PETITIONER:
COMMISSIONER OF WEALTH TAX WEST BENGAL

Vs.

RESPONDENT:
IMPERIAL TOBACCO CO. OF INDIA LTD.

DATE OF JUDGMENT:
15/04/1966

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1967 AIR 230 1966 SCR 174
CITATOR INFO :
F 1976 SC 203 (10)

ACT:
Wealth Tax Act (37 of 1957), ss. 17(b) and 27-Divergence of views in High Courts as to meaning of "Information" in s. 34(2)(b) Income Tax Act which is in pari materia with s. 17(b)-Duty of Tribunal to make reference to High Court.

HEADNOTE:
Orders of reassessment under s. 16(3) read with s. 17(b) of the Wealth Tax Act were, passed by the Wealth Tax Officer in respect of two assessment years, and by those orders, amounts which had been formerly allowed as deduction were included in the total wealth of the respondent. The orders were set aside by the Tribunal on the ground that the reassessment was based on a mere change or opinion on the part of the Officer, because, there was no "information" in his Possession, as required by s. 17(b), which could lead him to believe that chargeable wealth of the respondent had escaped assessment. The appellant's applications to the Tribunal and the High Court, for a reference to the High Court, were dismissed.
In appeal to this Court,
HELD: The Tribunal should be directed to make a reference either to the High Court under s. 27(1) or to this Court under s. 27 (3A) of the Wealth Tax Act. [179 G].
There is a divergence of opinion among the High Courts as to the meaning of the word "information" in. s. 34(1) (b) of the Income-tax Act, and some High Courts have taken the view that a change of opinion by the Income-tax Officer, in certain circumstances, will justify the issue of notice under s. 34 (1)(b) of the Income-tax Act. Since that section is in pari materia with s. 17(b) of the Wealth Tax Act, a question of law did irises a,; to the interpretation of the word "information" in s. 17(b) of the Wealth Tax Act and it should have been referred by the Tribunal to the High Court. [179 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1062 and 1063 of 1966.
Appeals by special leave from the judgment and order dated February 15, 1965 of the Calcutta High Court in matters Nos. 231 ,in,] 232 of 1964.
R. M. Hazarnavis, K. D. Karkhanis, R. H. Dhebar and R. N. Sachthey, for the appellant.
A. K. Sen, T. A. Rancachandran, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the respondent.
The judgment of the Court was delivered by
Wanchoo, J. These two appeals by special leave arise out of two applications by the appellant to the Income-tax Appellate

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Tribunal for reference to the High Court of a question of law, which was formulated as follows:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the reassessment proceedings under s. 17(b) of the Wealth Tax Act were not validly initiated and in setting aside the same."

The facts which led to the applications for reference are briefly these. The respondent submitted wealth-tax returns for the years 1957-58 and 1958-59. For the year 1957-58 the respondent claimed that an amount of Rs. 51 lakhs and odd being provision for taxation and another amount of Rs. 37 lakhs and odd being provision for contingencies, being ascertained liability, should be allowed as deduction from the total wealth. For the year 1958-59, the respondent claimed Rs. 31 lakhs and odd being provision for contingencies as ascertained liability as deduction from the total wealth.
Assessment for the year 1957-58 was completed on December 30, 1957 and the Wealth-tax Officer accepted the contention of the respondent and allowed the claim for deduction. Subsequently the Commissioner of Wealth-tax by his order dated December 29, 1958 passed under s. 25(2) of the Wealth Tax Act, No. XXXVII of 1957, (hereinafter referred to as the Act) disallowed the deduction of Rs. 51 lakhs and odd being the provision for taxation for the assessment year 1957-58. The order of the Wealth-tax Officer allowing deduction for contingencies for the assessment year 1957-58 however stood. The assessment for the year 1958-59 was completed on December 9, 1958 and deduction was allowed for contingencies only. It may be added that we are not concerned in the present appeals so far as deduction for provision for taxation is concerned. On March 22, 1960, the Wealth-tax Officer completed the assessment of the respondent for the year 1959-60 and disallowed the claim for deduction of the provision for contingencies. On June 2, 1960, the Wealth-tax Officer issued two notices under s. 17(b) of the Act for reassessment of net wealth for the years 1957-58 and 1958-59. On September 24, 1961 orders of reassessment under s. 16(3) read with s. 17(b) of the Act were passed in respect of the assessment years 1957-58 and 1958-59 and by these orders the amounts which had been formerly allowed as deduction with respect to contingencies were included in the total wealth of the respondent. The respondent then went in appeal against the two reassessment orders and the Appellate Assistant Commissioner sustained the decision of the Wealth-tax Officer with respect to the reassessments in question. The case of the respondent was that the Wealth-tax Officer had no information on the basis of which he could proceed to reassess the net wealth of the respondent and in this connection reliance was placed on the words "in consequence

of any information in his possession" appearing in s. 17(b) of the Act.

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The respondent then went in appeal to the Appellate Tribunal and his contention there was that the issue of notices under s. 17(b) of the Act was invalid as it was based on a mere change of opinion on the part of the Wealth-tax Officer, as at that time there was no information in the possession of the Wealth-tax Officer which could lead him to believe that the net wealth chargeable to tax had escaped assessment. It was contended that such information must be information which came into possession of the Wealth-tax Officer subsequent to the making of the original assessment and that the information must lead him to believe that income chargeable to tax had escaped assessment. The Tribunal accepted this contention of the respondent. It may be pointed out that the assessment made by the Wealth-tax Officer for the year 1959-60 was taken in appeal to the Appellate Assistant Commissioner by the respondent and the respondent's appeal was dismissed in November 1960. The Tribunal pointed out that if the Wealth-tax Officer had waited till after the decision of the Appellate Assistant Commissioner about the assessment for the year 1959-60 and then issued notices there would have been sufficient information for the purpose of s. 17(b) with the Wealth-tax Officer to authorise him to issue notice thereunder-, but as the Wealth-tax Officer issued the notices in June 1960 before that appeal was decided, it was only a case of change 'of opinion by the Wealth-tax Officer which did not justify issue of notices under s. 17(b). The Tribunal also pointed out that the departmental representative was specifically asked what the information was upon which the Wealth-tax Officer came to the conclusion that taxable wealth had escaped assessment. The departmental representative was unable to point to any specific information which came into the possession of the Wealth-tax Officer and which could lead him to issue the notices in question. The Tribunal therefore held that the reassessment proceedings under s. 17(b) for the years 1957-58 and 1958-59 were not validly initiated and set them aside. Thereupon the appellant applied to the Tribunal for making references under s. 27(1) of the Act. The Tribunal rejected the applications. The appellant then applied to the High Court under s. 27(3) of the Act for direction to the Tribunal to state a case. The High Court however rejected the applications summarily. Thereupon the appellant applied to this Court for special leave which was granted; and that is how the matter has come before us.

The main contention that has been urged on behalf of the appellant before us is that there is divergence of opinion among the High Courts on the question as to what constitutes "information" for the purpose of s. 34(1)(b) of the Indian Income-tax Act. No. IT of 1922, (hereinafter referred to as the Income-tax Act). That section is in pari materia with s. 17(b) of the Act and therefore a question of law did arise which should have been referred to the

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High Court for its decision on the question raised by the appellant. Reliance in this connection is placed on the decision of this Court in Maharajkumar Kamal Singh v. Commissioner of Income-tax Bihar(1) where this Court held that "the word 'information' in section 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". A further question was raised in that case,

namely, "whether it would be open to the Income-tax Officer to take action under s. 34(1) on the ground that he thinks that his original decision in making the order of assessment was wrong without any fresh information from an external source or whether the successor of the Income-tax Officer can act under s. 34 on the ground that the order of assessment passed by his predecessor was erroneous". That question was not decided by this Court in that case, though this Court pointed out that in construing the scope and effect of s. 34, the High Courts had expressed divergent views on the point. It is urged on behalf of the appellant that the precise question left undecided by this Court in Maharajkumar Kamalsingh's case(1) arises in the present case, and as there are divergent views taken by the High Courts on that question, a question of law did arise on the order of the Appellate Tribunal and therefore the Tribunal should have made a reference.

In Commissioner of Income-tax Bombay v. Sir Mohomed Yusuf Ismail(1) it was held by the Bombay High Court as far back as 1943 that under s. 34 a mere change of opinion on the same facts or on a question of law or the mere discovery of a mistake of law is not sufficient information within the meaning of s. 34 and that in order to take action under s. 34 there must be some information as a fact which leads the Income-tax Officer to discover that income has escaped or has been under-assessed.

The same view was taken in a later case by the Nagpur High Court in Income-tax Appellate Tribunal Bombay v. B. P. Byramji & Co.(1) where it was again emphasised that a mere change of opinion by the Income-tax Officer is no ground for taking action under s. 34,

Further in Bhimraj Pannalal v. Commissioner of Income-tax Bihar(1) it was held by the Patna High Court that "an order of assessment made after investigation by a particular officer should Jr not at his sweet will and pleasure be allowed to be revised merely because he changed his opinion and that there must exist something either suppressed by the assessee or a fact or a point of law which was inadvertently or otherwise omitted to be considered by the Income-tax Officer, before he can proceed to act under s. 34; and a mere change of opinion on the same facts and law is not covered by that section."

(1) [1959] supp. 1 S.C.R. 10: (1959) 35 I.T.R. 1.
(2) (1944) 12 T.T.R. S.
(3) (1946) 14 I.T.R. 174.
(4) (1957) 32 I.T.R. 289.

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The appellant on the other hand relies on some recent decisions which show that there is some divergence of opinion in the High Courts on this question. In Salem Provident Fund Society Limited v. Commissioner of Income-tax Madras(1) the Madras High Court held that "information for the purpose of section 34 need not be wholly extraneous to the record of the original assessment. A mistake apparent on the face of the order of assessment would itself constitute 'information'; whether someone else gave that information to the Income-tax Officer or whether he informed himself was immaterial."

In Commissioner of Income-tax v. Rathinasabhapathy Mudaliar(1) the Madras High Court again held that "the discovery of the Income-tax Officer after he had made the assessments that he had committed an error in not including the minor's income in the father's assessment was 'information' obtained after the assessment, and even though all the facts were in the original records, the case was covered by section

34(1)(b) of the Income-tax Act and the reassessment was not invalid, and this was not a case of mere change of opinion on the same facts but a case of getting information that income had escaped assessment."

In Canara Industrial and Banking Syndicate Limited v. Commissioner of Income-tax, Mysore,(1) the Mysore High Court held that "if income had escaped assessment owing to the failure of the Income-tax Officer to understand the true implication of a notification, and the Income-tax Officer later on finds that on a correct interpretation of the notification the income was liable to be assessed, he can take proceedings under section 34 for assessment of such income; the word 'information' in section 34 is wide enough to apply to such a case."

The last case to which reference is made is Asghar Ali Mohammad Ali v. Commissioner of Income-tax(1) wherein the Allahabad High Court held that "the word 'information' used in the provision covers all kinds of information received from any person whatsoever or in any manner whatsoever; all that is required is that the Income-tax Officer should learn something i.e. he should know something which he did not know previously." It was further held that "if there is information leading to the belief that income has escaped assessment, the mere fact that this information has resulted in a change of opinion will not make section 34 inapplicable. A change of opinion is not sufficient for initiating proceedings under S. 34, only when such change of opinion is the result of a different method of reasoning, and not based on 'information'

(1) (1961) 42 I.T.R. 547. (2) (1964) 51 I.T.R. 204.
(3) (1964) 51 I.T.R. 479. (4) (1964) 52 I.T.R. 962.
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It does appear that some High Courts at any rate are taking the view that a change of opinion by the Income-tax Officer in certain circumstances will be sufficient for the purpose of s. 34(1) (b) and will justify the issue of a notice thereunder. It may be added that after the decision of this Court in Maharajkumar Kamal Sigh's case(1) 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. To that extent the decision of the Bombay High Court in Sir Mohanmed Yusuf Ismail(1) has been overruled. That is why the Appellate Tribunal stated in its decision that if the notices in the present case had been issued after the decision of the Appellate Assistant Commissioner in the appeal from the assessment for the year 1959-60, there would have been information in possession of the Wealth-tax Officer to justify him in issuing notices under s. 17(b) of the Act. But in the present case the Wealth-tax Officer issued notices before that decision was known to him and the question is whether in the circumstances, in view of the later decisions of the High Courts to which we have referred, a question of law arose or not. The language of s. 17(b) of the Act is in pari materia with the language of s. 34(1)(b) of the Income-tax Act and therefore the decisions under s. 34(1)(b) of the latter Act would be relevant in construing the scope and effect of s. 17(b) of the Act. There does appear to be divergence of opinion among the High Courts as to the meaning of the word "information" in section 34(1)(b) of the Income-tax Act, and in view of that divergence we are of opinion that a question

of law did arise in the present case as to the interpretation of the word "information" in s. 17(b) of the Act and should have been referred by the Tribunal.

We therefore allow the appeals, set aside the order of the High Court and direct the Tribunal to state a case referring the question of law arising in these cases in the form suggested by the appellant. The Tribunal will be free to decide whether to refer the matter to the High Court under s. 27(1) or to this Court under s. 27 (3A) of the Act. Costs of this Court will abide the result of the reference.

Appeals allowed.

(1) [1959] Supp. 1 S.C.R. 10.

(2) 1944 12 I.T.R. 8.

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