The Commissioner of Income Tax, Bihar and Orissa, Patna

Vs

S. P. Jain

Civil Appeals Nos. 320-322 (Nt) Of 1969

(K. S. Hegde, P. Jagmohan Reddy, H. R. Khanna JJ)

19.09.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. These appeals are by the Commissioner of Income Tax, Bihar and Orissa, against the judgment of the High Court of Patna in references under Section 66(2) of the Income Tax Act, 1922 (hereinafter called the 'Act') which answered the questions referred to it in favour of the assessee and against the appellant.

2. We shall presently set out the questions called for by the High Court, but before, we do so it is necessary to state the facts on which those questions have to be determined.

3. The assessee in an individual having income from salary, interest on securities, rents from house properties, dividends etc. In the year 1954-65 for which the previous year is November 1, 1952 to October 31, 1953, the assessee filed a return on February 28, 1955 declaring a total income of Rs. 2,60,737/-. On February 24, 1958 a revised return was filed including therein property income amounting to Rs. 550/-. The Income Tax Officer completed the assessment on September 30, 1958 on a total income of Rs. 21,15,845/- which included a sum of Rs. 10,80,000/- treated as the assessee's income from undisclosed sources "for investment in shares in the name of Sri Kalyan Shum Shere J. B. Rana" (hereinafter referred to as 'the Rana'). The assessee disputed the inclusion of this amount of Rs. 10,80,000/-. The Income Tax Officer treated this amount as income from undisclosed sources for the following reasons :

From the statement of case, it would appear that on July 1, 1952 the assessee sold 50,000 ordinary shares of Rhotas Industries Ltd. (R.I. Ltd.) to Dalmia Jain Collieries Ltd. (D.J.C. Ltd.) Another 10,000 shares of R.I. Ltd. were sold on the same day to Maheshpur Collieries (M.C. Ltd.). He also sold 40,000 and 35,000 ordinary shares of S.K.G. Sugar Ltd. the former to D.J.C. Ltd. and the latter to M.C. Ltd. on the same day, viz. July 31, 1952. Thereafter, in the year 1953, the two vendor companies are alleged to have sold these shares for a sum of Rs. 10,80,000/- to one Rana as follows :

> (a) On May 30, 1953, the D.J.C. Ltd. sold 40,000 ordinary shares to S.K.G. Sugar Ltd. for Rs. 3,20,000/-. Again on August 28, 1953, the D.J.C. Ltd. sold 50,000 ordinary shares to R.I. Ltd. for Rs. 4,00,000/-.
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> (b) On May 30, 1953, M.C. Ltd. sold 35,000 ordinary shares of S.K.G. Sugar Ltd. for Rs. 2,80,000/-; and on August 28, 1953, the same company sold another 10,000

ordinary shares to R.I. Ltd. for Rs. 80,000.

4. The shares were delivered allegedly to Rana by Mr. J. F. Wood, General Manager of the Allahabad Bank after collecting the sale price of Rs. 10,80,000/- in cash paid on May 30, 1953 and August 28, 1953 and that the sum so received was given as loan to one Sri Durga Prasad of Tumsar through Sri J. F. Wood who paid to him the two amounts aggregating to Rs. 10,80,000/- on the respective dates against two promissory notes and receipts.

5. Though the Rana is shown to have purchased the shares in May and August, 1953, he got them transferred to his own name only in April, 1955.

6. On the material on record the Income Tax Officer came to the following conclusions :

> "(i) The Rana could not be contacted at 22, Circus Avenue, Calcutta. The Inspector of the Department found that the tenant of the first floor of 22, Circus Avenue, Calcutta was some one else and that the flat had never been let out to the Rana.
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> (ii) The Income Tax Officer's own personal enquiries showed that the Rana could never have been in a position to invest a sum of over Rs. 10 lakhs in the shares in question.
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> (iii) Neither the two vendor companies nor the Rana nor Sri Durga Prasad of Tumsar had any account with the Allahabad Bank at that time and the shares were not in the Bank's custody. The letter of Mr. J. F. Wood confirming the transaction did not appear in the Issue No. of the Bank and no office copy of the letter was forthcoming in the Bank. A person with sufficient financial influence with the Bank alone could have brought about such a transaction and the Rana should therefore be a benamidar.
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> (iv) Though the Rana is alleged to have purchased shares in May and August, 1953 the Rana had never attended any general meeting of the share-holders nor appointed any proxy to attend in the general meeting on his behalf.
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> (v) R.I. Ltd. declared dividends on June 2, 1954 and S.K.G. Ltd. on April 23, 1954. The dividends in all amounted to Rs. 21 lakhs but the Rana did not take steps to have the same recorded as the registered share-holder and to collect the dividends.
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> (vi) The Rana opened a current account in Allahabad Bank in April, 1955 with a cash deposit of Rs. 500/- and the dividends were then collected by the Bank. During April to December, 1955 deposits were over Rs. 22 lakhs and withdrawals Rs. 20 lakhs. During the calendar year 1955 the deposits were Rs. 14.97 lakhs and withdrawals Rs. 16.85 lakhs; in the calendar year 1957, there was one deposit of Rs. 1,30,125 and withdrawal of Rs. 1,41,000/-. All these deposits were by cheques and withdrawals involving over Rs. 38 lakhs in the three years were all by bearer cheques and endorsed in favour of Ananta Chandra Das. Along with the cheques, letters of authorisation were also issued in his favour. Excepting for the signature of the Rana, the other entries in the cheques were in different handwriting and the authorisation letters were all typed in identical form. Ananta Chandra Das was found to be a representative of Sir B. D. Dujari, Accountant of Ashoka Marketing Ltd. and one of the lieutenants of the assessee.

> (vii) The vendor companies and the companies whose shares were sold, namely, of R.I. Ltd. and S.K.G. Ltd. all belonged to Sahu Jain Group and under the compete control of the assessee, who is the head of Sahu Jain Group. Since it was not likely that the assessee could afford to allow these shares pass out of his control to an outsider, the transaction of purchase of the shares from the vendor companies would have been by the assessee in the name of the Rana."

7. On February 28, 1968, the Income Tax Officer informed the assessee that on the basis of information available with him, he had reason to believe that the Rana was the assessee's benamidar in the transaction of purchase of the shares in question for Rs. 10,80,000/- from the two vendor companies and called upon the assessee to state his objections, if any, and also to adduce evidence in support of his contentions and also to produce the Rana before him. On March 13, 1958, the assessee denied the purchase of the shares by him through the alleged benamidar. On September 3, 1958, the assessee's accountant forwarded to the Income Tax Officer a statement or letter by the Rana, dated August 26, 1958, confirming the purchase of shares by him. Since the assessee took no steps to produce the Rana for examination by the Income Tax Officer in view of "the utter uselessness" of the Rana's letter and in the absence of "necessary evidence and conclusive proof" about the Rana's financial capacity, the Income Tax Officer treated the source of investment of Rs. 10,80,000/- as belonging to the assessee. The source not having been explained, the Income Tax Officer, assessed the sum as the assessee's income from undisclosed sources.

8. In appeal against the assessment, the Appellate Assistant Commissioner remanded the case to the Income Tax Officer as he found that the evidence of Sri Durga Prasad had been taken without giving any opportunity to the assessee to cross-examine him and that Ananta Chandra Das was not examined, nor any evidence of the officers of the two vendor companies recorded. The Appellate Assistant Commissioner further directed the Income Tax Officer to examine the assessee and also to investigate the physical movement of the shares in question during the period covered by the transactions and the subsequent history including their ultimate disposal. It would appear from the Appellate Assistant Commissioner's order that the Income Tax Officer submitted two remand reports in which he made out the following salient points :

> (1) The assessee did not avail of the opportunity of producing the Rana.
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> (2) The Income Tax Officer visited Nepal and found that the present position and antecedents of the Rana were modest.
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> (3) Ananta Chandra Das was found to be an employee of Ashoka Marketing Ltd. Later, the Income Tax Officer succeeded in contacting Ananta Chandra Das whose statement was also recorded.
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> (4) The statement of Onkarmal Dalmia recorded on December 9, 1958, showed that the share scrips of the two companies involved, which were stated to have been purchased by D.J.C. Ltd. and Maheshpur Collieries Ltd. were found to have been in the custody of the Accountant of the Ashoka Marketing Ltd.
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> (5) The Principal Officer of the two companies Shri H. D. Bisoni did not know about the transactions in question.
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> (6) Sri Durga Prasad changed his earlier statement and said that the loans received by

him were from the two companies concerned.

(7) The sale to Rana was made at Patna below the market rates.

(8) Some details regarding the movement of the shares were noted by the Income Tax Officer but their subsequent history was not traced out.

(9) The statements of Sarvashree Onkarmal Dalmia, H. D. Bisoni, the appellant, Ananta Chandra Das and Thakur Das Dujari were enclosed.

9. After the receipt of the remand reports, the Appellate Assistant Commissioner was of opinion that if the cumulative picture was visualised and considered not in isolation but generally as a whole, great weight has to be attached to the Income Tax Officer's conclusion that the investment of Rs. 10,80,000/- was the assessee's income from undisclosed sources. An appeal against this order was taken to the Income Tax Appellate Tribunal. The Tribunal declined to consider certain documents in Annexures D-1 to D-33 of the statement of the case. After rejecting these documents, the Tribunal found that "the purchase of shares by Rana was not a benami transaction" and was legally valid.

10. The conclusions of the Accountant Member which will be referred to as that of the Tribunal, so far as they are relevant for the disposal of this appeal have been stated by him as under :

(1) At the relevant time in 1953, it was not in dispute that the two vendor companies were the actual owners of 75,000 ordinary shares of S.K.G. Ltd. and 60,000 ordinary shares of R.I. Ltd. The shares which the companies purchased were pledged with the Commissioner of Income Tax by the assessee and with his permission subsequently sold to the above companies.

(2) The transactions of sale by the vendor companies have been established according to the entries in the account books of the companies and by the factum of actual advance of loans amounting to Rs. 10,80,000/- to Sri Durga Prasad who executed the requisite promissory notes in favour of the two companies. According to the evidence of Sri Durga Prasad and the letter of Sri J. F. Wood, General Manager of the Allahabad Bank, the sale proceeds were received by him on behalf of the vendor companies from the Rana and paid over to Sri Durga Prasad after obtaining the promissory notes. It was not the department's case that Sri S. P. Jain had advanced Rs. 10,80,000/- to Sri Durga Prasad. The vendor companies did not have cash to make the advances except after the sale of the shares. From the facts recorded it followed that the two vendor companies effected the actual sale of shares in question and made the loans aggregating to Rs. 10,80,000/- to Sri Durga Prasad.

(3) Rana did not claim to be a tenant of 22, Circus Avenue, Calcutta. He had given his address as "Thapathali Darbar Nepal C/o Smt. Pooku Maiya Saheba, 22, Circus Avenue, Calcutta". In 1956, Rana seems to have been present at Calcutta and this fact had been confirmed in a letter to the Income Tax Officer, dated July 27, 1956, by General Baber Shamshir J. B. Rana, who stated that the Rana left his home (Nepal) some months back for treatment in India but he did not know Rana's address. The department had commenced its enquiries early in 1956 and at that time the Rana had substantial cash balance left in the Allahabad Bank. Since Rana never claimed to be a tenant and the departmental enquiries did not result in a positive finding that the

Rana never stayed at No. 22, Circus Avenue, Calcutta, no adverse inference could be drawn against the assessee from the failure to contact the Rana. If it was a fact that the Rana had given a bogus address, his financial standing and credit could be assailed. As the facts stood the fact that the Rana could not be contacted at 22, Circus Avenue, could not warrant an inference that the Rana was a benamidar.

> (4) That the assessee had produced at the remand stage a letter, dated March 15, 1959, from the Indian Ambassador, Nepal to the effect that the Rana was a person of large means and resources and enjoyed respectable position. The department did not take further action by seeking any clarification from the Indian Ambassador. He held that there was no material to hold that the Rana was not financially in a position to make the investment in question of over Rs. 10 lakhs.

> (5) The Income Tax Officer drew an adverse inference that the Rana was a benamidar from the fact that the Rana did not get himself registered as a share-holder for nearly a year and did not promptly collect the dividends declared. The Tribunal though that this was possible if Rana possessed sufficient means where-as if he was weak financially he would have tried to collect the dividends immediately on declaration.

> (6) Ananta Chandra Das was ultimately located by the Income Tax Officer as an employee working in New Central Jute Mills, He was subjected to prolonged cross-examination by the Income Tax Officer in November and December, 1962. It was not elicited from Ananta Chandra Das that the moneys collected by him from Allahabad Bank Ltd. against the cheques of the Rana were paid to the cashier or accountant of the Ashoka Marketing Ltd. or of any other concern under the assessee's control. Ananta Chandra Das, on the other hand, specifically stated that the Rana utilised his services for getting the moneys from the Bank and the moneys were duly handed over to the Rana. Ananta Chandra Das's evidence failed to establish that the moneys collected from Allahabad Bank were for the assessee's benefit.

11. The Judicial Member though he agreed with the main conclusions arrived at by the Accountant Member however added :

> "This following circumstances of this case have caused serious doubts in my mind as to the bona fides of the transactions of the purchases or sales of these shares by the Rana (1) that there was no evidence of any negotiation for the sale of this huge lot of shares by the two colliery companies to the Rana. Certainly no brokers were involved; (2) that the two large sums of Rs. 6 lakhs and Rs. 4,80,000/- were handed over in cash by the Rana on May 30, 1953 and August 28, 1953, though admittedly the Rana had no Bank account and no residence of his own in Calcutta where the cash could be kept in safety; (3) that though neither of the two colliery companies nor the Rana were constituents of the Allahabad Bank, yet the General Manager of the Bank actually handed over the purchase price and the share scrips respectively to the vendors and the purchaser and no reference could be found in the official records of the Bank; (4) the unsatisfactory nature of the evidence given by Nandlal Poddar and (5) lastly, the manner of withdrawal of nearly Rs. 37 lakhs in cash from the Allahabad Bank. Although the department has been able to point out the circumstances which raise an element of doubt as to the genuineness of the

transaction of the purchases of these shares in 1953 by the Rana, in my opinion, the assessee has successfully rebutted any positive evidence produced by the department. I have a feeling that if the department had acted in time it could possibly have unearthed materials and evidence to strengthen and support this case. In spite of the serious misgivings in my mind I am constrained to hold that the department has failed to establish beyond reasonable doubt that the Rana acted merely as a benamidar in the purchase of these shares and also that he so acted on behalf of the assessee, Sri S. P. Jain. I, therefore, concur with the order made by the Accountant Member."

12. On the Tribunal's findings, the following questions were referred to the High Court :

> (1) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in declining to consider the documents which were already on record and which the Department wanted to adduce as evidence ?
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> (2) Whether on the facts and in the circumstances of the case, the Tribunal's finding that the purchase of the shares by the Rana was not a benami transaction was legally valid ?
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> (3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deleting the sum of Rs. 10,80,000/- from the total income of the assessee by holding that the Rana was not the benamidar of the assessee ?

The High Court confirmed the Tribunal's conclusions on more or less similar reasoning which formed the basis of those conclusions.

13. On behalf of the revenue, it is contended by the Additional Solicitor-General that the Tribunal based its conclusions on inadmissible evidence and on wrong facts. It gave no cogent reasons for rejecting the findings of the Income Tax Officer. It disregarded and failed to take into account the relevant material on record and has based its findings on mere conjectures and surmises. For these reasons he invites us to ignore the bases of the Tribunal's conclusion and hold that on the findings given by the Income Tax Officer, Appellate Assistant Commissioner and the materials on record, the sale by the two vendor companies to Rana was a sham and bogus transaction, that in fact Rs. 10,80,000/- alleged to have been paid for the price of those shares was the assessee's income from undisclosed sources.

14. What has to be considered in this case is, whether the sale of shares by the vendor companies to Rana on the date when it is alleged to have taken place was a sham and bogus one; and if it was, and that Rana was merely a name-lender, whether the loan alleged to have been advanced by the vendor companies to Durga Prasad of Tumsar was in fact advanced by the assessee. Both are inter-linked and unless the connection of the assessee with the loan is established, the assessment in respect of that amount as income from undisclosed sources cannot be sustained.

15. The two primary questions that arise for decision in these appeals are :

> (1) Whether the findings of fact reached by the Tribunal are liable to be interfered with on any of the grounds recognised by law, and
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> (2) whether the department has been able to establish that the shares alleged to have

> been purchased by the Rana were actually purchased by the assessee and that the Rana was a mere benamidar for the assessee.

The findings reached by the Tribunal are prima facie findings of fact. Before rejecting those findings, we must be satisfied that there are grounds in this case recognised by law which empower us to interfere with those findings. If the Department succeeds in crossing this hurdle, it has to further establish not merely that the Rana was not the real purchaser of those shares but that he was the benamidar of the assessee. The question which naturally arises on the very threshold is, whether it is permissible for this Court to go behind the findings of fact as found by the Tribunal upon which it had come to the conclusion that the Rana was the real purchaser.

16. In Karnani Properties Ltd. v. C.I.T., West Bengal, (82 ITR 547 at 554 : (1971) 3 SCC 568 at 573) this Court [consisting of one of us (Hegde, J.) and Grover, J.] had indicated the limitations imposed on the High Court and this Court from interfering with the findings of fact arrived at by the Tribunal. The assessee in that case owned a number of residential flats and was providing various services and amenities. It claimed that its income should be assessed under the head "business". The Income Tax Officer split the receipts into two parts, one part being treated as rent and the other as "income from other sources" taxable under Section 12 of the Act. The Appellate Tribunal however held that the second part was assessable as income from the business under Section 10. Neither the department nor the assessee contended that part was assessable under Section 9. The High Court thought that some of the facts found by the Tribunal were not correct and on a re-appraisal of the material on record came to the conclusion that the income was assessable under Section 9 of the Act. This, the High Court could not do as it had no jurisdiction to go behind or question the statements of fact made by the Tribunal unless a reference challenging the findings of fact arrived at by the Tribunal were made to it. It appears in that case the question whether the findings of fact urged by the Tribunal were vitiated for any reason was not before the High Court. In those circumstances this Court pointed out (see Page 551) (Ibid p. 571 (Para 8) :

> "The jurisdiction of the High Court in dealing with a reference under Section 66 is a very limited one. It must take the fact as stated in the statement of the case unless the question whether the findings of the Tribunal are vitiated for one or the other of the reasons recognised by law is before it."

In our view there can be no doubt that unless the Tribunal has been asked to refer a question impugning the validity of the findings sustainable on any principle of law, the facts stated in the statement of the case would from the basis on which the legality or otherwise of the assessment would alone require to be considered by the High Court.

17. In this case the revenue has in its application under Section 66 of the Act asked for specific reference on the question :

> "Whether on the facts and in the circumstances of the case the findings of the Tribunal that a sum of Rs. 10,80,000/- paid for the purpose of the shares was not assessee's own income was a perverse finding having regard to the evidence on the record ?"

The question was repeated in its application under Section 66(2) but perhaps the High Court thought that questions 2 and 3 on which it directed the Tribunal to state a case would cover the scope and ambit of question 3 on which the revenue had asked for reference. We think that the two questions

on which the reference has been made impugn the findings and the validity of the Tribunal's conclusion that Rs. 10,80,000/- was not an income from undisclosed sources, but was the product of genuine sale by the vendor companies. Though this question does raise the validity of the finding given by the Tribunal, we have to ask ourselves the question, in what circumstance will this court interfere with the finding given by the Tribunal or arrive at a different conclusion to that arrived by it.

18. In our view, the High Court and this Court have always the jurisdiction to intervene if it appears that either the Tribunal has misunderstood the statutory language, because the proper construction of the statutory language is a matter of law, or it has arrived at a finding based on no evidence or where the finding is inconsistent with the evidence or contradictory of it, or it has acted on material partly relevant and partly irrelevant or where the Tribunal draws upon its own imagination imports facts and circumstances not apparent from the record or based its conclusions on mere conjectures or surmises or where no person judicially acting and properly instructed as to the relevant law could have come to the determination reached. In all such cases the findings arrived at are vitiated.

19. The learned Additional Solicitor-General referred to certain observations of Lord Radcliffe in Edwards (Inspector of Taxes) v. Bairstow, (28 ITR 579 at 594 : (1955) 3 WLR 410) and wishes us to adopt that as basis for interference with questions of fact found by the Tribunal. The passage to which we were referred is stated at Page 594 thus :

> "I think it possible that the English Courts have been led to be rather over-ready to treat these questions as 'pure questions of fact' by some observations of Warrington and Atkin L. JJ. in Cooper v. Stubbs ([1925] 2 KB 753). If so, I would say, with very great respect, that I think it is a pity that such a tendency should persist. As I see it, the reason why the Courts do not interfere with Commissioners' findings or determinations when they really do involve nothing but questions of fact is not any supposed advantage in the Commissioners of greater experience in matters of business or any other matters. The reason is simply that by the system that has been set up the Commissioners are the first Tribunal to try an appeal, and in the interests of the efficient administration of justice their decisions can only be upset on appeal if they have been positively wrong in law. The Court is not a second opinion, where there is reasonable ground for the first. But there is no reason to make a mystery about the subjects that Commissioners deal with or to invite the Courts to impose any exceptional restraints upon themselves because they are dealing with case that arise out of facts found by Commissioners. Their duty is no more than to examine those facts with a decent respect for the Tribunal appealed from and if they think that the only reasonable conclusion on the facts found is inconsistent with the determination come to, to say so without more ado."

This statement goes farther than what has been adopted by this Court. On the other hand Viscount Simonds confined the interference to the view which has so far been prevailing in references under the tax laws. At Page 586, he observed :

> "For it is universally conceded that, though it is a pure finding of fact, it may be set aside on grounds which have been stated in various ways but are, I think, fairly summarised by saying that the Court should take that course if it appears that the Commissioners have acted without any evidence or upon a view of the facts which could not reasonably be entertained. It is for this reason that I though it right to set

> out the whole of the facts as they were found by the Commissioners in this case. For, having set them out and having read and re-read them with every desire to support the determination if it can reasonably be supported, I find myself quite unable to do so. The primary facts, as they are sometimes called, do not, in my opinion, justify the inference or conclusion which the Commissioners have drawn : not only do they not justify it but they lead irresistibly to the opposite inference or conclusion. It is therefore a case in which, whether it be said of the Commissioners that their finding is perverse or that they have misdirected themselves in law by a misunderstanding of the statutory language or otherwise, their determination cannot stand."

Whether we adopt the extended view advanced by Lord Radcliffe or the view of Lord Simonds, what has to be safeguarded against is that any crystallization of the views of this Court and its reluctance to interfere with the findings of fact should not make the Tribunals or the Income Tax authorities smug in the belief that as the Courts do not interfere with the findings which form the bed-rock upon which the law will be based they can act on that assumption in finding facts or by their mere ipsi dixit that they are findings of fact wish it to be so assumed irrespective of whether they are sustainable in law or on the materials on record. In a number of cases this Court has set out the principles upon which it will interfere with the findings of fact arrived at by the Tribunal. We need not in this case travel beyond the scope of those principles.

20. In Mehta Parikh and Co. v. Commissioner of Income Tax, Bombay, (30 ITR 181 : 1956 SCR 626 : AIR 1956 SC 554) to Hon'ble Judges of this Court after referring to Edward's case (supra), said that the Court would be entitled to intervene if it appears that the fact-finding authority acted without any evidence which cannot reasonably be entertained or the facts found are such that no person acting judicially and properly instructed as to the relevant law would have come to the determination in question. One of the learned Judges, Venkatarama Ayyar, J. did not express his opinion in that case.

21. It was again pointed out by Bhagwati, J. in Omar Salay Mohamad Sait v. Commissioner of Income Tax, Madras : (37 ITR 151 at 170 : AIR 1959 SC 1238).

> "We are aware that the Income Tax Appellate Tribunal is a fact-finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it this Court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence on record before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by this Court."

22. These observations were again referred to and adopted in Lalchand Bhagat Ambica Ram v.

Commissioner of Income Tax, Bihar and Orissa. (37 ITR 288 at 295 : (1960) 1 SCR 301 : AIR 1959 SC 1295) See also Meenakshi Mills, Madurai v. Commissioner of Income Tax, (31 ITR 28 at 50 : 1956 SCR 691 : AIR 1957 SC 49) where Venkatarama Ayyar, J. summed up the position emerging on the several decisions referred to by him :

> "It appears to us that apart from the circumstances to which we have referred justifying an interference with the findings set out in the statement of the case, what has to be considered in all those cases is, whether on the materials on record, the true and the only reasonable conclusion is the one which is contrary to that found by Tribunal."

23. The Tribunal in our view has failed to take into account the relevant material on record in arriving at its findings. It has further acted on inadmissible evidence and also based its conclusion on conjectures, surmises and wrong facts. It had further failed to consider the probabilities of the case on which the Income Tax Officer and the Appellate Assistant Commissioner placed a great deal of emphasis. It seems to have been influenced greatly by the fact that the sale of the shares by the vendor companies to Rana took place in the Allahabad Bank in the presence of Wood, the General Manager, without taking the probabilities of the case into consideration in support of which four letters of Wood produced by the assessee were relied upon. It may be noted that no material is placed on the record to show as to how Wood came into the picture. At the time the impugned transactions took place, neither the companies that sold the shares nor the Rana were the customers of Allahabad Bank. The share scrips were not in the possession of the Bank nor the sale transactions were put through the Bank. The name of Wood was either dragged to give it an air of credibility to the transaction or Wood was a busy body who was willing to lend his name to apparently spurious transaction. The letters said to have been sent by Wood are not proved; Wood was not examined. No explanation is forthcoming for his non-examination. The curious thing is that the Tribunal after rejecting the statement of the present General Manager of the Bank as inadmissible, relied on a portion of that statement for the proof of Wood's signature. It may be noticed that there is no official record of the transaction, no prior correspondence, no broker, no receipt for the cash money of Rs. 10,80,000/- nor is there any valid reason given for the unusual procedure adopted of routing the money through Wood when neither the vendor company nor Rana nor Durga Prasad had any Bank accounts with the Allahabad Bank, Calcutta. The force of this omission was felt by the Tribunal which was also of the view that "there should have been some kind of correspondence before the Rana agreed to purchase the block of shares from the two collieries." It however slurred over the lacuna by seeking to put the blame for the omission on the Income Tax Officer who it thought ought to have questioned the assessee and called on the vendor companies to explain how the transactions were actually finalised. When as we will see, an official of vendor companies was called, he said that they were kept in the dark about the transactions for nearly two years, who else could the Income Tax Officer examine ? It was the duty of the assessee to produce correspondence if there was any, but for that omission no blame can attach to the Income Tax Officer. That apart Wood was not produced and there is nothing to show that these letters were written by him. It is also apparent that these letters though written on the official note paper of the Allahabad Bank Ltd. Calcutta give no reference number nor are there any office copies of those letters in the Bank. In fact the case of the assessee is that the sales on behalf the of the vendor companies were effected in May and August, 1953. In respect of the transactions, on each of these occasions it is said that there are two letters of Wood, dated May 30, 1953 and August 28, 1953. One letter of May 30, 1953 is addressed to M.C. Ltd., intimating to them that 35,000 ordinary shares in S.K.G. Sugar Co. Ltd. were duly delivered to Rana against payment of Rs. 2,80,000/- which amount has been paid to Durga Prasad. The other letter on the same day was addressed to D.J.C. Ltd. in respect of which 40,000 ordinary

shares in S.K.G. Sugar Co. Ltd. were duly delivered to Rana against payment of Rs. 3,20,000/- which amount was also said to have been paid to Durga Prasad. It may be observed that these two letters are with reference to the letters of the vendor companies of the day before i.e. May 29, 1953, but the letters referred to have not been produced by the assessee. If such letters were actually written to Wood by the vendor companies on May 29, 1953 the assessee could have produced or got them to be produced in the same way as he has produced the letters of Wood from the custody of the respective vendor companies. It may also be noticed that in the two letters of May 30, 1953 of Wood there is no mention of Durga Prasad having executed any promissory notes and receipts in favour of the vendor companies in respect of the money said to have been paid to him. In the two letters of August 28, 1953, addressed to the vendor companies, there is no reference to any prior correspondence with them, but there is a reference to the promote and receipts which are said to have been handed over by Durga Prasad to the respective companies in respect of Rs. 80,000/- received from the Rana against the delivery of 10,000 ordinary shares of R.I. Ltd. belonging to M.C. Ltd. and Rs. 4,00,000/- in respect of 50,000 ordinary shares of the same company belonging to D.J.C. Ltd. The promissory notes and receipts mentioned in those letters were again not produced by the assessee nor did he cause them to be produced from the vendor companies. In spite of these serious infirmities, the Tribunal has strongly relied on these letters assuming wrongly that they were either admitted or proved.

24. The letters of the General Manager Wood say that the cash received from Rana on the two occasions on account of the vendor companies was paid to Durga Prasad at the bank counter by him. The Tribunal states that the department has not questioned the fact that the share scrips were handed over to Rana against the receipt of cash or that when the cash was received, it was advanced as loan to Durga Prasad. In fact it asserts that "where the factum of sale of shares by the two companies has not been challenged the fact that they took place in the presence of Mr. J. F. Wood cannot be questioned irrespective of whether the Rana was acting on his own behalf or as name lender of anybody else". It further states : "Once the signature is genuine and the letters are found to have been typed from the Bank's typewriter we cannot cast any doubt on the genuineness of the letters in the absence of evidence to establish any fraud or forgery." There is absolutely no evidence or suggestion to justify the statement that the four letters of Wood were typed on the Bank's typewriter. An example of the manner in which the Tribunal speculated is illustrated by the following :

> "The two colliery companies were also not called upon to explain how the transaction was actually finalised. In these circumstances we can only speculate on how the Rana came to make a definite offer, and actually purchased the shares across the counter of Allahabad Bank Ltd. We must assume that having promised to arrange the loan of Rs. 10,80,000/- to Sri Durga Prasad, the assessee might have explored the means of keeping up the promise. Evidently he should have suggested to the colliery companies to dispose of their holdings to R.I. Ltd. and S.K.G. Ltd. especially when the companies would be making a profit of nearly Rs. 3,00,000/- by the sale of the shares at the market price. It is quite conceivable that if the assessee had met the Rana before the Rana might have talked to the assessee about his intention to makes some investments to the tune of Rs. 10 lakhs, and the Rana ultimately might have expressed his willingness to invest the sum in the purchase of S.K.G. Ltd. and R.I. Ltd. shares. Having regard to the purchase of the sale of the shares, and the fact that one single individual was prepared to take over the shares at the market price, we are of opinion that no importance could be attached to the absence of any broker for effecting the transaction."

25. In our view there is ample justification for the comment of the learned Additional Solicitor-General that the Tribunal was misreading the evidence and was indulging in conjectures and surmises. The Income Tax Officer after referring to the fact that neither the vendor companies nor the alleged vendee or Durga Prasad of Tumsar had any account with the Allahabad Bank at that time, that the shares were not in the custody of the Bank, that neither the Bank nor Wood has given any explanation as to how the General Manager of the Bank came into the picture observed that obviously such a transaction could not have taken place through the Bank unless some person having sufficient influence on the Bank was behind it. Shri Kalyan Shum Shere J. B. Rana had no relations with the Bank at that time. It is thus clear that some one else was behind the transaction and that the Rana was merely acting as a benamidar. Even after the remand report, the Income Tax Officer observed that the sale to the Rana was unreal. The Appellate Assistant Commissioner pointed out in his order that the Income Tax Officer had treated the letter of Wood as a questionable document. These findings and observations amply demonstrate the error the Tribunal had committed in thinking that the department had not questioned either the letters of Wood or the fact that the share scrips were handed over to the Rana against the receipt of cash or that when the cash was received, it was advanced as a loan to Durga Prasad. In fact, it was stated that Durga Prasad has admitted to have received the money in the Bank. This would imply that Durga Prasad received Rs. 10,80,000/- on two occasions once on May 30 and the other on August 28, 1953 and both the times at the Allahabad Bank. According to the first statement of Durga Prasad, dated December 21, 1956, which was produced before us it appears that before going to Calcutta on some business he had already had a talk in Delhi with the assessee about securing a loan to expand his business and the assessee assured him that he would help him. When he went to Calcutta, he met the assessee there and the assessee granted him the loan of Rs. 10,80,000/-. He says that the sum was received by him in currency notes at the counter of Allahabad Bank Ltd., Calcutta and that he took the cash in person, travelled to Tumsar in the Calcutta Mail and handed it over to his munshi, Kesheorao who entered it in the cash book. He admits that he did not deposit it in any Bank. Later, after the remand, he changed his statement and said that the assessee never agreed to arrange for the loan and it was not true that he promised to grant the loan to him personally and that the loan was arranged from the D.J.C. Ltd. and M.C. Ltd. from out of the sale proceeds of shares, that there were two loans in May and August, 1953, that the sums were disbursed by the General Manager of the Bank on behalf of the companies and that the Nepali Rana was present in the General Manager's room. Even so, the statement that he received Rs. 10,80,000/- at the counter of the Allahabad Bank, that he got the whole amount in one day and took it to Tumsar would itself behalf the transaction because it is difficult to explain away the statement that he took the money personally to Tumsar in the Calcutta Mail. If he received the amount in two instalments, he does not say when again he came to Calcutta and how he took the second instalment. The positive statement on the first occasion and the incongruities in the second should have been sufficient for the Tribunal, if it had cared to consider the evidence in a reasonable manner it would have come to a different and opposite conclusion. The Tribunal further states that admittedly the vendor companies had no cash and found the money only on the sale of the shares. There is absolutely no evidence for this finding. Again the Tribunal held that the Income Tax Officer did not give a finding that the assessee had advanced Rs. 10,80,000/- as a loan from out of his secreted moneys. This statement is incorrect. The Income Tax Officer in his order of August 30, 1958 did say that amount was advanced by the assessee. The attempt of the assessee to give respectability to the transactions by putting forward the General Manager of the Allahabad Bank as the man through whom the transaction took place cannot succeed as the letters produced are inadmissible in evidence.

26. It is further contended that the sale of the shares was entered in the books of the respective

vendor companies on May 30 and August 28, 1953. This by itself does not show that the entries were contemporaneous and have not been entered subsequently. This doubt is further strengthened by the admission of Onkar Mal Dalmia, Secretary-cum-Accountant of M.C. Ltd. and D.J.C. Ltd. that he went to Calcutta in August or September, 1953 and obtained the shares from Mr. B. D. Dujari, Accountant of Ashoka Marketing Ltd. and took them for inspection to the auditors after which he returned the shares to Mr. B. D. Dujari. The shares which were alleged to have been sold to Rana and delivered to him in May and August, 1953 were in fact lying in Ashoka Marketing Ltd. which is a concern of the assessee and his family. This company is debited with not only the personal expenses and the salaries of domestic servants etc. but also with the assessee's salary of Rs. 8,000/- a month.

27. The statement of Onkar Mal Dalmia was recorded on December 9, 1958 and 50 days thereafter even though he admitted that he received copies of his statement tried as an afterthought to explain away his previous statement saying that the shares of R.I. Ltd. and S.K.G. Sugar Ltd. were not shown to the auditors at that time and that evidently what he stated was a mistake as by August or September, the respective companies had already sold away those shares. The Income Tax Officer had rejected this latter statement of Dalmia and the Tribunal has not taken this fact into consideration. It cannot be said that the Income Tax Officer or the Appellate Assistant Commissioner were not justified in rejecting the explanation and acting on his first statement. According to the Accountant Member the statement of Dalmia of his having seen the share scrips in the Ashoka Marketing Co. was one among those he considered irrelevant. But such a conclusion appears to us to be incomprehensible and totally unwarranted. It is an important circumstance if established and in our view it has been so held to have been established. The further observations that Dalmia's statement was due to some confusion is merely to have recourse to special pleadings for neutralising a vital circumstance.

28. The Tribunal has also not taken into consideration another circumstance adverted to by the Income Tax Officer which is that according to Bishnoi, the Director and Principal Officer of D.J.C. Ltd. and M.C. Ltd. he had no knowledge of the transactions till they were confirmed in the meeting of the Board of Directors. It has however been urged that Bishnoi could not have any knowledge of the transaction earlier until the share transfer matters came up for confirmation in the meeting of the Board of Directors. This is a rather surprising contention because if the assessee, as the Tribunal stated, had no controlling interest in the vendor companies and had in fact sold these shares to Rana, the Director and Principal Officer of the Company would certainly be expected to have knowledge of the transactions. The fact is that though Rana is said to have purchased the shares in May and August, 1953 these shares were in the custody of the Ashoka Marketing Ltd. from September, 1953 to April, 1955 when they were transferred in the name of Rana. The Income Tax Officer had also pointed out that dividends were declared in April and June, 1954 aggregating to Rs. 2,00,000/- but no attempt was made by Rana till April, 1955 to claim these dividends. We cannot accept the Tribunal's explanation as reasonable when it says :" : If Rana was not of sufficient means it could be said that he would be in haste to collect the dividends amounting to about Rs. 2 lakhs". The Tribunal further states that Rana could not collect the dividends till he got himself registered as a shareholder "which he did in April, 1955". The question, however, is, why did not Rana get the shares transferred in his name and why were they allowed to remain in the possession of Ashoka Marketing Company when such a large sum of Rs. 2,00,000/- which even a rich man assuming that Rana was a substantial person would not take steps to receive immediately and would forego a substantial income from interest thereon for a whole year.

29. Dealing with the earlier statement of Onkar Mal Dalmia, the Tribunal states that if the Income

Tax Officer wished to adhere to that statement, which would imply that D.J.C. Ltd. and M.C. Ltd. advanced Rs. 10,80,000/- to Durga Prasad from out of their own secreted profits on the footing that there was no sale of shares to R.I. Ltd. and S.K.G. Ltd. held by them, no question would arise of treating the Rana as the benamidar of the assessee. Besides, according to it, that statement would be irrelevant once it is admitted that there has been a real sale by the two companies in May and August, 1953. In this connection in further observed that the factum of sale of the shares by the two companies has not been challenged nor the fact that the sale took place in the presence of Wood been questioned, irrespective of whether the Rana was acting on his own account or as name-lender of anybody else. This entire conclusion is based on an unwarranted assumption and a wrong reading of the Income Tax Officer's finding. The case of the department throughout has been that there was no sale of shares at all to Rana and that the real purchaser is the assessee.

30. The non-examination of Rana is also a significant fact and a great many excuses have been given for the omission to examine him. Whether Rana was a person who had substantial means or not need not be considered but his evidence was essential for the assessee's case. The Department gave every opportunity to the assessee to examine him. The assessee as well as Podar with whom the assessee was concerned gave at least two different addresses at which not only was Rana not found but the evidence was that he never stayed at any of those places. The statement that the assessee could not be expected to produce Rana and that the Income Tax Officer had even gone to Nepal to ascertain his whereabouts and having traced him and met him, it should be inferred that he must have informed the Income Tax Officer that he had purchased the shares, is also without substance. If the assessee could not produce him, he was at any rate able to get a letter, dated August 26, 1956 from him which was wrongly described as an affidavit. It was on a plain paper and neither attested by anyone authorised to attest affidavits nor marked or stamped by any judicial authority. When the Rana was willing to oblige the assessee, he could have easily expressed his willingness either to give evidence before the Income Tax Officer or made his statement on affidavit. Neither of which was done.

31. Another important factor to be considered is that after the shares were transferred in the name of Rana in 1955, Rana is said to have opened an account in his name in the Allahabad Bank and was said to be selling them in the market in lots and whenever their sale proceeds accumulated he would withdraw it by cheques. Nandan Lal Podar said he introduced Rana to the Bank. It also appears that Podar was a Director and a close associate of the assessee. There is no discussion of this person's evidence by the Accountant Member though Judicial Member thought that it was unsatisfactory. In the course of one year i.e. from April, 1955 to 1956, Rana is alleged to have withdrawn large amounts by nine cheques aggregating to Rs. 38 lakhs. These cheques were said to have been sent for by Rana sitting at 11, Clive Row, Calcutta, which is the address of the assessee and also of the Sahu Jain concerns. These cheques were bearer cheques for lakhs of rupees and encashed through one A. C. Das, peon of Ashoka Marketing Ltd. The letters of authorisation given to Das were typed in identical from bearing only the signature of Rana, the other entries having been filled up by someone else. These large amounts brought by A. C. Das in cash were handed over in the office of Sahu Jain concerns. A. C. Das states that he was directed to render this service for the Rana by T. D. Dujari. Dujari said that when he had gone to Jain (assessee) for office work, the latter introduced him to Rana and asked Dujari to assist Rana if the latter so desired and that some days later Rana came to him with a request for a bearer to fetch money from the Bank and that Rana himself handed the cheques to A. C. Das. The Judicial Member thought that this raises some doubt on the genuineness of Rana's transactions. The Accountant Member though that the statement of A. C. Das was positive evidence and the Department had not produced any material to show that the moneys were actually withdrawn from the Bank and collected on behalf of the assessee. This again was an

unreasonable assumption for the only way that fact could have been proved is to establish primary facts from which an inference that it was the assessee to whom the amount was paid could be drawn. It cannot be expected of A. C. Das, an employee of assessee's concern and who was reluctant of appear before the Income Tax Officer, to state that he in fact gave the money to the assessee. The Accountant Member however would have relied on that evidence for he says "if it had been established that A. C. Das was in the employ of Ashoka Marketing Ltd. in 1955-56, it would have cast a serious doubt about the acceptability of the evidence of A. C. Das." This observation overlooks the fact that A. C. Das in his deposition made on December 18, 1962, stated that he used to receive pay from M/s. Ashoka Marketing Ltd. and in the Remand Report I.T.O., dated April 12, 1963, it was observed that there was documentary proof that A. C. Das was an employee of the Ashoka Marketing Ltd. None of the contradictions in A. C. Das's evidence mentioned in the remand report, dated April 12, 1963, were adverted to or discussed by the Tribunal. It also did not notice that A. C. Das was really the assessee's witness which is borne out by what was stated in that remand report that A. C. Das continued to be an employee of Sahu Jain Group of Companies, that he was ultimately found in the house of Sahu Jain at 11, Clive Row, Calcutta, when a notice under Section 37 was served on him on November 9, 1962, asking him to appear on November 12, 1962 and that he actually turned up on November 17, 1962. Dealing with this aspect, the Income Tax Officer observed "this period of absence was rather 'meaningful'". This has not been discussed or commented upon by the Tribunal nor has it considered any of the adverse circumstances referred to by the Income Tax Officer in his remand report in which he discussed the improbability of the story of the withdrawal of the moneys by. A. C. Das as an agent of Rana.

32. We have already pointed out the improbability of the story of Durga Prasad that he received Rs. 10,80,000/- at the counter of the Allahabad Bank. The positive statement that the land was given to him by the assessee and that he took this amount personally to Tumsar travelling in the Calcutta Mail, though retracted, was relied upon by the Income Tax Officer for the conclusion that this amount was lent by the assessee and it was income from undisclosed sources.

33. From the above discussion it is clear that the findings reached by the Tribunal are wholly vitiated. No Judicial Tribunal properly instructed could have arrived at those findings. We are therefore constrained to ignore those findings and re-examine the issues arising for decision on the basis of the material on record.

34. The question then is, whether the department has satisfactorily established that Rana was not the real purchaser of the shares and that he was a mere name lender. We have broadly stated the relevant facts earlier. We will now summarise the facts and circumstances - even at the risk of some repetition - which go to establish that the Rana was a mere name lender. They are :

> (1) There is no evidence to show that the Rana's financial position was such that he was in a position to purchase the shares in question. It is not shown that he had any bank balance either in this country or in any other country.
>
> (2) The Rana has not cared to appear before the authorities under the Act though several opportunities were afforded to him to do so for explaining the circumstances under which he purchased those shares.
>
> (3) The purchase price of the shares amounting to several lakhs of rupees was not paid by cheque or cheques. The same is said to have been paid in cash. This is a wholly improbable circumstance.

(4) The Rana had not entered into any correspondence with the companies concerned for the purchase of the shares. He had not engaged the services of any brokers for making purchases. It is not shown how the Rana came to know that the companies in question were wanting to sell the shares.

(5) It is not shown why the transactions in the said shares should have taken place in the presence of Wood. Wood had nothing to do with the transactions. Neither the Rana nor the companies which sold the shares had any dealings with the Allahabad Bank at the relevant time. The share scrips were not in the possession of the Allahabad Bank. The money was not paid through the Allahabad Bank. The letters of Wood on which considerable reliance was placed did not bear any officer serial number. No copies of those letters were available in the Allahabad Bank. It is not explained how Wood came into the picture.

(6) If Rana was the purchaser of the shares, he should have been possession of the share scrips. They were his documents of title. We have earlier pointed out that the share scrips were in the possession of Ashoka Marketing Co. It is not explained how those scrips happened to be in the possession of the Ashoka Marketing Co.

(7) Even after the alleged sale of the shares in favour of the Rana, Rana did not take any steps to have the shares registered in his name for nearly 1 1/2 years. This circumstance again is not explained.

(8) The Rana did not care to collect the huge dividends that were declared in respect of those shares totalling about Rs. 2 lakhs for a year and half.

(9) The Rana never cared to attend any general meeting of the company nor did he appoint any proxy on his behalf.

10. It was only when the price of those shares went up in the market and that when they had to be sold the Rana is said to have opened an account in the Allahabad Bank in which were credited sums of about Rs. 38 lakhs got by the sale of those shares. Practically all these amounts were said to have been realised by the Rana by issuing bearer cheques in favour of a peon of Ashoka Marketing Co. who had been casually introduced to him. The Rana could not have been too big to go to the Bank to collect these huge amounts, if he was the real owner of the money. He is said to have waited in the premises belonging to Sahu Jain Co. and sent these bearer cheques through the said peon. It is further said that with a view to see that the peon did not misappropriate the money, Rana used to send his own driver with him. If that was so, it is not explained why Rana did not give the bearer cheques to his driver himself if the driver was so trustworthy and it is not explained what the Rana did with the money so collected.

The above enumerated circumstances are tell-tale. The only reasonable inference that can be drawn from those circumstances is that the Rana was a mere name lender. The conclusion reached by the Income Tax Officer and the Appellate Assistant Commissioner that the Rana was a mere name-lender is a reasonable conclusion. Neither the Tribunal nor the High Court has given any good reasons for rejecting those conclusions.

35. The next question is, whether the department has established that the Rana was a benamidar for the assessee. As mentioned earlier, it is not sufficient if the department establishes that the Rana was

the benamidar for somebody. It must go further and establish that the Rana was the benamidar of the assessee. There are good reasons to come to a conclusion that the Rana was the benamidar of the assessee. These are, as have been noted already :

> (1) The close association of the assessee with the Rana, which is evident from the record. It was the assessee who introduced the Rana to Nandlal who was a close associate of the assessee and it was Nandlal who introduced the Rana to the Allahabad Bank. Rana did not go to collect the money from the Allahabad Bank, but is said to have stayed in the premises of Sahu Jain Co., a company with which the assessee was closely associated and further a peon who gets the money from the Bank was residing in the house of Sahu Jain, 11, Clive Row, when the notice under Section 37 of the Act was served on him. According to this peon, A. C. Das, it was Dujaria who asked him to render that service to Rana. According to Dujaria it was the assessee Jain who introduced him to Rana and asked him to assist the Rana. It also appears from the evidence adduced on behalf of the assessee that the huge amount of about Rs. 38 lakhs collected by the Allahabad Bank was realised by the Rana by issuing bearer cheques to the above mentioned peon of Ashoka Marketing Co. an assessee's concern. Further, it was the assessee who produced the so-called affidavit of the Rana but at the same time would not produce the Rana for examination for obvious reasons.
>
> (2) The D.J.C. Ltd. and M.C. Ltd. would not have sold suddenly the shares without any previous correspondence or without even informing the company's Secretary or Director, unless of course, there was intercession by some one who had influence over those companies.
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> (3) There is no admissible evidence to establish that Rana brought a bagful of currency notes and gave it to the companies. Even if the Rana had paid the price in cash to the companies, the companies would have deposited those amounts in some Bank. On the other hand, those companies are said to have given the entire price realised by the sale of the shares immediately as a loan to one Durga Prasad on the basis of the two promissory notes. In discussing this aspect we had pointed out the incongruity in the first and the second statement of Durga Prasad to show that the loan of Rs. 10,80,000/- was said to have been given to him by the vendor companies in one lump sum, that he carried this huge amount from Calcutta to Nagpur and gave it to his Munim and that he never deposited that amount in any Bank. There is also a total absence of any material to show how Durga Prasad had spent these amounts. All these circumstances would clearly indicate that the story is a fictitious one and that the alleged loan to Durga Prasad is a pure fabrication. It is therefore clear that Durga Prasad is no other than a mere puppet of the assessee.
>
> (4) The shares alleged to have been purchased by the Rana were found to be in possession of Ashoka Marketing Co., a concern practically owned by the assessee. Unless the assessee was the purchaser of those shares, the shares could not have been in the possession of the Ashoka Marketing Co. It is reasonable to assume that after the alleged sale, the assessee was in possession of the shares through Ashoka Marketing Company.
>
> (5) After the shares were sold the money was collected and brought from the Bank as

> pointed out above by the peon A. C. Das of the Ashoka Marketing Co. on nine bearer cheques and according to A. C. Das he paid those amounts to the Rana in the premises of the assessee Sahu Jain at 11, Clive Row.

36. From the circumstances above enumerated, the Income Tax Officer and the Appellate Assistant Commissioner were fully justified in drawing an inference that the Rana was a name lender for the assessee. Neither the Tribunal nor the High Court has given good reasons for displacing the conclusions reached by the Income Tax Officer and the Appellate Assistant Commissioner. They had a duty to examine the reasons given by those authorities before rejecting them.

37. For the reasons stated above, we answer questions Nos. 2 and 3 referred to the High Court in the negative and in favour of the revenue. The answer to question No. 1 has not been pressed and hence we need not answer it. In the result this appeal is allowed with costs both in this Court as well as in the High Court.

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