Kapurchand Shrimal vs Commissioner Of Income Tax, Andhra ... on 28 August, 1981

Equivalent citations: 1981 AIR 1965, 1982 SCR (1) 505, AIR 1981 SUPREME COURT 1965, 1981 TAX. L. R. 1468, 1981 24 CURTAXREP 345 (SC), (1981) 131 ITR 451, 1981 (4) SCC 317

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, P.N. Bhagwati

PETITIONER:
KAPURCHAND SHRIMAL

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, ANDHRA PRADESH, HYDERABAD

DATE OF JUDGMENT28/08/1981

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
BHAGWATI, P.N.

CITATION:
1981 AIR 1965 1982 SCR (1) 505
1981 SCC (4) 317 1981 SCALE (3)1330

ACT:
Income Tax Act, 1922 , section 25A, scope of-Whether an order of assessment passed under the Indian Income Tax Act, 1922 by the Income Tax Officer in the case of a Hindu undivided family without holding an inquiry into the validity of the claim made within a reasonable time by a member of the Hindu undivided family that a partition had taken place among the members of the family is liable to be merely cancelled in appeal by the Income-tax Appellate Tribunal without a further direction to the assessing authority either to modify the assessment suitably or to pass a fresh order of assessment in accordance with law.

HEADNOTE:
The assessee is a Hindu undivided family and the

assessment years are 1955-56 and 1957-58 to 1961-62. The assessee addressed on October 10, 1960 to the Income-tax Officer in connection with a notice received under section 18A(1) of the Act in respect of the assessment year 1961-62 stating that all the movable and immovable properties of the assessee had been partitioned by metes and bounds under partition deeds and that the Hindu undivided family was no longer receiving any income as such and there was therefore no question of payment of any advance tax by it. A specific request to record the factum of the partition for that purpose of the Act effective from July 10, 1960 was also prayed for. This was followed by another letter on June 16, 1961 by M/s. S.G. Dastagir and Co. On behalf of the assessee in connection with advance tax demanded for the assessment year 1962-63 with a similar request. Before fresh assessments were completed for the years 1955-56, 1957-58 and 1958-59 as per the orders of the Appellate Assistant Commissioner dated February 24, 1962 a third letter dated March 11, 1962 was addressed to the same Income-tax Officer with a similar request for recording the factum of partition. Another letter dated March 21, 1962 was addressed by M/s. S.G. Dastagir & Co. reminding the Income-tax Officer of the earlier letters of October 10, 1960 and June 16, 1961.

The assessment for the years 1955-56 to 1958-59 were, however, completed between August 21, 1962 and March 27, 1963 without holding any inquiry as contemplated by section 25A of the 1922 Act regarding the factum of partition. The Income-tax Officer thereafter started an inquiry under section 25A and by his order dated March 30, 1965 refused to record the partition. On appeal against the refusal the Appellate Assistant Commissioner by his order dated November 8, 1967 set aside the said order and directed the Income-tax Officer to record the partition under section 25A as on July 10, 1960. That order became final as an appeal was filed against it by the Revenue. In the appeals filed before the Assistant Appellate Commissioner against the assessment orders for the years in question, that is, 1955-56 and 1957-58 to 1961-62 the assessee con-

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tended that the assessments were liable to be set aside on the ground that the inquiry into the claim of partition which was a condition precedent for making an order of assessment on the Hindu undivided family had not been made as required by section 25A of the Act. The Appellate Assistant Commissioner rejected the said contention, but the appeals preferred before the Tribunal were allowed. The Tribunal cancelled the assessments without any directions to make fresh assessments. At the instance of the Revenue a reference was made by the Tribunal to the High Court of Andhra Pradesh under section 66(1) of the Act. The High Court answered the reference in favour of the Revenue and hence the appeals.

Allowing the appeals, the Court

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HELD: (1) Under section 25A of the 1922 Act the Income-tax Officer was bound to hold an inquiry into the claim of partition if it is made by or on behalf of any member of the Hindu undivided family which is being assessed hitherto as such and record a finding thereon. If no such finding is recorded sub-section (3) of section 25A of the Act becomes clearly attracted. When a claim is made in time and the assessment is made on the Hindu undivided family without holding an inquiry as contemplated by section 25A(1), the assessment is liable to be set aside in appeal as it is in clear violation of the procedure prescribed for that purpose, [517 A-C]

Kalwa Devadattam and two Ors. v. The Union of India and Ors., [1964] 3 S.C.R. 191; Additional Income-tax Officer, Cuddapah v. A. Thimmayya & Anr., (1965) 55 I.T.R. 666 and Karri Ramkrishna Reddy v. Tax Recovery Officer, Vijayawada, (1973) 87 I.T.R. 86, discussed and distinguished.

(2) The duty of the Tribunal does not end with making declaration that the assessments are illegal and it is duty bound to issue further directions. The appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute. The statute does not say that such a direction cannot be issued by the appellate authority in a case of this nature. [517 D-E]

In the instant case, however, since it is not established that the claim was a belated one the proper order to be passed is to set aside the assessments and to direct the Income-tax Officer to make fresh assessments in accordance with the procedure prescribed by law. The Tribunal, therefore, erred in merely cancelling the assessment orders and in not issuing further directions. [517 G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1286- 1291 of 1973.

Appeals by certificate from the judgment and order dated the 30th June, 1972 of the Andhra Pradesh High Court at Hyderabad in Referred Case No. 5 of 1971.

A. Subba Rao for the Appellant.

S.C. Manchanda, and Miss A. Subhashini, for the Respondent.

The Judgment of the Court was delivered by VENKATARAMIAH, J. The only question which arises for consideration in these six appeals by certificate is whether an order of assessment passed under the Indian Income-tax Act, 1922 (hereinafter referred to as 'the Act') by the Income-tax Officer in the case of a Hindu undivided family without holding an inquiry into the validity of the claim made within a reasonable time by a member of the Hindu family that a partition had taken place among the family is liable to be merely cancelled in appeal by the Income-tax Appellate Tribunal (for short, 'the Tribunal') without a further direction to the assessing authority either to modify the assessment suitably or to pass a fresh order of assessment in accordance with law.

The assessee is a Hindu undivided family and the assessment years are 1955-56 and 1957-58 to 1961-62. An assessment order made on May 30, 1959 in respect of the assessment year 1955-56 had been set aside by the Appellate Assistant Commissioner on February 24, 1962 with a direction to make a fresh assessment. When fresh assessment proceedings were commenced pursuant to the above said direction in respect of the assessment year 1955-56,, the assessment proceedings for the assessment years 1957-58 and 1958-59 were also taken up. Earlier a letter had been addressed on October, 10, 1960 by Kapurchand Shrimal to the Income-tax Officer in connection with a notice received by the assessee under section 18A (1) of the Act in respect of the assessment year 1961-62 stating that all the movable and immovable properties of the assessee had been partitioned by metes and bounds under partition deeds and that the Hindu undivided family (the assessee) was no longer receiving any income as such and there was therefore no question of payment of any advance tax by it. The second para of that letter contained a specific request to record the factum of the partition for the purpose of the Act. Again on June 16, 1961 M/s S.G. Dastagir and Co. addressed a letter on behalf of the assessee in connection with advance tax demanded for the assessment year 1962-63, the second para of which contained a similar request for recording the factum of partition. Before the fresh assessments were completed for the three years referred to above a third letter dated March 11, 1962 was addressed to the same officer who received it on the next day itself in which again there was a claim made regarding the partition. But this letter however was written specifically in respect of the assessment year 1957-58. On March 21, 1962, M/s S.G. Dastagir too addressed a further letter to the Income-tax Officer reminding him of the earlier letters of October 10, 1960 and June 16, 1961 and that letter stated:

> "Apart from these letters the matter has been discussed with you on a number of occasions personally during the course of the assessment proceedings of the year 1957-58 and your attention has already been drawn to the facts that an order under section 25A has to be passed before the completion of the assessment for the year 1957-58. The letter dated 11th March, 1962 was addressed to you by the assessee only when it was gathered that you were going to pass the assessment order for the year 1957-58 without making the contemplated enquiry under section 25A."

The assessments for the years 1955-56 to 1958-59 were however completed between August 31, 1962 and March 27, 1963 without holding an inquiry as contemplated by section 25A of the Act regarding the factum of partition. The Income-tax Officer, thereafter started an inquiry under section 25A and by his order dated March 30, 1965 refused to record the partition. On appeal the Appellate Assistant Commissioner by his order dated November 8, 1967 set aside the said order and directed the

Income-tax Officer to record the partition under section 25A as on July 10, 1960. That order became final as no appeal was filed against it by the Department.

It should be stated here that the Income-tax Officer passed assessment orders against the assessee for the assessment years 1959-60, 1960-61 and 1961-62 on March 26, 1964, March 30, 1965 and March 26, 1966 respectively before the Appellate Assistant Commissioner held that the partition had taken place on July 10, 1960.

In the appeals filed before the Appellate Assistant Commissioner against the assessment orders for the years in question i.e. 1955-56 and 1957-58 to 1961-62 it was contended that the assessments were liable to be set aside on the ground that the inquiry into the claim of partition which was a condition precedent for making an order of assessment on the Hindu undivided family had not been made as required by section 25A of the Act. The Appellate Assistant Commissioner rejected the above contention. The assessee there upon filed appeals before the Tribunal against the orders of the Appellate Assistant Commissioner and one question which was A common to all the appeals that was urged before the Tribunal was about the validity of the assessment made against the assessee (Hindu undivided family) without holding an inquiry regarding the claim of partition before the assessment proceedings were completed. While the assessee contended that the assessments were liable to be cancelled on account of the non-compliance with the mandatory provisions of section 25A of the Act it was urged on behalf of the Department that in fact there was no violation at all of section 25A and even if it was held that there was any such violation the proper order to be passed was either to direct the Income-tax officer to give effect to section 25A (2) of the Act without cancelling the assessments made on the assessee or to set aside the assessments with a direction to the Income-tax Officer to pass fresh orders of assessment. On a consideration of the submissions made by the parties, the Tribunal came to the conclusion that the assessments which had been made without holding an inquiry into the claim of partition as required by section 25A of the Act were illegal and void Accordingly it cancelled the assessments and added 'We do not consider it necessary to direct fresh assessments. It would be open to the Income-tax Officer to do so if the law otherwise so permits.' Thereafter at the instance of the Revenue a reference was made by the Tribunal to the High Court of Andhra Pradesh under section 66(1) of the Act in all the cases for a decision on the following question:

> "Whether on the facts and in the circumstances of the case, the assessments made by the Income-tax Officer on the Hindu undivided family of Shri Kapurchand Shrimal for the years under reference without passing an order under section 25A were valid ?"

We are not concerned in these appeals with another question arising out of the assessment order made for the year 1958-59 which was also referred alongwith the above common question.

The High Court after hearing the learned counsel for the parties answered the common question which arose in all the appeals stating that the assessment made by the Income- tax Officer without passing the order under section 25A on the claim of partition were valid but only required modification and directed the Tribunal while giving effect to the order of the High Court to direct

the Income-tax Officer to modify the assessments in the light of section 25A (2) of the Act. Aggrieved by the decision of the High Court the assessee has filed these appeals.

Section 25A of the Act which arises for consideration in these cases reads thus:

> "25A. Assessment after partition of a Hindu undivided family-(1) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make such inquiry thereinto as he may think fit, and, if he is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect:
>
> Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.
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> (2) Where such an order has been passed, or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last day on which it carried on such business, profession or vocation, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no partition had taken place, and each member or group of members, shall in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it; and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23;

Provided that all the members and groups of members whose joint family property has been partitioned shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.

(3) Where such an order has not been passed in respect A of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family.

A Hindu undivided family is an entity which is treated as an assessee for the purposes of the Act. In the Act as it was originally passed there was no effective machinery to assess the income which was received by a Hindu undivided family during an accounting year but was no longer in existence as such at the time of assessment. By reason of section 14(1) of the Act which provided that no tax would be payable by an assessee in respect of any sum which he received as a member of a Hindu undivided family, there was further difficulty in subjecting such income tax. Section 25A was, therefore, enacted to get over these difficulties by providing for a special procedure to be followed in

a case where a claim was made that there has been a partition satisfying the tests laid down in that section. Sub-section (3) of section 25A of the Act provides that a Hindu undivided family which is being assessed as such shall be deemed for the purposes of the Act to continue to be a Hindu undivided family until an order is passed under sub-section (1) of section 25A that a partition has taken place among the members of the family as stated therein. Sub-section (1) of section 25A provides that if at the time of making as assessment a claim is made by or on behalf of any member of a Hindu undivided family which is being assessed till then as undivided that a partition has taken place among the members of such family, the Income-tax officer shall make such inquiry there into as he may think fit and if he is satisfied that the joint family property has been partitioned among the various members groups of members in definite portions he shall record an order to that effect. Such order can however be made only after notices of the inquiry have been served on all the members of the family. It may be noted that sub-section (I) of section 25A does not actually prescribe the form in which such a claim can be made. It does not also state the specific stage of the assessment proceedings when such claim should be made. Sub- section (2) of section 25A of the Act provides that where an order is passed under sub-section (1) thereof recording the partition or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family where joint family property has been partitioned on or after the last day on which it carried on such business, profession or vocation the Income-tax officer shall make an assessment of the total income received by or on behalf of the joint family as such as if no partition had taken place and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding any thing contained in sub-section (section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it. The Income-tax officer is further authorised to make assessments accordingly on various members and groups of members in accordance with section 23 of the Act. By virtue of the proviso to sub- section (2) of section 25A of the Act the liability which so long as an order was not recorded under sub-section (I) of section 25A was restricted to the assets of ., the Hindu undivided family is transformed when such an order is recorded into the personal liability of the members for the amount of tax due by the family.

In these appeals there is a finding of fact recorded by the Tribunal that a proper and valid request for recording a partition had been made as far back as October 10, 1960. The first of the assessment orders impugned in these appeals was passed on August 31, 1962 by the Income-tax officer and the other assessment orders were passed subsequently. It is not shown that the Income-tax officer before whom the claim of partition had been made on October 10, 1960 had not got reasonable time to inquire into the claim and then to make the assessment orders on the basis of the finding on the question of partition. Admittedly all the orders of assessment were passed against the assessee (Hindu undivided family) before holding an inquiry as required by section 25A (I) of the Act into the claim of partition. In fact the Income-tax officer refused to record the partition only on March 30, 1965 but in appeal the Appellate Assistant Commissioner held that a partition had taken place as on July 10, 1960 by his order dated November 8, 1967 and that order had become final. The questions for consideration are whether under these circumstances the orders of assessment can be treated as valid orders and if they are not whether the Income-tax officer can be directed by the appellate authority to pass fresh orders of assessment in accordance with law.

The first decision relied on by the assessee is Kalwa Devadattam and two ors. v. The Union of. India and ors.(l) That was a case arising out of a suit in which the validity of certain assessment Orders passed against a Hindu undivided family under the Act and A the proceedings instituted to recover the amounts payable under these assessment orders by sale of certain properties had been questioned. The plaintiffs in that suit were the sons of one Nagappa. Nagappa and the plaintiffs who formed a Hindu joint family had carried on business and the said family had been assessed to tax under the Act. When proceedings were instituted to recover the dues under the assessment orders for the sale of some properties, the plaintiffs filed the suit contending that some of the properties could not be sold as they were their separate properties and the remaining properties could not be sold as they had been allotted to them on partition of the joint family estate on March 14, 1947 before the orders of assessment were made by the income-tax authorities. The claim of the plaintiffs based on the ground of non- compliance with section 25A of the Act was rejected by this Court with these observations:-

> "It may be assumed that by this statement within the meaning of section 25A it was claimed "by or on behalf of any member of a Hindu family hitherto assessed as undivided" that a partition had taken place among the members of his family and that the Income-tax officer was bound to make an inquiry contemplated by section 25A. But no inquiry was in fact made and no order was recorded by the Income-tax officer about the partition: by virtue of sub-s. (3) the Hindu family originally assessed as undivided had to be deemed for the purposes of the Act to continue to be a Hindu undivided family. If by the assessment of the family on the footing that it continued to remain undivided Nagappa or his sons were aggrieved their remedy was to take an appropriate appeal under s. 30 of the Indian Income-tax Act and not a suit challenging the assessment. The method of assessment and the procedure to be followed in that behalf are statutory, and any error or irregularity in the assessment may be rectified in the manner provided by the statute alone, for s. 67 of the Indian Income-tax Act bars a suit in any Civil Court to set aside or modify any assessment made under the Act. The Income-tax officer made the assessment of tax under the Act. Granting that he committed an error in making the assessment without holding an inquiry into the partition alleged by Nagappa, the error could be rectified by resort to the machinery provided under the Act and not by a suit in a Civil Court."

This Court dismissed the suit against the Revenue on three independent grounds: (1) the suit which was in substance one for setting aside an assessment was in law not maintainable because of s. 67 of the Act; (2) that in the absence of an order under s. 25A (1 assessment of the Hindu joint family was properly made; and (3) even if an order recording partition was made the liability of the plaintiffs to pay income tax assessed on the family could still be enforced against them jointly and severally under s. 25A (2) proviso. The above case was not obviously one in which an order of assessment which had been passed contrary to section 25A of the Act had been challenged in an appeal under the Act.

The next case relied on by the assessee is Additional Income tax officer, Cuddapah v. A. Thimmayya & Anr.(l) There again the question raised was a different one although some of the material facts

were similar to the facts in these appeals. The facts there were those: Krishnappa and his two sons Thimmayya and Venkatanarsu constituted a Hindu undivided family which had carried on some business during the previous years corresponding to assessment years 1941-42 to 1946-47. When the assessment proceedings for these years were pending, on May 20, 1946 Venkatanarsu claimed before the 'Income-tax officer that the property of the family had been partitioned among the members of the family in definite portions. The said claim was not disposed of till June 30, 1952. In the meanwhile assessments for the five years in question were completed between September 30, 1948 and November 30, 1950 resulting in a tax liability of Rs. 67,750/- in the aggregate for the five years. Appeals were preferred against the said orders of assessment but in the appeals it was not contended that the orders were illegal as no inquiry had been made as contemplated in section 25A (1). The appeals were unsuccessful. On June 30, 1952, the Income- tax officer made an order under section 25A recording that a partition had taken place on November 2, 1946. As the tax due was not paid the Income-tax officer made the order under section 46(S) of the Act on June 25, 1958 calling upon the managing director of a private limited company which had taken over the business of Krishnappa and his two sons not to pay the salaries payable to Thimmayya and Venkatanarsu by the company and to pay it to the credit of Government of India towards the payment of arrears of income-tax referred to above. Thimmayya and Venkatanarsu questioned that order before the High Court under A Article 226 of the Constitution. The High Court held that the order on the claim made under section 25A(I) on June 30, 1952, was given "a clear retrospective operation", and the Income-tax officer was bound "to give effect to that order recognising the partition and to follow up the consequences which flowed from the order". In the view of the High Court, the petitioners were entitled to insist upon an order for apportionment under section 25A (2) and without such an order, proceedings for collection of tax could not be commenced against them under the proviso to sub-section (2) of section 25A. On appeal this Court held that because prior to the orders of assessment there was no order recording that the property of the family had been partitioned among the members of the family no personal liability of the members arose under the proviso to section 25A (2) to pay the tax assessed thereunder and the remedy of income-tax authorities was to proceed against the property, if any, of the Hindu undivided family. It was therefore held that the Income-tax officer was not competent to make the order under section 46 (5) directing the company to withhold the tax from the salaries payable to Thimmayya and Venkatanarasu. The relevant observations of this Court are these:-

> "In the present case no orders were recorded by the lncome-tax officer at the time of making assessments in respect of the five years, and therefore no personal liability of the members of the family arose under the proviso to sub-section (2). The Income-tax officer does not seek to reach in the hands of Thimmayya and Venkatanarsu the property which was once the property of the Hindu undivided family: he seeks to reach the personal income of the two respondents. That the Income-tax officer could do only if by virtue of the proviso to sub-section (2) a personal liability has arisen against them. In the absence of an order under sub-section (1), however, such a liability does not arise against the members of the Hindu undivided family, even if the family is disrupted. We are therefore of the view, but not for the reasons mentioned by the High Court, that because there has been before the orders of assessment no order recording that the property of the family has been partitioned

> among the members, the two respondents are not personally liable to satisfy the tax due by the joint family. The remedy of the income-tax authorities, in the circumstances of the case, was to proceed against the property, if any, of the Hindu undivided family. That admittedly they have not done."

It will be seen that in this case no question was raised as to whether the assessment orders were void as they were passed without holding an inquiry as required by section 25A (I) of the Act. The only question was whether in the absence of an order under section 25A (1), any personal liability can be enforced against the members of the joint family.

Strong reliance is, however, placed on behalf of the assessee on the decision of the Andhra Pradesh High Court in Karri Ramakrishna Reddy v. Tax Recovery officer, Vijayawada(') which involved the interpretation of section 171 of the Income-tax Act, 1961, which, in so far as the question involved in these appeals is concerned, contains similar provisions. In that case a person who was a member of a Hindu undivided family questioned in a proceeding under Article 226 of the Constitution an assessment made against the Hindu undivided family after it had been partitioned without holding an inquiry as required by section 1.71 (2) of the Income-tax Act, 1961 even when a claim of partition had been made by his father in the assessment proceedings. The petitioner therein con tended that such an order would not be binding upon the other members of the family. The High Court accepted the contention of the petitioner therein and held that the assessment order could not be enforced against him. This again is a case where the validity of the assessment order had been questioned not in an appeal filed against it but in a separate proceeding. The observations made therein may not, therefore, be of much assistance to the assessee because we are concerned in these appeals with the powers of the appellate authority where appeals are filed against the assessment orders themselves contending that there has been non-compliance with section 25A(I). Moreover it appears that certain observations made in that case in respect of the decision of this Court in Additional Income-tax officer, Cuddapah v. A. Thimmayya & Anr.(2) and the Full Bench decision of the Andhra Pradesh High Court in Commissioner of Income-tax v. Tatavarthy Narayanamurthy (3) need further examination. We refrain from expressing any opinion on the correctness of this decision which does not even appear to have been cited before the High Court when the reference out of which these appeals arise was argued.

From a fair reading of section 25A of the Act it appears that the Income-tax officer is bound to hold an inquiry into the claim of partition if it is made by or on behalf of any member of the Hindu undivided family which is being assessed hitherto as such and record a finding thereon If no such finding is recorded, sub-section (3) of section 2SA of the Act becomes clearly attracted. When a claim is made in time and the assessment is made on the Hindu undivided family without holding an inquiry as contemplated by section 25A (1), the assessment is liable to be set aside in appeal as it is in clear violation of the procedure prescribed for that purpose. The Tribunal was, therefore, right in holding that the assessments in question were liable to be set aside as there was no compliance with section 25A (l) of the Act. It is, however, difficult to agree with the submission made on behalf of the assessee that the duty of the Tribunal ends with making a declaration that the assessments are illegal and it has no duty to issue any further direction. It is well known that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to

issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute. The statute does not say that such a direction cannot be issued by the appellate authority in a case of this nature. In interpreting section 25A (l) we cannot also be oblivious to cases where there is a possibility of claims of partition being made almost at the end of the period within which assessments can be completed making it impossible for the Income-tax officer to hold an inquiry as required by section 25A (1) of the Act by following the procedure prescribed therefor. We, however, do not propose to express any opinion on the consequence that may ensue in a case where the claim of partition is made at a very late stage where it may not be reasonably possible at all to complete the inquiry before the last date before which the assessment must be completed. In the instant case, however, since it is not established that the claim was a belated one the proper order to be passed is to set aside the assessments and to direct the Income-tax officer to make fresh assessments in accordance with the procedure prescribed by law. The Tribunal, therefore, erred in merely cancelling the assessment orders and in not issuing further directions as stated above.

We do not, however, agree with the orders made by the High Court by which it upheld the assessments and directed the Income-tax officer to make appropriate modifications. Such an order is clearly unwarranted in the circumstances of this case. The order of the High Court is, therefore, set aside. The question referred by the Tribunal to the High Court does not appear to be comprehensive enough to decide the matter satisfactorily. The question may have to be read as including a further question regarding the nature of the orders to be passed by the Tribunal if the orders of assessments are held to be contrary to law. In the light of the above, we hold that the orders of assessments are liable to be set aside but the Tribunal should direct the Income- tax officer to make fresh assessments in accordance with law.

The appeals are accordingly disposed of. There shall be no order as to costs.

S.R. Appeals allowed.