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daughters in possession, would not become full owners under s. 14. We do not think it would be proper to consider these questions in the present suit in this haphazard manner when on the all-important question of possession, the appellants themselves do not wish to say whether the mother was in possession actually or constructively, whether the daughters' possession was merely permissive, or whether the daughters were in independent possession, on their own behalf. These and other questions of fact, and the questions of law that have to be considered in deciding a claim by the first appellant or the other two appellants under s. 14 of the Hindu Succession Act, should properly be considered in any suit that they may bring in future, if so advised. We express no opinion on any of these questions.

For the reasons which have been mentioned earlier, we hold that the High Court rightly decreed the suit in favour of the plaintiffs in respect of the non-ancestral property also, and dismiss the appeal. In the circumstances of the case, we order that the parties will bear their own costs throughout.

Appeal dismissed.

THE COMMISSIONER OF INCOME TAX, BOMBAY CITY I, BOMBAY

v.

M/S. NARSEE NAGSEE AND CO., BOMBAY.

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May 6.

(S. K. Das, J. L. Kapur and M. Hidayatullah, JJ.)

Business Profits Tax—Limitation for assessment—Notice under Business Profits Tax Act issued beyond four years—Validity—"Profits escaping assessment", meaning of—Excess Profits Tax Act, 1940 (15 of 1940), ss. 13, 15—Indian Income-tax Act, 1922 (11 of 1922), ss. 22(2), 34(1)—Income Tax and Excess Profits Tax Amendment Act, 1947 (22 of 1947)—Business Profits Tax Act, 1947 (21 of 1947), ss. 11(1), 14.

The assessee firm which was doing business in Bombay was served with a notice on January 21, 1953, by the Income-tax Officer under s. 11(1) of the Business Profits Tax Act, 1947, in respect of the chargeable accounting period from November 13, 1947, to October 31, 1948, calling upon it to submit its return. It filed the return under protest stating that the notice was barred under s. 14 of the Act as it was served beyond the period of four

years. The question was whether in s. 11 of the Act a limitation corresponding to the limitation contained in s. 14 must be necessarily read and whether in a case where the profits were not brought to assessment because notice under s. 11 was not issued in time, they must be deemed to have escaped assessment and action could only be taken under s. 14 within the time specified therein :

Held (*per* S. K. Das and Kapur, JJ., Hidayatullah, J., *dissenting*), (1) that the words "profits escaping assessment" in s. 14 of the Business Profits Tax Act, 1947, apply equally to cases where a notice was received by the assessee but resulted in no assessment, under-assessment or excessive relief, and to cases where due to any reason no notice was issued to the assessee and therefore there was no assessment of his income ;

(2) that ss. 11 and 14 of the Act have to be read together and that a notice under s. 11 cannot be issued against an assessee beyond the period of four years indicated in s. 14.

Kamal Singh v. *Commissioner of Income-tax*, [1959] Supp. 1 S.C.R. 10 and *Maharajadhiraj Sir Kameshwar Singh* v. *State of Bihar*, [1960] 1 S.C.R. 332, relied on.

Gokuldas Ratanji Mandavia v. *Commissioner of Income-tax*, [1959] A.C. 114, distinguished.

Per Hidayatullah, J.—Section 11 of the Business Profits Tax Act, 1947, is confined to cases where there has been no prior assessment, while s. 14 is applicable to cases where after an assessment there is discovery that profits have escaped assessment due to one reason or another. The use of the words "escaped assessment" in the context of the Act has reference only to those cases where profits of a business were brought to process once but for some reason some profits escaped assessment or were under-assessed or received excessive relief. For the subsequent and re-opened assessment there is a limit of four years, but for the assessment for the first time there is no limit.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 319 of 1958.

Appeal from the judgment and order dated September 5, 1956, of the Bombay High Court in Income-tax Reference No. 31 of 1956.

H. N. Sanyal, Additional Solicitor-General of India, K. N. Rajagopal Sastri and *D. Gupta*, for the appellant.

N. A. Palkhivala, S. N. Andley, J. B. Dadachanji and *Rameshwar Nath*, for the respondents.

N. A. Palkhivala, S. S. Shukla and *Mrs. Eluri Udayaratnam*, for the intervener (The Punjab National Bank Ltd.)

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1960. May 6. The Judgment of S. K. Das and J.L. Kapur, JJ., was delivered by Kapur, J. Hidayatullah, J., delivered a separate Judgment.

KAPUR, J.—This is an appeal against the judgment and order of the High Court of Bombay passed in Income Tax Reference No. 31 of 1956. The appellant is the Commissioner of Income-tax and the respondent is a firm carrying on business in Bombay and the question for decision arises under the Business Profits Tax Act (Act 21 of 1947), hereinafter referred to as the Act.

The assessment relates to the year of assessment 1949-50 and the chargeable accounting period was from November 13, 1947, to October 31, 1948. On January 12, 1953, the Income-tax Officer issued a notice on the respondent under s. 11(1) of the Act in respect of the above-mentioned chargeable accounting period which was served on the respondent on January 21, 1953. The respondent filed a return under protest. The assessment was completed by the Income-tax Officer on November 30, 1953. Against this order the respondent took an appeal to the Appellate Assistant Commissioner on the ground that the respondent was not liable to Business Profits Tax because it was beyond the period of four years limitation under s. 14 of the Act. This plea was upheld by the Appellate Assistant Commissioner. The Income-tax Officer then appealed to the Appellate Tribunal and it confirmed the order of the Appellate Assistant Commissioner. At the instance of the appellant a case was stated to the High Court of Bombay on the following two questions of law :—

(1) " Whether the Income-tax Officer had jurisdiction to assess the assessee firm under the Business Profits Tax Act by issue of a notice under Section 11 (1) of the Business Profits Tax Act on 12-1-1953 in respect of the chargeable accounting period 13-11-1947 to 31-10-1948 without having recourse to Section 14 of the Business Profits Tax Act ?

(2) If the answer to Question No. 1 is in the negative whether the B. P. T. assessment could be considered to have been validly made ? "

The High Court modified the first question by deleting the words "without having recourse to Section 14 of the Business Profits Tax Act" and answered both the questions in the negative. The Income-tax Appellate Tribunal had held that as under s. 14 of the Act the period of limitation commenced from the end of the chargeable accounting period in question the notice under s. 11 (1) had to be issued before that period. The High Court did not accept this view. It held that both ss. 11 and 14 had to be read together and the mention of four years in s. 14 was an important indication of the period of limitation in regard to the issue of notice under s. 11 also and further if profits which escaped assessment, as in the present case, could only be taxed within four years of the end of the chargeable accounting period because of s. 14 of the Act, then inferentially the escape of assessment must be at sometime anterior to the period mentioned in s. 14 and as on the facts of the present case the notice had been issued four years after the close of the chargeable accounting period the notice under s. 11 was not valid. Against this order the appellant has come in appeal to this Court on a certificate of the High Court.

It is submitted by the appellant that though ss. 11 and 14 may have to be read together, they apply to different sets of circumstances; s. 11 applies to a case where the Income-tax Officer requires any person whom he believes to be engaged in any business to which the Act applies or to have been so engaged during any chargeable accounting period and calls upon him to furnish a return with respect to such chargeable accounting period; and s. 14 applies to a case where, in consequence of definite information possessed by him, the Income-tax Officer discovers in regard to any chargeable accounting period that the profits of any business have escaped assessment. In other words, s. 11 applies to original assessments after the first notice calling upon an assessee to make a return in regard to the profits of any chargeable accounting period and s. 14 applies where such notice was issued, and it either ended in no assessment at all or there was under-assessment,

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etc. According to the argument of the appellant, therefore, there is no period of limitation prescribed by the Act for the first notice to furnish a return in regard to any chargeable accounting period but if such notice was given and a return was made and for any reason whatsoever the profits were not assessed or were under-assessed, etc., then s. 14 comes into operation and notice has to be served within four years of the end of the chargeable accounting period in question.

The provisions of the Act which arise for consideration are ss. 2, 4, 5, 11 and 14. Section 2 is the definition section; s. 4 the charging section and s. 5 deals with the applicability of the Act. Section 11 provides for the "Issue of notice for assessment" and s. 14 is headed "profits escaping assessment". Section 2 (2) defines accounting period and s. 2(4) chargeable accounting period. Section 4 provides that in respect of any business to which the Act applies there shall be charged, levied and paid on the amount of taxable profit during any chargeable accounting period a tax equal to sixteen and two-third per cent. of the taxable profits, which in later years was fixed at a lower figure by the Finance Acts of 1948 and 1949. Under s. 5 the Act applies to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax under s. 4 (1) (b) (i) and (ii) or sub-cl. (c) of that sub-section. Sections 11(1) and 14 of the Act may now be quoted :—

S. 11(1). "The Income-tax Officer may, for the purposes of this Act, require any person whom he believes to be enaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay business profits tax, to furnish within such period, not being less than forty-five days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice,

the profits (taxable profits) of the business or the amount of deficiency, if any, available for relief under section 6".

S. 14. "If, in consequence of definite information which has come into his possession, the Income-tax Officer discovers that profits of any chargeable accounting period chargeable to business profits tax have escaped assessment, or have been under-assessed, or have been the subject of excessive relief, he may at any time within four years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under s. 11, and may proceed to assess or reassess the amount of such profits liable to business profits tax, and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section".

These sections lead to the conclusion that every business to which the Act applies is liable to the risk of being assessed to Business Profits Tax and it is well settled that income escapes assessment when the process of assessment has not been initiated as also in a case where it has resulted in no assessment after completion of the process of assessment. In our opinion, the High Court was right when it held that ss. 11 and 14 of the Act have to be read together.

The Act and the Indian Income-tax Act are both taxing statutes operating on the same source, i.e., profits of business which is similarly defined in the two statutes. If the provisions relating to escaping of assessment in the two statutes, i.e., in s. 14 of the former and in s. 34(1) of the latter as it existed after the amendment of 1939, employ the same language, they must receive the same interpretation and not be construed differently. Section 34(1) of the Indian Income-tax Act as amended in 1939 provided :—

S. 34(1). "If in consequence of definite information which has come into his possession the Income-tax Officer discovers that income, profits or gains chargeable to income-tax have escaped assessment in any year, or have been under-assessed, or have

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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 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 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 ".

The words "escaping income" in the Indian Income-tax Act were interpreted as being applicable to a case where a person received notice under s. 22(2) of the Income-tax Act but the process ended in no assessment as to a case where there was no assessment at all because no notice was issued under s. 22(2) of the Income-tax Act; in other words, it includes cases where the process of assessment did not commence because no notice was given under s. 22(2) of the Income-tax Act due to inadvertence, oversight, negligence or any other cause as to cases where such notice proved abortive or ineffective. Both are cases of escaped assessment: *Commissioner of Income-tax, Bombay* v. *Pirojbai N. Contractor* (1). In this Court these words were considered and interpreted in *Kamal Singh* v. *Commissioner of Income-tax* (2). They were interpreted to comprise a case of no notice being given for the assessment and notice being given and resulting in no assessment. Gajendragadkar, J., observed:—

"We see no justification for holding that cases of income escaping assessment must always be cases where income has not been assessed owing to inadvertence or oversight or owing to the fact that no return has been submitted. In our opinion, even in a case where a return has been submitted,

(1) [1937] 5 I.T.R. 338. (2) [1959] Supp. 1 S.C.R. 10, 18, 19.

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 section 34(1)(b) cannot therefore succeed".

This passage was quoted with approval in another case by this Court in *Maharajadhiraj Sir Kameshwar Singh* v. *State of Bihar* (1) (per Hidayatullah, J.). *Chatturam Horilram Ltd.* v. *Commissioner of Income-tax*(2) was a somewhat different case. There assessment proceedings had been taken but had failed to result in a valid assessment owing to some lacuna other than that attributable to the Assessing Authorities and it was held to be a case of chargeable income escaping assessment and not a case of mere non-assessment of income-tax.

All these cases show that the words "escaping assessment" apply equally to cases where a notice was received by the assessee but resulted in no assessment at all and to cases where due to any reason no notice was issued to the assessee and, therefore, there was no assessment of his income. It is also clear from the language of s. 14 of the Act that when a notice is issued under that section all the requirements of the notice under s. 11 apply and the Income-tax Officer has to proceed in the manner as if the notice was issued under s. 11. Therefore, any advantage or relief which was available to the assessee under s. 11 as to allowable deductions, deficiency, etc., would be equally available, if the notice is issued under s. 14.

The legislature has adopted the language of s. 34(1) of the Income-tax Act in s. 14 of the Act and it must, therefore, be considered to have adopted the construction of that section applied by the courts. Secondly, this Court has construed the words "escaping assessment" as used in s. 34(1) of the Income-tax Act. The same words in the same context as employed in s. 14 of the Act must have the same meaning. It was submitted that in the present case a different meaning

(1) [1960] 1 S.C.R. 332. (2) [1955] 2 S.C.R. 290.

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should be given because although in s. 34 of the Indian Income-tax Act and s. 14 of the Act, the words "escaping assessment" are used the language of s. 11(1) of the Act and of s. 22(2) of the Indian Income-tax Act is different in so far in the former the notice requires an assessee to furnish a return of the income of the previous year and in the latter he has to furnish the particulars with respect to any chargeable accounting period of the profits of the business. It becomes necessary, therefore, to examine the provisions of the Act as to the chargeable accounting periods and other provisions relevant thereto. In s. 2(2) of the Act "Accounting period" in relation to any business means any period which is or has been determined as the previous year for the purpose of the Indian Income-tax Act. Under s. 2(4) of the Act "Chargeable accounting period" means :—

(a) "any accounting period falling wholly within the term beginning on the first day of April, 1946, and ending on the thirty-first day of March, 1947;

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term".

According to this definition, therefore, where the previous year was the financial year 1946-47 then the accounting period and the chargeable accounting period would be coincident, i.e., they would both be 1946-47; but if the previous year was the calendar year or the Diwali year the accounting periods of nine months in the former case, i.e., April 1, 1946, to December 31, 1946, and 7 months in the latter, i.e., April 1, 1946, to November 1, 1946, would be the chargeable accounting periods for the purposes of the Act. The extent of the periods will vary according to the determination of the previous year under the Income-tax Act. It might be a full year or less which appears to be the reason for adopting the nomenclature which has been adopted in the Act instead of the previous year. It would be incongruous to call a period of less than a year as the previous year. For the chargeable accounting periods mentioned above the Business Profits Tax would be charged, levied and paid in the

financial year 1947-48 at the rate mentioned in s. 4 of the Act on every business falling under s. 5. But for all these periods the assessment year would be the financial year 1947-48. Keeping this in view we may now see what changes were made by the Finance Act of 1948. By that Act the Act was continued for another one year and for the figure "1947" in the definition of chargeable accounting period in s. 2(4)(a) the figure "1948" was substituted and the following proviso was added:

> "Provided that where an accounting period falls partly before, and partly after, the end of March, 1947, so much of that accounting period as falls before, and so much of that accounting period as falls after, the end of March, 1947, shall be deemed each to be a separate chargeable accounting period".

By this proviso the accounting period or the previous year was split up in cases where it was not the preceding financial year or 1947-48. Thus the calendar year 1947 became two chargeable accounting periods of 3 months and 9 months, i.e., from January 1, 1947, to March 31, 1947, and April 1, 1947, to December 31, 1947, and the same would apply to accounting period from Diwali to Diwali, i.e., 5 months and 7 months. In effect the whole year's profits thus became chargeable to Business Profits Tax instead of only of a part of the year as was the case for the financial year 1947-48. Other changes made by the Finance Act of 1948 were in s. 4 where under s. 10 of the Finance Act the rate of tax for the chargeable accounting period up to the end of March, 1947, remained at 16 2/3 per cent. but for the chargeable accounting period after that date was to be fixed by the Annual Finance Act and by s. 11(1) of that Act the rate was fixed at ten per cent. Thus Business Profits Tax rates also were to be fixed by the Annual Finance Act as were the Income-tax rates. Then came the Finance Act of 1949 which continued the Act for another year and under s. 4 fixed the rate chargeable in respect of any chargeable accounting period after March 31, 1948. The Finance Act of 1950 did not continue the Act and it thus came to

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an end except for liabilities which had already arisen or accrued under the Act.

As the tax under the Act is charged, levied and paid on the taxable profits of a chargeable accounting period but assessment is in respect of the financial year in which the Act operates it is not an unreasonable inference that notice for the chargeable accounting period must issue in the financial year following that period. No difficulty would arise in regard to accounting periods which coincide with previous years, i.e., 1946-47, 1947-48 and 1948-49. For these years the notice will issue in the following chargeable accounting period which again will be the financial year in which the Act would be operative. But the question is how the proviso to s. 2(4) added by the Finance Act of 1948 would affect this rule. Taking a calendar year 1946 as the accounting period, for the financial year 1947-48 the chargeable accounting period would be the nine months period from April 1, 1946, to December 31, 1946, and notice under s. 11(1) of the Act must issue in the financial year because the tax is leviable and assessment is made for the year beginning April 1, 1947, when the Act came into force and remained operative during the year 1947-48. After the Finance Act of 1948 the accounting year, if it was a calendar year, became divided into two parts and both were assessable in the assessment year beginning with April 1, 1948, and, therefore, notice had to be given in the financial year 1948-49. Similarly in the financial year 1949-50 notice would have to be given in that year for the preceding chargeable accounting period. In this view of the matter the contention that there is no provision in s. 11(1) of the Act as to the chargeable accounting period as there is for the previous year in s. 22(2) of the Income-tax Act is not well-founded.

That the notion of the previous year or the accounting period is as much applicable to the Act as to the Indian Income-tax Act is shown by reference to Computation of Profits Rules in the Schedule to the Act. There the computation is related to the accounting periods. The previous year is shown applicable by reference to the Rules under the Act

by which some of the Rules of the Income-tax Act are made applicable to the Act; and some of the sections of that Act are made applicable by s. 19 and by the Rules under the Act. Amongst the Rules applicable is r. 8 which, *inter alia*, related to allowances under s. 10(2)(vi) of the Indian Income-tax Act. The first and the second provisos to this rule are as follows :—

> "Provided that if the buildings, machinery, plant or furniture have been used by the assessee in his business for not less than two months during the previous year, the percentage shall be increased proportionately according to the number of complete months of user by the assessee :
>
> Provided further that in the case of a seasonal factory worked by the assessee during all the working seasons of the previous year, the percentage shall be increased as if the buildings, machinery, plant, or furniture had been in use throughout the period the assessee was the owner thereof during the previous year ".

Both these provisos use the word previous year which is same as the accounting year under the Act.

By r. 4(A) of the Rules made under the Act certain sections of the Indian Income-tax Act have been adapted with modifications therein mentioned. Of those s. 50 of the Income-tax Act is one. In the Act it has been substituted by the following :—

> "No claim to any refund of tax under the Act shall be allowed unless it is made within four years from the last day of the financial year commencing next after the expiry of the accounting period which constitutes or includes the chargeable accounting period in respect of which the claim to such refund arises ".

All these sections show not only that the two statutes, i.e., the Act and the Indian Income-tax Act, have to be read together but also that the notion of the previous year has been inducted into the Act.

The modified s. 50, as introduced into the Act by the rules, means this that the refund, if any, can only be allowed within four years of the financial year which commences after the expiry of the accounting

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period which itself constitutes the chargeable accounting period or includes in it the chargeable accounting period in respect of which the refund is claimed. If the contention of the appellant is correct then this section will be wholly otiose where the assessment is levied after say 10 years from the end of the chargeable accounting period because by no method of calculation will a refund of tax in that circumstance be claimable under s. 50. This furnishes a key to when a notice under s. 11(1) has to be given. It must be given within the financial year which commences next after the expiry of the accounting period or the previous year which is by itself or includes the chargeable accounting period in question. Section 48 of the Income-tax Act, as amended and applied to the Act, does not affect the operation of s. 50 because the two sections have to be read together and the assessee must apply for the refund within the period specified by s. 50: *Adam Haji Dawood & Co. Ltd.* v. *Commissioner of Income-tax, Burma* (1).

The language of s. 14 and particularly the words "may proceed to assess or reassess the amount of such profits to Business Profits Tax" support the contention of the respondent that it applies to cases of no assessment due to notice not being given as to cases of no assessment after notice was given and proceedings proved ineffective. The words "assess" and "reassess" do not mean the same thing and signify two differrent cases. The former applies to cases where there was no assessment to tax due to notice not being given and the process has to commence with the issuing of such notice and the latter to cases where the assessment process is recommenced by issuing a second notice, the previous notice having proved abortive or resulting in under-assessment, etc.

Construing in this manner effect is given to the words "profits of any chargeable accounting period .....have escaped assessment" and it also avoids the anomaly that some cases where there was no assessment can be dealt with under one section with a time limit as under s. 14 but other equally clear cases of non-assessment are dealt with under s. 11

(1) [1936] 4 I T.R. 100 (Rang.).

without there being any limitation of time. If the contention of the appellant is accepted then it would come to this that it would depend upon the Income-tax Officer as to which of the two sections he uses for the purposes of assessment and would lead to this absurdity that in a case of definite information of profits having escaped assessment there will be a limitation of four years and in cases where there is no such information but only belief there will be no such limitation.

If the words "profits escaping assessment" are applicable to original assessments, i.e., where the process of assessment did not commence, as also to assessments where the process of assessment was commenced but proved wholly abortive or partially so, then s. 14 would apply to both such cases. Thus construed s. 11 would apply to normal original assessments and s. 14 to profits escaping assessment as construed above whether the assessment is an original assessment or is a re-assessment.

In determining the scope of s. 14 of the Act reference may be made to another statute which is relevant for the purpose, i.e., the Excess Profits Tax Act (Act XV of 1940), ss. 13 and 15 of which are identical in language with ss. 11 and 14 of the Act. Section 13 deals with the issue of a notice for assessment and s. 15 with profits escaping assessment. Before the Income Tax and Excess Profits Tax (Amendment) Act, 1947 (Act 22 of 1947), there was a 5 years' period of limitation prescribed in s. 15 in the following terms: "within five years of the end of the chargeable accounting period in question". By the aforesaid amendment these words were deleted. The Act, being Act 21 of 1947, as well as the Amendment Act above referred to were enacted about the same time one after the other. The legislature thought it necessary to remove the period of limitation and thereby made profits escaping assessment liable to taxation under the Excess Profits Tax Act without any period of limitation but in the Act the legislature thought it expedient to prescribe the period of limitation of four years in s. 14. It cannot be said that this was

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without any purpose and the argument that prescribing the period of limitation in s. 14 of the Act was deliberate and was intended to prevent taxing under the Act of profits which had escaped assessment for four years from the end of the chargeable accounting period in question is not without substance.

It was argued for the appellant that s. 11(1) construed according to the plain meaning of the words used therein applies to original assessments and s. 14 to assessments in which notice was given but due to any cause whatsoever the proceedings resulted in no assessment or in under-assessment. He referred to the words "require any person whom he believes to be engaged in any business.....or to have been engaged during any chargeable accounting period or to be otherwise liable", and submitted that these words mean that if an Income-tax Officer has such belief in regard to a person who is engaged in any business or was engaged in any business during any chargeable accounting period in question he can issue a notice at any time without limitation of time requiring a return to be filed, etc. In support counsel for the appellant relied upon two judgments, *Gokuldas Ratanji Mandavia* v. *Commissioner of Income-tax* (1) which was an appeal from East Africa and *Telu Ram Jain & Co.* v. *Commissioner of Income-tax* (2), a case decided by the Punjab High Court. In the former case a notice was issued to the assessee under s. 59(1) of the East African Income Tax (Management) Act, 1952, which provided:—

> "The commissioner may, by notice in writing, require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return of income....."

Sections 71(1) and 72 provided:—

> "S. 71(1). The commissioner shall proceed to assess every person chargeable with tax as soon as may be after the expiration of the time allowed to such person for the delivery of his return....."
>
> "S. 72. Where it appears to the commissioner that any person liable to tax has not been assessed

(1) [1959] A.C 114. (2) [1955] 27 I.T.R. 94.

.....the commissioner may.....assess such person at such amount.....as, according to his judgment, ought to have been charged....."

The notice requiring the assessee to furnish returns of his income for the years of assessment 1943-53 was issued but no return was filed and assessment was made under s. 72 of the East African Act for the years 1943-51. The assessee contended that s. 72 did not apply until the machinery under s. 71 had been put into operation and that the assessments were *ultra vires* and void because they were made before the time allowed by s. 71. It was held that s. 71 applied to all original assessments and s. 72 with reopening of cases which had been settled under a normal procedure. Accepting the contention of the assessee Lord Somervell of Harrow observed:—

"If the power to make an assessment under section 72 applies to the making of an original assessment their Lordships are unable to imply a term restricting it to back cases or making it ultra vires to operate it at any time. One would expect an opportunity to make a return to be a condition precedent to assessment. This is supported by the provisions for personal allowances in Part VI of the Act. If the respondent is right any person can be assessed without having any such opportunity. There would be two concurrent jurisdictions one providing reasonable protection for the taxpayer and the other providing no protection quoad the original assessment, apart from a right to appeal. Such a construction seems to their Lordships inconsistent with the general and mandatory provisions of s. 71. That section is providing how all original assessments are to be made".

The language of these ss. 59(1), 71 and 72 is different from that of ss. 11 and 14 of the Act. Section 72 was held not applicable because there would be two concurrent jurisdictions, one providing reasonable protection for the taxpayer and the other providing no protection which would be contrary to the provisions of s. 71. According to the Privy Council it was necessary to restrict the words of s. 72 to cases in which the machinery of s. 59(1) having been operated

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no assessment resulted. The words of s. 14 are entirely different. It applies to cases of profits escaping assessment and the words "escaping assessment" have already been interpreted under s. 34 of the Income-tax Act and there is no reason why the same words occurring in a statute which is *in pari materia* should be given a different meaning in the two Acts. Further the difficulty which the Privy Council felt in regard to there being two jurisdictions, one giving protection to the assessee and the other not giving such protection, does not exist in the present case because the process of assessment under s. 14 of the Act is exactly the same as it is where notice is given under s. 11(1) of the Act and all the advantages which an assessee would have under s. 11(1) are available to him under s. 14.

The Punjab case to which our attention has been drawn was a case under the Excess Profits Tax Act and it was held that because of the removal of the limitation clause in s. 15 of that Act assessments were not hit by any period of limitation and a further observation not necessary for the decision of the case was made that even otherwise the language of s. 13 of that Act was wide and there was no substance in the contention that after the assessment period a notice under s. 13 of that Act could not be issued and that the only notice which could be given was one under s. 15.

In view of the construction we have placed on s. 14 of the Act on the words "profits escaping assessment" that they apply to assessments where notice has been given and has resulted in no assessment and where due to inadvertence, oversight or other circumstances no notice was given, it is difficult to interpret s. 11 in the manner contended for by the appellant.

In our opinion, the assessment which was sought to be made was without jurisdiction and the appeal must, therefore, fail.

We accordingly dismiss the appeal with costs.

Hidayatullah J.

HIDAYATULLAH, J.—The Commissioner of Income-tax, Bombay has filed this appeal against the judgment and order of the High Court of Bombay dated September 5, 1956, with the certificate of the High

Court granted under s. 19 of the Business Profits Tax Act, 1947 (hereinafter called the Act) read with s. 66(1) of the Indian Income-tax Act, 1922. Messrs. Narsee Nagsee & Co., Bombay (hereinafter referred to as the assessee firm), are the respondents.

The assessee firm, at all material times, was doing business in Bombay. For the chargeable accounting period, November 13, 1947, to October 31, 1948, a notice was issued on January 12, 1953, by the Income-tax Officer under s. 11(1) of the Act calling upon the assessee firm to submit its return. This notice was served on the assessee firm on January 21, 1953, and it filed a return under protest, stating that the notice was barred under s. 14 of the Act. It may be mentioned that the assessment for purposes of income-tax for the same year was completed on February 17, 1953. The objection of the assessee firm was overruled by the Income-tax Officer, who completed the assessment under s. 12(1) of the Act on November 30, 1953. The assessee firm then appealed to the Appellate Assistant Commissioner, who upheld the objection that the notice was invalid under s. 14(1) of the Act. On appeal taken by the Commissioner of Income-tax, Bombay, the Appellate Tribunal concurred with the Appellate Assistant Commissioner. At the instance of the Commissioner, however, the Tribunal stated a case, and referred two questions for the decision of the Bombay High Court which were as under:

> "(1) Whether the Income-tax Officer had jurisdiction to assess the assessee firm under the Business Profits Tax Act by issue of a notice under Section 11(1) of the Business Profits Tax Act on 12-1-1953 in respect of the chargeable accounting period, 13-11-1947 to 31-10-1948, without having recourse to section 14 of the Business Profits Tax Act?
>
> (2) If the answer to question No. 1 is in the negative, whether the Business Profits Tax assessment could be considered to have been validly made?"

The High Court modified the first question by deleting its last 12 words. Both the questions were then answered by the High Court in the negative. The

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Commissioner of Income-tax obtained a certificate from the High Court, and filed this appeal.

Before dealing with the reasons given by the High Court and the Tribunal and considering arguments urged in this appeal, it will be convenient to reproduce ss. 11(1) and 14 of the Act:

"11(1). The Income-tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay business profits tax, to furnish within such period, not being less than forty-five days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice, the profits (the taxable profits) of the business or the amount of deficiency, if any, available for relief under section 6:

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return.

14. If, in consequence of definite information which has come into his possession, the Income-tax Officer discovers that profits of any chargeable accounting period chargeable to business profits tax have escaped assessment, or have been under-assessed, or have been the subject of excessive relief, he may at any time within four years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 11, and may proceed to assess or reassess the amount of such profits liable to business profits tax, and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section."

The Tribunal construed both these sections together, and expressed the opinion that the notice under s. 11 in respect of a chargeable accounting period should

issue before the commencement of the next chargeable accounting period, and that if the notice was not so issued, profits must be considered to have escaped assessment, and that action could only be taken under s. 14 within four years of the close of the chargeable accounting period in respect of which it was sought to tax the assessee. The Tribunal, therefore, held that inasmuch as the notice in this case was issued in January, 1953, more than four years after October 31, 1948, when the chargeable accounting period came to an end, the notice and the assessment were barred by time. The Tribunal also pointed out that the intention of the legislature could be gathered from the fact that though in s. 15 of the Excess Profits Tax Act the limitation of five years was deleted by Act 22 of 1947, a similar amendment was not made in s. 14 of the Act, which corresponds to s. 15 of the Excess Profits Tax Act, though the Act was passed at the same time being Act 21 of 1947. Holding, therefore, that the profits which were not taxed at all and were never brought under assessment must be deemed to have "escaped assessment" because notice under s. 11 was not issued in time, the Tribunal was of opinion that action could only be taken under s. 14 of the Act within the time specified there. The Bombay High Court did not accept that the notice under s. 11 had to be given before the end of the chargeable accounting period, but held that the two sections must be interpreted together, and observed :

> "Inasmuch as section 11 does not indicate any period of time with regard to the issue of a notice, would it or would it not be right for us to import into section 11 the consideration which led the Legislature to fix a limitation of time for the purpose of issuing a notice under section 14 ? If we were not to do that we would arrive at this rather extraordinary conclusion that the Legislature while saving the subject from harassment of proceedings with regard to escaped assessment or under-assessment, permitted that harassment with regard to the very initiation of the proceedings after the lapse of four years. It is contended that the period of four years mentioned in section 14 supplies an

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important indication for what the period of limitation should be with regard to the issue of a notice under section 11. If income which has escaped assessment can only be taxed within four years by reason of section 14, then it must inferentially follow that income must escape assessment at some point of time anterior to the period of four years mentioned in section 14.

.....

On the facts of this case the most significant and salient fact is that the notice has been issued four years after the close of the chargeable accounting period and as that notice is beyond the time mentioned in section 14, in our opinion, the notice is not a valid notice under section 11."

The Commissioner has contended that s. 11 deals with the issuance of a notice for the first time before any income has been returned or brought to tax. The notice under s. 11, it is submitted next, is without any limit of time, and a limitation cannot be read into a section, when the legislature has not thought it fit to lay it down. According to the Commissioner, s. 14 deals with "escaped assessment", which, under the scheme of the Act, must be given a narrow meaning as indicating the escapement of profits from tax either wholly or partly for any reason, after the process of assessment has taken place. Section 14, it is argued, operates after one set of proceedings for assessment of tax have taken place, and applies only where the profits either escape assessment, or are under-assessed or excessive relief has been granted, while s. 11, on the other hand, applies to all cases, where the assessee has not been called upon to file a return or has not filed one himself. As against this, the assessee firm adopts the reasons given by the Tribunal and the High Court, and adds that whereas under s. 14 some definite information must be possessed by the Income-tax Officer before he can issue the notice, the Income-tax Officer has only to entertain a belief that business was carried on in the chargeable accounting period to enable him to serve the notice under s. 11. The assessee firm, therefore, contends that it would be open to the Income-tax Officer to ignore s. 14

altogether, and to issue a notice under s. 11 in a case even after the expiry of a considerable time. The Commissioner contends that the liability to pay tax arises under s. 4 of the Act, and it remains till the liability is discharged by payment of tax, and the legislature has, therefore, advisedly left the power to the Income-tax Officer to assess the tax where there has been no proceeding to assess it, without imposing any limit as to time. Section 14, on the other hand, has been so framed that persons whose profits have been brought to assessment once should not be exposed to a double peril, except within the stated period.

The two sections must be reconciled. The learned Chief Justice of the Bombay High Court, who delivered the judgment of the Bench, stated that it was not an easy matter to give a rational meaning to them. He, however, felt that between the two rival contentions, the argument of the assessee firm was the more reasonable, and that where two constructions were possible, one strict and the other beneficial to the assessee, the latter should be preferred if it was equally reasonable.

The scheme of the Act, in so far as asking for a return is concerned, is entirely different from that of the Indian Income-tax Act. Under the latter Act, a general notice is issued calling upon every assessee whose income exceeds the minimum which is exempt under the Income-tax Act, to file a return within the period stated in the notice. The Income-tax Officer has further power to issue a notice to any individual assessee during any assessment year calling for a return of his income during the previous year. An assessee under the Income-tax Act is, therefore, bound, if his income is liable to tax, to file a return whether it be in answer to the general notice or to the special notice issued to him. The assessee may even file a return voluntarily before the special notice is issued to him. Even before 1939, though there was no general notice the distinction between the previous year and the assessment year obtained. The notice under s. 22 of the Indian Income-tax Act must issue before the

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close of the assessment year and cannot be issued thereafter.

The scheme of the Business Profits Tax Act is different. Business profits follow the assessment of income-tax, and are payable for any chargeable accounting period in which, the assessee having carried on business, assessable profits have resulted. Under the Act, the Income-tax Officer, if he has reason to believe that the assessee was engaged in any business to which the Act applied, or to have been so engaged during any chargeable accounting period or to be otherwise liable to pay business profits tax, can call upon the assessee to furnish a return. That is s. 11. Then comes s. 14, which says that if in consequence of definite information which has come into his possession the Income-tax Officer discovers that profits of any chargeable accounting period chargeable to business profits tax have 'escaped assessment', he may at any time within four years from the end of the chargeable accounting period in question serve on the person liable to such tax, a notice. There is no compulsion to file a return except in answer to a notice issued either under s. 11 or s. 14. There is no period comparable to the assessment year. Mr. Palkhivala attempted to bring in the conception of an 'assessment year' into the Act by saying that the next chargeable accounting period could be taken to be the assessment year for the previous chargeable accounting period. When it was pointed out to him that where the chargeable accounting period of a business ended, say, on March 15 every year the last chargeable accounting period would be compressed to 15 days, he had no adequate answer. The Tribunal also stated that the chargeable accounting year was also the 'assessment year'. This cannot be correct, because s. 11(1) speaks of the current as well as the back chargeable accounting periods, as will be explained in detail later. The question thus is whether a narrow meaning should be given to the words "profits which have escaped assessment" as denoting only those profits which by reason of a prior notice under s. 11 were sought to be assessed but had escaped assessment, or a wide meaning to include those profits

which were never sought to be assessed or brought under assessment by the issuance of a notice under s. 11.

The question is primarily one of construction of the two sections of the Act. Before dealing with it, it is necessary to look at the scheme of some of the basic provisions of the Act. The accounting period under the Act is equated to the previous year of the business for the purposes of the Indian Income-tax Act, 1922. The tax is laid on the taxable profits of the 'chargeable accounting period', which means an accounting period falling wholly within the term beginning on the first day of April, 1946, and ending on the thirty-first day of March, 1949, or where any accounting period falls partly within and partly without the said term, such part as falls within the said term. A proviso further says that if the accounting period falls partly before, and partly after, the end of March, 1947, then the period before and the period after shall be deemed to be separate chargeable accounting periods. Then comes s. 4, which is the charging section. That section, omitting the provisions about exemptions which do not concern us, reads:

> "Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount of the taxable profits during any chargeable accounting period, a tax (in this Act referred to as 'business profits tax') which shall, in respect of any chargeable accounting period ending on or before the 31st day of March, 1947, be equal to sixteen and two thirds per cent. of the taxable profits, and in respect of any chargeable accounting period beginning after that date, be equal to such percentage of the taxable profits as may be fixed by the annual Finance Act.
>
> Provided....." (omitted).

Section 5 deals with the application of the Act. That section, omitting again the provises that do not affect the present matter, provides:

> "This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by

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virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 4 of the Indian Income-tax Act, 1922, or of clause (c) of that sub-section :

"Provided....." (omitted).

It will appear from these sections quoted that the business profits tax comes in the wake of the income-tax. That is to say, the assessability to profits tax follows the assessability to income-tax. The tax is laid on the taxable profits accruing within a stated period which may include not more than four accounting periods corresponding either wholly or partly to the previous year under the Income-tax Act. The chargeability to income-tax is a condition precedent to the chargeability to profits tax, but not every business which pays income-tax necessarily pays business profits tax. The Act, however, does not prescribe a period comparable to the assessment year under the Indian Income-tax Act. It does not lay down any term within which the assessment should be completed.

The short question thus is whether in s. 11 of the Act a limitation corresponding to the limitation contained in s. 14 must necessarily be read. It seems to be agreed on all hands, and it was not denied at the Bar before us that if s. 11 is to be interpreted according to its own terms, then no such limitation can be read in it. The Tribunal and the High Court resort to s. 14 to do so.

It is always a serious matter to read into a section what the legislature has not chosen to put there. As pointed out by Lord Esher, M. R., in *Curtis* v. *Stovin* (1) :

> "It is, no doubt, very easy for a judge to say that he is introducing words into an Act only by way of construing it, while he is really making a new Act".

Such procedure is wholly out of place if the language of the section does not admit of any extension. The question invariably is not what the legislature might have said, or might be supposed to have intended to say, but what it did say. This is more so in an

(1) (1889) 22 Q.B.D. 513.

Act which imposes a tax, and which cannot be added to or subtracted from except perhaps for the most clear and compelling reasons. Bearing these principles, which have received recognition on many an occasion, in mind, I address myself to the task.

Under the scheme of the Act analysed above, it is quite clear that the liability to tax depends not on any action to be taken under the Act to recover the tax, but it attaches itself to the taxable profits when they have been made in any chargeable accounting period. Once this liability attaches, it can only be dissolved either by payment of the tax or by the levy becoming impossible due to lapse of stated time. The Commissioner contends that the liability to pay the tax in the case of a business not brought to tax does not cease by reason of any passage of time. It ceases only when by reason of an attempted assessment once, the proceedings under s. 14 cannot be initiated again after the expiry of four years from the end of any chargeable accounting period. The Commissioner contends that the phrase "profits have escaped assessment" in s. 14 must be limited to those cases only. For this purpose, reliance is placed upon a recent decision of the Privy Council in a case from Africa, *Gokuldas Ratanji Mandavia* v. *Commissioner of Income-tax* (1), which will be referred to in some detail.

The Income-tax authorities in Nairobi in that case wrote on May 26, 1953, asking Mandavia for information and a deposit of £ 2,000 and saying:

> "As you do not appear at any time to have made a return of total income and claim for allowances, I am sending under separate cover forms covering years of assessment 1943 to 1953. These should be completed and submitted to me along with the accounts of your professional activities and of your property dealings as set out in the preceding paragraphs".

Mandavia was at that time in England, and wrote on June 4, asking for time till the end of July. On June 15, 1953, the Regional Commissioner wrote to inform him that he was proceeding to assess him and impose penalties on the basis of such information as

(1) [1959] A. C. 114.

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had been submitted. These assessments were made on June 18, but were dated June 26 apparently to give the taxpayer more time in which to pay. Under s. 59 of the East African Income Tax (Management) Act, 1952, it was provided:

"59(1). The commissioner may, by notice in writing, require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return of income and of such particulars as may be required for the purposes of this Act with respect to the income upon which such person appears to be chargeable".

Under the third sub-section of that section, a duty was laid upon every person to give notice to the Commissioner before October 15 in the year following the year of income that he was so chargeable, where no notice had been served under sub-s. (1) and no return had been furnished within nine months of the close of the year of account. Then followed two sections, which need to be quoted partly. Section 71 provided, *inter alia*:

"(1). The commissioner shall proceed to assess every person chargeable with tax as soon as may be after the expiration of the time allowed to such person for the delivery of his return."

The section provided by sub-s. (2) for cases in which a return was made which was (a) accepted and (b) not accepted, and by sub-s. (3), for cases where no return was filed. Then followed s. 72 which provided (leaving out the proviso):

"Where it appears to the commissioner that any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the commissioner may, within the year of income or within seven years after the expiration thereof, assess such person at such amount or additional amount as, according to his judgment, ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings under this Act shall apply to such assessment or additional assessment and to the tax charged thereunder."

Now, the Commissioner in the cited case justified the assessments under s. 72, because it was contended that the assessments were *ultra vires* and void, in that they were made before the "time allowed". He relied upon the general words of s. 72, and submitted that they covered even a case where a person was not assessed whether he had a notice and a "time allowed" under ss. 59 and 71 or not. The argument on behalf of the taxpayer was that s. 72 only dealt with cases where subsequent information led either to an assessment after a prior assessment or to an additional assessment but had no application to cases in which the machinery of s. 59(1) had not been operated.

The Privy Council accepted the contention of the taxpayer. It held that before assessments could be made, the "time allowed" had to elapse. It, however, gave a narrow meaning to the words as to assessing for the first time in s. 72, as restricted to "cases in which, the machinery of s. 59(1) having been operated, no assessment has been made". Their Lordships gave three reasons for this conclusion, which may be set out in their own words:

> "If the power to make an assessment under section 72 applies to the making of an original assessment their Lordships are unable to imply a term restricting it to back cases or making it ultra vires to operate it at any time. One would expect an opportunity to make a return to be a condition precedent to assessment. This is supported by the provisions for personal allowances in Part VI of the Act. If the respondent is right any person can be assessed without having any such opportunity. There would be two concurrent jurisdictions, one providing reasonable protection for the taxpayer and the other providing no protection quoad the original assessment, apart from a right to appeal. Such a construction seems to their Lordships inconsistent with the general and mandatory provisions of section 71. That section is providing how all original assessments are to be made.
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> Section 72 deals, inter alia, with additional assessments, with cases in which, owing presumably to subsequent information, the Revenue desires to

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reopen what had apart from section 72 been settled. Having regard to the wording of section 71 it seems to their Lordships necessary to restrict the words as to assessing for the first time in section 72 to cases in which, the machinery of section 59 (1) having been operated, no assessment has been made. So far as the taxpayer is concerned, after he had made his return or had an opportunity of doing so, it was settled that he was under no liability to tax for that year. Subsequent information leads the Revenue to reopen the matter and decide that he ought to be assessed.

Section 72 is dealing with the reopening of cases which had been settled under the normal procedure. This explains the fact that section 72 contains a prima facie limitation of seven years whereas section 71 contains no limitation. On the respondents' arguments this seems inexplicable. On the other argument it seems reasonable that there should after a certain time be no reopening of what has been settled unless there has been fraud or wilful default.

The construction also gains support from the words 'ought to have been charged', when they occur for the second time in section 72. They there apply to 'such amount' as well as 'such additional amount'."

The case, though it is easily distinguishable on the ground that the African Act and the Act are not in *pari materia*, shows that by the compulsion of the language employed and the scheme of taxation, a restricted meaning may have to be given to certain general words. When such a claim is made, only the statute under which the claim is made, can be the guide and not another not in *pari materia*. The decision is also distinguishable on the ground that there a notice under s. 59 (1) was pending and the "time allowed" had not expired.

The assessee relies upon a decision of the Bombay High Court in *Commissioner of Income-tax* v. *P. N. Contractor* (1), where the previous year ended on March 31, 1934. No notice was served on the assessee under s. 22(2) of the Indian Income-tax Act during

(1) [1937] 5 I.T.R. 338.

the year of assessment. Then a notice under s. 34 of the Income-tax Act was served on June 26, 1935. It was held by Beaumont, C. J., and Rangnekar, J., that s. 34 of the Indian Income-tax Act was wide enough to include those cases in which there was no notice under s. 22 or a first assessment. Beaumont, C. J., dissented from the observations of Sir George Rankin in *In re Lachhiram Basantlal* (1) made *obiter* that "income cannot be said to have escaped assessment except in the case where an assessment has been made which does not include the income", and observed:

> "Under s. 34 what must be escaped is assessment and that means the whole process of assessment, which, in the case of individuals, starts with the service of a notice under s. 22(2). The liability to assessment is a risk to which every person in British India entitled to income is liable, and I cannot see why the process of assessment has not been just as much escaped by a person who receives no notice under s. 22(2) as by a person who receives such a notice which proves in fact ineffective. It seems to me that a person who receives no notice under s. 22(2) has escaped assessment, although, through no fault of his own, the process of assessment has never been set in motion."

The assessee also relied upon *Commissioner of Income-tax, Burma* v. *Ved Nath Singh* (2), where Roberts, C. J., Mya Bu and Dunkley, JJ., observed:

> "We are of opinion that s. 34 is applicable to cases in which either no assessment at all has been made upon the person who received the income, profits or gains liable to assessment, or, where an assessment has been made in the course of the year, but some portion of the income, profits or gains of such assessee for some reason or other has not been included in the order of assessment; such income is income which has 'escaped assessment' in the year, and falls within the ambit of s. 34 of the Act."

These cases arose before the amendments of 1939 and in those days there was no provision for a general

(1) (1931) I.L.R 58 Cal. 909, 912. (2) [1940] 8 I.T.R. 222.

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notice such as is now issued under s. 22(1). Even in those days, the return asked for the particulars of the total income during *the previous year*. Thus, at the end of the assessment year it was not possible to issue a notice for a back period beyond the previous year. By the force of s. 22(2) it could be said at the end of any assessment year that in so far as the income of the corresponding previous year was concerned, it had escaped assessment. The logical result of this was that if no notice calling for a return under s. 22 was issued within the assessment year, then s. 34 was the only means to get at the tax: See *Rajendra Nath Mukerjee* v. *Commissioner of Income-tax* (1). The scheme of the Indian Income-tax Act is entirely different, and by fixing a time limit for the issuance of a notice under s. 22(2) makes it clear that in s. 34 of the Indian Income-tax Act the words "escaped assessment" *ex facie* covered all cases of escaped assessment whether within or without a prior assessment. The assessment there 'escapes' when once the assessment year expires. The cases under the Income-tax Act which expound s. 34 are, thus, not in point.

The cases of this Court relied upon by the assessee also do not help. In *Kamal Singh* v. *Commissioner of Income-tax* (2), it was held that the word "information" was wide enough to include information as to the true and correct state of the law and the word "escaped" was wide enough to cover cases of inadvertence or oversight on the part of the assessing authorities. In *Commissioner of Income-tax* v. *Ranchhoddas Karsondas* (3), the respondent assessee had submitted a 'voluntary' return showing no taxable income, and it was held that the Income-tax Officer could not ignore the return and proceed under s. 34 of the Income-tax Act. In *Maharajadhiraj Sir Kameshwar Singh* v. *State of Bihar* (4), the income returned was not brought to tax and later under s. 26 of the Bihar Agricultural Income-tax Act, 1938, it was sought to be assessed. Section 26 of that Act was held to cover such a case, and the language of that section was extremely wide. These cases are hardly in point.

(1) L.R. (1933) 61 I.A. 10.
(2) [1959] Supp. 1 S.C.R. 10.
(3) [1960] 1 S.C.R. 114.
(4) [1960] 1 S.C.R. 332.

We are thus thrown back upon the construction of the two sections, and must find out where the compulsion of the language employed and the general scheme of the provisions lead to. Before doing so, I shall discuss one other extraneous consideration called in aid by both the Tribunal and the High Court. The Act followed the Excess Profits Tax Act, 1940, which provided for the levy of tax on excess profits made during the chargeable accounting periods within the term beginning on the first day of September, 1939, and ending on the thirty-first day of March, 1941. By succeeding Finance Acts, the year 1941 was changed to 1942, 1943, 1944, 1945 and 1946. Thereafter came the Act. Sections 13 and 15 of the Excess Profits Tax Act correspond respectively to ss. 11 and 14 of the Act with the difference that the limitation in s. 15 was five years. By Act 21 of 1947 (which immediately preceded the Act) this period of limitation was removed, by deleting retrospectively the words "within five years of the end of the chargeable accounting period in question" from s. 15 of the Excess Profits Tax Act. Thus, by the amendment there was no limitation for bringing to tax profits which had escaped assessment, and it was so held by Falshaw and Kapur, JJ., in *Telu Ram Jain & Co.* v. *Commissioner of Income-tax* (1).

Now, the Tribunal and the High Court reason that it was the simplest matter for the legislature to have deleted similar words from s. 14 of the Act, if the intention was to create no limitation for the assessment of profits which had not been assessed before. The fact that there was no corresponding change in the Act, it is said, shows that no first assessment or reassessment could be made after a lapse of four years.

This argument views the matter from one angle only. There is another side to it which is equally plausible. The intention of the legislature in making the amendment in the Excess Profits Tax Act was manifestly to make the tax leviable by a first assessment and *also by a reassessment* without any limit of time. After the amendment, no limitation existed either in s. 13 or s. 15 of the Excess Profits Tax Act.

(1) [1955] 27 I.T.R. 94.

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Such assessment or reassessment could be made at any time or even after considerable time. The question of hardship involved in calling for returns after the lapse of considerable time, which has weighed heavily with the High Court, did not seem to have distressed the legislature. It is thus impossible to think that the legislature left the Act untouched from a converse motive. We must not forget that the Act was then freshly enacted, and the first chargeable accounting period was hardly over for any assessee and every case of escaped assessment or under-assessment was also well within the time prescribed by s. 14 of the Act. There would hardly be any present need for such a drastic provision to start with. It might well have been thought that there would not be cases in which four years could not be considered ample, except those cases where a particular business was never brought to tax at all. For that, it might equally have been thought that s. 11, as is contended by the Commissioner, was sufficient. The amendment in s. 15 of the Excess Profits Tax Act might have been advisedly made to reach even those cases where though the profits of a business had once been brought to assessment, they needed to be re-assessed even though the first assessment resulted in some tax or no tax. For those cases it might have been felt that the limit of five years ought to go.

If this is as good an explanation of the intention of the legislature in amending s. 15, then the reason given by the High Court is not the only explanation, and it cannot be accepted. If the intention of the legislature can be gathered in two different ways, it is sheer speculation to say which is the true intention. As said earlier, it is always inadvisable to go by a supposed intention of the legislature and construe the words of the statute in the light of that supposed intention. The intention must be gathered from the words of the section in which the legislature has chosen to express its intention and not *vice versa*. I am accordingly of the view that this ground is not valid.

The High Court and the Tribunal read s. 11(1) somewhat differently. According to the Tribunal,

the notice under that section must issue before the end of the chargeable accounting period, and according to the High Court, within four years from the end thereof. There is nothing in the section which justifies any of these two readings. Three classes of persons are there mentioned. They are (a) persons believed *to be engaged* in any business, (b) persons believed *to have been so engaged* in any chargeable accounting period, and (c) persons believed to be otherwise liable to business profits tax. The first two categories clearly show that whereas for the first category the assessee must be engaged in business in the year of notice, for the second category the notice may issue in respect of a back chargeable accounting period. The words "to be engaged" and "to have been so engaged during any chargeable accounting period" cannot but refer to "current" and "back" chargeable accounting periods. The latter words plainly refer to a "back" period and the word "any" shows that it need not be the "back" period immediately preceding the "current" chargeable accounting period only. Indeed, it is possible to issue the notice under s. 11(1) after March 31, 1949, in respect of the very first chargeable accounting period and also every succeeding period lying within the term beginning on April 1, 1946, and ending on March 31, 1949.

If this be the natural meaning of the section—and this meaning is made more probable by the residuary category, viz., persons otherwise liable to pay business profits tax—it is an irresistible conclusion that no period comparable to the assessment year under the Income-tax Act was either introduced or contemplated. The distinction between "back" chargeable accounting periods and "current" chargeable accounting periods also disappears. Unless one can say when or after how much lapse of time profits escape assessment, s. 14 cannot be made applicable at all. Section 4 of the Act says that in respect of any business to which the Act applies, there shall be charged, levied and paid a tax referred to as the business profits tax. The liability that is incurred can only be discharged by payment of the tax and the charging and levying

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are duties laid upon the Income-tax Officers who execute them by issuing a notice under s. 11 and by assessing and demanding the tax. For this purpose, any person believed to be engaged in business to which the Act applies, or to have been so engaged or to be otherwise liable can be called upon to make a return. Of course, the proceedings thus initiated may or may not result in tax, but that is another matter. This is the first operation of the Act against a likely taxpayer. For this purpose, it is admitted, on all hands, there is no express limitation in s. 11(1) or elsewhere.

The question next is whether there is anything in s. 14, which impliedly imposes such a limitation. That section deals with "escaped assessment", "under-assessment" or "excessive relief". The last two categories *ex facie* refer to an assessment after a prior assessment. The question thus is whether the words "escaped assessment", refer also to an assessment after a prior assessment. The word "assessment", was explained by the Judicial Committee in *Commissioner of Income-tax* v. *Khemchand Ramdas* (1). It sometimes means the computation of income or profits, sometimes, the determination of the amount of tax payable, and, sometimes, the whole procedure laid down in a taxing Act for imposing the liability on an assessee. In s. 14 where the words "escaped assessment" are used, it means that there was a determination of the amount of the tax payable but some profits escaped that process either wholly or partly.

Profits cannot be said to have escaped assessment when there are proceedings afoot and assessment is being made. In my opinion, they cannot be said to have escaped assessment when they are exposed to assessment and assessment has yet to be done. It is to be noticed that s. 14 requires "definite information" in the possession of the Income-tax Officer and to "discovery" by him of the fact of escaped assessment as a condition precedent to action under that section. If under s. 4 the liability to tax exists and there is no limitation, and if under s. 11(1) it can be

(11) (1938) L.R. 65 I.A 236.

enforced without any limit as to time, the profits cannot be said to have escaped assessment any more than where assessment proceedings are afoot and are not yet over. This is not a case where by the operation of some other period of limitation the assessment proceedings can be said to be out of reach of the Department. If the profits are still assessable by reason of the charge under s. 4 and are subject to the process under s. 11(1), there is no "escaped assessment". There are here no "back" periods which cannot be reached under s. 11 like the period prior to the previous year of the Income-tax Act, for which only s. 34 is available. All chargeable accounting periods are on the same footing, and s. 11 is wide enough to reach all of them. Further, it is to be noticed that there is no time limit for completing an assessment once begun. Also, if profits which have never been processed can be dealt with both under ss. 11 and 14 and both have the limit of 4 years, why have two sections, one depending on belief and the other on definite information? We must look to some different meaning and different fields of operation. That can only be if the words "escaped assessment" are given a restricted meaning in s. 14.

In this view of the scheme of the Act and the clear words of s. 11(1), it seems difficult to put a limit of time because one is contained in s. 14 in respect of profits escaping assessment. No doubt, both the sections must be construed harmoniously; but as was observed by Sir Lawrence Jenkins in *Mohammad Sher Khan* v. *Seth Swami Dayal* (1), the provisions of one section cannot be used to defeat those of another, unless it is impossible to effect reconciliation between them. Equally both sections must not be made to operate in the same field. In the Act with which we are concerned, reconciliation is only possible if the words of s. 11(1) and s. 14 are given meanings without importing certain implications from one into the other, and the only way different fields can be found is to read them differently. The interpretation of the High Court, if I may figuratively describe it, makes the two sections march hand in hand during the four

(1) [1922] L.R. 49 I.A. 60.

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years which *ex facie* could not have been intended, as one section depends upon the entertainment of belief and the other section requires definite information leading to a positive discovery.

Read in this way, it is clear that s. 11 effectuates the assessment, levy and collection of tax from persons believed to be liable, while s. 14 enables a reopening of cases where after an assessment there is discovery that profits have escaped assessment due to one reason or another. The use of the words "escaped assessment" in the context of the Act has reference only to those cases where profits of a business were brought to process once but for some reason some profits escaped assessment or were under-assessed or received excessive relief. The insistence upon definite information leading to such a discovery before action is taken under s. 14, also points in the same direction. "Definite information" denotes that there is something discovered which can demonstrate the falsity of something done previously. The existence of belief shows the possibility of there existing some profits which need to be taxed. Whereas "definite information" points to a state of affairs in which though there was a processing of the profits before, something definite having been found out the result of that processing is discovered to be incorrect, the word "belief" in s. 11 shows that the Income-tax Officer is to embark upon a first enquiry as to whether the business comes within the purview of the Act or not.

To summarise, therefore, though it is possible to make the chargeable accounting period correspond to the 'previous year' under the Income-tax law, there is no method by which the conception of an assessment year can be brought in. To say that s. 11 operates for full four years is to find not an "assessment year" but an "assessment period". During the course of those four years, the tax would be realisable under s. 11, because the assessment period could not be said to be over. But then, there would be no room for the operation of s. 14, particularly where it speaks of "escaped assessment". During the whole of the four years, there would never be any escaped assessment, and there would be no further time available

for the operation of s. 14. Even on this reasoning, some meaning other than what prevails under the Income-tax Act will have to be given to the same words by the compulsion of the language employed in ss. 11 and 14. On the reasoning of the High Court, the whole of the period of four years would be the "assessment period". It would begin at the end of the chargeable accounting period and end after the lapse of four years. It would embrace all the chargeable accounting periods within reach. But then, s. 14 also operates in the same manner and for the same time. This construction renders s. 14 otiose.

Nor do I think that there is any unreasonableness in the construction, which I have indicated above. The legislature might have been solicitous that persons who have been subjected to the process of assessment once should not be exposed to a second peril except within the reasonable period of four years from the end of the chargeable accounting period; but it did not view in a similar way those persons who were never troubled before but whose liability to pay tax remained unaltered. The motive with which limitation was introduced in one section cannot be the motive for the Courts to introduce the same period in quite another section. To adopt the reasoning of the High Court would be to make no distinction between ss. 11 and 14 and to render meaningless the fiction to be found in the last words of s. 14. For profits which have never been brought to assessment, there would be two notices possible in some cases, one under s. 11(1) and the other under s. 14, one requiring only the entertainment of a belief as to a certain state of things and the other requiring definite information and discovery that profits have escaped assessment. These two conditions cannot co-exist in the same case. Harmonious construction requires that there should arise no impossible situations. Such situations are avoided if the operation of s. 11 is confined to those cases where there has been no prior assessment and the operation of s. 14 to those cases where after a prior assessment there is an escaped assessment, under-assessment or excessive relief. For the subsequent and reopened assessment there is a limit of

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four years, but for the assessment for the first time there is no limit.

I have looked into the Rules framed under the Act. No doubt, R. 50 speaks of a period during which refunds can be claimed, and it may be argued that this rule has to be interpreted in harmony with the Act. If the Rule cannot be reconciled with the Act, then the Rule must fail. See Maxwell on Interpretation of Statutes, 10th Edn., p. 51, where the following passage occurs:

> "If reconciliation is impossible, the subordinate provision must give way, and probably the instrument would be treated as subordinate to the section."

See also *Institute of Patent Agents* v. *Lockwood* (1) and *Minister of Health* v. *R*: *Ex parte Yaffe* (2). The breakdown of R. 50 would leave into operation R. 48, which is without any limitation of time, and refunds would be available under that Rule. This argument receives great support from the fact that under the Excess Profits Tax Act ss. 48 and 50 of the Indian Income-tax Act, were brought in *mutatis mutandis*. If, as has been shown above, there is no limitation either under s. 13 or s. 15 of the Excess Profits Tax Act s. 50 will have to be applied to that Act without any limit as to time. It appears to me that R. 50 is not framed in consonance with the spirit underlying s. 11, and if it was necessary for me to say so, I would have been disposed to thinking that being a Rule of the Board of Revenue, it would have to give way, even though under the Act it has to be read as a part thereof. This argument, therefore, has no validity.

In my opinion, the answer to the first question should be in the affirmative. In view of this answer, the second question would not fall to be answered. I would, therefore, allow the appeal with costs here and below.

BY COURT: In accordance with the judgment of the majority, the appeal is dismissed with costs.

Appeal dismissed.

(1) [1894] A.C. 347, 360.
(2) [1931] A.C. 494, 503.