CALCUTTA HIGH COURT

Debi Dutta Moody

Vs.

T. Bellan

Matter No. 14 of 1957

(D.N. Sinha, J.)

11.09.1958

ORDER

D.N. Sinha, J.

1. The facts in this case are shortly as follows : The petitioner carries on business in Calcutta. On 29-1-1951, he was assessed for income-tax for the assessment year 1947-48 on a total income of Rs. 1,15,532/- by the Income-tax Officer Companies District IV, Calcutta. On the 6th of February 1951, notice under Section 29 of the Indian Income-tax Act (hereinafter referred to as the "Act") was issued demanding payment of Rs. 39,337/4/6 as tax. The petitioner paid that amount. On the 19th of March 1956, a notice was issued upon the petitioner under Section 34 of the said Act. In the said notice it was alleged that the Income-tax Officer had reason to believe that the income of the petitioner assessable to income-tax for the assessment year 1947-48 had escaped assessment and he proposed to re-assess the said income which had escaped assessment. The petitioner was called upon to make a return in the prescribed form. Although the notice was issued on 19-3-1956, it is not disputed and therefore it must be deemed to be admitted, that the notice was served upon the petitioner on 2-4-1956. A further notice under Section 22(4) of the Act was issued on 10-1-1957. On 22-1-1957, third notice was issued under Section 23(2) of the said Act.

2. The short point that calls for decision in this case turns upon an amendment of Section 34 of the said Act. The relevant provision of Section 34 as it stood before the amendment effected by Section 18 of the Finance Act, 1956, which came into operation on 1-4-1956 was as follows :

> "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.

(b).....

He may in cases falling under Clause (a) at any time within eight years ..... of the end of that year, serve on the assessee, ... 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".

3. This section was amended by Section 18 of the Finance Act No. XVIII of 1956 dated 27-4-1956. Under Section 28 thereof the amendment was to come into force from 1-4-1956. Section 34 as amended now stands as follows :

> "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, ...
> (b) .....

He may in cases falling under Clause (a) at any time ..... serve on the assessee ..... 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 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 the 31st day of March 1941;
> (ii) for any year, if eight years have elapsed after the expiry of that year, unless the income, profit, 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 is computed in excess amount to or are likely to amount to one lakh of rupees or more, in the aggregate other for that year, or for that year or 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, 1951.
> (iii) For any year, unless he has recorded his reasons for doing so, and, in no 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.

Provided further that the income-tax officer shall not issue a notice under this Sub-Section for any year, after the expiry of two years from that year, if the person on whom the assessment or reassessment is to be made in pursuance of the notice is a person deemed to be the agent of a non-resident person under Section 43.

Provided further that the tax shall be chargeable at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment as the case may be."

4. It is admitted that under the old Section 34(1)(a) the assessment for the year 1947-48 could be reopened by serving a notice within eight years expiring on 31-3-1956. The amendment which did away with the bar of limitation of eight years for service of notice came into operation on 1-4-1956 and the notice was actually served on 2-4-1956. Thus, when the amendment came into force, the issue of a notice under the old section was already barred and if the matter is to be governed by the old law, then the notice was served beyond the period of limitation. On behalf of the petitioner it is argued that the right to issue and serve a notice, which is a precondition to the reopening of the assessment, having been barred, the new law introduced by the amendment did not apply. On the other hand, it is argued on behalf of the respondent that the new amendment does apply and that the notice was therefore both issued and served within time. This is the short point which is involved in this application, as well as two other applications - *(Luxmi Niwas Moody v. Shri T. Bellan and Ors*[1]*.)*, in which the petitioner is a minor son of the petitioner in this case and Matter No. 48 of 1957 (*Shrimati Banarashi Debi v. Shri T. Bellan and Ors.*), which is an application by the wife of the petitioner in this case. The facts therein are similar and indeed there has been only one set of argument in all the three applications.

5. The first case cited is a Supreme Court decision *Hoosein Kasam Dada (India) Ltd. v. The State of Madhya Pradesh, 1953 SCR 987* . The facts in that case were as follows : On 28-11-1947 the appellant filed his sales tax return. The proceedings commenced on 9-6-1949. Section 22(1) of the Central Provinces and Berar Sales Tax Act, 1947 was amended on the 25th of November, 1949. Prior to the amendment, an appeal could be preferred provided that the appellant paid the admitted amount of tax. By the amendment he had to pay the whole amount in respect of which the appeal was preferred. The particular proceeding which had commenced on 9-6-1949 was completed on 8-4-1950 when there was a best judgment assessment. On 10-5-1950 the assessee preferred an appeal. The question arose as to whether the amendment in Section 22(1) of the Central Provinces and Berar Sales Tax Act, 1947 would be applicable, or the old section. It was held by Das, J., (as he then was) that the right of appeal is a substantive right and not merely a matter of procedure and this right becomes vested in a party when the proceedings are first initiated in and before a decision is given by, the inferior court and such a right cannot be taken away except by express enactment or necessary intendment. It was held that in the particular case the appellant had a vested right of appeal when the proceedings were initiated in 1947 and the right to appeal was governed by the law as it existed on that date and the amendment had no retrospective effect, as it did not expressly or by necessary intendment give it retrospective effect. An appeal preferred by the assessee could not be refected because he had not paid the full amount of the tax in respect of which the appeal had been preferred. The next case cited is a Bench decision of this Court, *Khondker Mohammed Saler v. Chandra Kumar*[2]*,* It was held there that statutes of limitation could not be considered as any hing else than matters relating to procedure and ordinarily such statutes have their operation from the date fixed in the statute and

govern all matters
[1] Matter No. 22 of 1957
[2] AIR 1930 Cal 34
before the Court after the commencement of the operation of the statute even if they have been initiated prior to that date. There is however one exception and it is that where under the Act as amended, an application could not at all be made, the amendment will not apply retrospectively, for the effect of the amendment is to regulate and not to confiscate a vested right. In that case, it was found that under the Limitation Act XV of 1877 a minor could make an application within three years of the cessation of disability. Under the Limitation Act IX of 1908 the period was three years from the date when the right to apply accrued. In other words, the effect of the change was to curtail the period within which an application could be made and did not take away the right. It was held that the new Act could be given retrospective operation.

6. I next come to an appellate Court decision of this Court which comes nearer to the facts of this case. *Income-tax Officer, Companies District I, Calcutta v. Calcutta Discount Co. Ltd*[3]*.,* The facts in that case were as follows : The respondent was a private limited company which had been assessed for income-tax during the years 1942-43, 1943-44 and 1944-45. On 28-3-1951 notices were served upon the respondent under Section 34 of the Indian Income-tax Act as amended by the Income-tax and Business Profits Tax (Amendment) Act (XLVIII of 1948) on the ground that the income-tax officer concerned had reason to believe that the income for these years had been under-assessed. Act XLVIII of 1948 itself came into force on 8-9-1948. But by Section 1(2) it was prescribed that an amendment to Section 34 which was introduced by the said Act should be deemed to have come into force on 30-3-1948. By the amendment, the original provision of Section 34 of the Act was replaced completely by a new section of a self-contained character. But in both the original sections as well as the amended section, the period of eight years remained the same. Bose, J., in the lower court had held that the amendment was expressly made retrospective so far as Section 34 was concerned, from 30-3-1948. Therefore, there could be no further retrospective operation and no assessment prior to 30-3-1948 could be reopened. The learned Chief Justice pointed out as follows :

> "The effect of Section 8 of the amending Act so operating with respect to Section 34 was that it placed the section on the statute-book as on 30-3-1948 and made it a part of the Income-tax Act on and from that date. But what was the effect of such introduction of the new Section 34 on the Income-tax Act itself The effect was that the Income-tax Act, speaking or and from 30-3-1948 with the new section as a part of it, began to say in the words of the section itself and therefore expressly by its own words, that in cases coming under Clause 1(a) of the section, the Income-tax Officer would be entitled to issue a notice within eight years from the end of any assessment year in respect of which proceedings or further proceedings seemed to be called, for. One has only to read the Act standing so amended on 30-3-1948 and one finds at once a clear provision that all assessment years, ending within eight years from that date, are covered by it, as also all assessment years ending within eight years from subsequent dates. It is immaterial that some of them may be years ended before 30-3-1948. The question is not one of retrospective operation at all but a question of what the section says and how far the section, having come into force on 30-3-1948, extends by its own words. Had the section

merely created a right in favor of the Income-tax Officer to issue a notice in respect of escaped or under-assessed income and not included a provision

[3]1953-23 ITR 471 : AIR 1953 Cal 721

as to the period up to which, computed from the end of the assessment year concerned, the right could be exercised, a question might conceivably arise as to whether it was intended to be retrospective in operation, but in view of its clear terms, the section gives rise to no such question. The plain effect of the substitution of the new Section 34 with effect from 30-3-1948, 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 30-3-1948 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 30-3-1948. All the three assessment years in question in the present case ended within eight years from 30-3-1948 and also within eight years from the date of the notices and accordingly the proceedings taken are authorized by the section and are valid."

7. This deals with the question of retrospective operation of the amendment. If this principle is to be applied to the facts of this case, the position is as follows : The amendment came into operation on 1-4-1958. Under the proviso of the amendment section, no notice under Clause (a) of Sub-Section (1) could be issued if eight years had elapsed after the expiry of the year for which the assessment is sought to be reopened unless the amount which has escaped assessment was stated to be one lakh of rupees or more. It is not however stated anywhere that the amount that has escaped assessment was, or is likely to amount to, one lakh of rupees or more. Under the amended section, notice may be issued at any time under Clause 1(a). But the proviso clearly bars the issue of a notice, if eight years have expired. The question would be as to whether the facts in the present case would save such a notice. On this point it is argued by Mr. Meyer on behalf of the respondent that prior to the amendment introduced by the Finance Act of 1956, it was necessary both to issue the notice and serve it within eight years. But after the amendment it is sufficient to issue the notice within eight years, but the time for service has no bar of limitation. Mr. Meyer draws my attention to my decision in *Debi Dutt Mody v. S.T. Bellan*[4], There I field that after the amendment introduced by the Finance Act of 1956, as long as the reopening of the assessment satisfied the time bar of the proviso to Section 34(1)(a) and notice had been issued accordingly, there was no time-bar for service, which could be effected at any time. Mr. Meyer argues that in this case the notice was issued on 19-3-1956 which is well within the eight years' limitation. But it was served beyond eight years. He argues that the time granted under the amendment to serve the notice is unlimited. After the 1st of April, 1956 the statute by its own operation enables a notice which had been issued prior to the expiry of the eight years' bar, to be served at any time. In other words, he argues that this notice and the service thereof fully accords with the provisions of Section 34(1)(b) inasmuch as the notice had been issued for a year well within the eight years' bar as contained in proviso (ii) and it has been served in accordance with the provisions contained in Section 34(1). If the matter stood there, then I think that the observations made by Chakravartti, C.J., in the above mentioned case would apply in full force.

It might then be argued that it is not a question of the retrospective operation of the statute at all, but an application of the provisions of the statute as it stands. There is however

[4] Matter No. 153 of 1957, (judgment D/-22-4-1958) : AIR 1958 Cal 398

another principle which comes into the picture and has complicated the issue. The question is as to whether such an approach to the question is permissible where under the old law as it stood, the service of a notice was already barred by law, at the time when the new amendment came into operation. This aspect has been touched by the learned Chief Justice in the case above mentioned and has been further dealt with in other decisions and must now be considered. While considering the question of the retrospective operation of the statute, the nature of the right affected must first be considered. Where there is a vested right, it has been held that an amendment will be considered as prospective so is not to affect the vested right. If the right is merely procedural then normally there is no vested right. In the Calcutta Discount case (supra) the learned Chief Justice was dealing with an earlier amendment talking about vested rights the learned Chief Justice says as follows :

> "Section 34 only authorizes an enquiry with a view to verifying whether there was an assessable income which has escaped assessment or has not been fully assessed and it also authorizes an assessment or re-assessment, if the enquiry results in an affirmative finding. From one point of view, a vested right claimed in such circumstances would seem to be a right not to pay the tax legally due or a right to retain one's concealments which, in the words of an English case, is a right worthy of little respect and indeed not a right at all. It is, therefore, necessary to see whether any right can be found when the position is looked at from any other point of view."

8. In the particular amendment which was being considered by the learned Chief Justice, the time was enlarged for the completion of an assessment. As to this aspect of the matter the learned Chief Justice says :

> "Assuming that the restrictions on the Income-tax Officer's power to proceed under the Section have been slackened by the new Section, even then it cannot be said that any right of the assessee has been affected, because to be proceeded against under certain preliminary conditions rather than others, when the matter for which one is proceeded against is the same, is not a right. Nor is enlargement of time for the completion of an assessment a violation of any right, for, if a man is liable to be proceeded against, he cannot say that he has right to be proceeded against within a certain time or not at all. Just as a man may have right to take a proceeding, but has no right to be allowed to take it up to a certain time, so has no man, liable to be proceeded against, a right to the inflation or completion of any proceeding against him being limited to any particular period. Provided that the right or liability is not itself affected, the time for asserting the right or enforcing the liability may always be enlarged or abridged."

In this particular case, there has been a further amendment by which the time to serve a notice has been extended. In fact, while the notice must be issued within 8 years, the time to serve is without any limit. It may equally be said, therefore, that in such a case, the liability is not itself

affected but the time for asserting the right or enforcing the liability has been enlarged. It will be noticed, however, that the period of 8 years is still maintained. It is merely the procedure for serving notice that has been liberalised. If the matter stood there, if would appear that the petitioner had no vested right which was being affected. But it is here that a further principle has to be considered. Whether limitation is a substantive right or a procedural right, if at the time when a change in the law comes into operation, the right to proceed was already barred under the old Act, then could it be revived by virtue of the amendment unless there was an express enactment therein to that effect ?" To put it in another way, a tax may be legally due from a person and income-tax becomes due as soon as there is income and yet it may be that the law lays down that beyond a certain time a man cannot be proceeded against for realisation thereof. As long as the matter is not already barred, the assessee would have no vested right in such a bar of limitation, in the sense that it could at any time be enlarged or abridged. But the question is, supposing under an existing law the time bar has come to take effect, that is to say, the right to proceed against an assessee is lost. If an amendment thereafter comes into existence and does not expressly revive the right, can the matter be reopened under the new law ? Upon this point, in the very case above mentioned, the learned Chief Justice proceeds to say as follows :

> "It is true that if time is enlarged by a new enactment, but at the date when the enactment comes into force, no proceeding can any longer be commenced in a particular case under the previous law, the new enactment will not apply to such a case ILR 56 Cal 1117 : AIR 1930 Calcutta 34; but no such situation has been caused here. Time has not been enlarged at all. On the clay the new Section came into force and on any day thereafter, proceedings in respect of the same assessment years could be initiated under the old Section, if it had remained in operation, as under the new Section ..... As to time, none has a vested right in a period of limitation and a change of the period which does not altogether take away a right of action subsisting at the date of change or revive a right, then already barred under the old law, can always be made and the period applicable thereafter will be the new period, whether enlarged or abridged."

9. In other words, it has been held that the protection given to the assessee not to be subjected to re-assessment unless the re-assessment is done within a particular time, is not a substantive right by itself and therefore an amendment which affects that right will not be invalid. But in two cases only such amendment will not be taken to have affected the right of the assessee under the old law, namely (i) where under the old law there was a light of action and under the new law the right is altogether taken away and (ii) where the right to be proceeded against is already barred by the old law. In the present case, we are concerned with the latter case. It is clear that the learned Chief Justice is of the opinion that in such a case the amendment should not be taken to be retrospective. In any event, it should not be construed so as to revive the right unless there is something in the new law expressly or by necessary intendment.

10. The next case to be considered is a Division Bench judgment of the Madras High Court *Mahomed Hussain Naehiar Ammal v. Commissioner of Income-tax, Madras*[5], In that case, the facts were as follows: In the accounting year ending 31-3-1942 the assessee received from her non-resident husband, sums of money amounting to Rs. 9180/- which was remitted to India by bank-drafts obtained in the name of his agent. The agent paid the amounts to the assessee. The

assessee did not submit any return of these items for assessment. Proceedings under Section 34 of the Income-tax Act were initiated against

[5]1956-29 ITR 848 : AIR 1956 Mad 471

her on 25-7-1949 after the expiry of 4 years. Under Section 34 of the Income-tax Act, before it was amended in 1948, the period of limitation was 4 years for failure to submit a return. Therefore, the remedy was barred on 31-3-1947. The amendment came into operation on 30-3-1948. It was held that the amendment which enlarged the period of re-assessment could not be applied. The learned Judges relied on an earlier Division Bench decision, *Ramanathan Chettiar v. Kandappa Coundan*[6], where it was stated as follows :

> "It is well settled that the law of limitation being procedural law, its provisions operate retrospectively in the sense that they apply to causes of action which arose before their enactment. But it is equally well-established that if a right to issue has become barred by the provisions of the Act then in force on the date of coming into force of a new enactment, then such a barred right is not revived by the application of the new enactment."

11. The next case to be considered is a Division Bench judgment of the Bombay High Court *S.C. Prashar v. Vasantsen Dwarkadas*[7], In that case, the Income-tax Officer served firm 'P' with a notice under Section 34 of the Income-tax Act for the assessment year 1942-43 on 30-4-1954, the ground being that the income of firm V for the assessment year 1942-43 had to be included in the income of firm 'P'. The assessee applied to the High Court for a Writ of Prohibition. Chagla, C.J., said as follows :

> "Therefore, on the validity of the notice, the very short question that we have to consider is whether, if the remedy or the right to issue a notice under Section 34 was already barred at the date when the amending legislation came into force, the amending legislation could revive the remedy by providing an extended period of limitation. The amending Act came into force on 1-4-1952 and on that date the period of 8 years from 31-3-1943 had already expired. Therefore, the remedy available to the Income-tax Officer of assessing the assessee in respect of the escaped, income had already become barred. Could a legislation by providing that from 1-4-1952 there would be no limitation at all in respect of that remedy revive the remedy which was already lost to the Income-tax Officer ? It seems to us 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 of another party is barred by the existing law of limitation and that vested right cannot be affected except by the clearest and most express terms used by the Legislature. It is not suggested that a sovereign Parliament cannot take away vested rights, but the Court must be loath to construe any legislation as interfering with vested rights unless the law-making authority has clearly so provided ..... As the law stood, the assessee could say to himself on 1-4-1952, that any fear of proceedings being taken under section 34 was effectively at an end and therefore, unless there is anything in the 2nd proviso which would lead us to the

conclusion that the Legislature not only brought into force the Act, which received assent on 24-5-1953, on 1-4-1952, but it revived a remedy already lost, we could not possibly accede to the contention that the amended proviso has a retrospective effect in the manner suggested by the Advocate General."

[6](1950) 2 Mad LJ 624 : AIR 1951 Mad 314

[7]1956-29 ITR 857 : AIR 1956 Bom 530

12. Applying this principle to the facts of this case, it appears to me that the point must be decided in favor of the assessee. In the present case, the provision of Section 34 as it was before the amendment, laid down a certain period of time during which the notice must be issued and served, in order to enable a re-assessment to be made. On the expiry of that period the assessee was entitled to tell himself that no proceedings having been taken, he was safe from having his assessment reopened. Then comes an amendment which enlarges the time for the service of notices. If this was to be considered to be retrospective or given effect to in the present case, it means that a right which had been lost is to be revived. The principles laid down in the above mentioned cases do not support such an action. Mr. Meyer appearing on behalf of the respondents formulated his case in the following way : Firstly, he said that the provisions of Section 34 of the Indian Income-tax Act and the various amendments that have been made therein are directed against tax-evasion and such statutes are free from any presumption against retrospective effect. He cites the case of *Lord Howard De Walden v. Inland Revenue Commissioners*[8], In that case, Lord Howard De Walden carried on a series of transactions by which valuable assets belonging to him were transferred to Canada, in the name of other persons, particularly his son, to avoid income-tax. It was admitted that the sole purpose of such transactions was to avoid liability to taxation. It was held that Section 18 of the Finance Act, 1936 applied and these assets could be taxed. Lord Greene Mr. R. said as follows :

> "The section is a penal one and its consequences, whatever they may be, are intended to be an effective deterrent which will put a stop to practices which the legislature considers to be against the public interest. For years a battle of maneuver has been waged between the legislature and those who are minded to throw the burden of taxation off their own shoulders on to those of their fellow subjects. In that battle the legislature has often been worsted by the skill, determination and resourcefulness of its opponents of whom the present appellant has not been the least successful. It would not shock us in the least to find that the legislature has determined to put an end to the struggle by imposing the severest penalties. It scarcely lies in the mouth of the tax payer who plays with fire to complain of burnt fingers .... The fact that the section has to some extent a retrospective effect again appears to us of no importance when it is realized that the legislation is a move in a long and fiercely contested battle with individuals who well understand the rigour of the contest."

13. I do not find anything in this judgment which bears an anology to the facts of the present case. There is nothing to show 'hat under the old Act certain rights had become barred even if they were procedural rights. If the Finance Act of 1936 sought to effect rights in retrospect, there was nothing to prevent a sovereign legislature from promulgating such an Act. It may be that in the case of statutes dealing with tax evasion, the construction should be liberal, in favour of the

validity of the Act; and against the assessed. But there is nothing to indicate that the general principle has been abrogated, namely that a right already barred cannot be revived except by express words or by necessary intendment. There is nothing in Lord Greenc's judgment to show that he was negativing such a principle.

14. Mr. Meyer then argued that the amendment, by express enactment or by necessary

[8](1942) 1 KB 389

intendment was meant to be retrospecive. The way he formulated his case is as follows : He says that this amendment is retrospective because it deals with a past period and indeed, under the proviso to Section 34(1) the period to which an assessment might go back was 31-3-1941, that is to say more than 17 years from now. If the intendment was not to make it retrospective, then why was 1941 brought in at all ? This at first sight would appear to be an attractive argument, but a little thought would show that it has no substance. In the Calcutta Discount case (supra), the learned Chief Justice pointed out that taking back the assessment for 8 years was strictly speaking not a retrospective operation at all. The section itself as it stands, or as it stood then, provides for assessment being reopened for 8 years from a particular date. From that date, therefore, going back 8 years was not by virtue of retrospective operation of the Act, but upon the strength of the express wordings of the Act and by virtue of its own operation. Under the amendment as it now stands, a notice may be served in cases falling under Clause (a) of Section 34(1) at any time, but no "such notice could be issued if 8 years had elapsed, unless the income, profits or gains which escaped assessment amounted to one lac of rupees or more. Even in the latter case, the re-assessment could not be taken beyond 31-3-1941. Therefore, in 1950 there could have been no question of going back to 1941 unless it came under the category of escaped income which amounted to a lac or more. This does not throw any light on the retrospective operation of the section. Previously, there was a but of 8 years not only for the purpose of reopening the assessment but also for the issue and service of notices. Now the position has been cased so far as the Income-tax authorities are concerned and a notice can be served on the assessee at any time but it could not issue for a period of more than 8 years in retrospect. A further right has been granted of taking it back up to 1941 if the escape of assessment was for the substantial sum of a lac or more. All these periods and the re-assessment for such periods, although referring to past periods can be said to be under the section itself and therefore there is really no question of the retrospective operation of the amendment. But this again does not touch the question as to whether the amendment is available in the case of assessees against whom re-assessment was barred at the time when the amendment came into force, as has been shown above. Where such action is barred under the old law, there is a right in the assessee to consider himself free from the further peril of re-assessment. Such a person can say that the new amendment does not show on the face of it that it was intended to revive such barred re-assessments. As I have said above, the fact that the section deals with a past period, makes the argument of its retrospective operation plausible at first sight. But, a closer consideration will show the weakness of it. Such an argument ignores the principle I have mentioned above, which provides for a particular situation, namely where the existing light of re-assessment has been already barred. In my opinion, the law in firmly established that under such circumstances the remedy cannot be revived unless the law provides for it in express terms or necessary intendment. I. hold that in the latest amendment of Section 34(1) there is nothing which does so. The result is that this wide must be made absolute and there will be a Writ in the nature of Mandamus prohibiting the Respondents from enforcing or taking any steps under the notice dated 19-3-1956 Ex. 8 to the petition, against the petitioner. There will also be a Writ in the

nature of Certiorari quashing the same. There will be also a Writ in the nature of Mandamus directing the Respondents not to give effect to the notice under Sections 22 or 23 of the Income-tax Act based on the said notice, as mentioned in the petition. There will be no order as to costs.

Rule made absolute.