(20) For the reasons given above, therefore, I find that the learned lower appellate Court acted outside its jurisdiction in accepting the appeal and decreeing the suit. The plaintiff-firm not having complied with section 3 of the Act, the suit could not possibly be decreed. Consequently, I accept this revision, set aside the judgment and decree of the lower appellate Court and restore that of the trial Court. The respondent will bear the costs of the petitioner in all the Courts.

N. K. S.

ESTATE DUTY REFERENCE

Before D. K. Mahajan and Gopal Singh, JJ.

SRI KULBHUSHAN,—*Applicant.*

versus

THE CONTROLLER OF ESTATE DUTY, PATIALA,—*Respondent.*

Estate Duty Reference No. 1 of 1969

February 22, 1971

Estate Duty Act (XXXIV of 1953)—Sections 2(12A), 2(15), 27, 53 and 59—Original assessment to Estate Duty made on the basis of all the documents furnished by accountable persons—Subsequent discovery of certain sections of Act not being applied to the assessment—Such assessment—Whether can be re-opened. All the legal representatives of a deceased—Whether accountable persons even if dis-inherited—Unequal partition of Joint Hindu family properties by the deceased amongst himself and his sons—Whether amounts to desposition within the meaning of section 27—

Held, that although the original assessment of the Estate Duty is made on the basis of all the documents furnished by the accountable persons, yet if it is subsequently discovered that certain sections of the Estate Duty Act which were applicable had not been applied at the time of the original assessment, and in order to give effect to those legal provisions, the assessment can be re-opened.

Held, that all the legal representatives of a deceased person even though disinherited are not accountable persons for the assessment of the Estate

Duty. In any case, section 53(5) of the Act clearly provides that the liability to an Estate Duty is both joint and several. If any of the legal representatives was omitted by the Department, it has to suffer the consequence. It may not be able to recover the entire Estate Duty from the legal representative against whom it had omitted to proceed under the Act, but on this score alone the assessment is not bad in law.

(Para 10)

Held, that in a partition of a Hindu undivided family, the division of shares cannot be weighed in golden scales. There can be disparities for variety of reasons. But all the same there will be no transfer of property, from one to the other or any reliquishment of right to any property, unless it is specifically stated at the time of division. The division merely alters the mode of enjoyment. Joint enjoyment ceases on division and thereafter property is enjoyed in severally. There is no disposition of any property. A partition under the Hindu Law is a domestic affair and no outsider can attack it including the Estate Duty Department. If any party to the partition suffers inequality, it can be for a variety of reasons. It cannot be assumed that the unequal partition was purposely done to evade tax. Hence the unequal partition of joint Hindu family properties amongst the deceased and his sons does not amount to disposition within the meaning of section 27 of the Act. (Para 13)

Reference made to this Court under section 64(1) of the Estate Duty Act, 1963, by the Income-Tax Appellate Tribunal (Delhi Bench 'B'),—vide his order dated 6th December, 1968, for opinion in R.A. No. 406 of 1968-68 on the following questions of law arising out of E.D.A. No. 293 of 1965-66:—

(1) *Whether on the facts and in the circumstances of the case, the Assistant Controller of Estate Duty had information in his possession in consequence of which he could have reason to believe that any property chargeable to Estate Duty had escaped assessment ?*

(2) *Whether Smt. Chander Mohni daughter of the deceased late Shri Goverdhan Dass is an accountable person in respect of the property passing on the death of late Shri Goverdhan Dass ?*

(3) *If question No. 2 be decided in the affirmative, whether the notice issued under section 59 of the Estate Duty Act is bad in law ?*

(4) *Whether unequal partition of the Joint Hindu family properties amongst the deceased and his sons have given rise to any disposition made by the deceased in favour of his relatives within the meaning of section 27 of the Estate Duty Act ?*

BALRAJ KOHLI AND RAM RANG, ADVOCATES, for the applicants.

D. N. AWASTHY, AND B. S. GUPTA, ADVOCATES, for the respondent.

JUDGMENT

The judgment of this Court was delivered by:—

MAHAJAN, J.—The Income-Tax Appellate Tribunal has under section 64(1) of the Estate Duty Act, 1953, referred the following four questions of law for our opinion:—

"(1) Whether on the facts and in the circumstances of the case, the Assistant Controller of Estate Duty had information in his possession in consequence of which he could have reason to believe that any property chargeable to Estate Duty had escaped assessment?

(2) Whether Shrimati Chander Mohni daughter of the deceased late Shri Goverdhan Dass is an accountable person in respect of the property passing on the death of late Shri Goverdhandas?

(3) If question No. 2 be decided in the affirmative, whether the notice issued under section 59 of the Estate Duty Act is bad in law?

(4) Whether unequal partition of the Joint Hindu family properties amongst the deceased and his sons have given rise to any disposition made by the deceased in favour of his relatives within the meaning of section 27 of the Estate Duty Act?

(2) The case relates to the estate of Goverdhan Dass, a leading Advocate of Ferozepore City. He died on August 7, 1959. He was survived by two sons, Kul Bhushan, Advocate and his younger brother Brij Bhushan. He also left a married daughter, Shrimati Chander Mohni. The Assistant Controller, Estate Duty, treated both the sons as accountable persons and assessed them on June 25, 1960, on the principal value of Rs. 74,361. Later on, the Assistant Controller issued a notice under section 59 of the Estate Duty Act, 1953 (hereinafter referred to as the Act) on August 2, 1960. The Assistant Controller in pursuance of the said notice determined the principal value of the estate of the deceased at Rs. 1,94,218. The accountable persons appealed to the Zonal Appellate Controller of Estate Duty, Delhi. The Appellate Controller partially allowed the appeal by his order dated October 26, 1965. The accountable persons were not satisfied with the relief granted and they took up

the matter in second appeal to the Appellate Tribunal. Before the Tribunal, the following three contentions were raised :—

(i) That at the time of the original assessment, the accountable persons had furnished all the relevant information including copies of Trust Deed, Partition Deed inventory etc. and, therefore, the Assistant Controller could not have come across any fresh information subsequent to the order of assessment, and as such, he could not reopen the assessment under section 59.

(ii) that Shrimati Chander Mohni was an accountable person and as no notice of proceedings under section 59 of the Act was issued to her, the entire proceedings taken under section 59 were bad in law; and

(iii) that the inclusion of Rs. 55,413 representing the difference between the value of the properties allotted to the deceased on partition and the value of the share to which he was entitled could not be included as the estate of the deceased for the purposes of estate duty.

(3) The other matters dealt with by the Tribunal pertained to mere questions of fact with which we are not concerned in this reference. The Tribunal by its order dated January 22, 1968, decided all the three contentions against the accountable persons but gave certain relief on matters with which we are not concerned.

(4) We now propose to deal with the questions enumerated above and the contentions of the learned counsel for the accountable persons and the department thereon.

(5) The basis on which the Assistant Controller proceeded to reopen assessment under section 59 of the Act was that he discovered that certain sections of the Act which were applicable had not been applied at the time of the original assessment and in order to give effect to those legal provisions the assessment was reopened. The contention of the learned counsel for the accountable persons is that this is no ground for reopening the assessment. However, the matter is not *res integra* and is fully concluded by the decision of the Supreme Court in *Commissioner of Income-tax Gujrat* v. *A Raman & Co.* (1). The precise argument which prevailed with the High

(1) (1968) 67 I.T.R. 11.

Court in that case was examined by their Lordships at page 16 of the Report. It will be, therefore, advisable to reproduce that passage because, in our opinion, it completely concludes the matter:—

> "The High Court in this case was apparently of the view that the information in consequence of which proceedings for re-assessment were intended to be started, could have been gathered by the Income-tax officer in charge of the assessment in the previous years from the disclosures made by the two Hindu undivided families. But that, in our judgment, is wholly irrelevant. Jurisdiction of the Income-tax officer to reassess income arises if he has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment. That information must, it is true, have come into the possession of the Income-tax Officer after the previous assessment, but even if the information be such that it could have been obtained during the previous assessment from an investigation of the materials on the record, or the facts disclosed thereby or from other enquiry or research into facts or law, but was not in fact obtained, the jurisdiction of the Income-tax Officer is not affected."

(6) No doubt these observations were made in relation to the provisions of the Income-tax Act, but it makes no difference, as the provisions of section 59 of the Act are analogous to the relevant provision of the Income-tax Act. Therefore, there is no merit in the contention of the learned counsel so far as question No. 1 is concerned.

(7) With regard to the second question, the argument is rather interesting, but all the same, untenable. The contention of the learned counsel for the accountable persons has adopted a very ingenius argument to prove that Shrimati Chander Mohni is an accountable person. His argument proceeds thus. Section 21(12-A) of the Act defines "Accountable person" in the following terms:—

> "2(12-A) "Person Accountable" or "accountable person" means the person accountable for estate duty within the meaning of this Act, and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of the principal value of the estate of the deceased."

(8) Section 53 states who are the persons accountable and their duties and liabilities. Clauses (a) and (c) of sub-section (1) of section 53 of the Act which are in the following terms have been pressed into service to bring in Shrimati Chander Mohni read with section 24-B of the Income-tax Act of 1923:—

> "53(1) Where any property passes on the death of the deceased—
>
> (a) every legal representative to whom such property so passes for any beneficial interest in possession or in whom any interest in the property so passing is at any time vested;
>
> (b) * * * * * *;
>
> (c) every person in whom any interest in the property so passing is vested in possession by alienation or other derivative title."

(9) The contention of the learned counsel for the accountable persons is that all the legal representatives of a deceased are accountable persons and as under the Income-tax Act all the legal representatives of a deceased under section 24-B have to be assessed to income-tax payable by the deceased, therefore, all the legal representatives of a deceased under the Estate Duty Act have to be assessed to Estate Duty under the Act. Inasmuch as Shrimati Chander Mohni was not given a notice under section 59 for the purposes of reassessment, the same is invalid. The crux of the matter is whether Shrimati Chander Mohni is an accountable person. If she is not an accountable person, the argument will fall flat. In our opinion, Shrimati Chander Mohni is not an accountable person. In the first place, she was disinherited by the father. The relevant clause in the will reads thus:—

> "I have already spent a sufficient amount of money for the marriage of my daughter, Chander Mohni, and have instituted a Trust worth Rs. 10,000 in her favour. Therefore, she shall not receive any inheritance at my death out of my share of the property. However, after my death, my sons, on my behalf, shall give her five thousand rupees in accordance to her needs."

(10) At best, her position is that of a legatee. (See in this connection section 2(16) read with section 53 of the Act). On a close

examination of the will, it will be seen that the entire estate of the deceased passed on to the two sons. The sons have to pay Rs. 5,000 to her and that too in accordance with her needs. No part of the estate came into the hands of Shrimati Chander Mohni on the death of her father. None can come by reason of the will. Moreover, section 53(5) of the Act clearly provides that the liability to an Estate Duty is both joint and several. If any of the legal representatives was omitted by the Department, it has to suffer the consequences. It may not be able to recover the entire Estate Duty from the legal representative against whom it had omitted to proceed under the Act. Therefore, it is idle to suggest that in view of these provisions, Shrimati Chander Mohni is an accountable person. In our opinion, the Tribunal came to the right conclusion, on the second question.

(11) The third question does not arise, in view of our decision on the second question.

(12) This takes us to the fourth question. Here again, the matter is not *res integra*. However, according to the learned counsel for the Department, there is conflict of judicial opinion. It is urged that the Gujarat High Court has taken a view in favour of the accountable persons in *Kantilal Trikamlal* v. *Controller of Estate Duty,* Gujarat (2), but a contrary view has been taken by the Madras High Court in *S. P. Valliammai Achi* v. *Controller of Estate Duty, Madras,* (3) Mr. Awasthy basing himself on *S. P. Valliammai Achi's* case (3), has very strenuously argued for the department that the fourth question must be answered in its favour. The learned counsel concedes that normally under the Hindu Law, partition does not amount to transfer of property. But he maintains that in view of the peculiar provisions of section 2(15) Explanation 2 read with section 27 of the Act, where a partition results in unequal division of property, there would be a disposition within the meaning of section 27 to the extent by which the share is unequal. We have gone through both the decisions and it will be appropriate to set out the relevant parts from both of them. It will be pertinent to mention that the decision in *S. P. Valliammai Achi's case* (3), does not deal with the case of partition where the shares are not equal. It deals with a case of relinquishment of rights

(2 (1969) 74 I.T.R. 353.

(3) (1969) 73 I.T.R. 806.

in property. In *S. P. Valliammai Achi's* case (3), the learned Judges made the following observations at page 808 of the Report:—

> "The facts of this case, in our opinion, seem to square with the second Explanation to section 2(15). That, no doubt, is an Explanation to the inclusive definition of property. But the language of it seems to go further and coins a deemed disposition in the nature of a transfer. The mechanics of the transfer for purposes of Explanation 2 consist in the extinguishment at the expense of the deceased of a right and the accrual of a benefit in the form of the right so given up in favour of the person benefited. Transfer in a normal sense and as understood with reference to the Transfer of Property Act connotes a movement of property or interest or right therein or thereto from one person to another in *praesenti*. But in the kind of disposition contemplated by the second Explanation, one can hardly trace such a transfer because by the mere fact of extinction of a certain right of the deceased which does not involve a movement, a benefit is created in favour of the person benefited thereby. In the present case the son who was a quondam coparcener had a pre-existing right to every part of the coparcenary property, and if by a partition or a relinquishment on the part of one or more of the coparceners, the joint ownership is severed in favour of severalty, the process having regard to the peculiar conception of a coparcenary, involving no transfer. That is the view this Court expressed in *Commissioner of Gift-tax* v. *Getti Chettiar* (4), to which one of us was a party. But Explanation 2 is concerned not with the kind of situation, but an extinguishment of a right and creation of a benefit thereby, and this process is statutorily deemed to be a disposition which is in the nature of a transfer. Section 9 itself speaks of a disposition, and such a disposition no doubt should at least operate or purport to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust, settlement upon the person in succession, or otherwise. But the word "transfer" in section 9 cannot be understood in isolation and by confining one's attention only to that section. Its scope has

(4) (1960) 60 I.T.R. 454.

got to be appreciated and delimited with reference to the other provisions of the Act, one of which is the second Explanation to section 2(15). When the Explanation speaks of a disposition of the kind it contemplates, it seems to us to be impossible to conceive that that kind of disposition would have been intended by the legislature to be excluded from the scope of section 9. We are of the view, therefore, that section 9 read with section 2(15) Explanation 2, has been rightly invoked by the revenue for the inclusion of the value of the half share of the father, less the sum of Rs. 5,000 in view of the proviso to section 27.

(13) In *Kantilal Trikamlal's case* (2), the relevant observations occur at pages 368 and 372 and the same are reproduced below:—

"That takes us to the next question whether partition of joint family properties constitutes "disposition" within the meaning of section 27, sub-section (1). That raises the question as to what is the true nature and legal effect of "partition". What happens when a partition of joint family properties takes place? Prior to the decision of the Supreme Court in *Commissioner of Income -tax* v. *Keshavlal Lallubhai Patel* (5), there was a sharp cleavage of opinion amongst the different High Courts on this question and there were two competing divergent views:

(1) Partition is a conversion of joint enjoyment into enjoyment in severalty; the crucial test of transfer by a person having an interest in favour of a person having no interest is not fulfilled; there is no conveyance involved in the process of partition as each sharer has an antecedent title to the property which comes to his share on partition.

(2) It is a conveyance of a portion of joint right in exchange for similar right from the cosharer.

Suba Rao, J., as he then was, delivering the judgment of a Division Bench of the Madras High Court in *Gutta Radhakrishnayya* v. *Gutta Sarsamma* (6), pointed out that

(5) (1965) 55 I.T.R. 637 (S.C.)
(6) A.I.R. 1951 Mad. 213, 217.

the later view was wrong and, expressing his approval of the former view, said:

"Partition, therefore, is, really a process in and by which a joint enjoyment is transformed into an enjoyment in severalty. Each one of the sharers had an antecedent title and therefore no conveyance is involved in the process as a conferment of a new title is not necessary."

The observation of the Madras High Court was referred to with approval by the Supreme Court in *Commissioner of Income-tax* v. *Keshavlal Lallubhai Patel,* (5) where the Supreme Court had occasion to consider whether a partition of joint family property is a transfer in the strict sense. Sikri, J., speaking on behalf of the Supreme Court observed :

"We are of the opinion that it is not. This was so held in *Gutta Radha-Krishnayya* v. *Gutta Sarasamma* (6), Suba Rao, J. (then a Judge of the Madras High Court), after examining several authorities, came to the conclusion that 'partition is really a process in and by which a joint enjoyment is transformed into an enjoyment in severalty. Each one of the sharer had antecedent title and, therefore, no conveyance is involved in the process, as a conferment of a new title is not necessary.' The Madras High Court again examined the question in *M. K. Stremann* v. *Commissioner of Income-tax* (7), with reference to section 16(3)(a)(iv). It observed that 'obviously no question of transfer of assets can arise when all that happens is separation in status, though the result of such severance in statute is that the property hitherto held by the coparcenary is held thereafter by the separated members as tenants-in-common. Subsequent partition between the divided members of the family does not amount either to a transfer of assets from that body of the tenants-in-common to each of such tenants-in-common'.

(7) (1961) 41 I.T.R. 297.

Agreeing with these authorities, we hold that when the joint Hindu family property was partitioned, there was no transfer of assets within section 16(3) (a) (iii) and (iv) to the wife or the minor son."

It can, therefore, no longer be disputed that partition is merely a process in and by which joint enjoyment is transformed into enjoyment in severalty and since each one of the coparceners had an antecedent title which extended to the whole of the joint family properties and had therefore full interest in the specific property which ultimately goes to his share, no transfer of interest in such specific property takes place in his favour and, as observed by Subba Rao J., as he then was, "no conveyance is involved in the process as a conferment of a new title" or interest "is not necessary". There is no transfer of interest from one coparcener to another in the process of partition.

If this be so, it is difficult to see how it can be regarded as "disposition" within the meaning of section 27, sub-section (1). Two or three English decisions were relied upon by the learned Advocate-General on behalf of the revenue for the purpose of showing that the word "disposition" is a word of very large import and it would comprise all forms of transfer, whether *inter vivos* or by operation of law. But we do not think it necessary to refer to these decisions, for it is well settled that the language of a statute has always to be construed with reference to its context and the same word may carry a variety of significations depending on the context in, which it is used. Construction *ex vilermini* involves fitting together of words with their context: Words in most cases take their colour from the environment. Barring certain words which are so precise and distinctive as to admit of only one meaning, the majority of words depend on the context and hence the familiar phrase that they must be construed *secundum subjectam materiam.* We must therefore gather the meaning of the word "disposition" having regard to the

context in which it is used, and authorities bearing on the construction of that word as used in other statutes cannot help us to arrive at the proper meaning of that word occurring in section 27, sub-section (1). Let us see what is the meaning of word "disposition" in the context in which it occurs in section 27, sub-section (1). Section 9, sub-section (1), provides that property taken under a disposition made by the deceased purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession or otherwise, which shall not have been *bona fide* made two years or more before the death of the deceased shall be deemed to pass on his death. Having dealt with "disposition" made without consideration, which a gift as ordinarily understood in the law of transfer would always be, the legislature proceeded to bring within the charge of estate duty under section 27, sub-section (1), dispositions made for partial consideration provided they were made by the deceased in favour of a relative. The legislature said that a disposition made by the deceased in favour of a relative shall be treated for the purpose of section 9, sub-section (1), as a gift unless it was made for full consideration in money or money's worth, that is, if it was made for partial consideration. Section 9, sub-section (1), and section 27, sub-section (1), thus formed part of a single scheme under which dispositions made by the deceased in favour of another without consideration and dispositions made by the deceased in favour of a relative for partial consideration were both sought to be treated on the same footing and the properties taken under such dispositions were deemed to pass on to the death of the deceased. The word "disposition" must therefore possess the element of transfer of an interest in property from one person to another, an element which is possessed in common by the concept of "transfer, delivery, declaration of truth, settlement upon persons in succession". Even if the word "otherwise" were not construed in a limited sense to refer only to dispositions belonging to the same genus as the preceding words and were given a wide meaning so as to include every transfer or creation of an interest in property, we do not think it can possibly comprise partition

which does not involve transfer of any interest in property. No meaning of the word "disposition" however, wide in its ambit and broad in its coverage can possibly take in partition which is nothing but a process in and by which joint enjoyment is transformed into enjoyment in severalty. Section 27, sub-section (1), cannot therefore be invoked by the revenue for the purpose of contending that the instrument dated 16th November, 1953, constituted a disposition by the deceased in favour of Kantilal and it was therefore liable to be treated as a gift for the purpose of section 9, sub-section (1).

* * * * * * *
* * * * * * *

We then turn to the argument based upon section 2(15), Explanation 2. We fail to see how that Explanation can have any application on the facts of the present case. There are two difficulties which face the revenue when the revenue seeks to rely on this Explanation. In the first place, as already pointed above, partition, even if unequal, does not involve extinguishment of any interest in property at the expense of the coparcener who receives less than what he might have received according to his rightful share. Secondly, the condition which attracts the applicability of this Explanation is that there must be extinguishment of a debt or "other right". The words used are "other right" as distinguished from "interest in property" which we find in the main part of the definition in section 2(15). What the Explanation therefore contemplates is extinguishment of some right of the deceased as a result of which benefit is conferred on another and it does not include extinguishment of an interest in property. Where the legislature wanted to refer to interest in property, the legislature has done so in clear and explicit terms in the main part of section 2(15) and section 7(1) but here the words used are "other right" and we cannot therefore regard these words as comprising within their scope and ambit "interest in property". It is apparent that in case of partition there is no extinguishment of any "right" possessed by a coparcener which results in benefit to another

coparcener. It is therefore evident that in the present case there was no extinguishment at the expense of any "right" within the meaning of the Explanation and the Explanation cannot avail the revenue for the purpose of bringing the case within section 27, sub-section (1)."

(13) We have taken the liberty to quote extensively from these decisions because they illusterate the divergent views. After considering the pros and cons of both these decisions and the ratio thereof, we have come to the conclusion with utmost respect to the learned Judges deciding the case in *S. P. Valliammai Achi* v. *Controller of Estate Duty, Madras* (3), that the view taken in *Kantilal Trikamlal's case* (2), is the correct view. It would not be out of place to mention that in a partition of Hindu undivided family, the division of shares cannot be weighed in golden scales. There can be disparities for variety of reasons. But all the same there will be no transfer of property from one to the other or any relinquishment of right to any property, unless it is specifically stated at the time of division. The division merely alters the mode of enjoyment. Joint enjoyment ceases on division and thereafter property is enjoyed in severalty. There is no disposition of any property. A partition under the Hindu Law is a domestic affair and no outsider can attack it including the department. If any party to the partition suffers in-equality, it can be for a variety of reasons. The suggestion that it should be assumed to have been purposely done to evade tax, cannot be accepted. Nor was this the case set up by the Department. No one could predict that after the partition, the father would die within two years. It is conceded that if the death had not taken place within two years of the partition, the problem would have not arisen. It appears to us that the view taken by the learned Judges in *Kantilal Trikamlal's case* (3), is correct. The same view was taken by the learned Judges of the Andhra Pradesh High Court in *Smt. Cherukuri Eswaramma* v. *Controller Duty,* (8). However, the learned Judges did not discuss the provisions of Explanation 2 to section 2(15) of the Act. We cannot assume that they were oblivious to those provisions. In this view of the matter, we repel the contention of the learned counsel for the department on the fourth question.

(8) (1968) 69 I.T.R. 109.

(14) For the reasons recorded above, we answer the first question in the affirmative, that is, in favour of the department and against the accountable persons, second and fourth question in the negative, that is, second in favour of the department and against the accountable persons and fourth in favour of the accountable persons and against the department. The third question does not arise in view of our answer to second question. In view of the difficult nature of the case, we make no order as to costs.

K.S.K.

INCOME TAX REFERENCE.

Before D. K. Mahajan and Gopal Singh, JJ.

M/s. KISAN WORKERS TRANSPORT CO-OPERATIVE SOCIETY, LTD.,—*Applicant.*

versus

THE COMMISSIONER OF INCOME-TAX, PATIALA,—*Respondent.*

Income Tax Reference No. 39 of 1969

February 22, 1971

The Income-tax Act (XLIII of 1961)—Sections 251(1)(a) and 297(2)(a)—Income-tax Act (XI of 1922)—Assessment proceedings started by Income-tax officer under 1922 Act—Assessment made under 1961 Act—Appellate Assistant Commissioner while disposing appeal under 1961 Act not annuling the assessment but setting it aside and refering the case back to the Income-tax Officer to make fresh assessment under the 1922 Act—Such order of the Appellate Assistant Commissioner—Whether bad in law.

Held, that assessment proceedings started under the Income-tax Act, 1922, should have been completed under the Act as provided by section 297 (2)(a) of the Income-tax Act, 1961. However, while disposing appeal against assessment started under 1922 Act and completed under 1961 Act, the Appellate Assistant Commissioner, while disposing of appeal against the assessment and acting under section 251(1)(a) of the 1961 Act, instead of annuling the assessment, sets it aside and refers the case back to the Income-tax officer with the direction to make fresh assessment from return stage under the 1922 Act, the order of the Appellate Assistant Commissioner is valid and not bad in law. It is not incumbent on him to annul the assessment. Moreover, the Income-tax Officer was proceeding with the assessment under the 1922 Act, which he had jurisdiction to do. The mere fact that he applied a different provision of law would not render his order wholly without jurisdiction. (Paras 2 and 6)