M. Ct. Muthiah & 2 Others

Vs

The Commissioner of Income-Tax, Madras & Another

Petition No. 646 of 1954

(CJI S. R. Dass, B. P. Sinha, Vivian Bose, N. H. Bhagwati, B. Jagannath Das JJ)

20.12.1955

JUDGMENT

BHAGWATI J. -

This petition under Article 32 of the Constitution also raises the question about the constitutionality of section 5(1) of the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947).

The facts Which led to the filing of this petition may be shortly stated.

Sir M.Ct. Muthiah Chettiar Who carried on a flourishing banking business in India and foreign countries died in or about 1929 leaving behind him two sons M.Ct.M. Chidambaram Chettiar (since deceased) and M.Ct.M. Muthiah Chettiar, petitioner 3, and his widow Devanai Achi. M.Ct.M. Chidambaram Chettiar continued the ancestral banking business and also started several commercial enterprises. He died by an accident while travelling in a plane in the year 1954 leaving behind him his two sons, the petitioners 1 and 2. Devanai Achi had predeceased him. The petitioners 1 & 2 are the legal representatives of the deceased M.Ct.M. Chidambaram Chettiar and also the representatives of their grandmother Devanai Achi.

The Central Government, in exercise of its powers of its under Sections 5(1) of Act XXX of 1947, referred to the Income-tax Investigation Commission R.C. Nos. 516, 517 and 518 relating to M.Ct.M. Chidambaram Chettiar, M.Ct.M. Muthiah Chettiar, petitioner 3, and Devanai Achi. The Commission, after holding an enquiry in all the three cases, recorded their findings and held that an aggregate sum of Rs. 10,07,322-4-3 represented the undisclosed income during the investigation period and directed distribution of this sum over the several years in the manner indicated by them in Schedule A to their report. This report was submitted by the Commission to the Government on the 26th August, 1952. The Central Government considered the report and, purporting to act under section 8(2) of the Act, directed by their order No. 74(26) I.T./52 dated the 16th September 1952 that appropriate action under the Indian Income-tax Act be taken against the assessees with a view to assess or re-assess the income which had escaped assessment for the years 1940-41 to 1948-49.

In pursuance of the said directions of the Central Government the Income-tax Officer, City Circle I, Madras, issued notices under section 34 of the Indian Income-tax Act and made the re-assessment for the years 1940-41, 1941-42 and 1943-44 to 1948-49 based upon the findings of the Commission which were treated as final and conclusive. The assessment orders for the years 1940-41, 1941-42, and 1948-49 were served on the assessees on the 20th February 1954. Assessment orders for the years 1943-44 to 1947-48 were served on the 12th May, 1954. The re-assessment order for the year 1942-43 was not made though notices under section 34 of the Indian Income-tax Act has been

issued by the Income-tax officer on the assessees on the 19th March 1954. It appears that these re-assessment proceedings for the year 1942-43 are yet pending and no assessment order in respect of that year has yet been served on the petitioners.

In regard to the assessment orders which were served on the 20th February, 1954, the petitioners preferred on the 18th May, 1954 applications to the Commissioners of Income-tax, Madras, under section 8(5) of the Act for references to the High Court on questions of law arising out of those re-assessment orders passed by the Income-tax Officer. Similar applications were preferred thereafter in respect of the re-assessment orders which were served on the petitioners on the 12th May 1954. These applications are still pending.

On the 6th December 1954, the petitioners filed the present petition contending that the provisions of the Act XXX of 1947 were illegal, ultra vires and unconstitutional mainly on the ground that they were violative of the fundamental right guaranteed under article 14 of the Constitution.

The grounds urged in support of this contention were not felicitously expressed. The petitioners appear to have mixed up the contentions which could be urged as a result of our judgments in Suraj Mall Mohta v. A. V. Visvanatha Sastri and Another ([1955] 1 S.C.R. 448) and Shree Meenakshi Mills Ltd. v. A. V. Visvanatha Sastri and Another ([1955] 1 S.C.R. 787). They contended in the first instance that after the amendment of section 34 of the Indian Income-tax by Act XXXIII of 1954, which inter alia, added sub-sections (1-A) to (1-D) to section 34, the provisions of section 5(1) of the Act became discriminatory, as on a reading of both the enactments, Act XXX of 1947 and the Income-tax Act as amended in 1954 showed that they applied to the same category of persons and there was nothing in section 5(1) of the Act or any other provision of the said Act disclosing any valid or reasonable classification. The provisions of Act XXX of 1947 could not, therefore, be sustained on the ground of classification to avoid the mischief of article 14 of the Constitution. The petitioners obviously relied upon our decision in Shree Meenakshi Mill's case, supra, in support of this contention.

The petitioners thereafter proceeded to set out their alterative contention based upon our decision in Suraj Mall Mohta's case, supra, though it was not so stated in express terms. They contended that Act XXX of 1947 enabled the Central Government to discriminate between one person and another inasmuch as they were authorised to pick and choose cases of persons who fell within the group of those who had substantially evaded taxation on income, that the act of the Government in referring some evaders to the Commission was wholly arbitrary and there was nothing to eliminate the possibility of a favouritism or a discrimination against an individual by sending or not sending cases to the Commission as between two person both of whom might be within the group of those who have evaded the payment of tax to a substantial extent. They further contended that the procedure prescribed under the impugned Act was substantially more prejudicial and more drastic to the assessee than the procedure prescribed under the Indian Income-tax Act. There was no reasonableness or justification that one person should have the advantage of the procedure prescribed by the Indian Income-tax Act, while another person similarly situated should be deprived of it.

They, therefore, contended that section 5(1) of the Act was discriminatory and violative of article 14 of the Constitution and asked for the issue of a writ of certiorari or any other appropriate writ, direction or order quashing the report of the Income-tax Investigation Commission dated the 29th August, 1952, enclosed as Annexure A to the petition and the assessment orders of the Income-tax Officer for the years 1940-41, 1941-42, and 1943-44 to 1948-49 as being unconstitutional, null and

void and also of a writ of prohibition calling upon the Commissioner of Income-tax, Madras, respondent I, and the Income-tax Officer, City Circle I, Madras respondent 2 or their subordinate officers to forbear from implementing the findings of the Investigation Commission with regard to the year 1942-43.

This petition was heard along with Civil Appeals Nos. 21 and 22 of 1954, A. Thangal Kunju Musaliar v. M. Venkitachalam Potti and Another and M. Venkitachalam Potti and Another v. A. Thangal Kunju Musaliar ([1955] 2 S.C.R. 1196), which also raised inter alia the cognate question about the constitutionality of section 5(1) of the Travancore Act XIV of 1124 which was in pari materia with section 5(1) of Act XXX of 1947.

In regard to the question whether there is a rational basis of classification to be found in the enactment of section 5(1) of the Act, the preamble and the relevant provision of Act XXX of 1947 are the same as were considered by us in considering this question in relation to the Travancore Act XIV of 1124. The words "Substantial extant" also have been used in both the Acts and in the present case as in the cases of the Travancore petitioners concerned in the Evasion Cases Nos. 1 and 2 of 1125 (M.E.). Gauri Shanker, Secretary, Income-tax Investigation Commission, made an affidavit dated the 21st September, 1955 where in he set out the events and circumstances under which Act XXX of 1947 came to be passed. In paragraph 4 of that affidavit he stated :

> "It was found that during the period of the last war large fortunes had been made by businessmen, controls imposed by Government on prices and distribution, were often evaded and secret profits were made and kept outside the books and often kept invested in shares and real property acquired in the names of benamidars or in cash purchases of gold, silver and jewellery. The machinery of income-tax administration was unable to cope with the large number of complex cases that had to be dealt with, during the war years and a few years after its termination. As there had been a large scale evasion of tax during this period, it became necessary in the public interests to investigate cases of evasion of income-tax and bring under assessment huge profit that had escaped assessment. As a preliminary step in this direction, a demonetisation Ordinance was passed in January 1946 sterilising the High Denomination Notes in which secret profits earned during the war years had been partly kept and calling for a statement regarding the source of such profits. This was followed by the Income-tax Investigation Commission Bill. In view of the prolonged and complicated enquiries that had to be made to unearth these secret war profits and bring them under assessment a special commission was constituted to enquire into the profits made since 1939 but which had escaped assessment. I say that what is intended to investigate is evasion of payment of taxation which could reasonably be called "Substantial" and therefore the classification is real classification. The statute merely leaves the selective application of the law to be made by the executive authorities in accordance with the standards indicated in the Act itself."

This affidavit furnished the background and the surrounding circumstances obtaining at the time when Act XXX of 1947 was enacted and if this background is taken into account it would be obvious that the substantial evaders of payment of income-tax whose cases were referred by the Central Government to the Commission formed a class by themselves and there was a rational basis of classification in the enactment of section 5(1) of the Act.

The argument that the terms of section 5(1) enabled the Central Government to pick and choose the

cases of particular individuals falling within that category leaving the cases of the other persons fallings within the same category to be dealt with in accordance with the provisions of section 34(1) of the Indian Income-tax Act as it stood prior to the amendment of 1948 has been already dealt with in our judgment in A. Thangal Kunju Musaliar v. M. Venkitachalam Potti and Another, supra, while dealing with the corresponding provisions of section 5(1) of the Travancore Act XIV of 1124 and section 47 of the Travancore Act XXIII of 1121 and we have pointed out that so far as the Indian Income-tax Act as it was in existence on the 18th April, 1947 (which was the date on which Act XXX of 1947 received the assent of the Governor-General), stood unamended by Act XLVIII of 1948, the cases of persons who fell within the category of substantial evaders of income-tax within the meaning of section 5(1) of the Act could not have been dealt with under the provisions of section 34(1) of the Indian Income-tax Act and, therefore, there was no discrimination and no violation of the fundamental right guaranteed under article 14 of the Constitution.

The other argument that the selection of the persons whose cases were to be referred by the central Government for investigation to the Commission was left to the unguided and uncontrolled discretion of the executive or the administration officials also has been dealt with in that judgment and we need not repeat our reasons for rejecting the same.

If the provisions of section 34(1) of the Indian Income-tax Act as it stood unamended by Act XLVIII of 1948 (which corresponded with the provisions of section 47 of the Travancore Act XXIII of 1121) had been the only provisions to be considered we would have reached the same conclusion as we did in A. Thangal Kunju Musaliar v. M. Venkitachalam Potti and Another, supra. The position, however, in the present case is materially affected by reason of the two amendments which were made in section 34 of the Indian Income-tax Act, one in 1948 by the enactment of Act XLVIII of 1948 and the other in 1954 by the enactment of Act XXXIII of 1954.

Section 34 as amended by Act XLVIII of 1948 read as under :

> "Section 34(1) : If -
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> (a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or
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> (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 four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be include in a notice under sub-section (2) of section 22 and may proceed to assess or re-assess such

income, profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply according as if the notice were a notice issued under that sub-section : ....."

Act XXXIII of 1954 introduced into section 34 sub-sections (1-A) to (1-D). Section 34(1-A) which is material for our purposes provided :

"Section 34(1-A) : If, in the case of any assessee, the Income-tax Officer has reason to believe -

(i) that income, profits or gains chargeable to income-tax have escaped assessment for any year in respect of which the relevant previous year falls wholly or partly within the period beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1946; and,

(ii) that the income, profits or gains which have so escaped assessment for any such year or years amount, or are likely to amount, to one lakh of rupees or more; he may, notwithstanding that the period of eight years or, as the case may be, four years specified in sub-section (1) has expired in respect thereof, serve on the assessee, or, if the assessee is a company, on the principal 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 re-assess the income, profits or gains of the assessee for all or any of the years referred to in clause (i), and thereupon the provisions of this Act (excepting those contained in clauses (i) and (iii) of the proviso to sub-section (1) and in sub-sections (2) and (3) of this section) shall, so far as may be, apply accordingly :

Provided that the Income-tax Officer shall not issue a notice under this sub-section unless he has recorded his reasons for doing so, and the Central Broad of Revenue is satisfied on such reasons recorded that it is a fit cases for the issue of such notice.

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

Amended section 34(1) of the Indian Income-tax Act was substantially different from the old section 34(1) which was in operation up to the 8th September, 1948. The words "if in consequence of definite information which has come into his possession the Income-tax Officer discovers that income, profits or gains chargeable to income-tax have escaped assessment in any year..... " which appear in the old section were substituted by the words "If the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of the assessee..... income, profits or gains chargeable to income-tax have escaped assessment..... ". The requisites of (i) "definite" information (ii) which had "come into" possession of the Income-tax Officer and in consequence of which (iii) he "discovers" that income, profits or gains chargeable to income-tax had escaped assessment, were no longer necessary and the only thing which was required to enable the Income-tax Officer to take proceedings under section 34(1) as amended was that he should have reasons to believe that by reason of the omission or failure on the part of the assessee income, profits or gains chargeable to income-tax had escaped assessment for a particular year. Whereas before this amended section 34(1) came to be substituted for the old section 34(1) there was no comparison between the provisions of section 5(1) of Act XXX of 1947 and section 34(1) of the

Indian Income-tax Act as it then stood, the provisions of section 34(1) as amended after the 8th September, 1948 could stand comparison with the provision of section 5(1) of Act XXX of 1947 and the cases which were covered by section 5(1) of Act XXX of 1947 could be dealt with under the procedure laid down in section 34(1) of the Indian Income-tax Act. After the 8th September, 1948, therefore, even in the case of substantial evaders of income-tax who were a distinct class by themselves intended to be treated by the drastic and summary procedure laid down by Act XXX of 1947, some cases that were already referred by the Central Government for investigation by the Commission could be dealt with under that Act and other cases, though falling within the same class or category, could be dealt with under the procedure prescribed in the amended section 34(1) of the Indian Income-tax Act. The person who were thus dealt with under section 34(1) of the Indian Income-tax Act had available to them the whole procedure laid down in that Act including the right to inspect documents and the right to question the findings of fact arrived at by the Income-tax Officer by the procedure of appeal and revision and ultimate scrutiny by the Income-tax Appellate Tribunal which was denied to those persons whose cases had been referred by the Central Government for investigation by the Commission under section 5(1) of Act XXX of 1947.

The juxta-position of dates is also very instructive. It may be noted that in Act XXX of 1947 as it was originally enacted, the period up to which the Central Government could make the references to the Commission for investigation was laid down in section 5(1) of the Act to be 30th June, 1948. This period was extended to the 1st September, 1948, by the Taxation on Income (Investigation Commission) Second Amendment Act, 1948 (XLIX of 1948). Act XLIX of 1948 was passed by the Central Legislature and received the assent of the Governor-General on the 8th September, 1948, the same day on which Act XLVIII of 1948 which amended section 34(1) of the Indian Income-tax Act also received the assent of the Governor-General. Both these Acts, viz., Act XLVIII of 1948 and Act XLIX of 1948 were passed simultaneously and obviously with a view to bring the provisions of section 5(1) of Act XXX of 1947 and section 34(1) of the Indian Income-tax Act in tune with each other. It appears to have been realized that the substantial evaders of income-tax in respect of whom the Central Government had prima facie reasons for believing that they had to a substantial extent evaded payment of taxation on income could not have their cases referred for investigation by the Commission after the 30th June, 1948, that having been the time limit originally prescribed in section 5(1) of the Act. It also appears to have been felt that period could not possibly be extended beyond the 1st September, 1948, with the result that apart from the cases of substantial evaders of income-tax which were referred by the Central Government for investigation to the Commission up to the 1st September, 1948, there would be a large number of such cases which thought they could not be referred for investigation to the Commission would have to be dealt with under the ordinary provisions for taxation of income that had escaped assessment available in section 34 and the cognate sections of the Indian Income-tax Act. As section 34(1) then stood, the requisites of definite information coming into the possession of the Income-tax Officer in consequence of which he discovered that income, profits or gains chargeable to income-tax had escaped assessment would certainly not have availed the Government in tracking down these substantial evaders of income-tax and it appears, therefore, to have been thought necessary that section 34(1) of the Indian Income-tax Act should be amended so as to enable the Income-tax Officer to take proceedings thereunder if he had reason to believe that by reason of omission or failure on the part of the assessee..... income, profits or gains chargeable to income-tax had escaped assessment for the relevant period. An amendment of section 34(1) in this manner would enable Government to pass on the requisite information which they had obtained in regard to the substantial evaders of income-tax to the Income-tax Officers concerned and ask the Income-tax Officers to take proceedings against those evaders of income-tax under the amended section 34(1) of the Indian Income-tax Act. That appears

to have been the real object of the amendment of section 34(1) of the Indian Income-tax Act with effect from the 8th September 1948. The Commission would proceed with the references which were made to them up to the 1st September 1948 and the Income-tax Officers concerned would take the requisite proceedings under section 34(1) of the Indian Income-tax Act as amended after the 8th September 1948, against all persons whose income, profits or gains had escaped assessment including substantial evaders of income-tax whose cases would certainly have been referred by the Central Government for investigation to the Commission if it had been possible for them to do so before the 1st September, 1948, After the 8th September, 1948, there were two procedures simultaneously in operation, the one under act XXX of 1947 and the other under the Indian Income-tax Act with reference to persons who fell within the same class or category, viz., that of the substantial evaders of income-tax, after the 8th September, 1948, therefore, some persons who fell within the class of substantial evaders of income-tax were dealt with under the drastic and summary procedure prescribed under Act XXX of 1947, while other persons who fell within the same class of substantial evaders of income-tax could be dealt with under the procedure prescribed in the Indian Income-tax Act after service of notice upon them under the amended section 34(1) of the Act. Different persons, though falling under the same class or category of substantial evaders of income-tax, would, therefore, be subject to different procedures, one a summary and drastic procedure and the other a normal procedure which gave to the assessees various rights which were denied to those who were specially treated under the procedure prescribed in Act XXX of 1947.

The legislative competence being there, these provisions, though discriminatory, could not have been challenged before the advent of the Constitution. When, however, the Constitution came into force on the 26th January, 1950, the Citizens obtained the fundamental rights enshrined in Part III of the Constitution including the right to equality of laws and equal protection of laws enacted in article 14 thereof, and whatever may have been the position before the 26th January 1950, it was open to the persons alleged to belong to the class of substantial evaders thereafter to ask as to why some of them were subjected to the summary and drastic procedure prescribed in Act XXX of 1947 and others were subjected to the normal procedure prescribed in section 34 and the cognate sections of the Indian Income-tax Act, the procedure prescribed in Act XXX of 1947 being obviously discriminatory and, therefore, violative of the fundamental right guaranteed under article 14 of the Constitution.

It would be no answer to suggest that those substantial evaders whose cases were referred by the Central Government for investigation by the Commission before the 1st September 1948, formed a class by themselves leaving others though belonging to the same class or category of substantial evaders of income-tax to be dealt with by the ordinary procedure prescribed in the Indian Income-tax Act without infringing the fundamental right guaranteed under article 14 of the Constitution. A similar argument had been advanced before us by the learned Attorney General appearing for the Commission in Shree Meenakshi Mills' case supra. The ground which he had urged was "that the class of persons dealt with under section 5(1) of the Act XXX of 1947 was not only the class of substantial tax dodgers but it was a class of persons whose cases the Central Government, by 1st of September, 1948, had referred to the Commission and that class had thus become determined finally on that date, and that that class of persons could be dealt with by the Investigation Commission under the drastic procedure of Act XXX of 1947 while section 34 of the Indian Income-tax Act as amended empowered the Income-tax Officer to deal with cases other than those whose cases had been referred under section 5(1) to the Investigation Commission.... " Mahajan, C.J., who delivered the judgment of the Court dealt with this argument at page 795 ([1955] 1 S.C.R. 787, 795) as under :

> "As regard the first contention canvassed by the learned Attorney General it seems to us that it cannot stand scrutiny. The class of persons alleged to have been dealt with by section 5(1) of the impugned Act was comprised of those unsocial element in society who during recent years prior to the passing of the Act had made substantial profits and had evaded payment of tax on those profits and whose cases were referred to the Investigation Commission before 1st September, 1948. Assuming that evasion of tax to a substantial amount could form a basis of classification at all for imposing a drastic procedure on that class, the inclusion of only such of them whose cases had been referred before 1st September, 1948 into a class for being dealt with by the drastic procedure leaving other tax evaders to be dealt with under the ordinary law, will be a clear discrimination for the reference of the case within a particular time has no special or rational nexus with the necessity for drastic procedure....."

These observations were made to repel the particular argument of the learned Attorney-General but they did not lay down that in fact section 5(1) was confined to such a limited class.

We are further supported in this view by the fact that by the later amendment of section 34 of the Indian Income-tax Act effected by Act XXXIII of 1954, the time limit for the issue of notice under section 34(1-A) of the Indian Income-tax Act has been fixed as the 31st day of March, 1956. It is, therefore, clear that the period originally fixed for the reference of the cases of substantial evaders of income-tax for investigation by the Commission, viz. 30th June, 1948 or the extended period, viz., 1st September 1948 provided in section 5(1) of Act XXX of 1947 or the period fixed by the new section 34(1-A) of the Indian Income-tax Act, viz., 31st day of March, 1956 was not a necessary attribute of the class of substantial evaders of income-tax but was merely an accident and a measure of administrative convenience and was not an element in the formation of the particular class of substantial evaders of income-tax.

It follows, therefore, that after the inauguration of the Constitution on the 26th January, 1950, the persons whose cases were referred for investigation by Central Government to the Commission up to the 1st September, 1948, could, to use the words of Mahajan, C.J., in Shree Meenakshi Mills' case at page 794 ask :

> "..... Why are we now being dealt with by the discriminatory and drastic procedure of Act XXX of 1947 when those similarly situated as ourselves can be dealt with by the Income-tax Officer under the amended provision of section 34 of the Act ? Even if we once bore a distinctive label that distinction no longer subsists and the label now borne by us is the same as is borne by persons who can be dealt with under section 34 of the Act as amended; in other words, there is nothing uncommon either in properties or in characteristics between us and those evaders of income-tax who are to be discovered by the Income-tax Officer under the provisions of amended section 34".

We may also add, adopting the same phraseology, that in our judgment, no satisfactory answer can be returned to this query because the field on which the amended section 34(1) operated from and after the 26th January, 1950, included the strip of territory which was also occupied by section 5(1) of Act XXX of 1947 and two substantially differed laws of procedure, one being more prejudicial to the assessee than the other, could not be allowed to operate on the same field in view of the guarantee of article 14 of the Constitution.

The result, therefore, is that barring the cases of persons which were already concluded by reports made by the Commission and the directions given by the Central Government under section 8(2) of Act XXX of 1947 culminating in the assessment or re-assessment of the escaped income, those cases which were pending on the 26th January, 1950, for investigation before the Commission as also the assessment or re-assessment proceedings which were pending on the 26th January 1950 before the Income-tax Officers concerned in pursuance of the directions given by the Central Government under section 8(2) of the Act would be hit by article 14 of the Constitution and would be invalidated. The R.C. Cases 516, 517 and 518 relating to M. Ct. M. Chidambaram Chettiar, M. Ct. Muthiah Chettiar and Devanai Achi were pending before the Commission on the 26th January, 1950, the report therein not having been made by the Commission till the 26th August 1952 and the Commission had, after the 26th January 1950, no jurisdiction to complete the investigation and make their report, the whole procedure being violative of the fundamental right guaranteed to the petitioners under article 14 of the Constitution.

This position was not in terms argued before us by the learned counsel for the petitioners. It was urged in the first instance that the case was governed by our decision in Shree Meenakshi Mills' case, supra, on the basis that by reason of the applications to the Commissioner of Income-tax, Madras, made by the petitioners under section 8(5) of the Act for reference to the High Court on questions of law arising out of the Income-tax Officer's re-assessment orders above referred to, the proceedings under Act XXX of 1947 had not become final and the petitioners were, therefore, entitled to relief on the ratio of our judgment in that case. Reliance was placed was in support of this position on the provisions of section 8(4) of the Act :

> "In all assessment or re-assessment proceedings taken in pursuance of a direction under sub-section (2), the findings recorded by the Commission on the case or on the points referred to it shall, subject to the provisions of sub-section (5) and (6), be final but no proceedings taken in pursuance of such direction shall be a bar to the initiation of proceedings under section 34 of the Indian Income-tax Act, 1922 (XI of 1922)."

Sub-section (5) has reference to the application made by the assessee to the Commissioners of Income-tax to refer to the High Court any question of law arising out of the assessment or re-assessment orders and sub-section (6) has reference to the power of the Commission either of their own motion or on the application of the person concerned or of the Central Government to correct clerical or arithmetical mistakes in their report or errors therein arising from any accidental slip or omission..... These provisions contained in sub-sections (5) and (6), however, would not make the findings recorded by the Commission any the less final. These findings were invested with finally subject to this that if the High Court, on reference under sub-section (5), gave any opinion which would require a revision of those findings or if any clerical or arithmetical mistakes were found or errors were detected arisings from accidental slip or Commission within the meaning of sub-section (6) which also required some alterations in the findings, these findings would be divested of their finality and would have to be revised accordingly. The assessment or re-assessment orders made by the Income-tax Officers based upon those findings would also be bindings on the assessees subject only to the result of the reference, if any, made to the High Court on questions of laws arisings out of such orders.

If this was the true position, it could be urged that by reason of the pendency of the applications for reference to the High Court the proceedings under Act XXX of 1947 had not been concluded against the petitioners and it could not also be urged that when Act XXXIII of 1954 was enacted introducing section 34(1-A) in the Income-tax Act with effect from the 19th July, 1954, the R.C.

Cases 516 to 518 were pending and the whole proceedings under Act XXX of 1947 against the petitioners were invalidated. As a matter of fact the report had been made by the Commission against the petitioners as early as the 26th August, 1952, the Central Government had given the directions under section 8(2) for re-assessment of the petitioners on the 16th September, 1952 and the re-assessment orders for all the years except the year 1942-43 had been made by the Income-tax Officer against them by the 12th May, 1954, which was long before Act XXXIII of 1954 came into operation. All these re-assessment had thus become binding on the petitioners and were not affected by the mere pendency of the applications for reference to the High Court made by them to the Commissioner of Income-tax, Madras, under section 8(5) of the Act.

There is also a further point to be considered in this connection and it is that whatever discriminatory procedure the petitioners were subjected to by reason of the reference of their cases by the Central Government to the Commission under section 5(1) of the Act had been completed long before the Act XXXIII of 1954 came into operation and the only further procedure which they would be subjected under the provisions of Act XXX of 1947 would be that of a reference to the High Court on questions of law arising out of the orders of re-assessment if these applications were granted either by the Commissioner of Income-tax, Madras, or by the High Court on further application. In the event of such reference being made, the petitioners had the additional advantage of having their references heard by the High Court in a Bench constituted of not less than three Judges as contrasted with the normal procedure obtaining under section 66 and 66-A of the Indian Income-tax Act under which the references could be heard by a Division Bench of the High Court. Whatever was, therefore, the procedure to which the petitioners would be subjected under Act XXX of 1947, after the coming into operation of Act XXXIII of 1954 it was, instead of being prejudicial to them, really advantageous to them, and following our decisions in the cases of Syed Qasim Razvi v. The State of Hyderabad and Others ([1953] S.C.R. 589) and Habeeb Mohamed v. The State of Hyderabad ([1953] S.C.R. 661) we are of the opinion that the further proceedings, if any, which could be taken under the provisions of Act XXX of 1947 would not be at all discriminatory and violative of the fundamental right guaranteed under article 14 of the Constitution

The only relief which the petitioners would have been entitled to in that event would have been one in regard to the re-assessment proceedings for the year 1942-43 which were pending before the Income-tax Officer by virtue of the notice under section 34 issued by him to the petitioners on the 19th March, 1954. Reliance was placed upon a decision of the Allahabad High Court reported in Gangadhar Baijnath and others v. Income-tax Investigation Commission, etc. (A.I.R. 1955 All. 515), in support of this position. The learned Solicitor-General did not contest this position but undertook on behalf of the Income-tax authorities that they will not proceed against the petitioners for the re-assessment for the year 1942-43 in pursuance of the notice under section 34 served upon them in that behalf.

This would have been the only relief to which the petitioners would have become entitled on the main contention urged by them in their petition. The petitioners are, however, entitled to succeed on the alternative contentions which were raised by them as the result of the conclusion which we have reached above in regard to the proceedings pending before the Commission having become discriminatory after the 26th January, 1950, by reason of section 5(1) of the Act having become unconstitutional after the inauguration of the Constitution on that date.

In the result, the petitioners will be entitled to the issue of a writ of certiorari quashing the report of the Income-tax Investigation Commission dated the 29th August 1952, and the assessment orders of the Income-tax Officer for the years 1940-41, 1941-42 and 1943-44 to 1948-49 as being

unconstitutional, null and void, and also to the issue of a writ of prohibition against the respondents from implementing the findings of the Investigation Commission referred to above with regard to the year 1942-43 and we do order that such writs do issue against the respondents accordingly. The respondents will pay the petitioners' costs of this petition.

JAGANNADHADAS J. -

This petition raises the question whether section 5(1) of the Taxation on Income-tax (Investigation Commission) Act, 1947 (Act XXX of 1947) (hereinafter referred to as the Investigation Commission Act) is unconstitutional as offending article 14 of the Constitution and has therefore become void on the coming into force of the Constitution on the 26th January, 1950. This question was specifically left open in the two previous decisions of this Court, viz., Suraj Mall Mohta and Co. v. A. V. Visvanatha Sastri ([1955] 1 S.C.R. 448), and Shree Meenakshi Mills Ltd. v. A. V. Visvanatha Sastri ([1955] 1 S.C.R. 787). Almost the identical question arose in the Travancore Appeals (A. Thangal Kunju Musaliar v. Authorised Official, I.T., [1955] 2 S.C.R. 1196), in which judgment has just now been delivered. The provision with which we were concerned in those appeals is section 5(1) of Travancore Act XIV of 1924 which is almost in identical terms as section 5(1) of the Investigation Commission Act. We have held that this section of the Travancore Act did not, on the coming into operation of the Constitution, violate article 14 thereof and that it accordingly continued to be valid. This result was based on the following conclusions :

> (a) The expression "a person who has to a substantial extent evaded payment of taxation on income" has to be interpreted extent regard to the background or the circumstances that preceded at the time the section came to be enacted and which were disclosed in the affidavit field in this Court by the Secretary of the Investigation Commission and so interpreted the word "substantial" indicates with reasonable and certainty the class of persons intended to be subjected to the drastic procedure of the Act.
>
> (b) The selective application of the law to persons in this class cannot be considered invalid since the selection is guided by the very objective set out in section 5(1) itself.
>
> (c) The fact that some persons may escape the application of the law is not necessarily destructive of the efficacy of the provision.

It was also held, on a comparison with section 47 of the Travancore Act XXIII of 1121, corresponding to section 34 of the Indian Income-tax Act, 1922 (XI of 1922) as it stood prior to its amendment in 1948, that the persons who fall under the class of substantial evaders of income-tax within the meaning section 5(1) of the Investigation Commission Act were not intended to be and could not have been dealt with under the provisions of section 47 of the Travancore Act XXIII of 1121 and that therefore there would be no discriminatory application of two parallel statutory provisions.

In the present case, however, the majority of the Court has taken the view that section 5(1) of the Investigation Commission Act has become unconstitutional by the date of the Constitution in comparison with section 34 of the Income-tax Act as amended in 1948. It was pointed out that section 47 of the Travancore Act XXIII of 1121 which was the same as section 34 of the Income-tax Act as it stood from 1939 to 1948 did not undergo any amendment by the date of the Constitution

but continued, as before and it is said that this makes a difference. I feel constrained, however, with the utmost respect, to hold, on a careful consideration that there is no room for making any such distinction which is relevant for the purposes of this question. Undoubtedly it is true that section 34 of the Income-tax Act as it stood prior to 1948 is more restrictive in its operation than the same section as amended in 1948. But I am unable to see how the class falling under section 5(1) of the Investigation Commission Act is still not different from that which falls within amended section 34 of the Income-tax Act.

Under section 5(1) of the Investigation Commission Act the requirement is that the Central Government has "prima facie reasons for believing that a person has to a substantial extent evaded payment of taxation on income." This is quite different from the criterion applicable under the amended section 34 of the Income-tax Act. In the first place, section 34 of Income-tax Act relates to cases of evasion however small, while section 5(1) of Investigation Commission Act relates only to large scale evaders comprised within the term "substantial evasion". Secondly, the belief of the Government as to the existence of evasion need not satisfy any rigorous standard because it need not be based on any material directly connected with the suspected evasion. It is enough if it is a "prima facie reason to believe" which having regard to the scheme of the Act would cover cases in which tell-tale appearances may call for probing and effective investigation. This may well be no more than "well-grounded reason to suspect." This is quite different from the standard of "reasons to believe" required of the Income-tax Officer under section 34 of the Income-tax Act, 'Prima facie reason to believe" and "reason to believe" are as different from each other as "prima facie proof" and "proof". Therefore "reason to believe" is something definitely higher than "reason to suspect." Indeed, it is difficult to compare the standards required under the two sections. Though no doubt the power exercisable by the Central Government under section 5(1) of the Investigation Commission Act and that exercisable by the Income-tax Officer under section 34 of the Income-tax Act have this in common that both have reference to "reason to believe", the standard of belief and the basis of belief is expressed in such different terminology that it is not possible to compare the two and equate the two as being the same. Nor indeed can it be posited that every case of the class comprised in section 5(1) of the Investigation Commission Act must necessarily fall within section 34 of the Income-tax Act.

Apart, however, from any question as to comparison between the two sections and as to standards and basis of the belief required, once it is accepted (as has been done in the Travancore Appeals (A. Thangal Kunju Musaliar v. Authorised Official, I.T., [1955] 2 S.C.R. 1196), that substantial evasion is a definite legal standard determinative of a distinct class, it is clear that the class comprised thereunder is not identical with the class comprised under section 34 of the Income-tax Act. In the alternative, it is a select group of a wider class. If the smaller grouping is on a rational basis relevant to the policy of the Act, it would form a distinct class by itself for purposes of article 14.

It is necessary at this stage to bear in mind the entire scope of the Investigation Commission Act in order to determine what the class is which is contemplated and covered by it. Five main features may be noticed of the scheme of the Investigation Commission Act.

> (1) It relates only to those in respect of whom the Government have "prima facie reason to believe that there has been substantial evasion of tax."
>
> (2) The belief does not result straightaway in proceedings for reassessment (unlike under section 34 of the Income-tax Act) but the question of re-assessment (i.e., reopening of the assessment) depends on investigation into the correctness of that

belief. The first step in the scheme is section 5(2) which contemplates that the investigation may result in substantial evasion not being revealed. If so the further proceedings would be dropped on a report by the Commission to that effect. Hence no reassessment starts in such a case.

(3) An effective procedure for investigation is provided to bring out all the necessary and relevant facts and material to substantiate the evasion and quantum thereof.

(4) Proceedings for reassessment are taken only on the emergence of such material on a report to that effect and that too on a further direction by the Government as to the exact nature of the proceedings to be taken and as to the exact period to be covered falling within the limits of 31st December, 1938, and 1st September, 1948. (see section 8(2) and 5(3) of the Investigation Commission Act.)

(5) A reference could be made by the Government to the Commission only up to a specified date line statutorily determined.

If all these facts which are essential part of the scheme under the Investigation Commission Act are borne in mind it becomes apparent that the class contemplated under section 5(1) of the Investigation Commission Act for re-assessment is totally different from that which could be got at either under section 34 of the Income-tax Act as it stood between 1939 and 1948 or as it stands since 1948. One has only to compare the provisions in the Income-tax Act relating to the means by which the normal Income-tax authorities can get information or obtain material which might lead to a reopening of the assessment under section 34 of the Income-tax Act to appreciate that the class contemplated under section 5(1) of the Investigation Commission Act cannot be the same. The only provisions in the income-tax law for the purpose are sections 37, 38 and 39 of the Income-tax Act. The primary scheme of the Income-tax Act is that the basic materials for the assessment are the returns and the accounts or other evidence to be furnished by the assessee himself (sections 22 and 23 of the Income-tax Act) or the checking material that may be available from the returns and the accounts of other assessees who have transactions with this assessee. It may also consist of information received from other public authorities, etc., as well as the examination of persons appearing to have interconnected transactions. The Income-tax Officer has not the power to probe into suspicious features or obtain and seize material in verification or support thereof. All that normally he can do, where there is room for grave suspicious is to reject the accounts and make his assessment on the basis of "best judgment" (see section 23(4) of the Income-tax Act) which cannot be sustained if it is a wild guess based on mere suspicion. Now, the whole scheme of the Investigation Commission Act is obviously inspired by the realisation that the normal machinery available to the Income-tax Officer for the reassessment of large scale suppressed income is not adequate. All the same, the Legislature realising that drastic Investigation into the affairs of assessees on seemingly well-grounded suspicions might result in serious encroachment of personal liberties, has not chosen to vest the Income-tax Officer with any such powers of investigation and has confined this drastic procedure to evasion of Income during the period commencing 1st January, 1939, to the 1st September, 1948 (vide sections 8(2) and 5(3) of the Investigation Commission Act) and limited the same to cases of substantial evasion. In considering, therefore, what is the ambit of the class contemplated by section 5(1) of the Investigation Commission Act, it is necessary to remember these features of the scheme. It would follows that the class comprised in section 5(1) is the class of substantial evaders whose evasion appeared to the Government to call for a high-powered machinery for effective investigation, not available to an ordinary Income-tax Officer functioning under section 34 of the Income-tax Act. So understood it is quite clear, to my mind, that

section 5(1) of the Investigation Commission Act relates to a class totally different from what can be brought in under section 34 of the Income-tax Act as it, either stood before, of stands after, 1948. That this class was really contemplated to be distinct is also indicated by the following provision of section 8(4) of the Investigation Commission Act.

> "No proceedings taken in pursuance of such direction (direction made under section 8(2) for reassessment) shall be to the initiation of proceedings under section 34 of the Indian Income-tax Act."

This seems to indicate the possibility of concurrent assessment proceedings as against any particular assessee under section 34 of the Income-tax Act as also under section 8(2) of the Investigation Commission Act. The idea appears to be that section 34 proceedings may go on in respect of such income of the assessee the escaping of which comes to the knowledge of the officer by the normal procedure, and that the reassessment under the Investigation Commission Act is expected to be in respect of such evaded income which is to be discovered only as a result of regular and effective investigation.

It has been suggested in the course of arguments that no objection could be taken to Government taking only sufficient powers for investigation in appropriate cases, without any question arising as to discrimination or classification but that this cannot justify discriminatory procedure as regards actual reassessment. That raises a different aspect of the matter which will be presently dealt with.

Assuming however that substantial evaders contemplated under section 5(1) of the Investigation Commission Act fall also within the larger class of evaders who fall within the class contemplated by section 34 of the Income-tax Act as it stands, what follows ? The selective group under section 5(1) of the Investigation Commission Act is determined with reference to the criteria (1) that they are substantial evaders of income-tax, and (2) that they are assessees within the period 1939 to 1948 which is well known to be the period of war profits and black marketing and in respect of whom the Government get information before 1st September, 1948, justifying investigation. This is by itself a well-defined class and the classification has a reasonable relation to the object to be achieved, viz., the catching up of the escaped black-market war profits, for assessment. It is to be assumed that the Government would have made their references to the Investigation Commission of all the cases of persons about whom they have the requisite belief or information before 1st September, 1948. If there are any war profiteers of that period against whom there was no information by then and against whom information so becomes available later, it will be probably found that the information so received is not such as to enable the ordinary Income-tax Officer to rope him in. It may turn out that he has evaded once for all. But even if, in some cases, the Income-tax Officer could by the ordinary process get the escaped income of such assessees for reassessment, that by itself is no ground for thinking that a classification of substantial war profiteers who have evaded income-tax and against whom there was information up to a specified date is not in itself a valid classification. It is well-recognised that a classification otherwise reasonable is not invalid by reason of the classification not being comprehensive.

In Joseph Patsone v. Commonwealth of Pennsylvania (232 U.S. 138, 144; 58 L.Ed. 539, 543) the Supreme Court of the United States of America laid down that -

> "a state may classify with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of

> abstract symmetry does not matter. The question is a practical one dependent upon experience..... It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named."

Again in West Coast Hotel Co. v. Ernest the Parrish (300 U.S. 379, 400; 81 L.Ed. 703, 713) the same Court stated -

> "This Court has frequently held that the legislative authority, acting within its proper field, is not bound to extend its regulation to all cases which it might possibly reach. The legislature 'is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be clearest'. If 'the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied. There is no 'doctrinaire requirement' that the legislation should be couched in all embracing terms."

It is substantially the above view of permissible classification for the purposes of article 14 that has been recognised by this Court in Sakhawat Ali v. The State of Orissa ([1955] 1 S.C.R. 1004, 1010) where this Court laid down as follows :

> "Legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and not violative of the fundamental right guaranteed by article 14 of the Constitution."

Even if therefore section 34 of the Income-tax Act as amended in 1948 is wide enough in its ambit to catch up any and every case which could be dealt with under section 5(1) of the Investigation Commission Act, it is still a distinctive and selective group out of a larger group and is a class by itself determined with reference to the criteria above indicated. It is no objection to the constitutionality of that classification that some out of them who may have been left out may be taken up later for being proceeded against under the amended section 34 of the Income-tax Act. The class falling within the scope of the Investigation Commission Act is a class closed with reference to the date-line, 1st September, 1948, and it appears to me difficult to envisage the possibility of any member of that class being available to be dealt with by the Income-tax Officer under the amended section 34 of the Income-tax Act which came into operation from after that date-line except by imputing mala fides to the Government in the selective application of section 5(1) of the Investigation Commission Act. It is true that the date-line was changed by Legislative from 30th June, 1948 to 1st September, 1948. But it was an essential part of the whole scheme of the legislation that there was to be no reference beyond a date-line to be fixed by the Legislature, so as to limit the application of the Act. Hence it is also an attribute of the class contemplated by the Act.

I am aware that there are observations in Suraj Mall Mohta's case ([1955] 1 S.C.R. 448), and Shree Meenakshi Mills case ([1955] 1 S.C.R. 787), which appear not to have accepted the idea of the class being with reference to a date-line. But the actual decision in Suraj Mall Mohta's case ([1955] 1 S.C.R. 448) was based on the distinction between section 5(4) and section 5(1) of the Investigation Commission Act and the consequential parallelism between the class falling under section 5(4) of

the Investigation Commission Act and section 34(1) of the Income-tax Act. In Meenakshi Mills case ([1955] 1 S.C.R. 787) the decision was rested on the parallelism between section 5(1) of the Investigation Commission Act and section 34(1) of the Income-tax Act as amended in 1954. The decision in neither of these cases was based on any final determination of the scope of the class contemplated by section 5(1) of the Investigation Commission Act. The actual decisions in those cases are of course binding but not necessarily all the reasoning therein. Besides, with great respect, the relevancy of the date-line in section 5(1) as having been related to the then contemplated date for the lapse, in 1948, of the controls under the Essentials Supplies (Temporary Powers) Act, 1946 (Act XXIV of 1946) was not noticed. The principle of Sakhawat Ali's case ([1955] 1 S.C.R. 1004, 1010) was not also by then laid down by this Court (that case having been decided later in November, 1954).

Further, even if the date-line is not an essential part of the classification under section 5(1) of the Investigation Commission Act, the other four essential feature of the scheme of the class contemplated in section 5(1) as set out by me above are by themselves enough to constitute a complete and rational differentiation of the class comprised under section 5(1) of the Investigation Commission Act from that under that 34(1) of the Income-tax Act as amended in 1948. If on such a classification some cases of substantial evasion happen to have escaped the machinery of the Investigation Commission Act, that would not invalidate the classification on the principle accepted in Sakhawat Ali's case ([1955] 1 S.C.R. 1004, 1010). I am in any case unable to visualise the reasonable possibility of any person falling within the category contemplated under section 5(1) of the Investigation Commission Act, being taken up for reassessment under section 34 of the Income-tax Act as amended in 1948 and consequently of two parallel reassessment proceedings relating to such persons remaining pending by the 26th January, 1950, so as to bring about discriminatory operation between them and to render section 5(1) of the Investigation Commission Act ultra vires in respect of such pending matters. It appears to me, therefore, that section 5(1) of the Investigation Commission Act and the other sections following thereupon cannot be declared unconstitutional on the ground of absence of reasonable classification.

One other matter has been relied upon as being relevant. It was pointed out that the amendment of section 34 of the Income-tax Act in 1948 was simultaneous with the amendment of section 5(3) of the Investigation Commission Act, extending the time for a reference under section 5(1) by the Central Government up to the 1st September, 1948. It has been suggested that this clearly shows that intention of the legislature to the effect that after the 1st September, 1948, all cases which might have fallen under section 5(1) of the Investigation Commission Act are left to be dealt with under section 34 of the Act as amended. It appears to me with respect that there is no basis for this inference. On the other hand it appears to me (if what I have said above as being the scheme of the Investigation Commission Act is correct) that the Legislature deliberately limited the application of the Investigation Commission Act by a date-line realising the seriousness of its continued operation. It did not want to perpetuate the drastic provisions thereof to any new cases in view of the fact that the official war period ended and controls had been lessened by the above date-line, if not totally abolished. It may be mentioned that by proclamation, the war situation was formally terminated as from the 1st April, 1946, and that the Control Orders under the Defence of India Act ceased to be operative from the 1st October, 1946, and that the Essential Supplies (Temporary Powers) Act, 1946, was passed in substitution thereof. This 1946 Act was intended originally to be in operation only until March, 1948. (see Joylal Agarwala v. The state ([1952] S.C.R. 127, 130). The date-line of 1st September, 1948, in section 5(1) seems to be related to this situation. It appears to me that with the full consciousness that any new cases of the same category, if any, are not likely to be caught up under the normal procedure, the legislature merely purported by virtue of the amended section 34 of

the Income-tax Act to remove certain lacuna in the normal machinery, which had been noticed and reported upon by the income-tax administration and by the Investigation Commission, with reference to section 34 as it stood between 1939 to 1948. (See paragraph 22 of the General Report of the Income-tax Investigation Commission issued in 1948 making its recommendation for the improvement of the machinery at page 8 of that report and Appendix A thereto which would show that amendment of section 34 was not connected with the extension of the date for making references under section 5(1) of the Investigation Commission Act). I am unable, therefore, to assume that the simultaneous enactment of section 34 of the Income-tax Act and the amendment of the Investigation Commission Act in 1948 have a bearing on the question at issue.

Undoubtedly the re-assessment proceedings under the Investigation Commission Act appear to deprive the assessee of certain procedural advantages. He is deprived of an appeal on facts to the Appellate Assistant Commissioner and to the Income-tax Appellate Tribunal. He is given the right of appeal only on points of law by means of a reference to the High Court. But such reference is to be heard by a Bench of not less than three Judges. Now, once there is a valid classification the nature and extant of the actual discrimination which result under the scheme of legislation relating thereto is largely a question of policy, which the courts have nothing to do with, except possibly where the discrimination has no reasonable relation to the policy and purpose of the classification. The policy underlying the Investigation Commission Act is, as already stated, to catch up for reassessment large scale evasion of Income-tax of the war period. It is obvious that having regard to the magnitude of the interests that would be involved therein, it was quite legitimate that the matters concerned therewith, should be entrusted to a highly-qualified and high-powered authority, and not to the ordinary machinery. No grievance can be made if the legislature thought fit not to entrust the responsibility for fact finding to the normal machinery involving lesser qualifications and experience. It is true that the investigation might have been placed in the hands of one authority and the fact-finding on the material so gathered in the hands of another authority or that at least there might have been provided one appeal on facts also to high placed authority like the High Court. It may also appear somewhat disquieting that the same body is invested both with the power of investigation and the power of fact findings and that there is no appeal provided as against its findings on facts. But these are all matters of policy and cannot be said to be either unreasonable or unrelated to the purpose and policy of the classification. Investigation is a comprehensive term and it will be seen that the investigation procedure itself under the Act is in two stages, one before the authorised official at which the assessee is not entitled to be represented and the other before the Investigation Commission at which the assessee is entitled to be represented by a pleader, a registered accountant or an authorised employee (vide section 7(3) and the proviso thereto). These two stages may be taken roughly, though not necessarily to indicate two parts of the investigation (1) the process of probing into the evasion and collecting the material in support of it, and (2) arriving at conclusion with reference to the material so collected and presented. The latter is the judicial part at which the Commission is directed under section 7(2) to follow the principle of the Indian Evidence Act and to give the assessee a reasonable opportunity of rebutting evidence and generally to act in accordance with the principles of natural of natural justice. The procedure relating to this stage is assimilated to a judicial enquiry in a larger measure than is the procedure before the Income-tax Officer or the Appellate Assistant Commissioner, in respect of whose proceedings there is no provision that they must follow as far as practicable the principles of the Indian Evidence Act. (see section 23 of the Income-tax Act). It is well settled that the assessment proceedings by the Income-tax Officer under section 23 Income-tax Act - and hence also under section 34 thereof - are not regulated by the technical standards of evidence though of course they cannot be based on caprice or suspicion. It would, therefore, appear that according to the scheme of

the investigation Commission Act, the judicial part of it approximates much more to judicial standards than the assessment proceedings by the income-tax authorities and that though in theory there is a combination of the functions of an investigator and the judge in the Investigation Commission, in normal practice it is likely to be kept distinct by the appointment of an authorised official to conduct the first portion. It is also to be remembered that the combination of the investigator and the judge is inherent even in the normal income-tax machinery where the Income-tax Officer and the Assistant Income-tax Commissioner are in the nature of Judges interested in their own cause.

It has been suggested that there is something opposed to ordinary canons of judicial procedure or natural justice in the matter of making relevant documents available to the assessee in the proceedings before the Investigation Commission. It appears to me, with respect, that this is based on a misapprehension. It is true that section 7(4) of the Investigation Commission Act says:

> "No person shall be entitled to inspect, call for, or obtain copies of, any documents, statement or papers or materials furnished to, obtained by or produced before the Commission or any authorised official in any proceedings under this Act; but the Commission, and after the Commission has ceased to exist such authority as the Central Government may in this behalf appoint, may, in its discretion, allow such inspection and furnish such copies to any person." and section 6(8) of the Investigation Commission Act says :
>
> "All material gathered by the Commission or the authorised official materials accompanying the reference under sub-section (1) of section 5 may be brought on record at such stage as the Commission may think fit."

But these provisions have to be read subject to the proviso to section 7(4) and to the opening part of section 7(2) of the Investigation Commission Act. The proviso to section 7(4) is as follows :

> "Provided that, for the purpose of enabling the person whose case or points in whose case is or are being investigated to rebut many evidence brought on the record against him, he shall, on application made in this behalf and on payment of such fees as may be prescribed by Rules made under this Act, be furnished with certified copies of documents, statements, papers and materials brought on the record by the Commission."

Further, the opening part of section 7(2) says :

> "In making an investigation under clause (b) of section 3, the Commission shall act in accordance with the principles of natural justice, shall follow as far as practicable the principles of the Indian Evidence Act, 1872, and shall give the person whose case is being investigated a reasonable opportunity of rebutting any evidence adduced against him.....".

The above provisions preclude the possibility of the Commission pushing in into the final record on which the report is to be based any ex parte material to which the assessee has had no access. These also preclude the possibility of depriving him of the use of any relevant material in the Commission's possession which the assessee may call for. All that section 7(4) implies is that the assessee is not entitled to a roving inspection of the material gathered by the Investigation

Commission in the course of Investigation, which may relate to the affairs of various other persons. Such a provision is not opposed to natural justice for even in the matter of criminal judicial trials the accused is not entitled to a roving inspection of the material gathered by the police during investigation. (I may notice, with very great respect, that the observation in Suraj Mall Mohta's case ([1955] 1 S.C.R. 448) at page 464 that "the proceedings before the Income-tax Officer are judicial proceedings and (that therefore) all the incidents of such judicial proceedings have to be observed i.e., in other words, the assessee should be entitled to inspect the record and all relevant documents" seems to have failed to note that section 37(1) specifically limits the judicial character of the proceedings to the purposes covered by sections 193, 196 and 228 of the Indian Penal Code and also that the said section vests in the Income-tax authorities the powers of a courts only for specified purposes). If, therefore, in view of all these circumstances the Legislature thought fit to entrust the combined responsibility for the Investigation and fact-findings to a single high-powered and highly-qualified body consisting of three members of whom one is or has been a Judge of the High Court and made their findings of fact final, without providing for access to the regular heirarchy of appeals to the Assistant Commissioner and a Bench of two members of the Income-tax Appellate Tribunal, there appears to be nothing unreasonable therein. On the other hand there are counter-balancing features with reference to the composition of the Commission and the statutory standards by which the judicial part of its proceedings have to be governed. I am, therefore, unable to feel that the discrimination brought about in the procedure relating to assessment calls for any such adverse reaction as to be a reasonable basis for founding thereon an inference of unconstitutional inequality. However as I having already said above, this appears to be ultimately a question and of policy. Once the classification is found to be justified and reasonably related to the clearly underlying policy of the Investigation Commission Act, I am unable to feel that section 5(1) of the Investigation Commission Act can be struck down as ultra vires in relation to its supposed concurrent operation with section 34 of the Income-tax Act as amended in 1948. I hold, therefore, that section 5(1) of the Investigation Commission Act was not hit by article 14 of the Constitution notwithstanding amendment of section 34 of the Income-tax Act in 1948 and that it continued to be valid.

On all other points urged on behalf of the petitioners, I agree with the view expressed in the judgment delivered by my learned brother justice Bhagwati on behalf of the majority of the Court. It is, therefore, unnecessary for me to deal with them.

In the result, in my opinion, this petition must be dismissed with costs except as regards the incomplete reassessment for 1942-43 for which the learned Solicitor General has given an undertaking not to proceed with it under the provisions of the Investigation Commission Act, as stated in the judgment of my learned brother.

ORDER

BY THE COURT : In accordance with the Judgment of the majority the petition is allowed and it is ordered that a writ of certiorari do issue quashing the report of the Income-tax Investigation Commission dated the 26th August, 1952 and the assessment orders of the Income-tax Officer for the year 1940-41, 1941-42 and 1943-44 to 1948-49, and that a writ of prohibition do issue against the respondents restraining them from implementing the findings of the Investigation Commission with regard to the year 1942-43. The respondents do pay the petitioners' costs of their petition.

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