

(1997) 06 KL CK 0016

High Court Of Kerala

Case No: Income-tax Reference No's. 90 of 1993 and 147 of 1995

P.K. Narayanan

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: June 10, 1997

Acts Referred:

- Income Tax Act, 1961 - Section 132, 132(4A), 256

Citation: (1997) 142 CTR 381 : (1998) 229 ITR 596

Hon'ble Judges: K.K. Usha, J; G. Sivarajan, J

Bench: Division Bench

Advocate: M. Pathrose Mathai, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

G. Sivarajan, J.

In I. T. R. No. 90 of 1993, the Income Tax Appellate Tribunal has referred the following two questions u/s 256(1) of the Income Tax Act for the decision of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income from Archana Jewellery whose ostensible owner was A.N. Chellappan was liable to be assessed in the hands of the assessee for the assessment year 1983-84 ?

2. Whether the income from Archana Jewellery business run by A.N. Chellappan under statutory licence issued by the Central excise authorities and controlled by them is liable to be treated as income of the assessee ?"

2. In I. T. R. No. 147 of 1995, the Income Tax Appellate Tribunal has referred the following two questions as directed by this court as per judgment dated September 19, 1994, in O. P. No. 10711 of 1991 u/s 256(1) of the Income Tax Act :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income from Archana Jewellery whose ostensible owner was A.N. Chellappan was liable to be assessed in the hands of the assessee ?

2. Whether the income from Archana Jewellery business run under licence issued and controlled by the Central excise authorities is liable to be treated as income of the assessee and assessed at his hands when the licence stands in the name of another ?"

3. Though the questions in I. T. R. Nos. 90/1993 and 147 of 1995 are couched in a slightly different manner, the question that is raised is as to the assessability of the income from Archana Jewellery in the hands of the assessee.

4. The matter arises under the Income Tax Act. The assessment years concerned are 1983-84 and 1980-81 and the relevant accounting periods ended March 31, 1983, and March 31, 1980, respectively. The assessee is an individual. He was an abkari contractor. He was also having other businesses. For the assessment year 1980-81, the assessee filed a return of income on December 2, 1980, declaring an income of Rs. 16,340. He also admitted an agricultural income of Rs. 3,500. There was a search of the residential and business premises of the assessee on January 29, 1982, u/s 132 of the Income Tax Act. Certain incriminating documents and books of account were seized in such raid. Based on the materials recovered in such raid the assessing authority rejected the return and accounts of the assessee and completed the assessment on a total income of Rs. 5,82,760 as against the admitted income of Rs. 19,840. While doing so, the assessing authority had included a sum of Rs. 1,38,348 being the income from Archana Jewellery, M. G. Road, Ernakulam. Aggrieved by the assessment order for the year 1980-81, the assessee took up the matter in appeal before the Commissioner of Income Tax (Appeals), Calicut, who by his order dated March 1, 1984, inter alia, held that the inclusion of the income from Archana Jewellery at the hands of the assessee is unwarranted and directed exclusion of the same from the total income of the assessee. For doing so, the Commissioner of Income Tax (Appeals) relied on the decision of the Commissioner of Income Tax (Appeals), dated February 19, 1983, for the assessment year 1979-80. The Department took up the matter in appeal before the Income Tax Appellate Tribunal, Cochin Bench. The Tribunal also by following its earlier decision in the case of the assessee himself for the assessment year 1979-80 in I. T. A. No. 275/ Coch. of 1983 reversed the findings of the Commissioner of Income Tax (Appeals) and restored the order of the assessing authority holding that the income from Archana Jewellery, Ernakulam, is exigible to tax in the hands of the assessee. It is against this order of the Income Tax Appellate Tribunal, Cochin Bench, that the assessee has sought reference and this court by judgment dated September 19, 1994 in O. P. No. 10711 of 1991 has directed the Tribunal to refer the two questions specified in paragraph 1 of the judgment which is the subject-matter of I. T. R. No. 147 of 1995.

5. Similarly, for the assessment year 1983-84, the assessee filed a return of income declaring a net loss of Rs. 9,090. The assessing authority rejected the return of income and determined the total income at Rs. 82,350. While doing so the assessing authority included a sum of Rs. 14,993 being the income from the business of Archana Jewellery on the basis of the findings arrived at for the assessment year 1979-80. Aggrieved by the assessment order, the assessee took up the matter in appeal before the Deputy Commissioner Of Income Tax (Appeals), Trivandrum, who by his order dated December 14, 1989, inter alia, directed the exclusion of the income from Archana Jewellery in the assessment of the assessee following his decision in I. T. A. No. 12-SPL/CIT of 1984-85 in the case of the assessee for the assessment year 1981-82. The assessee filed an appeal against the order of the Commissioner of Income Tax (Appeals) on some other issue as I. T. A. No. 235/Coch. of 1990, wherein the assessee challenged the findings of the Commissioner of Income Tax (Appeals) directing deletion of income from Archana Jewellery in the assessment of the assessee (sic). The Department filed a cross objection No. 19/Coch of 1990 in the said appeal. The Income Tax Appellate Tribunal following its earlier decisions in I. T. A. Nos. 324, 325 and 326/Coch. of 1986 relating to the assessment year 1981-82 and 1982-83 which in turn relied on its earlier decision in I. T. A. No. 627/ Coch. of 1984 relating to the assessment year 1980-81 cancelled the findings of the Commissioner of Income Tax (Appeals) and restored the findings of the assessing authority regarding the inclusion of the income from Archana Jewellery in the hands of the petitioner. It is against this order of the Income Tax Appellate Tribunal that the assessee has sought reference of the two questions specified in paragraph 1 of this judgment and the Tribunal has referred the same for decision of this court, which is the subject-matter of I. T. R. No. 90 of 1993.

6. As already stated, the only question that arises for consideration in this case is as to whether the business of Archana Jewellery, Ernakulam, which admittedly stands in the name of one A.N. Chellappan in whose name licence has been obtained under the Gold (Control) Act, belongs to the assessee and as to whether the income from the said business can be included in the assessment of the assessee.

7. Since in both these cases, the assessing authority, the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal had relied on and followed their earlier decisions in the case of the assessee for the assessment years 1979-80 and 1981-82, it is necessary to refer to those proceedings. It appears that the business of Archana Jewellery, Ernakulam, was started during the accounting period relevant to the assessment year 1979-80. There was a search of the residential as well as the business premises of the assessee on January 29, 1982, and certain documents and other incriminating materials were seized from the said premises. Among the said records there was an agreement dated September 5, 1978, intended to be executed between one Sri A.N. Chellappan Achari residing along with the assessee and one Sri A.G. Ramesh residing at Ernakulam duly signed by Sri A.N. Chellappan Achari. In the said agreement, it is written that the lease agreement

executed by Sri A.N. Chellappan Achari (gold licensee) is for and on behalf of the assessee, Sri P.K. Narayanan. This agreement is for the purpose of doing gold business at door No. 919-A-3 in Ward No. 36 in Ernakulam village in the name of Archana Jewellery.

8. The lease agreement was for a period of three years from September 5, 1978. A sum of Rs. 5,000 was also given as advance to the landlord being the rent up to August 16, 1978. The stamp paper of Rs. 3 was purchased on August 18, 1978, in the name of Sri A.N. Chellappan Achari, Mamangalam. Another piece of evidence relating to the gold business (item marked as 20/37) at the time of seizure was also obtained from the bed room of the assessee according to which the total value of 15,134.40 gms of gold valued at Rs. 124 per gram was Rs. 18,76,628.40. The slip also refers to making charges, pagady, kuri collection, Cochin Bank S.B. account due and the cheques issued. The assessee was asked to give the details regarding the purchase of gold and also to whom he issued cheque for Rs. 6,11,293.97. The assessee filed a reply to the following effect :

"I have no connection with the business of Archana Jewellery. My wife, Smt. Dayavathi, has advanced some money to them and my nephew (brother's son), Sri B.D. Sathyan, is an employee of Archana Jewellery who used to stay with me. Shri A.N. Chellappan is my neighbour. As he was not known to Mr. A.G. Ramesh he was reluctant to give a room in his building for lease. As requested by Mr. A.N. Chellappan, I took the room from Mr. A.G. Ramesh and had given it to Mr. Chellappan. I do not find anything in the alleged slip to show that it has any connection with me. I am not a partner in Jewellery as alleged by you."

9. The assessing authority in the assessment for the year 1979-80 also noted the fact that Sri A.N. Chellappan Achari had filed two affidavits, one dated July 15, 1978, before the First Class Judicial Magistrate and copy of which was furnished to the Income Tax Officer also, and another dated September 18, 1981, filed before the Income Tax Officer, B-Ward, Ernakulam. From the details contained in the two affidavits, the Income Tax Officer came to the conclusion that Sri A.N. Chellappan Achari is a man of straw and had no capacity to contribute any capital for doing the business in the name of "Archana Jewellery". The assessing authority also noted that the seized records indicate that Archana Jewellery had taken loans from. Bank of Cochin ; the outstanding balance to Bank of Cochin amounted to Rs. 2,80,192 as on March 31, 1979 ; that the bank account of the business in the Bank of Cochin was originally opened and operated by the assessee; the properties offered for the loan from Bank of Cochin taken by Sri Chellappan are those of the assessee or of his wife or of his close relatives; the first man who has stood as guarantor to the loans advanced is the assessee himself, the bank had granted open cash credit facility on the security of guarantee executed by the assessee and 18 others and subsequently all the 18 persons have withdrawn from the guarantee and the assessee became the sole guarantor. The assessing" authority also noted that contrary to what is stated in

his reply extracted above, the assessee himself has given a loan to Sri Chellappan Achari and it is reflected in the Parur Central Bank account (O.D.6) and the books of P.K. Narayanan and Co., Palarivattom, in which he is the managing partner.

10. From all the above, the assessing authority came to the conclusion that the assessee had interest in the business of Archana Jewellery done in the name of Sri A.N. Chellappan. The assessing authority also noted the fact that under Rule 2(b) of the licensing of dealers under the Gold (Control) Act, 1968, only a person who is holding a licence can do gold business and that Sri A.N. Chellappan Achari was holding the licence and for the purpose of doing the business by Sri P.K. Narayanan his name is used. But the business in fact belongs to the assessee. For arriving at the said conclusion, he also relied on the slips showing transactions relating to gold regarding purchase of gold ornaments and sale of new gold ornaments which were found from the assessee's residence particularly some of them found from the assessee's bed room itself. The assessing authority ascertained that the assessee was introducing and withdrawing large sums of money from the business. From all the above, the assessing authority came to the conclusion that the initial capital contribution, control and management and also use of the funds of the business are with the assessee and that the assessee is the real owner of the business. Accordingly, he included the income from Archana Jewellery in his assessment. Against the assessment order from 1979-80, the assessee filed appeal before the Commissioner of Income Tax (Appeals), Ernakulam. One of the grounds in the appeal related to the inclusion of the income from Archana Jewellery in his assessment. The appellate authority observed that "the only ground on which the addition has been made appears to be that the appellant's wife has advanced money to the proprietor of Archana Jewellery and certain papers indicating transactions of Archana Jewellery in the form of purchase of old jewellery were found at the residence of the appellant. This, I am unable to accept as sufficient reason for coming to the conclusion that Archana Jewellery is owned by the appellant and the income has been derived therefrom. The documents seized from the appellant's residence did not raise any presumption regarding the ownership of this by the appellant. The addition is therefore not justified and the same is deleted. Total income is reduced by Rs. 20,580."

11. The Department took up this matter in appeal before the Tribunal as I. T. A. No. 375/Coch. of 1983. While the assessee has taken up certain other matters in appeal, both the appeals were heard and disposed of by the Tribunal by a common order. The Tribunal considered the question very elaborately and came to the conclusion that the assessee is the real owner of the business of Archana Jewellery, and that Sri A.N. Chellappan is only a name lender. Accordingly, the finding of the Commissioner of Income Tax (Appeals) on this point was vacated and the order of the assessing authority on this point was restored. The reasoning of the Tribunal is contained in paragraph 15 of the appellate order of the Tribunal, which is marked as annexure D in I. T. R. No. 147 of 1995, and reads as follows :

"15. We have considered the rival submissions. From the statement of A.N. Chellappan on September 18, 1981, it is seen that Sri Chellappan has not (sic) obtained 3 1/2 cents as kudikidappukaran and that he constructed a small house on the said land in 1979 spending Rs. 15,000, presumably savings from his income as goldsmith for about five years. He had no other property apart from this house. From this it is clear that Shri Chellappan is not a man of sufficient means to own and run the business of Archana Jewellery, having business of the magnitude of several lakhs of rupees. The document dated September 5, 1978, clearly shows that the lease of the shop was for and on behalf of Shri P.K. Narayanan, the assessee. The assessee's counsel could not explain why it is mentioned in the said document that the lease was for and on behalf of Shri P.K. Narayanan, if it was really meant for A.N. Chellappan. The assessee was instrumental in obtaining a huge open cash credit facility of Rs. 2 lakhs from the Bank of Cochin for Archana Jewellery. In the beginning the assessee was one of the 19 guarantors. Later on, 18 of the guarantors withdrew and the assessee remained as the sole guarantor. But for the assessee's guarantee, the loan could not have been sanctioned by the Bank of Cochin to Shri A.N. Chellappan. The assessee's wife also advanced loans to this business of Archana Jewellery. Further, P.K. Narayanan and Co., of which the assessee is the managing partner had advanced a loan of Rs. 1,00,000 without charging any interest. Added to this a heavy amount of Rs. 1,50,000 was drawn by the assessee from the said Archana Jewellery on March 5, 1980. If, as submitted, the assessee was not having any connection with Archana Jewellery, he could not have withdrawn such a huge amount of 1 1/2 lakhs rupees from the business of Archana Jewellery. In fact, the bank account of Archana Jewellery 0044 was operated by P.K. Narayanan, the assessee. The assessee's counsel could not also satisfy us as to how and why P.K. Narayanan operated this bank account of Archana Jewellery if he had no connection with the shop. To cap all these, the paper containing transactions of gold running to Rs. 18,76,628, pagady of Rs. 6,00,000, issue of cheque of Rs. 6,11,293 was found in the bed room of the assessee at the time of search. It is inconceivable as to how this paper found its way to the bed room of the assessee if the assessee was not in any way connected with the business of Archana Jewellery. In our opinion, the Income Tax Officer had brought out sufficient materials and convincing reasons for coming to the conclusion that the assessee is the real owner of the business of Archana Jewellery and that A.N. Chellappan is only a name lender. So the Income Tax Officer was justified in adding Rs. 20,580 as the income from Archana Jewellery in the assessee's hands and the Commissioner of Income Tax (Appeals) was not justified in deleting this addition. We restore the addition of Rs. 20,580 made by the Income Tax Officer."

12. As already stated, this finding of the Tribunal was followed in the appeal for the assessment year 1980-81, which is the subject-matter of I. T. R. No. 147 of 1995: Again for the assessment years 1981-82 and 1982-83 also, the earlier orders of the Tribunal were followed. For the assessment year 1983-84 also, which is the

subject-matter of I. T. R. No. 90 of 1993, the Tribunal followed the earlier decision for the assessment years 1982-83 and 1983-84.

13. The main reasoning for arriving at the conclusion that the assessee is the real owner of the business of Archana Jewellery and that Sri A.N. Chella"ppan Achari is only a name lender is contained in the appellate order of the Tribunal for the assessment year 1979-80. We have already dealt with the findings of the assessing authority, the first appellate authority and also extracted the findings of the Tribunal for arriving at the above conclusion in the preceding paragraphs.

14. The main factors for arriving at the conclusion that the assessee is the real owner of Archana Jewellery are : (i) Sri Chellappan Achari, who is the ostensible owner of the business of Archana Jewellery, has not invested any capital in the business, that Sri Chellappan Achari is not a man of sufficient means to own and run the business of Archana Jewellery having business of the magnitude of several lakhs of rupees ; (ii) the document dated September 5, 1978, seized from the residence of the assessee clearly shows that the lease of the shop room was for and on behalf of the assessee ; (iii) the assessee was instrumental in obtaining a huge open cash credit facility of Rs, 2,00,000 from the Bank of Cochin for Archana Jewellery. The assessee was one of the nineteen guarantors and later the assessee remained the sole guarantor. The assessee's wife also advanced loans to the business. The assessee had given loan of Rs. 1,00,000 without charging any interest. The assessee has withdrawn a sum of Rs. 1,50,000 from the business of Archana Jewellery on March 5, 1980. Factually the bank account of Archana Jewellery 00-14 was operated by Sri P.K. Nara-yanan, the assessee ; and (iv) the paper containing transactions of gold amounting to Rs. 18,76,628.40, pagady Rs. 6,00,000 and the issue of cheque for Rs. 6,11,293.97 were found in the bedroom of the assessee at the time of search. According to the Tribunal, it is inconceivable as to how this paper found its way to the bed room of the assessee, if the assessee was not in any way connected with the business of Archana Jewellery.

15. It is an admitted fact that the appellate order of the Tribunal for the assessment year 1979-80 has become final since the assessee has not taken up the matter under reference before this court. It is so stated by the assessee himself in the enclosure to the reference application for the assessment year 1983-84. It is also not known whether the assessee has taken up the Tribunal's order for the assessment years 1981-82 and 1982-83 in reference before this court. But this question arises for consideration in these two reference cases for the assessment years 1980-81 and 1983-84. It is also pertinent to note that the assessee has not adduced any material other than what is available for the year 1979-80 in the proceedings and the assessing authority, the first appellate authority and the Tribunal had followed their respective orders for the earlier years.

16. Sri M. Pathrose Mathai, learned counsel for the assessee, strongly contended that the Tribunal in these cases have held that the business of Archana Jewellery,

which apparently stands in the name of Sri A.N. Chellappan Achari actually belonged to the assessee and that Sri Chellappan Achari was only a name-lender. It is submitted by learned counsel that the Appellate Tribunal arrived at the above conclusion on irrelevant materials and that the Tribunal did not bear in mind the relevant principles for deciding the question of benami and also the relevant facts and circumstances, namely, that business in gold jewellery can be conducted only by a holder of licence under the provisions of the Gold (Control) Act and the Rules and Sri A.N. Chellappan Achari, who is the ostensible owner of the business of Archana Jewellery was a goldsmith holding such a licence and that the assessee had no such licence for conducting any gold business. Learned senior counsel also submitted that the income from the business of Archana Jewellery Was assessed in the hands of Sri A.N. Chellappan Achari as its proprietor. He submitted that the Tribunal did not bear in mind or apply the principles laid down by the Supreme Court for determining the benami nature of the transaction and also was carried away by irrelevant considerations. Learned counsel relied on the decisions of the Supreme Court in [SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.](#) and also the decision in [Commissioner of Income Tax \(Central\), Calcutta Vs. Daulat Ram Rawatmull,](#) , and submitted that the principles laid down by the Supreme Court in the above mentioned two cases have not been adverted to or applied in deciding the issue. Learned counsel submitted that the materials on record will clearly show that Sri A.N. Chellappan Achari was the owner of the business of Archana Jewellery and submitted that none of the above facts and circumstances are inconsistent with the ownership of the business of Archana Jewellery. These facts and circumstances by themselves are not sufficient to hold that the business of Archana Jewellery in fact belonged to the assessee. He submitted that though the findings of the Tribunal regarding the benami nature of the business appeared to be in the nature of findings of fact, the non-consideration of the principle regarding the nature of the transaction vitiates the said findings and that the findings arrived at by the Tribunal without considering the relevant principles are illegal, unsustainable and, therefore, the order of the Tribunal is to be set aside.

17. Learned counsel for the assessee also submitted that the fact that the assessee has not challenged the findings of the Tribunal on this question for the assessment year 1979-80 will not operate as res judicata. Learned counsel submitted that the principles of res judicata will not apply to the proceedings under the Income Tax Act. He submitted that even assuming that the principles of res judicata will apply to the Income Tax proceedings also, the order of the Income Tax Tribunal rendered for the year 1979-80 will not in any way disentitle this court from considering the question, for, an order of the Income Tax Appellate Tribunal cannot operate as res judicata in proceedings for the subsequent year which come before this court for its decision. Learned counsel relied on the decision of this court in [Commissioner of Income Tax Vs. Kalpetta Estates Ltd.,](#) .

18. Sri P.K.R. Menon, learned senior Central Government standing counsel, strongly contended that the Income Tax Appellate Tribunal on a consideration of the evidence available on record and the particular facts and circumstances of the case found as a fact that the business of Archana Jewellery belonged to the assessee and that Sri A.N. Chellappan Achari was only a name lender. Learned senior counsel submitted that this court sitting in advisory jurisdiction u/s 256(1) of the Income Tax Act will interfere with the findings of fact arrived at by the final fact-finding authority, namely, the Tribunal, only in a case where the findings are not supported by any evidence or the findings so arrived at are perverse or unreasonable. Learned counsel also submitted that the assessee has not specifically challenged the various findings of fact arrived at by the Tribunal. He submitted that the Tribunal for arriving at the conclusion has relied on the seized materials particularly the slips regarding the business transaction of Archana Jewellery found in the bedroom of the assessee which clearly indicated the connection of the assessee with the business of Archana Jewellery apart from the various other facts and circumstances. Learned counsel further submitted that the provisions of Section 132 of the Income Tax Act under which where any books of account, other documents, money, bullion, jewellery or other valuable articles or things are or is found in the possession or control of any person in the course of a search it may be presumed that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person ; that the contents of such books of account and other documents are true. On the basis of the aforesaid provision; he submitted that the burden is on the assessee to rebut the presumption available under the said section by adducing evidence that the materials seized from the bed room of the assessee do not belong to him. Learned senior counsel finally submitted that the finding arrived at by the Tribunal regarding the ownership of Archana Jewellery is a pure finding of fact and that it cannot be said that the aforesaid finding is not supported by any evidence or that the said finding is in any way perverse or unreasonable. In support of his contention that a finding of fact not specifically challenged cannot be allowed to be canvassed, learned counsel relied on the decisions of the Supreme Court in [Karam Chand Thapar and Bros. P. Ltd. Vs. Commissioner of Income Tax, \(Central\), Calcutta,](#) and in [Karnani Properties Ltd. Vs. The Commissioner of Income Tax, West Bengal,](#) . He also relied on the decision of the Supreme Court in [SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.,](#) , in support of his submission that the finding of fact arrived at by the Tribunal cannot be interfered with in reference u/s 256(1) of the Income Tax Act.

19. After due consideration of the question in the light of the respective contentions raised by the parties and the legal position contained in the decisions of the Supreme Court mentioned above, we are of the view that there is no case for taking a different view than the one taken by the Tribunal. The Tribunal, according to us, found as a fact on relevant and cogent materials that the business of Archana Jewellery in fact belonged to the assessee and that Sri A.N. Chellappan Achari was

only a name-lender.

20. As already stated, apart from the fact that Sri A.N. Chellappan Achari is a licensee under the Gold (Control) Act, for the purpose of doing the business in jewellery he had no means to start or to conduct a business of the dimension carried on in Archana Jewellery, Ernakulam. This is evident from the statement of Sri A.N. Chellappan Achari himself filed in the form of an affidavit before the Chief Judicial Magistrate on July 15, 1978, and a copy furnished to the Income Tax Officer on September 18, 1981. On the other hand, the materials seized from the residential premises of the assessee, namely, the lease agreement dated September 5, 1978 (item No. 20/14), the slip showing the business transactions in Archana Jewellery to the tune of Rs. 18,76,628.40 and also containing the details regarding pagady, kuri collection, Cochin Bank account, cheques issued to which the presumptions are available u/s 132(4A) of the Act (sic).

21. Apart from the above, the materials on record will show that the funds for starting the business were given by the assessee, his wife and other relations, the guarantors for the loan availed of from Cochin Bank were the assessee, his wife and other close relations and later by the assessee himself. The Tribunal has also observed that the assessee had advanced loans to this business and also withdrawn heavy amounts from the same and further found that the bank account of Archana Jewellery was in fact operated by the assessee himself. It is on a consideration of these cumulative facts and circumstances, the Tribunal has come to the conclusion that the assessee is the owner of the business of Archana Jewellery. It cannot be said that the aforesaid findings arrived at by the Tribunal are without any material or are in any way perverse or unreasonable. These are pure findings of fact and the conclusions reached on the basis of the aforesaid findings are also only findings of fact on which it cannot be said that any question of law arose for decision.

22. The Supreme Court in *Sree Meenakshi Mills*" case [1957] 51 ITR 28, had occasion to consider the test for determining whether a transaction is benami. A contention was taken on behalf of the appellant that an important test for determining whether a transaction is benami is to discover the source of consideration for the transfer. In that connection, the Supreme Court observed as follows (headnote) :

"The word "benami" is used to denote two classes of transactions which differ from each other in their legal character and incidents. In one sense, it signifies a transaction which is real, as for example, when A sells properties to B but the sale deed mentions X as the purchaser. Here the sale itself is genuine ; but the real purchaser is B, X being his benamidar. This is the class of transaction which is usually termed as benami. But the word "benami" is also occasionally used, perhaps not quite accurately, to refer to a sham transaction, as for example, when A purports to sell his property to B without intending that his title should cease or pass to B. The fundamental difference between these two classes of transactions is that, whereas in the former there is an operative transfer resulting in the vesting of

title in the transferee, in the latter there is none such, the transferor continuing to retain the title notwithstanding the execution of the transfer deed. It is only in the former class of cases that it would be necessary, when a dispute arises as to whether the person named in the deed is the real transferee or B, to enquire into the question as to who paid the consideration for the transfer. But in the latter class of cases, when the question is whether the transfer is genuine or sham, the point for decision would be, not who paid the consideration but whether any consideration was paid."

23. The Supreme Court after considering the findings of the Tribunal in that case held that the question whether the intermediaries were benamidars for the appellant could not arise and the further question as to who found the capital for the intermediaries is altogether irrelevant and the further question as to who had the benefit of the transaction could not also arise in that case.

24. In [Commissioner of Income Tax \(Central\), Calcutta Vs. Daulat Ram Rawatmull](#), the respondent-firm had opened an overdraft account with a limit of Rs. 10 lakhs against the collateral security of two fixed deposit receipts of Rs. 5 lakhs each, one of which was in the name of B, son of a partner of the firm, and the other in the name of A, son of another partner. The fixed deposit receipt in the name of B had been issued on November 21, 1944, by the Jamnanagar branch of a bank against the sum of Rs. 5 lakhs tendered on November 15, 1944, at a branch of the bank in Calcutta in the same building in which the respondent had its business premises. The other fixed deposit receipt had also been obtained similarly. Letters of guarantee and of continuity were signed by B and A. No consideration was received by them. After A's death the amount of his fixed deposit was not paid to his heirs but was adjusted against the overdraft of the respondent, whereas, in the case of the fixed deposit in B's name, B himself ultimately received the amount in January, 1946. B's explanation that the amount of Rs. 5 lakhs was transferred in March, 1942, to his native place to Ratangarh owing to bombing panic in Calcutta and when the war situation improved the money was taken for deposit there, was rejected as false. The Tribunal held that the sum of Rs. 5 lakhs belonged to the firm and was its concealed income, on certain state of facts. On a reference the High Court held that this material was not sufficient for the Tribunal to hold that the sum of Rs. 5 lakhs belonged to the respondent-firm. On appeal, the Supreme Court affirming the decision of the High Court held that the question was not whether the amount of Rs. 5 lakhs belonged to B, but whether it belonged to the respondent-firm. The fact that B had not been able to give a satisfactory explanation regarding the source of Rs. 5 lakhs would not be decisive even of the matter as to whether B was or was not the owner of that amount. A person could still be held to be the owner of a sum of money even though the explanation furnished by him regarding the source of that money was found to be not correct. It was also held that it is a common feature of commercial and other transactions that securities are offered by other persons to guarantee the payment of the amount which may be found due from the principal

debtor. The concepts of security and ownership are different and it would be a wholly erroneous approach to hold that a thing offered in security by a third person to guarantee the payment of debt due from the principal debtor belongs not to the surety but to the principal debtor. It was also held that the onus of proving that the apparent was not the real was on the party who claimed it to be so. As it was the Department which claimed that the amount of fixed deposit receipt belonged to the respondent-firm even though the receipt had been issued in the name of B, the burden lay on the Department to prove that the respondent was the owner of the amount despite the fact that the receipt was in the name of B. It was further held that there should be some direct nexus between the conclusion of fact arrived at by the authority concerned and the primary facts upon which that conclusion is based. The use of extraneous and irrelevant 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 has influenced the authority in arriving at the conclusion of fact. When a court of fact acts on material partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was 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 arises.

25. On the basis of these decisions the substance of the argument of learned counsel for the assessee is that in order to establish that the business of Archana Jewellery conducted by Sr. A.N. Chellappan Achari was benami for the assessee the Tribunal ought to have considered the question as to who furnished the source for the business and also as to who was in enjoyment of the benefits of the business. According to learned counsel, the Tribunal did not consider the aforesaid two questions and was solely influenced by the issue of certain slips and other irrelevant materials which are also inadmissible in evidence.

26. As already stated, the Tribunal has found that Sri. A.N. Chellappan Achari was a man of straw and that he did not have necessary funds to start a business of the magnitude of Archana Jewellery, that the room for conducting the business was taken by the assessee himself, that the initial capital for the business was furnished by the assessee, his wife and close relations and the loans from the banks were guaranteed by the assessee, his wife and close relations and later by the assessee himself, that the bank accounts were also operated by the assessee in the sense that he has deposited the money in the account of Archana Jewellery and also withdrawn huge amounts from the said accounts. Added to the above, the issue of slips and other documents relating to the transactions of purchase and sale of gold ornaments were also seized from the bed room of the assessee. The presumption u/s 132(4A) was also available to the Department and the burden is on the assessee to show that the slips and other documents seized from the residence of the assessee did not belong to him, which the assessee was not able to discharge properly.

27. The facts of the case would clearly show that the initial control and management and also the use of the funds for the business are with the assessee and that the assessee is the real owner of the business. Even though the Tribunal has not stated in so many words about the source of the business and also the beneficial enjoyment of the income from the business, the discussion and the findings of the Tribunal will clearly show that the Tribunal had in mind relevant considerations for determining the question as to the ownership of the business of Archana Jewellery and the various facts found by the Tribunal will clearly show that the initial capital, control and enjoyment of the business were with the assessee and it is as a result of the cumulative effect of the various facts found by the Tribunal that the Tribunal has ultimately come to the finding that the business belonged to him. It cannot be said that the various materials considered by the Tribunal for arriving at the above finding are inadmissible in evidence or irrelevant materials. The fact that the Tribunal did not consider the holding of licence by Sri. A.N. Chellappan Achari, which is necessary for the conduct of jewellery business will not in any way affect the conclusion reached by the Tribunal. Sri. A.N. Chellappan Achari has been introduced only for the purpose of enabling the assessee to start the business of jewellery in the name of Archana Jewellery, for, under the provisions of the Gold (Control) Act, a licence is required for the conduct of the said business and the assessee did not have a licence for the same. The fact that the business stands in the name of Chellappan Achari and that even the assessments were completed under the Income Tax Act in respect of Archana Jewellery in the hands of Chellappan Achari are irrelevant for determining the ownership of business. In this context, it is necessary to refer to the decisions in [SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.](#), and also in [Commissioner of Income Tax \(Central\), Calcutta Vs. Daulat Ram Rawatmull](#), . In [SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.](#), the Supreme Court considered the various decisions of English courts and other authorities at length and on the basis of the above summed up the legal position regarding interference with the findings of fact arrived at by the Tribunal as follows (page 50) :

"(1) When the point for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the court u/s 66(1).

(2) When the point for determination is a mixed question of law and fact, while the finding of the Tribunal on the facts found is final, its decision as to the legal effect of those findings is a question of law which can be reviewed by the court.

(3) A finding on a question of fact is open to attack u/s 66(1) as erroneous in law when there is no evidence to support it or if it is perverse.

(4) When the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact."

28. In the light of the above principles, the Supreme Court considered the facts of that case and observed that the issues which arise for determination whether the sales entered in the books of the appellant in the names of the intermediaries were genuine and if not, to whom the goods were sold and for what price are all questions of fact. Their determination does not involve the application of legal principles to facts established in the evidence. The findings of the Tribunal are amply supported by evidence and are eminently reasonable. It should, therefore, follow that there is no question which could be referred to the court u/s 66(1). The Supreme Court addressed the question as to what is the ground for holding that a finding of benami is one of mixed law and fact and observed that the only basis for such a contention is that the finding that a transaction is benami is a matter of inference from various primary basic facts such as who paid the consideration, who is in enjoyment of the properties and the like. But that is not sufficient to make the question one of mixed law and fact unless there are legal principles to be applied to the basic findings before the ultimate conclusion is drawn. But no such principles arise for application to the determination of the question of benami which is purely one of fact. The Supreme Court also referred to the decision of the Federal Court in AIR 1949 88 (Federal Court) and also the decision of the Privy Council in *Mistrilal v. Surji* AIR 1950 PC 28, holding that a finding of benami was one of fact not open to attack in second appeal.

29. In [Commissioner of Income Tax \(Central\), Calcutta Vs. Daulat Ram Rawatmull](#), , also the Supreme Court reiterated the above principle and observed that the findings on questions of pure fact arrived at by the Tribunal are not to be disturbed by the High Court on a reference unless it appears that there was no evidence before the Tribunal upon which they, as reasonable men, could come to the conclusion to which they have come ; and this is so even though the High Court would on the evidence have come to a conclusion entirely different from that of the Tribunal. It was held that such a finding can be reviewed only on the ground that there is no evidence to support it or that it is perverse. Further, when a conclusion has been reached on an appreciation of a number of facts, whether that is 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.

30. Applying the above principles, we are of the view that the question referred for the decision of this court as to whether the income from Archana Jewellery run by A.N. Chellappan Achari can be assessed in the hands of the assessee will depend on various primary facts and the ultimate inference to be drawn from those primary facts. As already stated, the Tribunal has found all those primary facts and from those primary facts the Tribunal further arrived at its conclusion that the business of Archana Jewellery belonged to the assessee. These are all questions of fact. In the view which we are taking, it is unnecessary for us to consider the submissions made on behalf of the parties regarding the principles of *res judicata*.

31. We answer the questions in both the cases in the affirmative, that is in favour of the Revenue and against the assessee.

32. A copy of this judgment under the seal of this court and the signature of the Registrar shall be sent to the Income Tax Appellate Tribunal, Cochin Bench.