
(1971) 07 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2863 of 1969

Karri Ramakrishna Reddy

APPELLANT

Vs

Tax Recovery Officer

RESPONDENT

Date of Decision : 02-07-1971

Acts Referred:

Income Tax Act, 1961 — Section 143, 144, 171, 171(2), 171(3)

Citation : (1973) 87 ITR 86

Hon'ble Judges : Lakshmaiah, J;Gopal Rao Ekbote, J

Bench : Division Bench

Advocate : I.V. Rangachary, for the Appellant; P. Rama Rao, for the Respondent

Judgement

Gopal Rao Ekbote, J.—This is an application for the issue of a writ of certiorari to quash the order of the Tax Recovery Officer, Vijayawada-2, Krishna District, made in S. R. No. 40/67 on 28th June, 1969.

2. The facts essential for the purpose of appreciating the contention raised before us are that the petitioner and his father, Karri Venkatareddi, constituted a Hindu undivided family. The said family was assessed to pay Income Tax for the assessment years 1961-62, 1962-63 and 1963-64. As the dues were not paid, the recovery certificates were issued. For the year 1961-62 the joint family was assessed on June 29, 1962, to a reduced assessment of Rs. 1,479.41. The recovery certificate was issued on March 13, 1963. For the year 1962-63, the assessment was made on March 14, 1967, and the amount under that assessment was Rs. 26,890. Likewise, for the year 1963-64, assessment was made on August 21, 1967, and the amount due under it was Rs. 5,549 and the certificates for the last two years were issued on September 30, 1967. With an addition of Rs. 5,449-59 towards interest due till February 13, 1969, the total amount due was Rs. 39,368.

3. In order to recover this amount on the basis of the said certificates, the Tax Recovery Officer attached several properties including a wet land of 3 acres and

70 cents situated at Pentapadu, i.e., R. S, Nos. 41/1 admeasuring 90 cents and R. S. No. 42/2 admeasuring 2 acres and 80 cents. We are not concerned with the attachment of other properties except these lands.

4. After the attachment of the said lands, the petitioner filed a claim petition on April 28, 1969. It was claimed that the properties cannot be attached for recovery of amounts due from Karri Venkatareddi as the properties were partitioned and the lands fell to his share under a registered deed dated September 2, 1962. In the claim petition he further averred that the assessment related to the tax dues of a Hindu undivided family of which the petitioner was a member, that the father of the petitioner for the accounting year 1963-64 showed his status as an individual and referred to a registered partition deed. The Income Tax Officer, however, did not issue any notices nor did he hold any enquiry. No finding in respect of partition was given. The assessment was completed in the status of Hindu undivided family. No appeal against that assessment order was filed.

5. The Tax Recovery Officer by his impugned order found that the partition was not genuine and, therefore, rejected the claim petition. It is this order that is challenged in this writ petition.

6. The principal contention of Sri I. V, Rangachary, the learned counsel for the petitioner, is that when the father of the petitioner had claimed partition by filing a return for 1963-64, showing the status as individual and referring to the registered partition deed; the assessment order passed for that year is void and as no notice was given to the other members of the family, consequently the certificate issued on the basis of such a void assessment order and all the proceedings of attachment, etc., taken in pursuance of such recovery certificates are void and therefore the impugned order must be quashed.

7. Before we deal with this question we would like to make it clear that for the years 1961-62 and 1962-63, no arguments were addressed to us. The partition deed admittedly was executed on September 2, 1962. The family, therefore, continued to be joint till that date. Any debt due before the partition including the tax amount can be recovered from the joint family members including the petitioner. The certificates issued in regard to the said two years therefore and attachment effected in pursuance of the same of the lands in question could not be questioned before us. Even in regard to 1963-64, till the date of the partition undisputedly the family continued to be joint and therefore the petitioner was liable for the pre- partition debt and the certificate issued to the extent of the amount due till the date of the partition and the attachment cannot be found fault with. The question raised therefore would relate only to the part of the accounting year 1963-64 after September 2, 1962.

8. Section 171 of the Income Tax Act, 1961, which provision admittedly is applicable to the facts of the present case relates to the assessment after partition of a Hindu undivided family. In order to view the implications of the

argument in correct perspective it is essential to bear in mind the legislative antecedents of Section 171. Its corresponding section in the 1922 Act was Section 25A, It was inserted by an amending Act of 1928. Its chief aim was to meet the difficulty of levying and collecting the tax in cases where a Hindu undivided family had received income in the accounting year but the Hindu undivided family was no longer in existence as such at time of assessment. The difficulty was the more acute by reason of the provision contained in Section 14(1):

" The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family. ..."

9. Section 25A was also found to be inadequate to meet the intended situations. The present Section 171 therefore was enacted. This section unlike Section 25A of the 1922 Act, applies not only to cases of total partition but also to cases of partial partition. It applies not only for the purpose of assessing and collecting tax but also for the purpose of levying and collecting penalty, fine or interest. It also provides that the Income Tax Officer should record a finding as to the date on which the total or partial partition took place and it further makes the members jointly and severally liable even when the order recording partition is passed after the assessment order is made on the joint family.

Section 171 reads :

"(1) A Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family.

(2) Where, at the time of making an assessment u/s 143 or Section 144, it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition, whether total or partial, has taken place among the members of such family, the Income Tax Officer shall make an inquiry there into after giving notice of the inquiry to all the members of the family.

(3) On the completion of the inquiry, the Income Tax Officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such partition, the date on which it has taken place.

(4) Where a finding of total or partial partition has been recorded by the Income Tax Officer under this section, and the partition took place during the previous year,--

(a) the total income of the joint family in respect of the period up to the date of partition shall be assessed as if no partition had taken place ; and

(b) each member or group of members shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in Clause

(2) of Section 10, be jointly and severally liable for the tax on the income so assessed.

(5) Where a finding of total or partial partition has been recorded by the Income Tax Officer under this section, and the partition took place after the expiry of the previous year, the total income of the previous year of the joint family shall be assessed as if no partition had taken place; and the provisions of Clause (b) of Sub-section (4) shall, so far as may be, apply to the case.

(6) Notwithstanding anything contained in this section, if the Income Tax Officer finds after completion of the assessment of a Hindu undivided family, that the family has already effected a partition, whether total or partial, the Income Tax Officer shall proceed to recover the tax from every person who was a member of the family before the partition, and every such person shall be jointly and severally liable for the tax on the income so assessed.

(7) For the purposes of this section, the several liabilities of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the partition, whether total or partial.

(8) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period up to the date of the partition, whether total or partial, of a Hindu undivided family as they apply in relation to the levy and collection of tax in respect of any such period.

Explanation.--In this section.-

(a) " partition" means-

(i) Where the property admits of a physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition; or

(ii) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition;

(b) " partial partition " means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both."

10. A careful reading of this section would disclose that Sub-section (1) is more of a declaratory character. It declares in so far as the Act is concerned that a Hindu family which hitherto was assessed as undivided shall be deemed to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family.

11. The sub-section, it will be evident, broadly declares the law in the first part,

but makes it subject to a finding of partition, if given under that section, in respect of the undivided family. The word " except " appearing in the sub-section is in effect a proviso. The second part, therefore, is an exception or a qualifying clause, the effect of which is to except out of the preceding part upon which it has engrafted something which but for the exception would be within it. What follows, therefore, is that in a case where a finding of partition has been given u/s 171 in respect of the Hindu undivided family, the first part of Sub-section (1) would not apply to such a case and it is only Section 171 which would apply and an assessment order will be made in accordance with the provisions of that section.

12. Sub-section (2), which is more relevant for our purpose, provides that when at the time of making an assessment it is claimed by any member of the Hindu undivided family so far assessed as undivided, that a partition has taken place, the Income Tax Officer after giving notice of the inquiry to all the members of the family, shall make an enquiry there into. The jurisdiction of the Income Tax Officer to inquire into a claim referred to in Sub-section (2) and to give a finding, reference to which is made both in Sub-section (1) and Sub-section (3), depend upon the concurrence of the following: (1) at the time of making an assessment a claim must have been made by or on behalf of any member of a Hindu family that a partition, total or partial, has taken place among the members; (2) the family must have been hitherto assessed as undivided ; (3) the Income Tax Officer shall make an inquiry into the claim and before he makes such enquiry he is bound to give notice of the enquiry to all the members of the family; and (4) the Income Tax Officer must be satisfied that the joint family property has been partitioned among the various members or groups of members by a physical division or otherwise as provided in the Explanation.

13. What is plain is that if at the time of assessment a claim is made by any member of the family that a partition has taken place, the Income Tax Officer has no other choice but to give notice to all the members and to make enquiry and to give a finding relating to the claim. The sub-section is couched in mandatory language and, therefore, makes it imperative on the part of the income tax Officer to comply with the requirements of that sub-section, whenever a claim of partition is made.

14. It is clear that "at the time of making an assessment under Sections 143 and 144 " means, during the course of the process of assessment and not at the time of making final order determining the tax payable under an assessment order. Thus, even before the date of assessment, but during the process of assessment, any member of a family hitherto assessed as undivided, may put forward a claim in respect of partition effected prior to or after the close of the relevant accounting year and the Income Tax Officer would be bound to inquire into such a partition and make an order in accordance with the provisions of the section. Such an order may hold that the partition has taken place or may hold that it has not taken place.

15. The section does not prescribe any particular form in which the claim must be set forth. If the intention of the member of a family to set forth such claim can be gathered either from the return which he files as individual or from a separate application in which facts relating to partition are sufficiently and intelligibly made out, it would be enough for the purposes of that section.

16. Sub-section (3) then makes it obligatory on the part of the Income Tax Officer to record a finding on the completion of the inquiry as to whether there has been a total or partial partition and if so the date on which it has taken place. Thus, once a claim is set forth, it is imperative that notices to the members of the family must be given, the enquiry must be held and a finding ought to be recorded. Sub-section (3) obviously implies the rejection of such a claim if the Income Tax Officer on inquiry reaches the conclusion that there has been no partition as is claimed. The section in any case does, not postulate that the claim can just be ignored or cold-stored. It has to be necessarily inquired into and a finding given. Such an inquiry and finding being a part of assessment coming within the purview of that section, neither the inquiry can be withheld pushing forth the assessment nor can the claim be treated as if it is a separate proceeding unconnected with the assessment proceeding envisaged by the section. Both are part of the same proceedings and have to be treated as integral. The assessment finally made under that section depends upon the nature of finding given in respect of partition.

17. It is also pertinent to note that once a total or partial partition is found to have been effected by an order u/s 171, then it will not only operate for the accounting year in proceedings relating to which the order is made but all subsequent assessments will have to be made in conformity with the finding. Such an order under the section is expected to be passed only once and when so passed the joint family would get disrupted for the purposes of the Act from the date thus found and a joint family constituted by some of the members of the disputed family would be a different assessable entity.

18. Coming then to Sub-sections (4) to (7), it is evident that in every case where an order has been made regarding the partition of joint family property among the members or groups of members, the assessment of the total income received by on behalf of the joint family as such must be made in accordance with the procedure laid down in these sub-sections. The procedure is to compute the total income of the joint family up to the date of partition and also determine the tax payable by the joint family as such, as if no partition had taken place and as if the joint family was still in existence and then to hold each member or group of members liable for a share of the tax determined as payable by the joint family. The tax assessed as payable by the joint family has to be apportioned among the members or groups of members according to the partition of the joint family property allotted to each of them; but fresh assessment orders u/s 143 or 144 have not to be made on them in respect of the income of the joint family. In other words, it is provided that the total income of the joint family in respect of

the period up to the date of the partition should be assessed as if no partition had taken place and the members are to be held jointly and severally liable for the tax assessed on the family, the several liability of any member or groups of members being computed according to the partition of the joint family property allotted to him at the partition. The joint and several liability of the members is personal and is not restricted to the property received on partition. Apart from Section 171, the Income Tax department can also invoke the principles of Hindu law that if a partition takes place after the family had incurred a debt but no provision is made at the time of partition for payment of the debt, the creditor can proceed to recover it from every one of the members to the extent of the family property in his hands. And it is in pursuance of this principle that we have made it clear above that the debt due under the Income Tax certificates for the years 1961-62, 1962-63 and a part of 1963-64 can be recovered even from the petitioner to the extent of the family property in his hands.

19. Sub-section (8) not being relevant for this enquiry need not be considered.

20. What emerges from the above said critical appreciation of Section 171 is that if any member, hitherto assessed as undivided, sets forth a claim of partition, that claim has necessarily to be inquired into after giving notice to the other members and after making a proper inquiry the Income Tax Officer has to record a finding relating to the partition. In case he reaches the conclusion that there was "no partition, then assessment order u/s 143 or 144, as the case may be, has to be made. And in case the Income Tax Officer comes to the conclusion that there has been a partition, the assessment order has to be made in accordance with the provisions of Section 171. There is no room for any contention that the inquiry into the claim and order relating thereto can separately be passed even after any assessment is made. We have already seen that in a case to which Section 171 is attracted, there is no scope for making an assessment order u/s 143 or 144, before it is found after an inquiry into the claim that there has not been any partition. Such an assessment order, if made before inquiry into the claim, would be inconsistent with Section 171. Since the section is couched in imperative language, in fact no assessment order can be passed either u/s 143 or Section 144 or u/s 171 unless and until notices are served on all the members of the family, inquiry is held and a finding is given in respect of partition claimed. And it is only in the light of the finding given that the assessment order either u/s 143 or Section 144 or u/s 171 can be made. In view of the clear and unambiguous language of Section 171, the contextual relationships of various sub-sections with each other and the composite structure of the whole section can leave no one in doubt that if disregarding the claim of partition made by any member, whether deliberately or inadvertently, an assessment is made it would be inconsistent with Section 171 and will be an assessment order passed without following the essential procedure and consequently would be illegal. The effect of Sub-sections (2) and (3) seems to us to be clear that if no notice is served upon the other members of the family after a claim of partition is made, and if no order is made regarding the partition and yet the Hindu undivided family is

assessed, such an assessment order would be void inasmuch as the essential steps to make an assessment order envisaged by Sub-sections (2) and (3) of Section 171 are not taken. Such an assessment order would not be binding upon the other members of the family. Whatever may be the impact of such an order on the member who had put up the claim of partition, it is clear that" a the other members were not served with any notice, any finding given in respect of partition, whether independently or in the form of an assessment order made against a Hindu undivided family shall be void as against the other members of the family.

21. In *The State of Andhra Pradesh Vs. Pachipulusu Venkata Subba Rao and Co.*, in somewhat similar circumstances but in a case under the Sales Tax Act, it was held that since the issue and service of notice was bad in law, the proceedings conducted thereafter would be vitiated and the assessment order would be illegal and ineffective.

22. The reason for such a situation is that when an assessee files a return in his individual capacity although he was assessed as Hindu undivided family hitherto and he claims partition in such individual return, it being obligatory on the part of the Income Tax Officer to make necessary inquiry into that claim after notice, the order passed relating to partition either directly or impliedly would be an order affecting the interests of the other members and since no notice was given to them, such an assessment order would be illegal and ineffective in so far as they are concerned.

23. Mr. P. Rama Rao, the learned counsel for the Income Tax department, relied upon *Additional Income Tax Officer, Cuddapah Vs. A. Thimmayya and Others*, and contended that against the assessment order passed, the petitioner ought to have proceeded in appeal and as he did not choose to do so, the assessment order has become final and consequently the attachment effected in pursuance of such an assessment order cannot be said to be illegal.

24. A closer examination of this case seems to us necessary. The facts of that case were that K and his two sons, T and V, constituted a Hindu undivided family. Pending proceedings for assessment of tax for the years 1941-42, 1942-43, 1944-45, 1945-46 and 1946-47 the family was disrupted and V claimed before the Income Tax Officer that the property of the joint family had been partitioned in definite portions. This claim was not disposed of till June 30, 1952, and meanwhile assessments for those 5 years were completed. Appeals were preferred against the orders of assessment to the Appellate Assistant Commissioner and then to the Appellate Tribunal, but they were not challenged on the ground that they were made without disposing of the claim for partition. On June 30, 1952, an order was made u/s 25A recording that the property of the family was partitioned on November 2, 1946. As the tax assessed was not paid, the Income Tax Officer made an order u/s 46(5) on June 25, 1958, calling upon the managing director of the company, which had ultimately taken over the business of the family, to withhold the amount of tax due from the salaries

payable to T and V and to show the sum to the credit of the Government of India. T and V thereupon presented petitions under Article 226 of the Constitution of India to the High Court for the issue of writs to quash the order. The High Court held that, without an order for apportionment u/s 25A(2), proceedings for collection of tax could not be commenced against T and V under the proviso to Section 25A(2). On appeal, the Supreme Court held, firstly, that the Income Tax Act contained no machinery authorising the Income Tax Officer to reopen an assessment of a Hindu undivided family relying upon an order recorded u/s 25A(1) subsequent to the passing of the assessment order. Therefore, the orders of assessment which had become final were not liable to be reopened u/s 25A(2) on the basis of the order passed under Sub-section 25A(1) subsequently. And, secondly, that because, prior to the orders of assessment, there was no order recording that the property of the family had been partitioned among the members, no personal liability of the members of the family arose under the proviso to Section 25A(2) to pay the tax assessed thereunder and the remedy of the Income Tax authorities was to proceed against the property, if any, of the Hindu undivided family. The Income Tax Officer was not, therefore, competent to make the order dated June 25, 1958, u/s 46(5) to withhold the tax from the salaries payable to T and V.

25. We are not concerned with the second finding of the Supreme Court because it is not relevant to this case. In regard to the first finding of the Supreme Court, it would be immediately clear that the question before the learned single judge and the Division Bench of the High Court as well as before the Supreme Court was whether the order u/s 25A passed subsequent to the assessment order would effectuate reopening of the assessment and consequently apportionment u/s 25A can be made in accordance with the order recording the partition; this contention was accepted by the learned single judge as well as the Division Bench of the High Court. It is this argument which was rejected by the Supreme Court by holding as above. No such argument is advanced in the present case. In* the Supreme Court the argument was not that the assessment order without making an inquiry into the claim already put up would be illegal and void. The said decision, therefore, cannot be said to be an authority for the proposition that in spite of a claim being set up, it can be inquired into separately although an assessment order can be made and such an assessment order would perfectly be valid. It is true that the Supreme Court has observed at page 672 as follows ;

" Failure to make an order on the claim made does not affect the jurisdiction of the Income Tax Officer to make an assessment of the Hindu family which had hitherto been assessed as undivided. The Income Tax Officer may assess the income of the Hindu family hitherto assessed as undivided notwithstanding partition, if no claim in that behalf has been made to him or if he is not satisfied about the truth of the claim that the joint family property has been partitioned in definite portions, or if on account of some error or inadvertence he fails to dispose of the claim. In all these cases his jurisdiction to assess the income of the family hitherto assessed as undivided remains unaffected, for the procedure for making

assessment of tax is statutory. Any error or irregularity in the assessment may be rectified in the manner provided by the statute alone, and the assessment is not liable to be challenged collaterally."

26. The observation has, however, to be understood in the context in which it is made. The Supreme Court was discussing the scheme of Section 25A in the earlier paragraph. And it is in that context that the above said observation is made. It was common ground that in so far as the observation relates to the two aspects, that is to say, if no claim of partition has been made or if the Income Tax Officer is not satisfied about the truth of the claim that the joint family property has been partitioned in definite portions, the assessment order can validly be made by the Income Tax Officer. But, the observation "if on account of some error or inadvertence he fails to dispose of the claim " is relied upon by the learned advocate for the department and it is contended that even if a claim is not disposed of, the assessment order still would be valid. We do not think that the Supreme Court intended to lay down anything of that kind. It would be quite contrary to the mandatory provisions of Section 25A, now Section 171. In fact, in the earlier paragraph, the Supreme Court observed:

" If a claim is raised at the time of making an assessment that a partition has been effected, the Income Tax Officer must make an inquiry after notice to all the members of the family and make an order that the family property has been partitioned in definite portions, if he is satisfied in that behalf. The Income Tax Officer is by law required still to make the assessment of the income of the Hindu undivided family, as if no partition had taken place and then to apportion the total tax liability and to add to the separate income of the members or groups of members the tax proportionate to the portion of the joint family property allotted to such members or groups of members and to make u/s 23 assessment on the members accordingly." - - -

27. It is in the light of these observations that the sentence, " If on account of some error or inadvertence he fails to dispose of the claim " has to be understood. It is also pertinent in this connection to note that since the claim was not disposed of in that case before making the assessment, the Supreme Court observed that:

" Order recording the partition subsequent to the date on which the order of assessment was made must for reasons aforementioned be ignored and tax levied as if no such order was made."

28. What is plain from the observation is that subsequent to the assessment any finding given would not be effective and would not amount to reopening of the assessment. When once it is found that the claim put up in an assessment proceeding has to be disposed of if it is to be effective before the assessment order is made and if not so made but made after the assessment order is passed it would be ineffective, then the question remains as to what is the effect of an assessment order made in defiance of Section 171. That point was not canvassed

before the Supreme Court at all, and that is the point with which we are confronted in the present inquiry.

29. It is true that the Supreme Court observed that " failure to make an order on the claim made does not affect the jurisdiction of the Income Tax Officer to make an assessment of the Hindu family which had hitherto been assessed as undivided". That observation, if taken in general, can well be understood, because that is the law declared in the first part of Sub-section (1) of Section 171 as discussed above. The question, however, is when a claim is set up and assessment order is passed, without complying with the imperative requirements of Sub-sections (2) and (3) of Section 171, what would be the effect of an assessment order made. That was not the view presented to the Supreme Court and the decision does not throw any light upon any such question. The jurisdiction of the Income Tax Officer cannot be in doubt. After the assumption of jurisdiction if an essential step as is envisaged by Sub-sections (2) and (3) of Section 171 are not taken, then the assessment order passed would be void not on the ground that the Income Tax Officer had no jurisdiction to pass such an order, but because the conditions precedent for making an assessment order envisaged by Sub-sections (2) and (3) of Section 171 have not been followed. To take for example, if a suit is instituted against a defendant and the court decrees the suit without issuing any summons to the defendant, it cannot be doubted that the civil court had jurisdiction; nevertheless, since the essential basic requirement of the Code of Civil Procedure, i.e., service of summons on the defendant, was not at all effected, any decree passed by the civil court would be a nullity as against the defendant. On the same principle, if an assessment is made in defiance of the mandatory provisions of Section 171, the assessment order would be illegal and void. We do not, therefore, consider that the above said Supreme Court decision decides anything contrary to what we have specifically considered and decided in this case.

30. Our attention was also drawn to a Full Bench decision given in R.C. No. 42 of 1965 on 23rd October, 1970 Commissioner of Income Tax Vs. Tatavarthy Narayanamurthy (Decd.) and Others, . In that case, referring to the scheme of the Income Tax Act, 1922., particularly to Section 25A, it is observed:

" Where an order u/s 25A(1) is passed, the assessment has to be made in accordance with the provisions of Sub-section (2). But, where no order under Sub-section (1) is passed, the Hindu undivided family is deemed to continue for the purposes of the Act, in spite of the fact that it has indeed ceased to be in existence. This is the fiction created by Subsection (3) of Section 28 of the Act. It is obvious that Sub-section (3) operates in all cases where no order under Sub-section (1) is made irrespective of the reason for not making such order. The absence of such an order may be due to no claim having been made by any member of a family, or such a claim having been made but refused, or due to the fact that right up to the finalisation of the assessment proceedings by the Tribunal, the proceedings u/s 25A(1) might have continued to be pending for

some reason or the other. "

31. A reading of that judgment, however, makes it abundantly plain that these observations came in by a side wind and Section 25A was not directly under consideration of the Full Bench. The real matter was u/s 28 of the Income Tax Act. We have already given the reasons while discussing the Supreme Court's decision above and if we may say so the same observations of ours apply to the Full Bench case also.

32. *Kalwa Devadattam and Others Vs. The Union of India (UOI) and Others*, can easily be distinguished on the facts of that case. The question there was whether a suit questioning the validity of an assessment order and for setting it aside is maintainable. It was held that u/s 67 of the Indian Income Tax Act no such suit was maintainable. In that case also, no question specifically bringing under consideration Sub-sections (2) and (3) of Section 171 or equivalent law of the previous Act was brought under discussion. The said decision, therefore, cannot be an authority on the proposition with which we are concerned in this case.

33. We are fortified in our conclusion by a Bench decision of the Bombay High Court in *Tuljansa Janardhansa Pawar, Hubli Vs. Commissioner of Income Tax, Bombay South*, The contention of the Attorney-General in that case was based upon the difference in language of Section 25A and Section 30 of the Income Tax Act. Whereas Section 25A provides for a notice to be served by the income tax Officer on all the members of the family before any order is recorded under that section, Section 30 does not cast a similar obligation upon the Appellate Assistant Commissioner and therefore it was argued that in the absence of any such statutory provision, there was no obligation upon the Appellate Assistant Commissioner to serve the applicant with- notice. Chagla C.J., speaking for the Bench, said : " In my opinion, this contention is entirely untenable ". It is further observed :

"we must always assume that the legislature who has knowledge of judicial principles and rules of natural justice impliedly, if not expressly, incorporate these rules whenever they confer judicial functions upon a person or an authority. If these Rules of natural justice are to be excluded, then we must find in the statute an express provision to that effect. Therefore, when we find in Section 30 that the Appellate Assistant Commissioner had to hear an appeal from the decision of the Income Tax Officer and to decide that appeal, we must hold that that decision had to be in conformity with the rules of natural justice, and if a decision was arrived at by the Appellate Assistant Commissioner in contravention of the rules of natural justice, it was not a decision at all in law. It is not disputed by the Attorney-General, and indeed it cannot be disputed, that the rights of the applicant were vitally affected by the decision arrived at by the Appellate Assistant Commissioner. Whereas he and the members of his family had been assessed as a joint Hindu family unit, behind his back and without hearing him, the Appellate Assistant Commissioner had held that he should be assessed as an individual. Therefore, in my opinion, the decision of the Appellate Assistant

Commissioner cannot be supported at all and that decision was not binding and never bound the applicant. If that decision is bad and not valid in law, the assessment made on the applicant is equally bad because, as I said, that assessment was made on the basis of the applicant being an individual."

34. What follows is that not only the Income Tax Officer hearing a case relating to an assessment in which claim of partition is made u/s 171 but also the Appellate Assistant Commissioner hearing the appeal or the Commissioner seeking to revise and cancel the order recording partition are all bound to serve notice of the hearing of the claim u/s 171 or appeal or revision on all the members of the family, and if the authorities fail to comply with this essential requirement, any order passed by them prejudicially affecting the rights of any member of the family would be held invalid.

35. The locus standi of the petitioner to file the claim petition and the writ petition was canvassed on the ground that on the date of the so-called partition itself the petitioner had transferred the land in question by way of gift to his minor son. It is not denied by the petitioner that on the date of the partition itself he had executed a gift deed in favour of his minor son. The minor son, therefore, becomes the owner of the land and it is he who ought to have preferred the claim. But, in our view, the petitioner had the necessary locus standi to file the writ petition under Article 226 of the Constitution. He may not be permitted, to question the validity of the attachment of the land which he had transferred in favour of his son. It cannot be attacked, for we have held him liable to a large extent. But, he can certainly question his liability on the basis of the assessment made in contravention of section 171 of Act.

36. For the reasons we have endeavoured to give, we allow the writ petition in part. We hold that the petitioner is not liable to pay any tax due in pursuance of an assessment order made for the accounting year 1963-64 relating to the portion of that year after September 2, 1962. Since he had gifted away the land attached, he could not prefer the claim nor has he any interest in questioning the attachment in a writ petition. The impugned order, therefore, in our view, cannot be quashed. The result of it is that while there will be a declaration in favour of the petitioner to the extent we have held him not liable for the payment of tax assessed for the part of the year 1963-64, his writ petition shall stand dismissed in regard to other reliefs claimed in the writ petition. In the circumstances of the case, we leave the parties to bear their own costs. Advocate's fee Rs. 100.