
**Shaw Wallace 81 Company Ltd. Vs Assistant Commissioner of Income
Tax, Central Circle XXVIII, Kolkata and Others**

Writ Petition No. 1888 of 2006

Court: Calcutta High Court

Date of Decision: April 28, 2010

Acts Referred:

Constitution of India, 1950 " Article 226#Income Tax Act, 1961 " Section 139, 139(1),
139(4), 142, 142(1)#Limitation Act, 1963 " Section 5

Citation: (2010) 4 CALLT 1

Hon'ble Judges: Indira Banerjee, J

Bench: Single Bench

Advocate: Debi Prasad Pal, Mr. Abhratosh Majumdar, Mr. Paritosh Sinha, Mr. Amitava Mitra,
Ms. Anupa Banerjee, Mr. Dolon Dasgupta and Mr. Abhra Majumder, for the Appellant; Dipak Kr.
Some and Mr. Ramesh Chowdhury, for the Respondent

Judgement

Indira Banerjee, J.

In this writ application, the Petitioner has, inter alia, challenged a notice dated 1st November, 2006 issued by the

Respondent No. 1 u/s 148 of the Income Tax Act, 1961, for the Assessment Year 1997-98, on inter alia the ground that the
impugned notice was

time barred.

2. The Petitioner filed its return of income for the Assessment Year 1997-98 on or about 16th February, 2000 showing its taxable
income as

"Nil". In the meanwhile on 24th August, 1998 and on 3rd November, 1999 notices u/s 142(1) of the Income Tax Act were issued to
the

Petitioner by the Assessing Officer.

3. The relevant provisions of the Income Tax Act relating to the furnishing of returns, were, at the material time as follows:

139. (1) Every person, if his total income or the total income of any other person in respect of which he is assessable under this
Act during the

previous year exceeded the maximum amount which is not chargeable to income tax, shall, on or before the due date, furnish a return of his income

or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such

other particulars as may be prescribed:

Provided that a person, not furnishing return this Sub-section and residing in such area as may be specified by the Board in this behalf by a

notification in the Official Gazette, and who at any time during the previous year fulfils any two of the following conditions, namely:

(i) is in occupation of an immovable property exceeding a specified floor area, whether by way of ownership, tenancy or otherwise, as may be

specified by the Board in this behalf; or

(ii) is the owner or the lessee of a motor vehicle; or (iii) is a subscriber to a telephone; or

(iv) has incurred expenditure for himself or any other person on travel to any foreign country,

Shall furnish a return, of his income during the previous year, on or before the due date in the prescribed form and verified in the prescribed manner

and setting forth such other particulars as may be prescribed.

Explanation 1. In this Sub-section, "due date" means -

(a) where the Assessee is a company, the 30th day of November of the assessment year;

(4) Any person who has not furnished a return within the time allowed to him under Sub-section (1), or within the time allowed under a notice

issued under Sub-section (1) of Section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of

the relevant assessment year or before the completion of the assessment, whichever is earlier:

Provided.....

.....

142. (1) For the purpose of making an assessment under this Act, the Assessing Officer may serve on any person who has made a return u/s 139

or in case the time allowed under Sub-section (1) of that section for furnishing the return has expired a notice requiring him, on a date to be therein

specified.:

(i) where such person has not made a return within the time allowed under Sub-section (1) of Section 139 or before the end of the relevant

assessment year, to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the

prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, or;

(ii) to produce, or cause to be produced, such accounts or documents as the Assessing Officer may require, or

(iii) to furnish in writing and verified in the prescribed manner; information in such form and on such points or matters (including a statement of all

assets and liabilities of the Assessee, whether included in the accounts or not) as the Assessing Officer may require:

Provided that:

(a) the previous approval of the Deputy Commissioner shall be obtained before requiring the Assessee to furnish a statement of all assets and

liabilities not included in the accounts;

(b) the Assessing Officer shall not require the production of any accounts relating to a period more than three years prior to the previous Year.

4. An order of assessment was passed by the Assessing Officer on 31st March, 2000, u/s 144 of the Income Tax Act, assessing the income of the

Petitioner for the Assessment Year 1997-98 at Rs. 81,21,22,860/- as against "nil" income returned by the Petitioner.

5. Aggrieved by the order of assessment, the Petitioner preferred an appeal before the Commissioner of Income Tax (Appeals). By an order

dated 20th June, 2001, the Commissioner of Income Tax (Appeals) enhanced the assessment made on 31st March, 2000 and computed the

taxable income of the Petitioner at Rs. 82,03,71,379/-.

6. Thereafter the Assessing Officer issued an order of assessment dated 8th August 2001, giving effect to the aforesaid appellate order dated 20th

June, 2001 of the Commissioner of Income Tax (Appeals) and computing the taxable income of the Petitioner at Rs. 82,03,71,379/-.

7. The Petitioner filed an appeal being ITA No. 1109 (Cal.) of 2001 before the Income Tax Appellate Tribunal, hereinafter referred to as the

Tribunal, against the order dated 20th June, 2001 of the Commissioner of Income Tax (Appeals). The appeal was partly allowed by the Tribunal,

by an order dated 28th February, 2002.

8. Against the order dated 28th February, 2002, the Petitioner preferred an appeal to this Court under Section 260A of the Income Tax Act (No.

144 of 2002). The said appeal was admitted by an order dated 28th February, 2002, on the questions of law formulated in the said order.

9. The Department also preferred an appeal u/s 260A of the Income Tax Act in this Court, against the order dated 28th February, 2002 along

with an application u/s 5 of the Limitation Act, 1963, for condonation of delay. It is submitted that even though the application for condonation of

delay has been allowed, the appeal has not yet been admitted.

10. On or about 5th November, 2004 the Assessment Officer passed an order of assessment in compliance with the order dated 28th February,

2002 of the Tribunal and determined the total income of the Petitioner at Rs. 79,82,04,130/-.

11. The Petitioner filed an appeal against the order dated 5th November, 2004 before the Commissioner of Income Tax (Appeals) and also made

an (sic) before the Assessment Officer for rectification of the said order (sic) 5th November, 2004.

12. The Assessing Officer rectified his order dated 5th November, 2004, an order dated 17th January, 2005 and determined the total income of

the Petitioner at Rs. 75,65,38,128/-.

13. By an order dated 12th February, 2008, the Commissioner of Income Tax (Appeals) allowed the appeal of the Petitioner against the order

dated 5th November, 2004.

14. There after, on 21st March, 2005, the Assessing Officer passed an assessment order determining the total income of the Petitioner at Rs. Rs.

53,84,47,712/- (sic). The Department appealed against the said order dated 12th February, 2008, to the Tribunal.

15. The Petitioner also filed an application u/s 254(2) of the Income Tax Act before the Tribunal being M.A. No. 221 (Kol.)(2005) for

rectification of the order dated 28th February, 2002.

16. The said rectification application was allowed by an order dated 19th September, 2005 whereby the learned Tribunal held that the order dated

28th February, 2002 had been passed on the basis, that notice u/s 142(1) had been issued on 24th August, 1997 whereas, in fact, the notice had

been issued on 24th August, 1998.

17. The learned Tribunal found that since no notice u/s 142(1) of the Income Tax Act had been issued before the end of the Assessment Year

1997-98, the return filed on 16th February, 2000 was invalid and not as per the provisions of the Act. The assessment on 31st March without

notice u/s 148 of the Act was a nullity and void.

18. Thereafter on 30th February, 2005, the Assessing Officer passed an order of assessment detemining the total income of the Petitioner at "Nil"

and the amount refundable to the Petitioner at Rs. 34,11,87,144/-. The aforesaid amount was refunded to the Petitioner on 20th September,

2006.

19. By an order dated 30th November, 2005, the Tribunal dismissed the appeal being ITA 1022/Kol/2005 against the order dated 12th

February, 2005 of the Commissioner of Income Tax (Appeals) as infructuous, in view of its order dated 19th September, 2005.

20. An appeal filed by the Department u/s 260A of the Income lax Act was apparently not admitted by this Court on the ground that the Same did

not involve any substantial question of law.

21. On or about 15th June, 2006, the Department filed an application u/s 254(2) of the Income Tax Act being M.A. No. 134/K/06 before the

Tribunal for rectification of the order dated 19th September, 2005 in view of retrospective amendment of Section 142(1) by insertion with effect

from 1st-April, 1990 of the following proviso:

Provided that where any notice has been served under this Sub-section for the purposes of this clause after the end of the relevant assessment year

commencing on or after the 1st day of April, 1990 to a person who has not made a return within the time allowed under Sub-section (1) of Section

139 or before the end of the relevant assessment year, any such notice issued to him shall be deemed to have been served in accordance, with the

provisions of this Sub-section.

22. On 3rd November, 2006, the Petitioner received the impugned notice dated 1st November, 2006 u/s 148 of the Income Tax Act for the

Assessment Year 1997-98.

23. In the said notice it was alleged that the Assessing Officer had reasons to believe that the Petitioner's income chargeable to during the

aforesaid assessment year, had escaped assessment within the meaning of Section 147 of the Act and that he proposed to reassess the income.

The Petitioner was directed to file a return in the prescribed form of its income for the said assessment year.

24. Sections 147, 148(1) and 149(1) of the Income Tax Act are set out hereinbelow:

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may,

subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped

assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the

depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections

148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under Sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action

shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax

has escaped assessment for such assessment year by reason of the failure on the part of the Assessee to make a return u/s 139 or in response to a

notice issued under Sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for

that assessment year:

Explanation 2.-For the purpose of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped

assessment, namely:

(a) where no return of income has been furnished by the Assessee although his total income or the total income of any other person in respect of

which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax;

(b).....

(sic)(1) Before making the assessment, reassessment or recomputation u/s 147. the Assessing Officer shall serve on the Assessee a notice

requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of

which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in

the prescribed manner and setting forth such other particulars as, may be prescribed; and the provisions of this Act shall, so far as may be apply

accordingly as if such return were a return required to be furnished u/s 139:

149. (1) No notice u/s 148 shall be issued for the relevant Assessment year, $\tilde{A}^{-}\hat{A}_{\hat{L}}\hat{A}^{\frac{1}{2}}$

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under Clause (b);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which

has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

Explanation.-In determining income chargeable to tax which has escaped assessment for the purposes of this Sub-section, the provisions of

Explanation 2 of Section 147 shall apply as they apply for the purposes of that section.

(2) The provisions of Sub-section (1) as to the issue of notice shall be subject to the provisions of Section 151.

(3) If the person or whom a notice u/s 148 is to be served is a person treated as the agent of a non-resident u/s 163 and the assessment,

reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not

be issued after the expiry of a period of two years from the end of the relevant assessment year.

The Petitioner objected to the said notice by a letter dated 24th November, 2006, inter alia, contending that the Assessing Officer could not

assume jurisdiction u/s 147 on the ground of income chargeable to tax having escaped assessment, after lapse of over eight years from the end of

the relevant Assessment Year.

25. The objection of the Petitioner was rejected by a letter dated 27th November, 2006 wherein it was contended that Section 150 of the Income

Tax Act, enabled the Assessing Officer to issue notice u/s 148. Section 150 provides as follows:

150. (1) Notwithstanding anything contained in Section 149, the notice u/s 148 may be issued at any time for the purpose of making an assessment

or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in a

proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of Sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in

that Sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the

time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision

limiting the time within which any action for assessment, reassessment or recomputation may be taken.

26. Dr. Pal appearing on behalf of the Petitioner submitted that the impugned notice having been issued on 1st November, 2006, after expiry of six

years, the notice was barred by limitation and hence without jurisdiction in view of Section 147 read with Section 149(1)(b) of the Income Tax

Act.

27. On the other hand, Mr. Som, appearing on behalf of the Respondents, argued that the notice had been issued in consequence of the finding in

the appellate order of the Tribunal dated 19th September, 2005, and, therefore, exempt from the bar of limitation in view of Section 150(1) read

with Section 154(1A) of the Income Tax Act.

28. The relevant part of the order of the Tribunal is extracted hereinbelow for convenience:

In this way, we find that the facts and law involved in the present case are identical. In the present case, the Assessee had not filed the return suo

motu within a time prescribed u/s 139(1), the Revenue had not issued any notice u/s 142(1) before the end of the assessment year and the return

furnished by the Assessee on 16.2.2000 had been filed beyond the time limit prescribed u/s 139(4) and was invalid return. Therefore, a notice u/s

148 has to be issued when an assessment, reassessment or recomputation is made u/s 147 to tax income which had escaped assessment. This is a

case of assessment without there being an earlier assessment. Therefore, the assessments completed without issuing notice u/s 148 are invalid and

bad in law and are accordingly liable to be quashed.

29. It is not for this Court to adjudicate the legality and/or correctness of the aforesaid order of the Tribunal, which is not in issue before this Court

in this writ application under Article 226 of the Constitution of India.

30. The question which arises for determination of this Court, in this writ application is whether the impugned notice had been issued to give effect

to any finding or direction contained in the order of Tribunal, so as to lift the bar of limitation u/s 149 of the Income Tax Act, as argued by Mr.

Som.

31. Dr. Pal rightly pointed out that the Tribunal had merely held that no assessment could be made without service of notice u/s 142(1) of (sic)

Tax Act. Notice u/s 142(1) not having been issued within (sic) statutory period, the entire proceedings were invalid.

32. (sic) As submitted by Dr. Pal, while analyzing the consequences of omission (sic) notice u/s 142(1), the Tribunal only made an observation (sic)

when a notice had not been issued u/s 142(1) within the (sic) period, it was not open to the assessing authority to proceed with the assessment,

unless a notice u/s 148 had been issued.

33. (sic) Dr. Pal submitted that the observation that no assessment could be (sic) when no notice u/s 142(1) had been served, unless notice u/s

148 was served, could not be construed as a finding or a direction of the Tribunal, to lift the bar of limitation u/s 150(1) of the Income Tax Act..

34. (sic). Section 150(1) provides that notwithstanding anything contained in Section 149, notice u/s 148 may be issued at any time for the

purpose of making an assessment or reassessment or recomputation, in consequence of or to give effect to any finding or direction contained in an

order passed by any authority, in a proceeding under this Act, by way of appeal, reference or revision or by a Court in any proceeding under any

other law.

35. Section 150(1) is conjointly to be read with Section 153(3)(ii) of the Income Tax Act which lifts the bar. of limitation for making an order of

assessment within the period prescribed u/s 153(1). The bar of limitation would not be attracted, when an order was passed as a consequence or,

or to give effect to any finding or direction in any order of a higher authority.

36. In support of his submission that the impugned notice was not issued as a consequence of or to give effect to any finding of Court Dr. Pal cited

the judgment of the Constitution Bench of the Supreme Court in Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur

Kheri, .

37. In Murlidhar Bhagwan Das (supra) the Assessing Officer had issued a notice u/s 34 of the Income Tax Act, 1922 pursuant to an order of the

Appellate Commissioner holding that a particular amount could not be assessed in the assessment year 1949-50, but should be assessed in the

Previous assessment year.

38. Dealing with the contention as to what constitutes a finding or a direction, the Supreme Court observed that a finding was only that, which was

necessary for disposal of an appeal in respect of an assessment of a particular year.

39. The judgment of the Constitution Bench in Murlidhar Bhagwan Das (supra) has been followed by the Supreme Court in Rajinder Nath and

Others Vs. Commissioner of Income Tax , Delhi, .

40. In Rajinder Nath (supra), the Income Tax Officer treated two buildings as belonging to a firm, comprised of a father, and his two major sons

as partners. In the assessment of the firm for the assessment year 1955-56 and 1956-57, the Income Tax Officer estimated the cost of

construction of the buildings at a higher value than that disclosed, and assessed the excess to tax as income of the firm.

41. On appeal the Appellate Assistant Commissioner (AAC), deleted the addition of the excess amount, holding that the firm was not the owner of

the property. The AAC observed that the amount advanced for the construction of the building had been debited, in equal share, to the father, his

two major sons and one minor son.

42. The AAC also observed that the Income Tax Officer was free to take action to assess the excess amount as income of the co-owners.

Thereafter the Income Tax issued notices u/s 147 of the Income Tax and reopened the individual assessments of the co-owners.

43. The question before the Supreme Court was, whether the bar of limitation was lifted, as a result of the finding that the excess amount arising

from the cost of construction of the building did not belong to the firm but to the individuals, and the observation that the Department was free to

take action against the three individuals.

44. The Supreme Court observed and held that the expression finding and direction were limited in meaning. The finding given in an appeal,

revision or reference out of an assessment, had to be a finding necessary for the disposal of the case of the particular Assessee and in relation to

the assessment year. To be a necessary finding it had directly to be evolved in the disposal of the case.

45. The Supreme Court quoted with full approval the law laid down by the Constitution Bench in Murlidhar Bhagwan Das (supra). The Supreme

Court observed as follows:

In the present case, the Appellant Assistant Commissioner found that the cost of constructing the two buildings had not been met by the

partnership firm. The firm had merely advanced money to the individual four co-owners, whose personal accounts in the books of the firm had

been debited accordingly. On that material the Appellate Assistant Commissioner held that the partnership was not the owner of the property and

consequently any excess over the disclosed cost of construction could not be added in the assessments of the firm. All that has been recorded is

the finding that the partnership firm is not the owner of the properties. It is true that the finding proceeds on the basis that the cost has been debited

in the accounts of the four co-owners. But that does not mean, without anything more, that the excess over the disclosed cost of construction

constitutes the concealed income of the Assessee. The finding that the excess represents their individual income requires a proper enquiry and for

that purpose an opportunity of being heard is needed to be given to the Assessee. Indeed, that is now plainly required by Explanation 3 to Section

153(3). The expression "another person" in the Explanation would include persons intimately connected with the person in whose case the order is

made in the sense explained by this Court in Murlidhar Bhagwan Das. It is one thing for the partners of a firm to be required to explain the

source(sic) of a receipt by the firm, it is quite another for them in their individual source(sic) status to be asked to explain the source of amounts

received by them as separate individuals. On such opportunity being provided it would have been open to the Assessee to show that the excess

alleged over the disclosed cost of construction did not constitute any taxable income. The finding contemplated in Explanation 3, it will be noted, is

a finding that the amount represents the income of another person. We are unable to hold that the observation of the Appellate Assistant

Commissioner can be described as such a finding in relation to the Assessee.

46. source(sic) In Commissioner of Income Tax, Shimla Vs. Greenworld Corporation, Parwanoo, , cited by Dr. Pal the Supreme Court held that

even though section 150 appeared to be of very wide amplitude, that would (sic) mean that recourse to reopening of the proceedings under

Sections 147 and 148 could be initiated at any point of time whatsoever. Proceedings under Sections 147 and 148 could only be initiated within

the period of limitation prescribed u/s 149. Section 150(1) was an exception which brought within its ambit only cases where reopening of the

proceedings might be necessary to comply with an order of a higher authority.

47. Mr. Som submitted that Section 150(1) overrides Section 149. Notice u/s 148 could be issued at any time in consequence of or to give effect

to any finding or direction contained in an order of a higher authority.

48. Mr. Som submitted that while Section 150 provides for assessment by issuing a notice u/s 148. Section 153(3) provides that the time limit for

assessment prescribed under Sub-section (2) of Section 153 would not apply to a notice in consequence of or to give effect to any finding or

direction contained in an order of a higher authority.

49. Mr. Som submitted that Section 153(3) (ii) and (iii) carved out exceptions to the rigid formula laid down by the Constitution Bench in

Murlidhar Bhagwan Das (supra).

50. In support of his submission, Mr. Som cited B.A.R. Abdul Rahman Saheb v. Income Tax Officer, A-Ward reported in 100 ITR 542;

Sukhdayal Pahwa Vs. Commissioner of Income Tax, and Commissioner of Income Tax Vs. Amy Colabawala,

51. Mr. Som submitted that the meaning of the word "consequence" as given in the Black's Law Dictionary (6th Edn.) is ""result following in

natural sequence from an event"", Mr. Som submitted that the event in the instant case was the order of the Tribunal and the result was the notice

u/s 148.

52. Mr. Som submitted that the "event" in this case is the order of the Tribunal and the "result" is the notice u/s 148. Mr. Som submitted that when

return had not been filed within the assessment year, the income was required to be dealt with in accordance with the provisions of Section 147

read with Section 148 of the Income Tax Act.

53. Mr. Som emphasized the parts of the order of the Tribunal extracted hereinbelow:

Once that time limit is over and the Assessee has not filed any return, it becomes a case of income escaping assessment and for that issuance of

notice u/s 148 is a must.

In the present case, the Assessee had not filed the return suo motu within the time prescribed u/s 139(1), the Revenue had not issued any notice u/s

142(1) before the end of the assessment year, and the return furnished by the Assessee on 16.02.2000 had been filed beyond the time limit

prescribed u/s 139(4) and was invalid return. Therefore, a notice u/s 148 has to be issued when a assessment, reassessment or re-computation is

made u/s 147 to tax income which has escaped assessment.

54. Distinguishing the Constitution Bench judgment in Murlidhar Bhagwan Das (supra) Mr. Som submitted that the said judgment had been

rendered in the context of the Income Tax Act, 1922.

55. In Murlidhar Bhagwan Das (supra) the Constitution Bench of the Supreme Court constituted of 5 Judges considered the scope of the second

proviso to Section 34(3) of the Income Tax Act, 1922 as amended by Act 25 of 1933, which read as follows:

Provided further that nothing contained in this section limiting the time within which any action may be taken or any order, assessment or

reassessment may be made, shall apply to a reassessment made u/s 27 or to an assessment or reassessment made on the Assessee or any person

in consequence of or to give effect to any finding or direction contained in an order u/s 31, Section 33, Section 33A, Section 33B, Section 66 or

Section 66A.

56. The scope of the proviso was confined to an assessment or reassessment Assessee or made on the any person ""in consequence of order or to

give effect to any finding or direction contained in any order"" under the provisions of the Income Tax Act referred to therein.

Subba Rao, J. speaking for the majority held as follows:

With this background let us give a closer look to the relevant terms of the proviso. The first part of the proviso released the operation of the

proviso from the restrictions imposed by Section 34 only in respect of the time-limit within which any action may be taken or any order of

assessment or reassessment may be made. It means that the proviso continues to be subject to the other restrictions imposed under the section and

it cannot override the said provisions in that regard. Under the proviso, the period of limitation will not apply to a reassessment made u/s 27 or to

an assessment or reassessment made on the Assessee or any person in consequence of or to give effect to any finding or direction contained in an

order u/s 31, Section 33, Section 33B, Section 66 or Section 66A of the Act....

Now, let us scrutinize the expressions on which strong reliance is placed for the contrary conclusion. The words relied upon are ""section limiting the

time"", ""any person"", ""in consequence of or to give effect to any finding or direction"". Pointing out that before the amendment the word ""subsection

was in the proviso but it was replaced by the expression ""section"", contended that this particular amendment will be otiose if it is confined to the

assessment year under appeal, for it is said that under no Circumstances the income tax Officer would have to initiate proceedings for the said year

pursuant to an order made by an Appellate Assistant Commissioner. This contention is obviously untenable....

A ""finding"", therefore, can be only that which is necessary for the disposal of an appeal in respect of an assessment of a particular year. The

Appellate Assistant Commissioner may hold, on the evidence, that the income shown by the Assessee is not the income for the relevant year and

thereby exclude that income from the assessment of the year under appeal. The finding in that context is that that income does not belong to the

relevant year. He may incidentally find that the income belongs to another year, but that is not a finding necessary for the disposal of an appeal in

respect of the year of assessment in question. The expression ""direction"" cannot be construed in vacuum, but must be collated to the directions

which the Appellate Assistant Commissioner, inter alia, u/s 31(3)(b), (c) or (e) or Section 31(4). The expression ""direction"" in the proviso could

only refer to the directions which the Appellate Assistant Commissioner or other tribunals can issue under the powers conferred on him or them

under the respective sections. Therefore, the expression ""finding"" as well as the expression ""direction"" can be given full meaning, namely, that the

finding is a finding necessary for giving relief in respect of the assessment of the year in question and the direction is a direction which the appellate

or revisional authority, as the case may be, is empowered to give under the sections mentioned therein. The words ""in consequence of or to give

effect to"" do not create any difficulty, for they have to be collated with, and cannot enlarge, the scope of the finding or direction under the proviso. If

the scope is limited as aforesaid, the said words also must be related to the scope of the findings and directions.

57. Dayal & Mudholkar, JJ. however, held that the finding of a Tribunal was its conclusion on a point agitated before it and for a conclusion to

amount to a finding, it was not necessary that it should be the final and ultimate conclusion. Their Lordships held that the proviso to Section 34

Sub-section (3) must be given a wide significance so as to include not only findings necessary for disposal of the appeal but also findings which

were incidental to it.

58. This Court is bound by the majority decision in Murlidhar Bhagwan Das (supra). It is immaterial that the judgment was rendered in the context

of the Income Tax Act, 1922, the expression ""in consequence of or to give effect to any finding or direction"" in the proviso to Section 34(3) of the

Income Tax Act being identical to the expression ""in consequence of or to give effect to any finding or direction contained in an order"" in Section

150(1) of the Income Tax Act, 1961.

59. As rightly argued by Dr. Pal none of the judgments cited by the Revenue suggested that the principle laid down by the Constitution Bench in

Murlidhar Bhagwan Das (supra) has been altered or modified. In fact the principles laid down by the Constitution Bench has been applied in the

facts and circumstances of each case.

60. In AMY Colabawala (supra) a Division Bench of the Kerala High Court] held as follows:

Section 150(1) overrides the provisions of Section 149 prescribing the time-limit for issuance of a notice u/s 148. Section 150(1) provides that

such notice may be issued at any time for the purpose of mailing an assessment or reassessment or recomputation in consequence of or to give

effect to any finding or direction as contained in an appellate order or revisional order, etc. The conditions of Section 150(1) are overriding as is

clear from the non obstante opening clause. The bar of limitation is automatically removed in cases and circumstances falling within Section

150(1)....

A finding"" can be, as observed by the apex Court in Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri, , only

that which is necessary for the disposal of an appeal in respect of an assessment of a particular year. In that context, ""finding"" is the conclusion

which the prescribed authority/ forum has necessarily to reach so as to dispose of the appeal before it. The expression ""finding"" or ""direction

cannot be treated as in vacuum. The words ""in consequence of" or ""to give effect to any finding or direction"" have to be collated with and cannot

enlarge the scope of the finding or direction mentioned in the provision. The finding must be in respect of a particular person or persons and in

respect of the particular assessment year. It is to be noted that the decision in Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas,

Lakhimpur Kheri, was rendered in relation to Section 34(3) (second proviso) of the 1922 Act. Though Section 153(3)(ii) is modelled on the lines

of the earlier provision, Explanations 2 and 3 have enlarged the scope. Explanation 2 creates a fiction. Explanation 3 erodes the iron jacket of any

person contemplated in Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri, . It can be a person unconnected

with the Appellant. That being the position, the answer to questions Nos. 1 and 2 are in the negative, in favour of the Revenue and against the

Assessee. In view of these answers, it is not necessary to answer the third question.

The references are disposed of accordingly.

61. In the aforesaid case too the Court held that the words "in consequence of or "to give effect to any finding or direction" had to be collated with

an could not enlarge the scope of the finding or direction mentioned in the provision. The Court, however, considered Explanations 2 and 3 of

Section 153(3)(ii) set out hereinbelow:

Explanation 2.~½Where, by an order referred to in Clause (ii) of Sub-section (3), any income is excluded from the total income of the Assessee

for an assessment(sic) year, then, an assessment of such income for another assessment(sic) year shall, for the purposes of Section 150 and this

section, dec(sic) to be one made in consequence of or to give effect to any finding direction contained in the said order.

Explanation 3.~½Where, by an order referred to in Clause (ii) of Sub-section any income is excluded from the total income of one person and

held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of Section 150 and this

section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other

person was given an opportunity of being heard before the said order was passed"" (sic) In AMY Colabawala (supra) two sisters were owners of

an agricultural (sic) which had been sold resulting in realisation of some surplus. The (sic)plus was taxed in the hands of the two sisters treating the

same as association of persons. When the matter was decided by the Tribunal in appeal, the Tribunal held that the two sisters were co-owners of

the property and they had not done anything by which they could be said to have generated income and therefore could not be treated as

association of persons. On the basis of those observations, notice u/s 148 was served on the two sisters.

63. Dr. Pal argued that the aforesaid decision did not consider the judgment of the Supreme Court in Raginder Nath (supra) where under similar

circumstances the Supreme Court had held that a finding or a direction could not be relied upon for lifting the bar of limitation. It is, however, not

for this Court to go into the question.

64. In Sukhdayal Parwav. Commissioner of Income Tax a Division Bench of Madhya Pradesh High Court discussed the provisions of Sections

148 to 151 of the Income Tax Act, 1961 and held as follows:

Section 150(1) of the Act is an exception to the provisions of Section 149 because it starts with a non obstante clause ""notwithstanding anything

contained in Section 149"". Thus, when a notice u/s 148 is issued at any time for the purposes for making an assessment or reassessment in

consequence of or to give effect to any finding or direction contained in an appellate order, the provisions of Section 149 as a whole will not be

applicable. Sub-section (2) of Section 149, which makes provisions of Sub-section (1) subject to the provisions of Section 151, will also not be

applicable in view of the clear language of Section 150(1). In fact, in the instant case, it was not necessary, for the ITO to obtain the sanction either

of the Commissioner or of the Board u/s 151 of the Act because the case was fully covered by Section 150(1).

65. In Sukhdayal Parwa (supra) the Assessee was assessed as an individual, for the Assessment Year 1959-60. On appeal, the Appellate

Assistant Commissioner passed an order dated 31st August, 1970 holding that the income could be assessed in the status of the Assessee as

Hindu Undivided Family and not as an individual. Consequent to the aforesaid order the Income Tax Officer reopened the assessment with a

notice u/s 148 inter alia observing ""In view of the finding of the AAC it became imperative to reopen the assessment of the HUF for the assessment

year 1959-60 u/s 147A read with Section 150 of the IT Act, 1961."" Explanation 3 to Section 153(3)(ii) was invoked. The judgment is thus

distinguishable.

66. In B.A.R. Abdul Rahman Saheb v. Income Tax Officer, A-Ward, Chittur and Anr. (supra) unexplained investments had been added to the

income of the assessment year 1959-60. The Appellate Assistant Commissioner held that the amounts representing unexplained investments should

be taxed in the relevant assessment years 1957-58 and 1958-59 and not 1959-60.

67. The Division Bench of Andhra Pradesh High Court found, and rightly that the effect of Section 150 and Sub-section (3) of Section 153 read

with explanation (2) was that, if income was deleted from assessment by an order of a higher authority, on the ground that it was not income of that

year but of a different year then assessment for that year would for the purpose of Section 150 be deemed to be made in consequence of or to

give effect to any finding or direction contained in the said order.

68. There can be no dispute with the proposition that Section 150 carves out an exception to the provisions of Section 149 and Section 151. The

bar of limitation introduced by Section 149(1)(b) is, however, not lifted by the order of the Appellate Tribunal u/s 254(2) of the Income Tax Act,

there being no finding of the Tribunal necessary to dispose of the appeal. Explanations 2 and 3 of Section 153(3)(ii) are, however, not attracted in

this case. The judgments cited by Mr. Som are of no assistance to the Revenue

69. The only issue before the Tribunal was whether the assessment was without jurisdiction, when no notice u/s 142(1) had been issued within the

relevant assessment year. The Tribunal held the assessment was without jurisdiction. Any other observation was incidental and could not be treated

as a finding for the purposes of Section 153(3)(ii) or Section 150(1) of the Income Tax Act.

70. As rightly pointed out by Dr. Pal, the Tribunal did not even allow the prayer of the Department to set aside the assessment for re-

determination. There was no direction of the Tribunal on the Assessing Officer to reopen assessment u/s 147 of the Act. The impugned notice was

thus clearly barred by limitation, the same having issued after expiry of six years.

71. For the reasons discussed above, the impugned notice cannot be sustained and the same is set aside and quashed.

The writ petition is disposed of accordingly.