Supreme Court of India
Kalyanji Mavji & Co vs C.I.T., West Bengal-Ii on 10 December, 1975
Equivalent citations: 1976 AIR 203, 1976 SCR (2) 966
Author: S M Fazalali
Bench: Fazalali, Syed Murtaza

PETITIONER:
KALYANJI MAVJI & CO

Vs.

RESPONDENT:
C.I.T., WEST BENGAL-II

DATE OF JUDGMENT10/12/1975

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
MATHEW, KUTTYIL KURIEN

CITATION:
1976 AIR 203 1976 SCR (2) 966
1976 SCC (1) 985
CITATOR INFO :
O 1979 SC1960 (14)

ACT:
Income Tax Act, 1922-Section 34(1)(b)-Scope, extent and ambit of, with, particular reference to the connotation and import of the word "information" used in s. 34(1)(b)-Escaped assessment-Reopening the original assessment on the basis of subsequent facts as also on the materials of the original assessment revealed by more careful and closer circumspection is "information" within the meaning of s. 34(1) (b) of the Act and not a case of mere change of opinion.

HEADNOTE:
The appellant company, a registered partnership firm, filed its income tax returns for the years 1956-57 and also for 1957-58 respectively showing a total income of' Rs. 7,44,551/-, after claiming a deduction of a sum of Rs. 43,116/-, being the amount of interest paid by the assessee on the debts incurred for the partnership business along with the balance sheet in support of the said deductions. The Income Tax officer accepted the claim on the basis of the balance sheet. When the assessee filed his return for the year 1958-59, the Income Tax officer discovered that the

deduction claimed by the appellant was not correct and called upon the assessee to prove its plea. But, the assessee did not lead any evidence before him. The Income Tax officer finding that the deduction of interest claimed was utilised for giving interest free loans to the partners for clearing their income-tax dues and, as such, it could not be said to be a loan incurred for the expenses of the partnership firm, not only disallowed the deduction claimed for that assessment year, but also issued a notice under s. 34 (1) (b) for the re-opening of the original assessment of the previous years on the ground that the deduction having been wrongly allowed, taxable income escaped assessment. Accordingly, the Income Tax officer re-assessed him by including Rs. 43,116 to the total income. The appeal to the Appellate Assistant Commissioner failed. However, on second appeal, the Income Tax Appellate Tribunal "B" Bench, Calcutta, set aside the order of the reassessment opining that the information resulting in the reassessment notice under s. 34(1)(b) was not based on any fresh facts, but was derived from the materials on the record of the original assessment amounting to a change of opinion and, as such, was not sufficient to attract the provisions of s. 34(1)(b). On the application of the respondent-Revenue, the Tribunal made a reference under s. 66(1) of the Act framing a question, namely,

> "Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the reassessment made by the Income Tax officer under s. 34(1)(b) of the Indian Income Tax Act (1922) was incompetent ?"

to the High Court, which answered it in the negative and held that the case squarely fell within the ambit of s. 34(1)(b) of the Act inasmuch as the information on the basis of which the Income Tax officer sought to reopen the original assessment, was based on subsequent facts' as also on the materials of the original assessment revealed by more careful and closer circumspection of these materials.

Negativing the following three contentions of the assessee appellant, namely,

(i) The information relied upon by the Income Tax officer not having been derived from external sources, it amounted to a mere change of opinion on the very facts and materials that were present on the record of the original assessment not attracting the provisions of s. 34(1)(b) of the Act.

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(ii) It was not open to the Income Tax officer to have reopened the original assessment merely because he took a different view of the matter in the assessment year 1958-59.

(iii) That the High Court has not appreciated the ratio laid down by the Supreme Court in Commissioner of Income-tax, Gujarat v. A. Raman and Company, 67 I.T.R. 11, and dismissing the appeal by special leave, the Court

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HELD: (1) S. 34(1) contemplates two categories of cases for reopening the previous assessment-(1) where there has been an omission or failure on the part of the assessee to make a return of his income under s. 22 or to disclose fully and truly all materials facts necessary for his assessment; and (ii) where there has been no such omission on the part of the assessee but the Income Tax officer, on the basis of the information in his possession, finds that income chargeable to tax has escaped assessment for any year. The first category deals with cases where an assessee is himself in default and the second category deals with cases where there is an default on the part of the assessee but where the income chargeable to tax has actually escaped assessment for one reason or the other and the Income Tax officer comes to know about the same[1971 E-F]

(2) The word "information" which has not been defined in the Act is of the widest amplitude and comprehends a variety of factors. Nevertheless, the power under s. 34(1)(b), however, wide it may be, is not plenary because the discretion of the Income Tax officer is controlled by the words "reason to believe". [973 C & E]

Bhimraj Pannalal v. Commissioner of Income-tax, Bihar and Orissa, 41 I.T.R. 221 an Bhimraj Panna Lal v. Commissioner of Income-tax, Bihar & Orissa, 32 I.T.R. 289, followed.

(3) Since the Income Tax officer was to see that the tax collecting machinery is made as perfect and effective as possible so that the tax-payer is not allowed to get away with escaped income-tax, in view of the difficulty in laying down any rule of universal application, the following tests and principles would apply to determine the applicability of s. 34(1)(b) to the following categories of cases:

(i) Where the information is as to the true and correct state of law derived from relevant judicial decisions;

(ii) Where in the original assessment the income liable to tax has escaped assessment duel to oversight, inadvertence or a mistake committed by the Income Tax officer on the principle that the tax-payer would not be allowed to take advantage of an oversight or mistake committed by the taxing authority;

(iii) Where the information is derived from an external source of any kind. Such external source would include discovery of new and important matters or knowledge of fresh, facts which were not present at the time of the original assessment; and

(iv) Where the information may be obtained even from the record of the original assessment from an investigation of the materials on the record or the facts disclosed thereby or from other enquiry or research into facts of law.

If these conditions are satisfied, then the Income Tax officer would have complete jurisdiction to reopen the original assessment. It is obvious that where the Income Tax

officer gets no subsequent information, but merely proceeds to reopen the original assessment without any fresh facts or materials or without any enquiry into the materials which from part of the original assessment, s. 34(1)(b) would have no application. [973 C, D, 976 A-E]

Maharaj Kumar Kamal Singh v. The Commissioner of Income-tax, Bihar & orissa [1959] Supp. (1) S.C.R. 10; Commissioner of Wealth-tax, West Bengal v. Imperial Tobacco Company of India Ltd. [1966] Supp. S.C.R. 174; Commissioner of Income-tax. Excess Profits Tax. Hyderabad, Andhra Pradesh v. V. Jagan Mohan Rao and ors. [1970] 1 S.C.R. 726 and Commissioner of Income tax Gujarat v. A. Raman and Company, 67 I.T.R. 11, discussed.

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(4) In the instant case the subsequent information was the discovery by the Income Tax officer the deduction was wrongly claimed and the consequent disallowance of that deduction and the conduct of the assessee itself in not adducing any evidence or materials to prove its stand that the claim was validly made which led to the issue of the notice under s. 34(1)(b) for reopening the assessment [978 H]

(5) The case really fell within the tests and principles laid down in A. Raman Company's case and within the ambit of s. 34(1)(b) inasmuch as the Income Tax officer proceeded on the basis of the information which came to him after the original assessment, by fresh facts revealed in the assessment for the year 1958-59 and consisted of the conduct of the assessee in not adducing any evidence to support its plea. It was not a case of a mere change of opinion by the Income Tax officer on the materials which were already on record. [1979 B-C]

Commissioner of Income-tax, Gujarat v. A. Raman and Company, 67 I.T.R. 11, applied.

Bankipur Club Ltd. v. Commissioner of Income-tax, Bihar and Orissa, 82 I.T.R. 831, 834, distinguished.

[On the question "Whether it is open to the I.T.O. to change his opinion subsequently on the same materials and reopen the original assessment" which arose in the decision in Commissioner of Income Tax, Bombay City-2 v. H. Holck Larsen, 85 I.T.R. 467, 479, relied on by the appellant assessee and also on the contention that in fact the amount sought to be deducted was paid towards the income-tax liabilities of the partners, the Court applied "Non liquet"]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 522 of 1971. Appeal by special leave from the judgment and order dated the 26th April, 1968 of the Calcutta High Court in I. T. Reference No. 50 of 1965.

N. N. Goswamy and Arvind Minocha for the Appellant. B. B. Ahuja and S. P. Nayar for the Respondent. The Judgment of the Court was delivered by FAZAL ALI, J. This appeal by special leave involves the interpretation of the scope, extent and ambit of s. 34(1)

(b) of the Income-tax Act, 1922 with particular reference to the connotation and import of the word `information' used in s. 34(1) (b). Although the question appears to have been settled in one form or the other by the decisions of this Court, the changing and diverse society such as ours' dealing in complex commercial activities continues to produce multifarious facts of taxable income which has escaped assessment cloaked under difficult propositions and knotty legal problems. It is the onerous task of this Court to dispel the doubts and resolve and reconcile the differing views taken by the High Courts in various situations which every time poses a new problem.

The points involved in the instant case have baffled many a legal brain so much so that the High Court also appears to have been in two minds whether to place the information in the instant case as based on the materials already on the record of the original assessment of 1956-57 revealed by closer circumspection or to the information derived from subsequent or fresh facts. Before, however, examining the legal incidents of s. 34 of the Income-tax Act, 1922, it may be necessary for us to travel into the domain of the facts of the present case which are short and simple.

The assessee appellant M/s Kalyanji Mavji & Company is a registered partnership firm dealing in various commercial activities. The said firm filed its return for the year 1956-57 corresponding to the accounting Gujarati Diwali Year 2001 showing a total income of Rs. 7,44,551/- after claiming a deduction of a sum of Rs. 43,116/-being the amount of interest paid by the assessee on the debts incurred for the partnership business. The Income-tax officer accepted the return but on appeal to the Appellate Assistant Commissioner the assessment was reduced by a sum of Rs. 9,200/- by his order dated July 3, 1958. For the assessment year 1957-58 the assessee showed the same income and the deduction claimed was allowed. The next year 1958-59, however, presented quite a different complexion. While the assessee filed his return in the year 1958-59, the Income-tax officer concerned suspected the correctness of the return particularly the deduction of interest and found that as the amount of the deduction claimed was utilised for giving interest-free loans to the partners for clearing up their income-tax dues it could not be said to be a loan incurred for the expenses of the partnership business and he accordingly disallowed the deduction claimed by the appellant. This discovery led the Income-tax officer to issue notice to the appellant under s. 34(1) (b) of the Income-tax Act, 1922-hereinafter referred to as `the Act'- for reopening the assessment of the year 1956-57-hereafter to be referred to as `the original assessment'-on the ground that the deduction having been wrongly allowed, taxable income and escaped assessment. After hearing the appellant the Income-tax officer completed the assessment and included the sum of Rs. 43,116/- to the total income shown, by the assessee. Thereafter the appellant filed an appeal before the Appellate Assistant Commissioner against the order of the Income-tax officer but the appeal was dismissed by the Appellate authority which confirmed the order of the Income- tax officer. It may be pertinent to note here, that in his order the Appellate Assistant Commissioner pointed out that in the assessment years 1958-59 and 1959-60 the Income-tax officer found that the appellant had no evidence with him to show that the funds borrowed on which the interest was paid were utilised for the purpose of the business and not diverted to the partners. Thereafter the appellant filed a second

appeal to the Income-tax Appellate Tribunal, "B", Bench Calcutta. The Tribunal after having accepted the facts culminating in the order of the Appellate Assistant Commissioner was of the opinion that the information of the Income-tax officer resulting in the notice under s. 34(1)

(b) of the Act to the assessee was not based on any fresh facts but was derived from the materials on the records of the original assessment. The Tribunal further found that if the Income-tax officer while completing the original assessment would have been careful enough to scrutinise the balance-sheet he would have at once detected the infirmity on the basis of which the subsequent Income-tax officer issued the notice under s. 34(1) (b)` of the` Act to the appellant. The Tribunal further was of the opinion that the subsequent Income-tax officer merely changed his opinion on the basis of the very materials that were before him when the original assessment was made and that was not sufficient to attract the provisions of s. 34(1) (b) of the Act. The Tribunal accordingly allowed the appeal and set aside the order of the Income-tax officer issuing notice to the assessee under s. 34(1) (b) for reopening the original assessment. Thereafter the respondent, namely, the Commissioner of Income-tax approached the Tribunal for making a reference to the High Court under s. 66(1) of the Act as a result of which the Tribunal referred the case to the High Court at Calcutta after framing the following question:

> "Whether on the facts and in the circumstances of the case, the Tribunal, was right in holding that the re-assessment made by the Income-tax officer under s. 34(1) (b) of the Indian Income-tax Act, 1922 was incompetent ?"

The High Court, after hearing the parties, differed from the view taken by the Tribunal and held that the present case squarely fell within the ambit of s. 34(1) (b) of the Act inasmuch as the information on the basis of which the Income-tax officer sought to re-open the original assessment was based on subsequent facts as also on the materials of the original assessment revealed by more careful and closer circumspection of those materials. The High Court referred to a number of decisions of this Court as also to the decisions of the Calcutta High Court. The appellant sought leave to appeal to this Court against the order of the High Court, which having been refused, the appellant obtained special leave from this Court, and hence this appeal.

In support of the appeal it was contended by Mr. Banerjee that the view taken by the High Court is legally erroneous inasmuch as the admitted facts of this case would disclose that the information relied upon by the Income-tax officer in order to re-open the original assessment was not derive from external sources but amounted to a mere change of opinion on the very facts and materials that were present on the record of the original assessment. It was also submitted that it was not open to the Income-tax officer to have re-opened the original assessment merely because he took a different view of the matter in the assessment year 1958-59. Lastly it was argued that the High Court had not correctly applied the ratio laid down by this Court in Commissioner of Income-tax, Gujarat v. A. Raman and Company(1).

Mr. Ahuja appearing for the Revenue submitted that the order of the Income-tax officer was fully justified and the High Court had taken the correct view of the law.

In order to appreciate the contentions advanced by counsel for the parties, it is necessary to make a brief survey of the provisions of s. 34(1) of the Income-tax Act, 1922. The section runs thus:

> "34. (1) If-
>
> (a) the Income-tax officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-assessed or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or
>
> (b) notwithstanding that there has been no omission or failure as mentioned in clause
>
> (a) on the part of the assessee, the Income- tax officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed, he may in cases falling under clause (a) at any time and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or reassess such income profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section Provided * * * *"

It would be seen that s. 34(1) contemplates two categories of cases for re-opening the previous assessment-(1) where there has been an omission or failure on the part of the assessee to make a return of his income under s. 22 or to disclose fully and truly all material facts necessary for his assessment; and (2) where there has been no such omission on the part of the assessee but the Income-tax officer on the basis of information in his possession finds that income chargeable to tax has escaped assessment for any year. It is, therefore, manifest that the first category deals with cases where an assessee is himself in default and the second category deals with cases where there is no fault on the part of an assessee but where the income chargeable to tax has actually escaped assessment for one reason or the other and the Income-tax officer comes to know about the same. In the instant case, however, we are concerned with clause (b) of s. 34(1) extracted supra. Before however proceeding to interpret the ambit and import of s. 34(1) (b) it may be necessary to consider the history of s. 34 of the Act which appears to have passed through different phases with amendments and additions made to the section from time to time.

Section 34 as it stood in 1922 was as follows: "34. If for any reason income profits or gains chargeable to income-tax has escaped assessment in any year, or has been assessed at too low a rate, the Income-tax officer may, at any time within one year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or in the case of a company on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or reassess such income, profits or gains, and the provisions of this Act shall, so far as may be apply accordingly as if the notice were a notice issued under that sub-section:

Provided that the tax shall be charged at the rates at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be."

It would be seen that in the section as it stood in 1922 the word `information' was not there at all and the section merely empowered the Income-tax officer to reopen the assessment of any year where income chargeable to tax had escaped assessment. No conditions or limitations on the power of the Income-tax officer were at all laid down under the section. It appears that the appropriate Legislature in its wisdom thought that this would be too wide a power to be given to the Income-tax officer and may not be workable. In these circumstances, by the Indian Income-tax (Amendment) Act, 1939, this section was recast as under:

> "34 (1) If in consequence of definite information which has come into his possession the Income-tax Officer, discovers that income, profits and gains chargeable, to income tax have escaped assessment in any year, or have been under-assessed, or have been assessed at too low, a rate, or have been the subject of excessive relief under this Act the Income-tax officer may, in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars 1, thereof, at any time within eight years, and in any other case at any time within four years of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principle officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section:

Provided * * * "

It may be pertinent to note that by virtue of this amendment the concept of the Income-tax officer deriving definite information was introduced for the first time. The word 'information' was qualified by `definite' and an additional condition was incorporated namely that the Income-tax officer discovers that income chargeable to tax had escaped assessment. This provision led the Courts to approach the provisions of the section with greater circumspection and stricter scrutiny as a result of which many cases of escaped assessments had to be set at naught by some decisions of the Courts. This led the Parliament to take a fresh view of the situation. Accordingly by the Income-tax and

Business Profits Tax (Amendment) Act, 1948, the section was re-cast in the present form as quoted above. There were further amendments in 1954 and 1956 with which we are not concerned. Ultimately by the Income-tax Act, 1961, the section underwent a complete transformation and even the setting of the section was changed which now forms s. 147(a) & (b) of the Income-tax, 1961. We are now concerned in this case only with s. 34(1) (b) as it stood after the amendment of 1948.

Another pertinent fact which may be mentioned here is that although s. 34 was the subject of several amendments, yet the word `information' which was introduced in 1939 has not been defined at all. Since the word `information' has not been defined, it is difficult to lay down any rule of universal application. At the same time it cannot be disputed that the object of the Act was to see that the tax collecting machinery is made as perfect and effective as possible so that the tax-payer is not allowed to get away with escaped Income-tax. The fact that the adjective `definite' qualified the word `information' and the word `discovers' which were introduced in the Income-tax (Amendment) Act, 1939 were deleted by the Amendment Act of 1948 would lead to the irresistible inference that the word `information' is of the widest amplitude and comprehends a variety of factors. Nevertheless the power under s. 34(1)

(b), however wide it may be, is not plenary because the discretion of the Income-tax officer is controlled by the word "reason to believe". It was so held by this Court in Bhimraj Pannalal v. Commissioner of Income-tax Bihar and Orissa(1), while affirming the decision of the Patna High Court in Bhimraj Panna Lal v. Commissioner of Income-tax, Bihar and Orissa(1). This legal proposition, however, is not disputed. It, therefore, follows that information may come from external sources or even from materials already on the record or may be derived from the discovery of new and important matter or fresh facts. The word `information" will also include true and correct state of the law derived from relevant judicial decisions either of the Income-tax authorities or other courts of law which decide income-tax matters. Where the ground on which the original assessment is based is held to be erroneous by a superior court in some other case, that will also amount to a fresh information which comes into existence subsequent to the original assessment. A subsequent Privy Council decision is also included in the word `information'. Thus it is very difficult to lay down any hard and fast rule. But this Court has in two leading cases laid down some objective tests and principles to determine the applicability of s. 34(1) (b) of the Act which we shall now discuss.

In Maharaj Kumar Kamal Singh v. The Commissioner of Income-tax, Bihar & Orissa(1) the word "information" fell for interpretation by this Court, where it was observed thus:

> "We would accordingly hold that the word "information" in s. 34(1) (b) includes information as to the true and correct state of the law and so would cover information as to relevant judicial decisions. If that be the true position, the argument that the Income-tax officer was not justified in treating the Privy Council decision in question as information within s. 34 (1) (b) cannot be accepted.
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> * * * * * In our opinion, even in a case where a return has been submitted, if the Income-tax officer erroneously fails to tax a part of assessable income, it is a case

> where the said part of the income has escaped assessment. The appellant's attempt to put a very narrow and artificial limitation on the meaning of the word "escape" in s. 34(1)(b) cannot therefore succeed."

It will be seen that this Court was in favour of placing not a narrow but a liberal interpretation on the provisions of s. 34(1) (b) of the Act. This decision was considered by this Court in Commissioner of Wealth Tax, West Bengal v. Imperial Tobacco Company of India Ltd.(2) where Wanchoo, J., speaking for this Court observed as follows:

> "It may be added that after the decision of this Court in Maharaj Kumar Kamal Singh's case it is now settled that "information in s. 34(1) (b) included information as to the true and correct state of law, and so would cover information as to relevant judicial decisions" and that such information for the purpose of s. 34(1) (b) of the Income-tax Act need not be confined only to cases where the Income-tax officer discovers as a fact that income has escaped assessment."

Similarly in Commissioner of Income-tax, Excess Profits Tax, Hyderabad, Andhra Pradesh v. V. Jagan Mohan Rao and ors.(3), while following the decision of this Court in Maharaj Kumar Kamal Singh's case (supra) it was observed as follows:

> "In these circumstances it was held by this Court firstly that the word information in s. 34(1) (b) included information as to the true and correct state of the law, and so would cover information as to relevant judicial decisions, secondly that `escape' in s. 34(1) was not confined to cases where no return had been submitted by the assessee or where income had not been assessed owing to inadvertence or oversight or other lacuna attributable to the assessing authorities. But even in a case where a return had been submitted, if the Income-tax officer had erroneously failed to tax a part of the assessa-
>
> ble income, it was a case where that part of the income had escaped assessment. The decision of the Privy Council, therefore, was held to be information within the meaning of s. 34(1)(b) and the proceedings for re- assessment were validly initiated."

The matter was again fully considered by this Court in A. Raman and Company's case (supra), where Shah, J., speaking for the Court extended the connotation of the word `information' to two different categories of cases and observed as follows:

> "The expression "information" in the context in which it occurs must, in our judgment, mean instruction or knowledge derived from an external source concerning facts or particulars, as to law relating to a matter bearing on the assessment.
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> * * * * * Jurisdiction of the Income-tax officer to reassess income arises if he has in consequence of information in his possession reason to believe that income

> chargeable to tax has escaped assessment. That information, must, it is true, have come into the possession of the Income-tax officer after the previous assessment,`but even if the information be such that it could have been obtained during the previous assessment from an investigation of the materials on the record, or the facts disclosed thereby or from other enquiry or research into facts or law, but was not in fact obtained, the jurisdiction of the Income-tax officer is not affected."

An analysis of this case would clearly show that the information as contained in s. 34(1) (b) must fulfil the following conditions:

> (1) The information may be derived from an external source concerning facts or particulars as to law relating to matter bearing on the assessment;
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> (2) That the information must come after the previous or the original assessment was made. In fact the words "in consequence of information" as used in s. 34(1) (b) clearly postulate that the information must be subsequent to the original assessment sought to be reopened; and (3) That the information may be obtained even on the basis of the record of the previous assessment from an investigation of the materials on the record, or the facts- disclosed thereby or from other enquiry or research into facts or law.

These categories are in addition to the categories laid down by this Court in Maharaj Kumar Kamal Singh's case which has been consistently followed in several decisions of this Court as shown above.

On a combined review of the decisions of this Court the following tests and principles would apply to determine the applicability of s. 34(1) (b) to the following categories of cases:

> (1) Where the information is as to the true and correct state of the law derived from relevant judicial decisions;
>
> (2) Where in the original assessment the income liable to tax has escaped assessment due to oversight, in advertence or a mistake committed by the Income-tax officer. This is obviously based on the principle that the tax-payer would not be allowed to take advantage of an oversight or mistake committed by the Taxing Authority;
>
> (3) Where the information is derived from an external source of any kind. Such external source would include discovery of new and important matters or knowledge of fresh facts which were not present at the time of the original assessment;
>
> (4) Where the information may be obtained even from the record of the original assessment from an investigation of the materials on the record, or the facts disclosed thereby or from other enquiry or research into facts or law.

If these conditions are satisfied then the Income-tax officer would have complete jurisdiction to re-open the original assessment. It is obvious that where the Income-tax officer gets no subsequent information, but merely proceeds to re-open the original assessment without any fresh facts or materials or without any enquiry into the materials which form part of the original assessment, s. 34(1) (b) would have no application.

Learned counsel for the appellant heavily relied on the decision of this Court in Bankipur Club Ltd. v. Commissioner of Income-tax, Bihar and Orissa(1) in support of the proposition that in the instant case the Income-tax officer has proceeded to re-open the assessment on the basis of the very materials which formed the subject of the original assessment. It was submitted that in the original assessment the assessee had claimed a deduction and had produced the balance-sheet and these very factors were also present when the Income-tax officer sought to make the assessment for the year 1958-59 and 1959-60, and since no fresh facts were brought to his notice it was not open to him to re-open the original assessment. The facts of the case relied upon by the appellant are clearly distinguishable from the facts of the present case. In Bankipur Club Ltd.'s(1) case it appears that the Club had in its return placed all the materials with full details. The facts placed before the Income-tax officer were self-evident and no calculation or scrutiny was necessary to find out the effect of the materials placed before the Income-tax officer. In view of this peculiar situation, Hegde, J., speaking for the Court observed:

> "The fact that the club had received certain amounts as guests charges from its members had been placed before the Income-tax officer. It is not the case of the Income-tax officer that he did not come to know all the relevant facts when he made the original orders of assessment. It is also not his case that at the time he made those orders he was not aware of the true legal position. It was for the Income-tax officer to show that he had received some information subsequent to his passing the original orders of assessment. No such material was placed before the Tribunal. That being so, the Tribunal, in our opinion, was right in holding that the Income-tax officer was incompetent to initiate proceedings under section 34(1)
>
> (b)."

In the instant case it would appear that three additional facts had come into existence after the original assessment for the year 1956-57 was made by the Income-tax officer. These were-(i) that for the assessment year 1958-59 the Income-tax officer did not accept the assessee's plea that he should be allowed deduction for a sum of Rs. 43,116/-; (2) that the Income-tax officer came to a finding that the assessee had not proved that the amount of deduction claimed was really in connection with the partnership business but held that this was on account of interest-free advance to the partners to pay their income-tax dues; and (3) the conduct of the appellant in not clearing the doubts of the Income-tax officer when the appellant was given the notice to contest the assessment merely on the question of law also spoke volumes against the assessee and was also an additional factor which weighed with the Income-tax officer. It would be seen that the Income-tax officer in his order, which is Annexure-A to the statement of case filed by the Tribunal, observed as follows:

> "In the course of the assessment proceedings for 1958-59 however it was discovered that the assessee's claim of payment of interest on money borrowed was not proper. Inasmuch as the entire money borrowed had been utilised not for the purpose of business but in giving interest free advance to the partners of the firm..... In fact no argument as regards the allowance or disallowance of the interest amount in question was placed but the entire argument of the representative proceeded on the basis that the action u/s 34 itself was illegal..... There is no doubt that there has been under assessment in this case and there is also no doubt that the fact of under assessment has been brought to the notice of the Income-tax officer only in the course of the income-tax proceedings for 1958-59."

Similarly the appellate Assistant Commissioner in his order, which is Annexure-B to the statement of the case, observed as follows:

> "At the time of the original assessment the appellant claimed an interest of Rs. 43,116/- which was allowed by the I.T.O. in full. However, later on, while making the assessment for the assessment years 1958-59 and 1959- 60, the I.T.O. found that the appellant had no evidence with him to show that the funds borrowed on which the interest was paid, in fact, were utilised for the purpose of the business and not diverted to the partners."

These findings by the two authorities have been clearly mentioned in the order of the Tribunal, which, while narrating the facts, observed as follows:

> "Subsequently, however, when the Income-tax officer was making the assessment for the assessment year 1958-59, he discovered that the assessee did not utilise the borrowed money for the purpose of the business but for giving interest free advances to its partners. The Income-tax officer, therefore, had reasons to believe that income to the extent of Rs. 43,116/- had been under-assessed and he issued notice under section, 34."

Thus in view of the findings given by the Income-tax authorities the following facts emerge:-

> (1) that at the time of the original assessment the appellant had filed his return claiming a deduction of Rs. 43,116/- and filed the balance sheet in support of his plea;
> (2) that the balance-sheet showed that the capital of the firm was Rs. 8,70,000/-, total drawings by the partners stood at Rs. 29,31,998/- and the loans were Rs. 6,63,292/- The Income-tax officer who completed the original assessment appears to have accepted the claim of the appellant because the balance-sheet without any further scrutiny and a close calculation would not have revealed that the amount of deduction claimed was really in the nature of interest free loans given to the partners to meet their income-tax liabilities:

> (3) that in 1958-59 the Income-tax officer discovered that the deduction claimed by the appellant was not correct and he accordingly called upon it to prove its plea but the appellant led no evidence before the Income tax officer. From this the Income-tax officer concluded that the amount sought to be claimed as deduction was not incurred for the purpose of the partnership business.

Thus, therefore, the subsequent information was-(1) the discovery by the Income-tax officer that the deduction was wrongly claimed and his disallowance of that deduction; and

(ii) the conduct of the appellant itself in not adducing any evidence or materials to prove its stand that the deduction was validly claimed.

We might mention that it was submitted by Mr. Banerjee that in fact the amount sought to be deducted was paid towards the income-tax liability of the partners and this was done to protect the business itself and to improve the credit of the partners. Even this specific plea does not appear to have been taken before the Income-tax officer. We are, however, not concerned with this particular plea because we are given to understand by the counsel for the appellant that the appeals against the assessment orders for the years 1958-59 and 1959-60 are pending before the Income- tax authorities. In these circumstances we are clearly of the opinion that the facts of the present case clearly fall within the tests and principles laid down by this Court in A. Raman and Company's case (supra) inasmuch as the Income- tax officer proceeded on the basis of the information which came to him after the original assessment by fresh facts revealed in the assessment for the year 1958-59 and consisted of the conduct of the appellant itself in not adducing any evidence to support its plea. We are, therefore, unable to agree with the view of the Tribunal that this was a case of a mere change of opinion by the Income-tax officer on the materials which were already on the record.

our attention was also drawn by the learned counsel for the appellant to the decision of the Bombay High Court in Commissioner of Income-tax, Bombay City II v. H. Holck Larsen(1). In this case, Chandrachud, J., as he then was, speaking for the Court after review of the authorities of this Court and other High Courts, observed as follows:

> "What is obligatory in order to apply section 34(1)(b) is that he must have "information" in his possession in consequence of which he has reason to believe that the income has escaped assessment or is under-assessed, etc. The distinction really consists in a change of opinion unsupported by subsequent information on the one hand and a change of opinion based on information subsequently obtained, on the other. In the former class of cases, the assessment proceedings are attempted to be re-opened without the discovery of an error and without receiving any information as to fact or law..... Such a reopening is based on a "mere" change of opinion and is without jurisdiction..... ..... In the latter class of cases, the reopening is based on information leading to the requisite belief and is therefore within the jurisdiction of the officer."

This decision is really based on the question whether it is open to the Income-tax officer to change his opinion subsequently on the same materials and reopen the original assessment. We are no doubt inclined to agree with the view expressed by Chandrachud, J., in the aforesaid case, but as this question is not free from difficulty as there is some divergence of judicial opinion on the subject, we would refrain from giving any definite decision on this point, particularly when in the view we take in the instant case, this point does not really arise for determination in this case, which is really based on another principle, namely, that the information was derived by the Income-tax officer from fresh facts and is clearly covered by the principles laid down in A. raman and Company's case (supra).

For the reasons given above, we find ourselves in complete agreement with the view taken by the High Court. Accordingly the appeal fails and is dismissed but without any order as to costs.

S.R. Appeal dismissed.