should be held that it is a provision of law which is applicable to proceedings which are being held by the Tribunal, and that it has not application outside those proceedings. On these grounds I think the Court below was right. The debtor has had and still has his remedy by application under section 5 and if he does not choose to take it then the civil Court must proceed with the case under the ordinary law and if necessary pass a decree without regard to the provisions of section 17. Parties to bear their own costs.

Parties to appear before the trial court on 4th August 1952.

CIVIL WRIT

Before Falshaw and Kapur, JJ.

MAHABIR PARSHAD, Advocate, Hissar,—*Petitioner*

versus

THE COMMISSIONER OF INCOME-TAX, PUNJAB, PEPSU, HIMACHAL PRADESH AND BILASPUR AT SIMLA,—*Respondent.*

July 17th 1952

Civil Writ No. 310 of 1951

Constitution of India, Article 226—Order passed before the coming into force of the Constitution—Whether such order can be interfered with under Article 226 of the Constitution—Income-tax Act (XI of 1922), Section 33-A(2) "Made one year from the date of the order", whether, mean not merely within one year from the date of the order, but within one year from the date when the petitioner is notified of that order—Interpretation of Statutes—Rule of casus omissus*—when applies.*

Held, that the powers conferred by Article 226 cannot affect orders passed before the coming into force of the Constitution and the Court has no power to interfere with such orders.

Held further, that the phrase "made one year from the date of the order", in section 33-A(2) of the Income-tax Act means one year from the date of the order and not one year from the date the petitioner is notified of the order, and the time begins to run from the date of the order and not from the date when it is communicated to the assessee.

Held also, that the distinction in the various sections of the Income-tax Act as to the running of time from the date of the order and from the date of knowledge is to be taken to be intentional, and there is no question of the applicability of the rule of *casus omissus* to such a case and the words in section 33-A(2) of the Income-tax Act must be given their natural meaning. Moreover no case can be found to authorise any Court to alter a word so as to produce a *casus omissus*.

The Secretary of State for India in Council v. Gopisetti, Narayanaswami Naidu Garu (I), and K.V.E. Swaminathan alias Chidambaram Pillai v. *Letchamanan Chettiar and others* relied upon.

Petition under Article 226 of the Constitution of India praying that—

(a). *Writ in the nature of mandamus be issued to the respondent directing him to consider the application of the petitioner filed under section 33-A (2) on merits and to dispose of the same according to law;*

(b) *any other relief or the appropriate writ may be issued as the circumstances of the case may require; and*

(c) *costs may be awarded.*

P. C. PANDIT, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

JUDGMENT

Kapur J. KAPUR, J. Counsel moves for issue of a writ in the nature of mandamus against the Commissioner of Income-tax, Punjab, in regard to an order passed on the 6th June 1948.

The facts of this case are that in regard to an assessment order for the year 1944-45 a penalty of Rs. 1,200 was imposed on the petitioner under section 28 of the Income-tax Act which on appeal to the Assistant Appellate Commissioner was reduced to Rs 900 but it appears that the order passed by the Appellate Assistant Commissioner, Punjab, was received by the petitioner after the 27th November 1946 ; what exact date it was is not stated in the petition. Under section 33-A (2)

of the Income-tax Act the petitioner filed a revision petition on the 26th November 1947. On the 6th June 1948, the Commissioner dismissed the petition as being barred by time. On the 24th June 1948, the petitioner filed an application for review against the above order under section 35 of the Income-tax Act. The petitioner alleges that no order was passed on this application, and that on the 8th April 1951, he made another application stating that his previous application, dated the 24th June had been mislaid. He referred in his new application to a judgment of the Madras High Court which has since been reported as *Muthiah Chettiar* v. *The Commissioner of Income-tax, Madras* (1), in which the question of limitation was decided and prayed that his revision petition be restored and he be given a personal hearing. On the 22nd September 1951, this application was dismissed on the ground that the previous order was correct. He has now come up with an application for a writ of mandamus.

The order in regard to which he wishes a writ to issue is dated the 6th June 1948, and our power of issuing writs was conferred by the Constitution which came into force on the 26th January 1950. It has been held in *Keshavan Madhava Menon* v. *The State of Bombay* (2), that the provisions of Article 13 of the Constitution have no retrospective effect and therefore it cannot affect an act which was done before the commencement of the Constitution. As the Constitution became operative only on and from the 26th January 1950, the powers conferred under Article 226 cannot affect orders which had already been passed, nor would this Court have the power to interfere with such orders. This view is consistent with the view taken by a large number of other High Courts.

As the question of costs may arise I think it necessary to give a finding on the merits of the case also. According to section 33-A of the Income-tax Act the Commissioner may by his

(1) A. I. R. 1951 Mad. 204
(2) 1951, S. C. R. 228

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own motion call for the record of any proceedings and may pass such orders as he thinks fit not being prejudicial to the assessee, and according to the proviso he cannot revise any such order if " (c) the order has been made more than one year previously ". The petitioner relies upon section 33-A (2) which is in the following terms :—

> " (2) The Commissioner may, on application by an assessee for revision of an order under this Act passed by any authority subordinate to the Commissioner, made within one year from the date of the order, call for the record of the proceeding in which such order was passed, and on receipt of the record may make such inquiry or cause such inquiry to be made, and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit ".

The submission of the petitioner's counsel is that the words in this subsection " made within one year from the date of the order " mean not merely within one year from the date of the order but within one year from the date when the petitioner is notified of that order, and he relies on the judgment of the Madras High Court which I have referred to above, namely *Muthiah Chettiar* v. The *Commissioner of Income-Tax, Madras* (1).

In order to determine the meaning of these words it may be necessary to refer to some of the other sections of the Act. Section 31 (5) of the Act provides—

> " 31. (5) The Appellate Assistant Commissioner shall, on the conclusion of the Appeal, communicate the orders passed by him to the assessee and to the Commissioner ".

Section 33 (1) is as follows :—

> "33. (1) Any assessee objecting to an order passed by an Appellate Assistant

(1) A. I. R. 1951, Mad. 204

> Commissioner under section 28 or section 31 may appeal to the Appellate Tribunal within sixty days of the date on which such order is communicated to him."

In section 33-A (1) the power can be exercised by the Commissioner if it is not made more than one year previously. In the second subsection the words used are "made within one year from the date of the order". In section 35 again the words used are "The Commissioner or Appellate Assistant Commissioner may, at any time within four years from the date of any order passed by him in appeal * * * *". In section 66 of the Act the words used are "Within 60 days of the date upon which he is served with notice of an order under subsection (4) of section 33 the assessee * *". Section 67-A of the Act provides for the computation of periods of limitation prescribed for appeals and applications under the Act and allows the exclusion of the time requisite for obtaining a copy as also the day on which the order complained of was made. In rule 17-A of the Excess Profits Tax Rules an appeal lies to the Appellate Tribunal and the period of limitation is given in the following words :—

> "* * shall be made at any time before the expiry of sixty days from the date of such order".

In rule 17-A the date from which limitation begins is the date of receipt of the order. In Civil Reference No. 8 of 1948 decided by Achhru Ram and Harnam Singh, JJ., the period of limitation under rule 17-A of the Excess Profits Tax Rules was considered and it was held that it began from the date of the order and not from the date of the receipt of the order by the assessee. *Mohammad Zaman and another* v. *Hans Raj Shah* (1), was quoted, but was not followed on the ground that

1) A. I. R. 1938, Lah. 707

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it was inapplicable being a case under the Code of Civil Procedure.

This question was again considered in Civil Reference No. 13 of 1949 by a Bench consisting of the Hon'ble the Chief Justice (Eric Weston, C.J.) and my learned brother Falshaw, J. The previous decision was followed and it was held that time began to run from the date of the order and not from the date when it was communicated to the assessee. Mr Pandit submits that this is a case of *casus omissus* and that we must introduce words the effect of which will be that period of limitation would run from the date when the order was communicated to the petitioner or the date on which the petitioner had the opportunity of coming to know of the order, and he has relied on the Madras judgment, *Muthiah Chettiar* v. *The Commissioner of Income-tax, Madras* (1). I shall discuss this case a little later, but I would first consider the question whether the rule of *casus omissus* applies to this case.

In *Mersey Docks* v. *Henderson* (2), Lord Halsbury said :—

> "No case can be found to authorise any Court to alter a word so as to produce a *casus omissus*,"

In *Crawford* v. *Spooner* (3), it was observed by the Judicial Committee of the Privy Council :—

> "We cannot aid the Legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there."

Craies at page 68 has stated the law as follows :—

> "In other words, the language of Acts of Parliament, and more especially of modern Acts, must neither be extended

(1) A. I. R. 1951. Mad. 204
(2) (1888) 13 A. C. 595 at p. 602
(3) (1846) 6 Moore P. C. 1 at p. 8

beyond its natural and proper limits, in order to supply omissions or defects, nor strained to meet the justice of an individual case."

In *Whitley* v. *Chappell* (1), Hennen, J., said—

"* * *but it would be wrong to strain words to meet the justice of the present case, because it might make a precedent, and lead to dangerous consequences in other cases."

In that case the question was whether the Legislature had used words wide enough to make the personation of a dead person an offence. The words used in the Act were "a person entitled to vote" and it was held that it can only mean a person who is entitled to vote at the time at which the personation takes place.

In *Gwynne* v. *Burnell* (2), Lord Brougham observed :—

"If we depart from the plain and the obvious meaning on account of such views (as those pressed in argument on 43 Geo. 3, c. 99) we do not in truth construe the Act, but alter it. We add words to it, or vary the words in which its provisions are couched. We supply a defect which the Legislature could easily have supplied, and are making the law, not interpreting it. This becomes peculiarly improper in dealing with a modern statute, because the extreme conciseness of the ancient statutes was the only ground for the sort of legislative interpretation frequently put upon their words by the Judges. The prolixity of modern statutes, so very remarkable of late, affords no grounds to justify such a sort of interpretation."

(1) (1868) 4 Q. B. 147 at p. 149

(2) (1840) 7 Cl. & F. 572 at p. 696

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In *Kamala Ranjan Ray* v. *Secretary of State for India in Council* (1), Lord Wright observed at p. 231 :—

> "The fact seems to be that the various Acts have provided for all contingencies as to transmission and devolution of the estate, but have not provided for the special case in which the *patni* estate is not transmitted or devolved, but annulled and determined. It may be that there is here a *casus omissus*, but if so that omission can only be supplied by statute or statutory action. The Court cannot put into the Act words which are not expressed, and which cannot reasonably be implied on any recognised principles of construction. That would be a work of legislation not of construction and outside the province of the Court."

In the other sections of the Act which I have mentioned either similar words have been used or where the legislature thought it necessary it has supplied the words the effect of which is that limitation begins to run from the date of knowledge. The distinction between the various sections in the Act must, in my opinion, be taken to be intentional. This was the rule laid down by Blackburn, J., in *R.* v. *Cleworth* (2).

In certain cases the Courts in England have considered words which are similar to those used in section 33-A of the Income-tax Act and have held that they must be given their natural meaning and refused to make any additions.

In the *King* v. *The Justices of Staffordshire* (3), two justices made an order under a statute on the 2nd December 1800. No appeal to the Quarter Sessions was lodged till the 29th April 1802. The appeal was dismissed on the ground that it was preferred too late. Writ of mandamus was then sought to be issued on the ground that the

(1) I. L. R. (1939) 1 Cal. 222 (P.C.)
(2) (1864) 4 B. S. 927 at p. 934
(3) 102 E. R. 554

appellants did not have notice of the order. The words of the statute giving right of appeal were "the party grieved by any such order or proceeding at the next Quarter Sessions after such order made or proceeding had." Lord Ellenborough, Ch. J., said at p. 555 :—

> "Now it is attempted to substitute the words 'after notice of such order made,' in lieu of the words in the statute 'after such order made : ' but they are different things, and the Legislature having made use of the latter words, we cannot say that the appeal may be made at the next Quarter Sessions after notice of the order. It is, however, a case of great grievance and hardship where the interests of parties are thus invaded by an order made behind their backs ; and may be a good ground to apply to Parliament for a revision of the clause of appeal ; but we cannot remedy the abuse."

No doubt Le Blang, J., did say that "if the right of appeal were to depend, in the case of a public highway in which all the King's subjects are interested, on personal notice in respect of each subject, there would never be an end of the time for appealing". But that may have been a reason for rejecting the contention of the petitioner ; but, as was observed by Lord Ellenborough, it would be a ground for applying to Parliament for revision and not for the Courts to remove the defect.

In *The Queen* v. *The Justices of Derbyshire* (1), an information was laid before two justices stating that trust funds for repairs of a certain turnpike road were insufficient and praying for their order under the statute. Notice was given to the surveyor who attended and opposed the application. The justices made an order holding that the trust funds were insufficient and directing payment by the surveyor. The monies were

(1) 115 E. R. 461

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to be paid on June the 1st and September the 1st, and the order was made on the 23rd April 1844. The monies not having been paid warrant of distress was served with a copy of the order on July the 5th. Within six days of the service of this order the surveyor gave the justices notice of appeal reciting that he had for the first time notice on the 5th July. Objection was taken at the Court of Sessions that the appeal was barred by time and that notice should have been given within six days after the adjudication. This objection was upheld. It was held that the time of appeal runs from the making of the order and not from the service of the order. The judgment in *King* v. *The Justices of Staffordshire* (1) was followed.

In *the Queen on the prosecution of the St. Alban's Rural Sanitary Authority* v. *The Barnet Rural Sanitary Authority* (2), a Rural Sanitary Authority made a complaint before two justices of the foul condition of a watercourse. On the 6th September 1875, the two justices made an order as a Court of summary jurisdiction calling upon the authority to clean the watercourse. This order was served on St. Alban's Rural Sanitary Authority on the 24th September. On the 2nd October the St. Alban's Rural Sanitary Authority served a notice of appeal on the Barnet Rural Sanitary Authority. It was contended that the notice was invalid as it was not given within 14 days after the cause of appeal had arisen which was the decision of the Court of summary jurisdiction, and the question to be decided was whether the notice was valid, being served more than fourteen days after the decision of the Court of summary jurisdiction, but within 14 days after the service of the order of the Court. It was held that the time for notice of appeal ran from the date of the decision and not from the service of the order of justices, and consequently the notice was too late. Blackburn, J., at p. 561 observed :—

> "The draftsman does not say 'within fourteen days from the decision of the

(1) 102 E. R. 554
(2) (1876) 1 Q. B. D. 556

Court', but, from reasons of style, or some other reason, chooses to use the words 'cause of appeal,' but these words must mean the same as the words in the previous subsection, 'demand of the rate or decision of the Court :' so that the time which is given is fourteen days from the date when the decision is made, in which case the decided cases shew the time for appealing is the time at which the decision is given, and not the time when the order is served."

Mellor, J., said at p. 562 :—

"When does the time for appealing begin ? Obviously from the decision of the Court."

In *Ex Parte Johnson* (1), the statute provided that within 24 hours after the adjudication and making of any order in bastardy the putative father may give notice of appeal to the Quarter Sessions. It was held that time must be counted from the oral adjudication of the justices in petty Sessions and not from the time when the formal order is signed by them. Cockburn, C.J., at p. 355 said :—

"The order must be considered as having been made by the justices at the time of their adjudication ; for what is called the order, i.e. the written record of adjudication, is merely the evidence of the order which the justices orally pronounced, and although their signatures were attached afterwards, that is to be looked on as done *nunc pro tunc*. Were this otherwise, it would be impossible for the opposite party ever to know the precise period at which the order was made. And although in this case the rule which I have stated may operate with great harshness on the appellant, who thought the order took effect from the time when the justices

(1) 122 E. R. 354

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signed the written document, that is much less likely to produce confusion than if we were to hold the contrary."

The Queen v. *The Justices of Derbyshire* (1) was followed. Mellor, J., said at p. 356 :—

> "My brother Crompton having shewn not only the inconveniences but the absolute absurdity of counting the time for appealing from a time of which the party who means to appeal may be ignorant, or from the service of the order, I am forced to the conclusion that it must be counted from the making of the order in Court."

In *Firm of Mohan Lal Hardeo Das* v. *Commissioner of Income-tax, Bihar and Orissa* (2), it was held that the period of limitation for an application under section 66 (2) of the Income-tax Act is one month from the passing of the appellate order under section 31 or 32 and is not one month from the date on which the appellate order is communicated to the assessee. At p. 178 Fazl Ali, J., said :—

> "There is, however, no such clear provision in the Income-tax Act and I cannot hold, without considerably straining the law, that the order passed by the Income-tax Commissioner can be ignored for the purpose of limitation, until it has been duly communicated by post to the assessee."

I will now refer to those cases on which reliance has been placed by counsel for the petitioner, and they are all cases from Madras. Reliance is first placed on *The Secretary of State for India in Council* v. *Gopisetti Narayanaswami Naidu Garu* (3). That was a case under Survey

(1) 115 E. R. 461
(2) I. L. R. (1930) 9 Pat. 172
(3) I. L. R. (1911) 34 Mad. 151

and Boundaries Act (Madras), and the words used there were " date of decision ", and it was held that the date of decision is the date when the decision is passed and the decision cannot be said to be passed until it is in some-way pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing what it contains. In that Act section 24 required the decision to be in writing with its reasons and communicated to the parties. The learned Judge relied on authorities which are not mentioned, but it was observed " we ought to follow the authorities to which we have referred which hold that the date of a decision is the date of its communication to the parties ". It was also observed by the learned Judge that section 11 (3) showed that the date of order and the date of communication may be different, it did not support the more important inference that the Act contemplated the starting of limitation before the communication of the order to the parties.

The next case which is relied upon is *K. V. E. Swaminathan alias Chidambaram Pillai* v. *Letchamanan Chettiar and others* (1)where it was held that an order under section 73 (1) or section 77 (1) of the Registration Act cannot be deemed to have been made unless passed in the presence of the parties or after notice to them or until it had been communicated to them. In section 73 (1) of the Registration Act the words used are " within thirty days after the making of the order of refusal * * * ", and in section 77 (1) the words are " within 30 days after the making of the order of refusal * * * ". The learned Judges referred to several other Madras cases, and Venkatasubba Rao, J., said at p. 497 :—

> " These, in my opinion, are rules which are in conformity with justice and common sense. "

Several English cases which I have referred to above were relied upon for holding that time

(1) I. L. R. (1930) 53 Mad. 491

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begins to run from the date of knowledge and not from the date of the making of the order.

In *Muthiah Chettiar* v. *The Commissioner of Income-tax, Madras* (1), the learned Chief Justice relied upon the two Madras cases I have referred to and held that time begins to run from the date of the notice apparently on the ground that that was the view of the Madras High Court. His Lordship said in paragraph 2 :—

> "We see no reason to disregard the consistent course of authority in this Court on this point."

In paragraph 3 the learned Chief Justice said :—

> "* *, we consider that the rule laid down by the learned Judges in the above two decisions * * is based upon a salutary and just principle."

The decision of the Madras Court must therefore be taken not to be based on the interpretation of the statute but on the ground of the rule being salutary and the principle being just. With very great respect I would say that this is no reason for construing the plain words of the statute in any different way. There appears to be a reason why the words used in section 33-A are "within one year from the date of the order". The period given is fairly long, and that appears to me to be the reason why the Legislature did not think it necessary to make the additions which they have made in some of the other sections, that the limitation is to run from the date the order is communicated to the assessee.

A further contention was raised that the petitioner has delayed his remedy for such a long time. But it is not necessary to go into that point.

I would, therefore, dismiss this petition and discharge the rule. The Commissioner of Income-tax will have his costs in this Court. Counsel fee Rs. 100.

Falshaw J.

FALSHAW, J. I agree.

(1) A. I. R. 1951, Mad. 204

66 HC—400—17-9-53—CP&S., Pb., Chandigarh.