

Merla Sitarama Prasad Vs. Assistant Controller of Estate Duty and anr.

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Court : Andhra Pradesh

Decided On : Feb-20-1970

Reported in : [1971]80ITR672(AP)

Judge : Gopal Rao Ekbote and ;Venkateswara Rao, JJ.

Acts : [Estate Duty Act, 1953](#) - Sections 58, 59 and 73A

Appeal No. : Writ Petition No. 858 of 1968

Appellant : Merla Sitarama Prasad

Respondent : Assistant Controller of Estate Duty and anr.

Advocate for Def. : T. Anantha Babu, Adv.

Advocate for Pet/Ap. : V.S.L. Narasimha Rao, Adv.

Judgement :

Venkateswara Rao, J.

1. This is a petition under Article 226 of the Constitution of India seeking a writ of prohibition or any other appropriate writ, direction or order restraining the Assistant Controller of Estate Duty Kakinada (R-1), from proceeding with the enquiry in pursuance of the notice G.I.R. No. 130 r/7-2-68 issued by him and to pass such other order or orders which the court may deem fit and proper in the

circumstances of the case.

2. Merla Ramanna, the father of the petitioner, died on March 31, 1962. On October 1, 1962, the petitioner filed a return with the estate duty authorities declaring the principal value of the estate; at Rs. 1,84,768 on the basis of which a provisional duty of Rs. 18,324.10 was levied. The value of the estate was finally, assessed at Rs. 5,74,992 and duty amounting to Rs. 66,998-40 was imposed on. June 27, 1963. After paying this duty in full, the petitioner preferred an appeal to the Appellate Controller who, by his order dated August 10, 1965, granted him some relief. While so, the Assistant Controller, Kakinada, issued a notice GIR/130 r/7-2-68 to the petitioner under Section 59 of the Estate Duty Act, which will hereinafter be referred to as the 'Act', calling upon the latter to deliver an account of all the property in respect of which estate duty is payable on or before February 27, 1968, alleging that he had reason to believe that property chargeable to duty had been under-assessed. It is to restrain the Assistant Controller from proceeding with the enquiry in pursuance of this notice that the petitioner invokes the jurisdiction of this Court under Article 226 of the Constitution, as, according to him, the impugned notice besides being vague and unwarranted, was issued long after the expiry of the period prescribed therefor by Section 73A(b) of the Act.

3. The Assistant Controller filed a counter, pleading, among other things, that he came to know some time after the appeal preferred by the petitioner was disposed of, that certain properties chargeable to duty had escaped assessment and that his jurisdiction to issue the impugned notice cannot, therefore, be questioned, that it is not correct to say that the notice is vague or unwarranted or that it is barred by limitation as the period mentioned in Section 73A(b) of the Act has to be computed only from the date on which the appeal filed by the petitioner was disposed of since the assessment became final only then and that the petition is, therefore, devoid of merits.

4. The point that, therefore, falls to be considered in this petition is whether the impugned notice is illegal and without jurisdiction for all or any of the reasons urged by the petitioner.

5. The main ground of attack levelled against the legality of the impugned notice is that it was issued after the expiration of three years from the date of assessment and is, therefore, barred by time under Section 73A(b) of the Act. The contention of the 1st respondent, on the other hand, is that the three years' period mentioned in Section 73A(b) has to be computed from the date on which the assessment became final consequent on the dismissal of the appeal preferred by the petitioner and not from the date of the assessment itself. The question, therefore, is what is the date with effect from which the period mentioned in Section 73A(b): has to be computed for the purpose of making a reassessment under Section 59 of the Act.

6. It is necessary to notice the. relevant sections: for the purpose of appreciating the respective contentions Urged by the parties. Section 59 reads :

'Property escaping assessment.--If the Controller,--

(a) has reason to believe that by reason of the omission or failure on the part of the person accountable to submit an account of the estate of the deceased under Section 53 or Section 56 or to disclose fully and truly all material facts necessary for assessment, any property chargeable to estate duty has escaped assessment by reason of under-valuation of the property included in the account or of omission to include therein any property which ought to have been included or of assessment at too low a rate or otherwise, or

(b) has, in consequence of any information in his possession, reason to believe notwithstanding that there has not been such omission or failure as is referred to in Clause (a) that any property chargeable to estate duty has escaped assessment, whether by reason of, under-valuation of the property included in the account or of omission to include therein any property which ought to have been included, or of assessment at too low a rate or otherwise,

he may at any time, subject to the provisions of Section 73A, require the person accountable to submit an account as required under Section 53 and may proceed to assess or reassess such property as if the provisions of Section 58 applied thereto.'

Sections 73A lays down :

'Limitation for commencing proceedings for assessment or reassessment.--No proceedings for the levy of any estate duty under this Act shall be commenced--

(a) in the case of a first assessment, after the expiration of five years from the date of the death of the deceased in respect of whose property estate duty became payable ; and

(b) in the case of a reassessment, after the expiration of three years from the date of assessment of such property to estate duty under this Act.'

Section 73A(a) prima facie limits the period beyond which no proceedings for levy of any estate duty could be commenced in the case of a first assessment, which is to be made under Section 58 of the Act, to five years from the date of the death of the deceased in respect of whose property duty has become payable, while Sub-section . (b) prescribes the period of limitation for commencing proceedings for the purpose of reassessment under Section 59 as three years from the date of assessment 'of such property', i.e., property referred to in Sub-section (a), to estate duty under the Act. The first assessment in respect of the property of late Ramanna, under Section 58, was admittedly made on June 27, 1963, i.e., within five years from the date of his death as required by Section 73A(a). The impugned notice by which the petitioner was called upon to furnish particulars for the purpose of effecting a reassessment under Section 59 was issued on February 7, 1968. If the period of three years mentioned in Section 73A(b) is to be computed from June 27, 1963, the date on which the initial assessment was made, the notice would be clearly out of time and no proceedings pursuant to that notice under Section 59 of the Act could be commenced having regard to the provisions of the self-same section that the Controller's right to require the accountable person to submit account is subject to the provisions of Section 73A. But it is contended for the 1st respondent that the date on which the petitioner's appeal was disposed of viz., August 10, 1965, alone should be taken as the date of assessment for the purpose of computing the period of limitation as, according to him, the order of assessment made by the Controller on June 27, 1963, should be deemed to have merged in the appellate order dated August 10, 1965, and did not become final till

then and the word 'assessment' occurring in Section 73A(b) is used to connote not only the order of the primary authority but also all further proceedings by way of appeal, revision, and the like.

7. The word 'assessment' has not been defined anywhere in the Act. Sri Narasimha Rao, the learned counsel for the petitioner, argued that the expression should be given its plain meaning in the absence of anything in the Act indicating that it has to be construed otherwise than in accordance with the ordinary meaning which it carries. The meaning given to the terms 'assess' in the Concise Oxford Dictionary is 'fix amount of (taxes, fine) ; fix amount of and impose (upon person or community) ; fine, tax (person, community, property, in, at, so much); estimate value of (property) for taxation. Hence, taxable a., taxably adv., assessment.' So, if 'assessment' is to be understood as evaluation of the property for the purpose of taxation and fixing the tax payable thereon, it has to be said that the assessment in this case under Section 58 of the Act was completed even on June 27, 1963, when the value of the estate was determined and duty was imposed by the Assistant Controller, But, our attention was invited by Sri Anantha Babu, the learned counsel for the 1st respondent, to *Kalawati Devi Harlalka v. Commissioner of Income-tax*, : [1967]66ITR680(SC) , *C.A. Abraham v. Income-tax Officer, Kottayam*, : [1961]41ITR425(SC) and *S. Sankappa v. Income-tax Officer, Central Circle II, Bangalore*, : [1968]68ITR760(SC) in support of his contention that the word 'assessment', when employed in a statute, intended for the purpose of levying a tax can bear a very comprehensive meaning and should, therefore, be construed in a broad and not narrow or restricted sense. In *Kalawati Devi Harlalka v. Commissioner of Income-tax*, the meaning and amplitude of the expression 'procedure for the assessment' occurring in Section 297 of the Indian Income-tax Act fell to be considered. Their Lordships pointed out :

'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 to 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 repeal of the 1922 Act. It deals with pending appeals, revisions, etc.'

It was likewise held in *C. A. Abraham v. Income-tax Officer, Kottayam*, in which the question whether an order imposing penalty could be passed against a firm after it has become dissolved fell to be considered, that a review of the provisions of Chapter IV of the Act (Income-tax) sufficiently discloses that the word 'assessment' has been used merely in the sense of computation of income. *S. Sankappa v. Income-tax Officer, Central Circle II, Bangalore* is another case in which it was pointed out that proceedings under the provisions of Section 35(1) or Section 35(5) of the Income-tax Act are also part of the proceedings for assessment as what the Income-tax Officer does in such proceedings is to correct errors in or rectify orders of assessment made by him. But none of these decisions are of any real help to us in interpreting the term 'assessment' occurring in Section 73A(b) of the Act as they relate to cases arising under the Income-tax Act and the words that fell to be considered in those case had to be construed having regard to the context in which they were used in that statute. That this is so can be seen from the following observations extracted from *C. A. Abraham v. Income-tax Officer, Kottayam*, itself referred to above :

'There is no doubt that the word 'assessment' does have subject to the context a very wide meaning. The expression 'assessment', as has often been said, is used in the Income-tax Act with different connotations. In *Commissioner of Income-tax v. Khemchand Ramdas*, [1938] 6 I.T.R. 414 (P.C.) the Judicial Committee of the Privy Council observed : 'One of the peculiarities of most Income-tax Acts is that 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. The Indian Income-tax Act is no exception in this respect.... "

It is, therefore, abundantly clear that their Lordships had to interpret the words 'assessment' and 'procedure for assessment' in the manner they did having regard to the context in which the expressions were used and that the interpretation given

by them does not hold good for interpreting the same or similar words occurring in a different statute. It has now come to be recognised quite well that the same expression may be used to convey different meanings not only in different statutes but also at different places in one and the same enactment. The same word or phrase used in different Acts need not therefore necessarily carry the same meaning. The meaning that has to be given to it depends upon the context in which it is employed. Reference may be made in this connection to *Ram Narain v. State of Uttar Pradesh*, : [1956]1SCR664 in which their Lordships of the Supreme Court sounded a note of caution against construing expressions used in one Act with reference to their use in another Act when they observed :

'It is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. The meanings of words and expressions used in an Act must take their colour from the context in which they appear.'

Lilavati Bai v. State of Bombay, : [1957]1SCR721 is another authority for the proposition that observations made by a court with reference to the construction of one statute cannot be applied with reference to the provisions of another which is not in pari materia with the statute which forms the subject-matter of the previous decision. The decisions cited by the learned counsel for the 1st respondent do not, therefore, advance the stand taken by him that the word 'assessment' occurring in Section 73A(b) is used in a comprehensive sense and to connote not only the initial assessment consisting of the estimation of the value of the estate and fixing and imposing the duty payable thereon, made by the Assistant Controller under Section 58 but also all subsequent proceedings such as appeal, revision and reference.

8. It was next contended by Sri Anantha Babu that the term 'assessment' used in Section 73A(b) of the Act should be understood as 'the final order of assessment' for the purpose of computing the period of limitation prescribed therein and that, in this view, the impugned notice cannot be considered to have become barred by time as the assessment became final only on August 10, 1965, when the appeal preferred by the petitioner to the Appellate Controller was disposed of. We are, however, unable to accept this contention either. We can, understand the finality of

the assessment made by the primary authority being affected or impaired if its operation was suspended pending disposal of the appeal but this is admittedly not the case. The word used in Section 73A(b) is 'assessment' and not 'final assessment', and if it is to be understood in the manner suggested by Sri Anantha Babu, it should mean that it could not be enforced or given effect to till the termination of all further proceedings, if any, allowed by the Act, But this is not so, as the assessment order dated June 27, 1963, was operative right from the moment it was made and was not in any way inhibited because of the preference of an appeal by the petitioner against that order. Indeed, no appeal could be preferred by the petitioner until and unless he paid the duty imposed by the primary authority in view of the proviso to Section 62(b) of the Act which lays down that no appeal shall lie under Sub-Clause (iv), Clause (a), of that section unless the duty has been paid before the appeal is filed. The appeal preferred by the petitioner simply placed the order passed by the Assistant Controller in jeopardy but did not have the effect of rendering that order ineffectual. The mere filing of an appeal does not by itself operate as a stay of assessment in the absence of a provision to that effect anywhere in the Act and it is therefore, not correct to say that the order of assessment made by the Assistant Controller in this case lacked finality or that the date on which the assessment was made by him cannot be taken as the starting point for computing the period of limitation, simply because there was a possibility of the assessment being varied or set aside in appeal.

9. The next contention urged for the 1st respondent is that the assessment made by the Assistant Controller on June 27, 1963, merged in the appellate order dated August 10, 1965, and that the date of the latter order alone should be taken as the date of assessment for the purpose of computing period of limitation. *Madan Gopal Rungta v. Secretary to the Government of Orissa*, : AIR 1962 SC1513 , *Collector of Customs v. East India Commercial Co. Ltd.*, : [1963]2SCR563 and *Commissioner of Income-tax v. Amritlal Bhogilal & Co.*, : [1958]34ITR130(SC) are relied upon in this context. *Madan Gopal Rungta v. Secretary to the Government of Orissa* and *Collector of Customs v. East India Commercial Co. Ltd.* do not seem to have much bearing on the facts of this case. In *Madan Gopal Rungta v. Secretary to the Government of Orissa*, the Government of Orissa rejected an application for mining lease in 1957, i.e., prior to the amendment of Article 226 of

the Constitution. The applicant thereupon approached the Central Government to have the order of the State Government reviewed but without success. He then filed a petition under, Article 226 of the Constitution in the High Court of Orissa. . The High Court dismissed that petition on the ground that it had no jurisdiction to deal with the matter as the final order: in the case was passed by the Central Government which was located beyond its jurisdiction. The matter was then taken to the Supreme Court by special leave when their Lordships held, among other things, that where there is a review petition and the Central Government passes an order on such petition one way or the other, it is Central Government's order that prevails and the State Government's order must, in those circumstances, merge in the order of the Central Government and that, apart from the theoretical question of merger, the terms of Rule 60. of the Mineral Concession Rules made it perfectly clear that whenever the matter is brought to the Central Government under Rule 59, it is the order of the Central Government which is effective and final. The appeal was therefore dismissed. Collector of Customs v; East India Commercial Co. Ltd. was a similar case in which the question arose whether the High Court had jurisdiction to issue a writ where an order of confiscation made by the Collector a Customs was confirmed in appeal by the Central Board of Revenue. Their Lordships of the Supreme Court held :

'....On principle, when once an order of an original authority is taken in appeal to the appellate authority which is located beyond the territorial jurisdiction of the High Court, it is the order of the latter authority which is the operative order after the appeal is disposed of; and as the High Court cannot issue a writ against the appellate authority for want of territorial jurisdiction it would not be open to it to issue a writ to the original authority which may be within its territorial jurisdiction once the appeal is disposed of, though it may be that the appellate authority has merely confirmed the order of the original authority and dismissed the appeal the decree of the lower court merges in the decree of the appellate court, and on the same principle it would not be incorrect to say that the order of the original authority is merged in the order of the appellate authority whatsoever its decision--whether of reversal or modification or mere confirmation.'

The facts of the case referred to above would thus clearly show that the applicability of the doctrine of merger had to be considered by their Lordships for the purpose of determining the question of jurisdiction and not of limitation with which alone we are concerned in this case. The question that fell to be considered in *Commissioner of Income-tax v. Amrtilal Bhogilal & Co.* was as to whether the order made by the Income-tax Officer granting registration to a firm would also merge along with the assessment made by him in the decision rendered by the appellate authority. This question was answered in the negative and so, this decision also does not render any assistance to the respondent, It would, on the other hand, support the petitioner's contention that the doctrine of merger is not an absolute or unqualified one to be applicable in all cases, irrespective of the facts. Reference may be made in this context- to *State of Madras v. Madurai Mitts Ltd.*, : [1967]1SCR732 in which their Lordships pointed out:

'...The doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that whatever there are two orders, one by the inferior tribunal and the other by a superior tribunal, passed in an appeal or revision, there is a fusion or merger of two orders irrespective of the subject-matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute... the application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction.'

As already seen, this is not a case in which the assessment made by the primary authority became inoperative on account of the filing of the appeal by the petitioner. On the other hand, it had full force and was also given effect to even before the appeal was preferred. It cannot, therefore, be contended that the order of the primary authority should be deemed to have become merged in the order of the appellate authority so as to lose its character as 'assessment' for the purpose of Section 73A(b) of the Act. This apart, the appeal had nothing to do with the proceedings sought to be commenced under Section 59 of the Act as no part of the alleged 'escaped' estate was the subject-matter of the appeal. The Assistant Controller had, therefore, no need to wait till after the disposal of appeal preferred by the petitioner for commencing action under Section 59. It would be

unreasonable in such circumstances to hold that the assessment made by the primary authority merged in the appellate order and ceased to be an 'assessment' within the meaning of Section 73A(b) simply because an appeal was preferred by the petitioner.

10. It would be useful in this connection to refer to *State of Orissa v. Debaki Debi*, (1) [: [1964]5SCR253 . In that case, the respondents before the Supreme Court were assessed to sales tax in respect of various quarters under the provisions of the Orissa Sales Tax Act. They successfully appealed to the Assistant Collector of Sales Tax against the assessments on the ground that the Sales Tax Officer had wrongly rejected their claim to certain deductions from the taxable turnover. Some time later, the Orissa High Court gave judgment in another case from which it appeared that the Assistant Collector was wrong in allowing the deductions in question. Thereupon, the Collector of Sales Tax, in exercise of his revisional powers under Section 23(3) of the Act, revised the orders of the Assistant Collector, by raising the taxable turnover. The respondents questioned the order of the Collector of Sales Tax before the High Court of Orissa under Article 226 on the ground that it was illegal, having been made beyond the period of 36 months from the end of the relevant periods as prescribed by Sub-section (7) of Section 12. The High Court held that the orders made in revision were illegal as they were really reassessments of turnover which had escaped assessment or had been under-assessed and, under Sub-section (7) of Section 12 of the Act, such reassessment could not be made in respect of any quarter after the expiry of the period of thirty-six months prescribed for the purpose. Their Lordships of the Supreme Court accepted this view of the High Court and dismissed the appeals observing as follows :

'If we look at the substance of the matter as we must, it appears clear that the provision of a period of limitation of 36 months for the passing of an order of assessment of tax is really an independent legislative provision of the Act and though it has been inserted by the draftsmen in the form of a 'proviso' in Section 12(6), it is in substance not a real 'proviso' to the main provision. That independent legislative provision lays down that no order 'assessing the amount of tax shall be passed after the lapse of 36 months from the expiry of the period' for which the

assessment is made. The provision is not in terms limited only to orders of assessment made under Section 12 but on its language applies to and governs any order assessing the amount of tax which would manifestly include an assessment under any provision of the Act besides Section 12. The consequence is that even if an order of assessment made in exercise of powers of revision under Section 23 be held to be not an order made under Section 12 this limitation of 36 months from the expiry of the period for which the assessment is made will still be applicable.'

It is difficult to countenance the contention that the date of assessment for the purpose of computing the period of limitation prescribed by section. 73A(b) is the date on which the appeal preferred by the petitioner was disposed of either for the reason that the appellate order alone is the final order or that the original order of assessment made by the primary authority had merged in the appellate order, in view of the pronouncements made by their Lordships of the Supreme Court in the decision cited that limitation prescribed by Section 12(7) of the Orissa Sales Tax Act has to be reckoned from the end of the period, for which the turnover of a dealer has been under-assessed or escaped assessment notwithstanding that the Collector of Sales Tax acting under Section 23(3) of the Act suo motu took up the matter in revision and ultimately passed an order revising the taxable turnover. The filing of an appeal, revision or similar other proceeding against the order of assessment made by the primary authority cannot, therefore, have the effect of postponing the date of assessment for the purpose of limitation, in the absence of a statutory provision. To hold otherwise would entail the undesirable consequence of keeping the person accountable in constant dread of being called upon once again to submit an account of the estate of the deceased for an indefinitely long period even after the initial assessment contemplated by Section 58 is completed as the Act provides for art appeal to the Appellate Controller, another appeal to the Appellate Tribunal, reference to the High Court and an appeal to the Supreme Court which would naturally occupy considerable time. It could not have been the intention of the legislature to keep the sword of Damocles hanging on the head of the accountable persons for such a long period to justify the contention that by the words 'date of assessment' employed in Section 73A(b) it meant the date on which the appeal or other proceedings referred to in Sections 62 to 65 of the Act are

disposed of. That the legislature could not have intended to place the accountable person in a state of uncertainty and suspense for such an unduly long period can also be seen from the fact that the time limit found in Section 73A(b) of the Act for initiating proceedings for reassessment under Section 59 was introduced for the first time by the Amending Act XXXIII of 1958, presumably with a view to save the accountable persons from being harassed by overzealous or unscrupulous officers, at their whim and fancy, regardless of the time that may have elapsed since the date of the completion of the initial assessment.

11. The Assistant Controller was bound to commence proceedings within three years from the date of the initial assessment which, as already seen, did not lose any of its efficacy because of the filing of an appeal, if he desired to take action under Section 59 of the Act and, such being the case, he cannot be permitted to claim the benefit of the appeal preferred by the petitioner by seeking to save the period during which that appeal was pending excluded for the purpose of computing the period of limitation prescribed by Section 73A(b).

12. What is prescribed by Section 73A is a period of limitation as the section is entitled 'Limitation for commencing proceedings for assessment or reassessment'. It is not in doubt that a provision relating to limitation has to be construed strictly and that it ought to receive such a construction which the plain meaning of the language employed in it imports. It was already seen that the plain meaning of the words 'the date of assessment' occurring in Section 73A(b) is the date on which assessment is made by the primary authority under Section 58 of the Act and not the date of disposal of the appeal, revision, etc., and it, therefore, follows that the impugned notice was issued long after the time limited for the purpose had expired.

13. It is further settled law that when once time begins to run, no subsequent event can stop it in the absence of a statutory provision. Time, in this case, commenced to run the moment assessment was made by the Assistant Controller under Section 58 of the Act and it was already seen that no stay was granted by the appellate authority suspending the operation of the order made by the Controller under Section 58 and that there is also no provision in the Act which had the effect

of keeping the order of assessment made by the primary authority in abeyance pending disposal of the appeal. In this view also, therefore, it has to be said that the appeal preferred by the petitioner did not have the effect of postponing the date of commencement of the period of limitation mentioned in Section 73A(b) of the Act.

14. The heading of Section 73A(b), viz., 'Limitation for commencing proceedings for assessment or reassessment' would similarly bring out in bold relief that by 'date of assessment', the legislature meant the date of assessment made by the primary authority under Section 58 and not the date of disposal of the appeal, reference or revision provided by the statute as the words 'assessment and reassessment' occur prominently only in Sections 58 and 59, Part VII of the Act and not in Sections 62 to 65 which provide for appeals and reference.

15. There is yet another reason why we should interpret the word 'assessment' used in Section 73A(b) in the manner stated above; even on the assumption that it also admits of the construction sought to be put on it by the learned counsel for the 1st respondent. The Estate Duty Act is a fiscal statute and it is well established that wherever the provisions of such a statute admit of more interpretations than one, they should receive the construction which is more favourable to the taxpayer. *Nawab Khazi Jung v. Assistant Controller of Estate Duty*, [1965] 56 I.T.R. (E.D.) 8 (A.P.) is an authority in point. For this reason also, viz., that the word 'assessment' in this case should be construed in the manner most beneficial to the taxpayer, we have to hold, agreeing with the petitioner, that the period of limitation prescribed by Section 73A(b) of the Act has to be computed from June 27, 1963, the date on which assessment under Section 58 of the Act was made by the Assistant Controller and not from the date on which the appeal was disposed of. It then follows that the impugned notice is clearly barred by time and that the 1st respondent is, therefore, not entitled to commence proceedings against the petitioner for reassessment under Section 59 of the Act.

16. For the foregoing reasons, we are satisfied that the notice GIR 130-r/ 7-2-68 is not valid having been issued beyond three years from the date of the assessment made at the inception under Section 58 of the Act and that the 1st respondent is,

therefore, not entitled to proceed with any enquiry for reassessment in pursuance of that notice. In the result, the petition is. allowed with costs and a writ of prohibition restraining the 1st respondent from proceeding with the enquiry in pursuance of his notice GIR 130-r/ 7-2-68 will issue as prayed for by the petitioner. Advocate's fee Rs, 150.

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