ALLAHABAD HIGH COURT

Moti Chandra

Vs.

Income-tax Officer

Civil Misc. Writs Nos.1553 of 1958 and 1370 of 1959

(B. Upadhya and A.P. Srivastava, JJ.)

09.05.1960

JUDGMENT

B. Upadhya, J.

1. These two petitions under Article 226 of the Constitution were heard together and are being disposed of by a common order for they raise common questions of fact and law. Writ petition No.1553 of 1958 relates to proceedings under Section 34 of the Income-tax Act and R.6-B of the Income-tax Rules in respect of the assessment year 1949-50 while writ petition No. 1370 of 1959 relates to similar proceedings for the assessment year 1950-51. The petitioners in case No.1553 of 1958 are Shri Moti Chandra, Sri Kailash Nath, Shri Sarwan Lal Agarwal and Master Krishna Chandra (minor), while the petitioners in the other case are Shri Moti Chandra and Shri Sarwan Lal. The opposite party in both the cases is the Income-tax Officer, District III (ii), Kanpur. It is stated that a business was carried on in the name and style of Messrs. Roopnarain Ramchandra at Kanpur and this business belonged to a firm which in the relevant accounting period was constituted under an instrument of partnership dated the 28th of March 1947. The constitution of the firm, according to this instrument of partnership, a copy of which is annexure-'C' to the affidavit filed in support of petition No.1370 of 1959 was as follows:

1. Lala Ajodhya Prasad 3/20
2. Lala Sharwanlal 3/20
3. Lala Moti Chandra 2/20
4. Latta Musaddi Lal 3/40
5. Lala Shiva Pershad 3/40
6. Lala Radhey Lal 3/40
7. Lala Shree Kishan 3/40 and
8. Lala Moti Chandra (minor)

admitted to benefits of partnership to the extent of 6/20.

2. The firm was assessed to tax for the assessment years 1949-50 and 1950-51 in the status of a registered firm and the instrument of partnership dated the 28th of March 1947 was the basis of the registration of the firm under Section 26-A of the Income-tax Act. It appears that on the 27th of November 1952, another instrument of partnership was executed according to which the constitution of the firm became as follows:

1. Shri Ajodhya Prasad 24/160
2. Shri Sarwan Lal 24/160
3. Shri Moti Chandra 24/160
4. Shri Musaddi Lal 15/160
5. Shri Kailash Nath 11/160
6. Shri Radhey Lal 15/160
7. Shri Shree Kishen 15/160
8. Shri Amar Nath 8/160, and
9. Master Krishna Chandra (minor) admitted to the benefits of partnership to the extent of 24/160.

3. It is stated in the petition that this firm also was dissolved on the 1st March 1956. The firm constituted under the earlier instrument of partnership was registered under the Income-tax Act for the assessment year 1948-49, and the registration was renewed for the years 1949-50, 1950-51, 1951-52 and 1952-53. For the assessment year 1953-54 an application for the registration of the new instrument of partnership dated the 27th November 1952, was made and was allowed. During the course of assessment proceedings for the year 1954-55 an application for renewal of registration was made and a similar application was made in the proceedings for the year 1955-56. These two renewal applications were rejected by the Income-tax Officer who took the view that the constitution of the firm as evidenced by the instrument of partnership dated the 27th November 1952, was not genuine and that the profits of the firm were shared not by the nine partners specified in the petition but by twenty more persons. He held that while two of the ostensible partners had joined the partnership in their individual capacities, one had done so in his capacity as Karta of a Hindu undivided family and six ostensible partners did so on behalf of their respective firms. The Income-tax Officer was of opinion that the members of the undivided family and the partners of the smaller firms were also recipients of the profits of Messrs. Rup Narain Ram Chandra and as profits were shared by all these persons the instrument of partnership did not show the real state of affairs and could not be said to be a genuine agreement of partnership between nine persons. On the finding that 29 persons were associated together in earning the profit of the business he held that the income was in fact of an association of persons consisting of those 29 individuals. The Income Tax Officer referred to section 4 of the Indian Companies Act 1913 and held that as an agreement of partnership between more than twenty persons was not legally permissible, those 29 persons constituted not a firm but an association of

persons. This view was upheld by the Appellate Assistant Commissioner.

4. An appeal was then preferred to the Income Tax Appellate Tribunal and a copy of the order passed by that Tribunal is appended to the affidavit in writ petition No.1553 of 1958. This order shows that while two members of the Tribunal agreed with the assessee and found that the persons who had ostensibly actually entered into the agreement of the partnership were the only partners, the third member found in favour of the Income tax Officer and held that the view taken by the Appellate Assistant Commissioner was correct. Learned counsel for the department informs us that an application under Section 66 (1) of the Income-tax Act has been moved and is still pending before the Tribunal.

5. In the meantime on the strength of the finding of the Appellate Assistant Commissioner the Income tax Officer felt that the assessment made in some of the earlier years on the business income of Messrs. Rup Narain Ram Chandra in the status of a registered firm had been wrongly made and believed that the income of the persons who really shared the profits had escaped assessment. On this belief he issued notices under section 34 of the Income-tax Act and R.6-B of the Income tax Rules in respect of the assessment years 1948-49, 1949-50, and 1950-51. Writ petitions were filed challenging all these notices. Of these, the writ petition relating to the assessment year 1948-49 has already been disposed of by us by an order passed on 6-5-1960. The present two petitions relate to the assessment years 1949-50 and 1950-51.

6. On behalf of the petitioners it is contended that the notices issued under section 34 of the Income-tax Act and R.6-B of the Income-tax Rules are illegal and ultra vires in respect of each of these assessment years mainly on the following grounds: -

1. That the Income tax officer had no information of fact at the time of issuing the notice which he did not possess at the time when the original assessments were made. All the facts which are now stated were known to the Income tax officer at the time when the assessments were made. It was not open to him to use section 34 of the Act merely to review or revise his opinion on the same facts or information.
2. That no notice under section 34 could be issued as no association of persons was in existence at the time when the notices were issued.
3. That the partners of the firm Messrs. Rup Narain Ram Chandra having already been assessed to tax the Income tax officer could not proceed to assess Messrs. Rup Narain Ram Chandra again as an association of persons in respect of the same income.
4. That assuming that Messrs. Rup Narain Ram Chandra was an association of persons no principal officer of the association had been appointed as contemplated by section 2(12) of the Income tax Act and the notices were not addressed or served as required by section 63 of the Act.
5. That a notice under Section 34 could be issued only if an assessment had already been made under Section 23 of the Income Tax Act. If the body to which the notice under

Section 34 was issued was an Association of persons it had never been assessed earlier under Section 23.

6. That the notice under Section 34 was barred by time.

7. That the Income-tax Officer had issued notices under Rule 6-B of the Income-tax Rules calling upon the assessee to show cause why the registration of the firms in the years in dispute may not be cancelled. The petitioners were challenging the correctness of the notices. The Act did not provide for any appeal against the order passed by the Income-tax Officer under Rule 6-B of the Income-tax Rules and the assessee would thus be left without any remedy unless they are allowed to question the notices by moving this Court by a writ petition.

7. There is not much controversy as to the legal position about the circumstances in which a notice under Section 34 of the Income-tax Act may be issued. Cases have been cited at the Bar to show that this section cannot be used for merely reviewing or revising the opinion on the same facts. The language of Section 34 has undergone change more than once. For some years the provision required that the Income-tax Officer should be in possession of definite information on which his belief that income had escaped assessment should be founded. This Court took the view in *Subharan Sekseria v. Commissioner of Income-tax*[1], that there should be a causal connection between the definite information which the Income-tax Officer had received and the discovery which he made that income has escaped assessment. This view was affirmed in a later case but the legislature intervened and the statute was changed. Section 34 as it stood at the relevant time and as it stands now provides that the Income-tax officer may issue the notice contemplated by the section if he has reason to believe that income, profits and gains have escaped assessment. If he believes that income has escaped assessment by reason of the omission or failure on the part of the assessee to make a return of his income under Section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, the notice under Section 34 may be issued at any time. If there has been no omission or failure as mentioned above on the part of the assessee but in consequence of information in his possession the Income-tax Officer has reason to believe that income has escaped assessment the notice may be issued by him within a period of four years. On behalf of the petitioners it is contended that there is no information within the meaning of Section 34 (i)(b) on which Income-tax Officer's belief in the present case might be based. It is pointed out that the contents of the instrument of partnership and the fact that some of the partners represented their respective firms were all known to the Income-tax Officer at the time when the assessments in respect of the two years in question were made. Learned counsel for the department on the other hand contends, that the orders passed by the Income-tax Officer and the Appellate Assistant Commissioner in respect of the years 1953-54 and 1954-55 and the order passed by the dissenting member of the Tribunal in the appeals relating to those years show that some new facts have come to light which were not known to the Income-tax Officer when the original assessments for the years 1949 to 1951 were made. The Income-tax Officer has now come to know that the share of profits of the firm Messrs. Rup Narain Ram Chandra went direct to the accounts of some of the firms on whose behalf one

of their partners had joined Messrs. Rup Narain Ram Chandra. This is a new fact which it is contended could not be known and was not known to the Income-tax Officer who made the original assessments.

8. The Advocate General for the petitioners relied upon serveral cases to show that the mere fact that a partner of a firm or a Karta of a family entered into partnership with others would not ipso facto make the partners of his firm or the members of his family partners in the new firm joined by him. He relied particularly on *Ram Kumar Ramniwas v. Commissioner of Income Tax*[2]*,*

[1]1950-18 ITR 773: AIR 1950 All 587

[2]1952-22 ITR 474: (AIR 1953 All, 150)

where a Bench of this Court laid down that if there be a partnership between the Karta of a Hindu undivided family and a stranger it is the Karta alone who is partner in the firm and not the other members of the Hindu undivided family. The same view was taken by the Calcutta High Court in *Commissioner of Income-tax v. Dudwala and Co*[3]*.,* and this view was affirmed by the Supreme Court in *Kshetra Mohan Sannyasi Charan v. Commissioner of Excess Profits Tax*[4]*,* The learned Advocate General contended, relying on this case, that all that the Income Tax Officer relied upon while issuing the notice was the inference he could draw from the same facts relating to the legal character of the body which carried on the business in the name and style of Messrs. Rup Narain Ram Chandra. The legal inference that this body was an association of persons was not possible and the entire basis therefore on which the Income-tax Officer sought to make new assessments was not available. On behalf of the department it is contended that the question of legal character of the body of persons carrying on business as Messrs. Rup Narain Ram Chandra depended on certain facts. If a person in his own individual capacity joins another firm and then agrees to divide his share of profits with certain other persons who carry on other business with him he alone may be a partner but if his firm contributes capital to the larger firm and if the share of profits is received not by the individual but by the smaller firm itself and all the other partners of the smaller firm divide it as such among themselves the real object is that these various groups of persons constituting several firms should together constitute a larger firm and run a business whose profits would be shared by them all. Learned counsel for the department contended that the real intention and purpose, the actual facts and the manner in which the business of the partnership is conducted are all relevant for this purpose and the inference as to the legal character of the body of persons cannot but be based on facts which are not admitted and which may have to be investigated further by the Income Tax officer in the course of assessment proceedings. According to his contention to stop the Income Tax Officer from exercising his power under Section 34 at the very start would be to deprive him of the power of collecting and ascertaining facts with a view to make a proper assessment which he is empowered in law to do. Learned counsel further contended that it is open to the petitioners to show that the ostensible partners as shown in the instrument of partnership which was registered under Section 26-A of the Act were the only partners in the firm and that the profits of the firm were divided by them as certificate in the petition for registration under the Income Tax Rules. If the Income Tax Officer is satisfied about these facts there can be no doubt that the proceedings

initiated by the notice under Section 34 would be dropped. If, on the other hand, after necessary investigation into the facts and after collecting the relevant evidence the Income Tax Officer finds that the instrument of partnership was a mere camouflage and that various groups of persons had joined together to earn profits pretending that only some of them constituted the firm and the contrivance was nothing but a fraud on the revenue, the Income-tax Officer would be perfectly justified in assessing them in the status of an association of persons on the entire income of the association. Learned Counsel contended that the facts being not admitted this Court should be reluctant to exercise its jurisdiction under Article 226 of the Constitution in a matter like this.

[3]1950-18 ITR 653: AIR 1950 Calcutta 315

[4] 1953-24 ITR 488

9. After hearing learned counsel and considering the facts of the case it appears to us that there is some dispute about the facts on which the parties would rely in connection with the question of determining the legal character of the body carrying on business as Messrs. Rup Narain Ram Chandra. In this connection it is necessary to point out that the findings of the Income Tax Officer and the Appellate Assistant Commissioner and the Income Tax Appellate Tribunal all relate to the instrument of partnership dated 27th November 1952. This document was not the one which was registered for the years 1949-50, and 1950-51 the year now in dispute. The constitution of the firm also was not exactly the same in 1952 as it was according to the document dated 28th March 1947 which was registered in the years in question in these petitions. It is also not possible to ignore the facts that many of the partners were the same in both these partnership agreements and that the name, style and nature of the business was the same in both the agreements. The business in the name and style of Messrs. Rup Narain Ram Chandra had been carried on from before the agreement dated 28th March 1947 and if having regard to the continuity of the business, the same business name and the fact that the majority of the partners were the same the Income Tax Officer believed that the body which carried on the business in the relevant accounting periods was an association of persons and not a firm as was found in the respective later accounting periods by the Appellate Assistant Commissioner and Tribunal we find it difficult to say that his belief was entirely unfounded. It is not necessary for an Income Tax Officer to disclose to the assessee reasons for his belief or the information in his possession at the time when he issues the notice under section 34. The essential requirement is that in consequence of information in his possession, he should have a reasonable belief that income, profits and gains have escaped assessment. The Income-tax Officer in the course of proceedings under Section 34 may place on record the material or information in his possession on which he bases his finding that the income has in fact escaped assessment. In the instant case there does not appear to be any dispute relating to the quantum of the income. The dispute appears to be confined to the question whether the income was that of a firm entitled to registration under the Income Tax Act as claimed by the assessee or of a body of persons who could not in law constitute a firm and were an association of persons liable to be taxed jointly on the entire income of the business. Evidence may be placed by the Income Tax Officer on the record in this connection and it shall of course be open to the petitioners and other persons interested in the assessment to produce such evidence as they may consider necessary to prove their case and to

show that the belief of the Income Tax Officer on which the notice under section 34 of the Act was issued was erroneous. It appears to us rather premature at this stage to stop the proceedings and to say that the Income Tax Officer ought not to have issued the notice. He had the jurisdiction to do so and his power to issue the notice depended on his own belief. Thus the facts on which the legal status of Messrs. Rup Narain Ram Chandra is to be determined are in dispute and have still to be ascertained. In the exercise of its writ jurisdiction this Court cannot be expected to go into these seriously disputed questions of fact. It is therefore not possible to quash the notice under Section 34 of the Act on the ground that no other view of the facts is possible or that the Income Tax Officer is only going to review or revise his opinion on facts already known to him.

10. The second ground that no notice could be issued as the association of persons sought to be assessed was not in existence on the date the notices were issued hardly merits any serious consideration. Section 44 of the Act provides for the assessment of a dissolved firm or Association and this section has been referred to by the Income Tax Officer specifically in the notices under Section 34. Besides all the 29 persons to whom the notices under Section 34 have been issued may not be assessed as members of a dissolved firm or Association in respect of the two assessment years in dispute.
In paragraph 15 of the counter affidavit in writ petition No.1553 of 1958 the Income Tax Officer states that during the period relevant for the assessment year 1949-50 the ostensible partners were those mentioned by the petitioners but really the number of partners was in excess of 20 and the details of some of those partners had been mentioned in paragraph 6 of the counter affidavit. It is contended on behalf of the opposite party that the question as to which persons formed the association of persons sought to be assessed is a question which the Income Tax Officer is competent to decide during the course of the assessment proceedings itself and if he did not know the exact number of persons or exactly the particular persons who constituted the association of persons during the periods relevant to these assessments he was perfectly within his right to issue a notice to the 29 persons, among whom, according to his belief, were the persons who formed that association. It would be open to those 29 persons to show to the Income Tax Officer that they or some of them did not form that association and the Income Tax Officer had the jurisdiction to record a finding as to the constitution of the association of persons on the basis of his own enquiries and the evidence produced by these persons to whom the notices were issued. The notice itself could not be said to be bad for want of jurisdiction merely because only those persons had not been served with a notice who possibly constituted the association of persons in the relevant accounting periods. The liability to tax of those other persons to whom notices had not been issued and who may be later found to be members of that association of persons does not call for any decision in the present case.

11. The learned Advocate General relied on a decision of a Bench of this Court in *Joti Prasad v. Income-tax Officer, Mathura*[5], for his contention that the same firm cannot be assessed twice. He urged that the persons who were found in the course of the relevant proceedings to be partners of

Messrs. Rup Narain Ram Chandra were taxed on their shares of income and the entire income of the business carried on in the name and style of Messrs. Rup Narain Ram Chandra during the relevant accounting periods had been subjected to tax. These assessments are still there and have not been vacated. It is therefore not open to the Income-tax Officer to start proceedings for subjecting the same income to tax in the status of an association of persons.

12. In Joti Prasad's case 1959-37 ITR 107: AIR 1959 Allahabad 456 an association formed under a scheme formulated by the Collector for distribution of Khandsari sugar at controlled rates functioned between January 8, 1947 and January 6, 1948. There were 30 members of the association, 23 of them were assessed to income tax. In their individual assessments their respective shares of the profits earned by the association during the period were included and the tax levied thereon was paid by them. Later the Income Tax Officer initiated assessment proceedings and assessed the income of the association in its hands and served notices of demand. Ten of the

[5]1959-37 ITR 107: AIR 1959 All 456

members of the association thereupon applied to this Court for relief against the order of assessment. It was held on the facts of the case (a) that there was an association of persons with a separate capital for the purpose of carrying on a business and sharing profit of that business, (b) that once the income of the association was charged to income tax in the hands of the members individually and the assessment of the members remained a valid assessment there could be no fresh assessment of the income tax in the hands of the association and (c) that as the Income-tax Officer had ignored the provisions of section 3 of the Income Tax Act which took away his right to charge tax in the hands of the association he committed a manifest error apparent on the face of the record and therefore a writ of certiorari could be issued to correct the error.

13. Section 3 of the Income-tax Act reads as follows:-

> "3. Charge of Income-tax. - Where any Central Act enacts that income tax shall be charged for any year at any rate or rates tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of this Act in respect of the total income of the previous year of every individual, Hindu undivided family, Company and local authority; and of every firm and other association of persons or the partners of the firm or members of the association individually".

It is evident that this section puts into gear as it were, the entire Income Tax Act in accordance with the provisions of the Finance Act which is passed every year specifying the rate or rates at which income tax is to be charged for that year. This tax is to be levied in accordance with and subject to the provisions of the Income Tax Act. It has to be levied in respect of the total income of the previous year of every individual, Hindu undivided family, a company and local authority; and of every firm and other association of persons or the partners of the firm or members of the association individually. So far as individual Hindu undivided families, companies and local

authorities are concerned it is plain that having regard to the provisions of the Act and the ordinary methods of accounting their income can be ascertained.
The income would be really their income and of no one else and can be subjected to tax as such. A firm is not a juristic entity and except in the Income-tax Act it is not considered as a person. Under the Indian Partnership Act when one speaks of a firm all the partners are meant to be spoken of. The very definition of a firm under the Indian Partnership Act shows this. For purposes of income tax, however, a firm is considered to be a unit. All the partners of a firm are liable to be assessed jointly as a firm. According to ordinary law the income of each partner actually is his share of the income of the firm and according to the ordinary law the income of the other partners cannot be considered to be his income. According to the Income Tax Act a firm is regarded as a unit and every partner is liable to tax not only on his share of income but also on the entire income of the firm. In the case of an unregistered firm the assessment when made creates a liability on each and every partner of the firm. Similarly in the case of an association the body, unless incorporated or registered as such under the Indian Companies Act or the Societies Registration Act would have no legal recognition and every member of the association would be individually and severally liable for the acts or omissions of the association. The Income Tax Act however provides for the assessment of an association of persons, though such an association may not be an incorporated or registered body. In the ordinary law there is some scope for a dispute as to whether the income earned by a body of persons as a firm may be said to be the income of a partner and the income earned by a body of persons as an association of persons may be called the income of a member of the association. To set at rest all doubts relating to the matter, section 3 specifically provides that the assessment may be made on the firm or association of persons or the partners of the firm or the members of an association individually. The language of this section is however express, where it lays down that income tax shall be charged in respect of the total income of the previous year of every unit of assessment, the conjunction 'and' is used. It means that the tax shall be levied on the income of every individual, every Hindu undivided family, company and local authority; and of every firm and other association of persons. Thereafter the word 'or' is used providing an alternative mode of assessment. The section says..... "or the partners of the firm or members of the association individually". After the words 'local authority' there is a semi colon which is significant. It indicates that the alternative mode of levying the tax on a partner or a member of an association applies only to cases of firm and other association of persons. This section thus provides that in the case of an association of persons an Income Tax Officer has a choice. He may assess the association of persons as a unit or he may assess the members of the association individually. In Joti Prasad's case 1959-37 ITR 107: AIR 1959 Allahabad 456 the Income Tax Officer had assessed the members individually. Having once made his choice he could not turn round and proceed against the association itself. At page 112 (of ITR) our brother Bhargava, J. said as follows: -

> "So far as the present case is concerned, it has to be decided on the basis that income tax has been assessed in the hands of the individual members of the association in exercise of

> the discretion which vests in the Income Tax Officer under section 3 of the Act to proceed in that manner instead of assessing the income in the hands of the association and once it has been assessed and charged to tax and the assessment remains valid assessment, there can be no fresh assessment of tax on that income in the hands of the association".

In our opinion this reason was enough to dispose of Joti Prasad's case 1959-37 ITR 107: AIR 1959 Allahabad 456 but certain observations have been made in the course of the judgment which are relied upon by the Advocate General. At page 111 (of ITR) it is said:

> "Section 3 of the Act which is the main charging section, only talks of charging the income of certain persons and does not talk of income tax being charged on persons. This implies that the charge is to be levied on an income only once. Whether it is to be charged in the hands of one person or another can certainly be determined under section 3 and other relevant provisions of the Income Tax Act.

Section 3 is clear enough to indicate that the same income cannot be charged repeatedly in the hands of different persons or in the hands of the same persons".

After considering the arguments addressed to us we are of opinion that the decision in Joti Prasad's case, 1959-37 ITR 107: AIR 1959 Allahabad 456 depended plainly on the ground already mentioned and it was not quite essential to go into the question of the nature or the liability to tax under section 3. Section 3 does say that the tax is to be levied on the income but it also says clearly that the tax is to be levied on the income of an individual, Hindu undivided family and so on. It appears difficult to conceive of income in the abstract and the very concept of income for the purposes of assessment implies the existence of a unit whose income is sought to be assessed. What the learned judges evidently meant was that in cases where there was only one course open and the income had been assessed as that of a particular unit it could not be assessed again as that of the same unit. In cases where the assessing authority had two alternatives to follow and had chosen one he could not change over and pursue the other alternative. We find nothing in the observations to show that the income could not be assessed to tax if an Income Tax Officer found that it did not actually belong to the person in whose hands it had been assessed but really belonged to and was the income of another person and should have been assessed as such. In the latter case it is obvious that the first assessment would be a bad assessment, an assessment which could not and should not have been made and which would not be a valid assessment under the Act. It cannot therefore be said that when an Income Tax Officer proceeds to make an assessment of that income as belonging to an entity other than that which was originally assessed such an assessment would be barred by section 3 of the Act.

In Joti Prasad's case 1959-37 ITR 107: AIR 1959 Allahabad 456 the assessment had been made on the members of the association. It was therefore held that the same income could not be assessed again in the hands of the association itself. The decision is wholly inapplicable to the case in hand. Here the assessment was never made either on members of the association or on the association itself. It had been made on certain persons who claimed to be the partners of the firm

Messrs. Rup Narain Ram Chandra. The Income Tax Officer now wants to assess the association of persons which was not assessed to tax at all. Even the income of the members of the association had not been subjected to tax in their hands. Section 3 therefore provides no bar to such assessment.

14. The next ground urged by the learned Advocate General is that the notices were bad as they were not addressed to the Principal Officer of the association of persons sought to be assessed. Reliance is placed on *Mohd. Haneef v. Commissioner of Income-tax*[6], and on section 63 of the Income Tax Act with section 2(12) of the Act. Section 63 (2) of the Act says:

> "63(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family and, in the case of any other association of persons be addressed to the principal officer thereof".

Section 2(12) of the Act defines "principal officer" as follows: -

> "2. (12) principal officer used with reference to a local authority or a company or any other Public body or any association, means –

[6]1955-27 ITR 447 (All)

> (a) the secretary, treasurer, manager or agent of the authority, company, body or association, or
>
> (b) any person connected with the authority, company, body or association upon whom the Income Tax Officer has served a notice of his intention of treating him as the principal officer thereof", Section 63(1) provides for the manner in which notices under the Income-tax Act are to be served. It lays down that a notice under the Act may be served on the person named therein either by post or as if it were a summons issued by a court under the C.P.C. The second part of the section says that in the case of an association the notice may be addressed to other principal officer thereof. This provision appears to us to be an enabling provision. An association of persons in the case of such bodies being not incorporated or registered may be a fluctuating body whose membership may be not easily determinable and it may be so large that service on all the members of the association may be impracticable. The law, therefore, provides that the notice may be addressed to the principal officer of the association. This, in our opinion, does not bar the notice being issued to all the members of the association.

If, therefore in the instant case the Income-tax Officer issued the notices to 29 persons and these persons included some or all of those persons who formed the association of persons in the relevant accounting periods we find no justification for accepting the argument that the notice is invalid and cannot form the basis of a legal assessment.

15. Some argument was addressed to us on the ground that the notice in writ No.1553 of 1958, though addressed to 29 persons had a clause calling upon certain persons to submit the return. This clause reads as follows:

> "Now, therefore under Section 34 read with Section 22 (2) of the said Act I require you the said.....to deliver to me within 35 days of the receipt of this notice a return in the attached form of the total world income of the said firm taxable for the year ending 31st March 1950."

It is contended that the person actually called upon to file the return not being named, the notice though served on the 29 persons did not require any of them to submit a return and was not a valid notice under the law. We would not like to deal with the question at this stage as it may be raised for consideration in the proceedings before the Income-tax Officer when appearance is put in response to the notice. We may, however point out that in the circumstances of the case when the notice was addressed to 29 persons mentioned in the notice we do not think it is possible to say that those 29 persons did not get adequate information of the fact that the Income-tax officer intended to proceed under Section 34 of the Income-tax Act to make an assessment on the association of persons as mentioned in the notice and that it was for them to respond to the notice and file returns or to make such representations as they considered necessary. We do not consider it proper to quash the notices for that reason.

16. In writ No.1370 of 1959 there is a similar clause in which the Income-tax Officer says:

> "I require you the said Shri Shrawan Lal or Shri Moti Chandra to deliver to me within 35 days....."

In this notice he asks either Sri Shrawan Lal or Sri Moti Chandra to file the return. The notice is again addressed and sent to the 29 persons mentioned in the notice and we cannot ignore the fact that the Income-tax Officer expressly says that these persons were members of the association of persons and were jointly and severally liable to assessment in respect of the income which had escaped assessment. Mohd. Hanif's case, 1955-27 ITR 447 (All) (supra) affords no parallel. In that case an association of four persons had been assessed to tax. Thereafter a notice under Section 34 was addressed to Mohd. Hanif who was one of those four persons. Mohd. Hanif filed a return in the status of an individual. The Income-tax Officer made an assessment on an association of two persons other than Mohd. Hanif himself. On appeal this assessment was converted into an assessment on the four persons who had been originally assessed. This Court took the view that the conversion of the assessment made by the Income-tax Officer on two persons into that of four persons was not permissible. We find nothing in Mohd. Hanif's case, 1955-27 ITR 447 (All) as being of any assistance to the petitioners in the present case.

17. The argument that a notice under Section 34 may be issued only if an assessment is once completed under Section 23 does not appear to be acceptable. Section 34 says that the

assessment may be made under that provision if an income has escaped assessment and also if it has been under-assessed. If a person is assessed once on an income less than that which he actually had, an assessment under Section 34 may be made and the additional assessment would be on that part of the income which was not subjected to income-tax in the original proceedings. But if a person is not assessed at all and the entire income has escaped assessment Section 34 provides that such income which has escaped assessment may be brought to tax. Learned counsel has not been able to show why this may not be done.

18. The contention that the notice was barred by time appears to be equally futile. If the Income-tax Officer had sought to tax the registered firm which had been assessed and which had filed a return of income, the bar of four years limitation mentioned in proviso to Section 34 may have been available but as in the present case no return had been admittedly filed by an association of persons and no assessment has been made on that body at all, the law does not provide for any limit of time during which the assessment may be made. We are unable to uphold this objection of the petitioners.

19. So far as the notices under Rule 6B of the Income-tax Rules are concerned they have been issued under Rule 6-B to the firm which was registered and according to the Income-tax Officer wrongly registered under Section 26-A of the Act. There is no bar in the Income-tax Act to an Income-tax Officer issuing a notice under Rule 6-B of the Income-tax Rules. If he does issue such a notice and after cause is shown passes an order adverse to the firm concerned the order does not ipso facto result in an assessment. When an assessment is thereafter made again it can be done only by the issue of a notice under Section 34 of the Act and when that is done any firm whose registration has been cancelled and which has been assessed as an unregistered firm thereafter can prefer an appeal and question the propriety of its assessment in the status of an unregistered firm and may thus challenge the propriety of the order cancelling registration passed by the Income-tax Officer. In the instant case at this stage we find nothing inherently wrong in the notice under Rule 6-B of the Income-tax Rules so as to justify our interference in the exercise of our writ jurisdiction. In the view of the matter the non-appeal ability of the order cancelling registration becomes immaterial.

20. In the light of the above observations the petitions are dismissed with costs which we assess at Rs. 500/- in both the cases as fee of the counsel for the opposite party. The stay orders are discharged.
Petitions dismissed.