Bhagwan Das Sita Ram vs Commissioner Of Income-Tax on 5 March, 1984

Equivalent citations: 1984 AIR 993, 1984 SCR (3) 100, AIR 1984 SUPREME COURT 993, 1984 TAX. L. R. 635, 1984 (16) TAX LAW REV 353, 1984 SCC (TAX) 172, 1984 ALL TAX J 483, 1984 UPTC 755, (1984) 17 TAXMAN 9, 1984 UJ (SC) 338, 1984 TAXATION 73 (3) 85, (1984) 146 ITR 563, (1984) 39 CURTAXREP 351

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, V.D. Tulzapurkar

PETITIONER:
BHAGWAN DAS SITA RAM

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX

DATE OF JUDGMENT05/03/1984

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
TULZAPURKAR, V.D.

CITATION:
1984 AIR 993 1984 SCR (3) 100
1984 SCALE (1)492

ACT:
Income-tax Act, 1922-s. 22 and s. 23 read with second proviso to sub-s. (3) of s. 34-Interpretation of-When assessment can be made after a period of four years from assessment year-Assessment proceedings commence by filing of voluntary return-On expiry of four years proceedings are suspended but proceedings and returns do not become invalid. Bar of limitation lifts in case of direction by Tribunal-When and on whom Tribunal can issue direction.

Words and Phrases-"any person" in second proviso to sub-s. (3) of s. 34-Scope of must be a Person who would be liable to be assessed for whole or part of income that went into assessment of the year under appeal.

HEADNOTE:

A bigger Hindu undivided family (HUF) had filed income-tax returns for the assessment years 1946-47 to 1949-50. When the assessment was being done the bigger (HUF) made a claim under s. 25A of the Income Tax Act, 1922 , that the said HUF was partitioned on 19.5.1945. While this claim was pending, the appellant along with a smaller HUF (hereinafter referred to as the assessee) which had come into being on partition of the bigger HUF, filed voluntary returns on 18.11.1950 for the assessment years 1946-47 to 1949-50 under s.22(1) of the Act. The bigger HUF's claim partition, which was rejected by the Income Tax Officer and the Appellate Assistant Commissioner, was accepted by the Appellate Tribunal on 31.8.1954. While disposing of the appeals of the bigger HUF against the assessment orders, the Tribunal gave a direction on 28.10.1954 that assessments be made on the bigger HUF after accepting partition. After the claim of partition was accepted the Income-tax Officer sent notices to the assessee for initiating proceedings against him under s.34(1) (b). In response to the notices the assessee filed fresh returns on 12.4.1955. Rejecting the contention of the assessee that the time for making assessment under s.34 had expired, the Income-tax Officer completed assessments under s. 23(3) read with s. 34 on . 8.9.1955. The assessee's appeal was rejected by the Appellate Assistant Commissioner and the Appellate Tribunal. The assessee filed a writ petition in the High Court which was allowed and the assessment orders were quashed on 30.3.1960. The High Court observed that as voluntary returns filed by the assessee were pending no proceeding could be taken under s. 34. Thereafter the Revenue attempted to assess the assessee on the basis of voluntary returns originally filed on 18.11.1950 by relying upon the order of the Tribunal dated 23.10.1954 in the bigger HUF's case and invoking second proviso to s. 34(3). The assessee filed a writ petition and that was dismissed. The Income-tax Officer completed assessment under s. 23(3) on 31.5.1962. In appeal the Appellate Assistant Commis-

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sioner held that no valid assessment could be made on 31.5.1962 and this view was confirmed by the Appellate Tribunal. A reference was made to the High Court on the question whether on the facts and circumstances of the case, valid assessment could be made on 31.5.1962 for the assessment years 1948-49 and 1949 50 on the basis of voluntary returns of income filed under s. 22(1) of the Act. The assessee contended that since a return exhausted itself after expiry of four years from the end of the assessment year to which it related, no assessment could be made on the basis of voluntary return, it could be done under s. 34 only if 2nd proviso to sub-s. (3) of s. 34 applied. By majority a

full Bench of the High Court answered the question in the affirmative in favour of the revenue. Hence these appeals. The two questions which arose were: (1) whether the assessment could be made under s. 23(3) on the basis of voluntary returns filed or action should have been taken under s. 34 with the help of the second proviso to sub-s. (3) of s. 34 and (2) whether the Tribunal could give a finding or direction in respect of the assessee.

Dismissing the appeals,

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HELD :

On Question No. (1)

The High Court was right in taking the view that assessments could be made on the basis of voluntary returns already filed by the assessee. Sub-s. (3) of s. 34 provides a period of limitation of four years for assessment under s. 23 of the Act. If the assessment proceedings commence by filing of voluntary returns, as indeed these do, on the expiry of the period of four years from the end of the year in which the income, profits or gains were first assessable, such proceedings are suspended or interrupted. But neither the proceedings nor the returns become invalid. Since the order was passed by the Tribunal giving direction, the bar of limitation provided by s. 34(3) was lifted and the assessments could be made without any bar of limitation. [106 G-H, 107 A]

Commissioner of Income-tax Bombay City II v. Ranchhoddass Karsondas, 36 I.T.R. 569; Estate of the late A.M.K.M. Karuppan Chettiar v. Commissioner of Income-tax, Madras, 72 I.T.R. 403; and Commissioner of Income-tax Madras v. M.K.K.R. Muthukaruppan Chettiar, 78 I.T.R. 69, referred to

On question No. (2)

The High Court rightly answered the question in favour of the revenue on the view that the Tribunal was competent to give the direction in respect of the present assessee. [108 E-G]

Second proviso to s. 34(3) authorises directions to be given by the Tribunal in respect of the assessee or any person beyond four years as provided in s. 34(3) of the Act. As explained in Income-tax Officer v. Murlidhar Bhagwandas, "any person" in respect of whom such direction could be given must be one who would be liable to be assessed for the whole or a part of the income that went into the assessment of the year under appeal or revision. The court must turn

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to s. 31 of the Act to ascertain who is that person other than the appealing assessee who might be affected by the orders passed by the appellate authority. Modification or setting aside of assessment made on a firm, joint Hindu family, association of persons for a particular year may affect the assessment for the said year on a partner or partners of the firm, member of members of such Hindu

undivided family or the individual, as the case might be. These instances are only illustrative and not exhaustive. The expression "any person" in its widest amplitude might take in any person connected or not with the assessee, whose income for any year had escaped assessment; but this construction cannot be accepted, for the said expression was necessarily circumscribed by the scope of the subject-matter of the appeal or revision, as the case might be. So therefore the person must be one who would be liable to be assessed for the whole or any part of the income that went into assessment of the year under appeal or revision (Emphasis supplied). Therefore, "any person" in sub-section (3) of s. 34 must be confined to person intimately connected in the aforesaid sense with the assessments of the years under appeal. [701 C-S, 108 A-F]

Income-tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das, 52 I.T.R. 335; Rajinder Nath v. Commissioner of Income-tax, Delhi, 120 I.T.R. 14; Commissioner of Income-tax, Central, Calcutta v. National Taj Traders, 121 I.T.R. 535; and Commissioner of Income-tax, Andhra Pradesh v. Vadde Pullaiah & Co., 89 I.T.R. 240, referred to.

The facts in the instant case show that income can belong either to the bigger Hindu undivided family or to the smaller Hindu undivided family, the present assessee alongwith another smaller H.U.F. and to no one else. Therefore a finding that it belongs or it does not belong to the bigger Hindu undivided family which had disrupted on partition would determine the issue whether it could be taxed in the hands of the present assessee. Judged in the light of the test laid down in Murlidhar Bhagwan Das case and as pointed out in Rajinder Nath's case, it appears that the present assessee can be said to be a person who would be liable to be assessed for the whole or part of the income that went to the assessment of the bigger Hindu undivided family in years under appeal and is a person intimately connected with the assessments of the bigger Hindu undivided family. The income in this case cannot be the income of both bigger Hindu undivided family and the present assessee, it must be either of these two. Therefore, the directions given in the appeals filed by the bigger Hindu undivided family would be applicable to the present assessee. [111 A-D]

Commissioner of Income-tax, Gujarat v. Shantilal Punjabhai, 57 I.T.R. 58, distinguished.

Commissioner of Income-tax, Punjab, Jammu & Kashmir and Himachal Pradesh v. S. Raghubir Singh Trust, 123 I.T.R. 438 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1168-69 (NT) of 1973.

Appeal by Special leave from the Judgment and Order dated the 3rd January, 1973 of the Allahabad High Court in I. T. Ref. No. 450 of 1969.

S.C. Manchanda and M. J.P. Malhotra for the Appellant. S.T. Desai, B.B. Ahuja and Miss A. Subhashini for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. These appeals by certificate granted by the High Court of Allahabad under Section 66A(2) of the Indian Income-Tax Act, 1922, arise out of judgment delivered and order passed on 3rd January, 1973 by the High Court of Allahabad in Income-tax Reference No. 450 of 1965. The following question of law had been referred to the High Court for consideration under Section 66(1) of the Income- Tax Act, 1922 by the Appellate Tribunal, Allahabad Bench, Allahabad:

> "Whether, on the facts and in the circumstances of the case, valid assessments could be made on 31st May, 1962, for the assessment years 1948-49 and 1949-50 on the basis of voluntary returns of income filed under Section 22(1) of the Indian Income-Tax Act, 1922 on 18.11.1950?
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> The matter came up before a Division Bench of the High Court and as there was a previous bench decision of that Court in the case of Sool Chand Ram Sewak v. Commissioner of Income-tax, U.P. which supported the revenue's case and as the division bench before whom this case came was unable to accept that view, the division bench referred the case to a larger Bench. This reference thereafter came before a Full Bench consisting of Gulati, H. N. Seth & C.S.P. Singh, JJ. Gulati and C. S. P. Singh, JJ. answered the question in the affirmative in favour of the revenue and against the assessee. Seth J. however, was in favour of assessee. In view of the majority the question was answered in favour of the revenue and in affirmative.
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> Before we deal with the question in controversy, it will be necessary to note some of the relevant facts. There were originally four appeals for the assessment years 1946-47, 1947-48, 1948-49 and 1949-50. As the appeals for the assessment years 1946-47 and 1947-48 were withdrawn by the revenue, we are now concerned with appeals for the assessment years 1948-49 and 1949-50.
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> The present assessee is a branch of a bigger Hindu undivided family known as Nathu Ram Jawahar Lal, Jhansi.
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> The bigger Hindu undivided family of M/s Nathu Ram Jawahar Lal was partitioned on 19th May, 1945, and the present assessee along with another smaller H.U.F. came into existence and the said bigger H.U.F. had made a claim in respect of the partition under Section 25A of the Indian Income-Tax Act, 1922. While this claim was pending the present assessee filed voluntary returns under Section 22(1) of the Act for the assessment years 1946-47 to 1949-50 on 10th November, 1950. The said claim of partition by the bigger H.U.F. was rejected by the Income-tax Officer and also by the

Appellate Assistant Commissioner. The said H.U.F. thereafter, filed appeals to the Appellate Tribunal in respect of the order under claim of partition under Section 25A of 1922 Act which by its order dated 31st August, 1954 accepted the claim under Section 25A of 1922 Act, and the Tribunal passed orders on that basis in the appeals relating to the assessment orders in respect of the bigger H.U.F. on 28th October, 1954. The Income-tax Officer, thereafter, initiated proceedings under Section 34 of the Income-tax Act of 1922 for assessing the smaller Hindu undivided family, the present assessee in view of the fact that the claim for disruption of the bigger H. U. F. had been accepted by the Tribunal. The present assessee filed fresh returns of income on 12.4.1955 in response to notices under Section 34 of 1922 Act. The returns originally filed were under Section 22(1) and were filed on 18th November, 1950. The assessee's objection regarding the validity of the assessments being made under Section 34 on merits as well as on the point that time for making the assessment under Section 34 had already expired, were rejected by the Income- tax Officer. He, therefore, completed the assessments on 8.9.1955 under Section 23(3) read with Section 34 of the Income-tax Act, 1922. The assessee could not get any decision in his favour either from the Appellate Assistant Commissioner or from the Tribunal and being aggrieved by these orders, filed a Writ Petition to the High Court of Allahabad challenging the validity of the Appellate orders. The assessee was successful in the Writ and, therefore, the appellate orders were quashed by the High Court. The revenue having failed in its attempt to complete the assessee's assessments under Section 34, made another attempt to assess the assessee on the basis of the voluntary returns originally filed by the assessee on 18.11.1950 by relying upon the order of the Tribunal dated 28.10.1954 and invoking the provisions of 2nd proviso to Section 34(3). The said assessments which were completed on 31st May, 1962 were the subject matters of appeals before the Tribunal.

The point before the Tribunal was whether valid assessments could be made for the assessment years under consideration on 31st May, 1962 on the basis of the returns filed under Section 22(1) of the Act of 1922 on 18th November, 1950. The Appellate Assistant Commissioner by his order held that no valid assessments could be made on 31st May, 1962.

It appears that on 28th October, 1950, relating to the assessment years 1946-47 to 1949-50 in case of bigger Hindu undivided family, M/s Nathu Ram Jawaharlal, Jhansi, order was passed by the Tribunal in the appeal relating to the assessments pending before it. It should be noted that originally on the basis that the bigger H.U.F. had not been disrupted assessments for these years had been made and appeals relating to those assessments were pending before the Tribunal. The Tribunal disposed of these appeals by the order dated 28th October, 1954 and the Tribunal in the said order had observed, inter alia, as follows; "The assessments for those years were (have) necessarily to be set aside with the direction that fresh assessments should be made, one for the period 19.5.1945 upto which the Hindu undivided family was in existence and the others on the component Hindu undivided families, namely

M/s Jawaharlal Mani Ram and Bhagwan Das Sita Ram."

The Tribunal in the instant appeal out of which the reference was made to the High Court and out of which these appeals arise, after discussing the relevant facts and the provisions of law confirmed the order of the Appellate Assistant Commissioner and dismissed the appeals. As mentioned hereinbefore after the Tribunal had directed the assessments should be made on the component units of the bigger Hindu undivided family, after partition was accepted, namely, the assessee and Jawaharlal Mani Ram, the Income-tax Officer instead of proceeding on the basis of the voluntary returns already filed by the assessee proceeded to take action under Section 34(1) (b) of the Act of 1922 and completed the assessments for all the four years on September 8,1955. The assessee appealed against these assessments to the Appellate Assistant Commissioner of Income-tax, but before the appeals were taken up for hearing, the assessee moved the High Court of Allahabad under Article 226 of the Constitution. On March 30, 1960, the High Court quashed the assessment orders on the ground that as voluntary returns filed by the assessee were pending, no proceeding could be taken under Section 34 of the Act, 1922. Thereafter the Income-tax Officer initiated proceedings on the basis of the voluntary returns. The assessee again filed a writ petition praying for quashing the proceedings on the ground that revenue could not proceed against it on the basis of the voluntary returns. This petition was rejected by the High Court and thereafter the Income-tax Officer proceeded to complete the assessments under Section 23(3) and passed assessment orders on 31st May, 1962, in respect of the four years.

The first question, is, whether the assessment could be made under Section 23(3) on the basis of voluntary returns filed or action should have been taken under Section 34 with the help of the second proviso to sub-section (3) of Section

34. It is well-settled that when a return of income is filed by the assessee voluntarily under Section 22(1) of the Act, 1922, assessment proceedings commence against him and Section 34 does not come into play at all so long as the assessment proceedings remain pending. But it was contended that a return exhausted itself after the expiry of four years from the end of the assessment year to which it related. After the expiry of that period, no assessment was possible on the basis of the voluntary return. In such a case assessment was possible under Section 34, if the case was covered by the second proviso to Section 34(3).

The High Court was of the opinion that sub-section (3) of Section 34 provides a period of limitation of four years for assessment under Section 23 of the Act, 1922. If the assessment proceedings commence by filing of voluntary return, as indeed these do, on the expiry of the period of four years from the end of the year in which the income, profits or gains were first assessable, such proceedings are suspended or interrupted. But neither the proceedings nor the returns become invalid. The High Court referred to the provisions of Section 34(3) and was of the view that since the order was passed by the Tribunal giving direction, the bar or limitation was lifted and the assessments could be made without any bar or limitation. Reference was made to the decision of this Court in the case of Commissioner of Income-tax Bombay City II v. Ranchhoddass Karsondas, and in the case of Estate of the late A.M.K.M. Karuppan Chettiar v. Commissioner of Income-tax, Madras and Commissioner of Income-tax Madras v. M.K.K.R. Muthukaruppan Chettiar.

The High Court, on the basis of these decisions, was of the view that assessments could be made on the basis of voluntary returns already filed by the assessee. We are of the opinion that the High Court was right.

The next question is whether it was open to the Tribunal to give a finding or direction in respect of the present assessee. Reliance was placed on the decision of this Court in Income-tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das. There, this court after referring to the expression "any person" in the 2nd proviso of sub- section (3) of Section 34 of 1922 Act observed at page 346 of the report as follows.

> "The expression "any person" in its widest connotation may take in any person, whether connected or not with the assessee, whose income for any year has escaped assessment; but this construction cannot be accepted, for the said expression is necessarily circumscribed by the scope of the subject-matter of the appeal or revision, as the case may be. That is to say, that person must be one who would be liable to be assessed for the whole or a part of the income that went into the assessment of the year under appeal or revision. If so construed, we must turn to section 31 to ascertain who is that person other than the appealing assessee who can be liable to be assessed for the income of the said assessment year. A combined reading of section 30(1) and Section 31(3) of the Act indicates the cases where persons other than the appealing assessees might be affected by orders passed by the Appellate Commissioner. Modification or setting aside of assessment made on a firm, joint Hindu family, association of persons, for a particular year may affect the assessment for the said year on a partner or partners of the firm, member or members of the Hindu undivided family or the individual, as the case may be. In such cases though the latter are not co-nomine parties to the appeal, their assessments depend upon the assessments on the former. The said instances are only illustrative. It is not necessary to pursue the matter further. We would, therefore, hold that the expression "any person" in the setting in which it appears must be confined to a person intimately connected in the aforesaid sense with the assessments of the year under appeal."

The High Court was of the view that "any person" would include the person who would be liable to be assessed for the whole or a part of the income that went into the assessment of the year under appeal or revision. In that view of the matter, the majority judgment of the High Court on this aspect was in favour of the revenue. Then on the question whether the direction for the assessment could be given in respect of any other year, other than the year in which the partition took place, it was contended that direction could be given only for the assessment year 1946-

47. Majority judgment of the High Court found no force in that contention. As this question arose directly for the assessment years 1948-49 and 1949-50 in respect of which the appeals came before the Tribunal in which the directions had been given, the High Court was of the view that it was necessary for the Tribunal to give a finding with regard to the partition of the family and the ownership of the income in both the appeals. The Tribunal was thus competent to give the direction. In that view of the matter, the two learned judges of the Allahabad High Court were of the opinion

that assessments were valid and answered the question in favour of the revenue. Referring to the said decision which has been mentioned in the majority judgment, Seth J. however was of the view that the direction given by the Tribunal in this case did not authorise the assessment on the smaller Hindu undivided family. Seth J. was further of the view that such direction could only have been given in the year in which disruption of the bigger H.U.F. took place. In that view of the matter, Seth J. expressed dissent as mentioned hereinbefore. We are of the opinion that the majority of the learned judges of the High Court were right. Second proviso to Section 34(3) of the Indian Income-tax Act, 1922 authorised directions to be given by the Tribunal in respect of the assessee or any person beyond four years as provided in Section 34(3) of 1922 Act.

As noted before the expression "any person" in respect of whom such direction could be given was explained by this Court in Income-tax Officer, A-Ward Sitapur v. Murlidhar Bhagwandas (supra). As mentioned in the passage quoted above from the said decision, if so construed then the Court must turn to Section 31 of 1922 Act to a certain who is that person other than the appealing assessees might be affected by the orders passed by the appellate authority. Modification or setting aside of assessment made on a firm, joint Hindu family, association of persons, for a particular year may affect the assessment for the said year on a partner or partners of the firm, member or members of such Hindu undivided family or the individual, as the case might be. It was therefore argued that it was only those types of assessees mentioned by this Court in the passage noted above were the 'persons' who could be "any person" other than the appealing assessee who can be said to be liable to be assessed and in respect of whom direction might be given, otherwise such directions or provision for such directions if the provision is so read would be ultra vires article 14 of the Constitution. We must make it clear that this Court had itself made it clear categorically in the passage quoted above that the instances given in the above passage were only illustrative passage meaning thereby that the instances were not exhaustive. This Court made it clear that the expression "any person" in its widest amplitude might take in any person connected or not with the assessee, whose income for any year had escaped assessment; but this construction could not be accepted, for the said expression was necessarily circumscribed by the scope of the subject- matter of the appeal or revision, as the case might be. So therefore the person must be one who would be liable to be assessed for the whole or any part of the income that went into assessment of the year under appeal or revision (Emphasis supplied). Therefore, this Court observed that "any person" in sub-section (3) of Section 34 must be confined to a person intimately connected in the aforesaid sense with the assessments of the years under appeal.

Reference may be made to the decision of this Court in the case of Rajinder Nath v. Commissioner of Income-tax, Delhi, where the I.T.O. treated two buildings as belonging to a firm comprised of a father and his two major sons as partners and in the assessments on the firm for the assessment years 1955-56 and 1956-57 and he estimated the cost of construction of the buildings at a higher figure than that disclosed and brought to tax the excess as income in the hands of the firm. On appeal, the A.A.C. found that the money advanced for the construction of the buildings had been debited in equal shares to the father and two major sons and a minor son and held that the firm was not the owner of the properties and delected the addition. The A.A.C. also observed that the I.T.O. was free to take action to assess the excess in the hands of the co-owners. The I.T.O. thereupon issued notices under Section 147(a) of the I.T. Act, 1961 and reopened the assessments of the

individual assessees (the co-owners) and included therein the proportionate shares of the additions on account of the estimated excess of the cost of construction. On appeal, the A.A.C. held that Section 147(a) could not apply but upheld the assessments under Section 153(3) (ii) of 1961 Act. On further appeal, the Tribunal held that Section 153(3) (ii) could not apply because there was neither a finding nor a direction in the earlier order of the A.A.C. and further that A.A.C. could not convert the assessments made under Section 147(a) into those under Section 153(3) (ii). On a reference of the questions, (i) whether the A.A.C. was justified in holding that the provisions of Section 147(a) were not applicable, and (ii) whether the provisions of Section 153 (3) (ii) were not applicable, the High Court held that the provisions of Section 153(3) were applicable observing that the A.A.C's finding that the properties did not belong to the firm and, therefore, the excess amount of the cost of construction could not be regarded as the income of the firm was a finding which was necessary for the disposal of the firm's appeal and as a corollary it was held that the buildings belonged to the co-owners and this necessitated the "direction" to the I.T.O. that he was free to assess the excess in the hands of the co-owners. Dealing with this contention, Pathak J. who delivered the judgment of this Court observed at page 20 of the report:

> "The expression "another person" in the Expln. would include persons intimately connected with the person in whose case the order is made in the sense explained by this Court in Murlidhar Bhagwan Das (1964) 52 ITR 335 (SC). It is one thing for the partners of a firm to be required to explain the source of a receipt by the firm, it is quite another for them in their individual status to be asked to explain the source of amounts received by them as separate individuals. On such opportunity being provided it would have been open to the assessees to show that the excess alleged over the disclosed cost of construction did not constitute any taxable income. The finding contemplated in Expln. 3, it will be noted, is a finding that the amount represents the income of another person."

In the instant case before us, applying the test observed in that case this was a case where the facts showed that income can belong either to the bigger Hindu undivided family or to the smaller Hindu undivided family, the present assessee along with another smaller H.U.F. and to no one else. Therefore a finding that it belongs or it does not belong to the bigger Hindu undivided family which had disrupted on partition would determine the issue whether it could be taxed in the hands of the present assessee. Judged in the light of the test laid down in Murlidhar Bhagwan Das (supra) and as pointed out in Rajinder Nath's case, it appears to us that the present assessee can be said to be a person who would be liable to be assessed for the whole or part of the income that went to the assessment of the bigger Hindu undivided family in years under appeal and is a person intimately connected with the assessments of the bigger Hindu undivided family. The income in this case cannot be the income of both bigger Hindu undivided family and the present assessee, it must be either of these two. We are, therefore, of the opinion that directions given in the appeals filed by the bigger Hindu undivided family would be applicable to the present assessee.

On behalf of the assessee it was contended that only the categories of persons referred to in Sections 30(1) and 30(3) of 1922 Act would be governed by the said expression "any person"

> Sub-section (3) of Section 31, inter alia, authorises the Appellate Assistant Commissioner in case of an order cancelling registration of a firm under sub-section (42) of Section 23 or refusing to register a firm under sub-section (4) of Section 23 or Section 26A or to make fresh assessment or to confirm such order, or cancel it and direct the Income-tax officer to register the firm or to make a fresh assessment, as the case may be, or in the case of an order under sub-section (2) of Section 25 or sub-section (1) of Section 23A or sub-section (2) of Section 26 or Section 48, 49 or 49F, confirm cancel or vary such order. It also authorises in case of an order under sub-section (1) of Section 25A to confirm such order or cancel it and either direct the Income-tax officer to make further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of section 25A. The other cases were cases of orders under Section 28 or sub-section (6) of Section 44E or sub-section (5) of Section 44F or sub-section (1) of Section 46, or in case of an appeal against a computation of loss under Section 24, confirm or vary such computation, or in case of an appeal under sub-section (1A) of Section 30 decide that the person is or is not liable to make the deduction and in the latter case direct the refund of the sum paid under sub-

section (6) of Section 18.

While on these provisions it is material to refer to sub-section (4) of Section 33 which authorises the Tribunal after giving both parties an opportunity of being heard to pass such orders thereon as it thinks fit and to communicate any such orders to the assessee and to the Commissioner.

The contention on behalf of the assessee is that though the Appellate Tribunal has wide powers as indicated in sub- section (4) of Section 33 but the amplitude of that power is curtailed by other provisions. It was contended that read with sub-section (3) of Section 34, as assessment order could not be passed after the expiry of four years from the end of the year in which the income, profits or gains were first assessable and is view of the fact that here in the instant case voluntary returns for the years under question had been filed by the assessee within time, after four years no direction could be given by the Tribunal. It was, secondly, contended that the present smaller Hindu undivided family was not intimately connected with the assessment of the bigger Hindu undivided family as contemplated by the observations of this Court in Income-tax Officer v. Murlidhar Bhagwan Das (supra), this direction was of no use and the assessment made on the basis of this direction cannot be availed of.

We are unable to accept this contention. Firstly it must be observed that the Tribunal passed the orders and gave its direction in respect of the years concerned. These years were the subject matters of appeal before the Tribunal in the case of bigger H.U.F. It was contended that these direction were given subsequent to the order under Section 25A and could not affect position thereafter. We are a unable to accept this position also. As mentioned hereinbefore, the order under Section 25A was passed in August, 1954. The bigger Hindu undivided family had applied for order under Section 25A regarding the disruption of the Hindu undivided family, the Income-tax Officer rejected that prayer. The assessee appealed therefrom. In August, 1954, this order was set aside by the Tribunal and it

was held that the bigger Hindu undivided family had been disrupted. In as much as the income liable to be assessed on the smaller Hindu undivided family would arise only on the disruption of the larger Hindu undivided family, this direction was proper. The order under Section 25A declares the status of the family and the smaller Hindu undivided family became liable to be assessed as a result of disruption of the bigger Hindu undivided family. The assessment orders however were passed based on the previous order under section 25A but these orders were passed for all these four years and the assessments under appeal for all these four years were pending before the Tribunal in disposing of which the Tribunal gave the direction to make the assessments on the smaller Hindu undivided family. Therefore no question arises as to whether for subsequent periods directions could have been given. This is a direction clearly within the contemplation of sub- section (3) of Section 34. Secondly, we are of the opinion that the smaller Hindu undivided family is one of the persons which was clearly contemplated by sub-section (3) of Section 34 in the facts and circumstances of this case. The assessability of income and the quantum of the same of the present assessee was linked up with the assessability of the bigger Hindu undivided family if the bigger Hindu undivided family was liable to be assessed if there was no disruption then there was no income of the smaller Hindu undivided family. The income in the hands of smaller Hindu undivided family could then not have been liable to be assessed. I on the other hand it was the other way that there was a valid partition, the bigger Hindu undivided family no longer existed and the smaller Hindu undivided family would be liable to be assessed. From that point of view it clearly comes within the ratio of the observation of this Court in Income-tax officer v. Murlidhar Bhagwan Das (supra). Further more looked at from another point of view, though the Karta represented the bigger Hindu undivided family, all the members of the bigger Hindu undivided family, including those who were members of the smaller Hindu undivided family were parties though not oe nomine for all practical purposes, because they were liable as members of the family for the amount assessed. In that view of the matter, we are of the opinion that this direction was quite valid and would be applicable.

The observations of this Court in the case of Commissioner of Income-tax Central, Calcutta v. National Taj Traders are in consonance with the conclusions reached by us. Tulzapurkar, J. explained in the said decision the situations in which directions could be given under Section 33B of the Income-tax Act, 1922 where there was no express provision like sub-section (3) of Section 34. In our opinion in the facts of this case, the present assessee can be said to be "any person" as indicated in Murlidhar Bhagwan Das (supra) in Section 34(3) of 1922 Act.

The view taken by us is also in consonance with the observation of this Courts in the case of Commissioner of Income-tax, Andhra Pradesh v. Vadde Pullaiah & Co.1 Reference was also made to a Bench decision of the Bombay High Court in the case of Mathuradas B. Mohta v. Commissioner of Income-tax, Poona, and a decision of this Court in the case of Commissioner of Income-tax, U.P. v. Mohd. Shakoor Mohd. Bashir. But in view of the facts and circumstances of the instant case before us, it is not necessary to deal with the said decisions.

On behalf of the assessee, reliance was placed on a decision of the Division Bench of Gujarat High Court in the case of Commissioner of Income-tax, Gujarat v. Shantilal Punjabhai. There an individual Shantilal was a member of the Hindu undivided family and also a partner of a firm. The

Income-tax officer found that the assessee was the nominee of the Hindu undivided family in the said firm, and, therefore, included the share of profits the assessee in the said firm, in the total income of the Hindu undivided family.

The decision proceeded on the basis that the Income-tax Act did not contemplate two different assessees in the same assessment year for the same taxable income. In that case the assessee was also an assessee in his own right. In that case the Court had observed at page 80 of the report that there were two separate and distinct assessment proceedings, one in respect of the assessee in his status as an individual and the other in respect of the Hindu undivided family. The assessment proceedings in respect of the assessee, Shantilal, were in respect of his income arising from his self-acquired and separate property. The assessment proceedings against the Hindu undivided family, were proceedings against the entire entity, and though the assessee, Shantilal, was a member of the family, the assessment was on the income derived by the Hindu undivided family from the property or business of the said Hindu undivided family. In that assessment, the income accruing and arising from the separate property of the assessee, Shantilal could not be assessed, as the business carried on by the asseseee, Shantilal, was not the business of the Hindu undivided family. The Income-tax Officer held that Shantilal was the nominee of the Hindu undivided family, meaning thereby that the business belonged to the Hindu undivided family and it was that conclusion of the Income-tax officer which was reversed by the Tribunal. The Tribunal holding that the revenue had failed to prove that the assessee, Shantilal was the nominee of the family, in other words, that the income arising from the firm's business was the income of the Hindu undivided family. The direction given by the Tribunal was on the question which was between the revenue and the Hindu undivided family and the only finding that could be given by the Tribunal was between the two parties, namely, the Hindu undivided family and the revenue and not between the revenue and the assessee. Shantilal, who was not an assessee nor a party to those assessment proceedings. Therefore, if any action had to be taken in consequence of the finding or the direction given by the Tribunal, that action could be taken not against the assessee, Shantilal, but against the Hindu undivided family. As would be apparent, the facts of that case were entirely different.

Here in the instant case the proceeding against the assessee in the present case could be taken only if there was disruption of the Hindu undivided family. Therefore in the assessment of Hindu undivided family. viz. if the bigger Hindu undivided family was considered to be an existing entity then in such a case the assessment against the present assessee could not be sustained. If on the other hand the assessment on the bigger H.U.F. could not be sustained because there was disruption of the family as contended for by the bigger Hinud undivided family then only the present assessee could be assessed. In that view of the matter, we are of opinion that the present assessee can be said to be. a person other then the appealing assessee would be affected by the order concerned and would come within the meaning of "any person" as explained by this Court in the case of Income-tax officer v. Murlidar Bhagwan Das (supra).

Decision of this Court in the case of Commissioner of Income-tax, Punjab, Jammu & Kashmir and Himachal Pradesh v. S. Raghubir Singh Trust was relied on behalf of the assessee. There the res-

pondent trust created by R. filed its return of income for the assessment year 1954-55. Holding that the trust was invalid, the Income-tax officer assessed the income of the trust in the hands of R.R. carried the matter in appeal and other proceedings and ultimately the High Court held that the trust was valid and the income was the income of the trust and not of R. The I.T.O. issued a notice on 19th September, 1961, under Section 34(1)(b) of the Indian I.T. Act, 1922, to reopen the assessment of the trust. The trust claimed that the notice was barred by limitation. The Tribunal accepted the claim and held that trust was a stranger to the proceedings for the assessment of R and the second proviso to Section 34(3) did not save the reassessment proceedings initiated against the trust from the bar of limitation and the High Court, on a reference, agreed with the Tribunal. On appeal to this Court it was held, affirming the decision of the High Court, that even though the finding of the High Court that the income belonged to the trust and not to R was a finding necessary for disposing of the reference in favour of R and it was a "finding", but the trust was a stranger to the assessment proceedings of R. and not "any person" within the meaning of the second proviso to Section 34(3) and, therefore, the second proviso to Section 34(3) was not attracted and the reassessment proceedings against the trust were barred by time. That decision must be understood in the facts of that case. The settler and the trust cannot be said so intimately connected as to come within the ratio of Murlidhar Bhagwan Das's case. The Court found that assessee trust could not be said to be intimately connected with the assessment of Raghubir Singh. As a result of the trust deed failing, there may be numerous situations viz., there might be resulting trust or it might be that the trust property would go to other beneficiaries. It is not necessary for us to explore or explain those possibilities. But in the facts of this case, we are of the opinion that whether the income of the smaller Hindu undivided family, namely the present assessee is liable to be taxed is so intimately or inextricably linked up with the question of assessability of bigger Hindu undivided family, which again is dependent upon the question whether there was disruption of bigger Hindu undivided family and that being the very subject-matter of appeals in the four years in which this direction had been given, we are of the opinion that directions given in this case are valid and would save the assessments against the assessee for the two years in question.

In the aforesaid view of the matter, we are of the opinion that the majority of the learned judges of the High Court were right in their conclusions and the question was correctly answered by the majority of the learned judges of the High Court. The appeals therefore fail and are dismissed with costs.

H.S.K. Appeals dismissed.