in favour of Brij Lal (defendant No. 2) and supports the pleas raised by the second defendant in his written statement. Another sale-deed of 2nd of August, 1946 (Marked No. 5) at page 50 of the paper-book was executed by Brij Lal (defendant No. 2) and others in favour of Datu Ram and another. Exhibits P. 1 and P. 2, which have not found a place in the paper-book, have been duly considered by the learned Subordinate Judge, and the execution of no other documents has been made a grievance of by Mr. Roop Chand.

In the result, we see no reason to differ from the conclusions and findings of the learned Judge and we would, accordingly, affirm the decree awarded by him in favour of the defendants. In the circumstances, we would make no order as to costs.

PREM CHAND PANDIT, J.—I agree.

K.S.K.

INCOME-TAX REFERENCE

Before D. K. Mahajan and R. S. Narula, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB,—*Petitioner*

versus

M/S MOTHU RAM-PREM CHAND,—*Respondents.*

Income-tax Reference No. 48 of 1964

July 12, 1967

Income-tax Act (XI of 1922)—Ss. 25-A and 28—Applicability and effect of—"Where"—Meaning of—Assessee, Hindu undivided family—Assessment for 1954-55 completed on September 30, 1954—H.U.F. disrupted with effect from March 31, 1956 and application for an order under S. 25-A recognising the disruption filed on March 13, 1957—Order imposing penalty in respect of 1954-55 assessment passed on November 28, 1958—Order under S. 25-A passed on January, 29, 1960—Imposition of penalty—Whether valid.

Held, that a plain reading of section 28 of the Indian Income Tax Act, 1922, shows that there are two conditions precedent for invoking the same, viz:—

(i) there should be in existence "any person" who has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof; and

(ii) such person has been heard or has been given a reasonable opportunity of being heard.

"Person" is defined in sub-section (9) of section 2 of the Act to include a Hindu undivided family. An H.U.F. is treated as a separate legal entity under the Act distinct from its members. The existence of such a legal entity comes to an end on its disruption or on a partition of tht erstwhile Hindu undivided family. Unlike a partnership firm, there are no partners in an H.U.F. Consequently it is impossible to satisfy the provisions of sub-section (3) of section 28 of the Act of giving an opportunity to the assessee in case of an H.U.F., after it is dissolved. No proceedings for imposition of penalty can be taken against the estate of an assessee after the assessee is dead. Similarly no such proceedings can be taken against an H.U.F. [subject to the provisions of sub-section (3) of section 25-A] after it is disrupted and ceased to exist in the eye of law.

Held, that the effect of the provisions of section 25-A of the Indian Income Tax Act, 1922, is that a Hindu undivided family, which was being assessed as such, shall continue to be assessed in the same status notwithstanding partition of the property amongst its members; but if a claim is made during the course of an assessment that there has been a partition in the family, the Assessing Authority is to issue notices to other members of the family and to make a proper order after due inquiry if it is satisfied about the partition. In a case where an order under section 25-A(1) is passed the assessment has to be made in accordance with the requirements of sub-section (2) of section 25-A. In a case where no order under section 25-A(1) has been passed, the Hindu undivided family is deemed by the legal fiction created under sub-section (3) of section 25-A to continue for the purposes of the Act in spite of the fact that it has in fact ceased to be in existence. Sub-section (3) of section 25-A shall operate in a case where no order under section 25-A(1) is made irrespective of the reason for no such order being passed, e.g., it may be due to no claim having been made for the purpose or such a claim having been made and refused, or due to the fact that right up to the finalisation of the assessment proceedings by the Tribunal, the proceedings under section 25-A(1) may have remained pending for one reason or the other.

Held, that the order of the Income Tax Officer dated November 28, 1958, imposing penalty was perfectly valid and within his jurisdiction, because the Income-tax Officer was bound to ignore the disruption of the Hindu undivided family on the date he passed the order under section 28(1)(c), as no order under section 25-A(1) had admittedly been passed till then. But the order under section 25-A(1) having been passed during the pendency of the Assessee's first appeal, which is for all practical purposes continuation of the proceedings for imposition of penalty, the Appellate Assistant Commissioner was bound to take notice of that order and to set aside the order imposing penalty.

Held, that "where" has sometimes been interpreted to imply not only "cases in which", but also "if and so long as", but the expression has to be given the meaning which would best fit in the context. If the Legislature had intended that an order of imposition of penalty under section 28 of the Act would be deemed to be legal because of the operation of section 25-A(3) of the Act even after an appropriate order under sub-section (1) of that section has been passed with retrospective effect, word "until" would have been used in the place of the word "where" in section 25-A(3). In each of the three sub-sections of section 25-A, the Legislature has intentionally used the word "where". The word has, therefore, to be given a meaning which would fit in each of the three clauses of the section. In sub-section (1) the word "where" is incapable of being given any meaning other than "a case in which". The word "where" in all the three sub-sections of section 25-A is intended to imply "cases in which" and not "until".

Held, that on the facts and in the circumstances of the case the order of the Appellate Assistant Commissioner dated March 9, 1962, setting aside the order of imposition of penalty under section 28(1)(c) which had been passed by the Income Tax Officer on November 28, 1958, was correct as an order under section 25-A(1) had in the meantime been passed on January, 29, 1960 accepting the partition of the H.U.F. with effect from March 31, 1956 and the order of the Tribunal dated June 1, 1963, reversing that of the Appellate Assistant Commissioner was bad in law.

Reference under section 66(1) *of the Indian Income-Tax Act* (*XI of* 1922) *made to this Court by the Income-Tax Appellate Tribunal* (*Delhi Bench 'C'*) *for decision of the following question of law* :—

> "*Whether on the facts and in the circumstances of the case, the imposition of penalty under section* 28(1)(c) *on* 13*th February,* 1959, *is bad in law as the assessee Hindu undivided family had already disrupted on* 31*st March,* 1956."

J. N. KAUSHAL, and M. R. AGNIHOTRI, ADVOCATES, for the Petitioner.

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

JUDGMENT

NARULA, J.—The answer to the following question referred to this Court by the Income-tax Appellate Tribunal (Delhi Bench 'C') (hereinafter referred to as the Tribunal) under section 66(1) of the

Indian Income-tax Act (11 of 1962), as subsequently amended (hereinafter called the Act), at the instance of Messrs Mothu Ram-Prem Chand (referred to as the Assessee in this judgment), depends on a proper construction and correct interpretation of sub-section (3) of section 25-A of the Act:—

> "Whether on the facts and in the circumstances of the case, the imposition of penalty under section 28(1)(c) on 13th February, 1959 is bad in law as the assessee Hindu undivided family had already disrupted on 31st March, 1956".

The facts leading to this reference are brief and may first be set out in chronological order. The Assessee was a registered Hindu undivided family firm. Its assessment for the year ending 1954-55 under section 23(3) of the Act was completed on September 30, 1954. On September 29, 1959, the Income-tax Officer initiated action under section 34 of the Act on having come to know of substantial income of the H.U.F. from undisclosed sources which had not been assessed. On March 31, 1956, the H.U.F. disrupted. A registered partition deed, dated December 1, 1956, was executed between the members of the H.U.F. witnessing the partition. During the course of assessment for the year 1957-58, the assessee claimed disruption of the H.U.F. and filed an application, dated March 13, 1957, praying for an order being passed under section 25-A of the Act accepting the partition of the Hindu undivided family with effect from March, 31, 1956. The application was accompanied by a copy of the registered partition deed, dated December 1, 1956, the original partition deed on a stamp paper of Rs. 2,000, and a copy of the Punjab Government Gazette, dated April 20, 1956, in which a public notice had been issued regarding the partition of the H.U.F. In pursuance of that application, notices were issued to the other members of the H.U.F. on March 22, 1957, under proviso to sub-section (1) of section 25-A, but no final order accepting the disruption of the H.U.F. was passed at that stage. The assessment under section 34 of the Act was completed by the order of the Income-tax Officer, dated September 29, 1958 (Annexure 'A' to the statement of case).

On October 1, 1958, the Income-tax Officer issued a notice under section 28 calling upon the Assessee to show cause why penalty under section 28(1)(c) of the Act should not be levied on it as the

Assessee had concealed its income and had deliberately furnished inaccurate particulars thereof. By order, dated November 26, 1958 (erroneously referred to in the statement of case as of February 13, 1959) a penalty of Rs. 60,000 was imposed on the Assessee in pursuance of the said notice. The Assessee, on March 11, 1959, preferred an appeal against the order of imposition of penalty to the Appellate Assistant Commissioner of Income-tax under sections 30/31 of the Act. During the pendency of the appeal, the Income-tax Officer went into the claim of the Assessee about the disruption of the H.U.F. and passed a detailed order, dated January 29, 1960 (Annexure 'B' to the statement of case), wherein he referred to the history of the case and documentary evidence produced by the Assessee and finally held as follows:—

> "On the basis of the evidence placed on record by the assessee I am satisfied that partition took place amongst the members of the H.U.F. consisting of Shri Mothu Ram and his son Shri Prem Chand with effect from 31st March, 1956, and I record and order to that effect under section 25A(1) accepting the partition of the H.U.F. with effect from 31st March, 1956."

Reliance was placed on the above-said order under section 25A (1) of the Act at the hearing of the appeal before the Appellate Assistant Commissioner. In a detailed order, dated March 9, 1962 (Annexure 'C' to the statement of case), Shri N. S. Pruthi, the appellate Assistant Commissioner referred to the entire law on the subject and taking notice of all the arguments addressed before him held that the order of the imposition of penalty against the H.U.F. could not be upheld in this case, where an order under section 25A(1) of the Act had been passed accepting the disruption of the family with effect from March 31, 1956, Department's appeal against the order of the Appellate Assistant Commissioner was accepted by the Tribunal's order, dated June 1, 1963 (Annexure 'D' to the statement of case) with the following observations:—

> "We are of opinion that the Assistant Commissioner erred in his decision. He has placed reliance on certain decision, but he has failed to see that in this case the facts are

different. Here the order under section 25-A had not been passed before the levy of the penalty. In this case, the penalty was levied on 13th February, 1959, whereas the order under section 25-A was passed only subsequently, viz., 29th January, 1960. The true position in the present case is that as a matter of fact, there was no order under section 25-A(1) when the penalty was levied. The true implication of section 25-A(3) does not appear to have been understood by the Assistant Commissioner. The sub-section quite already refers to the actual passing of the order under section 25A(1) and it is common ground that in the present case an order under section 25-A(1) had not been passed on the date of the penalty order."

It is in the above circumstances that the question quoted in the opening paragraph of this judgment has been referred to this Court by the Tribunal at the instance of the Assessee.

The penalty in question has been imposed under section 28(1)(c) of the Act. The relevant part of the provision is in the following terms:—

"28. (1) If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

(a) * * * * *

(b) * * * * *

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he or it may direct that such person shall pay by way of penalty—

* * * * * *

* * * * * *

Provided that—

(a) * * * * *

(b) * * * * *

(c) * * * * *

(d) * * * * *

(2) * * * * *

(3) No order shall be made under sub-section (1) or sub-section (2), unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(4) * * * * *

(5) * * * * *

(6) * * * * *"

A plain reading of the provision shows that there are two conditions precedent for invoking the same, viz.—

(i) there should be in existence "any person" who has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof; and

(ii) such person has been heard or has been given a reasonable opportunity of being heard.

"Person" is defined in sub-section (9) of section 2 of the Act to include a Hindu undivided family. An H.U.F. is treated as a separate legal entity under the Act distinct from its members. The existence of such a legal entity comes to an end on its disruption or on a partition of the erstwhile Hindu undivided family. Unlike a partnership firm, there are no partners in an H.U.F. Consequently it is impossible to satisfy the provisions of sub-section (3) of section 28 of the Act of giving an opportunity to the assessee in case of an H.U.F., after it is dissolved. No proceedings for imposition of penalty can, therefore, be taken against the estate of an assessee after the assessee is dead. Similarly no such proceedings can be taken against an H.U.F. [subject to the provisions of sub-section (3) of section 25A] after it is disrupted and ceased to exist in the eye of law. Section 25-A may be quoted at this stage:—

"25A. (1) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make such inquiry

there into as he may think fit, and, if he is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions, he shall record an order to that effect:

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed, or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last day on which it carried on such business, profession or vocation, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it; and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23:

Provided that all the members and groups of members whose joint family property has been partitioned shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.

(3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family."

The effect of the operation of the above-quoted provision is that a Hindu undivided family, which was being assessed as such, shall

continue to be assessed in the same status notwithstanding partition of the property amongst its members; but if a claim is made during the course of an assessment that there has been a partition in the family, the Assessing Authority is to issue notices to other members of the family and to make a proper order after due inquiry if it is satisfied about the partition. In a case where an order under section 25A(1) is passed the assessment has to be made in accordance with the requirements of sub-section (2) of section 25A. In a case where no order under section 25A(1) has been passed, the Hindu undivided family is deemed by the legal fiction created under sub-section (3) of section 25A to continue for the purposes of the Act in spite of the fact that it has in fact ceased to be in existence. Sub-section (3) of section 25A shall operate in a case where no order under section 25A(1) is made irrespective of the reason for no such order being passed, e.g., it may be due to no claim having been made for the purpose or such a claim having been made and refused, or due to the fact that right upto the finalisation of the assessment proceedings by the Tribunal, the proceedings under section 25A(1) may have remained pending for one reason or the other.

In *Commissioner of Income-tax, B. & O.*, v. *Sanichar Sah Bhim Sah* (1), it was held by a Division Bench of the Patna High Court (Ramaswami and Choudhary, JJ.), that the machinery prescribed by section 25A cannot be applied to the proceedings taken under section 28 of the Act for imposing penalty on a Hindu undivided family after it had disrupted and after the Income-tax Officer had made an order under section 25A. In that case, however, the order of imposition of penalty under section 28 was passed on April 24, 1950, after the Income-tax Officer had passed an order under section 25A(1) on March 18, 1949, holding that the Hindu undivided family had become separate with effect from February 13, 1946. Sub-section (3) of section 25A of the Act could not and did not, therefore, come into the field in the Patna case. It has not been disputed before us by Shri J. N. Kaushal, the learned Senior counsel for the Assessee, that if no order under section 25A(1) had at all been passed in this case, the order of imposition of penalty could not have been questioned by the Assessee on the ground on which it is now

(1) (1955) 27 I.T.R. 307=A.I.R. 1955 Patna 103.

attacked. Nor does the judgment of a Division Bench of the Andhra Pradesh High Court (Subba Rao, C.J., as he then was, and Mohammad Ahmad Ansari, J.), in *Mahankali Subbarao and others* v. *Commissioner of Income-tax, Hyderabad* (2), take the matter any farther, because in that case the penalty under section 28 had been imposed on January 29, 1947, after the passing of the order under section 25A(1) of the Act on February 26, 1946, accepting the division of the Hindu undivided family with effect from April 5, 1943, sub-section (3) of section 25A was, therefore, no hurdle in the way of the assessee in that case. Subba Rao, C.J., who spoke for the Court held in *Mahankali Subbarao's case* (*supra*) as follows :—

> "Section 28, which enables, the Income-tax authorities to impose penalty under the circumstances mentioned therein, says that if the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person has committed the defaults mentioned in clause (a), (b), or (c), he may direct him to pay penalty in addition to any tax and super tax. 'Person' is defined to include a Hindu undivided family. Therefore, under this section an undivided Hindu Family, who is a person, can be directed to pay the penalty. But by reason of the disruption in the family at the time the proceedings were initiated, the Hindu family ceased to be a "Person" within the meaning of the said section."

To the same effect was the subsequent judgment of the Andhra Pradesh High Court in *Mareddi Krishna Reddy* v. *Income-tax Officer, Tenali* (3). In that case Subba Rao, C.J., (with whom M.A. Ansari, J., concurred), brought out the distinction between section 25A on the one hand and section 44 of the Act on the other. It was pointed out that whereas section 25A prescribes for the assessment of a joint family which was divided, apportions the liability between the erstwhile members and imposes a joint and several liability for its collection; section 44 contains the additional words "all the provisions of Chapter IV shall, so far as may be, apply to any such as-

(2) (1957) 31 I.T.R. 867=A.I.R. 1957 Andhra Pradesh 113.
(3) (1957) 31 I.T.R. 678=A.I.R. 1957 And. Prad. 368.

sessment", which words are significantly absent from section 25A. Since section 28 is one of the sections in Chapter IV, section 44 applies to it because of the special provision made in that behalf in that section. No such phraseology having been used in section 25A, all the provisions of Chapter IV do not apply thereto. The observations of Subba Rao, C.J., in *Mareddi Krishna Reddy's case* (*supra*) were approved by their Lordships of the Supreme Court in *C. A. Abraham v. Income-tax Officer, Kottayam and another* (4).

Mr. D. N. Awasthy, the learned counsel for the Commissioner of Income-tax, has, however, emphasised that the order of the Income-tax Officer imposing the penalty was perfectly valid and within his jurisdiction, because the Income-tax Officer was bound to ignore the disruption of the Hindu undivided family on the date he passed the order under section 28(1)(c), as no order under section 25A(1) had admittedly been passed till then. There is force in this argument of Mr. Awasthy to the extent to which it goes. Mr. Kaushal has fairly conceded that if no order under section 25A(1) had been made in this case, till the penalty proceedings became final with the order of the Tribunal, the assessee would not be able to press its claim. What is pointed out by Mr. Kaushal is that during the pendency of the appeal before the Appellate Assistant Commissioner, an appropriate order under section 25A(1) having been passed and the income-tax authorities having accepted the disruption of the H.U.F. with effect from March 31, 1956, by order, dated January 29, 1960, the order under section 25A (1) was deemed to take effect from and relate back to March 31, 1956, and in any case to March 13, 1957, the date on which the claim of dissolution of the H.U.F.. was made on behalf of the Assessee during the course of assessment. The operative part of the order under section 25A(1) has already been quoted above. It clearly shows that the income-tax authorities accepted the disruption of the H.U.F. "with effect from March 31, 1956". This, therefore, is a case "where" an order under section 25A(1) had been passed, and the notice under section 28 had been issued long after the date of accepted disruption of the H.U.F. Mr. Awasthy seems to read into section 25-A(3) of the Act the word "until" in place of the word "where". "Where" refers to a case in which the order in question has been passed. No indication of point of time can be spelt out of

(4) (1961) 41 I.T.R. 425=A.I.R: 1961 S.C: 609:

sub-section (3) of section 25-A. The relevant point of time is the date with effect from which the partition of the joint family is accepted by the income-tax authorities. Unless the proceedings for imposition of penalty have become final in the sense that no appeal or second appeal etc., is pending against the initial order, the mere fact that the disruption of the H.U.F., is subsequently accepted by the income-tax authorities would not disentitle the Assessee to claim that the imposition was illegal. In the instant case, however, the appropriate order under section 25A(1) was passed during the pendency of the Assessee's first appeal, which is for all practical purposes continuation of the proceedings for imposition of penalty. The Appellate Assistant Commissioner was, therefore, right when he took notice of the order, dated January 29, 1960, and set aside the impugned order. Precisely this question arose before the Madras High Court and was answered in favour of the assessee in *S. A. Raju Chettiar and others* v. *Collector of Madras and another* (5). Notice under section 28 was served in that case on September 4, 1944. The Hindu undivided family was disrupted on January 25, 1946. A penalty of Rs. 83,000 was imposed in pursuance of the said notice on March 18, 1948. The application of the Assessee for acceptance of the family partition, dated January 25, 1946, was allowed by the order of the Income-tax Officer, dated December 31, 1948, long after the passing of the order of imposition of penalty. Section 25A(3) was invoked on behalf of the Revenue to support the imposition. The argument was rejected by a Division Bench of the Madras High Court (Rajagopalan and Rajagopala Ayyangar, JJ.), in the following words:—

> "Learned counsel contended that, since the order that was passed by the Income-tax Officer was only on 31st December, 1948, the Hindu undivided family should be deemed to have continued in existence till that date. We are unable to accept this interpretation of Section 25(A)(3).
>
> Each of the clauses under section 25(A) begins with the expression "where". To construe "where" as "until" does not seem to fit in with the scheme underlying section 25-A of the Act. Besides such a contention put forward in the

(5) (1956) 29 I.T.R. 241=A.I.R. 1956 Mad. 396.

'*Commissioner of Income-tax* v. *Swaminathan Chettiar* (6), was specifically repelled by a Division Bench of this Court.'

I am in respectful agreement with the above-quoted law laid down by the Madras High Court in the case of *S. A. Raju Chettiar and others.* There is no doubt that "where" has sometimes been interpreted to imply not only "cases in which", but also "if and so long as", but the expression has to be given the meaning which would best fit in the context. If the Legislature had intended that an order of imposition of penalty under section 28 of the Act would be deemed to be legal because of the operation of section 25A(3) of the Act even after an appropriate order under sub-section (1) of that section has been passed with retrospective effect, word "until" would have been used in the place of the word "where" in section 25A(3). In each of the three sub-sections of section 25A, the Legislature has intentionally used the word "where". The word has, therefore, to be given meaning which would fit in each of the three clauses of the section. In sub-section (1) the word "where" is incapable of being given any meaning other than "a case in which". If it is given the meaning sought to be assigned to it by Mr. Awasthy, it would make the provisions of sub-section (1) of section 25A senseless. I would, therefore, hold that the word "where" in all the three sub-sections of section 25A is intended to imply "cases in which" and not "until".

Mr. Awasthy then invited our attention to the Full Bench judgment of the Kerala Hgh Court in *Govardan Hathi Bhai and Company* v. *Income-tax Officer, Mattancherry, and another* (7), where a writ petition seeking to quash an order of imposition of penalty was dismissed on the ground that a Hindu undivided family must be deemed to continue as such until the order under section 34(3) of the Cochin Income-tax Act had been passed recognising the partition and as no such order had been passed in that case, and it was found that the Hindu undivided family had not even made a claim for such an order, it was held that there was no invalidity in the impugned order. There is a clear distinction between the facts of that case and of the reference before us. No claim for partition had been made before

(6) A.I.R. 1948 Mad. 164.
(7) (1962) 46 I.T.R. 430.

the Assessing Authorities at any time prior to the imposition of penalty. No order under sub-section (3) of section 34 of the Cochin Income-tax Act (corresponding to section 25A (3) of the Act) had been passed in the Cochin case. The judgment of the Kerala High Court does not, therefore, help the respondent. Similarly no assistance can be obtained from the judgment of the Allahabad High Court in *Moman Ram Ram Kumar* v. *Commissioner of Income-tax, U.P.* (8), the next case cited by Mr. Awasthy. That was a case of partial partition where no order under section 25A(1) had at all been passed. Nor had any order under section 25A(1) been passed in *Muppana Somaraju and Veeraraju* v. *Commissioner of Income-tax, Andhra Pradesh* (9), the last case relied upon by Mr. Awasthy. There can be no quarrel with the proposition of law laid down by the Andhra Pradesh High Court in *Muppana Somaraju and Veeraraju's* case. Sub-section (3) of section 25A has its full effect in a case where no order under sub-section (1) of that section is passed at all, till the proceedings in question become final in all respects. Reference has then been made by Mr. Awasthy to the scheme of section 25A as discussed in the judgment of their Lordships of the Supreme Court in *Additional Income-tax Officer, Guddanah* v. *A. Thimmayya and another* (10). Nothing has, however, been said in that judgment which goes contrary to the law laid down by the Madras High Court in *S. A. Raju Chettiar and others* v. *Collector of Madras and another* (5).

It was lastly contended on behalf of the Revenue that the order under section 25A(1) can become effective only in respect of years of assessment subsequent to the one in which the claim for disruption is made. The argument appears to be misconceived. The order under section 25A(1) becomes effective from the date which is specified in the order itself as the date with effect from which the disruption of the H.U.F. is accepted by the Income-tax Officer. In spite of the vehement arguments advanced at the Bar by Mr. Awasthy, we have not been persuaded to take a view different from the law laid

(8) (1966) 59 I.T.R. 135.

(9) (1964) 51 I.T.R. 131.

(10) (1965) 55 I.T.R. 666.

down by the Madras High Court in *S.A. Raju Chettiar and others* v. *Collector of Madras and another* (5).

For the foregoing reasons the question referred to us is answered in the affirmative, that is, in favour of the Assessee, but the parties are left to bear their own costs of the proceedings in this Court.

D. K. MAHAJAN, J.—I concur.

B.R.T.

LETTERS PATENT APPEAL

Before D. K. Mahajan and R. S. Narula, JJ.

SURINDER KAUR,—*Appellant*

versus

MOHINDER SINGH,—*Respondent*

Letters Patent Appeal No. 32 of 1963

July 13, 1967

Hindu Marriage Act (XXV of 1955)—S. 9(1)—"Reasonable excuse"—Husband not earning anything—Whether affords 'reasonable' excuse to wife to withdraw from the society of husband—No possibility of husband and wife living together in a state of happiness—Decree for restitution of conjugal rights—Whether must be refused—Letters Patent—Clause 10—Appeal under—Re-appraisal of evidence—Whether permissible—Discretion exercised by lower courts—Whether to be interfered with in Letters Patent appeal.

Held, that the mere fact that the husband is not earning anything does not furnish to the wife, a "reasonable excuse" within the meaning of sub-section (4) of section 9 of the Hindu Marriage Act, 1955, to withdraw from the society of her husband.

Held, that merely because there is no possibility of the parties living together in a state of happiness, a decree for restitution of conjugal rights cannot be refused irrespective of other considerations and evidence of the conduct of the