(11) For the reasons given above, we accept this writ petition, and holding that the impugned notice for demolition of the construction in question, Annexure P-3, is wholly illegal and without jurisdiction, set aside the same. The respondents shall bear the costs of the petitioner.

S. S. Sandhawalia, J.—I agree.

K. T. S.

FULL BENCH

Before R. S. Narula, C. J., O. Chinnappa Reddy and Prem Chand Jain, JJ.

JAI HANUMAN TRADING CO.,—*Petitioner*

versus

THE COMMISSIONER OF INCOME TAX-PATIALA II, PATIALA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 2810 *of* 1975

April 12, 1977.

Income Tax Act (43 *of* 1961)—*Sections* 147, 148 *and* 149—*Word "issued" occurring in section* 149—*Whether means "served".*

Held that in the scheme of the Income-tax Act 1961, limitation is prescribed with reference to the issuance of the notice. The scheme of the Act is that an Income-tax Officer must first have reason to believe that income chargeable to tax has escaped assessment either by reason of the omission or failure on the part of the assessee to make a return or to disclose fully and truly all material facts or in consequence of information in his possession. He is then required to record his reasons. He is then required to issue the notice prescribed by section 148 within the period prescribed in section 149. This notice must be served before the Income-tax Officer can proceed to make the assessment or re-assessment under section 147. That is the scheme of the present Act and there is no reason why the expression "issued" occurring in section 149 should not be given its natural meaning instead of the strained, wider meaning "served". The departure from the old provision in section 34 of the 1922 Act is a conscious departure and it is the duty of the court to give full effect to it. Thus in the context of the provisions of the 1961 Act, the expression "issued" occurring in section 149 cannot be given the meaning "served". (Paras 7 and 8).

Tikka Khushwant Singh *v.* Commissioner of Income Tax 101 I.T.R. 106—Overruled.
Indu Pardesh *v.* J. P. Jain, I.T.O. 58 I.T.R. 559:
Shanti Bhai Patel *v.* Upadhyaye, I.T.O., 96 I.T.R. 141.
Commissioner of Income Tax *v.* Kailesedevi, 105 I.T.R. 479 DISSENTED FROM.

Petition under Article 226 of the Constitution of India praying that :—

(a) *all the relevant records be summoned;*

(b) *an appropriate Writ, Order or Direction quashing the impugned notice, Annexure P-2, be issued;*

(c) *any other appropriate writ, order or direction as this Hon'ble Court may deem fit in the circumstances of the case, be issued;*

(d) *the filing of certified copies of Annexures 'P-1' to 'P-4' be dispensed with, as the same are not readily available with the petitioner;*

(e) *issuance of Notice of Motion may kindly be dispensed with;*

And further praying that the operation of the impugned notice, *Annexure P-2 and further proceedings in the case may kindly be stayed till the final decision of the writ petition in this Hon'ble Court.*

G. C. Mittal, Madan Mohan, Advocates, *for the Petitioner.*

D. N. Awasthy, Advocate, B. K. Jhingan, Advocate with him, *for the Respondents.*

JUDGMENT

O. Chinnappa Reddy, J.

(1) For the assessment years 1965-66, 1966-67 and 1969-70, the petitioner submitted returns of income of Rs 31,291, 20,649 and 1,004 respectively. The petitioner's income for those years was assessed by the Income-tax Officer at Rs. 44,040, 23,040 and 1,250 respectively. In the balance sheets submitted alongwith the returns amounts of Rs. 51,735, 32,705 and 16,915 were shown as received on account of charity. The Income-tax Officer did not direct the addition of the amounts received on account of charity to the income returned by the petitioner. He did not question the correctness of the figures either. While so, on 28th March, 1974, the Income-tax Officer issued three notices under section 148 of the Income-tax Act, 1961, alleging

that he had reasons to believe that the income chargeable to tax for the three assessment years in question had escaped assessment within the meaning of section 147 of the Income-tax Act, and requiring the petitioner to submit returns of income within thirty days of the service of notices as he proposed to reassess the income for the said assessment years. These notices were served on the petitioner on 2nd April, 1974. The petitioner objected to the validity of the notices and demanded the disclosure of the reasons on which the Income-tax Officer grounded his belief that income chargeable to tax had escaped assessment. The petitioner received no reply. The petitioner, therefore, filed C.W.P. Nos. 2808, 2809 and 2810 of 1975 impugning the validity of the notices as invalid and without jurisdiction.

(2) The first submission of Shri Gokal Chand Mittal, learned counsel for the petitioner, was that the notices were bad as they were served beyond the period of limitation prescribed by section 149(1)(b) of the Income-tax Act. Shri Mittal contended that the notices fell under section 147(b) and, therefore, the period of limitation was only four years. In the written statements filed by the Revenue the reasons recorded by the Income-tax Officer under section 148(2) are extracted. In regard to the assessment year 1969-70—the reasons for the other two years are identical—the reasons are stated as follows:—

> "During the year relevant to assessment year 1969-70 the assessee charged Rs. 16,914 as charity along with other charges from the customers which is its income. The assessee has failed to disclose this amount in its return of income. I have reasons to believe that by reason of assessee's failure to disclose fully and truly the particulars of income to the extent of Rs. 16,914 has escaped assessment. Issue notice under section 148 read with section 147(a) for the assessment year 1969-70."

Though the statement of the reasons recorded by the Income-tax Officer refers to section 147(a), it is clear from the allegations in the written statements that there was no failure or omission on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment for those years. In relation to the assessment year 1969-70, it is said in the written statement.

> "So far as the item of charity is concerned it goes on accumulating with the petitioner-company to be disbursed from time to

> time in charities to be selected by the petitioner-company itself. The customer of the company from whom the aforesaid three headed remuneration is charged has no hand in nominating the charity to which the amount paid by him on account of charity is to go. Thus it is a case of application of the petitioner's income towards charity by the petitioner-company. In the year under consideration namely 1969-70 it appears from the assessment order, dated 31st January, 1970, passed by Shri Joginder Singh Income-tax Officer Companies Ward, Rohtak, that his attention was not drawn to the question of charity at all ..... The original assessment for the assessment year 1969-70 was completed on 31st January, 1970 by Shri Joginder Singh Income-Tax Officer. It is incorrect to say that the receipt and disbursement of the charity amount was accepted as correct by Shri Joginder Singh Income-tax Officer Companies ward, Rohtak. As already submitted above there was no mention of this item in the assessment order and apparently the attention of the Income-tax Officer was not drawn to this at all."

Thus, it appears to be the case of the Revenue that at the time of the original assessment, the Income-tax Officer did not focus his attention on or apply his mind to the question whether the receipts by way of charity were to be treated as income or not and that later-on the Income-tax Officer acquired the "knowledge or instruction" that the receipts by way of charity ought to have been included in the assessable income of the assessee. In other words, something which had not presented itself to the mind of the Income-tax Officer at the time of the original assessment came to be so presented to his mind after the completion of the assessment. Thus, though the statements of the reasons recorded by the Income-tax Officer refer to section 147(a), the cases really fall under section 147(b) and the period of limitation is only four years.

(3) Of course, as was held in *Income-tax Officer* v. *Eastern Coal Co. Ltd.* (1) by Sankar Prasad Mitra, C.J, and Sabyasachi Mukharji J., 'a notice under section 147 which has been proposed under clause (a) can be treated as one, if the material conditions are fulfilled, under clause (b) of section 147 of the Income-tax Act of 1961'. In fact, section 292-B of the Income-tax Act 1961 expressly provides that no return of income, assessment, notice, summons or

(1) 101 I.T.R. 477.

other proceeding furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of the Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assesment, notice, summons or other proceeding, if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of the Act. Therefore, a notice under section 148 though proposed under section 147(a) may well be considered as one under section 147(b) if the conditions of section 147(b) are otherwise substantially satisfied.

(4) Since section 147(b) is the provision which is applicable to the cases, the limitation for the issuance of the notices in such cases is governed by section 149(1)(b) which prescribes a period of four years from the end of the relevant assessment year. Therefore, for the assessment year 1965-66, the notice under section 148 should have been issued on or before 31st March, 1970; for the year 1966-67, it should have been issued before 31st March, 1971, and for the assessment year 1969-70, it should have been issued before 31st March, 1974. The notices in respect of the assessment years 1965-66, and 1966-67 were clearly issued far beyond the period of limitation and they have, therefore, to be quashed. C.W.P. Nos. 2808 and 2809 of 1975 are, therefore, allowed.

(5) In regard to the assessment year 1969-70, the submission of Shri G. C. Mittal was that it was not enough that the notice was sent by the Income-tax Officer before 31st March, 1974; it was necessary that it should have been served on the assessee before 31st March, 1974. He submitted that the word "issued" occurring in section 149 meant "served". In support of his submission, he relied on the decision of the Supreme Court in *Banarsi Devi* v. *Income-tax Officer*, (2) and the decisions of the High Courts in *Indu Prasad* v. *Jani, Income-Tax Officer*, (3), *Shanabhai Patel* v. *Upadhyaya, I.T.O.* (4), *Tikka Khushwant Singh* v. *Commissioner of Income-tax* (5), *Commissioner of Income-tax* v. *Kailasadevi*, (6). Inasmuch as the High Courts of Gujarat, Punjab and Haryana and Andhra Pardesh have merely purported to allow the decision of the Supreme Court in Banarsi Devi's case, it is necessary to consider the facts and the ratio of that case in some detail.

(2) 53 I.T.R. 100 (S.C.).
(3) 58 I.T.R. 559 (Gujarat).
(4) 96 I.T.R. 141 (Gujarat).
(5) 101 I.T.R. 106 (Pb. & H).
(6) 105 I.T.R. 479 (Andhra Pradesh).

(6) Banarsi Devi's case arose under the provisions of the 1922 Act and as we shall presently point out, there is a vital difference between the provisions of the 1922 Act and the provisions of 1961 Act. For the assessment year 1947-48, the assessee in that case had filed a return of her income and the assessment was completed some time in 1948. On 2nd April, 1956, the Income-tax Officer served on her a notice dated 19th March, 1956 under section 34(1) of the Indian Income-tax Act, 1922. The date of the notice was within 8 years from the end of the relevant assessment year, i.e., 31st March, 1948, but it was served beyond eight years from that date. Section 34(1), as it stood at that time, provided that a notice falling under clause(a) had to be served on the assessee within eight years of the end of that assessment year. The notice was clearly out of time as it was served beyond eight years from 31st March, 1948. The situation in such cases was sought to be saved by section 4 of the Amending Act (Act No. 1) of 1959 which provided that no notice issued under section 34(1) (a) at any time before the commencement of the Amending Act and no proceeding taken in consequence of such notice shall be called inquestion merely on the ground that at the time the notice was issued, the time within which such notice should have been issued had expired. The argument on behalf of the assessee in that case was that section 4 of the Amending Act only saved a notice issued after the prescribed time but that it did not apply to a situation where the notice was issued within the prescribed time but not served within time. The meaning of the word "issued" in section 4 of the Amending Act thus fell to be considered by the Supreme Court. The Supreme Court noticed that section 4 of the Amending Act was enacted for the sole purpose of saving the validity of notices such as those issued in the case before them and that if the construction sought to be placed by the assessee was to be accepted, it would defeat the purpose of the amendment. They noticed that while section 34(1) (a) prescribed eight years for the service of notices, there was no provision prescribing a time-limit for the issuance of notices. They further noticed that according to the dictionaries and in legislative practice the expression "issued" had a narrow as well as a wide meaning and that in its wider connotation it meant "served" also. They held that the expression "issued" occurring in section 4 of the Amending Act was used in its wider connotation and meant "served". They observed that such a construction alone would effectuate the intention of the legislature. The Supreme Court said :—

> "The crucial word in the said section is "issued". The section says that though a notice was issued beyond the time

within which such notice should have been issued, its validity could not be questioned. If the word "issued" means "sent", we find that there is no provision in the Act prescribing a time-limit for sending a notice, for, under section 34(1) (a) of the Act, a notice could be served only within 8 years from the relevant assessment year. It does not provide any period for sending of the notice. Obviously, therefore, the expression "issued" is not used in the narrow sense of "sent".

The Supreme Court then proceeded to observe that the expression "issued" occurring in the proviso to section 23(3) had previously been equated with the expression "served" occurring in the substantive part of section 34(1) by judicial interpretation. They referred to the observations of Chagla C.J. in *Commissioner of Income-tax* v. *Ghurye* in that connection. They then referred to the General Clauses Act, the Calcutta Municipal Act and held that the expression "issued" had both a limited and a wide meaning and that it was for the Court to give a proper meaning to the expression according to the context of the Act. They said :—

"In the legislative practice of our country 'the said two expressions are sometimes used to convey the same idea. In other words, the expression "issued" is used in a limited as well as in a wider sense. We must, therefore, give the expression "issued" in section 4 of the Amending Act that meaning which carries out the intention of the legislature in preference to that which defeats it. By doing so we will not be departing from the accepted meaning of the expression, but only giving it one of its meaning accepted, which fits into the context or setting in which it appears."

The Supreme Court then proceeded to give a closer look to the provisions of section 4 of the Amending Act and finally observed :—

"Under section 34(1) of the Act, as we have already pointed out, the time prescribed was only for service of the notice. As the notice mentioned in section 4 of the Amending Act is linked with the time prescribed under the Act, the section becomes unworkable if the narrow meaning is given to the expression "issued". On the other hand, if we give a wider meaning to the word, the section would be

consistent with the provisions of section 34(1) of the Act. Moreover the narrow meaning would introduce anomalies in the section : while the notice, assessment or reassessment were saved, the intermediate stage of service would be avoided. To put it in other words, if the proceedings were only at the stage of issue of notice, the notice could not be questioned, but if it was served, it could be questioned : though it was served beyond time, if the assessment was completed, its validity could not be questioned. The result would be that the validity of an assessment proceeding would depend upon the stage at which the assessee seeks to question it. That could not have been the intention of the legislature. All these anomalies would disappear if the expression was given the wider meaning.

To summarize : The clear intention of the legislature is to save the validity of the notice as well as the assessment from an attack on the ground that the notice was given beyond the prescribed period. That intention would be effectuated if the wider meaning is given to the expression "issued." The dictionary meaning of the expression "issued" takes in the entire process of sending the notice as well as the service thereof. The said word used in section 34(1) of the Act itself was interpreted by courts to mean "served". The limited meaning, namely, "sent" will exclude from the operation of the provision a class of cases and introduce anomalies. In the circumstances by interpretation, we accept the wider meaning the word "issued" bears. In this view, though the notices were served beyond the prescribed time, they were saved under section 4 of the Amending Act."

(7) The decision of the Supreme Court in *Banarsi Devi's* case therefore was that the expression "issued" had a wide as well as a narrow meaning and that in the context of section 34(1) which provided for service of notices within a period of eight years and in the context of the object of the Amending Act, the expression "issued" could only be given a wider meaning in section 4 of the Amending Act. The Supreme Court did not lay down that the expression "issued", whenever and wherever it occurred in the Income-tax Act, carried the wider meaning.

(8) Now let us examine the provisions of the Income-tax Act, 1961, along-side the corresponding provisions of 1922 Act. Sections 147, 148 and 149 of the 1961 Act which correspond to section 34(1) of the 1922 Act provide the machinery for assessment or re-assessment if it is found by the Income-tax Officer that income chargeable to tax has escaped assessment. The expression 'income chargeable to tax which has escaped assessment is deemed to include income chargeable to tax which has been under-assessed, income which has been assessed at too low a rate, income which has been made subject to excessive relief under the 1961 Act or the 1922 Act and income assessed after excessive computation of loss or depreciation allowance. Section 147 (a) and (b) of 1961 Act which correspond to section 34(1) (a) and (b) of the 1922 Act prescribe the conditions to be fulfilled before assessment or re-assessment can be made. Under section 147(a), the Income-tax Officer must have reason to believe that income chargeable to tax has escaped assessment for any assessment year by reason of the omission or failure on the part of the assessee to make a return of his income or to disclose fully and truly all material facts necessary for assessment for that year. Under section 147(b), the Income-tax Officer must have reason to believe, in consequence of information in his possession, that income chargeable to tax has escaped assessment. Section 148(1) prescribes a condition precedent before any action is taken under section 147. It prescribes that the Income-tax Officer shall serve a notice on the assessee containing all or any of the requirements which may be included in a notice under section 139(2). Section 148(2) further prescribes that before the issuance of a notice under section 148(1), the Income-tax Officer shall record his reasons for doing so. It is important to notice at this juncture that neither section 147 nor section 148 prescribe any time-limit for the service of notice. This has to be contrasted with section 34(1) which prescribed that in cases falling under clause (a) the notice had to be served within eight years and in cases falling under clause (b), the notice had to be served within four years of the end of the assessment year. Section 149 of the 1961 Act stipulates that no notice under section 148 shall be issued after the expiry of eight years from the end of the assessment year in cases falling under section 147(a) and after the expiry of four years from the end of the assessment year in cases falling under section 147(b). It is to be noticed at once that while section 148 prescribes that notice shall be served, section 149 prescribes that a notice shall be issued. The limitation prescribed under section 149 is for the issuance of the notice which is required to be served

under section 148 before action is taken under section 147. The contrast between the provisions of the 1961 Act and the 1922 Act becomes immediately patent. While section 34(1) of the Indian Income-tax Act, 1922, prescribed limitation for the service of the notice on the assessee, section 149 now prescribes limitation for the issuance of the notice. It was because, in the scheme of the 1922 Act, limitation was prescribed for the service of the notice that the Supreme Court had to hold in Banarsi Devi's case that the expression "issued" in section 4 of the Amending Act meant "served". In the scheme of the 1961 Act, limitation is prescribed with reference to the issuance of the notice. The scheme of the Act is that an Income-tax Officer must first have reason to believe that income chargeable to tax has escaped assessment either by reason of the omission or failure on the part of the assessee to make a return or to disclose fully and truly all material facts or in consequence of information in his possession. He is then required to record his reasons. He is then required to issue the notice prescribed by section 148 within the period prescribed in section 149. This notice must be served before the Income-tax Officer can proceed to make the assessment or re-assessment under section 147. That is the scheme of the present Act and there is no reason why the expression "issued" occurring in section 149 should not be given its natural meaning instead of the strained, wider meaning "served". The departure from the old provision in section 34 of the 1922 Act is a conscious departure and it is our duty to give full effect to it.

(9) We do not think that it is necessary to discuss the decisions in *Indu Prasad* v. *J. P. Jain, Income-tax Officer*, (3 supra) *Shanabhai Patel* v. *Upadhyaya, Income-tax Officer*, (4 supra) *Tikka Khushwant Singh* v. *Commissioner of Income-tax*, (5 supra) and *Commissioner of Income-tax* v. *Kailashdevi* (6 supra) since the learned Judges who decided those cases merely purported to follow the decision of the Supreme Court in *Banarsi Devi* v. *Income-tax Officer*. We have given our reasons for holding that the Supreme Court did not decide in Banarsi Devi's case that the expression "issued" wherever and whenever it occurred should always be given the wider meaning "served". The Supreme Court gave the meaning "served" to the expression "issued" occurring in section 4 of the Amending Act having regard to the context of the provision and the object of the Amending Act. We are clearly of the opinion that in the context of the provisions of the Income-tax

Act, 1961, the expression "issued" occurring in section 149 cannot be given the meaning "served". We dissent from the views expressed by the Gujrat and Andhra Pradesh High Courts and we overrule the decision of the Punjab and Haryana High Court in Tikka Khushwant Singh's case.

(10) The learned counsel for the petitioner urged that the Income-tax Officer had no reason to believe, in consequence of any information in his possession, that any income had escaped assessment. He urged that the assessee had disclosed the receipts on account of charity in the balance-sheet submitted by him along with the return. According to him it was a case of mere change of opinion by the Income-tax Officer. On the other hand, Shri Awasthy, learned counsel for the Revenue, invited our attention to Kalyanji Mavji's case (7) and urged that the information contemplated by section 147(b) may be obtained even from the record of the original assessment, from an investigation of the material on record or the facts disclosed thereby or from other enquiry or research into facts or law' and that cases where 'income liable to tax' has escaped assessment due to oversight, inadvertance or mistake committed by the Income-tax Officer' may also be brought under section 147(b). We do not, however, propose to go into this question having regard to another formidable objection raised by Shri Awasthy that under the amended provisions of Article 226 of the Constitution we are precluded from going into these questions if any other remedy is provided by or under any other law for the time being in force. Shri Awasthy argued that the assessee was entitled to raise the question of non-existence of reasons for belief before the assessing authority, the Appellate Assistant Commissioner and the Appellate Tribunal. In the famous case of *Calcutta Discount Company Ltd.* v. *Income-tax Officer*, (8), the Supreme Court recognised the existence of alternative remedy under the provisions of the Indian Income-tax Act when it observed :—

> "Mr. Sastri mentioned more than once the fact that the company would have sufficient opportunity to raise this question viz., whether the Income-tax Officer had reason to believe that under assessment had resulted from non-disclosure of material facts, before the Income-tax Officer himself in the assessment proceedings and, if unsuccessful there, before the Appellate Officer or the Appellate Tribunal or in the High Court under section 66(2) of the

(7) 102 I.T.R. 287 (S.C.).

(8) 41 I.T.R. 191 (S.C.).

Indian Income-tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action."

While the High Court previously had the freedom to issue a high prerogative writ notwithstanding the existence of an alternative remedy, it is now precluded from doing so because Article 226(3) provides, "no petition for redress of any injury referred to in sub-clause (b) or sub-clause (c) of clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force." C.W.P. 2810 of 1975 is, therefore, dismissed, but in the circumstances without costs.

N.K.S.

FULL BENCH

Before O. Chinnappa Reddy, S. S. Sandhawalia and Bhopinder Singh Dhillon, JJ.

LABH SINGH and another,—*Appellants.*

versus

HARDAYAL ETC.,—*Respondents.*

Execution Second Appeal No. 121 *of* 1975

April 19, 1977.

Punjab Pre-emption Act (1 *of* 1913)—*Sections* 15—*Code of Civil Procedure* (*V of* 1908)—*Section* 47—*Non-compliance with the terms of a decree of pre-emption by depositing less amount—Such objection not taken by the vendee in appeal against the decree—Vendee—Whether to be deemed to have waived such objection—Such objection taken in execution proceedings—Whether barred by the principle of res-judicata.*

Held, that in a given case, the vendee who challenges the pre-emption decree in appeal, may not have the requisite knowledge or information as regards the less deposit of the pre-emption amount or the deposit amount having been made beyond the time permitted. It cannot, therefore, be said as a matter of law that if the objection is not taken in the appeal as regards the less deposit or the deposit