

## **Omar Salay Mohamed Sait vs Commissioner Of Income-Tax, Madras on 5 March, 1959**

**Equivalent citations: AIR1959SC1238, [1959]37ITR151(SC), AIR 1959 SUPREME COURT 1238**

**Bench: B.P. Sinha, J.L. Kapur**

### **JUDGMENT**

Bhagwati, J.

1. This appeal with special leave is directed against the order of the Income-tax Appellate Tribunal, Madras "A" Bench, dated August 8, 1952, made in I. T. A. No. 3254 of 1951-52 allowing the appeal and reversing the order of the Appellate Assistant Commissioner in I. T. A. No. 130 of 1949-50 for the assessment year 1948-49 dated June 23, 1951, whereby the Appellate Assistant Commissioner had allowed the appellant's claim for a reduction of his total income by Rs. 1,59,240.

2. The appellant is a cloth merchant dealing in cloth, piece-goods and yarn both on wholesale and retail basis at Madurai. The appellant and his brother Abdulla Salay Mohammed were originally carrying on the business in partnership. But the partnership was dissolved during the year 1947-48 and the Appellant took over the entire business and became the sole proprietor thereof. For the assessment year 1948-49 (the accounting year being the year ending March 31, 1948), he submitted a return on September 7, 1948, in which he showed a net loss of Rs. 7,224 in his business under the head "business, profession or vocation."

3. In the course of the investigation the Income-tax Officer, Madurai, found two cash credits in the books of account produced by the appellant showing a sum of Rs. 1,05,000 under date March 1, 1948, representing a draft from the Imperial Bank of India Ltd., Porbandar, and a sum of Rs. 53,199-12-6 under date March 15, 1948, representing a draft from the Porbandar State Bank through the Central Bank of India Ltd., Bombay, credited to the account of Yamma Bai Ahamed, the maternal grandmother of Kathija Bai Habib, wife of the appellant. The appellant was called upon to explain these entries and he made his statement on January 26, 1949, before the Income-tax Officer who recorded the same. His explanation was that the said two sums represented the sale proceeds of gold, jewellery and sovereigns which belonged to Yamnabai who was a native of Ranavav near Porbandar in Saurashtra. His case was that she was living in Ranavav but had come away to Madurai sometime in 1947, that she decided not to return to Ranavav owing to the communal disturbances which broke out in August, 1947, and empowered the appellant to sell the jewellery, gold and sovereigns situate in her house in Ranavav and bring over the sale proceeds to Madurai and invest the same there, that thereupon he proceeded to Ranavav, took the gold, jewellery and sovereigns from the house to Porbandar and got the same sold through Messrs. Shariff Hassan and

Brothers and remitted the sale proceeds through bank drafts to Madurai, Rs. 1,05,000 on March 1st 1948, and Rs. 53,200 on March 15, 1948, and that these amounts were credited in her name as deposits in the books of account of the appellant. In proof thereof the appellant produced before the Income-tax Officer the original invoice relating to the sale of jewels and gold, furnished by Messrs. Shariff Hassan & Bros., Shroff Merchants, Porbandar, through whom the sales were effected along with a copy of their accounts. The letters received from the Imperial Bank of India and the Central Bank of India evidencing the transmission of funds were also produced.

4. After his statement was recorded as aforesaid, the Income-tax Officer on January 29, 1949, addressed a letter to the appellant calling upon him to obtain from Yamnabai an affidavit to the effect that she really possessed jewels, gold and sovereigns worth nearly Rs. 1,60,000 and that these were given to him by her for being sold and deposited with him. He also wanted to ascertain from her as to when these jewels and sovereigns were purchased and what was the value of cash, jewellery and other valuables owned by her at that time which information he desired should also be included in that affidavit. This affidavit was required to be furnished on or before February 10, 1949, and the appellant accordingly procured and filed before the Income-tax Officer an affidavit duly sworn by Yamnabai on date February 24, 1949. That affidavit showed that she had been residing in Ranavav till March, 1947, and thereafter she came away to Madurai in the last week of that month along with her granddaughter, Kathija Bai Habib, that on account of communal troubles which broke out subsequently in the neighbourhood of her residence at Ranavav, she decided to settle down in Madurai permanently, that she was then staying with her granddaughter Kathija Bai Habib and her husband, the appellant, that besides the jewels given to her daughter and after her death to her granddaughter and the sum of Rs. 73,000 gifted to the said granddaughter in or about the year 1935, she had also with her jewels and sovereigns which were her own, gifted to her on various occasions, that when she had come to Madurai, which was with the intention of going back, she had left the jewels and sovereigns behind in her house at Ranavav, that as she had settled down there she wanted the jewels to be disposed of and invested in the business of her granddaughter's husband, that she accordingly gave a power of attorney to Omar Salay Mohamed. i.e., the appellant, on January 30, 1948, and instructed him to sell the same at Ranavav and bring down the cash to Madurai, that he went there personally, sold the same and brought the sale proceeds through bank drafts, that on account of the prevailing high prices he was able to get by sale Rs. 1,58,452-4-3; that these jewels and sovereigns belonged to her entirely and exclusively being fifth given to her on various occasions by her parents, her husband and other relations, that these monies had been invested in two instalments with her granddaughter's husband carrying on business in the name of Haji Moosa Sait & Bros., that she was drawing from the deposit an amount of Rs. 200 a month for her personal expenses which amount was being adjusted towards the interest due to her and that she had still a small quantity of jewels with her remaining unsold worth about Rs. 10,000 at the then market price.

5. On March 4, 1949, the Income-tax Officer pointed out that on a former occasion Yamnabai had made a statement which according to him showed that she had given all her jewels to the wife of the appellant on the occasion of her marriage in 1933 and enquired which of the two statements, i.e., one made on the previous occasion on November 18, 1941, or that made in her affidavit dated February 14, 1949, was correct. He further asked the appellant whether he had any evidence to

prove that she actually possessed considerable jewels and sovereigns.

6. The appellant replied on March 14, 1949, stating that her affidavit filed on November 11, 1941, referred to jewels which her daughter, i.e., the appellant's mother-in-law, had at the time of her death and which were taken back by her then and were subsequently given to the appellant's wife at the time of her marriage in 1933, that she did not give her own jewels and sovereigns at the time of the appellant's marriage but only his mother-in-law's jewels, that she retained her own jewels and sovereigns and those were sold recently, that it was this subsequent sale that had been referred to in the affidavit dated February 24, 1949, and that neither of the statements made by her, one made on November 18, 1941, and the other made on February 24, 1949, was incorrect. He also stated that she did not have documentary evidence in her possession to prove ownership of the jewels and gold, that she was 72 years old and many of her relations who knew her intimately were then dead and it was not therefore possible to produce any oral evidence from persons who knew her intimately, as the existence of any such persons was doubtful, she having come away to Madurai two years ago.

7. These materials were considered by the Income-tax Officer who rejected the explanation of the appellant mainly on two grounds, viz., (1) that Yamnabai had on November 18, 1941, made an affidavit wherein she had stated that "all the jewels" had been given by her to Khatija Bai at the time of her marriage with the appellant, a statement which was allegedly inconsistent with the statement contained in her affidavit dated February 24, 1949, and (2) that the jewellery and gold ornaments were very heavy in weight, an almost impossible burden for any woman to wear even if she be madly in love with jewels and there were Har Kanthas as many as eight in number which again was not easy to understand. Having thus rejected the explanation of the appellant on these grounds the Income-tax Officer proceeded to observe that besides the trade in piece goods on a considerable scale the appellant also carried on speculation in shares and securities, that he had also got a yarn trade, that though the piece goods business was carried on a very large scale, no quantitative particulars were kept, and that with his connections all over India and with innumerable business carried on by him either directly or indirectly it was nothing improbable for the appellant to have earned nearly Rs. 1,60,000 in the course of a year. Accordingly, he made the assessment order on date March 31, 1949, adding the sum of Rs. 1,58,200 which represented the cash credits in the account of Yamnabai and Rs. 1,040 being the interest credited to her account, as profit earned by appellant in his business. He also issued a notice under section 28(1) (c) of the Income-tax Act (two days before the assessment order was signed by him as aforesaid) and called upon the appellant to show cause in writing or in person at his office at Madurai on April 30, 1949, why a penalty should not be imposed upon him.

8. When this notice under section 28(1) (c) was served on the appellant, he obtained three affidavits from three respectable residents of Ranavav who knew Yamnabai intimately and who could speak about her status and wealth. These affidavits were dated April 18, 1949, and were sworn by (1) Dadamiah, son of Omarmiah Town Kazi of Ranavav, aged 90, (2) Jusub son of Aboobacker of Ranavav, aged 35, who was a neighbour and a resident in the same compound with Yamnabai, and (3) Ebrahim Jan Mohamed, son of Jan Mohamed, aged 80, residing at Porbandar, and son-in-law of her uncle. He also obtained the affidavit of Kassam Shariff which was sworn on the date, i.e., April 18, 1949, showing the sale of the jewellery, gold and sovereigns by the appellant through his firm

Messers. Shariff Hassan & Bros., merchants, residing at Porbandar, Kathiawar District. These affidavits were submitted by the appellant along with his reply to the penalty notice dated April 25, 1949, which recounted all the facts which supported the contentions of the appellant and pointed out that there was no discrepancy between the statements made in the affidavit dated November 18, 1941, and that dated February 24, 1949, and the affidavits dated April 18, 1949, which had been obtained by him from the parties at Ranavav above-mentioned showed that Yamnabai was possessed of plenty of jewels, gold and sovereigns which were sold by the appellant as aforesaid at Porbandar, having been armed with the power of attorney granted in his favour by her. It may be noted that in the affidavit filed by Kassam Shariff on April 18, 1949, the deponent besides giving the information in regard to the sale of the jewellery, gold and sovereigns through his firm and the transmission of the sale proceeds thereof to Madurai had also stated that on account of Viramgam Customs at the border of the Katiawar State and British India, during the British rule in India, gold was not allowed to pass through the said customs, outside the State, and hence all the jewells, gold and sovereigns were held only within the State and those who wished to leave the State and go to British India used to come to him for disposing of their jewellery, gold and sovereigns and take cash from him, that he used to sell them on their behalf on commission basis and that he had sold lots of jewels, gold bars and sovereigns on commission basis.

9. On the very same day, i.e., April 25, 1949, the appellant filed an appeal before the Appellate Assistant Commissioner against the order of the Income-tax Officer dated March 31, 1949, being I. T. A. No. 130 of 1949-50. During the pendency of this appeal the notice under section 28(1) (c) of the Income-tax Act was heard before the Income- tax Officer and the appellant appeared before him on May 7, 1949, through his advocate and showed cause against that notice. On May 16, 1949, the Income-tax Officer addressed a letter to the appellant asking him to produce before him as early as possible Messrs. Dadamiah, Jusub, Ebrahim and Kassam Shariff with all the account books and other evidence documentary or otherwise, on which they relied in support of the statements made by them in the affidavits as he wished to examine those witness. The appellant replied by his letter dated May 30, 1949, pointing out that the deponents were residents of Ranavav in Porbandar which was more than 200 miles from Madurai, that Dadamiah was aged 90 and Ebrahim was aged 75 and it would not be reasonable to compel them to undertake the journey to Madurai as it might well cost their lives, that the affidavit themselves gave full particulars about the deponents, that the reasonable course to be adopted was either to administer in interrogatories to the said persons on the matters referred to in the affidavits, or to send a letter of request to the District Court of Porbandar to examine the said persons on commission for purpose of verifying the correctness of the contents of the affidavits. The appellant further pointed out that Kassam Shariff had already been addressed by the Income-tax Officer and the information received from him on a direct enquiry by the Income-tax Officer might be used to check the correctness of the facts disclosed in his affidavit. (This statement obviously had reference to the letter dated May 24, 1949, which had been sent by Shariff Hassan & Bros., in reply to the letter dated December 14, 1948, addressed to them by the Income-tax Officer. Therein the Income-tax Officer had asked the firm to let him know what were the jewels that were sold, their approximate weight, their value and the names and addresses of the parties to whom the jewels were sold by them and the date of such sales. He had also asked them to send along with their reply a copy of the account of the appellant as found in their books for the year 1948. In reply the firm gave the price of the jewels, gold and sovereigns sold by the

appellant to them together with their statement of account furnished to the appellant as appearing from their books. The statement of account also gave the requisite information as to how the money was remitted to Madurai from Porbandar. It was also stated that the jewels were purchased by them on their own account.) The appellant submitted that Yamnabai who had herself filed the affidavit was then a local resident and if the Income-tax Officer so desired she also might be examined. The appellant further submitted that all the courses suggested above would help the Income-tax Officer to verify the correctness of the facts disclosed in their affidavits and expressed his willingness to render every assistance and carry out the directions of the Income-tax Officer in all matters within his power.

10. Nothing further transpired after May 30, 1949, till December 16, 1950, when the Additional Income-tax Officer, Madurai, addressed a letter to the Additional Income-tax Officer, Porbandar, asking him to make detailed enquiries in the matter and let him know at a very early date regarding the genuineness of the sale as also whether Yamnabai was sufficiently rich or owned those jewels and such other material particulars as the latter could gather to strengthen the case for penalty. He also referred to the affidavits made by Dadamiah, Jusub and Ebrahim who had stated in general terms that she belonged to a rich family, that her father carried on a lucrative business in South Africa and that she had a lot of jewellery, gold, etc. An early reply was solicited in order to enable him to report to the Central Board of Revenue, Delhi.

11. We find on the record a reply dated January 9, 1951, addressed by the Income-tax Officer, Ward B, Junagad, to the Additional Income-tax Officer, Madurai, which reported that Yamnabai's father and husband were said to have done very good business in Africa and as she was the only surviving issue of her father it came about that she inherited a good amount by way of gold valuables, bullion and cash, that on that side of the country wealthy Muslims invested their finances in purchase of ornaments and bullion, that four or five persons who had been interviewed by his Inspector had in general terms confirmed the well-to-do condition of both the father and the husband to whom she had inherited on the death of both of them about 25 to 30 years ago, that the sale of gold and sovereigns and ornaments appeared to be quite genuine so far as the transaction between Messrs. Shariff Hassan & Bros., and the appellant was concerned, that this transaction was not a solitary one, but Messrs. Shariff Hassan & Bros., had done similar transactions which were also found in their books, that under his instructions the Inspector had interviewed Harjivan Trikamji, the head munim of Messrs. Shariff Hassan & Bros., who had also confirmed the transaction as having been effected during 1948 and stated that actual delivery of gold and bullion stock took place in his presence, and that his Inspector had also interviewed Messrs. Jusub Aboobacker and Dadamiah who had confirmed their affidavits filed before the Income-tax Officer, Madurai. By his letter dated February 22, 1951, the Additional Income-tax Officer, Madurai, wrote back to say that there were suspicions about the transaction inasmuch as it was likely that the appellant could have earned a large income during the control and had subsequently not brought the same to account, the inference being that he had invested these unaccounted profits in purchase of gold and jewellery and had later sold the same and brought the sale proceeds to Madurai. The question moreover was whether the appellant would have allowed such a large amount to lie idle for 25 to 30 years with Yamnabai and that too in the not very secure precincts of the house at Ranavav. He therefore asked the Income-tax Officer, Junagad,

to make detailed enquiries of cloth merchants and others known to the appellant who might give useful information in the matter. Pursuant to this letter from the Additional Income-tax Officer, Madurai, Harjivan Trikamji Mehtaji of Messrs. Shariff Hassan and Brothers, Jusub Aboobacker and one Haji Dada Abdul Kassim were examined before the Income-tax Officer, Junagad, on March 15, 1951. Harjivan Trikamji confirmed that the appellant had gone to his firm to sell ornaments and he remembered that the appellant had said at that time that those ornaments belonged to his mother-in-law, and he had also possessed the power of attorney. He distinctly remembered that such a talk had taken place between the appellant and his proprietor because it was a transaction of a big amount and all these things were clarified with the appellant. When he was asked to say what the ornaments were like, he replied that the ornaments were of old time and were of old model which he knew very well. Jusub Aboobacker stated that he had been asked by Yamnabai to keep watch over her house and household things during her absence from Ranavav as she went to Madurai for a short period, that she thereafter changed her mind about coming back to Ranavav on account of communal troubles and sent the appellant who was the son-in-law of her daughter to dispose of all the furniture and valuables lying in the house, that he was present at the time of the removal of valuables from an "old treasure" which was in the house, that he also witnessed the removal of the ornaments and the sovereigns, that he did ask for the authority which she had given to the appellant for the removal of valuables as while going to Madurai she had particularly asked him to keep a watch as a good amount by way of gold, jewellery and sovereigns was lying in the house and that the ornaments which she had inherited from her father and husband whose only heir she was, were of old type. Haji Dada Abdul Kassim stated that and it was well known in their community that she was a rich lady possessing a good amount of money and valuables. The Income-tax Officer, Junagad, enclosed these statements along with his letter dated March 17, 1951, addressed to the Additional Income-tax Officer, Madurai, wherein he stated that he had taken an opportunity of visiting Ranavav which was 8 miles away from Porbandar, that he had seen the house belonging to her which was a pacca building but of old style and if put in market would not fetch more than Rs. 10,000 to Rs. 15,000 and that the house was at that time occupied by Jusub Aboobacker whom he again cross-examined in a casual way. He further stated that there were few cloth dealers in Ranavav and they were mostly Hindus who did not know her but there was one Mohammadan cloth dealer who knew her and who was also cross-examined by him and his answers were also sent by him along with the letter. He also stated that he had cross-examined the head munim of Messrs. Shariff Hassan & Bros, and tried to get from him something to prove whether the ornaments in question were newly purchased or not but the result was in the negative. He therefore suggested that if the latter wanted his suspicions to be confirmed, the jewellery, gold and sovereigns in which the unaccounted profits were suspected to have been concealed must have been purchased somewhere in Bombay or Madurai and the enquiries in that behalf should be pursued there.

12. This letter appears to have put an end to further enquiries in the matter of the said transaction in connection with the penalty notice and on December 30, 1954, a letter was addressed by the Additional Income-tax Officer, Madurai, to the appellant intimating that the penalty proceedings under section 28(1) (c) instituted for the assessment year 1948-49 had been dropped.

13. The appeal which had been filed by the appellant before the Appellate Assistant Commissioner being I. T. A. No. 130 of 1949-50 came up for hearing in about June, 1951. All the materials which

had been collected by the Income-tax Officer and the Additional Income-tax Officer, Madurai, including the correspondence which had passed between the Additional Income-tax Officer, Madurai, and the Income-tax Officer, Ward B, Junagad, and the enclosures thereto were in the file of the appellant and on June 23, 1951, the Appellate Assistant Commissioner after hearing the parties and perusing all the documents allowed the appellant's appeal in regard to the said sum of Rs. 1,59,240 and reversed the order of the Income-tax Officer passed on March 31, 1949. The appellant was in the result declared not liable to be taxed for 1948-49 and the tax, if paid, was ordered to be refunded.

14. In his order dated June 23, 1951, the Appellate Assistant Commissioner set out all the facts leading to the assessment order and mooted the question whether the jewels etc., did really belong to Yamnabai, if not, whether the circumstances reasonably supported the Income-tax Officer's presumption that the appellant had converted his secret profits into jewellery, gold and sovereigns, with a view to camouflage his transactions and brought such profits in his accounts by re-sale of such jewellery etc., and remittances through bank drafts.

15. In regard to the affidavits made by Yamnabai, one on November 18, 1941, and the other on February 24, 1949, the alleged discrepancy in which was particularly stressed by the Income-tax Officer as negating the contention that she was possessed of large jewellery, gold and sovereigns of the aggregate value of Rs. 1,60,000 in 1948, the Appellate Assistant Commissioner reproduced the whole of the affidavit dated November 18, 1941, which read as under :

"1. I am the maternal grandmother of Kathija Bai Habib, wife of Omar Salay Mohammed Sait.

2. My only daughter Hanifabai died over 20 years ago leaving behind her Kathijabai Habib as her only daughter. She left no son. I had given her considerable jewels. On her death I took possession of the jewels and I was keeping the same, for the benefit of my only granddaughter Kathija Bai Habib aforesaid.

3. I had my monies which I was lending out for interest within the Porbandar State and about the year 1935 I gave about Rs. 73,000 to my granddaughter as I have no son or grandson and she is the only person to whom I could bequeath my properties after my daughter's demise.

4. I had given her all the jewels on the occasion of her marriage in 1933."

16. The Appellant Assistant Commissioner interpreted this affidavit to mean that "all the jewels" which she had referred in paragraph 4 of that affidavit and which she stated she had given to Kathija Bai Habib, the wife of the appellant, on the occasion of her marriage in 1933 had reference only to "considerable jewels" which she had given to her daughter Hanifabai, which she had taken possession of on the latter's death and which she was keeping with her for the benefit of her only granddaughter Kathija Bai Habib. These jewels were according to the Appellate Assistant Commissioner given by her to the appellant's wife in 1933 and had nothing to do with her own

jewels etc., which she had been in possession of long prior to 1933 and which she continued to possess even thereafter, having been inherited by her on the death of her father and husband. The Appellate Assistant Commissioner therefore came to the conclusion that the assumption of the Income-tax Officer that she gave away all her jewels and also money and therefore could not have any more jewellery, gold and sovereigns available for sale in 1948 could not derive any support from the statements contained in that affidavit. The Appellate Assistant Commissioner further referred to the result of the subsequent enquiries made by the Income-tax Officer, Ward B, Junagadh, and observed that the departmental enquiries made at the other end substantially supported the appellant's claim that she was possessed of valuable jewellery etc., and such jewellery etc., were sold through the Porbandar Shroff merchants in 1948 by her duly authorised attorney (the appellant) and the sale proceeds transmitted to Madurai for credit to her account in the appellant's books. The Appellate Assistant Commissioner further observed that no defects (or any other suspicious feature) had been found by the Income-tax Officer in the accounts, that the past history of the appellant was good and, therefore, the suspicion of the Income-tax Officer was not based on any material. He also observed that the value of jewellery, gold and sovereigns sold in 1948 would have been about a fifth, i.e., about Rs. 30,000 or so in 1933 when she gifted her deceased daughter's jewels and considerable value to her granddaughter at the time of the latter's marriage, and that having regard to the fact that she chose to gift away valuable jewels and cash, she should have been in fairly good financial position, as she had been spoken of as one who was spending freely on charities. This information having been gathered by the Income-tax Officer by independent enquiries at the other end could not according to the Appellate Assistant Commissioner be discounted. As regards the suspicion which the Income-tax Officer had entertained due to the weight of these jewels, and ornaments, the Appellate Assistant Commissioner observed that Honi Dad Patle was not a jewel but really represented gold bars and the Income-tax Officer's impression was also partly due to his applying the poor South Indian standards of weight of jewellery worn by women. The Appellate Assistant Commissioner accordingly held that in the face of such overwhelming evidence there was no justification at all for disputing the appellant's claim that the credits did really represent Yamnabai's monies and on no account could they be treated as profits camouflaged and both the items aggregating to Rs. 1,59,240 where therefore liable to be deleted.

17. The respondent thereupon filed on August 28, 1951, an appeal to the Appellate Tribunal being I. T. A. No. 3254 of 1951-52. This appeal was disposed of by an order made by the Appellate Tribunal on August 8, 1952, whereby the Tribunal allowed the respondent's appeal and vacated the order passed by the Appellate Assistant Commissioner to the extent of Rs. 1,59,240 mentioned above.

18. The Tribunal, in the first instance, set out the background of the transaction which it considered to be essential in appreciating a question of this size. The first thing which it pointed out was that the business carried on by the appellant was of a large magnitude consisting of wholesale and retail business in mill piece-goods, handloom cloth, milk and fancy goods showing a turnover of Rs. 13.03 lakhs and the gross profit of 6% therein, that there was also yarn trade the gross profit of which was only 1.9 per cent. on a turnover of 2.37 lakhs, that no stock tally was furnished and only a trial balance-sheet had been filed, and that the income-tax authorities had not examined the veracity of accounts which was by far more important than tracing the cash credits. It was also pointed out that a trader carrying on business on such a large scale would be expected to have a comfortable capital



and that the available trading capital was not more than Rs. 40,000 out of which tangible and intangible assets took away a good portion leaving a small sum towards floating capital, though it was true that the appellant's wife's account showed a credit balance of over Rs. 1,33,000.

19. This was the background against which the Tribunal stated that the transaction in question had to be considered and the most important point to see and find out was whether in the circumstances of the case, Yamnabai could have in her possession jewellery, etc., to the tune of Rs. 1,60,000. In this behalf the Tribunal laid stress on the statements made by her in her affidavit dated November 18, 1941, and interpreted the same to mean that she had given all her jewels and cash of Rs. 73,000 to the appellant's wife in 1933 and 1935 respectively and that therefore she could not have any other jewellery, gold and sovereigns in her possession in 1948. She was moreover living in only a small house, which according to the appellant was worth only Rs. 5,000; she did not have any money-lending business or investments or other immovable properties in Porbandar State and it would be strange to think of "an old lady of 70 years living in Kathiwar, far away from her only near and dear one who was at Madurai, keeping gold worth Rs. 1,70,000 tucked away in her house costing about Rs. 5,000 just not knowing when she would flicker away with the possibility of anybody claiming the movable property which was said to be with her." The Tribunal, therefore, discounted the story put forward by her and the appellant and commented further that it would be "too tall a story to believe that during the war period when the appellant was running an admittedly one of the most important cloth shops in Madurai, the business would be suffering loss with a Pandora's box of gold lying at his disposal in the distant Kathiwar State beyond the reach of the then British Indian taxing authorities." The absence of a reply from M/s. Shariff Hassan and Bros., to the letter addressed to them by the Income-tax Officer, Madurai, dated December 14, 1948, till after the issue of the notice under section 28(1) (c) on the appellant was also adversely commented upon and it was observed that the old lady in her declining years gave away all she had including gold and cash, excepting jewellery etc., worth Rs. 12,000 which was said to be with her, to her only grandchild Khathija Bai and continued to live in a small house at Kathiwar counting her days. The conclusion reached on the above premises by the Tribunal was that the appellant had in his possession this much money and he managed to remit it from Porbandar to Madurai, to give a colouring of reality and that all the other circumstances had been nicely woven so as to paint the picture in as real colours as possible.

20. The Tribunal then commented upon the Appellate Assistant Commissioner's looking at the information gathered subsequently by the Income-tax Officer at Junagad and after observing that the Income-tax Officer had mentioned in his grounds of appeal that he was not a party to the Appellate Assistant Commissioner's looking at the information gathered subsequently the Tribunal stated that such a procedure would not have been so much objectionable, if the sale had been traced. It was further observed that "to look at things partially at the appellate stage is not safe. If the Appellate Assistant Commissioner felt that the case was not investigated properly he could have remanded it for such further and fuller information which he considered necessary. The Department would have then tried to trace the sale, the actual remittance from two banks, the persons who remitted the money and would have also cross-examined the purchasers regarding the disposal of such a vast wealth and other connected matters. It is improper to look at the evidence partially and arrive at a conclusion." Although it was agreed by the parties before the Appellate Assistant

Commissioner that the material which has been collected by the Income-tax Officer at Junagad be treated as evidence in the assessment proceedings, it was not considered by the Tribunal.

21. The Tribunal also pointed out the following other loopholes, viz., (1) that there was no proof or evidence as to how Yamnabai kept this vast wealth and in whose safe custody it was kept; (2) that the handwritten patti given by M/s. Shariff Hassan & Bros., showed that the gold was given on two different dates, on February 21, 1948, 1,222 tolas and on February 25, 1948, 750 sovereigns and it was not explained why it was necessary to give gold ornaments, bars and sovereigns in two different instalments; (3) that there was no specific entry in the appellant's books regarding his travel to Porbandar and return and that there was a consolidated entry on March 2, 1948, in his books showing expenses of journeys made to Madras, Bombay, Porbandar, etc., and that clearly showed that the appellant returned sometimes prior to March 2, 1948, and as such it was inconceivable for the appellant to put his gold in the hands of a firm at Porbandar, which had not even the decency to reply to the quarry of the Income-tax Officer and to have come away without receiving the sums due to him; and (4) that the different modes of remitting, one for the sum of Rs. 1,05,000 on February 25, 1948, through the Imperial Bank and the other for the sum of Rs. 53,200 through the Porbandar State Bank was also subject to comment.

22. On all these considerations the Tribunal appeared to be satisfied that these sums represented unaccounted for money in the hands of the appellant which he managed to remit to Madurai and accordingly treated that as sums whose nature and source had not been properly explained and that they had been correctly treated by the Income-tax Officer as income of the appellant. The Appellate Assistant Commissioner's order was accordingly vacated to the extent of Rs. 1,59,240 as mentioned above.

23. Being aggrieved by the above order of the Tribunal the appellant applied for a reference to the High Court under section 66(1) of the Income-tax Act, on October 15, 1952. This application being Reference Application No. 751 of 1952-53, was rejected by the Tribunal by its order, dated August 8, 1953, on the ground that the question whether these credits did not represent sale proceeds of gold belonging to Yamnabai was a pure question of fact. The Tribunal observed in the course of that order that "both on account of lack of direct evidence regarding Yamnabai possessing that much of gold and on account of indirect inference that the assessee's books were not in such a straightforward manner as could infuse confidence, (the Tribunal) held that this sum represented unaccounted for money which was remitted by the assessee from Kathiawar to give it a colouring of genuine sale proceeds of gold belonging to the old lady. This is purely a finding of fact. There is ample material to support this. No question of law can therefore be said to arise out of Tribunal's order."

24. The appellant thereupon filed a petition being C. M. P. No. 10650 of 1953 under section 66(2) of the Income-tax Act, in the High Court of Judicature at Madras on September 21, 1953, and the High Court also by its order dated August 9, 1954, dismissed the petition observing that the finding of the Tribunal that the total credit of Rs. 1,59,240 in favour of Yamnabai appearing in the books of account of the appellant represented the income of the appellant was a finding of fact and that in their opinion there was certainly evidence on record to support that finding and the circumstances

and the probabilities of the case were strongly in favour of the conclusion of the Tribunal.

25. The appellant thereafter filed an application in the High Court on January 4, 1955, for leave to appeal to this court which was dismissed on March 31, 1955, with the result that the appellant filed in this court a petition for special leave to appeal under article 136 of the Constitution on August 22, 1955. By its order dated January 31, 1956, this court granted special leave to appeal against the order, dated August 8, 1952, of the Income-tax Appellate Tribunal, Madras, in I. T. A. No. 3254 of 1951-52 and that is how this appeal has come up for hearing and final disposal before us.

26. We have set out the facts in minute detail as we are setting aside the order of the Appellate Tribunal and remanding the matter back to it in order to reconsider the same. The limits of our jurisdiction in regard to the finding of fact reached by courts of fact have been laid down by us in several decisions of this court. In *Dhirajlal Girdharilal v. Commissioner of Income-tax*, we expressed the opinion that when a court of fact arrives at its decision by considering material which is irrelevant to the enquiry, or acts on material partly relevant and partly irrelevant, where it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its decision, a question of law arises : Whether the finding of the court of fact is not vitiated by reason of its having relied upon conjectures, surmises and suspicions not supported by any evidence on record or partly upon evidence and partly upon inadmissible material.

27. It was similarly observed by us in *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax*, that the powers given to the Income-tax Officer under section 23(3) of the Income-tax Act, however wide, did not entitle him to base the assessment on pure guess without reference to any evidence or material. An assessment under section 23(3) of the Act could not be made only on bare suspicion. An assessment so made without disclosing to the assessee the information supplied by the departmental representative and without giving any opportunity to the assessee to rebut the information so supplied and declining to take into consideration all materials which the assessee wanted to produce in support of his case constituted a violation of the fundamental rules of justice and called for exercise of the powers under article 136 of the Constitution.

28. The last case to which reference need be made in this context is that of *Sree Meenakshi Mills, Madurai v. Commissioner of Income-tax*, where this court observed at page 720 :

"The position that emerges on the authorities may thus be summed up : (1) When the point for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the court under section 66(1).

(2) When the point for determination is a mixed question of law and fact, while the finding of the Tribunal on the facts found is final its decision as to the legal effect of those findings is a question of law which can be reviewed by the court.

(3) A finding on a question of fact is open to attack under section 66(1) as erroneous in law when there is no evidence to support it or if it is perverse.

(4) When the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact."

29. On the facts and circumstances of this case we shall have to determine whether the finding of fact reached by the Appellate Tribunal was vitiated inasmuch as it was unsupported by evidence or was unreasonable and perverse in nature having been arrived at by improper rejection of evidence available in the record of the proceedings or having been based partly on evidence and partly on conjectures, surmises and suspicions.

30. Shri A. V. Vishwanatha Sastri for the appellant attacked the order of the Appellate Tribunal and the reasoning adopted by it as under :

(A) The circumstances relied upon by the Appellate Tribunal, viz., that the wholesale and retail business of the appellant in cloth showed a turnover of Rs. 13.03 lakhs but gross profit on only 6 per cent. and his yarn business showed a turnover of Rs. 2.37 lakhs with a gross profit of only 1.8 per cent., that no attempt was made to furnish a stock tally and that a mere trial balance-sheet had been prepared and submitted to the Income-tax Officer by the appellant were not sufficient by themselves to lead to an inference that there were undisclosed profits earned by the appellant in his said business. It was submitted that no investigation appears to have been made by the Income-tax Officer as regards those circumstances and no explanation was asked for from the appellant in regard to the same, that the low rate of profits earned in the business might have been due to various causes which would have come to light had the appellant been examined by the Income-tax Officer in that behalf and had been called upon to explain the same, and that a trial balance-sheet without any touching up was indeed more reliable than a balance-sheet prepared by an assessee after due deliberation. It was further submitted that the observation of the Appellate Tribunal that the departmental authorities ought to have examined the veracity of the appellant's accounts was also based on a conjecture that the books of account of the appellant did not represent the true state of affairs and was contrary to the statements contained in the order of the Appellate Assistant Commissioner to the effect that no defects or any other suspicious feature had been found by the Income-tax Officer in the accounts of the appellant, that his past history was good and that, therefore, the suspicion of the Income-tax Officer was not based on any material, that as a matter of fact, the income-tax returns submitted by the appellant in the previous assessment years had been accepted by the income-tax authorities and he was assessed to income-tax on the basis of those returns after duly examining his books of account for the relevant periods and before this enquiry was started by the Income-tax Officer for the assessment year 1948-49 in regard to cash credits standing in the name of Yamnabai the correctness of the books of account had never been assailed. At no time prior to this had any suspicion been entertained by the Income-tax authorities in regard to the profits earned by the appellant in his business and no foundation at all was laid for a conclusion that the appellant had concealed any profits earned by him in his business and an inference in that behalf was, it was

submitted, merely based on suspicion and conjecture.

(B) The next submission of the learned counsel was that the Appellate Tribunal appears to have relied on the circumstance that the appellant according to his books of account was having a trading capital of only Rs. 40,000 out of which tangible and intangible assets took away a good portion leaving a small sum towards floating capital. Even though a credit balance of over Rs. 1,33,000 was admittedly shown in the account of the appellant's wife that balance had not been taken into account at all. If that balance of Rs. 1,33,000 had been treated as available to the appellant, as it should have been it would have shown a trading capital of about Rs. 1,73,000 which left a substantial amount towards floating capital even taking into account the tangible and intangible assets of the business. This sum of Rs. 1,33,000 represented the accumulation of the sum of Rs. 73,000 which had been given by Yamnabai to the wife of the appellant in the year 1938, as stated by her in her affidavit, dated November 18, 1941. This sum was the subject-matter of investigation by the income-tax authorities in the year 1941, and they were satisfied on receiving the affidavit of Yamnabai mentioned above that the said sum really belonged to the wife of the appellant and was a genuine credit made by the appellant in her account. This circumstance also did not lead to any inference of undisclosed profits made by the appellant in his business during the assessment year in question, and it was urged that the conclusion, if any, reached in that behalf by the appellate Tribunal was based on mere conjectures.

(C) The next submission was that the story about Yamnabai having in her possession jewellery, gold and sovereigns of the aggregate value of Rs. 1,60,000 was discounted by the Appellate Tribunal without any rhyme or reason and the circumstances attending upon the transaction were not properly understood and appreciated by it. The first and the foremost mistake which according to counsel the Appellate Tribunal committed was to misread her affidavit dated November 18, 1941. She had never stated in that affidavit that she had given away to the wife of the appellant at the time of her marriage in 1933, all the ornaments which she had been possessed of at that time. The affidavit dated November 18, 1941, made by her had to be read as a whole and "all the jewels" referred to only her in paragraph 4 of that affidavit obviously referred to the "considerable jewels" which, according to her statement in paragraph 2 thereof, she had given to her only daughter Hanifabai and which she had taken possession of the latter's death and kept with her for the benefit of her only granddaughter Kathija Bai Habib, the wife of the appellant. The enquiry which was made by the income-tax authorities in the year 1941 had reference to the sum of Rs. 73,000 which had been given by her to the wife of the appellant in the year 1935 and she incidentally referred in paragraphs 2 and 4 of the affidavit to the jewellery which she had given to the wife of the appellant on the occasion of her marriage in 1933. She had no occasion at that time to refer to the jewellery, gold and sovereigns which she was possessed of in her own right as heir to her deceased father and husband who had earned large sums of money in South Africa and the conclusion which the

Income-tax Officer as well as the Appellate Tribunal reached that she had given away all her jewellery which she was possessed of in the year 1933 to the wife of the appellant on the occasion of her marriage and kept nothing to herself except jewellery worth about Rs. 12,000 which was with her, was based on a pure misreading of her affidavit, dated November 18, 1941. This misreading of the affidavit, it was contended, was really the root cause of the whole trouble and erroneous finding.

The further circumstances which impressed the Appellate Tribunal was that Yamnabai had no near relative nor anybody to look after her in Ranavav, that she had a small house, which according to the appellant was worth only Rs. 5,000 and that it was strange that she should keep jewellery, gold and sovereigns of the value of Rs. 1,70,000 tucked away in her house costing about Rs. 5,000 just not knowing when she would flicker away with the possibility of anybody claiming the movable property which was said to be with her. The mere fact, however, of her staying alone at her native place at Ranavav in Kathiawar and not going to live with her granddaughter at Madurai was of no consequence. The house was no doubt of the value of about Rs. 5,000 but that appears to have been the value of the house as constructed and there was evidence to show that at the time of the enquiry made by the Income-tax Officer, Junagad, it was valued at Rs. 10,000 to Rs. 15,000. There was nothing incredible about her keeping such a large amount of jewellery, gold and sovereigns in her own house at her native place. Even though she was about 70 years old there was nothing to show that she was ailing when she left for Madurai in early 1947 and if regard be had to the longevity of life of these people in Saurashtra as also to the fact that not only in 1952 but also in the year of grace 1958 she was yet alive the mere fact of her being 70 years old was not sufficient to create any apprehension in her mind that she was going to pass away in the near future, jeopardizing the treasure which she possessed in her house. Moreover, there was evidence that she had secreted these valuables in an "old treasure" which was in the house (vide the statement of Jusub Aboobacker in his examination by the Income-tax Officer, Junagad, dated March 15, 1951). She had been staying in her own mohalla where the people of her own community stayed and who apparently had great regard for her, she being a lady of charitable disposition. Jusub Aboobacker was also looking after her and as a matter of fact he had been asked by her to keep a watch over her house when she left Ranavav for Madurai as aforesaid and if she had entertained the idea of returning from Madurai to Ranavav after some time, there was really no necessity for her to take away these valuables, jewellery, gold and sovereigns from the "old treasure" where she had kept them and carry the same along with her to Madurai. She did not entertain any apprehension in regard to the safety of these valuables in her house nor was there any immediate occasion for her taking the same away to Madurai and giving the same away to the wife of the appellant. It was also to be remembered in this connection that there was a customs barrier at Viramgam at the border of the Kathiawar States and British India and people were not allowed to take away jewellery, gold and sovereigns out of the States into British India and used to dispose them of and take the cash away with them if they wanted to migrate out of the State (vide the affidavit of Kassam Shariff dated April 18, 1949). It would appear that she normally expected to live for some time more and even if she died perchance they did not appear to be much danger of anybody finding these valuables from the "old treasure" unless she herself gave information to anyone in regard to the same. Jusub Aboobacker in fact stated that he was present at the time of the removal of those valuables from the "old treasure" which was in the house and he also witnessed the removal of the ornaments and the sovereigns by

the appellant. It was contended that this circumstance, therefore, was not such as to create any suspicion in the minds of the Income-tax Officer or the Appellate Tribunal and the suspicion, if any, entertained by them was absolutely unfounded.

The Appellate Tribunal also appeared to have considered it strange that the appellant who was running a prosperous business in one of the most important cloth shops in Madurai would be suffering loss with "a Pandora box of gold lying at his disposal in the distant Kathiawar State beyond the reach of the then British Indian Taxing authorities." It was difficult to understand what connection there was between the losses alleged to have been suffered by the appellant in his business "and the Pandora box of gold" lying at his disposal in Ranavav. The jewellery, gold and sovereigns were not within his reach. They belonged to Yamnabai and it was only when she gave him the power of attorney on January 31, 1948, that he went over from Madurai to Ranavav via Madras and Bombay, and armed with that authority removed the valuables from her house and took them to Porbandar and sold the same through Messrs. Shariff Hassan & Bros. The whole of the inference drawn by the Appellate Tribunal in this behalf was allegedly based on no material whatever and was submitted to be at best a suspicion or a conjecture which warped the reasoning of the Appellate Tribunal.

The affidavits which were sworn by Dadamiah, Ibrahim Jan Mohammed, Jusub Aboobacker and Kassim Shariff were also criticized by the Appellate Tribunal as not worth the paper on which they were transcribed because according to it the deponents were not subjected to cross-examination on the matter at issue. The Appellate Tribunal obviously forgot that when the Income-tax Officer, Madurai, had by his letter dated May, 16, 1949, that these deponents were staying at Ranavav and Porbandar which was more than 200 miles from Madurai and suggested that either interrogatories be administered to them or a letter of request be sent to the District Court of Porbandar to examine those persons on commission. Yamnabai herself was also offered for further examination by the Income-tax Officer, if he so desired. As a matter of fact in the further enquiry which was conducted by the Income-tax Officer, Junagad, on March 15, 1951, Harjivan Trikamji, the Mehtaji of Messrs. Shariff Hassan & Bros., Jusub Aboobacker and one Haji Dada Abdul Kassim were examined and whatever was possible to do by way of conducting the enquiry with a view to elicit the true facts was done by the Income-tax Officer, Junagad. In view of these circumstances it was difficult to understand the criticism of the Appellate Tribunal that the deponents of those affidavits which were made on April 18, 1949 had not been cross-examined. It was also elicited in the examination of Harjivan Trikamji conducted by the Income-tax Officer, Junagad, on March 15, 1951, that these ornaments which were sold by the appellant on behalf of Yamnabai were "of old time and were of old model which he knew very well." Jusub Aboobacker had also made a similar statement in his examination that the ornaments were of old type which she had inherited from her father and husband whose only heir she was. The conclusion, therefore, that the appellant had in his possession that much money and he managed to remit the same from Porbandar to Madurai to give a colouring of reality was, it was pointed out, absolutely without foundation and based on no evidence at all.

(D) It was next contended that the criticism of the Appellate Tribunal in regard to the Appellate Assistant Commissioner's looking at the information gathered subsequently was equally without

substance. That information had been gathered by the Additional Income-tax Officer, Madurai, after having duly communicated with the Additional Income-tax Officer, Porbandar, in connection with the penalty notice addressed to the appellant and the Income-tax Officer, Junagad, the penalty notice addressed to the appellant and the Income-tax Officer, Junagad, in pursuance of the instructions given to him in that behalf had conducted the inquiry at that end. He had examined several persons including Harjivan Trikamji, Jusub Aboobacker and Haji Dada Abdul Kassam and also made a report on date March 17/31, 1951, and all this information was in the file of the appellant. The Appellate Assistant Commissioner it was submitted was perfectly competent to refer to the said information and draw his own conclusion thereon. The Appellate Tribunal did not approve of this act of the Appellate Assistant Commissioner and observed that it was improper to look at the evidence partially and arrive at a conclusion. It also observed that if the Appellate Assistant Commissioner felt that the case was not investigated properly, he could have remanded it for such further and fuller information as he considered necessary. The Department would then have tried to trace the sale, the actual remittance from the two banks and the persons who remitted the money and would have also cross-examined the purchasers regarding the disposal of such a vast wealth and other connected matters. The Appellate Tribunal in fact refused to look at the information gathered subsequently and to consider the same while arriving at its own conclusion in regard to the transaction in question. According to counsel, the information which has been thus gathered constituted an important piece of evidence whatever may have been the infirmity attaching to the same in the mind of the Appellate Tribunal and the Appellate Tribunal was bound to consider the same and reach its own conclusion on all the materials available including that information which had been gathered subsequently at Junagad under the circumstances herein before stated. The Appellate Tribunal was, therefore, to justified in not considering the evidence which was taken subsequently at that end at the instance of the Department itself and any conclusion arrived at by the Appellate Tribunal was, it was contended, vitiated by improper rejection of relevant and material evidence.

(E) The alleged loopholes pointed out by the Appellate Tribunal in its order were also, it was urged, no loopholes at all.

(1) There was evidence on record to show how Yamnabai kept this vast wealth in an "old treasure" in the house itself (vide the statement of Jusub Aboobacker before the Income-tax Officer, Junagad, on March 15, 1951). There was, therefore, no question of any safe custody in regard to them and it was also in evidence that when she left Ranavav for Madurai in early 1947, she asked her neighbour Jusub Aboobacker to keep a watch over the house inasmuch as a good amount by way of gold and sovereigns was lying in the house (vide the statement of Jusub Aboobacker, *ibid*). In places like these in the interior of Kathiawar there was no question of any other safe custody.

(2) No questions were addressed either to the appellant or to any other party in the course of her investigation as to why the gold was given on two different dates, i.e., February 21 1948, and February 25, 1948. If enquiries had been made in this behalf the appellant might have furnished the necessary information in regard to the same.



(3) The appellant was the sole proprietor of his firm and if he went to Ranavav from Madurai in February, 1948, armed with the power of attorney which was executed in his favour by Yamnabai on January 31, 1948, he had to go there via. Madras, Bombay and Porbandar. He would take whatever monies he required for the journey from his own firm, and the necessary entries in regard to the expenses actually incurred by him could be made only after his return to Madurai on or about March 2, 1948, and in fact such a consolidated entry was found in his books.

It is no doubt true that he returned to Madurai, on or about March 2, 1948, and the second remittance of Rs. 53,282 was made by Messrs. Shariff Hassan & Bros., on March 8, 1948, through the Porbandar State Bank. They were respectable Shroffs and merchants and there was nothing surprising if after the first remittance of Rs. 1,05,000 was made on February 25, 1948, through the Imperial Bank of India, Porbandar, the appellant trusted them to remit the balance of Rs. 53,282 some time later as they in fact did on March 8, 1948. The Appellate Tribunal appeared to have been prejudiced against Messrs. Shariff Hassan & Bros., because they did not send an immediate reply to the enquiry addressed to them by the Income-tax Officer, Madurai, on December 18, 1948. The explanation rendered by Messrs. Shariff Hassan and Bros., in their letter dated May 24, 1949 that they had misplaced the letter of the Income-tax Officer, Madurai, dated December 14, 1948, and hence could not reply to the same earlier, it was urged, was a reasonable explanation and the Appellate Tribunal was not justified in criticising the firm of Messrs. Shariff Hassan & Bros., in the manner it did stating that they had not even the decency to reply to the query of the Income-tax Officer, Madurai.

(4) The different modes of remitting the monies, viz., of the sum of Rs. 1,05,000 through the Imperial Bank of India and the sum of Rs. 53,282 through the Porbandar State Bank, did not furnish any material for suspicion or surmises. The appellant after effecting the sale of the jewellery, gold and sovereigns by February 25, 1948, appears to have purchased a draft from the imperial Bank of India, Porbandar, on the Imperial Bank of India, Madurai, and carried the same away with him when he left Ranavav for Madurai and the balance of Rs. 53,282 was sent by the firm of Messrs. Shariff Hassan & Bros., by Air Mail from Porbandar State Bank through Central Bank of India Ltd., Bombay, to Central Bank of India, Madurai. Neither the appellant nor Messrs. Shariff Hassan & Bros., nor their partner Kassam Shariff nor their Mehtaji was asked as to why the whole sum was not remitted from Porbandar to Madurai on February 25, 1948, but was remitted in two instalments one of Rs. 1,05,000 on February 25, 1948, and the other of Rs. 53,282 on March 8, 1948. In the absence of any explanation asked for by the income-tax authorities from them in this behalf it would not be legitimate to comment on that circumstance.

31. Shri A. V. Vishwanatha Sastri, therefore, submitted that the appellant did all that lay in his power to help the income-tax authorities to arrive at the proper conclusion, that his conduct all throughout was honest and above board and that the whole of the decision of the Appellate Tribunal was vitiated inasmuch as it was based on mere conjectures, surmises and suspicions and not supported by any evidence whatever, on a misreading of the statements contained in Yamnabai's affidavit dated November 18, 1941, and on improper rejection of evidence appearing in the file of the appellant consisting of the correspondence between the Income-tax Officer, Madurai, and the Income-tax Officers at Junagad and Porbandar and the statements made by the witnesses before the

latter.

32. Shri Rajagopala Sastri for the respondent in fact wanted to reply to these arguments but we asked him before proceeding further to satisfy us in the first instance as to how he could justify the improper rejection of the evidence by the Appellate Tribunal as aforesaid. The only thing which he could point out was the passage from the order of the Appellate Tribunal which criticised the impropriety of the Appellate Assistant Commissioner's having looked into the evidence partially and arriving at his conclusion, without giving the Department an opportunity of leading further evidence by way of tracing the sale outside, on remand. This passage certainly did not show that the Appellate Tribunal had applied its mind to the evidence which was there on the file of the appellant in the shape of information gathered subsequently and it merely confirmed that the Appellate Tribunal had improperly rejected that evidence.

33. That being the position, Shri Rajagopala Sastri could not very well resist the order which we proposed to make, setting aside the order of the Appellate Tribunal and remanding the matter back to it for dealing with the same in accordance with law, after taking into consideration all the circumstances adverted to in the arguments of Shri A. V. Viswanatha Sastri, the whole evidence which was available in the file of the appellant and such further evidence as the parties may be advised to lead before it.

34. We are aware that the Income-tax Appellate Tribunal is a fact finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it this court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the reached on the evidence on record before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by this court.

35. In the result, we set aside the order of the Appellate Tribunal in I. T. A. No. 3254 of 1951-52 dated August 8, 1955, and remand the matter back to the Income-tax Appellate Tribunal, Madras "A" Bench, to reconsider the same in accordance with law, in the light of the observations made above. Both the parties, i.e., the Revenue as well as the assessee, will have liberty to adduce before the Appellate Tribunal such further evidence as they may be advised.

36. Costs of this appeal will abide the result of the decision of the Appellate Tribunal reached hereafter. If the appellant succeeds before the Appellate Tribunal, he will be entitled to his costs of this appeal from the respondent; if, however, he fails, and his appeal is dismissed by the Appellate Tribunal, he will pay the respondent's costs of this appeal.

37. Appeal allowed. Case remanded.