

(1973) 02 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 213 to 215 of 1972 from Writ Petition No's. 3869 to 3871 of 1969

Income Tax Officer, B-Ward

APPELLANT

Vs

Mohanlal

RESPONDENT

Date of Decision : 15-02-1973

Acts Referred:

Income Tax Act, 1922 — Section 35, 35(1)

Income Tax Act, 1961 — Section 155

Citation : (1975) 100 ITR 118

Hon'ble Judges : Gopal Rao Ekbote, C.J.; Madhava Rao, J

Bench : Division Bench

Advocate : P. Rama Rao, for the Appellant; K. Jagannadha Raju, for the Respondent

Judgement

Ramachandra Raju, J.—The petitioner is common in all these three writ petitions. He is an Income Tax assessee on the file of the Income Tax Officer, B-Ward, Circle I, Hyderabad (the respondent herein). These writ petitions are directed against the notices dated October 24, 1969, issued by the respondent to the petitioner u/s 35 of the Indian Income Tax Act, 1922 (hereinafter called as "the old Act"), for the purpose of rectifying the mistakes made in the assessment orders for the years 1955-56, 1956-57 and 1957-58, alleging that the rectification sought to be made by the notices became barred by time long time ago and, thus, the notices issued by the respondent are without jurisdiction and illegal. It is prayed in the writ petitions to restrain the respondent from taking any proceedings in pursuance of the said notices.

2. In order to appreciate the points involved for decision, the necessary facts may be stated thus. There were two sources of income for the petitioner. They are income from two firms. At the time of the three assessments in question the incomes of one firm only were available and of the other firm was not available because the assessments of that firm were not over. It is not in dispute that with regard to the assessments in question the old Act applies, According to Section

35 of the old Act where in respect of any completed assessment of a partner in a firm or on any reduction or enhancement made in the income of the firm the share of the partner in the profit or loss of the firm has not been included in the assessment of the partner or, if included, is not correct, the Commissioner or the Appellate Assistant Commissioner or the Income Tax Officer, as the case may be, may at any time within four years from the date of the final order passed in the case of the firm rectify any mistake in the completed assessment of the partner. A similar provision also is made in Section 155 of the Income Tax Act, 1961 (hereinafter called "the new Act"). The dates of assessments for the three years 1955-56, 1956-57 and 1957-58, are respectively June 23, 1956, September 29, 1958, and September 29, 1958, the assessments for the last two years having been completed on the same date. For the first year the Income Tax Officer took into account nil income with regard to the income from the firm in question. For the last two years tentatively he took the share income of the petitioner at Rs. 2,000. The assessments of the firm for the three years were completed later. They were completed respectively on February 29, 1960, March 30, 1960, and March 30, 1960. According to those assessments the share income of the petitioner in that firm for those three years respectively came to Rs. 5,586, Rs. 23,415 and Rs. 24,856. On completion of the said firm's assessments the previous assessments of the petitioner were rectified by the Income Tax Officer by including therein the petitioner's share income from the said firm purporting to take action u/s 155 of the new Act. These rectifications were made by the Income Tax Officer without giving any show cause notice to the petitioner as contemplated u/s 154 of the new Act. A similar provision is also made in Section 35 of the old Act for giving show cause notice.

3. Against those rectification orders, the petitioner preferred appeals to the Appellate Assistant Commissioner of Income Tax. The Appellate Assistant Commissioner allowed the appeals on December 15, 1965, by which time the four year period of limitation for rectification was over in all the three cases. The Appellate Assistant Commissioner set aside the rectification orders of the Income Tax Officer and directed him to pass fresh orders after giving reasonable opportunity to the petitioner of being heard in the matter. Against this order of the Appellate Assistant Commissioner, neither the department nor the petitioner preferred any appeals and, thus, it had become final. Following the direction given by the Appellate Assistant Commissioner, the Income Tax Officer issued notices to the petitioner u/s 154/155 of the new Act proposing to rectify the assessments. The petitioner filed objections contending that the time within which the rectification of mistakes has to be made had already expired, i.e., the four year period from the dates of the assessments of the firm had expired long back and the assessments cannot, therefore, now be revised by rectifying the mistakes. The petitioner also contended before the Income Tax Officer that the order of the Appellate Assistant Commissioner is void and illegal inasmuch as be attempted to bypass the provisions of law and extend the period of limitation and any orders which the Income Tax Officer proposes to pass will be very much

long after the four-year period and those orders would be illegal, void and bad in law and the Income Tax Officer cannot take shelter under the orders of the Appellate Assistant Commissioner. Overruling the objections of the petitioner, the Income Tax Officer passed fresh orders u/s 155 of the new Act on January 18, 1969, rectifying the assessment orders of the petitioner by adding his share incomes from the firm in question.

4. Against those orders of the Income Tax Officer, the petitioner again filed appeals before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner allowed the appeals on June 4, 1969, and cancelled the rectification orders on the preliminary ground that the proceedings taken and finalised u/s 155 of the new Act to rectify the assessments of the years 1955-56, 1956-57 and 1957-58 are invalid and ab initio void, because for the assessments in question the old Act only applies and not the new Act. According to him the Income Tax Officer ought to have taken the rectification proceedings u/s 35 of the old Act and not u/s 155 of the new Act. In allowing the appeals and cancelling the orders passed by the Income Tax Officer, the Appellate Assistant Commissioner did not in terms give any direction to redo the rectifications after giving proper notice u/s 35 of the old Act. It is subsequent to the allowing of these appeals and cancelling of the rectification orders passed by the Income Tax Officer, the latter gave the impugned notices to the petitioner u/s 35 of the old Act for the purpose of rectifying the assessment orders afresh.

5. In subsequent decisions it was held that even though the old Act applies with regard to particular assessments for the purpose of rectification even if the notices were given u/s 155 of the new Act, it does not by itself invalidate the rectification. But the department accepted the view taken by the Appellate Assistant Commissioner that the Income Tax Officer ought to have taken the rectification proceedings by giving notices u/s 35 of the old Act and not u/s 155 of the new Act and allowed the order of the Appellate Assistant Commissioner to become final without taking the matter by way of further appeal. Thus, it is that after the appeals were disposed of by the Appellate Assistant Commissioner the Income Tax Officer took up the matter again for rectification and issued the impugned notices.

6. By the time the Income Tax Officer issued the impugned notices on October 24, 1969, it was more than nine years since the assessments of the firm were completed in the year 1960. It is the case of the petitioner that as provided u/s 35 of the old Act as also u/s 155 of the new Act power is given only to rectify mistakes within four years from the date of final orders passed in the case of the firm and, therefore, the notices given much long after the expiry of the four-year period are without jurisdiction and illegal.

7. But by Section 34(3), second proviso, it is provided that nothing contained in the section limiting the time within which any action may be taken or any order, assessment or reassessment may be made, shall apply to a reassessment made u/s 27 or to an assessment or reassessment made on the assessee or any

person in consequence of or to give effect to any finding or direction contained in an order u/s 31, Section 33, Section 33A, Section 33B, Section 66 or Section 66A, that is, provisions relating to appeals, revisions and references. There is a similar provision u/s 153(3)(ii) of the new Act. Section 31 relates to hearing of appeals by the Appellate Assistant Commissioner. It is provided u/s 31(3) that in disposing of an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment, or set aside the assessment and direct the Income Tax Officer to make a fresh assessment. If the matter before us comes under the second proviso to Section 34(3), the Income Tax Officer would be within his power in issuing the impugned notices and rectify the mistakes even though it was more than four years from the date of passing of final orders in the assessments of the firm. Two questions arise here: one relates to the argument of Sri K. Jagannadha Raja, the learned counsel for the petitioner, that Section 34 has no application to the facts of the case and the case only comes u/s 35. Whereas Section 34 deals with the assessments and reassessments, rectification of mistakes has to be done only u/s 35 and there is no similar provision in Section 35 as the one in Section 34(3), second proviso. Therefore, with regard to rectification of mistakes in assessments, as provided u/s 35, the rectification must be done within four years from the dates of the final orders passed in the assessments of the firm and any order passed by the Appellate Assistant Commissioner in any appeal made to him will not be of any avail for rectification of mistakes beyond four years from the dates of the final orders passed in the assessments of the firm.

8. The second question is that even assuming that Section 34(3), second proviso, applies to cases of rectification also, whether it can be said that the rectification sought to be made by the Income Tax Officer by issuing the impugned notices is in consequence of or to give effect to any finding or direction contained in the order of the Appellate Assistant Commissioner in question. As already noticed above, in the order of the Appellate Assistant Commissioner, no direction was given for redoing the rectifications. By the order he merely cancelled the rectifications already made by the income tax Officer on the ground that he had done it by issuing the notices of rectification under the provisions of the new Act instead of under the provisions of the old Act. Therefore, it cannot be said that the Income Tax Officer is now seeking to rectify the mistakes on account of any direction given by the Appellate Assistant Commissioner. Then remains whether he is doing the rectification as a consequence of or to give effect to any finding given by the Appellate Assistant Commissioner. The finding given by him is that the Income Tax Officer ought to have taken proceedings u/s 35 of the old Act and not u/s 155 of the new Act.

9. It may also be noted that when the matters came up in appeal for the first time before the Appellate Assistant Commissioner, he allowed the appeals on December 15, 1965, on the ground that the Income Tax Officer passed the rectification order without giving to the petitioner any show cause notice and gave a direction to the Income Tax Officer to pass fresh orders after giving

reasonable opportunity to the petitioner of being heard in the matter. It is only subsequent to that the Income Tax Officer gave notices u/s 155 of the new Act instead of u/s 35 of the old Act and, therefore, when appeals were again preferred to the Appellate Assistant Commissioner he found the notices given u/s 155 of the new Act to be wrong and cancelled the rectification order passed by the Income Tax Officer, but did not give any direction to pass fresh orders after giving notice u/s 35 of the old Act. Sri P. Rama Rao, the learned counsel for the department has argued that though no direction was given by the Appellate Assistant Commissioner in the subsequent appeals, what the Income Tax Officer now sought to do to rectify the assessment orders of the petitioner should be taken as in pursuance of the direction given by (he Appellate Assistant Commissioner in the earlier appeals as the action taken by him in pursuance of the earlier direction did not materialise. I do not think that this argument can be countenanced. A direction was given and in pursuance of that direction the Income Tax Officer did take action and passed orders of rectification. But that I think the direction has been complied with and exhausted. I do not think that the direction given by the Appellate Assistant Commissioner would be available for all time for the Income Tax Officer to take up rectification proceedings at any time and more than once.

10. This leaves us with the following two questions for consideration :

"(1) Whether Section 34(3), second proviso, is not applicable to cases of rectification of assessments to be made u/s 35 of the old Act ?

(2) In case the said provision is applicable whether the proposed action taken by the Income Tax Officer can be said to be in consequence of or to give effect to any finding given by the Appellate Assistant Commissioner in his order disposing of the appeals in question ?"

11. In the view I am taking on the first question, I do not think it is necessary to examine the second question. In my view Section 34 has no application to cases coming u/s 35. There is no provision in Section 35 similar to the second proviso to Section 34(3). Section 34 provides for additional assessment in cases where income has escaped full assessment and for assessment of income which was not assessed at all in the relevant assessment year. When an assessment starts with a notice u/s 34 all the relevant provisions of the Act apply as effectively as where the assessment starts with a notice u/s 22(2) in the ordinary course. Therefore, an assessment or a reassessment made starting with a notice u/s 34 is made u/s 23 read with Section 34 and an appeal would lie against an assessment or reassessment as against an assessment made u/s 23 in the ordinary course. Section 35 deals with mistakes which are apparent from the record. But certain cases of reassessment are, however, deemed under Sub-sections (5), (7), (8) and (9) of Section 35 to be case of mere " rectification " of a mistake apparent from the record and in such cases action can be taken u/s 35(1). It is provided under Sub-section (1) of Section 35 that the Income Tax Officer may, at any time within four years from the date of any assessment order or refund order passed

by him on his own motion, rectify any mistake apparent from the record of the assessment or refund, as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee. In the proviso to this sub-section it is further provided that no such rectification shall be made having the effect of enhancing an assessment or reducing a refund unless the Income Tax Officer has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard. It is provided under Sub-section (5) of Section 35 that where in respect of any completed assessment of a partner in a firm it is found on the assessment or reassessment of the firm or on any reduction or enhancement made in the income of the firm u/s 31, Section 33, Section 33A, Section 33B, Section 66 or Section 66A that the share of the partner in the profit or loss of the firm has not been included in the assessment of the partner or, if included, is not correct, the inclusion of the share in the assessment or the correction thereof, as the case may be, shall be deemed to be a rectification of a mistake apparent from the record within the meaning of Section 35 and the provision of Sub-section (1) shall apply thereto accordingly, the period of four years referred to in that sub-section being computed from the date of the final order passed in the case of the firm.

12. It is not doubted that the matter comes u/s 35. As a matter of fact notices were given u/s 35 and not u/s 34. We are only dealing with notices given u/s 35 and are now on the point whether the notices given after more than nine years from the dates of the assessments of the firm can be said to be not barred by time. Sri P. Rama Rao, the learned counsel for the department, has conceded that, unless Section 34 can be made applicable to the facts of this case and reliance placed on the second proviso to Section 34(3), the impugned notices would be out of time because they were issued long after the period of four years from the dates of the assessments of the firm. In the first instance, Section 34 deals with assessments and reassessments with regard to incomes which escaped assessment. Though the cases where the share of a partner in profit or loss of a firm has not been included in the assessment of the partner or if included is not correct can be said to be cases of income escaping assessment, as provided under Sub-section (5) of Section 35, the inclusion of the share in the assessment or correction thereof is deemed only a rectification of a mistake apparent from the record within the meaning of that section. Therefore, by this deeming provision those cases were taken away from the purview of Section 34 because by means of the deeming provision the inclusion of the share income in the assessment or the correction thereof cannot be called an assessment or a reassessment. Therefore, it is not possible to say that cases coming u/s 35 would also automatically be attracted by Section 34, though notices are given only u/s 35 and not u/s 34. The second proviso to Sub-section (3) of Section 34 applies only to cases where, proceedings are started on giving notices u/s 34.

13. In support of his argument that the second proviso to Section 34(3) can be invoked for the purposes of saying that the present notices were not issued

beyond time, Sri P. Rama Rao has placed reliance on the decision in *S. Sankappa and Others Vs. The Income Tax Officer, Central Circle II, Bangalore*, . In that case the question arose whether the rectification proceedings could not be taken u/s 155 of the new Act because they related to assessment years when the old Act was applicable so that the proceedings could be taken only u/s 35(5) of the old Act in view of the provision of Section 297(2)(a) of the new Act. It was contended that the proceedings for rectification u/s 35(5) of the old Act were not " proceedings for assessment " within the meaning of Section 297(2)(a) of the new Act and, therefore, the old Act could not be resorted to. u/s 297(2)(a) of the new Act provision is made that, where a return of income has been filed before the commencement of the new Act by any person for any assessment year, proceedings for the assessment of that person for that year may be taken and continued as if the new Act had not been passed. The Supreme Court held that the proceedings taken for rectification of assessment to tax either under Section 35(1) or u/s 35(5) of the old Act were proceedings for assessment. The orders that are to be passed by the Income Tax Officer u/s 35(1) rectifying firms" assessments are all orders altering assessment orders made in proceedings for assessment of the firms and under the notices in question the Income Tax Officer was proposing to rectify orders made for computation of income and imposition of tax under the charging section in the case of individual partners. Section 297(2)(a) of the new Act, therefore, applied and permitted the Income Tax Officer to proceed in accordance with the provisions of the old Act. The proceedings taken for rectification of assessment to tax either u/s 35(1) or Section 35(5) of the old Act are part of the proceedings of the assessment.

14. But by the deeming provision made under Sub-section (5) of Section 35 of the old Act " correction " is made " rectification " of a mistake apparent from the record within the meaning of Section 35, which means that by means of the deeming provision the correction is not called reassessment. For the purposes of Section 297(2)(a) proceedings taken for rectification may be treated as part of the assessment proceedings. But having regard to the deeming provision made under Sub-section (5) of Section 35 of the old Act, a correction can be taken only as a rectification of a mistake apparent from the record and not a reassessment. If the rectification of a mistake made as provided u/s 35 can also be taken as a reassessment there is no need for the deeming provision made under Sub-section (5) of Section 35. I do not think from what was held in the Supreme Court decision it can be said that the rectification orders made u/s 35 would necessarily come under assessments or reassessments, for Section 34 to be attracted automatically. As already mentioned above, it may be noted that assessment or reassessment orders made in pursuance of notices given u/s 34 are made appealable like assessments made u/s 23 in the ordinary course, but the orders passed u/s 35 are not made appealable.

15. Sri K. Jagannadha Raju has also argued that once an assessment order was considered and orders were passed by the Appellate Assistant Commissioner, the assessment order of the Income Tax Officer merges with that of the Appellate

Assistant Commissioner and thereafter rectification of the assessment as provided u/s 35 can be made only by the Appellate Assistant Commissioner and not by the Income Tax Officer. It is true, as provided in Section 35, that once an appeal is preferred to the Appellate Assistant Commissioner against the order of assessment of the Income Tax Officer and the Appellate Assistant Commissioner passes orders in the appeal, the order of the Income Tax Officer merges with that of the Appellate Assistant Commissioner and thereafter it is only the Appellate Assistant Commissioner that can deal with the matter for rectifying mistakes as provided u/s 35. But in the cases before us no appeals were filed against the assessment orders of the Income Tax Officer, The assessment orders still remain that of the Income Tax Officer without having been merged with those of the Appellate Assistant Commissioner as no appeals were preferred against the assessment orders. The orders of the Appellate Assistant Commissioner in question are only in the appeals arising with regard to the proceedings taken by the Income Tax Officer for rectification of the mistakes in the assessment orders and not those passed in the appeals taken against the assessment orders as such. The assessment orders of the Income Tax Officer still remain untouched by the appellate authority. Under these circumstances, there is no force in this contention of the learned counsel.

16. It may also be added that the appeals themselves filed by the petitioner to the Appellate Assistant Commissioner were not maintainable, as there is no provision for appeal against the orders passed by the Income Tax Officer u/s 35 for rectification of mistakes. What follows from it is a different matter. We are not concerned with that now in these writ petitions. We are only concerned with whether the impugned notices issued by the Income Tax Officer were in time.

17. In the end I hold that the notices were issued beyond time and, therefore without jurisdiction. Accordingly, the writ petitions are allowed and the Income Tax Officer is directed not to take further action in pursuance of those notices.

18. In the circumstances of the case, I direct the parties to bear their respective costs in all the three writ petitions.

JUDGMENT

Gopal Rao Ekbote, C.J.

19. These appeals are from the order of our learned brother, Ramchandra Raju J., given in Writ Petitions Nos. 3870, 3871 and 3869 of 1969, respectively, on June 25, 1971, whereby the learned judge allowed the writ petitions and directed the Income Tax Officer not to take further action in pursuance of the notices.

20. The facts necessary for our purposes are that the petitioner is a partner of the firm. For the assessment years 1955-56, 1956-57 and 1957-58, the assessments of the firm were not completed. The Income Tax Officer provisionally made assessments in regard to the petitioner who, as stated earlier, is a partner of the firm. For the assessment year 1955-56, his profit was

provisionally assessed as nil and for the assessment years 1956-57 and 1957-58 a tentative profit of Rs. 2,000 was arrived at.

21. The assessment for the first year was completed on June 23, 1956, and for the other two years it was completed on September 29, 1958. Both these were provisional assessments.

22. While the matter stood thus, the firm of which the petitioner was a partner was finally assessed for the year 1955-56 on February 29, 1960, and for the other two years the assessments were completed on March 30, 1960.

23. It was found that for the assessment year 1955-56, the petitioner's share of income was Rs. 55,586. For the assessment year 1956-57, it came to Rs. 24,415 and for the assessment year 1957-58, it was calculated at Rs. 24,856,

24. The Income Tax Officer, therefore, commenced rectification proceedings u/s 155 of the 1961 Act. Without giving notice to the assessee for the assessment year 1955-56, he passed an order of rectification on February 17, 1963. For the other two assessment years, he corrected the assessment without giving any notice to the assessee on February 25, 1964. Both these corrected assessments were based upon the profits indicated above.

25. The assessee, although he had no notice of the correction proceedings, appealed against the orders of the Income Tax Officer. On December 15, 1965, the Appellate Assistant Commissioner set aside the order of the Income Tax Officer on the ground that notices ought to have been issued u/s 35(2) to the assessee before any order correcting the assessment was made.

26. The Income Tax Officer consequently gave fresh notices in regard to the three years on November 1, 1968. He made final fresh orders on January 18, 1969, which were almost the same as he had made before.

27. On appeal to the Appellate Assistant Commissioner, this time the petitioner took the objection that notices u/s 155 of the 1961 Act were misconceived. The old Act applied to the proceedings and the proceedings should have been commenced u/s 35 of the old Act. The Appellate Assistant Commissioner, therefore, annulled the assessment proceedings declaring them to be void by his order dated June 4, 1969.

28. The Income Tax Officer accepting the order of the Appellate Assistant Commissioner issued fresh notices u/s 35 on October 24, 1969. It is to challenge the correctness of these notices for all the three assessment years that the present writ petitions out of which these appeals arise were filed.

29. Our learned brother Ramchandra Raju J. allowed the writ petitions mainly on three grounds. He firstly found that the rectification proceedings are not proceedings for assessment. Secondly, he held that the proviso to Sub-section (3) of Section 34 was available only in a case where notice u/s 34 is given and not to a notice given u/s 35 of the Act. The third ground on which the writ

petitions were allowed was that the Income Tax Officer had already exhausted the power of correcting the assessment once and the same power is not available to him all over again.

30. In these appeals, the learned advocate for the department contended that the first ground on which the learned judge has allowed the writ petitions no more holds goods because of the decision of the Supreme Court in *S. Sankappa and Others Vs. The Income Tax Officer, Central Circle II, Bangalore*, . In that case, the Supreme Court categorically found that proceedings taken for rectification of assessment to tax, either u/s 35(1) or u/s 35(5) of the 1922 Act, were proceedings for assessment. In view of this decision, with due respect to the learned judge, we are unable to agree with his view that rectification proceeding is not an assessment proceeding.

31. We also find it difficult to agree, with his second ground that the proviso to Section 34(3) is available only in pursuance of a notice u/s 34 and not u/s 35. That point, however, does not arise in the present case. In the view which we are taking we feel it unnecessary to elaborate on that point.

32. We also do not share the view of the learned judge that the power to correct assessment since has been exhausted was not available for a second time to the Income Tax Officer. What was ignored in arriving at that conclusion was that the order of the Income Tax Officer passed on February 25, 1964, when for the first time he exercised the power of correction was found to be bad in law by the Appellate Assistant Commissioner as no notice was given. When that judgment was set aside, we fail to see how that power can be said to have been exhausted. Second time when he exercised the power it was exercise of the power for the first time. That question also does not, in our opinion, arise in the present case in the view which we are taking.

33. The real question which arises in the present proceedings is whether the rectification order made by the Income Tax Officer on February 17, 1963, was a valid order. We think it was not. u/s 35(1) of the Act, a provision which admittedly applies to the present proceedings,, it was incumbent upon the Income Tax Officer before he made any rectification to issue notice to the assessee communicating his intention to rectify the provisional assessment which he had earlier made. He was also under an obligation to allow a reasonable opportunity of being heard. It could not be doubted that the first proviso to Section 35(1) is mandatory and ought to have been followed. The effect of not following that mandatory provision cannot but be to make the order passed by the Income Tax Officer a nullity. We are fortified in our view by a decision of this court in *Karri Ramakrishna Reddy Vs. Tax Recovery Officer*, .

34. The fact that the assessee went in appeal against such an order would not alter the real position, nor the fact that the Appellate Assistant Commissioner set aside such an order by his order dated December 15, 1965. When once it is found that the order made by the Income Tax Officer without notice is a void

order, then any subsequent proceeding taken relevant thereto would also be void. The effect of those proceedings, therefore, was that no proceedings u/s 35(1) shall be deemed to have been even commenced by the Income Tax Officer. The necessary consequence of it is that the notices which the Income Tax Officer gave on November 1, 1968, were notices given u/s 35(1) for the first time expressing his intention to correct the assessment proceedings provisionally made. Those notices were clearly given beyond four years of the order of assessment made in the assessment proceedings of the firm on February 29, 1960. Section 35 requires such proceedings to be commenced and completed within four years of the date from which the assessment order in regard to the firm was made. When the notice was given beyond the time, the Income Tax Officer had no jurisdiction to commence the proceedings. The notice, therefore, is bad in law and has, in our judgment, rightly been ignored by the learned judge. He was right, in our view, in directing the Income Tax Officer not to carry on the correction proceedings in pursuance of such notices because he would have had no jurisdiction to proceed with the cases as they would be time-barred.

35. We thus agree with the conclusion of the learned single judge although we have reached that conclusion through altogether a different route. The appeals are accordingly dismissed. In the circumstances, we make no order as to costs. Advocate's fee Rs. 100 in each appeal.