(1996) 07 KL CK 0064

High Court Of Kerala

Case No: T.R.C. No"s. 16 to 26, 30, 32, 33, 35 and 36 of 1992

Dr. Thomas Varghese		APPELLANT
	Vs	
State of Kerala		RESPONDENT

Date of Decision: July 12, 1996

Acts Referred:

- Kerala Agricultural Income Tax Act, 1950 - Section 34, 9(2)

Citation: (1997) 1 ILR (Ker) 209 : (1997) 226 ITR 365

Hon'ble Judges: V.V. Kamat, J; P.A. Mohammed, J

Bench: Division Bench

Advocate: C. Kochunni Nair, M.A. Feroz and Dale P. Kurian, for the Appellant; V.C. James, Govt. Pleader, for the Respondent

Judgement

P.A. Mohammed, J.

The prime question involved in this batch of tax revision cases is whether the petitioners are liable to be assessed to agricultural Income Tax invoking the provisions contained in Section 9(2)(a)(i) of the Agricultural Income Tax Act, 1950 (for short, "the Act"). The assessment years involved in all these cases are 1978-79 and 1979-80. These tax revision cases have been filed u/s 78 of the Agricultural Income Tax Act, 1991, against the common order passed by the Deputy Commissioner of Agricultural Income Tax, Trichur, dated March 20, 1991, in respect of the aforesaid assessment years.

2. The petitioners in these cases are the trustees of twelve family trusts. Those trusts are : (1) John Paul Daughters Trust ; (2) Mary John Family Trust ; (3) Leela Philip Family Trust ; (4) Susan Varghese Family Trust ; (5) Susheela George Family Trust ; (6) Sheela Thomas Family Trust ; (7) Saju Thomas Daughters Trust ; (8) Francis Paul Heirs Trust ; (9) Francis Paul Daughters Trust; (10) John Paul Heirs Trust ; (11) Francis and John Family Trust; and (12) Saju Thomas Heirs Trust. These family trusts were constituted under separate deeds executed on May 1, 1975. These family trusts own extensive properties, both agricultural and non-agricultural. For the effective management of these

properties, the terms in the trust deed specifically empowers the respective trusts to enter into partnership or joint ventures or any other arrangement. In terms of the trust deed, two partnerships were constituted, namely, "Popular Plantations" and "Popular Estates". The trust deed provides that the trust could nominate one of its trustees as partner in the firm for and on behalf of the trust.

3. For the sake of convenience, the facts involved in T. R. C. No. 16 of 1992 are adopted as common for all these cases. The Agricultural Income Tax Officer, Trichur, within whose jurisdiction the aforesaid properties are situate assessed the trustees of the trusts for their share of income from trust properties showing the status as "individual". Annexure "III" is the copy of the assessment order passed by the Officer dated March 30, 1984, for the assessment year 1978-79 describing the name of the assessee as follows : "Dr. Thomas Varghese, Trustee, Susan Varghese Family Trust, partner, Popular Plantations and Popular Estates, Railway Station Road, Trichur". As per the said order, the share of the petitioners" income from Popular Plantations and Popular Estates was added together and the total income was thus accordingly fixed. Thus the petitioner was assessed as representative of the trust, however, showing the status as "individual". The agricultural Income Tax payable by the petitioner for the years 1978-79 and 1979-80 was thus fixed. The same method of assessment was adopted in the case of all the trustees treating them as representatives of the trusts and thus assessed them separately. However, on November 8, 1990, a notice was issued by the Deputy Commissioner of Agricultural Income Tax and Sales tax, Trichur, proposing to revise the assessments for the years 1978-79 and 1979-80 invoking the powers u/s 34 of the Act. Annexure "IV" is a copy of the notice issued by the Deputy Commissioner. According to the Deputy Commissioner, the assessments completed by the Agricultural Income Tax Officer for the years 1978-79 and 1979-80 were found to be incorrect and irregular and, therefore, suo motu proceedings to revise the assessments were initiated.

4. Annexure "IV" notice brings forth the following circumstances available in the case. Popular Estates and Popular Plantations consisted of partners including Dr. Thomas Varghese and his wife, Susan Varghese. The twelve partners of the firms are also trustees of twelve family trusts constituted under separate deeds executed on May 1, 1975, of which Dr. Thomas Varghese is the trustee of the Susan Varghese Family Trust. The agricultural Income Tax assessments for the years 1978-79 and 1979-80 were completed on Dr. Thomas Varghese, assigning the status of "individual" and taking into account the income derived by him from Popular Estates and Popular Plantations in the representative capacity of the trust which he represented. The assessments in the case of his wife (trustee of "Sheela Thomas Family Trust") were also completed in the same manner. According to the Deputy Commissioner, the partnership deed executed on May 1, 1975, reveals that the partners had joined together and formed the partnership in their individual capacity and not in the capacity as trustees of the respective trusts. The Deputy Commissioner formed such an opinion for the following reasons :

(1) It has not been specifically mentioned in the partnership deed that each partner represented the trust of which he/she is the trustee.

(2) No provision has been made in the partnership deed for the continued functioning of the firm with new trustees in case of change in partnership.

(3) Though Clause 6(f) of the trust deed empowers the respective trusts to enter into partnership or joint venture or any other arrangements with any other person, firm, etc., Clause 3 of the partnership deed of the firm clearly indicates that the capital of the two firms was not made out of the amounts settled on the twelve trustees.

(4) Sri T.I. Mathew, the authorised representative of the firms, in his letter dated February 16, 1982, had stated that all the partners in the two firms are individuals and not trusts and that by mistake the partners have been misnamed as trusts. Further, it is seen that the revised returns and applications for registration and renewal of registration for the years 1976-77 to 1979-80 were filed by each partner in his individual capacity in the place of returns and applications originally filed in the name of the trusts.

5. In view of the above, the Commissioner took the view that the twelve partners have joined the partnership in their individual capacity and not in the representative capacity of the respective trusts. Therefore, u/s 9(2)(a)(i) of the Act, the agricultural income of an individual shall include the agricultural income of his wife from the membership in a firm in which the individual is also a partner and such income shall be assessed in the hands of the individual. Consequently, the Commissioner further said that Smt. Susan Varghese, wife of the petitioner, is also a partner of the firms, "Popular Estates" and "Popular Plantations" and hence the income derived by her from the said two firms should have been included in the income derived by her husband. Therefore, according to the Commissioner, the omission to observe the provision contained in Section 9(2) of the Act has resulted in underassessments creating a short demand of Rs. 39,489 for the years 1978-79 and 1979-80. It was in the above background, the Commissioner has issued notices initiating suo motu revision u/s 34 of the Act to all the partners of the firm.

6. Pursuant to the aforesaid notices, the petitioners filed objections (annexure "V") against the proposal to revise the assessments for the years 1978-79 and 1979-80. The objections so filed by the petitioners are the following :

(I) The initiation of revisional proceedings u/s 34 of the Act by the Commissioner is irregular, without jurisdiction and hence invalid.

(II) The petitioner and his wife were partners in Popular Plantations and Popular Estates in their representative capacities, representing different trusts and not in their personal capacities and so the provisions of Section 9(2)(a)(i) of the said Act are not attracted.

(III) In the preamble to the partnership deed of both the firms, the partners including the petitioner and his wife have been described as "being trustees" of the trusts they

represented. The trusts constituted under the Indian Trusts Act, 1882, are associations of persons and it is well-established in law that associations of persons cannot as such become partners in a partnership firm. This being the legal position, where a trust desires and is permitted to participate in a partnership business, the strategem usually employed is for such trusts to depute any one of its trustees to join the partnership for and on behalf of the trust. That is why individuals joining a partnership for and on behalf of the trusts are invariably described in the partnership deed as being trustees of the trust which they represent. A natural person joining the partnership in his personal capacity does not have to be described as being the trustee of any trust,

(IV) The relationship between the partnership and its partners in the abovesaid arrangement will obviously remain the same whether the partner is a partner in his personal capacity or in a representative capacity. Where the partner happens to represent a trust or a firm, such act of representation would strictly be an arrangement between the trust or the firm which is so represented and the person or persons representing them.

(V) In the event of any change in the partnership, which could be caused by an existing partner leaving the partnership or a new partner joining it, the trustees who represent trusts in the continuing partnership do not have to be necessarily changed. Consequent on such change in the partnership, the partnership will have to be reconstituted and the same trustee or a new trustee can be assigned to represent the trusts in the continuing partnership.

(VI) As it happened, there were two reconstitutions of the firms on May 1, 1975. On the first occasion, 7 of the present 12 trusts joined the partnership through the medium of their trustees and the partnership was reconstituted with such new partners and the original partners. The firm was reconstituted once again on the same day when the original partners retired from the partnership and the representatives of the remaining five of the present trusts were taken in as partners. It is in this context that in the partnership deed pertaining to the second reconstitution the former seven representatives of the trusts came to be described as existing partners.

(VII) The term "existing partners" used in the partnership deed did not mean that they were partners prior to May 1, 1975. It only meant that at the particular point of time on May 1, 1975, when the partnership was reconstituted for the second time on that day, they were already partners.

(VIII) The trust deed does empower the trust to join any partnership or any other venture.

(IX) There is no law which insists that the capital which a trust brings to a partnership in which it is represented by a trustee should be from the amount settled on the trust. The capital can be contributed from any resources available to the trust. The manner in which the trust raised the capital is immaterial and has absolutely no bearing on the question

whether the partners of the firms are partners in their personal capacities or representative capacities. The fact that the capital contributed to the partnership by the trustees has been provided by the trusts from their own resources is borne out by and can be verified from the accounts of the trusts.

(X) The statement made by the auditor, Mr. Mathew, in his letter dated February 16, 1982, to the effect that the partners of the firms are individuals and not trusts was a statement made in the context of explain-ing"why it was not the names of the trusts, but those of the persons representing them that had to be mentioned in the application for registration of the firm. As already explained, in their relationship with the partnership, the partners are individuals, and the fact of their representing the trusts is strictly a matter of arrangement between the individuals and the trusts.

(XI) The share income of each of the partners in the partnership is assessed to Income Tax in the hands of the trusts which they represented and not in the hands of the persons who represented them. Nor has the share income of the husband been clubbed with the income of the wife.

(XII) The accounts and other materials will establish that the investments the petitioner and his wife have made in Popular Plantations and Popular Estates were provided to them by the respective trusts which they represented.

(XIII) The petitioner and his wife represent different trusts in the partnerships and the share income which they earn from the partnerships belong and is invariably made over to the trusts which they represent. Thus the petitioner and his wife are only conduits through whom investment is made by the trusts in the partnerships and the share income is passed on by the partnership to the trusts. That being the position, the provision of Section 9(2)(a)(i) is not applicable and hence the proposal to revise the assessment u/s 34 of the Act may be dropped.

7. In support of the above objections, the petitioner has produced the following documents and accounts relating to the partnerships and trusts.

(1) Copies of the partnership deeds executed on May 1, 1975 (this is referred to in paragraph 11 of annexure "V").

(2) The accounts of the trusts (see paragraph 11 of annexure "V").

8. Along with the objections, the petitioner has produced a copy of the ledger account of Susan Varghese Family Trust in the name of Popular Plantations and Popular Estates.

9. Finally, the Deputy Commissioner passed an order on March 20, 1991, evidenced by annexure "VI" confirming the proposal contained in the notice. Accordingly, he set aside the assessments in respect of Dr. Thomas Varghese, partner, Popular Estates and Popular Plantations, for the years 1978-79 and 1979-80 and the matter was remanded to

the assessing authority for fresh disposal in accordance with law and in the light of the observations made above. The legality of the said order and similar orders passed in the case of other petitioners are challenged in these tax revision cases.

10. Two important questions arise for consideration in these cases. The first as observed at the outset is the applicability of the provisions contained in Section 9(2)(a)(i) of the Act. The second question is whether the proceeding initiated by the Deputy Commissioner u/s 34 of the Act is vitiated for the reason of delay. In other words, the question is whether the Deputy Commissioner has exercised the power under the said section within the reasonable period.

11. While deciding the first question aforesaid what is primarily required is to ascertain the paramount intention of the petitioners in executing annexure "I" and annexure "II" partnership deeds. It is an admitted case as could be seen from annexure "IV" notice that Clause 6(f) of the trust deeds authorises the constitution of partnership or joint venture or any other arrangements with any other person, firm, etc. It is in view of this recital contained in the trust deeds that these partnership firms were constituted for the effective management of the properties belonging to the aforesaid trusts. The constitution of the partnership firms among the trustees to manage the trust properties or to deal with them in any other manner is not uncommon. It is legal and valid. A trust is one of several juridical devices whereby one or more person is enabled to deal with the property for the benefit of another person or persons. A juridical body by itself will not become a partnership firm capable of managing the trust properties. In such a situation, where a trust permits to form partnership, such trust will depute any of its trustees to join the partnership for and on behalf of the trust. What Section 67 of the Indian Trusts Act, 1882, reveals is the liability of a partner being a trustee who wrongfully employs the trust property in business. That would indicate the function of a partner, being a trustee in a partnership firm.

12. Basically the properties involved in these cases are the properties belonging to the twelve family trusts. The question is whether by execution of the partnership deeds this basic feature of the property had undergone any transformation or change. The aforesaid twelve family trusts were created on May 1, 1975 ; seven of them are shown in the partnership deed dated May 1, 1975, as existing partners. There were two reconstitutions of the firms on May 1, 1975. On the first occasion seven of the present 12 trusts joined the partnership through the medium of their trustees and the partnership was reconstituted with such new partners and the original partners. The firm was reconstituted once again on the same day when the original partners retired. Whatever may be the change in the body of the firm either by constitution or reconstitution the properties to be handled are the same trust properties. There is no change in the basic character of the properties and therefore even after the reconstitution of the firms the properties remained as trust properties.

13. The intention of the parties while executing the above partnership deeds has to be gathered by reading the two deeds as a whole. Clause 7 of annexure "I" provides that partner No. 8, viz., K.P. Paul, being a trustee of Francis Paul Heirs Trust, shall be the managing partner and he shall be responsible to the other partners for the proper management of the business. The above clause sufficiently makes it clear that partner No. 8 has been appointed as managing partner of the firm because he is the trustee of Francis Paul Heirs Trust and he shall be responsible to the other partners for the proper management of the business. A similar clause is contained in annexure "II" deed. The intention of the parties to the above partnerships can also be gathered from the preamble to the deed and other attendant circumstances. The preamble to the deed provides that six partners were joined in the partnership being the trustees of different family trusts and they also signed the deeds in their representative capacity as trustees of the trusts. These properties were originally treated by the Officer as trust properties and the assessments were made on the trustees representing the trust. If the intention was to treat the properties as individual properties, there was no reason for the partners to join the partnership specially showing as trustees of the respective family trust. No symptom is anywhere there in the partnership deed that the partners have joined the partnership in their individual capacities.

14. In view of the above position, we cannot agree with the conclusion of the Deputy Commissioner that the twelve partners have joined the partnership in their individual capacity and not in their representative capacity of the respective trusts. The intention that the partners joined the partnership as representatives of the different family trusts has been sufficiently established as found hereinbefore. When all the partners signed the partnership deed in their representative capacity describing themselves as trustees of different trusts how could a different intention be gathered from the recitals in the deed ? Of course, Clause 3 of the partnership deed stipulates that whatever capital required for the business of the partnership shall be brought by the partners as and when required and in such proportion as may be agreed upon by and between the parties. This does not mean that the partners will contribute capital individually. It only mean"s that they will bring the capital as trustees of the different trusts because all functions under the partnership are as representatives of the trusts. After clearly noticing the intention of the parties, we feel it imperative that wherever the word "partner" is found in the partnership deeds it shall be understood as partner being the trustee of a family trust. Once it is so understood there is no room for interpreting that the partners have joined the partnership in their individual capacity. What we could gather from annexure "VI" is that the Deputy Commissioner has failed to examine the partnership deeds taking note of the above distinctive basic feature.

15. Section 3 is the charging section for the levy of agricultural Income Tax. Under the said section the agricultural Income Tax shall be levied at the rate specified in the Schedule on the total agricultural income of the previous year of every person. The definition of the word "person" contained in Section 2(m) attracts the "trustee" of a trust

within its compass. The procedure for determination of agricultural income from the trust property, the liability for assessment, etc., are dealt with in Sub-sections (1), (3), (4), (5) and (6) of Section 4. The agricultural properties involved in these cases are the properties of the trusts and all the petitioners have been properly assessed as trustees of different trusts. That is evident from annexure "III" assessment order. We have already found that by reason of the constitution of the partnership deeds by the trustees of the different family trusts for management of the trust properties there is no change in the basic character of the properties. That would necessarily mean that there is no change in the character of income received by the trustees and therefore they are liable to be assessed as representatives of the trust property under the provisions aforementioned.

16. Now, let us examine as to how the petitioners had been assessed initially as could be seen from the original assessment orders for the years 1978-79 and 1979-80. As pointed out hereinbefore, in those assessment orders after describing the petitioners as trustees of the relative family trusts and partners of two partnership-firms their status is shown as "individual". This cannot be said to be determinative or conclusive to say that the petitioners had been assessed not in the capacity as representatives of the trusts. Though column 3 of the assessment order relating to "status" contains six named items which could be appropriately assigned to the assessees, "trust" or "trustee" is not included among them. Therefore, it can be said that description of the status as "individual" in column 3 in such situation does not have the effect of effacing the representative capacity of the petitioners as trustees of the different family trusts or the character of the trust property.

17. In annexure "VI", after narrating the rival contentions, the view expressed by the Commissioner is that the twelve partners have joined the partnership in their individual capacity and not in the representative capacity of the respective trusts. In fact, the contention urged by the petitioners in their objection in this regard has not been properly appreciated by the officer. The circumstances under which the authorised representative, Mr. Mathew, mentioned the names of the petitioners as individuals in the application for registration of the firm have been explained in the letter dated February 16, 1982, addressed to the officer. What is stated therein is that as per the partnership deed dated May 1, 1975, all the partners of the firm are individuals and not trusts. Since the status has been mistakenly stated as trusts it was found necessary to correct the same. This correction has also to be understood in the background of column 3 of the assessment order which is discussed hereinbefore. Whatever that be, the capacity of the petitioners as representatives of the different family trusts will not in any way be affected by the abovesaid circumstances. The petitioners continued to be the trustees of the property held by the different family trusts. The Department has no case that the petitioners are not trustees of the trust properties. Therefore, the case of the petitioners that they are the representatives of the trust properties and the properties have been managed and dealt with by them as trustees is a fact which is proved and established in this case. They have no individual or personal right in the properties in question while joining them in the

partnership-firms as trustees of the family trusts. Therefore, the conclusion of the Commissioner that the petitioners have joined the partnership in their individual capacity is unsustainable in the facts and circumstances discussed hereinbefore.

18. In this case the income from the trust property has been passed through the media of partnership-firm and ultimately came into the possession of the trustees of the different family trusts. That means, the income is one and the same and it does not have a different character. When a trustee has been assessed on the share income received from the trust property, such income is not available for adding it along with another person by giving it a different form or shape. The wife of the petitioner has been assessed as one of the trustees of the trust. When the income received by the trustees has been thus assessed separately, the very same income is not available for addition with the income of the husband or wife as the case may be. What is done by the Commissioner is that along with the income of the husband the income of the wife which has been already assessed as trustee of the trust property is sought to be added so that the enhanced rate of tax would be applicable. This cannot be permitted for more reasons than one.

19. Section 9(2)(a)(i) of the Act is thus :

9. Income from settlement, disposition, etc.-- ....

(2) In computing the total agricultural income of any individual for purpose of assessment there shall be included-

(a) so much of the agricultural income of a wife or minor child of such individual as arises directly or indirectly-

(i) from the membership of the wife in a firm of which her husband is a partner."

20. The above provision prescribes what are the incomes to be included in computing the total agricultural income of any individual for the purpose of assessment. The corresponding provision in, the new Act, the Kerala Agricultural Income Tax Act, 1991, is found in Section 22. u/s 9(2)(a)(i) while computing the total agricultural income of any individual for the purpose of assessment, there shall be included so much of the agricultural income of a wife of such individual as arises directly or indirectly from the membership of the wife in a firm of which her husband is a partner. This provision will apparently apply in the case of husband and wife who are the partners of a partnership-firm. In the present case, the husband and wife are trustees of different family trusts and the property involved is the trust property. There is no change in the character of property even after the constitution of partnership as discussed hereinbefore. Therefore, the above provision will not apply in the facts of this case.

21. The issue in hand can be looked at from a different angle. This court while dealing with the question of double taxation with reference to the provisions of the Agricultural Income Tax Act, in the case of a husband and wife who are the partners of a firm,

observed in Achamma George Vs. Inspecting Assistant Commissioner and Another, : "Wading through the various provisions of the Act, it is difficult to locate a conscious intention on the part of the Legislature to bring in the agricultural income of an assessee to subject it to double taxation". In so far as the income received by a wife as a partner of a firm is concerned, it expressed the view (page 66) : ". . . . the income received by a wife in her capacity as a partner of a firm (in which her husband also happened to be a partner) could not be taxed over again in her hands, when such share of income from the firm had been already added on to the income of her husband. That being so, the assessing authorities did not have the jurisdiction to have a repeat performance of assessment when the income of the wife had already been treated as part of the income of the husband, and taxed as such". The principle emerging from the above is that an interpretation favouring a double taxation has to be avoided unless the statute makes a conscious intention in that behalf.

22. When the income from trust property has been assessed in the hands of the trustees as representatives of the trusts under the compulsion of the statute, such income will not be available for assessment again in any other form. It is also not possible to assess such income in a different manner obviating the assessment as required under the Act. When the husband and wife are separately assessed as trustees of different family trusts on the income received by them from the trust property, such income of the wife is not available for clubbing it together with that of the husband or vice versa. The husband and wife in this case were assessed as representatives of the different family trusts due to compulsion of the statute. Therefore, the income subjected to such assessment is unavailable for reassessment at the hands of the petitioners taking a different view by the Commissioner on the same set of materials already on record.

23. Section 34 is the provision which authorises the Commissioner to initiate suo motu revision. Under the said provision, the Commissioner may, of his own motion or on application by an assessee, call for the record of any proceeding under the Act which has been taken by any authority subordinate to him and may make such enquiry or cause such enquiry to be made and, subject to the provisions of the Act, may pass such orders thereon as he thinks fit. This provision does not provide any period of limitation for initiating action thereunder. If we construe the section literally the power under it can be exercised at any time. Such construction cannot be said to be a reasonable construction. Ordinarily, when a statute does not provide any time-limit for exercising a specified power affecting the interest of persons, the authority on whom such power is conferred shall exercise it within a reasonable period. A Division Bench of this court i Deputy Commissioner of Agrl. Income Tax and Sales Tax Vs. P.S.B. Paul Pandian, , while interpreting Section 34 of the Act, observed (page 812) :

" .... it appears to be a sound principle that even though Section 34 of the Act in terms does not prescribe a time-limit within which the power under that section has to be exercised, in order to avoid prejudice and hardship to the assessee it should be exercised within a reasonable time once the assessment becomes final, lest it be a Damocles"

sword hanging over the head of the assessee for all time. We have not been shown anything to justify the inordinate delay between the completion of assessment for the years 1967-68 and 1968-69 on November 2, 1967, and November 20, 1968, respectively, on the one hand and its reopening on August 31, 1978, on the other, the delay being about 11 years in one case and about 10 years in the other."

24. Recently, another Division Bench of this court, to which one of us was a party Rajagiri Rubber and Produce Co. Ltd. Vs. Commissioner of Income Tax, observed to the following effect (headnote) :

" Even in the absence of a time-limit prescribed by the statute, the repository of power should initiate proceedings within a reasonable time. Even for the completion of the proceedings, the same logic should apply and the final order in regard thereto should also be passed within a reasonable time. The revisional power u/s 34 of the Kerala Agricultural Income Tax Act, 1950, has to be resorted to within a reasonable time even though no limitation is laid down by law. When the power is sought to be exercised after a long lapse of time the Revenue should be able to demonstrate that there were circumstances beyond control or other supervening events or insurmountable difficulties because of which the proceedings could not be set in motion within the normal period."

25. What has been laid down in the aforesaid decisions is, even though Section 34 does not provide any time limit for exercising the power, it must be exercised within a reasonable time.

26. What is "reasonable" time ? It is not the time that is fixed by the authority who is to exercise the power. Nor is it the one that is fixed by the person who would be affected by the exercise of such power. It is the time that a reasonable man, who is instructed of the facts of the case, feels just and proper. The reasonableness of time in a particular case paramountly depends on the facts and circumstances of each case.

27. In this case, the assessment years involved are 1978-79 and 1979-80, the relevant accounting periods being 1977-78 and 1978-79. The original orders of assessment for the above years were passed on March 30, 1984. The assessee had filed appeals against those orders. Pursuant to the appellate order, the original assessment orders were modified on October 1, 1986. What is sought to be revised as per annexure "IV" notice u/s 34 is not the modified assessment order passed on October 1, 1986. By the said notice, the assessments completed by the Agricultural Income Tax Officer for the years 1978-79 and 1979-80 are sought to be revised though reference is made only in respect of the modified assessment orders dated October 1, 1986. In substance, the suo motu revision was intended to club the income of the wife to that of the husband invoking the provisions contained in Section 9(2)(a)(i) of the Act. The appellate orders passed at the instance of the petitioners have no relevance to the revision sought to be made. That being so, what is sought to be revised by annexure "IV" notice dated November 8, 1990, is the assessment orders completed on March 30, 1984. That would mean the power u/s

34 has been invoked by the Deputy Commissioner after a period of six years and seven months from the date of completion of the assessments for the years 1978-79 and 1979-80. But the fact remains that the proceedings had been initiated by the Deputy Commissioner suo motu. He is fully aware that the action has been taken by him u/s 34 after a period of more than six years. When no time-limit is prescribed for exercising the power suo motu affecting the interests of the partners, the authority conferred with such power is bound to show cause for such delay. At least the notice proposing such action must reveal the circumstances leading to such delay. Annexure "IV" notice does not disclose any circumstance whatsoever justifying the delay in taking suo motu action. Annexure "V" order also does not contain any circumstance in that regard. This is fatal to the case of the Department.

28. When completed assessments are reopened after a lapse of many years by invoking the suo motu power of revision serious prejudice would be caused to the assessee. The result in such circumstances would be to unsettle matters which are already settled. Therefore, it is the inherent duty of the Deputy Commissioner to state the circumstances leading to the delay in initiating the action u/s 34. It is apposite to note that even a contention has been raised in the present revision petitions to the effect that the proceeding initiated by the Deputy Commissioner is vitiated for delay. That is urged as a question of law before this court by counsel for the petitioners. When such a question has been raised, may be for the first time, this court is bound to examine it. In this context, it is pertinent to note that no attempt has been made by the respondent to explain the cause for the delay or to disclose the circumstances which prevented the early action, at least before this court. That will amount to clear laches on the part of the respondent. In this state of affairs, we are constrained to hold that annexure "VI" order is also invalid for reason of delay and laches.

29. In view of the discussion hereinbefore, the proceeding initiated by the Deputy Commissioner u/s 34 of the Act is set aside. All the impugned orders in these tax revision cases are accordingly quashed. The original assessment orders passed in favour of the petitioners for the years 1978-79 and 1979-80 are declared final and conclusive and they are accordingly restored.

30. The tax revision cases are allowed.