Before M. S. Gujral and R. N. Mittal, JJ.

MAJOR TIKKA KHUSHWANT SINGH,—*Petitioner*

versus

THE COMMISSIONER OF INCOME-TAX, PATIALA AND ANOTHER,—*Respondents.*

C.W. 2068 of 1974.

November 6, 1974.

Income Tax Act (XLII of 1961)—Sections 148 and 149—Words 'issue' and 'serve' used in the sections—Whether interchangeable—Word "issue"—Whether used in the same sense as word "served"—Interpretation of statutes—Words of doubtful meaning used in a statute receiving clear judicial interpretation—Legislature using same words in a subsequent statute—Such words—Whether to be construed as judicially interpreted previously.

Held, that an Income-tax Officer, under section 148 of Income-tax Act, 1961 is to serve on the assessee a notice before making the assessment, reassessment or recomputation. Section 149 precribes the period in which the notice under section 148 can be issued The words 'issue' and 'serve' in the sections are interchangeable and the word 'issue' has been used in section 148 of the Act in the sense in which the word 'serve' has been used. The Income-tax Officer cannot assume jurisdiction to make assessment, reassessment or recomputation unless the notice has been issued and served within the time limit prescribed under sections 148 and 149 of the Act. When certain words of doubtful meaning as used in a statute receive clear judicial interpretation and the same words are used in subsequent statutes, it will be assumed that the Legislature knew the meanings of these words and they shall be construed as judicially interpreted previously.

Petition under Articles 226/227 of the Constitution of India, praying that a writ of Certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the impugned order, Annexure "P-4", dated 21st March, 1974 and Notice Annexure "P-5", dated 19th March, 1974.

J. N. Kaushal, Senior Advocate, with S. P. Goyal, Advocate, *for the petitioners.*

D. N. Awasthy, Advocate, with S. S. Mahajan, Advocate, *for the respondents.*

JUDGMENT

MITTAL, J.—(1) Briefly, the facts of the present case are that a notice under section 148 of the Income-tax Act, 1961 (hereinafter referred to as the 1961 Act) was issued and despatched on February 24, 1970, relating to the assessment year 1961-62 to the petitioner by Income-tax Officer, Sangrur. No return was filed by the petitioner in response to the notice. The Income Tax Officer, therefore, issued another notice on October 10, 1973 under section 142(1) of the aforesaid Act in which he was intimated to appear on November 23, 1973. The counsel for the petitioner appeared on November 24, 1973 and got the case adjourned to December 10, 1973 for filing a reply. The petitioner filed a reply dated December 9, 1973 supported by an affidavit stating therein that the alleged notice under section 148 was not served upon him. He further stated that no proceedings were competent against him under section 148 of the 1961 Act, as notice was not served upon him within eight years. The petitioner was required by the Income Tax Officer, respondent No. 2, to appear before him on March 18, 1974 when he was ordered to accept notice under section 148. Counsel for the petitioner refused to acknowledge the receipt of the notice. The petitioner also submitted his written reply regarding the aforesaid matter. On May 13, 1974 he has been served with a final order dated March 21, 1974 passed under section 144 of the 1961 Act whereby the income of the petitioner has been assessed at Rs. 48,400. He had also been served with notice dated March 19, 1974 under section 271 to show cause as to why an order imposing a penalty be not passed against him. The petitioner challenged the order passed under section 144 of the Act and the notice dated March 19, 1974. At the time of motion hearing, the Motion Bench admitted the petition to a Division Bench on the point of interpretation of the word "Issue" occurring in section 148 of the 1961 Act.

(2) In order to decide the question, it is necessary to notice some of the sections of the 1961 Act. Section 147 empowers the Income Tax Officer, who 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 assessment year to the Income-tax Officer or to 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 in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year, subject to the provisions of

sections 148 to 153 to assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned. Section 148 relates to issue of notice where income has escaped assessment, section 149 to time-limit for notice and section 151 to sanction for issue of notice. The aforesaid sections are as follows :—

"148. (1) Before making the assessment, reassessment or recomputation under section 147, the Income-tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 139; 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.

"(2) The Income-tax Officer shall before issuing any notice under this section, record his reasons for doing so.

"149. (1) No notice under section 148 shall be issued.

(a) in cases falling under clause (a) of section 147—

(i) for the relevant assessment year, if eight years have elapsed from the end of that year, unless the case falls under sub-clause (ii) ;

(ii) for the relevant assessment year, where eight years but not more than sixteen years, have elapsed from the end of that year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year;

(b) in cases falling under clause (b) of section 147, at any time after the expiry of four years from the end of the relevant assessment year.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the

notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year.

151. (1) No notice shall be issued under section 148 after the expiry of eight years from the end of the relevant assessment year, unless the Board is satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice.

(2) No notice shall be issued under section 148 after the expiry of four years from the end of the relevant assessment year, unless the Commissioner is satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice."

Before taking action under section 147, the Income-tax Officer is required to follow the procedure under the subsequent sections. Under section 148, he is to serve on the assessee a notice before making the assessment, reassessment or recomputation. Section 149 prescribes the period in which the notice under section 148 can be issued. The question for determination is : whether the words 'issue of notice' used in section 148 will include service thereof or not. It is contended by the learned counsel for the petitioner that the two words, namely, 'serve' and 'issue' used in sections 148 and 149 are interchangeable words and the word 'issue' in larger sense also will include 'service'. He has further argued that the Supreme Court interpreted the word 'issue' in *Banarsi Debi and another* v. *Income-tax Officer, District IV, Calcutta and others* (1) wherein the same interpretation was taken. On the other hand, the learned counsel for the respondents has argued that the two words have been used in the two sections in different context and the word 'issue' will mean only 'send'.

(3) We find force in the contention of the learned counsel for the petitioner. The provisions of sections 147, 148, 149, 150 and 151 of the 1961 Act are *pari-materia* with those of section 34 of the 1922 Act. In *Banarsi Debi's case* (supra), the Supreme Court was interpreting section 4 of the Indian Income-tax (Amendment) Act, 1959 by which the notice issued under clause (a) of sub-section (1) of the section 34 of the 1922 Act before the commencement of the

(1) (1964) 53 I.T.R. 100.

aforesaid Amending Act, and assessment, reassessment or settlement made, or other proceedings taken in consequence of such notice, could not be challenged on the ground that the notice had been issued or assessments were made after the prescribed period of limitation, as given in sub-section (1) of section 34 of that Act. K. Subba Rao, J., as he then was, while speaking for the Supreme Court observed as follows :—

> "Section 4 of the Amending Act was enacted for saving the validity of notices issued under section 34(1) of the Act. When that section used a word interpreted by courts in the context of such notices it would be reasonable to assume that the expression was designedly used in the same sense. That apart, the expressions 'issued' and 'served' are used as interchangeable terms both in dictionaries and in other statutes. The dictionary meaning of the word 'issue' is 'the act of sending out, put into circulation, delivery with authority or delivery'. Section 27 of the General Clauses Act, 1897 (X of 1897), reads thus:
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> 'Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expressions, 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, preparing and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.'
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> It would be seen from the provision that Parliament used the words 'serve', 'give' and 'send' as interchangeable words. So too, in sections 553, 554 and 555 of the Calcutta Municipal Act, 1951, the two expressions 'issued to' or 'served upon' are used as equivalent expressions. In the legislative practice of our country the said two expressions are sometimes used to convey the same idea. In other words, the expression 'issued' is used in a limited as well as in a wider sense. We must, therefore, give

> the expression 'issued' in section 4 of the Amending Act that meaning which carries out the intention of the legislature in preference to that which defeats it. By doing so we will not be departing from the accepted meaning of the expression, but only giving it one of its meaning accepted, which fits into the context or setting in which it appears."

It is the principle of law that when certain words are judicially interpreted, it will be assumed that the legislature knew the meanings of those words while using them in subsequent statutes. In this view I am supported by the observations of *Vis count Backmaster in Barras* v. *Aberdeen Steam Trawling and Fishing Co. Ltd.*, (2), wherein it was observed as follows :—

> "It has long been a well-established principle to be applied in the consideration of Act of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context, must be construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it."

Thus, it will be assumed that while enacting the 1961 Act, the legislature knew that the words 'serve' and 'issue' were being used interchangeably according to the judicial interpretation. In spite of the knowledge it preferred to use the words in the aforesaid Act. Mr. Awasthy, the learned counsel for the Revenue has argued that in the 1961 Act, the two words have been used in two different sections. According to him before making the assessment, reassessment or recomputation under section 147, it is the duty of the Income-tax Officer to serve a notice on the assessee as required by section 148, whereas he can assume jurisdiction after issuance of the notice within the prescribed period under section 149 even though the same may not be served upon the assessee. He also submits that by dividing the provisions of section 34 of the 1922 Act in the 1961 Act, the intention of the legislature has become clear. We express our inability to accept the contention of the learned counsel for the Revenue. A reading of sections 148 and 149 clearly shows that the Income-tax Officer cannot assume jurisdiction to

(2) (1933) A.C. 402, 411.

make assessment, reassessment or recomputation unless the notice has been issued and served within the time limit prescribed under the aforesaid sections. The same question came up before a Division Bench of the Gujrat High Court in *Shanabhai P. Patel* v. *R. I. Upadhyaya, Income-tax Officer, Ahmedabad* (3). B. K. Mehta, J. while speaking for the Court observed as follows:—

> "Sections 147, 148 and 149 of the Income-tax Act of 1961 confer the power of reassessment on the Income-tax Officer. This scheme of power was originally comprehended in the provisions of section 34 of the Act of 1922. The division of the provisions contained in section 34 of the 1922 Act into sections 147, 148 and 149 in the Act of 1961 does not in any way indicate that the legislature intended to depart from or materially alter the position as it emerged from the provisions of section 34 of the old Act regarding notice of reassessment. The Supreme Court held in *Banarsi Debi* v. *Income-tax Officer* (1), that the words 'service of notice' or 'issuance of notice' in section 34 have no fixed connotation but are interchangeable. The same meaning should be given to the words 'issue of notice' in section 148 and 'service of notice' in section 149.
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> "Under the Act of 1961 also there are no two distinct and separate stages of issue of notice and service of notice. Notice of reassessment is issued to the assessee when it is served on him. A notice of reassessment issued against the assessee before limitation but served on the assessee after limitation would be without jurisdiction, void and ineffective."

(4) We are respectfully in agreement with the above observations. Similar view was taken by a learned Single Judge of Calcutta High Court in *Lilooah Steel and Wire Co. Ltd.* v. *Income-tax Officer* (4). Mr. Awasthy has placed reliance on Full Bench judgment of this Court in *Seth Balkishan Das* v. *Commissioner of Income-tax, Patiala* (5). In that case the qestion referred to this Court was : whether on the facts and in the circumstances of the case, the service of the notice under section 34

(3) (1974) 69 I.T.R. 141.
(4) (1972) 86 I.T.R. 611.
(5) (1966) 61 I.T.R 194.

on the assessee was invalid at law as copy of the notice was not affixed at any conspicuous place in hte court-house or at any conspicuous place in the income-tax office. The matter for decision before the Full Bench was absolutely different. The learned counsel cannot derive any benefit from that case. In view of the aforesaid discussion, we are of the opinion that the words 'issue' and 'serve' are interchangeable and that the word 'issue' has been used in section 148 of the 1961 Act in the same sense in which the word 'serve' has been used.

(5) It is stated that an appeal has been filed against the order, dated March 21, 1974 of the Income-tax Officer and the same is still pending. The writ petition was admitted to interpret the word 'issue' as occurring in section 148 of the 1961 Act only. The appeal will be decided by the appellate authority in accordance with law. The petition is disposed of accordingly with no order as to costs.

MAN MOHAN SINGH GUJRAL, J.—I agree.

N. K. S.

CIVIL MISCELLANEOUS

Before B. R. Tuli and A. S. Bains JJ.

KAHNA RAM, SON OF PHULA RAM AND OTHERS,—*Petitioners*

versus

LATHA SINGH AND OTHERS,—*Respondents.*

Civil Writ No. 3712 of 1968
and
Civil Misc. No. 3111 of 1971.

November 7, 1974.

East Punjab Utilization of Lands Act (XXXVIII of 1949)— Sections 5, 6, 7 and 14-Lands leased out for 20 years under the Act— Land owner—Whether has locus standi to apply to the Collector for determination of the Lease for default of the lessee—Rejection of such application by the Collector—Appeal against—Whether lies— Lease of the land determined by the Collector—Such land—Whether can be restored to the land owner before the expiry of the 20 years in spite of the omission of the words "Or its earlier termination" in section 7.