

ALLAHABAD HIGH COURT

Hazari Lal

Vs.

Income-tax Officer

Civil Misc. Writ No. 2227 of 1959

(V. Bhargava and B. Upadhyya, JJ.)

17.03.1959

ORDER

B. Upadhyya, JJ.

1. The petitioner, Hazari Lal, has invoked the power of this Court under Article 226 of the Constitution for issue of a writ of certiorari to quash a notice issued under Section 34 of the Income Tax Act by the opposite-party to him on 4-1-1956, and for issue of a writ of prohibition directing the opposite party to refrain from taking proceedings for re-assessment of the petitioner for the assessment year 1946-47. The petitioner was a partner in Firm Hazari Lal Babu Lal at Kanpur which was registered under Section 26-A of the Income-tax Act. He was an assessee in his personal capacity and for the year 1946-47 an assessment order under Section 23(3) of the Income Tax Act was passed in his case on 31-8-1946. For the following assessment year 1947-48 the order of assessment under Section 23(3) of the Act was passed on 30-9-1947. On 15-1-1946, the wife of the petitioner purchased a house by means of a registered sale deed for a total price of Rs. 19,500/-, out of which Rs, 500/- had been paid as earnest money on 20-12-1945, and the balance of Rs. 19000/-was paid on the 15th of January, 1946, at the time of execution of the sale deed. The opposite-party, receiving information of the document, issued a notice under Section 34(1)(a) of the Income-tax Act on 27-3-1952, to the petitioner in respect of his assessment for the year 1947-48 and, following up that notice, he made a fresh assessment on 25-2-1953, by adding a sum of Rs. 12,800/- to the income which was originally assessed under the assessment order dated 30-9-1947. The petitioner objected to this re-assessment of his income under Section 234 for the year 1947-48 but that objection was disregarded. The petitioner then went up in appeal. The Appellate Assistant Commissioner of Income-tax, by his order dated 20-7-1955, accepted the appeal and deleted the addition which had been made in the income for the assessment year 1947-48. He further gave direction to the Income-tax Officer to revise the assessment in the light of that order. When giving this decision, the Appellate Assistant Commissioner of Income-tax noticed the fact that the purchase of the house by the wife of the petitioner had taken place on 25-

1-1946, and the entire consideration had been paid by that date, so that the previous year available for the investment of the income, which had been made and completed on 15-1-1946, was the financial year 1945-46.

The financial year 1945-46 was not the previous year for the assessment year 1947-48 in respect of which the notice under Section 34 had been issued in pursuance of which this amount had been taxed as income in the hands of the petitioner. On this view the Appellate Assistant Commissioner of Income-tax held that this addition of Rs. 12,800/- in the assessment for the year 1947-48 was without any justification. On receipt of this order of the Appellate Assistant Commissioner of Income-tax, the opposite party, in addition to giving effect to that order by revising the assessment for the year 1947-48, issued a notice under Section 34(1)(a) of the Income-tax Act to the petitioner for re-assessment of his income for the assessment year 1946-47. This notice under Section 34 in respect of the assessment year 1946-47 was issued on 4-1-1956. The petitioner objected to the issue of this notice, principally, on the ground that it was barred by time, so that the Income Tax Officer had no jurisdiction to take proceedings against the petitioner for the assessment year 1946-47. The reply to that objection was sent by the Income Tax Officer on 24-7-1956, stating that the proceedings were legal and could not be dropped. Thereupon, this petition was moved by the petitioner on 30-8-1956. In these circumstances, the question, that principally arises for decision by us, is whether the notice dated 4-1-1956, issued by the opposite party to the petitioner in respect of the assessment year 1946-47 was or was not barred by time.

2. The ordinary period within which a notice under Section 34(1)(a) of the Income-tax Act could be validly served on an assessee under the Income-tax Act as it was in 1956 was a period of eight years computed from the last day of the assessment year 1946-47, so that, ordinarily, a notice under Section 34(1)(a), in order to be in time, had to be served on or before 31-3-1955. On the other hand, the notice now impugned was issued on 4-1-1956, long after that period of limitation had expired. In these circumstances, on behalf of the opposite-party, reliance was placed on the second proviso to Section 34(3) of the Income Tax Act which is as follows :

"Provided further that nothing contained in this section limiting the time within which any action may be taken or any order, assessment or re-assessment may be made shall apply to re-assessment made under Section 27 or to an assessment or reassessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under Section 31, Section 33, Section 33-A, Section 33-B, Section 66 or Section 66-A." It was urged on behalf of the opposite-party that, if this proviso applied to the notice D/d. 4-1-1956, and to the further proceedings for assessment or reassessment to be taken in pursuance of it, the limitation on the period for issue of notice or for passing an order of assessment or re-assessment contained in Section 34(1) or Section 34(3) would not apply, so that it would be permissible for the opposite-party to issue a notice and to make an order of assessment or re-assessment without being governed by any period of limitation. This interpretation of the proviso is, in our opinion,

perfectly correct but the question that we have to consider is whether this proviso is or is not applicable to the facts of this case.

3. In interpreting this proviso, it appears to us that two aspects have to be kept in view when considering the effect of an order under Section 31, Section 33, Section 66 or Section 66-A. An order under Section 31 is passed by the Appellate Assistant Commissioner of Income Tax when deciding an appeal. An order under Section 33 is passed by the Income-tax Appellate Tribunal on a second appeal against the order passed by the Appellate Assistant Commissioner of Income-tax under Section 31. The opinion of the High Court under Section 66 or the decision of the Supreme Court on that opinion of the High Court under Section 66-A is also given in proceedings which have passed through the stage of an order by the Appellate Assistant Commissioner of Income-tax under Section 31. The powers that are exercised by the various authorities, which can thus pass orders under Section 31, Section 33, Section 66 or Section 66-A, are powers which can be exercised by an appellate authority or by authorities and courts to whom further appeals or references arising out of the appellate order lie. The scope of the orders, that can be passed, is, therefore, to be determined by the powers which an Appellate Assistant Commissioner of Income-tax has when passing an order under Section 31 of the Income-tax Act. The very fact that the Appellate Assistant Commissioner of Income-tax, when making an order under Section 31, is dealing with an appeal filed by an assessee in respect of an assessment order indicates the scope of his jurisdiction to give findings and to make consequential orders. The various orders, which an Appellate Assistant Commissioner of Income-tax can make are detailed in Section 31(3) though there is no detailed provision about the findings which he can record. It appears to us, however, that from the very nature of the jurisdiction which an Appellate Assistant Commissioner of Income-tax exercises, it must follow that his power of recording findings is limited to matters which he is called upon to decide when passing an order in appeal in conformity with the details laid down in Section 31(3). Any order passed by him, which is beyond the scope of Section 31(3), would be an order without jurisdiction and, similarly, any finding recorded by him, which is not necessary for the purpose of making an order covered by Section 31(3) would be a finding without jurisdiction.

Further, when applying the second proviso to Section 34(3) of the Income Tax Act, the Income Tax Officer is only competent to take into account orders which are in conformity with the provisions of Section 31(3) and findings which are necessary for passing those orders. Orders, which are outside the scope of Section 31(3), or findings which are not at all necessary for making such orders, cannot be taken into account by the Income Tax Officer for the purpose of relying on the second proviso to Section 34(3) which we are now considering. Shri Gopal Behari, learned counsel for the opposite-party, in this connection, urged before us that the word 'finding' had nowhere been defined in the Income Tax Act, nor had its scope been indicated and we should, in interpreting this word as used in the proviso, take into account the meaning attributed to that word in common use and should not draw any aid from the word as defined or as limited by the provisions of the Code of Civil Procedure. The word 'finding' in law has a definite meaning and that is indicated by the provisions of the Code of Civil Procedure where it is

indicated that a finding is a decision of a court on material questions in issue. Issues are framed on material questions of fact or law and the decision of the court recorded on such issues has been called a 'finding'. We do not think that there is any other wider meaning of the word 'finding' in common use which can be applied to this word as used in the proviso to Section 34(3). The word 'finding' cannot be interpreted so as to include within it any statement of fact contained in a decision irrespective of whether that fact was or was not material to the decision and whether the court or the tribunal, when recording the decision, had any occasion to hear parties on that question of fact and to record a decision on it instead of merely reciting it as a statement of fact. The word 'finding', interpreted in the sense indicated by us above, will only cover material questions which arise in a particular case for decision by the authority hearing the case or the appeal which, being necessary for passing the final order or giving the final decision in the appeal has been the subject of controversy between the interested parties or on which the parties concerned have been given a hearing. That this interpretation is the proper interpretation to be given to the word 'finding' was also indicated by Chagla C. J. in his judgment in *S.C. Prashar v. Vasantsen Dwarkadas*¹, where the learned Chief Justice was considering this very proviso which is for consideration before us. In that case, the question arose whether the right to assess a stranger under Section 34 could arise in consequence of or to give effect to any finding or direction contained in an order under Section 33. The learned Chief Justice remarked :

"In the first place, it is difficult to understand how a Tribunal can give a finding or a direction affecting a third party who is not before the Tribunal."

This indicates that the learned Chief Justice felt very doubtful about the competency of the Income Tax Appellate Tribunal to record a finding or a direction which affected a third party. Clearly, this doubt could arise only because a finding or a direction affecting a third party would not be necessary for properly disposing of an appeal under Section 33 when the Income Tax Appellate Tribunal would be confining its jurisdiction to deciding matters arising in the appeal before it and would be limited to passing orders of the nature indicated in Section 31. It is true that, in that case, the learned Chief Justice did not further pursue the line indicated by this view and preferred to base his decision on a different consideration altogether. The argument before the learned Chief Justice had mainly centered round the contention that the provision was ultra vires Article 14 of the Constitution to the extent that it affected proceedings against any person other than the assessee. The learned Chief Justice proceeded to examine this contention on the assumption that a finding affecting a person other than an assessee could be recorded and came to the conclusion that, if so, the proviso offended against Article 14 so far as it affected third parties. It appears to us that, if the aspect about the power of the tribunal to record a finding affecting a third party had been examined in full to its logical conclusion, it would appear that the tribunal could not competently record such a finding. Of course, the question would certainly have arisen why the proviso mentions not only assessee but other persons also. It has been urged that the use of the expression 'any person' was intended and could be intended only to enlarge the scope of the proviso so as to permit action being taken for assessment or re-assessment in

consequence of or to give effect to a finding or a direction contained in an order under Section 31, Section 33, Section 66 and Section 66-A not only against the assessee in the appeal or the proceedings before the appropriate authority but also against any other person. We do not think that this was the real intention. Interpreting the proviso, all the words used in it have to be given their full significance and it is the cumulative effect of that significance that has to be given effect to. As we have indicated above, the very fact that findings are recorded or directions made in exercise of the appellate power or the power which arises in proceedings which have been subject to an appellate decision indicates that the

¹1956-29 ITR 857 : AIR 1956 Bom 530

findings and directions must be of the nature which an appellate court can record or make and, consequently, the directions must be limited to the nature indicated in Section 31 and the findings must be limited to those facts which are necessary for the purpose of giving such directions. If this aspect is kept in view, the purpose of the use of the expression 'any person' also becomes clear. It is true that, in a judicial or quasi-judicial proceeding, the orders that are passed normally govern a person who is a party to those proceedings, but sometimes the law that is applicable is of such a nature that it might become necessary to give effect to the orders passed even against a person who may not himself directly be a party but who, it may be presumed, has had a sufficient opportunity of being represented in the proceedings through the actual party. Some of the examples, which appear from the power conferred on the Appellate Assistant Commissioner of Income Tax to pass orders under Section 31(3) of the Income Tax Act, may, in this connection, be mentioned. Under clause (c) of sub-section (3) of Section 31, a case can arise where the Appellate Assistant Commissioner of Income Tax interferes with an order cancelling the registration of a firm under sub-section (4) of Section 23 or refusing to register a firm under sub-section (4) of that section. If the registration has been refused or cancelled by the Income Tax Officer, the Appellate Assistant Commissioner of Income Tax may allow the appeal and direct registration of the firm. The result of that order would be that the income of the firm, whose registration was cancelled or refused, which must have been assessed to tax in the hands of the firm itself, will subsequently, on the appeal being allowed, have to be assessed to tax in accordance with sub-section (3) of Section 23 of the Income Tax Act in the hands of the partners. Thus, as a result of the decision in the appeal against an order under Section 23(4) of the Income Tax Act in which the assessee appellant would only be a firm, the effect of the appellate order would have to be given by assessing tax on the share of each partner in the income of the firm in the assessment proceeding of that partner. Such partners would only be covered by the expression 'any person' as they cannot be held to be assesseees in the particular appeal which had to be filed by the firm against the order passed in its assessment proceedings under Section 23(4) of the Income Tax Act. Another similar case may be where an Income Tax Officer passes an order under Section 23-A for the assessment of a company, deeming certain dividends to have been declared though they were not actually declared. Subsequently, on appeal, the amount declared as deemed to have been distributed as dividends might be reduced by the Appellate Assistant Commissioner of Income Tax under clause (a) of sub-section (3) of Section 31. In the meantime, there is the possibility that the shareholders might have been assessed to tax by

including in their incomes dividends deemed to have been received by them being the dividends declared as seemed to have been distributed under Section 23-A. Naturally, it would be necessary to grant to the shareholders the appropriate relief when the order under Section 23-A is subsequently varied by the Appellate Assistant Commissioner of Income Tax in appeal. In such a case, to give that relief, there would have to be re-assessment of each shareholder and, once again, he would be a person within the meaning of the expression 'any person' used in the proviso to Section 34(3) of the Income Tax Act. Two other cases, which appear to be very similar, are cases where the appeals before the Appellate Assistant Commissioner of Income Tax are against orders under Section 25-A or Section 26(2) of the Income Tax Act, i. e., cases where the point under consideration is the separation of a Hindu undivided family or the succession of a business. In such cases also, the parties actually in appeal may not subsequently be liable to the tax and the tax may become due, as a result of the appellate decision, from others or vice versa. In the case of a Hindu undivided family, the tax assessed on a Hindu undivided family may become payable by the individual separate members, or the tax found due from the individual members as a result of the appeal may be payable by the Hindu undivided family. Similarly, in the case of an order under Section 26(2), the tax found due from a predecessor may later in appeal be found to be payable by the successor or vice versa. These appear to us to be cases where the Appellate Assistant Commissioner of Income Tax is competent to record findings in an appeal by one assessee affecting persons other than that assessee. In such cases, however, the persons, who are affected by the findings or direction in the order of the Appellate Assistant Commissioner of Income Tax, are only such persons who are not only intimately connected with the assessee but who are according to the provisions of the Income Tax Act, in the matter of their assessment, affected by the orders passed in the proceedings for the assessment of the assessee. A partner's assessment can often depend on the assessment of the firm. Similarly, a shareholder's liability to tax on deemed dividends' depends on the proceedings taken against the firm under Section 23-A. It is cases of these types where the expression 'any person', can be applied appropriately if the meaning of the expression 'finding or direction' in the order is considered after taking into account the scope of the jurisdiction of the Appellate Assistant Commissioner of Income Tax in the light of the provisions contained in Section 31. In this view, further, there can be no findings or directions in an order by an Appellate Assistant Commissioner of Income Tax which would affect the rights of total strangers, who can be described as third parties, in the manner in which the effect on them was considered by Chagla C. J., in the case cited above. This meaning, in our opinion, should be accepted not only for the reason indicated above but for the further reason that it is one of the principles of interpretation of statutes that the Court should be chary of accepting any interpretation which tends towards the invalidity of a provision of law and should prefer an interpretation which would enure to the validity of that law. On the interpretation given by us, it would appear that no question of the proviso offending against Article 14 of the Constitution would arise. The class of persons covered by the expression 'any person' would not be a class who might be accidentally affected by a finding or decision recorded by an Appellate Assistant Commissioner of Income Tax. The class of persons covered by the expression 'any person' would be persons belonging to those sections who, under the Income Tax Act, are intimately connected

with and interested in the proceedings taken against the assessee and whose assessments under the Act are affected by the orders passed in those proceedings. Such a classification would clearly have a nexus with the object for which the proviso was introduced. The object of the proviso was to enlarge the limitation so that orders passed in appeal or findings given when passing those orders in appeal do not become infructuous and can be adequately given effect to. This purpose is achieved if the persons, who are really interested in those proceedings are also governed by the findings or directions contained in the appellate order. The classification is based on their interest in the proceedings against the assessee or on the fact that under the law itself, their assessment will be dependent on the orders passed in the proceedings against the assessee. There being such a classification, the proviso would be a valid one and, consequently, we think that the interpretation we have placed above should be accepted. Examining the present case in the light of our views above, it is clear that, in this case, the Appellate Assistant Commissioner of Income Tax was only competent to record the finding that the sum of Rs. 12,800/-, which was in question in the appeal before him, was not income relevant to the assessment year 1947-48. The question whether this income accrued or was earned in the previous year relevant to the assessment year 1946-47 was not before him for decision, nor was it a point on which it was essential for him to record a finding before appropriately deciding the appeal before him. The only material point for his consideration was whether this income was earned by the petitioner in the previous year for the assessment year 1947-48. If it was not so, there was no need at all for the Appellate Assistant Commissioner of Income Tax to go into further questions, such as the question whether it was income of such nature as to be liable to income-tax, or whether it was income earned by the petitioner or by some one else, or whether it was income earned in the previous year relevant to the assessment year 1946-47. These were all questions which were beyond the scope of his jurisdiction when deciding the appeal of the petitioner relating to the assessment year 1947-48. Consequently, for the purpose of applying the proviso to Section 34(3), the Income Tax Officer was entitled only to take into account the finding recorded by the Appellate Assistant Commissioner of Income Tax that this sum of Rs. 12,800/- was not the income of the petitioner for the assessment year 1947-48 and the Income Tax Officer could not treat as a finding the remark made or the view expressed by the Appellate Assistant Commissioner of Income Tax that this sum was the income of the assessee for the assessment year 1946-47. That was a point, as we have said earlier, which the Appellate Assistant Commissioner was not called upon to decide and was not a point on which he could competently record a finding.

4. There remains the further question whether the present proceedings being taken against the petitioner can be justified even on the basis of those findings which the Appellate Assistant Commissioner could competently give in his order under Section 31. The relevant finding, which the Appellate Assistant Commissioner of Income Tax could record, was that this sum of Rs. 12,800/- was not the income for the assessment year 1947-48 and what we have to examine is whether it can be held that the notice issued under Section 34 of the Act to the petitioner in respect of the assessment year 1946-47 can be held to be action taken in consequence of or to

give effect to the competent finding or direction contained in the order of the Appellate Assistant Commissioner of Income Tax, i. e., the finding that the sum of Rs. 12,800/- was not the income for the assessment year 1947-48. On this aspect of the case, we have had some difficulty as we have not found that the exact scope and meaning of the expression 'in consequence of' has at any place been defined or laid down in any decision by the courts. In the dictionary, the expression 'in consequence of', has been equated with 'as a result of' (see A New English Dictionary by Sir James A.H. Murray, Volume II, containing the letter 'c', edited by W.A. Craigie, Henry Bradley and C. T. Onions) or 'by reason of or' as the effect of (see Webster's New International Dictionary, Volume I, Second Edition). We have not been able to derive much assistance from these meanings given in the dictionaries. That there is some remote connection between the notice issued under Section 34 to the petitioner for the assessment year 1946-47 and the finding of the Appellate Assistant Commissioner that the sum of Rs. 12,800/- was not the income for the assessment year 1947-48 cannot be denied. The finding that this sum was not the income for the assessment year 1947-48 can lead to the conclusion that it may be income for some other year, and, amongst those some other years, would be included the assessment year 1946-47. Thus a remote connection between the notice issued under Section 34 and the finding recorded by the Appellate Assistant Commissioner of Income Tax does exist, but we are unable to accept the view that such a remote connection by itself can satisfy the requirement that the action taken must be "in consequence of the finding. The action which the Income Tax Officer took in the proceedings for the assessment year 1947-48 itself so as to delete the amount in accordance with the direction of the Appellate Assistant Commissioner and to reduce the tax assessed accordingly, would certainly be action taken in consequence of the order of the Appellate Assistant Commissioner but, in order to take this action for a different year, the Income Tax Officer had to rely not merely on the finding of the Appellate Assistant Commissioner of Income Tax but on other facts or circumstances.

Under Section 34 (1) (a) of the Income-tax Act this notice could be issued against the petitioner by the Income Tax Officer only if he had reason to believe that, by reason of the omission or failure on the part of the petitioner to disclose fully or truly all material facts necessary for his assessment for the year 1946-47. this sum of Rs. 12,800/- had escaped assessment for that year. The various factors, on which he could act, were thus the omission or failure on the part of the petitioner to disclose fully or truly all material facts for his assessment for the year 1946-47 and thereafter his satisfaction that it was as a result of that omission or failure on the part of the petitioner that the income for the assessment year 1946-47 had been underassessed. The finding given by the Appellate Assistant Commissioner of Income Tax hardly touches any of these factors. The relevant finding, which we have taken into consideration, is, as we have indicated above, merely that this sum of Rs. 12,800/- was not income for the assessment year 1947-48. In that finding, there is nothing to show that there had been any omission or failure on the part of the petitioner to disclose fully or truly all material facts necessary for his assessment for the assessment year 1946-47. There was again nothing in that finding which would show that any income for the assessment year 1946-47 had been under-assessed or had escaped assessment. All that the finding could indicate was that possibly, if this sum represented income, it had escaped

assessment in some year prior to the assessment year 1947-48. Thus all the main factors, on the basis of which action under Section 34(1)(a) of the Income Tax Act could be taken by the Income Tax Officer, had to be found by him quite independently of the finding, recorded by the Appellate Assistant Commissioner of Income Tax. He had to satisfy himself, independently of that finding, that this sum of Rs. 12,800/- represented taxable income, secondly he had similarly to find independently that this sum was income for the assessment year 1946-47, and, thirdly he had to find again independently of the finding recorded by the Appellate Assistant Commissioner of Income Tax that this under-assessment was the result of the omission or failure on the part of the petitioner to disclose fully or truly all material facts necessary for his assessment for the assessment year 1946-47. It would thus appear that the notice issued under Section 34(1)(a) for the assessment year 1946-47 was really a consequence of independent facts which the Income Tax Officer had before him in order to justify his belief that the requirements of this provision of law were satisfied. The issue of the notice did not automatically or directly follow from the finding which was recorded by the Appellate Assistant Commissioner of Income Tax. In fact, the finding recorded by the Appellate Assistant Commissioner may have been a reason why the Income Tax Officer thereafter started looking for material on the basis of which he could come to believe that the provisions of Section 34(1)(a) were applicable to the assessment of the petitioner for the assessment year 1946-47. The actual applicability of Section 34(1)(a) to the assessment of the petitioner for the year 1946-47 did not arise as a result of the finding recorded by the Appellate Assistant Commissioner. It appears to us, therefore, that the present notice dated 4-1-1956, issued to the petitioner cannot be said to be action taken by him in consequence of or to give effect to the finding or direction contained in the order under Section 31 passed by the Appellate Assistant Commissioner on 20-7-1955.

5. This view of ours, though not directly supported by is in line with various decisions in which, the expression 'in consequence of' or 'as a result of' has come up for interpretation before the courts. In this Court, the expression 'in consequence of' used in Section 34(1)(a) of the Income Tax Act, as it stood before its amendment in 1948, came up for interpretation in the case of *Subhakaran Seksaria v. Commissioner of Income Tax, U. P., C.P. and Berar*², It was held :

"Section 34 of the Income-tax Act requires that the Income-tax Officer should have received definite information and that definite information should have led to the discovery that income, profits and gains chargeable to income-tax had escaped assessment or had been under-assessed or had been assessed at too low a rate or had been the subject of excessive relief."

Thus the idea conveyed by the expression 'in consequence of' was interpreted as requiring that the definite information should have led to the discovery. In the same judgment, it was further remarked :

"There must be a causal connection between the definite information and the discovery,

and where there is no such causal connection, Section 34 is not applicable."

Applying that test to the case before us, we find that we are unable to hold that the finding recorded by the Appellate Assistant Commissioner of Income Tax that the sum of Rs. 12,800/- was not income for the assessment year 1947-48 led to the action taken by the Income Tax Officer of issuing notice under Section 34(1)(a) of the Income Tax Act irrespective of the assessment year 1946-47. In fact there is no causal connection between the two. The issue of notice was not caused by the finding. It was the result of an independent belief of the Income Tax Officer on the various factors which have been mentioned above and which permitted him to issue such notice. The equivalent expression 'as a result of' was also interpreted in England in *Dunham v. Clare*³, In that case, the expression, which came up for interpretation, was 'where death results from the injury'. Collins M.R. in his judgment, interpreted the words as follows :

"An applicant for compensation on this scale must prove an injury by accident arising out of and in the course of an employment within the Act, and death as the result of the accident. When that is proved, all is done that is necessary to establish a claim to compensation. The question in this case is whether death resulted from the injury. In my opinion that means, whether death in fact resulted from the injury. If it did in fact, it makes no matter how improbable or how unnatural the result may have been. The question whether one event results from another involves an examination of the chain of causation. There must be no break in the chain. If there is a break, then the final event is not the result of the initial event. But the break must be an actual effective break, a novus actus interveniens, from which a new chain of causation commences. To constitute an actual effective break in the chain, the predominant and really efficient cause of the final event must be the new act intervening. Otherwise there is no such break in the chain as to prevent the final event from being the result (though an improbable result) of the initial event."

It appears to us that an application of these remarks of Collins M. R. to the expression 'in

²1950-18 ITR 773 : AIR 1950 All 587

³(1902) 71 LJKB 683.

consequence of, which, as we have said above, has been equated with 'as a result of' leads to the same view which we have expressed above. In the present case, there was clearly a break between the finding of the Appellate Assistant Commissioner of Income Tax in respect of one assessment year and the action of the Income Tax Officer in issuing the notice under Section 34(1)(a) in respect of a different assessment year. The break was that the Income Tax Officer had to rely on entirely new facts, which did not exist in the finding, in order to arrive at the belief which could justify the issue of the notice. These new facts, which he had to take into account for his belief, were, as we have mentioned earlier, the omission or failure on the part of the petitioner to make a full and true disclosure of facts necessary for his assessment that the sum of Rs, 12,800/- was income liable to income tax and that this income had been earned in the previous year relevant to the assessment year 1946-47. It was clearly an actual effective break as there was

intervention of new facts. The predominant and effective cause for the issue of the notice was based on the independent new facts and not on any belief based on the finding recorded by the Appellate Assistant Commissioner of Income Tax. Consequently, applying the principle laid down by Collins M. R. it would appear that we must hold that the action of issuing the notice under Section 34(1)(a) for the assessment year 1946-47 was not the result of the finding recorded by the Appellate Assistant Commissioner of Income Tax in the appeal in respect of the assessment year 1947-48. Mathew L. J., in the same case, indicated what he considered was the effect of the word 'results'. He said :

"Death may result from an injury without being the probable or the natural consequence of it." This remark gives an indication that the action of the Income Tax Officer could be said to be in consequence of the finding if it could be the probable or the natural consequence of it. As we have indicated earlier, the re-assessment for the assessment year 1947-48 by the Income Tax Officer was certainly the probable and the natural consequence of the order of the Appellate Assistant Commissioner but the issue of the notice for the assessment year 1946-47 was not the probable or natural consequence of the finding. It was, in fact, the consequence of independent facts which the Income-tax Officer had reason to believe. In this connection, we may also refer to the remarks of Mr. Justice Channell in *Re an Arbitration between Etherington v. Lancashire and Yorkshire Accident Insurance Co⁴*. There the learned Judge had to interpret an Insurance policy where the insurance money was payable if the death was not due to intervening cause. The learned Judge held :

"The expression new cause intervening was the same as other cause intervening and meant some new and independent cause which might, together with the original cause, produce certain results." This decision was upheld in appeal and the appellate judgment is reported in *Etherington v. Lancashire and Yorkshire Accident Insurance Company*. These remarks indicated again that, in order that an act should be the consequence of some earlier incident, there should be no intervention of an intermediate incident which itself does not flow from the original incident. In the case before us, if the issue of the notice under Section 34 for the year 1946-47 could have followed the finding of the Appellate Assistant Commissioner without the intervention of any new facts or circumstances and as a result of only those facts and circumstances which themselves directly flowed

⁴(1909) 24 TLR 784

⁵(1909) 25 TLR 287

from the competent finding of the Appellate Assistant Commissioner of Income Tax, it could have been held that the action of issuing the notice was the consequence of the finding of the Appellate Assistant Commissioner. On the other hand, what we find is that the finding of the Appellate Assistant Commissioner of Income Tax was only remotely connected with the issue of the notice inasmuch as it may be held that it was because of that finding that the Income Tax Officer started looking for

material to find out in respect of which year he could possibly issue notice under Section 34(1)(a) of the Income Tax Act. The issue of the notice itself did not follow the finding or other facts which necessarily arose out of that finding.

6. Consequently, on the view we have taken above, we have to hold that the proviso to Section 34(3) of the Income Tax Act does not govern this notice issued against the petitioner on 4-1-1956. As we have already said earlier, the normal period of limitation laid down under Section 34(1)(a) had already expired when this notice was issued and, since the second proviso to Section 34(3) relied upon by the opposite-party did not apply, the notice was timebarred when issued.

7. Before concluding, we may take notice of a point that was raised by learned counsel for the opposite-party to the effect that, in this case, there was no patent error on the part of the opposite-party of exercising jurisdiction in excess of that vested in him and consequently, this was not a fit case where this Court should exercise its powers under Article 226 of the Constitution. We do not think that, in the circumstances of this case, this contention has any force. Normally, it is true that this Court is hesitant in interfering with proceedings before authorities specially entrusted with deciding those proceedings by issue of a writ of certiorari and the Court refrains from doing so if the Court is of the opinion that the alternative remedy is suitable and convenient. The considerations, however, are different where the principal writ sought is a writ of prohibition. If we were to relegate the petitioner to the ordinary remedy permissible under the Income Tax Act, there is no doubt that the petitioner may be able to obtain relief if he ultimately comes up to this Court by a reference under Section 66 of the Income Tax Act. He may even get relief at an earlier stage under Section 33 from the Income Tax Appellate Tribunal or under Section 31 from the Appellate Assistant Commissioner of Income Tax but, before he can get that relief, he may have to submit to proceedings for re-assessment of his income for the assessment year 1946-47. The proceedings for assessment are onerous. The Income Tax Officer, who is to take proceedings, has refused to accept the plea of the petitioner and, if we do not entertain his petition and grant him the relief sought, he would have to incur expenses and undergo all the inconvenience of going again through those proceedings for that assessment. He may also have to pay the tax assessed as a result of those proceedings before he can subsequently obtain relief from the Appellate Assistant Commissioner of Income Tax or the Income Tax Appellate Tribunal or from this Court. It appears to us that, in such a case, it is appropriate for us to exercise our powers under Article 226 of the Constitution so as to relieve him of unnecessary hardship and harassment, so that we consider that, on the view taken by us above, the petitioner should be granted the relief which he has prayed for.

8. As a result, we allow this petition and quash the notice dated 4-1-1956, issued against the petitioner under Section 34(1)(a) of the Income Tax Act. Since we are quashing the notice which automatically has the result that the Income Tax Officer cannot now exercise the jurisdiction which we have found he did not possess. We do not think that there is any need for issuing a writ of prohibition. The petitioner will be entitled to his costs from the opposite-party which we fix at

Rs. 400/-. The same amount is assessed as the amount of fee for learned counsel.
Petition allowed.