S. C. Prashar, Income-Tax Officer, Market Ward, Bombay and Another

Vs

Vasantsen Dwarkadas and Others

Civil Appeal No. 705 of 1957

(S.K. Das, J. L. Kapur, A.K. Sarkar, M. Hidayatullah, Raghuvar Dayal JJ)

12.12.1962

JUDGMENT

S. K. DAS, J. -

This appeal has been brought to this court on a certificate of fitness granted by the High Court of Bombay. The appellants are the Union of India and the Income-tax Officer, Market Ward, Bombay. By this appeal the appellants challenge the correctness of the judgment and order of the High Court of Bombay dated October 5, 1955, by which the High Court affirmed the judgment and order of a learned single Judge of the same court dated December 7, 1954, on a petition filed by the respondents under Art. 226 of the Constitution.

The relevant facts are these. The firm of Purshottam Laxmidas was started on October 28, 1935. This firm had two partners, Dwarkadas Vussonji and Parmanand Odhavji. Dwarkadas died of April 1, 1946, leaving a son, Vasantsen. Another firm by the name of Vasantsen Dwarkadas was started on January 28, 1941, and in that firm there were three partners, Vasantsen, Narandas Shivji and Nanalal Odhavji. This firm was dissolved on October 24, 1946. The firm of Vasantsen Dwarkadas filed a return of its income for the assessment year 1942-1943 and also claimed registration as a firm. The Income-tax authorities refused registration and came to the conclusion that the firm of Vasantsen Dwarkadas belonged really to Dwarkadas, father of Vasantsen; therefore they added the income of the firm to the income of Dwarkadas. In subsequent assessment years the firm of Vasantsen Dwarkadas again applied for registration, but registration was again refused. For the assessment years 1942-1943 to 1948 to 1948-1949 several appeals were filed before the Income-tax Appellate Tribunal by the firm Vasantsen Dwarkadas both against the quantum of income assessed and against the refusal of the Income-tax Officer to register the firm of Vasantsen Dwarkadas. An appeal was also filed by the firm of Purshottam Laxmidas against its assessment in respect of excess profits tax, and there was also an appeal for the assessment year 1942-1943 by Vasantsen as the heir and legal representative of his farther against the decision of the Income-tax authorities that the income of the firm Vasantsen Dwarkadas should be included in the income of Dwarkadas. It appears that after the decision in Vasantsen's case in the assessment year 1942-1943, the Income-tax Officer gave a finding that the firm of Vasantsen Dwarkadas was only a branch of the firm of Purshottam Laxmidas and therefore the Income-tax Officer added the income of Vasantsen Dwarkadas to the income of the firm Purshottam Laxmidas. This question also came up before the Income-tax Appellate Tribunal in the appeals filed by Purshottam Laxmidas in respect of the assessments made against it. By a consolidated order dated August 14, 1951, the Income-tax Appellate Tribunal disposed of all the aforesaid appeals, and it came to the conclusion that the business done in the name of Vasantsen Dwarkadas was really the business of the firm Purshottam Laxmidas. With regard to the appeal filed by Vasantsen as heir and legal representative of his father for the assessment year 1942-1944, the

Tribunal expressed the view that the income of Vasantsen Dwarkadas should be deleted from the assessment of Dwarkadas. It said :

> "We are therefore of opinion that the addition of Rs. 62,372/- to Dwarkadas's income or the modification directed by the Appellate Assistant Commissioner should be deleted from Dwarkadas's income. If the Income-tax Officer can include the same in the income of Purshottam Laxmidas, he is of course at liberty to do so. He can then apportion the income of Purshottam Laxmidas amongst the partners thereof as provided in s. 23(5) of the Act."

The Commissioner of Income-tax questioned the correctness of the aforesaid finding of the Tribunal, but on a reference to the High Court the latter upheld the order of the Tribunal. The reference was decided on October 8, 1953.

On April 30, 1954, the Income-tax Officer concerned who is the appellant before us served on the firm Purshottam Laxmidas a notice under s. 34 of the Indian Income-tax Act, 1922. This notice was in these terms :

> "Whereas I have reason to believe that your income assessable to income-tax for the year ending 31st March 1943 has been under-assessed I therefore, propose to re-assess to income allowance that has been under assessed :
>
> I hereby require you to deliver to me within 35 days of the receipt of this notice a return in the attached from of your total income and total world income assessable for the year ending 31st of March, 1943.
>
> This notice is being issued after obtaining the necessary satisfaction of the Commissioner of Income-tax, Bombay City, Bombay."

The notice was followed by some correspondence between the firm Purshottam Laxmidas and the Income-tax Officer. The result of the correspondence was that the Income-tax Officer informed the firm that its income was to be re-assessed in order to give effect to the finding of the Appellate Tribunal in its order dated August 14, 1951 that the business of Vasantsen Dwarkadas was really the business of the firm Purshottam Laxmidas.

On July 9, 1954, Vasantsen as the first petitioner and the firm of Purshottam Laxmidas as second petitioner filed a petition in the High Court under Art. 226 of the Constitution and asked for the issue of a writ quashing the notice dated April 30, 1954, and a writ of mandamus restraining the Union of India and the Income-tax Officer concerned from taking any steps or proceedings in pursuance of the said notice. Their main contentions were (1) that the Income-tax Officer had no jurisdiction to issue the notice after the expiry of the limit of time fixed by sub-s. (1) of s. 34, (2) that the second proviso to sub-s. (3) of s. 34 on which the Income-tax Officer relied did not apply to the case, (3) that there was no provision in the Act under which the Appellate Tribunal could give a finding in the appeals filed by the firm of Vasantsen Dwarkadas or in the appeal filed by Vasantsen himself, that the income in question represented the income of the firm Purshottam Laxmidas and (4) lastly, that the second proviso to sub-s. (3) of s. 34 was bad on the ground that it violated Art. 14 of the Constitution.

Desai, J., who heard the petition in the first instance came to the conclusion that the notice was bad and without jurisdiction because, to use his own words, the Income-tax Officer in issuing the notice

on April 30, 1954, which was clearly more than eight years from the close of the assessment year 1942-1943 was obviously in error in thinking that the second proviso to sub-s. (3) of s. 34 applied to the case. The learned Judge held that the proviso did not apply to orders of assessment which had become final before the date when it came into force. It may be here stated that the second proviso to sub-s. (3) of s. 34 was amended by Act XXV of 1953 and by s. 1(2) of the Amending Act of 1953 the amended proviso came into force on April 1, 1952. Desai, J., further held that the proviso in question did not voilate Art. 14 of the Constitution in so far as assessees who were parties to the proceedings before the Appellate Tribunal were concerned; but the proviso was bad in so far as it affected persons other than assessees. He held however that the petitioners before him were parties to the proceedings before the appellate Tribunal and therefore fell within the category of assessees. In view however of his finding that second proviso to sub-s. (3) of s. 34 did not apply to the case, his final conclusion was that the notice was without jurisdiction.

The matter was then taken in appeal and the appeal was heard by Chagla, C.J., and Tendolkar, J. The appellate court affirmed the finding of Desai, J., that the notice under s. 34 was issued out of time and was therefore invalid. It further held that the second proviso to sub-s. (3) of s. 34 did not apply to the case. On the question as to whether the second proviso voilated Arts. 14 of the Constitution it came to the conclusion that no valid distinction could be drawn between persons with regard to whom a finding or direction is given by the appellate Tribunal and persons with regard to whom no such direction or finding is given. The appellate court expressed the view that both fell in the same category and there was no difficulty in having a uniform provision of law with regard to them. The appellate court further expressed the view that for the assessment year 1942-1943 the assessee before the Tribunal was Vasantsen Dwarkadas as representing his father; in that appeal the firm of Purshottam Laxmidas was not before the Tribunal and therefore the firm was no better than a stranger who was in some way associated with the assessee. The appellate court held in the result that the second proviso to sub-s. (3) of s. 34 offended against Art. 14.

I have stated earlier that the appeal has been brought to this Court from the decision of the appellate court on a certificate of fitness granted by the High Court. In the original statement of the case filed on behalf of the appellants, the principal question raised was that relating to the second proviso to sub-s. (3) of s. 34 which I shall presently read. The appellants were however allowed by us to file a supplementary statement of the case in which two other points have been urged. One of these points is that the validity of the notice dated April 30, 1954, cannot be challenged by reason of the provisions of s. 31 of the Amending Act, 1953 (XXV of 1953). The second point is that the validity of the notice cannot be challenged also because of the provisions of s. 4 of the Indian Income-tax (Amendment) Act, 1959 (I of 1959).

Therefore, three substantial questions fall for decision in this appeal. The first question is whether the second proviso to sub-s. (3) of s. 34 is constitutionally valid and applies to the case. The second is, can the validity of the notice dated April 30, 1954, be challenged in view of the provisions of s. 31 of the Amending Act of 1953. The third question is the effect of the provisions of the Indian Income-tax (Amendment) Act, 1959 (I of 1959). I shall now deal with these questions one by one.

First as to the second proviso to sub-s. (3) of s. 34. S. 34 of the Indian Income-tax Act, 1922, has undergone many amendments. It is not necessary to refer to the section as it stood prior to 1939. The section as it stood in 1939 empowered the Income-tax Officer to assess or reassess income which had escaped assessment or had been under-assessed or had been assessed at too low a rate or had been the subject of excessive relief under the Act. The section made a distinction between two classes of cases; one in which the Income-tax Officer had reason to believe that the assessee had

concealed the particulars of his income or had deliberately furnished inaccurate particulars thereof and in this class of cases the Income-tax Officer could take action as laid down in the section at any time within eight years; in all other cases the Income-tax Officer could take action within four years of the end of the relevant assessment year. The section was almost completely recast by the Income-tax and Business Profits Tax (Amendment) Act, 1948 (Act XLVIII of 1948). For the purpose of this case all that I need state is that the two time limits of eight years and four years were continued in respect of two classes of cases mentioned in clauses (a) and (b) of sub-s. (1) of s. 34; clause (a) related to cases of omission or failure on the part of an assessee to make a return of his income or to disclose fully and truly all material facts necessary for his assessment, and cl. (b) related to cases where the Income-tax Officer had consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax had escaped assessment etc. The time limit of eight years applied to cases under cl. (a) and the time limit of four years applied to cases under cl. (b). By s. 18 of the Finance Act, 1956, more changes were introduced with effect from April 1, 1956. The time limit of eight years was omitted from sub-s. (1) as regards cases falling under cl. (a) but a proviso to sub-s. (1) of s. 34 which was substituted for the original proviso said inter alia that the Income-tax Officer shall not issue a notice under cl. (a) of sub-s. (1) for any year if eight years have elapsed after the expiry of that year unless the income, profits or gain chargeable to income-tax which have escaped assessment or have been under-assessed or assessed at too low a rate or have been made the subject of excessive relief under the Act etc. amount to or are likely to amount to Rs. 1,00,000/- or more in the aggregate for that year etc. Certain other safeguards were also introduced in the sub-section with which we are not concerned. Put shortly, the time limit of eight years continued in respect of cl. (a) cases if the amount was less than Rs. 1,00,000/-.

Now, I come to sub-s. (3) and the second proviso thereto. Prior to 1956 sub-s. (3) provided that every assessment or re-assessment should be completed within eight years from the end of the relevant assessment year in those cases where the assessee had failed to make a return or failed to disclose fully and truly all material facts necessary for his assessment. In 1956 the time limit was removed and the assessment or re-assessment in such cases might be completed at any time. In all other cases the period of limitation was still four years, as it was before 1956, for completion of assessment under s. 23 or of assessment of re-assessment, under s. 23 read with s. 34. The second proviso, after its amendment in 1953, constituted an exception to sub-s. (1) as well as sub-s. (3). The periods of limitation laid down in sub-s. (1) for initiating proceedings and in sub-s. (3) for making an order of assessment or re-assessment were subject to the exception mentioned in the second proviso. I may now read that proviso -

> "Provided further that nothing contained in this section limiting the time within which any action may be taken or any order, assessment or re-assessment may be made, shall apply to a re-assessment made under section 27 or to an assessment or re-assessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 31, section 33, section 33A, section 33-B, section 66 or section 66A."

I have stated earlier that the second proviso as amended was inserted by the Income-tax (Amendment) Act, 1953 (XXV of 1953), with effect from April 1, 1952.

Now, I proceed to discuss the first question as to whether this proviso applies in the present case. The question has two facets : (1) whether the proviso is constitutionally valid and (2) if it is constitutionally valid, does it apply to a case where the time limit fixed by sub-s. (1) of s. 34 had expired some time before April 1, 1952, the date on which the proviso came into effect ? With

regard to the first facet, Chagla, C.J., has pointed out, rightly in my opinion, that the persons with regard to whom a finding or direction is given and persons with regard to whom no finding or direction is given belong really to the same category, namely, the category of persons who are liable to pay tax and have failed to pay it for one reason or another. Admittedly, persons who are liable to pay tax and have not paid it could not be proceeded against after the period of limitation, unless a finding or direction with regard to them was given by some tribunal under the various sections mentioned in the proviso; therefore out of the large category of people who were liable to pay tax but failed to pay it, a certain number is selected for action by the proviso and with regard to that small number the right of limitation given to them is taken away. The real question is, is there any rational basis for distinguishing between persons who are liable to pay tax and have failed to pay it and with regard to whom a finding or direction is given, and persons who are liable to pay tax and have failed to pay it and with regard to whom no finding or direction is given. I am in agreement with the view expressed by the learned Chief Justice that no rational basis has been made out for the distinction between the two classes of people referred to above, who really fall in the same category and with regard to whom there was no difficulty in having a uniform provision of law. I am further in agreement with the view of the learned Chief Justice that the principle laid down by this court in Suraj Mall Mohta & Co. v. A. V. Visvanatha Sastri and another [(1955) 1 S.C.R. 448.] applies. In that case sub-s. (4) of s. 5 of the Taxation on Income (Investigation Commission) Act, was challenged and this Court pointed out that there was nothing uncommon either in properties or in characteristics between persons who were discovered as evaders of income-tax during an investigation conducted under s. 5(1) and those who were discovered by the Income-tax Officer to have evaded payment of income-tax. Both these kinds of persons really belonged to the same category and therefore required equal treatment. This Court pointed out that s. 34 of the Indian Income-tax Act and sub-s. (4) of s. 5 of the impugned Act dealt with persons who had similar characteristics and properties and therefore a different treatment of some out of the same class offended the equal protection clause embodied in Art. 14 of the Constitution. It seems to me that the position is the same here. Whether persons who evade tax are discovered by means of a finding given by a tribunal or they are discovered by any other method, they really belong to the same category and therefore require equal treatment. The second proviso to sub-s. (3) of s. 34 which came into effect from April 1, 1952, patently introduced an unequal treatment in respect of some out of the same class of persons. Those whose liability to pay tax was discovered by one method could be proceeded against at any time and no limitation would apply in their case, and in the case of others the limitation laid down by sub-s. (1) of s. 34 would apply. This in my opinion is unequal treatment which is not based on any rational ground. Desai, J., put the matter on somewhat narrower ground. He held that so far as assessees were concerned, there might be a rational ground for distinction because the appeal proceedings etc. might take a long time and the assessee being a party to the appeal could not complain of such delay, therefore, assessees did not occupy the same position as strangers. But the learned Judge held that there was no rational distinction so far as strangers were concerned and there was no reason why they should be deprived of the benefit of the time limit prescribed by sub-s. (1). He therefore held that the proviso, so far as it affected persons other than assessees not parties to the proceedings enumerated in it, must be held to be ultra vires the legislature. Even on this narrow ground it seems to me that the respondents are entitled to succeed. The finding which the Appellate Tribunal gave in its consolidated order dated August 14, 1951, was a finding given in the appeal filed by Vasantsen as heir and legal representative of his father for the assessment year 1942-43. In that appeal the firm Purshottam Laxmidas was not even a party, though Purshottam Laxmidas was a party to certain other appeals before the Appellate Tribunal. I have some difficulty in appreciating how the firm Purshottam Laxmidas can be treated as an assessee within the meaning of the second proviso to sub-s. (3) of s. 34 for the assessment year 1942-1943. If

the firm cannot be so treated, then even on the narrow ground stated by Desai, J., the proviso would be of no help to the present appellants.

I now take up the second facet of the same question. On this aspect of the case both the learned single Judge (Desai, J.) and the appellate court (Chagla, C.J., and Tendolkar, J.) were agreed. The relevant assessment year was 1942-1943 and it ended on March 31, 1943. The period of four years therefrom would end on March 31, 1947, and the period of eight years would end on March 31, 1951. Now the second proviso to sub-s. (3) came into effect, as I have stated earlier, on April 1, 1952. In other words, the time limit fixed by sub-s. (i) had expired some time before the amended second proviso came into effect. Desai, J., has rightly pointed out that it is a firmly established principle of Income-tax law that once a final assessment is arrived at and the assessment is complete, it cannot be re-opened except in the circumstances detailed in ss. 34 and 35 of the Act and within the time limited by those sections. Is there anything in the proviso in question which would give it a retrospective effect beyond April 1, 1952 ? In my opinion there is none. The second proviso came into force on April 1, 1952, and before that date period of eight years from March 31, 1943, had already expired. The legislation which provided that from April 1, 1952, there would be no limitation in respect of certain cases could not revive a remedy which was already lost to the Income-tax Officer. It seems to me that the proposition of law is settled beyond any doubt that although limitation is a procedural law and although it is open to the legislature to extend the period of limitation, an important right accrues to a party when the remedy against him is barred by the existing law of limitation, and a vested right cannot be affected except by express terms used by the statue or the clearest implication following therefrom. Some reliance was placed on the decision of the Calcutta High Court in Income-tax Officer v. Calcutta Discount Co., Ltd., [(1953) 23 I.T.R. 471.] which later came to this Court on a different point. I am of the opinion that the decision is of no help to the present appellants. It was said in that decision that the plain effect of the substitution of new s. 34 with effect from March 30, 1948, was that from that date the Income-tax Act was to be read as including the new section as a part thereof; the further effect of the express language of the section was that so far as cases coming within cl. (a) of sub-s. (1) were concerned, all assessment years ending within eight years from March 30, 1948, and from subsequent dates, were within its purview. The learned Chief Justice of the Calcutta High Court took particular care in that decision to point out that what was not within the purview of the section was an assessment which ended before eight years from March 30, 1948. That decision therefore does not in any way assist the present appellants.

On behalf of the appellants, some distinction was sought to be drawn between a right and the remedy thereof and it was contended that the liability of an assessee to pay the tax owing to the State was always there from the commencement of the assessment year and s. 34 of the Act dealt merely with the machinery of assessment. It was argued that a case under s. 34 was not analogous to a time barred claim to recover money from one individual by another. In my opinion such a distinction is entirely out of place so far as s. 34 is concerned. The learned Chief Justice has rightly pointed out that under s. 34 the Income-tax Officer has the right to issue a notice within the period of limitation fixed by sub-s. (1); in another sense, it may be said that the remedy of the Income-tax Officer to bring to tax escaped income is available to him under s. 34 provided he avails himself of the remedy within the period of limitation. No distinction can be drawn, so far as s. 34 is concerned, between the right of the Income-tax Officer and the remedy available to him. If the remedy is lost, the right is also lost and if the right is lost, much more so is the remedy.

Therefore, I am clearly of the view that on April 30, 1954, the Income-tax Officer had no jurisdiction to issue the notice which he did on the firm Purshottam Laxmidas under the second

proviso to sub-s. (3) of s. 34, because the time limit fixed by sub-s. (1) of s. 34 had expired long before the said proviso came into effect and the proviso does not in express terms or by necessary implication revive a remedy which had been lost before April 1, 1952.

This disposes of the first question argued before us. I proceed now to the second question, namely, the effect of s. 31 of the Indian Income-tax (Amendment) Act, 1953 (XXV of 1953). I may first set out the section :

> "For the removal of doubts it is hereby declared that the provisions of sub-sections (1), (2) and (3) of section 34 of the principal Act shall apply and shall be deemed always to have applied to any assessment or re-assessment for any year ending before the first day of April, 1948, in any case where proceedings in respect of such assessment or re-assessment were commenced under the said sub-sections after the 8th day of September, 1948, and any notice issued in accordance with sub-section (1) or any assessment completed in pursuance of such notice within the time specified in sub-section (3), whether before or after the commencement of the Indian Income-tax (Amendment) Act, 1953, shall, notwithstanding any judgment or order of any court, Appellate Tribunal or Income-tax authority to the contrary, be deemed to have been validly issued or completed, as the case may be, and no such notice, assessment or re-assessment shall be called in question on the ground merely that the provisions of section 34 did not apply or purport to apply in respect of an assessment or re-assessment for any year prior to the Ist day of April, 1948."

It will be noticed that the section is in two parts : the first part is declaratory of the law and says that sub-ss. (1), (2) and (3) of s. 34 shall apply and shall be deemed always to have applied to any assessment or re-assessment for any year ending before April 1, 1948, in any case where proceedings in respect of such assessment etc. were commenced under the said sub-sections after September 8, 1948, and any notice issued in accordance with sub-s. (1) or any assessment completed in pursuance of such notice within the time specified in sub-s. (3), whether before or after the commencement of the Amending Act of 1953, shall be deemed to have been validly issued etc.; the second part says inter alia that no such notice shall be called in question on the ground merely that the provisions of s. 34 did not apply or purport to apply in respect of an assessment prior to April 1, 1948. It should be noticed here that the Amending Act of 1948 (Act XLVIII of 1948) completely recast s. 34; and sub-s. (2) of s. 1 of that Act which came into force on September 8, 1948, provided that ss. 3 to 12 of the Amending Act should be deemed to have come into force on March 30, 1948. The amendment of s. 34 was made by s. 8 of the Amending Act; therefore, s. 34 as amended by the Amending Act of 1948 operated retrospectively from March 30, 1948. In the Calcutta Discount Co. Ltd. v. Income-tax Officer [(1952) 21 I.T.R. 579.], Bose J., held that s. 34 although described as a machinery section did not relate to procedure pure and simple but affected the protection given to an assessee and, therefore, the amended section had no application to the assessments for 1942-1943, 1943-1944 and 1944-1945. This view of Bose J., was not accepted by the Appellate Court in Income-tax Officer v. Calcutta Discount Co. Ltd. [(1953) 23 I.T.R. 471.], where the learned Chief Justice of the Calcutta High Court rightly pointed out that s. 34 as it spoke from March 30, 1948, took in all assessment years ending within eight years from March 30, 1948, and subsequent dates, but did not take in an assessment year which ended before eight years from March 30, 1948. It is worthy of note that the Bill which became Act XXV of 1953 was introduced after the judgment of Bose, J., and before the judgment of the learned Chief Justice. There were really two separate and distinct questions : one was whether s. 34 as amended in 1948 applied to assessment years prior to 1948-1949 and the second question was whether, on the footing that

amended s. 34 did apply to assessment hears prior to 1948-1949, any action could be taken under the amended section in respect of those assessments which had become time-barred before the amended section came into effect. Bose, J., answered the first question in the negative and necessarily the second question also in the negative. The learned Chief Justice answered the first question in the affirmative, but took pains to point out that an assessment made before eight years from March 30, 1948, was not within the purview of s. 34.

I am of the opinion that in its true scope and effect, s. 31 of the Amending Act of 1953 puts beyond any doubt that the view expressed by the learned Chief Justice in Income-tax Officer v. Calcutta Discount Co. Ltd. [(1953) 23 I.T.R. 471.], it the correct view and amended s. 34 applies to assessment years prior to 1948-1949, but it does not say that an assessment which had become final and in respect of which re-assessment proceedings had become time-barred before the amended section came into force could be re-opened. This appears to me to be clear from the first part of s. 31. That part says that sub-ss. (1), (2) and (3) of s. 34 shall apply and be deemed always to have applied to any assessment etc. for any year ending before April 1, 1948 in any case where proceedings in respect of such assessment etc. were commenced under the said sub-sections after September 8, 1948, and any notice issued in accordance with sub-s. (1) shall be deemed to be valid etc. The section does not say that the periods of limitation laid down in sub-ss. (1) and (3) are being done away with; on the contrary, the first part of the section says that the proceedings must have been commenced after September 8, 1948 (the date on which the Amending Act of 1948 came into force) under the said sub-sections and the notice must have been issued in accordance with sub-s. (1). The Income-tax Officer can commence proceedings under the said sub-sections or issue a notice in accordance with sub-s. (1) only when he obeys the injunction as to time laid down therein; then only he can be said to have commenced proceedings or issued a notice in accordance with the sub-sections. If he has done that and commenced proceedings after September 8, 1948, then the second part of the section says that the notice or the assessment shall not be called in question on the ground merely that the provisions of s. 34 did not apply or purport to apply in respect of any year prior to April 1, 1948. These lines underlined in the second part of the section also bring out its true scope and effect. If there has been compliance with provisions of the sub-sections including the time limits fixed therein, then the notice issued or assessment made is not liable to challenge on the mere ground that amended s. 34 does not apply in respect of a year prior to 1948-1949. In other words, s. 31 of the Amending Act of 1953 nullifies the effect of the decision of Bose, J. in Calcutta Discount Co. Ltd. v. Income-tax Officer, [(1952) 21 I.T.R. 579.] and gives effect to the decision of the learned Chief Justice of the Calcutta High Court. The section does not abrogate the periods of limitation laid down in the relevant sub-sections of s. 34; if it did, it would be in conflict with s. 34 and the ground taken would be such conflict and not merely the ground that the provisions of s. 34 did not apply to any year prior to 1948-1949.

My conclusion, therefore, is that s. 31 of the Amending Act of 1953 does not validate the notice issued in the present case - a notice issued on April 30, 1954 long before which date the assessment had become final and in respect of which reassessment proceedings had become time-barred. The short answer to the argument based on s. 31 is that the notice in the present case was not issued in accordance with sub-s. (1) of s. 34, and the first part of s. 31 requires that the notice must be so issued before the second part thereof can give any protection to it.

I now proceed to consider the Amending Act of 1959. The Indian Income-tax (Amendment) Act, 1959 (1 of 1959) received the assent of the President on March 12, 1959. The relevant provisions with which we are concerned are contained in ss. 2 and 4 of the amending Act. By s. 2 of the amending Act, a new sub-section, namely, sub-s. (4) was inserted in s. 34. This sub-section said :

> "S. 34(4). A notice under clause (a) of sub-section (1) may be issued at any time notwithstanding that at the time of the issue of the notice the period of eight years specified in that sub-section before its amendment by clause (a) of section 18 of the Finance Act, 1956 (18 of 1956), had expired in respect of the year to which the notice relates."

S. 4 of the amending Act contained provisions regarding the saving of notices, assessments etc., in certain cases only and read as follows :

> "No notice issued under clause (a) of sub-section (1) of section 34 of the principal Act at any time before the commencement of this Act and no assessment, re-assessment or settlement made or other proceedings taken in consequence of such notice shall be called in question in any court, tribunal or other authority merely on the ground that at the time the notice was issued or at the time the assessment or re-assessment was made, the time within which such notice should have been issued or the assessment or re-assessment should have been made under that section as in force before its amendment by clause (a) of section 18 of the Finance Act, 1956 (18 of 1956), has expired."

The main point argued before us on behalf of the appellants is that s. 4 of the amending Act of 1959 saves the notice which the Income-tax Officer issued in the present case on April 30, 1954. I may here state one initial difficulty which faces the appellants. S. 4 of the amending Act of 1959 refers to a notice issued under cl. (a) of sub-s. (1) of s. 34; therefore, in order to get the benefit of the section the appellants must establish that the notice dated April 30, 1954 was a notice issued under cl. (a) of sub-s. (1) of s. 34. In an earlier part of this judgment I had set out in full the notice which the Income-tax Officer had issued on April 30, 1954. That notice said inter alia that the Income-tax Officer had reason to believe that the income of the firm Purshottam Laxmidas assessable to income-tax for the year ending March 31, 1943 had been under-assessed and therefore the Income-tax Officer proposed to re-assess the income. It is at least doubtful that the notice, if one were to go by the words used in the first part thereof, would make it a notice under cl. (a) of sub-s. (1) of s. 34 unless the satisfaction of the Commissioner referred to in the last part makes it one. I have said earlier that cl. (a) of sub-s. (1) of s. 34 related to those cases in which there was an omission or failure on the part of the assessee to make a return of his income under s. 22 for any year or to disclose fully and truly all materials facts necessary for his assessment for that year. When the Calcutta Discount Company's case [(1961) 2 S.C.R. 241.] came to us, we had explained what was meant by non-disclosure of material facts and pointed out the distinction between the primary and inferences therefrom. (see Calcutta Discount Company Limited v. Income-tax Officer, Companies District, [(1961) 2 S.C.R. 241.]. There is nothing in the record to show that in the present case there was an omission or failure on the part of the assessee to make a return of his income under s. 22 for the year 1942-43; nor is there any avertment on behalf of the appellants that the assessee failed to disclose fully and truly all material facts necessary for his assessment for that year in the sense explained above. I have said earlier that there was some correspondence between the Income-tax Officer concerned and the firm of Purshottam Laxmidas with regard to the notice issued on April 30, 1954. The firm wanted to know the reason why the notice had been issued. In reply to the letter from the firm, the Income-tax Officer said (see Ex. C) :

> "The income of the concern of Vasantsen Dwarkadas was originally included in the hands of Dwarkadas Vassonji; Dwarkadas Vassonji was also a partner in the registered firm of Messrs Purshottam Laxmidas. The Appellate Tribunal by its

> consolidated order dated 14-8-1951 (I.T. Nos. 7836 to 7851 of 1951/52 and E.P.T.A. Nos. 13 to 17 of 1950/51) has come to the finding that the concern of Vasantsen Dwarkadas in the branch of Messrs Purshottam Laxmidas. The income of the firm has therefore to be reassessed."

The aforesaid reply does not make out any case that the notice was issued under cl. (a) of sub-s. (1) of s. 34. When we allowed the appellants to file a supplementary statement of the case urging new points, we also granted time to the respondents to file a supplementary statement of case, if any, on their behalf. The respondents filed a supplementary statement of their case and said therein that the notice dated April 30, 1954 was not and could not be issued under cl. (a) of sub-s. (1) of s. 34 but was and could only be issued under cl. (b) of sub-s. (1) of s. 34. Therefore, it seems to me that the appellants have not established without any doubt that the notice in this case was issued under cl. (a) of sub-s. (1) of s. 34, so as to give them the protection of s. 4 of the Amending Act of 1959. The point taken is indeed a point of law, namely, whether the appellants are entitled to the benefit of s. 4 of the Amending Act of 1959. But the applicability of s. 4 depends on certain facts and those facts must be first be found. It is true that in the judgment of the High Court there is a reference to eight years' period of limitation but none of the parties raised any question as to whether the notice dated April 30, 1954 was issued under cl. (a) or cl. (b) of sub-s. (1) of s. 34. The parties joined issue only on the question whether the second proviso to sub-s. (3) of s. 34 applied or not. The necessary facts were not investigated and no finding was given as to whether the notice came within cl. (a) or cl. (b) of sub-s. (1) of s. 34.

I am of the opinion that this is enough to dispose of the claim put forward by the appellants that the notice dated April 30, 1954, is saved by s. 4 of the Amending Act of 1959. No foundation on facts having been laid for the claim, it must be rejected.

The matter was however argued before us at great length on the supposition that the notice dated April 30, 1954 was a notice issued under cl. (a) of sub-s. (1) of s. 34. I am of the opinion that even on that supposition the appellants are not entitled to succeed. It is manifest that sub-s. (4) of s. 34 does not help the appellants. That sub-section is clearly prospective and is intended to authorise action after the coming into force of the 1959 amendment; therefore, sub-s. (4) of s. 34 cannot validate a notice issued in 1954. Now the question is, what about s. 4 of the Amending Act of 1959 ? It has been very strenuously argued before us that section by reason of the unambiguous language used therein saves the notice. It is pointed out that the section in its first part refers inter alia to a notice issued under cl. (a) of sub-s. (1) of s. 34 at any time before the commencement of the 1959 Act and in its second part says that no such notice shall be called in question in any court etc. merely on the ground that at the time of notice was issued, the time within which such notice should have been issued under s. 34 as in force before its amendment by s. 18 of the Finance Act, 1956 had expired. The argument is that the language of the section in such that it clearly saves the notice issued on April 30, 1954 because (1) it fulfills the requirement of the first part of the section in as much as the notice was issued before the commencement of the 1959 Act and (2) the second part of the section says that the notice cannot be called in question on the ground that it was issued after the expiry of the time mentioned in sub-s. (1) of s. 34 as it stood before the amendment made in 1956.

At first sight the argument appears almost irresistible. But on a careful consideration I have come to the conclusion that it is not correct. It is necessary here to refer to the circumstances under which the amending Act of 1959 was enacted. Prior to the amendment of sub-s. (1) of s. 34 by the Finance Act, 1956, in cases falling under cl. (a) a notice had to be served within eight years from the end of the relevant assessment year. This time limit was removed by s. 18 of the Finance Act, 1956. In

Debi Dutta v. T. Bellan [A.I.R. 1959 Cal. 567.], the Calcutta High Court held that action under the amended section could not be taken if prior to the amendment coming into force (that is, April 1, 1956) the period for serving the notice had already expired. This was the difficulty which the Legislature had to meet and it wanted to supersede the view expressed by the Calcutta High Court. It is indeed true that the Statement of Objects and Reasons for introducing a particular piece of legislation cannot be used for interpreting the legislation if the words used therein are clear enough. But the statement of Objects and Reasons can be referred to for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislation aimed at. The decision of the Calcutta High Court to which I have earlier made a reference was adverted to in the Statement of Objects and Reasons. It seems to me that sub-s. (4) of s. 34 was enacted to supersede the view expressed in the Calcutta decision aforesaid, so that after the coming into force of sub-s. (4) in 1959 a notice under cl. (a) of sub-s. (1) could be issued at any time notwithstanding that at the time of the issue of the notice the period of eight years specified in the sub-section before its amendment by s. 18 of the Finance Act, 1956 had expired. It further appears to me that both sub-s. (4) of s. 34 and s. 4 of the Amending Act of 1959 are meant to deal with only those cases where action is taken under s. 34 as amended in 1956, but where the eight years' time limit had already expired and the original assessment (if any) had become final prior to the amendment of s. 34 of 1956. Whereas sub-s. (4) of s. 34 is intended to authorise action in such cases after the coming into force of the Amending Act of 1959, s. 4 is intended to save and validate action taken in such cases between 1956 when s. 34 was amended by the Finance Act, 1956 and 1959 when the Amending Act was passed. In my view, s. 4 of the Amending Act of 1959 has not bearing on a notice issued under s. 34 prior to 1956. I do not accept as correct the decision of the Bombay High Court in Onkarmal Meghraj v. Commissioner of Income-tax, Bombay-1 [(1960) 38 I.T.R. 369.]. That decision implies that s. 4 of the Amending Act of 1959 in effect abrogates and supersedes the statutory time limits for action under s. 34(1)(a) in all the past years ever since s. 34(1)(a) was put on the Statute Book. It seems to me that on the contrary, the provisions of s. 34(4) and s. 4 of the Amending Act clearly indicate that the only effect of s. 34(4) is to authorise action, and the only effect of s. 4 of the Amending Act is to validate action, under s. 34 as amended in 1956 in cases where action under s. 34 has already become time barred prior to its amendment in 1956. They have no bearing on notices issued or on assessment made under s. 34 prior to 1956. If the intention was to abrogate altogether all provisions regarding limitation in s. 34 right from 1922, then s. 4 would have been differently worded and would not have said that it saved notices etc. in certain cases only; on the view canvassed for by the department, s. 4 would save notices issued in all cases before 1959 irrespective of any question of limitation. Moreover, if the view taken of s. 4 of the Amending Act of 1959 is that it abrogates and supersedes all past provisions regarding limitation, then the section would be in conflict with the provisions of s. 34. On the principle of harmonious construction the attempt should be to avoid such conflict rather than create it. The last part of s. 4 shows in my opinion its true intent, namely that what is intended is to validate post-1956 action, that is, action taken under s. 34 as amended by s. 18 of the Finance Act, 1956. I cannot read s. 4 as abrogating all periods of limitation and as validating notices issued prior to 1956, even though such a notice was not properly issued under cl. (a) of sub-s. (1) of s. 34. If the intention was that any and every notice issued under cl. (a) of sub-s. (1) of s. 34 at any time before the commencement of the 1959 Act could be validated, then the section should not have said -

"notice issued under clause (a) of sub-s. (1) of s. 34."

The very fact that the section talks of a notice issued under cl. (a) of sub-s. (1) of s. 34 means that it is a notice issued in compliance with the provisions of cl. (a) of sub-s. (1) of s. 34 as amended in 1956 when the time limit was removed. When a notice is issued under cl. (a) of sub-s. (1) of s. 34 as

amended in 1956; it cannot be called in question merely on the ground such as was upheld by the Calcutta High Court is Debi Dutta v. T. Bellan [A.I.R. 1959 Cal. 567.] that the time limit had already expired before the issue of the notice; this seems to me to be the true meaning of s. 4 when the first of the section which talks of a notice issued under cl. (a) of sub-s. (1) of s. 34 is contrasted with the second part which says that such a notice shall not be called in question on the ground that the time limit had already expired before the date on which the notice was issued. If the intention was to abrogate the time limit for all notices issued before 1959, there was no sense in saying that the notice should issue under cl. (a) of sub-s. (1) of s. 34 and at the same time it would not be called in question on the ground that the time limit had expired before the date of its issue; the section than would have simply said that notwithstanding any time limit in cl. (a) of sub-s. (1) of s. 34, all notices issued before 1959 would be valid. I do not think s. 4 of the Amending Act 1959 was intended to abrogate all periods of limitation for action under cl. (a) of sub-s. (1) of s. 34 for all past years.

The time limit of eight years was removed in 1956 in respect of those cases where the amount was not likely to be less than Rs. 1,00,000/-. The present case is one where the amount is less than Rs. 1,00,000/- and the limitation of eight years applied in 1954. All that s. 4 states that if a notice has been issued under cl. (a) of sub-s. (1) of s. 34 at any time before the commencement of the 1959 Act, the notice shall not be called in question merely on the ground that at the time it was issued the time limit as in force before the amendment made in 1956 had expired; in other words, s. 4 validates action taken between 1956 when s. 34 was amended and 1959 when the Amending Act was passed. It does not affect notices issued prior to 1956 nor does it abrogate all periods of limitation.

For all these reasons I have come to the same conclusion as my learned brother Kapur, J., that the appeal must be dismissed with costs.

KAPUR, J. -

This is an appeal against the judgment and order of the High Court of Bombay confirming the order passed by S. T. Desai, J., in Writ Petition No. 266 of 1954 under Art. 226 of the Constitution of India whereby Desai, J., issued a writ of prohibition restraining the appellants from taking any further steps in pursuance of the notice dated April 30, 1954, issued under s. 34 of the Income-tax Act, hereinafter called "the Act" or from assessing or reassessing the firm known as Purshottam Laxmidas in respect of the assessment year 1942-43. The appellant before us is the Income-tax Officer and the respondents are the firm and partners of the firm above noted.

Dwarkadas Vussanji and Parmanand Odhavji carried on business in partnership in the name and style of Purshottam Laxmidas from October 28, 1935, till April 1, 1946, when Dwarkadas Vussenji died. Thereafter Vasantsen Dwarkadas, the son of Dwarkadas Vussonji, and Parmanand Odhavji respondent No. 3 continued the business under the same name i.e. Purshottam Laxmidas. That firm was registered under the Indian Income-tax Act.

On January 28, 1941, another firm under the name of Vasantsen Dwarkadas was started, its partners were Vasantsen Dwarkadas respondent No. 1, Narandas Shivji and Nanalal Odhavji. This firm was dissolved on October 24, 1946. For the assessment year 1942-43 firm Vasantsen Dwarkadas filed a voluntary return of income and also applied for registration under s. 26 of the Act. The registration was refused on the ground that the firm was not a genuine firm but really belonged to Dwarkadas Vussonji, the principal partner in the firm Purshottam Laxmidas. The Income-tax Officer added the income of the firm Vasantsen Dwarkadas for the assessment year 1942-43 to the individual income

of Dwarkadas Vussonji, in the subsequent assessment year i.e. 1943-44. In the subsequent years also the firm Vasantsen Dwarkadas applied for registration but registration was refused on the ground that it was not a genuine firm. Appeals were taken in usual course to the Income-tax Appellate Tribunal by firm Vasantsen Dwarkadas both against the quantum of its assessed income and against the refusal of registration. These appeals filed by firm Vasantsen Dwarkadas and the appeal filed by Vasantsen Dwarkadas as representing the estate of his father Dwarkadas Vussonji and the appeals filed by the firm Purshottam Laxmidas in regard to the Excess Profits Tax were all heard together and decided by the Income-tax Appellate Tribunal by its order made on August 14, 1951. In that order the Income-tax Appellate Tribunal gave a finding that Dwarkadas Vussonji was not the sole proprietor of the business of firm Vasantsen Dwarkadas but that the business of that firm belonged to the firm Purshottam Laxmidas. At the instance of the Commissioner of Income the Appellate Tribunal stated a case to the High Court and the question referred was answered in favour of the assessee i.e.

On April 30, 1954, the Income-tax Officer issued a notice to the firm Purshottam Laxmidas under s. 34 of the Act the relevant portion of which was in the following terms :-

> "Whereas I have reason to believe that your income assessable to income tax for the year ending 31st March 1943 has been under-assessed I therefore, propose to reassess to the income allowance that has been under-assessed."

It is the validity of this notice which has to be determined.

As the decision of the case depends upon the interpretation of the various legislative changes made in s. 34 it may be convenient at this stage to mention those amendments relating to the periods during which action could be taken by the Income-tax Officer in regard to escaped incomes. Under s. 34(1) of the Act as it stood in 1939, after the Income-tax Amendment Act, 1939, Act 7 of 1939, hereinafter referred to as "the Amending Act of 1939", the period for taking action eight years for cases of omission or failure on the part of the assessee to furnish accurate particulars and four years in any other case of escapement of income-tax. This section was amended s. 8 of the Income-tax and Business Profits Tax (Amendment) Act, Act 48 of 1948, hereinafter referred referred to as "the Amending Act of 1948". The period in the two cases still remained the same but certain safeguards in favour of the assessees were provided. A further amendment was made in s. 34, this time in the second proviso to sub-s. (3) of s. 34 by Income-tax Amendment Act, 1953 (Act 25 of 1953), hereinafter referred to as the Amending Act 1953." That Act also made provision for saving of notices and assessments in certain cases. By s. 18 of the Finance Act of 1956, s. 34(1) was again amended. By Income-tax (Amendment) Act. 1959 (Act 9 of 1959) hereinafter referred to as the Amending Act of 1959" s. 34 was further amended, this time by addition of sub-s. (4) to that section and provision was also made for the validation of certain notices and assessment in certain cases. These various changes will be discussed in detail at appropriate places.

The Amending Act of 1953 received the assent of the President on May 24, 1953, but came into force retrospectively as from April 1, 1952. But that Act the second proviso to s. 34(3) of the Act was amended.

A notice under s. 34(1)(a) was issued to respondent No. 2 which has been set out above. Thereupon Vasantsen Dwarkadas filed a petition under Art. 226 of the Constitution in the Bombay High Court being Misc. Application No. 226-X of 1954 challenging its legality. S. T. Desai, J., who heard the petition in the first instance held that the Amending Act of 1953 which became operative as from

April 1, 1952, had no retrospective effect so as to enable the Income-tax Officer to reopen the assessment of the firm Purshottam Laxmidas for the assessment year 1942-43 which had become time-barred before April 1, 1952, and therefore the Income-tax Officer's action was barred and without jurisdiction; that the second proviso to s. 34(3) of the Act "so far as it affects persons other than assessees not parties to the proceedings" was ultra vires of the Constitution being in violation of Art. 14 of the Constitution; that on the facts and circumstances of the case the present respondents could not be regarded as strangers to the proceedings in which the findings were given by the Tribunal. The Appeal Court confirmed the decision of Desai, J., and further held that the firm Purshottam Laxmidas against whom the impugned action was taken was a stranger to the appeal filed by Vasantsen Dwarkadas. Against this judgment and order the Income-tax Officer has brought the present appeal.

The appellant in this court filed a supplemental Statement of Case in which he sought to challenge the correctness of the judgment of the High Court on two additional grounds; (1) that s. 31 of the Amending Act of 1953 had been overlooked and (2) that s. 2 of the Amending Act of 1959 had the effect of removing the bar of eight years' period in regard to notices under s. 34(1)(a) and s. 4 of that Act (Amending Act of 1959) validated all notices including the impugned notice. The respondents filed their supplemental Statement of Case on October 5, 1960.

Before taking up the construction of ss. 2 and 4 of the Amending Act of 1959, it will be helpful to examine the circumstances in which the Amending Act was enacted. After the Amending Act of 1948 for the purposes of taking action in respect of escaped incomes a period of eight years was applicable to all escaped incomes under s. 34(1)(a) of the Act, the two conditions requisite for taking action under s. 34(1)(a) being (1) notice within eight years of assessment year and (2) Income-tax Commissioner's previous sanction. By s. 18 of the Finance Act of 1956 the words "eight years" were removed from sub-s. (1) of s. 34 and were inserted in the proviso which was substituted in place of the old proviso to s. 34(1) which took effect from April 1, 1956. Then came the Calcutta case Debi Dutta Moody v. T. Bellan, [A.I.R. 1959 Cal. 567.], which held that notices which were time barred when the Amending Act of 1956 came into force remained time barred in spite of the new enactment. In that case the notice when issued was within time but when served it was barred by time.

The two provisions of the Amending Act of 1959 which have to be construed are ss. 2 and 4. By s. 2 a new sub-section - sub-s. (4) was added to s. 34 of the Act. It provides :-

> "(4) A notice under clause (a) of sub-section (1) may be issue at any time notwithstanding that at the time of the issue of the notice the period of eight years specified in that sub-section before its amendment by clause (a) of section 18 of the Finance Act, 1956 (18 of 1956), had expired in respect of the year to which the notice relates."

Section 4 of that Act provides for saving and validation of notices, assessments etc., in certain cases. The relevant portion of the section applicable to notices issued under s. 34(1)(a) of the Act is as follows :-

> "No notice issued under clause (a) of sub-s. (1) of s. 34 of the principal Act at any time before the commencement of this Act..... shall be called in question in any court..... merely on the ground that at the time the notice was issued..... the time within which such notice should have been issued... ..... under that

section as in force before its amendment by cl. (a) of s. 18 of the Finance Act, 1956 (18 of 1956) had expired."

The new proviso which was substituted in place of the old proviso to s. 34(1) by s. 18 of the Finance Act, 1956, may conveniently be given here. It reads as follows :-

"Provided that the Income-tax Officer shall not issue a notice under clause (a) of sub-section (1) :

(i) for any year prior to the year ending on the 31st day of March 1941;

(ii) for any year, if eight years have elapsed after expiry of that year, unless the income, profits or gains chargeable to income-tax which have escaped assessment or have been under-assessed or assessed at too low a rate or have been made the subject of excessive relief under this Act or the loss or depreciation allowance which has been computed in excess, amount to or are likely to amount to, one lakh of rupees or more in the aggregate, either for that year or for that year and any other year or years after which or after each of which eight years have elapsed not being a year or years ending before the 31st day of March 1941;

(iii) for any year, unless he has recorded his reasons for doing so and in any case falling under clause (ii) unless the Central Board of Revenue and in any other case the Commissioner is satisfied on such reasons recorded that it is a fit case for the issue of such notice."

The appellant contended that as a consequence of the new sub-section 4 of s. 34 of the Act (i.e. s. 2 of the Amending Act of 1959) the impugned notice became a valid notice notwithstanding the fact that at the time of the issuing of the notice the period of eight years specified in s. 34(1)(a) before its amendment by s. 18 of the Finance Act of 1956 had expired. This contention is not well-founded. Sub-section (4) is prospective and therefore operates as from March 12, 1959, and it does not affect notices issued previous to that date. That is the effect of the words "a notice under cl. (a) of sub-s. (1) may be issued at any time." In the context these words refer to notices issues after the coming into force of the Amending Act of 1959 and not to notice already issued.

The appellant next contended that the effect of s. 4 of the Amending Act of 1959 is that it abrogates and supersedes that statutory period prescribed for notices under s. 34(1)(a) for all past years whether the notices were issued before or after the amendment by the Finance Act of 1956. This contention is also not well-founded. This section applies to notices under cl. (a) of sub-section (1) s. of 34. The notice issued in the present case does not mention the clause under which the notice was issued and there is nothing to indicate that it was under cl. (a). The respondents in their supplemental Statement specifically raised the point that the notice was not under cl. (a) and could only be under cl. (b). The language of that section shows (1) that it applies to all notices under s. 34(1)(a) issued at any time before the Amending Act, 1959, i.e. March 12, 1959, and (2) its effect is that notices issued before the Amending Act 1959 cannot be challenged merely on the ground that at the time the notices were issued they were barred under s. 34(1)(a) of the Act as it was before its amendment by s. 18 of the Finance Act, 1956. Now the legislature has not said that the notices shall not be challenged on the ground that a period of eight years under s. 34(1)(a) as in force after the Amending Act 1948 had elapsed. It has deliberately used the words "as in force before its amendment by the Finance Act 1956". These words indicate that the legislature intended to give full

effect to the amendment made by the Finance Act of 1956 in s. 34(1)(a) removing the bar of the lapse of eight years' period in cases of certain incomes. The notices to which s. 4 applies and which are validated are those that were issued between the periods mentioned in that Act i.e. before the Amending Act, 1959, and after the Finance Act, 1956, in spite of the expiry of the eight years' period before the amendment by the Finance Act, of 1956. Thus whereas sub-s. (4) of s. 34 applies to and authorises the taking of action after the coming into force of the Amending Act of 1959, s. 4 of that Act validates action taken after the amendment by the Finance Act of 1956. It is not the effect, of s. 4 to abrogate and supersede the time limit provided by s. 34(1)(a) of the Act in all the past years. All it does is that it validates those notices which were issued within the two limits above mentioned.

In this connection Mr. Palkhivala submitted that it is necessary to see why the Amending Act of 1959 was enacted. According to his submission the reason for and the intention of the enactment was to nullify the effect judgment of the Calcutta High Court in Debi Dutta Moody's [A.I.R. 1959 Cal. 567.] case. In that case a notice issued under s. 34(1)(a) to the assessee before April 1, 1956, when the Finance Act of 1956 became operative was served a day later, i.e. April 2, and it was contended in the High Court that the period of eight years having by then elapsed the notice was invalid. It was held that in construing the retrospective operation of the statute the nature of the right affected must be considered and where there is a vested right an amendment is prospective so as not to affect a vested right; that at the time when the amendment by the Finance Act of 1956 became operative the right to proceed had already become barred under the Act of 1948 and that it could not be revived as a result of the amendment of 1956 unless there was an express provision to the contrary. It was the effect of that decision which was sought to be nullified by the Amending Act of 1959. In construing an enactment and determining its true scope it is permissible to have regard to all such factors as can legitimately be taken into account to ascertain the intention of the legislature such as the history of the Act, the reason which led to its being passed, the mischief which had to be cured as well as the cure as also the other provisions of the statute. That is the rule in Heydon's [(1584) 3 Co. Rep. 7a : 76 E.R. 637.] case which was accepted in R. M. D. Chamarbaugwalla v. The Union of India [(1957) S.C.R. 930, 936.]. Taking this principle into account it appears that the object of the amendment was to validate certain notice after the amendment and after the laps of eight years from the end of the assessment year and also to nullify the effect of the Calcutta Judgment above-mentioned.

Mr. Rajagopal Sastri relied next on the amendment to s. 34(3) of the Act by the amending Act of 1953 which came into effect as from April 1, 1952. By s. 18 of that Act the second proviso to sub-s. (3) of s. 34 was amended whereby certain changes were made in regard to the period of time for taking action in consequence of or to give effect to any finding or direction contained in an order under the various sections therein mentioned one of them being an order of the Income-tax Appellate Tribunal. The proviso as amended reads as follows :-

> "Provided further that nothing contained in this section limiting the time within which any action may be taken or any order, assessment or reassessment may be made shall apply to a reassessment made under section 27 or to an assessment or reassessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 31, section 33, section 33A, section 33B, section 66 or section 66A".

It was contended that because action was taken against the respondent in consequence of an order of the Income-tax Appellate Tribunal there was no time limit and therefore the impugned notice was

not hit by the period of eight years. It was further argued that for the purpose of validating certain notices and assessments, s. 31 of the Amending Act of 1953 was enacted the relevant portion of which is as follows :-

> "Validity of certain notices and assessments. For the removal of doubts it is hereby declared that the provisions of sub-sections (1), (2) and (3) of section 34 of the principal Act (the Indian Income-tax Act, (1922) shall apply and shall be deemed always to have applied to any assessment or reassessment for any year ending before the 1st day of April 1948, in any case where proceedings in respect of such assessment or reassessment were commenced under the said sub-sections after the 8th day of September 1948 and any notice issued in accordance with sub-section (1) ....whether before or after the commencement of the Indian Income-tax (Amendment) Act, 1953, shall, notwithstanding any judgment or order of any Court, Appellate Tribunal or Income-tax authority to the contrary, be deemed to have been validity issued..... and no such notice,..... shall be called in question on the ground merely that the provisions of section 34 did not apply or purport to apply in respect of an assessment or reassessment for any year prior to the 1st day of April 1948."

This section, so it was argued, validated the impugned notice even though the period of limitation expired on March 31, 1951.

I shall first deal with the argument based on s. 31 of the Amending Act of 1953. By s. 8 of the Amending Act of 1948 a new s. 34(1) was substituted for the old s. 34(1) with effect from March 30, 1948. Bose, J., of the Calcutta High Court in a petition under Art. 226 of the Constitution reported as Calcutta Discount Co. v. Income-tax Officer [(1952) 21 I.T.R. 579.], held that a notice served under the substituted s. 34(1) for any assessment year prior to the coming into force of the Amending Act of 1948 was invalid as the Income-tax Officer had no jurisdiction to proceed with the reassessment on the ground that s. 34(1) as amended in 1948 had no application to assessments for the years prior to 1948 even though the period of eight years had not elapsed. It was also held that the Amending Act of 1948 was expressly made retrospective as from March 30, 1948, it had no further retrospectivity and therefore the notice issued under s. 34(1) were without jurisdiction. Against that judgment which was dated March 26, 1952, an appeal was taken which was decided on March 25, 1953, and is reported as Income-tax Officer, Companies District I, Calcutta v. Calcutta Discount Co. Ltd., [(1953) 23 I.T.R. 471.] But in the meanwhile i.e. the period between the two judgments a bill was introduced in 1952 to amend s. 34 so as to nullify the effect of the judgment of Bose, J., in the Calcutta case. This resulted in the enactment of the Amending Act of 1953 which received the assent of the President on May 24, 1953, but was given retrospective effect as from April 1, 1952.

Section 31 of the Amending Act of 1953 can be divided into two parts. The first part beginning with the words "it is hereby declared" to the words "were commenced under the said sub-section after the 8th day of September 1948" is merely declaratory. It declares the section to be applicable to assessments for any year ending before April 1, 1948 in any case where proceedings in respect of such assessment or re-assessment "were commenced" under sub-ss. 1, 2 and 3 of s. 34 after September 8, 1948. According to the appellant the effect of the first part of the section was to apply the provisions of s. 34(1), (2) and (3) to every proceeding for assessment or reassessment whenever commenced after September 8, 1948 even though reassessment proceedings in regard to them had become time barred. The contention on behalf of the respondents, on the other hand, was that the

use of the words "were commenced" under sub-ss. (1), (2) and (3) of s. 34 prescribes the limits for the retrospective application of those sub-sections and that period was between September 8, 1948 and April 1952 when the Amending Act of 1953 became operative. The contention of the respondents' counsel is well founded. Section 31 does not make sub-ss. (1), (2) and (3) of s. 34 applicable to any and every assessment or re-assessment whenever commenced after September 8, 1948. The use of the words "were commenced", limits the retrospectivity to the period between September 8, 1948, and April 1, 1952. This part of s. 31 therefore is of no assistance to making the Amending Act of 1953 applicable to the present case in which the notice was given on April 30, 1954.

The second part of s. 31 deals with the validity of notices. It firstly provides that any notice issued "in accordance with" s. 34(1) whether issued before or after April 1, 1952, shall, notwithstanding, any judgment or order of any court to the contrary, be deemed to be validly issued and secondly that such notice shall not be challenged merely on the ground that provisions of s. 34 do not apply or purport to apply in respect of an assessment for any year prior to April 1, 1948. In this second part of s. 31 the important words are "in accordance with" which mean and imply that the notice issued was in conformity with sub-s. (1) of s. 34 which would include all formalities and limitations therein mentioned. Consequently it has to be a notice within eight years' period. As the impugned notice was issued beyond that period, it cannot be called a notice "in accordance with" and therefore the deeming provision as to validity is not applicable to the present case. Further the words notwithstanding any judgment etc. are indicative of the purpose of this provision to be this that if the notice was in conformity with s. 34(1) it will be valid notwithstanding any judgment etc. That this was the purpose and meaning of this second part is further made clear by the provisions against such notice being challenged on the ground of its being in respect of an assessment or reassessment for any prior to April 1, 1948. Thus these words only nullified the effect of the judgment of Bose, J., in Calcutta Discount Co.'s case, and did not validate time barred notices.

Moreover in the present case the notice is not being impugned on the ground of s. 34 being inapplicable in respect of the assessment year 1942-43. On the contrary the plea raised against the validity of the notice is that the provisions as to eight years in s. 34(1) are applicable; in other words the attack on the legality of the notice is that it is barred by the provisions of s. 34(1). This part of s. 31 also does not validate the notice issued to respondent No. 1 after a lapse of eight years from the assessment year. In my opinion therefore neither the first part nor the second part of s. 31 is applicable to the facts of the present case.

I shall next consider the appellant's argument based on the second proviso to s. 34(3) as amended by s. 18 of the Amending Act of 1953. The assessment year in the present case is 1942-43 and therefore the eight years' period under the Act expired on March 31, 1951, and order of the Appellate Tribunal was August 14, 1951 i.e. after the lapse of 8 years. It was contended by the appellant that as a result of this proviso the limitation as to time within which any action could be taken in regard to any assessment or reassessment was removed if assessment or reassessment was made in consequence of or to give effect to a finding or direction contained inter alia in the order of an Income-tax Appellate Tribunal under s. 33. In the present case, so it was contended by the appellant, there was a finding by the Appellate Tribunal in the order dated August 14, 1951, to the effect that the business in the name of firm Vasantsen Dwarkadas belonged to firm Purshottam Laxmidas and that if the Income-tax Officer could included the income in the income of Purshottam Laxmidas he was at liberty to do so. This order, it was submitted, removed by virtue of the second proviso to sub-s. (3) of s. 34 the bar of the period of eight years under sub-s. (1)(a) of s. 34 of the Act. The correctness of this contention will depend on whether the language of the second proviso is

retroactive in its operation and revives barred rights or barred actions or removes the bar of eight years under s. 34(1)(a) of the Act. There is nothing in the words used in the proviso which gives it retroactive operation expressly or by necessary intendment but it was argued that any enlargement of time for taking action under s. 34 of the Act revives the liability of an assessee to be taxed notwithstanding the expiry of the period during which action could be taken by the Income-tax Officer. It was also submitted that the eight years' period in s. 34(1)(a) was not a period of limitation but just created a fetter on the exercise of the power of the Income-tax Officer and when that fetter was removed the ability to exercise the power was revived.

The first argument above brings us to the general principles of the law of limitation whether a change in the period of limitation takes away the existing finality of the immunity against actions which had already been barred by the lapse of the period of limitation. The Statute of Limitation has been termed a statute of 'repose, peace and justice' and its intention was stated by Sir Richard Couch in Hurrinath Chatterji v. Mohunt Mothoor Mohun Goswami [(1893) L.R. 20 I.A. 183, 192.] as follows :-

> "The intention of the law of limitation is, not to give a right whether there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right."

In Kr. Kr. Kr. Ramanathan Chettiar v. N. M. Kandappa Goundan [I.L.R. 1951 Mad. 581.], it was held that if a right to sue had become barred by the provisions of the Limitation Act in force on the date of the coming into force of a new Act then such barred rights cannot be revived by the application of the new enactment and it cannot be said that because the remedies are barred but the rights are not extinguished such rights can be revived by mere change in the period of limitation and become enforceable in a court of law. This decision has to support of the observations of the Privy Council in cases which were decided on general principles applicable to limitation and were not based on any statutory provision such as s. 28 of the Limitation Act of 1908 by which as a result of lapse of the period of limitation the rights are extinguished. In Appasami Odayar v. Subramanya Odayar [(1888) L.R. 15 I.A. 167, 169.], it was observed :-

> "By sect. 1, clause 13, of Act XIV of 1859, a suit for a share of the family property not brought within twelve years from the date of the last participation in the profits of it would be barred. This Act continued in force until the 1st July, 1871, when Act IX of 1871 came into force. Consequently, if there was no participation of profits between 1837 and 1871 the suit would be barred, and the later Acts for limitation of suits need not be referred to. If they altered the law they would not revive the right of suit."

Later in Mohesh Narain Moonshi v. Taruck Nath Moitra [(1892) L.R. 20 I.A. 30, 38.], the same principle was stated by Lord Shand in the following words :-

> "It is clear that, on the 1st day of April 1873, the plaintiff's suit was barred by limitation under the Act of 1871, and the Act of 1877 could not revive the Plaintiff's right so barred - a point which was indeed decided, in regard to the Limitation Acts of 1859 and 1871 in the case of Appasami Odayar v. Subramanya Odayar [(1888) L.R. 15 I.A. 167, 169.].

In Khunni Lal v. Govind Krishna Narain [(1911) L.R. 38 I.A. 87, 102.], Mr. Ameer Ali said :-

> "No suit could be brought, even if the enactments referred to above had permitted it, to enforce the right after lapse of twelve years "from the time the cause of action arose" (s. 12, Act XIV of 1859). Nothing in Art. 142 of Act IX of 1871 or of Art. 141 of Act XV 1877 could lead to the revival of a right that had already become barred."

The same principle has been applied by the Privy Council in the case of decree in Sachindra Nath Roy v. Maharaj Bahadur Singh [(1921) L.R. 48 I.A. 335.]. There the question was which of the two Limitation Acts, Act 25 of 1877 or Act 9 of 1908 applied to a decree obtained on August 26, 1905. It was held the former applied and therefore the decree became unenforceable according to the law as it stood before the Limitation Act of 1908. Lord Atkinson observed at p. 345 :-

> "There is no provision in this latter Act" (Act 9 of 1908) "so retrospective in its effect as to revive and make effective a judgment or decree which before that date had become unenforceable by lapse of time."

In Delhi Cloth & General Mills Co. Ltd. v. Income-tax Commissioner, Delhi [(1927) L.R. 54 I.A. 421, 425.], it was held that no appeal lay against the decision of a High Court Court if it was given before appeals to the Privy Council were provided for. In that connection Lord Blanesburgh observed at p. 425 :

> "Their Lordships can have no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, are provisions which touch existing rights."

In all these cases the Privy Council proceeded on the principle that if the right of action had become barred according to the law of limitation in force, subsequent enlargement of the period of time does not revive the remedy to enforce the rights already barred. The same principle, in my opinion, would apply to the periods specified in s. 34 of the Act and if the period prescribed for taking action had already expired, subsequent change in the law does not make it so retrospective in its effect as to revive the power of Income-tax Officer to take action under the new law. It is one of the canons of construction of statute of limitation that in the absence of express words or necessary intendment no change in the period of limitation can revive the right to sue which has become barred not can it impair the immunity from any action which had become final after the lapse of a specified period of time.

The Calcutta High Court in Nepal Chandra Roy v. Niroda Sundari Ghose [I.L.R. 39 Cal. 506.], held that the right of the judgment debtor to make an application for setting aside an ex parte decree could not be revived by a change in the law if the right to apply had already become barred before the new law came into force. Similarly in Mohamed Mehdi Faya v. Sakunabai [I.L.R. 37 Bom. 393.], it was held that a remedy which had become barred under the old Limitation Act would not be revived by the passing of a new Limitation Act. This was a case where the right to sue for restitution of conjugal rights was held to be barred.

The Bombay High Court in Dhondi Shivaji Rajivade v. Lakhman Mhaskuji Khaire [A.I.R. 1930 Bom. 55.], held that where the mortgagor's right to sue for redemption of the mortgage was barred subsequent acknowledgement would not extend the period of limitation as the acknowledgement ought to have been made in writing within 60 years from the date of the mortgage. The court also held that the remedy and right of the mortgagor having been extinguished nothing contained in the

subsequent Limitation Act would affect the operation of the previous enactment. In this connection the court referred to s. 6 of the General Clauses Act, 1897.

The Madras High Court in two cases applied this principle in K. Simrathmul v. Additional Income-tax Officer, Ootacamund [(1959) 36 I.T.R. 41, 45.], to proviso (ii) of s. 34(3). The Punjab High Court in Pran Nath v. Commissioner of Income-tax Punjab [(1960) 38 I.T.R. 595, 600.], at P. 600 also applied this principle to the same provision. But it appears that in a later judgment, Commissioner of Income-tax v. R. B. L. Ishar Das [(1962) 44 I.T.R. 629.], a contrary view was taken but it does not appear that the previous judgment was brought to the notice of the court nor does it appear that the attention of the learned judges was drawn to the principles laid down in the decisions of the Privy Council. The Official Liquidator of the Benaras Bank Ltd. v. Sri Prakasha [I.L.R. (1946) All. 461.], relied on by Mr. Rajagopal Sastri did not decide the question that subsequent change in the law can revive barred rights. It proceeded on the construction of the amended s. 235 of the Indian Companies Act. He also relied on two judgments of the Patna High Court : Baleswar Prasad v. Latafat [(1944) I.L.R. 24 Pat. 249.], and Jagdish v. Saligram [(1945) I.L.R. 24 Pat. 391.]. In the former it was held that the law of limitation which governs an action is the law which prevails on the date when the action is brought and therefore acknowledgement made on a pronote executed in 1934 would be governed by the law in force at the time the suit was brought. In the latter also it was held that the law relating to acknowledgement under s. 20 was the one which was in force at the time of the bringing of suit. But it is significant to note that S. K. Das, J., (now a Judge of this Court) did not agree with that view but did not disagree with the decision as the matter had been previously decided in the judgment above referred to. He expressly said :

> "I would personally have come to a different conclusion if the matter were not covered by the aforesaid decisions of this Court."

Another argument raised on behalf of the appellant was that the eight years' period prescribed in s. 34 is not a rule of limitation but merely a fetter on the power of the Income-tax Officer to take action and the removal of the fetter revives the power of the officer. This really is not a different argument but the same argument of revival of a right to sue which has been discussed above. Change in the law as to the period in which a suit can be brought to recover a debt or action can be taken by the Income-tax Officer to commence an assessment to reassessment does not impair the rights already acquired by the bar of limitation or revive the power of the Income-tax Officer which has already become incapable of being exercised by laspe of time. The two stand on the same footing and have the same effect i.e. provide immunity and place a bar on any attack on the rights of the defendant or the assessee as the case may be.

The next question raised is the constitutionality of the second proviso to s. 34(3) of the Act. For that purpose it is necessary to restate some of the salient facts of the present case. The firm, Vasantsen Dwarkadas of which the partners were Vasantsen respondent No. 1, Narandas Shivji and Nanalal Odhavji filed voluntary return for the assessment year 1942-43 and also applied for registration of the firm which was refused on the ground that the firm was not a genuine firm but belonged to Dwarkadas Vussonji, the father of respondent No. 1, who was the principal partner in the firm Purshottam Laxmidas and the Income-tax Officer therefore added the income of firm Vasantsen Dwarkadas to the individual income of Dwarkadas Vussonji. This happened in regard to the assessment for the subsequent year also. Appeals were filed for that year and subsequent years by the firm Vasantsen Dwarkadas both against the quantum of the assessed income and refusal of the Income-tax Officer to register the firm. These appeals and the Excess Profits Tax appeal of firm Purshottam Laxmidas for the year 1942-43 were all consolidated and decided by the order of the

Income-tax Appellate Tribunal dated August 14, 1951. At that stage Dwarkadas being dead, Vasantsen Dwarkadas respondent No. 1 was substituted in place of his father in the appeal of Purshottam Laxmidas. The order in the appeal of firm Vasantsen Dwarkadas against the firm Purshottam Laxmidas was not an order to which firm Purshottam Laxmidas as such was a party and consequently any finding given in regard to the income of firm Vasantsen Dwarkadas being the income of the firm Purshottam Laxmidas was an order passed against a third party who was not heard in those proceedings. It was contended on behalf of respondents that the second proviso to s. 34(3) is unconstitutional because it infringes Art. 14 of the Constitution in so far as it deprives such third party of the immunity given against assessment or reassessment by the period of eight years mentioned in s. 34(1)(a) and it results in prejudging the merits of the third party's case before he is even heard and that there is no reasonable basis for distinguishing such third party from any other person escaping income-tax. The words used in the section are "assessment or reassessment made on the assessee in consequence of or to give effect to any finding contained in an order." Any person there mentioned must mean a person other than the assessee. The consequences of giving effect to the second proviso to s. 34(3) are that the protection of the time limit given by the proviso to sub-s. (1) of s. 34 will disappear qua those falling within the proviso and would be available to other assessees who fall within s. 34(1)(a) of the Act. It was submitted that assessees who all under this category cannot form a different class based on any real and substantial distinction; and that there is no nexus between the classification and the object sought to be achieved and therefore Art. 14 is violated. Reliance was placed on the judgment of this Court in Surajmal Mohta v. A. V. Visvanatha Sastri [(1955) 1 S.C.R. 448, 461.]; Shree Meenakshi Mills Ltd. Madurai v. Shree A. V. Visvanatha Sastri [(1955) 1 S.C.R. 787.] and M. Ct. Muthiah v. The Commissioner of Income-tax, Madras [(1955) 1 S.C.R. 1247.].

It was argued that there was no reasonable basis for classification in this case because there was nothing peculiar in properties of characteristics of persons with regard to whom a finding or a direction is given under the proviso and then action is taken against them under s. 34(3) and those who have evaded tax in regard to who no such direction is given and fall under s. 34(1)(a). Both of them have common qualities, common characteristics and common peculiarities and traits. There is little to distinguish one from the other and in support counsel relied on the observations of Mehr Chand Mahajan, C.J., in Surajmal Mohta's [(1955) 1 S.C.R. 448, 461.], case where it was observed that there was no difference in characteristics between persons who were discovered as substantial evaders of income during investigation conducted under s. 5(1) of Taxation on Income (Investigation Commission) Act (Act 30 of 1947) and those who are discovered by the Income-tax Officer to have evaded payment of income-tax. The question of classification was again raised in Shree Meenakshi Mills' [(1955) 1 S.C.R. 787.] case. In that case the Court had to decide whether persons who came within the scope of s. 5(1) of Act 30 of 1947 and those who came within s. 34 of the Income-tax Act as amended by the Income-tax (Amendment) Act 1954 (Act 33 of 1954) formed distinct classes. It was held that after the coming into force of the amended s. 34 which operates in the same field as s. 5(1) of Act 30 of 1947 both classes were included within the ambit of amended s. 34 and the two sections overlapped. Therefore according to the two cases above-mentioned if there are no particular qualities and elements which distinguish one set of evaders of income-tax from another and both have evaded income-tax their cases fall under s. 34(1) before and after 1948 or before and after 1953. From the mere fact that in regard to one a direction is given or an order is made within the second provise to s. 34(3) and in regard to another it is not given, no reasonable basis for classification arises as their essential characteristics are the same. But it was argued that in A. Thangal Kunju Musaliar v. M. Venkatachalam Potti [(1955) 2 S.C.R. 1196.], such classification was made. In that case a native of Quilon within the Travancore State was given a notice under s.

5(1) of the Travancore Act XIV of 1124, a provision corresponding to s. 5(1) of the Indian Act 30 of 1947 for investigation but before the report could be made the Constitution of India became applicable to Travancore State. The assessee filed a petition in the Travancore High Court for a writ of prohibition prohibiting the Commission from holding an inquiry in regard to evasion and then the matter was brought in appeal to this Court. It was held that s. 5(1) of Travancore Act is not discriminatory and violative of rights under Art. 14 when read in juxtaposition with s. 47 of the Travancore Income-tax Act was directed only against persons concerning whom definite information came into the possession of the Income-tax Officer in consequence of which that officer discovered the escaped income and such class was definite class and it was not confined to those who had escaped from assessment of income-tax made during the war period i.e. 1939 to 1946. On the other hand s. 5(1) of the Travancore Act sought to reach that class of persons which was comprised only of those about whom there was no definite information and no discovery of any item or items of income which escaped taxation but against whom the Government had only a prima facie reason to believe that they had evaded payment of tax of substantial amounts. Further action under the latter Act was limited to evasion of payment of tax made during war period. Section 5(1) of the Travancore Act therefore was not discriminatory in comparison with s. 47(1) of the Travancore Income-tax Act. The reason for holding that there was a definite characteristic which distinguished that class i.e. those who had escaped income to a substantial degree during the war period and those falling under s. 34 of the Income-tax Act was that in the case of the former the Government had reason to believe that they had evaded payment of tax to a substantial degree and that it was limited to evasion of payment of taxation on income made during the war period. In the case of those falling under s. 47(1) of the Travancore Income-tax Act there had to be definite information in the possession of the Income-tax Officer discovered that the income had escaped assessment. The two classes were distinct and therefore Musaliar's [(1955) 2 S.C.R. 1196.], case cannot apply to the facts of the present case. Later in N. Ct. Muthiah v. The Commissioner of Income-tax Madras [(1955) 2 S.C.R. 1247.], this court pointed out that if the provision of s. 34(1) of the Act as it stood before its amendment by the Amending Act of 1948 had been the only provision to be considered the rule in Musaliar's [(1955) 2 S.C.R. 1196.] case would have applied but the position was materially affected by reason of the two amendments made in s. 34(1), by Amending Act 1948 and the other by the Income-tax (Amendment) Act, Act 33 of 1954. In that case it was contended and it was so held that s. 5(1) of Act 30 of 1947 was ultra vires of the Constitution as it was discriminatory and violative of Art. 14 by reason of the two amendments above referred to. The submission of the respondents that there is no reasonable basis for classification between those who have escaped assessment under s. 34(1)(a) and those third parties who have escaped income-tax but with regard to whom a direction or an order is made under proviso (ii) to s. 34(3) is well founded and therefore the provision is unconstitutional and hit by Art 14.

Lastly it was argued that the second proviso contemplates a valid finding or direction and that it cannot be given against a non-assessee at all. It was also submitted that such a finding must be necessary but there is little substance in this submission. Whether a finding is necessary or not must depend on the circumstances of each case and it cannot be said as a matter of law that finding is or is not necessary.

For the reasons given above, the appeal must be dismissed with costs. In any case the appellant had undertaken to pay the costs of the respondents irrespective of the result of the appeal and he must pay the costs of the respondents.

SARKAR, J. -

This appeal arises out of a petition under Art. 226 of the Constitution for the issue of writs restraining the revenue authorities from making an assessment under a notice dated April 30, 1954, served under s. 34(1)(a) of the Income-tax Act, 1922, on Purshottam Laxmidas, the respondent firm, in respect of the assessment year 1942-43. It is contended that the notice had been issued after the period prescribed for it by the section had expired and was, therefore, invalid. This, it may be conceded, is so but it seems to me that the notice was none the less made valid by a subsequent enactment, namely, s. 4 of Act I of 1959 to which I will later refer.

Purshottam Laxmidas is the assessee. It had two partners, Dwarkadas and Parmanand. Vasantsen is the son of Dwarkadas. It appears that in 1941 another business was started in the name of Vasantsen Dwarkadas. Vasantsen claimed it to have been an independent partnership business carried on by him with two other persons. For the year 1942-43, this business had filed a return of income of its own and had applied for registration as a firm under the Income-tax Act. The Income-tax Officer rejected these claims by the business of Vasantsen Dwarkadas and added its income for the year to the income of Dwarkadas taking the view that it was a business solely belonging to him. Vasantsen Dwarkadas (the alleged firm) appealed from this decision. There was also an appeal against the assessment on Dwarkadas individually for the year 1942-43. In 1943-44, the Income-tax Officer came to a different conclusion and held that Vasantsen Dwarkadas was a branch of Purshottam Laxmidas. The alleged firm of Vasantsen Dwarkadas repeated its aforesaid contention in several years from 1943-44 onwards and went up in appeals against its rejection.

In 1951, various appeals concerning the parties named above came up before the Income-tax Appellate Tribunal. These appeals consisted of the said appeals by the alleged firm of Vasantsen Dwarkadas. Appeals by Vasantsen as the son and heir of Dwarkadas who had died in 1946 in respect of assessments on him for 1942-43 and 1943-44, and appeals by the firm of Purshottam Laxmidas in respect of assessments on it for various years under the Excess Profits Tax Act. These appeals were disposed of by a common judgment passed by the Tribunal on August 14, 1951. The appeals by the firm of Vasantsen Dwarkadas were all dismissed as it was held that it was not a partnership between the persons alleged. In the appeals by Purshottam Laxmidas, it was held that the business of Vasantsen Dwarkadas was one of its branches. In appeals against the assessment on Dwarkadas, it was held that the income of the business of Vasantsen Dwarkadas had wrongly been added to his income for the assessment year 1942-43 and the addition should be deleted. It was also said referring to the income of Vasantsen Dwarkadas in respect of the assessment year 1942-43, that "If the Income-tax Officer can include this sum in the income of Purshottam Laxmidas he is of course at liberty to do so" It is because of this observation that the impugned notice was served on the respondent firm of Purshottam Laxmidas. It was, thereupon that the firm of Purshottam Laxmidas and Vasantsen, the latter representing his father's estate, moved the High Court at Bombay under Art. 226 for the reliefs earlier mentioned. The respondents to the petition were the appellants, the Income-tax Officer, Bombay and the Union of India. Parmanand, the other partner in Purshottam Laxmidas, was also made a respondent to the petition but he does not seem to have taken any interest in the proceedings at all.

When the matter was heard in the High Court, the Act of 1959 had not been passed. The revenue authorities relied on the second proviso to s. 34(3) of the Income-tax Act as amended by Act 25 of 1953 for the validity of the notice. The High Court did not accept this contention and issued the writs as prayed. The revenue authorities have now come up in appeal which is being opposed by the respondents, Purshottam Laxmidas and Vasantsen. As I think that the appeal should be allowed because of s. 4 of Act I of 1959, which provision the High Court had no occasion to consider, it would be to no purpose to discuss the reasons on which the High Court based itself or the second

proviso to sub-s. (3) of s. 34.

I think I ought to refer at this stage to s. 34 of the Income-tax Act. That section authorises assessment and re-assessment in respect of past years where for one or other of the reasons mentioned in it, income has not been assessed to the full amount of tax payable on it. A general idea of some of the provisions of s. 34 may now be given. Sub-section (1) of this section provides that before making the assessment a notice has to be served on the assessees concerned asking for a return of the income of the year in which it escaped assessment and this within a certain number of years from the end of that year. Then sub-s. (3) of this section provides that the order of assessment pursuant to the notice has to be made within a certain number of years from them end of the year in which the income was first assessable. These are two conditions which have to be satisfied before assessment under s. 34 can be made. In the present case, we are concerned with the first of these conditions only, that is, whether the notice had been issued within the time provided for it for no order of assessment was ever made. I ought to have said that the second proviso to sub-s. (3) of s. 34 amended in 1953 enlarged in certain cases the time for issuing the notice and also for making the order of assessment. That is why the High Court had to deal with this proviso in this case.

Now, s. 34(1) has been amended on a number of occasions. A reference to some of the amendments would be useful. The first amendment to which I desire to draw attention is that made by the Income-tax (Amendment) Act, 1939. Under that amendment where the revenue authorities thought that the assessee had concealed his income or deliberately furnished inadequate particulars, they could issue the notice within eight years of the year in which the income is supposed to have escaped assessment and in other cases, within four years of that year.

Sub-section (1) of s. 34 was next amended be the Income-tax and Business Profits Tax (Amendment) Act, 1948. This Act was passed on September 8, 1948, but s. 8 which substituted a new section for the existing s. 34, was brought into operation retrospectively from March 30, 1948. The new sub-section (1) was divided into two clauses. Clause (a) dealt with cases of omission on the part of an assessee to make a return or his failure to disclose fully his income for any year as a result of which income escaped assessment. Clause (b) dealt with cases where there was no such omission but the Income-tax Officer in consequence of information in his possession believed that income of any year had escaped assessment. It was provided that in a case coming under cl. (a) the notice might be issued within eight years and in a case coming under cl. (b) within four years of the end of the year in which the income escaped assessment. There was a proviso to this sub-section which said that the Income-tax Officer could not issue the notice unless he recorded his reasons for doing so and the Commissioner of Income-tax, a superior revenue officer, was satisfied on the reasons so recorded that it was a fit case for the issue of the notice.

Then came the amendment by s. 18 of the Finance Act, 1956, passed on April 27, 1956, but brought into force retrospectively from April 1, 1956. As a result of this amendment it was provided in a case coming under cl. (a) of s. 34(1) the clause with which this case is concerned - That (1) no notice should issue for a year prior to the year ending on March 31, 1941, (2) nor for any year if eight years had elapsed after the expiry of that year unless the income which had escaped assessment was likely to amount to Rs. 1,00,000/- or more and (3) nor unless the Income-tax Officer had recorded the reasons for issuing the notice and where the amount of the escaped income was Rs. 1,00,000/- or more, the Board of Revenue, and in other cases the Commissioner, was satisfied on such reasons that the case was a fit one the issue of the notice.

It seems to me that the 1956 amendment made two real changes. First, it removed altogether the

prescription of time for the issue of a notice in a case where the escaped income was likely to be Rs. 1,00,000/- or more. Under the 1948 amendment no notice for a year from the end of which eight years had expired could be issued at all. As the amending Act of 1948 came into force on March 30, 1948, no notice could be issued under it for any year prior to the year ending on March 31, 1941. Therefore the provision in the 1956 amendment that no notice could issue for any year prior to the year ending on March 31, 1941, made no real alteration in the law. The other change was that in cases involving escaped income of Rs. 1,00,000/- or more, the approval of the Board of Revenue to the issue of the notice was made necessary. This alteration in the law has no bearing on the question that I propose to discuss.

Now the present is not a case where the revenue authorities contend that the income which escaped assessment was likely to be Rs. 1,00,000/- or more. The notice, it may be remembered, was issued on April 30, 1954, in respect of the year 1942-43. It was a notice therefore which was invalid both under the 1948 and 1956 amendments of s. 34(1).

I will now refer to the Act of 1959 which I have earlier mentioned. That is the Income-tax (Amendment) Act, 1959. It was passed on March 12, 1959. Section 2 of this Act introduced a new sub-section in s. 34, namely, sub-s. (4). That sub-section was in these terms :

> Sub-s. 4 "A notice under Cl. (a) of sub-s. (1) may be issued at any time notwithstanding that at the time of the issue of the notice the period of eight years specified in that sub-section before its amendment by clause (a) of section 18 of the Finance Act, 1956, had expired in respect of the year to which the notice relates."

Section 4 of this amending Act on which I propose to rest my judgment in this case runs as follows :

> S. 4. "No notice issued under cl. (a) of sub-s. (1) of s. 34 of the principal Act at any time before the commencement of this Act and no assessment, re-assessment or settlement made or other proceeding taken in consequence of such notice shall be called in question in any court, tribunal or other authority merely on the ground that at the time the notice was issued or at the time the assessment or re-assessment was made, the time within which such notice should have been issued or the assessment or re-assessment should have been made under that section as in force before its amendment by cl. (a) of s. 18 of the Finance Act, 1956, had expired."

Quite clearly the new sub-s. (4) of s. 34 cannot apply to the notice with which we are concerned for the sub-section by its own terms deals only with notices issued after the 1959 Act came into force and the notice in this case was issued before that date.

Now, s. 4 of the 1959 Act prevents a notice issued under s. 34(1)(a) of the principal Act being held to be invalid on the ground that it was issued after the time within which it should have been issued under that section as it stood before it was amended by the Finance Act of 1956. In other words, s. 4 validates notice issued under s. 34(1)(a) even though it was invalid for the reason that it was issued after the expiry of the eight years prescribed for it under the 1948 amendment, that being the section as it stood before the 1956 amendment.

The first requirement then of the applicability of s. 4 is that there must be a notice issued under s. 34(1)(a) of the principal Act. I do not think that it was seriously contended at the bar that the notice in the present case has not been issued under cl. (a) of s. 34(1). I feel no doubt that it was so issued.

The provision that we have to consider for this purpose is s. 34(1)(a) as it stood as a result of the 1948 amendment for that was the section in force on the date the notice was issued. The notice would have been one issued under cl. (a) of that section as so amended if it was a case where income had escaped assessment because of the failure of Purshottam Laxmidas to disclose fully its income for the year 1942-43. There can be no doubt on the facts of this case that Purshottam Laxmidas had failed to disclose fully its income for the year 1942-43. On the facts found, the income of the business of Vasantsen Dwarkadas was the income of Purshottam Laxmidas. Therefore Purshottam Laxmidas should have disclosed in its return for 1942-43 the income made by it on the business done in the name of Vasantsen Dwarkadas. What happened was that the income of Vasantsen Dwarkadas for 1942-43 was shown as the income of its own as an independent firm and this was done by Vasantsen. Obviously, Vasantsen, his father Dwarkadas and Parmanand, the latter's partner in Purshottam Laxmidas, were all acting together. It would perhaps be more correct to say that things had been left to Dwarkadas and Vasantsen to manage. The had three-fourth interest in the business, while Parmanand had only one-fourth. Furthermore, Parmanand has taken no interest in the present proceedings. It would follow from all this that if Vasantsen Dwarkadas's income had been shown separately, it could not have been included in the return filed by Purshottam Laxmidas. Therefore, it is a case in which Purshottam Laxmidas's income for 1942-43 escaped assessment because of its failure to disclose its income fully. That is why I think it beyond doubt that the notice in the present case had been issued under cl. (a) of s. 34(1). It is none the less so because it was issued in consequence of the direction of the Tribunal that the Income-tax Officer was at liberty if he could in law do so, to include the income of Vasantsen Dwarkadas for 1942-43 in the income of Purshottam Laxmidas. The order could not have enabled a notice to issue. The notice had to be issued under a statutory provision. That provision was s. 34(1)(a).

The next requirement of s. 4 of the Act of 1959 is that the notice must have been issued at any time before the commencement of that Act. The present notice which had been issued in 1954 had clearly been so issued. When the section uses the word "at any time", I suppose it means at any time; it does not thereby say that the notice must be issued at any time before the 1959 Act but after a certain other point of time. The other limit is not to be found in the section at all; all that it requires is that the notice must be issued before the 1959 Act.

It is however contended that the proper construction of s. 4 is that the notice must have been issued after the Finance Act of 1956 came into force and amended s. 34. I find nothing in s. 4 on which to rest this construction. Mr. Palkhivala appearing for the respondent, said that the words "under that section as in force before its amendment by cl. (a) of s. 18 of the Finance Act, 1956" led to this construction. I do not see why and I am not able to deal with this contention more fully for I do not see the reason on which it is based. To may mind, all that these words mean is that the section to be considered is the section as it stood before it was amended by the Finance Act, 1956, that is to say, the section as it stood as a result of the amending Act of 1948, for that was the section which was in force immediately before the amendment affected by the Finance Act, 1956.

Then it was said that if the notice contemplated was not one issued after the Finance Act, 1956, then under s. 34(1)(a) all years without any limitation could be brought to assessment. If that is the result of the words used in s. 4, the words must have that effect. That would be no reason to say that s. 4 applies only to notices issued after the 1956 Act came into force. No doubt the words "at any time" would comprehend a notice whenever issued before the commencement of the 1959 Act. But the section protects such notice only against the invalidity caused by s. 34(1) as it stood after the 1948 amendment, that is, against the invalidity caused by reason of the notice having been issued after the expiry of the time prescribed for it in the section as it then stood. Section 4 does not protect the

notice from invalidity otherwise attaching to it. Now it will be remembered that the 1939 amendment of s. 34 also prescribed a period of time for the issue of the notice. That prescription had to be obeyed whenever applicable. Section 4 provided for no immunity against a breach of that prescription. So, though s. 4 of the 1959 Act freed a notice from the bar of limitation in respect of it imposed by the 1948 amendment, it did not altogether do away with all prescriptions of time. In spite of s. 4, a notice contemplated by it would be subject to the prescription of time as to its issue under the 1939 Act and may be, under s. 34 as it stood before the 1939 amendment. If the notice was issued after the 1956, amendment it would also be subject to the prescription as to time provided by that amendment.

Then it was said that if s. 4 applied to a notice issued more than eight years after the year in which the income escaped assessment but before the 1956 amendment came into force in a case where the escaped income of the year was less than Rs. 1,00,000/-, the position would be curious. A notice issued in a similar case after the 1956 amendment would be bad under s. 34 as it then stood and s. 4 could not save it for it saved notices only from the effect of the 1948 amendment. The position then would be that in a case involving the same amount of escaped income for the same year, a notice issued before 1956 amendment and invalid under the 1948 amendment would be validated and a more recent notice equally invalid under both the earlier and present laws would remain invalid. Assume that the position is somewhat curious or incongruous. But that seems to me to be the result of the words used. For all we know that might have been intended. However strange, if at all, the result may be, I do not think the Courts can alter the plain meaning of the language of the statute only on the ground of incongruity if there is nothing in the words which would justify the alteration. As I have said earlier, in this case there is nothing to justify the alteration of the plain meaning. Consider this. In a case where the escaped income is Rs. 1,00,000/- or over, no incongruity as in the case of escaped income below Rs. 1,00,000/- arises. In such a case the 1956 amendment removes the bar of limitation altogether and what had not been previously barred cannot become at all barred. So no question of more recent notices becoming barred and earlier notices made valid arises. If on the ground of the alleged incongruity notices issued before 1956 in cases of escaped income of less than Rs. 1,00,000/- have to be left out of the scope of s. 4 of the Act of 1959, I suppose we must hold that such notices in cases of escaped income of Rs. 1,00,000/- or over must also be left out of the scope of s. 4, for clearly the section cannot be read as treating the notices in these two cases differently. But in the latter kind of cases, there is no incongruity. I would indeed be absurd to hold that notices issued before 1956 in cases where the escaped income was Rs. 1,00,000/- or over were excluded from s. 4, for in such cases notices may be clearly issued after the 1959 Act under sub-s. (4) of s. 34 introduced by that Act. Sub-section (4) of s. 34 was enacted by the Act of 1959 which also enacted s. 4. If a year's escaped income could be brought to tax by a notice issued after the 1959 Act under sub-s. (4), it could not be that it was intended that the same income could not be brought to tax by a notice earlier issued and prima facie made valid by s. 4. There would be no reason to make a distinction between the two cases. If a distinction could not be made between the two cases, and in one case notices issued before 1956 were covered by s. 4, s. 4 must apply to all notices issued before the 1956 amendment came into force.

I may, before I conclude, as well say that for the reasons mentioned in the judgment in the case of Commissioner of Income-tax v. Sardar Lakhmir Singh (C.As. Nos. 214-215 of 1958), that I shall presently read today, I think that the second proviso to s. 34(3) of the Income-tax Act is invalid and cannot therefore support the notice.

The result is that I think that the present notice was validated by s. 4 of the Income-tax (Amendment) Act of 1959. The appeal will, therefore, be allowed. As the certificate under which

the appeal was admitted so provides by consent of parties, the appellant will pay the costs of Respondents Nos. 1 and 2, of this appeal. The orders of the Courts below are set aside.

HIDAYATULLAH, J. -

In this judgment we shall deal also with C.As. 214, 215 and 509 all of 1958 and C.A. 585 of 1960. The appellant is the Commissioner of Income-tax, Bombay. In Civil Appeal Nos. 214 and 215 of 1958 the Commissioner of Income-tax, Bihar, and in C.A. No. 509 of 1958 the Commissioner of Income-tax, Madras, are the appellants. In Civil Appeal No. 585 of 1960 the Income-tax Officer, Ahmednagar, and the Union of India are the appellants. These appeals are directed against divers respondents to whom reference will be made later. This appeal and C.A. No. 585 of 1960 are appeals against the orders of the Bombay High Court in the exercise of the power conferred by Articles 226 and 227 of the Constitution, the remaining arise out of regular proceedings for assessment under the Income-tax Act, culminating in references to the High Court under s. 66, Income-tax Act, and orders passed therein. In all these appeals assessments made or notices issued, under s. 34 of the Income-tax Act were successfully called in question by the respondents and orders appropriate to the nature of the proceedings were passed by the High Court concerned, either declaring the assessments illegal or quashing the notice by a writ. In these case, however commenced, the validity of the assessments or the notices under s. 34 was questioned on the ground of 'limitation'. The High Courts held that the notices or assessments with which they were dealing were out of time. The Bombay High Court further held that the 2nd proviso to s. 34(3) of the Income-tax Act was ultra vires Article 14 of the Constitution and thus void. The High Courts certified the respective cases as fit for appeal to this Court and these appeals have been filed.

We have had the benefit of reading the judgments just delivered by our learned brethren Das and Kapur, JJ., who have ordered the dismissal of all the appeals. We have the misfortune to differ from them as we are of opinion that these appeals must succeed. The point of law which arises in these appeals is common though it arises in different settings. We are concerned with s. 34 of the Indian Income-tax Act as it stood between 1939 and 1959. This section has been the subject of repeated amendments in 1939, 1948, 1953, 1956 and 1959. It has, while enabling the bringing to tax, income, profits and gains which escape assessment, always provided a period or periods of time for such action though after 1956 it has done away with the restriction of time in certain classes of cases. We are not concerned with the state of law prior to the Amending Act of 1939 or the amendments made later than the Act of 1959. During the intervening twenty years, the Indian Legislature and Parliament have not only amended s. 34 but have passed at intervals validating laws and these cases involve the interpretation and application of the section as amended from time to time and the determination of the effect of the validating provisions with a view to seeing whether any impugned notice or assessment is saved by any validating provision. In our opinion, the provisions taken all-in-all are sufficient to uphold the validity of the divers notices issued in these cases and the assessments, if any, made as a consequence. If the notices and the assessments are held to be in time and thus valid, there is nothing in these appeals besides the constitutionality of the second proviso to s. 34(3) which was raised successfully in the appeals from Bombay. If the constitutionality is also upheld then these several judgments and orders must be reversed and that indeed is our opinion. We shall now give the facts of this appeal.

In this case there was a firm of two partners (i) Dwarkadas Vussonji and (ii) Parmanand Odhavji, bearing the name "Purshottam Laxmidas." This firm did business from October 28, 1935, to April 1, 1946. On the latter date Dwarkadas died. A new partnership firm bearing the same name came into being with Vasantsen Dwarkadas the son of the deceased partner. This firm was registered. Another

firm by name "Vasantsen Dwarkadas" was started on January 28, 1941, and it was dissolved on October 24, 1946. Its partners were : (i) Vasantsen Dwarkadas (ii) Naraindas Shivji and (iii) Nanalal Odhavji.

For the assessment year 1942-43 the firm "Vasantsen Dwarkadas" filed a voluntary return and applied for registration. This registration was refused on the ground that the firm was not genuine. The income of the firm relative to that assessment year was added to the personal income of Dwarkadas Vussonji in the assessment year 1943-44. This also happened in subsequent years. A number of appeals were heard together and disposed of by the Income-tax Appellate Tribunal by its order on August 14, 1951. These appeals were filed by the firm "Vasantsen Dwarkadas" for the assessment years 1942-43 to 1948-49, by Vasantsen Dwarkadas representing the estate of his father and by the firm Purshottam Laxmidas" concerning excess profits. The Tribunal held that not Dwarkadas Vussonji alone but the firm "Purshottam Laxmidas" owned the firm "Vasantsen Dwarkadas". A case was stated but the High Court upheld this conclusion on October 8, 1953. A notice was then issued under s. 34 of the Income-tax Act to the firm "Purshottam Laxmidas" on April 30, 1954, that it had been under-assessed in the relevant year. This notice was challenged before the Bombay High Court by a petition under Article 226 of the Constitution. The first contention was that the 2nd proviso to s. 34(3) was ultra vires Article 14 of the Constitution in so far as it applied to persons other than the assessees. Both the points were accepted by the learned single judge who heard the petition. He, however, held that the firm "Purshottam Laxmidas" could not be called "a stranger" to the assessment proceedings. A Divisional Bench of the High Court upheld further that the said firm was "a stranger" to the proceedings before the Tribunal. The validity of the notice was sought to be established under s. 34 as amended in 1948 and also by invoking s. 31 of the Indian Income-tax (Amendment) Act 1953, Act XXV of 1953. In this Court by a supplemental statement the amendments made by the Finance Act of 1956 (18 of 1956) and by the Indian Income-tax (Amendment) Act, 1959 (1 of 1959) were also brought to our notice. The amount involved in this case was Rs. 62,732.

In the companion the full facts of which will be given in this judgment later the position was this. In Civil Appeal No. 585 of 1960, notices were issued to the respondent on February 18, 1957, in respect of the assessment years 1944-45, 1945-46 and 1946-47, as a result of a direction by the Appellate Assistant Commissioner. The notices were quashed by the Bombay High Court following the decision just mentioned. The amounts involved were Rs. 14,000; 14000 and 38,000. In Civil Appeal No. 509 of 1958 the notice was issued in 1949 to a lady whose husband had remitted Rs. 9,180 to her from Bangkok in the year relative to the assessment year 1942-43. She had omitted to file a return. In Civil Appeal Nos. 214 and 215 of 1958 the assessment years were 1946-47 and 1947-48. The assessment of the respondent as individual was made on November 17, 1953, as a result of a direction by the Appellate Assistant Commissioner on March 20, 1953. These assessments were held barred under s. 34(3) as it stood before the Amending Act of 1953. The amounts involved were Rs. 28,284 (1946-47) and Rs. 21,141 (1947-48).

The above are the relevant facts of the five appeals with which we are dealing. We shall deal with each appeal separately later. For the present it is sufficient to note the dates of the assessment years involved, the date of the direction (if any) issued by a superior officer or Tribunal and the date of the issue or service of the notices and date of the assessment, if any, in each case. This will serve to determine under what amendment or amendments the matter falls to be considered. We shall revert to these dates after analysing s. 34 with reference to the amendments made from time to time.

In determining the effect of the provisions of the amending Acts and the validating enactments

contained in some of them, it is altogether more satisfactory to start with the Income-tax Act (hereafter the Principal Act) as amended in 1939, and then to proceed chronologically. Each case then falls for consideration in its appropriate period. Section 34 before its amendment in 1939 provided for a period of one year for bringing to tax income, profits or gains escaping assessment in any year. In 1939, the whole section was substituted by another. The material portion of it read as follows :-

> "34(1) If in consequence of definite information which has come into his possession the Income-tax Officer discovers that income, profits or gains chargeable to income-tax have escaped assessment in any year, or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act the Income-tax Officer may, in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years and in any other case at any time within four years of the end of that year, serve on the person liable to pay tax on such income, profits or gains..... a notice..... any may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

#x x x x x x x x x##

It will be noticed that the Income-tax Officer was to proceed on definite information that there was an escapement of assessment before he took action. The section provided two periods in which action could be taken - (1) an eight year period and (ii) a four year period. The first was to apply to cases in which the Income-tax Officer had reason to believe (a) that the assessee had concealed the particulars of his income or (b) furnished inaccurate particulars thereof. The second was to apply in all other cases. The terminus a quo in either case was the end of assessment year and the terminus ad quem the service of the notice. The section remained in force till March 30, 1948, when the Income-tax and Business Profits Tax (Amendment) Act 1948 (passed on September 8, 1948) substituted a new section in place of the old. That section in so far as it is material to our purpose read :-

> "34. (1) If -
>
> (a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or
>
> (b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed,

he may in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or re-assess such income, profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under the sub-section :

Provided that :-

(i) the Income-tax Officer shall not issue a notice under this sub-section, unless he has recorded his reasons for doing so and the Commissioner is satisfied on such reasons recorded that it is a fit case for the issue of such notice;

#x x x x x##

Explanation. - Production before the Income-tax Officer of account-books or other evidence from which material facts could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section.

#(2) x x x x x##

(3) No order of assessment under section 23 to which clause (c) of sub-section (1) of section 28 applies or of assessment or re-assessment in cases falling within clause (a) of sub-section (1) of this section shall be made after the expiry of eight years, and no order of assessment or re-assessment in any other case shall be made after the expiry of four years, from the end of the year in which the income, profits or gains were first assessable :

Provided that where a notice under sub-section (1) has been issued within the time therein limited, the assessment or re-assessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if such period exceeds the period of eight years or four years, as the case may be :

Provided further that nothing contained in this sub-section shall apply to a re-assessment made under section 27 or in pursuance of an order under section 31, section 33, section 33A, section 33B, section 66 or section 66A."

The new section created different conditions precedent to action in the two kinds of cases to which the periods of 8 and 4 years applicable.

8 years : Income-tax Officer should have reasons to believe that escapement was due to omission or failure on the part of the assessee -

(i) to make a return of this income for the year;

or

(ii) to disclose fully and truly all material facts necessary for his assessment. The explanation made it clear that the disclosure must be positive.

4 years : This comprised all other cases in which there was no omission or failure on the part of the assessee but the Income-tax Officer was in possession of information which led him to believe that there was an escapement of assessment.

In both cases the Income-tax Officer had to record his reasons in writing and the Commissioner had to satisfy himself that the reasons were good.

The section as enacted by the Amending Act of 1948 was amended again in 1953 by the Indian Income-tax (Amendment) Act, 1953 which in the absence of special provision in any section came into force from the 1st day of April, 1952. Section 18 of Amending Act amended the second proviso to sub-section (3) which has been quoted above and it read :-

> "Provided further that nothing in this section limiting the time within which any action may be taken, or any order, assessment or reassessment may be made, shall apply to a re-assessment made under section 27 or to an assessment or re-assessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 31, section 33, section 33A, section 33B, section 66 or section 66A."

The Act also enacted a provision for the validity of certain notices and assessments. This was section 31 which read :-

> "31. For the removal of doubts it is hereby declared that the provisions of sub-section (1), (2) and (3) of section 34 of the principal Act shall apply and shall be deemed always have applied to any assessment or re-assessment for any year ending before the 1st day of April, 1948, in any case where proceeding in respect of such assessment or re-assessment were commenced under the said sub-sections after the 8th day of September, 1948, and any notice issued in accordance with sub-section (1) or any assessment completed in pursuance of such notice within the time specified in sub-section (3), whether before or after the commencement of the Indian Income-tax (Amendment) Act, 1953 shall, notwithstanding any judgment or order of any court, Appellate Tribunal or Income-tax authority to the contrary, be deemed to have been validly issued or completed as the case may be, and no such notice, assessment or re-assessment shall be called in question on the ground merely that the provisions of section 34 did not apply or purport to apply in respect of an assessment or re-assessment for any year prior to the 1st day of April, 1948."

The effect of these provisions will have to be seen in cases in which notices and assessments took place after the 1st day of April, 1952, particularly as a result of a direction such as is mentioned in the second proviso to so sub-section (3) of s. 34 as amended by this Act.

By the Finance Act 1956, the section was again amended from the 1st day of April, 1956. The most significant changes were the omission of the time-limit of eight years in sub-section (1) in respect of cases falling under clause (a) and the substitution of certain provisos to sub-section (1). The section as amended in so far as material to our purpose is reproduced :

"34. (1) If -

(a) The Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive depreciation allowance has been computed, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or have been under-assessed, or assessed at too low a rate, or have been made subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed,

he may in cases falling under clause (a) at any time x x x and in cases falling under (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or re-assess such income, profits or gains or re-compute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the Income-tax Officer shall not issue a notice under clause (a) of sub-section (1) -

(i) for any year prior to the year ending on March 31, 1941;

(ii) for any year, if eight years have elapsed after the expiry of that year unless the income, profits of gains chargeable to income-tax which have escaped assessment or have been under assessed or assessed at too low a rate or have been made the subject of excessive relief under this Act, or the loss or depreciation allowance which has been computed in excess, amount to, or are likely to amount to, one lakh of rupees or more in the aggregate, either for that year, or for that year and any other year or years after which or after each of which eight years have elapsed, not being a year or years ending before March 31, 1941;

(iii) for any year, unless he has recorded his reasons for doing so, and in any case falling under clause (ii), unless the Central Board of Revenue, and, in any other case, the Commissioner, is satisfied on such reasons recorded that it is a fit case for the issue of such notice :

Proviso ..... (omitted)

Proviso ..... (omitted)

Explanation. - Production before the Income-tax Officer of account-books or other evidence from which material facts could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section.

That this section was to operate on back period does not admit of any doubt. No clearer language could be used or the purpose. The first proviso to sub-section (1) makes this abundantly clear by allowing notices to be issued 'at any time' for any year later than the year ending on March 31, 1941, and then limiting action to eight years from the end of the year in cases coming in clause (a) involving less than rupees one lakh. Though the section came into force on April 1, 1956, it covered in this way years going right back to 1941, of course, subject to the conditions indicated there.

For those cases in which there was no default on the part of the assessee the period continued to be four years as before. The deletion of the time limit of eight years, allowing action to be taken at any time in cases involving more than rupees one lakh and limiting time to eight years in all cases coming within clause (a) led to some controversy as to whether the issuance of a notice under the section as amended by the Amending Act of 1956 but served beyond eight years as laid down in the 1948 Amendment, and the reopening of cases right back to 1941 which were subject to a time limit under the 1948 Amendment which time had expired, was legal. The Calcutta High Court in Debi Dutta Moody v. T. Bellan [A.I.R. 1959 Cal. 567.] held that notices which were not served within the time limited for action under the 1948 amendment could not be validly served after the 1956 amendment which removed the time limit in certain cases. In that case a notice was issued before but served after April 1, 1956, when the 1956 amendment came into force.

This led to the passing of an Ordinance and later the Indian Income-tax (Amendment) Act, 1959. This Amending Act added sub-section (4) to s. 34 which read :-

> "(4) A notice under cl. (a) of sub-s. (1) may be issued at any time notwithstanding that at the time of the issue of the notice of period of eight years specified in that sub-section before its amendment by clause (a) of section 18 of the Finance Act, 1956 had expired in respect of the year to which the notice relates."

It also enacted by s. 4 as follows :-

> "No notice issued under cl. (a) of sub-s. (1) of s. 34 of the principal Act at any time before the commencement of this Act and no assessment, re-assessment or settlement made or other proceeding taken in consequence of such notice shall be called in question in any court, tribunal or other authority merely on the ground that at the time the notice was issued or at the time the assessment or re-assessment was made, the time which such notice should have been issued or the assessment or re-assessment should have been made under that section as in force before its amendment by cl. (a) of s. 18 of the Finance Act, 1956, had expired."

These repeated amendments, in so far as relevant to the present cases, were in two directions. It will be remembered that by the Amendment of 1939 two periods in which action could be taken were created : an eight-year period applying to the concealment or deliberate furnishing of inaccurate particulars by the assessee and a four-year period applying to all other cases. The 1948 Amendment did not make any change in these two periods but stated that the eight-year period applied also to a failure to furnish a return. All other provisions substantially remained the same. In a case in which the return was not made, it would have been a question which of the two periods in the section as amended in 1939 would have applied. The 1948 Amendment said the action could be taken within eight years. Another question thus arose, namely, whether the four-year period as provided by the 1939 Amendment which had expired applied or the eight-year period as provided by the 1948 Amendment. The answer to this question depended on the further question whether the 1948

Amendment was retrospective in its operation.

The Amending Act of 1948 was passed on September 8, 1948, and came into force from March 30, 1948. In some cases it has been held that its retrospectivity cannot be carried further than March, 30, 1948. That is true in one sense but not in the sense how its provisions were to work in relation to the assessees. The section was meant to enable the issue of notices with a view to re-assessing income which had escaped assessment and allowed the re-assessment of income for back years. It was meant to operate retrospectively for eight years in some cases and four years in others. In our opinion it had retrospective operation in respect of back years according to its own provisions. If the 1948 Amendment could be treated as enabling the Income-tax Officer to take action at any point of time in respect of back assessment years within eight years of March 30, 1948, then such cases were within his power to tax. We have such a case here in C.A. No. 509 of 1958 where the notice was issued in 1948 to the lady whose husband had remitted Rs. 9,180 to her from Bangkok in the year relative to the assessment year 1942-43. That lady was assessable in respect of this sum under s. 4(2) of the Income-tax Act. She did not file a return. If the case stood governed by the 1939 Amendment the period applicable would have been four years if she had not concealed the particulars of the income. She had of course not deliberately furnished inaccurate particulars thereof. If the case was governed by the 1948 Amendment she would come within the eight-year rule because she had failed to furnish a return. Now, we do not think that we can treat the different periods indicated under s. 34 as periods of limitation, the expiry of which grant prescriptive title to defaulting tax-payers. It may be said that an assessment once made is final and conclusive except for the provisions of ss. 34 and 35 but it is quite a different matter to say that a "vested right" arises in the assessee. On the expiry of the period the assessments, if any, may also become final and conclusive but only so long as the law is not altered retrospectively. Under the scheme of the Income-tax Act a liability to pay tax is incurred when according to the Finance Act in force the amount of income, profits or gains is above the exempted amount. That liability to the State is independent of any consideration of time and, in the absence of any provision restricting action by a time limit, it can be enforced at any time. What the law does is to prevent harassment of assessees to the end of time by prescribing a limit of time for its own officers to the action. This limit of time is binding upon the officers, but the liability under the charging section can only be said to be unenforceable after the expiry of the period under the law as it stands. In other words, though the liability to pay tax remains it cannot be enforced by the officers administering the tax laws. If the disability is removed or according to a new law a new time limit is created retrospectively, there is no reason why the liability should not be treated as still enforceable. The law does not deal with concluded claims or their revival but with the enforcement of a liability to the State which though existing remained to be enforced. This aspect was admirably summed up by Chakravartti, C.J., (Sarkar, J., concurring) in Income-tax Officer v. Calcutta Discount Co. Ltd. [(1953) 23 I.T.R. 471, 482.] as follows :-

> "The plain effect of the substitution of the new Section 34 with effect from the 30th March, 1948, is that from that date the Income-tax Act is to be read as including the new section as a part thereof and if it is to be so read, the further effect of the express language of the section is that so far as cases coming within clause (a) of sub-section (1) are concerned, all assessment years ending within eight years from the 30th March, 1948, and from subsequent dates, are within its purview and it will apply to them, provided the notice contemplated is given within such eight years. What is not within the purview of the section is an assessment year which ended before eight years from the 30th March, 1948."

We entirely agree with these observations and in our opinion after the passing of the 1948 Amendment which came into force on March 30, 1948, the Income-tax Officer could take action in all cases in which the assessment years ended within eight years of the date of his action and in which there was an escapement of an assessment for the reasons indicated in clause (a) of the section as amended. In other words, action could be taken retrospectively in the cases indicated by Chakravartti, C.J. If there be any doubt about the powers of the Income-tax Officer the validating section passed in 1953 (S. 31) quite clearly indicates that section 34 as amended in 1948 was to be read in this manner.

We come now to the next amendment in 1956. It created a change of a far-reaching character by removing the limit of time for action where the sum likely to be taxed amounted to rupees one lakh or more either for single year or for a group of years going back to the year ending on March 31, 1941. These cases were governed by the eight-year rule under the 1948 amendment. In other words, the eight-year period was retained for cases-involving less than one lakh of rupees and the limit of time was removed for those cases in which the amount involved was one lakh rupees or more. We are not concerned at this moment with the sanctions necessary before action could be taken. That is a separate matter. If no sanction was obtained then the notice would be bad for that reason but not on the ground of a limit of time. What we have said above about the amendment of 1948 applies mutatis mutandis also to the amendment of 1956. That provision was also to operate retrospectively as has been stated by us earlier. There is good reason to think that this is the correct view because when the Calcutta High Court in the Debi Dutta Moody's [A.I.R. 1959 Cal. 567.] case held that the 1956 amendment was not applicable to the cases, Parliament passed the 1959 Act nullifying that decision. By the same Act, Parliament gave power to issue a notice at any time an all these cases in which the eight-year period under the principal Act as it stood prior to the 1956 Amendment had expired. The words "at any time" mean what they say. There is no special meaning to be attributed to them. "Any time" thus meant action to be taken without any limit of time. A similar result was reached in certain cases under the 1953 Amendment of the second proviso to sub-section (3) of section 34. It provided : nothing in the section limiting the time within which any action may be taken shall apply to an assessment or re-assessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section already mentioned. This proviso was challenged under Article 14 of the Constitution but that is a different matter. If the section is constitutionally enacted then it also means what it says. It is hardly possible to imagine clearer language than the one used. It says that the limit of time mentioned in section 34 is removed in certain cases, that is to say, action can be taken at any time in these cases. In our judgment, each case of a notice must be judged according to the law existing on the date the notice was issued or served, as the law may require. So long as the notice where the notice is in question, and the assessment, where the assessment is in question, are within the time limited by the law, as it exists when the respective actions are taken, the actions cannot be questioned provided the law is clearly retrospective. The only case in which no further action can be taken is one in which action was not taken under the old law within the period prescribed by that law and which is not also within the period mentioned in the new law if its operation is retrospective. All other cases are covered by the law in force at the time action is taken. It is from these view points that these appeals, in our opinion, should be judged.

We shall now take up first this appeal and later in this judgment the other appeals separately and deal with the special points raise in them. In this appeal the assessment year in question was 1942-43. We have already described how the firm "Purshottam Laxmidas" was held to own the firm "Vasantsen Dwarkadas". The final order in the case was made by the High Court on October 8, 1953. By that date the period of time prescribed by s. 34 of the principal Act as amended in 1948

had expired. But s. 34 of the principal Act was amended by the Indian Income-tax (Amendment) Act, 1953, from April 1, 1952. The action in the case was taken on April 30, 1954, after the amendment. The second proviso to sub-section (3) of s. 34 was by then amended to provide that nothing in the section limiting the time within which action might be taken was to apply to an assessment or re-assessment made on any person in consequence of or to give effect to any finding or direction contained in an order under s. 66. Of course, if the law as it stood prior to this amendment applied the time for action would have expired in 1951, and any action on April 30, 1954, would have been clearly out time. But the Income-tax Officer derived his jurisdiction from the second proviso and that made s. 34 applicable without the limit of time. There was also s. 31 of the Amending Act of 1953, which made s. 34 of the principal Act (which meant the Income-tax Act as amended till that date including the amendments made by the Amending Act of 1953 in the second proviso to s. 34(3)), applicable to any assessment or re-assessment for any year ending before April 1, 1948, where proceedings were commenced after September 8, 1948. It also saved all notices issued or assessments made, whether before or after the commencement of the Amending Act of 1953 (1-4-1952) from the attack that the provisions of s. 34 (as amended up to 1-4-1952) did not apply to as assessment or re-assessment for any year prior to April 1, 1948.

The effect of the amendment of the year 1953 on this case may be stated shortly thus : The assessment year being 1942-43, the notice under s. 34 had to issue in 1951 at the latest. After that year notice could not issue unless the limit of time was increased or removed. But the fact that the notice could not be issued after 1951 did not clothe the assessee with a right not to pay the tax if it became legally claimable again. If the law conferred a power on the income-tax Officer to deal with such a case, the assessee would again be exposed to proceedings, provided it said in clear terms that the law was retrospective. This is what the law did in precise and clear terms. In 1953 an Act was passed amending s. 34 which enabled action at any time if there was a finding or direction of the character indicated in the second proviso to sub-s. (3) of s. 34. Section 31 also made this position clear by applying the amended s. 34 to all assessments commenced after September 8, 1948, and saved all notices issued and assessments made in respect of any year prior to April 1, 1948, whether the notices were issued or the assessments were made before or after April 1, 1952.

The Department in this case had relied on the Amending Act of 1953 before the High Court. Though the High Court considered the case from the angle of the second proviso to sub-s. (3) of s. 34 and also struck it down as unconstitutional it did not take into consideration s. 31. It was argued before us that we cannot take s. 31 into account if it was not referred to by the High Court. But a Court is required to take judicial notice of statutes and if s. 31 of the Act of 1953 said that sub-ss. (1), (2) and (3) of s. 34 of the principal Act (including of course the amendments as made by the 1953 Act) shall apply and shall be deemed always to have applied to any assessment or re-assessment for any year ending before April, 1948, it is the duty of Courts and Tribunal to read s. 34 in that manner and in no other. In our opinion it was not open to the High Court to read s. 34 without s. 31 which contained a legislative construction and made s. 34 retrospective. This omission has vitiated the High Court's reasoning.

To-day we are faced with the provisions of the Indian Income-tax (Amendment) Act, 1959. These provisions have already been set out by us. Section 4 of the Amending Act of 1959 precludes Courts and Tribunals from calling in question notices and assessments made even though the time within which that action was taken was more than that prescribed by the principal Act as amended in 1948.

Mr. Palkhivala raised five propositions in connection with the 1959 Act which were applied mutatis mutandis to the Amending Acts of 1953 and 1956 by other learned counsel. These five propositions

were intended to show that all amendments in the time limit by the various amending Acts were meant to operate on assessment years following the commencement of the Acts and not on back assessment years which continued to be governed by the old provisions. He also contended that even if an assessment year was within the time indicated in the new law, the new law could not take note of it, if under the old law that assessment year was out of time. He also contended that the validating sections operate on the assessment years between the Act as amended by the last preceeding amendment and the validating section. Thus according to him s. 4 of the Amending Act of 1959 operated to validate action taken after the 1956 amendment and sub-s. (4) introduced in s. 34 operated from the date of introduction. Mr. Palkhivala tried to support these contentions by a textual interpretation of the sections, the history of legislation on the subject of income, profits and gains escaping assessment, and the marginal notes to the sections. What he argued in relation to the 1959 Act was applied with suitable adaptations in the interpretation of the amendments of 1948, 1953 and 1956.

To begin with we do not accept the contention of Mr. Palkhivala that s. 4 of the 1959 Act is retrospective only up to 1956. That section is of course retrospective up to that year but it operates on notices issued even earlier than the Act of 1956 or in other words in respect of assessment years prior to March 31, 1956. There is good reason to think that it covers all the period between 1941 and 1959. Since it is conceded that it does cover 1956-1959, all that we have to consider is whether it covers the period 1941-1956. For this purpose, we shall analyse the section into its component parts. The section first says : "No notice issued under clause (a) of sub-section (1) of section 34 of the Principal Act at any time before the commencement of this Act and no assessment, re-assessment .....made .....in consequence of such notice". This means that it is speaking of all notices issued earlier than the enactment of the 1959 Act and assessments made an consequence. The section sets no limit to the time but says "at any time". By the words "clause (a) of sub-s. (1) of s. 34 of the principal Act" and by defining "principal Act" to mean the Indian Income-tax Act, 1922, the Act refers to the Income-tax Act as amended till then. The section then says that such a notice or assessment made in consequence, shall not be called in question on the ground that the time prescribed for action under the section as it stood before the amendment of 1956 had expired. This clearly shows that it meant to operate on cases which would be governed by the 1948 Amendment even though the time limit prescribed by the 1948 amendment had expired and that the notices and the assessments made as a consequence, were to be saved.

Now the changes made by the 1956 amendment were two : (a) the eight year limit was to operate in all cases falling in clause (a) of sub-s. (1) under the 1948 amendment but under the 1956 amendment it was not to apply to cases involving Rs. One lakh or more. This power could not be exercised for any year prior to the year ending on March 31, 1941 and (b) the satisfaction of the Board had to be obtained before the Income-tax Officer could take action.

By the validating section 4 of the 1959 Act, any notice issued before 1959 could not be challenged even if under the 1948 Act they would be out of time. The Amending Act cured not a defect arising under the 1956 amendment but one arising under the 1948 amendment. It is impossible to say, as contended, that the last words of s. 4 of the Amending Act of 1959 limit retrospectively only up to 1956, even though the words are "at any time before the commencement of this Act." Further, by sub-s. (4) added to s. 34, the Amending Act gave power to issue fresh notices which under the 1948 amendment would have been barred. The sub-section reads :-

> "A notice under clause (a) of sub-section (1) may be issued at any time notwithstanding that at the time of the issue of the notice the period of eight year

specified in that sub-section before its amendment by clause (a) of section 18 of the Finance Act, 1956 (18 of 1956), had expired in respect of the year to which the notice relates."

The last words definitely refer to an year which would be governed by the 1948 amendment.

This a law made in 1959 and it speaks of notices not complying with the time limit as prescribed by the 1948 Act. To test whether the retrospectivity goes back only to 1956 we can look at the matter this way. The time limit in clause (a) of s. 34(1) for all cases was eight years under the 1948 amendment. The years on which the 1948 amendment which came into force on 30-3-1948 operated admittedly included the year 31-3-1948 to 31-3-1949 as the first year and so on till the 31-3-1956 to 31-3-1957. The 1956 amendment came into force on 1-4-1956. Working backward from 1959 for eight years we come to 1951. The years 1951-52 to 1955-56 admittedly were governed by the 1948 Act and were still within the eight-year period under the 1948 amendment (if it applied) till 31-3-1960 to 31-3-1961. The years 1956-59 were within time because there was either no limit or a limit of eight years which would give room for action till 1964-1967. Where was the need for the validating provisions or the addition of sub-s. (4) of s. 34 in 1959 ? Action under the 1948 amendment could be taken till the year of assessment 1951-52 and all intervening assessment years till the year ending March 31, 1956. Similarly action under the 1956 amendment could be taken till 1965-1968 in respect of years 1956-57, 1957-58 and 1958-59. This is true of all cases under the eight-years limit whether provided by the 1948 amendment or the 1956 amendment. The validating section was hardly needed and sub-s. (4) added to s. 34 not at all. It is, therefore, quite clear that the construction suggested for the respondent cannot be accepted and the two provisions in the 1959 Act mean what they say.

It will, however, be noticed that though the time limit was removed there was no validation in respect of want of sanction by the Board of Revenue in cases above rupees one lakh. In cases started between 1956-1959 the Commissioner's sanction in cases below rupees one lakh and the Board's sanction in cases above rupees one lakh was needed. But the Commissioner's sanction was needed even under the 1948 amendment. So all cases in which there was Commissioner's sanction would be validated unless the case required the Board's sanction. Such cases would be those above rupees one lakh and in view of the removal of the time limit by s. 34(4) it was possible to issue fresh notice after obtaining the sanction. In this way the continuity of the law was obtained. It had earlier been achieved in 1953 when there was a changeover from the 1939 amendment to the 1948 amendment. What we have said here repels an identical argument on the 1953 amendment.

Where the language of an enactment is clear there is hardly any need to go to the marginal note or the history of the law before the amendment. Even if the history be examined one thing is quite clear. It is that at intervals the Indian Legislature and Parliament have been at pains to save notices issued to, and assessment made on, defaulting tax-payers and have enabled fresh action to be taken and saved notices and assessment out of time.

The provisions made in 1959 were not present before the High Court. The High Court decided this case in 1956 but we must take notice of them and give effect to s. 4 thereof. In any case, the provisions of s. 34, as amended by the Amending Act of 1953 read with s. 31 of that Act, were sufficient to save notice issued against the firm of "Purshottam Laxmidas" unless the amendment to the second proviso to s. (3) of s. 34 was unconstitutional. We are of opinion that the proviso was not unconstitutional and we shall give our reasons in a latter part of this judgment. That is a matter which can be dealt with separately.

In our judgment notice against the firm of "Purshottam Laxmidas" was validly issued under the amended second proviso to s. 34(3) and its validity cannot be called in question in any Court or Tribunal in view of the provisions of s. 4 of the Amending Act of 1959. We could therefore, allow Civil Appeal No. 705 of 1957.

C.A. No. 509 of 1958.

We have already referred to this appeal by the Commissioner of Income-tax, Madras. The respondent is a lady whose husband resided in Bangkok between September 1940 and July 1947. In the year relative to the assessment year 1942-43 he remitted through his agent in India a sum of Rs. 9,180 for payment to the respondent. The respondent did not submit a return of this sum which was deemed to be her income under s. 4(2) of the Income-tax Act. In the year 1949, a notice was served on her under s. 34 of the Income-tax Act as amended by the Amending Act of 1948. The question was whether the amendment of 1948 applied to the notice. The Tribunal held that it did but the High Court of Madras took the contrary view. According to the High Court the period of four years was applicable to her case under the Income-tax Act was amended in 1939 and that period expired on 31-3-1947 and the 1948 amendment did not revive the right to take action which had died. The Amending Act of 1953 (Act 25 of 1953) had come into force by the time the High Court decided the case (22-2-1956) and s. 31 of that Act was brought to the notice of the High Court. The High Court however held that the validity of the notice had to be tested with reference to the law existing on July 25, 1949, when the notice was issued and the Act of 1953 could not be taken into account.

We have already shown why the decision of the High Court cannot be sustained. The action was taken after the 1948 amendment by which income, profits and gains which had escaped assessment by reason of the omission or failure of the assessee to make a return of the income could be brought to tax after serving a notice within eight years from the end of the relevant year. Here the notice in 1949 was within eight years from 1942-43 and was validly issued. Even if an omission or failure to make a return was governed by the four-year period under the 1939 Amendment, the assessee did not get immunity except if no fresh power to bring to tax such special income was created. Such a power to tax was brought into being by the 1948 Amendment and the notice being within the fresh eight-year period was validly issued. In our judgment the order of the High Court cannot be upheld. We would, therefore, allow the appeal.

C.A. No. 585 of 1960.

The assessee in this appeal (Jagannath Fakirchand) is the manager of a Hindu undivided family. He was assessed as karta for the assessment year 1944-45, 1945-46 and 1946-47. These assessments were completed in 1949 and 1950. Later those cases were remanded by the Appellate Assistant Commissioner. In respect of the assessment year 1945-46 a notice under s. 34(1) was also issued but it was withdrawn. Some of these cases are still pending but we are not concerned with them.

The assessee filed a suit against one Jagannath Ram Kishan for rendition of accounts as a munim. Jagannath Ram Kishan claimed to be a partner. The suit was dismissed as it was not proved that Jagannath Ram Kishan was a munim. Jagannath Ram Kishan died and his widow Kalavati was substituted as legal representative. The Income-tax Officer issued notices under s. 34(1) to Kalavati for the assessment year 1944-45, 1945-46 and 1946-47. In the appeals arising therefrom the Appellate Assistant Commissioner held that there was a partnership between Jagannath Ramkishan and the assessee which lasted till August 26, 1945, and directed the Income-tax Officer to assess the partnership. Notices under s. 34 were then issued on February 18, 1957, to the partnership and also

to Jagannath Fakirchand. Jagannath Fakirchand filed a petition under Article 226/227 in the High Court contending that the notices were out of time and the second proviso to s. 34(3) was unconstitutional. The Bombay High Court following its decision in the previous case, accepted both the contentions. The sums involved in these cases were Rs. 14,000; 14,000 and 30,800 for the three years respectively.

The assessment in this case was the result of a direction and the second proviso to s. 34(3) as amended in 1953 and s. 31 of the Amending Act of 1953 governed this case. The notice is also further saved by the provisions of the Amending Act of 1959 as it was issued after 1956 (February 18, 1957). It was not contended before us that these provisions do not apply to a notice given after April 1, 1956. In fact the contention was that the provisions of the 1959 Act enable notices to be sent out at any time after 1956 and validate all notices to sent. In view of what we have held in this appeal, Civil Appeal No. 585 of 1960 must be allowed. We would, therefore, allow this appeal. We may mention here that in this case also the second proviso to s. 34(3) as amended in 1953 was declared unconstitutional. In our opinion that decision cannot be upheld. We shall give our reasons presently.

C.A. No. 214 and 215 of 1958.

These appeals arise out of the judgment of the High Court on a reference on the question :

> "Whether having regard to the return dated the 7th March, 1951, by Sardar Lakhmi Singh in his individual capacity and to the provisions of section 34(3), the assessment made to him on the 27th November, 1953, is validly made ?"

The assessments are for the years 1946-47 and 1947-48. Lakhmir Singh was the son of one Nechal Singh and the two used to be assessed as a Hindu undivided family. From the assessment year 1944-45 two separate returns were filed and claimed under s. 25A of the Income-tax Act was made. This claim was rejected but there was an assessment of Lakhmir Singh as an individual out of abundant caution. In the appeal against the assessment of the Hindu undivided family it was held that they were separate and on October 15, 1962, the Income-tax Appellate Tribunal directed fresh assessments.

For the assessment year 1946-47 three returns were filed. Lakhmir Singh's return was voluntary and was filed on March 15, 1951. Another return was filed Nechal Singh. A third return under protest was filed on March 9, 1951, by Nechal Singh on behalf of the Hindu undivided family, showing income "nil". On March 15, 1951, the Hindu undivided family was assessed by the Income-tax Officer by grossing up the income as disclosed in the returns filed by Lakhmir Singh and Nechal Singh as 'individuals.' The voluntary return of Lakhmir Singh as individual remained on file. There was an appeal by the Hindu undivided family and the assessment was set aside by the Appellate Assistant Commissioner on March 20, 1953, who directed assessment of Lakhmir Singh as an individual. This was done on November 17, 1953, on the voluntary return already filed by him. On appeal by Lakhmir Singh it was contended that the assessment was barred under the unamended second proviso to s. 34(3) which provided a period of four years. The appeals were dismissed as it was held that there was no limitation for an assessment under s. 31(3) in view of the new proviso. The High Court held on reference that the Amending Act of 1953 did not apply and the assessments were barred under the unamended s. 34(3) as the amendment came into force on April 1, 1952, after the assessment was also held barred for the same reason. No reference was made to s. 31 of the Amending Act of 1953.

The Department contended before us that the assessment was valid under s. 31 of the Act 25 of 1953 and that the amended proviso applied. Section 31 applied the amended s. 34(1), (2), and (3) of the Income-tax Act to assessment and re-assessment for any year ending before 1st day of April, 1948, in which the proceedings were commenced after September 8, 1948. It was contended by the assessee before us that the section cannot apply because (a) it was not relied upon before the High Court and (b) that there was nothing to show that the proceedings commenced after September 8, 1948.

We shall first consider whether the questions referred to the High Court embraced the application of s. 31 of the Amending Act of 1953. These questions in the two references were :

Whether having regard to the return dated March 7, 1961, by Sardar Lakhmir Singh in his individual capacity and to the provisions of section 34(3), the assessment made on him on the November 7, 1953, is validly made ?

and Whether having regard to the return dated 14-1-1952 by Sardar Lakhmir Singh in his individual capacity and to the provisions of section 34(3) the assessment made on him on 27-11-53 is validly made ?

In both the questions emphasis is placed upon the date of the assessment and the date of the return. The return for the year 1946-47 was filed on March 15, 1951, and that for the year 1947-48 on January 14, 1952. The assessment in either case was made on November 27, 1953. The returns were filed after September 8, 1948, and the assessments were made after the amendment of the second proviso to section 34(3) by removing the limit of four years in it. It must be noted that the returns filed by Lakhmir Singh were voluntary returns. Till that time the Department had refused to recognise the 'individual ' status claimed by Lakhmir Singh and Nechal Singh under s. 25A of the Principal Act. These assessees had also filed under protest returns for the Hindu undivided family.

The questions as framed refer to the provisions of s. 34(3) of the Income-tax Act. They also mentioned two sets of dates : namely, the dates of the returns (7-3-1951 and 14-1-1952) and the date of the assessment (17-11-1953). Now we know that before the first day of April, 1952, there was a four-year limit for assessments or re-assessments under sub-s. 3 of s. 34 but thereafter that limit was removed by the proviso added by s. 18 of the Amending Act of 1953 and by s. 31 of the same Act assessments made before or after the commencement of the Amending Act of 1953 (1-4-1952) were declared valid if proceedings commenced after September 8, 1948. The question as framed cannot be answered without reference to s. 31 and even if parties did not bring it to the notice of High Court it was the duty of the High Court to look into the validating provisions of s. 13. If the High Court did not we know of no rule or decision of this Court which prevents us from looking into a validating provision which existed at the time of the High Court's decision and was overlooked by it and which by itself furnished the answer to the question propounded for the opinion of the High Court. No decision of this Court lays down that in determining the true answer to a question referred under s. 66, this Court is confined only to those sections to which the Tribunal or the High Court referred. Indeed, there are many cases which say the contrary : see Kusumben Mahadevia v. Commissioner of Income-tax [(1960) 3 S.C.R. 417.], Zoraster & Co. v. Commissioner of Income-tax [(1961) 1 S.C.R. 210.] and the recent case of Scindia Steam Navigation Co. v. Commissioner of Income-tax [(1961) 42 I.T.R. 589.]. We must, therefore, look into s. 31 to determine these appeals.

It remains only to consider now whether the proceedings commenced after September 8, 1948. The application of s. 31 depends on this circumstance. Here the facts are plain and admit of no doubt

whatever and the complaint that there is no finding is of no avail. The voluntary returns were filed in 1951 and 1952, twenty-nine and thirty-nine months after the datum line mentioned in s. 31. These returns were filed with returns of the Hindu undivided family which were filed under protest. A return can be voluntary only if no action has been taken by the Department. The Department, till the success of the appeal by the Hindu undivided family ignored the returns filed as individuals. There could not have been and there were in fact no proceedings against Lakhmir Singh in his capacity as an individual till he himself filed his returns in 1951 and 1952. In our opinion it is futile to contend that these admitted facts required a finding or that the foundation for the application of s. 31 of the Act of 1953 was not laid down in these appeals. In our judgment the High Court was not right in the answer it gave to the two questions which ought to have been answered against the assessee. We would, therefore, allow these two appeals. It may be pointed out that in these appeals also the question of the constitutionality of the second proviso to s. 34(3) was raised but the High Court refrained to give its decision.

Before dealing with this question we wish to say a few words about the well-known principle that subsequent changes in the period of limitation do not take away an immunity which has been reached under the law as it was previously. In this sense statutes of limitation have been picturesquely described as "statutes of repose". We were referred to many cases in which this general principle has been firmly established. We do not refer to these cases because in our opinion it is somewhat inapt to describe s. 34 with its many amendments and validating sections as a "section of repose". Under that section there is no repose till the tax is paid or the tax cannot be collected. What the law does by prescribing certain periods of time for action is to create a bar against its own officers administering the law. It tries to trim between recovery of tax and the possibility of harassment to an innocent person and fixes a duration for action from these two points of views. These periods are occasionally readjusted to cover some cases which would otherwise be left out and hence these amendments. An assessment can be said to become final and conclusive if no action can touch it but where the language of the statute clearly reopens closed transactions there can be no finality. We could not raise these prescribed periods to the level of those periods of limitation which confer not only immunity but also give titles by the passage of time.

The attack on the second proviso to sub-s. (3) of s. 34 is threefold. It is contended that (a) it deprives a party of the ordinary period of limitation (b) it results in the prejudging of the merits of a case before the party is heard and (c) there is discrimination between a stranger to the proceedings in which a finding or direction is given and other persons about whom there is no finding or direction. It is said that the latter are protected by "a rule of limitation" but not the former. The finding also is characterised as without authority of law and thus inoperative on the ground that a finding in respect of other years or other persons is not possible under the Income-tax Act. In support of the plea of discrimination reliance is placed on Surajmal Mohta v. A. V. Vishwanath Sastri [(1955) 1 S.C.R. 448.], Shri Meenakshi Mills Ltd. Madurai v. A. V. Vishwanath Sastri [(1955) 1 S.C.R. 787.] and M. C. Muthiah v. Commissioner of Income-tax. The other side relies on A. Thangal Kunju Musaliar v. M. Venkatachalam Potti [(1955) 2 S.C.R. 1196.].

Before dealing with the contentions raised we find it necessary to say a few words about the manner in which the problem of discrimination should be approached. One must first find out the object of the impugned provision and compare it with the topic of legislation and then try to discover if there is a connection between the two and a reasonable basis for making a difference between different classes of persons affected by the law, in keeping with the topic of legislation and the object of the enactment. A difference which is aimless, arbitrary or unreasonable and which is unconnected with the object in view must remain a discrimination and incapable of being upheld. In all cases in which

laws were struck down under Article 14 this was the approach. It is hardly necessary to refer to the previous cases because each provision to be tested, must be tested in its own setting and no two cases can be alike.

We are dealing here with a distinct class of persons, namely, those whose tax liability has not been discharged for one reason or another. Some escape payment of tax not because they have omitted or failed to make a true disclosure but because in spite of their full and true disclosure some portion of the income escapes assessment. For such persons there is a smaller period for assessing the escaped income. But those who are guilty of an omission or failure or who give incorrect particulars or conceal the particulars of their income must stand exposed to action for a longer time. The difference between these two cases is understandable. Those who are deliberately in default generally cover up their action and it takes longer to detect them and open proceedings against them. They cannot be allowed to say that theirs is a case on par with a man who acts innocently. The section also draws a distinction between two more classes - one above rupees one lakh and the other below it. In the former there is no limit of time except that the income-tax officer cannot go beyond the year ending on the March 31, 1941, and that he must take the sanction of the Board of Revenue. In the other cases the Income-tax Officer can take action within eight years and must obtain the sanction of his Commissioner. These two distinctions have never been challenged as discriminatory.

What is challenged is the provision that if in the assessment proceedings against A there is a finding or direction against B, proceedings can be started against B at any time while the time limit for action otherwise is either four years or eight years. But it must be remembered that the law is dealing with the subject of tax evasion. No uniform system applicable to all kinds of defaulters can be made. The methods of tax evaders are both ingenious and varied. One such method is to confuse the issue by mixing up incomes, profits and gains of several parties so that the income of A may appear to be the income of B or of AB. There is of course always the chance that it may not be discovered to be the income of either A or B or AB. The cases with which we have dealt are admirable examples of such actions. Whether the firm "Vasantsen Dwarkadas" belonged to its three partners, or to Dwarkadas alone or to the firm "Purshottam Laxmidas"; whether Jagannath Ramkishan was a munim of Jagannath Fakirchand or his partner; whether Lakhmir Singh or Nechal Singh from a Hindu undivided family or were separate are questions the answers to which may not be known till some Court or Tribunal finds the true facts and there is no reason why a law should not be framed in such a way as to give more time for action. If A keeps his money with B and this fact is discovered in the assessment proceedings against B and a finding to that effect is given, a situation arises in which the law thinks that A should be brought to book even though, if action against him were commenced in the ordinary way, it would have been out of time. The finding does not hurt A. He need not be heard before the finding is given because he is heard in his own proceedings and the finding given earlier does not bind him. All that happens is that he is faced with an inquiry which he would have avoided if the true facts had not been discovered. He would have faced an inquiry if the matter had been discovered earlier independently of the finding within a shorter period. He now faces the same inquiry but without the limit of time. He need not compare himself with others but only with himself. The different treatment arises under different circumstances and they serve the object which is to bring to tax the tax evader. In this connection, reference may be made to the decision in A. Thangal Kunju Musaliar v. M. Venkatachalam Potti where two classes of tax evaders contemplated by s. 47 of the Travancore Income Tax Act XXIII of 1121, which corresponded to s. 34(1) of the Income-tax Act as it stood before the amendment of 1948, and by s. 5(1) of the Travancore Taxation on Income (Investigation Commission) Act XIV of 1124, were held to be different classes and not falling within the same category on the ground that action against the former class could be taken on the basis of definite information coming into

possession of the Income-tax Officer that income had escaped, while, in the case of the latter, the Government could refer the cases to the Commission on finding prima facie reason to believe that they had evaded payment of tax to a substantial amount. The persons who came under s. 34(1)(a) of the Income-tax Act after the amendment of 1948 are those in respect of whose income the Income-tax Officer has reason to believe that due to certain conduct on their part their income has escaped assessment, while action can be taken against the persons contemplated by the second proviso to sub-s. (3) against those persons alone with respect to whose escaped income some authority had given a finding or directions. These latter persons would therefore correspond to the persons contemplated by s. 47 of the Travancore Income-tax Act, while the other tax evaders contemplated by s. 34(1) as amended in 1948 would correspond to persons contemplated by s. 5(1) of the Investigation Commission Act. We see no reason to hold that the second proviso to s. 34(3) offends Article 14.

In the result, as we have already said, we would allow all these appeals. We would also grant costs of the appellants both here and in the High Court in C.A. No. 585 of 1960 and C.As. Nos. 214 and 215 of 1958 but in view of the undertaking given in the High Court by the Department the appellants in C.A. No. 705 of 1957 shall bear the costs of the first and second respondents in this Court and also in C.A. No. 509 of 1958 we would make a similar order in view of the order of the High Court granting the certificate.

BY COURT : In accordance with the opinion of the majority, the appeal is allowed. The appellants will pay costs of respondents 1 and 2 as per consent of the parties referred to in the certificate, granted by the High Court.

Appeal allowed.

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