**BOMBAY HIGH COURT**

Laxminarayan R. Rathi

Vs

Income-Tax Officer

(V Desai and Y Tambe, JJ.)

03.05.1963

**JUDGMENT**

**Tambe, J.**

1. This is an application under articles 226 and 227 of the Constitution of India. All the contentions raised in the petition have not been pressed before us, and it is, therefore, not necessary to refer to all the allegations made in the petition.

2. The facts which are material to the contentions raised and which have been stated before us by counsel for the petitioner in brief ar :The petitioner before us is karta of the Hindu undivided family of Laxminarayan R. Rathi, residing at Mangalwar Peth, Sholapur. The Hindu undivided family has been in due course assessed to income-tax for the assessment years 1940-41 to 1948-49. The Hindu undivided family had also been reassessed for the assessment years 1941-42 and 1943-44 under section 34 of the Indian Income-tax Act (hereinafter called the Act). On 23rd March, 1962, the Income-tax Officer, Special Investigation Circle, Poona, issued nine notices under section 34 of the Act, in respect of assessment years 1940-41 to 1948-49. All these notices are in identical terms. In brief, it is stated in these notices that whereas the Income-tax Officer had reason to believe that the income of the assessee assessable to income-tax for the said assessment years had escaped assessment, been under-assessed, or had been the subject of computation of excessive loss or depreciation allowance, it was proposed by the Income-tax Officer to assess or reassess the said income. The notice further called upon the assessee to deliver to the Income-tax Officer not later than 27th April, 1962, or within 35 days of the receipt of the notice, a return in the attached form of the assessee's total income and total word income assessable for the said years. The notices further stated that they had been issued after obtaining the necessary satisfaction of the Central Board of Revenue. By this petition, the assessee seeks to get quashed seven out of these nine notices on the ground that it was beyond the jurisdiction of the Income-tax Officer to issue these notices after 31st March, 1956, and, therefore, these notices

are liable to be quashed. The petitioner, therefore, prays for issue, under articles 226 and 227 of the Constitution of India, of a direction, order or a writ, including a writ in the nature of certiorari, quashing the notices of date 23rd March, 1962. The petitioner further prays for issue, under articles 226 and 227 of the Constitution, of a direction, order or a writ, including a writ in the nature of mandamus and/or prohibition, permanently restraining the respondent, his servants and agents from taking any proceedings by way of assessment or otherwise in pursuance of the said notices of date 23rd March, 1962.

3. Mr. Palkhivala, appearing for the petitioner, at the outset stated that the petitioner is not asking for quashing of the notices issued for the assessment years 1947-48 and 1948-49, but is confining his prayer only to the notices issued for the assessment years 1940-41 to 1946-47. The contention of Mr. Palkhivala is two-fold. In the first instance, he contends that to the facts and circumstances of the case, the apposite provision of law applicable is sub-section (1A) of section 34 of the Act, and not sub-section (1)(a) of section 34 of the Act. Section 34(1A) empowers the Income-tax Officer to issue notices for the assessment years 1940-41 to 1946-47 only up to 31st March, 1956; the impugned notices of date 23rd March, 1962, having been given after 31st March, 1956, are beyond the competence and jurisdiction of the Income-tax Officer, and, therefore, liable to be quashed. In the alternative, Mr. Palkhivala contends that even assuming that the apposite provision of law applicable to the case is section 34(1)(a) and not section 34(1A), the outside time-limit mentioned in section 34(1A), namely, 31st March, 1956, must be imported in section 34(1)(a), and section 34(1)(a) must be read as subject to the outside time-limit mentioned in section 34(1A).

4. Mr. Joshi, appearing for the Income-tax Officer, the respondent hereto, contends that the cases of the petitioner were transferred to the respondent, and similarly, cases of one Kisanlal Badrilal also had been transferred to the respondent. The said Kisanlal is the father-in-law of Laxminarayan Rathi, the karta of the petitioner family. Kisanlal Badrilal owned business. It was noticed in the assessment proceedings of Kisanlal that his balance-sheet showed a capital of Rs. 10 lakhs and odd, though the sources of the family, of which Kisanlal was the karta, were meagre. This large capital was used for making advances to various firm in which Laxminarayan Rathi was a partner. The said large advance made to Laxminarayan Rathi were practically without interest. Further investigation in the matter led the respondent to believe that the capital alleged to belong to Kisanlal really belonged to the petitioner family. The respondent having reason to believe that this large capital which belonged to the petitioner represented his income from undisclosed sources, action under section 34 was initiated after obtaining the necessary satisfaction of the Board of Revenue. According to Mr. Joshi, the notices issued fall under section 34(1)(a), and that is the apposite provision of law applicable to the case. Under the said section 34(1)(a), it is open to the respondent to issue notice at any time, and, therefore, it was

within his jurisdiction and competence to issue these notices; the notices are not bad in law, and are not liable to be quashed.

5. The rival contentions raised before us relate principally to the construction of section 34(1)(a) and section 34(1A). It would, therefore, be necessary to read the material part of section 34 as it stood on the date of issuance of the notices. It read as follow :

> "34. (1) If -
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> (a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been underassessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or
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> (b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed, he may in cases falling under clause (a) at any time and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or re-assess such income, profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-sectio :
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> Provided that the Income-tax Officer shall not issue a notice under clause (a) of sub-section (1) -
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> (i) for any year prior to the year ending on the 31st day of March, 1941;
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> (ii) for any year, if eight years have elapsed after the expiry of that year, unless the income, profits or gains chargeable to income-tax which have escaped assessment or have been under-assessed or assessed at too low a rate or have been made the subject of excessive relief under this Act, or the loss or depreciation allowance which has been

computed in excess, amount to, or are likely to amount to, one lakh of rupees or more in the aggregate, either for that year, or for that year and any other year or years after which or after each of which eight years have elapsed, not being a year or years ending before the 31st day of March, 1941;

(iii) for any year, unless he has recorded his reasons for doing so, and, in any case falling under clause (ii), unless the Central Board of Revenue, and, in any other case, the Commissioner, is satisfied on such reasons recorded that it is a fit case for the issue of such notice....

(The other two provisos and the Explanation to section 34(1)(a) are not material).

(1A) If, in the case of any assessee, the Income-tax Officer has reason to believe -

(i) that income, profits or gains chargeable to income-tax have escaped assessment for any year in respect of which the relevant previous year falls wholly or partly within the period beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1946; and

(ii) that the income, profits or gains which have so escaped assessment for any such years amount, or are likely to amount, to one lakh of rupees or more;

he may, notwithstanding that the period of eight years or, as the case may be, four years specified in sub-section (1) has expired in respect thereof, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or reassess the income, profits or gains of the assessee for all or the years referred to in clause (i), and thereupon the provisions of this Act (excepting those contained in clauses (i) and (iii) of the proviso to sub-section (1) and in sub-sections (2) and (3) of this section) shall, so far as may be, apply accordingl :

Provided that the Income-tax Officer shall not issue a notice under this sub-section unless he has recorded his reasons for doing so, and the Central Board of Revenue is satisfied on such reasons recorded that it is a fit case for the issue of such notic :

Provided further that no such notice shall be issued after the 31st day of March, 1956.

(1B) Where any assessee to whom a notice has been issued under clause (a) of sub-section (1) or under sub-section (1A) for any of the years ending on the 31st day of March of the years 1941 to 1948 inclusive applies to the Central Board of Revenue at any time

within six months from the receipt of such notice or before the assessment or reassessment is made, whichever is earlier, to have the matters relating to his assessment settled, the Central Board of Revenue may, after considering the terms of settlement proposed and subject to the previous approval of the Central Government, accept the terms of such settlement, and, if it does so, shall make an order in accordance with the terms of such settlement specifying among other things the sum of money payable by the assessee.

(Sub-sections (1C), (1D), (2) and (3) are not material for the purposes of this case).

(4) A notice under clause (a) of sub-section (1) may be issued at any time notwithstanding that at the time of the issue of the notice the period of eight years specified in that sub-section before its amendment by clause (a) of section 18 of the Finance Act, 1956 (18 of 1956), had expired in respect of the year to which the notice relates."

6. Turning to the first contention raised by Mr. Palkhivala, namely, that the notices fell under section 34(1A) and not under section 34(1)(a), the argument of Mr. Palkhivala is that the present case relating to assessment years 1940-41 to 1946-47 is covered by both sections 34(1)(a) as well as section 34(1A). The provisions of section 34(1)(a) are general provisions relating to the years from 1940-41 onwards, while the provisions of section 34(1A) govern only the cases relating to assessment years 1940-41 to 1946-47. The special provisions contained in section 34(1A), therefore, must be read as an exception to the general provision contained in section 34(1)(a). Consequently, the cases would fall under section 34(1A) and be governed by those provisions. Section 34(1A) in terms provides that notice relating to the said years must be issued before 31st March, 1956. The impugned notices were issued on 23rd March, 1962, and, therefore, bad in law. He has placed reliance on a Full Bench decision reported as Shazada Nand and Sons v. Central Board of Revenue. It is true that there are some common features in the provisions of section 34(1)(a) and section 34(1A). Section 34(1)(a) empowers the Income-tax Officer, after obtaining the necessary satisfaction of the Central Board of Revenue, to issue notices and proceed to assess or reassess the assessee in respect of any of the assessment years from 1940-41 onwards, if he has reason to believe that income amounting to one lakh of rupees or more has either escaped assessment or has been under-assessed or assessed at too low a rate by reason of failure on the part of the assessee to make a return of his income under section 22 or by reason of his failure to disclose fully and truly all material facts necessary for his assessment. Section 34(1A) also empowers the Income-tax Officer, with the necessary satisfaction of the Central Board of Revenue, to issue notice and assess or reassess the income of the assessee if he has reason to believe that the income, profits and gains chargeable to income-tax and amounting to rupees one lakh or more has escaped assessment in respect of any one or more of the assessment

years 1940-41 to 1946-47; to that extent it can be said that there are common features between these two provisions. The question that arises for consideration is whether these common features necessarily lead to an inference that section 34(1A) has to be readd as an exception to the general provision contained in section 34(1)(a). The principle has been thus stated by Maxwell On the Interpretation of Statutes, at pages 168-169 (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 that 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 cases 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."

7. The same principles would also be applicable when there are, in one and the same statute, a certain provision dealing with a special case and the other provision which are in general terms. Craies on Statute Law, 5th edition, puts the matter thus at page 20 :The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, 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 statue to which it may properly apply."

8. It would thus be seen that to attract the principle quoted above, the requisite conditions ar : Firstly, both the general enactment and the particular enactment must be simultaneously operative, the general enactment covering a larger field and the particular enactment covering a limited field out of the larger field covered by the general enactment; and, secondly, there must be nothing contained in the general provisions indicating the legislative intent to overrule or set aside the particular provisions. Keeping these principles in view, it is necessary to see whether the provisions of section 34(1)(a) and section 34(1A) were operating together simultaneously,

over the income made during war years. When the legislative history is seen, it discloses that the provisions of section 34(1)(a) and section 34(1A) were, at no time, simultaneously operative over assessment years 1940-41 to 1946-47.

9. Turning to the history of legislation, section 34 has been amended from time to time. It is not necessary to trace all the changes introduced in section 34 from time to time. But, it would be sufficient to notice the provisions of section 34 as they stood prior to the insertion of sub-section (1A) in section 34 by the Income-tax (Amendment) Act (33 of 1954), with effect from 17th July, 1954. Section 34, as it then stood, would show that the time-limit was prescribed for the exercise of the power by the Income-tax Officer of issuing a notice and proceeding to assess or reassess either under section 34(1)(a) or section 34(1)(b). The period of limitation prescribed for exercise of the power of issuing notice under clause (a) was 8 years, and the limitation prescribed for exercising the power of issuing notice under clause (b) was 4 years. This was the position obtained when subsection (1A) was introduced in section 34 in the year 1954. Now, it would be noticed that by 17th July, 1954, it was no more competent for the Income-tax Officer to issue notice under section 34(1)(a) in respect of any assessment year prior to 1945-46, the period of 8 years having expired by that date. It is indeed true that till March 31, 1955, notice under section 34(1)(a) could have been issued to assess or reassess escaped concealed income of 1946-47, but till that date notice under section 34(1A) in respect of that year could not have been issued as the clause "notwithstanding that the period of eight years.... specified in sub-section (1) has expired" appearing in sub-section (1A) would show. It has also to be noticed that there was an Act known as Taxation on Income (Investigation Commission) Act, 1947, in force, under which cases had been referred by the Central Government to the Commission for investigating the cases of certain assessees whose income made by them during the war period, i.e., the period commencing from 1st September, 1939, to 31st March, 1946, had, in the opinion of the Central Government escaped assessment. That enactment was declared ultra vires the Constitution by the Supreme Court some time in 1954. The position thus was neither notices could be issued under section 34(1)(a) in respect of assessment years prior to 1945-46, nor could the cases of assessees, who had concealed their income made during the war years, be dealt with under the Taxation on Income (Investigation Commission) Act, 1947. It is to get over these difficulties that sub-sections (1A) to (1D) were inserted in section 34 by the aforesaid Amending Act, 1954. Section 34(1A) enabled the Income-tax Officer to issue notice under that section similar in terms to the notice issued under section 34(1)(a) and (b), and proceed to assess or reassess the income, profits and gains of the assessee made in any of the war years, i.e., the period beginning from 1st September, 1939, and ending with 31st March, 1946, "notwithstanding that the period of eight years or four years, as the case may be, specified in sub-section (1) has expired in respect thereof." There were, however, two safeguards provided against an arbitrary action being taken against an assessee by the Income-tax Officer. The first safeguard was that no action could be taken against

the assessee without the prior sanction of the Board of Revenue. Further, no action could be taken in case of escapement of income below one lakh of rupees. The outside limit prescribed for taking action was March 31, 1956. It would thus be seen that section 34(1A) was enacted by the Central Legislature to enable the Income-tax Officer to take action and to bring to tax income made by the assessee during the war years which could not be brought to tax under the normal procedure prescribed under section 34(1)(a) by reason of efflux of time, the period of limitation prescribed therein having expired. It is thus clear that section 34(1)(a), as it stood prior to its amendment by the Finance Act, 1956, with effect from 1st April, 1956, and section 34(1A) were not simultaneously operating on the escaped income of the war years. It has next to be seen whether these two sub-sections, namely, sections 34(1)(a) and 34(1A), could be said to be simultaneously operating on the escaped concealed income of the war years after the amendment of section 34(1)(a) by the Finance Act, 1956. Now, the changes effected in section 34(1)(a) by the Finance Act, 1956, were that the period of limitation of eight years for issuing notice under section 34(1)(a) was omitted, and, instead, it was expressly provided that the Income-tax Officer may, in cases falling under section 34(1)(a), issue notice "at any time." The provisos 1 to 3 to sub-section (1) of section 34 were substituted in place of the former proviso by the Finance Act, 1956, and under those provisos, the period of limitation of eight years for issuing notice under section 34(1)(a) was retained in respect of escaped concealed income below one lakh of rupees; the said period of eight years was lifted only in respect of years ending on 31st March, 1941, and onwards, subject to the condition that the escaped concealed income amounted to one lakh of rupees or over, and subject to the further condition that the necessary satisfaction of the Central Board of Revenue was obtained for issuing the notice. Section 34(1B) also has been introduced by the Finance Act, 1956, and sub-section (4) was added by the Indian Income-tax (Amendment) Act, 1959, with effect from 12th March, 1959. To these provisions we would advert later. The position thus obtaining after 1st April, 1956, was that it was open to the Income-tax Officer to issue notice at any time under section 34(1)(a) and proceed to assess or reassess the assessee in respect of the escaped concealed income exceeding one lakh of rupees in respect of any year from 1940-41 onwards, after obtaining the necessary satisfaction of the Central Board of Revenue. But, as would be seen from the terms of section 34(1A), it was no more open to the Income-tax Officer to issue notice under section 34(1A) and proceed to assess or reassess the escaped concealed income of the war years, because the outside limit prescribed in the proviso had by then expired. It would thus be seen that section 34(1)(a) either as it stood prior to its amendment by the Finance Act, 1956, or as it stood after its amendment by the Finance Act, 1956, and section 34(1A) were not simultaneously operating on the escaped income exceeding one lakh of rupees of the assessee made by him during the war years. That being the position, there arose no conflict between the operation of these two provisions at any point of time. Further the legislature by the Amending Act of 1956 has expressly authorised the Income-tax Officer to

issue notice "at any time" in respect of cases falling under section 34(1)(a). It is, therefore, for the aforesaid reasons, not possible to read sub-section (1A) as an exception to the provisions contained in section 34(1)(a). The return filed by the respondent shows that the respondent had reason to believe that the escaped concealed income amounted to about Rs. 10 lakhs. The notices issued show that the necessary satisfaction of the Central Board of Revenue had been obtained. On the date the notices were issued, section 34(1)(a) empowered the Income-tax Officer to issue notices "at any time". The notices, therefore, clearly fall under section 34(1)(a). The first contention raised by Mr. Palkhiwala, therefore, should fail.

10. It is true that the decision in Shahzada Nand and Sons v. Central Board of Revenue on which reliance is placed by Mr. Palkhiwala supports the aforesaid contention of Mr. Palkhiwala. The facts in that case were that the Income-tax Officer on July 25, 1958, issued a notice under section 34 to the assessee that he had reason to believe that the firm's income for 1945-46 (year ending on March 31, 1946) had escaped assessment, or had been under-assessed. It was further stated in the notice that the notice was issued after obtaining the necessary satisfaction of the Central Board of Revenue. The validity of the notice was challenged by the petitioner by a writ petition under article 226 and it was prayed that the said notice be quashed. On behalf of the assessee, it was contended that the notice in question could only fall under section 34(1A). That sub-section was a more specific provision, and was, therefore, an exception to the more general provision contained in section 34(1)(a). The notice was, therefore, bad, it having been issued after March 31, 1956, contrary to the provisions of section 34(1A). The said contention of the assessee was accepted and the petition was allowed. At page 246, it was observe :

> "Now considering the language and scope of the two sub-sections in question before us, sub-section (1A) would prima facie appear to be an exception to the cases covered by sub-section (1)(a), and if this be the correct view, then the notice in question cannot but held to fall under sub-section (1A)."

11. With utmost respect, for the reasons stated above, and for reasons we will hereinafter give, we find it difficult to take a similar view.

12. This brings us to the second contention raised by Mr. Palkhivala that the outside limit mentioned in section 34(1A) for issuing a notice in respect of those years. The argument is that the legislature, when it enacted the Finance Act, 1956, was well aware that section 34(1A) was on the statute book, and that it provided the outside limit of March 31, 1956, for issuing notices to bring to tax escaped concealed income of war years. The legislature has not chosen to delete the provisions of section 34(1A), or, at any rate, the proviso to the said sub-section, which prescribed the outside limit. The retention of section 34(1A) on the statute book indicates the clear intention of the legislature that the outside limit prescribed in section 34(1A) was intended

to apply to notices issued under section 34(1)(a) in respect of war years. Relying on the decisions reported in*Commissioner of Income-tax v. Narsee Nagsee & Co., Bisesar House v. State of Bombay, and Commissioner of Income-tax v. Narsee Nagsee & Co., Mr. Palkhivala* argued that the ratio of these decisions supports his contention that the outside limit specified in section 34(1A) must be read in section 34(1)(a) in respect of the war years. In short, Mr. Palkhivala wants us to read something which is not there in section 34(1)(a). In considering such a contention, it is necessary to keep in mind the note sounded by Lord Esher M.R. in Curtis v. Stovin and referred to by Hidayatullah J. at page 327 *in Commissioner of Income-tax v. Narsee Nagsee & Co :*

> "It is always a serious matter to read into a section what the legislature has not chosen to put there. As pointed out by Lord Esher M.R. in Curtis v. Stovi : 'It is, no doubt, very easy for a judge to say that he is introducing words into an Act while he is really making a new Act.' Such procedure is wholly out of place if the language of the section does not admit of any extension. The question invariably is not what the legislature might have said, or might be supposed to have intended to say, but what it did say. This is more so in an Act which imposes a tax, and which cannot be added to or substracted from except perhaps for the most clear and compelling reasons."

13. It is indeed true that every Act must be construed as a whole, and the duty of the court must be, as far as possible, to reconcile the various provisions of the statute, and if for the purpose of reconciling conflicting provisions in a statute, it is necessary to read something in a section, it may be open to the court to read something in the section which has not been expressly put therein. But in the absence of such a compelling reason, the court would not be justified in reading something in a section which the legislature has not put there.

14. It is therefore necessary to see whether there is any compelling reason to read the period of limitation or the outside limit specified in section 34(1A) in section 34(1)(a), for the purpose of reconciling the provisions of these two sub-sections. We have already pointed out that there is no conflict between the provisions of section 34(1)(a) and section 34(1A). The two provisions either prior to the amendment of section 34(1)(a) or after its amendment were operating over the escaped income of war years at different times. Section 34(1A) operated when section 34(1)(a), as it stood prior to its amendment, ceased to operate. Section 34(1)(a), as it stands after its amendment, operates after section 34(1A) has ceased to operate so far as the escaped concealed income of war years is concerned. There being thus no conflict between the two provisions, the question of reconciling these two provisions, in our view, does not arise. Even assuming that there be any conflict between the two provisions, the legislature has clearly indicated its intention by omitting the period of limitation of eight years and expressly providing that the Income-tax

Officer may in case falling under clause (a) issue notices "at any time". The legislature having thus expressly stated its intention, in our opinion, we would not be justified in reading in section 34(1)(a), the outside limit specified in section 34(1A), and thereby derogate from the intention of the legislature expressly stated in section 34(1)(a). The said intention of the legislature also is disclosed when the legislative history of the amendment of this section is kept in view as a whole. The period of limitation prescribed for issue of notice under section 34(1)(a) was first eight years. With a view to reach the escaped concealed income of war years, the legislature had enacted a separate piece of legislation, namely, the Taxation on Income (Investigation Commission) Act, 1947, and the scheme envisaged therein, inter alia, included the fixation of the tax liability by settlement with the Board of Revenue. These provisions of that Act, however, were declared invalid by the Supreme Court somewhere in the year 1954. The legislature finding that the escaped concealed income of the war years could not be reached and brought to tax either under the provisions of the Taxation on Income (Investigation Commission) Act, or by following the procedure specified in section 34(1)(a), enacted section 34(1A), and thereby enabled the Income-tax Officer to reach that income notwithstanding the expiry of the period of eight years, by issuing a notice up to 31st March, 1956. Sub-section (1A) of section 34 was thus enacted not for the purpose of prescribing any period of limitation as such, but to enable the Income-tax Officer to take proceedings in spite of the expiry of the period of limitation. It was, in short, an enabling provision. At the expiry of the outside limit specified in section 34(1A), the legislature in enacting the Finance Act, 1956, has amended section 34(1)(a) and in express terms provided that the Income-tax Officer may at any time issue a notice under section 34(1)(a) to bring to tax escaped concealed income of the assessee of years ending March 31, 1941, and subsequent years subject to fulfilling the conditions mentioned in that section. The legislature, from time to time, has thus expressed its clear intention of reaching escaped concealed income of the assessee in respect of years 1940-41 onwards, provided that the escaped concealed income amounted to one lakh rupees or more, and provided that the Board of Revenue is satisfied about taking proceedings. It is, therefore, not possible to read the enabling provisions of section 34(1A), which as we have shown were enacted to enable the Income-tax Officer to take action in spite of the expiry of the period of limitation, as operating a restriction on the exercise of the power of the Income-tax Officer when the legislature in express terms authorised him to take action at any time.

15. It has next to be considered whether the retention of section 34(1A) on the statute book leads to the conclusion that the outside limit mentioned in section 34(1A) must necessarily be read in section 34(1)(a). In our opinion, it is not possible to say that the retention of section 34(1A) necessarily leads to that conclusion. It may equally be that the legislature finding section 34(1A) having ceased to be operative after 31st March, 1956, and having expressly provided in section 34(1)(a) that the Income-tax Officer should take action at any time perhaps did not think it

necessary to omit these provisions, possibly in view of the cases pending consequent on action having been taken under section 34(1A) between the period 17th July, 1954, to 31st March, 1956. Mr. Joshi has also referred to the amendment effected in sub-section (1B) and to sub-section (4) added by the Amending Act, 1959, as indicating the legislative intent that from April 1, 1956, it is competent to the Income-tax Officer to issue notice under section 34(1)(a) at any time in respect of the years 1940-41 onwards. There is considerable force in the argument of Mr. Joshi. Now, sub-section (1B) provides for a settlement between an assessee and the Board of Revenue in respect of the assessee's tax liability for the war years, if the assessee chooses to get it settled that way by making an application to the Central Board of Revenue at any time within a period of six months from the receipt of the notice or before assessment or reassessment is made, whichever is earlier. Prior to its amendment by the Finance Act, 1956, this facility was afforded to the assessee only in cases where action against him was taken under section 34(1A), and not where action has been taken against him in respect of those years under section 34(1)(a). By the amendment effected by the Finance Act, 1956, such facility in respect of war years has been afforded both where action has been taken against the assessee either under clause (a) of sub-section (1) or sub-section (1A). If it could be reasonably held that the extension of this facility to cases falling under section 34(1)(a) relates to cases then pending, then no positive legislative intent could be read by reason of this amendment. If, however, it could not reasonably be held that the extension of this facility could apply to the then pending cases, then, it must necessarily have application to cases that would be started under section 34(1)(a) by issuing notice after April 1, 1956, and that would indicate that the legislature empowered starting of new cases by issuing notices under section 34(1)(a) in respect of years ending with 31st March, 1941 to 1947. The period principally covered by these two dates are the war years. Now, having regard to the provisions of section 34(1)(a), as it stood prior to its amendment, the position obtaining was that the notice had to be given within a period of eight years from the expiry of the assessment year, and the assessment or reassessment initiated by notice under section 34(1)(a) had to be completed before the expiry of one year from the date of service of notice. Now, by April 1, 1956, there could normally be no cases pending in respect of the assessment year prior to the assessment year 1947-48, because in view of the provisions, to which we have just now referred, assessment or reassessment for the years 1946-47 had to be completed before 31st March, 1956. It would, therefore, be reasonable to assume that the aforesaid facility afforded by amendment to sub-section (1B) by extending it to cases falling under section 34(1)(a) relate to proceedings started by a notice given under section 34(1)(a) after 1st April, 1956, and that is indicative of the legislative intent to empower the Income-tax Officer to issue notice under section 34(1)(a) at any time after April 1, 1956, in respect of war years also.

16. Mr. Mehta, giving a reply, on behalf of the assessee, to the argument of Mr. Joshi, contended that the extension of the facility to proceedings started under section 34(1)(a) was only in respect

of the assessment year 1947-48, which was not covered by section 34(1A), or the facility extended may be in respect of proceedings started consequent on orders of higher authorities or the Income-tax Tribunal, the High Court or the Supreme Court. We find it difficult to restrict the general language of sub-section (1B) to only such limited field as suggested by Mr. Mehta.

17. Coming to the provisions of sub-section (4), which is introduced by the Amending Act of 1959, it in express terms provides that notice under clause (a) of sub-section (1) may be issued "at any time" notwithstanding that at the time of the issue of the notice the period of eight years which was specified before the amendment had expired. The legislative history shows that the addition of this sub-section was necessitated in view of the difficulty experienced in reaching certain escaped concealed income including those of the war years. As already stated, by July, 1954, no notice under section 34(1)(a) could be issued in respect of the assessment year 1945-46 or earlier years. The introduction of section 34(1A) no doubt enabled the Income-tax Officer to issue notice up to 31st March, 1956. Now, in cases relating to the war years where neither under section 34(1)(a) nor under section 34(1A) a notice had been issued, a question arose whether a notice could be issued under the amended section 34(1)(a) after April 1, 1956, and a view was taken that where the assessee had acquired a vested right, on account of the failure on the part of the Income-tax Officer to issue notice within time, no notice could be issued under the amended section 34(1)(a) and take away the vested rights, the legislature not having provided retrospective operation to the amended section 34(1)(a). It is to get over this difficulty that sub-section (4) has been added to section 34, and further by virtue of section 4 of the Amending Act, 1 of 1959, notices already issued, assessment, reassessment, or settlements made were saved. The addition of sub-section (4) to section 34, therefore, again is indicative of the legislative intent that it has empowered the Income-tax Officer to issue notice after April 1, 1956, under section 34(1)(a) at any time. As already stated, even without reference to the provisions of section 34(1B) or the provisions of sub-section (4) of section 34, we have reached the same conclusion on the clear terms of section 34(1)(a) as it stood after its amendment.

18. The decisions to which reference was made by Mr. Palkhivala are, in our opinion, distinguishable on facts, and are of little assistance to the petitioner. The first decision is*Commissioner of Income-tax v. Narsee Nagsee & Co.* It arose out of the Business Profits Tax Act. Section 11 thereof, which provided for the issue of notice for furnishing a return of business profits, did not prescribed any period within which such notice was to be issued. The section was altogether silent on the point. Another section of the Act, namely, section 14, which provided for assessment of business profits which had escaped assessment or had been under-assessed, prescribed that notice for such assessment should be issued within four years of the end of the chargeable accounting period. A question was raised whether, in the circumstances, the period of limitation of four years mentioned in section 14 would also govern the issue under section 11.

The position obtaining was an anomalous position. The income which had escaped assessment could only be taxed by issuing a notice within a period of four years, while the proceedings for the initial assessment could under section 11 be started by issuing a notice at any time. In these circumstances, it was held that the legislative intent of laying down the period of four years for starting assessment proceedings was indicated in section 14. After stating the principle that the Act must be construed as a whole and the duty of the court must be, as far as possible, to reconcile the various provisions of the statute, the learned Chief Justice, who delivered the judgment of the court, at pages 169-170 of the report, observe :

> "The intention of the legislature was clear that after four years of the end of the chargeable accounting period the assessee should not be proceeded against even if profits had escaped assessment or his profits had been under-assessed or he had obtained a relief to which he was not entitled. Inasmuch as section 11 does not indicate any period of time with regard to the issuing of a notice, would it or would it not be right for us to import into section 11 the consideration which led the legislature to fix a limitation of time for the purpose of issuing a notice under section 14? If we were not to do that, we would arrive at this rather extraordinary conclusion that the legislature, while saving the subject from harassment of proceedings with regard to escaped assessment or under-assessment, permitted that harassment with regard to the very initiation of proceedings after the lapse of four years.... If income which has escaped assessment can only be taxed within four years by reason of section 14, then it must inferentially follow that income must escape assessment at some point of time anterior to the period of four years mentioned in section 14."

19. The learned Chief Justice, also looking at the case from another aspect, held that when no period of time is mentioned in the section conferring statutory powers on an officer, those statutory powers must be exercised reasonably within reasonable times, and it was held that the time-limit mentioned in section 14 could be inferred as reasonable time mentioned in section 11. Now, such is not the case here. Section 34(1)(a) is not silent as regards the period within which the Income-tax Officer has to exercise powers conferred on him thereunder. But, on the other hand, the section is eloquent and in express terms provides that notice could be issued "at any time." The legislature thus having expressed its intention in clear terms, there is, in our view, no room to import the period of limitation mentioned in sub-section (1A) in the provisions of section 34(1)(a). We have already discussed the circumstances under which section 34(1A) was brought under statute book, and shown that the legislature was not prescribing any period of limitation as such, but it was an enabling provision empowering the Income-tax Officer to issue notice notwithstanding that the period of eight years limitation mentioned in section 34(1)(a), as it then stood, had expired. The rule laid down in Narsee Nagsee's case, therefore, has no

application to the facts of the present case.

20. The facts in Bisesar House v. State of Bombay are similar to Narsee Nagsee's case, though it arose under another enactment, namely, the C.P. and Berar Sales Tax Act. Sub-section (2) of section II thereof empowered the Sales Tax Officer to issue a notice for the purpose of initial assessment if he was not satisfied with the return filed by the dealer. The section, however, was silent as to the period of time within which the notice had to be issued. Sub-section (5) of section II deals with the case where the commissioner receives information that the dealer, who is liable to pay tax under the Act, has failed to apply for registration, and the Commissioner was given power to assess such dealer, but the period of limitation was fixed and that period of limitation was any time within three calender years from the expiry of such period during which the dealer was liable to pay tax. Following the ratio in Narsee Nagsee's case, it was held that the period of limitation mentioned in sub-section (5) of section II should be imported into sub-section (2) of section II of the Act. We have already shown that the ratio of Narsee Nagsee's case is not applicable to the facts of the present case.

21. The third case to which reference was made, i.e*., Commissioner of Income-tax v. Narsee Nagsee & Co.* is the same case decided by this court, which was taken in appeal to the Supreme Court. The Supreme Court, by its majority decision, affirmed the decision of this court but on a different line of reasoning. It was held that the notice under section 11(1) of the Business Profits Tax Act must be given within the financial year which commenced next after the expiry of the accounting period or the previous year which was by itself or included the chargeable accounting period in question. If notice was not so given, then the case fell under section 14 of the Act. In this view of the matter, it was held that the notice given in the case which purported to be one under section 11 was in fact a notice under section 14, and, therefore, governed by the period of limitation mentioned in section 14.

22. For the reasons stated above, in our opinion, the petition should fail. The rule is, therefore, discharged with costs.

23. Petition dismissed.