Income-Tax Officer, Tuticorin

Vs

T. S. Devinatha Nadar and Others

Civil Appeals Nos. 2154 to 2158 of 1966

(CJI K. N. Wanchoo, R. S. Bachawat, V. Ramaswami I, G. K. Mitter, K. S. Hegde JJ)

25.10.1968

JUDGMENT

MITTER J. –

This group of five appeal by special leave arises our of c common order, made under article 226 of the Constitution, of the High Court of Judicature at Madras. The appeals involve the interpretation of section 35(5) of the Income-tax Act, 1922.

The facts in Civil Appeal No. 2154 of 1966, relevant for the disposal of the appeal, taken by way of sample, are as follows : The respondent along with his four brothers were partners of a registered firm carrying on business in gunnies. The assessment of the firm for the year 1943-44 was completed on January 22, 1946, and the share income of each partner was determined at Rs. 8,265. The assessment of the respondent as individual was completed on January 24, 1946, wherein was included his income from the partnership just noted. Subsequently, the assessment of the firm was reopened by proceedings under section 34(1) (a) of the Act and a sum of Rs. 90,000 was a deed to the income of the firm liable to be brought to tax. The notice under section 34 was issued on the September 11, 1952, and the reassessment of the firm took place on May 30, 1959. On July 24, 1959, notice under section 35(5) of the Act was served on the respondent for rectification of his assessment as an individual. The rectification was ultimat

When the matter came to be heard by the High Court of Madras, there were already three reported decision of this court bearing on the interpretation of section 35(5) of the Act. In the last of these decision, a doubt had been cast as to the correctness of the two earlier decision but the High Court left that the decision in Second Additional Income-tax v. Atmala Nagaraj being the second decision of this court in point of time, was fully applicable to the cases before it and in that view of the matter the order of rectification was quashed. Hence, these appeals.

Before taking note of the earlier decisions of this court, it would be appropriate to consider the relevant provisions of the Income-tax Act and interpret them as if the matter were res integra. If the result leads to a conflict of decisions, we will have to examine the question a to whether the view taken in an earlier case should be adhered to. It is only when this court finds itself unable to accept the earlier view that it would be justified in deciding these appeals in a different way.

The two sub-sections of section 35 which call for interpretation are transcribed as follows :

> "35. Rectification of mistake. - (1) The Commissioner or Appellate Assistant Commissioner may, at any time within four years from the date of any order passed

> by him in appeal or, in the case of the Commissioner, in revision under section 33A and the Income-tax Officer may, at any time within four years from the date of any assessment order or refund order passed by him on his own motion rectify any mistake apparent from the record of the appeal, revision, assessment or refund as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee :
>
> Provided that no such rectification shall be made, having the effect of enhancing an assessment or reducing a refund unless the Commissioner, the Appellate Assistant Commissioner or the Income-tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard :
>
> Provided further that no such rectification shall be made of any mistake in any order passed more than one year before the commencement of the Indian Income-tax (Amendment) Act, 1939. ....
>
> (5) Where in respect of any completed assessment of a partner in a firm it is found on the assessment or reassessment of the firm on any reduction or enhancement made in the income of the firm under section 31, section 33, section 33A, section 33B, section 66 or section 66A that the share of the partner in the profits or loss of the firm has not been included in the assessment of the partner or, included, is not correct, the inclusion of the share in the assessment of the correction thereof, as the case may be, shall be deemed to be a rectification of a mistake apart from the record within the meaning of this section, and the provision of sub-section (1) shall apply thereto accordingly, the period of four years referred to in that sub-section being computed from the date of the final order passed in the case of the firm....."

Section 35(5) was brought on the statute book by the Income-tax (Amendment) Act, 1953 (XXV of 1953). Section 1(2) of the Act provided that :

> "Subject to any special provision made in this behalf in this Act, it shall be deemed to have come into force on the 1st of April, 1952."

The Amendment Act contained provisions which show that some of the amendments introduced were to be effective from dated other than 1st April, 1952. Section 19 of the Act of 1953 introduced sub-section (5), (6) and (7) section 35 of the Original Act. Under sub-section (1) of section 35 the income-tax authorities mentioned therein were empowered to rectify mistakes apparent from the record. Such power could, in the case of an Income-tax Officer, be exercised at any time whithin four years from the date of any assessment order passed by him on his own motion. The section however imposes a limitation in that the mistake must be in the record of the case itself. As a firm and the individuals omposing it are separate entities for purpose of Income- tax Act, they are assessed separately. Under section 23(5) (a) of the Act when the assessee is a registered firm and its income has been assessed under sub-section (1), sub-section (3) or sub-section (4) of that section the income-tax payable by the firm itself has to b

The point which has been canvassed in this case in favour of the respondent is that as the section was brought on the statute book on the 1st April, 1952, any mistake anterior to that date cannot be rectified. It was argued that the opening words of the section reading "Where in respect of any

completed assessment of a partner in a firm" go to show that only assessment completed after the intorduction of the provision, i.e., on 1st April, 1952, were in the contemplation of the legislature as proper subject for rectification. It was urged that according to the well known canons of construction legislation which impairs an existing right or obligations except as regard matter of procedure, is no to have retrospective operation unless such construction is clear from the terms of the Act itself. This argument was sought to be fortified' by the reference to sub-section (2) of section 1 of the Income-tax Amendment Act of 1953 on the ground that the legislature was bringing this provision on the statute book as fro

> "..... is that all statutes, other than those which are merely declaratory, or which relate only to matters of procedure or of evidence, are prima facie prospective; and restropective effect is not to be given to them unless, by express words or necessary implication, it appeals that this was the intention of the legislature."

The law was also succinctly stated by Lord Hatherley L. C. in Pardo v. Bingham where on the question as to whether a statute operated retrospectively it was said :

> "In fact, we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what is was that the Legislature contemplated."

Applying the above principles, we find that the aim of the legislation was to bring into line the assessment of the individual partner with that of the firm. It was well known that in many cases a firm's final assessment dragged on for years while the assessments of the individual composing of it were completed long before the assessment of the firm itself because in the case of individual the matter was fairly simple. It does not stand to reason that if the assessment of the firm is completed long after that of the individual by reason of proceedings under section 34 or otherwise, the discrepancy in the income of the partners as shown by the assessment of the firm and as an individual should continue or be left untouched and the obvious and logical course should be to rectify the assessment of the individual on the basis of the final assessment of the firm. Sub-section (5) of section 35 is only a step in that direction but the legislature in its wisdom thought it best that assessment of individual which had

This group of appeals has been referred to a larger Bench than one of three judges before whom the matter was opened on May 4, 1967, because of the earlier decision of this court. We now proceed to examine these decisions chronologically. In Income-tax Officer, Madras v. S. K. Habibullah. the facts were as follows. One Mohiuddin, who was a partner in two registered firms, submitted returns of his income incorporating therein the estimated share of losses in the two firms for the assessment years 1946-47 and 1947-48. The estimates of the assessee were accepted by the Income-tax Officer, who completed the assessment for the two years on February 20, 1050. The assessment of one of the firms for the same years was completed on October 31, 1950, but the proportionate share of the assessee for the losses was computed at much smaller figures. The assessment of the other firm for 1947-48 was completed on June 30, 1951, again for a smaller sum than that estimated by the assessee. The Income-tax Officer started rectif

> "The power to rectify assessment of a partner consequent upon the assessment of the firm of which he is a partner by including or correcting his share of profit or loss can therefore be exercised only in case of assessment of the firm made on or after April 1, 1952."

The decision in Habibullah's therefore in no way conflict with the view of section 35(5) which we have taken above. In passing, however, it may be noted that in Habibullah's case. a reference was made to sub-section (6) of section 35, which was introduced in the statute book by section 19 of the Amendment Act of 1953 at the same time as sub-section (5). There are certain words in sub-section (6) which are not to be found in sub-section (5) and on a contrast between the language used in the two sub-sections it was observed in Habibullah's case :

> "When the legislature under clause (6) of section 35 expressly authorised rectification in the circumstances mentioned therein even if the assessment has been completed before the Indian Income-tax (Amendment) Act, 1953, and it made not such provision in clause (5), it would be reasonable to infer that the legislature did not intend to grant to the revenue authorities a power to rectify assessment falling within clause (5) where the firm's assessment was completed before April 1, 1952."

This reasoning was advanced before us in aid of the argument that sub- section (5) should have no retrospective operation beyond April 1, 1952. We do not want to express any view as to the interpretation of sub-section (6) but, in our opinion, sub-section (5) was clearly intended to give retrospective effect to final orders made in the case of the firm by incorporation of the result thereof in the case of the partner as as individual.

The second decision of this court is that of Second Additional Income- tax Officer v. Atmala Nagaraj. In this case the proceedings related to the assessment of the respondent for the assessment year 1950-51. The respondent in one of the appeals was assessed as an individual while in the other appeal the respondent was assessed as a Hindu undivided family. The original assessment was completed in both cases on January 22, 1952. The two assessee held shares in two registered firm and the shares from the profits of these firms were included in the assessable income of the two respondents. The assessments of the firms were completed by an order dated October 16, 1954, when it was found that the aggregate shares of income from the two firms in the case of each of the respondents were more than that for what they had been assessed. After starting proceedings under section 35 an additional demand was made whereupon the respondents moved the High Court of Andhra Pradesh. After referring to Habibullah's case and K. La

> "The assessment of the respondent was a final assessment before April 1, 1952, and sub-section (5) has not been made applicable to such assessment, either expressly or by implication. It has been given a limited retrospectivity from April 1, 1952, and it was held by this court in the cited case that it was not open to courts to give more retrospectivity to it. Resort in this case could only be taken to the law as it stood before the introduction of sub-section (5), and as determined already by this court, the record of the firm's assessment could not then be called in aid to demonstrate an error on the record of a partner's assessment.... In our opinion, sub-section (5) could not be used in this case, and the decision of the High Court was right."

With very great respect, we find ourselves unable to concur. As we have already said, sub-section (5) becomes operative as soon as it is found on the assessment or reassessment of the firm or on any reduction or enhancement made in the income of the firm that the share of the partner in the profit or loss of the firm had not been included in the assessment of the partner or if included was not correct. The completion of the assessment of the partner as an individual need not happen after April 1, 1952. The completed assessment of the partner is the subject-matter of rectification and this may have preceded the above-mentioned date. Such completion does not control the operation of

the sub-section. In the result, we find ourselves unable to concur in the decision or the reasoning in Atmala Nagaraj's case.

The last case in the series is the of Ahmedabad Manufacturing and Calico Printing Co. Ltd. v. S. C. Mehta. In this case the court had to consider sub-section (10) of section 35 which was introduced by section 19 of the Finance Act, 1956. The Bench hearing this appeal was composed of five judges and two of them, S. K. Das and J. L. Kapur JJ., took the view that Habibullah's case had been correctly decided but that Atmala Nagaraj's case might require reconsideration although they did not express any final opinion on that point. Sarkar J. (as he then was) did not think that much assistance could be had from Habibullah's case in the matter of interpretation of sub-section (10) of section 35. He said further :

> "There is nothing in S. K. Habibullah's case to indicate that in the opinion of the learned judges deciding it there were any words which would indicate that sub-section (5) was to have a retrospective operation. In my view, sub-section (10) contains such words."

The judgment of the two others judges, Hidayatullah and Raghubar Dayal JJ. was delivered by Hidayatullah J., who dealt with the subject of retrospective operation of statutes elaborately and discussed Habibullah's case at some length and expressed the view (at page 125) that although the section mentioned the final order in the firm's assessment as the starting point "there was nothing to show that this new terminus a quo must be after April 1, 1952, before sub-section (5) could be used". According to Hidayatullah J., "the words of the sub- section were entirely indifferent to this aspect". The learned judge was however careful to add that this must not be considered as his final opinion on sub-section (5). Any opinion of Hidayatullah J. even with the above qualification merits the highest respect. After giving very anxious consideration to the views expressed by the learned judge, we still hold that by sub-section (5) of section 35 the legislature intended that rectification should be made on the findings as

In the result, the appeals are allowed. The judgment and order of the High Court of Madras are set aside and the orders of rectification passed by the Income-tax Officer are held to be effective and binding on the respondents. In the circumstances there will be no order as to the costs of these appeals.

HEGDE J. -

The respondent in these appeals were the partners of a registered firm carrying on business in gunnies. For the assessment year 1943-44, i.e., the assessment year ending March 31, 1944, the firm in question January 24, 1946, the partners of the said firm were also assessed to tax for the assessment year 1943-44, after taking into consideration their shared of profits in the firm. The Indian Income-tax Act, 1922, to be hereinafter referred to as "the Act, " was amended by Act 25, 1953. The said amending Act among other provisions incorporated section 35(5) into the Act. Section 1(2) of that Act provided that "subject to any special provision made in this behalf in this Act, it shall be deemed to have come into force on the 1st day of April, 1952." On September 11, 1952, the Income-tax Officer issued notice to the firm under section 34 of the Act requiring the firm to show cause why its assessment for the assessment year 1943-44 should not be reopened and enhanced for the reasons mentioned in that n

As the matters now stand, the question of law arising for decision is not res integra It is concluded

by the decision of this court in Atmala Nagaraj's case, wherein this court laid down that sub-section (5) of section 35 was not applicable to cases where the assessment of a partner of a firm was completed before April 1, 1952, even though the assessment of the firm was completed after April 1, 1952.

Evidently, encouraged by some of the observations in the decision of this court in Ahmedabad Mgf. & Calico Printing Mehta, Income-tax Officer, Mr. S. K. Aiyer, learned counsel for the department, contended that Habibullah's case were not correctly decided and that they should be overruled. Though the majority have not decided to the contention of Mr. S. K. Aiyer that Habibullah's case. has not been correctly decided, it has accepted his contention that Atmala Nagaraj's case was not correctly decided. As I am unable to concur with that conclusion, I am constrained to deliver this dissenting judgment. In my opinion, no case is made out to overrule the decision of this court either in Habibullah's case or in Atmala Nagaraj's case.

As seen earlier, the assessments in question were made as far back as January 24, 1946. Every assessment under the Act is final unless the same is modified in appeal or revision or reopened under section 34 or rectified under section 35. The assessment with which we are concerned in this case was neither modified in appeal or revision nor reopened under section 34. The question for decision is whether it can be rectified under section 35.

Under the Act, the assessment of a firm and the assessment of its partners are two different assessment though in assessing a partners his share in the firm's profits is added to his other income. In fact, the profits of a registered firm are subject to double tax, firstly in the hands of the firm and nextly, in the hands of its partners. As the law stood prior to the amending Act 25 of 1953, the assessment of a partners could not be rectified under section 35(1) on the ground that the firm's assessment had been enhanced as a result of reassessment. In other words, the reassessment of a firm could not be considered as a mistake apparent from the records of the assessment of its partners. That was the view taken by the Andhra Pradesh High Court in Kanumarlapudi Lakshminarayana Chetty v. First Additional Income-tax Officer, Nellore, and that view was accepted as correct by this court in Habibullah's case. Therefore, all that we have to see is whether section 35(5), one of the group of clauses added by Act 25 o

Section 35(5), to the extent it is material for our present purpose, reads as follows :

> "Where in respect of any completed assessment of a partner in a firm, it is found on the assessment or reassessment of a firm..... that the share of the partner in the profit or loss of the firm has not been included in the assessment of the partner, or, if included, is not correct, the inclusion of the share in the assessment or the correction thereof as the case may be, shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply thereto accordingly, the period of four years referred to in that sub- section being computed from the date of the final order passed in the case of the firm."

Section 35(1) empowers the income-tax authorities to rectify mistakes apparent from the record of certain orders passed by them. The clause (omitting parts not material) provides that the Income-tax Officer may, any time within the four years from the date of any assessment order passed by him, on his own motion, rectify any mistake apparent from the record of the assessment. As seen earlier, prior to the amending Act 25 of 1953, the Income-tax Officer could not have made the rectifications

with which we are concerned in these appeals. Therefore, the question for decision is whether by the exercise of the powers conferred on him by section 35(5), the Income-tax Officer could have validly made the impugned rectifications ?

It may be noted that in these cases both the assessment of the firm as well as the assessment of its partners were made long before April 1, 1952. But the assessment of the firm was reopened and the firm reassessed after that date. In Habibullah's case this court laid down that the legislature had given to clause (5) of section 35 which was incorporated with effect from April 1, 1952, a partial retrospective operation. The provision enacted by clause (5) is not procedural in character. It affect the vested rights of the assessee. Therefore, in the absence of compelling reasons, the court would not be justified in giving a greater retrospectivity to that provision than is warranted by the plain words used by the legislature. Clause (5) of section 35 does not purport to amend clause (1) of the same section. It confers additional powers upon the income-tax authorities and that power cannot be exercised in respect of assessment of a firm which had been completed before the date on which the power had been invest

> "..... when once a final assessment is arrived at, it cannot, in their Lordships' opinion, be reopened except in the circumstances detailed in section 34 and 35 of the Act.... and within the time limited by those sections."

From this decision, the correctness of which is not doubted by the majority, it follows that section 35(5) is only retrospective as from April 1, 1952; it has no greater retrospectivity and that section cannot effect vested rights. No doubt that decision was dealing with the assessment of a firm, but the ratio of the that decision, in my opinion, applies with equal force to the assessment of a partner. If the assessment of a firm made before April 1, 1952, cannot be reopened under section 35(1) read with section 35(5), the same must be equally true of the assessment of a partner of a firm. The ratio of the decision in Habibullah's case is that rights which have become final, prior of April 1, 1952, cannot be affected by having recourse to section 35(5).

By applying the ratio of the decision in Habibullah's case, this court held in Atmala Nagaraj's case that sub-section (5) of section 55 was not applicable to cases where the assessment of a partner was completed before April 1, 1952, even though the assessment of the firm of which he was the partner was completed after April 1, 1952. At page 612 of the report, this is what this court observed in Atmala Nagaraj's case :

> "Here, the original assessment was made before the amendment, and to that assessment the amended provision cannot still be made applicable for the reason to be given by us, even though the assessments of the firms were after April 1, 1952. The assessment of the respondents was a final assessment before April, 1952, sub-section (5) has not been made applicable to such assessment, either expressly or by implication. It has not been given a limited retrospectively from April 1, 1952, and it was held by this court, in the cited case that it was not open to courts to give more retrospectivity to it. Resort in this case could only be taken to the law as it stood before the introduction of sub-section (5), and as determined already by this court the record of the firm's assessment could not then be called in aid to demonstrate an error on the record of a partner's assessment. It was further held in S. K. Habibullah's case that the provision enactred by sub-section (5) is not procedural in character and that it affe hts of an assessee. In our opinion, sub-section (5) could not be used in this case, and the decision of the High Court was right."

It may be noted that both the decisions in Habibullah's case and Atmala Nagaraj's case, were rendered by the same Bench (consisting of S. K. Das, Hidyatullah and Shah, JJ.). I am unable to accept the contention that Atmala Nagaraj's case laid down any new legal principle. It merely applied the principle laid down in Habibullah's case to the facts of that case. In my opinion, there is no legal basis to distinguish the one from the other.

In Ahmedabad Manufacturing and Calico Ptg. Co.'s case this court was called upon to interpret the scope of sub-section (10) of section 35 of the Act which was bought into force on April 1, 1956. The language of that provision in wholly different from that of section 35(5). It is not clear from the report why in that case it became necessary to consider the correctness of the decision of this court in Habibullah's case and Atmala Nagaraj's case. But it appears that in the course of the arguments the correctness of those decisions was put into issue. Three separate judgments were delivered in that case, one on behalf of S. K. Das and Kapur JJ. by Das J., another on behalf of Hidyanatullah and Raghubar Dayal JJ. by Hidayatullahh J., and the third by Sarkar J. Sarkar J., in his judgment, merely referred to Habibullah's case and not to Atmala Nagaraj's case. Dealing with Habibullah's case, this is what his Lordships observed :

As to S. K. Habibullah's case I do not think that much assistance can be had from it. It applied the rule of presumption against a statute having a retrospective operation - as to which rule, of course, there is no dispute - to sub-section (5) of section 35. Now cases on the construction of one statute are rarely of value in construing another statute, for each case turns on the language with which it is concerned and statutes are not often expressed in the same language. The language used in sub-section (5) and (10) seems to me to be wholly different. There is noting in S. K. Habibullah's case to indicate that in the opinion of the learned judges deciding it there were any words which would indicate that sub-section (5) was to have a retrospective operation. In my view, sub-section (10) contains such words. Further, I do not find that the other consideration to which I have referred arose for discussion in that case. In my view, the two cases are entirely different."

Das J. accepted the correctness of the decision in Habibullah's case but while dealing with Atmala Nagaraj's case he observed :

> "We may point out, however, that in Second Additional Income-tax Officer v. Atmala Nagaraj this court went a step further and held that sub-section (5) of section 35 was not applicable to cases where the assessment of the partner was completed before April 1, 1952, even though the assessment of the firm was completed after April 1, 1952. Learned counsel for the appellant frankly conceded before us that he did not wish to go as far as that and contended that even in a case where a declaration of dividend was made after April 1, 1956, sub- section (10) would not apply; because that would make sub-section (10) unworkable. The decision in Second Additional Income-tax Officer v. Atkala Nagaraj may perhaps require reconsideration as to which we need not express any final opinion now, but so far as this case is concerned we see no reason why the principle in S. K. Hahibullah's case will not apply."

But Hidayatullah J. who, as mentioned earlier, was a party to both the decision, dealing with those decisions observed :

> "We do not naturally express a final opinion on sub-section (5). We must have that to a future case. We must, however, say that the two earlier cases may have to be reconsidered on some future occasion."

For the reasons to be presently stated, I would rather prefer to follow the decisions in Habibnullah's case and Atmala Nagaraj's case which I am sure must have been rendered after deep consideration rather than the passing doubts hesitatingly expressed by two of the learned judges who were parties to those decisions. As seen earlier, even the majority has not shared the doubts expressed by Hidayatullah J. as regards the correctness of the decision in Habiubullah's case.

The rule laid down in Habibullah's and Atmala Nagaraj's case is a well settled rule. Dealing with the interpretation of taxing statutes, it is observed in Halsbury's Laws of England (volume 36, pages 416-17) :

> "The language of a statute imposing a tax, duty or charge must receive a strict construction in the sense that there is not room for any intendment, and regard must be had to the clear meaning of the words. If the Crown claims a duty under a statute, it must show that that duty is imposed by clear and unambiguous words, and where the meaning of the statute is in doubt, it must be construed in favour of the subject, however much within the spirit of the law the case might otherwise appear to be; but a fair and reasonable constriction must be given to the language used without leaning to one side or the order.

The rule that the literal construction of a statute must be adhered to, unless the context renders it plain that such a construction cannot be put on the words, is especially important in cases of statutes which impose taxation. There is not rule admitting equitable construction of a taxing statute; that is to say, cases which are not within the actual words of the statute cannot be brought within the statute by consideration of its governing principle or intention.'

Rowlatt J. observed in Cape Brandy Syndicate v. Inland Revenue Commissioners :

> "..... in a taxing Act one has to look merely at what it clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

These principles have been accepted as correct both by the English courts and the superior courts in this country. It is now well settled that if the interpretation of a fiscal enactment is in doubt, the construction most beneficial to the subject should be adopted even if it results in obtaining an advantage to the subject : the subject cannot be taxed unless he comes within the letter of the law and the argument that he falls within the spirit of the law cannot avail the department.

In Commissioner of Income-tax v. Provident investment Co. Ltd., this court quoted with approval the following passage from an earlier decision of this court in A. V. Fernandez v. State of Kerala :

> "If the revenue satisfied the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. We must or necessity, thereof, have regard to the actual provision of the Act and the rules made thereunder before we can come to the conclusion that the appellant was liable to assessment as contended by the sale tax authorities."

In Commissioner of Income-tax v. Elphinstone Spinning and Weaving Mills Co. Ltd., this court held that if the words of the taxing statute fail, then so must the tax. The courts cannot, except rarely and in clear cases, held the draftsmen by a favourable construction.

In Commissioner of Income-tax v. Elphinstone Spinning and Weaving Mills Co. Ltd. this court again observed :

> "The income-tax law seeks to bring within the net of taxation certain class of income, and can only successfully do so if it frames a provision appropriate to that end. It the law fails and the taxpayer cannot be brought within its letter, no question of unjustness as such arises."

In Banarasi Debi v. Income-tax Officer, Calcutta, it was observed :

> "Before construing the section it will be useful to notice the relevant rules of construction of a fiscal statute. In oriental Bank Corporation v. Henry B. Wright, the Judicial Committee held that if a statute professed to impose a charge, the intention to impose a charge on the subject must be shown by clear and unambiguous language. In Canadian Eagle Oil Co. v. R., Viscont Simon L. C. observed : 'In the words of Rowlatt J.... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, noting is to be implied. One can only look fairly at the language used.'
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> In other words, a taxing statute must be couched in express and unanbiguous language. The same rule of construction has been accepted by this court in Gurusahai Saigal v. Commissioner of Income-tax, wherein it was stated :..... it is well recognised that the rule of construction that if a case is not covered within the four corners of the provisions of a taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter, applied only to a taxing provision and has no application to all provisions in a taxing statute."

In Commissioner of Income-tax v. Ajax Products Ltd. this court quoted with approval the rule laid down by Rowlatt J. in Cape Brandy Syndicate case, to which reference has already been made. It went further and observed :

> "To put it in other words, the subject is not to be taxed unless the charging provision clearly imposes the obligation. Equally important is the rule of construction that if the words of a statute are precise and unambiguous, they must be accepted as declaring the express intentions of the legislature."

From the foregoing decisions it is clear that the consideration whether a levy is just or unjust, whether it is equitable or not, a consideration which appears to have greatly weighed with the majority, is wholly irrelevant in considering the validity of a levy. The courts have repeatedly observed that there is no equity in a tax. The observations of Lord Hatherley L. C. in Pardo v. Bingham : "In fact we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the Legislature contemplated", where made while construing a non-taxing statute. The said rule has only

a limited application in the interpretation of a taxing statute. Further, as observed by that learned judge in that very case the question in each case is, "whether the legislature had sufficiently expressed its intention", on the point in issue.

I do not think that the impugned assessments can be said to be just or equitable even if that consideration is at all relevant. The assessments of partners of firms, whose assessments had become final before April 1, 1952, cannot be reopened. There is no just or equitable ground to differentiate the case of the respondents from those assessees. As seen earlier, the assessment of the respondents had become final as far back as 1946. They would have arranged their affairs on that basis. Thirteen years thereafter, they were called upon to pay additional tax. It cannot be said that that is just or equitable.

This takes me to the question whether the impugned assessments come clearly within the scope of section 35(5). That is the only relevant consideration. But, before going into that question we must remind ourselves that the assessments of the respondents had become final in the year 1946 and under the law as it stood prior to the enactment of section 35(5), those assessments could not have been interfered with. Section 35(5) unlike several other provisions in the amending Act of 1953 had been given only a partial retrospective effect. It is made to be operative as from April 1, 1952. In this background let us now proceed to examine section 35(5).

Before a case can be held to fall within the scope of section 35(5), two requirements must be satisfied, namely, (1) that the assessment or reassessment of the firm must have taken place on or after April 1, 1952, and (2) the assessment of the partner must be a "completed assessment". The next question to be decided is whether the "completed assessment" referred to in section 35(5) includes an assessment which had become final prior to April 1, 1952.

I am unable to find out how the firm's assessment could have been validly reopened under section 34, in September 1952. By the time the notice under section 34 was issued, the eight year's period of limitation prescribed in section 34 had expired. But the validity of the firm's reassessment does not appear to have been challenged at any time before the hearing of these appeals. Hence, it is not safe to pursue that question.

The concept of a "completed assessment" was introduced for the first time by the amending Act 25 of 1953. The Act as it stood till then only spoke of assessments, reassessments and rectification of assessments. What did the legislature mean by saying "completed assessment" in section 35(5) ? That expression is not defined in the Act. The legislature must be considered to have deliberately used that expression in place of the expression "assessment", an expression familiar to courts and the connotation of which is well settled. On the basis of well organised canons of construction of statutes we must give that expression a meaning different from that given to "assessment". Evidently, the legislature used the expression "completed assessments" to distinguish that class of assessments from assessments which are final under the Act. It appears to me, by using that expression, the legislature intended that the assessment of a partner should not be considered as a final assessment till the assessment of the firm b

Section 35(5) neither expressly nor by necessary implication empowers the Income-tax Officer to reopen assessments which had become final. If the legislature wanted to confer such a power it should have said so as it did in section 35(6) and in several other provisions in the amending Act, sections 3(2), 7(2) and 30(2) of that Act. Further, if section 35(5) empowers the reopening of all final assessments of partners of firms, where was the need to give that provision a partial

retrospectivity. That very circumstance negatives the contention of the department. Even if it is to be held that the expression "completed assessment" is an ambiguous expression, in that event also, the power conferred under section 35(5) could not have been exercised to rectify the assessments in question.

From the foregoing it follows that the decision of this court in Atmala Nagaraj's case is correct. Even assuming that section 35(5) can receive a different interpretation and that interpretation is more reasonable than that adopted by this court in Atmala Nagaraj's case, in that event also this court would not be justified in overruling its previous decision, which has the force of law in view of article 141 of the Constitution. I am of the opinion that the decisions of this court should not be overruled excepting under compelling circumstances. It is only when this court is fully convinced that public interest of a substantial character would be jeopardized by a previous decision of this court, this court should overrule that decision. Every time this court overrules its previous decision, the confidence of the public in the soundness of the decision of this court is bound to be shaken.

Reconsideration of the decisions of this court should be confined to questions of great public importance. In law finality is of utmost importance. Legal problem should not be treated as mere subjects for mental exercise. This court must overrule its previous decisions only when it comes to the conclusion that is manifestly wrong, not upon a mere suggestion that some or all the members of the later court might arrive at a different conclusion if the matter was res integra. In Bengal Immunity Co. Ltd. v. State of Bihar, this court laid down that there is nothing in the Constitution which prevents the Supreme Court from departing from a previous decision of its own if the court is satisfied of its error and its baneful effect on the general interest of the public. Das, Acting C.J., speaking for the majority, observed in the course of his judgment (at page 630 of the report) :

> "It is needless for us to say that we should not lightly dissent from a previous pronouncement of this court. Our power of review, which undoubtedly exists, must be exercised with due care and caution and only for advancing the public well being in the light of the surrounding circumstances of each case brought to our notice but we do not consider it right to confine our power within rigidly fixed limits as suggested before us."

The question of law with which we are concerned in this case was of minor importance, at all times. It has become all the more so because of the passage of time, as it has relevance only to assessments of partners of firms made before April 1, 1952, and that too in cases where the question of enhancing those assessments arises as a result of the assessment or reassessment of the concerned firms on or after April 1, 1952. Such cases are not likely to be many.

For the reasons mentioned above, I dismiss these appeals with costs.

ORDER. -

In accordance with the opinion of the majority the appeals are allowed, the judgment and order of the High Court of Madras are set aside and the orders of rectification passed by the Income-tax Officer are held to be effective and binding on the respondents. In the circumstances there will be no order as to costs of these appeals.

Appeals allowed.

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