CIVIL WRIT

Before Bhandari, C. J. and Bishan Narain, J.

FIRM HAZARI MAL KUTHIALA,—*Petitioner*

v.

THE INCOME-TAX OFFICER, ETC.,—*Respondents*

Civil Writ No. 325 of 1955.

1956

Sept. 4th

Indian Finance Act (XXV of 1950)—Object of—Section 13—Expression "Levy, assessment and Collection"—Meaning of—Whether cover the case of re-assessment under section 34—Income-tax Act—Liability for income-tax—When arises—Income Tax Act (XI of 1922)—Section 23—Object of—Interpretation of Statutes—Rules of—Rule in pari materia*—How far applicable—Reason for enactment of Law—Whether can be imputed to the Legislature—Reports of Committees—Whether admissible as aids to construction of statute—Tax assessment laws—Construction of—Repeal of Statute—Effect of—Intention of Legislature—How determined—Statutes—Nature of—Mandatory or directory—Meaning of—Patiala State Income-tax Act, 2001—Section 5(5)—Whether mandatory or directory.*

Held, that the Indian Finance Act, 1950, was enacted with the express object of declaring that income arising in a Part B State prior to 1st April, 1950, shall be assessed in accordance with the provisions of the State laws and that income in respect of any other period shall be assessed in accordance with the provisions of the Indian Laws. It was not enacted with the object of securing that any income which was assessable under the provisions of appropriate laws should be exempted from assessment except in so far as the exemption was given by the statute itself.

Held, that " to levy " a tax means " to impose or assess" or " to impose, assess or collect under the authority of law." It is a unilateral act of superior legislative power to declare the subjects and rates of taxation and to authorise the Collector to proceed to collect the tax. " Assessment "

is the official determination of liability of a person to pay a particular tax. "Collection" is the power to gather in money for taxes, by enforced payment if necessary. The levy of taxes is generally a legislative function; assessment is a quasi-judicial function and collection is an executive function. These three expressions "levy", "assessment" and "collection" are of the widest significance and embrace in their broad sweep all the proceedings which can possibly be imagined for raising money by the exercise of the power of taxation from the inception to the conclusion of the proceedings. The expression "levy, assessment and collection" appearing in section 13 of the Indian Finance Act, 1950, are wide enough to cover proceedings under section 34 of the Indian Income-tax Act for re-examining and re-determination of Income-tax liability in spite of a prior determination as "assessment" includes "re-assessment". The power of re-assessment is coextensive with the power of original assessment excepting only that it must be exercised within the periods and in respect of the cases set out in the body of the section.

Held, that liability for income-tax arises at the time income passes into the hands of tax-payer and does not depend upon an assessment. The return is required for determining whether the liability exists and for assessing the extent of liability.

Held, that section 23 of the Income-tax Act has been enacted with the object of securing (a) that no tax-payer should take advantage of his wrong by omitting or failing to make a return of his income or by omitting to disclose fully and truly all material facts necessary for his assessment, and (b) that every tax-payer shall pay to the State his proper share of the public taxes.

Held, that following are some well-known rules for the construction of statutes :—

(i) The first and the foremost rule, to which all others are subordinate, is that where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no

occasion for resorting to the rules of statutory interpretation. If a statute speaks for itself clearly, any attempt by the Court to make it clearer by imposing another meaning would not be construing the statute but enacting one.

(ii) The second rule is that the words appearing in a statute must be presumed to have been used in their proper sense and should be given their ordinary, natural and familiar meaning. The same word may mean one thing in one context and another in a different context.

(iii) The third rule is that the Courts are not at liberty to create an imaginary ambiguity in the terms of a statute and later to clear it up by a long and tedious process of subtle analysis. The Courts must proceed on the assumption that the Legislature knew its own mind, that it understood the meaning of the terms employed by it and that those terms do not contain a hidden meaning which only the study of a powerful intellect can discover.

(iv) The rule in *pari materia* is not applicable when the object to which the words are applied or the intention with which the measure is enacted require the words to be differently understood in the two statutes or where the expressions used in the later statute are not re-enacted with the same limitations as in the earlier statute, or where a contrary intention is manifested by other qualifying or explanatory terms. Nor can the help of this rule be invoked when the terms of the statute to be construed make it quite clear that the expressions used therein were intended to convey a different meaning. Statutes in *pari materia* may not be resorted to to control the clear language of the statute under consideration.

(v) No reason for the enactment of a law may be imputed to the Legislature which is not supported by the face of law itself.

(vi) The opinions expressed in reports of Committees are inadmissible as aids to construction of a statute when the intention of the statute is in question.

Held, that the rule of strict construction whereby tax laws are to be construed strictly against the State and in favour of the tax-payer applies to tax assessment laws, that the right of the State to recover taxes from the citizen is purely a statutory creation, that the obligation to pay taxes falls with the repeal of the statute and that where a statute is repealed and there is neither a saving clause in the repealing Act nor a general statute limiting the effect of the repeal, the repealed statute is considered as if it had never existed except as to transactions past and closed. But the intention of the Legislature cannot be determined only by examining the statute and ascertaining the meanings from the terms that the Legislature has chosen to employ. It is open to the Court to go beyond the four corners of the statute to enquire into the circumstances with reference to which the words were used and the object appearing from those circumstances which the law-maker had in view. No intention to take away right to assess or collect taxes can be imputed to the Legislature where other enactments contemporaneous with the repealing statute disclose that the Legislature did not intend to abandon the income from the particular source of taxation in question but intended to continue it in the same or a similar form of revenue exactions.

Held, that a statute may be either mandatory or directory, a statute is mandatory if it imposes a condition, satisfaction whereof is essential to the validity of the Act as to which it is imposed ; and a statute is directory if it prescribes the formalities which may be disregarded without invalidating the thing to be done.

Held, that the provisions of subsection (5) of section 5 of the Patiala State Income Tax Act, 2001, must be regarded as directory, for the failure on the part of the Commissioner of Income Tax to consult the Minister-in-charge before assigning duties to an Income Tax Officer does not result in injury or prejudice to the substantial rights of interested persons. It is merely a direction for the orderly administration of public affairs and compliance or non-compliance with it does not affect the rights of tax-payers.

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue a writ of quo-warranto, *certiorari and prohibition and such other orders or directions as the nature of the case may require sending for the record of this case from respondent No. 1 with a view to quashing these proceedings and to prohibit and restrain the Respondents from taking any action against the petitioner in the matter and further praying that since respondent No. 1 is soon likely to take further action against the petitioner, further proceedings in the case be stayed pending the disposal of this writ petition by this Hon'ble Court.*

G. S. PATHAK, D. K. MAHAJAN and D. N. AVASTHY, for Petitioner.

S. M. SIKRI, Advocate-General and H. R. MAHAJAN, for Respondents.

JUDGMENT

Bhandari, C. J.

BHANDARI, C.J.—This petition under Article 226 of the Constitution raises the question whether it was within the competence of the Income-tax Officer, Special Circle, Ambala Cantonment, to issue a notice under section 34 of the Income-tax Act requiring the petitioner to file a return of his total income for the year, 1946.

The petitioner in this case is carrying on business as a timber merchant and forest lessee at Dhilwan, a small town situate in the erstwhile State of Kapurthala. He was assessed to income-tax under the Kapurthala Act on account of income from sales of timber at Dhilwan during the account year, 1945-46 and the tax assessed was duly paid. On the 12th March, 1955 the Income-tax Officer, Special Circle, Ambala Cantonment, issued a notice to him under section 34 of the Patiala State Income-tax Act, 2001, to the effect that he had reason to believe that the petitioner's income assessable to income-tax for the

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Sambat 2003 had been under-assessed and that he therefore proposed to "re-assess" the said income. He accordingly required the petitioner to deliver to him within the time specified in the notice, a return, in the form attached thereto, of the petitioner's total income and total world income assessable for the said Sambat year ending Chet 2003 (1946-47). The petitioner challenges the validity of the notice issued to him and asks for the issue of an appropriate writ restraining the respondent from taking any action against him.

The first point for consideration in the present case is whether the expression 'assessment' appearing in section 13 of the Indian Finance Act, 1950, in pursuance of which this notice was issued, is wide enough to cover a re-assessment under section 34.

The history of the Act of 1950 may perhaps be traced back to the year, 1947 when the British Parliament with a mighty stroke of the pen, decided to split up the legal entity known as British India into the twin Dominions of India and Pakistan, to grant complete independence to these Dominions and to release Indian States from all their obligations to the Crown. The anticipated departure of British power from the shores of India was a violent blow to the political and economic integrity of India; and the Indian States, which were like hundreds of yellow islands scattered on the surface of India, finding themselves in complete political isolation from each other and from the rest of India, decided to actively associate themselves with the Dominion Government. By the 15th August, 1947 practically all the States in the geographical limits of India acceded to the Dominion of India. Events now moved with dramatic rapidity and the States vied with each other in the speed with which they gratified their instinct of self-preservation by a process of self-annihilation. Some of the smaller

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States united with each other in order to form themselves into sizeable administrative units; certain others merged themselves in the provinces geographically contiguous to them; certain others were converted into centrally administered areas and the remaining States integrated their territories to create new viable units known as the Unions of States. The covenant for the formation of Patiala and East Punjab States Union was signed on the 5th May, 1948, and the Union was inaugurated on the 30th July, 1948. The States and Unions of States which continued as separate units empowered the Dominion Legislature to make laws for them with respect to all the matters mentioned in the Federal and Concurrent Legislative Lists, other than matters relating to taxes and duties, and continued to follow their own policies in matters such as customs, Income-tax, Central Excises and other taxes and duties.

The adherence by the States to their pre-existing public finance structures was not conducive to the promotion of uniformity in the structure and administration of federal finances throughout the country and on the 22nd October, 1948 the Government of India appointed the Indian States Finances Enquiry Committee to examine and report on the desirability and feasibility of integrating federal finances in Indian States and Unions with that of the rest of India, with the object of establishing a uniform system of federal finances throughout the Dominion of India. The Committee submitted Part I of the final report on the 9th July, 1949. They pointed out the advantages which were likely to accrue to the country as a whole including the States, from an integrated system of federal finances operated uniformly by the Central Government throughout the country and expressed the hope that "there will emerge uniformity of law, rates, interpretations and administration of all federal

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fiscal measures resulting in uniform policies, principles and practice in the levy, assessment and collection of central taxes and duties and tax evasion, always a serious evil, will be more effectively checked". They recommended the financial integration of acceding States and the imposition of Indian Income-Tax in their territories with effect from the 1st April, 1950. In paragraph 9 of the annexure to this report relating to Income-tax they observed as follows:—

> "9 (a). * * * * Subject to the limitations indicated below which were designed to secure legal continuity of pending proceedings and finality and validity of completed proceedings under the pre-existing State Legislation, we think the whole body of State Legislation relating to federal subjects should be repealed and the corresponding body of Central Legislation extended *proprio vigore* to the States with effect from the prescribed date or as and when the administration of particular federal subjects is assumed by the Centre."

The Government of India accepted the recommendations of the Committee, as modified in subsequent discussions with the States concerned, and was about to embody the memoranda of agreements already executed and ratified by the States in formal agreements when they were overtaken by a development of great and far-reaching consequence, namely the decision by the rulers and Rajpramukhs of several States and Unions to accept the Constitution of India as the Constitution for their States. The proclamation issued by the Rajpramukh of Patiala and East Punjab States Union on the 24th January, 1950 declared that the Constitution of India shall be the Constitution for the Patiala and East Punjab States Union as for other parts of India and shall be enforced as such according to the tenor of its provisions.

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The Constitution of India which was promulgated on the 26th January, 1950 brought all Part B States, including Patiala and East Punjab States Union within the Union of India incorporating the territories of all those States in the territory of India. It empowered Parliament to make laws in respect of all matters contained in List I and List III of the Legislative Lists (including laws in regard to taxes and duties) not only in respect of Part A States but also in respect of Part B States. The Indian Finance Act, 1950, came into force on the 1st April, 1950. It extended the provisions of the Indian Income-tax Act to the whole of India, except the State of Jammu and Kashmir, and repealed the Income-tax laws in Part B States. Subsection (1) of section 13 of the said Act in so far as it is relevant for the purposes of this case is in the following terms :—

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

This Act makes it quite clear that income arising in a Part B State was to be assessed:—

(a) in accordance with the pre-existing State Law if it arose before the 1st April, 1950; and

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(b) In accordance with the provisions of the Indian Income-tax Act if it arose after the said date.

It preserves the operation of the State law for the purpose of levy, assessment and collection of tax in respect of the income of previous years relevant to assessment years prior to 1950-51.

Mr. Pathak who appears for the petitioner disputes the correctness of the broad statement appearing in the preceding paragraph and has placed two submissions before us in support of the contention that the expression "assessment" appearing in section 13 is not wide enough to cover a re-assessment under section 34 of the Income-tax Act.

It is contended in the first place that as the Act of 1950 is a statute *in pari materia* with the Act of 1922 and as both the statutes are governed by one spirit and policy, the words in the later Act must be understood to have been used in the same sense as in the prior statute and that the expressions "assessment" and "re-assessment" which appear repeatedly in the Income-tax Act refer to two different proceedings. The first proceeding commences when the Income-tax Officer issues a notice under section 22 and terminates when he determines the amount due by the assessee and issues a notice of demand under section 29. The expressions "cancel the assessment", "make a fresh assessment" and "annul or enhance the assessment" in sections 27, 30 and 32 appear to indicate that proceedings which are initiated after the issue of the notice of demand under section 29 do not form part of the assessment. The second proceeding commences with the issue of a notice under section 34 which empowers the Income-tax Officer to re-examine and re-determine income-tax liability in spite of a prior determination. These two proceedings, it is contended, are completely different from each other,

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the one being designated an assessment and the other a re-assessment. As the expression "assessment" has acquired a fixed legal or judicially settled meaning and as according to this meaning the expression "assessment" must be limited to assessment made under the provisions of section 23, it is argued under no circumstances can it be extended to assessments made under the provisions of section 34. I regret I am unable to concur in this view. It is true that the Legislature has used the expression "assessment" in the Act of 1922 in one sense and one meaning and that the same Legislature has used the same expression in the Act of 1950, a statute *in pari materia,* but these facts do not lead necessarily to the conclusion that this word means exactly the same thing in both these enactments. The Act of 1950 was enacted with the express object of declaring that income in respect of a certain period shall be assessed in accordance with the provisions of the State laws and that income in respect of another period shall be assessed in accordance with the provisions of the Indian Laws. It was not enacted with the object of securing that any income which was assessable under the provisions of the appropriate laws should be exempted from assessment, except in so far as the exemption was given by the Act itself. I am unable to discover any uncertainty of meaning in the expression "levy, assessment and collection" and would be extremely reluctant to resort to rules of interpretation not for the purpose of resolving any ambiguity but for the purpose of creating one. In any case the rule *in pari materia* is not applicable when the object to which the words are applied or the intention with which the measure is enacted require the words to be differently understood in the two statutes or where the expressions used in the later statute are not re-enacted with same limitations as in the earlier statute, or where a contrary intention is manifested by other qualifying or

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explanatory terms. Nor can the help of this rule be invoked when the terms of the statute to be construed make it quite clear that the expressions used therein were intended to convey a different meaning. Statutes *in pari materia* may not be resorted to to control the clear language of the statute under consideration (*Palmer* v. *Santvoord* (1).

Again it is stated that the Act of 1950 was enacted in order to give effect to the recommendations of the States Finances Enquiry Committee because both the Government of India and the Rulers and Rajpramukhs of Indian States and Unions (including the Rajpramukh of Pepsu) had entered into agreements under Articles 278, 291, 295 and 306 that the recommendations of the said Committee should be accepted by the parties subject to certain modifications in matters of detail. These agreements, it is contended, are the supreme law of the land in respect of the matters to which they relate, for Article 278 declares that when the President enters into an agreement with the Government of a State, the provisions of Chapter 12 of the Constitution shall, in relation to such State, have effect subject to the terms of such agreement. It follows as a corollary that when an Indian law is in conflict with any such agreement, the latter must prevail and the Indian law must to the extent of repugnancy be void. The Committee's recommendations as embodied in paragraph 9 were * * * * "designed to secure the legal continuity of pending proceedings and finality and validity of completed proceedings under the pre-existing State legislation" and were not intended expressly or by implication to enable Government to initiate fresh proceedings under the State laws which were sought to be repealed or to reopen transactions which were past and closed. A proceeding under section 34 initiated after the relevant date is neither a pending proceeding nor

(1) 153 New York 612.

a completed proceeding but an entirely new proceeding which cannot be regulated by the State laws. In construing the expression "assessment" appearing in section 13 of the Act of 1950 the Court should have regard to the policy which induced its enactment, for it is a cardinal rule of interpretation that in construing a law of doubtful meaning the Court should adopt the sense of the words which promote in the fullest measure the policy of the Legislature and to avoid a construction which would alter or defeat that policy. If legislative words derive vitality from the obvious purposes for which the statute was enacted and if the statute was enacted with the object of carrying out the recommendations of the Committee then, it is contended, the State laws should be deemed to apply only to pending and completed proceedings and the expression "assessment" appearing in section 13 should be construed to exclude a reassessment under section 34.

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This argument cannot, in my opinion, bear a moment's scrutiny. It has not been established, in the first place that the Finance Act of 1950 was enacted solely to give effect to the recommendations of the Committee. It is an accepted proposition of law that no reason for the enactment of a law may be imputed to the Legislature which is not supported by the face of the law itself (*Mackenzie* v. *Hare* (1). Secondly it has not been alleged or proved that all the recommendations made by the Committee were accepted by the Legislature. Thirdly, it is not open to this Court to examine the report of the Committee, for it has been held repeatedly that opinions expressed in reports of Committees are inadmissible as aids to construction when the intention of a statute is in question, Craies on Statute Law page 122, *Assam Railway and Trading Co.* v. *The Commissioner of Inland Revenue*, (2), *Aswini Kumar Ghose* v. *Arabinda Bose*, (3),

(1) 239 U.S. 299
(2) 1935 A.C. 445 at 457
(3) 1953 S.C.R. 1, 78,

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Fourthly, even if the report of the Committee were to be taken into consideration in determining the proper construction of the statute, I am unable to hold that the recommendations made by it were designed *only* to secure the legal continuity of pending proceedings and finality and validity of completed proceedings. In clause (e) of paragraph 9 which appears at page 45 of the report the Committee observed as follows :—

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

Paragraph 10 runs as follows :—

> "10. Reading out these with certain other legal matters specifically concerning income-tax—
>
> (1) the recommendations made in the last two sub-paragraphs quoted above should be understood as requiring that all income, profits and gains accruing or arising in States of all periods which are previous years of the States' assessment years 1949-50 or earlier should, subject to the provisions of section 14 (2) (c) of the Indian Income Tax Act, be assessed wholly in accordance with the State laws and at the State rates, respectively appropriate to the assessment years concerned, notwithstanding that some of those previous years

> may also be previous years for the Indian assessment year 1950-51. In the last mentioned case no Indian assessment for 1950-51 should be made in respect of such income. * * * * ".

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If the Committee were anxious to secure that all matters and proceedings "pending under or arising out of the pre-existing State Acts" should be disposed of under those Acts and that all income, profits and gains accruing or arising in States prior to the relevant date "should be assessed wholly in accordance with the State laws" there can be little doubt that they wanted all proceedings under section 34 which had already arisen and which were likely to arise out of the pre-existing State Acts to be disposed of in accordance with the provisions of the said Acts.

Fifthly, the wide and comprehensive language which the Committee has chosen to employ affords no indication of a desire on the part of the Committee to condone tax evasions which had taken place in the past, for they were endeavouring to devise ways and means for securing that tax evasion should be more effectively checked. Indeed, there was no conceivable reason which would have impelled the Committee to draw a distinction between income which had escaped assessment and income which had been under-assessed or to recommend that income which had escaped assessment should be assessed under the provisions of section 34 but that income which had been under-assessed should not be reassessed under the provisions of the said section. I entertain no doubt in my mind that the Committee contemplated that all proceedings under section 34 which had already arisen and which were likely to arise out of the State Acts should be disposed of under the said Acts and

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that they had no desire to reduce the taxing statutes to a nullity by permitting easy evasion. Lastly, if the expression "assessment" is not wide enough to embrace a reassessment under section 34 it is obvious that reassessment proceedings which were pending at the time of the financial integration of the States could not be continued after integration had taken place. In the absence of strong and compelling reasons to the contrary nothing would in my opinion be more absurd than to declare that whereas the Committee were anxious to keep alive the entire pre-existing State legislation in respect of pre-integration incomes, they were seized with a sudden and senseless desire to destroy the provisions of section 34, to foster an obvious opportunity for easy tax evasion and to make a free gift of large sums of money to assessees in Indian States who had successfully evaded the payment of taxes.

Let us approach the consideration of this case by reminding ourselves of certain well-known rules for the construction of statutes. The first and foremost rule, to which all others are subordinate, is that where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. If a statute speaks for itself clearly any attempt by the Court to make it clearer by imposing another meaning would not be construing the statute but enacting one. The second rule is that the words appearing in a statute must be presumed to have been used in their popular sense and should be given their ordinary, natural and familiar meaning. " It would be a new terror in the construction of Acts of Parliament", said Lord Loreburn in *Macbeth* v. *Chislett,* (1). "if we were required to limit a word to an unnatural sense because in some Act, which is not incorporated

(1) (1910) A.C. 220

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or referred to such an interpretation is given to it for the purposes of that Act alone." The same word may mean one thing in one context and another in a different context. *D. N. Banerji* v. *P. R. Mukherjee* and others (1), for as pointed out by Mr, Justice Holmes in an oft-quoted passage—"A word is not crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and contents according to the circumstance and the time in which it is used". The third rule, if it may be designated as such, is that the Courts are not at liberty to create an imaginary ambiguity in the terms of a statute and later to clear it up by a long and tedious process of subtle analysis. We must proceed on the assumption that the Legislature knew its own mind, that it understood the meaning of the terms employed by it and that those terms do not contain a hidden meaning which only the study of a powerful intellect can discover.

Now what exactly is the meaning of the expression "levy, assessment and collection" which appears in section 13 of the Finance Act? To "levy" a tax means "to impose or assess" or "to impose, assess or collect under the authority of law". It is a unilateral act of superior legislative power to declare the subjects and rates of taxation and to authorise the Collector to proceed to collect the tax. "Assessment" is the official determination of liability of a person to pay a particular tax. "Collection" is the power to gather in money for taxes, by enforced payment if necessary. The levy of taxes is generally a legislative function; assessment is a quasi-judicial function and collection an executive function. These three expressions "levy", "assessment" and "collection" are of the widest significance and embrace in their broad sweep all the proceedings which can possibly be imagined for raising money by the exercise of the power of

(1) 1953 S.C.R. 302, 309

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taxation from the inception to the conclusion of the proceedings. The Act of 1950 declared with irresistible clearness that income in respect of a certain period was to be assessed in accordance with the State laws and that income in respect of another period was to be assessed in accordance with the Indian laws. The language of the statute is clear and unambiguous and the intention of the Legislature plain. I entertain no doubt in my mind that even if the compass of the expression "assessment" were to be narrowed in the sense proposed by Mr. Pathak, the expressions "levy" and "collect" appearing in section 13 are wide enough to cover proceedings under section 34 for re-examining and re-determination of Income-tax liability in spite of a prior determination, *Lakshmana Shenoy* v. *Income-tax Officer,* (1), *Bhailal Amin and Sons* v. *D. Lal,* (2).

While dealing with this aspect of the question I am not unmindful of the fact that a contrary view has been taken by the Mysore High Court in *City Tobacco Mart* v. *Income-tax Officer, Urban Circle, Bangalore,* (3). It appears that the attention of the learned Judges who were called upon to deal with this case was not invited to several factors which had an important bearing on the matters in controversy between the parties. They do not appear to have considered the effect of the expression "levy" which appears in conjunction with the expression "assessment" in section 13 of the statute, or the fact that the expression "assessment" appearing in the said section in so far as it relates to the period covered by the Indian Income-tax Act includes reassessment, or that the said section does not draw a distinction between a pending proceeding and an original proceeding. They failed to recognise that *prima facie* assessment includes reassesment; they intro-

(1) A.I.R. 1954 Tran. Coch. 137
(2) 1953 I.T.R. 229
(3) 27 I.T.R. 549

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duced an ambiguity into the statute by endeavouring to construe it with reference to the recommendations made by the Committee and later tried to clear this ambiguity by imposing a meaning which the Legislature could not have contemplated.

We are now called upon to meet a somewhat curious objection that there was in fact no pre-existing State law under which a notice under section 34 could be issued to the petitioner. The disposal of this objection requires a review of the legislation on the subject.

On the 29th August, 1948, the Rajpramukh of Pepsu promulgated an Ordinance called the Patiala and East Punjab States Union Administration Ordinance No. 1 of 2005. Section 3 of the said Ordinance declares that as soon as the administration of any covenanting State has been taken over by the Rajpramukh, all laws in the Patiala State on the date of the commencement of the Ordinance shall apply *mutatis mutandis* to the territories of the said State and all laws in force in the covenanting State immediately before the Rajpramukh assumed the administration of the said State shall be repealed subject to the proviso that all pending proceedings shall be disposed of in accordance with the laws governing those proceedings in any such covenanting State. Section 5 provides that any Court or authority required or empowered to construe or enforce any law shall, notwithstanding that this section makes no provision or insufficient provision for the adaptation of such law to the changes effected by or consequential on the establishment of the State, construe such law with all such adaptations as are necessary for the said purpose.

On the 2nd February, 1949 Ordinance 1 of 2005 was replaced by the Patiala and East Punjab States Union General Provisions Administration Ordinance

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(16 of 2005) which re-enacted the provisions of the earlier Ordinance with only a small modification, namely, that instead of stating in section 3 that all laws in force in the covenanting States immediately before the relevant date shall be repealed, it declared that all such laws shall cease to have effect.

The administration of Income Tax Law in Pepsu, as in other Part B States excepting Jammu and Kashmir, was taken over by the Central Government early in April, 1950, and the pre-existing State laws in regard to income-tax in force in any of these States ceased to have effect except for the purposes of levy, assessment and collection of income-tax and super-tax in respect of any period therein defined.

It is contended on behalf of the petitioner that the notice under section 34 issued to him on the 12th March, 1955 could not be issued either under the Income Tax Act of Kapurthala or under that of Patiala or under that of India. It could not be issued under the statute of Kapurthala, for although the assessment in question was completed at a time when the Kapurthala Act was in force, the said Act was repealed on the 20th August, 1948, and everything fell with the abrogated Act not fully executed under it excepting proceedings which were pending before any Court or before any authority of the Kapurthala State. As no proceeding under section 34 was pending against the petitioner on the 20th August, 1948 a notice under the said section could not be issued under the Kapurthala Act. Nor can the Patiala Act apply to the facts of the case, first because it came into force on the 20th August, 1948, and could not operate retrospectively in regard to an assessment which had already been completed; and secondly because even if it could operate retrospectively, it could relate only to an assessment made under the charging section of the Patiala Act and not to an assessment made under the

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charging section of the Kapurthala Act. The Indian Act, it is argued, cannot apply, for section 13 of the Finance Act declares in express terms that the pre-existing State laws were to apply only to the levy, assessment and collection of income-tax in respect of a period prior to the 1st day of April, 1950.

It is well-known that the rule of strict construction whereby tax laws are to be construed strictly against the State and in favour of the tax-payer applies to tax assessment laws, that the right of the State to recover taxes from the citizen is purely a statutory creation, that the obligation to pay taxes falls with the repeal of the statute and that where a statute is repealed and there is neither a saving clause in the repealing Act nor a general statute limiting the effect of the repeal, the repealed statute is considered as if it had never existed except as to transactions past and closed. But the intention of the Legislature cannot be determined only by examining the statute and ascertaining the meanings from the terms that the Legislature has chosen to employ. It is open to the Court to go beyond the four corners of the statute to enquire into the circumstances with reference to which the words were used and the object appearing from those circumstances which the law-maker had in view. No intention to take away the right to assess or collect taxes can be imputed to the Legislature where other enactments contemporaneous with the repealing statute disclose that the Legislature did not intend to abandon the income from the particular source of taxation in question but intended to continue it in the same or a similar form of revenue exactions. It is firmly established in the United States that where a tax law is repealed by a later tax law, which does not expressly contain a saving clause reserving the right to collect taxes under the former law, but provides a different method of ascertaining the taxable value on the same subject of taxation, such Act does not

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operate as a release from liability for the taxes accrued at its passage under the former law (*Gorley* v. *Sewell*), (1). In *Com.* v. *Mortgage Trust Company,* (2), the Court observed as follows :—

> "The only rational interpretation of the legislative intention as expressed in the statute is that the taxation of such shares of stock should continue after the passage of the Act as it had existed for many years prior to that time, except as to the basis of valuation. The Act of 1907 did not provide a new system of taxation, nor did it introduce new taxable subjects. It was a revenue statute and it was not intended to defeat the right of the commonwealth to collect her taxes. We think the sound rule is, especially as the Acts which provide for the assessment and collection of annual taxes, that a statute repealing former laws on the same subject does not abolish all rights and remedies under the repealed Acts, if the legislative intent not to abolish them appears."

In *Los Angeles & West Side Transportation Co.,* v. *Superior Court* (3), the Supreme Court of California observed as follows :—

> "We think it is not strictly true to say that the legislative intention must be ascertained solely from the language of the Repealing Act. Rather it should be said that, if from contemporaneous enactments it is disclosed that the Legislature did not intend to abandon the revenue from this particular

(1) 77 Ind. 319
(2) 227 Pa. St. 163
(3) 295 Pasific Reporter 837, 840

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source, but intended to continue it in the same or a similar form of revenue exactions, then the general rule would not apply, and those subject to payment under the Act repealed would be holden for payment under continued revenue plan. This phase of the rule is epitomized in Sutherland on Statutory Construction (2nd Ed.) section 238, as follows : 'Where there is an express repeal of an existing statute and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal as far as the old law is continued in force. It operates without interruption when the re-enactment takes effect at the same time."

Now what were the circumstances which led to the enactment of Ordinances Nos. 1 and 16 of 2005. The Rulers of the several Punjab States entered into a covenant on the 5th May, 1948 as they were convinced that the welfare of the people of that region could best be secured by the establishment of a State comprising the territories of their respective States with a common executive, legislature and judiciary. But each one of the covenanting States had a different set of its own laws which could not possibly be continued in force in the Union which was being formed. The Rajpramukh of Pepsu who was vested with authority to make laws for the Patiala and East Punjab States Union was anxious to replace diversity by uniformity and with this end in view he decided that the different sets of rules which were in force in the covenanting States should be repealed and that a uniform system of laws should be established in the whole of the Union. He accordingly directed that with effect from the 20th August, 1948 all laws in force in the covenanting States be repealed and that all laws in force in the

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Patiala State should apply to the territories of all covenanting States. He had no intention, either express or implied, to deprive the Income-tax Department of its power to re-assess income of an assessee who had paid the tax first assessed against him or to exempt a tax-payer from his liability to pay the tax when the return submitted by him was incomplete or imperfect in consequence of any omission, understatement, under valuation or false and fraudulent return. There was no intention to circumscribe the powers exercised by Income-tax Officers under the previous State laws. I am accordingly of the opinion that in view of the principles enunciated in the authorities cited above, the law-making power had no intention to relinquish the right of the State to recover income-tax under section 34 of the Kapurthala Income-tax Act. This conclusion is supported by at least two circumstances. The first is that the Rajpramukh declared in Ordinances Nos. 1 and 16 of 2005 that the Patiala laws shall apply *mutatis mutandis* to the territories of all covenanting States that is with the necessary changes in detail to conform to a single vital alteration. The second is that he required all Courts and authorities to construe such laws with all such adaptations as are necessary for giving effect tto the changes brought about or consequential on the creation of the Union. As the language of section 34 of the Patiala Act is identically the same as the language of the corresponding section of the Kapurthala Act, and as the provisions of this section were applied to the territory of the Union, it is obvious that the Rajpramukh had no intention of depriving income-tax Officers of their right to reassess incomes which had been under-assessed or to impose any limitations on the powers conferred upon them by the provisions of that section.

There is another aspect of the matter which needs to be considered. It is a well-known proposition of

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law that liability for Income-tax arises at the time income passes into the hands of the tax-payer and does not depend upon an assessment. The return is required for determining whether the liability exists and for assessing the extent of liability. If the petitioner in the present case became liable to pay the tax as soon as the income accrued to him in or about the year 1946, then neither Ordinance No. 1 nor Ordinance No. 16 of 2005 could operate as a release from that liability, for section 6 of the Patiala General Clauses Act, 2002, declares that where any Patiala Act made after the commencement of this Act repeals any enactment hereto made or hereafter to be made, then unless a contrary intention appears the repeal shall have no effect on any obligation accrued or liability incurred under any enactment so repealed. Nor can it be said that liability arises only in respect of assessment under section 23 and not in respect of an assessment under section 34. Section 23 empowers the Income-tax Officer to assess the total income of the assessee while section 34 empowers him to assess income which has escaped assessment or was under-assessed in the relevant assessment year. Section 23 has been enacted with the object of securing (a) that no tax-payer should take advantage of his own wrong by omitting or failing to make a return of his income or by omitting to disclose fully and truly all material facts necessary for his assessment, and (b) that every tax-payer shall pay to the State his proper share of the public taxes. The power of reassessment is co-extensive with the power of original assessment, excepting only that it must be exercised within the periods and in respect of the cases set out in the body of the section. If this line of reasoning can be justified in law it is scarcely necessary to point out that the right to issue a notice under section 34 of the Kapurthala Act did not come to an end with the repeal of the said Act.

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I now come to consider another objection raised by the petitioner, namely, that as the Commissioner of Income-tax, Punjab, transferred the case to the Income-tax Officer, Special Circle, under the provisions of the Indian Income Tax Act and not under the provisions of the Patiala Act, the notice issued by him on the 12th March, 1955 was without jurisdiction and of no consequence. It is common ground that when the Indian Finance Act, 1950, declared that all income which had arisen in an Indian State prior to the 1st day of April, 1950 shall be assessed wholly in accordance with the State laws, it also declared that all matters and proceedings pending under or arising out of the State laws shall be disposed of under those Acts by the corresponding authorities under the corresponding Indian Acts. Section 5 (5) of the Patiala Act provides that "Income-tax Officers shall perform their functions in respect of such persons and class of persons, or of such incomes or classes of income, or in respect of such areas as the Commissioner of Income-tax may in consultation with the Minister-in-charge direct." Mr. Pathak has no difficulty in agreeing that the Commissioner of Income-tax, Punjab, under the Indian Act corresponds to the Commissioner of Income-tax under the Patiala Act, but he has considerable hesitation in accepting the proposition that the Income-tax Officer, Special Circle, corresponds to an Income-tax Officer appointed under the Patiala Act. The reason is simple. The Patiala Act, he contends, requires that an Income-tax Officer shall perform such functions as the Commissioner of Income Tax may *in consultation with the Minister-in-charge* direct, but the Indian Act makes no such provision. It is accordingly contended that as the Income-tax Officer, Special Circle, Ambala, has been appointed by the Commissioner of Income Tax, Punjab and Pepsu, without consulting the Minister, the appointment must be deemed to be

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ultra vires the statute and the notice issued by him under section 34 of the Patiala Act must be deemed to be void and of no effect. The records are silent whether the Commissioner of Income-tax, Punjab, consulted the Finance Minister of India before asking the Income-tax Officer, Special Circle, Ambala, to perform the duties which have been assigned to him, and I must therefore proceed on the assumption that the appointment was made without consulting the Minister-in-charge. This omission, however, would not in my opinion detract from the validity of the appointment. A statute may be either mandatory or directory. A mandatory statute is one if it imposes a condition satisfaction whereof is essential to the validity of the Act as to which it is imposed; and a directory statute is one if it prescribes the formalities which may be disregarded without invalidating the thing to be done. The distinction between these two types of statutes has been brought out clearly in section 261 of Crawford on Statutory Construction where the learned author, citing an early case observes—

> "If the provision involved relates to some immaterial matter, where compliance is a matter of convenience rather than substance, or directs certain actions with a view to the proper, orderly, and prompt conduct of public business, the provision may be regarded as directory, but where it directs acts or proceedings to be done in a certain way and indicates that a compliance with such provisions is essential to the validity of the act or proceeding, or requires some antecedent and prerequisite conditions to exist prior to the exercise of the power, or be performed before certain other powers can be exercised, the statute may be regarded as mandatory."

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In section 270 the learned author observes as follows :—

> "Statutes regulating the assessment of taxes must be given a mandatory construction, if their purpose is to protect the tax-payer. On the other hand, if the statute is simply intended to establish a uniform system of procedure and to promote despatch, and if non-compliance does not injure the tax-payer, the statute is to be construed as directory."

The provisions of subsection (5) of section 5 of the Patiala Act must, in my opinion, be regarded as directory, for the failure on the part of the Commissioner of Income-tax to consult the Minister-in-charge before assiging duties to an Income-tax Officer does not result in injury or prejudice to the substantial rights of interested persons. It is merely a direction for the orderly administration of public affairs and compliance or non-compliance with it does not affect the rights of tax-payers. This objection too must, in my opinion, be decided against the petitioner.

In view of the decision of this Court in *Bhagwan Das Sud* v. *Commissioner of Income-tax* (1), decided on the 24th January, 1956, Mr. Pathak abandoned the objection taken in paragraph 10 of the petition, namely, that the constitution of the Special Circle at Ambala was discriminatory in character and was repugnant to the provisions of Article 14 of the Constitution of India.

For these reasons I am of the opinion that although the learned counsel for the parties argued this case with conspicuous ability, the petitioner was unable to substantiate any of the pleas put forward by him. The petition must, in my opinion, be dismissed with costs. I would order accordingly.

Bishan Narain, J.

BISHAN NARAIN, J.—I agree.

(1) C.W. 6 of 1955