

# **BOMBAY HIGH COURT**

Laxmidas

Vs

Commissioner of Income-Tax

(C Kotval, C.J. V Desai, J.)

14.11.1968

## **JUDGMENT**

**V.S. Desai, J.**

1. This reference arises out of the assessment made upon the assessee firm for the assessment year 1948-49, the previous year for which was the S. Y. 2003 from 25th October, 1946, to the 12th November, 1947.

2. At the material time the assessee was a partnership firm consisting of three equal partners. One of the partners died subsequently in S. Y. 2005 and the firm was dissolved on his death. The original assessment was completed by the Income-tax Officer on the 24th April, 1950, which was after the dissolution of the firm. The total income was determined at Rs. 3,600. The application under section 26A made by the assessee was granted and its registration was renewed for the assessment year in question.

3. Subsequently, the Income-tax Officer received information that the assessee firm had received a sum of Rs. 1,75,000 by telegraphic transfer from Nandlal Bhandari Mills Ltd., Indore, on the 3rd June, 1947. The preliminary enquiry made by the Income-tax Officer on receipt of this information showed that the said amount represented a part of the total sale proceeds of Rs. 1,76,444 in respect of 826 bales of cotton sold by the assessee firm to the Nandlal Bhandari Mills Ltd., Indore, and Rai Bahadur Kanhaiyalal Bhandari Mills Ltd., Indore. In the assessee's account books, which had been produced before the Income-tax Officer at the time of the original assessment, there was an account in the name of one Hastimal Parikh. A credit entry was made in the said account in respect of the said sum of Rs. 1,75,000 received by telegraphic transfer and an equal amount was shown as having been paid to him in cash in Bombay. In view of these facts the Income-tax Officer was of the opinion that there was a case of reopening the assessment under clause (a) of section 34(1). He accordingly issued a notice to the assessee firm and served it on one of its partners on the 23rd March, 1957. In response to the said notice a return was

submitted on behalf of the assessee firm on the 24th April, 1957, and the reassessment was completed on the 18th March, 1958. The reassessment order was served on the assessee on the 25th March, 1958. On the material, which was before him, the Income-tax Officer came to the conclusion that the transaction of the sale of 826 bales of cotton was the assessee's transaction and the amount of Rs. 1,75,000, which was received by the assessee by telegraphic transfer, constituted its own receipt, and since the cost of the 826 bales had not come out of the account books of the assessee, the cost as well as the profits on the transaction constituted the secret profits of the assessee. In the view of the Income-tax Officer the element of profit involved in this transaction was the assessee's profit on the transaction received by it in the account year and consequently taxable under section 4(1) (a) and the part, which represented the cost of the 826 bales, was the accumulated profits of the assessee of earlier years outside the taxable territories, which it had received or brought into the taxable territories during the year of account and, therefore, taxable under section 4(1) (b) (iii) of the Act. The Income-tax Officer, therefore, brought the entire amount of Rs. 1,75,000 to tax. The assessee appealed to the Appellate Assistant Commissioner. Several contentions were raised by it before him. It was contended that the notice of reassessment, which was issued in the name of the dissolved firm, was bad and inoperative in law and, consequently, the reassessment made in consequence of the said notice was also bad and invalid; that the date of the service of the notice and was, consequently, the reassessment made in consequence of the said notice and was, consequently illegal; in view of the proviso to section 34(3) as it stood at the material time. On merits, it was contended that the Income-tax Officer had erred in holding that the transaction of the sale of 826 bales of cotton was not a transaction of Hastimal as alleged by the assessee but of the assessee itself. It was urged that the assessee had duly discharged the burden, which lay on it to prove the source of the receipt of Rs. 1,75,000, and the Income-tax Officer had erred in treating the item as the secreted profits of the assessee. The Appellate Assistant Commissioner did not accept any of the contentions urged by the assessee. He agreed with the view taken by the Income-tax Officer that the assessee was the undoubted owner of the 826 bales of cotton, which were sold by it to the two textile mills at Indore. The amount of Rs. 1,75,000 which it had received from the Nandlal Bhandari Mills by telegraphic transfer, a receipt of the assessee itself and the entire receipt, according to the Appellate Assistant Commissioner was chargeable in accordance with the provisions of section 4(1) of the Income-tax Act. The Appellate Assistant Commissioner accordingly dismissed the assessee's appeal. The assessee took a second appeal to the Income-tax Appellate Assistant Commissioner, were repeated before the tribunal. In addition, it was urged before the Tribunal that the action under section 34(1) (a) was not validly instituted because all the primary facts were before the Income-tax Officer when he made the original assessment and, as such, he was not competent to take recourse to section 34(1) (a) of the Act. It was further complained that the Appellate Assistant Commissioner had relied on certain additional evidence

which had been secured behind the back of the assessee while the appeal was pending and the assessee had no opportunity to meet it. The Tribunal did not accept any of the contention of additional material by the Appellate Assistant Commissioner was not entitled to consider the said part of the evidence and that it had to be left out from consideration. It was, however, of the opinion that, even without taking into consideration the said additional material, there was enough evidence on record to justify the conclusion which the Income-tax Officer and the Appellate Assistant Commissioner had come to, with regard to the merits of the matter. According to the Tribunal the view taken by the departmental authorities that the transaction of 826 bales of cotton was made in fact by the assessee itself and that Shri Hastimal had nothing to do with the sale or the sale proceeds was correct. The Tribunal of the opinion that, since the assessee's books of account did not show the funds from which the said bales of cotton were purchased, it was legitimate to infer that the said funds came from some undisclosed income of the assessee. Since the assessee had offered no explanation with regard to the said receipt, which could be believed, the entire amount constituted the assessee's undisclosed income liable to be brought to tax. It may be, observed the Tribunal, that the sale transaction might have involved some expenses and, consequently, the amount of Rs. 1,75,000 received by the assessee could be treated as a gross receipt of the sale. Since, however, no satisfactory explanation had been given by the assessee with regard to the part that could be deducted by way of expenses, the whole of it had to be treated as the income of the assessee. The Tribunal accordingly confirmed the decision of the departmental authorities and dismissed the assessee's appeal.

4. The assessee applied to the Tribunal under section 66(1) for a reference to this court on a number of questions. On the said application the Tribunal held that only two of the several questions, which had been suggested by the assessee, could be regarded as questions of law arising out of its order. It accordingly drew up a statement of the case and referred to this court the two questions, which were as follows :

"1. Whether the assessment made upon the assessee-firm, Laxmidas & Co., on the basis of the notice issued under the name of the firm, and served upon Chatrabhuj Vithaldas on March 23, 1957, was valid in law, the validity being challenged on the Ground that the firm ceased to exist at the material time of service of notice under section 34 ?

2. Whether the reassessment made upon the assessee on March 18, 1958, was barred by limitation of one year mentioned in the first proviso to section 34(3) ?"

5. When the reference came to this court, a notice of motion was taken out by the assessee praying that the Tribunal should be asked to furnish a supplementary statement on certain other questions of law which arose out by the Tribunal's order and which it had declined to refer. That notice of motion was heard by us on the 27th February, 1967. There were in all four questions

asked by the assessee in the said notice of motion. Two of them, however, were not pressed. Of the other two, one was :

"Whether there was any evidence in support of the conclusion arrived at by the Tribunal that the said sum of Rs. 1,75,000 represented the undisclosed income of the assessee ?"

and the other was :

"Whether the whole sum of Rs. 1,75,000 or only a part thereof which represented the estimated profits of the assessee on the sale of the 826 bales of cotton could be said to be the assessee's income ?"

6. In support of the notice of motion it was argued on behalf of the assessee that while the Income-tax Officer had held that the part of the receipt of Rs. 1,75,000, which constituted the cost of 826 bales, were the accumulated profits of the prior years of the assessee outside the taxable territories, which it had brought into the taxable territories during the year of account and were, therefore, taxable under section 4(1) (b) (iii) of the Act, the other part, which represented the element of profit, was taxable as a receipt of income under section 4(1) (a), the Appellate Assistant Commissioner had not specifically referred to either section 4(1) (a) or section 4(1) (b) (iii), but had stated that the entire amount of Rs. 1,75,000 was taxable under section 4(1). The Tribunal had not accepted either basis and had held that the amount constituted undisclosed income of the assessee and was, therefore, liable to be taxed. It was argued that the Tribunal, therefore, had proceeded on a different basis for the first time in its appeal before it.

7. It was complained by Mr. Kolah, counsel for the assessee, that the conclusion of the Tribunal that the amount of Rs. 1,75,000 represents the income of the assessee from undisclosed sources during the material year of account was nothing but a mere surmise since there was nothing to be found in the Tribunal's order with regard to the said conclusion. It was also complained by him that the Tribunal had failed to consider the question as to what part of the amount was capable of being allowed to the assessee as the expenses of the transaction. It was urged by him that the Tribunal had erred in proceeding on a different basis from that adopted by the departmental authorities even without giving him an opportunity to put before the Tribunal what he could have said about the new basis adopted by it. In view of the submissions urged before us by Mr. Kolah which, we were of opinion, were not without substance, we directed the Tribunal to furnish a supplementary statement of the case raising two other questions, which were sought by the assessee. Those questions were as follows :

"1. Whether there was any evidence in support of the conclusion arrived at by the Tribunal that the said sum of Rs. 1,75,000 represented the undisclosed income of the applicants ?

2. Whether there is any evidence in support of the conclusion that the whole of the said sum of Rs. 1,75,000 representing the sale proceeds of 825 bales of cotton sold and delivered to the mills at Indore, represents income of the appellant or whether only a part thereof, representing the estimated profits of the applicants on the sale thereof, can be said to be the applicant's income ?"

8. The Tribunal accordingly has drawn up a supplementary statement and referred the said two questions to us.

9. Now, when the matter went back to the Tribunal for drawing up the supplementary statement, it was urged on behalf of the assessee that it should be allowed to put before the Tribunal evidence regarding the actual profits that assessee could have made on the transaction of the sale of 826 bales of cotton and desired to produce the material part of the Bombay Cotton Annual 1946-47, No. 28, where the review of the season of the year 1946-47 was given and where also the rates of the deliveries were mentioned. This Annual, according to Mr. Kolah, would show the prevailing prices of Jarilla cotton during the material period and from the said prices the cost of the 826 bales of cotton to the assessee could be estimated. In view of the decision of the Supreme Court in *Keshav Mills Co. Ltd. v. Commissioner of Income-tax* the Tribunal was reluctant to take the additional evidence on record at the stage of making a supplementary statement. It was, however, urged before it that, in view of the observations contained in the judgment of this court on the notice of motion, it was intended by the High Court that the Tribunal should give an opportunity to the assessee to put before it material which might be relevant to be considered in connection with the basis which the Tribunal had adopted against it. In view of the said submission, the Tribunal took the view that, although there were no specific directions in the order of the High Court as a whole, it could said that the High Court had intended that an opportunity should be given to the assessee to put additional material. It, therefore, took the Bombay Cotton Annual 1946-47, No. 28, which had been produced by the assessee, on the record and made it a part of the statement of the case marking it as annexure "G".

10. A notice of motion has been taken out by the department praying that the supplementary statement should be sent back to the Tribunal with a direction to resubmit the same to the High Court after deleting the reference to the Bombay Cotton Annual, No. 28, in its statement. We will dispose of the notice of motion before proceeding to deal with the reference.

11. It is urged by Mr. Joshi on behalf of the Commissioner that, in view of the Supreme Court decision in *Keshav Mills Co. Ltd. v. Commissioner of Income-tax*, it is now clear beyond doubt that no additional evidence can be directed to be taken at the time of drawing up a supplementary statement of the case. Mr. Joshi argues that, in view of the said decision, this court could not have asked for additional evidence to be taken, nor has it, in the order made by it on the notice of motion, given any such directions. The Tribunal, according to Mr. Joshi, therefore, has erred in

allowing the additional evidence to be produced on the record at the stage when it was asked to draw up a supplementary statement of the case.

12. We are in agreement with the submission urged by Mr. Joshi. The supplementary statement was asked for on the two questions, which, in our opinion, arose on the order of the Tribunal and, since they had not been referred to in the original reference made by the Tribunal, we asked them to be drawn up and submitted to us along with the supplementary statement of the case in respect of the same. It is, no doubt, true that in the order that we made on the notice of motion in giving reasons why we felt that the questions arose on the order of the Tribunal, we referred to the submissions urged by Mr. Kolah relating to the same. We also observed that the submissions, which Mr. Kolah had made before us, were not without substance. But those submissions were referred to by us for the purpose of showing that the Tribunal should have referred the two questions to us. The questions, in our opinion, arose on the Tribunal's order and we, therefore, required them to be submitted to us. The questions had to be referred to us on the order of the tribunal as it stood and it was never intended by us that, for the purpose of referring the said questions to us, the Tribunal should consider them itself a fresh on the basis of further evidence allowed to be led by either party. Mr. Kolah, for the assessee, has pointed out that there was no purpose whatsoever in his asking for the question No. 2 unless he has to be allowed an opportunity to produce the material, which would help in determining the cost of the cotton bales. Since the High Court had agreed to his request that the said question should be asked to be referred by the Tribunal, it was implicit that the material for the determination of the said question should be allowed to be brought on record by it.

13. We cannot agree with this submission of Mr. Kolah. Prima facie, on his submission, the question arose and if he wanted it to be referred, he would, in our opinion, be entitled to have it. How the question would be answered would be determined when the question is referred and dealt with by us. The circumstance that there was no adequate material on record, which would supply a proper and adequate answer to the question, did not at that stage permit us to ask the Tribunal to collect further material and supply the same along with the question. In our opinion, therefore, the Bombay Cotton Annual, which has been wrongly taken on record by the Tribunal and the reference to its contents in its supplementary statement, will, therefore, have to be deleted. The notice of motion taken out by the department has prayed that the supplementary statement should be sent back for having deleted therefrom the reference to the Bombay Cotton Annual contained in paras. 9 and 10 of the supplementary statement. Instead of sending the reference back for that purpose, which will involve some further delay in disposing of this reference, which is of 1962, we will treat the said reference to the Bombay Cotton Annual in the supplementary statement as deleted and leave it out of consideration.

14. As to question No. 1 referred to us on the original reference, viz., whether the assessment made upon the assessee-firm on the basis of the notice issued in the name of the firm after its dissolution and served on one of its partners was valid in law, it is covered by a decision of this court in *Commissioner of Income-tax v. Devidayal and Sons*, which follows the Supreme Court decision in *C. A. Abraham v. Income-tax Officer, Kottayam*, relied on by the Tribunal. It was held in the said case that, even after the discontinuance of the business of a firm, either by dissolution or otherwise, the firm can be treated as continuing so far as the assessment of its pre-dissolution income is concerned, and the assessment or reassessment of such a firm, after dissolution, under section 44 of the Indian Income-tax Act, could be made in the same manner under Chapter IV as if it had not discontinued its business. It was also held that the service of notice issued in the name of the firm and served on one of the partners was also a valid and proper notice. In view of the said decision which completely covers the first question, Mr. Kolah, learned counsel for the assessee, has agreed that no useful purpose will be served by re-agitating it before this court. The first question, therefore, will have to be answered against the assessee.

15. As to the second question raised on the original reference, viz., whether the reassessment made upon the assessee on the 18th March, 1958, was barred by limitation of one year mentioned in the first proviso to section 34(3), the relevant dates to be mentioned are these : Notice of reassessment was issued on the 20th March, 1957, and served on the assessee on the 23rd March, 1957. The assessment was completed on the 18th March, 1958, and the assessment order, which was served on the assessee by registered post, was received by it on the 25th March, 1958. Under section 34(3), before its amendment by the Finance Act of 1956, the order of assessment or reassessment in cases falling within clause (a) of sub-section (1) of section 34 had to be made within eight years from the end of the year in which the income, profits and gains were first assessable. The proviso to the said sub-section provides as follows :

"Provided that where a notice under sub-section (1) has been issued within the time therein limited, the assessment or reassessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if such period exceeds the period of eight years..."

16. The contention of the assessee is that, since the notice under section 34(1) (a) had been issued within the time prescribed by section 34(3) but the assessment was made after the expiry of the said period, the proviso applied to the case and, since the assessment had not been made within the period of one year specified in the proviso, it was incompetent and invalid.

17. The contention of the assessee is that, since the notice under section 34(1) (a) had been issued within the time prescribed by section 34(3) but the assessment was made after the expiry of the said period, the proviso applied to the case and, since the assessment had not been made within

the period of one year specified in the proviso, it was incompetent and invalid.

18. Now, in the present case, the notice was served on the 23rd March, 1957, and the Income-tax Officer made the assessment order on the 18th March, 1958. It would, therefore, be seen prima facie that the order was made within the time-limit specified in the proviso. The order, however, was served on the assessee on the 25th March, 1958, which was beyond the period of one year from the date of service of the notice by two days. The argument of the assessee was that the reassessment could not be said to be made by the Income-tax Officer until the assessment order was communicated to, or served on, the assessee and, therefore, in the present case, the assessment could be only taken to have been made on the 25th March, 1958, and not on the 18th March, 1958, when the Income-tax Officer had merely completed the assessment. In support of this argument reliance was placed on behalf of the assessee on the decision of this court in *Petlad Bulakhidas Mills Co. Ltd. v. Raj Singh* in which the expression "one year from the date of the order" occurring in section 33A(2) was interpreted by this court, as meaning one year from the date on which the assessee actually knew of the order or had an opportunity of knowing of the order. The provisions of section 33A(2) provided a period of limitation for an application for revision to be made by the assessee against an order passed by any authority subordinate to the Commissioner and the said period was specified as one year from the date of the order which was sought to be revised. In the context of the provision it was held by this court that the right to make an application in revision was given to the assessee against an order and the right can only be effectively exercised if the party affected had the knowledge, either actual or constructive, of the order. If the assessee had neither actual nor constructive knowledge, it could not be said that there was an order under section 33A(2) against which the assessee could possibly make an application for revision. There are, however, a number of authorities on the interpretation of the expression contained in section 34(3) itself, which have taken the view that the period of time specified in the said proviso is the time up to the date of the communication of the said order or the service thereof on the assessee. In *RM. P. R. Viswanathan Chettiar v. Commissioner of Income-tax the Madras High Court* held as follows :

"The time-limit of four years which sub-section (2) of section 34 (as it then stood) provides is the period within which the Income-tax Officer has to complete one stage of the proceedings, that is, the assessment of the income and the determination of the tax payable. That stage can be completed by the Income-tax Officer himself within that period and it is not necessary that the terms of the order of assessment should be communicated to the assessee within that period."

19. It may be pointed out that in that case the decision in *Muthiah Chettiar v. Commissioner of Income-tax* in which the Madras High Court had interpreted the expression "date of the order

made" in section 33A(2) in the same manner as done by the Bombay High Court in *Petlad Bulakhidas Mills Co. Ltd. v. Raj Singh*, relied on by Mr. Kolah, had been pressed into service on behalf of the assessee. The case was distinguished and it was pointed out that the expression, as a statutory expression, had to be construed with reference to the context in which it had been used in the statute and the interpretation put on the words "order made" in section 33A(2) was in the context of the provision of that statute which was entirely different from the context of section 34(2). It may be pointed out that the decision of this court in *Petlad Bulakhidas Mills Co. Ltd. v. Raj Singh* followed the Madras decision in *Muthiah Chettiar v. Commissioner of Income-tax*. In *Kodidasu Appalaswamy and Suryanarayana v. Commissioner of Income-tax*, the Andhra Pradesh High Court has taken the same view and held and follows :

"If an order of reassessment is made within the period of 4 years from the end of the year in which the income was first assessable, the reassessment would not be time-barred under section 34(3) of the Act of 1922, even though a copy of the order of assessment and demand notice are served upon the assessee only after the expiry of 4 years from the end of the year in which the income was first assessable."

20. Similar views has been taken by the Mysore High Court in *Esthuri Aswathiah v. Commissioner of Income-tax* and by the Calcutta High Court in *Badri Prosad Bajoria v. Commissioner of Income-tax*. In the last mentioned case the decision of this court in *Petlad Bulakhidas Mill Co. Ltd. v. Raj Singh* relied upon on behalf of the assessee, has been referred to and distinguished on the ground that the interpretation of the expression used in section 33A(2) was in the context of the said provision and could have no application to the interpretation of section 34(3). In view of these decisions, the argument urged on behalf of the assessee that the reassessment was bared by limitation could not be sustained. It was pointed out by Mr. Kolah that on the interpretation, which we are accepting, it would be permissible for the Income-tax Officer to ante-date the assessment or reassessment, which he has made beyond the period of limitation prescribed and thus deprive the assessee of the benefit and the advantage intended for by him by the legislature.

21. We are, however, not impressed by the argument advanced by Mr. Kolah. The mere circumstance that in some conceivable cases a possible prejudice is likely to be caused to the assessee would not permit an interpretation to be put on the expression, which does not appear to be consistent either with the language of the provision or the intention of the legislature. Moreover, taking the present case itself, there is not question of there having been any anti-dating or any prejudice having been caused to the assessee. The order of assessment, it may be pointed out, was sent to the assessee by registered post and served on it on the 25th March, 1958. The acknowledgment receipt accompanying the registered packet, which shows that the registered

packet was received by the assessee on the 25th March, 1958, also shows that the packet was put in post on the 22nd March, 1958. Since the order was put in post on the 22nd March, 1958, it was obvious that it must have been made on or before the said date. There can be no doubt, therefore, in the present case that the order was made within a period of one year from the date of service of the notice on the assessee.

22. Mr. Joshi, the learned counsel for the department, has pointed out that, although the question is framed on the basis that section 34(3) and its proviso as it stood before its amendment by the Finance Act of 1956 was not really applicable to the case, as a matter of fact the said provision was not really applicable but the case was governed by section 34(3) as it stood after its amendment by the Finance Act of 1956. The amended sub-section (3) of section 34 did away with the provision of limitation of 8 years for the assessment or reassessment under clause (a) of sub-section (1) of section 34 and the limitation of a period of one year for completing the assessment after the issuance of notice in such cases. This amended provision came into force on the 1st of April, 1956. It is undisputed that at the date when this section came into operation the period of 8 years' limitation for the issuance of a notice under section 34(1) (a) under the unamended provision had not expired. The present notice, which was issued on the 18th March, 1957, and served on the assessee on the 23rd March, 1957, and the reassessment consequent thereof, were not governed by the unamended provision of sub-section (3) of section 34 as it stood prior to the 1st of April, 1956. Mr. Joshi, therefore, says that there is no question of the assessment made in the present case being barred by time on the ground of not having been made within the period of one year from the date of service of the notice. In our opinion, Mr. Joshi is right in the submission which he has made and even for that reason the question will have to be answered against the assessee.

23. Coming now to the first question referred to us on the supplementary statement, viz., whether there was any evidence in support of the conclusion arrived at by the Tribunal that the sums of Rs. 1,75,000 represented the undisclosed income of the applicants, what is required to be considered is whether, in the first place, there was evidence in support of the conclusion that the sum of Rs. 1,75,000 represented the income of the applicants and, in the second place, whether it constituted the undisclosed income of the assessee. It was the assessee's case that the said sum of Rs. 1,75,000 did not pertain to the transaction of the assessee itself but was in respect of the transaction of one Hastimal and had been duly passed over to him. This case of the assessee has been negatived by the Income-tax Officer, the Appellate Assistant Commissioner and the Tribunal also. They have held concurrently that the transaction of the sale of the said 826 bales of cotton to the Indore Mills in respect of which the sum of Rs. 1,75,000 was received by telegraphic transfer from the Nandlal Bhandari Mills Ltd., Indore, was a transaction of the assessee itself and not of Hastimal.

24. Mr. Kolah has argued that the assessee's case that the amount of Rs. 1,75,000 pertained to the transaction of Hastimal and was passed on to him is supported by the entries in the account books of the assessee and has moreover been accepted by Hastimal himself, who has been examined in the reassessment proceedings. Mr. Kolah has argued that the assessee has thus discharged the onus which initially lay upon it to explain the source of this amount of Rs. 1,75,000 and there is no evidence on record, which could effectively contradict the assessee's case. He complains that the findings of the departmental authorities and the Tribunal that the transaction is of the assessee and not of Hastimal is based purely on a surmise or suspicion. He has argued that the positive evidence led by the assessee could not be discarded on the basis of either surmises or suspicion.

25. Now, we are not impressed by this argument of Mr. Kolah. The departmental authorities and the Tribunal have enumerated a large number of circumstances disclosed on the material before the Income-tax Officer, which would justify them in not accepting the case of the assessee. The transaction of the sale of 826 bales of cotton was, prima facie, a transaction between the assessee and the Indore Mills without any evidence of Hastimal being concerned with the same. The information, supplied by principal officer of the Nandlal Bhandari Mills Ltd., which had sent the amount by telegraphic transfer, with regard to the said transaction, was that the mill had purchased 626 bales of cotton from the assessee and another mill had purchased 200 bales. The total sale price of these 826 bales was Rs. 1,76,444-1-0. The other mills had paid to the Nandlal Bhandari Mills their cost of the 200 bales purchased by them and Rs. 1,75,000 had been sent to the assessee by the Nandlal Bhandari Mills Ltd. by telegraphic transfer through the Imperial Bank of India, Indore, and the balance was paid in cash. It was further stated by them that the supplier of the goods was the assessee and they had dealt with the assessee as principal and principal. The sale and purchase of cotton bales was the normal business of the assessee and it had never indulged in transactions on commission basis. In the course of its business, the assessee was purchasing cotton at several places in the Indore State, getting it ginned and pressed into bales and to a large extent bringing the goods to Bombay for sale in the local market. It also indulged in speculative business in cotton on a large scale. It had, however, never entered into any transactions as brokers on behalf of others. The vouchers of sale, which were accepted by the assessee, were also in their own name. Hastimal, on the other hand, was a broker and had known the purchasers himself. There was, therefore, no reason whatsoever why he should have sold his goods to M/s. Nandlal Bhandari Mills through the assessee or why he should have come all the way to Bombay to collect the purchase price in cash from the assessee in respect of the goods sold. It was no doubt true that Hastimal was examined in the reassessment proceedings and in his cross-examination by the assessee had accepted the signature on the ledger book of the assessee as his signature and also his having accepted the money. It would, however, be found that his examination by the Income-tax Officer at Indore was inconsistent with what is stated in the cross-

examination and moreover the answers which he gave to further questions put by the Income-tax Officer, Bombay, to him at the time when he appeared for the cross-examination by the assessee clearly showed that his account was not true and genuine. In his examination by the Income-tax Officer, Indore, Hastimal admitted that he had dealt with Nandlal Bhandari Mills but he had always dealt with them directly. He also admitted that he had no intimate relations with the assessee-firm. When asked whether he remembered having received the sum of Rs. 1,75,000 from the assessee in Bombay, in 1947, his reply was that he could not definitely say whether he had received the amount. In his cross-examination he was confronted with his signature on the cash book of the assessee against the entry showing payment in cash to him of Rs. 1,75,000. He admitted his signature and said that he admitted the receipt of the amount and that it was received by him in the ordinary course of business with the assessee. To the further questions put to him by the Income-tax Officer, however, he was not in a position to give any further information with regard to the transaction in respect of which he was supposed to have received the amount of Rs. 1,75,000. His answers were that since he was working as a cotton broker, the amount might be representing the proceeds of sales of cotton of some party through him or might be pertaining to their own purchases, which he could not recollect. He stated that he had maintained no books of account and, consequently, was not in a position to supply any particulars in respect of the transactions. He does not remember also to whom he had paid Rs. 1,75,000 which he had received from the assessee and stated that it was quite possible that the party who was entitled to receive the amount might have accompanied him to Bombay and might have been paid there only. It would be seen that the evidence given by this person was hardly such as could inspire confidence. Having regard to the other circumstances, which have been already referred to earlier, the departmental authorities and the Tribunal took the view that the assessee's case that the transaction of sale of 826 bales of cotton was the transaction of Hastimal was not true and it was, as a matter of fact, the transaction of the assessee itself as it prima facie appeared.

26. In our opinion, the conclusion arrived at by the departmental authorities and the Tribunal that the transaction was the transaction of the assessee could not, on these facts and circumstances, be said to have been a conclusion based on no evidence. There were quite a few circumstances disclosed on the record of the case relevant to the said conclusion and the contention of the assessee that the said conclusion is erroneous or unjustified cannot be sustained.

27. Coming to the next contention of the assessee, viz., that, even assuming the sale transaction of 826 bales of cotton could be said to be the transaction of the assessee, that by itself would not be sufficient to hold that the receipt of Rs. 1,75,000 represented the undisclosed income of the assessee, it is urged by Mr. Kolah that, if the transaction is taken to be the transaction of the assessee, it is only the profit involved in the transaction that could be regarded as the income of the assessee and not the whole of the sale proceeds.

28. Now, if the price paid by the assesseees for the 826 bales of cotton, which it had sold in the present transaction, had come out of the business account or books of account of the assessee, the contention urged by Mr. Kolah would undoubtedly have been correct. It is, however, clear that the cost price for the said 826 bales did not come out of the books of account of the assessee. Indeed, on the assessee's own case, that the transaction did not belong to it at all, it is not possible to say that the cost price of the 826 bales had come out of the books of account of the assessee. It is clear, therefore, that the amount invested by the assessee in the purchase of 826 bales of cotton had not come out of the business of the assessee but out of some secret funds held by it. That being the position, not only the element of profit involved in the transaction of sale, but the cost of the transaction itself constituted secret profits of the assessee or, in other words, its undisclosed income. The argument of the learned counsel, therefore, that only the profit involved in the transaction would pertain to the income and not the cost part of it, could not be sustained in the present case.

29. The next question to be considered is that, even assuming that the entire amount of Rs. 1,75,000 could be treated as the undisclosed income of the assessee, whether such a finding would be sufficient to make it taxable during the relevant assessment year ?

30. It is argued by Mr. Kolah that a mere conclusion that a receipt constitutes undisclosed income of the assessee would not be sufficient to tax it unless it is further shown that the undisclosed income pertains to the year of account and is, therefore, taxable in a given assessment year. Mr. Kolah points out that the Income-tax Officer proceeds on the basis that while the profit part involved in the transaction was the income of the year of assessment assessable under section 4(1) (a), the cost part consisted of accumulated profits in prior years outside the taxable territories received or brought into the taxable territories during the year of account. According to the Income-tax Officer, therefore, the cost part of the transaction, though it constituted secret profits of the assessee, the said secret profits did not pertain to the year of account but to prior years. The appellate Assistant Commissioner, according to the learned counsel, appears to be of the same view, though he had not expressly referred to either section 4(1) (a) or section 4(1) (b) (iii), but has merely stated that the amount was assessable under section 4(1). Mr. Kolah says that the Tribunal, though it disagreed with this basis of the Income-tax Officer and the Appellate Assistant Commissioner and has held that it is the undisclosed income of the assessee, has nowhere stated that it is the undisclosed income of the year of account and not the accumulated income of the prior years outside the taxable territories as held by the Income-tax Officer. Mr. Kolah's argument is that, in the absence of there being any finding that the income was the undisclosed income of the year of account or in the absence of there being any evidence in support of such a finding, the Tribunal could not treat it as the undisclosed income assessable to tax during the year of account. Mr. Kolah has, therefore, argued that the whole amount of Rs.

1,75,000 could not be treated as the undisclosed income liable to tax and question No. 2, therefore, has got to be answered in favour of the assessee.

31. Now, on the facts, all the authorities are agreed that the entire amount of Rs. 1,75,000 was the receipt of the assessee itself, which constituted its secreted profits. All the authorities have also agreed that the explanation given by the assessee with regard to the said receipt is not acceptable or believable. In these circumstances it has been held in a number of cases that it will be permissible for the Income-tax Officer to draw an inference that the income is the undisclosed income of the assessee liable to be taxed in the year in which it is disclosed. All the authorities have come to the conclusion that the income is liable to taxation in the current year. The Income-tax Officer, no doubt, was of the opinion that the inference, which he was entitled to draw that the income was taxable during the course of the year, could be drawn on the basis that it constituted the accumulated profits outside the taxable territories and brought into the taxable territories during the year of account. The tribunal pointed out that it was the assessee's undisclosed income of the year of account and, in the absence of any explanation given by the assessee to hold to the contrary, it was not necessary for the Income-tax Officer or the Appellate Assistant Commissioner to regard a part of it as falling under section 4(1) (a) and a part as falling under section 4(1) (b) (iii). On the facts, viz., that the assessee was in receipt of an income and that he had failed to account for the source of the income, the legal inference which was permissible was that constituted the undisclosed income of the current year and if the said inference was to be rebutted it was for the assessee to produce evidence to that effect. The Tribunal has pointed out that, in view of the stand which the assessee had taken, viz., that the transaction did not belong to it all, it was impossible for the assessee to give any other explanation to shown that, although it might constitute the undisclosed income of the assessee, it was not taxable in the year of account but in some other years. The tribunal, therefore, held that the inference permissible to be drawn was sufficient to come to the conclusion that the income of the assessee was taxable in the current year.

32. Now, the view taken by the Tribunal appears to be supported by a number of authorities. Thus, in *Kale Khan Mohammad Hanif v. Commissioner of Income-tax* in which certain cash credits in the account of the assessee, which had been overlooked in the original assessment, were detected and in the reassessment proceedings the assessee's explanation that they did not represent income was rejected, and they were brought to tax as representing income from undisclosed sources, it was observed by the Supreme Court as follows :

"..... the onus of providing the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions

of the Income-tax Act. In the absence of such proof, the Income-tax Officer is entitled to treat it as taxable income."

33. In *A. Govindarajulu Mudaliar v. Commissioner of Income-tax* it was held as follows :

"Where an assessee fails to prove satisfactorily the source and nature of certain amounts of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature, and where the explanations of the assessee as regards the amounts shown in the account books of a firm of which he was a partner, as credits from him, were rejected as untrue, it was open to the Income-tax Officer and the Appellate Tribunal to hold that they represented the concealed income of the assessee."

34. It was argued in the case that, although the assessee failed to establish the case put forward by him, it did not follow as a matter of law that the amounts in question were income received or accrued during the previous year and that it was the duty of the department to adduce evidence to show from what source the income was derived and why it should be treated as concealed income. Dealing with this argument, the Supreme Court observed :

"Now the contention of the appellant is that assuming he had failed to establish the case put forward by him, it does not follow as a matter of law that the amounts in question were income received or accrued during the previous year, that it was the duty of the department to adduce evidence to show from what source the income was derived and why it should be treated as concealed income. In the absence of such evidence, it is argued, the finding is erroneous. We are unable to agree. Whether a receipt is to be treated as income or not, must depend very largely on the facts and circumstances of each case. In the present case the receipts are shown in the account books of a firm of which the appellant and Govindaswamy Mudaliar were partners. When he was called upon to give explanation he put forward two explanations, one being a gift of Rs. 80,000 and the other being receipt of Rs. 42,000 from business of which he claimed to be the real owner. When both these explanations were rejected, as they have been, it was clearly open to the Income-tax Officer to hold that the income must be concealed income. There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature. The conclusion to which the Appellate Tribunal came appears to us to be amply warranted by the facts of the case."

35. In *Commissioner of Income-tax v. M. Ganapathi Mudaliar* it was observed as follows :

"Once it is held that an amount credited in the account books of the assessee is the income of the assessee it is not necessary for the department to locate its exact source."

36. It would follow from these decisions that, one the receipt having been shown to be of the income of the assessee and his explanation with regard to its source and nature not having been accepted as satisfactory, the legal inference permissible to be drawn would be that the receipt constituted the undisclosed income of the assessee liable to be taxed in the year of account unless the said inference was rebutted by the assessee by showing that the receipt was either not income or that, if it was income or that, if it was income, it was not taxable during the year of account.

37. In the present case the Tribunal's conclusion that the amount of Rs. 1,75,000 constituted the undisclosed income of the assessee liable to be taxed was, therefore, correct and question No. 1 raised on the supplementary statement will have to be answered against the assessee.

38. Coming now to question No. 2, in view of our answer to question No. 1, it would follow that the whole sum of Rs. 1,75,000 representing the sale proceeds of 826 bales of cotton represented the income of the assessee and not only the part thereof, which represented the estimated profits of the assessee.

39. Mr. Kolah's submission was that, although the transaction can be treated as his and the sum of Rs. 1,75,000 could be treated as his receipt, the whole of it did not constitute the income or at any rate the undisclosed income of the year of account, but only the profit involved in the transaction of sale itself was the undisclosed income of the year of account. If there was any evidence put before the authorities by the assessee to substantiate the said submission, the position would have been different. As we have already pointed out, the assessee took a stand that the transaction was not his transaction at all. He did not produce any evidence to show that, even assuming that the transaction was taken to be his transaction, a part of the receipt of Rs. 1,75,000 could not be treated either as an income or assessable income of the assessee. In view of the decisions, to which reference has already been made that onus was on the assessee and, in the absence of his establishing the same, the legal inference was permissible that the entire amount was the undisclosed income liable to be taxed in the year of account.

40. In our opinion, therefore, the second question raised on the supplementary statement also must be answered against the assessee.

41. In the result, therefore, question No. 1 raised on the original reference is answered in the affirmative and question No. 2 in the negative, and question No. 1 raised on the supplementary statement is answered in the affirmative. Question No. 2 raised on the supplementary statement is answered in the affirmative with regard to the whole of the amount of Rs. 1,75,000.

42. The assessee will pay the costs of the Commissioner.

43. The notice of motion taken out by the department for deleting the reference to the Bombay Cotton Annual 1946-47, No. 28, is allowed. There will be no order as to costs.

