CALCUTTA HIGH COURT

Daulatram Rawatmull

Vs

Commissioner of Income-Tax

(K Sen, C.J. A.C. Sen , J.)

01.04.1966

JUDGMENT

A.C. Sen, J.

1. This is a Reference under Section 66(1) of the Indian Income-tax Act, 1922. Four questions have been referred to us; we are, however, required to answer only the first and the fourth question as the other two questions have not been pressed at the hearing. The fourth question need not be answered in full, because the assessibility of the cash credits has not been questioned before us We, therefore, propose to answer the first question and a part of the fourth question in so far as the fourth question relates to the accessibility of the fixed deposits. The first question rung thus: "Whether on the facts and in the circumstances of the case, the Income-tax Officer was justified in proceeding to reopen the assessment under Section 84(1)(a) after Section 34(lA) had been introduced in the Indian Income-tax Act."

2. The fourth question is to the following effect: "Whether on the facts and in the circumstances of the case, the cash credits and fixed deposits in question were assessable for the assessment year 1946-1947."

3. These questions of law arose out of the order of the Appellate Tribunal, dated the 15th December, 1959, in Income-tax Appeal No. 9776. 1968-59 The facts are stated below.

4. The assessment year under Reference is the year, 1946-47 and the corresponding year of account is 2001/2002 Bijoya Dashami equivalent to the period from 27th September, 1644 to 15th October, 1945.

5. The assessee at all material times was a firm of six partners whose names and shares are indicated below:

(1) Nandlal Bhowalka 3
(2) Giridharilal Bhowalka 3

(4) Bajranglal Bhowalka 2
(5) Rautmal Nowpani 3
(6) Rameswarlal Nowpani 3

6. The firm had been carrying on business as dealers and commission agents in jute and other commodities. The firm also acted as procuring agents for rice and paddy for certain areas for the Government of Bengal and received commission on such procurements.

7. The assessee firm was originally assessed on 30th March 1948, by the Income-tax Officer, Non-Company-cum-E.P.T. Circle, under Section 23(3) of the Indian Income-tax Ant for the assessment year, 1946-47. On 31st
October, 1954, the case was transferred by the Central Board of Revenue from the aforesaid Income-tax Officer to the Income-tax Officer, Central Circle. VI, Calcutta.

8. On 19th February, 1955, the Income-tax Officer, Central Circle VI, issued a notice under Section 34(1)(a) stating that he had reason to believe that the assessee's income assessable to income-tax for the year ended on the 31st March, 1947, had been under assessed and calling upon the assessee to file a return of income for that year; in response to the notice the assessee filed a return showing the income which was determined by the Appellate Assessment Commissioner on appeal from the original assessment.

9. The Income-tax Officer. Central Circle, VI. Calcutta, thereafter examined the books of account of the assessee firm and made a reassessment The Income-tax Officer found inter alia that the assessee firm had obtained an overdraft to the extent of Rs. 10,00,000 upon the security of two fixed deposit receipts of Rs. 5,00,000 each issued by the Central Bank of India Ltd., Jamnagar Branch. The two fixed deposits of Rs. 5,00,000 each were held respectively in the names of Raghunath Prosad Nowpani alias Raghunath Prosad Agarwal and Biswanath Bhowalka alias Biswanath Gupta, sons respectively of the partners Rautmal Agarwala and Bajranglal Agarwala. These fixed deposits were made in November, 1944. The Income-tax Officer held that the amounts of the fixed deposits credited in the Jamnagar Branch of the Central Bank of India Ltd in the names of the two sons of the partners of the firm were secret profits that belonged to the assessee firm itself and he added the sum of Rs. 10,00,000 to the total income of the assessee. He also added another sum of Rs. 5,00,000 held as fixed deposit in the Jamnagar Branch of the Central Bank of India Ltd standing in the name of S.P. Agarwala, son of Rameshwar Agarwala. We are, however, not concerned with this sum of Rs. 5,00,000 standing in the name of S.P.

Agarwala The reassessment was completed on the 28th of February. 1956.

10. On appeal the Appellate Assessment Commissioner held that there was evidence to show that out of Rs. 5,00,000 deposited in the Jamnagar Branch of the Central Bank in the name of Biswanath Bhowalka alias Biswanath Gupta, a sum of Rs. 50,000 was in deposit with the Comilla Bank on or about 25th March, 1942, and that this sum of Rs. 50,000 could not, therefore, be the income of accounting year under consideration from September 27, 1944, to October 15, 1945. The addition in this respect was therefore reduced by the Appellate Assistant Commissioner from Rs. 5,00,000 to Rs. 4,50,000.

11. In the second appeal filed by the assessee the Tribunal concurred with the Appellate Assistant Commissioner that the fixed deposit of Rs. 5,00,000 in the name of Raghunath Prosad Nowpani represented the secret profits of the assessee. At to the fixed deposit of Rs. 5,00,000 in the name of Biswanath the Tribunal held that out of Rs. 5,00,000, a sum of Rs. 4,50,000 was the secret profit of the assessee. As to the fixed deposit of Rs. 6,00,000 in the name of S.P. Agarwala, the Tribunal held that there was no evidence to connect the money with the assessee firm and directed the exclusion of the said sum of Rs. 5,00,000 from the total income of the assessee.

12. Let us first of all take up the first question challenging the authority of the Income-tax Officer to reopen the assessment under Section 34(1)(a). It is argued on behalf of the assessee that the Income-tax Officer acted without jurisdiction in reopening the assessment under Section 34(1) (a) and that consequently the entire proceeding ending with the order of reassessment was void and inoperative in law. In order to appreciate this argument it is necessary to take note of certain legislative changes after the completion of the original assessment and before the commencement of the proceeding under Section 34(1)(a).

13. The assessment for the assessment year 1946-47 was completed on the 30th March, 1948 The notice under Section 34(1)(a) was served on the assessee on 19th February, 1955. On 17th July, 1954 that is to say more than six months before the service of the notice under Section 34(1)(a) on the assessee four new Sub-sections, namely, (1A), (1B), (1C) and (1D) had been inserted in Section 34 by the Income-tax Amendment Act, 1954 (Act 38 of 1954). It is argued that the initiation of the proceeding for reassessment should have been made not under Section 34(1) (a) but under Section 34(1A) and that failure to do so has rendered the entire proceeding void and inoperative.

14. After the decision of the Supreme Court in K.S. Rashid & Sons v. Income-tax Officer, , the validity of Section 34(1A) cannot be questioned. The Supreme Court has held that Sub-section (1A) of Section 34 is valid and does not contravene Article 14 of the Constitution and that absence of any provision prescribing a period of limitation for action taken under Section

34(1A), such as the one prescribed for action taken under Section 34(1)(a), does not introduce any infirmity in Sub-section (1A) of Section 34. The assessee too does not say that Sub-section (1A) is void and inoperative in law. In fact the assessee's ease is that the assessee should have been reassessed under Sub-section (1A) of Section 84 and not under Clause (a) of Sub-section (I) of Section 34. It is urged that the assessee belongs to a class to which Clause (a) of Subsection (1) of Section 34 has no application.

15. In dealing with the contention raised against the validity of Sub-section (1A) of Section 34 the Supreme Court observed as follows in Rashid's case, : "The other contention raised against the validity of Section 34(1A) is based on the fact that at the relevant time, Section 34(1) (a) dealt with cases similar to those falling under Section 34(1A), and vet, whereas in the former category of cases a period of limitation was prescribed as 8 years there is no such limitation in regard to the latter, and that, it is urged, means unconstitutional discrimination We are not impressed by this argument. It is true that in a broad sense both Section 34(1)(a) and Section 34(1A) deal with cases of income which has escaped assessment, and in that sense, the assessees against whom steps are taken in respect of income which has escaped assessment can be said to form a similar class; but the similarity between the two categories disappears when we remember that Section 34(1A) is intended to deal with the assessees whose income has escaped assessment during a specified period between September 1, 1939 and March 31, 1946. It is well known that that is the period in which as a result of war, huge profits were made in business and industry.

The second point which is very important is that in regard to the cases falling under Section 34(1A), action can be taken only where the income which has escaped assessment is likely to amount to Rs. 1 lakh or more. In other words, it is only in regard to cases where the escaped income is of a high magnitude that the restriction of the period of limitation has been removed. It is difficult to accept the argument that the Legislature was not justified in treating this smaller class of assessee differently on the ground that the profits made by this class were higher and the income which had escaped assessment was correspondingly of a much larger magnitude. The object of the Legislature being to catch income which had escaped assessment, it would be legitimate for the Legislature to deal with the class of assessees in whose cases the income which had escaped assessment was much larger, because that would be a basis for rational classification which has intelligible connection with the object intended to be achieved by the Statute."

16. The learned Counsel for the assessee lays stress on the words "but the similarity between the two categories disappears when we remember that Section 34(1A) is intended to deal with assessees whose income has escaped assessment during a specified period between September 1, 1939 and March 31, 1946." He also lays stress on the words "The second point which is very important is that in regard to the cases falling under Section 34(1A) action can be taken only

when the income which has escaped assessment is likely to amount to Rs. 1,00,000 or more." These two passages, according to the learned Counsel for the assessee, clearly indicate that Section 34(1A) is intended to deal with the assessees whose income has escaped assessment between September 1, 1939 and March 31, 1946, and the income which has escaped assessment is likely to amount to Rs. 1,00,000 or more. He submits that such assessees formed a distinct class and that their escaped income can be assessed only under Section 34(1A). That the assessees whose income escaped assessment between September 1, 1939 and March 31, 1946 and the income that has escaped assessment was likely to amount to Rs. 1,00,000 or more formed a distinct class cannot be gainsaid. The Supreme Court has clearly stated in Rashid's case, , that they form a distinct class and that there is a rational basis for this classification, which has intelligible connection with the object intended to be achieved by the Statute. Sub-section (1A) of Section 34, as has been pointed out by the Supreme Court in Rashid's case, , is intended to deal with the assessees belonging to this class. The assessee in the instant case undoubtedly belongs to this class and the proceeding for reassessment could have been initiated under Sub-section (1A) of Section 34.

17. But the escaped income of the assessee has in fact been reassessed under Clause (a) of Sub-section (1) of Section 34. Can it be said that reassessment is void? Prior to the introduction of Sub-section (1A) under Section 34 the Income-tax Officer was competent to initiate proceeding against the assessee in respect of his income that has escaped assessment during war period under Clause (a) of Sub-section (1) of Section 34. The contention of the assessee is that the authority of the Income-tax Officer to take action under Clause (a) of Sub-section (1) of Section 34 came to an end with the introduction of Subsection (1A) of Section 34 because the assessee belongs to a class whose escaped income can be assessed or reassessed only under Subsection (1A) of Section 34.

18. There was nothing in the language of Clause (a) of Sub-section (1) of Section 34 before amendment in 1956 from which it could be said that the assessees mentioned in Sub-section (1A) of Section 34 could not be assessed under that clause, namely, Clause (a) of Sub-section (1) of Section 34 within the period of the limitation mentioned in the said clause.

19. The argument on behalf of the assessee is that Section 34 is meant for reopening a completed assessment and that that reopening must be made strictly in accordance with the procedure laid down in that section. The next step in the argument is that Subsection (1A) of Section 34 applied exclusively to the evaders of the war period and that consequently where Sub-section (1A) applied reopening would be bad unless that was done strictly in accordance with the procedure laid down in that sub-section. The assessee in the instant case is certainly one of the big evaders of the war period. Sub-section (1A) was incorporated on 17th July, 1964. The proceeding for

reopening the completed assessment of the assessee for the assessment year 1946-47 was started in February. 1955, that is to say, after Sub-section (1A) had come into operation. It is, therefore, contended that the Income-tax Officer should have followed the procedure laid down in Sub-section (1A) it he wanted to reopen the assessment for the year 1946-47. But in fact the Income-tax Officer instead of doing that adopted the procedure laid down in Clause (a) of Sub-section (1) of Section 34. It is, therefore, urged that the fresh assessment made under Clause (a) of Subsection (1) after reopening the completed assessment is void and inoperative in law.

20. It may be pointed out at this stage that Section 34 provides, not only for reopening the original assessment but also for making an assessment for the first time. For example, where the income has escaped assessment altogether, an assessment under Section 34 will be an original assessment. Therefore, no special stress need be laid on the word 'reopen' in interpreting Sub-section (1A) of Section 34 In the instant case, if we look at the assessment made on a notice under Section 34(1)(a), we find that certain items have been added to the income as per original assessment order (reduced in appeal) The total income has been ascertained without disturbing the original assessment and the total income so found has been assessed under Sections 23(3) and 55. So, strictly speaking, the original assessment has not been reopened; only the rate of tax has been readjusted as there has been an increase in the total income.

21. According to the learned Counsel for the assessee, two laws have been enacted by the Legislature for assessing or reassessing an escaped income--one for assessing or reassessing the escaped income of war profiteers and the other for assessing the escaped income of persons other than the war profiteers. In other words, according to him, Sub-section (1A) of Section 34 is meant for war profiteers and Clause (a) of Sub-section (1) of Section 34 is meant for the rest. He, therefore, submits that the class within the ambit of Sub-section (1A) of Section 34 must necessarily be different from the class within the ambit of Clause (a) of Sub-section (1) of Section 34. Hence, it is suggested by him that if a member belonging to one class is sought to be assessed or reassessed according to law applicable to the members of the other class, assessment or reassessment must necessarily be void.

22. That an assessee within the ambit of Sub-section (1A) of Section 34 could not be assessed by applying the provisions of Clause (a) of Sub-section (1) of Section 34 is sought to be demonstrated in another way. The Supreme Court has pointed out in Calcutta Discount Company Ltd. v. The Income-tax Officer, , that two conditions must be satisfied before the Income-tax Officer can have jurisdiction to issue a notice for the assessment or reassessment under Clause (a) of Sub-section (1) of Section 34. The relevant portion in the judgment of Das Gupta, J. is quoted below:

"To confer jurisdiction under this section (Section 34(1)(a)) to issue notice in respect of

assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year two conditions have therefore to be satisfied. The first is that" the Income-tax Officer must have reason to believe that income, profits or gains chargeable to income-tax have been under assessed. The second is that he must have also reason to believe that such 'under-assessment' has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income under Section 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income-tax Officer could have jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years, but within the period of eight years, from the end of the year in question "

23. It is urged on behalf of the assessee that according to the principle laid down by the Supreme Court in the case of Calcutta Discount Co. Ltd., , four conditions, all being conditions precedent, must be satisfied before the Income-tax Officer can have jurisdiction to issue a notice under Sub-section (1A) of Section 34 The said four conditions, according to this argument, are as follows: (1) That income, profits or gains chargeable to income-tax escaped assessment for any year in respect of which the relevant previous year falls wholly or partly within the period beginning on the first day of September, 1939, and ending on 31st day of March, 1946; (2) that the income, profits or gains which had so escaped assessment for any such year or years amount, or are likely to amount, to one lakh of rupees or more; (3) that the Income-tax Officer shall not issue a notice under this Sub-section unless he has recorded his reason for doing so, and the Central Board of Revenue is satisfied with such reasons recorded that it is a fit case to issue such notice; (4) that no such notice shall be issued after 31st day of March, 1956.

24. It is, therefore, suggested that if an assessee falling within the ambit of Sub-section (1A) of Section 34 is assessed or reassessed without satisfying all the four conditions set out above, the assessment or reassessment must he held to be without jurisdiction and hence void and inoperative in law. In the instant case, though the assessee is a member of the class contemplated by Sub-section (1A) of Section 34 all the four conditions quoted above have not been satisfied. Moreover the assessment has not been made with the sanction of the Central Board of Revenue. The learned Counsel for the assessee, therefore, concludes that the assessment under Clause (a) of Sub-section (1) of Section 34 must be void, inoperative having been made without jurisdiction.

25. The learned Counsel for the assessee has also invoked the principle of generalia specialibus non derogant in order to show that the assessees within the ambit of Sub-section (1A) of Section 84 could not be assessed under Clause (a) of Sub-section (1) of Section 34 as it stood before the amendment of 1956. Our attention was drawn in this connection to the case of Mathuradas

Govindas v. G.N. Gadgil , decided by a Full Bench of the Gujrat High Court There it was held that no notice for the assessment or reassessment of the escaped income of the assessment years in relation to which the relevant previous years fell within the period. 1st September 1939, to 31st March. 1946, could be issued under Section 34(1) (a) of the Income-tax Act. 1922, after it had been amended by the Finance Act, 1956, if no such notice had been issued under Sub-section (1A) of Section 34 on or before 31st March, 1956. It may he mentioned that Section 34 was further amended by the Finance Act, 1956, and the amendment was of a far reaching character. The said amendment came into effect on 1st April, 1956. By that amendment the time limit of eight years in Sub-section (1) in respect of cases falling within Clause (a) has been substituted by a number of new provisos.

26. The notice in that case was issued under Clause (a) of Sub-section (1) of Section 34 on 31st January 1962, and the question for consideration was whether after the amendment by the Finance Act, 1956, a notice could be issued under Clause (a) of Sub-section (1) of Section 34 for reopening any assessment for any of the assessment years covered by Subsection (1A) of Section 34 when no notice for reopening such assessment had been issued under Sub-section (1A) on or before 31st March 1956, the amount of escaped income being Rs. 1,00,000 or more In the instant case the question for our consideration is whether a notice under Clause (a) of Sub-section (1) of Section 34 could be validly issued for assessing or reassessing escaped income of Rs. 1,00,000 or more for the assessment year 1946-47 after 17th July, 1954, when Sub-section (1A) of Section 34 was inserted, having regard to the fact that the previous year relevant to the assessment year, 1946-47 falls within the scope of Sub-section (1A) of Section 34. Hence the question before the Gujrat High Court was not the same as the question before us. The Gujrat High Court, however, considered the legal position prior to the amendment of Section 34 by the Finance Act, 1956. It is for this reason that the decision of the Gujrat High Court calls for careful consideration.

27. The learned Judges of that High Court considered the effect of the amendment of 17th July 1954 Their Lordships pointed out that the effect of the amendment of 17th July, 1954, was that with effect from that date there were two Sub-sections in Section 34 empowering the Income-tax Officer to reopen assessments in certain cases one being Subsection (1) with two Clauses (a) and (b), the other being Sub-section (1A). Their Lordships, however, were not concerned with Clause (b) of Sub-section (1). It was argued on behalf of the assessee that Sub-section (1)(a) was a general provision applicable to all assessment years while Sub-section (1A) wag a special provision applicable only to those assessment years in respect of which the relevant previous years fell wholly or partly within the period, 1st September, 1939, to the 31st March, 1946, and that the general provision of Sub-section (1)(a) must, therefore, in accordance with the maxim generalia specialibus non derogant be held applicable only to those cases which were not covered by the special provision in Subsection (1A). It was further contended that the ambit of Sub-

section (1)(a) did not extend to the escaped income earned during the war period for which special provision was made under sub Section (1A) and that consequently Sub-section (1)(a) could not be invoked by the Revenue for bringing into tax the escaped income of war years which could be done only by proceeding under Sub-section (1A).

28. Their Lordships of the Gujrat High Court accepted the arguments advanced on behalf of the assessee. The argument advanced by the learned Advocate-General on behalf of the Revenue did not appeal to their Lordships. The learned Advocate-General did not dispute the correctness of the Rules of Interpretation embodied in the maxim generalia spectaltbus non derogant but he contended that there was no scope for the application of that Rule of interpretation in the said case because neither Sub-section (1)(a) was a general provision nor was Sub-section (1A) a special provision. He urged that both Sub-sections operated simultaneously and if at any point of time the conditions of either Sub-section were fulfilled, such Sub-section could be availed of by the Income-tax Officer for reopening the assessment of the assessee, even if the conditions of the other Sub-sections were not satisfied and the Income-tax Officer could not, therefore, proceed under that Sub-section. On an analysis of the provisions of Clause (a) of Sub-section (1) and those of Sub-section (1A) their Lordships of the Gujrat High Court came to the conclusion that Sub-section (1A) was a special provision as against the general provision contained in Clause (a) of Sub-section (1). Another contention on behalf of the assessee in support of the proposition that Sub-section (1A) was a special provision was substantially accepted by their Lordships. It was contended by the learned Counsel for the assessee in that case that whereas Sub-section (1)(a) empowered the Income-tax Officer to take action when he had reason to believe that the income had escaped assessment or had been under assessed or assessed at too low a rate or had been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance had been computed, action under Sub-section (1A) could be taken only in cases where income had escaped assessment. The assessee, however, agreed that a case of underassessment resulting from escapement of a part of the income from assessment was covered by Sub-section (1A) because what was escapement of a part of the income from assessment was also underassessment from the point of view of the total income. The assessee, however, urged that the other cases of underassessment which did not involve escapement of a part of the income from assessment and the cases where income was assessed at too low a rate or had been made the subject of excessive relief under the Act or where excessive loss or depreciation allowance had been paid, were not within the compass of Sub-section (1A), and Sub-section (1A) inasmuch as it operated on a field more limited than that occupied by Sub-section (1)(a), was special provision.

29. Their Lordships of the Gujrat High Court also referred to the Preamble of the Income-tax Amendment Act. 1954, by which Sub-section (1A) was inserted in Section 34 for the purpose of showing that Sub-section (1A) was a special provision in regard to assessment or reassessment of

persons who evaded the payment of tax of income of Rs. 1,00,000 or more earned by them during the war period. The relevant portion of the judgment is quoted below:

"The Preamble of the Indian Income-tax (Amendment) Act. 1954, which introduced Sub-section (1A) in Section 34, also leads to the same conclusion. The Preamble stated that the Act was intended In provide for assessment or reassessment of persons, who, to a substantial extent had evaded payment of tax during a certain period and for matter connected therewith and with that object in view the Act introduced Sub-section (1A) in Section 34. The period referred to in the Preamble as 'certain period' was particularised in Sub-section (1A) as the war period, namely, 1st September. 1939, to 31st March, 1946, and what was meant by the word 'substantial' was made clear in the Sub-section by providing that it should apply where the Income-tax Officer had reason to believe that the income which has escaped assessment amounted or was likely to amount to Rs. 1,00,000 or more. It is, therefore, clear that Sub-section (1A) was introduced for the purpose of providing for assessment or reassessment of persons who had evaded payment of tax on income of Rs. 1,00,000 or more earned by them during the war period. This would certainly constitute Sub-section (1A) a special provision in regard to assessment or reassessment of those persons."

30. In the opinion of their Lordships of the Gujrat High Court the circumstances under which Sub-section (1A) came to be introduced in Section 34 also support the view that subsection (1A) lays down a special provision applicable to big evaders of war period. Relying on the two; decisions of the Supreme Court, namely, (1) Shri Meenakshi Mills Ltd. v. A.V. Viswanatha Sastri, and (2) Thangal Kunju Musaliar v. Venkatachalam Potti, , their Lordships of the Gujrat High Court came to the conclusion that Sub-section (1A) was enacted as a special provision The relevant portion of the judgment runs thus.

"These observations of the Supreme Court clearly show that the class of assessees which was selected for special treatment by Section 5(1) of Act XXX of 1947 was dealt with by Sub-section (1A) after the introduction of that Sub-section in Section 34 with this modification that defects of classification which were alleged to exist in Section 5(1) were cured by the basis of classification being made more definite and if that be so, the conclusion is irresistible that Sub-section (1A) was enacted as a special provision and must be construed as such."

31. The learned Counsel for the assessee in that case, in support of his theory that subsection (1A) contained a special provision as against general provision contained in Clauses (a) and (b) of Sub-section (1) of Section 34, referred to the following observations of the Full Bench of the Allahabad High Court in Jaikishan Srivastava v. Income-tax Officer, :

"It is to be noticed that, even though there is a common class of assessees who can be proceeded

against under both Section 34(1) as well as Section 34(1A) of the Act, the latter provision is applicable to a limited class of persons. That class of persons are those whose Income, profits or gains had escaped assessment for any year in respect of which the relevant previous year fell wholly or partly within the period beginning on the 1st day of September, 1939, and ending on March 31, 1946. Then there was a second limitation that the income, profits or gains which had so escaped assessment must be believed by the Income-tax Officer to be likely to amount to on" lakh of rupees or more. It seems to me that, having picked out such a narrow class, the legislature made a special provision under Section 34(1A) of the Act for taking proceedings against that class of persons without being limited by any period of limitation and by this all that the legislature did was to enlarge the period of limitation in their cases. Once it has been held that proceedings for assessment under Section 34(1) as well as under Section 34(1A) of the Act in the matter of procedure, right of appeal, etc. are identical, Section 34(1A) has to be read as an exception to Section 34(1) of the Act whereby the limitation applicable to the larger class of persons who could be dealt with under Section 34(1) of the Act, has been done away with for a smaller class of persons. It is, therefore, in the nature of an exception specifically for the purpose of enlarging the period of limitation or doing away with the limitation in the case of a limited and narrower class. This narrower class, as indicated by the language of Section 34(1A) of the Act, consisted of assessees who had earned income during the war period and who had evaded payment of tax en Incomes of one lakh of rupees or more, and the purpose of Introducing this provision was to subject their escaped income to tax."

32. Their Lordships stated that they were in entire agreement with the above observations of the Full Bench of the Allahabad High Court.

33. After having found that Sub-section (1A) was a special provision in regard to the reopening of assessment of the big evaders during the war period their Lordships concluded by applying the maxim generalia specialibus non derogant that the general provision in Clause (a) of Sub-section (1) of Section 34 was inapplicable to the cases covered by the special provisions in Sub-section (1A). The relevant portion of the judgment of the Gujrat High Court runs thus: "Now, in the present case, as we have already pointed out above, the general provision in Sub-section (1)(a) covered the entire field occupied by the special provision in Sub-section (1A) inasmuch as it applied to all assessment years including the assessment years dealt with by Sub-section (1A) irrespective of the question whether the income that had escaped assessment was less than Rs. 1,00,000 or Rs. 1,00,000 or more. The general intention expressed in Sub-section (1)(a) being that no assessment in respect of an assessment year should be reopened unless the conditions therein specified were fulfilled and notice was issued within the period of eight years, if Sub-section (1)(a) applied to escaped income of assessment years dealt with by Sub-section (1A) when such escaped income amounted to Rs. 1,00,000 or more, the consequence would be that

assessment in respect of those assessment years could not be reopened if the conditions specified in subsection (1)(a) were not fulfilled or the period of eight years had expired before issue of a notice But Sub-section (1A) declared that such consequence should not ensue and that though the conditions specified in Sub-section (1)(a) were not fulfilled and though the period of eight years had expired before issue of a notice, assessment in respect of those assessment years should be liable to be reopened if certain other conditions were fulfilled and notice was issued before 31st March, 1956. Sub-section (1A) thus clearly indicated a particular intention incompatible with the general intention expressed in Sub-section (1)(a) and this incompatibility was emphasized by the non obstante clause in the opening part of Sub-section (1A). The general provision in Sub-section (1)(a) was, therefore, having regard to the aforesaid rule of interpretation, inapplicable to cases covered by special provision in Sub-section (1A). Such cases were governed exclusively by Sub-section (1A) and the general words of Sub-section (1)(a) could not be availed of for the purpose of reopening assessments in such cases (vide Koka Ram v. Salig, AIR 1928 All 686, Bhana Makan v. Emperor, AIR 1936 Bom 256, Vithalji Madhavji v. Commr. of Income-tax and Subodh Chandra Popatlal v. Commr. of Income-tax, ."

34. The rest of the judgment of the Gujrat High Court deals with the effect of the amendment made in Section 34 by the Finance Act, 1966, with which we are not concerned in the instant case. We have dealt with the judgment of the Gujrat High Court at great length because the learned Counsel for the assessee strongly relied upon it in support of his contention that after the introduction of Sub-section (1A) in Section 34 the Income-tax Officer was not competent to assess or reassess the escaped income of the assessee for the assessment year. 1946-47 under Sub-section (1A) of Section 34.

35. We are not prepared to accept the said contention of the learned Counsel for the assessee or the views expressed by the Gujrat High Court on this point. Sub-section (1A) was inserted not for the purpose of enlarging the authority of the Income-tax Officer to assess or reassess the escaped income This will be clear from the Preamble to the Indian Income-tax (Amendment) Act, 1954 (Act 33 of 1964), by which Sub-section (1A) was introduced in Section 34. The Preamble runs thus: "An Act further to amend the Indian Income-tax Act, 1922, to provide for the assessment or reassessment of persons who have to a substantial extent evaded payment of tax for a certain period and for matters connected therewith."

36. The object certainly was to make provision for the assessment of persons whom it was difficult, if not impossible, to assess under the law existing on 17th July, 1954. The circumstances surrounding the passing of the said Act also revealed the real object of the Act This section was introduced because Section 5(4) of the Taxation on Income (Investigation Commission) Act (3 of 1947), was struck down as unconstitutional on May 28, 1954, in Suraj

Mall Mohta v. A.V Visvanatha Sastri, . In that case, while examining the validity of Section 5(4) of the Investigation Commission Act, the Supreme Court held that the persons brought within the mischief of the said section belonged to the same class of persons who fell within the ambit of Section 34 of the Act and were dealt with by Section 34(1), and in view of the fact that the procedure prescribed under Section 5(4) of the Investigation Commission Act was very much less favourable to the assessee than the one available to them if action was taken against them under Section 34(1), the conclusion reached was that the impugned Section 5(4) was unconstitutional. After the judgment had been pronounced, the Legislature intervened and enacted Section 34(1A). That, however, was not the end of the matter. When Section 34(1A) was introduced in the Act, there remained two statutory provisions dealing with substantially the same subject matter, namely Section 5(1) of the Investigation Commission Act, and Section 34(1) of the Indian Income tax Act. In , a point was raised before the Supreme Court as to whether it was open to the Income-tax Department to invoke Section 5(1) of the Investigation Commission Act after Section 34(1A) of the Act had been enacted, and the Supreme Court held that it was not, because on comparing the two relevant provisions the Supreme Court came to the conclusion that Section 5(1) contravened Article 14 of the Constitution. It was in this way that Section 5(1) of the Investigation Commission Act became a dead letter and the Investigation Commission, in consequence, ceased to function The cases which had been referred to that Commission and which had not been completed had, therefore, to be taken up under Section 34(1) of the Act. Thus it will be noticed that at first the validity of Section 5(4) of the Investigation Commission Act was challenged successfully in the case of Suraj Mall Mohta , whereupon the Legislature intervened and Section 34(1A) was added in the Indian Income-tax Act. Nevertheless, the cases pending before the Investigation Commission were sought to be continued before the said Commission under Section 5(1) of the said Act and this section was struck down in the case of Shree Meenakshi Mills Ltd., . Thereafter the proceedings against the same class of assessee were sought to be continued under Section 34(1A) of the Income-tax Ac! and it was urged in the next case, namely, , that Section 34(1A) itself was invalid. We shall presently see how the Supreme Court upheld the validity of Section 34(lA) in Rashid's case .

37. From what has been stated above as to the historical background of Section 34(1A), it is clear that this section was inserted with a view to continuing the proceedings against the same class of assessees as those who were unsuccessfully sought to be assessed under Section 5(1) of the Investigation Commission Act. The necessity was felt of introducing Subsection (1A) in Section 34 because it was no longer possible by reason of lapse of time to proceed against the assessees within the contemplation of Section 5(1) of the Investigation Commission Act under Section 34(1) of the Indian Income-tax Act as it stood at the date when the Supreme Court declared Section 5(1) of the Investigation Commission Act as invalid.

38. In Section 34, before the insertion of Sub-section (1A) on 17th July, 1954, a time limit was prescribed for the exercise of (the power of assessment or reassessment by the Income-lax Officer either under Clause (a) or under Clause (b) of Sub-section (1) of Section 34. The period of limitation prescribed for issuing notice under Clause (a) was eight years and that under Clause (b) was four years. This was the position when Sub-section (1A) was inserted in Section 34 on 17th July, 1954. It is needless to point out that on 17th July, 1954, it was no longer possible for the Income-tax Officer to issue a notice under Clause (a) of Sub-section (1) of Section 34 in respect of any assessment year prior to 1945-46, the period of eight years having expired by that date War profits were mostly earned between 1st September, 1939, and 31st March, 1946.The Taxation of Income (Investigation Commission) Act (XXX of 1947) was passed to deal with the war profiteers who had evaded income-tax in respect of income earned during this period. The case of Suraj Mall Mohta was referred by the Central Government to the Investigation Commission under the provisions of Sub-section (4) of Section 5 of that Act on a report submitted by the Investigation Commission to the Central Government to the effect that the Company had made secret profits which it had not disclosed and the report was made under the said Sub-section of Section 5 of the said Act. Proceedings against the Company had to be dropped as the Supreme Court held on a petition under Article 32 of the Constitution filed by the Company that Sub-section (4) of Section 5 of the Taxation on Income (Investigation Commission) Act, 1947, and the procedure prescribed by that Act being a piece of discriminatory legislation offended against Article 14 of the Constitution and was, therefore, void and unenforceable. Sub-section (1A) was inserted in Section 34 to provide for the assessment or reassessment of persons who like the Company dealt with by the Supreme Court in the case of Suraj Mall Mohta, , had to a substantial extent evaded payment of tax during 1st September, 1939 to 31st March, 1946. The reason was obvious. At the material date it was no longer possible to rope in most of those persons by reason of lapse of time under the provisions of Clause (a) of Sub-section (1) of Section 34 as it then stood. Sub-section (1A) was inserted primarily to deal with the asses-sees who escaped assessment in respect of profits earned between 1st September, 1939 and 31st March, 1946. The Income-tax Officer was given power to assess them notwithstanding that the period of eight years or, as the case may be, four years specified in Sub-section (1) of Section 34 had expired in respect of such profits. The assessees within the ambit of Sub-section (1A), no doubt formed a distinct group; and it was necessary to obtain the previous sanction of the Central Board of Revenue to take action against them. But from that it does not follow that any assessee of this group in respect of whom the period of eight years or, as the case might be, four years specified in Sub-section (1) of Section 34 had not expired at the date of the introduction of Sub-section (1A), no action could be taken after the introduction of Sub-section (1A) under Sub-section (1) within the period of limitation specified in Sub-section (1).

39. In the instant case we are concerned with an escaped income which could be assessed or reassessed under Clause (a) of Sub-section (1) of Section 34, and therefore, the relevant period of limitation was eight years Subsection (1A) was inserted in order to confer additional power to the Income-tax Officer and not to take away some of the powers the Income-tax Officer already enjoyed under Clause (a) of Sub-section (1) The intention of the Legislature is clear not only from the language of Sub-section (1A), but also from the history behind it. The special jurisdiction given by Sub-section (1A) was not certainly intended to affect the jurisdiction of the Income-tax Officer under Clause (a) of sub section (1) It could not be said that an assessee within the ambit of Sub-section (1A) could not be dealt with under Clause (a) of Sub-section (1) even though the period of eight years had not expired till after insertion of Sub-section (1A).

40. It is argued on behalf of the assessee that after the insertion of Sub-section (1A) the Income tax Officer was not competent to assess or reassess any assessee within the ambit of Sub-section (1A) in accordance with the procedure laid down in Clause (a) of Sub section (1) even though the period of eight years had not expired. We cannot accept this argument If it were so, then proceedings under Clause (a) of Sub-section (1) pending on the dale of insertion of Sub-section (1A) would have lapsed. It is difficult to ascribe such intention to the Legislature. In our opinion, if it was found after the insertion of Sub section (1A) that an assessee could be assessed or reassessed both under Clause (a) of sub section (1) as well as under Sub-section (1A), then it must be held that the Income-tax Officer was free to take action either under Sub section (1A) or under Clause (a) of Sub-section (1). Having regard to the historical back ground of Sub-section (1A) it cannot be said that in inserting Sub-section (1A) the Legislature had the intention of curtailing the jurisdiction or authority of the Income-tax Officer under Clause (a) of Sub-section (1) of Section

34. It cannot be said that the ambit of Clause

(a) of Sub-section (1) had been impliedly narrowed down by Sub-section (1A) so as to deprive the Income-tax Officer of the power to take action under Clause (a) of Sub-section (1) within the time prescribed against any assessee within the purview of new Sub-section (1A) Sub-section (1A) could not be treated as a mere exception to Sub-section (1)(a).

Sub-section (1A) applied to certain persons who were not at all within the contemplation of Sub-section (1)(a). For instance, under Clause (a) of Sub-section (1) action could be taken against the assessee only when the assessee has omitted or failed to make a re turn, whereas under Sub-section (1A) it was possible to take action against an assessee whose income has escaped assessment notwithstanding there had been no omission or failure on the part of the assessee to make a return.

Sub-section (1A) says that "if in the case of any assessee the Income-tax Officer has reason to believe income, profits or gains have escaped assessment he may proceed to assess or reassess income." So the Income-

tax Officer could take action even where there had been no omission or failure on the part of the assessee to make a return Hence, in some respects the scope of Sub-section (1A) was wider than the scope of Sub-section (1)(a).

Some of the assessees within the purview of Sub-section (1A) could have been dealt with under Clause (b) of Sub-section (1) if the period of limitation had not expired. Subsection (1A) itself makes that position clear. It says that the Income-tax Officer may, notwithstanding that the period of eight years or, its the case may be four years specified in Subsection (1) has expired in respect of an escaped income, serve on the assessee a notice and proceed to assess or to reassess the escaped income. It is clear that all the assessees within the ambit of Sub-section (1A) could have been assessed either under Clause (a) or under Clause (b) of Sub-section (1) if the period of eight years or, as the case may he, four years specified in Sub-section (1) had not expired.

41. Next, the condition precedent in taking action under Sub-section (1A) was quite distinct from the condition precedent in taking action under Clause (a) of Sub-section (1). In the case of assessment under Clause (a) of Sub-section (1) the requisite notice could not be issued by the Income-tax Officer unless the Commissioner was satisfied with the reasons recorded by the Income-lax Officer that the case was a fit one for the issue of such notice. But in the case of an assessment under subsection (1A) the authority to be satisfied was the Central Board of Revenue. Then there was an outer limit to the issuing of notices under Sub-section (1A). No notice under subsection (1A) could be issued after 31st March, 1956.

42. For the reasons stated above Subsection (1A) could not be taken as an exception either to Clause (a) or to Clause (b) of Sub-section (1). The Bombay High Court too took this view in Laxminarayan R. Rathi v. Income-tax Officer . This was as much independent and self-contained as Clauses (a) and (b) of Sub-section (1). Sub-section (1A) primarily applied to the assessees whose income had escaped assessment but against whom it was no longer possible to lake action on 17th July, 1954, either under Clause (a) or under Clause (b) of Sub-section (1) by reason of lapse of time. The real intention of the Legislature apart from the historical background, in inserting Sub-section (1A) is clearly expressed in the words "notwithstanding the period of eight years or, as the case may be, four years specified in Sub-section (1) has expired....". The object was to take action against those persons whose income earned between 1st September. 1939, and 31st March, 1946, amounting to one lakh of rupees or more escaped assessment and against whom no action could be taken by reason of lapse of time either under Clause (a) or under Clause (b) of Sub-section (1). So it may safely be concluded that the Legislature had not the

slightest intention of taking away the authority of the Income-tax Officer to assess or reassess the escaped income earned between 1st September, 1939 and the 31st March, 1946, amounting to one lakh of rupees or more even though the period of eight years bad not expired. If the Income-tax Officer had that power under Clause (a) of Sub-section (1) immediately before the insertion of Sub-section (1A) that power certainly continued even after the insertion of Sub-section (1A).

43. In the opinion of the Gujrat High Court, as expressed in Mathuradas's case . Sub-section (1A) was a special provision in regard to reopening of assessment of all assessment years in respect of which the relevant previous years fell wholly or partly within the war period where income that had escaped assessment was Rs. 1,00,000 or more, and Sub-section (1)(a) was a general provision in regard to reopening of assessment of all assessment years. With due respect we cannot persuade ourselves to accept this opinion of the Gujrat High Court. Immediately before the insertion of Subsection (1A) most of the big evaders of the war period were outside the ambit of Clause (a) of Sub-section (1) of Section 34; it is for this reason that necessity was felt for inserting Sub-section (1A) Notice under Sub-section (1A) for initialing proceeding for assessment or reassessment could be given from 17th July, 1954 to the 31st March, 1956. The persons to whom notice could be given during this period under Sub-section (1A) were mostly persons to whom no notice could he given under Clause (a) of Sub-section (1) of Section 34 by reason of lapse of time. Therefore, during the said period from 17th July, 1954 to 31st March, 1956, most of the persons within the contemplation or within the ambit of Sub-section (1A) were not included in the bigger group contemplated by Clause (a) of Sub-section (1). The words 'general and special' are relative. There is no sense in saying that a particular provision is special when there is no corresponding general provision at the relevant time. At the date of the insertion of Sub-section (1A). Clause (a) of Sub-section (1) was not the general law in respect of persons for whose assessment or reassessment Sub-section (1A) was enacted. In other words, at that date, it could not be said that the said persons could have been assessed or reassessed under Clause (a) of Subsection (1) if Sub-section (1A) had not been inserted. Therefore, it cannot be said that at the relevant time Clause (a) of Sub-section (1) was the general law and Sub-section (1A) was a special law in regard to the same subject matter.

44. The maxim 'generalia specialibus non derogant' has been thus explained in Maxwell's Interpretation of Statutes, 11th Edition: "Generalia specialibus non derogant, or, in other words, 'where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects Specially dealt with by earlier legislation, you are not to hold the earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.' In such eases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act. Having already given its attention to the particular

subject and provided for it, the Legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language, or there be something which shows that the attention of the Legislature had been turned to the special Act and that the general one was intended to embrace the special cases provided for by the previous one, or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special one."

45. If the maxim is taken in the above sense, then certainly, the maxim has no application to the facts of the present case, because Clause (a) of Sub-section (1) of Section 34 which, according to the Gujrat High Court as well as according to the learned Counsel for the assessee, is the general law was enacted before, and not after, Sub-section (1A) which, according to them, is a special law.

46. But there is an analogous rule which has thus been explained in Craies on Statute Law. 5th Edition, as follows "The Rule is, that whenever there is a particular enactment and a general enactment in the same Statute, and the later, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the Statute to which it may properly apply." This rule too is not applicable in the facts and circumstances of the present case If it is assumed that Sub-section (1A) of Section 34 is a particular enactment and Clause (a) of Sub-section (1) of Section 34 is a general enactment even then, it cannot be said that Clause (a) of Sub-section (1) taken in its most comprehensive sense would overrule Sub-section (1A) of Section 34.

47. We, therefore, conclude that neither the maxim 'generalia speciallbus non derogant' as explained by Maxwell, nor the analogous rule enunciated by Craies has any application to the instant case.

48. The effect of Sub-section (1A) of Section 34 on the other parts of Section 34 is to be ascertained by applying the general presumption against and intention to alter the law beyond the immediate scope of the Statute It is presumed that the Legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or clear implication, or in other words, beyond the immediate scope and object of the Statute. In all general matters outside those limits the law remains undisturbed (vide Maxwell Interpretation of Statutes, 9th Edition at page 85). So it must be taken that Clause (a) of Sub-section (1) was not in any way disturbed by reason of insertion of Sub-section (1A) Hence if it is found that at the relevant time Clause (a) of Sub-section (1) and Sub-section (1A) both applied to a particular assessee, then, it must be held that the Income-tax Officer had jurisdiction to take action either

under Clause (a) of subsection (1) or under Sub-section (1A) of Section 34. It cannot be gainsaid that there was scope for such action in respect of the assessment years 1946-47 and 1947-48. The Gujrat High Court has pointed out in the case of Mathuradas , that Clause (a) of Sub-section (1) and Sub-section (1A) overlap to a certain extent. The relevant portion of the judgment is quoted below:

"Take the case of assessment year, 1946-47 for which the relevant previous year was the calendar year 1945. The previous year in this case fell wholly within the war period and yet action for reopening assessment could, on the plain terms of Sub-section (1)(a), be taken under that Sub-section between 17th July, 1954 and 31st March, 1956, being the period during which Sub-section (1A) was in force. Equally, if Sub-section (1)(a) stood alone, action for reopening assessment in respect of the assessment year 1947-48 for which the relevant previous year was the calendar year 1946 could be taken under Sub-section (1)(a) between 17th July, 1954 and 31st March, 1966, even though the calendar year 1946 fell partly within the war period and so also action for reopening assessment in respect of other assessment years for which the relevant previous years wholly or partly fell within the war period could be taken under Sub-section (1)(a) between 17th July, 1954 and 31st March, 1956, notwithstanding the expiration of the period of eight years, provided the case fell within the second proviso to Sub-section (3)."

49. It follows that in the case of persons whose income earned in the calendar years, 1945 and 1946 escaped assessment in the relevant assessment years and the amount of the escaped income was Rs. 1,00,000 or more proceedings for assessment or reassessment could be initiated between 17th July 1954 and the 31st March, 1956, either under Clause (a) of Sub-section (1) or under Sub-section (1A). So far as the assessees were concerned, it was immaterial under which of these two provisions proceedings were initiated, because once the notice was served either under Clause (a) of Sub-section (1) or under Sub-section (1A), the rest of the procedure was just the same and all the remedies available to the assessees were also just the same.

50. In the case of K.S. Rashid, , the Supreme Court has indicated what was the position in respect of a year covered by Clause (a) of Sub-section (1) as well as by Sub-section (1A). In that case the validity of notices served under Sub-section (1A) of Section 34 in respect of the income of the petitioners for the years 1941-42 to 1946-47 was challenged on the ground that though Section 34(1) and Section 34(1A) dealt with assessees similarly placed, the remedy by way of appeal and revision was available to the assessees dealt with under Section 34(1) but not to the assessees dealt with under Section 34(1A); and also on the ground that the protection of the period of limitation enjoyed by assessees dealt with under Section 34(1) was denied to the assessees dealt with under Section 34(1A). The Supreme Court did not accept either of the two grounds. It was held by the Supreme Court that the remedy by way of appeal and revision was as much available

to the assessees within the mischief of Section 34(1) as to the assessees within the mischief of Section 34(1A). In other words, the Supreme Court held that there was no procedural discrimination as between the two classes of assessees, one within the purview of Section 34(1) and the other within the purview of Section 34(1A).

51. As to the second ground based on limitation the observations of the Supreme Court already quoted in another context are again quoted below:

"The other contention raised against the validity of Section 34(1A) is based on the fact that at the relevant time, Section 34(1)(a) dealt with cases similar to those falling under Section 34(1A) and, yet, whereas in the former category of cases a period of limitation was prescribed as eight years there is no such limitation in regard to latter, and that, it is urged means unconstitutional discrimination. We are not impressed by this argument. It is true that in a broad sense both Section 34(1)(a) and Section 34(1A) deal with cases of income which has escaped assessment, and in that sense, the assessees against whom steps are taken in respect of their income which has escaped assessment can be said to form a similar class; but the similarity between the two categories disappears when we remember that Section 34(1A) is intended to deal with the assessees whose income has escaped assessment during a specified period between September 1, 1939 and March 31, 1946. It is well known that that is the period in which as a result of war, huge profits were made in business and Industry."

52. So, according to the Supreme Court, at the relevant time the assessees who might be dealt with under Section 34(1)(a) were not strictly speaking in similar circumstances with assessees who might be dealt with under Section 34(1A). Section 34(1A) intended to deal with assessees whose income had escaped assessment during a specified period, namely, between September, 1639 and March 31, 1946, and the amount of the escaped income was Rs. 1,00,000 or more, whereas Section 34(1)(a) was meant for the rest of the tax evaders whose income, whatever might be the amount, escaped assessment within a period of eight years prior to the initiation of proceedings for assessment or reassessment. Hence, there was an intelligible differentia which distinguished persons or cases that were grouped together for the purpose of Section 34(1A) from others left out of the group and the differentia had a rational relation to the objective sought to be achieved by Section 34(1A), namely, assessment of persons who had to a substantial extent evaded payment of tax during the war period. The Supreme Court, therefore, concluded that the discrimination on the score of limitation between persons grouped together for the purpose of Section 34(1A) and those not included in the said group was not unconstitutional, that is to say, was not hit by Article 14 of the Constitution.

53. Certain assessees whose income escaped assessment during the war period no doubt were grouped together for the purpose of assessment under Section 34(1A) but from that it does not

follow that at the relevant time an assessee within the purview of Section 34(1A) could not at the same time fall within the group assessable under Section 34(1)(a). For example, in the instant case, the assessee falls within both the groups, namely, the group governed by Section 34(1A) and the group governed by Section 34(1)(a) as it stood before the amendment of 1956. The two groups were not mutually exclusive. This possibility of certain assessees falling under both the groups was visualised by the Supreme Court in Rashid's case, . In that case it was suggested that as a result of the provisions contained in Section 34(1)(a) and Section 34(1A) one year would overlap. That one year was the year of assessment 1946-47. It may be noted that the assessment years involved in that case were 1941-42 to 1946-47. The Supreme Court met the suggestion of overlapping in this way: "The argument of overlapping has no significance because it makes no difference whether action is taken under Section 34(1), or under Section 34(1A) in respect of that year. Once the notice is served under Section 34(1) or Section 34(1A), the rest of the procedure is just the same and all the remedies available to the assessees are also just the same. Therefore, we see no substance in the argument that in the absence of restriction as to period of limitation under Section 34(1A) introduces any infirmity in the said provisions. In the result, we must hold that Section 34(1A) is valid and has not contravened Article 14 of the Constitution."

54. The Supreme Court has clearly stated in the above case that it was a matter of indifference whether in the case of an assessee who might at the relevant date be assessed in respect of his escaped income either under Section 34(1)(a) or under Section 34(1A) action was taken under the one or the other section. If action was taken against him under Section 34(1) (a) instead of under Section 34(1A) he certainly could have no grievance on the ground of discrimination, because so far as he was concerned Section 34(1)(a) was much more liberal than Section 34(1A).

55. We, therefore, hold that the Income-tax Officer was justified in the instant case in proceeding to reopen the assessment under Section 34(1)(a) after Section 34(1A) had been inserted in the Indian Income-tax Act. The question No. 1 is, accordingly, answered in the affirmative.

56. We now propose to consider the fourth question in so far as it relates to fixed deposits, The question to be decided is whether the fixed deposits in question were assessable for the assessment year, 1946-47. It is contended by the learned Counsel for the assesses that the fixed deposits were not assessable for the assessment year, 1946-47. The fixed deposits were made in the financial year, 1944-45. The argument on behalf of the assessee is that if the fixed deposits are treated as the assessee's income from some undisclosed source, the corresponding assessment year would be 1945-46. In that event, it is urged, the fixed deposits were not assessable for the assessment year, 1946-47.

57. If the fixed deposits represented income from business, then certainly, they were assessable for the assessment year, 1946-47. If, however, the fixed deposits represented income from some

undisclosed source, then they were assessable not for the assessment year, 1946-47, but for the assessment year, 1945-46. It was held by our High Court in Jethmal Lakhani v. Commr. of Income-tax , cited by the learned Counsel for the assessee that the Income-tax Officer is bound to treat the financial year as the previous year for income from undisclosed sources of the assessee. Our High Court in this respect followed the Patna High Court which too took the same view in the Commr. of Income-tax v. P. Darolia & Sons . It is not seriously disputed by the Revenue in the instant case that if the fixed deposits were income from undisclosed source, then they were assessable for the assessment year, 1945-46 not for the assessment year, 1946-47. So the question for determination is whether the fixed deposits assuming they were the income of the assessee were income from business or some undisclosed source. The learned Accountant Member of the Tribunal agreed with the Income-tax Officer that the fixed deposits represented income from business He concluded as follows:

"The assessee is a firm. The partnership deed indicates that it was formed to carry on a business and, therefore any income that might arise or accrue to the assessee was from the business of the assessee In the facts of this case, I am of opinion that any income that might be held to have arisen to the assessee (concealed not entered into the account books) are all income from the assessee's business. Therefore, in the present case, the undisclosed incomes are all undisclosed profits of business."

58. The Income-tax Officer referred to various facts in support of the inference that the fixed deposits were made out of secret profits from the assessee's business The assessee was carrying on the business of procuring rice and paddy as an agent of the Government of Bengal. The turnover was about Rs. 1 25 crores. The assessee was also carrying on speculation and business in jute and oil. With regard to the business of procuring rice the Income-tax Officer mentioned the following facts The assessee could not produce vouchers in respect of payments. A number of suppliers were not traceable at the addresses given The assessee procured different variety of rices at different prices. There was no detailed subsidiary record to show the quantity, quality and rate at which the rice was purchased. The rates of carting cooly charges went up to very appreciable extent during the year under consideration. The details kept for expenses under various heads were very meagre. The original receipts in respect of a number of items of expenditure were not available. The total quantity procured by the assessee during the year amounted to 81 lakhs of maunds, including 46 lakhs of maunds of rice and 35 lakhs of maunds of paddy. There was no detailed account for all expenses claimed to have been incurred by the assessee to establish that the expenses were genuine and even though the assessee was doing the business of speculation, the assessee did not maintain any Sauda Bahi for the said business. The Income-tax Officer noticed similar facts in respect of the assessee's business in jute and oil. The Income-tax Officer, therefore, came to the conclusion that the account books of the assessee with

regard to the business were not verifiable.

59. The accountant member of the Tribunal inferred from the facts noted above that the fixed deposits represented income from business. The inference itself is one of fact. It cannot be said that the inference is based on no evidence. Therefore, we must accept the finding of the Tribunal as to the nature of the income represented by the fixed deposits. Concealed income is not necessarily an income from sources not disclosed, that is to say, from other sources. In the case of Lakhmichand Baijnath v. Commr. of Income-tax, West Bengal, , the Supreme Court has pointed out that when an amount held to be concealed income, is credited in business books, it is not an unreasonable inference to draw that it is a receipt from business. The Supreme Court has further pointed out that the question as to whether a certain sum is the concealed business profit of an assessee is clearly a question of fact which is open to attack in a reference under Section 66 of the Income-tax Act only when it can be shown that there is no evidence to support it or that it is perverse. In the instant case it cannot be said that the Inference of the Tribunal that the fixed deposits were concealed income from business is perverse.

60. It has also been held by the Calcutta High Court in Mansfield & Sons v. Commr. of Income-tax, (1963) 48 ITR 254 (Cal), following the decision of the Supreme Court in Lakhmi Chand Baijnath's case, that where a credit entry is found in the business accounts of an assessee and the explanation as to how the amount came to be received is rejected by the Income-tax Authorities and the amount is taken to be income from an undisclosed source, such income can be treated as business income if the assessee has no other source of income.

61. In the instant case the assessee is a firm formed for the purpose of carrying on business. There is nothing on record to show that the firm had any source of income other than business. Therefore, in our opinion, it is not unreasonable to hold that any amount representing secret income arose out of business of the firm.

62. We, therefore, hold that the fixed deposits represented income from business and that they were assessable in the assessment year, 1946-47. The assessability of the cash credits is not disputed The fourth question, accordingly, is answered in the affirmative. Question Nos. 2 and 3 were not pressed at the hearing; we, therefore, refrain from answering them.

63. The two questions pressed at the hearing having been answered in favour of the Revenue, the assessee must pay costs of this Reference to the Commissioner of Income-tax.

K.C. Sen, J.

64. I agree.