had been made in stating that no super-tax was leviable. This decision clearly shows that the subsequent cancellation of the assessees' registration was held by Their Lordships of the Privy Council to form part of the record retrospectively in the light of the said subsequent event, and the order was deemed to suffer from a mistake apparent from the record so as to justify the exercise of the rectification powers under s. 35 of the Act. It is because Their Lordships thought that s. 35 would have been clearly applicable that they did not decide the question as to whether s. 34 could also have been invoked. This decision lends considerable support to the view which we are disposed to take about the true meaning and scope of the expression "the mistake apparent from the record" occurring in s. 35.

We must accordingly hold that the High Court of Bombay was in error in coming to the conclusion that the notice issued by the Income-tax Officer calling upon the respondent to pay the sum of Rs. 29,446-9-0 was not warranted by law. The result is the order passed by the High Court issuing a writ against the appellant is set aside and the appeal is allowed with costs throughout.

Appeal allowed.

COMMISSIONER OF INCOME-TAX, BOMBAY

v.

M/S. AMRITLAL BHOGILAL & CO.

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April 28.

(VENKATARAMA AIYAR, GAJENDRAGADKAR and A. K. SARKAR JJ.)

Income Tax—Registration and assessment of firm by Income Tax Officer—Appeal against orders of assessment—Power of Appellate Assistant Commissioner in appeal—Cancellation of order of registration by Commissioner of Income Tax in revision pending such appeal—Validity—Indian Income-tax Act, 1922 (XI of 1922), ss. 26A, 31 and 33B(1).

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The respondent firm was assessed to income-tax for the assessment years 1947-48, 1948-49 and 1949-50 under s. 23(3). The Income-tax Officer renewed the registration of the firm under s. 26A of the Income-tax Act and passed an order under s. 23(6) allocating the shares of the various partners. The respondent preferred appeals against the orders of assessment to the Appellate Assistant Commissioner. On November 4, 1950, the Appellate Assistant Commissioner partly accepted the appeals in respect of the assessment years 1947-48 and 1948-49 but the appeal in respect of the assessment year 1949-50 was still pending. Meanwhile after issuing notice to the parties and hearing them the Commissioner, acting under s. 33B(1), passed an order on June 5, 1952, cancelling the registration granted under s. 26A on the ground that one of the partners of the firm was a minor, and directed the Income-tax Officer to make fresh assessments for the three years. The respondent preferred appeals to the Appellate Tribunal which were allowed. On the application of the appellant the Tribunal referred, under s. 66(1) of the Act, three questions to the High Court of Bombay. In regard to the assessment years 1947-48 and 1948-49 the High Court held that the orders of the Income-tax Officer granting registration had merged in the appellate orders of the Assistant Appellate Commissioner and the revisional power of the Commissioner under s. 33B(1) could not be exercised in respect of them. With regard to the renewal of registration for the year 1949-50 the High Court held that the Commissioner could not exercise his revisional power as the propriety of this order was open to consideration by the Appellate Assistant Commissioner in the respondent's appeal pending before him. The appellant obtained special leave and appealed:

Held, that the Commissioner had the authority under s. 33B(1) to set aside the orders of registration made by the Income-tax Officer. An order of the Income-tax Officer granting registration was not appealable before the Appellate Assistant Commissioner. Such an order could be cancelled by the Commissioner in exercise of his revisional powers under s. 33B(1); but it could not be cancelled by the Appellate Assistant Commissioner even in the exercise of his appellate jurisdiction when dealing with an appeal by an assessee. The theory that the order of a tribunal merges in the order of the appellate authority did not apply to the order of registration passed by the Income-tax Officer.

Commissioner of Income-tax, Bombay North v. *Tejaji Farasram Kharawala*, [1953] 23 I.T.R. 412, referred to.

Durgabati and Narmadabala Gupta v. *Commissioner of Income-tax*, [1956] 30 I.T.R. 101, disapproved.

But the Commissioner has no power while exercising his revisional jurisdiction under s. 33B(1) of the Act to set aside the assessment orders. The Commissioner, in the present case, did

not really intend to set aside the assessment orders but merely to direct the Income-tax Officer to make suitable consequential amendments in regard to the machinery or procedure to be adopted to recover the tax payable by the respondent. The registration or non-registration of a firm does not at all affect the computation of taxable income; it merely governs the procedure to be adopted in recovering the tax found due.

Shapurji Pallonji v. *Commissioner of Income-tax, Bombay*, [1945] 13 I.T.R. 113, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 128 of 1955.

Appeal by special leave from the judgment and order dated March 5, 1953, of the Bombay High Court in I. T. R. No. 40 of 1952.

H. N. Sanyal, Additional Solicitor-General of India, K. N. Rajagopala Sastri and *R. H. Dhebar*, for the appellant.

B. R. L. Aiyangar, for the respondent.

1958. April 28. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—This is an appeal by the Commissioner of Income-tax, Bombay, by special leave and it raises a short question of law under s. 33B of the Income-tax Act. The respondent assessee had been registered as a firm under s. 26A of the Act for the year 1946-47. For the assessment years 1947-48, 1948-49 and 1949-50, the Income-tax Officer made the assessment on the respondent on June 7, 1949, June 7, 1949, and September 23, 1949, respectively under s. 23(3) of the Act. The Income-tax Officer made an estimate about the profits of the respondent under the proviso to s. 13 and computed the total income of the respondent at Rs. 95,053, Rs. 93,430 and Rs. 83,752 for the said years respectively. The respondent had applied for and obtained renewal of registration of the firm. The Income-tax Officer had also passed an order under s. 23(6) of the Act and allocated the shares of the various parties.

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Against the said assessment orders the respondent preferred an appeal to the Appellate Assistant Commissioner. On November 4, 1950, the Appellate

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Assistant Commissioner reduced the respondent's estimated profit by Rs. 28,250 in the assessment year 1947-48 and by Rs. 19,000 in the assessment year 1948-49. The respondent's appeal in regard to the assessment year 1949-50 was pending before the Appellate Assistant Commissioner.

Meanwhile it had come to the notice of the Commissioner of Income-tax that the respondent firm which had been granted renewal of registration by the Income-tax Officer was not a firm which could be registered under the Act as one of the partners of the firm was a minor. The Commissioner then took action under s. 33B(1) of the Act and issued notice to the respondent to show cause why the assessments made under s. 23(3) of the Act and the registration granted under s. 26A should not be cancelled. After hearing the parties, the Commissioner passed an order under s. 33B(1) on June 5, 1951 by which he cancelled the registration of the firm under s. 26A and directed the Income-tax Officer to make fresh assessments against the respondent as an unregistered firm for all the three years. As a result of this revisional order passed by the Commissioner of Income-tax, the Income-tax Officer passed fresh orders.

The respondent preferred five appeals to the tribunal; two of these were against the orders passed by the Appellate Assistant Commissioner under s. 31 and related to the assessment years 1947-48 and 1948-49; while the remaining three challenged the orders passed by the Commissioner of Income-tax under s. 33B(1) of the Act and related to the assessment years 1947-48, 1948-49 and 1949-50. In these three appeals, with which we are concerned, the respondent had urged that the Commissioner was not competent in law to pass an order setting aside an assessment which had been confirmed or modified by the Appellate Assistant Commissioner; that the orders passed by the Commissioner under s. 33B(1) were bad in law as they directed the Income-tax Officer to pass an order in a particular manner and that the orders passed by the Income-tax Officer subsequent to the cancellation of the respondent's registration were bad in law as they were passed with-

out giving notice to, or hearing, the respondent. On January 2, 1952, the tribunal upheld the contentions raised by the respondent and allowed the appeals.

The appellant then moved the tribunal under s. 66(1) of the Act for referring the questions specified in its application for the opinion of the High Court. The tribunal accordingly framed the following three questions and referred them to the High Court of Bombay :

"1. Whether on the facts and circumstances of the case the Commissioner of Income-tax acting under s. 33B(1) can set aside the orders passed by the Appellate Assistant Commissioner, for the assessment years 1947-48 and 1948-49 ?

2. Whether on the facts and circumstances of the case the order passed by the Commissioner of Income-tax dated 5th June, 1951, is bad in law as it directs the Income-tax Officer to pass an order in a particular manner ?

3. Whether on the facts and circumstances of the case orders passed by the Income-tax Officer dated 21-6-52 are bad in law, as fresh notices as required by Sections 22 and 23 of the Income-tax Act were not given by the Income-tax Officer to the assessee ? "

This matter was heard by the High Court on March 5, 1953. In regard to the assessments made for the years 1947-48 and 1948-49 the High Court held that the question raised by the appellant was concluded by the judgment already delivered by it in the *Commissioner of Income-Tax, Bombay North* v. *Tejaji Farasram Kharawala* (1). In Tejaji's case the High Court had held that when an appeal is provided from a decision of the tribunal and the appeal court, after hearing the appeal, passes an order, the order of the original court ceases to exist and is merged in the order of the appeal court; and although the appeal court may merely confirm the order of the trial court, the order that stands and is operative is not the order of the trial court but the order of the appeal court. In that view of the matter, since the Income-tax Officer's order.

(1) [1953] 23 I.T.R. 412.

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granting registration to the respondent was assumed to have merged in the appellate order, the revisional power of the Commissioner could not be exercised in respect of it. The same view has been taken in the majority decision of the Patna High Court in *Durgabati and Narmadabala Gupta* v. *Commissioner of Income-tax* (1). In respect of the Income-tax Officer's order renewing registration to the respondent for the year 1949-50, the High Court took the view that the revisional power of the Commissioner could not be exercised even in respect of this order because the propriety or the correctness of this order was open to consideration by the Appellate Assistant Commissioner in the respondent's appeal then pending before him, *Commissioner of Income-tax* v. *Amritlal Bhogilal* (*sub-nom*) (2). In respect of this order the High Court had framed an additional question. It was in these terms: "Whether the order of the Commissioner acting under s. 33B(1) setting aside the order of the Income-tax Officer where an appeal against that order was pending before the Appellate Assistant Commissioner was valid?" The High Court answered this additional question also in favour of the assessee. In the result the High Court held that the Commissioner's order cancelling the respondent's registration for all the three years in question was invalid. That is why the High Court did not think it necesssary to answer the remaining two questions framed by the tribunal.

The application subsequently made by the appellant to the High Court for a certificate under s. 66A (2) was rejected by the High Court. Thereupon the appellant applied for and obtained special leave from this Court on March 22, 1954. The appellant's contention is that the view taken by the High Court that the Commissioner of Income-tax could not have exercised his revisional power in respect of the Income-tax Officer's order granting registration to the respondent with regard to all the three years in question is based on a misconstruction of the relevant provisions of s. 33B of the Act.

Section 33B(1) which confers revisional power on

(1) [1956] 30 I.T.R. 101. (2) [1953] 23 I.T.R. 420.

the Commissioner provides that the Commissioner may call for and examine the record of any proceeding under the Act and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and, after making and causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify including an order enhancing or modifying the assessment or cancelling the assessment or directing a fresh assessment. Sub-section (2) provides that orders of re-assessment made under s. 34 cannot be revised under s. 33B (1) and adds that the said revisional power cannot be exercised after the lapse of two years from the date of the order sought to be revised. Sub-section (3) gives the assessee the right to prefer an appeal to the appellate tribunal against the Commissioner's revisional order within the prescribed period; and sub-s. (4) provides for the procedure for filing such an appeal.

In the present appeal two short questions fall to be decided under s. 33B (1). Does the order passed by the Income-tax Officer granting registration to the assessee firm continue to be an order passed by the Income-tax Officer even after the assessee's appeal against the assessment made by the Income-tax Officer on the basis that the assessee was a registered firm has been disposed of by the Appellate Assistant Commissioner? In other words, where the appeal preferred by an assessee against his assessment has been considered and decided by the Appellate Assistant Commissioner, does the order of registration along with the subsequent order of assessment merge in the appellate order? If, in law, the order of registration can be said to merge in the final appellate order, then clearly the Commissioner's revisional power cannot be exercised in respect of it. This question arises in respect of the registration order in regard to the two assessment years 1947-48 and 1948-49. The other question which also falls to be decided is whether the order of registration in respect of the assessment year

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1949-50 can be made the subject-matter of the exercise of the Commissioner's revisional power even though the assessee's appeal against the assessment for the said year is pending before the Appellate Assistant Commissioner at the material time.

There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement; but the question is whether this principle can apply to the Income-tax Officer's order granting registration to the respondent.

In dealing with this question it would be necessary first to refer to the relevant provisions of the Act in regard to the granting of registration. Section 26A of the Act lays down the procedure for the registration of firms. An application has to be made by the firm in that behalf specifying the particulars prescribed by the said section and by the material rules framed under the Act. If registration is granted by the Income-tax Officer it enables the Income-tax Officer to adopt the procedure prescribed by s. 23 (5) (a) for making assessment orders in respect of the registered firm. If a firm is not registered the Income-tax Officer is required to follow the procedure prescribed by s. 23 (5) (b) in making assessment orders in respect of unregistered firms. A firm is an assessee under s. 2 (2) whether it is registered under s. 26A or not. The Act does not impose an obligation on firms to apply for and obtain registration. The Act in terms does not purport to define the effect of registration nor does it enumerate the rights of parties on registration of firms. Section 23 (5) (a) and (b) provide for the machinery for

collecting or recovering the tax and in no sense can they be treated as charging sections. Broadly stated, even if a firm is registered in pursuance of an application made under s. 26A, no difference arises in the liability of the firm or its individual partners to be taxed for the total income as may be determined by the Income-tax Officer under ss. 3 and 4 of the Act. The computation of taxable income is not at all affected by the machinery provided by s. 23 (5). The decision in *Shapurji Pallonji* v. *Commissioner of Income-Tax, Bombay* (1) on which Mr. Ayyangar himself relied clearly brings out and emphasizes this position. It is true that the Income-tax Officer is empowered to follow the two methods specified in s. 23 (5) (a) and (b) in determining the tax payable by registered and unregistered firms respectively and making the demand for the tax so found due; but this does not affect the computation of taxable income. It is important to bear in mind that the order granting registration to an assessee firm is an independent and separate order and it merely affects or governs the procedure to be adopted in collecting or recovering the tax found due. It is not disputed that the registration granted by the Income-tax Officer to an assessee firm can be cancelled by him either under s. 23 (4) or under r. 6B. It is also clear that the Income-tax Officer's order granting registration can be cancelled by the Commissioner under s. 33B (1). The argument for the respondent, however, is that, as a result of the decision of the appeal preferred by him against the Income-tax Officer's order of assessment, the order of registration passed by the Income-tax Officer in favour of the respondent has ceased to be the order passed by the Income-tax Officer as such.

It is therefore necessary to inquire whether the order of registration passed by the Income-tax Officer can be challenged by the department before the Appellate Assistant Commissioner where the assessee firm has preferred an appeal against the order of assessment. The decision of this question would obviously depend upon the relevant provisions of the

(1) [1945] 13 I. T. R. 113.

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Act in respect of appeals to the Appellate Assistant Commissioner and the powers of the Appellate Assistant Commissioner. Section 30 (1) gives the assessee the right to prefer appeals against the orders specified in the said section. The assessee firm can, for instance, object to the amount of income assessed under s. 23 or s. 27. The assessee firm can also object to the order passed by the Income-tax Officer refusing to register it under s. 23 (4) or s. 26A. It can likewise object to the cancellation by the Income-tax Officer of its registration under s. 23 (4). It is significant that, whereas an appeal is provided against orders passed by the Income-tax Officer under s. 23 (4) or s. 26A either refusing to register the firm or cancelling registration of the firm, no appeal can be filed by the department against the order granting registration. Indeed it is patent that the scheme of the Act in respect of appeals to the Appellate Assistant Commissioner is that it is only the assessee who is given a right to make an appeal and not the department. Thus there can be no doubt that the Income-tax Officer's order granting registration to a firm cannot become the subject-matter of an appeal before the Appellate Assistant Commissioner.

The next question which must be considered is whether the Income-tax Officer's order granting registration to a firm can be challenged by the department during the hearing of the firm's appeal against the final order of assessment made by the Income-tax Officer? The powers of the Appellate Assistant Commissioner are to be found in s. 31 of the Act. Section 31 (3) (a) authorises the Appellate Assistant Commissioner to confirm, reduce, enhance or annul the assessment under appeal. Under s. 31 (3) (b), wide powers are given to the appellate authority to set aside the assessment or direct the Income-tax Officer to make fresh assessment after making such further enquiry as the Income-tax Officer may think fit or as the Appellate Assistant Commissioner may direct. The Appellate Assistant Commissioner is also given the authority, in the case of an order cancelling the registration of the firm under sub-s. (4) of s. 23 or

refusing to register a firm under sub-s. (4) of s. 23 or s. 26A or to make a fresh assessment under s. 27, to confirm such order or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment as the case may be. This section further lays down that, at the hearing of an appeal against the order of an Income-tax Officer, the Income-tax Officer shall have the right to be heard either in person or by his representative. It is thus clear that wide powers have been conferred on the Appellate Assistant Commissioner under s. 31. It is also clear that, before the appellate authority exercises his powers, he is bound to hear the Income-tax Officer or his representative. It has been urged before us by Mr. Ayyangar that these provisions indicate that, in exercise of his wide powers the Appellate Assistant Commissioner can, in a proper case, after hearing the Income-tax Officer or his representative, set aside the order of registration passed by the Income-tax Officer. We are not prepared to accept this argument. The powers of the Appellate Assistant Commissioner, however wide, have, we think, to be exercised in respect of the matters which are specifically made appealable under s. 30(1) of the Act. If any order has been deliberately left out from the jurisdiction of the Appellate Assistant Commissioner it would not be open to the appellate authority to entertain a plea about the correctness, propriety or validity of such an order. Indeed, if the respondent's contention is accepted, it would virtually give the department a right of appeal against the order in question and there can be no doubt that the scheme of the Act is not to give the department a right of appeal to the Appellate Assistant Commissioner against any orders passed by the Income-tax Officer. The order granting registration can be cancelled by the Income-tax Officer himself either under r. 6B or under s. 23(4). It may be cancelled by the Commissioner in exercise of his revisional power under s. 33 B; but it cannot be cancelled by the Appellate Assistant Commissioner in exercise of his appellate jurisdiction under s. 31 of the Act. It is true that,

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in dealing with the assessee's appeal against the order of assessment, the Appellate Assistant Commissioner may modify the assessment, reverse it or send it back for further enquiry; but any order that the Appellate Assistant Commissioner may make in respect of any of the matters brought before him in appeal will not and cannot affect the order of registration made by the Income-tax Officer. If that be the true position, the order of registration passed by the Income-tax Officer stands outside the jurisdiction of the Appellate Assistant Commissioner and does not strictly form part of the proceedings before the appellate authority. Even after the appeal is decided and in consequence the appellate order is the only order which is valid and enforceable in law, what merges in the appellate order is the Income-tax Officer's order under appeal and not his order of registration which was not and could never become the subject-matter of an appeal before the appellate authority. The theory that the order of the tribunal merges in the order of the appellate authority cannot therefore apply to the order of registration passed by the Income-tax Officer in the present case.

In this connection we may refer to the argument which Mr. Ayyangar seriously pressed before us. He contended that, when the Appellate Assistant Commissioner hears the assessee's appeal, he is himself computing the total taxable income of the assessee and, in discharging his obligation in that behalf, he may be entitled to consider all relevant and incidental questions. In support of this argument Mr. Ayyangar referred us to the decision in *Rex* v. *The Special Commissioner of Income-Tax (ex parte Elmhirst)* (1). The point which arose before the King's Bench Division in this case was whether, when a notice of appeal has been given, it was open to the assessee to withdraw his appeal and the Court held that once notice of appeal is given the appellate authority was entitled and indeed bound to see that a true assessment of the amount of the taxpayer's liability was arrived at. We are unable to see how this decision can really help the

(1) [1935] 20 Tax Cas. 381.

respondent in the present case. When an appeal is taken before the Appellate Assistant Commissioner undoubtedly he is bound to examine the case afresh but that cannot bring within the purview of his appellate jurisdiction matters which are deliberately left out by the Act. If s. 30(1) does not provide for an appeal against a particular order, legislature obviously intends that the correctness of the said order cannot be impeached before the appellate authority. The jurisdiction and powers of the appellate authority must inevitably be determined by the specific and relevant provisions of the Act.

In this connection it may be useful to compare the relevant and material features of the revisional powers conferred on the Commissioner by ss. 33A and 33B respectively. The Commissioner's revisional power under s. 33A cannot be exercised to the prejudice of the assessee in any case. It can be exercised in respect of orders passed by any authority subordinate to the Commissioner; but in no case can the revisional order prejudicially affect the assessee. It is significant that the explanation to s. 33A expressly provides that the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner. In other words, in exercise of this revisional power the Commissioner may modify or reverse in favour of the assessee even the orders passed by the Appellate Assistant Commissioner. The position under s. 33B, however, is different. The Commissioner's revisional power under s. 33B can be exercised only in respect of orders passed by the Income-tax Officer. The appellate orders are outside the purview of s. 33B. That is one important distinction between the two revisional powers. The other important distinction is that, whereas under s. 33A the revisional jurisdiction cannot be exercised to the prejudice of the assessee, under s. 33B the Commissioner can, in exercise of his revisional power, make orders to the prejudice of the assessee. It is not disputed that under s. 33B erroneous orders passed by the Income-tax Officer which are prejudicial to the revenue can be revised by the Commissioner. Now,

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the Income-tax Officer's order registering the firm is not appealable and so it cannot become the subject-matter of an appeal before the Appellate Assistant Commissioner. Such an order can therefore be revised by the Commissioner under s. 33B whenever he considers that it has been erroneously passed. In the present case there is no doubt that the respondent firm cannot be validly registered in view of the fact that one of its partners is a minor and so, on the merits, the Commissioner's order is clearly right. We must accordingly hold that the High Court was in error in taking the view that the Commissioner had no authority to set aside the registration order passed by the Income-tax Officer granting registration to the respondent for the years 1947-48 and 1948-49.

The case in regard to the subsequent year 1949-50 presents no difficulty. The appeal preferred by the respondent against the Income-tax Officer's assessment order in respect of this year was pending at the material time before the Appellate Assistant Commissioner; and so no question of merger arose in respect of the order granting renewal of registration for this period. There can be no doubt that even on the theory of merger the pendency of an appeal may put the order under appeal in jeopardy but until the appeal is finally disposed of the said order subsists and is effective in law. It cannot be urged that the mere pendency of an appeal has the effect of suspending the operation of the order under appeal. The High Court, however, appears to have taken the view that the revisional power is an extraordinary power and can be exercised only for unusual and extraordinary reasons. It was also assumed by the High Court that, in the pending appeal, the department would have an alternative remedy because, according to the High Court, the department could have challenged the validity or the propriety of the respondent's registration and could have asked the Appellate Assistant Commissioner to cancel it. As we have already pointed out, the department could not challenge the validity of the registration order in the assessee's appeal before the appellate authority and so the argument that the

department had an alternative remedy is not correct. It is clear from the judgment of the High Court that it is the assumption that the department had an alternative remedy which weighed with the learned judges in reaching their final conclusion. Then the argument that the extraordinary revisional power must be exercised only for extraordinary reasons is really not very material. Whether or not the revisional power can be exercised in a given case must be determined solely by reference to the terms of s. 33B itself. Courts would not be justified in imposing additional limitations on the exercise of the said power on hypothetical considerations of policy or the extraordinary nature of the power. We must, therefore, hold that the High Court was also in error in holding that the Commissioner was not authorised in cancelling the order of the respondent's registration for the year 1949-50. The result is that the view taken by the High Court must be reversed and the first question framed by the tribunal as well as the additional question framed by the High Court must be answered in favour of the appellant.

Then there remain two other questions which were framed by the tribunal but have not been considered by the High Court. The learned counsel appearing for both the parties agree that we need not remit these two questions to the High Court with the direction that the High Court should deal with them in accordance with law; it has been conceded before us that, if the principal question about the Commissioner's power under s. 33B(1) to cancel the respondent's registration is answered in favour of the appellant, then the two remaining questions would become academic and answers to them would also have to be in favour of the appellant. It is true, by his order the Commissioner purported to set aside the assessment orders made under s. 23(3) and s. 55 and directed the Income-tax Officer to make fresh assessments according to law for each of the years in question. If this part of the order is literally construed it would clearly be open to the objection raised by the respondent. The assessment orders passed by the Income-tax Officer for the years 1947-48 and 1948-49 had been modified by the

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Appellate Assistant Commissioner and in that sense they had ceased to be the orders of assessment passed by the Income-tax Officer himself and so the Commissioner could not have exercised his revisional power under s. 33B(1) in respect of the said appellate orders but we are inclined to think that the Commissioner did not intend to set aside the assessments in this sense. It is clear from the order read as a whole that, having cancelled the respondent's registration, the Commissioner wanted to direct the Income-tax Officer to make suitable consequential amendment in regard to the machinery or procedure to be adopted to recover the tax payable by the respondent. In fact it is conceded that, in his subsequent order, the Income-tax Officer has accepted the figure of the taxable income of the respondent as determined by the appellate authority for the relevant years and has proceeded to act under s. 23(5)(b) on the basis that the respondent is an unregistered firm. Therefore we cannot hold that the order passed by the Commissioner is bad in law on the ground that "he directed the Income-tax Officer to pass the order in a particular manner". The answer to question No. 2 would accordingly be in the negative. Then as regards question No. 3, it is difficult to understand how this question can be said to arise from the proceedings before the tribunal. This question challenges the validity of the procedure adopted by the Income-tax Officer in passing fresh orders against the respondent. This proceeding is clearly subsequent to the impugned order of the Commissioner under s. 33B(1) and so we are unable to see how the tribunal allowed the respondent to raise this contention in appeals which had been filed by the respondent against the Commissioner's order under s. 33B(1). Besides, it has been fairly conceded by Mr. Ayyangar before us that, when the Income-tax Officer merely proceeded to adopt a different machinery to recover the tax due from the respondent in consequence of the cancellation of the respondent's registration, there was no occasion or need to issue another notice against the respondent. We must accordingly answer question No. 3 also in the negative.

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In the result all the questions framed in this case are answered in favour of the appellant. The order passed by the High Court is set aside and the appeal is allowed with costs throughout.

Appeal allowed.

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M/S. DALMIA DADRI CEMENT CO. LTD.

v.

THE COMMISSIONER OF INCOME-TAX

(and connected petition)

(S. R. DAS C. J., VENKATARAMA AIYAR, S. K. DAS, GAJENDRAGADKAR and VIVIAN BOSE JJ.)

Act of State—Covenant between States for merger—Rights of subjects of the Covenanting States—Enforcement in municipal courts of the New State—Income-tax—Concessional rates granted by the Covenanting State—Whether binding on the New State.

The appellant company which was incorporated in 1938 in the erstwhile State of Jind obtained certain concessions from the Ruler of the State under an agreement dated April 1, 1938, which, inter alia, provided that the State was to be allotted certain shares in the company without any payment and as regards income-tax the company was to be assessed at concessional rates. On May 5, 1948, the Ruler of Jind along with the Rulers of seven other States entered into a Covenant for the merger of their territories into one State. Article VI of the Covenant provided, inter alia, that the Ruler of the Covenanting State shall make over the administration of his State to the Rajpramukh of the new State and that all duties and obligations of the Ruler of the Covenanting State shall devolve on the New State and shall be discharged by it. In accordance with that Article the Rajpramukh took over the administration of Jind on August 20, 1948, and immediately after assumption of office promulgated Ordinance No. I of S. 2005, by s. 3 of which all laws in force in the State of Patiala were made applicable *mutatis mutandis* to the territories of the New State and that all laws in force in the Covenanting States stood repealed. On November 24, 1949, the Rajpramukh issued a proclamation accepting the Constitution of India and on April 13, 1950, the New State became a taxable territory of the Union of India.