under Article 226 accrued on 20-3-1952, when the respondent gave it the notice, but the partnership had been dissolved about four years earlier.

It was urged by Mr. Achhru Ram, learned Counsel for the Petitioner that because the respondent gave the notice to the firm and not to any of its erstwhile partners the firm as such had the right to make the petition. In my judgment there is no force in this argument because whatever be the position of the respondent the action taken by the Petitioner-firm must be consistent with the allegations made by it and when it is admitted on its behalf that dissolution of the firm took place long before the respondent''s notice and the partnership did not subsist any longer, the firm as such could not make the petition. The other reason why the Petitioner-firm could not take advantage of the form of the respondent''s notice is that the respondent does not admit that the firm had dissolved and for this reason he had to issue notice to the firm, but the Petitioner''s case is-different. I wish also to add that even if it be conceded that because the respondent gave the notice to the firm this petition could be made in the firm''s name, it should have been signed by all the persons who were its partners and no one partner could sign on behalf of others. The condition in a subsisting firm is altogether different because each partner in law is the agent of others, but after the firm is dissolved'' there are no partners and consequently the question of one''s being an agent for the other docs not arise.

3. It was also urged by the Petitioner''s learned Counsel that the petition may be treated as one by the partners of the firm. I am inclined to think that this request cannot be accepted, first because we do not know who the partners of the firm were, and secondly the petition is not signed by any one of them. It is true that in the power of attorney that H.R. Modi executed in favour of the counsel who submitted the petition he claimed to be the managing partner of the firm, but the petition itself is silent on the point and I do not think that a description of a person contained in the power of attorney can be treated as a

part of the petition or evidence of the fact stated therein. In the circumstances I hold that the petition before us is not a proper petition and is liable to be dismissed for this reason. In view, however, of the fact that the respondent did not raise this objection and had he done this it is probable that the petition would have been amended, I would not like to throw out the petition merely because of, the technical defect but would proceed to deal with the point raised by the respondent regarding the maintainability of the petition.

4. The following is the operative part of the notice issued by the respondent which has given rise to this petition:

Whereas I have reason to believe that your income assessable to Income Tax for the year ending Chet, 2004 Bikrami has 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 35 days of the receipt of this notice, a return in the attached form of your total income, etc.

It was mentioned in the notice that it was issued u/s 34 (income tax Act) but there way nothing to show which Act was meant. Both sides are agreed that it conforms to the provisions of Section 34, Patiala & East Punjab States Union Ordinance of 2006 and the Indian Income Tax Act as amended up to 1948. Since the parties are not agreed as to the applicability of the above-mentioned provisions of law, it appears to be necessary to say something about the Income Tax law that was in force in the erstwhile Patiala State and the subsequent changes before and after the formation of the Union. The Act in force in Patiala during the year for the income of which the respondent had called for the return was the Patiala Income Tax Act (8 of 2001). The relevant part of Section 34 of that Act reads as follows:

34(1). If in consequence of definite information which has come into his possession the Income Tax Officer discovers that income, pro-fits or gains chargeable to Income Tax have escaped assessment in any year, or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act, the Income Tax Officer may, in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years, and in any other case at any time within four years of the end of that year, serve on the person liable to pay tax on such income, profits or gains or in the case of a Company on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 22, and may proceed to assess or reassess such income, profits, etc. and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

5. After the formation of the Patiala and East Punjab States Union which took

place on 20-8-1943, the above Act which had become applicable to the whole Union was amended by Patiala and East Punjab States Union Finance Ordinance (1 of 2006) and it was laid down by Section 23(B) of the Ordinance that a new section shall be substituted for the old Section 34. The following are the relevant parts of the substituted section:

34. (1) If-

the to that Officer believe reason omission failure part of; assessee make return income year disclose fully truly material necessary income, profits gains chargeable Income Tax escaped assessment year, under-assessed, assessed too low rate, have made subject relief if excessive loss depreciation allowance computed, or< his facts all at or on for has been any an a Act, under 22 Section by and of> (b) notwithstanding that there has been no omission or failure as mentioned in Clause (a) on the part of the assessee the Income Tax Officer has in consequence of information in his possession reason to believe that income, profits or gains, chargeable to Income Tax have escaped assessment for any year, or, have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed:

He may in cases falling under Clause (a) at any time within eight years and in cases falling under Clause (b) at any time within four years of that year, serve on the assessee...a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 22 and may proceed to assess or re-assess such income, etc. or compute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice issued under that sub-section.

6. Later on after the Constitution of India had been adopted by our Union, by virtue of the Indian Finance Act, 1951 the Indian Income Tax Act (11 of 1922) as amended by the Indian Income Tax (Amendment) Act of 1948 was made applicable here. Section 34, Patiala Income Tax Act of 2001 Bikrami was word for word the same as Section 34, Indian Income Tax Act of 1922 as inserted and amended by an Act of 1939 and Section 34, Patiala and East Punjab States Union Finance Ordinance of 2006 given above reproduces the section as amended and inserted by the Indian Income Tax (Amendment) Act of 1948.

7. As I have already observed the main relief claimed by the Petitioner in the petition was the issue of a writ of certiorari but on the objection of Mr. S.M. Sikri, learned Counsel for the respondent, that a writ of certiorari could not be issued to the respondent, the Petitioner''s learned Counsel, Mr. Achhru Ram, changed his position and prayed for a writ of mandamus. He contended: (1) That since the Income Tax law applicable to Patiala State during the year for the income of which the return was called for by the respondent was the Patiala Act of 2001 notice for return could only be issued u/s 34 of that Act: (2) That neither Section 34, Patiala Ordinance of 2006 nor that of the Indian Income Tax Act as amended

upto 1948 was retrospective; (3) That before a notice u/s 34, Patiala Act of 2001 could issue there should have been a definite information before the respondent and in consequence of that information the respondent should have discovered that income, etc. for the year in question has escaped assessment and since the notice given by the respondent to the Petitioner does not even state that the preliminary condition for his taking action u/s 34 of the said Act was satisfied he had not jurisdiction to issue the notice and the same was liable to be quashed.

8. Mr. S.M. Sikri submitted as follows:

(1) So far as the issue of notice was concerned it was governed by law that was in force at the time it was actually issued, i.e. on 26-3-1952, and since by that time not only the Patiala Act of 2001 Bk. had been amended by the Ordinance of 2006 but the Indian Income Tax Act as amended up to date had also been made applicable to the Union, all that was necessary to do for the respondent before the issue of the notice was to state in the words of amended Section 34 that he had reason to believe that the income assessable to Income Tax for a particular year had escaped assessment and this Act having boon clearly stated in the notice no question of want of jurisdiction or illegality of the proceedings arose. (2) The objection raised by the Petitioner did not affect the question of the respondent''s jurisdiction to issue the notice and could be raised before the respondent who was quite competent to decide it. In the circumstances no writ could be issued quashing the notice or prohibiting further proceedings. (3) Should the respondent refuse to entertain the Petitioner''s objection or should he decide It against the Petitioner it would be open to the latter to prefer an appeal from the respondent''s order to the Assistant Commissioner, a second appeal to the appellate Tribunal and a revision to the Commissioner of Income Tax and in case, of necessity he can even apply for a reference to the High Court and then prefer a further appeal to the Supreme Court under the provisions of the Income Tax Act. (4) The scheme of the Income Tax Act is the same as that of English law on the point and the intention of the Legislature is that in all matters relating to the assessment of Income Tax the liability of a person to the tax and the amount of the tax assessed decisions of the Tribunals constituted under the Act should be final and no Court has any power to interfere with them. (5) This petition is not maintainable because of the other remedies open to the Petitioner.

9. Mr. Achhru Ram conceded that the objection that he has raised with regard to the applicability of Section 34, Patiala Ordinance of 2006 and the Indian Income Tax Act of 1922 as amended upto 1948 can be taken before the respondent. He also conceded that if the respondent decided against the Petitioner remedies as pointed out by the respondent''s counsel were open to the Petitioner to have the respondent''s decision set aside, but he argued that this did not debar him from approaching the High Court under Article 226 for issue of an appropriate writ because it was a case of total want of jurisdiction. Learned Counsel cited a number of authorities in support of his contention, but before I deal with them I wish to examine the submission made by Mr. Sikri that the point raised by the

Petitioner does not involve a question of jurisdiction.

10. The point, as stated above, is whether notice should have issued u/s 34, Patiala Income Tax Act of 2001 Bk. or under that of the subsequent enactments. The perusal of the original Section 34 and the one amended later goes to show that the reason for issue of a notice has to be the same in both the cases, that is to say the Income Tax Officer believes that income, profits or gains for a particular year have escaped assessment, etc. No doubt the word used in the earlier enactment is "discovers" but there is ample authority for the proposition that it means the same thing as "reason to believe". It is also true that according to the section as it stood in 2001 Bk. the basis of discovery must! be a definite information which has come into the possession of the Income Tax Officer while under the amended section the belief may be formed merely by reason of the omission or failure on the part of the assessee to make a return of his income. It was argued by Mr. Achhru Ram that in a case where information of the kind required by Section 34, Patiala Act of 2001 is wanting there can be no discovery and consequently no notice can issue. It is not necessary to deal with this question at this stage and all that I wish to point out is that the operative part of both the sections being the same the question whether one section applied or the other does not affect the jurisdiction of the Income Tax Officer to issue notice and it will be within the power of the respondent to decide it if and when raised before him in the course of the proceedings that he intends to start. The material question that will have to be decided is whether any income, profits or gains made by the Petitioner-firm during the year in question has escaped notice and it cannot be denied that this is a question of fact which can only be decided by the respondent. Notice contemplated by Section 34 is merely a method of procuring the presence of the Petitioner before the respondent with a view to determining that question and I fail to see how any defect therein can be regarded as a defect of jurisdiction.

11. Let us assume for the sake of argument that the point does involve the question of jurisdiction. Can it be held that it is a case of total want of jurisdiction and if not, is a petition for writ a proper remedy, when the Petitioner can have the same point decided in addition in the Income Tax authorities by the High Court as well as the Supreme Court? To start with Mr. Achhru Ram relied upon para. 1396 of Halsbury''s Laws of England, Vol. 9, Edn. 2, p. 819 which deals with prohibition. The words of the paragraph are:

With certain exceptions, the issue of the writ of prohibition, though not of course, is of right and not discretionary, and the superior Court cannot refuse to enforce public order in the administration of the law by the denial of a grant of the writ; smallness of the matter in dispute and delay on the part of the applicant are not in themselves grounds for a refusal. The writ, however, cannot be claimed, as of right, unless the defect of jurisdiction is clear nor will it, as a rule, be granted where an amendment in a plea will cure the alleged defect, nor where a specific remedy is given by a statute which in effect substitutes the statutory remedy for the remedy by prohibition.

This paragraph cannot help the Petitioner for two reasons. One is that even if the point raised affects the jurisdiction the defect of jurisdiction is not by any means clear. The second is that as I shall show hereafter, the specific remedies provided to the Petitioner under the Income Tax Act are intended to substitute, them for the remedy by prohibition.

12. Mr. Achhru Ram also relied upon - ''Rex v. Kensington Income Tax Commissioners'' (1914) 83 LJKB 1439 (A). In that case it was held that prohibition will lie to prevent the Commissioners of the place of residence of the respondents from making any assessment in respect of such profits. The facts were that who was a resident of South Kensington was ''a partner in the firm of A.F. & Co. which carried on business in Bolvia and which did not own any property or carry on any business in the United Kingdom. On 7-1-1912 all the property and business of the firm were transferred to a limited company and since that date the Appellant had no interest in the business or property of the firm except as holding shares in the company and as a director. He had paid Income Tax on these shares out of and on his director''s fees. The surveyor for South Kensington, bring of opinion from the size of the business of the firm that its profits up to date of transfer to the company could not have been ascertained at once, and that the Appellant was therefore still in receipt of profits from the firm, made five assessments to Income Tax upon the Appellant under Sch, D in respect of profits from foreign possessions for the years ending April 5, 1908, 1909, 1910 and 1911, which were confirmed by the General Commissioners for South Kensington. The Appellant having paid the first assessment under protest as the result of a distress, obtained a rule nisi from the Divisional Court to prohibit the Commissioners from proceeding upon these assessments upon the ground inter alia that the whole of such profits were profits arising from foreign possessions and were received in the City of London, and were by virtue of Section 108, Income Tax Act, 1842, assessable by the Commissioners acting for the City of London, and not elsewhere. Later on the Divisional Court discharged the rule. On appeal the decision of the Divisional Court was reversed and it was held that persons carrying on business partly in the United Kingdom and partly abroad subject only to an option to be assessed u/s 108, Income Tax Act, 1842, were only assessable to Income Tax u/s 106 in respect of the profits of such business by the Commissioners of the place in the United Kingdom where they carried on that business and prohibition would lie to prevent the Commissioners of the place of resident of such persons from making any assessment in respect of such profits. It will thus be seen that this was a case of total lack of jurisdiction and the Commissioners had no jurisdiction to make any assessment.

13. This aspect of the case was emphasised by Lush J. in - ''Rex v. Bloomsbury Income Tax Commissioners'' (1915) 3 KB 768 at pp. 790 & 791 (B) and by Varadachariar J. in - Secretary of State Vs. V.M. Meyyappa Chettiar, In the Madras case the learned Judge while dealing with the observation of Shearman J.

in - ''Rex v. Swansea Income Tax Commissioner'' (1925) 2 KB 250 that there may be cases in which prohibition may be obtained where the applicant shows that he is not liable to the. jurisdiction of the Commissioner at all observed:

Read in the light of other decisions and of the remarks of the other learned Judges who took part in that very case, this observation can only refer to cases like-''Kensington Income Tax Commrs. v. Aramayo'' (1916) 1 AC 215 where even on undisputed facts or facts assumed by the Commissioner they would have no jurisdiction.

14. Mr. Achhru Ram also referred to ''Farquharson v. Morgan'' (1894) 63 LJQB 474 The case arose out of an application made by a tenant to a County Court Judge for the enforcement of an award. The Judge made an order enforcing the award. The landlord then moved for a writ of prohibition against the County Court enforcing the award or proceeding further with the matter. It was held that inasmuch as the award on the face of it disclosed want of jurisdiction so far as it dealt with matters which were not subject to allowance and compensation under the Act, the landlord was entitled to a writ of prohibition against the enforcement of the award u/s 24 in respect of those matters. Lord Halifax while dealing with the matter made the following observations:

If in truth a cause was entertained by an inferior Court which the Judge of that Court must himself have known was beyond his jurisdiction, I can find no case where it has been held that the Court would be justified in refusing to grant a prohibition.... Here an application was made by the respondent to exercise the powers with regard to issuing execution in respect of the very matters which the Act has excepted from its operation and which consequently the County Court Judge had no power to adjudicate upon. Under these circumstances, reluctant as I am to help the present Appellant, I am unable to resist the conclusion that the writ of prohibition must go so far as the matters which are outside the Agricultural Holdings Act, 1833, are concerned.

15. None of these cases can, therefore, help the present Petitioner, because neither it is a case of total want of jurisdiction nor the defect of jurisdiction, if any, is apparent on the face of the notice issued by the respondent.

16. The facts of - ''Channel Coaling Co. v. Ross'' (1907) 76 LJKB 145 (G) in which a writ of prohibition was issued to a Subordinate Court prohibiting further proceedings, are somewhat analogous to those of ''Farquharson''s case (F)''. In that case an order was made by a County Court Judge allowing service of the summons on the Defendant in Scotland under Order 7, Rule 41, County Court Rules. It was held that the Court had no jurisdiction to issue the summons.

17. The Petitioner''s learned Counsel also referred us to the observations made by Lord Esher M.R. in - ''Reg v. Commissioners for the Special Purposes of the income tax'' (1888) 21 QBD 313 (H) and argued that since the respondent belonged to the first category of tribunals mentioned in those observations it was not for him to decide whether notice to the Petitioner should issue u/s 34 of the

amending later Acts or conditions laid down by Section 34, Patiala Act of 2001 were satisfied. The observations were as follows:

When an inferior Court or tribunal, or body, which has to exercise the power of deciding facts is first established by an Act of Parliament the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is for them conclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence, what they do may be Questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist to proceed further to do something more. When the Legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases] have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly stating certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts, on which the further exercise of their own jurisdiction depends and if they were given jurisdiction so to decide without any appeal being given, there is no appeal from such exercise of their jurisdiction,

Mr. Sikri accepted the above dictum'' of Lord Esher and conceded that it lays down the correct law applicable to cases of this kind, but he contended that the respondent, or for the matter of that all tribunals constituted under the different provisions of the Income Tax Act were tribunals of the second category and the respondent had the jurisdiction to decide the points in question. Mr. Achhru Ram cited particularly two cases to support his contention: - Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District I and Another, and - Devilal Vs. Ganpat, In the first case the Petitioner applied for a writ under Article 226 quashing the notice issued to him by the Income Tax Officer u/s 34 Income Tax Act, 1922 as amended by the Income Tax Act of 1948 and for prohibiting him from proceeding with the, reassessment that he contemplated to make. The petition was allowed. As I am told that this decision is the subject-matter of a Letters Patent appeal, I do not consider it desirable to say anything about its merits. I may, however, observe that as regards the precise point that is urged before us by Mr. Sikri, namely, that it is within the competence of an Income Tax Officer to decide whether or not he has jurisdiction to go on with proceedings of this kind, the decision goes against the Petitioner. By referring to para. 6 of the judgment we find that the Petitioner challenged the jurisdiction of the Income Tax Officer to proceed with the reassessment firstly on the ground that the necessary conditions precedent which must exist before an Income Tax Officer can assume jurisdiction to proceed u/s 34, Income Tax Act were absent, and second on the ground that Section 34 as amended in 1948 had no application to the assessment for 1942-43, 1943-44 and 1944-45, as the amendment had no retrospective effect. Dealing with the first point this is what the learned Judge said:

...The Legislature has given the Income Tax Officer jurisdiction to determine all facts, including the existence of the preliminary facts on which the further exercise of his jurisdiction depends and so the contention that the Income Tax Officer cannot be wrongly deciding or assuming that certain preliminary facts exist confer on himself jurisdiction has no force and cannot be accepted....

Later on he said:

It appears to me that the present case falls within the latter part of the formula of Lord Esher laid down in - ''Reg v. Commissioner for the Special Purposes of the Income Tax (H)''. If the Income Tax Officer has made a wrong decision as to the existence of the conditions precedent the remedy is by way of appeal as provided by the Income Tax Act and by stating a case to the High Court u/s 66 of the Act. This Court has no jurisdiction to interfere by writs of prohibition or certiorari.

It was on the second point that the learned Judge found for the Petitioner and for this reason issued a writ prohibiting the Income Tax Officer from going on with the proceedings.

18. The ''Rajasthan Case'' arose under the following circumstances: A notice was issued to the Petitioner-firm who carried on business in the District of Jodhpur requiring him to produce his account-books in connection with the Income Tax assessment. On this the Petitioner applied to the High Court for a writ of mandamus or certiorari or any other appropriate writ against the Union of India restraining it from taking any action against the firm, on the ground (1) that Rajasthan became a taxable territory on 1-4-1950 and therefore, income accruing or arising before that day was'' not assessable to Income Tax, and (2) that the Dominion Parliament did not make any law authorising taxation on income accruing prior to 1-4-1950 and had no jurisdiction to make any law relating to the imposition of Income Tax in Rajasthan prior to 26-1-1950, when the new Constitution came into force. The learned Judges found for the Petitioner on both these grounds and issued a writ to the respondent directing it not to levy any tax on the income of the Petitioner accruing, arising or received in Rajasthan, excluding the area of the former covenanting State of Bundi, prior to 1-4-1950, etc. An objection was raised on behalf of the respondent that because an alternative remedy was open to the Petitioner no writ of prohibition should issue. The learned Judges overruled this plea with the observation that

since in this case we have come to the conclusion that there was no law according to which Income Tax could be imposed for the period prior to 1-4-1950 a proper case for the issue of a writ of prohibition has been made out.

The circumstances of the present case being different, this decision cannot help the present Petitioner.

19. I now proceed to discuss the cases cited by Mr. Sikri. ''(1915) 3 KB 768 (B)'' to which reference has been made above. Additional assessments to Income Tax were made upon a firm in 1913 for the three years ending April 5, 1910, 1911 and 1912 respectively, for profits of a business carried on by them in partnership at High Holborn, including profits made through their agents Hooper and Jackson Limited of Illinois. Hooper and Jackson were Americans but were residing in England in the County of Hertfordshire Hooper applied for a rule against the additional Commissioners of Taxes for the division of Bloomsbury, to show cause why they should not be prohibited from acting or proceeding upon assessments. It was alleged on his behalf, inter alia (i) that there was no jurisdiction in the Commissioners to make or proceed upon assessment if the individual assessed was in fact not chargeable to Income Tax; (ii) that the Commissioners could not give themselves jurisdiction to assess a person by determining in the first instance that he was chargeable when in fact he was not chargeable; and (iii) that the information before the surveyor did not in fact or in law afford ground for his discovery that the applicant was chargeable. The Attorney-General on the other hand, contended that it was for the assessing authorities to decide in the first instance whether the applicant was chargeable to Income Tax, that if the surveyor had honestly come to the conclusion upon the information in his possession that the applicant had not made a full and proper return to Income Tax and the additional Commissioners had thereupon made an additional assessment upon him that assessment was binding unless challenged by the means prescribed under the statutes, and that the decisions of the additional Commissioners could only be challenged by an appeal to the General Commissioners (under Section 57, Sub-section 3, Taxes Management Act, 1880) whose decision was final subject to the right of the person assessed to require the statement of a case to the High Court upon questions of law. The rule was discharged. In the judgment read out by Lord Reading he referred to Lord Esher''s observation in the ''Reg v. Commissioners for the Special Purposes of the income tax'', (H} which has been reproduced above and made the following remarks as regards the question, viz., within which class of tribunals should the case before him be placed.

In my view an examination of the Income Tax Acts shows the scheme of the Legislature is to entrust the decision of the facts to a tribunal of persons specially selected for the locality, and who are often in a better position than the Courts to determine the questions of fact, sometimes very complicated, which may arise. The exigencies of the State require that there should be a tribunal to deal expeditiously and at comparatively little expense with all such questions and to decide them finally, reserving always to the individual the right to have the Commissioners'' decisions on points of law reviewed by the Courts. The obligation is placed, for reasons of expediency upon the person assessed to appeal to the Commissioners if he wishes to rid himself of an assessment which is, in his view based upon wrong conclusions of fact, and this obligation rests equally upon a person who contends that he is not chargeable etc....

The concluding sentence of his judgment is:

I am of the opinion that the Crown''s contentions are right and that the rule should be discharged with costs.

20. The following are the remarks made by Avory J. who agreed with the conclusions reached by Lord Reading:

In my opinion the whole scheme of the legislation in the Income Tax Act, 1842 and the Taxes Management.Act, 1880 brings this case within the category of cases referred to by Lord Esher in - ''Reg v. Commissioner for Special Purposes of the income tax'', (H) where the Legislature has entrusted the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists, as well as the jurisdiction on finding that it does exist, to proceed further or do something more.

The learned Judge further remarked:

In such a case it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts including the existence of the preliminary facts on which the further exercise of their jurisdiction depends and the principle of the law to be applied in this case is that laid down by Tindal C.J. in - ''Cave v. Mountain'' (1840) 1 Man & G. 257 approved and adopted by Lord Denman C.J. in ''Reg v. Belton'' (1841) 1 QB 66 , where he says....

21. ''Raleigh Investment Co. Ltd. v. Governor-General in Council'' AIR 1947 PC 78 (M). This appeal arose out of a suit for refund of the Income Tax which according to the Appellant Company had been wrongly recovered. The basis of the claim was that in the computation of assessable income direct had been given to a provision of the Income Tax Act which in the submissions of the Appellant was ultra vires the Indian Legislature, The High Court held that the provision was ultra vires and the jurisdiction to entertain the suit was not denied either by Section 226, Government of India Act, 1935 or by Section 67, Income Tax Act, and accordingly made an order, for the repayment of the sum in question. On appeal by the Governor-General the Federal Court set aside the decision of the High Court on the ground that the impugned provision was not ultra vires the Indian Legislature. Their Lordships of the Privy Council held that the suit was barred by S, 67, Income Tax Act, which laid down that

no suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act and no prosecution suit, or proceeding shall lie against any officer of the Crown for anything in good faith done or intended to be done under the Act.

They further held that though in form the relief claimed in the suit did not profess to modify or set aside the assessment, in substance it did because the repayment could not be ordered so long as the assessment stood. It is true that the facts of the present case are different inasmuch as no assessment has so far been made and Section 67 in terms does not apply, but the observations that their Lordships made in the course of the judgment lay down the principles which are of great value. This is what they said:

In construing the section (Section 67) it is pertinent in their Lordships opinion to ascertain, whether the Act contains machinery which enables an assessee effectively to raise in the Courts the question whether a particular provision of the Income Tax bearing on the assessment made is or is not ultra vires. The presence of such a machinery, though by no means conclusive marches with a construction of the section which denies an alternative to inquire into the same subject-matter. The absence of such machinery would greatly assist the Appellant on the question of construction and, indeed, it may be added that if there were no such machinery, and if the section effected to preclude the High Court in its ordinary civil jurisdiction from considering a point of ultra vires, there would be a serious question whether the opening part of the section so far as it debarred the question of ultra vires being debated, fell within the competence of the Legislature.

In their Lordships'' view it is clear that the Income Tax Act, 1922 as it stood at the relevant date did give the assessee the right effectively to raise in relation to an assessment made upon him the question whether or not a provision in the Act was ultra vires.

The last paragraph of the judgment reads as below:

In conclusion their Lordships would observe that the scheme of the Act is to set up a particular machinery by the use of which alone total income assessable for Income Tax is to be ascertained.... Under the Act (Section 45) there arises a duty to pay the amount demanded on the basis of that assessment otherwise than by use of the machinery expressly provided by the Act would appear to be inconsistent with the statutory obligation to pay arising by virtue of the assessment. The only doubt, indeed, in their Lordships'' mind is whether an express provision was necessary in order to exclude jurisdiction in a civil Court to set aside or modify an assessment.

22. ''In re Ramji Das Mahaliram'' 62 Cal 1011 (N). In this case the Petitioner applied to the High Court for a writ of certiorari directing the Commissioner of Income Tax, Bengal to bring up the records of certain assessment proceedings pending before the Income Tax Officer of a District in Calcutta relating to an assessment in respect of the financial year 1932-33 and in the alternative for an order directed to the Commissioner of Income Tax requiring him to hear and determine the assessees application and/or to state a case to the High'' Court according to law. The facts were that the Income Tax Officer had issued a notice

to the Petitioner on 5-2-1934 u/s 22(2) read with Section 34, Income Tax Act, calling for a return of the income assessable in 1932-33. The Petitioner submitted a return under protest. Then the Income Tax Officer called for the Petitioner''s trading books for their accounting years 1987-88, 1985-86 and 1984-85. It was alleged on behalf of the Petitioners at the outset that the statement contained in the notice issued to the Petitioner by the Income Tax Officer that he had reason to believe that the assessees whole income had escaped Income Tax was without jurisdiction, Mc Nair J. while dismissing the application made the following observations:

It is clear from the English decisions that the power, of exercising prohibition is discretionary, and that the Court should not be chary of exercising it, to control persons who are entrusted with the power of imposing any obligation upon individuals and who attempt to exercise those powers in excess of their jurisdiction.

It has also been laid down that the fact that there is a right of appeal is not necessarily fatal to a claim by for prohibition, (While v. Steele approved in the King v. North Ex parte Cakey) but the guiding principle appears to be that the writ in such a case will not issue unless the want of jurisdiction complained of is based upon a breach of a fundamental principle of justice.

Here the orders complained of do not in my opinion, come within the, exception and I am not satisfied that this is a case in which a writ of prohibition should issue.

23. ''U.C. Rekhi v. Income Tax Officer, first ''F'' Ward, New Delhi'' AIR 1951 Simla 1 (O). This was an application for a writ that I.T.O. be prohibited from proceeding against the Petitioner and was based on various grounds, one of which was that the respondent had no jurisdiction to call upon the Petitioner to submit fresh returns for reassessment when there had been no assessment at all for the period in question. The respondent while opposing the petition submitted that the Petitioner was residing within the territorial jurisdiction of the respondent and accordingly he had jurisdiction under Sections 34 and 64, Income Tax Act to call for returns, that the Legislature had entrusted the decision of questions of fact and law to the Income Tax Officer subject to a right of appeal and statement of the case to a High Court and that on a challenge of jurisdiction of the Income Tax Officer to make the assessment it was for him or the Commissioner of Income Tax to decide upon the material before them whether the individual was or was not liable to assessment, etc. The learned Judges dismissed the petition holding that it was misconceived. Kapur J. who wrote the judgment of the Bench after referring to a number of cases, English as well Indian, expressed the view that on a true construction of the various sections of the Income Tax Act the extraordinary remedy by writ or certiorari or prohibition was not-available to an assessee. As regards Section 34 this is what the learned Judge said:

I must, therefore, hold that the jurisdiction, to proceed u/s 34 is by laws vested in. the Income Tax Officer who has a statutory-duty imposed upon him to proceed if he makes a discovery within the meaning of Section 34 of that Act. He has to determine the facts and the law in order to give him the jurisdiction to proceed and if in the determination of this he goes wrong, the proper remedy for an assessee is to go up in appeal and to have a case stated to High Court under the provisions of the Income Tax Act.

24. The same question, though in somewhat different form, came up before the Simla High Court in another case in ''Re L. Lachhman Das Nayar'' AIR 1953 Punjab 55 (P). Kapur J. this time sitting with another colleague of his reexamined the entire case law on the point and affirmed what had been held in ''Rekhi''s case (O)''. He remarked (page 64 of the printed report) that one of the questions that they had to determine was whether the only remedy open to the assessee was to proceed in accordance with the provisions of the Income Tax Act or the High Court should interfere at an intermediary state and put an end to the assessment proceedings, and on a discussion of a host of authorities answered the question in the following words:

An examination of the scheme of the Act and the words used in Section 34 of the Act and the various cases that I have referred to above show that the Legislature has entrusted the determination of facts and of law to the Income Tax Officers. A particular machinery has been set up under the Act "by the use of which alone" total assessable income for the purpose of the Income Tax is to be ascertained and jurisdiction to question the assessment otherwise than by the use of this machinery is incompatible with the scheme of the Act. The challenge of the action of the Income Tax Officer by a writ of prohibition or mandamus is, therefore, not available to the assessee.

25. At p. 67 of the printed report are given the conclusions arrived at by the learned Judge of which the following two are important and relevant for purposes of this case:

No. (1) That the Income Tax Act has entrusted to the Income Tax Officer the decision of the facts and the law to decide whether the provisions of Section 34 are applicable

No. (6) Whether the attack on the proceedings u/s 34 of the Act is due to the want of preliminary conditions or conditions precedent or to the bar of time, or illegality due to the matter being res judicata, or due to the provision being ultra vires or the amendment being prospective, they are all questions of law and do not affect the jurisdiction of the Income Tax Officer.

26. Mr. Achhru Ram contended that these remarks were of the nature of obiter dicta, but even so it cannot be denied that they are supported by a large number of English and Indian decisions noticed in the judgment of the-learned Judge and some of which have also-been referred by me here.

27. Now, it is clear from these cases that so far the English Courts are concerned

they have consistently taken the view that the tribunals established by and working under the Income Tax law belong to the class of the tribunals to which the second part of the formula laid down by Lord Esher in - ''Reg v. Commissioners for the Special Purposes of the Income Tax (H)'', relates and that all points arising out of and affecting the assessment, whether they be points of fact or law, must be raised before, and adjudicated upon, by those tribunals and no writs are issued against those tribunals except when their proceedings are vitiated by total want of jurisdiction or the defect of jurisdiction is apparent on record. Mr. Sikri argued that the scheme of the Indian Income Tax Law being the same as that of the English law, Indian Courts must be guided by the practice of the English Courts. Mr. Achhru Ram accepted. Mr. Sikri''s contention as regards the similarity of the scheme of the Income Tax Law in force in U.K. and in India, but did not agree with him on the second point. In my judgment Mr. Sikri''s contention must prevail.

28. Before concluding I wish to refer to a rase recently decided by this Bench - ''Amar Dass v. Govt. of Patiala'' AIR 1953 Pepsu 53 (Q), in which we laid down certain principles that in our opinion must govern petitions under Article 226 for issue of writs. We held, inter alia, that the powers given to the High Court by Article 226 vast these Courts with an extraordinary jurisdiction of a summary but coercive nature, that the relief under the Article is discretionary with the Court, that even if the proceedings which give rise to an application for writ in some respects are not in accord with (sic), if no injustice has been done, no writ or direction should be issued, that the powers should be exercised very sparingly and only in cases where refusal to grant any relief would cause great hardship, and that where any specific and adequate legal remedy is open to the applicant, application for a writ should not be entertained. As regards the question whether the other remedy open to the applicant in a particular case is specific and adequate we observed that it should be decided upon the facts of each case. The petition must fail in view of these principles also because as the remedy provided to the Petitioner by the Income Tax Act is adequate as well as specific.

29. I wish also to refer to the two recent decisions of the Supreme Court which are relevant to the question involved in this petition. The first, --'' Veerappa Pillai Vs. Raman and Raman Ltd. and Others, was an appeal arising out of an application made to the High Court Madras for quashing certain proceedings of a Regional Transport Authority. The High Court allowed that petition and in addition to quashing the order of the authority in question directed permits for certain buses to issue in the Petitioner''s favour. On appeal the Supreme Court set aside the order of the High Court and made the following observations about the scheme of the Motor Vehicles Act:

The Motor Vehicles Act is a statute which creates new rights and liabilities and prescribes an elaborate procedure for their regulation. In the Act there is a complete and precise scheme for regulating the issue of permits, providing what matters are to be taken into consideration as relevant, and prescribing appeals and revisions from subordinate bodies to higher authorities. The remedies for the redress of grievances or the correction of errors are found in the statute itself and it is to these remedies that resort must generally be had.

30. As regards Article 226, Chandrasekhara Aiyar J. observed that it was not necessary for him to consider and decide on the exact scope and extent of the jurisdiction of the High Court under the Article, but he emphasised that

such writs as are referred to in Article 226 are obviously intended to enable the High Court, to issue them in grave cases where the sub-ordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the, record, and such act, omission, error or excess has resulted in manifest injustice.

The learned Judge added:

However, extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide) what is the proper view to be taken or the order to be made.

31. The second case is - Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, This appeal arose out of an application made to the High Court Simla under Article 226 for writs of certiorari, etc., against the Custodian General. The High Court dismissed the petition. On appeal the Supreme Court maintained the order of the High Court and held that the Custodian General had been constituted an appellate Court u/s 24, Administration of the Evacuee Property Act in words of the widest amplitude and the Legislature had not limited his'' jurisdiction by providing that such exorcise will depend on the existence of any particular state of facts. While dealing with the scope of a writ the following remarks were made by Maha-jan J.:

A writ of certiorari cannot be granted to quash the decision of an inferior Court within its jurisdiction on the ground that the decision is wrong. Before such a writ is issued, it must be shown that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice.... Once it is held that the Court has jurisdiction but while exercising it is made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a Court has jurisdiction to decide rightly as well as wrongly.

32. The observation made by his Lordship regarding the powers of the Custodian General apply with greater force to the tribunals constituted by the Income Tax Act and both these cases support Mr. Sikri''s submission that no writ can issue to them in respect of a matter which is within their jurisdiction to decide.

33. For all these reasons I would dismiss the petition with costs. Counsel''s fee Rs. 300/-.

Gurnam Singh, J.

34. I entirely agree.

