PETITIONER:
INDIAN AND EASTERN NEWSPAPER SOCIETY NEW DELHI

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, NEW DELHI

DATE OF JUDGMENT31/08/1979

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
BHAGWATI, P.N.
TULZAPURKAR, V.D.

CITATION:
1979 AIR 1960 1980 SCR (1) 442
1979 SCC (4) 248

ACT:
Income Tax Act 1961-S. 147(b)-Scope of-"Information" "Reason to believe"-Meaning of-Opinion of audit party of Income Tax Department-If would constitute "information".

HEADNOTE:
Section 147(b) of the Income Tax Act, 1961 provides that if an Income Tax officer has, in consequence of information in his possession, reason to believe that income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income.

The internal audit organisation of the income tax department, in the course of auditing the income tax records pertaining to the assessee for certain assessment years stated that the assessee's income on account of letting out of halls and rooms should not have been assessed as income from business but an assessment should have been made under the head "Income from property". Treating the report as information in his possession under s. 147(b) the Income Tax officer re-assessed the assessee's income The Appellate Assistant Commissioner reversed the Income Tax officers order. On the other hand, the Appellate Tribunal took the view that the Income Tax officer had jurisdiction to proceed under s.147(b). In a reference under s.257 of the Income Tax Act the question was whether the Income Tax officer was legally justified in reopening the assessment under s. 147(b) on the basis of the view expressed by the Internal Audit party received by him subsequent to the original assessment.

Allowing the appeal,
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HELD: The opinion of the internal audit organization of the Department on a point of law cannot be regarded as information within the meaning of s. 147(b) of the Act. [455A].

1. (a) An assessment proceeding, which is a quasi-judicial proceeding, acquires finality on the assessment order being made. The finality of such an order can be disturbed only in proceedings, and within the confines, provided by law. An appeal, revision and rectification are proceedings in which the finality of the assessment may be

questioned. Section 147, under which an assessment may be reopened, is a proceeding for assessing income which has escaped assessment. [446F-G]

2. In cases falling under s. 147(b) "information" is an indispensable ingredient. The word ''information'' has been interpreted by this Court to mean not only facts or factual material but include information as to the true and correct state of the law and, therefore, information as to relevant judicial decisions. The term is also defined as "instruction" or Knowledge derived from an external source concerning facts or particular, or as to law, relating to n matter bearing on the assessment. [447D-F]

Mahaaraj Kamal Singh v. Commissioner of Income Tax 35 I.T.R. 1 (S.C.)= [1959] Sup. I SCR 10, Commissioner of Income Tax v. Raman & Company 67 I.T.R. Il(SC)=[1968] I SCR 10, referred to.

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3.(a) By its inherent nature, a fact has concrete existence. It influences the determination of an issue by the mere circumstance of its relevance. It requires no further authority to make it significant. [447-H].

(b) The term 'law' is used in the sense of norms or guiding principles having legal effect and legal consequences. To possess legal significance for that purpose, law must be enacted or declared by a competent authority. The legal sanction vivifying it imparts to it its force and validity and binding nature. Law may be statutory law enacted by a competent legislative authority, or it may be judge made law emanating from a declaration or exposition of the content of a legal principle or the interpretation of a statue and may in particular cases extend to a definition of the status of a party or the legal relationship between the parties, the declaration being rendered by a competent judicial or quasi-judicial authority empowered to decide questions of law between contending parties. The declaration or exposition is ordinarily set forth in the judgment of a court or the order of a tribunal. Such declaration or exposition in itself bears the character of law. In every case, therefore, to be law it must be a creation by a formal source, either legislative or judicial authority. A statement by a person or body not competent to create, or define the law cannot be regarded as law. [448A-D]

(c) Where s. 147(b) is read as referring to 'information' as to law, what is contemplated is 'information' as to the law created by a formal source. It is law which, because it issues from a competent legislature or a competent judicial or quasi-judicial authority, influences the course of the assessment and decides any one or more of these matters which determine the assessee's tax liability [448G]

4. The Internal Audit organisation of the Income Tax Department was set up primarily for imposing a check over the arithmetical accuracy of the computation of income and the determination of tax. The audit of income tax receipts having been entrusted to the Comptroller and Auditor-General of India, it is intended as an exercise in removing mistakes and errors in income tax records before they are submitted to the scrutiny of the Comptroller and Auditor General. The audit by the Comptroller and Auditor General is, by virtue of s. 16 of the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971 intended to ensure the sufficiency or otherwise of the rules and procedures prescribed for the purpose of securing an effective check on the assessment, collection and proper allocation of revenue and to ascertain whether the rules and

procedure are being fully observed and L nothing more. Therefore the contents of an internal audit report cannot be construed as enjoying the status of a declaration of law binding on the Income Tax Officer. Both the internal audit party of the Income Tax Department and the Audit report of the Comptroller and Auditor General perform essentially administrative or executive functions and cannot be attributed the power of judicial supervision over the quasi-judicial acts of income tax authorities. The statute does not contemplate such power The opinion of the audit party in regard to the application of one section of the Income Tax Act instead of another by the Income Tax officer is not law because it is rot a declaration by a body authorised to declare the law. [450B-F]
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5. While the law may be enacted or laid down only by a. body or person with authority in that behalf, knowledge or awareness of the law may be communicated by any one. No authority is required for the purpose of communicating knowledge or awareness of the law. [450G]

6 (a) In every case the Income Tax officer must determine for himself what the effect and consequence of the law mentioned in the audit note are and whether in consequence of the law which has come to his notice he can reasonably believe that income had escaped assessment. The basis of his belief must be the law of which he has now become aware. The true evaluation of the law in its bearing on the assessment must be made directly and solely by the Income Tax officer. [451C-D]

Maharaj Kamal Singh v. Commissioner of Income Tax 35 I.T.R. I (SC)= [1959] Sup. I SCR 10, Commissioner of Income Tax v. Raman & Company 67 I.T.R. 11 (SC)=[1968] 1 SCR 10, Bankipur Club Ltd. v. Commissioner of Income Tax [1971] 82 I.T.R. 831 followed

R. K. Malhotra, Income Tax officer, Croup Circle 11(1), Ahmedabad v. Kasturbhai Lalbhai, 109 I.T.R. 537, Kalyanji Mavji & Co. v. Commissioner of Income Tax, 102 I.T.R. 287, over-ruled.

Assistant Controller of Estate Duty Y. Nawab Sir Mir Osman Ali Khan Bahadur, 72 I.T.R, 376 referred to.

Commissioner of Income Tax v. H. H. Smt. Chand Kanwarji Alwar 84 I.T.R 584, Commissioner of Income Tax v. Kalukutty 85 I.T.R 102, Vashist Bharghava v. Income Tax officer, 99 I.T.R. 148, Muthukrishna Reddier v Com missioner of Income Tax, Kerala, 90 I.T.R 503, Raj Kumar Shrawan Kumar v. Central Board of Direct Taxes & Anr. 107 I.T.R. 570, Elgin Mills Co. Ltd., v. Income Tax officer, Companies Circle, 'A' Ward, Kanpur, 111 I.T.R. 287 not approved.

(b) The error discovered by the Income Tax Officer on a. reconsideration of the same material (and nothing more) does not give the Income Tax Officer the power to reopen the assessment. [451G]

(c) The submission of the Revenue that upon receipt of the audit note the Income Tax officer discovers or realises that a mistake has been committed in the original assessment and therefore the discovery of the mistake would be "information" within the meaning of s. 147(b) is inconsistent with the terms of the section. What the section envisages is that the Income Tax officer must first have information in his possession and then in consequence of such information he must have reason to believe that income has 'escaped assessment. The realisation that income has escaped assessment is covered by the words "reason to believe", and it follows from the "information" received by him. The information is not the realisation; the information

gives birth to the realisation. [452C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Tax Reference Case Nos. 1 to 4 of 1973.

Income Tax Reference under section 257 of Income Tax Act 1961 made by T T. Appellate Tribunal Delhi Bench 'C' in R.A. Nos. 491 to 494 of 1971-72 (I.T.A. NOS. 6992,19629-19631 of 1967-68).

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V. S. Desai, (Mrs.) A. M. Verma, A. N. Haskar an(3 J. B. Dadachanji for the appellant.

T. A. Ramachandran and Miss A. Subhashini for the respondent.

(Dr.) Devi Pal, Ravinder Narain and J. B. Dadachanji for the Intervener.

The Judgement of the Court was delivered by

PATHAK, J.-Can the view expressed by an internal audit party of the Income Tax Department on a point of law be regarded as ''information' for the purpose of initiating proceedings under section 147(b) of the Income Tax Act, 1961 ? opinion on the question has been divided among the High Courts, and accordingly the present cases have been referred by the Income-tax Appellate Tribunal under s. 257 of the Act.

The assessee, Messrs. Indian and Eastern Newspaper Society, is a society registered under the Indian Companies Act. It is a professional association of newspapers established with the principal object of promoting the welfare and interest of all newspapers. The assessee owns a building in which a conference hall and rooms are let out on rent lo its members as well as to outsiders. Certain other services are also provided to the members. The income from that source was assessed to tax all along as income from business. It was so assessed for the years 1960-61, 1961-62, 1962-63 and 1963-64 also.

The Income Tax Department includes an internal audit organisation whose function it is to examine income-tax records and check mistakes made therein with a view ultimately to improve the quality of assessments. In the course of auditing the income-tax records pertaining to the assessee for the assessment years 1960-61 to 1963-64, the internal audit party expressed the view that the money realised by the assessee on account of the occupation of its conference hall and rooms should not have been assessed as income from business. It said that an assessment should have been made under the head "Income from property". The Income Tax Officer treated the contents of the report as "information" in his possession for the purpose of s. 147(b) of the Income Tax Act. 1961, and reassessed the income on that basis. The Appellate Assistant Commissioner allowed the appeals filed by the assessee holding, inter alia, that in law it could not be said that the Income Tax officer had any "information" in his possession enabling him to take action under s. 147(b). On appeal by the Revenue, the Income Tax Appellate Tribunal, Delhi Bench noticed a conflict of judicial opinion on the question whether the internal audit

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report could be treated as "information" for the purpose of s. 147(b). The Gujarat High Court in Kasturbhai Lalbhai v. R. K. 'Malhotra, Income-tax Officer, Group Circle 11(1), Ahmedabad had held that an internal audit report could not be regarded as "information", while the Delhi High Court in

Commissioner of Income-tax v. H. H. Smt. Chand Kanwarji Alwar has expressed a contrary view. Following the view adopted by the Delhi High Court, the Tribunal held that the Income Tax officer had jurisdiction to proceed under s. 147(b). The assessee applied for a reference, and having regard to the difference between the High Courts on the point, the Tribunal has considered it expedient to refer the following question of law directly to this Court:-

"Whether, on the facts and in the circumstances of the case, the Income-tax officer was legally justified in reopening the assessments under section 147 (b) for the years 1960-61, 1961-62, 1962-63 and 1963-64 on the basis of the view expressed by the Internal Audit party and received by him subsequent to the original assessment ?"

Since then, the judgment of the Gujarat High Court in Kasturbhai Lalbhai's case (supra) has, on appeal, been reversed by this Court in R. K. Malhotra, Income Tax Officer, Group Circle 11(1) Ahmedabad v. Kasturbhai Lalbhai. It has been strenuously contended that the view taken by this Court calls for further consideration. Having regard to the dimensions of the controversy and the importance of the question, we have been persuaded to take a fresh look at the point.

An assessment proceeding is a quasi judicial proceeding. It acquires finality on the assessment order being made. And the finality of such an order can be disturbed only in proceeding, and within the confines provided by law. An appeal, revision and rectification are proceedings in which the finality may be questioned. The assessment may also be reopened under section 147 of the Act. It is a proceeding for assessing income which has "escaped assessment". Section 147 reads:-

"147. 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 under section 139 for any

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assessment year to the Income Tax officer or Lo disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, 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 chargeable to tax has escaped assessment for any assessment year,

he may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned."

In cases falling under section 147(b), the expression "information" prescribes one of the conditions upon which a concluded assessment may be reopened under that provision. It is an indispensable ingredient which must exist before the section can be availed of. What does "information" in section 147(b) connote ? In Maharaj Karnal Singh v. Commissioner of Income-tax this Court, construing the corresponding section 34(1) (b) of the Indian Income Tax Act, 1922 held the word "information" to mean not only facts or factual material but to include also information as to the true and correct state of the law and, therefore,

information as to relevant judicial decisions. Thereafter, in Commissioner of Income-tax v. Raman & Company, the Court defined the expression "information" in section 147(b) of the Income-Tax Act 1961 as "instruction or knowledge derived from an external source concerning facts or particulars, or as to law, relating to a matter bearing on the assessment." That definition has been reaffirmed in subsequent cases, and with it as the point of departure we shall now proceed.

In so far as the word "information" means instruction or know- ledge concerning facts or particulars, there is little difficulty. By its inherent nature, a fact has concrete existence. It influences the determination of an issue by the mere circumstance of its relevance. It requires no further authority to make it significant. Its quint essential value lies in its definitive vitality.

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But when "information" is regarded as meaning instruction or knowledge as to law the position is more complex. When we speak of "law", we ordinarily speak of norms or guiding principles having legal effect and legal consequences. To possess legal significance for that purpose, it must be enacted or declared by competent authority. The legal sanction vivifying it imparts to it its force and validity and binding nature. Law may be statutory law or, what is popularly described as, judge-made law. In the former case, it proceeds from enactment having its source in competent legislative authority. Judge made law emanates from a declaration or exposition of the content of a legal principle or the interpretation of a statute, and may in particular cases extend to a definition of the status of a party or the legal relationship between parties, the declaration being rendered by a competent judicial or quasi-judicial authority empowered to decide questions of law between contending parties. The declaration or exposition is ordinarily set forth in the judgment of a court or the order of a tribunal. Such declaration or exposition in itself bears the character of law. In every case, therefore, to be law it must be a creation by a formal source, either legislative or judicial authority. A statement by a person or body not competent to create or define the law cannot be regarded as law. The suggested interpretation of enacted legislation and the elaboration of legal principles in text books and journals do not enjoy the status of law. They are merely opinions and, at best, evidence in regard to the state of the law and in themselves possess no binding effect as law. The forensic submissions of professional lawyers and the seminal activities of legal academics enjoy no higher status. Perhaps the only exception is provided by the writings of publicists in international law, for in the law of nations the distinction between formal and material sources is difficult to maintain.

In that view, therefore, when section 147(b) of the Income Tax Act is read as referring to "information" as to law, what is contemplated is information as to the law created by a formal source. It is law, we must remember, which because it issues from a competent legislature or a competent judicial or quasi-judicial authority, influence the course of the assessment and decides any one or more of those matters which determine the assessee’s tax liability.

In determining the status of an internal audit report, it is necessary to consider the nature and scope of the functions of an internal audit party. The internal audit organisation of the Income Tax Department was set up primarily for imposing a check over the arithmetical accuracy of the computation of income and the determination

of tax, and now,
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because of the audit of income-tax receipts being entrusted to the A Comptroller and Auditor-General of India from 1960, it is intended as an exercise in removing mistakes and errors in income tax records before they are submitted to the scrutiny of the Comptroller and Auditor-General. Consequently, the nature of its work and the scope of audit have assumed a dimension ca-extensive with that of Receipt Audit. The nature and scope of Receipt Audit are defined by section 16 of the Comptroller and Auditor General's-(Duties, Powers and Conditions of Services) Act, 1971.

Under that section, the audit by the Comptroller and Auditor General is principally intended for the purposes of satisfying him with regard to the sufficiency of the rules and procedures prescribed for the purpose of securing an effective check on the assessment, collection and proper allocation of revenue. He is entitled to examine the accounts in order to ascertain whether the rules and procedures are being duly observed, and he is required, upon such examination, to submit a report. His powers in respect of the audit of income-tax receipts and refunds are outlined in the Board's Circular No. 14/19/ 56-II dated July 28, 1960. Paragraph 2 of the Circular repeats the provisions of section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. And paragraph 3 warns that "the Audit Department should not in any way substitute itself for the revenue authorities in the performance of their statutory duties." Paragraph 4 declares:

> "4. Audit does not consider it any part of its duty to pass in review the judgment exercised or the decision taken in individual cases by officers entrusted with those duties, but it must be recognised that an examination of such cases may be an important factor in judging the effectiveness of assessment procedure .. It is however, to forming a general judgment rather than to the detection of individual errors of assessment, etc. that the audit enquiries should be
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> directed. The detection of individual errors is an incident rather than the object of audit."

Other provisions stress that the primary function of audit in relation to assessments and refunds is the consideration whether the internal procedures are adequate and sufficient. It is not intended that the purpose of audit should go any further. Our attention has been invited to certain provisions of the Internal Audit Manual more specifically defining the functions of internal audit in the Income Tax Department. While they speak of the need to check all assessments and refunds in the light of the relevant tax laws, the orders of the Commissioners of Income Tax and the instructions of the Central Board of Direct Taxes, nothing contained therein can be construed as conferring on the contents of an internal audit report the status of a declaration of law binding on the Income Tax Officer. Whether it is the internal audit party of the Income Tax Department or an audit party of the Comptroller and Auditor-General, they perform essentially administrative or executive functions and cannot be attributed the powers of judicial supervision over the quasi-judicial acts of income tax authorities. The Income Tax Act does not contemplate such power in any internal audit organisation of the Income Tax Department; it recognises it in those authorities only

which are specifically authorised to exercise adjudicatory functions. Nor does section 16 of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 envisage such a power for the attainment of the objectives incorporated therein. Neither statute supports the conclusion that an audit party can pronounce on the law, and that such pronouncement amounts to "information" within the meaning of section 147(b) of the Income Tax Act, 1961.

But although an audit party does not possess the power to so pronounce on the law, it nevertheless may draw the attention of the Income Tax officer to it. Law is one thing, and its communication another. If the distinction between the source of the law and the communicator of the law is carefully maintained, the confusion which often results in applying section 147(b) may be avoided. While the law may be enacted or laid down only by a person or body with authority in that behalf, the knowledge or awareness of the law may be communicated by anyone. No authority is required for the purpose.

In the present case, an internal audit party of the Income Tax Department expressed the view that the receipts from the occupation of the conference hall and rooms did not attract section 10 of the Act and that the assessment should have been made under section 9. While
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sections 9 and 10 can be described as law, the opinion of the audit A party in regard to their application is not law. It is not a declaration by a body authorised to declare the law. That part alone of the note of an audit party which mentions the law which escaped the notice of the Income Tax officer constitutes "information" within the meaning of section 147(b); the part which embodies the opinion of the audit parts in regard to the application or interpretation of the law cannot be taken into account by the Income Tax Officer. In every case, the Income Tax officer must determine for himself what is the effect and consequence of the law mentioned in the audit note and whether in consequence of the law which has now come to his notice he can reasonably believe that income has escaped assessment. The basis of his belief must be the law of which he has now become aware. The opinion rendered by the audit party in regard to the law cannot for the purpose of such belief, add to or colour the significance of such law. In short, the true evaluation of the law in its bearing on the assessment must be made directly and solely by the Income Tax officer.

Now, in the case before us, the Income Tax officer had, when he made the original assessment, considered the provisions of sections 9 and 10. Any different view taken by him afterwards on the application of those provisions would amount to a change of opinion of material already considered by him. The Revenue contends that it is open to him to do so, and on that basis to reopen the assessment under section 147(b). Reliance is placed on Kalyanji Mavji & Co. v. Commissioner of Income Tax, where a Bench of two learned Judges of this Court observed that a case where income had escaped assessment due to the "oversight, inadvertence or mistake" of the Income Tax officer must fall within section 34(1) (b) of the Indian Income Tax Act, 1922. It appears to us, with respect, that the proposition is stated too widely and travels farther than the statute warrants in so far as it can be said to lay down that if, on reappraising the material considered by him during the original assessment, the Income Tax officer discovers that he has committed an error in consequence of which income has escaped assessment it is open to him to reopen the assessment. In our opinion,

an error discovered on a reconsideration of the same material (and not more) does not give him that power. That was the view taken by this Court in Maharaj Kamal Singh v. Commissioner of Income Tax (supra), Commissioner of Income Tax v. Raman and Company (supra) and Bankipur Club Ltd. v. Commissioner of Income Tax. and we do not believe that
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the law has since taken a different course. Any observations in Kalyanji Mavji & Co. v Commissioner of Income Tax (supra) suggesting the contrary do not, we say with respect, lay down the correct law.

A further submission raised by the Revenue on section 147(b) of the Act may be considered at this stage. It is urged that the expression "information" in section 147(b) refers to the realisation by the Income Tax officer that he has committed an error when making the original assessment. It is said that, when upon receipt of the audit note the Income Tax officer discovers or realizes that a mistake has been committed in the original assessment, the discovery of the mis take would be "information" within the meaning of section 147(b). The submission appears to us inconsistent with the terms of section 147(b). Plainly, the statutory provision envisages that the Income Tax officer must first have information in his possession, and then in consequence of such information he must have reason to believe that income has escaped assessment. The realisation that income has escaped assessment is covered by the words "reason to believe'. and it follows from the "information" received by the Income Tax officer. The information is not the realisation, the information gives birth to the realisation.

The recent decision of this Court in R. K. Malhotra v. Kasturbhai Lalbhai (supra) may be examined now. While making an assessment on a Hindu undivided family, the Income Tax officer allowed a deduction of municipal taxes in determining the annual value of two house properties occupied by the assessee. Subsequently, the Income Tax officer re-opened the assessment on receipt of a report from the office of the Comptroller and Auditor-General of India that on a true interpretation of s. 23(2) of the Income Tax Act, 1961, the deduction of municipal taxes was not admissible in the computation of the annual value of self-occupied house properties. The assessee contended that the report did not constitute "information" within the meaning of section 147(b) of the Act, and the Gujarat High Court accepted the plea in the view that information as to law would consist of a statement by a person, body or authority competent and authorised to pronounce upon the law and invested with the authority to do so, and that the Audit Department was not such competent or authorised authority. On appeal by the Revenue, a Bench of two learned Judges of this Court, although endorsing the principle enunciated by the High Court, said that the audit department was the proper machinery to scrutinise assessments made by the Income Tax officer and to point out errors of law contained therein, and the High Court had
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erred in taking the strict view which it did. The Court rested its decision on Assistant Controller of Estate Duty v. Nawab Sir Mir Osman Ali Khan Bahadur, Commissioner of Income Tax v. H. H. Smt. Chand Kanwarji (supra), Commissioner of Income Tax v. Kalukutty and Vashist Bhargava v. Income Tax officer.

In Assistant Controller of Estate Duty v. Nawab Sir Mir osman Ali Khan Bahadur (supra), this Court held the opinion of the Central Board of Revenue as regards the correct

valuation of securities for the purpose of estate duty to be "information" within the meaning of section 59 of the Estate Duty Act, 1953 on the basis of which the Controller of Estate Duty was held entitled to entertain a reasonable belief that property assessed to estate duty had been under-valued. The circumstance that the opinion of the Board was rendered in an appeal filed before it under the Estate Duty Act against the assessment made by the Assistant Controller of Estate Duty was apparently not brought to the notice of this Court when it heard R. K. Malhotra v. Kasturbhai Lalbhai (supra). The opinion of the Board represented its view as a quasi-judicial authority possessing jurisdiction to lay down the law. Although the Board did not enhance the valuation of the securities in the appellate proceeding because of the argument advanced by the appellant, nonetheless its observations amounted to information as to the law. It was not a case where the Board was functioning as an extrajudicial authority, performing administrative or executive functions, and not competent or authorised to pronounce upon the law. The Delhi High Court in Commissioner of Income Tax v. H. H. Smt. Chand Kanwarji (supra) held that the scrutiny note of Revenue Audit constituted "information" within the meaning of section 147(b) of the Income Tax Act because the Comptroller and Auditor-General of India was empowered by statute to scrutinise the proceedings of the Income Tax Department and to point out defects and mistakes which adversely affected the Revenue. The High Court considered that the view that information as to law could be gathered only from the decisions of judicial or quasi-judicial authorities was unduly restrictive. In Commissioner of Income-tax v. Kalukutty (supra), the Kerala High-Court also regarded the note put up by Audit as "information" within the meaning of section 147(b) of the Act, but it appears to have assumed, without anything more, that an audit note would fall within that expression. As regards Vashist Bhargava v. Income Tax officer (supra) the "information" consisted in a note of the Revenue Audit

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and the Ministry of Law that the payment of interest by the assessee was in fact made to his own account in the Provident Fund and, therefore, in law the money paid did not vest in the Government and, consequently, the original assessment was erroneous in so far as it allowed the deduction of the interest as expenditure made by the assessee. The Delhi High Court upheld the reassessment on the finding that the note of the Revenue Audit and the Ministry of Law had to be taken into account by the Income Tax officer, because in his executive capacity he had to be guided by the advice rendered by the Ministry of Law and he had to pay due regard to the note of the Revenue Audit because the officers of the Audit Department were experts empowered to examine and check upon the work of the Income Tax officers. It seems to us that the considerations on which the Delhi High Court rested its judgment are not correct. But the decision of the case can be supported on the ground that the basic information warranting the re-opening of the assessment was the fact that the payment of interest was made to the Provident Fund account of the assesses himself. That the money so paid did not vest in the Government was a conclusion which followed automatically upon that fact, and no controversy in law could possibly arise on that point.

On the considerations prevailing with us, we are of opinion that the view taken by the Delhi High Court and the Kerala High Court in the aforementioned cases is wrong and

we must, with great respect, hold that this Court was in error in the conclusion reached by it is. R. K. Malhotra v. Kasturbhai Lalbhai (supra).

Our attention has been drawn to the further decision of the Kerala High Court in Muthukrishna Reddier v. Commissioner of Income Tax, Kerala and the decisions of the Allahabad High Court in Raj Kumar Shrawan Kumar v. Central Board of Direct Taxes & Anr and Elgin Mills Co. Ltd. v. Income Tax officer, Companies Circle, "A" Ward, Kanpur. The Kerala High Court merely followed its earlier judgment in Commissioner of Income Tax v. Kalukutty (supra) and the Allahabad High Court was impressed by the same reasons substantially which persuaded the Delhi High Court and the Kerala High Court in the cases referred to above.

Therefore, whether considered on the basis that the. nature and scope of the functions of the internal audit organisation of the Income Tax Department are co-extensive with that of Receipt Audit or on the

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basis of the provisions specifically detailing its functions in the Internal Audit Manual, we hold that the opinion of an internal audit party of the Income Tax Department on a point of law cannot be regarded as "information" within the meaning of section 147(b) of the Income Tax Act, 1961.

The question referred by the Income Tax Appellate Tribunal is answered in the negative, in favour of the assessee and against the Revenue The assessee is entitled to one set of costs in these appeals.

P.B.R. Appeals allowed .

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