

(1943) 01 CAL CK 0033
In the Calcutta High Court

Ritendrakanto Lahiri Chaudhury and Another	APPELLANT
Vs	
Dhirendrakanto Lahiri Chaudhury and Another	RESPONDENT

Date of Decision : 13-01-1943

Acts Referred:

Cess Act, 1880 — Section 44

Citation : AIR 1943 Cal 193

Hon'ble Judges : Pal, J;Mohamad Akram, J

Bench : Full Bench

Judgement

Pal, J.—This appeal is by the defendants in a suit for certain declarations relating to the extent of the plaintiff's liability to the cess and the apportionment thereof by the Collector u/s 44, Cess Act, in respect of touzi No. 5254 of the Mymensingh Collectorate. The plaintiff and the defendants 1 and 2 are related as step brothers. The late Dharanikanta Lahiri Chowdhuri was their paternal grandfather and was the owner of the above touzi. Dharani Kanta died on 29th November 1918, and by his will bequeathed all his property to his grandson Dhirendra Kanta Lahiri Chowdhuri. Dhirendra's father Narendra Kanta who was the only son of Dharani Kanta was thus totally disinherited by Dharanikanta. This created a dissension between Dhirendra and his father Narendra and the dispute was ultimately settled amicably by a deed of family arrangement dated 27th October 1919, whereby the estate left by Dharanikanta was taken half and half by Dhirendra and Narendra. Dhirendra and Narendra subsequently came to an amicable partition of the property and by the partition deed dated 11th April 1922, the parties inter alia apportioned amongst themselves (1) the lands of the touzi No. 5254, (2) the revenue payable for it, and (3) the cess then payable in respect thereof. It was further agreed that when cess will be re-assessed after revaluation the parties inter se will be liable to pay it in proportion to the valuation of the lands of the touzi in their respective allotments.

2. The touzi No. 5254 comprised moujas and kismats in Parganas Mymensingh and Jafarshahi in the District of Mymensingh and Pargana Jafarshahi in the

District of Bogra. The revenue payable for the touzi is Rupees 10,781-11-0 and the cess payable for it at the time of the partition was Rs. 4673-10-0. By, the aforesaid amicable partition the plaintiff Dharendra Kanta got in his Sahara some of the mouzas of Pargana Mymensingh. The rest of the mouzas of that Pargana and all the mouzas of Pargana Jafarshahi in the Districts of Mymensingh and Bogra fall to the Saham of his father Narendra Kant. At that partition, the revenue was taken at the wrong figure of Rs. 10,815-3-4 and was apportioned between the parties, Rs. 4289-9-0 being made payable by the plaintiff Dharendra Kanta, and Rupees 6525-10-4 by his father Narendra. The cess then payable was apportioned in proportion to the apportioned revenue; venue, Rs. 2819-6-0 was made payable by Narendra Kanta and Rs. 1854-4-0 by Dharendra, the present plaintiff. Re-assessment of the cesa took place in 1930. At the revaluation, the valuation of the Bogra lands was much increased, so that the cess in respect of these lands increased from Rs. 68-10-0 to Rs. 637.15-0. On this re-assessment the cess payable in respect of the entire touzi became Rs. 6185-0-3. Narendra Kanta died in April 1931, leaving defendants 1 and 2, his sons by one wife, and the plaintiff, his son by another wife. The plaintiff claimed 1/3rd share in estate left by Narendra but ultimately gave up this claim under the deed of family settlement dated 23rd sraban 1388 B.S. so that defendants 1 and 2 became entitled to the estate left by Narendra.

3. On 23rd December 1936 defendants 1 and 2 made an application to the Collector of Mymensingh u/s 70 of Bengal Act, 7 of 1876, for opening a separate account for their saham of the touzi, and in that application also added a prayer for apportionment of the cess u/s 44, Cess Act, (Act 9 of 1880). On this application the separate account Case No. 172 of 1936-37 was started. The plaintiff did not appear in that proceeding. On 29th June 1937 the separate account as prayed for was opened. Out of the total revenue of Rupees 10,771-11-7, Rs. 6525-10-6 was apportioned as proposed by the applicants (defendants 1 and 2) as payable for the separate account. The original revenue of rupees 10,781.11.0 was reduced to Rs. 10,771-11-7 because some land of this touzi was made khas by the Government and proportionate" revenue of Rupees 9-15-5 was deducted therefor. On the same date the Collector made an order u/s 44(3), Cess Act, (Act 9 of 1880) determining the cess payable in the applicants" (the present defendants 1 and 2) share to be Rupees 3746-15-0 only out of the total cess of Rs. 6185-0-8. This apportionment is proportionate to the apportioned revenue. The plaintiff instituted the present suit on 23rd January 1939 stating the above facts and alleging (1) that no notice of the proceeding for the opening of separate account or for the apportionment of the cess was ever issued to and served on them, (2) that the said notices were fraudulently suppressed by the defendants, the then applicants, (3) that the plaintiff had no knowledge of the said proceedings, (4) that he has been very much prejudiced by the apportionment of the cess as made by the Collector and (5) that the said apportionment made by the Collector is ultra vires, having been made without jurisdiction.

4. The plaintiff made the following prayers in this suit : (1) That it be declared that the apportionment of cess in respect of Touzi No. 5254, fixing Rs. 3746-15-0 as payable by the defendants and Rs. 2438-1-3 as payable by the plaintiff is incorrect, illegal and ultra vires; (2) That it be declared that the plaintiff is not liable to pay cess in respect of the lands of the touzi lying within the District of Bogra"; (3) That it be declared that the cess payable by the plaintiff in respect of his saham of the touzi cannot exceed Rupees 2189.4-6 as detailed in para. 13 of the plaint or at any rate Rs. 2216-14-6 as detailed in para. 12 of the plaint.

5. Though it is the case of the plaintiff that a he did not get any notice also of the proceeding for opening separate account of revenue, he did not assail the separate account, as the revenue apportioned was in accordance with the terms of settlement and consequently he was not in the least prejudiced by the same. The Province of Bengal was made defendant 3 in this case. The Province appeared and filed a written statement to contest this suit. The defence of the Province was : (1) That the Civil Court had no jurisdiction in this matter; (2) That the suit in substance being one for setting aside the order of the Collector, it was barred by limitation under Article 14, Limitation Act; (3) That the notices were all served and there was no suppression of these notices.

6. Defendants 1 and 2 also took the same defence. They also asserted : (4) That the apportionment of the cess was in accordance with the terms of the deed of partition and the plaintiff therefore was not prejudiced by it; (5) That on a proper construction of the deed of partition the plaintiff was liable to pay the re-assessed cess in proportion to the amount of the revenue payable by him.

7. The learned Subordinate Judge decreed the 1 suit in part holding inter alia : (1)(a) That notices u/s 44 (2) Cess Act, were not served on the plaintiff; (b) That these notices were fraudulently suppressed by defendants 1 and 2; (c) That the notices issued did not contain the particulars prescribed by Section 44(2) Cess Act; (d) That the plaintiff had no knowledge of the proceedings either for the opening of separate account or for the apportionment of the cess before 15th chaitra 1344 B.S. corresponding to 28th March 1938; (2) That the order of apportionment of the cess without the prescribed notice was without jurisdiction, ultra vires, and illegal; (3) That according to the terms of the partition deed (Ex. 5) it was indisputable that defendants 1 and 2 after revaluation were to pay the entire increase in cesses in respect of the Bogra lands; (4)(a) That the suit was not barred by limitation as it was within one year from the date of the plaintiff's knowledge of the order apportioning the cess; (b) That as the order was made without jurisdiction, it did not require setting aside and no question of limitation therefore did arise; (5) That the declarations sought for in the suit were within the competence of a civil Court to take.

8. The learned Subordinate Judge accordingly decreed the suit declaring : (1) That the orders of the Collector in Separate Account Case No. 172 of 1936-37 to the effect that the plaintiff is to pay Rs. 2438-1-3 as annual cesses in respect of his saham lands of Touzi No. 5254, and that defendants 1 and 2 are to pay Rs.

3747-15-0 in respect of their saham lands of that touzi are incorrect, unfair, inequitable and illegal, and (2) that the plaintiff is not liable to pay any part of the increase in cesses of Bogra lands by revaluation of 1930.

9. Defendants 1 and 2 preferred an appeal from this decree and the learned Additional District Judge dismissed the appeal and con-) firmed the decree of the Court of first instance.

10. The learned District Judge held : (1) That the order made by the Collector was without jurisdiction and as such the civil Court had jurisdiction to interfere in the matter : (a) That the Collector's order was not without jurisdiction simply because of non-service of notice in the manner required by the Cess Act; (b) That Section 44, Cess Act, gives the Collector authority to apportion the cess by a notice after separate account has been opened; the Collector has no authority to issue a notice simultaneously for opening of a separate account and for apportionment of cess; in the present case (i) the notice for opening of separate account and for apportionment of cess was issued simultaneously; this simultaneous issue of this notice makes the order of the Collector without jurisdiction; (ii) the notice also had not the necessary particulars required by the section, (c) That the Collector by reason of service of notice for apportionment of cess before the opening of the separate account acted without jurisdiction and this made his order on that point illegal and ultra vires. (2) That according to the partition deed (Ex. 5) between the plaintiff and his father Narendra, after revaluation the entire increase in cess was payable by the person in whose share the Bogra lands fell. The entire Bogra land fell in the share of defendants 1 and 2 and the cess of that had been raised from rupees 68.10-0 to Rs. 637-15-0 on revaluation. (3) That the question of limitation does not arise as the order of the Collector is a nullity, it having been made without jurisdiction.

11. Mr. Mukherjee appearing for the appellants in this case contends: (1) That so far as the second of the declarations made by the decree of the Courts below is concerned, it is not covered by the terms of the partition deed agreed upon by the parties and is contrary to the law determining the relative rights and liabilities of the parties in this respect, (2) That so far as the first of the declarations made by the said decree is concerned, (a) it is beyond the competence of the civil Court to entertain a suit in this respect; (b) the Court of appeal below was wrong in holding that the Collector acted without jurisdiction, (i) simply because the notice was premature or (ii) because the notice was defective in particulars, though the said Court found that the notices were duly served.

12. Mr. Mukherjee further contends that even if it be held that the notices were not at all served, this non-service would not affect the jurisdiction of the Collector to apportion the cess and his order apportioning the same would not be ultra vires. Such order would require setting aside and assuming that the civil Court would have jurisdiction to set that order aside, the present suit would be barred by limitation under Article 14, Limitation Act. The order of the Collector

was made on 19th June 1987 and the present suit was filed on 23rd June 1939. The Court of appeal below found that there was no fraudulent suppression of the notices and the plaintiff was not kept from the knowledge of the order by any fraud of the defendants.

13. Dr. Sen Gupta appearing for the plaintiffs respondent contends : (1) That the Court of appeal below did not find that the notices were duly served; it rather affirmed the finding of the Court of first instance that the notices u/s 44(2) were not at all served on the plaintiff; (2) That the terms of the deed of partition clearly provided for the respective liabilities of the parties in case of revaluation and that according to its terms cess fell to be apportioned in proportion to the valuations of the lands of their respective sahams; (3) That on proper construction of the section notices prescribed by Section 44(2), Cess Act, were essential to confer jurisdiction on the Collector to proceed under Clauses (3) and (4) of the section, and that absence of the notices prescribed by Clause (2) would make any action taken under Clause (8) ultra vires and without jurisdiction. As regards the second declaration made by the decree of the Courts below, it cannot be and is not contended that it is beyond the competence of the civil Court to entertain a suit in respect of the matter involved in it. This portion of the suit simply raises a question of the extent of the respective liabilities of the co-owners inter se to pay the cesses. Whether such a question falls to be determined on the basis of any agreement of the parties or on any other basis, the competence of the civil Court to determine is unquestionable.

14. The partition deed is Ex. 5 in this case. In it the parties stated that the work of partition was carried out on the basis of the assets arrived at from the settlement records. The revenue and the existing cesses were apportioned proportionately to the assets of the respective sahams thus determined. As regards the cesses, it was agreed upon by the parties that until next revaluation this apportionment should stand. It was further stipulated that the parties would be at liberty to open separate accounts of revenue in the Collectorate. In the event of such separate accounts, they agreed that apportionment of the existing assessment of cess would remain as made by the parties themselves. In case of revaluation each party would be bound to pay such cess as might be assessed upon the said party on revaluation. Evidently this term contemplated revaluation after separation of accounts. Reading the entire document, little doubt is left in the mind that the parties intended that in case of revaluation after the partition each party would be liable to pay the cesses in proportion to the valuation of the lands of their respective sahams. Certainly this will be their respective liabilities if revaluation takes place after opening of separate accounts : vide Section 44(1), Cess Act. This will be their liabilities under the law even if revaluation takes place before opening of separate accounts : vide Section 44(4) of the Act.

15. A careful reading of the various provisions of the Act indicates the policy of the Act to be to apportion the liabilities of the various parties on the basis of the valuation roll. The superior holder is merely a sort of conduit pipe through which

the contribution of the inferior ultimately passes to the Government : Gorachand Barhal and Others Vs. Mohitkrishna Kundu and Others, Mukherji and Bartley JJ. The policy of the Act is that all persons who benefit by the maintenance and construction of roads and other means of communication or works of public utility out of the cesses should bear the liability of paying the same : Manindra Chandra Nandy v. Secretary of State 38 Cal. 372. The scheme of the Act is that the holder of the estate has to pay cess on the rent he receives from the estate; that the tenure-holder should pay cess on the rent he receives from the ryot under him; and that the raiyat has to pay the cesses not upon what he receives from his land, but upon what he pays to his landlord as rent : Secy. of State Vs. Ramasray Singh and Others, . In our opinion, the terms of the partition deed also contemplate this position. In any case there is nothing in the terms of the deed by which the parties can be said to have contracted-themselves out of this position. In our judgment, the declaration made that "the plaintiff is not liable to pay any part of the increase in cesses of Bogra lands by revaluation of 1930," was correctly made by the Courts below. The plaintiff is liable to pay the cesses only in proportion to the annual value of his saham at the revaluation of 1930 and not proportionately to the apportioned revenue.

16. As regards the factum, of notice u/s 44(2), Cess Act, the judgments of both the Courts relating to it were placed before us by the learned advocate appearing in this case. In our opinion Dr. Sen Gupta is right in his contention that the Court of appeal below did not disturb the finding of the Court of first instance that the notice u/s 44(2), Cess Act, was not at all issued to and served on the plaintiff. As, however, the judgment of the Court of appeal below on the point is not very clear we allowed the evidence on the point to be placed before us. The copy of the notice (Ex. B) relied on by Mr. Mukherjee as the one issued u/s 44(2), Cess Act, has been placed before us. This was on the face of it only a notice of the proceeding u/s 70 of Bengal Act 7, of 1876. It does not even refer to any proceeding for apportionment of the cesses. No doubt it encloses a copy of the application u/s 70 of Bengal Act 7 of 1876 and that application contains a request to the Collector to apportion the cess. But beyond this there is no reference to any case for cess apportionment and; the request itself does not indicate that the Collector is taking steps to make the apportionment. We are ourselves satisfied that a notice u/s 44(2), Cess Act, was not at all issued in this case. The relevant portions of Section 44 run as follows:

44.(1) When a recorded sharer of a joint revenue paying estate has opened a separate account under Act 11 of 1859 or u/s 70 of Bengal Act 7 of 1876...he shall be entitled, in regard to the payment and realization of...cess...under this Act, to all the advantages of separate liability enjoyed by him...in regard to the payment and realization of revenue and shall be entitled to separate assessment...under this Act...(2) Whenever any such separate account is opened after the valuation of an estate...the Collector shall issue a notice on the holders of the shares severally...informing them that, unless any objection is preferred...the assessment of the cesses...will...be apportioned among such

shares severally in proportion to the amount of Government revenue for the payment of which each share is entered...as being liable. Such notice shall specify such proportionate amount. (3) If no such objection is preferred...such proportionate amount shall be the amount...for which the respective holders of such several shares are primarily liable...(4) If any such objection, shall be preferred...the total amount of the cesses...shall be apportioned...in proportion to the annual value of such shares respectively....

17. Sub-section (1) of the section confers certain rights on the co-proprietors on the opening of separate accounts. So far as the cesses are concerned, their joint and several liability to pay those cesses is made several in respect of their respective sahamas of the estate up to a certain stage. If any assessment of cess follows the separation of accounts, then Sub-section (1) entitles the several share-holders to separate notice and separate assessment. Sub-section (2) deals with the case where separation of account follows an assessment of cess and so long as this assessment remains in force. It should be remembered at this stage that opening of a separate, account for revenue contemplates three classes of cases viz., (1) when a sharer has some undivided share in the entire estate; (2) when a sharer's share consists of a specific portion of the lands of the estate; (3) when a sharer's share consists of an undivided share in any specific portion of the land of the estate, but not extending over the whole estate. Section 10 of Act 11 of 1859 governs the first of the above cases. Section 11 of that Act governs the second and Section 70 of Bengal Act 7 of 1876 governs the third case. In the second and the third case, the applicant is required to state the amount of revenue heretofore paid on account of his share and his separate account when opened will mention that amount as payable for the separated share which was thus heretofore paid on account of the same. If the other sharers come and deny the correctness of the statement, the Collector is given no power to determine the question himself. He is then to refer the parties to the civil Court : vide Section 12 of Act 11 of 1859 and Section 71 of Bengal Act, 7 of 1876.

18. As has been pointed out above, one of the results of the opening of separate account for revenue is to sever the joint liability of the several share-holders into several liabilities in respect to their own shares or sahamas. After such separate account the sharers will have the right to such severance of their hitherto joint liability and, in case of revaluation, to several assessment. Section 44(1) of the Act confers this right on the several share-holders and the Collector as the person entitled to recover the cesses is put under obligation to respect this right. Sub-sections (3) and (4) of the section enact how the Collector can give effect to his obligation by an apportionment of the cess. Sub-section (3) supplies a certain basis for apportionment on certain contingencies and this apportionment will place the shares under a liability to pay accordingly. This will give the Collector the right to the payment of the apportioned amount. The Collector is empowered to acquire this right for himself; but it is made an inseparable condition precedent to the exercise of this power to proceed in the manner laid down in

Sub-section (2). The Collector is not made the arbiter as to how he should proceed. It is not even the law that on his being satisfied that the notice has been issued he can proceed to the apportionment. The law is that when notice has been issued and the sharer does not object, then only the Collector can proceed under Sub-section (3). The event must have happened in the manner laid down in Sub-section (2) and it will be open to a Court to see whether the event happened in that manner.

19. Section 9, Civil P.C., lays down that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. There is no dispute that the present is a suit of a civil nature. It is not contended that the cognizance of such a suit is expressly barred by any provision of law. The only question is whether its cognizance is impliedly barred by the fact that by the Cess Act the Collector is established as a special tribunal for the purpose of apportionment of the liability to pay the cesses. Mr. Mukherjee contends that the right to the severance of the joint liability and to its conversion into several liabilities is created by the Cess Act itself, viz., by its Section 44(1). The same Act appoints the Collector to be the special tribunal to determine the several liabilities of the sharers. It is a general principle of law that in such a case the jurisdiction of the Court to question the decision of the special tribunal is impliedly barred. Mr. Mukherjee contends that the whole scheme of the Act is to make the decision of the officers of the Revenue Department final and not challengeable by a party in a civil Court. The civil Court, for example, will have no jurisdiction to say that a person is a cultivating ryot for the purpose of the Act, when the Collector has made the assessment on the footing that he is a tenure-holder. The remedy of the person is the one provided by the Act itself. Mr. Mukherjee relies on *Lalit Kishore Mitra Vs. Nathu Mandal and Others*, . The decision cited by Mr. Mukherjee does not support the broad proposition contended for by him. There the Collector exercised his power u/s 26 of the Act which gives the Collector jurisdiction to determine whether a person is a tenure-holder or a ryot and the section expressly makes him the final judge of this for the purposes of assessment. The section says:

...and thereupon such person shall be deemed to be a tenure holder for the purposes of the assessment and levy of the cesses in respect of the lands held by him.

20. The principle of law applicable to such a case was clearly given in *Regina v. Commissioners for Special purposes of income tax* (1888) 21 Q.B.D. 313 . In this Lord Esher, M.R., observed:

When an inferior Court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not

otherwise. Then it is not for them conclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may entrust the tribunal or body with jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the Legislature are establishing such a tribunal or body, with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends, and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.

21. In *Rex. v. Bloomsbury income tax Commissioners* (1915) 3 K.B. 768 Lord Reading quoted the above passage, saying that the dictum states accurately the principle applicable to such cases. The Collector is given power to proceed under Sub-section (8) only when he has issued the notice prescribed by Sub-section (2) informing the person or persons interested that unless any objection is preferred to the Collector within one month of the service of such notice, the amount of the cesses which the whole estate is liable to pay according to the existing valuation will be apportioned among such sharers severally in proportion to the amount of Government revenue for the payment of which each such share is entered in the separate accounts as being liable. This information is an essential condition precedent to the Collector's proceeding further in the matter, because the very basis of apportionment to be adopted by the Collector is made to depend upon the conduct of the persons thus informed and as influenced by this information. Section 44(4), Cess Act, contains a very valuable provision for a sharer in an estate. The only mode of obtaining apportionment, after opening of separate account, on any basis other than the amount of revenue he is liable to pay is provided by this section and is by preferring objection under it : *Narendra Narain Singh v. Gopi Sundari Dasya* AIR 1915 Cal. 158 (Richardson and Mallik JJ.). Notice u/s 44(2) is his essential safeguard.

22. A notice like this is not a mere matter of procedure. Its issue and service is an essential fact on the existence of which the Collector's power is made dependent. In an analogous case, it was held by this Court that the service of notice u/s 16 of the Act was not merely a matter of procedure but was part of the law with reference to which valuation or revaluation as contemplated by law could be made by the revenue authorities and liability imposed regarding payment of cesses. Failure to serve notice under the section was held to invalidate the assessment : *Secy. of State Vs. Jitendra Nath Roy*, (Guha and

Bartley JJ.). It was held that the notice was imperative and where it was not served the person assessed became entitled to a declaration from the civil Court that the cess valuation was ultra vires and illegal.

23. It may be that expert knowledge often makes the administrative agency better qualified than the Courts to deal with intricate technical problems of any administrative regulation and this may be one of the reasons underlying the self-denying doctrines often invoked by the Courts while enforcing the primary jurisdiction rule in administrative matters. It cannot also be denied that a remedy created by a statute must be pursued according to the statutory prescription and in the tribunal, if any, prescribed by the statute. Even where the prescribed tribunal is not given the "exclusive jurisdiction" the question of "exhaustion of remedy" may arise and the Court may refuse to entertain a suit until all possible administrative determinations have been completed. But the question involved in this appeal does not raise these general considerations. We need not consider whether or not the Collector is given the exclusive jurisdiction to make the apportionment, because the plaintiff does not invite the Court to make any apportionment of the liability to pay the cesses. Nor does the question of exhaustion of remedies under the Act really arise here; because the plaintiff does not seek the remedy of severance of the liability of apportionment. He simply seeks a declaration that the order of apportionment made by the Collector, which purports to define the extent of his several liability, is null and void, it not having been made in compliance with the essential requirement of the statute conferring jurisdiction on the Collector in this respect.

24. In my opinion, any apportionment by the Collector under Sub-section (3) without the notice prescribed by Sub-section (2) of Section 44 will be an act without jurisdiction and the civil Court will have jurisdiction to declare such an apportionment as ultra vires, illegal and not binding on the party concerned. The plaintiff's right to the severance of liability conferred on him by Section 44(1) as a result of the opening of separate account remains unaffected by such apportionment. In the view taken by me the order of apportionment made by the Collector was a nullity. No question of limitation therefore arises in this case. In the result this appeal fails and is dismissed with costs. The cross-objection is not pressed and is dismissed. There will be no order for costs in the cross-objection.

Mohamad Akram, J.

25. I agree.