Beharilal Ramcharan vs Income-Tax Officer, Special Circle 'B' ... on 21 July, 1981

Equivalent citations: 1981 AIR 1585, 1982 SCR (1) 1, AIR 1981 SUPREME COURT 1585, 1981 TAX. L. R. 1441, 1981 SCC (TAX) 260, 1981 TAXATION 62 (3) - 51 (SC), (1981) 62 TAXATION 51, (1981) 131 ITR 129, 1981 (3) SCC 473

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Bench: P.N. Bhagwati, A.P. Sen, E.S. Venkataramiah

PETITIONER:
BEHARILAL RAMCHARAN

Vs.

RESPONDENT:
INCOME-TAX OFFICER, SPECIAL CIRCLE 'B' WARD, KANPUR AND ANR.

DATE OF JUDGMENT21/07/1981

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1981 AIR 1585 1982 SCR (1) 1
1981 SCC (3) 473 1981 SCALE (3)1059

ACT:
Income-Tax Act 1961-Section 226(3) (i)-Scope of-Notice issued to assessee in default did not specify amount of tax payable by him-Amount payable was within knowledge of assessee in default-Notice if invalid.
Clause (x) of section 226(3)-Sworn affidavit filed by accountant of assessee in default-if valid-Income Tax Officer-Whether bound to give opportunity of being heard before rejecting affidavit and declaring him responsible for tax.

HEADNOTE:
On May 21, 1966 the Income Tax Officer issued a notice to the petitioners under section 226 (3) (i) of Income Tax

Act, 1961, stating that according to the books of accounts of B.R. Sons Ltd. (the assessee) the petitioners owed them Rs. 76 thousand odd and that this amount should be paid by them to the Department against arrears of tax due from the assessee. In reply the petitioners stated that it was not they who owed the assessee but it was the assessee who owed them a large amount. The Income Tax Officer directed the petitioners to file a sworn affidavit setting out their pleas.

In the sworn affidavit filed on their behalf by the accountant of the petitioners the above contentions were reiterated. But the Income Tax Officer stating that an examination of the assessee's books of account showed that the facts stated in the affidavit were false in material particulars held the petitioners personally liable to make payment to the extent of their liability to the assessee. On January 11, 1967 the Income Tax Officer wrote to the petitioners that since they had not furnished any particulars to rebut his conclusion that the affidavit was false and also because they had failed to pay up the amount due from them to the assessee they were held to be an "assessee in default" within the meaning of section 226 (3) (x) of the Act.

In the petitioner's writ petition seeking to quash the action of the Department to attach their immovable property the High Court held that although it was necessary for the Income Tax Officer to have mentioned the amount due from the petitioners to the assessee, since the petitioners knew what the amount referred to by the Income Tax Officer was, no prejudice could be said to have been caused to them and that the notice issued to them was not invalid on that account; and (ii) the Income Tax Officer was justified in treating the petitioners as "assessee in default" for non-payment of the amount due and owing

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from them to the assesse, (iii) but since no recovery certificate as required under section 222 of the Act had been issued by the Income Tax Officer the recovery proceedings were invalid.

In the appeal to this Court,

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HELD: 1. The view of the High Court that by reason of non-specification in the notice dated May 21, 1966 of the amount due from the petitioners to the assessee no prejudice had been caused to the petitioners was correct. At no time did the petitioners complain that the notice did not specify the amount alleged to be due from them to the assessee or that it was vague and indefinite. In fact they replied to the notice on merits and filed a sworn affidavit. Secondly in his letter dated December 31, 1966 the Income Tax Officer pointed out to the petitioners that the assessee had a credit balance of over Rs. 8 lakhs as on May 24, 1966. Therefore the petitioners had clear notice of what the

amount alleged to be due from them to the assessee was. [8 G-9C]

2. (a) It is not necessary under clause (vi) that the statement on oath contemplated in that provision should be made only by the person to whom the notice under clause (i) is issued. It is sufficient if the objection to the requisition contained in the notice is made by the person to whom the notice is sent and such objection is supported on oath by a person competent to make such statement. [10 B]

(b) Merely because the affidavit was sworn by the accountant of the petitioners it was not open to the Income Tax Officer to disregard the affidavit. The accountant had obviously knowledge of the state of account between the petitioners and the assessee and was competent to make a statement on oath in regard to the position of such account. [9 E]

(c) If the Income Tax Officer discovers that a statement made on oath is false in any material particulars the garnishee is made personally liable to the Income Tax Officer to the extent of his own liability to the assessee on the date of the notice or to the extent of the assessee's liability for arrears of tax, whichever is less. [10E-F]

3. (a) For reaching an objective conclusion that in his opinion the statement on oath made on behalf of the garnishee is false in any material particulars the Income Tax Officer would have to give notice to the party concerned, hold an enquiry for determining whether the statement on oath is false and if so in which material particulars and what amount is in fact due from the garnishee to the assessee. In such an enquiry he would have to follow the principles of natural justice and reach an objective conclusion. [11 B-C]

(b) Once a statement on oath is made on behalf of the garnishee that the sum demanded is not due from him to the assessee the burden of showing that the statement is false is on the Revenue which would be bound to disclose to the garnishee all such evidence or material on which it proposes to rely. The Revenue should also show on the basis of relevant evidence that the statement

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on oath is false. It is only then that personal liability for payment can be imposed on the garnishee under clause (vi). [11 D-E]

In the instant case, after receiving the affidavit of the accountant, the Income Tax Officer, without giving any notice and without holding any enquiry, straightaway reached the conclusion that the statement in the affidavit was false and held the petitioners personally liable under clause (vi). [11 F,12 A]

Although the Income Tax Officer did set out in the notice dated December 31, 1966 the reasons for reaching this conclusion he did not offer any opportunity to the petitioners to show that the reasons that weighed with him

were not correct. His decision was therefore invalid. Notice dated December 31, 1966 and January 11, 1967 must therefore be set aside. [12 E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2367(NT) of 1976.

From the judgment and order dated the 20th May, 1971 of the Allahabad High Court in Civil Miscellaneous Writ No. 636 of 1967.

S.T. Desai, J.P. Goyal and S.K. Jain for the Appellant. D.V. Patel and Miss A. Subhashini for the Respondent. The Judgment of the Court was delivered by BHAGWATI, J. This appeal by certificate raises a short question of law relating to the interpretation of section 226 (3) of the Income Tax Act 1961. The petitioners were at all material times a partnership firm carrying on business as bankers and dealers in cloth and over the years, they had dealing with a limited company called B.R. Sons Limited which at one time acted as the sole selling agent of Laxmi Ratan Cotton Mills Company Limited. There was a running account between the petitioners and B.R. Sons Limited in respect of these dealings and according to the petitioners, there was a debit balance of Rs. 76,436.23 against B.R. Sons Limited in this account as on 24th May 1966. On 21st May 1966 the Income Tax Officer, Central Circle, Kanpur issued a notice to the petitioners under section 226 (3) (i) stating that a sum of Rs. 22,89,281.97 was due from B.R. Sons Limited on account of income tax, super tax, penalty etc. and requiring the petitioners to pay to him forthwith any amount due from the petitioners to B.R. Sons Limited or held by the petitioners for or on account of B.R. Sons Limited to the extent of the aforesaid arrears of tax due from B.R. Sons Limited. The petitioners were warned that if they failed to make payment pursuant to this notice, they would be deemed to be assessee in default and proceedings would be taken against them for realisa-

tion of the amount as if it were an arrear of tax due from them. This notice was served on the petitioners on 24th May, 1966 and the petitioners replied to it on 1st July 1966 pointing out that according to the state of the account between the petitioners and B.R. Sons Limited, there was no credit balance in favour of B.R. Sons Limited, and that on the contrary B.R. Sons Limited owed a large amount to the petitioners and in the circumstances the notice should be discharged. The Income Tax Officer by his letter dated 11th October 1966 intimated to the petitioners that they should file a sworn affidavit setting out their contention that they did not owe any amount to B.R. Sons Limited. This was followed by another letter dated 14th December 1966 addressed by the Income Tax Officer to the petitioners in which the Income Tax Officer pointed out that he had in his possession evidence to show that the petitioners still owed money to B.R. Sons Limited to a substantial extent and requesting the petitioners to pay up the amount due to B.R. Sons Limited on or before 21st December 1966. The petitioners thereupon filed an affidavit sworn by their accountant Shiv Kumar Arora on 22nd December, 1966 setting out the position of the account of B.R. Sons Limited and stating that far from any amount being due from the petitioners to B.R. Sons Limited, there was a debit balance of Rs. 76,436.23 against B.R. Sons Limited as on 24th May 1966

and the notice issued against the petitioners under section 226 (3) (i) was therefore unjustified. The affidavit was forwarded to the Income Tax Officer along with a letter addressed by the petitioners. The Income Tax Officer replied to the petitioners by his letter dated 31st December 1966 in which he pointed out that during the course of search of Bihari Niwas, the Income Tax Authorities have seized account books in Hindi, Muriya and English pertaining to the year commencing from 1st July 1965 and that the account of B.R. Sons Limited in the Muriya and English cash books showed that payments aggregating to Rs. 8,69,000.00 had been made to B.R. Sons Limited prior to 24th May 1966 but the original cash book in Hindi did not show any such payments having been made and he had therefore reason to believe that the affidavit filed on behalf of the petitioners showing that B.R. Sons Limited had a debit balance against them in the books of the petitioners as on 24th May 1966 was false in material particulars. The Income Tax Officer accordingly held the petitioners to be personally liable to make payment to the extent of their liability to B.R. Sons Limited as on 24th May 1966 and intimated to the petitioners that if they failed to make such payment on or before 10th January 1967, the Income Tax Officer would treat them as assessee in default under section 26 (3)

(x) and proceed to take recovery proceedings against them. The petitioners however, reiterated their stand and reaffirmed the correctness of their affidavit by their letter dated 10th January 1967. The Income Tax Officer thereupon addressed a letter dated 11th January 1967 stating that the petitioners had not furnished any material or evidence to rebut his conclusion that the affidavit filed on behalf of the petitioners was false in material particulars and since the petitioners had failed to pay up the amount due from them to B.R. Sons Limited, they were 'assessee in default' within the meaning of section 226 (3) (x) and consequently appropriate coercive steps were being taken for realising the amount of the tax. A copy of this letter was forwarded to the Tax Recovery Officer, Kanpur for information and necessary action. The Tax Recovery Officer, on the basis of this letter issued an order dated 27th January 1967 under Rule 48 of the second Schedule to the Act attaching some of the immovable properties belonging to the petitioners and following upon this order of attachment, he issued a notice on 7th February 1967 for setting the proclamation in respect of the sale of these immovable properties. The petitioners thereupon filed a writ petition in the High Court of Allahabad for quashing and setting aside the notice dated 21st May 1966 and the subsequent proceedings adopted by the Income Tax Officer and the Tax Recovery Officer against the petitioners.

The writ petition came up for hearing before a Division Bench of the High Court. One of the contentions advanced on behalf of the petitioners before the High Court was that the notice dated 21st May 1966 issued against the petitioners under section 226 (3) (i) was invalid, since it did not specify the amount alleged to be due from the petitioners to B.R. Sons Limited. The High Court accepted the contention of the petitioners that the notice issued by the Income Tax Officer under section 226 (3) (i) "should mention or give some specific indication of the amount which he believes is due or may fall due from such person to the assessee or which he holds or may subsequently hold for or on account of the assessee" but held that since the petitioners knew what was the amount which was being referred to by the Income Tax Officer in his notice and no prejudice was caused to the petitioners by the reason of non-specification of the amount in the notice issued by the Income Tax Officer, the notice could not be said to be invalid on that ground. The petitioners also contended before the High Court that if the Income Tax Officer was not inclined to accept the statement contained in the affidavit filed on behalf of the petitioners and he was disposed to take the view that

the affidavit was false in material particulars, he should have summoned the deponent of the affidavit for cross-examination and held an inquiry before coming to the conclusion that the statement contained in the affidavit was false. This contention was quite clearly a formidable one, based as it was on the language of section 226 (3) (vi) but the High Court negatived it on the ground that the affidavit filed on behalf of the petitioners was not in compliance with the terms of section 226 (3) (vi) since it was not sworn by any of the partners of the petitioners but was made only by an accountant of the petitioners and when the accountant stated in the affidavit that a sum of Rs. 76,436.23 was due and owing to the petitioners from B.R. Sons Limited on 24th May 1966, there was nothing to indicate as to which part of this averment was true to his personal knowledge and which, on the basis of the account books. The High Court accordingly repelled the challenge against the validity of the notice dated 21st May 1966 and held that the Income Tax Officer was justified in treating the petitioners as 'assessee in default' on ground of non-payment of the amount due and owing from them to B.R. Sons Limited. But so far as the recovery proceedings adopted by the Tax Recovery Officer were concerned, the High Court took the view that no recovery proceedings could be adopted without issue of a recovery certificate by the Income Tax Officer under section 222 and since in the present case, no such recovery certificate was issued by the Income Tax Officer, the recovery proceedings adopted by the Tax Recovery Officer were invalid and they were accordingly quashed. This was the only limited relief granted by the High Court to the petitioners and the rest of the reliefs claimed were rejected. The petitioners thereupon preferred the present appeal in this Court after obtaining certificate from the High Court.

The principal question that arises for determination in this appeal is as to whether, on a true interpretation of section 226 (3) (vi), the Income-tax Officer was bound to hold an inquiry before he came to the conclusion that the statement contained in the affidavit filed on behalf of the petitioners was false in any material particular. Section 226 (3) deals with recovery of arrears of tax from an assessee by requiring "any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee" (hereinafter referred to as the garnishee) to pay to the Income-tax Officer "so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount." There are ten clauses in which section 226 (3) is divided and these clauses, in so far as material provide inter alia as follows:

> (i) The Income-tax Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or an any person who hold or may subsequently hold money for or on account of the assessee, to pay to the Income-tax Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.
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> (iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this subsection shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an

insurer, it shall not be necessary for any pass book, deposit receipt, policy, or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

(vi) Where a person to whom a notice under this subsection is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of assessee's liability for any sum due under this Act, whichever is less.

(viii)The Income-tax Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(x) If the person to whom a notice under this sub-

section is sent fails to make payment in pursuance thereof to the Income-tax Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceeding may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 222.

It was in exercise of the power conferred under clause (i) that the notice dated 21st May 1966 was issued by the Income-tax Officer to the petitioners. This notice did not mention or even indicate any specific amount alleged to be due from the petitioners to B.R. Sons Limited and it was therefore observed by the High Court that the notice was not in accordance with the provisions of clause (i). We are not sure whether, on a true interpretation of clause (i) in the light of the other clauses of section 226 sub-section (3), it is necessary that the notice under clause (i) should set out a specific amount as due from the garnishee to the assessee or it is enough if the notice merely reproduces the language of clause (i) and requires the garnishee to pay "at or within the time specified in the notice" so much of the money as is sufficient to pay the amount due from the assessee in respect of arrears of tax. It is a debatable question on which we do not wish to express any opinion, since the High Court has taken the view that even though the notice dated 21st May 1966 issued to the petitioners did not mention or give indication of any specific amount alleged to be due from the petitioners to B.R. Sons Limited, it was not invalid, since no prejudice was caused to the petitioners by reason of non-specification of such amount and this view taken by the High Court was plainly correct, because the petitioners at no time complained that the notice did not specify the amount alleged to be due from the petitioners to B.R. Sons Limited or that it was vague and indefinite and in fact replied to

the notice on merits by raising an objection that, according to the statement of account between the petitioners and B.R. Sons Limited, there was no credit balance in favour of B.R. Sons Limited and on the contrary B.R. Sons Limited owed a large amount to the petitioners and also filed an affidavit sworn by their accountant Shiv Kumar Arora stating that on 24th May 1966 when they received the notice dated 21st May 1966 there was nothing due from the petitioners to B.R. Sons Ltd. but on the contrary B.R. Sons Limited owed a sum of Rs. 76,436.23 to the petitioners. The view taken by the High Court could also be sustained additionally on the ground that, in any event, by his letter dated 31st December, 1966 the Income- tax Officer pointed out to the petitioners that, according to him, B.R Sons Limited had a credit balance of over Rs. 8 lacs as on 24th May 1966 and the petitioners had therefore clear notice of what was the amount alleged to be due from the petitioners to B.R. Sons Limited. So far as the affidavit of the accountant filed on behalf of the petitioners was concerned, it was disputed before us on behalf of the Revenue whether this affidavit could be regarded as a "statement on oath" within the meaning of clause (vi) so as to attract applicability of that clause. The argument of the Revenue was and this argument was accepted by the High Court, that though this affidavit was undoubtedly made on oath, it was not a "statement on oath"

> within the contemplation of clause (vi), because it was not a statement of any of the partners of the petitioners but was merely a statement of an accountant of the petitioners. Now it is true that this affidavit filed on behalf of the petitioners was sworn by an accountant of the petitioners and not by one of their partners but we do not think that on that account it could be disregarded by the Income-tax Officer. The accountant of the petitioners would obviously have knowledge of the state of the account between the petitioners and B.R. Sons Limited and he would be competent to make statement on oath in regard to the position of such account. In fact, the accountant of the petitioners stated in paragraph 1 of the affidavit that he was acquainted with the facts deposed to in the affidavit and he also mentioned in the verification clause that so far as the averments in paragraphs 2 and 3 of the affidavit were concerned which related to the position of the account between the petitioners and B.R. Sons Limited, they were "true to his knowledge and based on the account books" of the petitioners. The state of the account between the petitioners and B.R. Sons Limited detailed by the accountant in the affidavit was thus based both on the account books of the petitioners as also on his personal knowledge and he was therefore competent to state on oath what was the position of that account. Moreover, the affidavit containing the statement of the accountant on oath was filed by the petitioners in support of their objection that far from there being any money due from them to B.R. Sons Limited, a sum of Rs. 76,436.23 was, in fact, due from B.R. Sons Limited to them. There was therefore sufficient compliance with the requirement of clause (vi). It is not necessary under clause
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> (vi) that the statement on oath contemplated in that provision should be made only by the person to whom the notice under clause (i) is sent by the Income-tax Officer.

It is in our opinion sufficient if the objection to the requisition contained in the notice is made by the person to whom the notice is sent and such objection is supported by a statement on oath made by a

person competent to make such statement. Here, as we have pointed out above, the accountant of the petitioners was competent to state on oath as to what was the true state of the account between the petitioners and B.R. Sons Limited and since an affidavit containing this statement on oath made by the accountant was filed on behalf of the petitioners in support of their objection, the requirement of clause (vi) was satisfied and its provisions were attracted.

Now under clause (vi), where a garnishee to whom a notice under clause (i) is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, he is not required to pay such sum or any part thereof to the Income-tax Officer in compliance with the requisition contained in the notice. But if it is discovered by the Income-tax Officer that such statement on oath was false in any material particular, the garnishee is made personally liable to the Income-tax Officer to the extent of his own liability to the assessee on the date of the notice or to the extent of the assessee's liability for arrears of tax, whichever is less. The petitioners having objected to the requisition contained in the notice dated 21st May 1966 by filing an affidavit of their accountant that nothing was due from the petitioners to B.R. Sons Limited, were not bound to comply with the requisition contained in such notice, but if the Income-tax Officer discovered that such statement on oath was false in material particular and that some amount was due from the petitioners to B.R. Sons Ltd. the petitioners would be personally liable to pay such amount to the Income-tax Officer. The question is whether the Income-tax Officer could be said to have discovered that the statement on oath made in the affidavit of the accountant of the petitioners that nothing was due from the petitioners to B.R. Sons Limited was false in any material particular, as claimed by the Revenue in the notices dated 31st December 1966 and 11th January 1967. Now it is obvious that under clause (vi) the discovery by the Income-tax Officer that the statement on oath made on behalf of the garnishee is false in any material particular has the consequence of imposing personal liability for payment on the garnishee and it must therefore be a quasi-judicial decision preceded by a quasi-judicial inquiry involving observance of the principles of natural justice. The Income-tax Officer cannot subjectively reach the conclusion that in his opinion the statement on oath made on behalf of the garnishee is false in any material particular. He would have to give notice and hold an inquiry for the purpose of determining whether the statement on oath made on behalf of the garnishee is false and in which material particular and what amount is in fact due from the garnishee to the assessee and in this inquiry he would have to follow the principles of natural justice and reach an objective decision. Once a statement on oath is made on behalf of the garnishee that the sum demanded or any part thereof is not due from the garnishee to the assessee, the burden of showing that the statement on oath is false in any material particular would be on the Revenue and the Revenue would be bound to disclose to the garnishee all such evidence or material on which it proposes to rely and it would have to be shown by the Revenue on the basis of relevant evidence or material that the statement on oath is false in any material particular and that a certain definite amount is due from the garnishee to the assessee. Then only can personal liability for payment be imposed on the garnishee under clause (vi).

Here what happened was that an affidavit of the accountant containing a statement on oath that on 24th May 1966 nothing was due from the petitioners to B.R. Sons Limited but on the contrary a sum of Rs. 76,436.23 was due from B.R. Sons Limited to the petitioners was filed on behalf of the

petitioners sometime after 22nd December 1966 and on receipt of this affidavit, the Income-tax Officer pointed out to the petitioners by his notice dated 31st December, 1966 that this statement on oath contained in the affidavit was false in material particulars, because on 24th May 1966, B.R. Sons Limited had a credit balance of over Rs. 8 lacs in the books of the petitioners and concluded that the petitioners were therefore personally liable to the Income-tax Officer to the extent of their liability to B.R. Sons Limited. This notice clearly embodied the decision of the Income-tax Officer that the statement on oath made by the accountant in the affidavit filed on behalf of the petitioners was false in material particulars and that the petitioners were personally liable to make payment under clause (vi). The petitioners by their letter dated 10th January 1967 disputed the conclusion reached by the Income-tax Officer in his notice dated 31st December, 1966 and reiterated that nothing was due from the petitioners to B.R. Sons Limited as on 24th May, 1966. The Income-tax Officer however adhered to the decision reached by him and by his notice dated 11th January, 1967 intimated to the petitioners that he was treating them as assessee in default within the meaning of clause (x) and proceeding to take appropriate coercive steps for realising the amount of tax due from them. It will thus be seen that after receipt of the affidavit of the accountant, the Income-tax Officer did not give any notice or hold any inquiry for the purpose of determining whether or not the statement on oath made by the accountant in the affidavit was false in any material particular and whether any and if so, what amount was due from the petitioners to B.R. Sons Limited, but straight-away reached the conclusion that the statement on oath that nothing was due from the petitioners to B.R. Sons Limited was false in material particulars and without even determining what precise amount was due from the petitioners to B.R. Sons Limited, held that the petitioners were personally liable to the Income-tax Officer under clause (vi). The Income-tax Officer did set out in his notice dated 31st December, 1966 the reasons which prevailed with him in reaching this decision but he did not offer any opportunity to the petitioners to show that the reasons which weighed with him were not correct. The decision reached by the Income-tax Officer that the statement on oath made in the affidavit of the accountant was false in material particulars as set out in the notices dated 31st December, 1966 and 11th January, 1967 was therefore clearly invalid and the notice dated 31st December, 1966 and 11th January, 1967 must consequently be set aside.

We accordingly dismiss the appeal in so far as it is directed against the validity of the notice dated 21st May 1966 but so far as the notices dated 31st December, 1966 and 11th January, 1967 are concerned, we allow the appeal and issue a writ quashing and setting aside the said two notices. We may make it clear that it will be open to the Income-tax Officer to proceed to hold an inquiry for the purpose of determining whether the statement on oath contained in the affidavit of the accountant of the petitioners that nothing was due from the petitioners to B.R. Sons Ltd. as on 24th May 1966, was false in material particulars, and if as a result of such inquiry carried out in accordance with the principles of natural justice, the Revenue is able to show, the burden being upon it, that the statement on oath made by the accountant was false in material particulars and that a certain definite amount was due from the petitioners to B.R. Sons Limited on 24th May, 1966, the petitioners would be personally liable to pay such amount to the Income-tax Officer and in case of default, the Income-tax Officer would be entitled to treat the petitioners as 'assessee in default' under clause (x) of section 226 sub-section (3).

Since the petitioners have partly succeeded and partly failed, the fair order of costs would be that each party should bear and pay its own costs throughout.

P.B.R. Appeal partly allowed