
(1997) 07 P&H CK 0141

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 69 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Satya Narain

RESPONDENT

Date of Decision : 31-07-1997

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 144B, 144B(1), 144B(2), 144B(3)

Citation : (1998) 229 ITR 477

Hon'ble Judges : N.K. Agrawal, J; Ashok Bhan, J

Bench : Division Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant; S.K. Mukhi, for the Respondent

Judgement

N.K. Agrawal, J.—The following question of law has been referred at the instance of the Commissioner of Income Tax by the Income Tax Appellate Tribunal (for short "the Tribunal"), u/s 256(1) of the Income Tax Act, 1961, (for short "the Act") :

" Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal erred in law in holding that the assessment order passed by the Income Tax Officer for the assessment year 1975-76 on September 16, 1978, was barred by time and as such liable to be annulled ?"

2. The assessee, in the status of an individual, derived income from his proprietary business and from house property as also share income from the partnership firm, Everest Woollen Mills, Ludhiana. He filed a return declaring total income of Rs. 63,260 including share income from the firm at Rs. 21,479 for the assessment year 1975-76 (accounting year ending on March 31, 1975). The Assessing Officer examined the books of account of the assessee's proprietary business, Bombay Wool Agency, Ludhiana, and proposed disallowances aggregating to Rs. 71,725 u/s 144B of the Act. These disallowances consisted of the disallowance of interest paid on the borrowings at Rs. 57,500, disallowance of travelling expenses Rs. 2,000, disallowance of motor car expenses Rs. 11,309

and disallowances of shop expenses and charity Rs. 916. In addition, the Assessing Officer re-determined income from house property at Rs. 6,833 and the share income from the firm at Rs. 1,81,884. The assessee had declared share of profit from the firm, Everest Woollen Mills, Ludhiana, at Rs. 21,479 but the Assessing Officer, on the basis of the draft assessment order, prepared by the Assessing Officer in the case of the firm u/s 144B of the Act, estimated the assessee's share income from the firm at Rs. 1,81,884. Since the variation in the income returned and the income proposed to be assessed exceeded Rs. 1,00,000, the power u/s 144B of the Act was invoked by the Assessing Officer and a draft assessment order in the case of the assessee in his individual status was prepared. In the said draft assessment order, the aforesaid additions and disallowances were incorporated and the draft of the proposed order of assessment was forwarded to the assessee to file objections, if any, to such variation.

3. The assessee, after receipt of the draft order of assessment filed objections on April 12, 1978. The Assessing Officer forwarded the draft order of assessment together with the objections filed by the assessee to the Inspecting Assistant Commissioner on April 14, 1978. The Inspecting Assistant Commissioner issued directions on September 16, 1978, in the form of approval to the proposed variation in the assessee's income. The assessment order was then framed by the Assessing Officer on September 16, 1978, u/s 143(3) of the Act on a total income of Rs. 2,88,120 as against declared income of Rs. 63,260. All the disallowances and additions proposed in the draft assessment order were thus given effect in the assessment order dated September 16, 1978.

4. The question of law sought to be answered relates to the validity of the assessment of the assessee's share income from the partnership firm. Whatever the disallowances and additions were made in relation to the assessee's income from proprietary business and his income from house property, those are not under challenge and the question of law referred to this court for opinion is confined to the validity of the action of the Assessing Officer in respect of the share income of the assessee from the partnership firm.

5. The assessee went in appeal before the Commissioner of Income Tax with the plea that the Assessing Officer could not take the assessee's share income from the partnership firm unless assessment was completed in the case of the firm. The assessment was still pending in the case of the firm and only a draft order of assessment had been forwarded by the Assessing Officer concerned to the firm u/s 144B of the Act. The Commissioner of Income Tax did not agree with the assessee's plea that the Assessing Officer could not take the assessee's share income at Rs. 1,81,884 from the draft assessment order in the case of the firm. The assessee had argued that if the Assessing Officer could not validly do so, then the proposed variation would be below Rs. 1,00,000 and, consequently, Section 144B of the Act would not be attracted in the case of the assessee.

6. The Commissioner of Income Tax also did not accept the assessee's second

plea that the Assessing Officer, by resorting to Section 144B, illegally enlarged the time limit for completion of the assessment. The assessee's plea was that an assessment could be validly completed before the expiry of two years from the end of the assessment year in which the income was first assessable, as provided in Sub-clause (iii) of Clause (a) of Subsection (1) of Section 153 of the Act. In other words, the assessment could be completed up to March 31, 1978, whereas it was made on September 16, 1978.

7. The Commissioner of Income Tax, after rejecting the challenge to the validity of the addition, however, directed the Assessing Officer to assess the assessee's share income which had been finally and actually determined by that time in the case of the firm. Certain reliefs were granted in respect of the other disallowances which are not required to be discussed because those are not in controversy here.

8. The assessee went in second appeal before the Tribunal against the Commissioner's order upholding the assessment framed by the Assessing Officer u/s 143(3) read with Section 144B of the Act. The assessee's plea was that if his share income was not taken at Rs. 1,81,884, the Assessing Officer could not have referred the assessment to the Inspecting Assistant Commissioner u/s 144B of the Act. It was also argued that the Assessing Officer had power to amend the assessment of a partner u/s 155(1) read with Section 154 of the Act if the Assessing Officer found, on completion of the assessment in the case of the firm, that the share income assessed in the case of the partner was not correct.

9. The Tribunal agreed with the assessee's contentions raised against the validity of the assessment and annulled the assessment order. Shri B. S. Gupta, senior counsel for the Revenue, has argued that Section 144B of the Act did not contain any legal bar against making the assessment of a partner's share income on the basis of an estimate. The application of Section 144B could not be ousted only because there existed a provision in Section 155(1) of the Act for the purpose of amending the order of assessment of the partner so as to correctly include his share income after assessment of the firm.

10. Section 144B was inserted by the Taxation Laws (Amendment) Act, 1975, with effect from January 1, 1976. It was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989. Section 144B, as originally inserted, read as under :

"144B. Reference to Inspecting Assistant Commissioner in certain cases.--(1) Notwithstanding anything contained in this Act, where in an assessment to be made under Sub-section (3) of Section 143, the Income Tax Officer proposes to make any variation in the income or loss returned which is prejudicial to the assessee and the amount of such variation exceeds the amount fixed by the Board under Sub-section (6), the Income Tax Officer shall, in the first instance, forward a draft of the proposed order of assessment (hereafter in this Section referred to as the draft order) to the assessee.

(2) On receipt of the draft order, the assessee may forward his objections, if any, to such variation to the Income Tax Officer within seven days of the receipt by him of the draft order or within such further period not exceeding fifteen days as the Income Tax Officer may allow on an application made to him in this behalf.

(3) If no objections are received within the period or the extended period aforesaid or the assessee intimates to the Income Tax Officer the acceptance of the variation the Income Tax Officer shall complete the assessment on the basis Of the draft order.

(4) If any objections are received, the Income Tax Officer shall forward the draft order together with the objections to the Inspecting Assistant Commissioner and the Inspecting Assistant Commissioner shall, after considering the draft order and the objections and after going through (wherever necessary) the records relating to the draft order, issue, in respect of the matters covered by the objections, such directions as he thinks fit for the guidance of the Income Tax Officer to enable him to complete the assessment :

Provided that no directions which are prejudicial to the assessee shall be issued under this Sub-section before an opportunity is given to the assessee to be heard.

(5) Every direction issued by the Inspecting Assistant Commissioner under Sub-section (4) shall be binding on the Income Tax Officer.

(6) For the purposes of Sub-section (1), the Board may, having regard to the proper and efficient management of the work of assessment, by order, fix, from time to time, such amount as it deems fit ;

Provided that different amounts may be fixed for different areas :

Provided further that the amount fixed under this Sub-section shall, in no case, be less than twenty-five thousand rupees.

(7) Nothing in this Section shall apply to a case where an Inspecting Assistant Commissioner exercises the powers or performs the functions of an Income Tax Officer in pursuance of an order made u/s 125 or Section 125A."

11. A perusal of the aforesaid provision makes it manifest that, where an Income Tax Officer, in making an assessment u/s 143(3), proposed to make additions or disallowances resulting in variation of the returned total income in an amount exceeding the prescribed amount, which shall in no case be less than Rs. 25,000 he shall send a draft assessment order to the assessee. If the assessee objected to assessment being made on the basis of the draft order, he might send his objections in writing to the Income Tax Officer within seven days of the receipt of the draft order. This period might, on an application of the assessee, be extended for a further maximum period of 15 days. On receipt of such objections, the Income Tax Officer had to forward the draft order together with the objections to the Inspecting Assistant Commissioner. If, after considering the draft order and the objections and other necessary records, the Inspecting Assistant

Commissioner was of the opinion that the objections were correct, he might issue necessary directions accordingly. If, however, the Inspecting Assistant Commissioner was not satisfied of the correctness or the tenability of the objections, he shall have to give a hearing to the assessee. If that opportunity of being heard, which meant a personal hearing, was denied to the assessee, then the order was bound to be vitiated as violating the Rules of natural justice expressly provided in the scheme of procedure. The prescribed amount is Rs. 1,00,000 as fixed by the Central Board of Direct Taxes by its order dated December 23, 1975. The condition precedent for invoking the provisions of Section 144B(1) was that the proposed overall variation in the total income returned must exceed the prescribed amount of Rs. 1,00,000. The proposed variation with reference to one or more items in an amount exceeding Rs. 1,00,000 would not suffice if the proposed overall variation in the returned total income did not exceed Rs. 1,00,000.

12. The obligation as to the making of a draft assessment order and reference to the Inspecting Assistant Commissioner u/s 144B arose if the assessment was made u/s 143(3) in a case where the variation exceeded Rs. 1,00,000 and not where an ex parte best judgment assessment was made u/s 144 of the Act. The provisions, contained in Section 144B, also did not apply to an assessment or reassessment made u/s 147 read with Section 148.

13. The intention behind the provisions of Section 144B seemed to be to reduce the ever increasing number of appeals. It was designed to provide a forum, before the actual assessment and being burdened with an ascertained liability, for the assessee to know the merits of the proposed assessment, the materials arrayed against him, and to meet them, in the manner of a mini appeal, by pointing or producing such evidence or materials, or making submissions as the assessee might think fit. The proceedings, from the point of view of the assessee, stood on a slightly better footing than an appeal. Here the assessee might introduce additional facts and additional evidence in order to meet the pricks of the draft assessment order.

14. On a perusal of Section 144B(1), it was clear that the provisions of that Section were of mandatory nature. Where, in making an assessment u/s 143(3), the Income Tax Officer proposed to make any variation in the income or loss returned by an amount exceeding Rs. 1,00,000 he was bound to comply with the provisions of Section 144B of the Act. The Income Tax Officer could not be expected to take any fresh initiative or pass any order other than one in accordance with the directions issued by the Inspecting Assistant Commissioner. While considering the draft assessment order u/s 144B, the Inspecting Assistant Commissioner cannot, on his own motion, issue a notice to the assessee so as to make additions in respect of new items not covered by the draft order.

15. The object behind the issuance of a draft order was to give a comprehensive opportunity to the assessee to object to the proposed variation in the income or loss returned by the assessee. The question, whether a defect in the draft order

was fatal to the assessment, has to be decided having regard to the object behind the issuance of the draft order. It is true that a draft order of assessment like the final order of assessment, should contain the quantification of the total income but the omission to quantify the total income in every case would not nullify the assessment if no prejudice was caused to the assessee.

16. If the draft order issued by the Assessing Officer was capable of giving full opportunity to the assessee to meet the proposed variations, it could not be said that the defect in the draft order made the entire proceedings invalid. In that case, the assessment order passed by the Income Tax Officer, after following the procedure u/s 144B, was not a nullity even though the draft order suffered from the defect that it did not contain the computation of total income.

17. One of the contentions raised by the assessee against the validity of the action u/s 144B of the Act was that the Assessing Officer had resorted to Section 144B with a view to enlarging the period of limitation. Under Clause (a) of Sub-section (1) of Section 153 of the Act, time limit for completion of assessment is two years from the end of the assessment year in which the income was first assessable. In the case of the present assessee, the assessment year was 1975-76 and thus the assessment could be completed within two years from the end of the assessment year 1975-76. The assessment has been framed on September 16, 1978, whereas it should have been completed on or before March 31, 1978. However, in a case where Section 144B was invoked, there was an extended period of limitation as provided in Clause (iv) of Explanation 1 to Section 153 of the Act.

18. Clause (iv) of Explanation 1 reads as under :

"Explanation 1.--In computing the period of limitation for the purposes of this Section :-- . . .

(iv) the period (not exceeding one hundred and eighty days) commencing from the date on which the Income Tax Officer forwards the draft order under Sub-section (1) of Section 144B to the assessee and ending with the date on which the Income Tax Officer receives the directions from the Inspecting Assistant Commissioner under Sub-section (4) of that Section, or, in a case where no objections to the draft order are received from the assessee, a period of thirty days, or ...

shall be excluded."

19. The assessee's challenge is confined to the use of the extended period of limitation on the ground that the Assessing Officer, with mala fide intentions, sought an extension of the period of limitation in the case of the assessee and, therefore, resorted to Section 144B of the Act.

20. Shri S. K. Mukhi, learned counsel for the assessee, has argued that assessment could be validly completed before the expiry of two years from the end of the assessment year in which income was first assessable and, since the

period of limitation had expired on March 31, 1978, the extension of the limitation, sought by the Assessing Officer under Clause (iv) of Explanation 1 to Section 153, was totally uncalled for and unwarranted.

21. Shri B. S. Gupta, learned senior counsel for the Department, has urged that there was no material on record to infer that the Assessing Officer resorted to Section 144B so as to seek an extended limitation. The real purpose in resorting to Section 144B was to propose a variation in the assessee's share income on the basis of the draft assessment order framed in the case of the firm. It is said to be an entirely imaginative proposition that the Assessing Officer resorted to Section 144B with the sole purpose of seeking an extended period of limitation while completing the assessment in the case of the assessee as an individual. The Assessing Officer did not, in fact, need any extension in the period of limitation inasmuch as the assessee's share income from the firm could be modified within a period of four years as provided in Sub-section (1) of Section 155 of the Act. Where a larger period of limitation was available, there could not be any presumption that the Assessing Officer resorted to Section 144B simply with a view to seeking an extended period of 180 days. Clause (iv) of Explanation 1 to Section 153 provided an extended period of limitation not exceeding 180 days only. As against this, a period of four years was available for recomputing the share income of a partner on the basis of the assessed income of the firm under Sub-section (1) of Section 155 of the Act. "

22. Looking to the specific provision laid down in Sub-section (1) of Section 155 of the Act specifying the period of four years for redetermining the share income of a partner, the charge levelled against the Assessing Officer that he resorted to Section 144B for the purpose of seeking extended period of limitation up to 180 days is found to have no substance. Moreover, the assessee was not able to show that the assessment u/s 143(3) read with Section 144B of the Act on September 16, 1978, was so framed beyond the period of 180 days after the expiry of two years from the end of the assessment year.

23. Shri S. K. Mukhi, learned counsel for the assessee, has also challenged the application of Section 144B with the plea that the Assessing Officer had no jurisdiction to invoke that Section when an elaborate scheme had been laid down in the Act for redetermining a partner's share income after the completion of the firm's assessment. Section 67 of the Act laid down the method of computing a partner's share in the income of the firm. In computing the total income of an assessee, who was a partner of a firm, his share is required to be computed after the net result of the computation of total income of the firm is available. Section 182 related to the assessment of income of registered firms. After assessing the total income of the firm, the Income Tax payable by the firm itself is to be determined and the share of each partner in the income of the firm is to be included in his total income and assessed to tax accordingly. Section 247 of the Act provided for an appeal by a partner if the partner of a firm, who is individually assessable on his share in the total income of the firm, felt aggrieved

by the determination of the amount of total income of the firm or the apportionment thereof between the several partners. A partner could not agitate such matters in any appeal preferred against an order of assessment determining his own total income or loss. It is thus argued by Shri Mukhi that a conjoint reading of Sections 67, 182 and 247 of the Act brought into existence a complete and comprehensive scheme with regard to the assessment of the income of a firm and the share income of its partners. Since a special and detailed scheme had been provided for in the Act, there was no reason to proceed u/s 144B before the income of the firm had been actually determined in the case of the firm. It was only a premature and unwarranted action which could not be sustained with the invocation of Section 144B of the Act. Section 144B could not be used to determine the share income of a partner inasmuch as an elaborate and special procedure had been laid down in Sections 67, 182 and 247 of the Act. There was also another specific provision in Section 267 of the Act enabling the Assessing Officer to amend the assessment made on any member of the body or association of persons after there was a change in the assessed income of the body of individuals or an association of persons in appeal u/s 246 or Section 253 of the Act. The appellate authority or the Appellate Tribunal has been empowered u/s 267 of the Act to pass an order in an appeal u/s 246 or Section 253, as the case may be, authorising the Assessing Officer either to amend the assessment or to make a fresh assessment on any member of the body or association of persons.

24. Shri B. S. Gupta has, on the other hand, refuted the arguments of Shri Mukhi with the plea that Section 144B could not be held to be inapplicable for determining the share income of a partner only because there existed certain other provisions in the Act for determination or re-determination of the share income of a partner. Since Section 144B provided a special remedy for the purposes of collecting revenue from a partner on his share income, the Assessing Officer was within his jurisdiction and power to proceed u/s 143(3) read with Section 144B of the Act. There was no legal bar against proceeding u/s 144B. If there were two courses open, any one could be adopted unless barred by a specific provision in this behalf. The provisions in Section 144B were procedural in nature. Where, in making an assessment u/s 143(3), the Assessing Officer proposed to make any variation in the income or loss returned by an amount exceeding Rs. 1,00,000, he could do so though he was bound to comply with the provisions of Section 144B of the Act.

25. Section 144B started with a non obstante Clause which implied that even if there were other provisions on a subject, those would not create a bar to the application of Section 144B. As already stated, there was no legal bar in Section 144B, which could prohibit the use of that Section in the matter of determining the share income of a partner on the basis of a proposed variation. It is true that, in the case of the firm, the total income had not been finally determined u/s 143(3) of the Act. A draft order had been prepared in the case of the firm also. The Assessing Officer, in the case of the assessee as an individual, proceeded to

look into the draft assessment order of the firm and took the share income of the assessee from that draft order. He then proceeded in the case of the assessee also u/s 144B of the Act after adopting the assessee's share income as proposed in the draft assessment order of the firm. There was no precondition in Section 144B to the effect that the Assessing Officer could proceed thereunder on the basis of a specific determination of income only. The only requirement was that he should follow the procedure laid down thereunder while proposing to make any variation in the income or loss returned by the assessee. Section 144B conferred wide powers upon the Assessing Officer while proposing a variation in the income or loss of the assessee. There was no condition laid down in Section 144B on what basis the Assessing Officer, in fact, could propose the variation in the income. Two safeguards have been provided in Section 144B, namely, (i) that the Assessing Officer shall forward a draft of the proposed order of assessment to the assessee, and (ii) that the objections received from the assessee shall be forwarded along with draft order to the Inspecting Assistant Commissioner for directions. The assessee was thus given two opportunities to represent against the proposed variation in his income, first by filing the objections against the draft order and then putting forward his case before the Inspecting Assistant Commissioner.

26. In the absence of any legal bar in Section 144B against estimating the share income of a partner, the power of the Assessing Officer to propose a variation in the income of a partner cannot be curtailed unless it is found that exercise of power u/s 144B was mala fide or was in violation of the procedure laid down therein. In the case of the present assessee, neither any charge of mala fides has been substantiated nor any breach of the procedure has been shown.

27. Shri B. S. Gupta, learned senior counsel for the Department, has argued that the Assessing Officer had to proceed u/s 144B so as to protect the interests of the Revenue. Though there were other provisions in the Act empowering and enabling the Assessing Officer to determine the share income of the assessee after the firm's income was finally determined, the Assessing Officer did not intend to wait till then and wanted to collect the tax from the assessee in the interests of the Revenue. The assessee's interests were not prejudiced inasmuch as he could claim refund of tax, collected from him, with interest.

28. Section 144B enables the Assessing Officer to make an assessment order after giving effect to the directions received from the Inspecting Assistant Commissioner. Such an assessment order was an assessment made by the Assessing Officer in exercise of the jurisdiction and power u/s 143(3) of the Act. An assessee was entitled to file an appeal against such an assessment order notwithstanding that he failed to file objections to the variation proposed by the Assessing Officer u/s 144B of the Act. The mere fact that the assessee did not file any objections to the draft assessment order would not debar the assessee from preferring an appeal against the final assessment order.

29. If there was a non-compliance or an irregular compliance with the provisions

of Section 144B, it was a procedural irregularity. In the controversy in hand, no case has been made out about the non-compliance or irregular compliance with the provisions of Section 144B. The only charge made against the assessment is that the share income of a partner could not be proposed to be varied on the basis of another draft order prepared in the case of the firm. This plea finds support from no specific provision in the Act. As has been stated earlier, Section 144B did not contain any legal bar therein prohibiting the Assessing Officer from proposing any variation in the income or loss of a partner. It empowers the Assessing Officer to propose any variation in the income or loss returned. If such a variation is prejudicial to the assessee and the amount of variation exceeded the amount fixed by the Board (which is Rs. 1,00,000), the Assessing Officer has to forward the draft of the proposed order of assessment to the assessee inviting objections. The subsequent procedure laid down in Sub-sections (2), (3), (4) and (5) provided sufficient safeguards against the proposed variation in the income. Therefore, it cannot be inferred that the Assessing Officer had no powers to propose a variation in the share income of a partner u/s 144B of the Act. Even though there were specific provisions in Sections 67, 182 and 247 of the Act and there was extended period of limitation u/s 155(1) and Section 267 of the Act, that would not create a legal bar against the invocation of Section 144B of the Act by an Assessing Officer. The Assessing Officer in a given situation, in order to protect the interests of the Revenue, may vary the share income of a partner and impose tax by resorting to Section 144B of the Act. If the Assessing Officer apprehended that late recovery of tax from the partner may not be feasible, he may resort to Section 144B of the Act by estimating the share income of the partner. Though special powers have been conferred upon the Assessing Officer to redetermine the share income of a partner on completion of assessment or reassessment of the firm, those would not prevent the Assessing Officer from exercising his powers u/s 144B of the Act.

30. Shri B. S. Gupta has placed reliance on a decision of the Delhi High Court in Smt. Mohinder Jaspal Singh Vs. Commissioner of Income Tax, , in which the extended period of 180 days, as provided in Explanation 1(iv) to Section 153 of the Act, was examined and it was held that the provisions of Section 144B could be invoked in relation to an assessment within the period of limitation computed under the said Explanation. The question of limitation was also examined by the Gujarat High Court in Commissioner of Income Tax Vs. Shree Digvijay Woollen Mills Ltd., . There also, it was held that the assessment was not barred by limitation if it was completed within the period specified in Explanation I(iv) to Section 153.

31. As has been observed earlier, the question of limitation raised by the assessee is relevant to the extent that the Assessing Officer availed of the extended period of limitation and completed the assessment within that extended period in the case of the assessee. It has not been shown by the assessee that the assessment completed on September 16, 1978, was beyond the period of limitation. The only charge, however, is that the Assessing Officer,

with a mala fide intention, resorted to Section 144B and thereby sought an extended period of limitation. This charge has, however, been not substantiated. Moreover, a larger period of four years was available u/s 155(1) of the Act and, therefore, it is not correct to assume that the Assessing Officer resorted to Section 144B simply for seeking an extended period of limitation. The two decisions on which reliance has been placed by Shri B. S. Gupta do not, however, appear to be relevant to the controversy in the present case. The Assessing Officer proceeded u/s 144B so as to collect tax from the partner on his share income without waiting for the assessment of the firm to be finalised. The share income of the partners had been proposed in the draft assessment order of the firm and the Assessing Officer adopted the share income as proposed in the draft order of the firm. This is how the Assessing Officer proposed to vary the share income of the assessee and proceeded u/s 144B of the Act.

32. In the result, the exercise of jurisdiction by the Assessing Officer u/s 144B of the Act is not found to be bad in law or invalid. There was no legal bar in Section 144B against estimating the share income of a partner. The non obstante Clause therein enabled the Assessing Officer to proceed to determine a partner's share income even though there were other provisions available in the Act in this behalf. The application of Section 144B could not be ousted only because there existed certain provisions in the Act for amending the order of assessment of the partner in future. If the Assessing Officer found it necessary to determine the share income of a partner, he could propose a variation u/s 144B. In the absence of mala fides or breach of the procedural provisions contained in Section 144B, the action cannot be called to be illegal. The question of law is, therefore, answered in the affirmative, i.e., in favour of the Revenue and against the assessee.