A

COMMISSIONER OF INCOME-TAX, CALCUTTA

v.

BIJU PATNAIK

B

MAY 9, 1986

[R.S. PATHAK AND SABYASACHI MUKHARJI, JJ.]

C *Income Tax Act 1961, s. 256(2)—Decision of Tribunal perverse and ignoring of all material and relevant facts—Scope of the jurisdiction of High Court in directing reference on question of law—High Court in error in not directing reference.*

D **The respondent-assessee claimed deductions in his assessments relating to the assessment years 1962-63 to 1964-65 in respect of payments of interest on loans taken from Kalinga Foundation Trust and others and certain dividend transactions relating to the shares of Kalinga Tubes, Ltd. The Income-Tax Officer issued a letter to the assessee requesting him, *inter alia,* to produce evidence and prove (i) that the cash credits appearing in his account in the name of Kalinga** E **Foundation Trust were genuine; and (ii) that 39,000 shares of Kalinga Tubes Ltd. standing in the names of shareholders were not really his own investment. After examining the assessee's evidence and on the basis of documentary evidence and government records and on the basis of local enquiries made, the Income-Tax Officer came to the conclusion that no trust in the name of Kalinga Foundation Trust really existed** F **and even if it existed, it had no funds of its own and that the name "Kalinga Foundation Trust" was used by the assessee as a camouflage to put through his unaccounted money. Accordingly, all cash credits appearing in the books of accounts of the assessee himself or in the books of other concerns or persons or remittances of actual payments in the name of Trust were treated by the Income-Tax Officer as moneys** G **coming out of the undisclosed sources of the assessee and accordingly assessed the same as his income from undisclosed sources. All interest and dividend received in the name of the Trust were included by the Income-Tax Officer in the assessment of the assessee as his own income. The Income-Tax Officer was also of the opinion that the moneys advanced in the name of the Trust to several persons in connection with** H **the acquisition of 39,000 shares of Kalinga Tubes Ltd. which were**

issued in 1958 actually belonged to the assessee. Accordingly, the dividend of the said shares was treated as the income of the assessee and the expenses incurred in that connection were allowed as deduction. The persons in whose names the 39,000 shares of Kalinga Tubes Ltd. stood, were treated by the Income-tax Officer as benamidars of the assessee.

Against the orders of assessment, appeals were filed by the assessee before the Appellate Assistant Commissioner who set aside the assessments for the years under consideration and remanded the matters back, to Income-tax Officer to frame issues and give due opportunity to the assessee to cross-examine the witnesses in the light of the observations made in the order. Again, against the order of the Appellate Assistant Commissioner, the appeals were filed. It was argued before the Tribunal on behalf of the appellant-assessee; (i) that on the basis of the facts emerging on an examination of assessee's evidence and facts found on the basis of documentary evidence, the Appellate Assistant Commissioner should have confirmed the assessments; (ii) that local inquiries and oral testimony had been used by the Income-tax Officer to support the conclusions already arrived at on an examination of assessee's own evidence and corroborated by documentary evidence and therefore the Appellate Assistant Commissioner should not have set aside the assessment on the ground that the persons who were examined by the Income-tax Officer should have been allowed to be cross-examined by the assessee; (iii) that the gist of the enquiries had been communicated to the assessee to enable him to meet the case against him and it was for the assessee to produce before the Income-tax Officer the persons who had collected the funds for the Kalinga Foundation Trust as the Income-tax Officer was not bound by the technical rules of evidence; (iv) that it had collected evidence to prove that these shares were purchased by the assessee benami in the names of the shareholders named; (v) that the assessee had created a private registered Trust in 1949 out of his own properties having the same name as Kalinga Foundation Trust and that a reference to Kalinga Foundation Trust in some of the documents produced by the assessee was to this private trust and not to any public trust of the same name alleged to have been created at a public function. After considering the material, the Tribunal held (a) that the Kalinga Foundation Trust came into existence in 1947 and continued after its registration in 1959 under the same name and style and the fund of the Trust was built up by collection of donation from the public at large; (b) that seven persons who were designed by the Income-tax Officer as benamidars of the assessee for the purchase of the

A shares of M/s Kalinga Tubes Ltd, were not benamidars and the money required for the purchase of these shares had been raised by themselves; (c) that the investments made by the Trust in the assessee's group of industries or with the assessee were from its own resources and funds and such investments were guided by business expediency and
B prudence; (d) that the Trust was comprised of persons of public repute and the control and management of the trust styled as "Kalinga Foundation Trust" were under the effective control of the Board of Trustees comprised of persons of public reputation and (e) that the income from interest, dividend, or any other usufruct arising out of the investments made by the Trust in the various concerns and the investments of the Trust which were included in the assessments of the assessee in the
C years under reference should be excluded as appertaining to a separate and distinct entity and therefore directed the Income-tax Officer to exclude these amounts from the assessments of the assessee in all these three years. The revenue did not accept the findings of the Tribunal as correct. Several questions of law were sought for from the Tribunal to
D be referred out of the decision of the Tribunal under s. 256(1) of the Income Tax Act, 1961. The Tribunal refused to refer these questions. An application was made under s. 256(2) of the Act asking for reference on those questions from the High Court. The High Court also rejected the application and refused to call for a statement of case on those questions. Hence these appeals by sepcial leave.

E

Allowing the appeals,

HELD: 1. The High Court, in the facts and circumstances of the case, was in error in not directing a reference under s. 256(2) of the Act. Therefore, the judgment and order of the High Court, are set aside and
F the Tribunal is directed to send a statement of case for the three years involved within six months of the date of receipt of this order on the questions mentioned in this judgment. [44 C-D]

2. The Supreme Court in several decisions has laid down the following principles with regard to the scope of the jurisdiction of the High Court in directing reference on question of law where the decision
G rests primarily on appreciation of facts:

(i) When the point for determination was a pure question of law, such as construction of a statute or document of title, the decision of the Tribunal was open to reference to the Court.

H (ii) When the point for determination was a mixed question of law

and fact, while the finding of the Tribunal on the facts found was final, its decision as to the legal effect of those findings was a question of law which could be reviewed by the Court. A

(iii) A finding on a question of fact was open to attack under reference under the relevant Act as erroneous in law when there was no evidence to support it or if it was perverse. B

(iv) When the findings was one of facts, the fact that it is itself an inference from other basic facts will not alter its character as one of fact. [36 F-H; 37A]

Sree Meenakshi Mills Limited v. *Commissioner of Income-Tax, Madras,* 31 ITR 28, *Gouri Prasad Bagaria and Others* v. *Commissioner of Income-Tax, West Bengal,* 42 ITR 112, *I.C.I. (India) Private Ltd.* v. *Commissioner of Income-tax, West Bengal III,* 83 ITR 710, *Commissioner of Income-tax (Central), Calcutta* v. *Daulat Ram Rawatmull,* 87 ITR 349, *Commissioner of Income-tax, Bihar and Orissa* v. *S.R. Jain,* 87 I.T.R. 370, relied upon. C D

2. The question as to whether the donations alleged were given by the assessee were the moneys raised by the Trust as donations from various people or not should be considered in its proper perspective but does not seem to have been done. This is the most material portion and in not appreciating the material portion and discussing the evidence in respect of the same, there was non-consideration of a relevant factor on a factual aspect and on this the question is whether the Tribunal's decision was perverse in the sense that no man instructed properly at law could have acted as the Tribunal did, and secondly whether there was ignoring of all the materials and relevant facts in considering this aspect. There was also evidence on record as to who had collected it to a certain extent, but no evidence on the other aspect. Ignoring of that fact is a vital fact which influences the decision and a conclusion and must be judged in its proper perspective. Therefore, the questions which arise on this aspect are questions of law, and the High Court should have directed the statement of a reference. [41C-G] E F G

4. Regarding the ownership of 39,000 shares in Kalinga Tubes Ltd. issued in 1958, this involved determination of two issues: (a) whether the ostensible holders of these 39,000 shares were real owners or benamidars and if they were benamidars, who were the real holders. The Income-tax Officer was of the view, on facts suggested, that the H

A **seven persons were benamidars of the assessee, whether they are so or not and what is the effect of the said fact is another question. But these facts were not properly considered by the Tribunal to come to the conclusion as to whether, 39,000 shares of Kalinga Tubes Ltd. belonged to the assessee and not to the shareholders named.** [42 D-E; 43 E-F]

B CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1793-1798 (NT) of 1974.

From the Judgment and Order dated 5th April 1974 of the Orissa High Court in S.J.C. Nos. 211 to 216 of 1971.

C S.C. Manchanda, Ms. A. Subhashini, K.C. Dua and K.P. Bhatnagar for the Appellant.

Devi Pal, J.B. Dadachanji, K.K. Patnaik, Sukummaran, M. Seal, A.K. Verma, J. Peres and D.N. Mishra for the Respondent.

D P.N. Gupta and P.N. Mishra for Official Liquidator.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Whether, question of law referable to the High Court, arises out of the order of the Appellate
E Income-tax Tribunal in this case, is, the question that arises in these appeals by special leave from the decision of the Orissa High Court. Several questions of law were sought for from the Tribunal to be referred out of the decision of the Tribunal under section 256(1) of Income-tax Act, 1961 (hereinafter called the 'Act'). The Tribunal re-
F fused to refer these questions. An application was made under section 256(2) of the Act asking for reference on those questions from the High Court. The High Court rejected the applications and refused to call for a statement of case on those questions. This appeal by special leave is from the said decision of the High Court.

G It is not necessary to refer to all the questions that were pressed before the High Court because all these questions were not pressed before this Court.

The following questions were, however, canvassed before this Court:

H "1. Whether, the findings of the Appellate Tribunal, are

vitiated in law by reason of it having ignored relevant and admissible evidence and having relied on incorrect facts and mis-statement of facts? A

2. Whether, on the facts and in the circumstances of the case, the conclusion of the Tribunal that the Kalinga Foundation Trust came into existence in 1947 and that it was distinct from the Trust created by the assessee in 1949 logically followed from the materials on record or it was perverse in the sense that no reasonable man could come to it on the said materials? B

3. Whether, on the facts and in the circumstances of the case, in arriving at the finding that the Kalinga Foundation Trust had acquired property from donations from the public, the Tribunal erred in law in not giving due consideration to the several matters relevant for determination of the points which had been considered by the Income-tax Officer in the assessment order? C D

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the income from dividend shown in the name of the Kalinga Foundation Trust, the interest on the loans advanced in the name of the Kalinga Foundation Trust and all investments, remittance, receipts and actual payments in the name of Kalinga Foundation Trust did not belong to the assessee and should therefore be deleted from the assessment of the assessee? E

5. Whether, on the facts and in the circumstances of the case, there was any evidence in support of the Tribunal's findings that the assessee had collected donation from the public for the Kalinga Foundation Trust? F

6. If the answer to question 5 (rearranged by us) be in the negative, then whether the Tribunal was right in holding that the amounts donated by the assessee to the said Trust were satisfactorily explained and accordingly they were not to be included in the assessment of the assessee? G

7. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the revenue authorities were bound to accept the decision of the H

A Supreme Court in *S.P. Jain* v. *Kalinga Tubes Ltd.* as to the ownership of 39,000 shares of Kalinga Tubes, Ltd. in spite of the materials collected by the Income-tax Officer subsequent to the delivery of the judgment in the said case?

B 8. If the answer to question 7 (rearranged by us) be in the negative then whether the finding of the Tribunal that the persons in whose names the said shares stood were not the benamidar of the assessee was perverse and was arrived at without due consideration of the material considered by the Income-tax Officer in detail on the C point?"

The controversy in these appeals related to the various additions made by the revenue to the total income of the assessee relating to the assessment years 1962-63, 1963-64 and 1964-65. The assessee claimed in his assessment, deduction in respect of payments of interest on loans taken from Kalinga Foundation Trust and others and certain dividend D transactions relating to the shares of Kalinga Tubes Ltd.

While examining the evidence in support of these claims, the Income-tax Officer issued a detailed letter dated 17th October 1965 to the assessee informing him about the evidence available with the revenue against him and requesting him, *inter alia,* to produce evidence E and prove (i) that the cash credits appearing in his account in the name of Kalinga Foundation Trust were genuine and (ii) that 39,000 shares of Kalinga Tubes Ltd. standing in the names of B.K. Mall, Sm. Swaran Oberoi, Shri K.C. Dalai, Shri G.C. Patnaik, etc. were not really his own investment. After examining the assessee's evidence and on the F basis of documentary evidence and government records and on the basis of local enquiries made, the Income-tax Officer had come to the conclusion that no trust in the name of Kalinga Foundation Trust really existed and even if it existed, it had no funds of its own and that the name 'Kalinga Foundations Trust' was used by the assessee as a camouflage to put through his unaccounted money. Accordingly, all G cash credits appearing in the books of accounts of the assessee himself or in the books of other concerns or persons or remittances of actual payments in the name of trust were treated by the Income-tax Officer as moneys coming out of the undisclosed sources of the assessee and accordingly assessed the same as his income from undiscolsed sources. All interest and dividend received in the name of the trust were in- H cluded by the Income-tax Officer in the assessment of the assessee as

his own income. The Income-tax Officer was also of the opinion that the moneys advanced in the name of the trust to several persons in connection with the acquisition of 39,000 shares of Kalinga Tubes Ltd. which were issued in 1958, actually belonged to the assessee. Accordingly, the dividend of the said shares was treated as the income of the assessee and the expenses incurred in that connection were allowed as deduction. The persons in whose names the 39,000 shares of Kalinga Tubes Ltd. stood, were treated by the Income-tax Officer as benamindars of the assessee. Thus, in respect of the assessment years under consideration several items were included as income in the hands of the assessee on this score. It is not necessary to set out the items.

Against the orders of assessment, appeals were filed by the assessee before the Appellate Assistant Commissioner. As grievance was made before the Appellate Assistant Commisioner that there was violation of due opportunity being given to the assessee, the Appellate Assistant Commissioner disposed of the appeals by setting aside the assessments for the years under consideration and remanded the matters back, to Income-tax Officer to frame issues and give due opportunity to the assessee to cross-examine the witnesses in the light of the observations made in the order. Against the order of the Appellate Assistant Commissioner, the appeals were filed. A prayer was made that the appeals should be remanded back to the Appellate Assistant Commissioner. The Tribunal, however, disposed of the appeals on the relevant materials on record.

It was contended on behalf of the revenue before the Tribunal that the Kalinga Foundation Trust had come into existence as alleged in 1947 at a public meeting held at Killa Maidan, Cuttack and it was registered long thereafter on 28 November 1959. It was stated that the trust was genuine and it had sufficient funds obtained by donations and consequently was in a position to lend the amounts found credited in the assessee's books and in the books of other concerns. The accounting year followed by the said trust was the calendar year whereas the accounting year followed by the assessee was the financial year ending on 31st March 1962, 31st March 1963 and 31st March 1964, respectively for the three years in question. One of the points urged on behalf of the assessee was that if it was intended to use the trust as a camouflage, the accounting year of the Trust would have been the same as that of the assessee. It was further contended that the Minute Book and books of accounts were maintained by the Trust and that the Trust had its own written constitution by way of Memorandum and

A Articles of Association and Rules. The funds of the Trust were lying in trust with the Maharaja of Sonepur as he was the honorary Treasurer of the Trust. It was further pointed out on behalf of the assessee that the eminent persons were members of the Trust.

B On behalf of the revenue, it was, however, contended before the Tribunal that on the basis of the facts emerging on an examination of assessee's evidence and facts found on the basis of documentary evidence, the Appellate Assistant Commissioner should have confirmed the assessments. It was further stated by the revenue that local inquiries and oral testimony had been used by the Income-tax Officer to support the conclusions already arrived at on an examination of assessee's own evidence and corroborated by documentary evidence and therefore the Appellate Assistant Commissioner should not have set aside the assessment on the ground that the persons who were examined by the Income-tax Officer should have been allowed to be cross-examined by the assessee. It was submitted that the gist of the enquiries had been communicated to the assessee to enable him to meet the case against him and it was for the assessee to produce before the Income-tax Officer the persons who had collected the funds for the Kalinga Foundation Trust as the Income-tax Officer was not bound by the technical rules of evidence.

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D

E So far as the acquisition of 39,000 shares of Kalinga Tubes Ltd. was concerned, it was submitted by the revenue that it had collected evidence to prove that these shares were purchased by the assessee benami in the names of Shri B.K. Mall, Shri G.C. Patnaik, etc. It was pointed out by the revenue that the assessee had created a private registered Trust in 1949 out of his own properties having the same name as Kalinga Foundation Trust and that a reference to Kalinga Foundation Trust in some of the documents produced by the assessee was to this private trust and not to any public trust of the same name alleged to have been created at a public function.

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After considering the materials, the Tribunal held that the Kalinga Foundation Trust came into existence in 1947 and continued after its registration in 1959 under the same name and style and the fund of the Trust was built up by collection of donation from the public at large.

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It may be pointed out and we are of the opinion that this is the core of the controversy in this case, i.e., whether there was no evi-

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dence substantial or reliable produced to indicate who were the persons who had contributed to the Trust, how much they had contributed to the Trust, the identity and the credit-worthiness of the doners to the said trust.

It was contended on behalf of the assessee that the said trust which came into existence was a separate and distinct entity and the assessee was only holding an executive post in that trust. It was held by the Tribunal that seven persons who were designed by the Income-tax Officer as benamidars of the assessee for the purchase of the shares of M/s Kalinga Tubes Ltd. were not benamidars and the money required for the purchase of these shares had been raised by themselves. The Tribunal held that the investments made by the Trust in the assessee's group of industries or with the assessee were from its own resources and funds and such investments were guided by business expediency and prudence. The finding of the Tribunal is that the Trust was comprised of persons of public repute and the control and management of the trust styled as 'Kalinga Foundation Trust' were under the effective control of the Board of Trustees comprised of persons of public reputation. The Tribunal accordingly held that the income from interest, dividend, or any other usufruct arising out of the investments made by the trust in the various concerns and the investments of the Trust which were included in the assessments of the assessee in the years under reference should be excluded as appertaining to a separate and distinct entity and therefore directed the Income-tax Officer to exclude these amounts from the assessments of the assessee in all these three years. The revenue did not accept the findings of the Tribunal as correct as mentioned hereinbefore and sought reference to the High Court on several questions.

Before the questions involved in these appeals are considered, it is necessary to bear in mind the scope of the jurisdiction of the High Court in directing reference on question of law where the decision rests primarily on appreciation of facts. This question has from time to time troubled the courts—both the High Courts and this Court and several decisions have laid down the principles guiding such a situation. Though not exhaustive, these may be referred to as illustrations.

In Sree Meenakshi Mills Limited v. *Commissioner of Income-Tax Madras,* 31 I.T.R. 28, Venkatarama Ayyar, J. speaking for this Court said that findings on question of pure facts arrived at by the tribunal were not to be disturbed by the High Court on a reference unless it

A appeared that there was no evidence before the Tribunal upon which they, as reasonable men, could come to the conclusion to which they had come; and this was so, even though the High Court would on the evidence have come to a conclusion entirely different from that of the Tribunal. The Court laid down the following propositions: (a) such a finding can be reviewed only on the ground that there was no evidence B to support it or that it was perverse. (b) When a conclusion had been reached on an appreciation of a number of facts established by the evidence, whether that was sound or not must be determined, not by considering the weight to be attached to each single fact in isolation, but by assessing the cumulative effect of all the facts in their setting as a whole. (c) Where an ultimate finding on an issue was an inference to C be drawn from the facts, on the application of any principles of law, that would be a mixed question of law and fact, and the inference from the facts found would in such a case, be a question of law. But where the final determination of the issue equally with the finding or ascertainment of the basic facts does not involve the application of any principle of law, an inference from the facts cannot be regarded as one D of law. The proposition that an inference from facts was one of law was therefore correct in its application to mixed questions of law and fact, but no to pure question of fact. In the case of pure questions of fact an inference from the facts is as much a question of fact as the appreciation of the facts. Ayyar, J. noted that the observations contained in some judgments of the English Courts that what inference E was to be drawn from the proved facts was question of law referred to this distinction. The position that emerges from the decided cases was that:

(i) When the point for determination was a pure question of law, such as construction of a statute or document of title, the decision of F the Tribunal was open to reference to the Court.

(ii) When the point for determination was a mixed question of law and fact, while the finding of the Tribunal on the facts found was final, its decision as to the legal effect of those findings was a question G of law which could be reviewed by the Court.

(iii) A finding on a question of fact was open to attack under reference under the relevant Act as erroneous in law when there was no evidence to support it or if it was perverse.

H (iv) When the finding was one of fact, the fact that it is itself an

inference from other basic facts will not alter its character as one of fect. A

In *Gouri Prasad Bagaria and Others* v. *Commissioner of Income-Tax, West Bengal,* 42 I.T.R. 112, this Court held that when the assessee's statement was believed in a particular case and the finding of the Tribunal was based on that, then there was obviously material on which the finding of the Tribunal could be based; and to seek for other material was tantamount to saying that a statement made by an assessee was not material on which a finding could be given. The Tribunal having believed the assessee's statement, that was an end of the matter in so far as that fact was concerned, and if the finding was based upon a statement which was good material on which it could be based, no question of law really arose. B C

In *I.C.I. (India) Private Ltd.* v. *Commissioner of Income-tax, West Bengal III,* 83 I.T.R. 710, this Court observed that the jurisdiction in the matter of reference could be exercised: (i) when the point for determination was a pure question of law such as construction of a statute of document of title; (ii) when the point for determination was a mixed question of law and fact. While, however, the finding on facts was final, its decision as to the legal effect of those findings was a question of law. A finding on a question of fact was open to attack as erroneous in law when there was no evidence to support it or if it was perverse. When, however, the finding was one of fact, the fact that it was an inference from other basic facts would not alter its character as one of fact. D E

In *Commissioner of Income-tax (Central), Calcutta* v. *Daulat Ram Rawatmull,* 87 I.T.R. 349, this Court held that the onus of proving that the apparent was not the real was on the party who claimed it to be so. It is not necessary to discuss other details of the facts involved in that case. It is sufficient to note, however, as was observed by this Court that there should be some direct nexus between the conclusion of facts arrived at by the authority concerned and the primary facts upon which that conclusion was based. The use of extraneous and irelevant material in arriving at that conclusion would vitiate the conclusion of fact because it is difficult to predicate as to what extent the extraneous and irrelevant material had influenced the authority in arriving at the conclusion of fact. Findings on questions of pure fact arrived at by the Tribunal were not to be disturbed by the High Court on a reference unless it appears that there was no evidence before the F G H

A Tribunal upon which they, as reasonable men, could come to the conclusion to which they have come; and this was so even though the High Court would on the evidence have come to a conclusion entirely different from that of the Tribunal. In other words, such a finding could be reviewed only on the ground that there was no evidence to support it
B or that it was perverse. Further, when a conclusion had been reached on an appreciation of a number of facts, whether that was sound or not must be determined, not by considering the weight to be attached to each single fact in isolation, but by assessing the cumulative effect of all the facts in their setting as a whole. When a court of fact acted on a material partly relevant and partly irrelevant, it was impossible, this Court observed, to say to what extent the mind of the court was
C affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arose. Likewise, if the court of fact based its decision partly on conjecture, surmises and suspicions and partly on evidence, in such a situation an issue of law arose.

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In *Commissioner of Income-tax, Bihar and Orissa* v. *S.P. Jain,* 87 I.T.R. 370, this Court noted that the questions referred to the High Court did not challenge the validity of the findings in that case given by the Tribunal, as the Tribunal had failed to take into account the relevant material on record in arriving at its finding and had further acted
E on inadmissible evidence and misread the evidence and based its conclusion on conjectures and surmises, the court could ignore the findings of the Tribunal and re-examine the issues arising for decision on the basis of the material on record. This Court further reiterated that the High Court and this Court had always the jurisdiction to interfere with the findings of the Appellate Tribunal if it appeared that either the
F Tribunal had mis-understood the statutory language, because the proper construction of the statutory language was a matter of law, or it had arrived at a finding based on no evidence, or where the finding was inconsistent with the evidence or contradictory of it, or it had acted on material partly relevant and partly irrelevant or where the Tribunal drew upon its own imagination and imported facts and circumstances not
G apparent from the record or based its conclusions on mere conjectures or surmises or where no person judicially acting and properly instructed as to the relevant law could have come to the determination reached. In all such cases the findings arrived at were vitiated. This Court further observed that "Any crystallization of the view of this Court and its reluctance to interfere with the findings of the fact should
H not make the Tribunals or the Income-tax authorities smug in the

belief that as the courts do not interfere with the findings which form the bed-rock upon which the law will be based they can act on that assumption in findings facts or by their mere *ipse dixit* that they are findings of fact wish it to be so assumed irrespective of whether they are sustainable in law or on the materials on record".

Now in the instant case, as mentioned hereinbefore, the first three questions challenge the genuineness of the donations alleged to have been contributed by the Kalinga Foundation Trust alleged to have come into existence as separate organisation at a public meeting in 1947 and the donations collected therefrom and the next question, i.e., question No. 4 challenges the finding that the dividend shown in the name of Kalinga Foundation Trust and the interest and loans in the name of Kalinga Foundation Trust did not belong to the assessee. The basic question is a next question—whether the assessee had collected donations from the public. If the answer to that question is that it was from the public, the second aspect is whether the revenue is bound to accept the decision of this Court in *S. P. Jain* as to ownership of 39,000 shares, in view of the materials collected by the Income-tax Officer subsequent to the delivery of the judgment in this case.

Apparently the identity of the doners to the Trust has not been established and a large amount of materials have been collected subsequent to the decisions of this case in *S. P. Jain*'s case which had been adverted to be the Income-Tax Officer and to which our attention was drawn. These did not appear to have received consideration by the Tribunal.

We were taken through the evidence on record exhaustively about the foundation of the Trust. We were taken through the evidence as to who were present at the time of the inauguration of the Trust and whose evidence were there, there was a public meeting and whether this Trust was separate from the other Trust or not, whether particular persons were present or not; they are all set out in the orders of the Tribunal as well as the Income-tax Officer. It is not necessary at this stage for the purpose of disposing of these appeals to exhaustively discuss this.

The revenue has pointed out to the Tribunal as appears in para 22 at page 159 of the Tribunal's order that there was omission of adjustment of entries. The Tribunal has held that the Income-tax Officer and completely ignored the fact that the assessee has not

made this contribution plus Rs.1,29,331 which was one point at issue, out of his own funds but had deposited only the amount which he had collected from various persons and hence the question of showing this amount in the books of the assessee did not arise.

This is however begging the question; was there any material that the collectors had collected these amounts from various persons, if so, who were those persons and if so, whether they were capable of making these contributions? This, in our opinion, is the core question. The significant fact has to be borne in mind that the Trust kept the money with the Maharaja of Sonepur without earning any interest. Apart from any question whether there was any scope of any application of section 20 of the Trust Act or not, such a conduct was highly improbable according to the revenue. The explanation of the assessee about the nature and source of various cash credits was that these were loans from Kalinga Foundation Trust. It was claimed that there was a society of the name of Kalinga Foundation Trust. This society, it was maintained, had received large amounts as donations but for over a decade, these donations were lying in cash and were not invested anywhere. These were not even deposited in any bank. It was explained that it was only from 1958 that the society had started investing its funds with Shri Patnaik and the concerns with which he was associated. This, it was urged by the revenue, was *prima facie* unacceptable for *inter alia,* the following reasons:

(1) Funds exceeding a crore of rupees were claimed invariably to have been received in cash.

(2) These were also claimed to have remained uninvested and the cash was said to have been lying idle all these years.

(3) There was no tangible evidence of the existence of any part of these funds prior to 1958.

(4) Although the Society is claimed to have been in existence from 1947, it did not apply for exemption under the Income-tax Act.

(5) Although the funds were said to have been collected all over Orissa yet there was no evidence of the money being brought from different places from Orissa to Cuttack.

(6) There was no evidence of any receipt issued to the alleged donors. No lists of donors were maintained or supplied.

These important factors were pointed out to the assessee and no explanation was offered by the assessee. The assessee had sought to give an appearance of truth to the explanation offered and relied on certain letters. But there appears to be no evidence as to who were the persons from whom the money was collected, how was the money received and how was the money invested? This is conjunction with other factors, in our opinion, raises a question whether the Tribunal had acted without material evidence.

It is not necessary nor it is proper at this stage for this Court to express any opinion whether on these facts what conclusion should properly be drawn but the basic question, in our opinion, on the first aspect of the matter as to whether the donations alleged were given by the assessee were the moneys raised by the Trust as donations from various people or not remains. That question, in our opinion, should be considered in its proper perspective but does not seem to have been done. This is the most material portion and in not appreciating the material portion and discussing the evidence in respect of the same, in our opinion, there was non-consideration of a relevant factor on a factual aspect and on this the question is whether the Tribunal's decision was perverse in the sense that no man instructed properly at law could have acted as the Tribunal did, and secondly whether there was ignoring of all the materials and relevant facts in considering this aspect, do arise.

So far as the first aspect of the question is concerned, it is true that names of some collectors of money were given and some particulars were given but the persons from whom donations were collected, their particulars were not supplied nor examined nor were they produced to prove the genuineness of their donations, their capacity to make the donations. So the question remains whose money was donated by whom? There was evidence on record as to who has collected it to a certain extent, but no evidence on the other aspect. In our opinion, ignoring of that fact is a vital fact which influences the decision and a conclusion and must be judged in its proper perspective. Therefore, the questions which arise on this aspect are questions of law, on the principles enunciated by this Court in the decisions noted hereinbefore.

The second aspect is about 39,000 shares of Kalinga Tubes Ltd.—whether these belong to the assessee. The Revenue's contention was that Kalinga Tubes Ltd. was controlled by Shri B. Patnaik and

A Shri Loganathan and in 1954, the company was in need of capital and those two persons came to be introduced to Shri S.P. Jain.

Early in 1956, the three groups considered the desirability of extending the business. This was converted into a public limited company. In 1956 when the company was still a private limited company, a request was made to the Controller of Capital Issues for raising the capital of the company and at a meeting held on 29th March 1958, resolution was moved and the move of Jain group was defeated. To appreciate this contention, the assessee asserted that Messrs. Kalinga Tubes Ltd. needed funds for capital expansion. The company was converted into a public limited company and Articles of Association were suitably amended. The company also made an application to the Controller of Capital Issues for the sanction of issue of further shares to the extent of Rs.39,00,000 at the General Meeting of the shareholders. The company decided to issue the new shares to the members of the public.

Regarding the ownership of 39,000 shares in Kalinga Tubes Ltd. issued in 1958, this involved determination of two issues: (a) whether the ostensible holders of these 39,000 shares were real owners or benamidars and if they were benamidars, who were the real holders? The company was incorporated as a private limited company in 1950. From 1950 to 1954, it was controlled by Shri Biju Patnaik and Shri Loganathan. In 1954, the company was in need of capital and these two persons came to be introduced to Shri S.P. Jain. There was some agreement between Shri Jain and the existing shareholders. The Memorandum of Agreement was drawn up in July, 1954. According to this agreement, Patnaik, Loganathan and Jain group were to be equal shareholders of the company. Early in 1956, the three groups considered the desirability of extending the business and obtaining loan from Industrial Finance Corporation. The Industrial Finance Corporation did not give loan to private limited companies and, therefore, the company was converted into a public limited company in January 1957. In September 1956, when the company was still a private company, a request was made to the Controller of Capital Issues for raising the capital of the company. It is further stated that at a meeting held on 29th March 1958, Shrimati Gyan Patnaik, wife of Shri B. Patnaik moved a resolution providing that 39,000 shares should not be offered or allotted to the existing shareholders or to the public. Shri S.L. Aggarwal of the Jain group, however, moved a resolution which provided that the 39,000 shares be offered to the existing shareholders of

the company in proportion to their shareholdings. The resolution further provided that if the offer was not accepted by the existing shareholders within 15 days, the offer would be deemed to have been declined.

It appears that on 18th April 1958, Shri S.P. Jain filed a suit. The suit was decided against the Jain group. But Shri S.P. Jain filed a complaint under sections 397, 398, 402 and 403 of the Indian Companies Act. An appeal was preferred from single judge's judgment to the division bench. There was appeal to this Court. There is an observation in the judgment of Burman, J. of the Orissa High Court to the following effect:

> "In the present case, it is clear that the allotments, of the said 39,000 shares to the seven persons were not in interest of the Company, because records, including the balance sheets, show that even by 1960 share moneys Rs.39 lakhs were not realised from the said allottees. Although, it was given out, by those in the management of the Company, that the Company was in urgent need of funds, the said allotments of 39,000 new shares did not however bring immediate funds to the company."

The Income-tax Officer was of the view that the facts suggested that the seven persons were benamidars of Shri Patnaik, whether they are so or not and what is the effect of the decision of this Court on this point is another question. But these facts were not properly considered by the Tribunal to come to the conclusion as to whether 39,000 shares of Kalinga Tubes Ltd. belong to the assessee and not to the shareholders named. The details of this are in Annexure 'B' to the Income-tax Officer's order.

The Income-tax Officer has categorically found that Shri Mall was not assessed to Income-tax as an individual. He was assessed as a member of the joint family on an income of Rs.15,000 to Rs.17,000. The total wealth of the family was about half a lakh. It was not possible to purchase shares of the face value of Rs.9 lakhs on his own. The shares from 1959 to 1964 had gradually appreciated in value. In other words even after deducting the loan incurred by acquiring these shares, the net worth of these shares during 1959 to 1967 was Rs.2½ lakhs to Rs.7½ lakhs. Shri Mall never filed his wealth-tax return which clearly showed that nowhere shares were treated as his own. These and

A other factors taken in conjunction led the Income-tax Officer to the conclusion that 39,000 shares belonged to Shri B. Patnaik. In that view of the matter the materials gathered by revenue subsequent to the decision in *S.P. Jain*'s case on the aforesaid lines should have been appreciated and considered by the Tribunal.

B In our opinion therefore on the principles enunciated by this Court in several decisions mentioned hereinbefore, these questions as questions of law mentioned above do arise.

In our opinion the High Court, in the facts and circumstances of the case, was in error in not directing a reference on the abovenamed C questions to the High Court under section 256(2) of the Act.

The judgment and order of the High Court are, therefore, set aside. We direct the Tribunal to send a statement of case for the three years involved within six months of the date of receipt of this order on the questions mentioned hereinbefore to the High Court at Cuttack. D Let the records be sent to the Tribunal immediately through the High Court. As the matter is very old, the reference when made should be disposed of as quickly as possible.

The costs of these appeals will abide by the ultimate order made in the reference. E

M.L.A. Appeals allowed.