
(1963) 01 KL CK 0004

In the High Court Of Kerala

Case No : O.P. No's. 1291, 1293, 1294 and 1295 of 1961

SAIT NAGJEE PURUSHOTHAM AND CO. (P.) LTD.

APPELLANT

Vs

THIRD ADDITIONAL Income Tax OFFICER, CALICUT.

RESPONDENT

Date of Decision : 15-01-1963

Acts Referred:

General Clauses Act, 1897 — Section 3, 6

Citation : (1964) 51 ITR 33

Judgement

In all these writ petitions, Mr. K. V. Surianarayana Iyer, learned counsel for the petitioner, who is the same, challenges the orders passed by the 3rd Additional Income Tax Officer, Kozhikode, dated February 21, 1961, u/s 35 (10) of the Indian Income Tax Act, 1922.

The short contention that has been raised before me by Mr. Surianarayana Iyer in all these matters is that the provisions contained in section 35 (10) were enacted as and by way of a temporary measure and that on the date when these orders, under attack, were passed by the concerned officer, section 35 (10) had ceased to be in force, and, therefore, there was no jurisdiction in the officer concerned either to initiate proceedings u/s 35 (10) or to pass any orders u/s 35 (10). Section 35 (10) being, according to the learned counsel, a temporary measure, the provisions of section 6 of the General Clauses Act, 1897, have no application.

On the other hand, the contention of Mr. G. Rama Iyer, learned counsel for the revenue, is that notwithstanding the fact that section 35 (10) had ceased to be in force when the notices for reassessment were issued and when the others under attack were passed, there is jurisdiction in the officer to pass the orders in question, by virtue of the provisions contained in section 6 of the General Clauses Act. According to the learned counsel, the principles applicable to the expiry of a temporary enactment have no application to the statute in question. Therefore, it will be seen that a decision on this question will really depend upon the view that is taken by this court as to whether section 35 (10) of the Indian Income Tax Act is a temporary enactment or not.

In order to appreciate the contentions of the learned counsel on both sides, it is desirable to set out a few facts, which will show the circumstances under which these orders, under attack, came to be passed. It is also necessary to state briefly the history regarding the enactment of sub-section (10) of section 35 in the Indian Income Tax Act in 1956, as well as its omission in 1959.

Section 35 of the Indian Income Tax Act deals with rectification of mistakes, and u/s 35 (1) power is given to the various authorities, within the period of four years mentioned therein to suo motu rectify any mistake apparent from the record of the appeal, revision, assessment or refund, as the case may be. And within the same period, power is given to the various officers mentioned therein to rectify any such mistake which has been brought to their notice by an assessee. The first proviso to sub-section (1) provides that no such rectification shall be made having the effect of enhancing an assessment or reducing a refund unless the officer specified therein, in respect of the various matters, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard. Therefore, it will be seen that the power to rectify mistakes apparent from the record is given to the various officers, and that power could be exercised within the period mentioned in sub-section (1) of section 35 and this power can be exercised suo motu or at the instance of the assessee. The only limitation in the exercise of such a power is regarding the obligation to issue a notice and give to the assessee a reasonable opportunity of being heard, when the proposed rectification will result in the enhancement of an assessment or in reducing a refund. Under sub-section (4) of section 35, the Income Tax Officer has to serve on the assessee a notice in the prescribed form specifying the sum payable where the rectification has the effect of enhancing the assessment or reducing a refund. It is also provided that such notice of demand shall be deemed to be issued u/s 29 and the provisions of the Act shall apply accordingly.

Section 35 (10), which was incorporated in the main Act by section 19 of the Finance Act, 1956 (Act XVIII of 1956), is as follows :

"Where, in any of the assessments for the years beginning on the 1st day of April of the years 1948 to 1955 inclusive, a rebate of Income Tax was allowed to a company on a part of its total income under clause (i) of the proviso to paragraph B of Part I of the relevant Schedules to the Finance Acts specifying the rates of tax for the relevant year, and subsequently the amount on which the rebate of Income Tax was allowed as aforesaid is availed of by the company, wholly or partly, for declaring dividends in any year, the amount or that part of the amount availed of as aforesaid, as the case may be, shall, by reason of the rebate of Income Tax allowed to the company and to the extent to which it has not actually been subjected to an additional Income Tax in accordance with the provisions of clause (ii) of the proviso to paragraph B of Part I of the Schedules to the Finance Acts above referred to be deemed to have been made the subject of incorrect relief under this Act, and the Income Tax Officer shall recompute the

tax payable by the company, by reducing the rebate originally allowed, as if the recomputation is a rectification of a mistake apparent from the record within the meaning of this section and the provisions of sub-section (1) shall apply accordingly, the period of four years specified therein being reckoned from the end of the financial year in which the amount on which rebate of Income Tax was allowed as aforesaid was availed of by the company wholly or partly for declaring dividends."

The substance of section 35 (10) appears to be that when a rebate has been allowed during the particular years referred to therein, under the relevant Finance Acts, on the undistributed profits of a company, and subsequently the amount on which a rebate of Income Tax was allowed is availed of by the company wholly or partly for declaring dividend in any subsequent year, the amount or that part of the amount so availed of, by reason of the rebate of Income Tax, is to be deemed to have been made the subject of incorrect relief under the Act. Under these circumstances the Income Tax Officer is given a power to recompute the tax payable by the company by reducing the rebate originally allowed as if the recomputation is a rectification of a mistake apparent from the record, within the meaning of section 35 and the provisions of sub-section (1) are made applicable accordingly. The period of four years specified in sub-section (1) is to be reckoned for the purpose of section 35 (10) from the end of the financial year in which the amount, on which the rebate of Income Tax was allowed, was availed of by the company wholly or partly for declaring dividend. I may also indicate that u/s 28 of the Finance Act, 1956, the amendment made by that Finance Act in the Income Tax Act by section 4 and clause (b) of section 15 are deemed to have come into force on the last day of April, 1950. Therefore, it is clear that the provisions of section 35 (10) incorporated in the main Act, by section 19 of the Finance Act, 1956, came into force on the 1st day of April, 1956.

I may also indicate at this stage that by section 13 (2) of the Finance Act, 1959 (Act XII of 1959), sub-section (10) of section 35 of the Indian Income Tax Act was omitted. In fact, the actual expression used in section 13 (2) is "sub-section (10) shall be omitted". Here again, it may be pointed out that section 1 (2) of the Finance Act, 1959, provides that save as otherwise provided in the said Act, sections 3 to 18 inclusive and sections 20 to 27 inclusive shall be deemed to have come into force on the 1st day of April, 1959. Therefore, it will be noted that the omission of sub-section (10) of section 35 of the parent Act, effected by section 13 of the Finance Act, has taken effect from 1st April, 1959.

O.P. No. 1295 of 1961 relates to the assessment year 1949-50 corresponding to the accounting year ending November 1, 1948. O.P. No. 1293 of 1961 relates to the assessment year 1950-51 corresponding to the accounting year ending with October 31, 1949. O.P. No. 1291 of 1961 relates to the assessment year 1951-52 corresponding to the accounting year ending with November 9, 1950, and O.P. No. 1294 of 1961 relates to the assessment year 1952-53 corresponding to the accounting year ended October 30, 1951.

There is no controversy that for all these years, originally, orders of assessment were passed allowing a rebate of the one anna in the rupee on the undistributed profits of the company under clause (1) of the proviso to paragraph B of Part 1 of the relevant Schedules in the Finance Acts. There is also no controversy that at the general body meeting of the company, held on July 19, 1958, the company declared further dividends out of the undistributed profits of the previous years in respect of which they had previously obtained a rebate of one anna in the rupee on such undistributed profits.

As the notices issued by the concerned officer, the replies given, and the orders of assessment passed for all these periods are more or less substantially the same, I will refer, with reference to O.P. No. 1295 of 1961, to the notices, the replies as well as the orders.

As I mentioned earlier, O.P. No. 1295 of 1961 relates to the assessment year 1949-50 corresponding to the accounting year ending November 1, 1948.

Under exhibit P-1 dated 15th September, 1960, the Income Tax Officer issued the notice u/s 35 (10). He refers to the original assessment having been completed on March 21, 1950, as further revised by an order dated February 13, 1954, and adverts to the fact that the petitioner was allowed a rebate of Income Tax at the rate of one anna in the rupee on the undistributed profits to the extent of Rs. 64,004. He also refers to the fact that during the year ended November 11, 1958, the company has declared out of the profits of the said year further dividend to the extent of Rs. 68,005. On this basis the officer states that he proposes to revise the petitioners assessment for the year 1949-50 u/s 35 (10) of the Act to recover the rebate allowed on Rs. 64,004 and to levy an additional Income Tax on the balance of Rs. 4,001. The petitioner is desired to file his objections, if any, to the proposed revision on or before September 27, 1960. It is also indicated in exhibit P-1 that the additional tax payable for this year would be Rs. 5,250.56 nP.

The assessee sends a reply evidenced by exhibit P-2 dated 8th October, 1960. In fact, exhibit P-2 is a common reply in respect of the four notices issued by the officer on 15th September, 1960, proposing to rectify the assessment for all the years u/s 35 (10).

The assessee states that as the provisions of section 35 (10) were repealed with effect from April 1, 1960, no proceedings can be taken by the officer under that provision. The assessee accepts the position that dividends in question, namely, Rs. 50,000 and Rs. 1,25,000 were paid out of the profits of the years ended October 31, 1948, October 31, 1949, October 31, 1950, and October 31, 1951, and that the assessee was granted rebate for all these years under the relevant Finance Acts. The petitioner then adverts to the fact that the intention of the legislature at the time of introducing sub-section (10) of section 35 was that rebate should be taken away if subsequently dividend is distributed out of the profits in respect of which the rebate was granted. The assessee states that

whatever may have been the original intention. The legislature has discarded that principle by omitting section 35 (10) from the statute altogether and whatever rebate has been granted once on the undistributed dividend, will inure in favour of the assessee, notwithstanding the subsequent distribution of dividend.

The petitioner further takes up the position that the provisions contained in sub-section (10) of section 35 relate to matters of procedure and that procedure is not available from April 1, 1960, in view of the repeal of section 35 (10). The petitioner also avers that there is no provision authorising the Income Tax Officer to start proceedings afresh after April 1, 1960, under the repealed provisions. At this stage, I may mention that the date April 1, 1960, given as the date of repeal of section 35 (10) in this reply is evidently a mistake for April 1, 1959. I have already pointed out that the omission of section 35 (10) of the Income Tax Act by section 13 of the Finance Act, 1959, takes effect from April 1, 1959.

The Income Tax Officer was not satisfied with stand taken by the assessee and in consequence passed the order, exhibit P-3, in respect of the assessment year 1949-50, ultimately imposing an additional tax of Rs. 5,250.56 nP. for the year in question.

In exhibit P-3 the Income Tax Officer refers to the original order of assessment and the assessee having obtained rebate on the undistributed profits as well as the notice issued by him for rectification of the mistake u/s 35 (10). The officer also adverts to the objection to his jurisdiction to initiate proceedings in question raised by the petitioner on the basis of the omission of section 35 (10) of the Income Tax Act with effect from April 1, 1959.

But the assessing authority is satisfied that he should not accept the contentions of the petitioner that he has no jurisdiction to issue the notice on September 15, 1960, after the omission of section 35 (10) of the Income Tax Act with effect from April 1, 1959. According to the officer, the provisions of section 35 (10) have not been repealed with retrospective effect and though the provisions of section 35 (10) have been made inoperative after April 1, 1960, the cause of action for the invocation of the provisions of that section arises in the cases on hand on July 19, 1958, when the company declared dividends out of the undistributed profits. It is the further view of the officer that the date, namely, July 19, 1958, when further dividends were declared on the undistributed profits of the prior years is well within the period prescribed u/s 35 (10), namely, 4 years, for the revision of assessment u/s 35. The officer, no doubt, refers to what according to him is the scheme of the Finance Acts, 1959 and 1960. It is the view of the officer again that the provisions of section 35 (10) apparently became unnecessary under the new scheme of company taxation and, therefore, was deleted by the Finance Act, 1959, the amendment taking effect from April 1, 1960, which again is evidently a mistake for April 1, 1959. Finally the officer comes to the conclusion that when the dividends in question were declared, namely, July 19, 1958, the provisions of section 35 (10) were operative and the

period of limitation, namely, 4 years, had not elapsed and on this basis he makes a recomputation of the tax u/s 35 (10) and in consequence levies the additional tax for the assessment year 1949-50 in the sum of Rs. 5,250.56.

Similarly, it will be seen that for the assessment year 1950-51, the Income Tax Officer levies an additional tax of Rs. 5,491.37. Again, for the assessment year 1951-52, the Income Tax Officer levies an additional tax of Rs. 1,291.62. Again, for the assessment year 1952-53 the Income Tax Officer levies an additional tax of Rs. 2,200.44. I may also state that excepting the question of jurisdiction of the officer to initiate proceedings by issue of notice on September 15, 1960, and to make the orders of assessment under attack on February 21, 1961, no other questions have been raised by the learned counsel for the petitioner in these matters.

It may also be necessary to briefly indicate as to how exactly the rebate of one anna in the rupee on the undistributed profits of the company came to be given

Such a relief was afforded for the first time by the Indian Finance Act, 1948 (Act XX of 1948). The Finance Minister in his Budget Speech for 1948-49, extracted in ([1948] 16 I.T.R.) (Journal Section), page 14, has dealt with the subject of "Tax on undistributed profits of companies." In this connection the Finance Minister has stated :

"In the budget for 1946-47 a complicated system of levying super-tax at steeply graded rates on dividends above a datum line was introduced and last year these rates were further stiffened. The object of this was to deter the distribution of large dividends and secure the ploughing back of profits into business. In actual practice very little revenue was collected from this source and the purpose with which it was introduced does not appear to have been realised. I feel that something more positive is required to induce industrialists to return more of their profits into investment than taxing those who distribute large dividends. My proposal to secure this end is to reduce the tax on the undistributed profits of companies by one anna. The effect of my proposal will be that on distributed profits the present rate of 5 annas will remain, while the tax on undistributed profits will be at the rate of 4 annas."

Following this indication it is seen that the Finance Act, 1948, provides for a rebate being allowed at the rate of one anna per rupee on the undistributed profits of a company. The material provision in this Act which requires to be noted is provisos (a) and (b) in Paragraph B of the Second Schedule to the Act which are as follows :

"B. In the case of every company, not being a company to which paragraph C of this part applies -

On the whole of total income Five annas in the rupee :

Provided that in the case of an Indian company -

(a) where the total income, as reduced by seven annas in the rupee and by the amount, if any, exempt from Income Tax, exceeds the amount of any dividends (including dividends payable at a fixed rate) declared in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March, 1949, and no order has been made under sub-section (1) of section 23A of the Indian Income Tax Act, 1922, a rebate shall be allowed at the rate of one anna per rupee on the amount of such excess :

(b) Where the amount of dividends referred to in clause (a) above exceeds the total income as reduced by seven annas in the rupee and by the amount, if any, exempt from Income Tax, there shall be charged on the total income an additional Income Tax equal to the sum, by which the aggregate amount of Income Tax actually borne by such excess (hereinafter referred to as the excess dividend) falls short of the amount calculated at the rate of five annas per rupee on the excess dividend."

The other parts of paragraph B are omitted as being unnecessary for the present purpose. There is no controversy that there were similar provisions in the Finance Acts of 1949 to 1955 inclusive. That is why there is significance when section 35 (10) refers to the years beginning on the 1st day of April of the years 1948 to 1955 inclusive, during which period a rebate may have been obtained on the undistributed profits by virtue of the relevant Finance Acts referred to above.

I may also refer again to the speech of the Finance Minister when section 35 (10) was introduced and omitted from the main Act by the Finance Acts of 1956 and 1959 respectively.

In the Budget Speech for 1956-57, the relevant extract from which appears in ([1956] 29 ITR 40) (Journal Section), the Finance Minister again refers to the rebate that was being granted up to then in respect of undistributed profits and indicates that the said rebate will be withdrawn. The Finance Minister states :

"The other fields of direct taxation is the taxes on corporations. About half of our direct taxes comes from this sources and there has been no change in company taxation during the last five years. In view of the large development expenditure that has taken place in the First Plan Period and the even larger expenditure contemplated in the next Plan, I think there is adequate justification for putting a small extra burden on companies. I propose, therefore, to effect three changes. First, the rebate of one anna of Income Tax at present given to non-section 23A - Companies in respect of undistributed profits will be withdrawn. Second, while the rate of super-tax payable by Indian companies will remain unchanged, there will be levied, in addition, a super-tax at a graduated rate on the dividends declared by them above a certain limit, namely, 6 per cent. This rate I propose to be as two annas in the rupee on the amount distributed in excess of six per cent. but up to ten per cent. of the paid up capital. On distribution above ten per cent. of such capital, the extra super-tax will be three annas in the rupee. Third, there will be a tax of two annas on bonus issues."

This speech was made, as I mentioned earlier, by the Finance Minister in connection with the Budget for 1956-57. The result was the Finance Act of 1956 (Act XVIII of 1956). Among the various amendments made to the Indian Income Tax Act, in particular section 19 of the Finance Act 1956, as I indicated earlier, effected certain amendments to section 35 of the Income Tax Act. u/s 19 of amending Act, sub-sections (8), (9) and (10) are substituted in the place of the original sub-section (8) of section 35 of the Income Tax Act. The particular provision that has to be noted, so far as these proceedings are concerned, is only section 35 (10) which is incorporated by this Finance Act. That provision, as I have mentioned earlier, creates a liability for payment of tax in respect of dividends which are declared subsequently from and out of the undistributed profits of the previous years which have earned a rebate by virtue of the relevant provisions contained in the Finance Acts. In the Finance Act of 1956, in paragraph B of the First Schedule relating to companies, provisions similar to provisos (a) and (b) occurring in the Finance Acts from 1948 to 1955 inclusive, did not find a place and there is a uniform rate of taxation on the whole total income of the company.

I will also advert to the omission of section 35(10) by section 13 (2) of the Finance Act of 1959. Here again, in the Budget Speech made by the Finance Minister for 1959-60 extracted in ([1959] 35 ITR 57) (Journal Section), it is seen that the Government intends to effect some proposals for changing the then existing system of assessment and the inconvenience which resulted from it are noted and ultimately it is said by the Finance Minister that the scheme he proposes to introduce will avoid all that inconvenience. A part of the scheme appears to be that the overall rate applicable to Indian Companies will be so fixed that the yield will be equal to the then annual gross yield less than the annual credit given to the shareholders. I have already indicated that section 13 (2) of the Finance Act of this year omits section 35 (10) of the Income Tax Act. Here again in paragraph of Part I of the Schedule dealing with companies, Income Tax at the rate of thirty per cent. of the whole of the total income of the company is levied.

I am conscious of the fact that the speeches made at the time when a measure is being discussed certainly cannot be taken into account for the purpose of considering the question as to whether section 35 (10) is a temporary measure or not.

In fact, these speeches were referred to by Mr. Surianarayana Iyer learned counsel for the petitioner, to urge that the legislature was not decided as to what exactly is the scheme or pattern of taxation to be followed in respect of the companies and they were only making several experiments in that behalf. In particular, Mr. Surianarayana Iyer, learned counsel referred to the circumstance that inasmuch as the particular years 1948 to 1955 are mentioned in section 35 (10) that will clearly indicate that the legislature was making only a temporary provision when it incorporated section 35 (10) in the statute, and, therefore,

when that sub-section was omitted and when no other suitable provisions have been made, the principles applicable to the expiry of a temporary Act come into full play.

There cannot be any controversy that if the provisions of section 35 (10) are to be construed as a temporary measure, then in the absence of special provision to the contrary, when it was omitted in 1959, no action can be taken after the temporary statute has ceased to be in force.

In Halsburys Laws of England, 3rd edition, volume XXXVI, at page 421, paragraph 641, the learned author, dealing with permanent and temporary statutes, says :

"The duration of a statute is prima facie perpetual, it endures until it is repealed either expressly or by implication, by a subsequent statute, or in the exercise of a power conferred by statute and does not lapse through non-user. A statute, or a particular provision thereof, may, however, be merely temporary, that is to say, may be expressed to continue in force for a limited period only, in which case it will expire automatically at the end of that period unless earlier repealed."

In Craies on Statute Law, 5th edition, at page 374, it is stated :

"Every statute for which no time is limited is called a perpetual Act, and continues in force until it is repealed."

Again, dealing with temporary Acts, at page 377, the learned author says :

"As a general rule, and unless it contains some special provision to the contrary, after a temporary Act has expired no proceedings can be taken upon it, and it ceases to have any further effect."

In *S. Krishnan v. State of Madras*, Mr. Justice Patanjali Sastri states the rule regarding temporary statutes thus :

"The general rule in regard to a temporary statute is that, in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires."

Again, the Supreme Court had to consider the applicability of section 6 of the General Clauses Act, where a repeal of a statute is followed by a fresh legislation on the same subject. Mr. Justice Mukherjea, speaking for the court, in the decision in *State of Punjab v. Mohar Singh* observes :

"Of course, the consequences laid down in section 6 of the Act will apply only when a statute or regulation having the force of a statute is actually repealed. It has no application when a statute, which is of a temporary nature automatically expires by efflux of time. The Ordinance in the present case was undoubtedly a temporary statute but it is admitted that the period during which it was to continue had not expired when the repealing Act was passed. The repeal, therefore, was an effective one which would normally attract the operation of

section 6 of the General Clauses Act."

In fact, it will be seen that the Supreme Court was dealing with a case where the Ordinance though in its nature a temporary statute was repealed even before it had run out its period of duration.

Again, the learned judge observes at page 88 :

"Whenever there is a repeal of an enactment, the consequence laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot, therefore, subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material."

In the cases before me it is not the contention of either the petitioner or the respondent that the omission of section 35 (10) of the Income Tax Act by the Finance Act, 1959, has been followed by any fresh legislation on the same subject. Therefore, there is no question of attempting to find out in these cases whether new provisions, if any, indicate a different intention. But it will be seen that when there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears.

Again in *Gopichand v. Delhi Administration*, their Lordships refer with approval to the passage in *Craies on Statute Law* that, as a general rule, unless it contains some special provision to the contrary after a temporary Act has expired, no proceedings can be taken upon it and it ceases to have any further effect and the Supreme Court also adverts to the fact that the said principle has been accepted by the Supreme Court in *S. Krishnan v. State of Madras*.

Therefore, it will be seen that if Mr. Surianarayana Iyer is able to satisfy this court that the provisions of section 35 (10) are a purely temporary or analogous to a temporary legislation, then he will be well-founded in his contention that after the said sub-section has ceased to be in force, no action can be taken upon it. But the question is whether this contention of Mr. Surianarayana Iyer, learned counsel for the petitioner, can be accepted.

After having due regard to the various matters adverted to above, I am not satisfied that the provisions of section 35 (10) can be considered to be a temporary enactment in the circumstances of the case. If it is a temporary enactment it will certainly expire automatically at the end of the period fixed unless earlier repealed.

The expression that is used in section 6 of the General Clauses Act is "repeals any enactment hitherto made or hereafter to be made". The expression "enactment" is defined in section 3(19) of the General Clauses Act, 1897, as :

"Enactment shall include a Regulation (as hereinafter defined) and any regulation of the Bengal, Madras or Bombay Code, and shall also include any provisions contained in any Act or in any such Regulation as aforesaid" and section 3(50) defines Regulation.

The above definition of the expression "enactment", which is, no doubt, an inclusive definition, clearly shows that even a provision in a statute or Act will be an "enactment" under the General Clauses Act and it is on that basis that section 6 proceeds. That is, in my view, the provisions of section 35 (10), when incorporated in the Income Tax Act by the Finance Act, 1956, must be considered to be a "provision" contained in the Income Tax Act, and, therefore, it will be an "enactment" as that expression is defined in section 3(19) of the General Clauses Act. It is not possible for me to accept the contention of the learned counsel that section 35 (10) should be considered to be a temporary provision enacted by the legislature. It may be, as pointed out by Mr. Surianarayana Iyer, learned counsel for the petitioner, that the legislature has not quite decided as to how exactly a company is to be assessed. But in this case it is seen that for the years beginning from the 1st April of 1948 to 1955 a rebate was given on the undistributed profits of companies by virtue of suitable provisions being made in the relevant Finance Acts themselves during the years in question. But in 1956 the legislature takes the view that the companies need not be granted that relief any further and is also of the further view that even in respect of undistributed profits which have earned a rebate during those years in question, if they are utilised in subsequent years for the purpose of distributing dividends, then in respect of such part of the profits or the entire profits, as the case may be, which is so distributed, the concession by way of rebate already earned should be withdrawn and the tax should be recomputed on that basis. The period, 1948 to 1955, is specifically mentioned in section 35 (10) because it is during this period that a concession as and by way of rebate of one anna had been given by the relevant Finance Acts. There is nothing, in my view, to indicate in terms of section 35 (10) of the statute that it is in any manner intended to be purely temporary, nor is there anything to indicate that such provision will expire automatically at the end of any particular period. In fact, if the said sub-section had continued to be in the statute book and not omitted by the Finance Act of 1959, it would be perfectly within the jurisdiction of the Income Tax Officer to recompute the tax within the period mentioned therein when once any part of the undistributed profits which

have earned a rebate during the years 1948 to 1955 is availed of in any subsequent years for the purpose of declaring dividends.

The fact that section 35 (10) was introduced in the Income Tax Act by the Finance Act of 1956 and that the Finance Acts are passed every year, is in my view no indication that section 35 (10) was intended to be a temporary provision. In fact, a reference to the various Finance Acts, and in particular to the Finance Act of 1956, whereby section 35 (10) was incorporated in the Income Tax Act, will clearly show that apart from provisions being made the rate of tax, etc., there are several provisions therein, which substantially make amendments to the Indian Income Tax Act itself, and it is also a matter of common knowledge that very many of the amendments effected in the Indian Income Tax Act by such Finance Acts, are still to be found in the main statute.

From and after 1959, no doubt, the scheme of taxation of companies appears to have been slightly different and the legislature must have been perfectly well aware of the provisions of section 6 of the General Clauses Act, when the provisions of section 35 (10) were omitted by the 1959 Finance Act. In my view, notwithstanding the expression used in section (13) 2 of the Finance Act of 1959 that "sub-section (10) shall be omitted" the legal effect of such omission is the same as that of a repeal of section 35 (10) as and from April 1, 1959. If it is considered to be a repeal, the position clearly is as referred to above that the consequence laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. So far as I could see, there is no different intention in the 1959 Finance Act so as to make inapplicable the consequence laid down in section 6 of the General Clauses Act, regarding the repeal of section 35 (10). If that is so, it follows that as soon as there was a declaration of dividend on July 19, 1958, from and out of the undistributed profits of the previous years, the petitioner has incurred a liability under the enactment - repealed, namely, section 35 (10) of the Indian Income Tax Act. It can also be stated that when once there has been a declaration of dividend on July 19, 1958, from and out of the undistributed profits, a right has also accrued to the Income Tax Officer to recompute the tax payable by the company by reducing the rebate originally allowed u/s 35 (10) of the statute, provided he has taken action for that purpose within the period of four years mentioned in section 35 (10). In this case, there is no controversy that notice has been issued on September 15, 1960, and an order of reassessment itself has been passed on February 21, 1961, and there is no controversy that the period of four years is satisfied, calculating it even from July 19, 1958.

Though I am dismissing the writ petitions on merits, it is necessary to note that Mr. G. Rama Iyer, learned counsel for the revenue, urged that there has been considerable delay in the petitioner seeking relief in this court. I am not impressed with this contention of the learned counsel for the revenue. The orders of reassessment were passed on February 21, 1961, and it is seen that the petitioner moved the Appellate Assistant Commissioner challenging all these

orders. But it is averred in the affidavit that the said officer by his order dated March 28, 1961, held that there is no provision in the Act for an appeal to him against an order passed u/s 35 (10) and, therefore, the appeals are not valid and maintainable. These writ petitions have been filed in this court on June 30, 1961. In the circumstances, the contention that there is delay is absolutely without merits. I express no opinion as to whether the view of the Appellate Assistant Commissioner that no appeal lies is correct or not. I also make it clear that I do not accept all the reasons given by the Income Tax Officer in the orders in question for holding that he has got jurisdiction to pass the orders in question. From the above discussion it will be seen that my approach to the question of jurisdiction of the officer is entirely different. But I agree with his final conclusion that he has got jurisdiction to pass the orders in question.

As I mentioned earlier, no other points have been raised by the learned counsel for the petitioner in these proceedings. The result is that the attack made as against the jurisdiction of the officer to initiate proceedings for purposes of reassessment u/s 35 (10) of the Indian Income Tax Act fails and all the writ petitions are dismissed. The parties will bear their own costs in all these writ petitions.