courts of the new State. So I agree that, so far as this case is concerned, the appellant must fail.

But my learned brother's judgment is grounded to a large extent on the views of the English courts which do not draw the distinction that I am drawing here. I therefore want to make it clear that this decision must not be used as a precedent in a case in which rights to immoveable property are concerned. Without in any way committing myself to one view or the other, as at present advised, I feel it may be a pity for us to disregard the trend of modern international thought and continue to follow a line of decisions based on the views of an older Imperialism, when we are not bound by them and are free to mould our own laws in the light of modern thought and conceptions about rights to and in immoveable property. But in so far as the present case is concerned, I agree that the appeal and the petition under Art. 32 should both be dismissed.

Appeal and petition dismissed.

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v.

THE INCOME TAX OFFICER, ERNAKULAM & ANOTHER

(and connected appeals)

1958

April 28.

(S. R. DAS C. J., VENKATARAMA AIYAR, S. K. DAS, A. K. SARKAR and VIVIAN BOSE JJ.)

Income Tax—Re-assessment—Original assessment under the provisions of Travancore, Cochin and Mysore Income-tax Acts—Constitutional changes resulting in Travancore and Cochin, and Mysore becoming Part B States—Extension of Indian Income-tax Act to those States—Applicability of the Travancore, Cochin and Mysore Income-tax Acts for re-assessment for prior period—Financial agreement between the President of India and the Rajpramukh—

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Effect on re-assessment proceedings—Travancore Income-tax Act, 1121 (Travancore XXIII of 1121), s. 47—Cochin Income-tax Act, 1117 (Cochin VI of 1117), s. 44—Mysore Income-tax Act, 1923 (Mysore V of 1923), s. 34—Finance Act, 1950 (XXV of 1950), s. 13(1)—Constitution of India, Arts. 278 and 295.

Section 13(1) of the Finance Act, 1950, provided: "If immediately before the 1st day of April, 1950, there is in force in any Part B State.....any law relating to income tax or super-tax or tax on profits of business, that law shall cease to have effect except for the purposes of the levy, assessment and collection of income-tax and super-tax in respect of any period not included in the previous year for the purposes of assessment under the Indian Income-tax Act, 1922, for the year ending on the 31st day of March, 1951, or for any subsequent year, or, as the case may be, the levy, assessment and collection of the tax on profits of business for any chargeable accounting period ending on or before the 31st day of March, 1949 ..."

The appellant, a merchant carrying on his business in the erstwhile States of Travancore and Cochin, was assessed to income-tax for the two accounting years 1122 M. E. (1946-1947) and 1123 M. E. (1947-1948) under the income-tax law in force there, namely, the Travancore Income-tax Act of 1121 M. E. and the Cochin Income-tax Act of 1117 M. E. Between 1947 and 1950 there were constitutional changes resulting in the integration of the two States, formation of the United State of Travancore and Cochin, accession of the latter to the Dominion of India, and finally, its acceptance of the Constitution of India whereby it became a Part B State within the Constitution of India. The question of financial integration was considered by the Indian States Finances Enquiry Committee and on the basis of the recommendations made by it a financial agreement was entered into on February 25, 1950, between the President of India and the Rajpramukh of the State of Travancore-Cochin. By Art. 277 of the Constitution taxes leviable under the Travancore Income-tax Act or the Cochin Income-tax Act continued to be so levied until provision to the contrary was made by Parliament by law. Such provision was made by the Finance Act, 1950, which extended the Indian Income-tax Act, 1922, to the State of Travancore-Cochin, but by s. 13(1) saved certain provisions of the Travancore and Cochin Income-tax Acts. In respect of the assessment for the accounting year 1124 M. E. the Income-tax Officer of Ernakulam rejected the appellant's books of account as unreliable and made a "best of judgment" assessment by his order dated January 11, 1952. On February 12, 1952, the Income-tax Officer, Ernakulam, issued four notices to the appellant, two under s. 44 of the Cochin Income-tax Act and two under s. 47 of the Travancore Income-tax Act stating therein that in consequence of definite information which had come into his possession, he had discovered that the income of the appellant

for the assessment years 1123 and 1124 M. E had been under-assessed and that he proposed to re-assess the said income; and the appellant was asked to submit a return in respect of his total world income for the two years in question. The appellant challenged the jurisdiction of the Income-tax Officer to re-assess his income and contended (1) that the assessment order dated January 11, 1952, made by the Income-tax Officer for the accounting year 1124 M. E. being the only document on which the Income-tax Officer relied for issuing a notice to the appellant, the requisite conditions for the application of the statutory provisions were lacking, (2) that s. 13(1) of the Finance Act, 1950, did not have the effect of saving the provisions of the Travancore Income-tax Act or the Cochin Income-tax Act for the purpose of re-assessment of income-tax, and (3) that the financial agreement made between the President of India and the Rajpramukh dated February 25, 1950, which received constitutional sanctity in Art. 278 of the Constitution, rendered the initiation of such re-assessment proceedings unconstitutional and void:

Held, (1) that though the meaning of the phrase "definite information" in s. 44 (1) of the Cochin Income-tax Act and s. 47(1) of the Travancore Income-tax Act, must depend on the circumstances of each case, there must be a casual connection between the information and the discovery, referred to in the sections; but discovery does not mean a conclusion of certainty at the stage of notice; it is enough if the Income-tax Officer forms an honest belief.

Accordingly, the assessment order dated January 11, 1952, which disclosed a definite and systematic pattern of transactions for avoidance of tax not only in respect of the year covered by the order but spread over years anterior to it, amounted to information which, if honestly believed, would reasonably support the opinion of the Income-tax Officer that there was a discovery of "escaped" income, etc., within the meaning of the sections;

Firm Jitanram Nirmalram v. *Commissioner of Income-tax*, A. I. R. 1952 Pat. 163, approved.

(2) that the expression "levy, assessment and collection of income tax" in s. 13(1) of the Finance Act, 1950, was wide enough to comprehend re-assessment proceedings under s. 47 of the Travancore Income-tax Act and s. 44 of the Cochin Income-tax Act;

Commissioner of Income-tax, Bombay Presidency and Aden v. *Khemchand Ramdas*, (1938) L. R. 65 I. A. 236, explained.

Firm L. Hazari Mal v. *Income-tax Officer, Ambala*, A. I. R. 1957 Punjab 5, approved.

(3) that on a true construction of the recommendations of the Indian States Finances Enquiry Committee, the financial

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agreement between the President of India and the Rajpramukh did not render the impugned proceedings unconstitutional or void.

In the connected appeals, the respondents who were merchants doing business in the State of Mysore, were assessed to income-tax under the Mysore Income-tax Act, 1923, for the years prior to the integration of Mysore with India. But subsequent to the integration of Mysore notices under s. 34 of the Mysore Income-tax Act were issued against them for re-assessment of income-tax for the years prior to the integration. The respondents contended that the Income-tax Officer had no jurisdiction to issue such notices on the grounds (1) that under the Finance Act, 1950, the Mysore Income-tax Act, 1923, stood repealed on and from April 1, 1950, and s. 13(1) of the former Act kept alive the Mysore Act for the purpose of levy, assessment and collection of income-tax, etc., for the period mentioned therein, but did not save s. 34 of the Mysore Income-tax Act for the purpose of re-assessment of income-tax and, therefore, the notices issued under s. 34 were without jurisdiction and authority, (2) that the financial agreement between the President of India and the Rajpramukh of Mysore, dated February 28, 1950, rendered the initiation of such re-assessment proceedings unconstitutional and void, and (3) that the jurisdiction under s. 34 of the Mysore Income-tax Act was limited to ascertainment of extra income not assessed and the section did not confer jurisdiction to make a new assessment under the Act:

Held, (1) that the Finance Act, 1950, empowered the Income-tax Officer to take proceedings under s. 34 of the Mysore Income-tax Act, for re-assessment, for the prior years, of the under estimated or escaped income;

(2) that the financial agreement dated February 28, 1950, did not render the proceedings for re-assessment, unconstitutional or void; and

(3) that though there was a distinction between an original or normal assessment under s. 23 and a re-assessment under s. 34 of the Mysore Income-tax Act, the expression "levy, assessment and collection of income-tax" in s. 13(1) of the Finance Act, 1950, had been used in a comprehensive sense so as to include the whole procedure for imposing liability upon the assessee.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 143 to 145 of 1954, 27 to 30 and 161 to 164 of 1956.

Appeals from the judgment and order dated September 14, 1953, of the former Travancore-Cochin High Court in Original Petitions Nos. 53, 56 and 57 of 1952.

Appeals from the judgment and order dated December 14, 1954, of the Mysore High Court in C. P. Nos.

52 and 53 and W. P. Nos. 105 and 106 of 1954. Appeals from the judgment and order dated March 22, 1955, of the Mysore High Court in Writ Petition No. 122 of 1954 and order dated April 7, 1955, in W. P. Nos. 35, 36 and 37 of 1955.

K. S. Krishnaswami Iyengar, M. U. Isaac and *Sardar Bahadur*, for the appellants in C. As. Nos. 143-45 of 1954.

H. N. Sanyal, Addl. Solicitor-General of India, R. Ganapathy Iyer and *R. H. Dhebar*, for the appellants in C. As. Nos. 27-30 and 161-164 of 1956.

R. Ganapathy Iyer and *R. H. Dhebar*, for the respondent in C. As. Nos. 143-145 of 1954.

A. V. Viswanatha Sastri and *G. Gopalakrishnan*, for the respondents in C. As. Nos. 27-30 of 1956.

A. V. Viswanatha Sastri, K. R. Choudhury and *G. Gopalakrishnan*, for the respondents in C. As. Nos. 161-164 of 1956.

1958. April 28. The Judgment of the Court was delivered by

S. K. Das J.

S. K. DAS J.—This judgment relates to and governs eleven appeals which for convenience have been classified into two groups. The first group may be called the group of Travancore-Cochin appeals, and within this group fall Civil Appeals Nos. 143 to 145 of 1954. The second group may be called the group of Mysore appeals and within this group are eight appeals, namely, Civil Appeals Nos. 27 to 30 of 1956 and 161 to 164 of 1956. By reason of the circumstance that certain common questions of law and fact arise in all these eleven appeals, they have been heard one after the other; but it will be convenient and will avoid confusion if we state the facts relating to the Travancore-Cochin group first and then deal with the questions arising therefrom. We shall then state the additional facts of the Mysore group of appeals, and answer the questions arising therefrom, in so far only as they have not been answered already in relation to the Travancore-Cochin group. It may be here added

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that in the Travancore-Cochin appeals (Civil Appeals 143 to 145 of 1954) the appellant is the assessee, A. N. Lakshmana Shenoy, of Messrs. New Guna Shenoy Company, Ernakulam, and the two respondents are the Income-tax Officers of Ernakulam in Cochin and of Kottayam in Travancore. In the other group of appeals, namely, the Mysore appeals, the appellants are the Income-tax Officers of certain income-tax circles in Bangalore and the respondents are assessees who carry on business within the jurisdictional area of the said Income-tax Officers. In the Travancore-Cochin appeals, the High Court of Travancore-Cochin came to a decision against the assessee, while in the Mysore appeals the High Court of Mysore came to an opposite conclusion on identical questions of law; that is why in the first group of appeals the assessee is the appellant and in the second group the appellants are the Income-tax Officers.

Travancore-Cochin appeals: We proceed now to deal with the Travancore-Cochin appeals. The assessee, A. N. Lakshmana Shenoy, is a hardware merchant who carried on his trade and business for several years in the then States of Travancore and Cochin, with his headquarters at Ernakulam in Cochin. He was assessed to income-tax in both the States under the income-tax law in force there, namely, the Cochin Income-tax Act of 1117 M. E. (hereinafter referred to as the Cochin Act) and the Travancore Income-tax Act of 1121 M. E. (hereinafter referred to as the Travancore Act). He was so assessed by the Income-tax Officer at Ernakulam for the Cochin State and the Income-tax Officer at Kottayam for the Travancore State. It is a matter of history that Cochin and Travancore were formerly independent States, and till the lapse of paramountcy, the Crown as represented by and operating through the political authorities provided the nexus between those States and the Central Indian Government. The Indian Independence Act, 1947, released the States from their obligation to the Crown; but in August, 1947, the Rulers of the two States acceded to the Dominion of India. This was followed by a process of

two-fold integration—the consolidation of the States into sizeable administrative units and their democratisation. On May 27, 1949, the Rulers entered into a covenant which was concurred in by the Government of India. By that covenant the Rulers agreed that as from the first day of July, 1949, the States of Travancore and Cochin should be united in and form one State with a common executive, legislature and judiciary by the name of the United State of Travancore and Cochin. The covenant further provided that "there shall be a Rajpramukh for the United State and the Ruler of Travancore shall be the first Rajpramukh; the executive authority of the United State shall be exercised by the Rajpramukh and there shall be a council of ministers to aid and advise him". Article IX of the covenant said that "the Rajpramukh shall within a fortnight of the appointed day execute on behalf of the United State an Instrument of Accession in accordance with the provisions of s. 6 of the Government of India Act, 1935, and in place of the earlier Instruments of Accession of the covenanting States; and he shall by such Instrument, accept as matters with respect to which the Dominion Legislature may make laws for the United State all the matters mentioned in List I and List III of the Seventh Schedule to the said Act, except the entries in List I relating to any tax or duty". There was a proviso to the Article which said that nothing in the Article shall be deemed to prevent the Rajpramukh from accepting any or all of the entries in the said List I relating to any tax or duty as matters with respect to which the Dominion Legislature may make laws for the United State. On July 14, 1949, a supplementary Instrument was executed by the Rajpramukh by which he accepted, on behalf of the United State, all matters enumerated in List I and List III of the Seventh Schedule to the Government of India Act, 1935, as matters in respect of which the Dominion Legislature might make laws for the United State, subject, however, to the proviso that nothing contained in the said lists or in any other provision of the Government of India Act, 1935, shall be deemed to empower the

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Dominion Legislature to impose any tax or duty in the territories of the United State. The result was that in spite of the integration and accession of the United State to the Dominion of India, the Cochin Act continued to be in force in the territory formerly known as Cochin and the Travancore Act in the territory known as Travancore. On November 24, 1949, there was a proclamation by the Rajpramukh which stated that in the best interests of the United State of Travancore and Cochin it was desirable that the constitutional relationship established between the United State and the Dominion of India shall not only be continued, but the relation as between that State and the contemplated Union of India shall be further strengthened; it was then stated that the Constitution of India as drafted by the Constituent Assembly of India which included duly appointed representatives of the United State provided a suitable basis for strengthening the relation between the two States. The proclamation then went on to say—

"And whereas by virtue of the power vested in it under the Covenant establishing this State, the Legislative Assembly of the State has resolved that the Constitution framed by the Constituent Assembly of India be adopted by this State.

I now hereby declare and direct—

That the Constitution of India shortly to be adopted by the Constituent Assembly of India shall be the Constitution for the United State of Travancore and Cochin as for the other parts of India and shall be enforced as such in accordance with the tenor of its provisions.

That the provisions of the said Constitution shall as from the date of its commencement, supersede and abrogate all other constitutional provisions inconsistent therewith which are at present in force in this State."

The Constitution of India came into force on January 26, 1950, and on that date Travancore-Cochin became one of the Part B States within the Constitution of India. Under that Constitution the subject of "taxes on income other than agricultural income" was

included in the Union Legislative List and Parliament alone had exclusive power to make laws in respect thereof. All laws in force in the territory of Travancore-Cochin became subject to the Constitution of India when it came into force; but Art. 277 of the Constitution enacted—

"Any taxes, duties, cesses or fees which immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law."

The result of the aforesaid provision of the Constitution was that the taxes leviable under the Cochin Act or the Travancore Act continued to be so levied until provision to the contrary was made by Parliament by law. Such provision was made by the Finance Act, 1950 (XXV of 1950). Section 3 of that Act extended the Indian Income-tax Act, 1922, to the whole of India, except the State of Jammu and Kashmir, with effect from April 1, 1950. The interpretation of s. 13 (1) of the Finance Act, 1950, is one of the questions argued in these appeals, and the relevant provision of that sub-section must be quoted in full—

"If immediately before the 1st day of April, 1950, there is in force in any Part B State other than Jammu and Kashmir or in Manipur, Tripura or Vindhya Pradesh or in the merged territory of Cooch-Behar any law relating to income-tax or super-tax or tax on profits of business, that law shall cease to have effect except for the purposes of the levy, assessment and collection of income-tax and super-tax in respect of any period not included in the previous year for the purposes of assessment under the Indian Income-tax Act, 1922, for the year ending on the 31st day of March, 1951, or for any subsequent year, or, as the case may be, the levy, assessment and collection of

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the tax on profits of business for any chargeable accounting period ending on or before the 31st day of March 1949.

Provided that any reference in any such law to an officer, authority, tribunal or court shall be construed as a reference to the corresponding officer, authority, tribunal or court appointed or constituted under the said Act, and if any question arises as to who such corresponding officer, authority, tribunal or court is, the decision of the Central Government thereon shall be final: ".

So far we have traced the constitutional history of the integration of Travancore-Cochin, its accession to the Dominion of India and finally its acceptance of the Constitution of India whereby it became a Part B State within the Constitution of India. We now go back to the story of the assessments made on the assessee. The income of the assessee for the two accounting years, 1122 and 1123 M.E. (corresponding to the years ending on August 16, 1947, and August 16, 1948, respectively) was assessed in the two assessment years, 1123 and 1124 M.E. in accordance with the Cochin Act by the Income-tax Officer at Ernakulam by his orders dated July 28, 1949, and January 31, 1950, respectively. These assessments, the assessee alleged, became final and he paid the taxes accordingly. Similarly, the income of the assessee in Travancore for the accounting years 1122 and 1123 M.E. was assessed under the Travancore Act for the assessment years 1123 and 1124 by the Income-tax Officer, Kottayam, by his orders dated April 11, 1949, and July 30, 1949, and these assessments also, according to the assessee, became final and he paid the taxes accordingly. The income of the assessee for the accounting year 1124 M.E. was assessed under the Indian Income-tax Act, 1922, in the assessment year 1951-52 by the Income-tax Officer, Ernakulam, by his order dated January 21, 1952. The account books of the assessee were rejected as unreliable and the Income-tax Officer, Ernakulam, made a "best of judgment" assessment. This assessment order is Ext. VIII in the record. The assessee appealed against it and, subsequently, on

December 14, 1953, that is, subsequent to the decision on the three writ petitions filed in the High Court of Travancore-Cochin, the Appellate Assistant Commissioner, Trivandrum, passed an order which has been produced before us with an application for taking it on the record. We accepted the application and both the assessment order, Ext. VIII dated January 21, 1952, and the appellate order dated December 14, 1953, will be duly considered by us.

On February 12, 1952, the Income-tax Officer, Ernakulam, issued four notices to the assessee, two under s. 44 of the Cochin Act and two under s. 47 of the Travancore Act stating therein that in consequence of definite information which had come into his possession, he had discovered that the income of the assessee assessable to income-tax for the assessment years 1123 and 1124 M. E. had been under-assessed and the Income-tax Officer, therefore, proposed to re-assess the said income; the assessee was asked to submit a return in respect of his total world income for the two years in question. On March 14, 1952, the Income-tax Officer, Kottayam, issued two similar notices to the assessee under s. 47 of the Travancore Act stating therein that he had discovered in consequence of definite information which had come into his possession that the income of the assessee for the two years 1123 and 1124 assessable to income-tax had either escaped assessment or had been under-assessed or had been assessed at too low a rate and therefore be proposed to re-assess the said income. Presumably, the Income-tax Officer, Kottayam, issued the two notices, because it was doubtful if the Income-tax Officer, Ernakulam, had authority to issue notices to the assessee under the Travancore Act. Nothing, however, turns upon this, so far as the appeals before us are concerned.

On June 16, 1952, the assessee filed a writ petition in the High Court of Travancore-Cochin in which he challenged the jurisdiction of the Income-tax Officer, Ernakulam, to re-assess his income for the two assessment years, 1123 and 1124 M. E. On the very day on which the assessee filed his writ petition, the Income-tax Officer, Ernakulam, made an "escaped income"

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assessment under s. 44 of the Cochin Act for the assessment year 1123. This order was communicated to the assessee on June 17, 1952, and the assessee filed a second writ petition in the High Court of Travancore-Cochin on June 19, 1952, in which he again challenged the jurisdiction of the Income-tax Officer, Ernakulam, to make the assessment under s. 44 of the Cochin Act and further said that the assessment was made in spite of his application for adjournment and an order of stay passed by the High Court on June 17, 1952. On June 20, 1952 the assessee filed a third writ petition in the Travancore-Cochin High Court in respect of the two notices issued to him by the Income-tax Officer, Kottayam. By this writ petition the assessee challenged the jurisdiction of the Income-tax Officer, Kottayam, to issue the two notices in question under s. 47 of the Travancore Act. These three writ petitions, numbered as original petitions 53, 56 and 57 of 1952, were dealt with together by the Travancore-Cochin High Court and a Bench of three Judges of the said High Court held by their judgment and order dated September 14, 1953, that the two Income-tax Officers concerned had jurisdiction to re-assess the income of the assessee for the two assessment years 1123 and 1124 M. E. They accordingly dismissed the writ petitions, but without costs. They, however, gave a certificate that the cases were fit for appeal to the Supreme Court under Art. 133 of the Constitution and on that certificate the three appeals, which we have called Travancore-Cochin appeals, have been brought to this Court, from the judgment and order of the High Court of Travancore-Cochin dated September 14, 1953.

In the High Court three main points were urged on behalf of the assessee: the first point taken was that with the passing of the Finance Act, 1950, which made Travancore-Cochin a "taxable territory" within the meaning of the Indian Income-tax Act, 1922, income-tax laws of Travancore and Cochin became void and inoperative and Parliament could not, under s. 13, keep alive the Income-tax Acts of Travancore and Cochin, or any provisions thereof, inconsistent with

the Constitution. Section 13 of the Finance Act, 1950, was, therefore, invalid in so far as it tried to keep alive the Cochin Act or the Travancore Act for the purpose of levy, assessment and collection of income-tax for the period referred to therein. The second contention was that even if s. 13 of the Finance Act, 1950, was valid and kept alive the provisions of the Cochin Act and the Travancore Act, it did so only "for the purpose of the levy, assessment and collection of income-tax and super-tax" in respect of the period mentioned in the section, and s. 13(1) did not have the effect of saving the provisions of the Travancore Act or Cochin Act for the purpose of "re-assessment of income-tax and super-tax". The third contention urged was that neither of the two Income-tax Officers concerned had any definite information in consequence of which they came to any discovery that the income of the assessee for the two years in question had been under-assessed or escaped assessment or had been assessed at too low a rate. It was contended on behalf of the assessee that the statements in the notices with regard to definite information etc. were only "a pretence to clutch at jurisdiction" and the very foundation of the action sought to be taken by the Income-tax Officers under s. 44 of the Cochin Act or s. 47 of the Travancore Act was non-existent. The learned Judges of the High Court negatived the aforesaid contentions, and, as we have already stated, dismissed the writ petitions.

Before us the first point urged on behalf o fthe assessee in the High Court has not been pressed. The other two points, namely, (1) the true construction of s. 13(1) of the Finance Act, 1950, and (2) the absence of any foundation for the action sought to be taken under s. 44 of the Cochin Act or s. 47 of the Travancore Act have been pressed with great vehemence. A third point which was specifically raised in the Mysore appeals in the High Court there and which arises in the Travancore-Cochin appeals also, has been taken before us, though it was not specifically taken in the High Court of Travancore-Cochin. We have allowed learned counsel for the assessee to raise the point, as

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it involves a pure question of law. The point is this. In the wake of accession and political integration of the States and Unions of States with India arose the problem of federal financial integration. The States and Unions of States, so long as they continued as separate units, had retained their own pre-existing public finance structures. They had one common feature, distinguishing them from the Provinces of India, in that except in respect of certain matters covered by the Standstill Agreements, the States were free to follow their own policies in matters of federal finance and taxation, that is to say, in the field of public finance, such as customs, income-tax, central excise, railways, posts and telegraphs etc. When the question of integration of these States with India arose, naturally the question of extinguishing the special rights and obligations of the States in the field of federal finance and of making good to them the net gap in their revenues also arose. By a resolution dated October 22, 1948, the Government of India appointed a committee of experts, referred to as the Indian States Finances Enquiry Committee, to consider the problem of federal finance. The Committee's terms of reference were, *inter alia*, as follows—

"To examine and report upon:

(1) the present structure of Public Finance in Indian States and Unions of States;

(2) the desirability and feasibility of integrating Finance in Indian States and Unions of States with that of the rest of India, to the end that a uniform system of Federal Finance may be established throughout the Dominion of India;

(3) whether, and if so, the extent to which the process of integrating Federal Finance in the Indian States and Unions with that of the rest of India should be gradual and the manner in which it should be brought about; and the machinery required for his purpose, especially as regards the legislative groundwork and the administrative organisation necessary for the imposition, assessment and collection of federal taxes;".

The Committee submitted a report in due course and

made certain recommendations. On the basis of those recommendations certain agreements were entered into between the President of India and the Rajpramukhs, including the Rajpramukh of Travancore-Cochin and the Rajpramukh of Mysore. We shall refer in somewhat greater detail to these agreements, particularly the agreements entered into by the Rajpramukhs of Travancore-Cochin and Mysore. The contention on behalf of the assessee is that these agreements with Part B States with regard to certain financial matters received constitutional sanctity in Art. 278 of the Constitution (now repealed by the Constitution (Seventh Amendment) Act, 1956). Article 278, so far as it is relevant for our purpose, was in these terms—

"278 (1). Notwithstanding anything in the Constitution, the Government of India may, subject to the provisions of clause (2), enter into an agreement with the Government of a State specified in Part B of the First Schedule with respect to—

(a) the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter;

(b) .....

(c) .....

and, when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement."

The argument on behalf of the assessee is that the recommendations of the Indian States Finances Enquiry Committee which were accepted by the Rajpramukh of Travancore-Cochin in the agreement entered into by the Rajpramukh with the President of India on February 25, 1950, were designed to secure "legal continuity of pending proceedings" and "finality and validity of completed proceedings" under the pre-existing State legislation; therefore, s. 13(1) of the Finance Act, 1950, should be so construed as to be in consonance with the aforesaid agreement, and, in the alternative, if s. 13(1) is construed to be at variance with the aforesaid financial agreement, it should be

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held to be void by reason of the provisions of Arts. 278 and 295 of the Constitution.

We proceed now to a consideration in detail of the arguments urged before us on behalf of the assessee in the Travancore-Cochin appeals. In logical sequence the point as to the absence of foundation for the action taken by the two Income-tax Officers of Ernakulam and Kottayam in the matter of the issue of notices for reassessment comes first, and we propose now to deal with it. It is necessary at this stage to set out the two sections under which the Income-tax Officers proposed to take action against the assessee. The two sections are s. 44 of the Cochin Act and s. 47 of the Travancore Act. Section 44 of the Cochin Act, so far as it is relevant for our purpose, is in these terms—

"44(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, or, in the case of 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 27, and 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:".

Section 47 (1) of the Travancore Act is identical in terms and need not therefore be quoted. It is worthy of note that the terms of the aforesaid two sections are similar to s. 34 of the Indian Income tax Act, 1922, as it stood after the amending Act of 1939 and before the amendments of 1948. The two requisite conditions

for the application of the section are contained in the first part, and they are: firstly, there must be definite information which has come into possession of the Income-tax Officer and, secondly, in consequence of that information, the Income-tax Officer discovers that income, profits or gains chargeable to income-tax have escaped assessment in any year etc. It is only when these two conditions are fulfilled that the Income-tax Officer can take necessary action under s. 44. The question before us is whether these two conditions were fulfilled in the cases out of which the Travancore-Cochin appeals have arisen.

As in the High Court so also before us, the only document on which the Income-tax Officers relied for this part of their case is Ext. VIII. This document, according to the Income-tax Officers, furnished the definite information in consequence of which they made the necessary discovery. Learned counsel for the assessee has taken us through Ext. VIII, Ext. A (statement of the case submitted by the assessee to the Appellate Assistant Commissioner) and the order of the Appellate Commissioner, dated December 14, 1953, and he has contended that (1) Ext. VIII does not relate to the years in question and cannot, therefore, constitute definite information for those years; (2) it gives certain highly speculative grounds for discrediting the account books of the assessee, which grounds have not been accepted by the Appellate Assistant Commissioner; and (3) in any view, it contained no information on which the Income-tax Officers could be said to have made any *discovery*. As to (1) above, the High Court rightly pointed out that Ext. VIII contained information of a kind which disclosed a definite and systematic pattern of transactions for avoidance of tax not only in respect of the year covered by the order but spread over years anterior to it. Secondly, Ext. VIII disclosed, according to the Income-tax Officers concerned, a systematic suppression of cash sales, a regular trade in purchase and sale of controlled commodities at profiteering rates, passing bogus bills for purchases, understating stocks, segregating stocks

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for clandestine sales, and selling goods to the branches at artificial book losses. There can be no doubt that all this information, if honestly believed, would reasonably support the opinion of the Income-tax Officers that there is a discovery of "escaped" income etc., within the meaning of s. 44 of the Cochin Act and s. 47 of the Travancore Act. But learned counsel for the assessee argues that while it may be right to say that Ext. VIII *prima facie* contains the kind of information which will satisfy the conditions of s. 44 of the Cochin Act and s. 47 of the Travancore Act, we must take note of the fact that according to the Appellate Assistant Commissioner, as shown by his order dated December 14, 1953, the so-called information contained in Ext. VIII was really non-existent, and the information being non-existent, there was no foundation for the action taken by the Income-tax Officers. We are unable to accept this argument as correct. Apart from the consideration that the order of the Appellate Assistant Commissioner was not available when the Income-tax Officers issued their notices, we think that the argument overstates the effect of the order of the Appellate Assistant Commissioner. It is true that the Appellate Assistant Commissioner considered in detail the various criticisms of the Income-tax Officer with regard to the account books along with the explanations offered on behalf of the assessee; but he expressed his final conclusion in the following words:—

"I have given my careful consideration to the various adverse criticisms of the Income-tax Officer and to the Advocate's answers thereto. I have also looked into the accounts and other revelant papers. As a result, I am satisfied that the Income-tax Officer's criticisms are in most cases not at all well founded and that the Advocate has successfully met almost every point raised by the former. In fact, the Income-tax Officer himself admitted at the time of the hearing that his order was shown to be quite vulnerable. But he contended that it would not be enough if the Advocate merely answered the specific criticisms in the order and that the case should be looked at as a whole and a decision should be arrived at as to whether on such

a comprehensive view the appellant's accounts could be regarded as completely faultless and worthy of unquestioned acceptance. Seen from this broad angle, it cannot of course be said that the accounts are free from defects. There is firstly no stock book for uncontrolled goods and the accuracy of the inventories of opening and closing stocks of such goods is therefore open to doubt. Again, whatever may be the appellant's reasons for not recording full details for cash sales, there is the admitted fact that the cash sales stand partly unvouched and details as to the names and addresses of purchasers are not available for the major part of the year, and there is therefore no possibility of satisfying one-self whether all the cash sales have been duly brought to account. There is also the further fact that at least some of the purchases are not satisfactorily vouched and that the rates of gross profit disclosed by the accounts both at the head office and the branches are not quite adequate. These, in my opinion, are sufficient grounds for discrediting the book results and resorting to an estimate of the turnover as well as the gross profit."

It cannot, therefore, be said that the order of the Appellate Assistant Commissioner washed out the entire information contained in Ext. VIII so as to strike at the very root of the jurisdiction of the Income-tax Officers concerned to issue the notices in question. It is to be remembered that there is a distinction between receipt of definite information as a consequence of which a discovery is made and a notice is issued, and the final determination as to the liability or extent of liability for escaped assessment etc. We accept as correct the view expressed in *Firm Jitanram Nirmalram* v. *Commissioner of Income-tax* (1), that the phrase "definite information" cannot be construed in a universal sense and its meaning must depend on and vary with the circumstances of each case. There is no doubt, however, that the information must be definite, that is, more than mere guess, gossip or rumour. There must also be a causal connexion between the information and the discovery; but "discovery" in

(1) A.I.R. 1952 Pat. 163.

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the context of the section does not mean a conclusion of certainty at the stage of notice. What is necessary at that stage is that the Income-tax Officer should have formed an honest belief upon materials which reasonably support such belief. This, in our opinion, is the correct view, and judged from that standpoint, Ext. VIII fulfilled the requirements of s. 44 of the Cochin Act and s. 47 of the Travancore Act.

We now turn to the construction of s. 13 (1) of the Finance Act, 1950. The argument on this point has meandered over a wide area; but it is really dependent on the meaning to be given to the expression "for the purposes of the levy, assessment and collection of income-tax and super-tax" occurring in the section. Does the word 'assessment' include 're-assessment'? The contention of the assessee is that it does not. The Travancore-Cochin High Court did not accept this contention, but the Mysore High Court did in favour of the respondents in the Mysore appeals.

The general scheme of the Cochin Act and the Travancore Act is the same as that of the Indian Income-tax Act, 1922, and for a clear understanding of the meaning of the expression 'levy, assessment and collection of income-tax', it is best to explain the general scheme of these Income-tax Acts with reference to the Indian Income-tax Act, 1922, which served more or less as their model.

Section 3 is the charging section which imposes liability in respect of "the total income of the previous year of every individual etc.", and 'total income' means the 'total amount of income, profits and gains computed in the manner laid down in the Act'. It is clear that so far as the charging section is concerned, the liability does not cease unless the total income, profits and gains have been computed in the manner laid down in the Act. Section 4 states *inter alia* that subject to the provisions of the Act, the total income of any previous year of any person includes *all* income, profits and gains from whatever source derived. Leaving out the sections which deal with Income-tax authorities we come to the sections in Chapter III, which explain what is

taxable income under different heads. Chapter IV deals with deductions and assessment, and the words 'assessment' and 're-assessment' occur in several sections of this Chapter. Under s. 22(2) the Income-tax Officer must serve notice on any person whose total income is in the Income-tax Officer's opinion of such an amount as to render such person liable to income-tax, requiring him to furnish a return in the prescribed form of his total income during the previous year. Sub-section (4) authorises the Income-tax Officer to serve on any person upon whom a notice has been served under sub-s. (2) a further notice requiring him to produce accounts and documents, subject to the limitation that he shall not require the production of any accounts relating to a period more than three years prior to the year previous to the year of assessment. Section 23 provides for the making of the assessment. Sub-section (1) requires the Income-tax Officer, if he is satisfied that the return made under s. 22 is correct and complete, to assess the total income and to determine the sum payable. Under sub-s. (2) if the Income-tax Officer has reason to believe that the return is incorrect or incomplete he must serve on the person who made the return a notice requiring him either to attend at the Income-tax Officer's office or to produce any evidence relied on in support of the return. Sub-section (3) provides that the Income-tax Officer, after hearing such evidence as the person who made the return may produce and such other evidence as the Income-tax Officer may require on specified points shall by an order in writing assess the total income and determine the sum payable. Sub-section (4) makes provision for an assessment by the Income-tax Officer to the best of his judgment if the assessee fails to make a return or to comply with the terms of the notices issued to him. This whole procedure, it may be recalled, not only applies on first assessment but is also prescribed by s. 34 if for any reason income, profits or gains have escaped assessment or have been assessed at too low a rate. Section 27 deals with cancellation of assessment in certain circumstances, and states "the Income-tax Officer shall cancel the

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assessment and proceed to make a *fresh assessment* in accordance with the provisions of s. 23 ". Section 29 talks of a notice of demand to the person liable to pay the tax etc., the notice specifying the sum so payable. Section 30 gives a right of appeal from certain orders. Section 31 deals with hearing of appeals and states inter alia that the appellate authority may set aside the assessment and direct the Income-tax Officer to make a *fresh assessment.* Section 33 provides for appeals against the orders of the Appellate Assistant Commissioner and ss. 33A and 33B give powers of revision to the Commissioner. In appropriate cases the Commissioner can cancel the assessment and direct a *fresh assessment.* Then comes s. 34 which corresponds to s. 44 of the Cochin Act and s. 47 of the Travancore Act. In substance it deals with income which has escaped assessment for one reason or another and says in the operative part that the Income-tax Officer "may proceed to *assess or re-assess* such income, profits or gains etc." There has been some argument before us as to the meaning of the juxtaposition of the words "assess or re-assess" occurring in the section, and it has been contended that a distinction has obviously been drawn between income which has totally escaped assessment and income which has been under-assessed or assessed at too low a rate etc., and the word 'assess' appropriately applies to the former case and the word 're-assess' to the latter case. Two other sections which are relevant for our purpose are ss. 66 and 67. Section 66 (7) says that notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case. The word 'assessment' here undoubtedly includes 're-assessment'. Section 67 which bars civil suits says that no suit shall be brought in any civil court to set aside or modify any assessment made under the Act. Here again 'assessment' must include 're-assessment', for it cannot have been the intention that a civil suit shall lie in respect of a reassessment under s. 34 but not in respect of an assessment.

This brief resume of the relevant provisons of the

Income-tax Act clearly establishes that the word 'assessment' has to be understood in each section with reference to the context in which it has been used. In some sections it has a comprehensive meaning and in some a somewhat restricted meaning, to be distinguished from a 're-assessment' or even a 'fresh assessment'.

Now, the question is in what sense has the word 'assessment' been used in s. 13(1) of the Finance Act, 1950. Two circumstances may be noticed at once. The long title says that the Finance Act, 1950, is an Act to give effect to the financial proposals of the Central Government for the year beginning on April 1, 1950, and in s. 13(1) the collocation of words is "levy, assessment and collection of income-tax". In our opinion, both these circumstances point towards a comprehensive meaning; for it could not have been intended, as part of the proposal of the Central Government, that those whose income had totally escaped assessment should be liable but those who had been under-assessed should go scot free. We can see nothing in the words of the section which would justify such a distinction: we say this quite apart from the argument that s. 13(1) should be interpreted in consonance with the financial agreement entered into between the Rajpramukh and the President, an argument to which we shall presently advert. Moreover, the collocation of the words, 'levy, assessment, and collection' indicates that what is meant is the entire process by which the tax is ascertained, demanded and realised.

On behalf of the assessee it has been contended that (1) the Income-tax Act makes a distinction between a normal or original assessment under s. 23, a fresh assessment under s. 27 and a re-assessment or second assessment under s. 34 and (2) inasmuch as s. 13 (1) uses the word 'assessment' only, it must be taken to have been used in a restricted sense. In support of these contentions great reliance has been placed on the decision of the Privy Council in *Commissioner of Income-tax, Bombay Presidency and Aden* v. *Khemchand Ramdas* (1). The Mysore High Court also referred

(1) (1938) L.R. 65 I.A. 236, 248.

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to this decision in support of its view on the construction of s. 13 (1). We are unable to accept these contentions as correct; nor do we think that the decision cited supports the view expressed by the Mysore High Court. The facts in *Khemchand's case* (1) were briefly these. The firm of Khemchand applied to the Income-tax Officer to have the firm registered, the consequence of such registration being that the profits of the firm would not be assessable to super-tax. On January 17, 1927, the Income-tax Officer assessed the firm to income-tax for the year 1926-27 under s. 23, sub-s. (4) of the Act; but no super tax was imposed as the firm having applied for registration was registered. Notice of demand for the amount assessed was made in 1927. Subsequently, the Commissioner ordered the cancellation of registration, and directed the Income-tax Officer to take necessary action thereupon. On May 4, 1929, the Income-tax Officer imposed super-tax and issued a notice of demand in May, 1929. The question in the appeal was whether the Income-tax authorities had any jurisdiction to assess Khemchand's firm to super tax for the year 1926-27. Their Lordships pointed out that the powers of the Commissioner under s. 33 could only be exercised subject to the provisions of the Act, of which the provisions in ss. 34 and 35 were important. They held that it was debatable whether the circumstances of the case were such as to bring it within s. 34 and so far as s. 35 was concerned, the Income-tax Officer was hopelessly barred by time. In that context, their Lordships said:

"It is possible that the final assessment may not be made until some years after the close of the fiscal year. Questions of difficulty may arise and cause considerable delay. Proceedings may be taken by way of appeal and cause further delay. Until all such questions are determined, and all such proceedings have come to an end, there can be no final assessment. But when once a final assessment is arrived at, it cannot, in their Lordships' opinion, be reopened except in the circumstances detailed in ss. 34 and 35 of the Act (to which reference is made hereafter) and within the time

(1) [1938] L. R. 65 I. A. 236.

limited by those sections. In the present case the liability of the respondents both for income-tax and for super-tax was determined by the Income-tax Officer on January 17, 1927. In the order made by him on that date he assessed the respondents to income-tax at the maximum rate, but as the respondents were at that time a registered firm he held, as he was bound to hold, that no super-tax was to be levied. On some date before the end of March, 1927, he served on the respondents a notice of demand for the tax that he had determined was properly leviable. The assessment having been made under s. 23, sub-s. (4), no appeal lay in respect of it. The assessment of the respondents was therefore final both in respect of income-tax and super-tax. Their liability in respect of both taxes had been finally determined, and none the less because the question of their liability to super-tax had been determined in their favour. It was, indeed, contended before their Lordships that the assessment could not be regarded as having been determined inasmuch as the Commissioner might at any time, and apparently after any lapse of time, however long, cancel the registration of the respondents as a registered firm and so subject the respondents to liability to pay super-tax. Their Lordships would, in any case, hesitate long before acceding to a contention that would lead to so extravagant results. In their opinion, however, the contention cannot prevail. The Commissioner's powers under s. 33 can only be exercised subject to the provisions of the Act, of which the provisions in ss. 34 and 35 are in this respect of the greatest importance."

These observations lend no support to the view that the word "assessment" must always bear a particular meaning in the Income-tax Act. On the contrary, at p. 247 of the report, their Lordships said:

"These two questions are so closely related to one another that they can conveniently be considered together. In order to answer them it is essential to bear in mind the method prescribed by the Act for making an assessment to tax, using the word assessment

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in its comprehensive sense as including the whole procedure for imposing liability upon the tax-payer. The method consists of the following steps. In the first place, the taxable income of the tax-payer has to be computed. In the next place, the sum payable by him on the basis of such computation has to be determined. Finally, a notice of demand in the prescribed form, specifying the sum so payable, has to be served upon the tax-payer."

If the word 'assessment' is taken in its comprehensive sense, as we think it should be taken in the context of s. 13(1) of the Finance Act, 1950, it would include 're-assessment' made under the provisions of the Act. Such 're-assessment' will without doubt come within the expression 'levy, assessment and collection of income-tax'. In his speech in *Commissioners For General Purposes of Income-Tax For City of London* v. *Gibbs and Others* (1), Lord Simon has pointed out that the word 'assessment' is used in the English Income-tax Code in more than one sense; and sometimes within the bounds of the same section, two separate meanings of the word may be found. One meaning is the fixing of the sum taken to represent the actual profit and the other the actual sum in tax which the taxpayer is liable to pay.

It has been contended before us that the Finance Act and the Income-tax Act should be read together as forming one Code, and so read the words 'assessment' and 're-assessment' acquire definite and distinct connotations. We are unable to agree, for the reasons which we have already given, that even if we read the Finance Act along with the Income-tax Act the word 'assessment' can be given a restricted meaning. To repeat those reasons: the income-tax code itself uses the word assessment in different senses, and in the context and collocation of the words of the Finance Act, the word 'assessment' is capable of bearing a comprehensive meaning only. We can find no good reasons for holding that in the matter of levy, assessment and collection of income-tax, the Finance Act, 1950, contemplated that some persons should enjoy a

(1) [1942] A.C. 402, 406.

privilege and escape payment of the full tax leviable under the provisions of the relevant Act. On this point we approve of the decision in *Firm L. Hazari Mal* v. *Income-tax Officer, Ambala* (1), where Bhandari C. J., said—

"These three expressions 'levy', 'assessment' and 'collection' are of the widest significance and embrace in their broad sweep all the proceedings..... for raising money by the exercise of the power of taxation....."

This brings us to the third question. Is there any thing in the financial agreement of February 25, 1950, and the recommendations of the Indian States Finances Enquiry Committee, which would restrict the meaning of the expression 'levy, assessment and collection of income-tax'? Or, in the alternative, bring s. 13(1) of the Finance Act, 1950, into conflict with Arts. 278 and 295 of the Constitution?

The relevant portion of the agreement between the President of India and the Rajpramukh of Travancore-Cochin dated February 25, 1950, states:

"Now, therefore, the President of India and the Rajpramukh of Travancore-Cochin, have entered into the following agreement, namely:—

The recommendations of the Indian States Finances Enquiry Commitee, 1948-49 (hereinafter referred to as the Committee) contained in Part I of its report read with Chapters, I, II and III of Part II of its Report, in so far as they apply to Travancore-Cochin (hereinafter referred to as the State) together with the recommendations contained in the Committee's Second Interim Report, are accepted by the Parties hereto, subject to the following modifications."

The modifications which follow have no bearing on the question at issue and need not be set out. Now, let us examine the relevant recommendations of the Committee, which are accepted by the Parties and form part of the agreement. These recommendations are summarised in para. 9 of the annexure to Part I of the Committee's report, and are set out below—

"Our suggestions concerning certain legal and

(1) A.I.R. 1957 Pun. 5.

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other matters of general importance, affecting most federal subjects (including taxes on income), which will arise in connection with federal financial integration in all States, have been set out in paragraph 11 of Chapter II in Part II of our Report. Those relating to legal matters are, however, re-produced below for convenient reference :—

"(5) Apart from the constitutional requirement in connection with the integration of federal finances in States—vide paragraphs 37 and 40 Part I of our Report—certain important issues of a legal nature will arise in connection with the actual taking over of "federal" subjects in the States by the Centre. This is a difficult subject upon which we are not qualified to offer competent advice. We have endeavoured, however, to indicate below the main features of what we conceive will be required in order to establish "continuity of proceedings" in regard to all "federal" subjects—whether relating to revenues, expenditure or Service Departments—at the point of their transition from the States to the Centre ;.....

(a) Almost every "federal" subject is dealt with in the State as in the rest of India, under powers conferred by appropriate legislation consisting of relevant Codes, Acts, Ordinances and Statutory Rules and Regulations. Subject to the limitations indicated below,—which are designed to secure legal "continuity" of pending proceedings and "finality and validity" of completed proceedings under the pre-existing State legislation—, we think the whole body of State legislation relating to "federal" subjects should be repealed and the corresponding body of Central legislation extended *proprio vigore* to the States, with effect from the prescribed date or as and when the administration of particular "federal" subject is assumed by the Centre.

(b) For the above purpose, as well as for future "federal" administration in States, it may be necessary specifically to extend not merely the legislative, but also the executive and administrative competence of the Centre, its officers and "authorities", and the judicial authority of its Courts, to the territories of the States.

(c) Such State Courts (except Courts of *final* appeal from orders of the State High Courts) as may in fact correspond to particular grades and classes of "British Indian" Courts (Civil and Criminal) may have to be statutorily "recognised" as "corresponding judicial authorities" for purpose of dealing with cases arising in the States under the "federal" laws of the Union of India; and the Supreme Court in India will have to be made the Court of final appeal from decisions of the State High Courts to the same extent as in the case of Provincial High Courts.

(d) Those sections of the various Indian Acts and Ordinances which set out their territorial "extent of application" will require amending so as to include State territories with effect from the prescribed date.

(e) It will be necessary to provide that all matters and proceedings pending under, or arising out of, the pre-existing State Acts shall be disposed of under *those* Acts, by so far as may be, the "corresponding authorities", (nominated by the Chief Executive Authority) under the corresponding Indian Acts."

In view of the fact that the members of the Committee themselves felt that the legal issues involved in the actual taking over of "federal" subjects in the States by the Centre constituted a difficult subject on which they were not qualified to offer competent advice and their further statement that they were merely endeavouring to indicate the main features of what they considered to be required in order to establish "continuity of proceedings", it has been argued before us on behalf of the Income-tax authorities that it would be wrong to treat the recommendations as binding statutory rules, even though the financial agreement between the high contracting Parties states generally that the recommendations are accepted; it is contended that the Committee in express terms states that the recommendations merely endeavour to indicate the main features of what the Committee thought was required, and they should not be placed on a pedestal higher than what the Committee itself did. We think that there is much force in this contention; but in the view which we have taken of these

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recommendations, we do not think that it is necessary to decide finally what constitutional sanctity they have acquired by reason of their acceptance in the financial agreement and the provisions of Art. 278 of the Constitution. Assuming but without deciding that they have binding force, what is their true meaning and effect? The argument on behalf of the assessee is that cl. (a) of the recommendations is the operative clause, and inasmuch as it talks of "continuity of pending proceedings" and "finality and validity of completed proceedings" under the pre-existing State legislation, the true effect is that all assessment proceedings which have become complete and final by the issue of a demand notice under s. 29 of the Indian Income-tax Act (or corresponding section of the Cochin Act or Travancore Act) are saved under the clause and cannot be reopened; and only proceedings actually pending on the relevant date can be continued thereunder. We are unable to accept this as the true meaning and effect of clause (a). What is worthy of special notice is that cl. (a) specifically says that the clauses which follow it are the limitations or qualifications subject to which the whole body of State legislation is to be repealed, and they are designed to secure two objects—continuity of pending proceedings and finality and validity of completed proceedings; therefore, cl. (a) is not the *operative* clause, and it merely indicates the reasons or objects for which certain limitations or qualifications are suggested on the proposal to repeal the State legislation. Clause (a) is followed by cls. (b), (c), (d) and (e). Clause (b) which deals with executive and administrative competence of Income-tax Officers and judicial authority of Courts need not detain us. So also cls. (c) and (d), which have little bearing on the problem before us. Clause (e) is important, and it states that "all matters and proceedings pending under, or arising out of, the pre-existing State Acts shall be disposed of under those Acts etc." That a proceeding for re-assessment under s. 44, Cochin Act, or s. 47, Travancore Act, is a proceeding arising out of the pre-existing State Acts admits of no doubt, and is clearly covered by cl. (e). We see no good grounds

why full effect should not be given to it; it is one of the limitations, as stated in cl. (a), subject to which the State law is to be repealed. The matter is made still more clear by what is stated in the paragraph that immediately follows, viz. paragraph 10 of the annexure to the report of the Committee. That paragraph states—

"The recommendation made in the last two sub-paragraphs quoted above should be understood as requiring that all income, profits and gains accruing or arising in States, of all periods which are "previous years" of the States' assessment years 1949-50 or earlier should, subject to the provisions of section 14(2)(c) of the Indian Income-tax Act, be assessed wholly in accordance with the States' laws and at the States' rates, respectively, appropriate to the assessment years concerned etc."

If the recommendations are read as a whole, there is really no doubt left in the matter. The Committee did not restrict the limitations they were suggesting, to a proceeding which was actually pending on the date of repeal of the State law; it gave a wider meaning to pending proceedings—that is, "proceedings pending under and arising out of the pre-existing State Acts". It is to be remembered that where an assessment starts with a notice under s. 34 of the Indian Income-tax Act (or corresponding section of the Cochin or Travancore Act), all the relevant provisions of that Act apply as effectively as where the assessment starts with a notice under s. 22 (2)—or corresponding section of the Cochin or Travancore Act—in the ordinary course. It is also not disputed that the assessment made under s. 34 in any year subsequent to the relevant assessment year must be made as if it were made in the relevant assessment year, and the assessment must be based on the provisions of the Act as it stood in the year in which the income ought to have been assessed. Having regard to these considerations, we find no difficulty in holding that a re-assessment proceeding under s. 44, Cochin Act, or s. 47, Travancore Act, is a proceeding which comes under cl. (e) of the recommendations of the

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Committee, and must be disposed of under the pre-existing State law. Section 13 (1) of the Finance Act, 1950, gives effect to that recommendation. There is, therefore, nothing in the recommendations which would restrict the meaning of the expression "levy, assessment and collection of income-tax" in s. 13 (1) of the Finance Act; nor do they bring s. 13 (1) into conflict with Arts. 278 and 295 of the Constitution.

We accordingly hold that there is no substance in any of the three points urged on behalf of the assessee in the Travancore-Cochin appeals.

Mysore Appeals.

These are eight appeals and the relevant facts are these.

Civil Appeals 27 to 30 of 1956 arise out of four writ petitions numbered 52 and 53 of 1953, and 105 and 106 of 1954, which were dealt with together in the Mysore High Court by a common judgment dated December 14, 1954. Civil Appeals 161 to 164 also arise out of four writ petitions (no. 122 of 1954 and nos. 35 to 37 of 1955) filed in the same High Court. The orders passed in those writ petitions were that they were governed by the aforesaid decision dated December 14, 1954. In the result, all the writ petitions were allowed with costs.

In all these cases the petitioners, who are respondents before us, were assessed to income-tax under the Mysore Income-tax Act, 1923 (hereinafter called the Mysore Act) for different years previous to the integration of Mysore with India, and the assessment proceedings were completed and closed under the Mysore Act by demand notices issued by the Income-tax Officers concerned. But subsequent to the integration of Mysore, notices under s. 34 of the Mysore Act were issued against the petitioners, and they challenged the jurisdiction of the Income-tax Officers to issue such notices. Section 34 of the Mysore Act states—

"If for any reason, income, profits or gains chargeable to income-tax has escaped assessment in any year, or has been assessed at too low a rate, the Income-tax Officer may 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, or in the case of 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 s. 22, and may proceed to assess, or re-assess such income, profits or gains, and 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 tax shall be charged 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."

It corresponds to s. 34 of the Indian Income-tax Act as it stood prior to the amending Act of 1939 and the general scheme of the Mysore Act was the same as that of the Indian Income-tax Act, 1922, as it stood before 1939.

The two grounds on which the jurisdiction of the Income-tax Officers was challenged were—

(1) Under the Finance Act, 1950, the Mysore Act stood repealed on and from April 1, 1950, and s. 13 (1) of the Finance Act kept alive the Mysore Act for the purpose of levy, assessment and collection of income-tax etc. for the period mentioned therein, but did not save s. 34 of the Mysore Act for the purpose of re-assessment of income-tax ; therefore, the notices issued under s. 34 of the Mysore Act were without jurisdiction and authority.

(2) Even otherwise, the financial agreement between the President of India and the Rajpramukh of Mysore on February 28, 1950, which received constitutional sanctity in Art. 278 of the Constitution rendered the initiation of such re-assessment proceedings against the respondents unconstitutional and void.

The learned Chief Justice of the Mysore High Court upheld ground no. (1) and considered it unnecessary to pronounce on the second ground. Mallapa J., in a separate but concurring judgment expressed the view that having regard to the wording of s. 13 (1) of Finance Act, 1950, and the financial agreement of February 28, 1950, he had no doubt that s. 13 (1) did

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not provide for re-assessment under s. 34 of the Mysore Act.

The process of integration of Mysore with India was similar to that of Travancore-Cochin. The State of Mysore acceded to the Dominion of India by an Instrument of Accession executed on August 9, 1947, and accepted by the Governor-General on August 16, 1947. A supplementary Instrument of Accession was executed on June 1, 1949. By a Proclamation dated November 25, 1949, the Constitution of India to be adopted by the Constituent Assembly of India was accepted for Mysore, and on January 26, 1950, Mysore became a Part B State within the Constitution of India. A similar financial agreement was entered into by the Rajpramukh with the President of India on February 28, 1950. On April 1, 1950, the Finance Act, 1950, applied the Indian Income-tax Act, 1922, to Mysore, subject to the provisions of s. 13 thereof.

In dealing with the Travancore-Cochin appeals, we have fully dealt with the two grounds on which the respondent assessees in the Mysore appeals challenged the jurisdiction of the Income-tax Officers concerned to issue the notices under s. 34 of the Mysore Act. Two additional points urged in support of ground no. (1) may be stated here. It has been urged that the proviso to s. 34 of the Mysore Act brings out the distinction between 'assessment' and 're-assessment'; and secondly, it is contended that the jurisdiction under s. 34 is limited to ascertainment of extra income not assessed and the section does not confer jurisdiction to make a new assessment, for taxing whole of that assessment, under the Act. Learned counsel for the assessees has invited our attention to *In re Kashi Nath Bagla* (1); *Madhavjee Damodar Thackersay and Another* v. *Commissioner of Income Tax, Bombay* (2) and *Anglo-French Textile Co. Ltd.* v. *Commissioner of Income Tax, Madras, No. 4* (3).

The real question for decision in these appeals is the true scope and effect of s. 13 (1) of the Finance Act, and on that question the additional points mentioned

(1) A. I. R. 1932 All. 1. (2) [1935] 3 I. T. R. 457.
(3) [1950] 18 I. T. R. 906.

above throw very little light. There is, indeed, a distinction between an original or normal assessment under s. 23 and a re-assessment under s. 34; but we have shown that the word "assessment" has been used in more than one sense in Income-tax law, and so far as s. 13 (1) of the Finance Act, 1950, is concerned, there is no doubt that the expression 'levy, assessment and collection of income-tax' has been used in a comprehensive sense so as to include the whole procedure for imposing liability upon the taxpayer.

Result:

The final result, therefore, is—(a) the Travancore-Cochin appeals (Civil Appeals 143 to 145 of 1954) are dismissed with costs; and (b) the Mysore appeals (Civil Appeals 27 to 30 of 1956 and Civil Appeals 161 to 164 of 1956) are allowed and the judgment and orders of the Mysore High Court are set aside. The appellants in these Mysore appeals will be entitled to their costs in this Court and the High Court of Mysore.

Appeals Nos. 143 to 145 dismissed.
Appeals No. 27 to 30 and 161 to 164 allowed.

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(S. R. DAS C. J., VENKATARAMA AIYAR, S. K. DAS, A. K. SARKAR and VIVIAN BOSE JJ.)

Income Tax—Re-assessment—Taxable Area in Mysore within the jurisdiction of Governor-General in Council, retroceded in 1947—Constitutional changes resulting in Mysore becoming a Part B State—Financial agreement between the President of India and the Rajpramukh—Income-tax law applicable to Retroceded Area before and after the Retrocession—Re-assessment proceedings for period prior to 1949—Validity—Mysore Income-tax Act, 1923 (Mysore V of 1923), s. 34—Mysore Income-tax and Excess Profits Tax (Application to the Retroceded Area) (Emergency) Act, 1948 (Mysore XXXI of