factories of the petitioner in each case according to the directions given in the case of Eastern Electronics (Civil Writ No. 1199 of 1968). These petitions are also accepted to that extent and the parties are left to bear their own costs.

K.S.K.

INCOME-TAX REFERENCE

Before Shamsher Bahadur and R. S. Narula, JJ.

RAM SARAN DASS,—*Petitioner.*

versus

THE COMMISSIONER OF INCOME-TAX, PATIALA,—*Respondent*

Income Tax Reference No. 3 of 1965

March 24, 1969

Income-tax Act (XI of 1922)—*Sections* 5(7-C) *and* 28(3)—*Oral hearing demanded and given to an assessee by an Income-tax Officer—Such Officer not giving any decision—Proceedings transferred to another Income-tax Officer—Oral hearing neither demanded nor given to the assessee by the succeeding Officer—Order passed—Such order—Whether bad in law.*

Held, that section 5(7-C) of Indian Income-tax Act, 1922, does not necessarily come into operation after the entire opportunity referred to in section 28(3) has already been granted. The point of time when section 5(7-C) comes into operation has no relation to the stage at which the proceedings are transferred from the previous Income-tax Officer to the new one. Sub-section (7-C) of section 5 comes into operation as soon as an income-tax authority ceases to exercise jurisdiction and is succeeded by another authority who has and exercises jurisdiction irrespective of whether the assessee had or had not fully availed of the entire opportunity provided to him under section 28(3). If all that remained to be done by the preceding officer was to write an order and everything which such officer was expected to keep in view at the time he ceases to exercise jurisdiction is available in full to the succeeding officer, there is no bar to the latter merely writing out an order after applying his own mind to the whole of that material unless the assessee exercises his right under the first proviso to sub-section (7-C) of section 5, and asks for either the whole case being re-opened or merely for being re-heard before the passing of the final order. But if one of the things which were to influence the decision of the assessing authority was the effect of an oral hearing already granted to an

assessee (either because such a hearing had been asked for or was otherwise necessary in law), the succeeding officer must give a fresh opportunity or oral hearing to the assessee before deciding the matter. There is no known method by which the effect of a personal hearing could be transferred by the preceding officer to his successor unless, possibly, the whole discussion is tape-recorded and the tape is played back to the successor. The mandatory requirement of sub-section (3) of section 28, of the Act is wholly independent of the enabling provision of section 5(7-C). An order passed under section 28(1)(c) without affording adequate opportunity required to be given to an assessee under sub-section (3) of section 28 would never be valid. An order which is invalid on account of being violative of the requirements of section 28(3). cannot be validated by invoking the first proviso to section 5(7-C). A personal hearing can have some meaning only if it is given by the very person who has to ultimately decide the matter. Oral hearing by one officer cannot possibly be of any advantage to his successor in deciding a case. Hence the order passed by a succeeding Income-tax Officer without affording an opportunity of being heard to the assessee who had already availed of this opportunity before the previous Income-tax Officer and has not asked for fresh opportunity, is bad in law (Para 6).

Reference made by the Income-Tax Appellate Tribunal (Delhi Bench 'B'), under section 66(1) *of the Indian Income-tax Act,* 1922 *for the decision of the following question arising out of I.T.A. Nos.* 8316 *and* 8317 *of* 1962-63 (*Assessment years* 1946-47 *and* 1947-48).

"*Whether in the facts and circumstances of the case, the imposition of penalty by the Income-Tax Officer, 'F' Ward (Amritsar), is bad in law* ?"

BALRAJ KOHLI and RAM RANG, ADVOCATES, for the Petitioner.

D. N. AWASTHY and B. S. GUPTA, ADVOCATES, for the Respondent.

JUDGMENT

NARULA, J.—The following question has been referred to this Court under section 66(1) of the Indian Income-tax Act (11 of 1922) (hereinafter called the Act) by the Income-tax Appellate Tribunal (Delhi Bench 'B'):—

> "Whether in the facts and circumstances of the case, the imposition of penalty by the Income-tax Officer, 'F' Ward, (Amritsar) is bad in law?"

(2) The relevant facts giving rise to this reference are these :

(3) In respect of the proceedings for assessment of income-tax for the assessment years 1946-47 and 1947-48, concealed income of

Rs. 47,000 and Rs. 10,000 respectively was discovered after voluntary disclosure of an additional income of Rs. 40,667 in each of the above said years had been made by the assessee in addition to the amount of the original assessment on the income of Rs. 19,943 for the first year and Rs. 45,824 for the second year. After the conclusion of the proceedings relating to assessment of concealed income, notice, dated November 24, 1955, in respect of the assessment year 1946-47 was issued to Shri Ram Saran Dass Kapur applicant (hereinafter called the assessee) under sub-section (3) of section 28 of the Act to show cause why a penalty should not be levied on the assessee for concealing the income in question. Similar notice in respect of the assessment year 1947-48 was served on the assessee on December 26, 1955. In reply to the notice, dated, November 24, 1955, the assessee submitted written objections, dated April 14, 1956, in which he objected the legality of the notice, the jurisdiction of the Income-tax Officer, the vagueness of the notice and various other matters, and in which he finally stated in the penultimate paragraph as follow:—

> "That a personal hearing may kindly be given to explain the case personally."

A verbatim copy of the objections, dated April 14, 1956, was sent by the assessee to the Income-tax Officer, Special Ward, Amritsar (which Income-tax Officer had issued and served the notice, under section 28(3) of the Act on the assessee) in respect of the assessment year 1947-48. It is the common case of both sides that in pursuance of the specific request contained in the written reply of the assessee, the Income-tax Officer, Special Ward, gave an opportunity of personal hearing to the assessee and actually heard his arguments in support of those objections. Before the Income-tax Officer, Special Ward, who had heard the assessee, could give a decision in the matter, the cases for the imposition of penalty on the assessee were transferred to the Income-tax Officer, 'F' Ward, Amritsar. There is nothing to show that the assessee sent any communication or made any request to the Income-tax Officer for any further hearing. This fact is also admitted that the Income-tax Officer, 'F' Ward, never gave any opportunity of being heard to the assessee, and merely passed two separate orders, dated July 30, 1959, imposing a penalty of Rs. 15,000 in respect of the year 1946-47, and of Rs. 4,000 in respect of the year 1947-48. Aggrieved by the orders of imposition of penalty, the assessee went in appeal to the Appellate Assistant Commissioner of Income-tax who by his order, dated October 29, 1959, set aside the order under appeal. The Income-Tax Officer went up in appeal against the order of the Income-tax Appellate Assistant Commissioner to the Appellate Tribunal. By order, dated October 30, 1961, the

Appellate Tribunal allowed the appeal of the assessing authority, set aside the order of the Appellate Assistant Commissioner and remitted the appeal of the assessee for re-hearing to the Appellate Assistant Commissioner as he had not dealt with certain objections which were raised by the Department before the Tribunal. By his post-remand order, dated September 24, 1962, the Appellate Assistant Commissioner upheld and confirmed the order of the Income-tax Officer in respect of the imposition as well as the quantum of the penalty, in respect of the two years in dispute. In the assessee's appeal preferred against the post-remand order of the Appellate Assistant Commissioner, the Appellate Tribunal by its judgment, dated September 23, 1963, repelled all the contentions of the assessee. The contention of the assessee with which we are concerned was disposed of in sub-paragraphs (ii) and (iii) of paragraph 6 of the Appellate Tribunal's final order in the following words:—

"(ii) We have already noted above that the assessee besides filing a written explanation, dated April 14, 1956, requested that he may be heard personally. The Income-tax Officer did hear him personally on August 27, 1957. Thereafter the case went to the jurisdiction of the Income-tax Officer, F-Ward. Section 5(7C) lays down that where an income-tax authority ceases to exercise jurisdiction and is succeeded by another, the income-tax authority so succeeded may continue the proceeding from the stage at which the proceeding was left by his predecessor. The first proviso to this sub-section lays down that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be re-opened. We find that no such demand was made by the assessee (before the Income-tax Officer, F-Ward Shri Gujjar Mal who passed the penalty order on July 30, 1959) to the effect that the assessee be re-heard or any part of the previous proceeding be re-opened. In these circumstances the Income-tax Officer F-Ward Shri Gujjar Mal was perfectly justified in law in passing the penalty order.

(iii) In support of his contention the learned counsel for the assessee relies upon the ruling of the Calcutta High Court in the case of *Calcutta Tanneries* (1944) *Ltd.* v. *Commissioner of Income-tax, Calcutta* (1), where the facts of the case were almost identical to those of the assessee. This

(1) (1960) 40 I.T.R. 178.

ruling has been considered and dissented from by their Lordships of the Patna High Court in the case of *Murlidhar Tejpal* v/s *Commissioner of Income-tax, Patna,* (2). Respectfully following the later ruling of the Patna High Court, we would hold that the penalty order was validly passed by the Income-tax Officer, F-Ward."

It was the question of law decided in the abovequoted passage of the Tribunal which was sought by the assessee to be referred to this Court in the assessee's application under section 66(1) of the Act. The application of the assessee was allowed and the present reference was made by the Tribunal on July 10, 1964.

(4) The relevant questions of fact which have been decided by the Tribunal and with which findings we are bound and on the basis of which we have to answer the question referred to us, are summarised below:—

(i) that the notices under section 28(3) of the Act calling upon the assessee to show cause why penalty under clause (c) of sub-section (1) of section 28 should not be imposed on the assessee were issued and served by the Income-tax Officer, Special Ward, Amritsar;

(ii) that two separate written replies to the abovesaid show-cause notices were sent by the assessee to the Income-tax Officer, Special Ward, on April 14, 1956;

(iii) that a specific prayer had been made by the assessee in writing in paragraph 9 of each of his written replies to the show-cause notices for being afforded "a personal hearing" so as to enable the assessee "to explain the case personally;"

(iv) that the opportunity asked for by the assessee was duly granted to him and the assessee did actually show cause against the threatened imposition of penalty at the oral hearing availed of by him before the Income-tax Officer, Special Ward;

(v) that no decision in this respect was given by the Income-tax Officer, Special Ward, who heard the assessee and the jurisdiction to levy penalty on the assessee subsequently stood transferred to Shri Gujjar Mal, Income-tax Officer, F-Ward ;

(2) (1961) 42 I.T.R. 129.

(vi) that before Shri Gujjar Mal, Income-tax Officer, 'F' Ward, no request was made by the assessee under section 5(7-C) of the Act either for re-opening any of the two cases or for affording the assessee a re-hearing of either of the two cases;

(vii) that the Income-tax Officer, 'F' Ward, did not afford the assessee any opportunity of personal hearing;

(viii) that on the record of the case received by him on transfer from the Income-tax Officer, Special Ward, the assessing authority, i.e., the Income-tax Officer, 'F' Ward, imposed penalties on the assessee without any further proceedings or hearing.

(5) In order to appreciate and in order to satisfactorily answer the question referred to us, it is necessary to notice at this stage the relevant provisions of section 28(1) (c), section 28(3) and section 5(7-C) (with its first proviso) of the Act, which are reproduced below:—

"28(1)(c) If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person

(a) — — — — —

(b) — — — — —

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he or it may direct that such person shall pay, by way of penalty, in the case referred to in clause (a), in addition to the amount of the income-tax, and super-tax, if any, payable by him, a sum not exceeding one-and-a-half times that amount, and in the cases referred to in clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding ——————————".

"28(3) No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard."

"5(7-C) Whenever in respect of any proceeding under this Act, an Income-tax authority ceases to exercise jurisdiction, and is succeeded by another who has and exercises jurisdiction the Income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be re-opened or that before any order for assessment is passed against him he be reheard."

(6) Mr. D. N. Awasthi, the learned counsel for the Revenue, has owned and pressed the same arguments which prevailed with the Appellate Tribunal. He has submitted that all the requirements of sub-section (3) of section 28 having once been complied with by the Income-tax Officer, Special Ward, the assessee had thereafter no right to have the matter re-opened or re-heard otherwise than by making a specific prayer for that purpose under sub-section (7-C) of section 5 of the Act. Counsel submitted that the operation of section 5(7-C) starts from the point where the proceedings under sub-section (1) or (2) of section 28 have already culminated, and that if an assessee does not exercise his statutory right of getting the case re-opened or of asking for a re-hearing of the case under section 5(7-C), he cannot allege that sub-section (3) of section 28 has been violated as he has not been given a reasonable opportunity of being heard, if he has once had such an opportunity before any income-tax Officer even if he is different from the officer who ultimately imposed the penalty. I think there is clear fallacy in the submission of the learned counsel in this behalf. Section 5(7-C) does not necessarily come into operation after the entire opportunity referred to in section 28(3) has already been granted. The point of time when section 5(7-C) comes into operation has no relation to the stage at which the proceedings are transferred from the previous Income-tax Officer to the new one. Sub-section (7-C) of section 5 comes into operation as soon as an income-tax authority ceases to exercise jurisdiction and is succeeded by another authority who has and exercises jurisdiction irrespective of whether the assessee had or had not fully availed of the entire opportunity provided to him under section 28(3). If all that remained to be done by the preceding officer was to write an order, and everything which such officer was expected to keep in view at the time he ceases to exercise jurisdiction is available in full to the succeeding officer, there is no bar to the latter merely writing out an order after applying his

own mind to the whole of that material unless the assessee exercises his right under the first proviso to sub-section (7-C) of section 5, and asks for either the whole case being re-opened or merely for being re-heard before the passing of the final order. But if one of the things which were to influence the decision of the assessing authority was the effect of an oral hearing already granted to an assessee (either because such a hearing had been asked for or was otherwise necessary in law) the succeeding officer must give a fresh opportunity or oral hearing to the assessee before deciding the matter. There is no known method by which the effect of a personal hearing could be transferred by the preceding officer to his successor unless, possibly, the whole discussion is tape-recorded and the tape is played back to the successor. Admittedly no such thing happened in this case. It is well-known that no amount of written representations, howsoever detailed, can in all cases, be treated as an equally effective substitute of a personal hearing. It is easier for an assessee to persuade an assessing authority to his point of view by removing his doubts and by answering his questions at a personal hearing, than by merely availing of the cold effect of a written representation. By making these observations, I may not be understood to suggest that it is necessary in all cases to give a personal hearing to an assessee in response to the notice under section 28(3) of the Act even if he does not ask for it. Mr. Awasthi frankly conceded that if in the face of the assessee's written request for a personal hearing, the Income-tax Officer, Special Ward, had refused to give him an oral hearing, and had passed an order imposing penalty, the order could be successfully impugned, and he would not be able to support it. He, however, submitted that such a personal hearing having once been afforded to the assessee, he was bound to make a fresh specific request to the successor Income-tax Officer, if he again wanted to be heard. We are unable to agree with this submission, as it is based on the assumption that the oral hearing afforded to the assessee by the Income-tax Officer, Special Ward, could possibly be utilised to his advantage in making the order of imposition of penalty by the succeeding Income-tax Officer. The mandatory requirement of sub-section (3) of section 28 of the Act is in our opinion wholly independent of the enabling provision of section 5(7-C). An order passed under section 28(1)(c) without affording adequate opportunity required to be given to an assessee under sub-section (3) of section 28 would never be valid. An order which is invalid on account of being violative of the requirement of section 28(3) cannot be validated by invoking the first proviso to section 5(7-C). So far as personal hearing is concerned, it seems to us to be plain that such a hearing can have some meaning only if

it is given by the very person who has to ultimately decide the matter. Oral hearing by one officer cannot possibly be of any advantage to his successor in deciding a case. To hold otherwise would amount to saying that the farce of a hearing is equal to a real, genuine and effective hearing.

(7) I asked Mr. Awasthi that if the case had been transferred from the Income-tax Officer, Special Ward, to the Income-tax Officer 'F' Ward before the oral hearing was given to the assessee, would the successor officer decide the matter without affording the assessee an opportunity of being heard merely on the ground that the assessee had not made an application under section 5(7-C)? Mr. Awasthi frankly submitted that no prayer under section 5(7-C) would have been necessary in that eventuality and the successor Income-tax Officer would have been bound to afford a personal hearing to the assessee before passing any valid orders in the matter. Counsel said this would have been necessary because the assessee had asked for a personal hearing, and he would, in those circumstances, have had no opportunity at all of a personal hearing. Once it is conceded that if personal hearing is required to be given in a case, and is not granted by an Income-tax Officer before he is transferred, his successor is bound to grant such a hearing before he can pass a valid order, it is in our opinion fallacious for the revenue to contend as is indeed sought to be contended indirectly, that the oral hearing by the previous officer is as effective and valid for the officer who actually decided a case as it would have been if the successor officer himself had orally heard the assessee. In order to press his submission Mr. Awasthi had to go to the length of stating that technically an order of a successor Income-tax Officer would be perfectly valid if he were to write on the order-sheet of a case under section 27(1) something like this:—

> "My predecessor issued notices under section 28(3). The assessee submitted his written replies which were considered by my predecessor. The assessee was also orally heard by my predecessor. At that stage the jurisdiction to hear this case has been passed over to me. The assessee has not made any prayer for re-opening the case or for re-hearing. So I need not re-do what my predecessor has already done, and need not, therefore, again consider the written replies submitted by the assessee, and need not hear him. Accordingly, I impose on the assessee a penalty of Rs. * * * * *."

The hollowness of the argument of the revenue is, in my opinion, amply revealed by Mr. Awasthi's submitting that so far as strict compliance with law is concerned, no fault can be found with an order of the kind mentioned above. In *Gullapalli Nageswara Rao and others* v. *Andhra Pradesh State Road Transport Corporation and another* (3), a somewhat similar question arose relating to the duty of the State Government to give a pesonal hearing to objectors against a scheme framed under Chapter IV-A of the Motor Vehicle Act (4 of 1939). The procedure which had been prescribed by the State of Andhra Pradesh for the hearing of such objections was that the Secretary to the Government had to give personal hearing, but the decision had to be given by the Chief Minister. Their Lordships of the Supreme Court observed that personal hearing enables the party appearing at such hearing to persuade the authority concerned by reasoned arguments to accept his point of view. Their Lordships held:—

> "If one person hears and another decides, then personal hearing becomes an empty formality."

With the above observations, the Supreme Court held that the procedure followed in the *case of Gullapalli Nageswara Rao and others* (3), (of hearing by the Secretary and decision by the Chief Minister) offended against the basic principles of judicial procedure. To accede to the view canvassed before us by Mr. Awasthi would amount to holding contrary to the pronouncement of the Supreme Court in *Gullapalli Nageswara Rao's case* (3). A Division Bench of this Court (Grover and Khanna, JJ.), held in *Amir Singh* v. *The Government of India and others* (4), that where the Collector of Customs who is bound to hear a party against whom he proposes to make an order had granted personal hearing is transferred an order passed by his successor without granting a fresh personal hearing violates the principles of natural justice. If, therefore, it is once admitted as has been rightly conceded by Mr. Awasthi, that an order passed without giving a personal hearing to an assessee who had specifically asked for one in proceedings for the imposition of penalty under section 28(1)(c) of the Act, would not be valid, the enabling provision of section 5(7-C) of the Act does not appear to us to remove in any manner the infirmity which would otherwise be apparent in a successor passing an order on the basis of an oral hearing given by his predecessor in office.

(3) A.I.R. 1959 S.C. 308.

(4) 1964 P.L.R. 1037.

(8) The question referred to us is fortunately not *res integra*. It was first considered by a Division Bench of the Calcutta High Court (Lahiri, C.J., and Bachawat, J.), in *Calcutta Tanneries* (1944) *Ltd.* v. *Commissioner of Income-tax, Calcutta* (1). After the Manager of the assessee had been heard twice in response to a notice of proceedings under section 28(1)(c) of the Act, he stated on the second hearing that he had nothing more to submit in support of the assessee's contention. No order was, however, passed by the Income-tax Officer who had given the two hearings, and before whom the proceedings had been closed on behalf of the assessee. Thereafter the proceedings were transferred to another Income-Tax Officer before whom no prayer was made by the assessee either to re-open the case or to re-hear the same. Nor did the succeeding Income-tax Officer afford any opportunity of re-hearing to the assessee. The case stood transferred to the succeeding Income-tax Officer before the Income-Tax (Amendment) Act (25 of 1953) which introduced section 5(7-C) was passed. The Division Bench of the Calcutta High Court proceeded to answer the question whether the assessee loses the right of hearing under section 28(3) if he does not exercise his right under the first proviso to section 5(7-C) after referring to the distinction between proceedings for assessment and proceedings for imposition of a penalty, and referring to the admitted facts of the case, as below:—

> "The question, however, still remains whether the assessee has lost its right of hearing under section 28(3) on account of its failure to exercise its right of having the proceeding reopened under the first proviso to section 5(7-C). Mr. Meyer appearing for the Commissioner of Income-tax contends that the right conferred by the proviso to section 5(7-C) is a substitute for the right conferred upon the assessee by section 28(3) so that if an assessee has failed to exercise the right under the proviso there is no further right of hearing under section 28(3). I am, however, unable to accept this contention. The right conferred by the first part of the proviso is a right to have the proceeding reopened whereas the right conferred by section 28(3) is a right of being heard. In my opinion, there may be a hearing without having the proceeding reopened and that hearing may be confined to the hearing of arguments only. As a result of the assessee's failure to exercise its right

under the first part of the proviso the assessee has undoubtedly lost its right of having the proceeding reopened 28(3) before the officer who has been vested with but I fail to see how it has lost its right of being heard under section 28(3) before the officer who has been vested with jurisdiction to continue the penalty proceeding."

Their Lordships of the Calcutta High Court held that the combined effect of section 28(3) and 5(7-C) is to authorise the succeeding Income-tax Officer to pass an order upon the evidence produced before his predecessor-in-office, but the effect is not to authorise the former to pass an order upon arguments advanced before the latter. On the basis of the abovesaid finding, the Division Bench of the Calcutta High Court answered the reference in favour of the assessee and observed that the Court could not but hold that the succeeding Income-tax Officer had no authority to pass an order of imposition of penalty without giving the assessee a further opportunity of advancing the arguments before him. Subsequently a Division Bench of the Patna High Court, while delivering its judgment in *Murlidhar Tajpal* v. *Commissioner of Income-tax, Patna* (2) expressly differed from the view expressed by the Calcutta High Court in the *Calcutta Tanneries' case (supra)* (1) and held that in their opinion the combined effect of section 28(3) and section 5(7-C) of the Act is that the succeeding Income-tax Officer has the authority to pass an order upon the explanation of the assessee produced before his predecessor-in-office if the assessee had failed to exercise his right under section 5(7-C) demanding that the proceedings should be re-opened. With the greatest respect to the learned Judges of the Patna High Court, we are of the opinion that the distinction so clearly brought out in the *Calcutta Tanneries' case* (1) between the re-opening of the proceedings and the re-hearing of arguments was not succinctly brought to the notice of the Patna High Court. In any event, the facts on which the decision of the Division Bench of the Patna High Court in *Murlidhar Tejpal's case* (2) was based were clearly distinguishable in material particulars from the facts of the case before us. In that case no request at all had been made by the assessee for an oral hearing, even before the original Income-tax Officer. In the absence of such a request oral hearing was not necessary and inasmuch as no oral hearing had been afforded to the assessee by the original Income-tax Officer, there would have been no violation of the principles of natural justice referred to by the Supreme Court in *Gullapalli Nageswara Rao's case* (3) and even

by a Division Bench of this Court in *Amir Singh's* case (4) in the proceedings for imposition of penalty against Murlidhar Tejpal. When a similar question arose before an earlier Division Bench of this Court (Mehar Singh, C.J. and Shamsher Bahadur, J.) in *Satprakash Ram Naranjan* v. *Commissioner of Income-tax* (5) the view of the matter taken by the Calcutta High Court in *Calcutta Tanneries' case* (1) was expressly approved by this Court. The judgments of the Rajasthan High Court in *A. C. Metal Works* v. *Commissioner of Income-tax, Delhi and Rajasthan* (6) and of the Mysore High Court in *Shop Siddegowda and Family* v. *Commissioner of Income-tax, Mysore* (7) were distinguished on the ground that no personal hearing had been claimed by the assessee in those cases even before the original Income-tax Officer, and there had been no oral arguments. It was also noticed that in the Rajasthan case a written explanation had been submitted in place of oral arguments. Likewise it was noticed that in the Mysore case, the assessee had confined himself to an explanation in writing which alone was available for consideration to the original Income-tax Officer, and which alone was considered by the successor authority. Similar distinction was drawn in the facts of the case decided by the Mysore High Court in *Hulekar & Sons* v. *Commissioner of Income-tax Mysore* (8). The case before us appears to fall within the ratio of the judgment of this Court in *Satprakash Ram Naranjan's case* (5) and does not fall within the compass of the facts which led to the respective decisions in the Rajasthan case and the Mysore cases. For the same reasons, we are unable to derive any assistance from the judgment of the Calcutta High Court, to which Mr. Awasthi has referred, in *Kanailal Gatani* v. *Commissioner of Income-tax and Excess Profits Tax, West Bengal* (9). No oral arguments had been advanced by the assessee before the original Income-tax Officer, and the question of the assessee being prejudiced by one officer hearing and the other deciding neither could nor did arise in that case. Mr. Nirmal Mukherjee, who appeared for Kanailal Gatani before the assessing authorities, had stated expressly before original assessing authority that "beyond his written statement filed in the matter he had nothing to add." It was on the facts and in the circumstances of that case that the Calcutta High Court held that in the absence

(5) (1969) 71 I.T.R. 646.

(6) (1967) 66 I.T.R. 14.

(7) (1964) 53 I.T.R. 57.

(8) (1967) 63 I.T.R. 130.

(9) (1963) 48 I.T.R. 262.

of a specific request of the assessee under the pressure of section 5(7-C) of the Act, the validity of the order of the succeeding officer deciding on the basis of the record already available was not effected. Their Lordships of the Calcutta High Court emphasised this aspect of the matter by observing as follows:—

> "On the facts of the present case, I am of the opinion that Mr. Roy (the succeeding Income-tax Officer) was entitled to make the order, having satisfied himself as to the correctness of it and, inasmuch as noowitnesses had been called and no arguments advanced, he was in a position to make the order and that no illegality has been committed."

The Calcutta High Court also made it clear in the penultimate paragraph of its judgment that they had decided the case upon the law as it stood before section 5(7-C) was introduced by the Amending Act of 1953, and that the High Court must not be deemed to have expressed any opinion upon the point whether a re-hearing or a fresh hearing was necessary under section 5(7-C), unless it was demanded by the assessee. The judgment of the Calcutta High Court in *Kanailal Gatani's case* (9), therefore, not in point for answering this reference.

(9) Inasmuch as the Appellate Tribunal repelled the arguments advanced before it by the assessee by following the view of the Patna High Court in *Murlidhar Tejpal's case* (2), in preference to the view of the Calcutta High Court in *Calcutta Tenneries' case* (1) and inasmuch as we have agreed with the Calcutta view, and have further held that the facts of the Patna case were distinguishable and any observations in the judgment of the Patna High Court which come into conflict with the ratio of the jujdgment in the *Calcutta Tenneries' case* (1); take a rather narrow view of the legal position which would be inconsistent with the authoritative pronouncement of the Supreme Court in *Gullapalli Nageswara Rao's case* (3); we have no hesitation in answering the question referred to us in the affirmative, i.e., in favour of the assessee. The costs of the assessee in this reference shall be borne by the Revenue.

SHAMSHER BAHADUR, J.—I agree.

K.S.K.