IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 157/Coch/2023
(Assessment Year: 2007-08)

Parayarukandy Vettath Gangadharan Kerala Transport Company (Decd., represented by LRs.) K.T.C. Building, YMCA Calicut 673001 [PAN: ADHPG8318B]	vs.	Dy. CIT, Circle - 1(1) Calicut
(Appellant)		(Respondent)

Appellant by:	Shri Suresh Kumar C., CA
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	24.01.2024
Date of Pronouncement:	12.04.2024

O R D E R

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the dismissal of his appeal contesting the assessment under section 147 r/w s. 143(3) of the Income Tax Act, 1961 ("the Act") dated 04.03.2015 for Assessment Year (AY) 2007-08 by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)], vide his order dated 05.01.2023. The assessee, since deceased, is represented by his legal representatives, all of whom, his legal heirs, identified by succession certificate placed on record, have authorized Shri Suresh as their counsel before us.

2.1 The brief facts of the case are that the assessment in respect of deemed dividend u/s. 2(22)(e) of the Act, the only addition per the impugned (re) assessment, was in the first instance made in the hands of M/s. Kerala Transport Co., a Calicut based firm in transport business, in which the assessee is a partner. The matter was

carried by the said firm in appeal wherein, in second appeal, the Tribunal, vide order dated 30.08.2013 (ITA Nos. 352 & 353/Coch/2013), deleted the addition holding as:

"We have heard the rival contentions on this issue. The Mumbai Special Bench in the case of *CIT vs. Bhaumik Colour P. Ltd*. (referred supra) has held that deemed dividend could be assessed only in the hands of the person who is *a shareholder of the lender company* and not in the hands of the person other than the shareholder. In the instant case, the Assessing Officer has given a specific finding that the partners of the assessee-firm are holding shares in M/s. Kalpaka Rubber Plantation Pvt. Ltd. (1) and M/s. Kalpaka Transport Company P. Ltd. (2), i.e., *the lender companies*. Hence, by following the decision of the Special bench referred above, we hold that the deemed dividend referred above cannot be assessed in the hands of the assessee-firm. Accordingly, we set aside the order of the ld. CIT (A) on this issue and direct the Assessing Officer to delete the assessment made u/s. 2(22)(e) of the Act in the hands of the assessee firm." (1) KRPPL (2) KTCPL (emphasis, supplied)

2.2 Even as the Revenue contested the matter before the Hon'ble High Court – which, as informed, did not survive in view of being incompetent u/s. 268A, proceedings u/s. 147 of the Act were initiated against individual partners, as the assessee, holding shares in the lender company/s, for AY 2007-08. Even as the assessee objected thereto, citing Board Circular (No. 459 dated 22.09.1987), the Assessing Officer (AO) assessed the deemed dividend at Rs.1,13,14,280/- relying on s. 150(1) of the Act, which provision reads as under:

Provision for cases where assessment is in pursuance of an order on appeal, etc.

150. (1) Notwithstanding anything contained in section 149, the notice under section 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 any 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.

2.3 In first appeal, the assessee's principal grievance, which constituteshis sole grievance before us, i.e., of the reassessment proceedings being time barred, was discussed at length. In view of the ld. CIT(A), the instant proceedings stand initiated

u/s. 150(1) of the Act and, accordingly, time limit of s. 153(6), where-under, as claimed, the impugned assessment ought to have been completed by 31.10.2014, would not apply. The assessee has before us raised this issue per an additional ground which, since admitted, reads as under:

1. It is respectfully submitted that assessment order is passed beyond the period provided under clause (i) of sub-section (6) of section 153 of the Act, and hence the same is infirm in law and invalid.

3. We have heard the parties, and perused the material on record.

3.1 The thrust of the assessee's case before us, taking us through the stated provision, reading as under, was with reference to the assessee being not heard by the Tribunal while passing it's order dated 30.08.2013, i.e., as required by s. 153(6)(i) r/w *Expl.* 2 (b) thereto, so that the bar of limitation per s. 149 r/w s. 153 shall oust the instant assessment as barred by time:

Time limit for completion of assessment, reassessment and recomputation.

153 (1) to (5) …….

(6) Nothing contained in sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3) and (5), be completed—

(*i*) where the assessment, reassessment or recomputation is made on the assessee or any person *in consequence of or to give effect to any finding or direction contained in an order* under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or

(*ii*) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147, on or before the expiry of twelve months from the end of the month in which the assessment order in the case of the firm is passed.

Explanation 2.—For the purposes of this section, where, by an order referred to in clause (*i*) of sub-section (6),—

(*a*) any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year 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; or

(*b*) *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, if such other person was given an opportunity of being heard before the said order was passed. (emphasis, ours)

3.2 It may at the outset be mentioned that subsequent to the hearing, it was communicated by Shri Suresh, the ld. counsel for the assessee, that he had inadvertently referred to a wrong provision of law – also pointed out to him during hearing, being the substituted section 153, i.e., by Finance Act 2016 w.e.f. 01.06.2016, so that it would, subject to the saving per *proviso* to s. 153(9), govern assessments made on or after 01.06.2016. So, however, the extant provision, being s. 153(3)(ii) r/w *Explanation 3* thereto, reading as under, is in *pari materia*; rather, near verbatim to the substituted section, i.e., 153(6)(i) r/w *Expl. 2* thereto, there is in substance no change in the assessee's case as presented before us, with, rather, the substituted provision placing a time limit, making the provision close-ended, as opposed to open-ended earlier:

153. (1) … (2A)

(3) The provisions of sub-sections (1), (1A), (1B) and (2) shall not apply to the following classes of assessments and reassessments and recomputation which may, subject to the provisions of sub-section (2A), be completed at any time—

(i) [****]

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person*in consequence of or to give effect to any finding or direction contained in an order* under section 250, 254, 260, 262, 263, or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act;

(iii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147.

Explanation 2 - Where, 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 year, then, an assessment of such income for another assessment year 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.

Explanation 3-Where, by an order referred to in clause (ii) of sub-section (3), 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. (emphasis, ours)

We find the prayer acceptable, and proceed accordingly. Clearly, section 153(3) deals with, and is by way of exception to the regular time limits for different categories of assessments, enumerated in sub-sections (1), (1A), (1B) & (2) of s. 153, i.e., where the assessment, reassessment or recomputation of income is to be made to give effect to a finding or direction by an appellate or revisionary authority in any proceedings under the Act. The second saving is where an assessment in the hands of a partner is made in consequence of a s. 147 assessment on the partnership firm.

3.3 Our first observation in the matter is that the language of *Explanation 3* to s. 153(3)(ii), defining the scope of the provision inasmuch as the conditions of ss. 150(1) and 153(3)(ii) are deemed as satisfied on hearing the 'other person', does not in any manner preclude the applicability of s. 153(3)(ii) r/w s. 150(1), i.e., independent of *Explanation 3* thereto. That is, where there is, on facts and in law, such a finding or direction by the appellate or revisionary authority. We shall advert to this aspect later. Our second observation in the matter is that there is no dispute that the assessment in the hands of the assessee, made on 04.03.2015, could have been made at the time the assessment in the hands of KTC, which was the subject matter of appeal before the Tribunal (in ITA Nos. 352/Coch/2013, dated 30.08.2013) was made, so that the condition of s. 150(2) is met, making s. 150(1) applicable. Thirdly, the impugned assessment being in pursuance of the Tribunal's order, which has since attained finality, reference to the Board Circular is of no consequence.

3.4 Even as pointed out by Shri Suresh, albeit w.r.t. section 153(6)(i) r/w *Expl. 2*, instead of s. 153 (3)(ii) r/w *Explanation 3* thereto, i.e., as it stood prior to its substitution by Finance Act, 2016, inasmuch as it provides for hearing the 'other person' in whose hands the income stands held by the appellate court as assessable, instead of the assessee before it, is only by way of ensuring observance of the

principles of natural justice, i.e., of *audi alterm patrem*, so that no prejudice is caused to the 'other person'. Income is to be assessed in the hands of the right person, but where an assessee's income is deleted on the ground of it being assessable, instead, in the hands of another, the Revenue's right to proceed against the other person outsidethe regular time limit incident thereon, is hinged by the condition of hearing the 'other person' before passing the order holding so. Where not so, income being in any case assessable in the hands of the right person, it would stand to be deleted in the hands of the assessee, but the Revenue would be able to proceed against the 'right person' only by observing due procedure, including as to time, and which therefore shall be subject to time limitation incident thereon. This is necessitated, understandably, as the decisions by the Tribunal or the Hon'ble Courts may come years later, by which time action against the 'other person', i.e., the right person, may be ousted by time limitation which attends all procedure. In fact, where the statute provides no time limitation, the Courts have held that a reasonable time limit shall apply [*CIT v. Calcutta Knitwears* [2014] 362 ITR 673 (SC)]. It is easy to see as to why, then, the law provides anear open time limit in such cases, saving the interest of the Revenue, while at the same time balancing it with the vital concern for not causing any prejudice to the 'other person'.

3.5 Only where therefore a partner is heard by the appellate or the revisionary authority holding the income to be, instead of the firm, assessable in his hands, would the bar of time limitation raised. *How, however, one may ask, the partners of a firm be given an opportunity of being heard when they themselves are being heard while hearing the firm*? The firm is not a legal person. It has no legal identity of it's own, i.e., independent and apart from the partners constituting it for the time being, being only a compendious name and manner of referring to them together (*N. Khadervali Saheb & Anr. (Decd. by LRs.) v.N. Gudu Sahib (Decd.) & Ors*. [2003] 261 ITR 1 (SC); *CIT v. A.W. Figgies & Co*. [1953] 24 ITR 405 (SC)). Could, as posed by the Bench during hearing, any of it's partners take a stand in the hearing of

the firm that he has not been heard in the matter, and that there has thus been violation of the principles of natural justice? *To no answer by Shri Suresh*. When the notice of hearing is issued in the name of, and served on, the firm, opportunity of hearing is thereby extended to all the partners of the firm. It is open for any of the partners, as observed by the Bench during hearing, to not agree with the choice of the counsel being authorized to represent the firm, and in that case they may mutually decide on another or, in the event of no agreement, opt for being represented by another. This is as he would be impacted by the decision in the case of the firm. Where there is no such disagreement, the counsel representing the firm is representing all the partners of the firm collectively, and not the only partner signing the Vakalat. All the partners are agents of the firm, acting for and on behalf thereof and, thus, for all of them, and their actions bind the firm and, in effect, each other, acting only as agents of each other. *The argument by Shri Suresh that all the partners may not sign the Vakalat for and on behalf of the firm, and only the signatory/s can therefore be regarded as having been, in hearing the firm, heard, is thus not tenable*.

3.6 We, in holding that it is the partners of the firm who are in effect and substance heard when the firm is heard, and therefore can object in case of perceived conflict of interest, are in effect only stating that the condition of hearing the other person imposed by law, is satisfied. The condition, essentially a principle of natural justice – a multifaceted concept, is here by way of *audi alterm partem*, which we consider as satisfied. It would, apart from being legally not maintainable (refer, inter alia, *N. Khadervali Saheb & Anr. (Decd. by LRs.* (supra)), downright mischievous on the part of a partner/s to be 'silent' when the income in the hands of the firm is being deleted on the ground that it is rightly assessable in the hands of the individual partners inasmuch as they are the shareholders, and later object when the Revenue proceeds to act in the case of the partner/s. *He cannot thus be heard to say that he has not been heard in the matter*. That is, in our opinion, is pre-empted from doing so and, in any case, cannot be countenanced. Yes, this may not hold in the reverse, at least

ordinarily, i.e., that the firm, inasmuch as it is comprised of it's partners for the time being, stands heard when a partner/s is heard. This distinguishes the decision in *A.B. Parikh v. ITO* [1993] 203 ITR 186 (Guj), relied upon before us. The law, it needs to be appreciated, is not a dead letter word, but an organic, living document, which is therefore to be read meaningfully and purposively. The entire exercise of interpretation is to give effect to the legislative intent; the statute being an edict of the Legislature [*Britannia Industries Ltd. v. CIT* [2005] 278 ITR 546 (SC); *CIT vs. Baby Marine Exports* [2007] 290 ITR 323 (SC)]. As explained in *Catholic Syrian Bank Ltd. v. CIT* [2012] 343 ITR 270 (SC), the court shall give an interpretation which shall serve the legislative object and intention, rather than subvert it. In *Prakash Nath Khanna v. CIT* [2004] 266 ITR 1 (SC), the Hon'ble Court reminded that statutes should not be construed as theorems of Euclid, but by construing the words with some imagination of the purposes which lie behind them, reading them as a whole. No wonder, then, that it was in the given factual matrix held in *Manaklal Porwal v. CIT* [1985] 155 ITR 648 (Raj) that hearing the partner amounted to hearing the firm.

3.7 We may at this stage visit the law in the matter. We do so after recording our understanding on this aspect thereof, as no case law, despite the provision having a long legislative history, dating to the 1922 Act, where-under bulk of the case law obtains, was cited before us. The corresponding provision therein is s. 34(3), which reads as under:

(3) No order of assessment or reassessment, other than an order of assessment under section 23 to which clause (*c*) of sub-section (1) of section 28 applies or an order of assessment or reassessment in cases falling within clause (*a*) of sub-section (1) or sub-section (1) of this section shall be made after the expiry of four years from the end of the year in which the income, profits or gains were first assessable:

Provided that where a notice under clause (*b*) of sub-section (1) has been issued within the time therein limited, the assessment or reassessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if at the time of the assessment or re-assessment the four years aforesaid have already elapsed:

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 re-assessment made under section 27 or to an assessment or re-assessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 31, section 33, section 33-A, section 33-B, section 66 or section 66-A. (emphasis, supplied)

The second *proviso* to s. 34(3) was, beginning with the challenge to it's *vires* on the ground of it violating Article 14 of the Constitution, as was indeed held, *inter alia*, in *S.C. Prashar v. Vasantsen Dwarkadas* [1963] 49 ITR 1 (SC)(explained and distinguished in *U.P. Cooperative Sugar Mills Ltd. v. State of UP* [1993] 105 STC 132, 141-142 (All)), subject to a series of decisions; the words used though therein being 'any person' as against 'another person' in *Explanation 3* to s. 153(3). The question of *vires* came up again before the constitution bench of the Hon'ble Court in *ITO v. Murlidhar Bhagwandas* [1964] 52 ITR 335 (SC). The majority judgment took the view that the words "any person" in the second *proviso*, in the setting in which they appear, must be confined to a *person intimately connected* with the assessment of the year under appeal. This was on the view that the modification or setting aside of assessment made on a firm, joint Hindu family or association of persons, etc. for a particular year, may affect the assessment for the said year on a partner(s) of the firm, member(s) of the Hindu undivided family or the association, and in such cases, though the latter are not *en nomine* parties to the appeal, their assessments depend upon the assessments on the former. Thus, the unconstitutionality of the second *proviso* to section 34(3) of the 1922 Act was confined only to the persons who are not intimately connected with the assessments and not with respect to the assessee or a person intimately connected with the assessment under appeal. This also explains the rationale of the provision. The matter was again considered by the Apex Court in *Daffadar Bhagat Singh &Sons v. ITO* [1969] 71 ITR 417 (SC), reiterating the law laid down in *Murlidhar Bhagwandas* (supra). There, the Income-tax Officer (ITO) refused to register a partnership constituted by a father and his two sons, holding that the business was of

the HUF constituted of them. On appeal, the AAC, the first appellate authority, while allowing registration of the firm, held that the income did belong to the firm and directed the ITO to assess it in the hands of the firm. *As the time had run out for normal reopening, the second proviso to section 34(3) was pressed into service, and the Supreme Court held that it was rightly done*. In *Hungerford Investment Trust Ltd. v. ITO* [1998] 231 ITR 175, 186 (SC), the AAC directed, for reasons set out in his order, that the assessments should be made on the appellant-company itself and not on it's agent in India. *It was held that this direction cannot be considered as a direction to assess a stranger*. In fact, as the original assessment proceedings pertain to the income of the appellant-company, in any view of the matter, the appellant-company must be considered as intimately connected with the assessment proceedings in which the AAC gave the impugned direction. The appellant-company was therefore held to be covered by the expression 'assessee or any person' in the second *proviso* to section 34(3). In that view of the matter, the directions given by the AAC were held to be directions *properly given* under section 31 of the 1922 Act and notices pursuant to such directions could not be considered as notices on total strangers barred by limitation. Case law in the matter is in fact legion.

Further citations, as indeed dilation, providing the narrative, the background facts and circumstances, furnishing the context under which each decision arose, may not be necessary considering that the same represents settled law, explained and applied per numerous decisions by the Hon'ble Courts, including the jurisdictional High Court, as indeed the Supreme Court itself, as in *CIT vs. Ambala Flour Mills* [1970] 78 ITR 256 (SC); *CIT v. Vadde Pullaiah & Co*. [1973] 89 ITR 240 (SC); *CIT v. Onkarmal Meghraj* [1974] 93 ITR 233 (SC); *Bhagwan Das Sita Ram (HUF) v. CIT* [1984] 146 ITR 563 (SC); *Lucy Kochuvareed v. CIT* [1971] 82 ITR 845 (Ker-FB). The decisions include cases of a firm and partner/s; bigger and smaller HUF; a person as individual or karta of his family, etc. In each case the person concerned being intimately connected, assessment thereon, it was held, could be validly made

even after the expiry of the regular time limit on the subject income being found as not assessable in the hands of the assessee but such other person. Why, the Hon'ble Courts, as in *Daffadar Bhagat Singh & Sons* (supra); *MSP Raja and Anr. vs. ISC* [1972] 83 ITR 46 (Ker), while holding that the income was not assessable in the hands of the assessee, directed or otherwise upheld the assessment in the hands of another in whose hands the same was in law assessable. The reason for the same is not far to seek. Assessment on the right person, i.e., in whose case it is finally held as assessable, accepting or, as the case may be, rejecting the assessee's stand, cannot be allowed to fail in view of litigation, consuming time. This agrees with the settled legal position that where any undeserved or unfair advantage enures to a party invoking the jurisdiction of the Court, i.e., by the mere circumstance that it having initiated a proceeding in the court, the interest or justice requires it being neutralized. That is, the fact of institution of litigation should not by itself be permitted to confer an advantage on the party responsible for it (*Grindlays Bank Ltd. v. ITO* [1980] 122 ITR 55, 59-60 (SC) (*DI v. Pooran Mal & Sons* [1974] 96 ITR 390, 395 (SC)).

3.8 The law in its previous avtaar, removing the bar of time for an assessment on the assessee or another person, thus came with two conditions. Firstly, a 'finding', implying it being necessary for the disposal of the matter before it, in consequence of or to give effect to which income under reference is being assessed in the hands of either the assessee himself (for another year) or another person – which was, saving the constitutionality of the provision, understood to mean a person intimately connected with the assessment under reference. Where not so, as was found to be on a stranger, the assessment, despite a 'finding', could be made only under the regular time limit (*CIT v. S. Raghubir Singh Trust* [1980] 123 ITR 438 (SC)). Although s. 153(3)(ii) is modelled on the lines of the second *proviso* to s. 34(3) of the 1922 Act, the Legislature thought it fit to modify, to an extent, the ruling in *Murlidhar Bhagwandas* (supra). By introducing legal fictions of *Explanations 2 & 3* to s. 153(3), it's scope is enlarged. *Explanation 3* removes the condition of a 'finding' or

'direction' – a term which is to be strictly construed, where the same relates to the income being assessable, instead, in the hands of another, subject to he being heard. The second condition of the person being intimately connected though survives, i.e., where enhanced time limit, taking refuge in a finding, or deemed finding, obtains.

3.9 The issue that, therefore, survives is if a partner is intimately connected with the assessment so as to qualify as "another person" u/s. 153(3)(ii) r/w *Explanation 3* thereto. The same brooks no controversy; nay, is well-settled per numerous binding decisions, viz. *Ambala Flour Mills* (supra); *Vadde Pullaiah & Co*. (supra) by the Apex Court, or *Manaklal Porwal* (supra), rendered based thereon.

3.10 What, then, is the controversy about? The first issue is if the assessment in the hands of the partner, as in the instant case, follows a finding or direction, *inter alia*, per an order u/s. 254. There can be no doubt in the matter on this. The loan or advance from the two associate companies, KRPPL and KTCPL, being received by the firm (KTC), assessed as income u/s. 2(22)(e) in it's hands, was deleted by the Tribunal only for the reason that it, though liable to be brought to tax u/s. 2(22)(e), could only be in the hands of the individual partner holding the shares therein. That is to say, it is only for the reason that the subject income is assessable in the hands of the partner/s holding the shares, was it deleted in the hands of the firm, the recipient of income. The same, thus, qualifies to be a finding in terms of its strict definition in *Murlidhar Bhagwandas* (supra). It is therefore, even as observed earlier (para 3.3), not necessary to resort to the deeming of *Explanation 3* to s. 153(3)(ii). The question of whether, therefore, the assessee-partner was heard or not does not arise for consideration inasmuch as the condition of s. 150(1) r/w s. 153(3)(ii) is met independent of it. *Without prejudice*, we have already discussed at length (refer paras 3.5, 3.6) as to why a partner can only be regarded as heard where the firm, as KTC, in which he is a partner, is heard. The assessee, therefore, has no case either way.

3.11 Shri Suresh would, before the close of the hearing, with our leave, mention some citations, without either placing the same on record, or otherwise adverting to their facts or ratio, viz. *Gupta Traders v. CIT* [1981] 135 ITR 504 (All); *Rani Rajendra Kumari BA v. ITO* [1980] 130 ITR 708 (All); and *ITO v. Ramnarain Sons Pvt. Ltd.* [1978] 119 ITR 83 (Bom). There was accordingly no question of the Revenue responding thereto. Though, sure, the same cannot be regarded as part of the pleadings, we yet consider it relevant to consider the same inasmuch as our sole objective is to decide the matter in accordance with law, with the issue raised being principally legal. The same stand carefully perused, to find each of them as distinguishable and not applicable in the facts and circumstances of the case. None of them, to begin with, is a case of a firm and partner, i.e., of the partner and firm being held as not intimately connected or *qua* the assessment on the other being held as not in consequence to a 'finding'. *Ramnarain Sons Pvt. Ltd.* (supra) is a case of a company and it's director, both of which are separate legal entities. *Rani Rajendra Kumari BA* (supra) is, likewise, a case of husband and wife and, clearly, unless one is representing the other before the tax authorities, it cannot be said that hearing one amounts to hearing the other. *Gupta Traders* (supra) is a case of a firm and a partner, though, as in *A.B. Parikh* (supra), in the reverse, i.e., the firm being contended as heard in the assessment of a partner, and which, ordinarily, as afore-explained, cannot be inasmuch as the firm implies all the partners constituting it for the time being. The law in the matter is abundantly clear, so that where another person is intimately connected, as a partner in the assessment of the firm, his assessment can be reopened outside the normal time limits, and he cannot be heard to say of being not afforded an opportunity of being heard, i.e., *qua* the income earlier assessed in the hands of the firm, particularly when the only reason for it's deletion is of it being assessable in his hands. There are, apart from the several cited herein, decisions endorsing this by each of the Hon'ble Courts whose decisions stand cited before us,

viz. *Sool Chand Ram Sevak v. CIT* [1969] 73 ITR 466 (All); *Dhiraj Mal v. CIT* [1971] 79 ITR 242 (All); *Ramkrishna Ramnath v. ITO* [1970] 77 ITR 456 (Bom).

3.12 Before parting with our order, we may add that the assessee's appeal for AYs. 2005-06 and 2008-09 (in ITA Nos. 156 & 158/Coch/2023), raising identical issue/s, came up before the Tribunal and was heard on 06.02.2024. Even as it was a common ground by the parties, represented by the same counsels, that the issue arising being identical, the view adopted for the current year, order in which was pending, shall equally apply for those years, being before a different constitution, it was argued, raising contentions, including that not raised earlier. The same, it was again a common contention, may be considered in deciding the instant appeal as well, and which is only proper inasmuch as the appeals raise a common legal issue in respect of assessments arising out of the common orders by the Tribunal. The instant order, accordingly, includes and considers the contentions raised on 06.02.2024 as well.

4. *In Sum*:

The facts of the case being simple and undisputed, the issue boils down to whether the instant assessment could be said to be in consequence of a finding or direction by an appellate court, i.e., by the Tribunal vide it's order dated 30.08.2013 (ITA Nos. 352 & 353/Coch/2013) in the case of KTC, i.e., in view of the restricted meaning of the said term as explained in *Murlidhar Bhagwandas* (supra), followed by *Rajinder Nath v. CIT* [1979] 120 ITR 14 (SC). The same is clearly so, with, rather, there being instances of Hon'ble Courts, with a view to restore justice, *suo motu* directing assessment of income in the hands of the other, intimately connected person. The extended time limit, i.e., w.r.t. s. 153(3)(ii) r/w s. 150, shall accordingly apply. The assessee's challenge before us, while not pressing this aspect, rests on the non-applicability of *Explanation 3* thereto which, in view of our finding aforesaid, is render superfluous or of no consequence. *Without prejudice*, a firm being not a juristic person, with no legal identity, but only a compendious name of all the

partners constituting it, though assessable separately under the Act, hearing the partner/s is integral to the hearing of the firm. A partner, thus, is to be regarded as heard when a firm, in which he is a partner, is heard. No prejudice, which the law, by providing for the condition of prior hearing, in essence seeks to provide, in our opinion, stands caused to any of the partners of the firm, KTC, when the Tribunal opined in the matter vide it's order dated 30.8.2013 (ITA No. 352/Coch/2013 for AY 2007-08), and the requirement of law, as enshrined in *Explanation 3* to s. 153(3)(ii), is met. That is, either way, the saving of sections 150(1) and 153(3)(ii) is therefore applicable in the instant case. We decide accordingly.

5. In the result, the instant appeal by the assessee is dismissed.

Order pronounced on April 12, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin; Dated: April 12, 2024
n.p.

Copy to:
1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The Sr. DR, ITAT, Cochin.
5. Guard File.

By Order

Assistant Registrar
ITAT, Cochin