cannot be impeached as the umpire had given no reason in this award for his conclusions which can be considered to be error of law apparent on the face of the award. Indeed, there is no decision on this matter in the judgment of the trial Court as that matter was left to be decided after the other two matters discussed above had been decided.

The result is that this appeal fails and is dismissed with costs.

CIVIL REFERENCE.

Before Bhandari, C.J., and Tek Chand, J.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, ETC.,—
Appellant.

verses

SHREE JAGAN NATH MAHESHWARY, AMRITSAR,—
Respondent

Civil Income-tax Reference 24 of 1953.

1957

Feb. 18th

Income-Tax Act (XI of 1922) Section 34—Notice issued to assessee based on a certain item of income that had escaped assessment—Whether permissible for Income-tax authorities to include other items in the assessment in addition to the item which had initiated and resulted in the notice—"definite information", "discovers" and "such income, profits or gains"—Meaning of Notice, whether should specify the income or source that has escaped assessment—Liability to pay tax—Whether depends on assessment—Section 34—Who can act under—Fiscal Statutes—Interpretation of—Rule as to beneficial interpretation in favour of the subject—Whether subject to the rule against an impairment of obligation—Section 34—Interpretation of.

Held, that when a notice is issued under section 34 based on a certain item of income that had escaped assessment, it is permissible for the Income-tax authorities to include other items in the assessment in addition to the tem which had initiated and resulted in the notice under ection 34.

Held, that, in general, the term "information" means the act or process of informing, communication, or reception of knowledge. It may be knowledge acquired directly as by observation or study, or derived inferentially, or from communication from others. What is "definite information" must, in the nature of things, differ with the circumstances of each case. A precise and all-embracing definition so as to cover all situations and exigencies cannot be attempted. The object of the Legislature in insisting upon "definite information" being in the possession of Income-tax Officer, before an action was taken under section 34, was to protect the assessee from harassment, which in all likelihood would result, if action was taken on the basis of mere suspicion, gossip or rumour. The word "information" is, therefore, synonymous with knowledge, or awareness, in contradistinction to apprehension, suspicion or misgiving.

Held, that, in its primary and abstract sense, the word "discovers" indicates detection as the result of uncovering, revealing or laying open to view what was hidden, concealed or unknown. But words do not always retain their abstract or primary definitions, and their meanings vary in accordance with the contextual use. It is very often the secondary meaning which acquires more extensive recognition, and receive ready comprehension. The word "discovers" has been interpreted by English Courts to mean, "comes to the conclusion from the examination the Inspector makes, and from any information he may choose to receive", or " has reason to believe" or "finds or satisfies himself", or "honestly comes to the conclusion from information before him" and the Courts in India have adopted the same interpretation of this word occuring in Section 34 of the Income-tax Act.

Held further, that the language of Section 34 of the Act has not in any manner crippled or fettered the powers of the Income-tax Officer regarding the receiving of "definite information" in consequence of which any escapement of income, profits or gains has been discovered. The words "definite information" and "discovers" in this context, do not bear any rigid, or narrow etymological meaning, but are to be interpreted in their broad and generally accepted sense. The only restriction in using the words "definite information" which the framers of section 34 had in view as it emerged after the passing of the amending

Act 1939, was to prevent the Income-tax Officers from making assessments blindly and officiously or on the basis of rumours, gossips or vague apprehensions. The Income-tax Officer was not called upon to discover the exact quality or quantity of the omission; it was sufficient if he found that there had been some omission, and it would be immaterial if it was greater or smaller than he had supposed it to be. It would be no less a discovery, when the actual omission was of some different kind to the supposed omission.

Held, that the word "such", as used in section 34 of the Act, qualifies "income, profits or gains" which have escaped assessment, it does not proceed further to qualify or particularise any portion of the escaped income, or the extent of its discovery, or the exact nature of the definite information.

Held, that it is not necessary to specify in the notice issued under Section 34 of the Act the income or the source that has escaped assessment and the notice cannot be termed as vague because of the absence of such specification. The intention underlying section 34 seems to be to inform the tax-payer, after the receipt of definite information that there was escapement of his income from assessment, and that he was being given an opportunity to satisfy the Income-tax authorities, as to his correct income for purposes of proper quantification.

Held, that the liability to pay tax does not depend on assessment. The obligation on the part of the subject to pay income-tax arises by virtue of charging sections. This liability *ex hypothesi* has already been fixed. The assessment order only quantifies, or determines, the definite amount which becomes payable as income-tax in consequence of the operation of the obligation created by sections 3 and 4 of the Indian Income-tax Act, which are the charging sections.

Held, that section 34 does not confer any power on any authority other than the Income-tax Officer to take action under it.

Held, that the general rule of interpretation of fiscal enactment to the effect, that in case of doubt, the construction most beneficial to the subject should be adopted, is subject to the overriding rule against impairment of obligation which is that "on the general principle of avoiding

injustice and absurdity any construction would, if possible, be rejected which enables the person to defeat or impair the obligation of his contract by any act or otherwise to profit by his own wrong."

Held further, that it is the duty of the Judge to construe a statute in a manner, so as to suppress the mischief and advance the remedy. Even, where usual meaning of the language falls short of the whole object of the legislature, the more extended meaning may be attributed to the words if they are susceptible of it, but, of course, without straining the language so as to avoid inclusion of plainly omitted cases. It is better for a statute to have effect than to be made void (*ut res valeat potius quam pereat*), and it is desirable that the words should be made subservient, and not contrary, to the intention of the Legislature (*Verba intentioni non e contra, debent inservire*).

Held also, that section 34 of the Income-tax Act, while being a part of taxing Act, does not impose any charge on the subject; it concerns itself with the machinery of the assessment, and according to canons of interpretation, that construction should be preferred which makes the machinery workable. Therefore, section 34 is to be read in aid and not in derogation of the charging section.

Case referred by Shri K. Srinivasan, Registrar, Income-tax Appellate Tribunal, Bombay, with his Letter No. R.A. 597 of 1950-51, forwarding a statement of the case in re: Shri Jagan Nath Maheshwary, Amritsar under Section 66(1) of the Indian Income-tax Act 1922 (Act XI of 1922) as amended by section 92 of the Income-tax (Amendment) Act 1939 (Act VII of 1939) for orders of the High Court.

S. M. SIKRI, Advocate-General and HEM RAJ MAHAJAN, for Appellant.

H. L. SIBBAL, for Respondent.

JUDGMENT

Tek Chand, J.

TEK CHAND, J.—The main facts leading to this reference are that the assessee carried on business at Amritsar, in speculation dealings, besides deriving income from rent and interest. For the accounting

year 1938-1939, corresponding to the assessment year 1939-40, an assessment was made on a total income of Rs. 4,006 including Rs. 2,500 under the head 'business'. The Income-tax Officer, Amritsar, after issuing notice, as required under section 34 of the Income-tax Act, determined the income at Rs. 7,006. This assessment was set aside on appeal and fresh notices under sections 22(2) and 34 of the Indian Income-tax Act were served on the assessee, and the proceedings that followed resulted in the income being computed at Rs. 41,833. This was followed by an appeal to the Appellate Assistant Commissioner who, by his order, dated 11th March, 1946, rejected it. This order was challenged in appeal before the Appellate Tribunal which, by its order, dated 7th August, 1950, determined the assessable income at Rs. 21,814 as against Rs. 41,833. The relevant paragraph from the order of the Tribunal reads as under:—

> "So far as the assessment for 1939-40 is concerned, the notice under section 34 was issued in respect of a particular item of concealment which amounted to Rs. 17,808. The enhancement, therefore, should not have gone beyond the item in dispute. The only addition that could have been made to the quantum determined in the original assessment was Rs. 17,800. The assessable income is, therefore, determined at Rs. 21,814 as against Rs. 41,833."

In the result, the appeal was partly allowed.

The Commissioner of Income-tax then presented an application requiring the Tribunal to refer to the High Court question of law which, he thought, arose from the order of the Tribunal relating to the assessment year 1939-40. The Tribunal, in its order or reference, dated 17th July, 1951, observed as under:—

> "The Tribunal, on the facts placed before them, in the view that in law section 34 would be

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applicable only to the particular item which had set in motion the section 34 proceedings and was specifically mentioned in the notice as such could invoke the provisions of section 34, deleted from the figure on which assessment had been made by the authorities the other amounts and confined the extra-assessment to a sum of Rs. 17,800. A close examination of the record, however, reveals that even this sum of Rs. 17,800 was not mentioned in the section 34 notice but had to be inferred from the order sheet of the Income-tax Officer. It is not possible to ascertain how the assessee knew the fact, that the notice under section 34 related to Rs. 17,800 or other amount.

"It is as arising from this order that this reference application had been preferred. So, we refer the following question of law to the High Court—

"Whether in the circumstances of the case when a notice is issued under section 34, based on a certain item of income that had escaped assessment, it is permissible for the income-tax authorities to travel beyond the notice and include other items in the assessment in addition to the item which had initiated and resulted in the notice under section 34."

The parties before us agree that the question framed for reference should be resettled so as to read as under:—

"Whether in the circumstances of the case when a notice is issued under section 34,

based on a certain item of income that had escaped assessment, it is permissible for the Income-tax authorities to include other items in the assessment in addition to the item, which had initiated and resulted in the notice under section 34."

For facility of reference, it is desirable to reproduce the exact language of the notice given by the Income-tax Officer under section 34 of the Indian Income-tax Act, and served on the assessee. It reads—

"To

L. Jagan Nath Maheshwary, B. Garden, Amritsar.

"Whereas in consequence of definite information, which has come into my possession I have discovered that your income assessable to income-tax for the year ending 31st of March, 1940 has

(a) * * * * *
(b) been under-assessed,
(c) * * * * *
(d) * * * * *

"I, therefore, propose to reassess the said income that has

(a) * * * * *
(b) been under-assessed,
(c) * * * * *
(d) * * * * *

"I hereby require you to deliver to me not later than 24th June, 1941, or within 30 days of the receipt of this notice a return in the attached form of your total income and total world income assessable for the said year ending 31st of March, 1940.

Income-tax Officer, 'B' Ward."

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Section 34 of the Indian Income-tax Act has had a chequered history and the Legislature has been amending it from time to time. Prior to the amending Act of 1939, section 34 of the Act read as under: —

> "If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year, or has been assessed at too low a rate, the Income-tax Officer, may, at any time within one year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principle officer thereof, a notice containing all or any of the requirements which may be included in a notice under subsection (2) of section 22, and may proceed to assess or reassess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that subsection;
>
> "* * * * * *
>
> "* * * * * *

The amending Act of 1939 brought about substantial changes. In this reference we are concerned with the provisions of this section as they were amended by the Act of 1939, which are reproduced below:—

> "If in consequence of *definite information* which has come into his possession the Income-tax Officer *discovers* that income, profits or gains chargeable to income tax have escaped assessment in any year or have been under-assessed or have been assessed at too low a rate, or have been the subject of excess relief under this Act, the Income-tax Officer may, in any case in which he has reason to believe that the

assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years, and in any other case at any time within four years of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under subsection (2) of section 22, and may proceed to assess or reassess *such* income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that subsection:

"* * * * * *

"* * * * * *

"(2) * * * *

In the year 1948, section 34 was again amended by the Income-tax and Business Profits-tax (Amendment) Act, 1948, by substituting the present section, and the relevant portion reads as under:—

"(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

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of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has, in consequence of information in his possession, reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed, he may in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under subsection (2) of section 22 and may proceed to assess or re-assess such income, profits or gains or recompute the loss or depreciation allowance, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that subsection:

"* * * * * *

"* * * * * *

As indicated above, for the purpose of this reference, it is the section as it stood before the amending Act of 1948, which has to be interpreted. It is an

accepted principle, that the assessment must be based on the provisions of the Act as it stood in the year in which the income ought to have been assessed, and this proposition has not been contested. The changes made in section 34 from time to time indicate that the earlier intention of the Legislature before the amending Act of 1939 was to confer upon the Income-tax Officers wide powers in cases, among others of escapement of assessment, which, by the amending Act of 1939, were substantially curtailed. These restricted powers continued for a period of about nine years between 1939-48, when the Legislature removed the restrictions and restored the wide powers which the Income-tax Officers had enjoyed previously before section 34 was amended in 1939.

On the question referred, one of the contentions of the learned counsel for the assessee is that, although the notice under section 34 of the Act was couched in general language, it was based on an information received by him on a certain item only of the income that had escaped assessment. It was argued that it was not open to the Income-tax authorities to subject the income to an assessment with respect to other items of escaped income, Mr. Sibal for the assessee, argued that within the period of limitation as fixed in section 34, the Income-tax Officer could issue to the assessee as many notices as there were items of the escaped income, and as often as he went on receiving *definite information* regarding any escaped income. But he stressed that re-assessment of the escaped income must be confined to those items only which the Income-tax Officer had *discovered* in consequence of *definite information* which he had received.

The words occurring in section 34 "served on the person liable to pay tax on *such* income, profits or gains....." according to Mr. Sibal, are confined

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to that escaped income, which the Income-tax Officer had *discovered* in consequence of *definite information*, which had come into his possession.

To appreciate this argument, three expressions occurring in section 34 of the Act, which have been the subject-matter of comment by the learned counsel appearing for the Commissioner of Income-tax and for the assessee, require examination. They are: (i) "*definite information*", (ii) "*discovers*" and (iii) "*such income, profits or gains*". The real meaning and import of these terms in their context will help in finding a correct answer to this reference.

In general, the term "information" means the act or process of informing, communication, or reception of knowledge. It may be knowledge acquired directly as by observation or study, or derived inferentially, or from communication from others. The first condition, before machinery under section 34 can be put into operation, is definite knowledge regarding escapement coming into possession of the Income-tax Officer at the time when intimation is sent to the assessee. What is "definite information" must, in the nature of things, differ with the circumstances of each case. A precise and all-embracing definition so as to cover all situations and exigencies cannot be attempted. The object of the Legislature in insisting upon "definite information" being in the possession of Income-tax Officer, before an action was taken under section 34, was to protect the assessee from harassment, which in all likelihood would result, if action was taken on the basis of mere suspicion, gossip or rumour.

Word 'Information' is, therefore, synonymous with knowledge or awareness, in contradistinction to apprehension, suspicion or misgiving.

In *Jitanram Nirmalram* v. *Commissioner of Income-tax, Bihar and Orissa* (1), Ramaswami, J., remarked—

> "It is obvious that the phrase 'definite information' in section 34 cannot be constructed in a universal sense, its meaning must depend and must necessarily vary with the circumstances of each case. It is necessary that the information should be more than mere gossip or rumour. But it need not be information of fact, nor need it be information of actual escape of tax."

According to Chief Justice Chagla in *Haji Ahmad Haji Esak and Company* v. *Commissioner of Income-tax, Bombay City* (2)—

> "Information must be a knowledge or mental awareness of the facts which are revealed by the materials."

In *In re Badar Shoe Stores* (3), it was observed—

> "What is 'definite information' must necessarily vary with the circumstances of the case. We think that the words 'definite information' are placed in section 34 of the Income-tax Act to protect the subject against an assault by the Income-tax Officer based upon mere suspicion. The 'definite information' which is something more than mere gossip or rumour, must lead to the discovery or belief as we have described it above. But we are not prepared to engage ourselves to the view that, provided the information is definite and

(1) (1951) 19 I.T.R. 476, 483.
(2) (1951) 19 I.T.R. 331, 341.
(3) (1946) 14 I.T.R. 431.

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does lead to that belief, it need not necessarily be information of fact, though in ninty-nine cases out of a hundred it would inevitably be information of fact. Still less need it be information of actual escape from assessment or under-assessment. It may well be information of circumstances not themselves amounting to under-assessment or escape from assessment, but leading to the belief of under-assessment or escape from assessment. In short it may be circumstantial evidence."

The next term that needs analysing is "discovers". Under section 34, the machinery of law is set in motion, "if in consequence of definite information which has come into his possession the Income-tax Officer *discovers* that income profits or gains chargeable to income-tax have escaped assessment in any year, or have been under-assessed.....etc., ...etc." In its primary and abstract sense, the word "discovers" indicates detection as the result of uncovering, revealing or lying open to view what was hidden, concealed or unknown. It is in this restricted sense, that the assessee wants us to interpret the word "discovers" in this section. But words do not always retain their abstract or primary definitions, and their meanings vary in accordance with the contextual use. It is very often the secondary meaning which acquires more extensive recognition, and receives ready comprehension. Besides, section 34, the word "discover" has occurred in Taxation Statutes in England. Section 52 of the Taxes Management Act, 1880, reads—

> "If the surveyor *discovers* that any properties or profits chargeable to the duties have been omitted from first assessment, or that any person so chargeable has not made

a full and proper or any return, or has not been charged to the said duties, or has been under-charged in the said first assessment, or has obtained and been allowed from and in such first assessment any allowance, deduction, abatement or exemption not authorised by the Tax Act—

"then, the Additional Commissioners shall make an additional first assessment on any such person in such sum as they think ought to be charged on him."

The use of the word "discovers" in the above, and in other, English statutes is a helpful guide, for construing it in our Income-tax Act, which is in *pari materia*. The meaning of the word "discovers", and what it implies, has been considered in a number of English authorities. In *The King* v. *The Kensington Income-tax Commissioners* [*Ex parte Aramayo* (1)], the contention on behalf of the taxpayer was, that the surveyor "discovers", when he has ascertained a fact on legal evidence. This contention was repelled by the three Judges constituting the Bench. Bray, J., said at p. 282—

"The question we have got to consider is what is the meaning of word 'discovers'. The word obviously has more than one meaning, and the question, which we have to consider, is what meaning it has in this section. Does it mean.....ascertained by legal evidence? In considering that question it is necessary to bear in mind the relevant provisions of the Act of 1842, and 1880. First of all we must ask ourselves: Has the surveyor any rights given to him to obtain legal

(1) 6 Tax Cases 279: 1913, 3 K.B. 870.

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evidence ? I cannot find that he has any such right.....It would, therefore, seem most unlikely that the Legislature should have intended by the word 'discovers' that the surveyor was to ascertain by legal evidence. In my opinion, it means 'comes to the conclusion' from the examination he makes and from any information he might choose to receive."

Avory, J. said at p. 289—

"I think that the word (*discovers*) means 'has reason to believe'. If it is construed in the sense 'has reason to believe', it is consistent, and only in that way is it consistent with the whole scheme of this legislation."

Lush, J., (at p. 290) understood the word "discovers" to mean "to find" or "satisfy himself". It is true, that the above decision was reversed by the Court of Appeal, but the grounds of reversal were different, and no doubt was expressed as to the interpretation given to the word "discovers". Pickford L.J., while giving the judgment of the Court of Appeal, in fact remarked, that he saw no reason to dissent from the decision of the Divisional Court as to the meaning of the word "discovers" occurring in section 52 of the Taxes Management Act: vide *Rex* v. *Kensington Income-tax Commissioners*, (1).

In *Rex* v. *Commissioners of Taxes for St. Giles and St. George, Bloombury* (*ex parte Hooper*) (2), Lord Reading, C.J., approved of the meaning of the word "discovers" in *Rex* v. *Kensington Income-tax Commissioners* (1), and was of the view, that "surveyor *discovers* when he honestly arrives at the conclusion based upon the material then before him."

(1) (1914) 3 K. B. 429 at p. 445.
(2) 7 Tax cases 62.

In *Williams* v. *Trustees of W. W. Grundy* (1), the same view was taken of the meaning of the word "discovers" occurring in section 125 of the Income-tax Act, 1918. This section was similarly worded as section 52 of the Taxes Management Act, 1880. Section 125 runs—

> "(1) If the surveyor discovers that any properties or profits chargeable to tax have been omitted from the first assessment; or.....'..
>
> "then the surveyor shall amend the assessment and assess the person liable to the full amount....."

Finlay, J., after citing above quoted passage from the judgment of Bray, J., in *Rex* v. *Kensington Income tax Commissioners* (2), said at p. 532—

> "There seems to be little doubt that if 'discovers' means coming to the conclusion from his (the Inspector's) examination, that passage applies here." and

the view expressed by Bray, J., as to the meaning of "discovers" was adopted in that case.

In *Inland Revenue Commissioners* v. *Machinlay's Trustees* (3), a case decided by the Court of Session of Scotland, the Lord President, Lord Normand, in giving his opinion stated—

> "The question, therefore, is whether a discovery that a mistake, essentially a mistake of law, has been made is a discovery within the meaning of section 125. I think the word 'discover' in itself, according to the ordinary use of language, may be taken

(1) (1934) I.K.B. 524.
(2) (1914) 33 K.B. 429 at 445.
(3) 22 T.C. 305-1938 S.C. 771.

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simply to mean 'find out'. What has to be found or found out is that any properties or profits chargeable to tax have been omitted from first assessment."

The above dictum of Lord Normand was cited with approval by Lord Justice Tucker in *Commercial Structures Ltd.*, v. *Briggs* (1). In a recent case, *Earl Beatty* v. *Inland Revenue Commissioners* (2), the above view was adopted by Vaisel, J., of Chancery Division.

To sum up, the word "discovers" has been interpreted by English Court to mean, "comes to the conclusion from the examination the Inspector makes, and from any information he may choose to receive", or "has reason to believe", or "finds or satisfies himself", or "honestly comes to the conclusion from information before him", see also Halsbury's Laws of England, Volume 17, 2nd Edition, p. 339.

The courts in India have adopted the same interpretation of the word "discovers" occurring in section 34, as was given to it by the English Courts: *vide* In *re. Badar Shoe Stores* (3), at pp. 437-439, and *Jitanram Nirmalram* v. *Commissioner of Income-tax, Bihar and Orissa* (4).

In *India United Mills Ltd.*, v. *Commissioner of Excess Profits Tax, Bombay,* (5), the Supreme Court interpreted section 15 of the Excess Profits-Tax Act (No. XV of 1940), in which the word "discovers" occurs. Section 15 reads as under:—

"If, in consequence of definite information which has come into his possession, the

(1) (1948) 2 All England Law Reports 1041: 1949 I.T.R. Suppl. 30
(2) (1953) 2 All England Laws Reports 758.
(3) (1946) 14 I.T.R. 431.
(4) (1951) 19 I.T.R. 476 at pp. 482 to 484.
(5) (1955) 27 I.T.R. 20.

Excess Profits-Tax Officer *discovers* that profits of any chargeable accounting period chargeable to Excess Profits-tax have escaped assessment, or have been under-assessed, or have been the subject of excessive relief, he may at any time serve on the person liable to such tax a notice containing all or any of the requirements, which may be included in a notice under section 13, and may proceed to assess or reassess the amount of such profits liable to Excess Profits-tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section."

The controversy in that case was, whether on the facts found, the Excess Profits-tax Officer could be held to have discovered that there had been grant of excessive relief. The contention of Mr. Kolah, counsel for the appellants, which did not find favour with their Lordships, was that discovery, for the purpose of section 15 of the Act, must be of facts which were in existence during the chargeable accounting period, and that facts which came into existence subsequent to the chargeable accounting period could under no circumstances be made the basis for reassessment of the profits of that period. On behalf of the Commissioner of Excess Profits-tax the Attorney-General contended, that the words "if the Excess Profits-tax Officer *discovers*" occurring in section 15 of the Act meant nothing more than that "if the Excess Profits tax Officer finds or satisfies himself". Their Lordships of the Supreme Court, while entertaining the contention of the learned Attorney-General observed:—

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

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

But their Lordships of the Supreme Court, at p. 29 of the report, while dismissing the appeal expressly confined their decision to the interpretation of the word "discovers" as occurring in section 15 of the Excess Profits-tax Act and said—

"There has been quite a literature on the meaning of the word 'discovers' occurring in that section (section 125 of the English Income-tax Act 1918) and in the corresponding sections of other English Income-tax Statutes, and the question has also been considered in the Indian Courts on the language of section 34 of the Indian Income-tax Act, as it stood prior to the amendment of 1948. Whatever the position, if the question were to arise under the Income-tax Act and there is no need to express any final opinion on it having re-

gard to the nature and scope of the provisions of the Excess Profits-tax Act and in particular section 26(3), we are of the opinion that the word 'discovers' in section 15 of the Act is of sufficient amplitude to take in subsequent events which have a material bearing on the facts and circumstances on which assessment had been made or relief granted....."

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From the above discussion, I am persuaded to conclude, that the language of section 34 of the Act has not in any manner crippled or fettered the powers of the Income-tax Officer regarding the receiving of "definite information" in consequence of which any escapement of income, profits or gains has been discovered. The words "definite information" and "discovers" in this context, do not bear any rigid, or narrow etymological meaning, but are to be interpreted in their broad and generally accepted sense. The only restriction in using the words "definite information" which the framers of section 34 had in view, as it emerged after the passing of the amending Act of 1939, was to prevent the Income-tax Officers from making assessments blindly and officiously or on the basis of rumours, gossips or vague apprehensions. The Income-tax Officer was not called upon to discover the exact quality or quantity of the omission; it was sufficient, if he found, that there had been some omission, and it would be immaterial if it was greater or smaller than he had supposed it to be. It would be no less a discovery when the actual omission was of some different kind to the supposed omission. In the words of Vaisey, J., Special Commissioner, who discharges duties similar to those of Income-tax Officer under section 34 of the Act, on discovering an omission, could very well say:

"I have discovered that there is an omission. I am not yet in a position to say what it is,

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either in quality or in quantity, but that is why I have made these assessments."

(*Earl Beatty* v. *I. R. Commissioners* (1)).

Now the meaning of the word "such" as used in juxta-position with "income, profits or gains" remains to be considered. According to the learned counsel for the assessee, the term "such income, etc., etc." refers not to the entire escaped income but to that part of it only, with respect to which the Income-tax Officer had a definite information, in consequence of which he had discovered the escapement. This restricted scope of the expression "such income, etc., etc.," does not commend itself to me, either on the basis of grammar, logic or natural and reasonable construction. The word "such", as used in this context, qualifies "income, profits or gains" which have escaped assessment, it does not proceed further to qualify or particularise any portion of the escaped income, or the extent of its discovery, or the exact nature of the definite information.

In section 34 of the Act, the adjective "such" is used as a descriptive and relative term for limiting the action to income, profits or gains, chargeable to income-tax, which have escaped assessment in any year or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under the Income-tax Act. In its grammatical usage, and in its natural and ordinary sense, the word "such" is understood to refer to the last antecedent, unless the meaning of the sentence would thereby be impaired, which does not seem to be the case here. The word "such" indicates something just before specified, or spoken of, that is proximately, and not merely previously. It particularises the immediately preceding antecedent, and not everything that has

(1) (1953) 2 A.E.L.R. 761-2.

gone before. It signifies what has preceded proximately and not just previously or formerly.

In *Steinlein* v. *Halstead* (1), section 1697 of Revenue Statute provided that—

> "Within 10 days after the execution of the assignment the assignor shall also make and file in the office of said clerk a correct inventory of his assets and a list of his creditors, stating the place of residence of each such creditor and the amount due to each, which inventory and list shall each be verified by his oath, and have affixed a certificate of the assignee that the same is correct according to his best knowledge and belief, and failure to make and file *such* inventory and list shall render such assignment void, but no mistake therein shall invalidate such assignment or affect the right of any creditor."

The controversy in that case was in relation to the use of the word "such" in the sentences—

> "and failure to make and file *such* inventory and list shall render such assignment void."

The Supreme Court of Winconsin held that according to the natural, reasonable and grammatical construction, the word "such" referred only to a correct inventory of assets and list of creditors, without any reference whatever to the oath of the assignor or the certificate of the assignee. In other words it specified only the last preceding clause of the subject-matter.

In view of the above, I am fortified in my conclusion that the word "such" occurring in section 34 has to be attributed to the last antecedent, namely, the escaped or under-assessed, etc., income, profits or

(1) 9 North Western Reporter 881.

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gains, without in any way further linking it with any particular escapement that was discovered in consequence of any definite information.

Mr. Sibal next argues that notice under section 34 was defective for reasons of vagueness. There is no warrant for the assumption that the notice, the contents of which have been reproduced in the earlier part of this judgment, was defective in any manner. It is true that there is no specification in the notice, either of the income or of the source that has escaped assessment, but that is not necessary. In *Istifa Khan* v. *The Commissioner of Income-tax* (1), the question, "whether the notice under section 34 without specification of income or the sources of the income which had escaped assessment was invalid in law", was answered in the negative, and it was observed that the mere fact that the notice was issued under section 34 would show the person concerned why it had been issued, without further requiring the income-tax Officer to give any particulars of the escaped income.

In any case, even on the supposition that the notice was defective, it does not improve matters for the assessee. The liability to pay tax does not depend on assessment. The obligation on the part of the subject to pay income-tax arises by virtue of charging sections. This liability *ex hypothesi* has already been fixed. The assessment order only quantifies, or determines, the definite amount which becomes payable as income-tax, in consequence of the operation of the obligations, created by sections 3 and 4 of the Indian Income-tax Act, which are the charging sections.

In *Whitney* v. *The Commissioner of Inland Revenue* (2), which went up to the House of Lords, Lord Dunedin made the following observations:

> "My Lords, I shall now permit myself a general observation. Once that it is fixed that

(1) (1942) 10 I.T.R. 435
(2) 10 T.C. 88 at p. 110

there is liability, it is antecedently highly improbable that the statute should not go on to make that liability effective. A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable. Now, there are three stages in the imposition of a tax, there is the declaration of liability, that is the part of the statue which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, *ex hypothesi*, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

In *Cockerline and Company* v. *The Commissioner of Inland Revenue* (1), the above quotation, from the judgment of Lord Dunedin was cited with approval by Lord Hanworth M. R., who also associated himself with the following passage from the unreported decision of the Court of Appeal, dated 3rd November, 1926, in *Williams* v. *Henry Williams* from the judgment of Sargant, L.J.,:—

"I cannot see that non-assessment prevents the incidence of the liability, though the amount of deduction is not ascertained until assessment. The liability is imposed by the charging section..... The subsequent provisions as to assessment and so on are machinery only. They enable the liability to be quantified and when

(1) 16 T.C. 1, at p. 19.

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quantified, to be enforced against the subject, but the liability is definitely and finally created by the charging section and all the materials for ascertaining it are available immediately."

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Lord Hanworth, while referring to the above cited observation from Lord Dunedin's judgment, said—

> "Lord Dunedin, speaking, of course, with accuracy as to these taxes, was not unmindful of the fact that it is the duty of the subject to whom a notice is given to render a return in order to enable the Crown to make an assessment upon him, but the charge is made in consequence of the Act upon the subject, the assessment is only for the purpose of quantifying it."

In *Chatturam and others* v. *Commissioner of Income-tax* (1), this proposition was examined by our Federal Court, and Kania, J., expressed himself thus, at p. 307—

> "The income-tax assessment proceedings commence with the issue of a notice. The issue or receipt of notice is not, however, the foundation of the jurisdiction of the Income-tax Officer to make assessment or of the liability of the assessee to pay the taxes..... The jurisdiction to assess and liability to pay taxes, however, are not conditional on the validity of the notice."

The Supreme Court endorsed the above view in *Chatturam Horil Ram Ltd.*, v. *Commissioner of Income-tax* (2).

(1) (1947) 15 I.T.R. 302.
(2) (1955) 27 I.T.R. 709 at pp. 715-17.

Another argument was also addressed to us, by the learned counsel for the assessee, based upon the general rule of interpretation of fiscal enactment, to the effect, that in case of doubt, the construction most beneficial to the subject should be adopted. But this general canon of interpretation, is subject to the over-riding rule against impairment of obligation. According to Maxwell—

> "On the general principle of avoiding injustice and absurdity any construction would, if possible, be rejected which enables the person to defeat or impair the obligation of his contract by any act, or otherwise to profit by his own wrong."
>
> (*Vide* p. 215, 9th Edition)

It is the duty of Judge to construe a statute in a manner so as to suppress the mischief and advance the remedy. Even where usual meaning of the language falls short of the whole object of the legislature, the more extended meaning may be attributed to the words, if they are susceptible of it, but, of course, without straining the language so as to avoid inclusion of plainly omitted cases.

It is well to remember that section 34, while being a part of taxing Act, does not impose any charge on the subject; it concerns itself with the machinery of the assessment, and according to canons of interpretation, that construction should be preferred, which makes the machinery workable. Therefore, section 34 is to be read in aid and not in derogation of the charging section.

In *Commissioner of Income-tax* v. *Mahali Ram Ramji Das* (1) their Lordships of the Privy Council expressed themselves in the following words:—

> "The section, although it is part of taxing Act, imposes no charge on the subject, and deals

(1) (1940) 8 I.T.R. 442 at p. 448.

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merely with the machinery of assessment. In interpreting provisions of this kind the rule is that that construction should be preferred which makes the machinery workable, *ut res valeat potius quam pereat.* In the present instance two considerations are in their Lordships' opinion decisive. First, no powers are imposed by the section on the Income-tax Officer to convene the assessee, or to issue notices calling on him to produce documents, though these powers are essential if the Income-tax Officer is to conduct a quasi-judicial enquiry before deciding that profits have escaped assessment or have been assessed at too low a rate."

To the maxim cited above by their Lordships of the Privy Council to the effect that it is better for a statute to have effect than to be made void, (*ut res valeat potius quam pereat*), I may take the liberty of supplementing, that it is desirable that the words should be made subservient and not contrary to the intention of the Legislature (*verba intentioni non e contra, debent inservire.*).

Thus the contention of the assessee's learned counsel for adoption of the strict interpretation of a fiscal statute in favour of subject, in the light of what has been discussed above, is without force and must be rejected. In *Drummond* v. *Collins* (1), Lord Parker, delivering the judgment in the House of Lords observed—

> "This Section (section 41 of the Income-tax Act 1842) is a collecting section and not a taxing section, and there is no reason in principle why it should not receive a liberal interpretation."

(1) 6 T.C. 525 at p. 540.

Scot, L.J., in the Court of Appeal, cited with approval the principle as enunciated by Lord Parker in the above passage: vide *Allen* v. *Thehearne* (1).

Mr. Sibal cannot justly complain that the Income-tax Officer in this case travelled beyond the contents of the notice. Moreover, it is not deducible from the language of section 34, as it stood before the amending Act of 1939, that it was the intention of the framers to pin the Income-tax authorities down to specific and exact grounds, and then to permit them to proceed on the basis, and only to the extent of the fragmentary information in their possession for the time being. It could not be the policy of the Legislature to so unduly restrict the powers of Income-tax authorities, so as to facilitate easy evasion and escapement of the income from being taxed. The intention underlying section 34 seems to be to inform the tax-payer, after the receipt of definite information, that there was escapement of his income from assessment, and that he was being given an opportunity to satisfy the Income-tax authorities as to his correct income for purposes of proper quantification. In support of his contention, Mr. Sibal relies upon the following passage occurring at p. 805 of "The Law and Practice of Income-tax by Kanga and Palkhivala, 3rd Edition".—

> "Where a notice has been given to the assessee under this section in respect of certain items of escaped income, the Income-tax Officer cannot make an additional assessment in respect of fresh items of income under other heads, which were not covered by the notice at all, nor can the Appellate Assistant Commissioner assess such fresh items of the income for the first time in appeal."

(1) 22 T.C. 15 at p. 26:

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From what follows, this does not appear to be a correct statement of law. The first authority that the learned counsel for the assessee has cited is *Chimanram Motilal* v. *Commissioner of Income-tax* (1). But this decision does not sustain his argument at all. The question in that case was—

> "Whether in the circumstances of this case the notice of reassessment issued to the applicant under section 34, Income-tax Act, was invalid or illegal for failure to specify the particular source of income that had escaped assessment?"

It was held that all that was necessary under section 34 was that a notice should be given, which sufficiently draws the attention of the assessee to the case, which he has to meet. In that case, on its facts, it was held, that the notice was sufficient to enable the assessee to meet the charge of escapement of income.

The next authority cited on behalf of the assessee is *Commissioner of Income-tax* v. *Nawab Shah Nawaz Khan* (2). There are no doubt certain observations in the judgment which appear to lend countenance to the contention of the assessee and the passage in Kanga's commentary is based upon this authority. But if the sentences, to which our attention was drawn, are read in the background of the facts of that case, and in the light of the questions, which the Judges of the Lahore High Court were called upon to answer, they would not support the argument canvassed by the assessee's learned counsel before us in this case. The facts of the reported case were, that an assessment was made on the Mamdot Estate of the assessee for the year 1933-34, the accounting year being 1932-33. On 16th February, 1935 an additional assessment was made under section 34 of the Income-tax Act,

(1) A.I.R. 1943 Bom. 132: (1943) 11 I.T.R. 44.
(2) (1938) 6 I.T.R. 370.

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in respect of a sum of Rs. 8,675-8-0, which the assessee was said to have earned from interest on securities. The assessee appealed against this order of the Assistant Commissioner of Income-tax, and while that appeal was pending, the Assistant Commissioner of Income-tax came to know that another item of income derived by the assessee from a certain mortgage transaction had also escaped assessment in respect of which a fresh notice was issued. Three questions were framed, and questions Nos. 2 and 3, which may have some relevance, are reproduced below:—

> "(2) Is the Assistant Commissioner legally competent to add a new item of income, after the expiry of the limitation prescribed in section 34, when an appeal against an assessment made under that section is pending before him?"
>
> "(3) Is the Assistant Commissioner competent to set aside the assessment made under section 34 and direct the Income-tax Officer to make a fresh assessment including a fresh item of income after the period of limitation prescribed in section 34 has expired?"

From the clear language and tenor of the two questions reproduced above, it would be clear, that they bear no similarity either to the question under reference, or to the facts of this case. The above questions were answered in the negative. The passage relied upon by the assessee's learned counsel in the judgment is quoted below *in extenso* containing the two sentences, to which our pointed attention was drawn—

> "It is obvious that under this section no income, if it has escaped, can be touched after the period of limitation prescribed therein. On

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the one hand, this section arms the Income-tax Officer with a special power to rectify his mistakes and to save the exchequer from any loss accruing from his negligence and on the other it protects the assessee against the arbitrary use of this section and sets a limit of time within which such mistakes can be rectified. *Again this section is confined to the items of income that have escaped and has no reference to the total income of the assessee. A notice issued under this section, therefore, pertains to those items only which have escaped assessment and to no others.* If it was permissible to the Assistant Commissioner of Income-tax to add fresh items of income under different heads to the items already detected by him as having escaped, even though the limitation prescribed by section 34 had expired, it would deprive the assessee of the protection afforded by section 34. No doubt section 31 empowers an Assistant Commissioner of Income-tax in general terms to enhance an assessment, but we do not consider that that power can be exercised irrespective of the limitations imposed by section 34."

From the above passage, when read as a whole it will be noticed that the distinguishing features of the Lahore case were, that what was being examined was the competence of Appellate Assistant Commissioner and not of the Income-tax Officer for purposes of proceedings under section 34. Section 34 does not confer any power on any authority other than the Income-tax Officer. The argument, which found favour there, was that the Appellate Assistant Commissioner, while disposing of the appeal, could not go beyond the subject-matter of the appeal. The new source of

income, which the Appellate Assistant Commissioner wanted to tax was held not to be included within the narrow ambit of his appellate powers. The argument that met with the approval of the Hon'ble Judges of the Lahore High Court was that the Appellate Assistant Commissioner, when dealing with the appeal, could pass orders only with respect to the subject-matter of the appeal, and could not *suo motu* proceed to enhance the assessment. Relying upon *Nawal Kishore-Kharaiti Lal* v. *Commissioner of Income-tax, Punjab* (1), *In re. North British and Mercantile Insurance Company* (2), and *Jagarnath Therani* v. *Commissioner of Income-tax* (3), the Lahore High Court held that the Appellate Assistant Commissioner was not empowered to make a new assessment in appeal, by adding new sources of income, which were not the subject-matter of the appeal before him. The penultimate paragraph of the judgment reads as under:—

> "On these grounds we have no hesitation in holding that under the circumstances of the present case the Assistant Commissioner is not empowered so to enhance the income assessable under section 34 of the Income-tax Act as to include the sum of Rs. 88,795 which has nothing to do with the subject-matter of the appeal before him."

The above passage brings out the real issue which was being contested in that case. The other question was also answered in the negative on the ground that—

> "an income which has once escaped cannot be assessed or reassessed after the expiry of the period of limitation."

(1) 1936 I.T.R. 237: A.I.R. 1936 Lah. 897
(2) 1937 I.T.R. 349: I.L.R. (1937), 2 Cal. 540
(3) A.I.R. 1925 Pat. 408

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Thus the sentence in the ruling, "a notice issued under this section, therefore, pertains to those items only which have escaped assessment and to no others", unless torn out from their factual context, cannot be deemed to throw any light on the question to be answered in this case.

After having given most anxious consideration to the various grounds advanced before us, and for the reasons stated above, the question referred to this Court must be answered in the affirmative. We are, therefore, of the view that in the circumstances of the case, when a notice is issued under section 34, based on a certain item of income, that had escaped assessment, it is permissible for the Income-tax authorities to include other items in the assessment, in addition to the item, which had initiated and resulted in the notice under section 34. The assessee shall pay costs to the Department which we assess at Rs. 250.

Bhandari, C. J.

BHANDARI, C.J.—I agree.

APPELLATE CIVIL

Before Tek Chand, J.

KALI CHARAN,—*Plaintiff-Appellant.*

versus

RAVI DATT, AND OTHERS,—*Defendants-Respondents*

Second Appeal from the Order No. 45 of 1953.

1957

Feb. 18th

Code of Civil Procedure (Act V of 1908)—Order 20 rule 14—Pre-emption Money—Deposit—Mere presenting of an applicaion to deposit money—Provisions of Order 20 rule 14 Civil Procedure Code whether complied with—Tender, meaning of—Contract Act (IX of 1872) Section 38.

Held, that a mere application to court requesting, without the actual production of the money, that the pre-emption money be deposited does not amount to compliance of the