INCOME TAX CASE

Before R. S. Narula and S. S. Sandhawalia, JJ.

S. P. JAISWAL,—*Petitioner*

versus

THE COMMISSIONER OF INCOME TAX, PUNJAB,—*Respondent*

Income Tax Case No. 4 of 1964.

July 10, 1968

Income-tax Act (XI of 1922)—S. 66—Application under file beyond time—Income-tax Appellate Tribunal—Whether has jurisdiction to extend period of limitation—Income-tax Act (XLIII of 1961)—S. 256(1)—Appellate Tribunal's power of condonation of delay—Extent of—S. 297(2)—"Proceedings for the assessment of a person"—Meaning of Income-tax (Removal of Difficulties) Order (1962)—Income-tax return filed before April 1, 1962—Under which Act to be dealt with—Income-tax Appellate Tribunal refusing to entertain time barred application—Application for reference to High Court—Whether lies—High Court—Whether can issue a mandamus *for making such reference—Constitution of India (1950)—Article 227—Power under—When can be invoked for setting aside an order of the Income-tax Appellate Tribunal.*

Held, that the Income-tax Appellate Tribunal has no jurisdiction under any provision of law to extend the period of limitation prescribed for the making of an application under section 66(1) of Income-tax Act, 1922. If the application is made beyond the prescribed time, the Tribunal has no discretion but to dismiss the same unless a statutory provision to the contrary is made or the provisions of section 5 of the Limitation Act are made applicable to those proceedings. However the Tribunal has the jurisdiction to condone delay up to a maximum period of thirty days in making an application under sub-section (1) of section 256 of Income-tax Act, 1961, if the Tribunal is satisfied that there was sufficient cause for the application not having been filed within time. [Para 21(iv) and (v)]

Held, that the expression "proceedings for the assessment of a person" used in section 297(2)(a) of the 1961 Act is of the widest possible amplitude and the word "assessment" in the said phrase has been used in its widest connotation and in a very comprehensive sense so as to include therein all possible proceedings under the Income-tax Act or the Finance Act relating to assessment up to the stage after which nothing remains to be done in connection with the assessment and computation of the tax in respect of the year in question. [Para 21(vi)]

Held, that the combined effect of the operation of clause (a) of sub-section (2) of section 297 of the 1961 Act and the Income-tax (Removal of Difficulties) Order, 1962, issued under section 298 of the said Act is that all proceedings including an application for a reference to the High Court in relation to the assessment

year in respect of which the return of income was filed before April 1, 1962, must be dealt with under the 1922 Act as if the 1961 Act had not been passed.

Held, that an application under section 66(3) of the Income-tax Act, 1922, does not lie to a High Court against an order of the Income-tax Appellate Tribunal refusing to entertain an admittedly time-barred application under section 66(1) of the said Act even if it could be shown that the refusal of the Tribunal to extend time was not warranted by law. Moreover neither an application under section 66(2) of the 1922 Act nor an application under sub-section (2) of section 256 of the 1961 Act lies to a High Court for the issue of a *mandamus* for making a reference in a case where the Income-tax Appellate Tribunal has refused to go into the merits of the application for reference on the ground that it is barred by time. Such an application lies only in a case where the Tribunal has refused to make a reference on the ground that no question of law arises from its appellate order.

[Para 21(i) and (ii)]

Held, that the power of judicial superintendence conferred on a High Court by Article 227 of the Constitution can be invoked for setting aside an order of a Tribunal holding that it has no jurisdiction to decide a particular matter placed before it if it is found that in fact the Tribunal had the jurisdiction to adjudicate upon the matter and it erroneously refused to exercise statutory jurisdiction vested in it by law. [Para 21 (iii)]

Application under section 66(3) of Income Tax Act, 1922, read with section 256 of the Income Tax Act, 1961 and Article 227 of the Constitution of India praying that this Hon'ble Court be pleased to direct the Income Tax Appellate Tribunal, New Delhi, to treat the petitioner's application for reference (R.A. No. 479/63-61 assessment year 1946-47) in time and to make the reference as prayed for therein.

H. L. SIBAL, SENIOR ADVOCATE, S. C. SIBAL, ADVOCATE, WITH HIM, for the Petitioner.

D. N. AWASTHY WITH BALWANT SINGH GUPTA, ADVOCATE, for the Respondent.

JUDGMENT

The Judgment of the Court was delivered by:

NARULA, J.—This application has been filed by Shri S. P. Jaiswal (hereinafter referred to as the assessee) under section 66(3) of the Income-tax Act, 1922 (hereinafter called the 1922 Act) read with section 256 of the Income-tax Act, 1961 (hereinafter referred to as the 1961 Act) and under Article 227 of the Constitution. The only

facts which are necessary to be noticed for deciding this application are that after the assessee's appeal to the Income-tax Appellate Tribunal for the computation of income-tax for the assessment year 1946-47 had been disposed of by the order of the Tribunal, dated February 15, 1963, an application under section 66(1) of the 1922 Act (copy Annexure 'A' to this application) was filed by the assessee for referring two questions of law to this Court. It is not disputed that the said application was filed 21 days beyond the time prescribed for moving the Tribunal for making such a reference. At the hearing of the application it was conceded on behalf of the assessee, and indeed it is not denied even now, that the application was barred by time. The assessee, however, invoked section 5 of the Indian Limitation Act, 1908, for condonation of the delay on certain grounds with the merits of which we are not concerned in these proceedings. The Tribunal by its order, dated September 16, 1963 (Annexure 'B'), held that section 5 of the Limitation Act did not in terms apply to an application under section 66(1) of the 1922 Act and that inasmuch as the benefit of section 5 of the Limitation Act had not been extended to an application under section 66(1) of the 1922 Act, the benefit of that provision could not be invoked by the assessee. In the circumstances, the Tribunal held that the application for reference was barred by limitation and the Tribunal proceeded to dismiss the same on that short ground "without considering it on merits."

(2) In the present application a prayer has been made to direct the Income-tax Appellate Tribunal, New Delhi, to treat the assessee's application for reference as having been filed within time and to direct the Tribunal to make the reference in question. The application has been opposed on behalf of the Commissioner of Income-tax.

(3) The first question which calls for decision is as to the provision of law under which the present application can be entertained by this Court. It was fairly and frankly conceded by Mr. Hira Lal Sibal, the learned counsel for the assessee that sub-section (3) of section 66 of the 1922 Act cannot be invoked by his client as the decision of the Tribunal to the effect that the application for reference was barred by time is indeed unassailable and it is an admitted fact that the application was in fact barred by time. Sub-section (3) of section 66 does not authorise the assessee or the Commissioner of Income-tax to move this Court on any ground other than the one mentioned in that provision, i.e., on the ground that the

decision of the Income-tax Appellate Tribunal about the petition being barred by time is not correct on merits. The only relief which this Court can grant under that provision is to direct the Tribunal to treat the application under sub-section (1) of section 66 as having been made within time. That relief it is conceded cannot possibly be claimed or granted in the instant case.

(4) Counsel then submitted that this application lies under sub-section (2) of section 66 of the 1922 Act corresponding to section 256(2) of the 1961 Act. We are not inclined to agree with this submission. In both the provisions referred to above, this Court can be moved only if:—

(a) the Tribunal had been moved by the applicant under sub-section (1) of section 66 of the 1922 Act or sub-section (1) of section 256 of the 1961 Act as the case may be; and

(b) if on the said application, the Tribunal refuses to state the case on the ground that no question of law arose therein.

(5) The assessee had no doubt moved the Tribunal under sub-section (1) of section 66, but the Tribunal has expressly refrained from passing any order on the merits of the claim for reference. The Tribunal has not even gone into the question whether it should state the case or whether it should refuse to state the case. In any event, the Tribunal has nowhere suggested that the questions which were sought to be referred by it to this Court were not questions of law or that the same did not arise out of the Tribunal's appellate order. Whatever other remedies may be available to a party aggrieved by an order of Tribunal refusing to make a reference on any ground other than the one to the effect that no question of law arises in the case, he has certainly no right to invoke sub-section (2) of section 66 of the 1922 Act or section 256(2) of the 1961 Act.

(6) Mr. Sibal lastly submitted that this application should be disposed of under Article 227 of the Constitution as the Tribunal has refused to exercise jurisdiction vested in it by law. Even Mr. Awasthi could not say anything against this contention. The jurisdiction of this Court under Article 227 of the Constitution can certainly be invoked if any Tribunal within the territorial jurisdiction of this Court passes an order which is wholly without jurisdiction or refuses to exercise jurisdiction vested in it on the ground that it has no such jurisdiction. Jurisdiction of this Court under

Article 227 of the Constitution is for this purpose akin to the revisional powers of the High Court under section 115 of the Code of Civil Procedure.

(7) The main difference between the two jurisdictions is that whereas it is only the order of a Court subordinate to the High Court which can be interfered with under section 115 of the Code, Article 227 of the Constitution can be invoked even for interference with the order of any Tribunal which sits within the territorial jurisdiction of the High Court. The circumstances in which the High Court interferes in either of the two cases are practically the same. We, therefore, decline to entertain this application under section 66(3) of the 1923 Act or section 256(2) of the 1961 Act, but proceed to hear and dispose of the same under Article 227 of the Constitution.

(8) Though an attempt was made by Mr. Sibal for some time to show that section 5 of the Limitation Act applies to an application under section 66(1) of the 1922 Act, it was ultimately conceded by him that in as much as the application of the assessee was filed before the Tribunal at the time when the Indian Limitation Act, 1908, was in force, and before the coming into force of the Limitation Act, 1963, the provisions of section 5 of the Limitation Act could not be invoked by the assessee as this provision had not been extended or made applicable to proceedings under section 66(1). This is because of section 5 not having been included in section 29(2)(a) of the 1908 Act, though it has now been included in the corresponding provision of the Limitation Act, 1963.

(9) Mr. Sibal lastly submitted that irrespective of the fact that the application of the assessee to the Tribunal was described as one under section 66(1) of the 1922 Act, and in spite of the fact that a specific prayer had been made in paragraph 5 of that application to make a reference under that provision, the provision under which the application should really have been filed and the only provision under which the reference could in fact be made by the Tribunal, was sub-section (1) of section 256 of the 1961 Act. Whereas the Income-tax Appellate Tribunal had no jurisdiction at all to extend the period of limitation fixed for filing an application under section 66(1) of the 1922 Act or to condone delay in filing the same, it is beyond doubt that the addition of the following proviso to sub-section (1) of section 256 of the 1961 Act, which sub-section corresponds to section 66(1) of the 1922 Act, has now authorise the

Tribunal to extend the prescribed period of limitation in the circumstances mentioned in the proviso:—

> "Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days."

(10) It is, therefore, obvious that if the only proper law under which an application for reference could be made by the assessee to the Tribunal at the relevant time was the 1961 Act, the Tribunal indeed had the jurisdiction to condone the delay if it could be satisfied that the assessee was prevented by sufficient cause from presenting the application within the period specified in sub-section (1) of section 256, inasmuch as the application was admittedly filed within a period not exceeding thirty days after the expiry of the prescribed period of limitation. On the other hand, it is equally clear that if the 1961 Act did not apply to the reference proceedings and the application in question had been rightly filed by the assessee under the 1922 Act, no exception whatever can be taken to the impugned order passed by the Tribunal.

(11) The main issue which emerges for decision in these circumstances in this case is whether the application for reference lay under the 1922 Act or the 1961 Act. For deciding this question notice has to be taken of some more relevant facts. These are that the 1961 Act came into force with effect from April 1, 1962, that at that time, the assessee's appeal against the order of the Appellate Assistant Commissioner was pending before the Tribunal which appeal was ultimately disposed of by order dated February 15, 1963, that the application for reference was admittedly filed long after that date, and that the return of income in respect of which the second appeal had been disposed of by the Income-tax Appellate Tribunal and in connection with which the reference to this Court was sought (for the assessment year 1946-47) had been filed by the assessee long before the date of commencement of the 1961 Act. It is in this perspective that we are called upon to decide whether the submission of Mr. Sibal to the effect that in view of the repeal of the 1922 Act with effect from April 1, 1962, the application for reference had of necessity to be made to the Tribunal under sub-section (1) of section 256 of the 1961 Act only, and that, therefore, the Tribunal has ignored the proviso to that sub-section while holding that it had no jurisdiction to extend the time, is correct or not.

(12) The 1922 Act has been repealed by sub-section (1) of section 297 of the 1961 Act. If things had rested there, Mr. Sibal would indeed have been correct in his submission. Clauses (a) and (c) of sub-section (2) of section 297 have, however, to be considered before coming to a decision about this matter. The case of the Revenue is that the application for reference had to be made under the 1922 Act because of the provision contained in clause (a) of sub-section (2) of section 297. The relevant extract from that section is quoted below:—

"(1) The Indian Income-tax Act, 1922, is hereby repealed.

(2) Notwithstanding the repeal of the Indian Income-tax Act, 1922 (hereinafter referred to as the repealed Act),—

(a) where a return of income has been filed before the commencement of this Act by any person for any assessment year, proceedings for the assessment of that person for that year may be taken and continued as if this Act had not been passed;

(b) * * * * *
* * * * *

(c) any proceeding pending on the commencement of this Act before any income-tax authority, the appellate tribunal or any Court, by way of appeal, reference or revision, shall be continued and disposed of as if this Act had not been passed;

(d) * * * * *
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(e) * * * * *
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(f) * * * * *
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(g) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the 31st day of March, 1962, or any earlier year, which is completed

on or after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act;

(h) * * * * *
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(i) * * * * *
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(j) * * * * *
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(k) * * * * *
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(l) * * * * *
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(m) where the period prescribed for any application, appeal, reference or revision under the repealed Act had expired on or before the commencement of this Act, nothing in this Act shall be construed as enabling any such application, appeal, reference or revision to be made under this Act by reason only of the fact that a longer period therefore is prescribed or provision is made for extension of time in suitable cases by the appropriate authority."

(13) Clause (c) of section 297(2) applies only to the particular and specific proceedings which were pending on the commencement of the 1961 Act, i.e., on April 1, 1962. As already stated it was the assessee's appeal to the Tribunal which was pending on that day and the same had, therefore, necessarily to be disposed of under the old Act as if the new Act had not been passed. The application for reference was admittedly not pending on the date of coming into force of the 1961 Act. Clause (c) of sub-section (2) of section 297 could, therefore, have no application to the proceedings in dispute. This leads to the question whether clause (a) applies to the application for reference made by the assessee. The answer to this question would in turn depend upon the true scope and correct construction of the expression "proceedings for the assessment" contained in clause (a). The case of the Revenue is that this expression includes proceedings under section 256(1) of the 1961 Act. On the other hand Mr. Sibal has contended that "proceedings for the assessment" of his client finally culminated in the appellate order of the Tribunal and that though the application for reference

was made to obtain the opinion of the High Court on certain questions of law and though it is quite possible that as a result of the decision of the reference it might have become necessary to reopen and recommence the assessment proceedings, the intervening link comprised of the application for reference and the consequent reference itself could not be termed "assessment proceedings". Mr. Sibal has in this connection placed reliance on the observations of the Privy Council ("the word "assessment" is used as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the taxpayer") in *Commissioner of Income-tax, Bombay Presidency & Aden* v. *Khemchand Ramdas* (1), which are stated to have been approved by their Lordships of the Supreme Court in *C.A. Abraham* v. *Income-tax Officer, Kottayam, and another* (2). It was held by the Supreme Court in that case as below :—

> "A review of the provisions of Chapter IV of the Act sufficiently discloses that the word "assessment" has been used in its widest connotation in that chapter. The title of the chapter is "Deductions and Assessment." The section which deals with assessment merely as computation of income is section 23; but several sections deal not with computation of income, but determination of liability, machinery for imposing liability and the procedure in that behalf. Section 18A deals with advance payment of tax and imposition of penalties for failure to carry out the provisions therein. Section 23A deals with power to assess individual members of certain companies on the income deemed to have been distributed as dividend, section 23B deals with assessment in case of departure from taxable territories, section 24B deals with collection of tax out of the estate of deceased persons, section 25 deals with assessment in case of discontinued business, section 25A with assessment after partition of Hindu undivided families and sections 29, 31, 33 and 35 deal with the issue of demand notices and the filing of appeals and for reviewing assessment and section 34 deals with assessment of incomes which have escaped assessment. The

(1) (1938) 6 I.L.R. 414 at P. 416.
(2) (1961) 41 I.T.R. 425 at P. 429.

expession "assessment" used in these sections is not used merely in the sense of computation of income and there is in our judgment no ground for holding that when by section 44, it is declared that the partners or members of the association shall be jointly and severally liable to assessment it is only intended to declare the liability to computation of income under section 23 and not to the application of the procedure for declaration and imposition of tax liability and the machinery for enforcement thereof."

(14) On the other hand Mr. Awasthi has referred to the following passage in the Division Bench judgment of the Calcutta High Court in *Kalawati Devi Harlalka* v. *Commissioner of Income-tax, West Bengal, and others* (3):—

"The word 'assessment' has been used in the Income-tax Act in a comprehensive sence. The expression 'proceedings for the assessment' in section 297(2)(a) has a wide connotation and embraces within its scope the various proceedings relating to assessment as envisaged in Chapter IV of the Act of 1922 including proceedings by way of appeal, reference and revision in a case where the return of income has been filed before the commencement of the Act of 1961. Clause (c) of section 297(2) does not restrict the scope of clause (a) to proceeding for original assessment."

(15) Mr. Awasthi finally referred in this connection to the authoritative pronouncement of the Supreme Court in *Kalawati Devi Harlalka* v. *Commissioner of Income-tax, West Bengal, and others* (4) to the effect that "it seems to us that section 297 is meant to provide as far as possible for all contingencies which may arise out of the repeal of the 1922 Act. It deals with pending appeals, revisions, etc. It deals with non-completed assessments pending at the commencement of the 1961 Act, and assessments to be made after the commencement of the 1961 Act, as a result of returns of income filed after the commencement of the 1961 Act." Notice must at this stage be taken of the provisions contained in section

(3) (1966) 62 I.L.T. 544.
(4) (1967) 66 I.L.R. 680 at P. 690.

298 of the 1961 Act, and of clause 4 of the Income-tax (Removal of Difficulties) Order, 1962, promulgated by the Central Government and published in the Gazette of India, dated August 8, 1962 :—

"298(1) If any difficulty arises in giving effect to the provisions of this Act the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(2) In particular, and without prejudice to the generality of the foregoing power, any such order may provide for the adoptations or modifications subject to which the repealed Act shall apply in relation to the assessments for the assessment year ending on the 31st day of March, 1962, or any earlier year."

(16) Clause 4 of the 1962 Order is in the following terms: —

"4. (1) Proceedings by way of the first or subsequent appeals, reference or revision in respect of any order made under the Indian Income-tax Act, 1922 (11 of 1922) (hereinafter referred to as the repealed Act), shall be instituted and disposed of as if the repealing Act had not been passed.

(2) Any such proceedings instituted under the repealing Act after the 31st day of March, 1962, and before the date of this Order shall be deemed to have been instituted under the repealed Act and shall be disposed of as if the repealing Act had not been passed:

Provided that if any such proceedings has been disposed of before the date of this Order under any provision of the repealing Act, it shall be deemed to have been disposed of under the corresponding provision of the repealed Act and any appeal, reference or revision in respect of the proceeding so disposed of shall be instituted and disposed of as if the repealing Act had not been passed."

(17) The import, scope and effect of section 298 and of clause 4 of the Central Government's order issued thereunder came up for consideration before the Calcutta High Court as well as before their Lordships of the Supreme Court in *Kalawati Devi Harlalka's case*

(supra). Bose, C.J., who wrote the judgment of the Division Bench of the Calcutta High Court held in this connection as below:—

> "But it is to be pointed out that the vires of clause (4) of the Income-tax (Removal of Difficulties) Order, 1962, has been challenged before us on the ground that such a provision is plainly beyond the power of the Central Government as conferred upon it by section 298 of the Income-tax Act, 1961. The submission of the counsel for the appellant is that clause (4) is inconsistent with section 297 of the Act and it has sought to fill up a lacuna which existed in that section. But if my interpretation of section 297(2) (a) is correct and the "proceedings for the assessment" are wide enough to include the proceedings by way of appeal, reference and revision, which are different steps in the machinery of assessment, then what clause (4) has done is simply to make explicit what was implicit in clause (a) and it is with the object of removing the doubt or difficulty, if any, existing in respect of the construction of clause (a) of section 297(2) that a specific provision like clause (4) was introduced in the Removal of Difficulties Order, 1962. In this view of the matter it must be held that there is no force in the criticism or challenge of the learned counsel for the appellant that clause (4) is inconsistent with the provisions of section 297 or that by enacting such a provision the Central Government was not purporting to give effect to the provisions of the Act or was doing anything inconsistent with the provisions of the Act. That the power conferred by section 298 upon the Central Government is very wide in its amplitude will be clear by a reference to the decision of the Judicial Committee in the case of *King Emperor* v. *Sibnath Banerji.*" (Reference was then made to certain observations of the Judicial Committee in its decision in *Sibnath Banerji's* case.)

The same observations are, in my view, applicable in interpreting sub-sections (1) and (2) of section 298. Under this section the Central Government may pass any order to resolve any difficulty that may rise in implementing the provisions of the Act of 1961. The only limitation put upon this power as is clear from sub-section (1) of section 298 is that the order that may be passed by the Central

Government, whether it is a general or a special order, should not be inconsistent with the provisions to implement which the same is passed. Sub-section (2) of section 298 is illustrative and makes express provision authorising the Central Government to make provision, in such general or special order, as is contemplated in sub-section (1), for adaptations and modifications subject to which the Act of 1922 shall apply in relation to the assessment for the assessment year ending on 31st March, 1962, or any earlier year. Therefore the contention of the learned counsel for the appellant challenging the vires of clause (4) of the Income-tax (Removal of Difficulties) Order, 1962, must be rejected.

In view of these findings on the question of construction of clause (a) of sub-section (2) of section 297 of the Act and as to the vires of clause (4) of the Income-tax (Removal of Difficulties) Order, 1962, it is not necessary to express any definite opinion on the point whether section 6 of the General Clauses Act, 1897, is available for the purpose of interpreting the provisions of the Act of 1961."

(18) Dismissing the appeal preferred by Kalawati Devi Harlalka against the abovesaid decision of the Calcutta High Court Sikri, J., who wrote the judgment of the Supreme Court, after referring to various decisions in which the word "assessment" had been used in the widest cannotation, held:—

"It is quite clear from the authorities cited above that the word "assessment" can bear a very comprehensive meaning; it can comprehend the whole procedure for ascertaining and imposing liability upon the taxpayer. Is there then anything in the context of section 297 which compels us to give the expression "procedure for the assessment" the narrower meaning suggested by the learned counsel for the appellant? In our view, the answer to this question must be in the negative. It seems to us that section 297 is meant to provide as far as possible for all contingencies which may arise out of the appeal of the 1922 Act. It deals with pending appeals, revisions, etc. It deals with non-completed assessments pending at the commencement of the 1961 Act, and assessment to be made after the commencement of the 1961 Act, as a result of

returns of income filed after the commencement of the 1961 Act. Then in clause (d) it deals with assessments in respect of escaped income; in clauses (f) and (g) it deals with levy of penalties, clause (h) continues the effect of elections or decorations made under the 1922 Act; clause (i) deals with refunds; clause (j) deals with recovery; clause (k) deals generally with all agreements, notifications, orders issued under the 1922 Act, clause (l) continues the notifications issued under section 60(1) of the 1922 Act, and clause (m) guards against the application of a longer period of limitation prescribed under the 1961 Act to certain applications, appeals, etc. It is hardly believable in this context that Parliament did not think of appeals and revisions in respect of assessment orders already made or which it had authorised to be made under clause (a) of section 297(2)."

(19) Very recently the Supreme Court has again held in *S. Sankappa etc.* v. *The Income-tax Officer, Central Circle II, Bangalore* (5), that the word "assessment" has been used in section 297(2)(a) of the 1961 Act in a comprehensive sense and includes all proceedings starting with the filing of the return and ending with determination of the tax payable by the assessee. Proceedings under section 66(1) are in my opinion a mere link in the same chain.

(20) Mr. Sibal also submitted that clause (4) of the Income-tax (Removal of Difficulties) Order, 1962, is void as being outside the scope of section 298. The contention of the learned counsel is that section 298 permits the passing of a general or special order for removal of any difficulty arising "in giving effect to the provisions of the 1961 Act" and not for enlarging the scope of any of its provisions. Great emphasis has been laid by learned counsel on the restriction placed on the power of the Central Government under section 298 by the provisions contained in the section itself to the effect that any general or special order passed by the Government must not be inconsistent with any provision of the Act. Mr. Sibal submits that the addition of the word "reference" in clause (4) of the Removal of Difficulties Order is hit by the abovesaid restriction inasmuch as "proceedings for assessment" do not include an application for reference and in so far as "reference" has been mentioned

(5) A.I.R. 1968 S.C. 816.

in clause (4) of the 1962 Order, it is inconsistent with clause (a) of sub-section (2) of section 297. We do not, however, find any force in this submission of Mr. Sibal in view of the widest possible cannotation attributed by the Supreme Court to the expression "proceedings for assessment" occurring in clause (a) of sub-section (2) of section 297 and in view of the law laid down in *Kalavati Devi Harlalka's case*. It was then contended that if clause (a) can be construed in the manner in which the Revenue has canvassed before us, clause (c) of sub-section (2) of section 297 would become wholly redundant and meaningless because clause (a) read with the 1962 Order would provide for all proceedings arising out of income-tax returns filed before April, 1962, being dealt with under the old Act, and there would have been no sense then in making a specific provision in clause (c) to the effect that proceedings pending on April 1, 1962, must be dealt with under the 1922 Act. There is an obvious fallacy in this argument. The proceedings referred to in clause (c), i.e., those which were pending on April 1, 1962, have to be dealt with under the old Act as if the 1961 Act had not been passed. No discretion or option in the matter is given to any authority. This is so in spite of the fact that all the proceedings referred to in clause (c) would certainly be covered by clause (a) also, the scope of clause (a) being wider than that of clause (c). But the difference lies in the fact that whereas clause (c) operated automatically and is couched in mandatory terms, discretion has been given to the Revenue in so far as the proceedings covered by clause (a) and not covered by clause (c) are concerned. This was the state of law brought about by the 1961 Act. By the provision contained in clause (4) of the 1962 Order the discretion conferred by section 297(2)(a) on the Revenue has been exercised by the Government once for all for all cases covered by that clause. As a result of that Order, clause (c) has in a sense become temporarily redundant. But this cannot possibly help the assessee in obtaining any relief.

(21) No other point has been argued in this case. For the foregoing reasons, it is held that—

(i) an application under section 66(3) of the Income-tax Act, 1922, does not lie to a High Court against an order of the Income-tax Appellate Tribunal refusing to entertain an admittedly time-barred application under section 66(1) of the said Act even if it could be shown that the refusal of the Tribunal to extend time was not warranted by law;

(ii) neither an application under section 66(2) of the 1922 Act nor an application under sub-section (2) of section

256 of the 1961 Act lies to a High Court for the issue of a *mandamus* for making a reference in a case where the Income-tax Appellate Tribunal has refused to go into the merits of the application for reference on the ground that it is barred by time. Such an application lies only in a case where the Tribunal has refused to make a reference on the ground that no question of law arises from its appellate order;

(iii) the power of judicial superintendence conferred on a High Court by Article 227 of the Constitution can be invoked for setting aside an order of a Tribunal holding that it has no jurisdiction to decide a particular matter placed before it if it is found that in fact the Tribunal had the jurisdiction to adjudicate upon the matter and it erroneously refused to exercise statutory jurisdiction vested in it by law;

(iv) the Income-tax Appellate Tribunal has no jurisdiction under any provision of law to extend the period of limitation prescribed for the making of an application under section 66(1) of the 1922 Act. If the application is made beyond the prescribed time, the Tribunal has no discretion but to dismiss the same unless a statutory provision to the contrary made or the provisions of section 5 of the Limitation Act are applicable to those proceedings;

(v) the Income-tax Appellate Tribunal has the jurisdiction to condone delay up to a maximum period of thirty days in making an application under sub-section (a) of section 256 of the 1961 Act, if the Tribunal is satisfied that there was sufficient cause for the application not having been filed within time;

(vi) the expression "proceedings for the assessment of a person" used in section 297(2)(a) of the 1961 Act is of the widest possible amplitude and the word "assessment" in the said phrase has been used in its widest cannotation and in a very comprehensive sense so as to include therein all possible proceedings under the Income-tax Act or the Finance Act relating to assessment up to the stage after which nothing remains to be done in connection with the assessment and computation of the Tax in respect of the year in question; and

(vii) the combined effect of the operation of clause (a) of sub-section (2) of section 297 of the 1961 Act and of the Income-tax (Removal of Difficulties) Order, 1962, issued under section 298 of the said Act is that all proceedings including an application for a reference to the High Court in relation to the assessment year in respect of which the return of income was filed before April 1, 1962, must be dealt with under the 1922 Act as if the 1961 Act had not been passed.

(22) As a result of the above findings this application is dismissed. We do not, however, make any order as to costs.

K.S.K.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

STATE OF PUNJAB,—*Appellant*

versus

VIDYA PARKASH,—*Respondent*

Letters Patent Appeal No. 254 of 1968

July 15, 1968

Constitution of India (1950)—*Article* 311(2)—*Government servant officiating on a higher post—Formal inquiry started against him on charges of misconduct—Such inquiry dropped and Government servant reverted to his substantive post—No opportunity afforded to disprove the charges—Article* 311(2)—*Whether infringed—Order of reversion—Whether can be quashed.*

Held, that where it is a case of a probationer or a temporary Government servant, and the Government either holds a preliminary enquiry into his conduct or even orders a formal enquiry, but drops it before recording a finding against him and proceeds to discharge him from service in accordance with the terms and conditions of his service, then, as the order of discharge carries no stigma on the face of it, the future of such a person is not affected in seeking fresh employment elsewhere thereafter. The Government has the right to discharge such a Government servant from service within the terms and conditions of his service either when it informs itself of his misconduct by a preliminary enquiry or even when it proceeds against him by a formal enquiry but does not