
(1981) 08 KL CK 0022
In the High Court Of Kerala
Case No : Writ Appeal No. 216 of 1979

Agricultural Income Tax Officer and Others	APPELLANT
Vs	
Puthumoole Krishna Bhat	RESPONDENT

Date of Decision : 04-08-1981

Acts Referred:

Income Tax Act, 1961 — Section 34

Citation : (1981) 25 CTR 349 : (1981) 2 ILR (Ker) 745 : (1982) 133 ITR 532

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; George Vadakkal, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; U.P. Kunikullaya, for the Respondent

Judgement

George Vadakkal, J.—This is an appeal from the decision reported in Krishna Bhat Vs. Agricultural Income Tax Officer, . The material facts necessary to understand the question raised herein are :

2. In respect of the agricultural income derived by the assessee from certain properties purchased by him and his six sons, he was, for the years 1966-67 to 1968-69, assigned the status of individual. He appealed and the AAC remanded the cases. He was then assessed for those years as one of the seven tenants-in-common, each entitled to 1/7th share. Exhibits P-2 to P-4 are the revised assessment orders for the said years. For the subsequent two years 1969-70 and 1970-71, also he was assessed as an individual. He appealed and the AAC had remitted these cases also. For the years 1971-72, 1972-73 and 1974-75, the assessment proceedings were on the basis that the petitioner and his six children constituted an association of persons. Exhibits P-5 to P-7 are the assessment orders. The assessee appealed to the AAC. The latter, by Ex. P-8 order, held that the petitioner-respondent is to be treated as an individual and the income derived by his minor children is to be added to his income and assessed in his hands. The Deputy Commissioner (Appeals) on revision confirmed Ex. P-8 order as per Ex. P-10 order. By the decision under appeal the learned single judge held

that the assignment in Exs. P-5 to P-8 and P-10 to the assessee, of a status different from that assigned to him in Exs. P-2 to P-4, was not warranted, and on that score quashed the said orders.

3. The principle governing such cases, as stated in the judgment under appeal, is (p. 898 of 130 ITR):

"The principle that emerges on a consideration of the decisions which have a bearing on the question is that, while the doctrine of *res judicata* or estoppel by record does not apply to assessment proceedings under the I.T. Act, or for that matter to the Agricultural I.T. Act or the Sales Tax Act, the taxing authority would be entitled to reopen the matter or to deviate from the basis on which the assessment was concluded during the previous years, if there are fresh materials on record warranting the deviation, or the materials on record were not considered by the officer "while making assessments for the previous years, and if those materials also were considered, the assessing officer would have come to a different conclusion."

4. The revenue canvasses the correctness of the qualification and of the limitation put on the non-applicability of the principle of *res judicata* to tax cases by the latter half of the proposition enunciated as above quoted.

5. It is not necessary to dilate upon the development of the theory of application (or rather, non-application) of the doctrine of *res judicata* in tax cases, for it is not disputed that the doctrine does not govern tax cases. We would content ourselves by extracting the following summary of law bearing on that point from Spencer-Bower and Turner on *Res Judicata*, 2nd Edn., pp. 260-61.

"309. It is now settled law that decisions on questions of land tax, income tax and rating assessment constitute an important exception to the general rules as to *res judicata*, and that such decisions given in regard to one year's tax or rates, or as to given rating or assessment lists, do not give rise to estoppels binding the parties in respect of another year's tax or rates, or a later assessment list. In the first place such decision often involve taking into account facts which change in some degree from year to year, and on this account alone it is impossible to hold the parties estopped from one year to another. "The assessment seems inherently to be of a passing nature". But it has long been clear that there are other grounds for excluding any estoppel on principles, for such decisions, at least when made at an administrative level, cannot be regarded as decisions made by a judicial tribunal in the course of resolving a *true lis inter partes*. Hence while such decisions may, and generally will, be conclusive *inter partes* as regards the actual assessment made, or the actual list fixed, yet they will not estop either party when the same question arises on another year's assessment, or on the fixing of a subsequent list. A decision of the Special Commissioners in one year will on this account not found an estoppel when the same point arises between the same parties in a subsequent year.

310. But not only decisions at an administrative level, but also those given by

courts of competent general jurisdiction fall within the exception to the general rule, and no estoppel can be founded upon them when the same point is raised again in another year of assessment, or in respect of a list other than that fixed in the original decision. This will be so even in cases where there is a formal admission (that no material circumstance has in the meantime changed). The reason appears to be because the question of the liability of the taxpayer for the subsequent year's tax or rates is not to be regarded as the same question as that of his liability for the first. What might in other types of case be regarded as *eadem quaestio* is not so to be regarded in taxation and rating cases, which are *sui generis* in this regard. This principle, though now firmly established, was for long in some doubt, and formed the subject of a remarkable conflict between two decisions of the Judicial Committee of the Privy Council, the subject of argument in the same year, and reported in the same volume of the Reports. In the first of these it was decided that an earlier decision of a court of competent jurisdiction did not, and in the second that it did, estop the parties from relitigating the original issue of liability for taxation."

6. The English cases on this point are *Society of Medical Officers of Health v. Hope (Valuation Officer)* [1960] AC 551 (HL) and *Mohamed Falil Abdul Caffoor v. CIT* [1961] AC 584 (PC). The Supreme Court has cited with approval these decisions and has followed them in *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, and in *The New Jahangir Vakil Mills Co., Ltd. Bhavnagar Vs. The Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, Ahmedabad*, . So we proceed on the premise that the doctrine of *res judicata* does not govern tax matters.

7. If the question arising in the assessment proceedings relating to one year cannot be regarded as *eadem quaestio*--the same question--as that which arose in any earlier assessment proceedings and each assessment case is *sui generis*--the only one of its kind--as is by now well established by the decisions referred to above, we think that there can arise no estoppel founded on a rule that a question once decided between the same parties, that is, so far as they are concerned, decided for all time, and, therefore, cannot subsequently be decided between them in any other manner (even if it be that the earlier decision is patently erroneous on facts or in law or on both account) without relying on materials (fresh or already on record) which were not considered in the earlier assessment proceedings. We are inclined to suppose that law recognises no such qualified doctrine of *res judicata*, whereunder the same question arising between the same parties once decided competently can be reopened taking into account matters of fact or of law not taken into account in the former proceedings ; and that if the question that falls for determination subsequently is not the same as that which arose for a decision earlier, but a new one which by itself is a class, there can be no determent of any kind which prevents a competent adjudicator (be he one who unilaterally decides at the administrative level like the tax officer or a court of competent general jurisdiction which decides a matter independently after hearing both sides) from deciding that question differently on

the same materials. The only apparent exception to the second proposition is a legal decision having the force of a precedent establishing the law authoritatively, the effect of which is derived not from the doctrine of *res judicata* but from the fact that such a decision is a precedent having the force of law binding not only on actual parties to the decision but all alike.

8. The decision of the Supreme Court in *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, supports what we have said in the preceding paragraph. Between the same parties, the assessee and the revenue, the Punjab High Court had, concerning an earlier assessment proceeding relating to sales tax, held that hire-purchase transactions are not assessable to sales tax and that a provision in the concerned Act providing for such assessment was unconstitutional. However, after the constitutional validity of that provision was upheld by the Supreme Court in another case, *Mithan Lal Vs. The State of Delhi and Another*, , the revenue again assessed the first-mentioned assessee to sales tax in respect of hire-purchase effected during the subsequent period. That assessee, inter alia, contended that the earlier decision of the Punjab High Court between the same parties "is final and conclusive as between the parties to that judgment". The Supreme Court repelled the said contention for two reasons, each independent of the other. That court said that the Supreme Court decision in *Mithan Lal v. State of Delhi* has superseded the decision of the Punjab High Court that the concerned provision is unconstitutional and further said (p. 501 of 12 STC) :

" There is another answer to the point of *res judicata* raised on behalf of the petitioners, relying upon the decision of the Punjab High Court in *Instalment Supply Ltd., New Delhi Vs. State of Delhi and Others*, . It is well settled that in matters of taxation there is no question of *res judicata* because each year's assessment is final only for that year and does not govern later years, because it determines only the tax for a particular period. (See the decision of the House of Lords in *Society of Medical Officers of Health v. Hope* [1960] AC 551 (HL) approving and following the decision of the Privy Council in *Broken Hill Proprietary Company Ltd. v. Broken Hill Municipal Council* [1926] AC 94 (PC)."

9. In *The New Jahangir Vakil Mills Co., Ltd. Bhavnagar Vs. The Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, Ahmedabad*, , the Supreme Court, adverting to the contention raised in that case in the following form observed (at p. 141):

"What he contends is that it was not open to the taxing authorities to consider and find that the assessee was a dealer in shares in 1943, because for all years prior to 1944, the department had already assessed the assessee on the footing that it was an investor of shares and not a dealer and those assessments having become final could be reopened only either u/s 34 or Section 35 of the Act. The argument is that in assessing the assessee for the account year 1944, it was open to the department to treat the assessee as a dealer in 1944, but not for any earlier year which was not the subject of the assessment proceedings."

10. Relying on Broken Hill Proprietary Company Ltd. v. Municipal Council of Broken Hill [1926] AC 94 (PC), Society of Medical Officers of Health v. Hope [1960] AC 551 (HL), Mohammed Falil Abdul Caffoor v. CIT [1961] AC 584 (PC) and Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others, the Supreme Court said as follows (at p. 143):

"On the principle stated above, it seems to us that it was open to the taxing authorities to consider the position of the assessee in 1943 for the purpose of determining how the gains made in 1944 should be computed, even though the subject of the assessment proceedings was the computation of the profits made in 1944. The circumstance that in an earlier assessment relating to 1943, the assessee was treated as an investor would not in our opinion estop the assessing authorities from considering, for the purpose of computation of the profits of 1944, as to when the trading activity of the assessee in shares began. The assessing authorities found that it began in 1943. On that finding the profits were correctly computed and the answer given by the High Court to the question of the computation of the profits was correctly given."

11. Mark, in both these cases decided by the Supreme Court, the material circumstances obtained at the time of the earlier assessment and the subsequent assessment remained unchanged and no new materials were relied on by the revenue on the respective assessees. In Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others, , the nature of the transaction was the same. Normally, a competent decision inter partes as regards the legal character of a transaction, is final and conclusive as between them whether an identical transaction is decided in another case between one of them and another to be of a different legal character or not, and the latter decision will not supersede the former decision. But it was held that it is not so in tax matters. In The New Jahangir Vakil Mills Co., Ltd. Bhavnagar Vs. The Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, Ahmedabad, , the question considered was whether the assessee was a dealer in 1943 and earlier years, in the assessment proceedings relating to which years it has already been held that he was not. The Supreme Court said that despite the earlier decision, that very question can be re-examined and re-considered, for the purpose of the assessment proceedings in respect of 1944;

12. In the English cases relied on by the Supreme Court in the above-said two decisions also the material circumstances obtained at both times were not different, nor was the question involved in the respective cases, any other than that which fell to be decided earlier. In Society of Medical Officers of Health v. Hope [1960] AC 551 (HL), the appellants before the House of Lords, the Society of Medical Officers of Health, claimed exemption from rating in the valuation list in force in 1956 pursuant to the Valuation (Metropolis) Act, 1869, of the hereditament occupied by them on the ground that it has been so decided in relation to the 1951 list and there was no evidence to show any variation in the appellant's constitution or activities since 1951. The decision proceeded on the

basis "that neither their circumstances nor their purposes have altered since that date" (the date of the decision in relation to the 1951 list). Lord Radcliffe said (pp. 562, 563):

"I do not think that it is possible to discuss the point raised by the present appeal simply in terms of these general phrases, or without giving full weight to the fact that what is in question is the conclusiveness for liability to one rate of a decision given with regard to another. The system of rating involves certain considerations that are special to itself. Its nearest analogy is with the system of annual personal taxation. With regard to both one has to begin by recognising that there is high and frequent authority for the proposition that it is not in the nature of a decision given "on one rate or tax that it should settle anything more than the bare issue of that one liability and that, consequently, it cannot constitute an estoppel when a new issue of liability to a succeeding year's rate or tax comes up for adjudication. The question of this liability is a "new question". It is not eadem quaestio. The "cause of action is different". "The subject-matter is a different year's tax and a different year's assessment and is not the same as the subject-matter "of the previous ruling". All these things have been said with reference to rates or taxes, and the list of decisions that recognise or enforce the principle is a long one ". (decisions referred to omitted).

"It would not be at all easy for us to depart from this long line of authoritative opinion, even if we wanted to. Personally, I do not want to, because I think that, on the whole, it is more in the public interest that tax and rate assessments should not be artificially encumbered with estoppels (I am not speaking, of course, of the effect of legal decisions establishing the law, which is quite a different matter), even though in, the result some expectations may be frustrated and some time wasted."

13. In *Mohamed Falil Abdul Caffoor v. CIT* [1961] AC 584 (PC), the question that came up for the decision of the Privy Council was whether on the construction to be placed on a trust deed, the trust was an "institution of a public character established solely for charitable purposes" within the meaning of Section 7(1)(c) of the Ceylon Income Tax Ordinance, 1932. The trust deed had been so construed earlier for the year 1949-50. It was urged that this decision concludes the matter between the parties in relation to assessment proceedings for the five years 1950-51 to 1954-55. It was held that the earlier decision did not create any estoppel.

14. As held in *IRC v. Sneath* [1932] 2 KB 362 : 101 LJKB 330 (CA) (a decision relied on in the two Appeal Cases discussed above) by Lord Hanworth M.R. (384) (p. 337 of 101 LJKB): " No doubt a decision reached in one year would be a cogent factor in the determination of a similar point in a following year " but it cannot " be treated as an estoppel binding upon the same party, for all years ". In other words, the decision in the assessment proceedings relating to one year has only evidentiary value, and the authority before whom it is relied on (if so done) may have to assess the probatory force thereof, but is not bound to accept

the same. Rules of fair-play will require him to consider all materials including an earlier decision on a similar point placed before him, and on such consideration he may draw his own conclusions thereon untrammelled by inhibitions.

15. A Division Bench of this court expressed almost the same view in a reverse context, namely, where the assessee contended that the Tribunal was wrong in relying upon the prior assessment orders and in basing its conclusion on those orders. The case is *E.V. Koradu Vs. Commissioner of Agricultural Income Tax*, , where it was pointed out that it is open to the Tribunal to rely upon the previous order of the. Tribunal " as a piece of evidence on which " it may rest its present conclusion and that the rule of exclusion of the doctrine of *res judicata* in tax cases does not go to the extent of requiring the taxing officers to ignore the earlier proceedings. The Division Bench relied on . the decision of the Supreme Court in *M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras*, , where it was held as follows:

"The doctrine of *res judicata* does not apply so as to make a decision on a question of fact or law in a proceeding for assessment in one year binding in another year. The assessment and the facts found are conclusive only in the year of assessment: the findings on questions of fact may be good and cogent evidence in subsequent years, when the same question falls to be determined in another year, but they are not binding and conclusive."

16. In view of what is stated above, we are unable to subscribe to the view expressed in *T. M. M. Sankaralinga Nadar and Bros. v. CIT*, AIR 1930 Mad 209 [FB]. In this decision, the Madras High Court which (as then) was bound by the two conflicting decisions of the Privy Council in *Broken Hill Proprietary Company Ltd. v. Municipal Council of Broken Hill* [1926] AC 94 and *Hoy stead v. Commr. of Taxation* [1926] AC 155 (PC), in attempting to reconcile the said two decisions, said that unless fresh facts come to light, the ITO is bound by the earlier assessment proceedings. After the authoritative pronouncement of the Supreme Court in the decisions discussed hereinbefore and particularly in the *M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras*, referred to in the preceding paragraph to the effect that (headnote): " the findings on questions of fact may be good and cogent evidence in subsequent years, when the same question falls to be determined in another year, but they are not binding and conclusive", the proposition of law, as laid down in the Madras case cannot, with great respect we venture to say, be treated as good law.

17. For the same reason, with respect, it is not possible for us to accept the very broad principle stated in *Commissioner of Income Tax, Central Vs. L.G. Ramamurthi and Others*, (headnote): "that no Tribunal of fact has any right or jurisdiction to come to a conclusion entirely contrary to the one reached by another Bench of the same Tribunal on the identical facts". We are of the view that the principle stated above was not intended by the court to be of any general application in so far as it has been so said, as expressly mentioned therein, because "having regard to the facts of the present case, the issue

invoked is more fundamental than the question of res judicata ".

18. Chagla CJ. in H.A. Shah and Co. Vs. Commissioner of Income Tax and Excess Profits Tax, Bombay City, , disagreeing with the Madras Full Bench, said thus (pp. 630, 631):

" ...even if there are no fresh facts, if material facts have not been taken into consideration on the earlier occasion, it could not be said of the later decision that it is an arbitrary interference with the earlier decision.". With great respect to the learned Chief Justice, if, as is later in that decision pointed out (p. 633), "the Income Tax Tribunal is dealing with the same question" (we do not subscribe to this view, for, on high authority, it is now well settled that in each assessment proceedings the question raised, though similar or even identical, is not same, not eadem quaestio) " not in the same assessment but in a different assessment and here again the basic principle to which we have drawn attention earlier should be borne in mind that every assessment is a self-contained assessment"; then, we are afraid that no question of "interference with the earlier decision" arises. If each assessment is a self-contained one, a finding in the earlier assessment proceedings will be only an instance where "the same question" has been decided in one way and, therefore, it may be a piece of cogent evidence persuasive enough not to depart from that but it will not foreclose the assessing authority from deciding otherwise than on the former occasion even if it be that all the materials subsequently considered have been relied on on the former occasion to take a different view and to enter a different finding. We respectfully decline to accept the above proposition stated by the learned Chief Justice as correct law on the point.

19. The other decisions relied on by the learned counsel for the assessee are (1952) 22 ITR 208 and Commissioner of Income Tax Vs. Dalmia Dadri Cement Ltd., Chagla C.J., in the Bombay case, discussed the above-said Nagpur decision as follows (pp. 628, 629 of 30 ITR): .

"Turning first to the Nagpur High Court in Tejmal Bhojraj v. Commissioner of Income Tax, the learned judges deduced certain propositions from the decision of the Madras Full Bench and the propositions are :

" (i) The doctrine of res judicata or estoppel by record does not apply to the decisions of Income Tax authorities ;

(ii) a previous finding or decision of such an authority may, however, be reopened and departed from in subsequent years in the following circumstances, namely--

(a) the previous decision is not arrived at after due enquiry; (with respect, that is not the test laid down by the Madras Full Bench);

(b) the previous decision is arbitrary ; (what the Madras Full Bench says is not that the previous decision is arbitrary, but that the subsequent decision should not be arbitrary or capricious); or

(c) if fresh facts come to light which, on investigation would entitle the officer to come to a conclusion different from the one previously reached;

(iii) in the absence of such circumstances, the Income Tax Officer cannot arbitrarily depart from the finding reached after due inquiry by his predecessor in office simply on the ground that the succeeding officer does not agree with the preceding officer's findings."

Therefore, to apply the test of the Nagpur High Court, if the previous decision has not taken into consideration material evidence or material facts, can it be said of that previous decision that it was arrived at after due inquiry ? "

20. As at present, after the authoritative pronouncement of the Supreme Court in the three decisions discussed hereinbefore, and in the light of the principles discussed by us, it needs only to be said, that we are constrained to disagree with what is said in the Nagpur case relied on by the learned counsel for the assessee.

21. The Punjab and Haryana High Court in Commissioner of Income Tax Vs. Dalmia Dadri Cement Ltd., has, following the Bombay decision in H.A. Shah and Co. Vs. Commissioner of Income Tax and Excess Profits Tax, Bombay City, , taken the view that the rule of exclusion of the principle of res judicata in tax cases (p. 420): "... ..is subject to limitations, for, there should be finality and certainty in all litigations including litigation arising out of the Income Tax Act and an earlier decision on the same question cannot be reopened if that decision is not arbitrary or perverse, if it had been arrived at after due inquiry, if no fresh facts are placed before the Tribunal giving the later decision, and if the Tribunal giving the earlier decision has taken into consideration all material evidence."

22. It does not appear that the decisions of the Supreme Court in Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others, , The New Jahangir Vakil Mills Co., Ltd. Bhavnagar Vs. The Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, Ahmedabad, and M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras, were brought to the notice of the court. As already stated, we are of the view that there are no limitations on the rule of exclusion of the doctrine of res judicata in tax cases.

23. We are unable to find any passage in the decision of the Supreme Court in the New Jahangir Vakil Mills" case which goes against the view taken by us, as contended on behalf of the assessee. The passage in that case, which is relied, on is (p. 142):

"The extent to which a decision given by an Income Tax Officer for one assessment year affects or binds a decision for another year has been considered by courts several times and speaking generally it may be stated that the doctrine of res judicata or estoppel by record does not apply to such decisions; in some cases it has been held that though the Income Tax Officer is not bound by the rule of res judicata or estoppel by record, he can reopen a question previously

decided only if fresh facts come to light or if the earlier decision was rendered without taking into consideration material evidence, etc."

24. As we understand the above passage, it only refers to the fluid state of law on this point as obtained previously and made more confusing by the two conflicting decisions of the Privy Council in *Broken Hill Proprietary Co. v. Broken Hill Municipal Council* [1926] AC 94 (PC) and *Hoystead v. Taxation Commissioner* [1926] AC 155. The Privy Council resolved this conflict only in *Mohamed Falil Abdul Caffoor v. CIT* [1961] AC 584(PC), where the Board expressly approved the decision in the *Broken Hill* case as laying down the correct law on the point and disapproved the decision in the *Hoystead* case. In *Caffoor's* case the Privy Council said not only that the question arising in the assessment relating to one year is not the same question as have arisen in another year, but also pointed out that it is *sui generis* (the only one of its kind) and, therefore, the principle of *res judicata* ordinarily applicable to decisions *inter eadem partes* is not attracted to a decision of that question. See *Spencer-Bower and Turner on Res Judicata*, 2nd Edn., p. 265. The learned authors appear to have the following passage in the judgment in that case in mind [1961] AC 584:

" The critical thing is that the dispute which alone can be determined by any decision given in the course of these proceedings is limited to one subject only, the amount of the assessable income for the year in which the assessment is challenged. It is only the amount of that assessable income that is concluded by an assessment or by a decision on an appeal against it. "

25. This decision of the Privy Council was approvingly cited and followed by the Supreme Court in *The New Jahangir Vakil Mills Co., Ltd. Bhavnagar Vs. The Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, Ahmedabad*, , to say that the very question decided for the assessment in 1943, whether the assessee was a dealer or investor in 1943, could be re-determined for the purpose of determining how the gains made by Mm in 1944 should be computed. There is no merit in the above contention advanced by the learned counsel for the assessee-respondent.

26. The sum and substance of the rule of exclusion of the doctrine of *res judicata* in taxation cases is : the doctrine of *res judicata* is rested on, (i) public policy that finds expression in the maxim, *interest reipublicae ut sit finis litium*--it is in the interest of the State that litigations come to an end, and (ii) private justice, namely, that one may not be vexed or harassed by litigation after litigation on the same cause of action. The exclusion of the doctrine of *res judicata* in taxation cases also rests on public policy, one outweighing the former, which was expressed by Lord Radcliffe in *Mohamed Falil Abdul Caffoor v. CIT* [1961] AC 584 (PC) as follows:

"It may be that the principles applied in these cases form a somewhat anomalous branch of the general law of estoppel *per rem judicatam* and are not easily derived from or transferred to other branches of litigation in which such

estoppels have to be considered; but in their Lordships opinion they are well established in their own field, and it is not by any means to be assumed that the result is one that should be regretted in the public interest."

27. Then, as regards the, second pillar on which that doctrine of res judicata is rested, namely, private justice : it is achieved to the extent of giving finality and attributing conclusiveriess to what is decided in one assessment, so far as that assessment is concerned, and only to that extent. Such confinement of the operation of the principle of res judicata to the particular assessment in which the decision is given is a necessary consequence of accepting the fact that it is in public interest that there be no bar or prohibition in examining a question afresh each time that question recurs, recurrence of the same question for a decision in assessment after assessment being an inevitable feature of taxation.

28. On the merits, no arguments were advanced before us on behalf of the assessee. The only reason stated in the judgment under appeal for quashing Exs. P-5 to P-8 and P-10 orders is (p. 899 of 130 ITR):

"In this case, Ex. P-2 to P-4 revised assessment orders for the years 1966-67, 1967-68 and 1968-69 were passed assigning the status of tenants-in-common to the petitioner and his sons after due enquiry including local investigation and giving cogent reasons. Exhibits P-2 to P-4 assessment orders were allowed to become final. Thereafter, in the absence of any additional material on record, or the assessing authority having a case that the entire materials or certain materials available on record which have a bearing on the conclusion that has to be reached have not been considered during the previous years, the assessing authority is not entitled to assign a new status to the assessee contrafy to what has been assigned after due contest and enquiry in the previous years under Exs. P-2 to P-4 orders for the assessment years 1966-67, 1967-68 and 1968-69. I, therefore, hold that the decision taken by respondents Nos. 1 to 3 in Exs. P-5, P-6, P-7, P-8 and P-10 orders, assigning a status different from what was assigned to the assessee in Exs. P-2 to P-4 orders, is not warranted and, therefore, those orders are liable to be quashed."

29. In the light of the principles discussed hereinbefore, the reason stated as aforesaid for quashing Exs. P-5 to P-8 and P-10 cannot be upheld. We arc, therefore, constrained to set aside the judgment under appeal and dismiss the original petition by allowing this appeal. We do so. Parties shall suffer their costs throughout.

30. The learned counsel for the respondent made an oral application under Article 134A of the Constitution of India for certificate for leave to appeal to the Supreme Court. We see no substantial question of law of general importance needing a decision by the Supreme Court arising in this case. Leave declined.