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amount borrowed for the purchase of the plantation when the whole transaction of purchase and the working of the plantation is viewed as an integrated whole, is so closely related to the plantation that the expenditure can be said to be laid out or expended wholly and exclusively for the purpose of the plantation. In this connection, it is pertinent to note that what the Act purports to tax is agricultural income and not agricultural receipts. From the agricultural receipts must be deducted all expenses which in ordinary commercial accounting must be debited against the receipts. There is nothing in the Act which prohibits such expenses from being deducted. No farmer would treat interest paid on capital borrowed for the purchase of the plantation as anything but expenses, and as long as the deductions he claims, apart from any statutory prohibition, can be fairly said to lead to the determination of the true net agricultural income, these must be allowed under the Act. In principle, we do not see any distinction between interest paid on capital borrowed for the acquisition of a plantation and that between interest paid on capital borrowed for the purpose of running an existing plantation; both are for the purposes of the plantation.

In the result, we agree with the High Court that the deduction claimed by the assessee fell within the scope of s. 5(e) of the Act, and that the whole of Rs. 22,628-9-8 and not merely Rs 1,570-10-7 should have been deducted from his assessable income. The appeal fails and is dismissed with costs.

*Appeal dismissed.*

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April, 30.

S. S. GADGIL, INCOME-TAX OFFICER, BOMBAY

*v.*

LAL AND COMPANY

(K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.)

*Income Tax—Assessment as agent of non-resident party—Time limit for issuing notice—Scope of amending statute extending time*

*limit—Validity of notice—Indian Income-tax Act* 1922 (11 *of* 1922). *s.* 34(1)(*b*)(*iii*) *proviso.*

The appellant company was carrying on business in Bombay as commission agents. In the course of assessment proceedings for the year 1954-55, the Income-tax Officer noticed from the assessee's books of account that the assessee had business connections with certain non-resident parties and found that the transactions disclosed that through the assessee those non-resident parties were receiving income, profits and gains. He considered that s. 43 of the Indian Income-tax Act, 1922, was applicable to the assessee and issued on March 27, 1957, a notice under s. 34 of the Act for assessment of the assessee as an agent of the said non-resident parties. The assessee pleaded, *inter alia*, that the proceedings intiated by the Income-tax Officer under s. 34 were barred since the notice issued by him was after the expiry of one year from the end of the assessment year 1954-55, but the Income-tax Officer rejected the contention relying on the amendment made to the proviso to s. 34(1)(b)(iii) by the Finance Act, 1956, under which the period of one year was changed to two years. The amendment was given retrospective operation upto April 1, 1956, but since the power to issue a notice under the unamended Act had come to an end on March 31, 1956, the question was whether the Income-tax Officer could issue a notice of assessment to a person as an agent of a non-resident party under the amended provision when the period prescribed for such a notice had before the amended Act came into force expired.

HELD: The proceedings initiated by the Income-tax Officer by the notice dated March 27, 1957, were barred; the authority of the Income-tax Officer under the Indian Income-tax Act before it was amended by the Finance Act of 1956 having come to an end, the amending provision would not entitle him to commence a proceeding even though at the date when he issued the notice it was within the period provided by the amendment.

Notwithstanding the fact that there was no determinable point of time between the expiry of the time provided under the old Act and the commencement of the Amendment Act, in the absence of an express provision or clear implication, the legislature could not be said to have intended to attribute to the Amending provision a greater retrospectivity than was expressly mentioned.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 322 of 1963.

Appeal from the Judgment and order dated April 1, 1958 of the former Bombay High Court in Miscellaneous Application No. 327 of 1957.

*K. N. Rajagopala Sastry* and *R. N. Sachthey*, for the appellant.

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*Bishan Narain, S. P. Mehta, J. B. Dadachanji, O. C. Mathur* and *Ravinder Narain*, for the respondent.

April 30, 1964. The Judgment of the Court was delivered by

SHAH, J.—M/s Lal and Company hereinafter called the assessee carry on business in Bombay as commission agents. In the course of assessment proceedings for the year 1954-55 the assessee's books of account were examined by the Income-tax Officer and it was noticed that the assessee had business connections with certain non-resident parties. On March, 12, 1957, the Income-tax Officer issued a notice calling upon the assessee to show cause why in respect of the assessment year 1954-55 the assessee should not be treated under s. 43 of the Indian Income-tax Act, 1922, as an agent in respect of twenty-five non-resident parties named in the notice. The assessee denied that he had "direct dealings" with any non-resident party and that in any event the proposed action was barred because the period prescribed for initiation of proceeding had expired, and requested the Income-tax Officer to drop the proceeding. The Income-tax Officer B-III Ward, Bombay issued on March 27, 1957, a notice under s. 34 of the Indian Income-tax Act for assessment of the assessee as an agent of the twenty-five named non-resident parties. The assessee submitted a return showing his income as "nil". The Income-tax Officer held that the transactions disclosed from the books of account of the assessee clearly showed that the assessee "had regular business connection with" non-resident parties, that through the assessee those non-resident parties were receiving income, profits and gains, and s. 43 was clearly applicable to the assessee there being definite business connection between the assessee and the named non-residents. He therefore treated the assessee as agent of the non-resident parties, under s. 43 of the Act.

The Income-tax Officer also rejected the contention of the assessee that action under s. 34 was barred at the date of the notice issued to the assessee. Relying upon the first proviso to s. 34(1)(b)(iii) inserted by the Finance Act, 1956, the Income-tax Officer held that the Legislature had

by amendment extended the "time-limit in clear and express terms so as to cover" action under s. 34 against a person on whom the assessment or reassessment is to be made as an agent of a non-resident person under s. 43 of the Act for the assessment year 1954-55, and accordingly assessed the income of the assessee at Rs. 60,684, estimating the income of the parties residing outside the taxable territories, in the absence of accounts to be Rs. 50,000.

The assessee then filed a petition under Art. 226 of the Constitution in the High Court of Judicature at Bombay praying that a writ in the nature of *mandamus* or prohibition do issue restraining and prohibiting the Income-tax Officer from giving effect to or taking any steps or proceedings by way of recovery or otherwise in pursuance of the orders of assessment. The assessee pleaded, *inter alia*, that the proceedings for assessment under s. 34 of the Act commenced by the Income-tax Officer after the expiry of one year from the end of the assessment year 1954-55 were without the authority of law. The High Court of Bombay, following its earlier judgment in *S. C. Prashar* v. *Vasantsen Dwarkadas*(1) held that at the date when the notice was issued, by reason of the proviso which was in operation under s. 34(1) in respect of the assessment year 1954-55 the notice was out of time and that the period provided thereby could not be extended by the Finance Act of 1956 so as to authorise the Income-tax Officer to issue a notice for assessment or reassessment of the assessee as statutory agent of a party, residing outside the taxable territory. In the view of the High Court the notice dated March 27, 1957, was invalid, and a valid notice being a condition precedent to the exercise of jurisdiction under s. 34, the proceeding under s. 34 was not maintainable. Against the order of the High Court issuing writs prayed for by the assessee, with certificate of fitness this appeal is preferred by the Income-tax Officer, Bombay.

In order to appreciate the contention raised by the assessee and which has found favour with the High Court, it is necessary to refer to the relevant provisions of s. 34,

(1) 29 I.T.R. 857

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as they stood before the section was amended by the Finance Act, 1956. The clauses relevant prescribing the period within which notice may be issued read as follows:

"(1) (a) If — x x x

(b) x x x

he may in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, x x x a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or re-assess such income, profits or gains or recompute the loss or depreciation allowance; x x x

Provided that—

(i) x x x

(ii) x x x

(iii) Where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of non-resident person under section 43, this sub-section shall have effect as if for the periods of eight years and four years a period of one year was substituted."

By s. 18 of the Finance Act, 1956, s. 34 was extensively amended and cl. (iii) of the proviso was substituted by the following proviso:

"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 an assessment or re-assessment is to be made in pursuance of the notice is a person deemed to be an agent of non-resident person under section 43."

Initially a notice of assessment or re-assessment under s. 34(1) against a person deemed to be an agent of a non-

resident person under s. 43 could not be issued after the expiry of one year from the end of the year of assessment: under the amended section this period was extended to two years from the end of the relevant assessment year. In the course of assessment to income-tax for the year 1954-55 the relevant law applicable prescribed that a notice of assessment or re-assessment against a person deemed to be an agent under s. 43 could not be issued after the expiry of one year from the end of the assessment year. That period expired on March 31, 1956, and after that date no notice could be issued, relying upon the law as it stood before amendment for assessment or re-assessment treating the assessee as an agent of a non-resident under s. 43. But the Income-tax Officer sought recourse to the amended provision which gave him a period of two years from the end of the assessment year, for initiating assessment proceedings, and the authority of the Income-tax Officer to so act is challenged by the assessee.

Section 18 of the Finance Act, 1956, is, it is common ground, not given retrospective operation before April 1, 1956. The question then is, whether the Income-tax Officer may issue a notice of assessment to a person as an agent of a non-resident party under the amended provision when the period prescribed for such a notice had before the amended Act came into force expired? Indisputably the period for serving a notice of re-assessment under the unamended section had expired, and there was in the Act as it then stood, no provision for extending the period beyond the end of one year from the year of assessment. The Income-tax Officer could therefore commence a proceeding under s. 34 on March 27, 1957, only if the amended section applied and not otherwise. The amending Act came into force *after* the period provided for the issue of a notice under s. 34 before it was amended had expired. It is true that there was no determinable point of time between the expiry of the prescribed time within which the notice could have been issued against the assessee under s. 34 proviso (iii) before it was amended. But there was no overlapping period either. *Prima facie,* on the expiry of the period prescribed by s. 34 as it originally stood, there was no scope for issuing a notice unless the

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Legislature expressly gave power to the Income-tax Officer to issue notice under the amended section notwithstanding the expiry of the period under the unamended provision or unless there was overlapping of the period within which notice could be issued under the old and the amended provision. But counsel for the Commissioner submitted that at no time was the Income-tax Officer bereft of authority to issue a notice under s. 34 of the Indian Income-tax Act, 1922. He submitted that till the mid-night of March 31, 1956, notice could be issued in exercise of the powers conferred by s. 34 proviso (iii) before it was amended and notice of assessment or re-assessment could also be issued under the amended provision immediately thereafter in exercise of the powers conferred by s. 18 of the Finance Act, 1956. Counsel relied upon the rule contained in s. 5(3) of the General Clauses Act that unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement. It was submitted that this is merely a statutory recognition of the rule which is well-settled that where a statute names a date on which it shall come into operation, it shall be deemed to come into force immediately on the expiration of the previous day and the law does not take into consideration fractions of a day.

Reliance was placed by counsel upon *Tomlinson* v. *Bullock*(1) and *English* v. *Cliff*(2). In *Tomlinson's case*(1) the question was whether an order of affiliation could be made on an application made in respect of a child born at any time of the day on August 10, 1872 under the Bastardy Act, 35 & 36 Vict. c. 65. In an application made for an order of affiliation, it was held that the order could competently be made in respect of a child born at any time of the day on the 10th of August, 1872, because the Act in the contemplation of law for this purpose came into effect from the commencement of the day on which it received the royal assent, and that normally an Act which comes into operation becomes law as soon as it commences. In *English* v. *Cliff*(2) it was held by the Court of Chancery

(1) (1879) 4 Q.B.D. 230 (2) (1914) 2 Ch. D. 376

that the trustees under a deed of settlement dated May 13, 1892, who stood possessed of an estate during the term of twenty-one years from the date of settlement upon trust to apply the rents and profits mentioned therein and who were authorised at the expiration of the said period to sell the estate could competently sell it and their action was not liable to be challenged as infringing the rule of perpetuity. It was held in that case that the determination of the term of twenty-one years and the commencement of the trust for sale arising at one and the same moment, the trust was not void for remoteness on the ground that it was limited to take effect at the expiration of the term. Neither of these cases has, in our judgment, any application to the principle applicable in the present case. The power to issue a notice under the unamended Act came to an end on March 31, 1956. Under that Act no notice could thereafter be issued. It is true that by the amendment made by s. 18 of the Finance Act, 1956, a notice could be issued within two years from the end of the year of assessment. But the application of the amended Act is subject to the principle that unless otherwise provided if the right to act under the earlier statute has come to an end, it could not be revived by the subsequent amendment which extended the period of limitation. The right to issue a notice under the earlier Act came to an end *before* the new Act came into force. There was undoubtedly no determinable point of time between the expiry of the earlier Act and the commencement of the new Act; but that would not, in our judgment, affect the application of this rule.

Reliance was also placed by counsel for the Commissioner upon the rule which has prevailed in the Supreme Court of the United States of America that "a new statute should be construed as a continuation of the old one with the modifications contained in the new one, although it formally repeals the old statute, when it re-enacts its substantial provisions and the two statutes are almost identical." *Bear Lake & River Water Works & Irrigation Company and Jarvis-Conklin Mortgage Trust Company* v. *William Garland and Corey Brothers & Co.*(1). It appears

(1) 164 U.S. 1

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to have been recognised in the Supreme Court of the United states of America in *Pacific Mail S. S. Co.* v. *Jolifee*(1) that repeal in terms of a former statute does not necessarily indicate an intention of the legislature thereby to impair right which had arisen under the act which was repealed. As the provisions of the new act took effect simultaneously with the repeal of the old one, the Supreme Court held that the new one might more properly be said to be substituted in the place of the old one, and to continue in force, with modifications, the provisions of the old act, instead of abrogating or annulling them and re-enacting the same as a new and original act. Apart from the question whether the rule so enunciated is applicable to the interpretation of Indian statutes, in this case we are not concerned with re-enactment of a statute. The statute abrogates one rule of limitation, and enacts another rule with a limited retrospective operation. To such a case the rule enunciated by the Supreme Court of America, assuming it applies, attributing to the Legislature an intention to continue in force the provisions of the old Act, with a modification, so as to give to the new statute in substance operation retrospectively from the date on which the old statute was enacted, can have no application. We do not think that any such intention may be attributed to the Legislature in enacting s. 18 of the Finance Act, 1956 so as to make it the basis of a liability to taxation after the expiry of the period prescribed in that behalf by the Legislature.

Counsel also submitted that s. 34 lays down a rule of limitation for commencing an action for assessment or re-assessment, and that in the absence of an express provision to the contrary, a statute of limitation in operation at a given time governs all proceedings from the moment of its enactment, even though the cause of action on which the proceeding was based came into existence before the Act was enacted. Equating a proceeding under s. 34 of the Indian Income-tax Act with a suit or a proceeding in a civil court, counsel said that the law of limitation being a law of procedure, assessment proceedings including proceedings for re-assessment are governed by the law in force

(1) 69 U.S. (2 Wall) 459

at the date on which they are instituted, and that the rule that the repeal of a statute without express words or clear implication in the repealing statute, cannot take away a right vested in a party acquired under the repealed statute when it was in force, is a rule of prescription and not of procedure, and notwithstanding general observations to the contrary in certain decisions, applies only to those actions in which by the determination of the period prescribed, a right to institute an action for possession of property is extinguished. Counsel relies in support of the plea on *Baleswar* v. *Latafat*(1). It is unnecessary to dilate upon this argument in any detail, or to enter upon an analysis of the numerous cases which were mentioned at the Bar to determine whether the rule that without an express provision, or a clear implication arising from the amending statute rights acquired under the repealed statute by the determination of the period of limitation prescribed thereby cannot be deemed to be revived, applies to suits for possession only. It may be sufficient to make two comments on the argument. The rule has in fact been applied to suits other than suits for possession: e.g. *Mahomed Mehdi Faya* v. *Sakinabai*(2) (a suit for restitution of conjugal rights); *M. Krishnaswami Nalcker* v. *A. Thiruvengada Muddaliar*(3) (a suit for recovery of a debt); *Shambhoonath Saha* v. *Guruchurn Lahiri*(4) (an application for execution); and *Nepal Chandra Roy Chowdhury* v. *Niroda Sundari Ghose*(5) (an application for setting aside an *ex parte* decree). Again soon after it was delivered the the authority of *Baleswar's case*(1) was weakened by the judgment in *Jagdish* v. *Saligram*(6) where the Court doubted the correctness of the earlier view.

A proceeding for assessment is not a suit for adjudication of a civil dispute. That an income-tax proceeding is in the nature of a judicial proceeding between contesting parties, is a matter which is not capable of even a plausible argument. The Income-tax authorities who have power to assess and recover tax are not acting as judges deciding a

(1) I.L.R. 24 Pat. 249
(2) I.L.R. 37 Bom. 383
(3) A.I.R. (1935) Mad. 245
(4) I.L.R. 5 Cal. 894
(5) I.L.R. 39 Cal. 506
(6) I.L.R. 24 Pat. 391

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litigation between the citizen and the States: they are administrative authorities whose proceedings are regulated by statute, but whose function is to estimate the income of the taxpayer and to assess him to tax on the basis of that estimate. Tax legislation necessitates the setting up of machinery to ascertain the taxable income, and to assess tax on the income, but that does not impress the proceeding with the character of an action between the citizen and the State: *The Commissioner of Inland Revenue* v. *Sneath*(1); and *Shell Company of Australia Ltd.* v. *Federal Commissioner of Taxation*(2).

Again the period prescribed by s. 34 for assessment or re-assessment is not a period of limitation. The section in terms imposes a fetter upon the power of the Income-tax Officer to bring to tax escaped income. It prescribes different periods in different classes of cases for enforcement of the right of the State to recover tax. It was observed by this Court in *Ahmedabad Manufacturing and Calico Printing Co. Ltd.* v. *S. C. Mehta, Income-tax Officer and another*(3):

> "It must be remembered that if the Income-tax Act prescribes a period during which tax due in any particular assessment year may be assessed, then on the expiry of that period the department cannot make an assessment. Where no period is prescribed the assessment can be completed at any time but once completed it is final. Once a final assessment has been made, it can only be reopened to rectify a mistake apparent from the record (s. 35) or to reassess where there has been an escapement of assessment of income for one reason or another (s. 34). Both these sections which enable reopening of back assessments provide their own periods of time for action but all these periods of time, whether for the first assessment or for rectification, or for reassessment, merely create a bar when that time passed

(1) 17 T.C. 149, 164 (2) [1931] A.C. 275

(3) [1963] Supp. 2 S.C.R. 92, 117-118

against the machinery set up by the Income-tax Act for the assessment and levy of the tax. They do not create an exemption in favour of the assessee or grant an absolution on the expiry of the period. The liability is not enforceable but the tax may again become exigible if the bar is removed and the taxpayer is brought within the jurisdiction of the said machinery by reason of a new power. This is, of course, subject to the condition that the law must say that such is the jurisdiction, either expressly or by clear implication. If the language of the law has that clear meaning, it must be given that effect and where the language expressly so declares or clearly implies it, the retrospective operation is not controlled by the commencement clause."

Counsel for the Commissioner sought to derive some support from *Income-tax Officer, Companies District I, Calcutta and another* v. *Calcutta Discount Company Ltd.*(1) in which Chakravartti C.J., dealing with the effect of the Income-tax and Business Profits Tax (Amendment) Act, 1948, observed:

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

(1) 23 I.T.R. 471

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But it may be recalled that the amending Act of 1948 with which the Court was concerned in *Calcutta Discount Company's case*(1) came into force on September 8, 1948, but s. 1(2) prescribed that the amendment in s. 34 of the Income-tax Act, 1922, shall be deemed to have come into force on March 30, 1948, and the period under the unamended section within which notice could be issued under s. 34(3) against the assessee company ended on March 31, 1951. Before that date the amending Act came into operation, and at no time had the right to re-assess become barred.

In considering whether the amended statute applies, the question is one of interpretation *i.e.*, to ascertain whether it was the intention of the Legislature to deprive a taxpayer of the plea that action for assessment or re-assessment could not be commenced, on the ground that before the amending Act became effective, it was barred. Therefore the view that even when the right to assess or re-assess has lapsed on account of the expiry of the period of limitation prescribed under the earlier statute, the Income-tax Officer can exercise his powers to assess or re-assess under the amending statute which gives an extended period of limitation, was not accepted in *Calcutta Discount Company's case*(1).

As we have already pointed out, the right to commence a proceeding for assessment against the assessee as an agent of a non-resident party under the Income-tax Act before it was amended, ended on March 31, 1956. It is true that under the amending Act by s. 18 of the Finance Act, 1956, authority was conferred upon the Income-tax Officer to assess a person as an agent of a foreign party under s. 43 within two years from the end of the year of assessment. But authority of the Income-tax Officer under the Act before it was amended by the Finance Act of 1956 having already come to an end, the amending provision will not assist him to commence a proceeding even though at the date when he issued the notice it is within the period provided by that amending Act. This will be so, notwithstanding the fact that there has been no determinable point of time between the expiry of the time provided under the old Act and the

(1) 23 I.T.R. 471.

commencement of the amending Act. The Legislature has given to s. 18 of the Finance Act, 1956, only a limited retrospective operation *i.e.*, upto April 1, 1956, only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the Legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income-tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided, become barred.

The appeal fails and is dismissed with costs.

*Appeal dismissed.*

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## COMMISSIONER OF INCOME-TAX, U.P., LUCKNOW

*v.*

## KANPUR COAL SYNDICATE

1964

April, 30.

(K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.)

*Income Tax—Assessment on Association of persons or on members individually—Option to appropriate authority—Right of appeal, whether such assessee has—Powers of Tribunal and Appellate Assistant Commissioner in Appeal—Income-tax Act,* 1922 (11 *of* 1922), *ss.* 3, 14(2) (*b*) 30, 31 *and* 33.

Income-tax was assessed upon the total income in the hands of the respondent-assessee, an association of several persons combined together for the purpose of purchase of coal and its supply to customers for domestic purposes and other small scale industries. The assessee claimed that it should not be assessed to tax as an association of persons, but the proportion of the income in the hands of each members of the association might be assessed to tax instead. The Income-tax Officer refused this request and an appeal to the Appellate Assistant Commissioner was dismissed. The Income-tax Appellate Tribunal, on a further appeal, held that though the Income-tax Officer had power to assess income of the association of persons as such or in the alternative on the individual members thereof in respect of their proportionate share in the income, the tribunal had no power under the Act to direct the Income-tax Officer to exercise his power in one way or other. On a