

(1973) 11 GUJ CK 0006

In the Gujarat High Court

Case No : Estate Duty No's. 2, 3 and 4 of 1971

Controller of Estate Duty

APPELLANT

Vs

N.A. Merchant

RESPONDENT

Date of Decision : 09-11-1973

Acts Referred:

Estate Duty Act, 1953 — Section 59, 62
Gift Tax Act, 1958 — Section 17
Income Tax Act, 1961 — Section 147

Citation : (1975) 101 ITR 270

Hon'ble Judges : B.J. Divan, C.J;T.U. Mehta, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; J.M. Thakore, for the Respondent

Judgement

Divan, C.J.—These three references relate to the estate of the same deceased person though the accountable persons in the three reference are different and they raise the same question of law which has been referred to us and hence we will dispose of all the three references by this common judgment. The question which has been referred to us in each of the three reference is as follows :

"Whether section 59 of the Estate Duty Act, 1953, is retrospective in operation and if so, in the facts and circumstances of the case, the reopening of the assessment u/s 59 of the said Act was bad in law ?"

2. The facts giving rise to these three reference are that one Abdulhusen Gulamhusen, Merchant of Bombay (hereinafter referred to as "the deceased"), died on February 8, 1959. The accountable persons filed returns under the provisions of the Estate Duty Act, 1953, and an assessment was made by the Deputy Controller of Estate Duty, Eastern Zone, on February 26, 1960. On February 21, 1962, a notice u/s 59 of the Act was issued to the accountable person concerned for reopening of the assessment on the ground that some property had escaped levy of estate duty. The accountable persons raised objections to the reopening of the assessment u/s 59. The Assistant Controller,

by his order dated February 10, 1968, rejected the contentions of the accountable persons and reopened the assessment. Against the order of reassessment, the accountable persons filed three different appeals before the Appellate Controller. That officer by his common order dated January 31, 1968, allowed the appeals and set aside the reassessment orders which had been passed u/s 59. The Appellate Controller came to the conclusion that section 59 under which action was taken by the Assistant Controller was not retrospective in operation and hence had no application in respect of the assessment which had been completed prior to the coming into force of section 59. It may be pointed out that when the Estate Duty Act was passed in 1953, there was no provision for reassessment of any kind and section 62 provided for certain rectification of mistakes, etc. In 1958, the Government suggested that certain amendments should be made to the Estate Duty Act and Bill was introduced in Parliament but the passage of the Bill through Parliament took considerable time and it was only on July 1, 1960, that the Amending Act, by which section 59 was brought on the statute book for the first time, came into force.

3. Hence, it was contended on behalf of the accountable persons before the Appellate Controller that assessments having been completed in the first instance on February 26, 1960, before the coming into force of the Amending Act, the reopening of the assessments u/s 59 was illegal and was not warranted. This contention was accepted by the Appellate Controller and, thereafter, the matter was taken in appeal by the revenue by filing appeals against the three accountable persons. The Tribunal upheld the view of the Appellate Controller and relying on the decision of the Bombay High Court in *Arvind N. Mafatlal v. Deputy Controller of Estate Duty* the Tribunal held that section could not be invoked in the instant three cases. Thereafter, at the instance of the revenue these three referenced referring the same question which we have here in above set out have been made to this court at the instance of the revenue.

4. In order to appreciate the legal position, we may point out that section 59 was freshly enacted by the Estate Duty (Amendment) Act, 1958 (Act 33 of 1958), and came into force with effect from July 1, 1960. A group of sections, sections 56 to 65 as they stand on the statute book today, was substituted in place of old sections 56 to 65 by this Amendment Act of 1958, and the originally enacted section 62 was repealed by the Amendment Act. Section 62 as originally enacted was as follows :

"62. Rectification of mistake relating to valuation for estate duty. -

(1) If, after the determination of the estate duty payable in respect of any estate, it appears to the Controller that, by reason of any mistake apparent from the record or of any mistake in the valuation of any property in any case other than a case in which the valuation has been the subject-matter of an appeal under this Act or of the omission of any property, the estate duty paid thereon is either in excess of or less than the actual duty payable, he may, either on his own motion or on the application of the person accountable and after obtaining the

previous approval of the Board, at any time within three years from the date on which the estate duty was first determined -

(a) refund the excess duty paid, or, as the case may be,

(b) determine the additional duty payable on the property :

Provided that where the person accountable had fraudulently under - estimated the value of any property or omitted any property, the period shall be six years :

Provided further that no order shall be made under this sub-section unless the person accountable has been given an opportunity of being heard.

(2) Nothing contained in sub-section (1) shall render any person accountable to whom a certificate that the estate duty has been paid is granted liable for any additional duty in excess of the assets of the deceased which are still in his possession, unless the person accountable had fraudulently attempted to evade any part of the estate duty in the first instance."

5. After the Amendment Act which came into force on July 1, 1960, the power of reassessment in cases similar to those u/s 34 of the Indian Income Tax Act, 1922, and section 147 of the Income Tax Act, 1961, was conferred upon the Controller in terms almost identical with minor differences which have no bearing on the question that we have to deal with. The provisions of new section 59 are as follows :

"59. 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 u/s 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 u/s 53 and may proceed to assess or reassess such property as if the provisions of section 58 applied thereto."

6. We may point out that in Assistant Controller of Estate Duty v. Mir Osman Ali Khan Bahadur the Supreme Court left the question open as to whether section 59 as amended by the 1958 Amendment Act could apply to assessments

completed before July 1, 1960, that being the date on which the Estate Duty (Amendment) Act, 1958, came into force. At page 380 of the report, the Supreme Court observed :

"The Division Bench did not decide the first point which related to the applicability of section 59 to assessments completed before the Amendment Act came into force. This matter will have to go back for decision of that question."

7. Thus, there is no pronouncement of the Supreme Court regarding the retrospective character of section 59 of the Act. So far as the decision of the High Courts are concerned, our attention has been drawn only to one decision, namely, the decision of the Bombay High Court in *Arvind N. Mafatlal v. Deputy Controller of Estate Duty* and no decision of any other High Court has been cited before us on this point of retrospective operation of sections 59, that is, applicability of section 59 to assessments which have been completed by appropriate order in that behalf before July 1, 1960.

8. Before we proceed to deal with the arguments and the authorities cited before us, we would like to point out that an analysis of the provision of section 62 as it stood before the amendment and section 59 which was introduced by the Amendment Act discloses the following factors :

Under old section 62, power was vested in the Controller, if, after the determination of the estate duty payable in respect of any estate, it appeared to him that, by reason (1) of mistake apparent from the record, or (2) of any mistake in the valuation of inappropriate in any case other than a case in which the valuation has been the subject matter of an appeal under the Act, or (3) of the omission of any property, the estate duty paid thereon is either in excess of or less than the actual duty payable, the power could be exercised of refunding the excess duty paid, or, as the case may be, for determining the additional duty payable on the property and the period of limitation was three years from the date on which the estate duty was first determined in ordinary circumstances. Where the accountable person had fraudulently under-estimated the value of any property, or omitted any property the period within which this power u/s 62 could be exercised was six years. Thus, it is obvious that the power under the cases falling under clause (1), namely, the mistake apparent from the record or similar to the power of rectification which is set out in section 154 of the Income Tax Act, 1961, or section 35 of the Indian Income Tax, 1922, after the amendment of 1958, the power of rectification is to be found in section 61 of the Estate Duty Act as amended by the 1958 Act and that the power is in terms similar to the power of rectification in the diffract section of the two Income Tax Acts we have just now referred. The other two circumstances under which the power under the old section 62 can be exercised were, mistake in the valuation of any property or omission of any property from the property which was already determined to be part of the estate of the deceased concerned. If the Controller came to the conclusion that by reason of any of the three circumstances mentioned here in above the estate duty which had been paid was in excess of

that which was payable or was less than the actual duty payable, he could, in exercise of the power u/s 62, pass an appropriate order direction refund of excess duty paid, or determine the additional duty payable on the property., By the section proviso to sub-section (1) of section 62, no order could be made under sub-section (1) of section 62 unless the accountable person had been given an opportunity of being heard. There was thus no power of reassessment, or, after reopening the assessment, stating the entire assessment proceedings afresh. That limitation on the power of the controller u/s 62 is obvious because even if he came to the conclusion that by reason of the omission of any property the estate duty as determined was less than the actual duty payable, he could only determine the additional duty which was payable by the accountable person by reason of the property which had been omitted on the earlier determination of the estate duty being included in the estate of the deceased person. For the time being, we will not take into consideration the period of limitation either of three years or of six years, as the case might be, which was provided by section 62, sub section (1).

9. However u/s 59, the Controller has become entitled to call upon the accountable person to submit an account as required u/s 53 and proceed to assess or reassess such property as is referred to in section 59 as if the provisions of section 58 apply to such assessment or reassessment u/s 59 can be exercised are : (a) When the Controller has reason to believe that by reason of the omission or failure on the part u/s 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. So far as clause (b) of section 59 is concerned, the Controller can act under that sub-section if in consequence of any information in his possession he has reason to believe that even though there is no such failure or omission on the part of the accountable person as is referred to in clause (a), 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, and then also the powers u/s 59 can be exercised But it is obvious that what is provided for by section 59 is entirely a new power of reassessment, that is, starting the entire assessment proceedings denovo as if he was starting fresh proceedings u/s 58.

10. In order to appreciate the rival contentions, it is necessary at this stage to refer to the exact scope of the power of reassessment in these direct taxes statutes. It may be pointed out that under the Indian Income Tax Act 1922, section 34 was the reassessment section. Under the Income Tax Act 1961, section 147 is the reassessment section. Under the Wealth tax Act 1961, reassessment is provided for by section 17 of that Act; and under the Gift-tax Act, a similar provision for reassessment is set out in section 16 and as these

different direct taxes statutes stand on the statute book, including section 59 of the Estate Duty Act as it stands to-day, the provisions are almost identical as regards the exercise of the power of reassessment of to officer concerned.

11. In *V. Jaganmohan Rao v. Commissioner of Income Tax, Ramaswami J.*, delivering the judgment of the Supreme Court, has pointed out the scope and nature of the power of reassessment u/s 34 of the Indian Income Tax Act, 1922. It is not necessary for the purpose of appreciating these observations to refer to the facts of that particular case but it was contended before the Supreme Court on behalf of the assessee that at the time of reassessment the Income Tax Officer should have legitimately assessed one-third share of the Income which was due to the assessee according to the judgment of the Madras High Court in certain other civil litigations and there was escarpment only to the extent of two-thirds share of the income. Dealing with this contention, the Supreme Court observed :

"This arguments is not of much avail to the appellant because once proceedings u/s 34 are taken to be validly initiated with regard cannot be confined only to that portion of the income. Section 34 in terms states that once the Income Tax Officer decides to reopen the assessment he could do so within the period prescribed by serving on the person liable to pay tax a notice containing all or any of the requirements which may be included in a notice u/s 22(2) and may proceed to assess or reassessment such income, profits or gains. It is, therefore, manifest that once assessment is reopened by issuing a notice under sub-section (2) of section 22 the previous under-assessment is set aside and the whole assessment proceedings start afresh. When once valid proceedings are started u/s 34(1)(b) the Income Tax Officer had not only the jurisdiction but it was his duty to levy tax on the entire income that had escaped assessment during that year."

12. Thus, the scope of reassessment proceedings in these different direct taxes statutes is that the occasion for initiating reassessment proceedings may be provided by one or the other factors provided in clauses (a) and (b) of section 59 for instance and similar provisions in the different statutes but if that occasion has arisen and reassessment proceedings are started afresh, then not only is it within the power of the officer concerned but it becomes the duty of the officer concerned to levy tax on the entire income or the entire estate or entire property, as the case may be, that has escaped assessment during the particular year under consideration.

13. The Madras High Court in *AL.VR. ST. Veerappa Chettiar v. Commissioner of Income Tax* has again summarized the same position after considering all the earlier decisions on the point and, in our opinion, this decision correctly summarizes the legal position regarding the power of the authority concerned in reassessment proceedings. The Madras High Court has there held, on a consideration of all the different decisions up to that date :

"Where the Income Tax Officer validly initiates reassessment proceedings by

issuing a notice u/s 34(1)(a) of the Indian Income Tax Act, 1922, in respect of a particular item he can, during the reassessment proceedings, deal with all items falling under clause (a) though they may not have been dealt with specifically in the notice and his jurisdiction is not limited only to the item in respect of which a notice under clause (a) of section 34(1) has been issued. Further, when reassessment proceedings are validly initiated by the officer in respect of an item of income falling either u/s 34(1)(a) or u/s 34(1)(b), the jurisdiction of the officer to reassess is not confined to the items of income in respect of which the notice has been issued but extends to all items of income which have escaped assessment whether they fall within section 34(1)(a) or section 34(1)(b). However, the power to bring to charge the cases falling under clause (b) in reassessment proceedings validly initiated by the issuance of a notice under clause (a) is subject to the limitation that the reassessment proceedings should be initiated within the period of four years as mentioned in clause (b)"

14. It is, therefore, clear that the power of reassessment which is conferred by section 59 as it stands amended by the Amendment Act of 1958 is quite different from the power which the Controller had u/s 62 before the amendment which came into force on July 1, 1960. It was not open to the Controller under the old section 62 to proceed against all properties which had escaped assessment at the time of earlier determination of estate duty but he can bring to tax all properties under the present section 59 which in the course of reassessment proceedings he finds to have escaped assessment or to have been omitted from determination of estate duty on the earlier occasion. Under old section 62, however, he could have proceeded only against the specific property which was mentioned in the notice to the accountable person and, secondly, he could only determine in the proceedings under old section 62 the amount of additional duty that the accountable person had to pay in respect of the property which had been omitted on the earlier occasion or the additional duty in respect of which a mistake had been discovered by him.

15. Coming to the decision of the Bombay High Court in Arvind N. Mafatlal V. Deputy Controller of Estate Duty the facts of that case have to be set out in order to appreciate the observations which were made in that case and the contentions which were urged in that case. Navinchandra Mafatlal was the chairman and managing director of a private limited company known as Mafatlal Gagalbhai & Company Ltd., Navinchandra Mafatlal owned 2,150 ordinary shares and 9,050 preference shares of this company. He died in 1955 and in 1956 a return was filed by his son, Arvind Mafatlal under the Estate Duty Act and after full discussion of several matters and a number of hearings, the Deputy Controller made an assessment order on March 22, 1960 and at that time the 2,150 ordinary shares were valued at Rs. 1,250 each on the market value basis. After the Amendment Act of 1958, the Deputy Controller of Estate Duty issued a notice u/s 59 of the Act as amended for reopening the assessment on the ground that at the time of the original assessment a mistake had been made in regard to several matters including the failure to apply an important rule, namely, rule 15

of the Estate Duty (Controlled Companies) Rules, 1953, under which shares in controlled companies had to be valued on the basis of the assets of the company and not on the basis of their market value, and he valued the 2,150 shares at Rs. 2,800 each, instead of at Rs. 1,250 as was done at the time of the original assessment. It was contended on behalf of the accountable person in proceedings taken out by way of special civil application under article 226 of the Constitutions challenging the jurisdiction of the Deputy Controller of Estate Duty u/s 59, that in as much as, on the date of the order, section 59 was not in force and, therefore, the accountable person had, under the order of March 22, 1960, acquired a right and immunity from reassessment. It was held by the Bombay High Court that the amended section 59 was not applicable to the case in as much as Amending Acts as a rule, have no retrospective effect, and cannot affect vested rights. The Bombay High Court, on comparison of the old section 62 as it stood before the amendment and section 59 which was inserted after the amendment of 1958, came to the conclusion that there was a substantial distinction between the remedies provided by the old section 62 and the new remedy provided by section 59 of the Estate Duty Act. Under the old section 62 all that could be done was to determine the additional duty payable on the property or refund the excess duty paid, whereas u/s 59 the power is to assess or reassess the property as if the provisions of section 58 applies, that is to say, a completely new assessment had to be made. The Bombay High Court in these circumstances held that section 59 could not be treated so as to make section 59 applicable to the case before them. At page 458, Kotval C.J., delivering the judgment of the Division Bench which dealt with the matter, observed (and we respectfully agree with that observation) that a completely new power was conferred on the Controller by section 59 and it is comparable to the power conferred by section 34 of the Indian Income Tax Act 1922, which shows that there is a vast distinction between the remedies provided by the old section 62 and the new remedy provided by section 59(b) the power is to assess or reassess the property as if the provisions of section 58 applied that is to say, a completely new assessment has to be made. At page 470 of the report, Kotval C.J., has observed :

"In the first place, the grounds upon which action could be taken under that section were only mistake apparent from the record, mistake in the valuation of any property, or omission of any property. Section 59 does not at all deal with any case of mistake. In fact, in the Estate Duty Act as amended, the question of rectification of mistake is relegated to the new section 61 and that section has not been invoked by the department at any stage. Secondly, the action that could be taken u/s 62 was only two-fold. If the assessee applied he could be refunded the excess duty, if any, paid by him or so far as the department is concerned, the only action that could be taken was to determine the additional duty payable on the property. In no case could an assessment made be reopened under the old sections 62. In other words, the assessee could not be called upon to render a fresh account or to submit a fresh return which u/s 59 the

department is expressly authorised to do. The words section 59 are decisive in this respect, "may.....require the person accountable to submit an account as required u/s 53 and may process to assess or reassess such property as if the provisions of section 58 applied thereto." Section 53 requires that every person accountable for estate duty shall, within six months of the death of the deceased, deliver to the Controller an account in the prescribed form and verified in the prescribed manner. That is the initial return which the person accountable is called upon to make and that is what the Controller is authorised to call for u/s 59, if the conditions of that section are fulfilled. Therefore, it is completely new account that could be called for. That could not be done under the old section 62. Similarly, power is given to the Controller to proceed to assess or reassess the property as if the provisions of section 58 applied thereto. Section 58 deals with the subject of "assessment " and it refers obviously to the assessment of the principal value of the estate of the deceased to determine the amount payable as estate duty. Therefore, the cumulative effect of reading the provisions of section 58 along with the provisions of section 59 is that if the conditions of section 59 are fulfilled, the Controller can call upon the person accountable to render a fresh account and assess him as if he were assessing him for the first time u/s 59. None of these powers or remedies, if we may say so, are conferred upon the department under the old section 62. These, in our opinion, are fundamental differences between the rights or remedies under the old section 62 and the new section 59. Whatever similarity there was between the rights or remedies under the old section 62 and the new section 59 was in regard to the question of mistake which, in the amended Act, has been relegated to section 61, but section 61 has not been invoked by the department. So far as section 59 is concerned in our opinion, it is not in any sense merely a variant of the old section 62."

16. We respectfully agree with these observations and in our view from what the Supreme Court has said in *V. Jaganmohan Rao v. Commissioner of Income Tax* and what the Madras High Court has said in *AL. VR. ST. Veerappa Chettiar v. Commissioner of Income Tax* regarding the scope and amplitude of the power of reassessment of the authority concerned in direct taxation statutes in reassessment proceedings, it is obvious that the content of the powers conferred upon the Controller u/s 59 by the Amendment Act of 1958 is entirely different from the content of the power which was conferred upon him by old section 62. In view of the entirely different contention of each of the two powers, it is obvious that the powers are altogether different and though the occasion which gives rise to the exercise of these powers under old section 62 and new section 59 may be similar, namely, omission of any property, it cannot be said that the same power or variant of the same power which were conferred on the Controller under old section 62 is conferred by the amended section 59.

17. At this stage it will be convenient to deal with the different contentions urged on behalf of the revenue by Mr. Kaji. He first contended that section 59 is retrospective and, therefore, the notice issued by the Deputy Controller on February 21, 1962, regarding escaped estate was properly and validly issued. As

the Bombay High Court pointed out in the case of Arvind N. Mafatlal v. Deputy Controller of Estate Duty the principles regarding retrospective operation of statutes are by now well settled and these principles have been summarized by Maxwell on the Interpretation of Statutes, and Craies on Statute Law. At page 215 of Maxwell on the Interpretation of Statutes, twelfth edition, it has been stated :

"Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation..... They are constructed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be constructed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication."

18. Again Maxwell has pointed out a page 218 the circumstances in which the presumption against retrospective operation has been applied :

"The rule of presumption against retrospective operation has been applied chiefly in cases in which the statute in question, if it operated retrospectively, would prejudicially affect vested rights or to legality of past transactions, or would impair contracts or would impose new duties or attach new disabilities in respect of past transactions."

19. At page 216 it has been observed by Maxwell :

"Before the presumption against retrospectivity is applied, a court, must be satisfied that the statute is in fact retrospective. In the words of Craies on Statute Law, a statute is retrospective "which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past".

20. In Craies on Statute Law, seventh edition, at page 387, it has been said :

"A statute is to be deemed to be retrospective which takes away or impairs any vested right acquired under existing laws or create a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past., But a statute "is not properly called a retrospective statute because a part of the requisite for its action is drawn from a time antecedent to its passing."

21. It has been pointed out in foot-note 32 at page 387 in Craies that :

"Past grounds for disciplinary order is effective (though enabling Act is not retrospective) because the effect of the order was in the future though the reason for making it was in the past."

22. At page 389 it has been pointed out :

"It is obviously competent for the legislature, in its wisdom, to make the

provisions of an Act of Parliament retrospective and no one denies the competency of the legislature to pass retrospective statutes if they think fit, and many times they have done so, but, before giving such a construction to an Act of Parliament, one would require that it should either appear very clearly in the terms of the Act or arise by necessary and distinct interpretation, and perhaps no rule of construction is more firmly established than this - that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

23. Again, at page 398, Craies has observed :

"It is "well-recognised rule that statutes should be interpreted, if possible, so as to respect vested rights", but such a construction should never be adopted if the words are open to another constructions..... For it is not to be presumed that interference with existing rights is intended by the legislature, and if a statute be ambiguous the court should lean to the interpretation which would support existing rights. But it must be a "vested right" in the strict sense in order to raise the presumption, for "there is no presumption that an Act of Parliament is not intended to interfere with existing rights.""

24. These principles of interpretation of statutes have been accepted as laying down the correct law in different decisions of the Supreme Court and different High Courts.

25. In *State of Bombay v. Vishnu Ramchandra. Hidayatullah J.*, as he then was delivering the judgment of the Supreme Court, has observed in paragraph 6 :

"The question whether an enactment is meant to operate prospectively or retrospectively has to be decided in accordance with well-settled principles. The cardinal principle is that statutes must always be interpreted prospectively, unless the language of the statutes makes them retrospective, either expressly or by necessary implication."

26. In paragraph 10, at page 310, Hidayatullah J. has set out the following passage from the decision of Chakravarti C.J. in *Ganesan V. A. K. Joscelyne*.

"I may state, however, that in spite of the ordinary and I might almost say cardinal rule of construction that statutes, particularly statutes creating liabilities, ought not to be so construed as to give them a retrospective operation unless there is a clear provision to that effect or unnecessary intendment implied in the provision, there is another principle on which courts have sometimes acted. It has been held that where the object of an Act is not to inflict punishment on anyone but to protect or misconduct on their character, the ordinary rule of construction need not be strictly applied."

27. In *Sajjan Singh v. State of Punjab*. What is meant by retrospective operation

has been pointed out. The question before the Supreme Court in that case was whether sub-section (3) of section 5 of the Prevention of Corruption Act, 1947, was retrospective in operation and the Supreme Court held that the Act had no retrospective operation and it pointed out that to take into consideration the pecuniary resources or property in the possession of the accused or any other person on his behalf which are acquired before the date of the Act is not in any way giving the Act a retrospective operation. A statute cannot be said to be retrospective because a part of the requisites for its actions is drawn from a time antecedent to its passing.

28. The strongest reliance on behalf of the revenue was placed on the decision of the Supreme Court in *Income Tax Officer V. T. S. Devinatha Nadar* for contending that section 59 was retrospective in its operation. The question before the Supreme Court in *T. S. Devinatha Nadar* 's case was whether the provisions of section 35(5) of the Indian Income Tax Act, 1922, which stood amended with the effect from April 1, 1952, could be made applicable to one of the partners of the firm when the firm in which he was a partner had been reassessed, and the majority of the learned judges of the Supreme Court overruled their earlier decision in *Income Tax Officer v. Atmala Nagaraj*, and approving their own earlier decision in *Income Tax Officer V. S. K. Habibullah* held that there was nothing in section 35(5) of the Indian Income Tax Act, 1922, to show that completed assessment of a partner in a firm must take place after April 1, 1952, i.e., the date on which the provision was brought on the statute book, in order that the power of rectification thereunder could be exercised. What was to take place after the section came into force to give rise to the power of rectification was the finding on the assessment or reassessment of the firm. Thus looking to the fact that there was a change in the tax payable by the firm as a result of the assessment or reassessment of the firm in which the particular partner was a member, such assessment or reassessment must be reflected in the individual assessment of the partner because of the allocation of the share of the profits or the income of the partnership to a particular partner concerned and to the extent to which any rectification became necessary in the assessment of the partner for the relevant year, this was consequential upon the assessment or reassessment of the income, profits or gains of the firm. Under these circumstances all that *T. S. Devinatha Nadar*'s case laid down is that it furnishes an illustration of retrospective effect being given by necessary implication though there was no express provision for giving retrospective effect to the provisions regarding the partner's accounts. But it cannot be said in the light of this decision in *T. S. Devinatha Nadar*'s case that even though the assessment had been completed earlier in each and every case, the assessment could be reopened or rectification could be done by the Income Tax Officer concerned. In our opinion, there is no justification for reading into this decision of the Supreme Court any legal principle other than the principle that retrospective effect can be given even by necessary implication.

29. There are no words clearly giving retrospective effect to section 59 and the

principle is well-settled that an assess is entitled not to be subjected to reassessment once the original assessment is finalised and unless the statute permits reassessment to be carried out, assessment once reached must be treated as final and complete. It is also clear under these circumstances that he shall not be subjected to reassessment after the assessee, men is finalised, In view of this right which under the direct taxes laws is given to an assessee, in order to reopen the assessment and to reassess that particular individual concerned the legislature must provide in express terms or by necessary intendment. We have already seen that there are no words expressly giving retrospective effect to section 59 and there is no necessity as was the necessity in T. S. Devinatha Nadar''s case to read by necessary implication any retrospective effect into the provisions of section 59. Under these circumstances the contention urged on behalf of the revenue that section 59 is retrospective in its operation must fail.

30. In the alternative it was contended on behalf of the revenue that even if section 59 is not retrospective, since section 59 does not affect any vested right''s, words of section 59 should be held to operate in such a manner as to make reassessment proceedings valid and in support of this contentions it was also urged that section 59 operates in future and past dealings have to be taken into account only for the purpose of determining the applicability of the section. If we appreciate the content of the power which has been conferred on the Controller by section 59 after the amendment of 1958, it is obvious that the content of the power u/s 59 is totally different from the content of the power which he enjoyed under the old section 62 before the amendment of 1958, and the analysis which we have set out in the earlier part of this judgment clearly shows that the provisions of section 59 are not a variant of the provisions of the old section 62 but they are and entirely new provision conferring a new power altogether on the Controller. It is true that both under the old section 62 as well as u/s 59 after the amendment, one of the circumstances which would enable the Controller to exercise his power under the respective section is omission of any property but even in this connection it must be borne in mind that u/s 59, after the amendment, it must be omission on the part of the accountable person to include any property which ought to have been included as distinguished from mere omission of any property irrespective of any action the part of the accountable person as was the case under the old section 62. The words "omission of any property" the only things which are common but the context in which they appear and the power to which this circumstance "omission of any property" gives rise being altogether different, it is obvious that the provisions of section 62 cannot be read as having been continued with a slight variation in the provisions of new section 59. It is, therefore, clear that what the revenue seeks to do in the instant case is not to exercise substantially the same power as under the old section 62 prior to the amendment; what the legislature seeks to do if this argument were to be upheld would be to exercise a new power altogether with a new content built into that power against the assessee though the

occasion which would give rise to the exercise of either of these two powers would be more or less similar. Hence reliance which Mr. Kaji sought to place on certain observations of Chakravartti C.J. in *Income-tax officer V. Calcutta Discount Co. Ltd.* cannot help the revenue in the instant case because Chakravartti C.J. in the case before him, held the power under the amended section to be a variant of the old power and that being the case, the observations of Chakravartti C.J. in *Calcutta Discount Company's* case cannot help the revenue in advancing its case. Under these circumstances, both the contentions urged on behalf of the revenue fail and both the aspects of the second contention must also fail. We, therefore, hold that section 59 after its amendment by the Act of 1958 is not retrospective in its operation and is not a variant of the provisions of the old section 62 and hence reliance cannot be placed on section 59 for reopening the assessment which was once completed prior to July 1, 1960, since reopening of the assessment would take away the right of the accountable person not to have the assessment reopened.

31. Under these circumstances, we answer the question in each of the three references against the revenue and in favour of the accountable person. We answer the first part of the question in the negative and it must be held that the reopening of the assessment u/s 59 of the Act was bad in law. The Controller will pay the cost of the accountable person in each of the three references.