Karnataka High Court V. Verghese And Another vs Deputy Commissioner Of ... on 22 December, 1993 Equivalent citations: ILR 1994 KAR 11, 1994 210 ITR 511 KAR, 1994 210 ITR 511 Karn Bench: M Ramakrishna, R Raveendran, S Majmudar JUDGMENT 1. By an order dated June 25, 1993, a Division Bench of this court consisting of K. SHIVASHANKAR BHAT and R. V. VASANTHAKUMAR JJ., has referred the following questions for the decision of the Full Bench : "1. When rule 9A(1) of the Income-tax Rules, 1962, was substituted by a new sub-rule, whether such substitution amounts to repeal and whether the General Clauses Act will apply ? 2. Whether the assessing authority has jurisdiction to complete the assessment by invoking the old sub-rule (1) of rule 9A which stood substituted by a new sub-rule at the time of making the assessment ?" Background facts : 2. In order to appreciate the scope of the aforesaid questions, it is necessary to note a few relevant facts leading to these proceedings. The writ petitioner in W. P. No. 18136 of 1989 is an individual, while the writ petitioner in W P. No. 18137 of 1989 is a partnership firm. Both of them carry on the business of producing feature films in Kannada. The petitioner firm in the second petition is also carrying on exhibition of cinematograph films. The petitioners have been employing a regular system of accounting, that is, the mercantile system of accounting. The petitioner-firm came into existence for the assessment year 1984-85 and for the first time during the assessment year 1986-87, the second petitioner-firm produced a feature film. For the assessment years 1977-78 to 1983-84, in the case of the individual petitioner-assessee, the Income-tax Officer accepted the method of accounting employed by the said petitioner and the income or loss of the petitioner-assessee was computed on the basis of the accounts maintained by the petitioner. For the assessment year 1984-85, corresponding accounting year being 1983-84 wherein the year ended on December 31, 1983, for the petitioner-assessee who is an individual, the Income-tax Officer being the Deputy Commissioner of Income-tax, resorted to rule 9A of the Income-tax Rules, 1962, framed by the Central Board of Director Taxes, in exercise of powers conferred on it under section 295 of the Income-tax Act, 1961. So far as the petitioner-firm is concerned, for the assessment year 1986-87 for which the corresponding accounting year was 1985-86 which the accounting year ended on December 31, 1985, the Deputy Commissioner of Income-tax (Assessment) computed the income of the petitioner-firm by resorting to the aforesaid rule 9A of the Rules. The concerned Income-tax Officer made the assessments for both these petitioners accordingly and gave limited relief to the petitioners under section 37(1) of the Income-tax Act, 1961, in view of the limits laid down by the aforesaid rules. These assessment orders are challenged by the concerned petitioners by filing the aforesaid writ petitions. 3. During the hearing of the writ petitions, it was submitted by learned counsel for the petitioners before the Division Bench that rule 9A(1) which was holding the field since 1976 was repealed on and from April 2, 1986, by the Central Board of Direct Taxes, which enacted the new rule 9A(1) in its place on April 2, 1986, that the concerned assessment orders were passed by the income-tax authorities on March 23, 1989, so far as the petitioner individual assessee is concerned, while for the petitioner firm, the assessment order was passed on March 10, 1989, that as per rule 9A(8)

of the new Rules, the said new rule could not apply for making the assessments in these cases as the concerned assessment years commenced prior to April 1, 1987, and the old rule 9A did not apply as it has stood repealed by the new rule 9A with effect from April 2, 1986. Therefore, on the dates on which the assessments were made, the Revenue could not have relied upon the old rule 9A of the Rules, that section 6 of the General Clauses Act does not apply to rule 9A and, therefore, neither the old rule 9A nor the new rule 9A could be pressed into service by the Revenue in passing these assessment orders. These contentions raised on behalf of the assessee were refuted by learned standing counsel for the Revenue. It is under these circumstances that the aforesaid two questions were framed by the Division Bench and have been referred for opinion of the Full Bench. The present Full Bench has been constituted by the Hon'ble Chief Justice for answering these referred questions. 4. We have heard the rival contentions canvassed by the advocates for the respective parties. Before we deal with the referred questions, it will be apposite to have a bird's eye view of the relevant statutory provisions governing the field. 5. Section 4 of the Income-tax Act, 1961, deals with charge of income-tax and provides that where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with and subject to the provisions including provisions for the levy of additional income-tax under this Act in respect of the total income of the previous year of every person. Section 5 deals with scope of total income. Sub-section (1) lays down that subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which - (a) is received or is deemed to be received in India in such year by or on behalf of such person; or (b) accrues or arises or is deemed to accrue or arise to him in India during such year; or (c) accrues or arises to him outside India during such year. . . 6. Section 9 deals with income that is deemed to accrue or arise in India. Sub-section (1) thereof provides that the following incomes shall be deemed to accrue or arise in India - (i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India. 7. Chapter IV deals with computation of total income. Section 14 deals with heads of income and lays down that save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income : A.-. . . . . D. - Profits and gains of business or profession. So far as profits and gains of business or profession are concerned, section 28 lays down the type of income which shall be chargeable to income-tax. Then follows section 29 in the same group of sections which provides that the income shall be computed in accordance with the provisions contained in sections 30 to 43D. Amongst these sections is found section 37. Sub-section (1) thereof provides that any expenditure not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purposes of the business or

profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession". Section 295 confers rule making power on the Board, that is, the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act as defined by section 2(12) of the Act. The Board can make rules for the whole or any part of India for carrying out the purpose of the Act. It is in exercise of the rule making power under sub-sections (1) and (2) that rule 9A was inserted in the Income-tax Rules, 1962, on December 30, 1976, by the Income-tax (Seventh Amendment) Rules, 1976. Rule 9A prescribed the method of computation of deductions for income arising out of the business of production of feature films. It prescribed different procedures for regional language feature films and non-regional language feature films. It is this rule 9A(1) which was replaced by new sub-rule with effect from April 2, 1986, by the Income-tax (Second Amendment) Rules, 1986. By these Second Amendment Rules, certain sub-rules of rule 9A were omitted and the word "regional language" was deleted. The effect of this amendment was that with effect from April 2, 1986, there remained no distinction between regional language films and non-regional language films in the matter of computation of deductions of permissible business expenses from the income of producers of such films. 8. It is now time for us to deal with the referred questions seriatim. Question No. 1 : 9. So far as this question is concerned, it becomes clear that rule 9A(1) of the Income tax Rules, which was operative since 197B, was modified by the Income-tax (Second Amendment) Rules, 1986, whereby certain then existing sub-rules of rule 9A were amended and/or replaced by new sub-rules. Therefore, rule 9A got substantially modified by the new rule 9A of the Rules. The short question for our consideration is whether enactment of new rule 9A(1) which replaced old rule 9A(1) amounted to repeal of the latter and whether such repeal would attract the General Clauses Act especially section 6 thereof, as learned counsel for both the sides stated to us that the referred question in so far as it deals with the General Clauses Act only pertains to the applicability of section 6 of the General Clauses Act and not to any other section thereof. When we turn to the Income-tax (Second Amendment) Rules, 1986, which are reproduced in [1986] 159 ITR (St.) 101, we find that for the then existing sub-rule (1) of rule 9A, new sub-rule (1) is shown to have been substituted. We are not concerned with the changes brought about in sub-rules (2), (3) and (4) or the then existing sub-rules (5), (6) and (7) which were omitted and existing sub-rules (8), (9), (10) and (11) were renumbered as sub-rules (5), (6), (7) and (8), respectively. But sub-rule (8) of the new rule 9A is relevant for our present purpose. It reads as under : For the re-numbered sub-rule (8), the following sub-rule shall be substituted, namely (see [1986] 159 ITR (St.) 102) : (a) Nothing contained in this rule shall apply in relation to any assessment year commencing before the 1st day of April, 1987." 10. Now, it is no doubt true that rule 9A(1) as existing earlier was sought to be substituted by the new rule 9A(1). But the moot question is whether it amounted to repeal of the old rule 9A(1) or it amounted only to its replacement or supersession. For deciding this question, we may usefully refer to the decisions of the Supreme Court to which our attention was invited by learned counsel for the petitioners. 11. In the case

of State of Maharashtra v. Central Provinces Manganese Ore Co. Ltd., , the Supreme Court was concerned with the question of the constitutional validity of Explanation 11 to section 2(g) of the Sales Tax Act, 1947, as substituted by the Sales Tax (Amendment) Act, 1949. The question was whether the purported amendment which did not take effect nullified the earlier unamended provision as it stood before the attempted amendment. It was held that as the purported amendment itself was not effective, the unamended provision stood as it was before the attempted amendment, and there was no question of restoration of Explanation II to section 2(g) as originally brought in the Sales Tax Act, 1947. In para 17 of the Report, Beg J., speaking for the Supreme Court, made the following pertinent observations (at page 885) : "We do not think that the word 'substitution' necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. Indeed, the natural meaning of the word 'substitution' is to indicate that the process cannot be split up into two pieces like this. If the process described as substitution fails, it is totally ineffective so as to leave intact what was sought to be displaced. That seems to us to be the ordinary and natural meaning of the words 'shall be substituted.' This part could not become effective without the assent of the Governor-General. The State Governor's assent was insufficient. It could not be inferred that what was intended was that, in case the substitution failed or proved ineffective, some repeal, not mentioned at all, was brought about and remained effective so as to create what may be described as a vacuum in the statutory law on the subject-matter. Primarily, the question is one of gathering the intent from the use of the words in the enacting provisions seen in the light of the procedure gone through. Here, no intention to repeal, without a substitution, is deducible. In other words, there could be no repeal if substitution failed. The two were a part and parcel of a single indivisible process and not bits of a disjointed operation." 12. Thereafter, in para 23 of the report (at page 887), it has been laid down as under : "The real question for determination is always one of the meaning of words used in a purported enactment in a particular context. We think that the Full Bench of the High Court correctly held that there was no repeal of the existing provision when 'substitution', by means of an amendment, failed to be effective. It had also rightly distinguished some of the cases cited before it on the ground that, in those cases, the process for substitution was interpreted to necessarily imply both a repeal and re-enactment out of which only the repeal which took place had survived when the re-enactment proved abortive." 13. In view of the aforesaid decision of the Supreme Court, therefore, it is very clear that whether the subsequent amendment to any existing provision results in its repeal or not will depend upon the words employed in the amendment and the intention underlying the use of those words. 14. In the case of Koteswar Vittal Kamath v. K. Rangappa Baliya and Co., , the Supreme Court considered the distinction between supersession of a rule and substitution of rule in para 6 of the report, the following pertinent observations are found (at page 509) : "The process of substitution consists of two steps. First the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. Even if the new rule be invalid,

the first step of the old rule ceasing to exist comes into effect and it was for this reason that the court held in Firm A. T. B. Mehtab Majid and Co. v. State of Madras, , that, on declaration of the new rule as invalid, the old rule could not be held to be revived." 15. In the case of B. N. Tewari v. Union of India, , the constitutional Bench of the Supreme Court, speaking through Wanchoo J., was concerned with the effect of substitution of the earlier existing carry forward rule, 1952, by the carry forward rule of 1950, and the situation that emerged on the striking down of the substituted carry forward rule, 1955. In this connection, it was observed that by promulgating the new carry forward rule of 1955, the Government of India itself cancelled the carry forward rule of 1952. When, therefore, this court stuck down the carry forward rule as modified in 1955 that did not mean that the carry forward rule of 1952, which had already ceased to exist because the Government of India itself cancelled it and had substituted a modified rule in 1955 in its place, could revive. 16. In the case of State of Orissa v. Mangalji Mulji Khara, , the Supreme Court had to consider the effect of supersession of earlier Government notifications by the Orissa Government notifications dated December 29, 1977. It was held that the word "supersession" in this notification was used in the same sense as the words "repeal and replacement" whereby under the previous notifications all that was done by using the words "in supersession of all previous notifications" in the notifications dated December 29, 1977, was that they repealed and replaced previous notifications and did not wipe out any liability incurred under the previous notifications. 17. Attention was also invited to a Division Bench decision of this court in the case of Jyothi Home Industries v. State of Karnataka [1987] 64 STC 208. In that case, this court was concerned with three notifications issued under the Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1979. M. N. Venkatachaliah J., as he then was, in that case, had to consider the effect of supersession of earlier Government notifications by the successive notifications issued under the aforesaid Karnataka Act. Contention (c) was to the effect that each of the three notifications, the one dated March 31, 1983, and Notifications Nos. I and II having been "superseded" by the successive notifications, the charge under section 3(1) could not be given effect to for any period prior to October 24, 1984. 18. Repelling this contention in para 32 at page 243 of the report, it was observed : "The word 'supersession' was judicially understood to mean 'repeal'. The notifications in this case were perilously close to the consequences arising out of a repeal without the benefit of a saving clause in respect of the obligations previously incurred but for the saving principle. . . " 19. For coming to that conclusion, the decision of the Supreme Court in State of Orissa v. Titaghur Paper Mills Co. Ltd., , was relied upon. Therein, it was observed that (at page 1349) : "The word 'supersession' in the notifications dated December 29, 1977, is used in the same sense as the words 'repeal and replacement' and, therefore, does not have the effect of wiping out the tax liability under the previous notifications. All that was done by using the words 'in supersession of all previous notifications' in the notifications dated December 29, 1977, was to repeal and replace previous notifications and not to wipe out any liability incurred under the previous notifications." 20. It was also

observed that (at page 242 of 64 STC) : "The results that flow from changes in the law by way of 'amendment', 'repeal' or 'substitution', 'supersession' on the earlier rights and obligations cannot be decided on any set formulae. It is essentially a matter for construction and depends on the intendment of the law as could be gathered from the provisions in accordance with accepted canons of construction." 21. In the light of the aforesaid legal position, let us see whether new rule 9A as brought on the statute book with effect from April 2, 1986, had repealed the old rule 9A which was holding the field from December 30, 1976. On a conjoint reading of the entire new rule 9A, it becomes clear that what it has done is to modify certain sub-rules of the then existing rule 9A. In other words, when the earlier rule 9A dealt with the topic of deduction in respect of expenditure on production of feature films, the new rule 9A did not repeal the scheme on the topic or give a go by to it, but on the contrary, maintained it in a modified form. Modifications were effected in the then existing sub-rules of rule 9A. Therefore, it is easy to infer that the rule making authority did not want to repeal whole hog the then existing rule 9A, but wanted to make certain modifications by way of amendments therein. Consequently, it must be held that though in the Income-tax (Second Amendment) Rules, 1986, it is mentioned that new rule 9A(1) will stand substituted for the old rule 9A(1), in substance, it is a case of supersession of the earlier provision or its modification or amendment. It does not amount to wholesale repeal of the earlier provision. 22. In this connection, we may also usefully refer to a Division Bench decision of this court, in the case of Smt. Papabai v. Assistant Commissioner, Chikodi (M. F. A. No. 1200 of 1989, dated July 26, 1993 and September 22, 1993) - , consisting of two of us (Ramakrishna and Raveendran JJ.). It was concerned amongst others with the effect of the amendment of article 1 of Schedule I to the Karnataka Court Fees and Suits Valuation (Amendment) Act, 1992, as amended by the Karnataka Act No. 2 of 1995. By section 2 of the Amendment Act, the then existing Schedule I was substituted by a new Schedule. It was held that the Legislature intended a substitution of article 1 and not the entire Schedule and relying on Halsbury's Laws of England (3rd edition), Volume 36, at page 425, it was observed that fiscal legislation imposing liability is generally governed by the normal presumption that it is not retrospective, vide Union of India v. Madan Gopal Kabra . It is also observed that it is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication (Reliance Jute and Industries Ltd. v. CIT . 23. It is true that the aforesaid judgment did not refer to amending a rule, but the rule of interpretation of an amendment of a statutory provision would equally hold good for interpretation of an amendment of a statutory rule enacted in exercise of statutory rule making power. We respectfully agree with the aforesaid view expressed by the Division Bench of this court. In the present case, rule 9A is not wholly repealed by the new rule 9A, but certain sub-rules thereof are sought to be substituted. It is easy to visualise that if the statutory scheme of the then existing provision is not given a go-by or wholly done away with but is retained subject to certain modifications and amendments, it cannot be said that the modified scheme or amended scheme

repeals the old scheme and reenacts it with or without modifications. 24. Once that conclusion is reached, section 6 of the General Clauses Act dealing with repeal would be out of the picture as the old rule 9A(1) cannot be said to have been repealed by the new rule 9A(1). 25. Even assuming that new rule 9A(1) can be said to have repealed old rule 9A(1), still it is not possible to hold that section 6 of the General Clauses Act would apply to this case. The reason is obvious. A Constitution Bench of the Supreme Court in the case of Rayala Corporation (Pvt.) Ltd. v. Director of Enforcement, AIR 1970 SC 494, has in terms held in connection with the statutory rule 132A(2) of the Defence of India Rule" 1962, that when such a rule is omitted, section 6 of the General Clauses Act cannot apply. 'Two reasons are given in paragraph 15 of the report for coming to that conclusion. Firstly, omission is not repeal and, secondly, section 6 would apply to repeal of a Central Act or Regulation and not of a rule. As in the present ease, a statutory rule is replaced by another statutory rule 9A(1) and as the replacement is not of any statutory provision enacted by the Legislature, on the ratio of the decision given in the aforesaid Supreme Court case, it must be held that section 6 of the General Clauses Act would not apply to the facts of this case. 26. Consequently, our answer to question No. 1 is to the effect that when rule 91(1) of the Income-tax Rules, 1962, was substituted by a new sub-rule, that substitution did not amount to repeal of the earlier rule 9A(1) and that, in any case, section 6 of the General Clauses Act will not apply to the facts of the present case. Thus, the answer to the question would be in the negative. Question No. 2 : 27. So far as this question is concerned, it has to be kept in view that the new rule 9A which replaced the old rule 9A(1) by the Income-tax (Second Amendment) Rules, 1986, with effect from April 2, 1986, itself provided as per sub-rule (8) that nothing contained in this rule shall apply in relation to any assessment year commencing before April 1, 1987. Therefore, the rule making authority has clearly expressed its intention to make the new rule prospective with effect from April 1, 1987, only, meaning thereby that the said rule was not to apply to any assessment year ending up to March 31, 1987. It is obvious that if the new rule is not to apply for the assessment years prior to April 1, 1987, for those assessment years the then existing rule 9A(1) in the old form would naturally remain operative and effective. It is not possible to agree with the contention of learned counsel for the assessee that once new rule 9A(1) operated with effect from April 2, 1986, the old rule 9A(1) automatically got effaced and became non-existent and cannot be relied upon by the Revenue even for making assessments for the assessment years ending up to March 31, 1987. This submission of his cannot stand in the face of the clear intention of the rule making authority, as reflected by sub-rule (8) of new rule 9A, which was also brought simultaneously into force from April 2, 1986, along with rule 9A(1) by the Income-tax (Second Amendment) Rules, 1986. Sub-rule (8) of rule 9A(1) represented a saving clause so far as operation of rule 9A(1) in its unamended form was concerned. It is easy to visualise that under the scheme of the Income-tax Act, to which we made reference earlier, the charge of income-tax is brought about conjointly by sections 4, 5, 14 and 28 of the Act, so far as the charge on income arising out of profits or gains of business or profession is

concerned. As laid down by section 29, the computation of such income for the purpose of working out the charge and for assessment at income-tax liability on such earned income is to be done as per sections 30 to 43D. Thus, sections 30 to 43D represent machinery provisions according to which computation of income has to be done by the assessing authority for bringing the charged income to tax. Section 37 is one of such machinery provisions which entitles an assessee to claim deductions by way of permissible business expenditure as per the provisions thereof. Rule 9A deals with the same field covered by section 37 of the Act and forms a part of the very same machinery provision and lays down the methods for computation of permissible deductible expenditure on production of feature films as allowable under section 37(1). Therefore, whether rule 9A applies in the modified form or unmodified form could not make any impact on the charge created by the Legislature for imposing tax on such income. If a machinery provision in connection with computation of deductions from business income for assessment years commencing from April 1, 1987, is modified as compared to an earlier machinery provision, the liability to pay tax on such income for earlier assessment years would not get adversely affected nor would the earlier machinery provision as applicable to the previous assessment years be rendered otiose. It is not as if new rule 9A(1) repealed the prior existing rule 9A(1) retrospectively and effaced it from the statute book and made it unavailable even for making assessments for earlier assessment years ending up to March 31, 1987. Sub-rule (8) of new rule 9A contra-indicates such a situation. If the rule making authority in express terms has not applied the new rule to assessment years prior to April 1, 1987, it means that it has saved the old machinery provisions of rule 9A(1) in connection with the assessment years up to March 31, 1987. Therefore, it cannot be said by any process of interpretation that the earlier machinery provision would not apply for assessment of income in connection with those earlier assessment years. 28. If the contention of learned counsel for the assessee is accepted, it would amount to rewriting sub-rule (9) of new rule 9A. Even assuming that learned counsel for the petitioners is right in his submission that old rule 9A(1) got substituted and replaced by new rule 9A(1) and in the process, old rule 9A(1) got repealed, even then on a comprehensive reading of new rule 9A, with all its sub-rules including sub-rule (8), there is no escape from the conclusion that new rule 9A(1) repealed and replaced old rule 9A(1) with effect from April 1, 1987, as it sought to cover only assessment years commencing from April 1, 1987, meaning thereby for earlier assessment years ending on March 31, 1987, there was no repeal of old rule 9A(1). The moment that conclusion is reached, the result would become obvious. For making assessments in connection with the assessment years ending up to March 31, 1987, old rule 9A(1) would hold the field and new rule 9A(1) would be out of the picture. 29. A Division Bench of this court, in the case of Felcon Tyres Ltd. v. Union of India (60 ELT 118), had an occasion to consider the effect of substitution of old rule 10 of the Central Excise Rules, 1944, by new rule 10, and also substitution of new rule 10 by section 11A on November 17, 1980. Holding that section 11A was almost identical to the earlier rule 10, it was held that when the charge of excise duty was attracted on the manufacture

of excisable commodities, a change in the scheme of the machinery provision had no effect on the notice issued earlier under the erstwhile rule 10 which got substituted by new rule 10 and further got changed into section 11A almost simultaneously. It was, therefore, held that once proceedings were initiated under the old rule 10, which was substituted by new rule 10 and then by section 11A, these subsequent changes did not come in the way of continuing the proceedings against the assessee. For coming to that conclusion, the Division Bench of this High Court speaking through S. P. Bharucha C. J. (as he then was) placed reliance on the decision of the Madhya Pradesh High Court in the case of Gwalior Royon Mfg. (Wvg.) Co. v. Union of India [1982] 10 ELT 844. The same view has also been taken by a Full Bench of the Gujarat High Court in Saurashtra Cement and Chemical Industries Ltd. v. Union of India [1993] 1 GLR 5. We are in respectful agreement with the aforesaid decision of this High Court as well as the decision of the Madhya Pradesh High Court and Full Bench of the Gujarat High Court. 30. Thus, it is not possible to agree with the contention of learned counsel for the petitioner-assessee that because of the substitution of the old rule 9A(1) by new rule 9A(1) from April 2, 1986, from that date onwards, the Revenue could not fall back upon old rule 9A(1) for making the assessments in connection with the assessment years prior to April 1, 1987. Apart from this contention being contrary to sub-rule (8) of new rule 9A(1), it does not stand to reason as it could not be said that the rule making authority wanted to completely do away with the earlier scheme regarding computation of permissible expenditure in connection with income arising from business of production of feature films. No such intention of the rule making authority is discernible from new rule 9A(1) or for that matter, from any of its sub-rules. No such retrospective repealing of old rule 9A(1) for earlier assessment years is even whispered by new rule 9A(1). Even otherwise, it cannot be even implied that the rule making authority by enacting new rule 9A(1) had retrospectively repealed an earlier rule. To say the least, such a contention of learned counsel for the petitioners cannot stand scrutiny on the express language of new rule 9A(8), especially keeping in view the limited powers of the rule making authority. As a result of the aforesaid discussion, it must be held that the assessing authority has jurisdiction to complete the assessment by invoking old sub-rule (1) of rule 9A, which later stood substituted by new sub-rule, at the time of making assessment in connection with the assessment years which had ended prior to April 1, 1987. Question No. 2 will, therefore, have to be answered in the affirmative, in favour of the Revenue and against the assessee. Reference answered accordingly.