PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
SETH R. DALMIA

DATE OF JUDGMENT27/02/1975

BENCH:
GUPTA, A.C.
BENCH:
GUPTA, A.C.
CHANDRACHUD, Y.V.
SARKARIA, RANJIT SINGH

CITATION:
1975 AIR 1017 1975 SCR (3) 735
1975 SCC (4) 16

ACT:
Income Tax Act 1961-Sec. 148.
Central Board of Direct Taxes (Regulation of Transaction of Business) Rules 1964--Rule 4--Whether approval, by Central Government of distribution of the business of board by Chairman must be expressed in the shape of an order.

HEADNOTE:
6 notices were issued to the respondent under s. 148 of the Income Tax Act for reopening the assessments for 3 assessment years. The notices recited that they. were issued after obtaining the necessary satisfaction of the Central Board of Direct. Taxes The respondent filed a writ petition in the High Court challenging the said notices inter alia on, the ground that sanction of the Central Board of Direct Taxes was not taken before the notices were issued as required by sec. 151 of the Act. The High Court accepted the said contention and did not decide the other grounds raised in the petition. The High Court held that on a reading of the affidavit made by J. P. Singh, Chairman of Central Board of Direct Taxes it would appear that the work which had been done by the Chairman of the Central Board was transferred to the Member of the Board and the approval of the Secretary to the Government of India was obtained for this transfer or allocation of work. The High Court, however, found that the averments in the affidavit were not in line with the office notes in the relevant file. The High Court also held that as no formal order was passed changing the allocation with the previous approval of the Central Government, the sanction issued by Central Board of Direct Taxes was without jurisdiction and authority.
On appeal by Special Leave it was contended before this Court that r. 4 of the Central Board, of Direct Taxes (Regulation of Transaction of Business) Rules, 1954 provides that the Chairman of the Central Board may with the previous approval of the Central Government distribute the business of the Board between himself and the other members and may specify the cases or class of cases which shall' be considered jointly by the Board. It was contended that J. P Singh in his affidavit clearly stated that on 30-3-1964 he suggested to Narayan Rao, a member of the Central Board of

Direct Taxes that lie should take up the work of according sanction of the Board under s. 151 of the Act which was being done by the Chairman. It was further stated in that affidavit that on June 18, 1964 he personally discussed the proposal with the Secretary to the Government of India, in, the Ministry of Finance and that the Secretary approved the said proposal and that a note was made by him on 18th June, 1964 to the effect that the matter was discussed with the Secretary and that it is just a minor internal arrangement and no formal order was necessary.

Allowing the appeal,

HELD'. (1) The High Court erred in not taking note of the affidavit of P. G. Gandhi Under Secretary Central Board of Direct Taxes, in which it is stated that all assessment work of income tax was assigned to Narayan Rao with the approval of the Central Government. In view of the statements in the specific affidavit of J. P. Singh and P. G. Gandhi it cannot be said that the office notes were not in line with the averments in the affidavits. [739H; 740C]

(2) It was not necessary to express the approval of the Central Government formally in the shape of an order. [741H] Fonseca Private Limited and Others v. L. C. Gupta & Others, [1973] 1 S.C.C. 418, distinguished.

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In that case what was challenged was the order passed by an officer who was not entitled to pass it under the rules of business and the decision has no relevance on the question whether on the circumstances of the present case, approval of the Central Government should have been recorded in a formal order. [741C]

(3) The distribution of the business of the Board by the Chairman is not a sub-delegated legislation and need not be expressed in a formal document; that the allocation of the business and approval are matters of internal arrangement not affecting any one's rights at that stage. Since the appeals succeed on other grounds the Court did not go into the question whether the provisions of the Central Board of Direct Taxes (Validation of Proceedings) Act, 1971 afforded protection to the action taken. [741E-F; 742E]

JUDGMENT:

CVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1107-1112 (NI) of 1970.

From the judgment and order dated the 24th March, 1970 of the Delhi High Court in Civil Writ Petition Nos. 663D and 668D of 1965.

S. T. Desai, T. A. Ramchandran & S. P. Nayar, for the appellants.

L. M. Singhvi and Bishambar Lal, for the respondent.

The Judgment of the Court was delivered by

GUPTA, J.-These six appeals by certificates granted by the High Court of Delhi arise out of six writ petitions filed by the respondent before us challenging the validity of six notices dated September 7, 1965 issued under sec. 148 of the Income-Tax Act, 1961 (hereinafter referred to as the Act). The, notices relate to the assessment years 1949-50, 1950-51 and 1951-52, the corresponding accounting years ending on the 30th September of 1948, 1949 and 1950 respectively. Three of the notices were issued to the petitioner in his individual capacity and the other three were served on him as a member of an association of persons. The petitioner had been assessed as an individual for the aforesaid assessment years in accordance with the provision& of the

Indian Income-Tax Act 1922. Thereafter a Commission known as Vivian Bose Commission was appointed to enquire into the affairs of various companies with which the appellant was alleged to have been associated. On the facts disclosed in the report of enquiry, the Income-tax Officer, Special Investigation Circle A, New Delhi, issued the aforesaid two sets of notices to the petitioner under sec. 148 of the Act. The notices informed the petitioner that these were issued "after obtaining the necessary satisfaction of the Central Board of Direct Taxes, New Delhi". This claim was questioned by the petitioner in the High Court and one of the grounds on which the validity of the notices was challenged was that sanction of the Central Board of Direct Taxes had not been taken before the notices were issued as required by sec. 151 of the Act. The High Court accepting this contention queshed all the six notices served on the petitioner and by issuing a writ of Prohibition restrained the appeallants, the Union of India, the Central Board of Direct. Taxes, New Delhi, and the Income-tax Officer, Special Investigation Circle A, New
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Delhi, from taking any action upon these notices. As the writ petitions succeeded on this ground, the High Court did not consider the other objections to the notices raised in the petitions. The pro, priety of that decision is in question in these appeals.

> The relevant part of sec. 151 of the Act reads as follows
>
> "151. Sanction for issue of notice.-(I) No notice shall be issued under section 148 after the expiry of eight years from the end of the relevant assessment year, unless the Board is satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice.
>
> (2) x x x"

Section 4(1) of the Central Boards of Revenue Act, 1963 provides "The Central Government may make rules for the purposes of regulating the transaction of business by each Board and every order made or act done in accordance with such rules shall be deemed to be the order or act, as the case may be, of the Board." "Board" as defined in sec. 2 of this Act means the Central Board of Direct Taxes or the Central Board of Excise and Customs. Rule 4 of the Central Board of Direct Taxes (Regulations of Transaction of Business) Rules, 1964 is in these terms :

> "The Chairman may, by an order made with the previous approval of the Central Government, distribute the business of the Board among himself and the other Members and specify the cases or class of cases which shall be considered jointly by the Board."

What happened in this case was that the Income-tax Officer put up the case of the respondent to the Central Board of Direct Taxes by a comprehensive note prepared by him and Shri S. A. L. Narayana Row, the only Member of the Board besides the Chairman, on being satisfied on the reasons recorded by the income-tax Officer that for each of the assessment years in both capacities of the respondent a fit case had been made out for the issue of a notice under sec. 148 of the Act, the impugned notices were issued to the respondent. In support of his case that sanction of the Board had not been obtained, the respondent relied on the Office Order dated January 1, 1964 annexed to the affidavit of shri p. G. Gandhi, Under Secretary Central Board of

Direct Taxes, filed in answer to the writ petitions, which sets out the distribution of work between the Chairman and the Member of the Central Board of Direct Taxes. In this document, entry No. 7 in thelist of work allotted to the Chairman reads : "all assessment work ofincome-tax".

It was contended that Shri Narayana Row had therefore no authority to deal with cases for reopening of assessments and assuch the impugned notices issued upon his satisfaction were invalid. In paragraph 5 of the affidavit of Shri P. G. Gandhi, it is admitted that "all assessment work of Income-tax" I had been assigned to the Chairman under office order dated January 1, 1964 which included matters relating to the reopening of assessments

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under sec. 34 of the Income-Tax Act, 1922 or under sec. 147 of the income-Tax Act, 1961, but the paragraph adds that "later with the approval of the Central Government this item of work was assigned to the Member of the Board Shri S. A. L. Narayana Row who in this case accorded the sanction".

An affidavit afirmed by Shri J. P. Singh who at the relevant time was the Chairman of the Central Board of Direct Taxes and ex-ofricio Additional Secretary to the Government of India in the Ministry of Finance, was also filed on behalf of the appellants. Paragraphs 3 to 7 of Shri Singh's affidavit state how Shri Narayana Row came to .deal with the cases relating to the reopening of assessments. These paragraphs read as follows :

> "3. That on 30-3 641 suggested to Shri S. A. L. Narayana Row, the then Member of the Central Board of Direct Taxes that he should take up the work of according sanction of the Board under Section 151(1) for reopening of assessments under Section 147 of the Income-Tax Act, 1961 to which he consented.
>
> 4. Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964 envisaged that Chairman may by an order made with the previous approval of the Central Government distribute the business of the Board among himself and the other members. The approval regarding the transfer of work relating to sanction under section 151(1) of Income-Tax Act from the Chairman to the Member Central Board of Direct Taxes was accordingly referred to by me to the Secretary, Ministry of Finance (Department of Revenue & Expenditure) on 9-6-1964.
>
> 5. That on 18-6, 1964, 1 personally discussed the proposal regarding transfer of work from myself to the Member, Central Board of Direct Taxes with Shri V. T. Dehejia, the then Secretary of the Government of India, Ministry of Finance (Department of Revenue & Expenditure).
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> 6. That Shri V. T. Dehejia, the then Secretary to the of India, Ministry of Finance (Department of Expenditure) approved the said proposal to a note was made by me on 18-6-1964.
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> 7. That pursuant to the duty assigned to him under of the Income-Tax Act, 1961 in the aforesaid Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules 1964, Shri S. A. L. Narayana Row, Member, Central Board of Direct Taxes

gave sanction for the reopening of the assessments under Section 147 of the Income-Tax Act, 1961 in the, aforesaid case on 11-8-1965."

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The High Court observed that on a reading of the affidavit affirmed by Shri J. P. Singh "it would appear that the work which had till then been done by the Chairman was to be transferred to the Member and approval of the Secretary to the Government of India was obtained for this transfer or allocation of work." Thee High Court however found that the averments in the affidavit were "not in line" with the office notes in the relevant file which appears to have been made available to the learned Judges of the High Court who heard these writ petitions. We have also looked into the copies of these office-notes which are on record. It appears that on March 13, 1964 Shri I. P. Singh, Chair-man of the Board, recorded the following note :

"M(I&ED) may also consider whether he could take up the cases for sanction of reopening of assessments (old section 34)."

This was obviously a note for consideration of the other Member of the Board who, on the next day, recorded his consent to this proposal in the following words

"I will take up, cases of reopening of assessment also."

Below the sentence conveying Shri Row's assent to the proposal, the Chairman wrote "Thanks". The matter however did not rest there. On May 14, 1964 the following note was put up by Shri B. B. Ghosh, Under Secretary

"Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964 envisage that Chairman may by an order made with the previous approval of the Central Government distribute the business of the Board among himself and the other Members. Accordingly, the Office Order already issued in the matter will require amendment. Draft D.O. is submitted for consideration. We may also inform the Heads of Departments under the Board about the decision. Draft letter is submitted for approval."

The last relevant note on this subject reads :

"Discussed with Secy. (R&E). It is just a minor internal arrangement. No formal order is necessary."

This is signed by Shri J. P. Singh and bears the date 18-6-64.

The High Court held that as no formal order was passed "changing the allocation with the previous approval of the Central Government, the sanction as granted by Shri 'S. A. L. Narayana Row is without jurisdiction and authority". It is not quite clear whether the High Court was not satisfied that Shri J. P. Singh's proposal for a change in the allocation of work was at all approved by the Government or that in the absence of a formal order to that effect the approval was of no consequence. The High Court does not appear to, have taken any note of the affidavit 'of Shri P. G. Gandhi in paragraph 5 of which it is stated that all assessment work of Income-tax was assigned to Shri Narayana Row with the approval of the Central

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Government. From the affidavit of Shri J. P. Singh, the then Chairman of the Central Board of Direct Taxes, part of which we have extracted above, it appears that Shri Singh had referred to ,he Secretary, Ministry of Finance

(Department of Revenue and Expenditure) the proposal for transfer of work relating to sanction under sec. 151 (1) of the Act from the Chairman to the Member of the Board, that Shri Singh personally discussed the matter with Shri V. T. Dehejia who was then the Secretary, Ministry of Finance, and that Shri Dehejia approved the proposal. Shri J. P. Singh's affidavit adds that the note he made in the office file on June 18, 1964-"Discussed with Secy. (R&E). It is just a minor internal arrangement. No formal order is necessary."- refers to these facts. In the face of the statements appearing in the affidavits of Shri J. P. Singh and Shri P. G. Gandhi that the work relating to the reopening of assessments was assigned to Shri Row with the previous approval' of the Central Government, it is difficult to see how it can, be said that the office notes were not in line with the averments in the affidavits. The High Court did not disbelieve the statement of Shri J. P. Singh that he had discussed the proposal with Shri V. T. Dehejia, who approved the proposal. to Possibly, the absence of a formal order expressing the approval led to the observation that Shri Singhs affidavit was not in line with the office notes and also the ultimate finding that the notices issued upon the satisfaction of the member of the Board was "without juris- diction and authority". Dr. Singhvi, learned counsel for the respondent, contended (1) that the material on record did not prove beyond doubt that the Central Government had approved-the proposal of the Chairman to alter the original distribution of work and (2) that in any event the law required the approval to be expressed in the shape of a formal order. Referring to the office note of the Chairman dated June 18, 1964, Dr. Singhvi submitted that it was not clear from this note what exactly was considered unnecessary a formal order expressing the approval, or getting the proposed alteration approved by the Central Government ? It was argued that as the suggested alteration was considered "just a minor internal arrangement," it was likely that the Chairman thought that no prior approval of the Central Government was necessary before the altered arrangement was put into operation, in which case the notices would be invalid in view of Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964. However, it seems to us, when the note said "no formal order is necessary" it could not possibly mean that approval of the Central Government was unnecessary, and we have no doubt that it meant that no formal order conveying the approval was necessary. Regarding the statements in the affidavits of Shri J. P. Singh and Shri P. G. Gandhi that all work relating to the reopening of assessments was assigned to Shri Narayana Row with the approval of the Central Government, Dr. Singhvi pointed out that these statements had been verified by Shri J. P. Singh as true to his knowledge "derived from records in the possession of the Central Board of Direct Taxes" and by Shri P. G. Gandhi as "based on the information derived from record in possession of the Board". It, was argued that as the records did not disclose any order of approval by the Central Government, the said statements were of no value.

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It seems to us that the verification of the statements in Shri J. P. Singh's affidavit clearly suggests that the facts stated therein were true to his knowledge which the records also bear out. As stated already, the High Court did not question the truth of the facts stated in Shri Singh's affidavit, nor do we find any reason to do so. We have no doubt that the office note made by Shri J. P. Singh on June

18, 1964 supports the statements made in his affidavit.
The next question is whether the approval should have been formally expressed in the shape of an order. On this question Dr. Singhvi referred to the decision of this Court in Fonseca (P) Ltd., & Ors. v. L. C. Gupta & Ors. (1) In that case an order made by the Deputy Secretary to the Government of India, Ministry of Works and Housing, who was not empowered to make such an order under the Rules of Business, was held to be illegal, ineffective and void. We do not think this decision has any relevance. The authority of Mr. V. T. Dehejia, Secretary, Ministry of Finance (Department of Revenue and Expenditure) to approve the proposal for the Central Government was never questioned, nor the power of the Chairman to distribute the business of the Board between himself and the other Member with the previous approval of the Central Government. We have already held that upon the material on record such approval appears to have been given Fonseca's case (supra) is hardly of any assistance on the question whether in this case the approval of the Central Government should have been recorded in a formal order. Dr. Singhvi characterised the distribution of the business of the Board by the Chairman as sub delegated legislation and referred to a number of authorities to show that the law required publication of such subdelegated legislation which implied that it must be expressed in aformal document. It was submitted that this was necessary to enable the persons affected by such sub delegated legilsation to ascertain what the legislation was. We do not think that the distribution of York by the Chairman of the Board can be equated with legislation. The allocation of business and the approval are matters of internal arrangement not affecting anyone's rights. Initially the Board consistng of the Chairman and the member had the jurisdiction to deal with he matter in question. Thereafter, in exercise of the power conferred by Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964 the Chairman with the approval of the Central Government distributed the business of the Board between himself and the member keeping all assessment work of Income-tax to himself. Then, again with the approval of the Central Government, he assigned this work to the member. Rule 4 of the central Board of Direct Taxes (Regulation of Transaction of Busiass) Rules, 1964 does not prescribe any special or particular manner in which the, approval is to be recorded. The approval given at hat stage does not touch the rights of the assessees. The fact that approval was given must of course be proved and. in our view, that is been done in this case; no question of publication of the order

(1) [1973] 1 SCC418.

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of allocation and the approval accorded to it by the Central Government can therefore arise. The office file does not also disclose any formal order approving the original distribution of work as between the Chairman and the member of the Board. It appears from the office note of January 1, 1964 that a draft showing the allocation of work was signed by Shri J. P. Singh and Shri V. T. Dehejia, Secretary of the Ministry of Finance (Department of Revenue and Expenditure) appended his signature below Shri Singh's. This shows clearly that a formal expression of the approval was not considered necessary. If there is no reason to doubt the truth of the statements made in Shri J. P. Singh's affidavit,. and we think there is none, then the leigalty of the impugned notices under sec. 148 of the Act cannot be

challenged on the ground that they were issued upon the satisfaction of Shri Narayana Row.

On behalf of the appellants our attention was also drawn to the Central Board of Direct Taxes (Validation of Proceedings) Act, 1971 (No. 37 of 1971) which provides, inter alia, that no action taken by the Chairman and other members of the Board, either singly or jointly, without having been validly entrusted with the powers or duties in-that behalf in accordance with the provisions of the Central Boards of Revenue Act, 1963 or the rules made thereunder shall be deemed to be invalid or ever to have been invalid on that ground. As in our opinion the impugned notices were issued in due compliance with the requirements of Rule 4 of Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964. we do not find it necessary to consider the provisions of this Act for the purpose of these appeals.

The appeals are accordingly allowed and the Judgment and orders appealed from are set aside. The High Court will now proceed to dispose of the writ petitions in accordance with law on the other grounds raised therein. The appellants will entitled to their costs in this Court-one hearing fee.

P.H.P.

Appeals allowed.

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