CALCUTTA HIGH COURT

Sugan Chand Suraogi

Vs.

Commissioner of Income-tax

A.F.O.O. No. 134 of 1961

(H.K. Bose, C.J. and A.C. Sen, J.)

04.09.1963

JUDGMENT

A.C. Sen, J.

1. The present appeal is directed against an order dated 10th of February, 1961 passed by Hon'ble Mr. Justice D.N. Sinha on an application by the appellant under Article 226 of the Constitution asking for a Rule on the respondent to show cause why a writ in the nature of certiorari should not be issued, commanding the said respondent to certify and return to this Court the records relating to the order complained of Sinha, J. by the said order dated 10th of February, 1961 discharged the Rule issued by Mitter, J. on the said application under Article 228 on the 24th off March, 1960.

2. The facts of the case are as follows : The appellant before us is a firm carrying on business under the name of Sugari Chand Sarangi at 08A Nalini Sett Road, Calcutta. From the deed of partnership being annexure-A to the original petition under Article 228 it transpires that the business of the partnership is to act as brokers in jute only, but the partners may by mutual consent embark upon any new line of business from time to time as they may agree upon on the same terms of partnership as made in the deed of partnership. The firm has since assessment year 1950/51 been assessed to income-tax as unregistered firm. In respect of the years 1951/52 and 1952/53 the appellant firm filed appeals against the assessment and by an order dated 23rd July, 1958 the Appellate Assistant Commissioner remanded the matter to the Income-tax Officer for enquiry and report.

3. In respect of the assessment year 1953/54 the appellant firm failed to comply with the requisition contained in a notice under Section 22(2) of the Income-tax Act and also in a notice under Section 22(4) of the said Act, whereupon an assessment was made under Section 23(4) on an estimated income of Rs. 3,00,000. On June 14, 1958 the appellant applied under Section 33A of the Indian Income-tax Act to the Commissioner of Income-tax, Calcutta praying that the assessment made against the firm might be cancelled and the case remanded to the Income-tax Officer for fresh assessment. Paragraphs 3, 4 and 5 of the said petition under Section 33A are quoted below :

"3. That due to unavoidable circumstances, all the partners were out of Calcutta for about three months from June 1957 and as such could not comply with notices under Section 22(4) of the learned Income-tax Officer.

4. That the petitioner requested their authorized representative Sri B. Mukherjee to appear from time to time before the Income-Tax Officer and to take time for submission of return, which however, he also failed to do so on account of his serious illness of Coronary Thrombosis of Heart and High Blood Pressure. This fact was conveyed to the petitioners when they came back from Rajasthan and this was after the assessment order under Section 23(4) was passed.

5. That in making the said assessment the Learned Income-Tax Officer failed to exercise his judicial mind and to consider the income of previous years, for comparison. The Learned Income-Tax Officer proceeds to assess the petitioners on a very high scale of income (Rs, 3,00,000). This estimate appears to be very hard and heavy without any basis whatsoever." In paragraph 6 of the said petition the appellant explained why it was not possible for the appellant either to make as application under Section 27 of the Indian Income-tax Act or to prefer an appeal to the Appellate Assistant Commissioner. In paragraph 8 of the said petition it is stated that the appellant is submitting the return with profit and loss account and the balance sheet and also application for registration and renewal for partnership under Section 26A to the learned Income-Tax Officer. There is nothing on record to show whether and if so when such returns and applications were filed before the Income-Tax Officer. The appellant prayed in the said application not only for the cancellation of the assessment, but also for the condonation of the delay for submitting the return and the application under Section 28A.

4. The said application under Section 33A was duly considered by Shri H.P. Sharma, Comm Winner of Income-Tax and some relief was granted to the appellant by an order passed on 20th January 1960. The learned Commissioner points out that the assessee's business is mainly brokerage of Jute goods. He also points out that the assessment was made in the status of an 'unregistered firm.' The relevant portion from the Said order of the Income-Tax Commissioner is quoted below;

"2. I have gone through the petition of the assessee and his record carefully. There are no circumstances which can justify the reopening of the assessment. It is contended that the partners were outside Calcutta for couple of months, the exact period is not known, nor there is any proof to support allegation. The cause for non-compliance with the notice under Section 22(2) is not mentioned. Hence the assessment under Section 23(4) will stand.

3. Next is the question of quantum. The assessments in this case have been made on the following incomes. I am also noting below the gross income from brokerage in each year, for that was the main source of income :

Assessment year.	Income on which the assessment has been made.	Section under which the assessment was made.	Gross Income from brokerage
1950-51	47,179/-	23(3)	58,952/-

1951-52	99,094/-	23(3)	1,31,416/-
1952-53	2,85,792/-	23(3)	3,32,661/-
1954-55	1,22,400/-	23(3)	1,11,943/-
1955-56	58,704/-	23(3)	67,174/-

The Income-Tax Officer examined subsequently the books of account, relating to the assessment year 1953-54 and found that the assessee's brokerage income was Rs. 1,18,000/- gross. From the facts noted above even if one does not go into the bonks of account (which cannot be made the basis of assessment when an ex parte assessment is going to be framed) the estimate of the assessee's income at Rs. 3 lacs seems to be wide for the mark. Incidentally it may also be noted that in the assessment for 1951-52 and 1952-53 the assessee has been disputing Rs. 25,312/- and Rs. 2,02,500/- respectively. These disputes are pending in appeal. However, taking into account all the relevant facts of the case I would reduce the business income to Rs. 1,75,000". The rest of the order deals with the question of registration under Section 26A of the Income-tax Act with which we are not concerned in the present appeal. The Commissioner finally passed the following order :-

> "Consequently the assessment will stand in the Status of an 'unregistered Firm' and also under Section 23(4) but the quantum of income will be reduced to Rs. 1,75,000/-."

5. It is against this order of the Commissioner of Income-tax an application was made by the appellant asking for a writ of certiorari praying that the order might be quashed on the grounds stated therein. As stated above a Rule was issued on the said application, but ultimately the said Rule was discharged by the Hon'ble Mr. Justice Sinha by his order passed on the 10th of February, 1961.

6. Before Sinha, J. a preliminary objection was taken on behalf of the respondent that an order of the Commissioner of Income Tax under Section 33A is an administrative order and as such no writ of certiorari can lie to quash such an order Sinha, J. thought that the matter could be disposed of on this preliminary point; still he entered into the merits of the case. His Lordship held against the appellant both on the preliminary point as well on merits. As to merits his Lordship observed as follows :

> "Even on the merits, I do not see that any ground has been made out for my interference. What Mr. Mitra argues is that the figure of Rs. 1,75,000/- as income is an impossible figure, where the gross income is Rs. 1,18,000/-. In other words, he argues that the Income-tax Officer after looking into the books of account has found that the total income of the assessee is Rs. 1,18,000/- gross and yet the Commissioner holds the business income for the assessment year to be Rs. 1,75,000/-. Mr. Mitra argues that out of Rs. 1,18,000/- gross, at least Rs. 40,000/- would have to be deducted as expenses, so that the figure of Rs. 1,75,000/- must necessarily be bad. In this argument there seems to be several flaws. The sum of Rs. 1,18,000/- has not been found to be the total gross income of the assessee for the assessment year 1953-54, but is the gross income of the firm from brokerage only. As I said above, it is evident that the firm has other source of income. It is

true that the Commissioner has not stated the details of figures upon which he has arrived at the sum of Rs. 1,75,000/- as the income of the firm for the relevant assessment year. But then, he has stated that he has taken into account "all the relevant facts" of the case. It is clear from the order itself that the Income tax Officer had examined the books of account and the result of the examination was doubtlessly available to the Commissioner of Income-tax. This jurisdiction cannot be said to be of a Court of Appeal on facts and figures. The error must be an error of law apparent on the face of the record ..... He (Mr. Mitra) has cited authority to show that for an assessment there must be computation. That must be necessarily so. This however, does not mean that every detail of the calculations should be set out in the order under Section 33A. The fact that such an order is an administrative order and not a judicial one has some bearing on the question. If it is an administrative order, it is not justiciable and, therefore, I do not see why the detailed reasoning's should be given. This is a risk which the assessee takes in exercising his rights under Section 33A(2) of the Income-tax Act. He has an alternative remedy by way of appeal and if he does not choose to avail himself of a judicial order, he cannot complain that the matter is not in a form in which we expect judicial orders to be made. As I stated above, this is not a Court of Appeal on facts and figures. Of course, if there were an inherent impossibility this might have been different. I see, however, no absurdity on the fact of the order."

7. In determining the preliminary objection taken on behalf of the respondent Sinha, J. mainly relied upon the decision of the Privy Council in *Commissioner of Income Tax, West Punjab v. Tribune Trust of Lahore reported*[1] *in.* Sinha, J. also referred to his own decision in *Sital-pore Colliery Concern Ltd. v. Union of India reported in*[2] He also referred to certain other decisions of the different High Courts of India which mainly followed the decision of the Privy Council in 74 Ind App 306 : AIR 1948 PC 102 and came to the conclusion that the order on revision passed by the Commissioner under Section 33A is an administrative order and as such, is outside the purview of the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution and that an order of the Commissioner under that section cannot be quashed by the issue of a writ in the nature of certiorari.

8. In the present appeal Mr. Mitra appearing on behalf of the appellant has challenged the afore said decision of Mr. Justice Sinha both on merits as well as on the question of law decided by his Lordship Like Mr Sinha, J. we too are of opinion that even though the matter can be disposed of on the preliminary objection, still we should also enter into the merits, Mr. Mitra suggests that in view of the report of the Income Tax Officer determining Rs. 1,18,000/- as gross receipt from brokerage, a taxable profit of Rs. 1,75,000/- is inherently impossible and demonstratively erroneous. We are unable to accept this suggestion made by Mr. Mitra. [After considering the case oil merits his Lordship concluded :] We are of opinion that the order of the Commissioner is not liable to be quashed on the ground that the Commissioner in passing the said order acted contrary to the principles laid down either in *Commissioner of Income Tax v. Laxminarain Badridas*[3]*,* or in *Gunda Subbayya v. Commissioner of Income Tax Madras*[4]*,* or in *Sun Insurance Office v. dark*[5]*,* We also are of opinion that order of the Commissioner is not liable to be quashed on the ground of error of law apparent on the

[1]74 Ind App 306 also in (1948) 16 ITR 214 and also in AIR 1948 PC 102 [3](1937) 5 ITR 170
[2](1957) 32 ITR 26 : AIR 1957 Cal 319 [4](1939) 7 ITR 21 : AIR 1939 Mad371 (SB)
[5](1912) 6 Tax Cas 59

face of the record. No doubt, the Commissioner says in one place of his order that the books of account cannot be made the basis of assessment when an ex parte assessment is going to be framed. It cannot be said that he ignored the books of account altogether in making his estimate of the business income of the appellant. In the context in which he has stated that the books of account cannot be made the basis of assessment when ex parte assessment is going to be framed, it is indeed difficult to understand what he really means. He may mean that the assessment being ex parte it was not possible for the Income-tax Officer to make the books of account the basis of assessment or it may be that he has laid it down as a general proposition of law. However, whatever may be in the mind of the Commissioner in making the aforesaid statement, it is clear that his estimate of the business income of the assessee was not in any way influenced by that statement. That being the position we cannot agree with Mr. Mitra that the order of the Commissioner is liable to be quashed on the ground that there is an error of law apparent on the face of record. We are reluctant to interfere with the order of the Commissioner on merits also for another reason. According to Mr. Mitra the Commissioner should have computed the taxable income on fresh materials and he wants us to quash his order for failing to do so. We are not sure whether the Commissioner is entitled to compute income on materials that were not available to the Income-tax Officer. At any rate we are not prepared to quash his order on the ground that he failed to do so. In this connection it may be mentioned that their Lordships of the Privy Council expressed their doubt in the Tribune Trust case AIR 1948 PC 102 as to whether the Commissioner is exercising his power under the old Section 33 of the Income-tax Act was competent to set aside an assessment that became final and conclusive.

9. Now, we may apply our minds to the preliminary objection taken on behalf of the respondent, viz. that the order passed by the Commissioner under Section 33A of the Income tax Act being administrative in nature cannot be quashed by a writ of certiorari. This point was dealt with by Sinha J. in (1957) 32 ITR 26 : AIR 1957 Calcutta 319. His Lordship was clearly of opinion that such an order is an administrative order and not a judicial one. The same view has been taken by the Andhra High Court in the case of *Edera Venkaiah v. Commissioner of Income Tax, Hyderabad*[6], The Judgment in that case was delivered by Jagmohan Ready J. who held that the revisional power of the Commissioner under Section 33A of the Income-tax Act is to be exercised only in the administrative capacity and that the Court will not interfere with such an order in revision under Section 33A. In that case also an order passed by the Commissioner under Section 33A was sought to be quashed on certiorari. This view of Jagmohan Reddy, J. was subsequently endorsed by a Division Bench of the Andhra High Court in *Addl. Income-tax Officer, Cuddapah v. Cuddapah Star Transport Co. Ltd*[7]. In that case also their Lordships held that while acting under Section 33A of the Income-tax Act the Commissioner does not perform any judicial or quasi-judicial function. They further held that the orders of revision passed by the Commissioner under Section 33A being of an administrative character are outside the purview of the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India and that an order of the Commissioner under the said section cannot be quashed by the issue of a writ of certiorari. There is one decision however of the Bombay High Court wherein an order of the Commissioner under Section 33A was quashed by a writ of certiorari. The said

[6] AIR 1959 And Pra 508
[7]ILR (1961) 1 Andh Pra 32

decision was made in the case of *Bhagwandas Kebaldas v. N.D. Mehrotra*[8], In that case however

the point that an order under Section 33A was administrative and not a judicial order and that a writ in the nature of certiorari cannot be issued was-not raised and was not considered at all. But the Bombay High Court in the subsequent case, viz., in the case of *Dhunji Shaw Pestonji Ratanji Cassad v. Commissioner of Income Tax, reported in*[9] took the view that an order in revision passed by the Commissioner under Section 33A of the Income-tax Act is an administrative order and that the High Court has no jurisdiction to issue a writ of certiorari to quash it. In that case the assessee applied to the Commissioner for reviewing the order passed by the Income-tax Officer. The application was made under Section 33A of the Income-tax Act. The Commissioner refused to interfere. Thereupon the assessee applied to the then High Court of Judicature at Nagpur for the appropriate writ under Articles 226 and 227 of the Constitution for quashing the order of the Commissioner. The High Court of Nagpur directed the Commissioner to consider the effect of certain notification issued under Section 60 of the Income-tax Act by the Central Government. After the case went back to the Commissioner, the Commissioner again rejected the application for revision under Section 33A of the Income-tax Act on the ground that a certain condition laid down in the said notification issued under Section 60 of the Income-tax Act had not been fulfilled. It is against this order that the assessee applied for an appropriate writ for quashing the aforesaid order of the Commissioner passed under Section 33A of the Income-tax Act. The assessee prayed not only for the issue of the writ of mandamus but also for the issue of a writ of mandamus. Their Lordships ultimately concluded that the High Court had no jurisdiction to issue a writ of certiorari for quashing the order passed by the Commissioner under Section 33A of the Income-tax Act.

10. It may be mentioned that all the decisions noted above wherein it has been held that the order passed by the Commissioner under Section 33A of the Income-tax Act is administrative in nature, referred to the decisions of the Privy Council reported in 74 Ind App 306 also in (1948) 16 ITR 214 also in AIR 1948 PC 102. The present Section 33A of the Income, tax Act corresponds to Section 33 of the Income-tax Act as it stood before its amendment in 1941. It may bet incidentally mentioned that prior to 1941 no right was given to an assessee to move the Commissioner who could call for the records of the subordinate officials suo motu and pass such orders as he thought fit. In 1941 the assessee was given the right to apply for revision to the Commissioner of Income-tax. Section 33 of the Income-tax Act before its amendment in 1941 stood thus :

> "(1) The Commissioner may of his own motion, call for the record of any proceeding under this Act which has been taken by any authority subordinate to him or by himself when exercising the power of an Assistant Commissioner under Sub-Section (4) of Section 5.
>
> (2) On receipt of the record the Commissioner may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit :
>
> Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard."

[8](1959) 36 ITR 538 (Bom)
[9](1962) 46 ITR 1023 (Bom)

The Privy Council in the Tribune Trust case, AIR 1948 PC 102 was called upon to decide whether the Commissioner was justified in denying the relief claimed by the assessee under Section 33 of the Income-tax Act. In that case the assessee which was a Trust and which paid tax up to the year 1931-32 raised an objection in respect of assessment for the year 1932-1933 on the ground that his income for that year was exempt by virtue of Section 4(3)(i) of the Income-tax Act. In a reference to the High Court under Section 66 it held that the income was not exempt. The assessee appealed to the Privy Council and the Privy Council reversed the decision of the High Court Meanwhile after the decision of the High Court and prior to the decision of the Privy Council the assessment for the years subsequent to the year 1932-33 was made and completed in accordance with the decision of the High Court. The assessee after the decision of the High Court made an application under Section 33 praying that the assessment for the years subsequent to 1932-1933 might be quashed. The Commissioner refused to cancel the assessments on the ground that the assessee had not availed itself of the procedure which the law provided including, if necessary, an appeal to the Privy Council in respect of the assessments subsequent to the year 1932-1933. The assessee applied to the Commissioner praying him to state a case and refer it to the High Court at Lahore under Section 66(2) of the Act. The Commissioner dismissed the said petition to state a case as, in his opinion, there was no question of law arising which was a proper subject for reference under the section. The assessee that moved the High Court praying that the Commissioner might be requited under Section 66(3) of the Act to state a case on certain questions which were alleged to arise out of the order of the Commissioner. The High Court acceded to the said petition and directed the Commissioner to state a case for reference under Section 68 upon certain questions formulated by the High Court. The said questions were ultimately retramed as follows :

> "1. Whether the assessment made subsequent to the year 1932-33 including the supplementary assessment for the year 1931-32 was nullity in view of the decision of their Lordships of the Privy Council.
> 2. Whether the Commissioner of Income-tax acted improperly id refusing to exercise the discretion vested in him to cancel the said assessment and to order the repayments of the sums received from the assessees on account of those assessments.
> 3. Whether the assessees could be denied the relief claimed by them under Section 33, Income-tax Act on any valid ground."

Their Lordships of the Privy Council in answering the aforesaid three questions made a general survey of the various chapters and sections of the Indian Income-tax Act as it then stood. With regard to the chapter containing Section 33 of the Income-tax Act, as it then stood, their Lordships observed as follows :

> "Chapter 4, headed 'deductions and assessments' and consisting of Sections 18 to 39 inclusive deals elaborately with these two subjects. It prescribes in details duties on the Income-tax authorities and the obligations and rights of the assessee and in particular by Section 30 defines the right of appeal to the Assistant Commissioner against an assessment and the limit of time within which an appeal may be brought and by Section 31 defines powers and duties of the Assistant Commissioner upon the hearing of an appeal. This section contains a proviso that the Assistant Commissioner shall not enhance

> an assessment unless the appellant has had a reasonable opportunity of showing cause against such an enhancement. Section 32 provides that any assessee objecting to an order passed by an Assistant Commissioner under Section 28 or to an order enhancing his assessment under Sub-Section (3) of Section 31 may appeal to the Commissioner within 20 days of the date on which he was served with notice of such order. This section provides by Sub-Section (3) that in disposing of the appeal the Commissioner may alter giving the appellant an opportunity of being heard pass such orders thereon as he thinks fit. Their Lordships pause at this point to observe with what particularity the rights of the assessee in regard to appeal are defined. The sections to which reference has been made are couches in language which is apt to create rights and to define their limits. Then comes Section 33 round which so much argument has ranged."

Thereafter their Lordships quoted Section 33 and then went on to say :

> "It is this section, as the third question in the case stated indicates, upon which the respondent relies as establishing a light to relief and their Lordships will recur to it, observing however that in its language and in its context it appears ill-designed for such a purpose."

In answering the second question their Lordships observed as follows :

> "Their Lordships are of opinion that the only remedies open to the tax payer, whether in regard to appeal against assessment or to claim for refund are to be found within the four corners of the Act. .... It is the Act which prescribes both the remedy and the manner in which it may be enforced."

11. It was argued on behalf of the assessee that it appeared upon the face of the order of the Commissioner that he exercised properly the discretion assumed to be vested in him and that his order should therefore be set aside. This argument was based on the following observations made by the Commissioner in retusing to set aside the assessment.

> "It was open to the assessee to keep these assessments alive by having them included in the reference to the Privy Council."

Their Lordships pointed out that though the sentence was not happily expressed it was sufficiently clear that what the Commissioner had in his mind was that it was open to the assessees to avail themselves of the procedure which the law provided, including if necessary an appeal to His Majesty in Council and that as they had not done so he refused to reopen the assessments. Their Lordships concluded this portion of their judgment as follows :

> "This was in fact the reason and, as their Lordships think, a valid reason for the course that he took. Moreover their Lordships, even if they thought that the Commissioner had not expressed himself with sufficient clarity, could do no more than send the matter back

> to him, for further consideration. They would not, upon so slender a ground, conclude that he had exercised his discretion improperly and direct him to exercise it differently".

Incidentally, it may be observed that Mr. Mitra hers exactly wants us to do what the assessees in that case asked the Privy Council to do. Mr. Mitra suggests that by reason of the observations made by the Commissioner that in an ex parte assessment the account books cannot be made the basis of assessment, the matter should go back to the Commissioner for reconsideration. We feel as the Privy Council felt, in that case, that upon so slender a ground it cannot be said that the Commissioner had exercised his discretion improperly and direct him to exercise it differently.

12. The Privy Council deals with the nature of the order passed by the Commissioner under Section 33 of the Income-tax Act as it then stood while answering the third question, viz, whether the assessee could be denied relief claimed by them under Section 33 and observes as follows :

> "The fallacy implicit in this question has been made clear in the discussion of the first two questions. It assumes that Section 33 creates a right in the assessee. In their Lordships' opinion it creates no such right. On behalf of the respondent the well-known principle which was discussed in *Julius v. Bishop of Oxford*[10] was invoked and it was urged that the section which opens with the words, "The Commissioner may of his own motion" imposed upon him a duty which he was bound to perform upon the application of an assessee. It is possible that there might be a context in which words so inapt for that purpose would create a duty, but in the present case there is no such context. On the contrary, Section 33 follows upon a number of sections which determine the rights of the assessee and is itself, as its language clearly indicates, intended to provide administrative machinery by which a higher executive officer may review the acts of his subordinates and take the necessary action upon such review. It appears that as a matter of convenience a practice has grown up under which the Commissioner has been invited to act "of his own motion" under the section and where this occurs a certain degree of formality has been adopted. But the language of the section does not support the contention, which lies at the root of the third question and is vital to the respondent's case, that it affords a claim to relief. As has been already pointed out appropriate relief is specifically given by other sections it is not possible to interpret Section 33, as conferring general relief."

So, it is clear that their Lordships were of opinion that Section 33 did not center any general relief. Their Lordships also pointed out that Section 33 intended to provide administrative machinery by which the higher executive officer might review the acts of his subordinate and take necessary action upon such review. In the opinion of their Lordships the machinery was administrative and the Commissioner was required to act as a higher executive officer reviewing the acts of his subordinate. These two expressions - administrative machinery and higher executive officer-leave no room for doubt that in the opinion ol their Lordships the order that the Commissioner passed under Section 33 of the Income-tax Act as it then stood, was in the nature of an administrative order.

[10](1880) 5 AC 214

13. Now, it is to be seen whether the position has in any way been altered as a result of the subsequent amendments of the Indian Income-tax Act. Section 33 of the Indian Income-tax Act which was the subject-matter of review in the Tribune case, AIR 1948 PC 102, is now represented by Section 33A of the Income-tax Act applicable to the present case. The said section runs as follows :

"Sub-Section (1);

The Commissioner may of his own motion call for the record of any proceeding under this Act in which an other has been passed by any authorities subordinate to him and make such an enquiry or cause such an enquiry to be made and, subject to the provision of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

Provided the Commissioner shall not revise any order under this Sub-Section if -
(a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal, the time within which such appeal may be made has not expired, or
(b) the order is pending on an appeal before the Appellate Assistant Commissioner or has been made the subject of an appeal to the Appellate Tribunal, or
(c) the order has been made more than one year previously.

Sub-Section (2) :

The Commissioner may, on application by an assessee for revision of an order under this Act passed by any authority subordinate to the Commissioner, made within one year from the date of the order or within such further period as the Commissioner may think fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within that period call for the record of the proceeding in which such order was passed and on receipt of the record may make sue enquiry or cause such enquiry to be made, and, subject to the provisions of this Act, may piss such order thereon not being an order prejudicial to the assessee, as he thinks fit :

Provided that the Commissioner shall not revise any order under this Sub-Section if
(a) When an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal but has not been made, the time within which such appeal may be made has not expired, or, in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right ol appeal, or
(b) Where an appeal against the order has been made to the Appellate Assistant Commissioner, the appeal is pending before the Appellate Assistant Com. missioner, or
(c) the order has been made the subject of an appeal to the Appellate Tribunal :
Provided further that an order by the Commissioner declining to interfere shall be deemed not to an order prejudicial to the assessee.
Explanation :- For the purposes of Sub-Sections (1) and (2), the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner.

Sub-Section (3) :

Every application by an assessee under Sub-Section (2) shall be accompaniad by a tee of twenty five rupees".

14. Mr. Mitra suggests that so far as Sub-Section (1) is concerned the order passed by the Commissioner when he calls foe the record of his own motion may be regarded as an administrative order, but so far as the order under Sub-Section (2) it concerned which is to be made by the Commissioner on application by the assessee for revision of an order must be regarded as a judicial order as distinguished from an administrative order. According to him, a right has been conferred on the assessee by Sub-Section (2) to apply to the Commissioner for revision. Usually, such an application is to be made within one year from the date of the order complained of. But the Commissioner may condone the delay when he is satisfied that the assessee was prevented by sufficient cause from making the application within that period. Mr. Mitra says that this power of condonation clearly implies that the Commissioner is required to act not in his administrative capacity but as a judicial officer. We are, however, unable to accept this contention of Mr. Mitra. First of all, there is scarcely any difference between Sub-Section (1) and Sub-Section (2) of Section 33A. If an order under Sub-Section (1) be an administrative order, there is no reason why an order under Sub-Section (2) should not be also an administrative order. Mr. Mitra however explains that when he says that the order under Sub-Section (1) may be administrative he is not really making any concession. He simply says that even assuming that the order under Sub-Section (1) is an administrate order an order under Sub-Section (2) must be taken to be judicial. That an order under Sub-Section (1) is administrative clearly follows from the decision of the Privy Council in the case of the Tribune Trust, AIR 1948 PC 102. Sub-section (1) of the present Section 33A is almost identical in language with Sub-Section (1) of Section 33 as it stood when the case of the Tribune Trust, AIR 1948 PC 102 was decided by the Privy Council. Therefore, there cannot be any manner of doubt that the order passed by the Commissioner under Sub-Section (1) of Section 33A is an administrative order. So far as Sub-Section (2) is concerned, it should be noted that the Commissioner is precluded from making any order prejudicial to the assessee. That is a feature which is common both to Sub-Section (1) as well as to Sub-Section (2). Then again, both the Sub-Sections clearly indicate that the Commissioner is to call for the record of any proceeding in which an order has been passed by an authority subordinate to him. Again, it may be noted that there is no provision for hearing the assessee in either of the two Sub-Sections. It is therefore difficult to hold that the order passed under Sub-Section (2) will be judicial or quasi-judicial simply because the assessee may by an application ask the Commissioner to revise an order passed by his subordinate. Even under the old Section 33 a practice grew up under which the Commissioner was invited to act under that section and where this occurred, a certain degree of formality had to be adopted. The Privy Council in the Tribune Trust case AIR 1948 PC 102 had to consider the effect of proceedings initiated by the Commissioner under the said section. Their Lordships concluded that it mattered little whether the Commissioner acted of his own accord or at the invitation of the assessee. Their Lordships observed as follows :-

> "The Commissioner may act under Section 33 with or without the invitation of the assessee; if he does so without invitation, it is clear that, if he does nothing to worsen the position of the assessee, the latter can acquire no right : the review may be a purely

> departmental matter of which the assessee knows nothing. If on the other hand the Commissioner acts at the invitation of the assessee and again does nothing to worsen his position, there is no justification for giving him a new right of appeal. He has a specific light of appeal against the assessment or order of the subordinate officer, which is subject to its own time limit. That he cannot enlarge by taking a course which is on his part purely voluntary."

When their Lordships say in connection with the Commissioner's acting at the invitation of the assessee that there is no justification for giving him a new light of appeal, the Privy Council clearly means that the order passed on such a review is also a purely departmental matter. Therefore, we fully agree with Mr. Justice Sinha that the nature of the proceeding initiated by the Commissioner under Sub-Section (2) of Section 33A is in no way different from the nature of a proceeding initiated by the Commissioner under Sub-Section (1) of Section 33A and that both the proceedings are administrative in nature.

15. It may incidentally be noted that after the constitution of the Appellate Tribunal by the Income-tax Amendment Act of 1939 the old Section 33 which conferred the revisional jurisdiction on Commissioner was repealed and thus the Commissioner's revisional powers were taken away. But in order to obviate the hardship involved in cases where the stakes were small, the revisional powers of the Commissioner were restored by the Indian Income-tax Amendment Act, 1941 being Act No. 23 of 1941. There is no reason to infer that the Legislature intended to confer larger powers on the Commissioner for the purpose of revision than those enjoyed by him under the old Section 33. It should be remembered that the revisional jurisdiction is one of superintendence and correction and that it can be exercised suo motu or on being moved to that end by the aggrieved party. The features that were pointed out by the Privy Council in relation to the old Section 33 for the purpose of concluding that the machinery provided by that section was purely administrative, still persist in regard to the present Section 33A. Therefore, it is not possible for us to accept the argument on behalf of the appellant that the proceeding under Section 33A(2) is quasi-judicial and not administrative.

16. Mr. Mitra on behalf of the appellant refers to a number of cases for the purpose of showing that the order passed by the Commissioner under Section 33A(2) in the present case is quasi-judicial and not administrative. Let us examine those cases one by one. Reference has been made to the decision of the Supreme Court in the case of *Province of Bombay v. Kushaldas S. Advani, reported*[11] *in* In that case there was an appeal from the judgment of the High Court of Bombay and the appeal related to the power of the High Court to issue a writ of certiorari against the Province of Bombay to quash an order to requisition certain premises. The material facts in that case were as follows : One Abdul Hamid Ismail prior to 29th January 1948 was the tenant of the first floor of a building at Warden Road, Bombay, the landlord of which was one Dr. N.D. Vakil. On 29th January 1948, Ismail assigned his tenancy to the petitioner before the Supreme Court and two others all the three assignees were refugees from Sind. On 4th February 1948 the petitioner went into possession of the flat. On 26th February 1948 the Government of Bombay issued an order requisitioning the flat under Section 3, Bombay Land Regulation Ordinance (5 of 1947) which came into force on the 4th of December 1947. On the same date Dr. Vakil was informed that the Government had allotted the premises to Mrs. C.

[11] AIR 1950 SC 222

Dayaram who was also a refugee from Sind. Further orders were issued authorising an Inspector

to take possession of the premises. On 4th March 1948 the petitioner filed a petition for a writ of certiorari and an order under Section 45, Specific Relief Act subsequently. The petition was heard by Bhagwati, J. who inter alia granted the writ against the Province of Bombay and others. On appeal, the Appellate Court confirmed the order as regards the issue of the writ of certiorari against the appellant, but cancelled the order as regards the other parties. An appeal was preferred against the order of the Bombay High Court by the Province of Bombay to the Supreme Court. The appeal was allowed by the Supreme Court and the petition was dismissed. Mahajan J and Mukherjee J. however, were in favor of dismissing the appeal, but they were in a minority. The learned Judges of the Supreme Court in that case had to consider the nature of the order passed by the Bombay Government in requisitioning the disputed premises and certain broad propositions were laid down for the purpose or ascertaining whether an order is administrative or judicial or quasi-judicial, Mr. Mitra reads out the following passage from the judgment delivered by Das, J. :

> "What are the principles to be deduced from the two lines of cases I have referred to ? That the principles, as I apprehend are : (i) that it a statute empowers an authority, not being a Court in the ordinary sense, to decide the dispute arising out of a claim made by one party under the statute which claim is opposed by another party and to determine respective lights of the contesting parties who are opposed to each other there is a lis and prima facie and in absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi judicial act; and (ii) that if the statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

Mr. Mitra submits that in the present case there is a lis. In the present case it is difficult to say that there is a lis in the sense in which that word has been used by Das, J. in the first test laid down by his Lordship. Evidently the present case does not satisfy the first test. So far as the second test is concerned, in the present case the statutory authority, viz., the Commissioner no doubt has the power to do any act which will affect the subject, viz., the assesses and in that sense it may be stated that it apparently satisfies the second test. But, as has rightly been pointed out by Mr. Mukherjee appearing on behalf of the respondent, the second test speaks of an act which prejudicially affects the subject and in the present case the Commissioner either under Sub-Section (1) or under Sub-Section (2) of Section 33A is precluded from passing any order which is prejudicial to the assessee. That being the position we are of opinion that the present case does not satisfy even the second test laid down by Das, J. Then again, so far as the second test is concerned, the final determination of the authority will be quasi-judicial provided the authority is required by the statute to act judicially. We have already pointed out that so far as Sub-Section (2) is concerned there is nothing to indicate that the Commissioner is required to act judicially in disposing of the application made by the assessee for revising the order of assessment passed by an authority subordinate to the Commissioner. That being the position we do not think that Kushaldas Advani's case AIR 1950 Supreme Court 222 supports the contention of Mr. Mitra that the order passed by the Commissioner in the present case in exercise of his powers under Sub-

Section (2) of Section 33A is either judicial or quasi-judicial. In our opinion, as already indicated, the order complained of is purely administrative and is not liable to be removed by a writ of certiorari.

17. The next case referred to is the case of *Nagendra Nath Bora v. Commr. of Hills Division reported [12]in* In that case the Supreme Court had to hear four appeals analogously. The appeals were directed against the orders of the Assam High Court exercising its powers under Articles 226 and 227 of the Constitution in respect of orders passed by the Revenue Authorises under the provisions of the Eastern Bengal and Assam Excise Act, 1910. All the four cases followed a common pattern. They came from the non-prohibited areas in the State of Assam where the sale of country spirit is regulated by license issued by the authorities under the provision of the Act. The settlement of shops for the sale of such liquor is made for one year. Their Lordships of the Supreme Court were required to interpret Section 9(1) of the said Act, viz., the Eastern Bengal and Assam Excise Act, 1910. Section 9 of the said Act is in these terms;

> "Section 9(1). Orders passed under this Act or under any rule made hereunder shall be appealable as follows in the manner prescribed by such rules as the State Government may make in this behalf :
> (a) to the Excise Commissioner, any order passed by the District Collector or a Collector other than the District Collector,
> (b) to the Appellate Authority appointed by the State Government for the purpose, any order passed by the Excise Commissioner.

Sub-Section (2) : In cases not provided for by clauses (a) and (b) of Sub-Section (1) orders passed under this Act or under any Rules made here under shall be appealable to such authorities as the State Government may prescribe.
Sub-Section (3) : The Appellate Authority, Excise Commissioner or the District Collector may call for the proceedings held by any officer or person subordinate to it or him or subject to its or his control and pass such orders thereon as it or he may think fit."
One of the appeals being Civil Appeal No. 670 of 1957 was on behalf of the Commissioner of Hills Division and Appeals, Assam against the judgment and order of the High Court relating to the settlement of a spirit shop, viz. Murmuria country spirit shop in the district of shibsagar. The first respondent in that appeal was one Bhanuram Pegu and the second respondent was Lakhiram Kalita. These two respondents among others submitted their tenders for the settlement of the shop. The Deputy Commissioner settled the shop with the first respondent Bhanuram Pegu. The second respondent Lakhiram Kalita filed an appeal before the Commissioner of Hills Division and Appeals who set aside the settlement in favour of Bhanuram Pegu and ordered settlement with Lakhiram Kalita. Against the orders of the Commissioner of Hills Division and Appeals Bhanuram Pegu moved the High Court of Assam under Articles 226 and 227 of the Constitution for a proper writ for quashing them. The High Court set aside the order of the Commissioner of Hilts Division and Appeals who thereafter preferred, as stated above, Civil Appeal No. 670 of 1957 to the Supreme Court. Before the Supreme Court it was argued on behalf of the Commissioner of Hills Division and Appeals that the several authorities indicated in Section 9 of the said Act are really administrative bodies and

[12] AIR 1958 SC 398

therefore their orders that were passed in the first instance or on appeal should not be amenable

to the writ jurisdiction or supervisory jurisdiction of the High Court under Articles 226 and 227 of the Constitution. The learned Chief Justice of India in disposing of this argument observed as follows :

> "If the matter had rested only with the provisions of the Act, apart from the rules made under Section 36 of the Act, much could have been said in support of this contention .... But when we come to the rules relating to appeals and revisions, we find that the widest scope for going up in appeal or revision, has been given to persons interested, because Rule 344 only lays down that no appeal shall be against the orders of composition, thus, leaving all other kinds of orders open to appeal or revision . . . Thus on a review of the provisions of the Act and the rules framed thereunder, it cannot be said that the authorities mentioned in Section 9 of the Act, pass purely administrative orders which are beyond the ambit of the High Court's power of supervision and control. Whether or not an administrative body or authority functions as a purely administrative one or in a quasi-judicial capacity, must be determined in each case, on an examination of the relevant statute and the rules framed thereunder. The first contention raised on behalf of the appellant must, therefore, be overruled."

18. The learned Chief Justice of India has made it clear that no hard and fast rule can be laid down as to whether the function of an administrative body in a particular case is quasi-judicial or purely administrative. It may further be noted that the scheme of the Assam Act with regard to appeal and revision is entirely different from the scheme of the Indian Income-tax Act on those matters. In the Indian Income-tax Act an elaborate procedure has been laid down for taking appeal to the Appellate Income-tax Officer and then to the Tribunal and on a question of law to the High Court and ultimately to the Supreme Court. We do not find any similar provision in the Assam Act. As has been pointed out by the learned Chief Justice of India, in the Assam Act no clear cut distinction has been made between appeal and revision. It seems that Section 9 of the Assam Act and the relevant rules made under the said Act deal with appeal as well as revision. This will also be clear from the following observations of the Chief Justice of India :

> "But when we come to the rules relating to appeals and revisions, we find that the widest scope for going up in appeal or revision, has been given to persons interested, because Rule 344 only lays down that no appeal shall lie against the orders of composition, thus, leaving all other kinds of orders open to appeal or revision".

In the Income-tax Act on the other hand the provision for revision is entirely separate from the provision for appeal. As a matter of fact after the Income-tax Amendment Act of 1959 the provision for revision was omitted from the Act. It was however restored as already indicated by the Amendment Act of 1941. Again, under the Assam Act the ultimate jurisdiction to hear appeals and revisions was divided between the Assam High Court and the authority referred to in Sub-Section (3) of Section 3 of that Act. The appeals land revisions arising out of cases covered by the provisions of the enactments specified in Schedule 'A' to that Act were to lie in and to be heard by the Assam High Court and the jurisdiction to entertain appeals and revisions in matters arising under the provisions of the enactments specified in Schedule 'B' to that Act, was vested in

the Authority to be set up under Section 3(3), that is to say, in the Excise Appellate Authority. It has therefore been pointed out by the learned Chief Justice of India that the Excise Appellate Authority, for the purposes of cases arising under the Excise Act, was vested with the powers of the highest Appellate Tribunal even as the High Court was, in respect of the other group of cases. These features of the Assam Act played an important part in inducing the Supreme Court to hold that the various authorities referred to in Section 9(1) of the Assam Act were required to act judicially. Those features however are not present in the case of the authority created under Section 33A of the Indian Income-tax Act. Therefore, the principles laid down by the Supreme Court in Nagendra Nath Bora's case, AIR 1958 Supreme Court 398 do not go to show that the Commissioner under Sub-Section (2) of Section 33A of the Income-tax Act is required to act judicially or that an order passed by him under that Sub-Section is not administrative, but quasi-judicial.

19. Mr. Mitra also relied on the case of *Radheshyam Khare v. State of Madhya Pradesh, reported*[13] *in* in support of his contention that the order passed by the Commissioner under Section 33A(2) of the Indian Income-tax Act is quasi-judicial and not administrative. In our opinion that case too does not support the contention of Mr. Mitra on behalf of the appellant. In that case the Supreme Court was required to examine the nature of the order passed by the High Court for the purpose of improvement in the administration of a Municipality. In this connection their Lordships had to interpret Section 53A of the C. P. and Berar Municipality Act 1922. Sub-Section (1) of Section 53A of the said Act runs as follows :

> "If a Committee is not competent to perform the duties imposed on it or undertaken by it by or under this Act or any other enactment for the time being in force and the State Government considers that a general improvement in the administration of the Municipality is likely to be secured by the appointment of a servant of the Government as Executive Officer of the Committee the State Government may by an order stating the reasons therefor published in the gazette, appoint such servant as an Executive Officer of the Committee for such period not exceeding 18 months as may be specified in such order."

In that case the State Government in exercise of the powers conferred by Section 53A of the Central Provinces and Berar Municipality Act, 1922 appointed Sri B.P. Jain as Executive Officer of the Municipal Committee. The validity of this order was challenged by the two appellants before the Supreme Court, the second appellant being the Municipal Committee and the first appellant being its President. The appellants being dissatisfied with the decision of the Madha-Pradesh High Court came up in appeal before the Supreme Court. Both before the High Court as well as before the Supreme Court they prayed for a writ in the nature of certiorari for quashing the order passed by the State Government. Their Lordships of the Supreme Court had to consider whether the order passed by the State Government was quasi-judicial or administrative, because on the determination of that question depended the answer to the further question whether the said order was liable to be removed on certiorari. S.R. Das, C.J., in deciding this question referred to the earlier decision of the Supreme Court reported in AIR 1950 Supreme Court

[13] AIR 1959 SC 107

222. The learned Chief Justice of India quoted with approval the following passages from the earlier decision in Advani's case :

"(i) That if a statute empowers authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine respective lights of the contesting parties who are opposed to each other, there is a lis and prima facie and in absence of anything in the statute to the contrary it is the duty of the authority to act Judicially and the decision of the authority is a quasi-judicial act and (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are no two parties apart from the authority and contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

The learned Chief Justice pointed out in that case that there was no question of any contest between the two contending parties which the State Government was, under Section 53A, to decide and that therefore there was no lis in the sense in which that word was understood generally and that therefore the principle referred to in the first heading had no application. His Lordship then considered whether the case came within the principle enunciated under the second heading that is to say, whether the C.P. and Berar Municipality Act, 1922, required the State Government to act judicially when taking action under Section 53A. His Lordship came to the conclusion that the action taken by the State Government under Section 53A was not a judicial or quasi-judicial act, but was an administrative act. In that view of the matter his Lordship dismissed the appeal. Mr. Mitra refers us to the following passage from the judgment of S.K. Das J., delivered in Radheshyam's case, AIR 1959 Supreme Court 107 :

"To get to the bottom of the distinction, we must go a little deeper into the content of the expression 'duty to act judicially'. As has been repeated so often, the question may arise in widely different circustances and a precise, clear-cut or exhaustive definition of the expression is not possible. But in decisions dealing with the question several tests have been laid down, for example -
(i) Whether is a lis inter partes;
(ii) Whether there is a claim (or the proposition and an opposition);
(iii) Whether the decision is to be founded on the taking of evidence or on affidavits;
(iv) Whether the decision is actuated in whole or in part by questions of policy or expediency and if so, whether in arriving at the decision, the statutory body has to consider the proposals and objections and evidence; and
(v) Whether in arriving at its decision, the statutory body has only to consider the policy and expediency and at no stage has before it any form of lis."

These observations, he argues, indicate that in the present appeal there is a lis inter partes and that there is a claim and an opposition and that the derision is to be founded on the taking of evidence. We are, however, unable to accept this suggestion of Mr. Mitra. The tests 14 laid down by S.K. Das, J. are clearly not applicable to a decision to be made by the Commissioner under Sub-Section (2) of Section 33A of the Indian Income-tax Act. In our opinion the Commissioner

under Sub-Section (2) of Section 33A of the Income-tax Act is only to consider the question of policy and expediency and at no stage has before him any form of lis. Therefore, in our opinion, this case, viz., Radeshyam's case decided by the Supreme Court does not help the appellant in the least.

20. Mr. Mitra next referred us to the case of *Express Newspaper Ltd. v. Union of India, reported in.*[14] In that case by several petitions under Article 32 of the Constitution the petitioners raised the question as to the vires of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 45 of 1955 and the decision of the Wage Board constituted thereunder. The judgment of the Supreme Court was delivered by Bhagwati, J. as he then was. His Lordship ultimately came to the following conclusion;

> "The petitions will, therefore, be allowed and the petitioners will be entitled to an order declaring that Section 5(1)(a)(iii) of the Working Journalists (Conditions of service) and Miscellaneous Provisions Act, 1955 is ultra vires the Constitution of India and that the derision of the Wage Board dated 30th April, 1957, is illegal and void."

The decision of the Wage Board was ultimately set aside. His Lordship had to consider the nature of the function to be performed by the Wage Board. Mr. Mitra read out to us the following passage from the judgment of Bhagwati, J. :

> "In order therefore to determine whether an administrative body is exercising a quasi-judicial function it would be necessary to examine in the first instance, whether it has to decide on evidence between a proposal and an opposition and secondly, whether it is under a duty to act judicially in the matter of arriving at its decision."

We must say that the above passage also does not help us in deciding whether the Commissioner under Section 33A(2) of the Income-tax Act has a duty to act judicially. Bhagwati, J. quoted with approval the following passage from Halsbury's Laws of England, 3rd Edition, Vol 11 para 115 :

> "The duty to act judicially may arise in a widely different circumstances which it would be impossible to attempt to define exhaustively. The question whether or not there is a duly to act judicially must be decided in each case in the light of the circumstances of the particular case and the construction of the particular statute with assistance of the general principles already set out."

So, it is clear that no hard and fast rule can he laid down as to when and under what circumstances an administrative body is required to act judicially. We have already pointed out that on an examination of the various provisions of the Income-tax Act it is difficult to hold that the Commissioner is required to act judicially under Section 33A(2) of the Income-tax Act. We therefore think that the case of Express Newspaper Ltd, AIR 1958 S C 578 does not in any way help Mr. Mitra in establishing that the decision of the Commissioner under Section 33A(2) of the Income-tax Act is quasi-judicial and not administrative.

[14] AIR 1958 SC 578

21. Mitra next referred to the case of *Shivji Nathu Bhai v. Union of India, reported in*[15] in support

of his contention that the order under challenge in the present appeal is quasi-judicial and not administrative. In that case the appellant before the Supreme Court was granted a mining lease in 1947 by the then ruler of Gangapur. The lease was annulled in June 1949. Thereafter the appellant applied in December, 1949 for mining leases for manganese in respect of five areas in the district of Sundagarh. Some defects having been pointed out in this application the appellants submitted a fresh application in September, 1950. In the meantime the third respondent also made application for mining leases for manganese for the same area in July 1950. Eventually in December 1952 the State of Orissa granted raining leases of the five areas to the appellant taking into account Rule 32 of the Rules which prescribe priority. The third respondent applied for review to the Central Government under Rule 52 of the Rules. The review application was allowed by the Central Government in January 1954 and the Government of Orissa was directed to grant a mining lease to the third respondent with respect to the two out of the five areas. Consequently, the appellant made an application under Article 226 of the Constitution to the Punjab High Court praying for quashing the order of the Central Government passed in January 1954 granting a mining lease to the third respondent with respect to two out of the five villages on the ground that it was a quasi-judicial order and that the rules of natural justice had not been followed inasmuch as he had not been given a hearing before the review application was allowed by the Central Government. A single Judge of the Punjab High Court held that the order was not a quasi-judicial order but merely an administrative one and there being no lis the appellant was not entitled to a hearing A Division Bench of the said High Court on appeal upheld the order of the learned single Judge. The appellant thereafter preferred an appeal to the Supreme Court. The Supreme Court however allowed the appeal and held that the Central Government was acting in a quasi-judicial capacity while deciding the application under Rule 54. The observation of Wanchoo, J. may be quoted here :

> "We are therefore of opinion that there is prima facie a lis in this case as between the person to whom the lease has been granted and the person who is aggrieved by the refusal and therefore prima facie it is the duty of the authority which has to review the matter to act judicially and there is nothing in Rule 54 to the contrary. It must therefore be held that on the Rules and the Act, as they stood at the relevant time, the Central Government was acting in a quasi-judicial capacity while deciding an application under Rule 54. As such it is incumbent upon it before coming to a decision to give a reasonable opportunity to the appellant, who was the other party in the review application whose rights were being affected, to represent his case. Inasmuch as this was not done the appellant is entitled to ask us to issue a writ in the nature of certiorari quashing the order of 28th January 1954 passed by the Central Government."

We may point out that the facts in that case are entirely different from the facts involved in the present appeal before us. Therefore, we cannot agree with Mr. Mitra that this decision persuades us to hold that the order passed by the Commissioner of Income-tax in the present case is not administrative but quasi-judicial. In passing we may point out that Wanchoo, J. makes it clear that the act of a body cannot be quasi-judicial unless that body has a duty to act judicially. So, the whole question is whether the Commissioner in the

[15] AIR 1960 SC 606

present case is required to act judicially. The Privy Council in the Tribune Trust case AIR 1948

PC 102 has made it amply clear that the machinery contemplated by the old Section 33 corresponding to the new Section 33A of the Income-tax Act is administrative and not judicial or quasi judicial.

22. Before we conclude we may note another argument of Mr. Mitra. He seeks to make a distinction between an order passed by the Commissioner under Section 33A when he refuses to exercise his powers under that section and an order by which he actually interferes with the decision of a subordinate authority. He seems to suggest that when the Commissioner refuses to interfere, the order is administrative, but when he actually interferes, the order is judicial or quasi judicial. He points out that in the Tribune Trust case AIR 1948 PC 102 and in most of the cases decided by the Indian High Courts the Commissioner refused to interfere and therefore, according to him, those decisions are not applicable to the facts of the present case where the Commissioner has in fact, exercised his powers under Section 31A(2). We are unable to accept this argument. The distinction sought to be made by Mr. Mitra between the two classes of orders is a distinction without difference and in all the cases discussed above, their Lordships refused to set aside the order of the Commissioner on certiorari not because the Commissioner refused to interfere but because in the opinion of their Lordships, the order was administrative in nature.

23. So on a survey of all the cases cited by Mr. Mitra to establish that the Commissioner is required to act judicially under Sub-Section (2) of Section 33A of the Income-tax Act we are clearly of opinion that no such conclusion can be deduced from those decisions. Moreover, it may be pointed out that the Acts considered in those decisions do not provide for such elaborate provision for appeal as is provided for in the Indian Income-tax Act. The power of revision conferred by Section 33A of the Income tax Act seems to stand apart from the elaborate procedure laid down for appeal first to the Appellate Income-tax Commissioner, then to the Income-tax Tribunal and on the question of law to the High Court and ultimately to the Supreme Court. That being the position it is difficult to hold that the functions of the Commissioner under either of the Sub-Sections of Section 33A of the Income tax Act are quasi-judicial. We therefore hold that the appeal is liable to be dismissed also on the preliminary objection, viz., that the order passed by the Commissioner under Sub-Section (2) of Section 33A of the Income-tax Act being administrative in nature is not liable to be quashed by a writ of certiorari.

24. As we have already expressed our opinion that the appellant is not entitled to any relief on merits the present appeal cannot succeed. The appeal is accordingly dismissed with costs.

25. Certified for two Counsel.

Bose, C.J.

26. I agree.

Appeal dismissed.