PATNA HIGH COURT

Bhimraj Panna Lal

Vs

Commissioner of Income-tax

Misc. Judl. Case Nos 653, 654 and 655 of 1954

(Ramaswami, C.J and Raj Kishore Prasad, J.)

24.04.1957

JUDGMENT

Raj Kishore Prasad, J.

1. These three references are under Section 66 (2) of the Indian Income-tax Act, 1922 (11 of 1922), and, as a common question of law arises in each of these three cases, which are in respect of different years of assessment, they have been heard together.

2. On the requisition of the High Court under Section 66 (2) of the Act, the Income-tax Appellate Tribunal has stated a combined case in all the three cases and referred it to the High Court to determine the common question of law raised thereby.

3. The question of law raised in these cases raises the validity of assessment of a certain sum of money, the amount of which varies in each case, to income-tax in the hands of the assessee under Section 34 of the Income-tax Act.

4. In M. J. C. No. 653, the assessment year is 1944-45, and the corresponding accounting year is 1999-2000 Sambat Diwali year ending on the 2nd July, 1943. The original estimate was made by the Income-tax Officer on the 15th June, 1945, under Section 23 (3) of the Act, on a sum of Rs. 93,887, which was reduced on appeal by the Appellate Assistant Commissioner to Rs. 91,887. Subsequently, the Income-tax Officer came to know certain facts, which will be mentioned hereafter, about the assessee carrying on business with M/s. Mangalchand Basantilal of Khurja in Aligarh District. The Income-tax Officer, after satisfying himself and believing that the assessee's income had escaped assessment, started a proceeding under Section 34, with the previous sanction of the Commissioner on the 10th December, 1949, and, after the statutory notices under Section 22 of the Act assessed the assessee to income-tax on the 2nd August, 1950, on a sum of Rs. 40,000, which was reduced by the Appellate Assistant Commissioner on the 4th April, 1952, to Rs. 32,000, which, also, however, was further reduced by the Tribunal on the 31st March, 1951, to Rs. 28,000. The question of law, which has been referred to the High Court in this case, is as below :

"Whether in the circumstances of the case the assessment of a sum of Rs. 28,000 to

income-tax in the hands of the assessee is legally valid under Section 34 of the Income-tax Act"?

5. In M. J. C. No. 654, the assessment year is 1945-46, the corresponding accounting year of which ends in July, 1944. The original assessment was made by the Income-tax Officer on the 31st August, 1949, under Section 23 (3) of the Act at Rs. 77,034, but it was reduced on appeal to Rs. 46,854. In this case also, subsequently the Income-tax Officer came to know of the facts stated earlier, and, therefore, he on being satisfied started a proceeding under Section 34, and, after a notice under Section 22, assessed the assessee on the 2nd August, 1950, on a sum of Rs. 40,000, which was reduced by the Appellate Assistant Commissioner on the 10th February, 1952 to Rs. 30,000, which was further reduced by the Tribunal on the 31st March, 1953 to Rs. 26,000. In this case also, the question of law is the same, but the amount involved is Rs. 26,000.

6. In M. J. C. No. 655, the assessment year is 1946-47, the corresponding accounting year of which ended in July, 1945. The original assessment made by the Income-tax Officer on the 31st August, 1949, under Section 23 (3) was on Rs. 65,833, which was reduced on appeal to Rs. 65,011 which was affirmed on appeal by the Tribunal. In this case also, the Income-tax Officer subsequently on knowing the facts stated above and on being satisfied started a proceeding under Section 34 of the Act, which resulted in an assessment by the Income-tax Officer on the 3rd August, 1950, on a sum of Rs. 15,000, which was affirmed by the Appellate Assistant Commissioner on the 3rd June, 1952, but it was reduced by the Tribunal on the 31st March, 1953 to Rs. 12,000. The question of law referred in this case also is the same, but the amount involved is Rs. 12,000.

7. In each of these cases, the Tribunal refused to refer the case on the 9th November, 1953, under Section 66 (1) of the Act to the High Court. The assessee, therefore, moved the High Court under Section 66 (2) and the High Court on 4-3-1955 required the Tribunal to state a case and refer it to the High Court on the question of law referred to before.

8. The circumstances in which the assessment under Section 34 of the Act came to be made against the assessee may briefly be stated here. After the original assessment, the Income-tax Officer got definite informations that the assessee was carrying on business with M/s. Mangalchand Basantilal of Khurja in the District of Aligarh in different names that he had remitted there certain amount from Ranchi, that M/s. Mangalchand Basantilal had sent a draft of Rs. 2,500 to Amritsar on his behalf and on his instruction and that he had earned a profit in Matar (peas) business. The Income-tax Officer, therefore, obtained information’s on the point from the Income-tax Officer, Aligarh, who furnished him with the copies of the assessee's account with M/s. Mangalchand Basantilal for all the relevant years. Before the Income-tax Officer, the assessee admitted that he did business through M/s. Mangalchand Basantilal, and that he had never shown this business in his account books. As these transactions were not recorded in the account books of the assessee, an enquiry was made from him for this omission by the Income-tax Officer. The reasons given by the assessee, for not incorporating this account in his account books, were that the business at Khurja was done out of fund of zamindari estate. The Income-tax Officer held that there was no reason for omitting the business transaction from the assessee's business account books, and, further that since there were admitted omissions in the account books of the assessee, it was expected that he had done more such transactions with other parties

and, therefore, he estimated the income from these undisclosed business transactions, as stated earlier, under Section 34 of the Act.

9. When the assessment against the assessee under Section 34 of the Act came up finally before the Tribunal, it stated as follows :

> "It is admitted that the transactions with Mangalchand Basantilal had not been recorded in the books produced by the assessee. The only inference that can be drawn from this is that the assessee had various business transactions, which he did not record in his accounts. Assessee did not produce any accounts or evidence to establish that these transactions which he admittedly did not record in his books did not result in a profit. The only conclusion that the Income-tax Officer could come to on the facts before him is that the assessee had various business transactions not recorded in his books and that these transactions resulted in a profit. We consider, therefore, that the Income-tax Officer was perfectly justified in taking proceedings under Section 34 of the Act for these three years".

10. Mr. S.N. Datta, who appeared for the assessee in each case, has not disputed the quantum of assessment. His argument is twofold, first, that the assessed income cannot be said to be income chargeable to income-tax having "escaped assessment" within the meaning of Section 34 of the Act, and, secondly, that, in any event, there was no material to support the assessment under Section 34 of the Act in the years under assessment.

11. The point raised on this reference, therefore, involves the construction of Section 34 (1) of the Act, as amended by Act 48 of 1948, which came into effect on the 30th March, 1948. The amended Section 34 (1), without the Proviso and the Explanation, is in the following terms :

> "34. Income escaping assessment.-(1) If -
> (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 under-assessed, 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 (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 within eight years 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 reassess 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 issued under that sub-section :

Provided that

* * * * *

12. On the language of Section 34 (1), therefore, if the Income-tax Officer decides to start a proceeding under Section 34 of the Act, he is required to give a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 22 of the Act, and, thereafter, he may proceed to assess or reassess such income, profits or gains, and, to such a case the provisions of the Act shall, so far as may be, apply accordingly as if the notice were a notice issued under Section 22 (2). When the assessee is given such a notice to show cause why the tax should not be raised because of an item having "escaped assessment", he is entitled to show that, as a matter of fact, there has been no omission and that the original rate is correct. In compliance with the notice under Section 34, the assessee is required to file a return of his income, and, if he files a return, but makes default in producing the account books called for under a subsequent notice under Section 22 (4), an assessment can be made under Section 23 (4) of the Act. The procedure under the notice referred to in Section 34 is to be, as far as may be, the same as would be applied in case of an original notice under sub-section (2) of Section 22. The failure to make any return at all as required by Section 22 (2), or to produce the account books, etc. called for as required by Section 22 (4) would have to be dealt with under sub-section (4) of Section 23, and, therefore, the other provisions of sub-section (4) of Section 23 will apply to the proceeding under Section 34 of the Act: *Kedarnath Kesariwal v. Commissioner of Income Tax, Bengal*[1], (A).

13. This Bench has recently held in *Commission of Income-tax, B. and O. v. Pratap Singh Bahadur*[2], that the assessee is bound in response to the notice to file a return; and that it is not a matter of option on the part of the assessee, for Section 28 (1) (a) of the Act states that a penalty will be imposed on the assessee if he fails to furnish the return in response to the notice, and, further that moreover under Section 23 (4) of the Act the assessee will render himself liable to assessment by the Income-tax Officer to the best of his judgment, and, therefore, the filing of return is not a matter of option, but it is a matter of obligation on the part of the assessee.

14. It is not necessary to issue a separate notice under Section 22 (2) also when a notice under Section 34 of the Act is issued. The requirements of a notice under Section 22 (2) of the Act may be included in a notice under Section 34. A Division Bench of this Court in *Raghu Karson v. The Commissioner of Income-tax, B. and O*[3]., held that where the Income-tax Officer came to the conclusion that the assessee had, in fact, books of account, which were not produced in accordance with a notice under Section 22 (4) of the Act, he was entitled to make an assessment to the best of his judgment under Section 23 (4). This case was followed by the Lahore High Court in *Vir Bhan, Bansi Lal v. Commissioner of Income Tax, Punjab*[4],

15. In a proceeding under Section 34, however, the Income-tax Officer is only dealing with the extra income, which has not been assessed to income-tax. This section imposes no charge on the subject, but deals with the machinery of assessment. No jurisdiction is given to the Income-tax Officer by Section 34 to make a new assessment for the purpose of taking the whole of that assessment under the Act. Section 34 does not require the whole thing to be reopened and every item under which income-tax is charged to be considered afresh, and, a fresh assessment levied. In one sense, of course, he must fix the taxable income to enable him to fix the rate, but he is not bound to re-open the items which are not in question, or which have become final, and start proceedings again. He is only bound to confine himself to the particular item which has been omitted. Where, therefore, the rate is sought to be raised under Section 34 of the Income-tax Act, an Income-tax Officer is not bound to determine afresh the correct taxable income of the assessee: *P. L. M.D.L. Palaniappa Chettiar v. Commr of Income-tax, Madras*[5]*,* which was followed by the Allahabad High Court in *In re Seth Kasinath Bagla*[6]

16. In considering the scope of Section 34 of the Act, Lord Normand, who delivered the opinion of the Board, in *Commr of Income-tax Bengal v. Mahaliram Ramjidas*[7]*,* observed :

> "The section, although it is part of a taxing Act, imposes no charge on the subject, and deals merely with the machinery of assessment. In interpreting provisions of this kind the rule is that construction should be preferred which makes the machinery workable, ut res valeat potinus quam pereat."

17. In this Privy Council case, therefore, it was held that :

> "To enable the Income-tax Officer to initiate proceedings under Section 34 it is enough that the Income-tax Officer on the information which he has before him and in good faith considers that he has good ground for believing that the assessee's profits have for some reason escaped assessment or have been assessed at top low a rate. The Income-tax Officer is not required by the section to convene the assessee or to intimate to him the nature of the alleged escapement, or to give him an opportunity of being heard, before he decides to operate the powers conferred by the Section."

17-a. Having thus ascertained the scope and procedure of a proceeding under Section 34 of the Act, I will now proceed to consider the arguments presented for determination on behalf of the Assessee.

18. Mr. Dutt contended, in the first instance, that the burden of proof was on the income-tax authorities for showing that the income has "escaped assessment", and, that income cannot be held to have "escaped assessment" merely on the *ipse dixit* of the Income-tax Officer, and, therefore, it is for him to establish to his own satisfaction that the income has "escaped assessment", and, it is not for the assessee to prove, that the income has "escaped assessment. In support of his contention, he has relied on *Commissioner of Income Tax, Bombay v. Gopal Vaijnath Manohar*[8]*,* and, *Messrs. Chimanram Motilal v. Commissioner of Income Tax (Central) Bombay*[9]*,*

19. It is true that it is for the Income-tax Officer to establish for his own satisfaction on the assessment, and subsequently before any Appellate Tribunal, that income has "escaped assessment". No doubt, therefore, the burden of proving that the income had "escaped assessment" within the meaning of Section 34 of the Act was on the Income-tax authorities, but, in my opinion, here they have clearly discharged it.

20. The question, in this case, really is : whether the Income-tax Officer has proved that any income "escaped assessment" ? In my opinion, on the admission of the assessee himself and on the evidence, which was before the Income-tax authorities, as I shall presently show, the Income-tax Officer could come only to the conclusion that income had "escaped assessment", and, that the assessee failed "to disclose fully and truly all material facts necessary for his assessment" in each of the years under assessment.

21. It is now well settled that the income-tax assessment proceedings commence with the issue of a notice; but, the issue or receipt of such a notice is not, however, the foundation of the jurisdiction of the Income-tax Officer to make assessment, or of the liability of the assessee to pay the tax. The liability to pay the tax is founded on Sections 3 and 4 of the Income-tax Act, which are the charging sections. Section 22 and others are the machinery sections to determine the amount of tax : *Chatturam v. Commissioner of Income Tax, Bihar*[10], which has been approved by the Supreme Court in *Chatturam Horilram Ltd v. Commissioner of Income Tax, B. and O*[11].

22. The question then, that arises, is : Whether the income though chargeable to tax in the year can be said to have "escaped assessment" in the relevant year within the meaning of Section 34 of the Act ? The argument of the learned counsel for the assessee is that since assessment proceedings had, in fact, been taken during the years under assessment, it cannot be said that the income "escaped assessment", and, as such, it was not assessable to income-tax on a proceeding under Section 34 of the Act.

23. The expression "escaped assessment" occurring in Section 34 (1) of the Act has not been defined in the Act anywhere. In *Rajendra Nath Mukherjee v. Commissioner of Income Tax*[12], Lord Macmillan, in delivering the opinion of the Board, observed : The appellants however submit that this is a case of income escaping assessment within the meaning of Section 34. Assessment, they argue, is a definite act, indeed the most critical act in the process of taxation If an assessment is not made on income within the tax year then that income, they submit, has escaped assessment within that year, and can be subsequently assessed, only under Section 34 with its time limitation. This involves reading the expression 'has escaped assessment' as equivalent to 'has not been assessed'. Their Lordships cannot assent to this reading. It gives too narrow a meaning to the word "assessment" and too wide a meaning to the word 'escaped'. That the word 'assessment' is not confined in the statute to the definite act of making an order of assessment appeals from Section 66 which refers to "the course of any assessment' ".

24. This Privy Council case was considered by the Supreme Court in AIR 1955 SC 619, and, his Lordship Jagannadhadas, J., who pronounced the unanimous judgment of the Supreme Court, although his Lordship did not decide what exactly constituted "escaped assessment", observed :

"Here again, it is unnecessary to lay down what exactly constitutes escapement from assessment". For the purpose of the present case, it appears to us sufficient to say that, where earlier assessment proceedings had in fact been taken but failed to result in a valid assessment owing to some lacuna other than that attributable to the assessing authorities, notwithstanding the charge ability of income to the tax, it would be a case of chargeable income escaping assessment and not a case of mere non-assessment of income-tax".

25. We must, accordingly, examine what indications there are in the Act, which will show the precise connotation of the words "escaped assessment" in Section 34 of the Act. That section, although it is a part of a taxing Act, is not a charging section, but a machinery section; and, a machinery section should be so construed as to effectuate a charging section, and, in interpreting the provisions of this kind, the rule is that that construction should be prepared which makes the machinery workable. Section 34 is intended to vesting in the Income-tax Officer a power to amend the assessment, when he has reason to believe that any income, profits or gains chargeable to income-tax have "escaped assessment" for any year, and, in such a case he may proceed to assess or re-assess such income, profits or gains, or, recompute the loss or depreciation allowances. Section 34, in my opinion, should, therefore, be construed along with the other sections of the Act.

26. In the ordinary course, an order made after investigation by a particular officer should not at his sweet-will and pleasure be allowed to be revised. There must in my view, exist something, either suppressed by the assessee or a fact or a point of law, which he in-advertantly or otherwise omitted to consider before he can proceed to act under Section 34 of the Act. It is only in this case that the Income-tax Officer or his successor, acting in the position, has the right to revise the order. A mere change of opinion on the same facts and law is not covered by this section. The power to be exercised under Section 34 (1) is by its very nature with reference to the state of affairs in future; and, a finding that any income has escaped assessment for a particular year could be reached only on the basis of facts, which must arise subsequent to the chargeable accounting period, but which were in existence during the chargeable accounting period. All that clause (a) of Section 34 (1) requires is that the Income-tax Officer must have reason to believe that as a result of the assessee's failure to make a return or to disclose fully and truly all material facts and the full particulars of his income, the income, has wholly or partially escaped assessment. Clause (b) of Section 34 (1) also requires that the Income-tax Officer must have reason to believe in consequence of information in his possession, that income has wholly or partially escaped assessment. All that clause (b) of sub-section (1) requires is that the Income-tax Officer must have in his possession information, and, in consequence of such information, he must have reason to believe that income has escaped tax. Further, where the assessee has failed to make a return of his income, or to disclose fully and truly all material facts necessary for his assessment leading to a reasonable belief that his income has wholly or partially escaped, assessment, clause (a) comes into operation, and, that clause does not require any other condition, to be fulfilled. Under the amended Section 34, the Income-tax Officer cannot institute a fishing investigation or inquiry merely with the object of finding out facts which would entitle him to reopen a past year's assessment; but if in the course of the assessment of a subsequent year some information comes into his possession, from which he has reason to believe that income has escaped assessment, he would be entitled to proceed under this section.

27. To enable an Income-tax Officer to initiate proceedings under Section 34, it is enough that the Income-tax Officer, on the information which he has with him and in good faith considers that he has a good ground of believing that the assessee's profit has, for some reason, escaped assessment or been assessed at too low a rate, so that a notice can be served if the income-tax Officer is *bona fide* of opinion that the income has escaped assessment. An action under Section 34, therefore, can be taken with reference to events which happened subsequently, those events having relation to the facts on which the original assessments had been made.

28. In my judgment, in order to hold that income may have "escaped assessment," there must have been either some fresh facts brought to the notice of the income-tax authorities, of some change in law which were in existence during the chargeable accounting period, but which were not brought to the notice of, or taken notice of by the income-tax authorities during the chargeable accounting period, but which arose subsequent to it having relation to the facts on which the original assessments had been made.

29. Section 34 (1), before its amendment in 1948, contained the words "If in consequence of definite information which has come into his possession the Income-tax Officer discovers". My Lord the Chief Justice, Ramaswami, J., as he then was, in considering the meaning of the words "definite information" and "discovers" occurring in Section 34, as they stood before its amendment in 1948. in *Firm Jitanram Nirmalram v. Commissioner of Income Tax. B and O*[13]*,* observed :

> "It is manifest that the phrase 'definite information' in Section 34 cannot be construed in a universal sense; its meaning must depend and must necessarily vary with the circumstances of each case. It is necessary that the information should be more than mere gossip or rumour. But it need not be information of fact nor need it be information of actual escape of tax. So far as the word 'discovers' in Section 34 is concerned it only requires that the Income-tax Officer should have formed an honest and reasonable belief upon material which could reasonably support such belief. In the nature of things, it cannot amount to a conclusion of certainty.

30. Recently the Supreme Court also in *India United Mills, Ltd. v. Commr. of E. P. Tax, Bombay*[14]*,* while considering the word 'discovers' in Section 15 of the Excise Profits Tax Act, 1940, observed :

> "Considering the question on the language of Section 16 of the Act, it is difficult to find therein any support for the contention, which has been urged on behalf of the appellant. It is general in its terms, and would apply whenever there is, as a result of definite information, a finding by the Excess Profits Tax Officer that chargeable profits had escaped assessment, or had been under-assessed or had been the subject of excessive relief. There is nothing in the wording of the section which would exclude its application, when that finding is based on facts which come into existence subsequently.

It is argued by Mr. Kolah that the word 'discovers' can aptly be used only when the facts on

which the discovery is made were in existence during the chargeable accounting period. In its natural and ordinary sense, the word 'discovers' carries no such limitation. The meaning given to it in the Oxford English Dictionary is "the finding out or bringing to light that which was previously unknown.' (Vol. 3, page 433). It will therefore be correct to say that that when a person comes to know of a fact of which he had no previous knowledge he discovers that fact, whether his want of knowledge is due to its not having been in existence during the material period, or to its having been unknown to him even though it might have been in existence. The word thus being one of wide import, what meaning it bears in any particular enactment must depend on the context.

31. By the amendment in 1948, the words "definite information" and "discovers" have been deleted, and have been substituted by the words "has reason to believe" in Section 34 (1), and, by the words "in consequence of information in his possession" in clause (b) of Section 34 (1). These words in the amended Section 34 (1) suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds, and that the Income-tax Officer may act under this section on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The powers under the present section are wide, but they are not plenary; the words of the section are "reason to believe", and not "reason to suspect."

32. Applying the aforesaid principles to the present case, I have no doubt in my mind that the proceeding started under Section 34 and the assessment made thereunder are
both in accordance with the provisions of the Act and are perfectly valid. The Income-tax Officer, in the present cases, had fortunately definite informations, which have been mentioned earlier, on which he proceeded to act under Section 34. The fact that the information which the Income-tax Officer had before him, and, on the basis of which, in good faith, he considered that he had good grounds for believing that the assessee's profits have, for some reason, escaped assessment in the years of assessment is supported by the admission of the assessee himself that he had business transaction with the firm in Aligarh.

33. In these circumstances, I am unable to accept the contention of Mr. Dutt that the income assessed under Section 34 had not "escaped assessment", and that, therefore, there was no justification to initiate proceedings under Section 34 of the Act.

34. Mr. Dutt then argued that, at any rate, there was no material before the Income-tax Officer to support the assessment under Section 34 of the Act in the years under assessment. The materials which were before the Income-tax Officer and which have been accepted by the Tribunal are : (1) the admission of the assessee that he had transactions with M/s. Mangalchand Basantilal of Khurja in Aligarh District; (2) the assessee admitted that the said transaction with M/s. Mangalchand Basantilal had not been recorded in the books of account produced by him; and (3) the assessee did not produce any accounts or evidence to establish that these transactions with M/s. Mangalchand Basantilal, which he admittedly did not record in his books, did not result in a profit. It will further appear from the order of the Appellate Assistant Commissioner that the assessee was doing business at Khurja in different names, and, he admitted that the business done in the names of Bhimarj Pannalal, Dayanand Modi and Murarilal Modi, was his own business. The letter of the Income-tax Officer, Aligarh, also supported the information which the Income-tax Officer got before starting the proceeding under Section 34. On these materials, therefore, the Tribunal stated that the fact that the assessee admitted that the transaction with M/s.

Mangalchand Basantilal had not been recorded in the books produced by the assessee clearly led to the only inference, which could be legitimately drawn from this, is that the assessee had various business transactions which he did not record in his account books. The Tribunal, therefore, found that the only conclusion, on these materials which the Income-tax Officer could come to, was that the assessee had various business transactions not recorded in his books, and that these transactions resulted in a profit, and, therefore, the Income-tax Officer was perfectly justified in taking out proceedings under Section 34 of the Act for these three years. It should be remembered that the assessee in response to the notice under Section 34 read with Section 22 (2), no doubt, filed a return, but he did not produce his account books which were required by the Income-tax Officer to be produced before him under Section 22 (4), and, in these circumstances, the Income-tax Officer was perfectly justified in making the best judgment assessment under Section 23 (4) of the Act.

35. Mr. R. J. Bahadur, in support of the order of the Income-tax Officer under Section 34 of the Act, submitted that the mere fact that the assessee admitted only one transaction with M/s. Mangalchand Basantilal was quite sufficient for the Income-tax Officer to conclude from this one incident only that there must have been other similar transactions, which had been suppressed by the assessee, and, as the assessee had failed to produce his account books, the Income-tax Officer was justified in making his best judgment assessment under Section 23 (4) of the Act. In support of his contention, he relied on *Franks (Risette) (King Street). Ltd. v. Dick*[15]. (O). In this case, Dackwerts, J., at p. 108, observed :

> "It is perfectly true that this is only one incident and the one incident only, which the Inspector of Taxes was able to establish before the Commissioners; but it was open to the Commissioners, as it seems to me, to conclude that this was not merely an isolated transaction but showed the kind of thing which was going on and they were, in my view, entitled to come to the conclusion to which they did come from this incident, though one only, that there must have been other similar incidents and, therefore, that the accounts of the Company could not be relied upon to show the whole of the trading profit of the Company.

36. I respectfully agree to the above statement of law enunciated by his Lordship. Here, it is not a case of no evidence or material but here it is a case of one piece of admitted evidence and suppression of evidence or material to the contrary by the assessee. In these circumstances, the only course left open in law to the Income-tax Officer was to make the best of his judgment assessment under Section 23 (4) of the Act on the basis of this one admitted isolated transaction.

37. In my judgment, therefore, the assessment under Section 34 of the Act made by the Income-tax Officer, as subsequently modified and upheld by the Tribunal, cannot be assailed on any grounds urged on this reference.

38. I would, accordingly, answer the question in each of the three references in the affirmative against the assessee and in favour of the Department. The assessee will pay a consolidated cost of Rs. 300 to the Income-tax Department for all the three references

Ramaswami, C.J.

39. I agree.

References answered.

Cases Referred.

[1]4 ITC 407 (FB)
[2] AIR 1957 Pat 61
[3]5 ITC 389 (Pat)
[4]1936-4 ITR 111
[5] 4 ITC 196 (FB)
[6]4 ITC 472
[7] AIR 1940 PC 124 : 67 Ind App 239 : 1940-8 ITR 442
[8]1935-3 ITR 372
[9]1943-11 ITR 44
[10]1947-15 ITR 302
[11](AIR 1955 SC 619).
[12] AIR 1934 PC 30 : 61 Ind App 10
[13] AIR 1952 Pat 163 : 1951-19 ITR 476
[14] AIR 1955 SC 79 : 1955-27 ITR 20
[15](1956) 36 Tax Cas 100