CIVIL MISCELLANEOUS

Before R. S. Narula, J. ..

JAI GOPAL MEHRA,—*Petitioner.*

versus

THE INCOME-TAX OFFICER AND ANOTHER,—*Respondents.*

Civil Writ No. 2036 of 1966.

January 20, 1969.

Income-tax Act (XI of 1922)—Section 34(1)(a)—Issue of notice under—Conditions for the validity of—Stated—Constitution of India (1950)—Article 226—Jurisdiction of the High Court to go into the validity of the notice—Extent of.

Held, that while deciding to issue a notice under section 34 of the Income-tax Act, 1922, the Income-tax Officer concerned does not decide anything except to initiate proceedings under the section. If the belief requisite under that provision for intimation of the proceedings is formed on various grounds, some of which alone are relevant, the assessment for the accounting period to which the relevant non-disclosure relates can validly be reopened by the competent Income-tax Officer. However, a notice under section 34 of the Act would be valid only if the facts or figures, on the non-disclosure of which the requisite belief is based :—(i) either admittedly relate to the assessee concerned or are at least alleged to relate to him and (ii) the non-disclosed facts or figures have relevance to the income of the accounting period in respect of which the assessment proceedings are sought to be reopened. (Para 8)

Held, that the existence of the belief requisite under section 34(1)(a) of the Act can be challenged by the assessee in the High Court but not the sufficiency of the reasons for the belief. The expression "reason to believe" in the section does not mean a purely subjective satisfaction on the part of the Income-tax Officer and it is open to the High Court to examine whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent the action of the Income-tax Officer in starting proceedings under section 34 of the Act is open to challenge. The High Court may in exercise of its powers under Article 226 of the Constitution of India (1950) ascertain whether the Income-tax Officer had in his possession any information and the Court may also determine whether from the information the Income-tax Officer may have reason to believe the income chargeable to tax has escaped assessment but the jurisdiction of the High Court extends no further. The question whether on the information in his possession the Income-tax Officer should or should not commence proceedings for assessment or reassessment must be decided by the Income-tax Officer and not by the High Court. The High Court cannot investigate whether the inferences raised by the Income-tax Officer are correct or proper. (Para 7)

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued directing respondent No. 2 to refer the question under section 64 of the Indian Income-tax Act, 1922, to respondent No. 2 for decision and respondent No. 2 be directed to decide the question according to law and further praying that the notices dated 16th November, 1960 under section 34 of the said Act for the assessment year 1943-44 and 1944-45 read with notice dated 10th February, 1966 be quashed and the respondent No. 1 be restrained from taking any assessment proceedings in pursuance of the notices dated 16th November, 1960 and 10th February, 1966 (annexures 'B', 'C' and 'D' to the writ petition) and also praying that pending the decision of the writ petition by this Hon'ble Court, proceedings before respondent No. 1 be stayed.

BHAGIRATH DASS, B. K. JHINGAN AND S. K. HIRAJEE, ADVOCATES, for the Petitioner.

D. N. AWASTHY, ADVOCATE, for the Respondents.

JUDGMENT

NARULA, J.—In this petition under Article 226 of the Constitution, Jai Gopal Mehra, a member of the erstwhile Jaishi Ram Mehra (HUF) of Amritsar, has impugned the validity of notices under sections 34(1)(a) of the Indian Income-tax Act, 1922, dated November 16, 1960 (Annexure B in respect of the assessment year 1943-44 and Annexure C of the same date in respect of the assessment year 1944-45) addressed to Jaishi Ram (HUF). Since names of several independent income-tax assessee units are likely to be mentioned in this judgment, it may be clarified at this stage that Jaishi Ram was the son of Kishan Dass and formed during his life-time an HUF with his wife and his four sons including Jai Gopal Mehra petitioner. Jaishi Ram in his individual capacity was a partner of a firm known as Walaiti Ram-Jaishi Ram. There were several other partners in that firm, but none of them was a brother of the petitioner. Jaishi Ram (HUF) with which assessee alone we are directly concerned in this case was disrupted by an award dated September 12, 1960, registered with the Sub-Registrar, Amritsar, on January 5, 1961. It is stated by the petitioner that a complete partition of HUF property was effected. By an order dated August 24, 1965, passed by the Income-tax Officer under section 25-A of the 1922 Act, the disruption and partition was accepted by the Income-tax authorities, Jaishi Ram died on October 23, 1961.

(2) The income-tax assessment of the HUF in respect of the assessment year 1943-44 was completed on the 3rd February, 1944. The assessment of the HUF for the assessment year 1944-45 was made on the 26th June, 1946. The assessment of the partnership firm in respect of the assessment years 1943-44 and 1944-45 was made by the orders of the Income-tax Officer, Amritsar, on January 18, 1944, and June 26, 1946, respectively.

(3) Kishan Dass Mehra had made a will on December 10, 1943, wherein he had made provision for the disposal of his property in favour of Jaishi Ram, and others. According to the petitioner, Kishan Dass Mehra was also a partner. till his death, in the firm Walaiti Ram-Jaishi Ram. This allegation made by Shri Bhagirath Dass at the bar has been denied by Mr. Awasthy. Be that as it may, Kishan Dass Mehra was not and could not be a partner of the firm during the assessment proceedings for the year 1944-45, as he had died on March 1, 1944. The petitioner has also alleged that the will of Kishan Dass Mehra was produced before the Income-Tax Officer, A Ward, Amritsar, in connection with the proceedings in respect of the assessment year 1944-45. The said will of Kishan Dass Mehra referred to a gift of six lac rupees having been made to Jaishi Ram Mehra for investment in Srinagar business.

(4) On November 16, 1960, notice under section 34 of the 1922 Act (Annexure B) was issued to Jaishi Ram (HUF) by the Income-tax Officer, Additional C Ward, Amritsar, wherein it was stated that he had reason to believe that the income of the HUF assessable to income-tax for the above-said assessment year had been under-assessed. The HUF was, therefore, called upon to deliver the return in the prescribed form within thirty-five days. Similar notice of the same date (Annexure C) was issued to the HUF in respect of the assessment year 1944-45. In reply to the notice, dated 18th February, 1963, letters, dated February 28 and April 9, 1963 were sent by the petitioners objecting to the validity of the notice on the basis of a Division Bench judgment of this Court in *Shahzadanand and Sons* v. *Central Board of Revenue* (1). After the judgment of this Court in the case of *Shahzadanand* had been reversed by the Supreme Court, the Income-tax authorities took up the matter again and sent to the HUF notice, dated February 10, 1966 (Annexure D). In that notice

(1) (1962) 45 I.T.R. 233.

it was claimed that in view of the reversal of the judgment of this Court in case of *Shahzadanand and sons* (1), the proceedings commenced under section 34 of the Act were particularly valid and according to law. The HUF was called upon to appear for the reassessment on February 28, 1966, on the basis of the proceedings under section 34(1)(a) which was stated to have been already disclosed in notice, dated February 18, 1963, issued under section 23(3) of the Act. The notice, dated February 18, 1963 (Copy Annexure RB) disclosed the basis for starting the impugned proceedings in respect of the assessment year 1943-44 in the following words:—

> "There is a deposit of Rs. 27,996 in the books of M/s. Walaiti Ram-Jaishi Ram, which is alleged to represent the sale proceeds of gold belonging to Shri Kishen Dass, deceased. The source of this gold has not adequately been explained."

The same notice (Annexure RB) discloses the basis for starting proceedings under section 34(1)(a) in respect of the assessment year 1944-45 in the following words:—

> "The family made investments of Rs. 6,00,000 in Jagdish Trading Company, Srinagar as per details given below:—

		Rs.
(i) 20.7.43	...	2,00,000
15.8.43	...	1,00,000
28.8.43	...	50,000
20.9.43	...	1,00,000
10.10.43	...	1,50,000

(ii) Rs. 28,425 deposited in the books of Walaiti Ram-Jaishi Ram, Amritsar.

(iii) Rs. 85,060 cash alleged to have been recovered from Kishen Dass's box on his death as noted in the account books of the firm M/s Walaiti Ram-Jaishi Ram, Amritsar.

(iv) Rs. 25,000 estimated value of 48 items of jewellery alleged to have been recovered from the box of Shri

> Kishen Dass deceased at the time of his death. The source of these deposits and jewellery have not been adequately explained so far."

After disclosing the basis of the proceedings in the above-quoted words the notice under section 23(3) (Annexure RB) gave details of the evidence which had been tendered before the department till then in connection with those proceedings.

(5) After the receipt of notice, dated February 10, 1966 (Annexure D), the petitioner entered into lengthy correspondence with the department objecting to the jurisdiction of the Income-tax Officer, who had resumed the proceedings and also taking certain objections, regarding the limitation for the impugned proceedings. Ultimately, the petitioner submitted on behalf of the assessee HUF, application, dated August 15, 1966 (Annexure H) for dropping of the impugned proceedings which were then pending before the Central Circle (I), Amritsar. On the grounds mentioned in the said application it was sought to be made out by the petitioner that the proceedings started by the Income-tax Officer (Additional), C Ward, in respect of the two years in dispute were illegal and without judisdiction. Before the Commissioner of Income-tax could decide the question of jurisdiction by passing appropriate orders, the present writ petition was filed in this Court on September 22, 1966. In paragraph 26 of the writ petition, detailed grounds for questioning the jurisdiction of the Income-tax Officer to start the impugned proceedings were given. The main ground mentioned therein was that the Income-tax Officer concerned had no territorial jurisdiction to send the impugned notices and that in view of the representations made by the petitioner objecting to his jurisdiction he was bound to refer the matter for the decision of the Commissioner of Income-tax in accordance with section 64 of the Act. That ground does not concern us any more though it was *prima facie* a valid ground at the time of admission of the writ petition as the Commissioner of Income-tax has since passed an order (Annexure RA) on October 12, 1966. The second ground of attack against the impugned proceedings, which is the only ground now pressed before me in these proceedings was that there was no reason to believe that there was any omission or failure on the Part of Jaishi Ram Mehra (HUF) to disclose fully and truly all material facts necessary for assessment of the HUF for the assessment years 1943-44 and 1944-45 which might

have resulted either in under-assessment or an escapement of income from assessment. It was in the above circumstances that the petitioner prayed in this case for the issue of a mandamus directing the Income-tax Officer to refer the question of jurisdiction to the Commissioner of Income-tax and also directing the Commissioner to decide the reference and for a writ in the nature of *certiorari* for quashing the impugned notices dated November 16, 1960 (Annexure B and C) and February 10, 1966 (Annexure D). A writ in the nature of prohibition for restraining respondent No. 1 from taking any assessment proceedings in pursuance of the notices referred to above was also prayed for. As already stated, the question of issue of *mandamus* to respondents 1 and 2 in terms of the prayer referred to above does not now arise; and the only question which calls for decision is whether in the circumstances of the case, as admitted before me, it can or cannot be said in law that the Income-tax Officer had "reason to believe" that there had been any under-assessment in respect of the two years in dispute "by reason of the omission or failure on the part of the assessee" to disclose fully and truly all material facts necessary for the assessment of the HUF for the years in dispute.

(6) In reply to the writ petition a lengthy written statement has been filed on behalf of the respondents wherein it has been stated that the question of territorial jurisdiction had not been properly raised, but in any case it had been decided against the petitioner vide Annexure RA to which reference has already been made. The averments in the return relating to the point now in issue before me will be referred to separately in connection with the assessment year concerned. It has been generally stated that the petitioner had raised questions relating to the belief of the Income-tax Officer which requires determination by a fact-finding process and that this can be done only by resort to the machinery provided by the Act. It has been added that the petitioner would get all the relief to which he may be entitled in accordance with the said machinery set up under the Act. The petitioner filed a replication in reply to the return and the respondents have filed a further affidavit in reply to the replication. It is with the further reply to the replication that the respondents have placed on the record of this case a copy of the notice dated February 18, 1963 (Annexure RB) to which reference has already been made.

(7) Before dealing with the rival contentions of the parties on the question of validity of the impugned notices it will be appropriate

to notice the law on the question of validity of notices under section 34 of the Act as well as about the extent of jurisdiction of this Court under Article 226 of the Constitution to go into a matter like this. Section 34(1)(a) of the Act is in the following works:—

> "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————————————"

In *S. Narayanappa and others* v. *Commissioner of Income-tax Bangalore* (2), it was held that the existence of the belief requisite under section 34(1)(a) can be challenged by the assessee but not the sufficiency of the reasons for the belief. It was further held that the expression "reason to believe" in section 34 does not mean a purely subjective satisfaction on the part of the Income-tax Officer and that it is open to a Court to examine whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, held the Supreme Court, the action of the Income-tax Officer in starting proceedings under section 34 of the Act is open to challenge in a court of law. In *Kantamani Venkata Narayan and Sons* v. *First Additional Income-tax Officer, Rajahmundry* (3), the same position of law was reiterated by their Lordships of the Supreme Court and it was further added that in proceedings under article 226 of the Constitution challenging the jurisdiction of the Income-tax Officer to issue a notice under section 34(1)(a) the High Court is only concerned to decide whether the conditions which invested the Income-tax Officer with power to reopen the assessment did exist but it is not within the province of a High Court to record a final decision about the failure to disclose fully and truly all material facts bearing on the assessment and consequent

(2) (1967) 63 I.T.R. 219.

(3) (1967) 33 I.T.R. 633.

escapement of income from assessment and tax. In *Commissioner of Income-tax, Gujrat* v. *A. Raman and Co.* (4), the Supreme Court again referred to the jurisdiction of a High Court under Article 226 of the Constitution and held that a High Court has the power to set aside a notice issued under section 147(b) of the Income-tax Act, 1961, which corresponds to section 34(1) (b) of the 1922 Act, if the condition precedent to the exercise of the jurisdiction does not exist. Their Lordships of the Supreme Court emphasised that the High Court may in exercise of its powers under Article 226 ascertain whether the Income-tax Officer had in his possession any information and that the Court may also determine whether from the information the Income-tax Officer may have reason to believe the income chargeable to tax has escaped assessment but that the jurisdiction of the High Court extends no further. It was made clear that the question whether on the information in his possession the Income-tax Officer should or should not commence proceedings for assessment or reassessment must be decided by the Income-tax Officer and not by the High Court. In a petition under Article 226 of the Constitution, held the Supreme Court, the tax-payer may challenge the validity of a notice under section 147 of the Income-tax Act, 1961, corresponding to section 34 of the 1922 Act, on the ground that either of the conditions precedent does not exist, but the High Court cannot investigate whether the inferences raised by the Income-tax Officer are correct or proper. Another important feature of the decision of the Supreme Court in the case of A. Raman and Co. is that it has been authoritatively held in that case that the information referred to in section 147 of the 1961 Act (which corresponds to Section 34 of the 1922 Act), may even be such information which could have been obtained by the Income-tax Officer during the previous assessment from an investigation of the material on record or from the facts disclosed thereby or from other enquiry into facts or law but were not in fact obtained though the information must have come into possession of the Income-tax Officer after the previous assessment. The last case to which reference may be made in this respect is the judgment of the Supreme Court in *Sowdagar Ahmed Khan* v. *Income-tax Officer, Nellore* (5). In that case it was held that the Income tax Officer had jurisdiction under section 34(1) (a) to issue the impugned notice as on the facts of the case there was some material in possession of the Income-tax Officer on which he formed the

(4) (1968) 67 I.T.R. 11.
(5) (1968) 70 I.T.R. 79.

prima facie belief that the assessee had failed to disclose fully and truly all material facts and in consequence of such non-disclosure income had escaped assessment.

(8) It was contended by Mr. Bhagirath Dass that the material which is said to have been not disclosed must be relevant for the purposes of assessment of the particular year in respect of which the proceedings are sought to be reopened under section 34. For this proposition also, counsel relied on the judgment of the Supreme Court in the case of *Kantamani Venkata Narayana and Sons* (*Supra*) (3). It was then contended on behalf of the petitioner that if in the formation of the requisite belief several matters were relied on and ultimately it was found that some of the grounds on which the belief was said to have been formed were either non-existent or extraneous or irrelevant and there was then nothing to show that the same belief may have been formed on the remaining grounds, the notice under section 34 could not be sustained and must be set aside on that short ground. In support of this submission, Mr. Bhagirath Dass relied on the judgment of the Supreme Court in *Dhirajlal Girdhari Lal* v. *Commissioner of Income-tax, Bombay* (6), and in *The State of Maharastra* v. *Babulal Kriparam Takkamore and others* (7). In *Dhiraj Lal's case*, the Supreme Court was concerned with an order of the High Court refusing to issue a mandamus under section 66(2) of the 1922 Act. In order to decide whether the questions on which reference was sought were questions of law or not, it was observed that it was well established that when a Court of fact acts on material, partly relevant and partly irrelevant it is impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at its finding and that, therefore, such a finding was vitiated because of the use of in admissible material and thereby an issue of law arose. In the case of *Babulal Kriparam Takkamore and others* (7), an order of the Nagpur Municipal Corporation was refused to be set aside because out of the two grounds on which it was based one was valid and the other irrelevant. It was held that the fact that one of those grounds was irrelevant did not affect the order inasmuch as it showed that the other ground in the opinion of the State Government was serious enough to warrant the impugned action. After carefully considering the matter I am of the oppinion that the dictum of the Supreme Court in

(6) A.I.R. 1955 S.C. 271.

(7) A.I.R. 1967 S.C. 1353.

Dhirajlal's case (6), has no application to the grounds of belief on which a notice under section 34 of the Act, is based. While deciding to issue such an notice the Income-tax Officer concerned does not decide anything except to initiate proceedings under section 34. If the belief requisite under that provision is formed on various grounds some of which alone are relevant, the assessment proceedings for the accounting period to which the relevant non-disclosure relates can validly be reopened by the competent Income-tax Officer. A notice under section 34 would be valid only if the facts or figures on the non-disclosure of which the requisite belief is based :

(i) either admittedly relate to the assessee concerned or are at least alleged to relate to him; and

(ii) the non-disclosed facts or figures have relevance to the income of the accounting period in respect of which the assessment proceedings are sought to be reopened.

(9) It is in this background of the legal position that I am called upon to decide about the validity of the two notices. In respect of the assessment year 1943-44, the solitary basis of the belief which has prompted the issue of the impugned notice (annexure 'B') is that there is a deposit of Rs. 27,996 in the books of the partnership firm Messrs Walaiti Ram Jaishi Ram and the said deposit is alleged to represent "the sale proceeds of gold belonging to Kishan Dass deceased". The alleged basis of the requisite belief is that the source of the said gold has not been adequately explained. It is significant that the impugned notice has not been sent to Messrs Walaiti Ram Jaishi Ram in whose books the relevant entry has been found; nor was any notice sent to Kishan Dass, the sale of whose gold is alleged to have been responsible for the entry relating to the amount in question in the books of a third party. Jaishi Ram (HUF) was not even a partner of the firm. No sale of the gold of Jaishi Ram (HUF), is alleged. It is not even alleged that the gold which purported to belong to Kishan Dass was in fact of Jaishi Ram (HUF). In spite of this admitted position, the notice in respect of 1943-44 has been addressed to the HUF of Jaishi Ram of which Kishan Dass was admittedly never a member. It was held by a Division Bench of the Andhra Pradesh High Court in *M. M. A. K. Mohindeen Thamby & Co.*, v. *Commissioner of Income-tax, Madras* (8); that with regard

(8) (1959) 36 I.T.R. 481.

to credit entries in the names of partners as well as credit entries in the names of third parties, appearing in the accounts of a partnership, the burden is on the assessee (partnership), to explain the entires and show positively their nature and source. If a notice based on behalf derived from the entry in dispute had been issued to Messrs Walaiti Ram Jaishi Ram or even to Kishan Dass some argument with regard to its validity could certainly have been raised. It is not even alleged in the notice dated February 18, 1963 (Annexure RB), under section 23 of the Act that the amount representing the sale proceeds of gold belonged to the HUF of Jaishi Ram. It is, therefore, obvious that the solitary reason for the belief of the Income-tax Officer on which the impugned notice has been based has no rational connection with or relevant bearing on any non-disclosure by the HUF of Jaishi Ram. The information relating to the deposit of Rs. 27,996 referred to above cannot, therefore, validly form the ground of the requisite belief in respect of the assessment of Jaishi Ram (HUF) for the assessment year 1943-44. The impugned notice in respect of that year (Annexure B) is, therefore, liable to be set aside and is hereby quashed on that short ground.

(10) Things are, however, different in respect of the second notice under attack, i.e., one relating to the assessment year 1944-45. The allegations on which the belief of the Income-tax Officer is based in respect of that year have already been quoted verbatim in an earlier part of the judgment. The first allegation is that the family (i.e., HUF of Jaishi Ram) made investment of six lac rupees in Jagdish Trading Company, Srinagar, as per details in Annexure RB. It is stated in the noted Annexure RB that the sum of six lac rupees belonged to the HUF of Jaishi Ram. It is not disputed that the said credit item had not been shown anywhere in the return of income-tax for the assessment year 1944-45 though all the deposits totalling six lac rupees referred to in the said item were placed in the Jagdish Trading Company during the accounting year relevant to the assessment year ,i.e.; year ending March 31, 1944. Mr. Bhagirath Dass has emphasised that no beief requisite under section 34 could be formed validly on the above-said ground, as it was no part of the duty of the assessee HUF to disclose its investments in income-tax return under the 1922 Act, till the enforcement of the Wealth Tax Act with effect from April 1, 1957. Return of income under section 22 of the Act is intended to contain all information relating to income of the assessee but not relating to the capital investment, moveable

property or wealth of the assessee. Counsel has also referred to the provisions of section 69 of the Income-tax Act of 1961, which now require information about investments made by an assessee being shown in the books of account failing which if no satisfactory explanation is given the value of the investment can be deemed to be the income of the assessee during the financial year in which the investment is made. It may no doubt be true that the law in force at the time of filing the income-tax return in respect of 1944-45 did not require disclosure of non-profit-yielding investment but one fact cannot be lost sight of here and that is that the source from which the HUF got the sum of six lac rupees which was invested during the relevant year and the income accrued to the HUF from the said investment are clearly germane to the reason of the belief which an Income-tax Officer may form under section 34 of the Act. I need not enter into the controversy raised by Mr. Bhagirath Dass about the alleged ability of the Income-tax Officer to have come to know about this deposit from the will of Kishan Dass which is stated to have been shown to the Income-tax Officer during the assessment proceedings of the year in question as it has been authoritatively settled by the Supreme Court that this is not a valid consideration for excluding the authority of the Income-tax Officer to form the belief requisite under section 34 of the Act. Whether, in fact, the HUF had or had not disclosed the said deposit is not a matter on which I have to pronounce in these proceedings. *Prima facie* it appears that the notice issued under section 34 of the Act, in respect of the assessment year 1944-45 based on the above ground cannot be struck down as the information relating to the investment of six lac rupees by the HUF in the Jagdish Trading Company during the year in question is certainly a valid and relevant consideration for forming the requisite belief. Same cannot be said about items Nos. 2 to 4 mentioned in Annexure RB in respect of the assessment year 1944-45. The details given in those items show that they are more akin to the ground on which the notice in respect of 1943-44, was served on the HUF of Jaishi Ram. Though items Nos. 2to 4 out of the four items in relation to the assessment year 1944-45 have been held by me to be irrelevant for purpose of forming the requisite belief under section 34 of the Act, the impugned notice (Annexure C), cannot be struck down as one of the grounds (recited in item No. 1), is valid and germane to the forming of the requisite belief. Nothing stated by me in this judgment would, however, amount to an expression of opinion as to the allegation of the respondent about the various disputed items referred to the notice

(Annexure RB), being or not being of the HUF or having or not having relation to the income of the HUF during the relevant year. These are matters on which the authorities under the Act will have to adjudicate upon in accordance with law. Mr. Awasthy submitted that the Income-tax authorities may possibly understand that I have debarred them from holding that the amounts mentioned in items Nos. 2 to 4 of the notice (Annexure RB), do really represent the property of income of the HUF assessee though it is expressed to be benami in the name of Kishan Dass. The apprehension of Mr. Awasthy is misconceived as I have expressed no opinion about the merits of the controversy. It would be for the authorities under the Act alone to decide whether in fact there has been some concealment or non-disclosure of the kind referred to in section 34; and if so, what is its effect.

(11) For the foregoing reasons this petition is partially allowed and the notice, dated November 16, 1960, (Annexure 'B') and so much of the notice, dated February 10, 1966 (Annexure 'D') and so much of the notice, dated February 18, 1963 (Annexure 'RB') as relate to the assessment year 1943-44 are hereby annulled and quashed. In respect of all other matters the petition is dismissed.

(12) In view of the divided success and failure of the parties in this case, I make no order as to costs.

K.S.K.

APPELLATE CRIMINAL

Before Gurdev Singh and A. D. Koshal, JJ.

MST. SATYA DEVI,—*Appellant.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 859 of 1966.

January 21, 1969.

Code of Criminal Procedure (V of 1898)—Section 465—Interpretation of—Trial Judge not absolutely certain about the sanity of an accused—Procedure to be adopted—Stated—Trial without complying with the provisions of the section—Whether vitiated.