and the proceedings for correction of that age in the Matriculation certificate were pending. The plea there was that instead of 1916, 1910 had been entered in the Matriculation certificate. Thus, the age stated in the service record was subject to the correction of his age in the Matriculation certificate. Under the circumstances, Shri Bawa could not apply for correction of his age in the service record within two years of his joining service. He had to make the application only after the age in the Matriculation certificate was corrected. His application, therefore, could not be rejected on the ground that it had not been made within two years of his joining service. In the instant case the petitioner himself gave his date of birth as January 1, 1912, and that age continued to be accepted till he made the application for its correction on December 9, 1966. The learned Commissioner was, therefore, right in exercising his discretion against the petitioner on the ground that he had made the application after the lapse of too long a time and that the age recorded in the service record was in accordance with his Matriculation certificate, which had not been disputed all these years. The petitioner cannot, therefore, derive any help from the decision of Tek Chand, J. Moreover, the order of the learned Commissioner is a speaking one as detailed reasons have been given in the note of the Superintendent of the office with which the learned Commissioner agreed.

(8) For the reasons given above, I find no merit in this writ petition, which is dismissed with costs, counsel's fee being Rs. 100.

R. N. M.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, JAMMU & KASHMIR AND HIMACHAL PRADESH, PATIALA,—*Petitioner.*

versus

M/s. RAM LAL-MANSUKH RAI, REWARI,—*Respondent.*

Income Tax Reference No. 30 of 1966.

February 25, 1970.

Income-tax Act (XI of 1922)—Sections 25(3), 25(4) and 30—Order of Income-tax Officer under section 25(3) or 25(4)—Appeal against such order under section 30—Whether maintainable.

The Commissioner of Income-tax, Punjab, Jammu & Kashmir and Himachal Pradesh, Patiala *v.* M/s. Ram Lal-Mansukh Rai Rewari
(Sandhawalia, J.)

Held, that there exists no inherent right of appeal and this right is entirely a creature of the statute granting the same. Section 30 of Income-tax Act, 1922, expressly gives a right of appeal against an order under section 25(2) but no appeal whatsoever has been specifically provided in respect of orders passed under section 25(3) or section 25(4) of the Act. By implication, therefore, it may well be presumed that the legislative intent was to exclude the orders passed under sub-sections (3) and (4) of section 25 from the ambit of the right of appeal. The Assistant Commissioner, therefore, cannot have jurisdiction to entertain appeals which fall outside the specific grounds and orders mentioned in section 30. Hence an order passed by an Income-tax Officer under section 25(3) or 25(4) of the Act is not appealable under section 30. (Para 5)

Reference under Section 66(1) *of the Income-tax Act,* 1922, *made by the Income-tax Appellate Tribunal, Delhi Bench, 'C' for decision of the following question of law arising out of Tribunals' order dated* 21*st May,* 1965, *in I.T.A. No.* 4439 *of* 1964-65 *regarding assessment year* 1943-44:—

> *"Whether on the facts and in the circumstances of the case, the assessee's appeal to the Appellate Assistant Commissioner was maintainable under section* 30 *of the Income-tax Act,* 1922.

B. S. GUPTA, AND D. N. AWASTHY, ADVOCATES, for the petitioner.

NEMO, for the respondent.

JUDGMENT

The judgment of this Court was delivered by :—

SANDHAWALIA, J.—The Income-Tax Tribunal, Delhi Bench 'C' has referred the following question of law under section 66(1) of the Income-Tax Act, 1922:—

> "Whether on the facts and in the circumstances of the case, the assessee's appeal to the Appellate Assistant Commissioner was maintainable under section 30 of the Income-Tax Act, 1922."

(2) The Hindu Undivided Family was assessed as such till the assessment year 1942-43. The question above-said relates to the assessment year 1943-44 for which the relevant accounting year ended on the 9th of November, 1942, (equivalent to Kartik Sudi 1, 1999 Bk.). The H.U.F. disrupted on the 9th of November, 1942, and an application under section 25A of the Act was duly filed. On the 21st of January, 1945, by an order under section 25A, the partition

and the disruption of the family was duly accepted as from the 9th of November, 1942. It deserves notice that from the 10th of November, 1942, a new partnership firm was formed for carrying on the business and an assessment for the year 1943-44 was made on the new unit on the 28th of August, 1943. An appeal was preferred against this assessment which was decided by the appellate Assistant Commissioner on the 4th of October, 1943.

(3) The admitted case is that thereafter neither the Department nor the assessee adverted to the admissibility or otherwise of the relief under section 25(4) of the Act to the assessee on the succession to the business of the H.U.F. Well-nigh 20 years after the order of the appellate Assistant Commissioner, the assessee filed an application under section 25(4) or in the alternative under section 25(3) of the Act claiming relief under the above-said provision. This application was rejected on merits by the Income-tax Officer on the 5th of July, 1963. The assessee then preferred an appeal to the appellate Assistant Commissioner, who rejected the same primarily on the ground that under section 30 of the Act, no appeal was provided for against an order under section 25(4). On further appeal to the Tribunal it was held that an appeal against an order objecting to the amount of income finally assessed under section 23 was maintainable under section 30 of the Income-tax Act and it was consequently directed that the appellate Assistant Commissioner should entertain the assessee's appeal and decide the same on merits. On these facts, the reference on the abovementioned question of law has arisen. Mr. B. S. Gupta on behalf of the Commissioner of Income-tax has reiterated and commended the reasoning of the order passed by the appellate Assistant Commissioner. He further placed reliance on *Commissioner of Income-tax, Madras* v. *Arunachalam Chettiar* (1). and *Ramaswami Chettiar* v. *Commissioner of Income-tax.* (2).

(4) We are inclined to agree with the contention raised on behalf of the revenue. As the argument turns primarily upon the language of section 30 of the Income-tax Act 1922, for facility of reference we are setting down below the relevant part thereof:—

> "*Appeals against assessment under this Act.* Any assessee objecting to the amount of income assessed under section

(1) (1953) 23 I.T.R. 180.
(2) (1956) 30 IT.R. 281.

> 23 or section 27, or the amount of loss computed under section 24 or the amount of tax determined under section 23 or section 27, or denying his liability to be assessed under this Act or objecting to the cancellation by an Income-tax Officer of the registration of a firm under sub-section (4) of section 23 or * * * * * *
> * * * * * * *
> or objecting to any order under sub-section (2) of section 25 or section 25A or sub-section (2) of section 26 * * *
> * * * * * * *".

(5) Now it is well-settled that there exists no inherent right of appeal and this right is entirely a creature of the statute granting the same. Its scope in the present case is necessarily limited by the provisions of section 30 of the Act. What is of particular significance is that this provision expressly gives a right of appeal against an order under section 25(2), but no appeal whatsoever has been specifically provided in respect of orders passed under section 25(3) or section 25(4), of the Act. By implication, therefore, it may well be presumed that the legislative intent was to exclude the order passed under sub-sections (3) and (4) of section 25 from the ambit of the right of appeal. As is evident from an analysis of section 30 it enumerates specifically and in great detail the orders which are appealable to the appellate Assistant Commissioner. The said authority, therefore, cannot have jurisdiction to entertain appeals which fall outside the specific grounds and orders mentioned in section 30. As already noticed section 30 does not expressly provide any appeal against the Income-tax Officer's orders under section 25(3) or section 25(4) and in our opinion no such right can be created by way of implication.

(6) The matter may then be viewed from another angle as well. Admittedly the assessment on the new firm for the year 1943-44 which is the assessment year in question was made vide an order dated the 28th of August, 1943. A notice of demand in pursuance of the assessment so made was served on the assessee and this patently did not indicate any relief granted under section 25(4 of the Act. An appeal lay against this order in which this matter could be agitated within 30 days of the service of such a demand notice. Such an appeal was in fact preferred against the assessment to the

Appellate Assistant Commissioner which was decided on the 4th of October, 1943. The issue of the non-grant of the relief under section 25(4) could thus clearly have been agitated before the Appellate Assistant Commissioner, but was patently not done. Thereafter for nearly 20 years, no grievance was made regarding the non-compliance with the provisions of section 25(4). In this context we are, therefore, unable to agree that the order of the Income-tax Officer passed subsequently under section 25(4) on the 5th of July, 1963, is in fact an order finally assessing the income in respect of the assessment year 1943-44. That assessment under section 23 in fact stood concluded by the earlier order of the Income-tax Officer, dated the 28th of August, 1943, and which had become final subsequently after the order of the Assistant Commissioner of 4th of October, 1943. That being so we are of the view that no appeal is competent against the order of the Income-tax Officer, dated the 5th of July, 1963.

(7) The matter is also not *res integra*. In *Ramaswami Chettiar's case* (2), the facts were closely similar. In that case there was a partition in a H.U.F. and the assessment of income of the H.U.F. from the 13th of April, 1940 to 30th March, 1941, was completed on the 24th March, 1942. More than six years later in August, 1948, the father (a member) of the disrupted H.U.F. presented an application to the Commissioner of Income-tax for relief under section 25(4) of the Act alleging that the foreign income of the joint family had been assessed to income-tax under the Income-tax Act, 1918. This being rejected, he filed a regular application before the Income-tax Officer for the same relief which was declined and an appeal therefrom also failed. On a reference being made a Division Bench of the Madras High Court relying on *Arunachalam Chettiar's case* (1), observed as follows :—

> "The benefit under the first part of section 25(4) is certainly one to which an assessee who satisfied the terms of that provision is entitled, and that benefit can be afforded to him in the assessment. If in an appeal against an assessment order, the proper interpretation or effect of section 25(4) comes up for consideration, the assessee can certainly in his appeal have the decision of the Income-tax Officer on that point adjudicated in the appellate Court and so on up to this Court. But the petition filed by Ramaswami Chettiar in the present case is certainly not one of those enumerated in the Act and no appeal therefore lies from

the order passed adversely to the applicant in such an application as the same is not covered by section 30 of the Act. The Appellate Assistant Commissioner was, therefore, right in the view that no appeal lay to him."

We would accordingly answer the question of law referred in the negative, in favour of the revenue, and against the assessee.

K. S. K.

LETTERS PATENT APPEAL.

Before Mehar Singh, C.J. and R. S. Narula, J.

RAJA RAM AND OTHERS,—*Appellants.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 283 of 1969.

February 26, 1970.

Land Acquisition Act (I of 1894 as amended by the Punjab Act No. XLVII of 1956)—Sections 3(c), 4, 6, 7 and 17—Valid declaration for acquisition of land for public purpose—Pre-requisites of—Stated—State—Whether can acquire land for a juristic person which is neither a Company nor a local authority—Acquisition of land for a Company when no part of compensation payable from public funds—Procedure in Part VII—Whether has to be followed—Declaration under section 6—Whether conclusive—Taking possession under section 17 of waste or arable land—Decision of the Government as to—Notice to the landowner—Whether essential—Food Corporation of India—Whether a "Company", within the meaning of section 3(e) or a department of the Government—Constitution of India (1950)—Article 226—Exercise of discretion under—Conduct of writ-petitioner—Whether relevant—No objection regarding the conduct raised before the single Judge—Such objection—Whether can be raised in Letters Patent Appeal—Words and phrases—Arable land—Meaning of.

Held, that a valid declaration under section 4 or 6 of the Land Acquisition Act, can be made if the land is needed for a public purpose, i.e., when the entire compensation for the acquisition of the land has to be paid from public revenues or some fund controlled or managed by a local authority. When the land is sought to be acquired for a "Company" and the compensation, therefore, is paid at least partly out of public revenues or some fund controlled or managed by a local authority, in such a case also the acquisition will be for a public purpose. A legal declaration can also be made if