without he being given any opportunity of being heard and placing his view point before the Court."

(51) In the present case we feel compelled to record that unless all the adverse observations of the learned single Judge made against the Vice-Chancellor are effaced from the record, complete justice between the parties would not be rendered. We accordingly allow Civil Misc. No. 1213 of 1975 and hold that the adverse remarks referred to therein must be deemed as if they had never been made on the record.

(52) For the afore-mentioned reasons, we allow this Letters Patent Appeal and setting aside the judgment of the learned single Judge dismiss the writ petition with costs throughout.

K. S. K.

FULL BENCH

Before R. S. Narula, C.J., P. S. Pattar and Harbans Lal, JJ,

PRITAM SINGH,—*Petitioner.*

versus

THE ASSISTANT CONTROLLER OF ESTATE DUTY, PATIALA,—

Respondent.

C.W. 4609 of 1975.
December 1, 1975.

Hindu Succession Act (*XXX of* 1956)—*Sections* 2, 4, 6 *and* 30—*Punjab agricultural custom—Whether abrogated after the coming into force of the Act—Hindus governed by such custom—Whether to be governed by Hindu Law and the provisions of the Act after the commencement of the Act—Joint Hindu Family—Whether abolished by the Act.*

Estate Duty Act (*V of* 1953)—*Section* 59(*b*)—*Wrong judicial decision—Whether constitutes "information" within the meaning of section* 59(*b*).

Held, that prior to the passing of the Hindu Succession Act, 1956, where the parties were Hindus, Hindu Law applied in the first instance in matters regarding succession, and whoever asserted a custom at variance with Hindu Law was to prove it and in case of his failure to do so, the rule of decision was to be personal law of the parties. After the coming into force of the Act, section 4 thereof abrogates any text, rule or interpretation of Hindu Law, or any custom or usage as part of that law in force immediately before its commencement with respect to any matters for which provision is made therein. By virtue of this section, the Punjab Agricultural Custom, so far as it was applicable to Hindus in matters of succession, has been completely abrogated and now no Hindu is governed by rules of customary law in matters of succession to property. All Hindus, as defined in section 2 of the Act, including Jat Sikhs, are now governed by Hindu Law and the provisions of the Act in matters of succession.

Held, that the Act has not abolished Joint Hindu Family and the Joint Hindu family property. It does not interfere with the special rights of those who are members of a Mitakshara co-parcenary except in the manner and to the extent mentioned in sections 6 and 30. Hindus who were previously governed by rules of customary law in matters of succession, like the other Hindus, now form joint and undivided Hindu Families including Mitakshara co-parcenary, and the sons, grand-sons and great grandsons of the holder of the joint or co-parcenery property for the time being acquire interest therein by birth.

Held, that the word 'information' in section 59(b) of the Estate Duty Act, 1953 includes information as to the true and correct state of law and would cover information derived from relevant judicial decisions. But a judicial decision which does not lay down correct law does not constitute 'information' within the meaning of clause (b) of section 59 of the Act. However, two conditions must be satisfied before the Assistant Controller of Estate Duty can act under section 59(b) of the Act: firstly, he must have information which comes into his possession subsequent to the passing of the original assessment order, and, secondly, that information must lead to his belief that property chargeable to estate duty has escaped assessment or has been under-asseed or has been assessed at too low a rate.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, Probation or Mandamus or any other appropriate Writ, Order or Directions be issued declaring that :—

(a) that the notice dated 8th October, 1974 (Annexure P-2) is null and void.

(b) the assessment of the petitioner made on 1st May, 1973 in annexure P-1 is valid and in accordance with the provisions of law applicable to the petitioner.

(c) that there is no custom or bar upon a Jat Sikh in Punjab to constitute a 'Coparcenary family' in the joint Hindu family.

(d) that if there is any such custom it is bad as it violates the provisions of the Constitution contained in Art. 14 and 19(1) of the Constitution of India.

(e) that a writ in the nature of prohibition be issued restraining the respondent from reassessing the Petitioner in persuance of the notice issued *vide* Annexure P-2.

(f) that further proceedings in the matter of re-assessment in persuance of notice Annexure P-2 be stayed till the decision of the petition.

(g) any other relief which the petitioner may be held to be entitled, may be granted.

(h) costs of the petition be allowed.

Further praying that the advance notice of motion on the respondents may also be dispensed with at this stage.

K. P. Bhandari and Gopi Chand, Advocates, *for the Petitioner.*

D. N. Awasthy, Advocate with B. K. Jhingan, Advocate, *for the Respondents.*

JUDGMENT

Pattar, J.—This is a petition filed under Article 226 of the Constitution of India by Pritam Singh, petitioner to quash the notice dated October 8, 1974, Annexure P-2 to the writ petition, issued by the respondent-Assistant Controller of Estate Duty, Patiala, directing him to file a statement of all the property chargeable to estate duty owned by his father Gurbachan Singh at the time of his death on March 27, 1971, for re-assessment of the estate duty.

(2) The facts of this case are that Gurbachan Singh, the father of the petitioner Pritam Singh, who was a Jat Sikh, died on March

27, 1971. A notice under section 55 of the Estate Duty Act No. 5 of 1953, (hereinafter described as the Act) was issued by the respondent to the petitioner for filing the return. In compliance with this direction the petitioner filed the return on March 13, 1972. The petitioner in his return mentioned that the deceased owned land in three villages, namely, Dharampura Taraf Saidan Ludhiana, Resulra and Agwar Gujran. This was claimed to be ancestral property belonging to the Joint Hindu family constituted by the deceased Gurbachan Singh and his sons, Pritam Singh and another. It was stated in the return that the deceased Gurbachan Singh and his sons constituted joint Hindu family and the land and the movable property mentioned below belonged to the said Hindu undivided family :—

(1) Deposits in the Post Office Account No. 606657	...	Rs. 4,906
(2) Cash in hand	...	Rs. 1,000
(3) Standing crops estimated—(The deceased died when winter crops were maturing)	..	Rs. 5,000
(4) Milch cattle estimated	..	Rs. 1,000
(5) House-hold goods/agricultural implements estimated at	..	Rs. 2,500 (exempt)

(3) The Assistant Controller of Estate Duty, after hearing the petitioner, held that the total value of the movable and immovable property owned by the joint Hindu family was Rs. 4,95,539, wherein the deceased had one-third share amounting to Rs. 1,65,180. After deducting the funeral and other expenses, he assessed the estate duty payable on the share of the deceased in the joint Hindu family property, *vide* his order dated May 1, 1973, copy whereof is Annexure P-1 to the writ petition.

(4) The respondent issued the impugned notice dated October 8, 1974, copy whereof is Annexure P-2 to the writ petition, under section 59 of the Estate Duty Act to the petitioner alleging that in the judgment in *Controller of Estate Duty* v. *Harbans Singh and others* (1), by a Division Bench of this Court, it was pointed out that by the

(1) (1975) 98 I.T.R. 331 (Pb.).

mere enforcement of the Hindu Succession Act, it could not be held that the custom had been abrogated and the agriculturists started being governed by the Mitakshara Hindu law etc. The petitioner was directed to file account of all property assessable to estate duty as the property escaped assessment and it was under-assessed at low rates. Feeling aggrieved, the petitioner filed this writ petition to quash this notice, Annexure P-2, on the allegations that it is illegal, invalid and void, that the above-said judgment relied upon by the Department, which is reported as *Controller of Estate Duty* v. *Harbans Singh and others* (1), did not lay down the correct law, that no reasons were given therein, that by virtue of section 4 of the Hindu Succession Act custom in matters of succession, if any, had been abrogated, that the Sikhs are Hindus and they are governed by their personal law, which is Hindu law, and the onus lay on the Department to prove the alleged custom but it was not done and that no appeal against the order Annexure P-1 was filed by the Department, which has become final between the parties, and the notice being illegal may be quashed. Notice of this petition was issued to the respondent.

(5) Shri B. D. Seth, Assistant Controller of Estate Duty, Patiala, filed an affidavit, wherein the facts mentioned in the writ petition were admitted. However, it was pleaded that the judgment of the Division Bench of this Court in *Harbans Singh's case* (supra) constituted 'information' for the purpose of taking proceedings under section 59 of the Estate Duty Act and the impugned notice was valid and legal and there is no substance in the writ petition and the same may be dismissed. It was pleaded that Jat Sikhs and other agricultural tribes, which were previously governed by Customary law, are not governed by the Mitakshara Hindu law and this writ petition is misconceived.

(6) The contents of the assessment order dated May 1, 1973, copy whereof is Annexure P-1 to the writ petition, of the Assistant Controller of Estate Duty have been given in the earlier part of the judgment and need not be repeated here. Annexure P. 2 is the copy of the impugned notice dated October 8, 1974, issued by the respondent to the petitioner, and it reads as follows:—

"In the matter of estate of late Shri Gurbachan Singh.

Whereas I have reason to believe that property chargeable to estate duty has :—

(a) escaped assessment.

(b) been under assessed.

(c) been assessed at too low rate.

You are requested to deliver to me not later than 30 days an account of all property in respect of which duty is payable."

(7) The first submission made by the counsel for the petitioner is that the impugned notice is illegal and could not be issued under section 59 of the Estate Duty Act, and that the judgment reported as *Controller of Estate Duty* v. *Harbans Singh and others* (1), did not constitute any information for the purpose of taking proceedings under section 59 of the Act, that no reasons were given in the said judgment, and that the law laid down in this decision is not correct and it required to be reconsidered and over-ruled.

(8) In order to appreciate the arguments of the counsel for the parties, I set out below the relevant provisions of the Estate Duty Act, 1953.

Section 2(15) :

'Property' includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method.

Explanation 1.—The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition the expression 'property' shall include the debt or right created.

Explanation 2.—The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression 'property' shall include the benefit conferred by the extinguishment of the debt or right.

* * *

Section 5(1)—

In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, including agricultural land, which passes on the death of such person, a duty called "Estate duty" at the rates fixed in accordance with section 35.

* * *

Section 6—

Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.

* * *

Section 7—

(1) Subject to the provisions of this section, property in which the deceased or any other person had an interest ceasing on the death of the deceased shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakhattayam or Aliyasantana law.

(2) If a member of a Hindu coparcenary governed by the Mitakshara school of law dies, then the provisions of sub-section (1) shall apply with respect to the interest of the deceased in the coparcenary property only—

(a) if the deceased had completed his eighteenth year at the time of his death, or

(b) where he had not completed his eighteenth year at the time of his death, if his father or other male ascendant in the male line was not a coparcener of the same family at the time of his death.

Explanation.—Where the deceased was also a member of a sub-coparcenary (within the coparcenary) possessing separate property of its own, the provisions of this sub-section shall have effect separately in respect of the coparcenary and the sub-coparcenary."

(3) — — — — —

(4) — — — — — —

* * *

Section 39—

(1) The value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family property governed by the Mitakshara school of Hindu Law which ceases on the death of a member thereof shall be the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death

(2) — — — — —

(3) For the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediately before his death, the provisions of this Act, so

far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased.

* * *

Section 59—

If the Controller—

(a) has reason to believe that by reason of the omission or failure on the part of the person accountable to submit an account of the estate of the deceased under section 53 or section 56 or to disclose fully and truly all material facts necessary for assessment, any property chargeable to estate duty has escaped assessment by reason of under-valuation of the property included in the account or of omission to include therein any property which ought to have been included or of assessment at too low a rate or otherwise, or

(b) has, in consequence of any information in his possession, reason to believe notwithstanding that there has not been such omission or failure as is referred to in clause (a) that any property chargeable to estate duty has escaped assessment, whether by reason of under-valuation of the property included in the account or of omission to include therein any property which ought to have been included, or of assessment at too low a rate or otherwise, he may at any time, subject to the provisions of section 73-A, require the person accountable to submit an account as required under section 53 and may proceed to assess or reassess such property as if the provisions of section 58 applied thereto."

(9) In the instant case, in response to a notice issued under section 55 of the Act, the petitioner Pritam Singh had filed a return on March 13, 1972, before the respondent, wherein he gave details of the whole of the property, and it was claimed that he, his brother and their deceased father were governed by Mitakshara Hindu law

and they constituted joint Hindu family, and that the property mentioned in the return belonged to the said joint Hindu family wherein Gurbachan Singh deceased had one-third share only. All these facts were accepted to be correct and the assessment was made by the respondent in accordance with the provisions of section 7 read with section 39 of the Act. The recitals in the notice, Annexure P. 2 to the writ petition, are vague and indefinite. It is simply stated therein that the property chargeable to estate duty escaped assessment, that it has been under-assessed and had been assessed at low rate. There is no mention in this notice that what was the information, much less its details, in possession of the Department regarding the property of Gurbachan Singh deceased and how it was under-assessed or it escaped assessment or the assessment was made at low rates. The Department did not raise any objection at the time of the passing of the order, Annexure P-1, that the deceased was governed by agricultural custom and was the owner of the property and, therefore, his property was not entitled to be assessed under section 7 read with section 39 of the Act. This was a question of fact which was to be alleged and proved by the Department, but they did not do so.

(10) In his return the respondent has pleaded that the notice has been issued on the basis of the judgment in *Harbans Singh's case* (1), which constituted 'information' for the purpose of taking proceedings under section 59(b) of the Act. The facts of that case as found by the Income-tax Appellate Tribunal were that "one Shri Udham Singh of village Reru, District Jullundur, was a Jat. He died on June 18, 1960. The deceased was a descendant of one of the three Jats who about 200 years ago founded the village Reru. It is situated at a distance of about three miles from the city of Jullundur. Ever since the three sections of Jats have been living in the village and holding a position of supremacy. Their gotras are Virk, Basras and Dhindses. The deceased belonged to the first one. There are three lambardars in the village, two of the Jat family and one of the Dharmias (Harijan). The head of the family in the family of the deceased has been one of the two Jat lambardars ever since the, village was founded. The deceased himself was a lambardar and, currently, Shri Harbans Singh, his eldest son, is one. About 1/3rd land of the village is the property of Virk Jats. These facts have been taken from the deposition of Shri Harbans Singh before me (Assistant Controller) on March 7, 1963. It is true that the deceased was a whole time Clerk in Kanya Mahavidiala from 1923 to 1942, i.e., from the age of about 33 years to the age of about 52 years. It

is also a fact that his eldest son, Shri Harbans Singh, was in military service from 1941 to 1949, i.e., from the age of 27 to 35, that the youngest son of the deceased, Shri Balbir Singh, is employed in the office of the Superintending Engineer, Electricity Branch, Jullundur, and that the second son of the deceased, Shri Niranjan Singh, did some business for five to six years in the district of Karnal, Punjab (now Haryana), and later was employed under some cooperative society of Reru from 1933 to 1944." After the death of Udham Singh, the Assistant Controller of Estate Duty made an assessment of his three sons as accountable persons and charged his entire property to estate duty. The case of the accountable persons before the Assistant Controller and Zonal Appellate Tribunal was that they had given up custom and were no longer governed by customary law of Sikh Jats. These officers found that the deceased was a member of an agricultural tribe and was thus governed by customary law of Punjab and, therefore, the value of his property had to be taken into account in computing his estate for the levy of estate duty under the Act. These findings were challenged by the assessees before the Tribunal. It was contended before the Tribunal that owing to the passing to the Hindu Succession Act, 1956, custom has been abrogated, that the Sikhs were Hindus, and therefore, the assessees were governed by Mitakshara school of Hindu law, which was prevalent in Punjab, that the entire property vested in the Hindu undivided family constituted by the deceased Udham Singh and his three sons, who were the assessees and the decisions of the two officers below were illegal. The Tribunal held that by the passing of the Hindu Succession Act, the custom in matters of succession has been abrogated that the assessees being Hindus, i.e., Sikh Jats, they were governed by their personal law, which was Hindu Law, in matters of succession, and that the property was joint Hindu family property and the appeal was allowed and it was ordered that the assessment should be made under section 7 read with section 39 of the Estate Duty Act. On the petition being made by the Department, the Income-tax Appellate Tribunal referred the following question of law to this Court for opinion under section 64(1) of the Act:—

> "Whether, on the facts and in the circumstances of the case, the assessment was to be made under section 7 read with section 39 of the Estate Duty Act, in view of the passage of the Hindu Succession Act, 1956 ?"

On these facts, it was held by the Division Bench of this Court:—

> "that merely on the enforcement of the Hindu Succession Act, it could not be said that custom had been abrogated and all the Jats started being governed by the Mitakshara school of Hindu law. The questions, whether (a) custom had been abrogated by the person concerned, (b) he is governed by the Mitakshara school of Hindu law, (c) he forms a joint Hindu family with his sons, and (d) his interest in the property is that of a coparcener, have to be settled in each individual case. The facts found by the Tribunal did not lead to that conclusion. Therefore, the assessment was not to be made under section 7 read with section 39 of the Estate Duty Act."

(11) I was a member of the Division Bench, which decided Harbans Singh's case and the judgment was written by P.C. Pandit, J. (as he then was). The counsel for the parties argued that case for more than one day. Ultimately, the counsel for both the parties agreed that since the Tribunal had not discussed and considered the evidence produced by the accounting party, therefore, this case should be remanded to the Tribunal to decide the same afresh after discussing the said evidence. But, unfortunately, this fact was not noted by Pandit, J. in his judgment. No decision on merits of the contentions raised by the counsel for the parties before the Bench was given, and that the remand was made to the Tribunal as a result of the statements made at the bar by the counsel for the parties. This fact is also clear from the judgment itself. A perusal of the judgment shows that no reasons whatsoever were given for the abovementioned law allegedly laid down in that case. No reference to section 4 of the Hindu Succession Act was made in the judgment regarding which the counsel for the parties argued the case for more than one day and cited several decisions in support of their respective contentions. None of those decisions is noted in the judgment. The case of the assessees was that section 4 of the Hindu Succession Act had abrogated custom in matters of succession, that they were governed by Hindu law and that the existence of the custom or its abrogation is not to be proved by the accounting party and that it was for the other party to allege and prove the alleged custom after the passing of the Hindu Succession Act, but no reference, muchless discussion thereon, was made in the judgment. After reciting the facts of the case and setting out the relevant

portions of sections 7 and 39 of the Estate Duty Act, Pandit J. observed as follows:—

> "The point for determination in this case is whether Udham Singh and his sons formed a joint Hindu family governed by the Mitakshara school of Hindu law and whether, on the former's death, his interest in the property was that of a coparcener and the same had to be valued for the purpose of levying the estate duty.
>
> After hearing the counsel for the parties, we are of the view that merely on the enforcement of the Hindu Succession Act, it could not be held that custom had been abrogated and all the Jats started being governed by the Mitakshara School of Hindu law and they formed joint Hindu families with their sons and commenced having coparcenary interest in the joint family property, with the result that the assessment in their cases had to be made under section 7 read with section 39 of the Act. All these questions, e.g., whether (a) custom has been abrogated by the person concerned, (b) he is governed by the Mitakshara School of Hindu law, (c) he forms a joint Hindu family with his sons, and (d) his interest in the property is that of a coparcener, have to be settled in each individual case. The facts found by the Tribunal in the instant case, which have been given above, do not, in my view, lead to that conclusion. The answer to the question of low referred to us, therefore, has to be in the negative, i.e., in favour of the department.
>
> It must, however, be made clear that the case has now to go back to the Tribunal for deciding the appeal on the merits. All the points urged by the assessee, especially those which were mentioned in their grounds of appeal Nos. 1 and 5 (printed at page 49 of the paper-book), on which particular emphasis was laid by their counsel, have to be considered by the Tribunal and findings given thereon. The appeal, in my opinion, could not have been decided on this law point alone. There will, however, be no order as to costs."

Since the remand of the case to the Tribunal was being made in accordance with the statements at the bar by the counsel for the parties, therefore, I did not consider it proper to write any dissenting judgment. It is thus clear that the law laid down in *Harbans Singh's case* (supra) is wrong and incorrect.

(12) The Appellate Tribunal is empowered to make a reference to the High Court under section 64 of the Estate Duty Act, 1953, and its relevant portions read as follows:—

"64(1) Within ninety days of the date upon which he is served with an order under section 63, the person accountable or the Controller may present an application in the prescribed form and, where the application is by the person accountable accompanied by a fee of one hundred rupees to the Appellate Tribunal requiring the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall, if in its opinion a question of law arises out of such order, state the case for the opinion of the High Court.

(2) — — — — — — — — — —

(3) — — — — — — — — — —

(4) — — — — — — — — — —

(5) If the High Court is not satisfied that the case as stated is sufficient to enable it to determine the question of law raised thereby, it may require the Appellate Tribunal to make such modifications therein as it may direct.

(6) The High Court, upon hearing any such case, shall decide the question of law raised thereby, and in doing so, may, if it thinks fit, alter the form of the question of law and shall deliver judgment thereon containing the ground on which such decision is founded and send a copy of the judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal and the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to such judgment."

Sub-section (1) of section 64 of the Act simply empowers the Appellate Tribunal to make a reference to the High Court for its opinion on a question of law only. Sub-section (5) of this section says that if the High Court is not satisfied that the case as stated is sufficient to determine the question of law, then it may require the Tribunal to make such modification therein as it may direct. Sub-section (6) empowers the High Court to decide the question of

law referred to it and in doing so it may alter the form of the question of law and shall deliver judgment thereon containing the ground on which such decision is founded. Under section 64 of the Act the High Court has no power to remand the case to the Appellate Tribunal for redecision of the case after considering the evidence of the assessees or the department. Therefore, the remand order passed in *Harbans Singh's case* (supra) is not warranted by law. The directions given in this judgment that the assessee must prove that the custom has been abrogated by him and he is governed by the Mitakshara school of Hindu law and that he formed a joint Hindu family with his sons are against the express provisions of statutory law and decisions of the various Courts including this High Court, which shall be discussed below. The case of the assessee was that section 4 of the Hindu Succession Act had abrogated the custom in matters of succession and, therefore, they were governed by the Hindu law, which was their personal law. Joint and undivided family is the normal state of Hindu society unless it is otherwise alleged and proved by the other side. Further, since the case was remanded to the Tribunal according to the oral agreement arrived at between the parties, therefore, there was no occasion to answer the question of law referred to the High Court. The direction given in the judgment reproduced above, "that the answer to the question of law referred to us, therefore, has to be in the negative i.e. in favour of the department" is absolutely wrong. Since the case was being remanded to the Tribunal in view of the above-mentioned statements made at the bar by the counsel for the parties before the Bench, therefore, the question of answering the point of law referred to the High Court did not arise.

(13) For the reasons given above, it is held that the observations made in *Harbans Singh's case* are not correct. The judgment did not lay down any new law and that the law prevailing prior to 17th June, 1956, when the Hindu Succession Act, 1956, came into force, was only mentioned therein and no decision regarding the law after the coming into force of the Hindu Succession Act was given and, therefore, it was not an 'information' on a point of law. The law, if any, laid down in *Harbans Singh's case* (supra) is wrong and incorrect.

(14) Now I proceed to discuss the law or/and custom governing the agricultural tribes in the State of Punjab, including Sikh Jats prior to the coming into force of the Hindu Succession Act, 1956, with

effect from June 17, 1956. Mr. Gopi Chand, the learned counsel for the petitioner, contended that the petitioner and his family are Hindus and are governed by Hindu law, that the property in dispute was ancestral and was joint Hindu family property constituted by him, his brother and their father Gurbachan Singh, wherein the deceased had one-third share and the assessment order dated May 1, 1973, Annexure P-1 to the writ petition is legal and valid and the impugned notice is illegal. Mr. D. N. Awasthy, the learned counsel for the respondents, conceded that if the petitioner and his family are held to be governed by Hindu law and the property in dispute is held to be the joint Hindu family property constituted by the deceased and his sons, then the order Annexure P. 1 would be valid.

Section 5 of the Punjab Laws Act, 1872, reads as follows :—

> "In questions regarding succession, special property of females, betrothal and marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partition, or any religious usage or institution, the rule of decision shall be—
>
> (a) any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority;
>
> (b) The Muhammadan Law in cases where the parties are Muhammadans, and the Hindu Law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to."

In *Salig Ram* v. *Munshi Ram and another* (2), it was held as follows :—

> "In questions regarding succession and certain other matters, the law in the Punjab is contained in section 5 of the

(2) A.I.R. 1961 S.C. 1374.

Punjab Laws Act, No. IV of 1872. Clause (b) of that section provides that the rule of decision in such matters shall be the Hindu law where the parties are Hindu, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act or has been modified by any such custom as is referred to in clause (a) thereof. Clause (a) provides that any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished and has not been declared to be void by any competent authority shall be applied in such matters. The position, therefore, that emerges is, where the parties are Hindus, the Hindu law would apply in the first instance and whosoever asserts a custom at variance with the Hindu law shall have to prove it, "though the quantum of proof required in support of the custom which is general and well-recognised may be small while in other cases of what are called special customs the quantum may be larger."

In *Ujagar Singh* v. *Mst. Jeo* (3), it was held :—

"When either party to a suit sets up 'custom' as a rule of decision, it lies upon him to prove the custom which he seeks to apply. If he fails to do so, clause (b) of section 5 of the Punjab Laws Act applies and the rule of decision must be the personal law of the parties subject to other provisions of the clause.

Where the parties to a suit had based their respective claims on basis of custom but neither side established the respective custom set up by them, the plaintiff was held entitled to fall back on her personal law i.e., Hindu law."

To the same effect was the law laid down in *Fatima Bibi and another* v. *Shah Nawaz and others* (4) *and Mohammad Jan and another* v. *Rafi-ud-Din and others* (5).

(3) A.I.R. 1959 S.C. 1041.
(4) A.I.R. 1921 Lahore 180.
(5) A.I.R. 1949 Privy Council 70.

(15) Therefore, it is clear that section 5 of the Punjab Laws Act, 1872, does not raise any presumption in favour of the existence of custom to the exclusion of personal law and if any person alleges that he or any other person is governed by custom, then he must plead and prove the alleged custom by cogent and reliable evidence. It is undisputed that for purposes of Hindu Succession Act the Sikhs are Hindus and their personal law is Hindu law. Consequently the personal law i.e., Hindu law will apply to the Sikh Jats in matters of succession unless a custom at variance with the Hindu law is alleged and proved. If the parties are governed by their personal law and the mere fact that there has been a departure from personal law in one respect it does not necessarily follow that the personal law has been abrogated. In Punjab, among the parties admittedly governed by Hindu Law, the Hindu law had been modified by custom to this extent that the adoption of a daughter's son is valid, but apart from this modification of the personal law, the legal consequences that ensue from such an adoption must be looked for in the Hindu law, vide *Baldoo Sahai* v. *Ram Chander and others* (6). The fact that in the matter of succession, the parties follow customary law, would not necessarily follow that the custom is also followed in matters of alienations and *vice versa*. In *Daya Ram* v. *Sohel Singh* (7), it was held that among parties generally following customary law, it is permissible to fall back as a last resort on their personal law for the decision of the point in issue where no definite rule of the former law applicable to the case before a Court can be found. According to these decisions, custom has to be alleged and proved by the party pleading the same. Custom could not be extended by logical process or by analogy.

(16) Prior to June 17, 1956, when the Hindu Succession Act came into force, there were four leading cannons governing succession to an estate among the agriculturists as laid down in Rattigan's Digest of Customary Law, Edition 1953, at page 233, and these are : First, that male decendants invariably exclude the widow and all other relations, second, that when the male line of descendants had died out, it is treated as never having existed, last male who left descendants being regarded as the proprietor, third, that a right of representation exists, whereby descendants in different degrees from a common ancestor succeed to the share which their immediate ancestor, if alive, would succeed to; fourth,

(6) 1931 I.L.R. 13 Lahore 126.

(7) 110 Punjab Records 1906 Page 390 (Full Bench).

the females other than the widow or mother of the deceased are usually excluded by near male collaterals, an exception being occassionally allowed in favour of daughters or their issue, chiefly amongst tribes that are strictly endogamous. Thus, the general rule of succession under the Customary law in the Punjab is that succession first goes to the direct male lineal decendants of the last male-holder to the exclusion of female descendants, and failing them, subject to certain life-estates in favour of some female, to the collaterals, among whom the right of representation exists, all heirs sharing equally by degrees. Custom excludes females and their offsprings with varying degrees of strictness. As a rule, daughters and their sons, as well as sisters and their sons are excluded by near male collaterials. As regards the succession of ancestral property, the above-mentioned was the customary law prevalent in the State of Punjab, including the present State of Haryana, prior to the coming into force of the Hindu Succession Act.

(17) The relevant provisions of Hindu law prior to the passing of the Hindu Succession Act, 1956, may now be noticed. There are two systems of inheritance among the Hindus in India, namely, the Mitakshara system and the Dayabhaga system. The Dayabhaga system prevails in Bengal, while Mitakshara system prevails in other parts of India. The Mitakshara system recognizes two modes of devolution of property, namely, survivorship and succession. The rule of survivorship applies to joint Hindu family property, while the rule of succession applies to separate property of the members of the joint Hindu family. However, the Dayabhaga school recognizes only one rule of devolution of property, namely, succession, and it does not recognize the rule of survivorship even in the case of joint Hindu family property. Under the Mitakshara law every member of the joint Hindu family has only an undivided interest in the joint property, while a member of the Dayabhaga joint family holds a share in quasi-severality, and his share passes on his death to his heirs as if he was absolutely seized thereof, and not to the surviving coparceners as under the Mitakshara law.

(18) According to para No. 96 of the Mulla's Hindu Law, Edition 1966, a widow, who is unchaste at the time of her husband's death, is not entitled to his property. Change of religion and loss of caste were the grounds of exclusion from inheritence, but these

disabilities ceased after the passing of the Caste Disabilities Removal Act, 1850,—*vide* para No. 97 of the Mulla's Hindu Law. According to para No. 98 of that book blindness, if it is congenital and incurable, lunacy, if it existed at the time when the succession opened, idiocy, leprosy, if it was incurable, besides other incurable diseases excluded from inheritance. The Hindu Inheritance (Removal of Disabilities) Act, 1929 laid down that no person, other than a person who is and has been from birth a lunatic or idiot, will be excluded from inheritance or from any right or share in a joint Hindu famliy property by reason of disease, deformity, or physical or mental defects. This Act came into force with effect from 20th September, 1928.

(19) Under the Hindu law, a joint Hindu family consists of all persons lineally descended from a common ancestor, and include their wives and unmarried daughters. A joint and undivided family is the normal condition of Hindu society and an undvided Hindu family is ordinarily joint not only in estate, but also in food and worship. The existence of joint estate is not an essential requisite to constitute a joint family and a family which does not own any property may nevertheless be joint. However, a Hindu coparcenary is a much narrower body than the joint family, and it includes only those persons who acquire by birth an interest in the joint or coparcenary property, and they are the sons, grand-sons and great-grandsons of the holder of the joint property for the time being, in other words, the three generations next to the holder in unbroken male descent. No female can be a coparcener under the Mitakshara law. Even a wife, though she is entitled to maintenance out of her husband's property, is not her husband's coparcener,—*vide* paras Nos. 212, 213 and 217 of the Mulla's Hindu Law, Edition 1966.

(20) Joint Hindu family property as given in para No. 220 of Mulla's Hindu Law, Edition 1966, means (1) ancestral property, (2) property jointly acquired by the members of a joint family with the aid of ancestral property, (3) separate property of coparceners thrown into the common coparcenary stock, and (4) accretions to such property. The ancestral property under Hindu law as defined in para No. 223 of the Mulla's Hindu law means property inherited by a male Hindu from his father, father's father, or father's father's father. The essential features of ancestral property according to the Mitakshara school of Hindu law are that the sons, grandsons and great grand-sons of the person who inherits it acquire an

interest in it by birth, and their rights attach to it at the moment of their birth.

(21) Property belonging to a joint Hindu family is ordinarily managed by the father or other senior member for the time being of the family. The manager of a joint family is called Karta. The powers of the manager of a joint Hindu family to alienate joint family property are analogous to that of a manager of the estate of an infant. The manager of the joint Hindu family has power to alienate for value joint family property, so as to bind the interests of both adult and minor coparceners in the property, provided that the alienation is made for legal necessity or for the benefit of the estate. An alienation by a Manager of the family made without legal necessity is not void, but voidable at the option of the other coparceners,—*vide* paras Nos. 236 and 242 of the Mulla's Hindu Law, Edition 1966.

(22) The Hindu Succession Act, 1956, which came into force with effect from June 17, 1956, has now codified the law of intestate succession among Hindus. It has brought fundamental and radical changes in the law of succession. It has repealed all previous law relating to intestate succession whether texual, customary or statutory. The Act lays down a uniform and comprehensive system of inheritance and applies *inter alia* to persons governed by the Mitakshara and Dayabhaga schools as also to those in certain parts of southern India, who were previously governed by the Maruakkattayam, Aliyasantana and Nambudri systems of Hindu law.

Section 2(1) of the Hindu Succession Act reads as follows .—

"2(1) This Act applies—

(a) to any person, who is a Hindu by religion in any of its forms of developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any

such person would not have been governed by the Hindu law by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be :—

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Budhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;

(c) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.

* * * * *
* * * * *"

Section 4 of this Act is of vital importance and given over-riding effect to the provisions of this Act, and it reads as follows :—

"4. (1) Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act

(2) For the removal of doubts, it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in

force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceiling or for the devolution of tenancy rights in respect of such holdings."

(23) Section 8 to 13 of the Hindu Succession Act lay down rules of succession to the property of a male Hindu dying intestate after coming into force of the Act, including the rules relating to ascertainment of the shares and portions of the various heirs. The two systems of inheritance to the separate or self-acquired property of a male Hindu dying intestate hitherto prevailing under the Mitakshara and Dayabhage schools are abolished and a uniform system comes into operation as propounded in section 8. The three classes of the heirs recognised by the Mitakshara school and three classes recognised by the Dayabhaga school cease to exist in case of devolution of property taking place after the coming into force of the Act. Under this Act, the heirs are divided into four classes or categories and these are (1) heirs in Class I of the Schedule to the Act, (2) heirs in Class II of the Schedule, (3) agnates and (4) cognates. Sections 15 and 16 give the general rules of succession in the case of female Hindus and the orders of succession of heirs of the females. The Hindu women's limited estate is abolished and any property possessed by a female Hindu, howsoever acquired, is her absolute property and she has full power to deal with it or dispose it of by will as she likes. The restraints and limitations on her power cease to exist even in respect of the existing property possessed by a female Hindu at the date of the Act coming into force, as provided in section 14 of the Act.

(24) The Hindu Succession Act, 1956, has brought some radical changes in the law of succession. Without abolishing the joint Hindu family and the joint Hindu family property, it does not interfere with the special rights of those who are members of a Mitakshara co-parcenary. However, its section 6 says that if a Hindu dies after the commencement of this Act having at the time of his death an interest in the Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act. However, according to the proviso to this section, if the deceased had left him surviving a female relative specified in Class I of the Schedule, or a male relative specified in that Class who claims through such female relative, his interest shall devolve by testamentary or intestate succession, as the case may be, under the

Act and not by survivorship. Further, section 30 of the Act gives powers to a Hindu to dispose of by will or other testamentary disposition his interest in a Mitakshara coparcenary property.

(25) Section 28 of the Hindu Succession Act lays down that no person shall be disqualified from succeeding to any property on the ground of any disease, defect of deformity, or save as provided in this Act, on any other ground whatsoever. Section 25 lays down that a murderer shall be disqualified from inheriting the property of the person murdered. Section 26 says that where, before or after the commencement of this Act, a person has ceased to be Hindu by coversion to another religion, he shall be disqualified from inheriting the property.

(26) Section 4 of the Hindu succession Act abrogated all the rules of law of succession hitherto applicable to Hindus, whether by virtue of any text or rule of Hindu law or any custom or usage having the force of law in respect of all matters dealt with in the Act. This Act also supersedes any other law contained in any Central or State Legislation in force immediately before it came into force in so far as such legislation is inconsistent with the provisions contained in the Act.

(27) In *Mst. Taro* v. *Darshan Singh and others* (8), it was held by a Division Bench of this Court as under :—

> "By virtue of sections 2 and 4 of the Hindu Succession Act, Punjab Agricultural custom, so far as it was applicable to Hindus, is no longer in force so far as the matters of succession, etc., are concerned, which are now governed by the provisions of the Hindu Succession Act."

To the same effect was the law laid down in *Smt. Banso and others* v. *Charan Singh and others* (9) *and Gopal Narain and another* v. *Durga Prasad Goenka and others* (10). In *Hans Raj* v. *Dhanwant Singh* (11), a Division Bench of this Court held :—

> "Section 4 of the Hindu Succession Act does away with the rule of custom so far as succession is concerned and therefore after the Hindu Succession Act came

(8) A.I.R. 1960 Punjab 145.
(9) A.I.R. 1961 Punjab 45.
(10) A.I.R. 1971 Delhi 61.
(11) A.I.R. 1961 Punjab 510.

into force, no Hindu can be said to be governed by the rules of customary law and the succession to the property held by a Hindu must be regulated by the provisions of the Hindu Succession Act."

(28) In *Gurdip Kaur* v. *Ghamand Singh and another* (12), the facts were that one Gurdip Kaur, who was the widow of a predeceased son (Harnek Singh) of Ghamand Singh filed a suit against her father-in-law Ghamand Singh for maintenance at the rate of Rs. 100 per mensem as the widowed daughter-in-law. She also claimed Rs. 4,350 as arrears of maintenance. It was pleaded in the plaint that Ghamand Singh possessed both ancestral and non-ancestral property of considerable value and that after the death of her husband, she was paid maintenance allowance at the rate of Rs. 100 per mensem for some time and then this allowance was stopped. Ghamand Singh defendant pleaded that he had no ancestral property with him and Gurdip Kaur plaintiff was not entitled to any maintenance allowance. It was averred that according to the agricultural custom which governed the parties, she should live in his house as his daughter-in-law, and he was ready to support her like all other members of the family. On these facts, the trial Court framed the following two issues :—

(1) Whether the applicant is unable to maintain herself ?

(2) If issue 1 is proved, is she not entitled to maintenance for reasons stated in paragraph 8 of the written statement

(3) Relief.

The trial Court decided issue No. 1 in favour of the plaintiff. On issue No. 2 it was held that the plaintiff had not pleaded any custom for the grant of maintenance and her claim was under section 19 of the Hindu Adoptions and Maintenance Act, 1956, and according to the provisions of this section the father-in-law could be burdened with the maintenance of her widowed daughter-in-law, if he was in possession of any coparcenary property. It was also remarked that the defendant did not possess any coparcenary property and, therefore, he was not liable to pay and as a result the suit was dismissed. Feeling aggrieved, Gurdip Kaur

(12) A.I.R. 1965 Punjab 238 (Full Bench).

filed regular first appeal in this Court, which was heard by a Division Bench and was referred to the Full Bench for decision on the following point :—

> "Whether the expression 'coparcenary property' in section 19(2) of the Hindu Adoptions and Maintenance Act, 1956, applies to ancestral property as that expression is understood under custom as it is followed by the tribe of the parties, that is to say, Jats in this State ?"

The Full Bench by majority held as follows :—

> "The term 'coparcenary property' occurring in section 19(2) of the Hindu Adoptions and Maintenance Act, 1956, means the property which consists of ancestral property, or joint acquisitions, or property thrown into the common stock and accretions to such property."

In para No. 7 of the majority judgment written by P. C. Pandit J. (as he then was), it was observed that by virtue of the provisions of section 4 of this Act, any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act. It is, therefore, clear that when a case for maintenance is now brought in Courts and provision for such maintenance has been made in this Act, then we are not to look to the fact whether the parties are governed by Hindu law or custom, because the provisions of this Act override the old Hindu law and custom, as the case may be.

(29) The legal position, therefore, that emerges is that prior to the passing of the Hindu Succession Act, 1956, where the parties were Hindus, the Hindu law would apply in the first instance in matters regarding succession, and whosoever asserted a custom at variance with Hindu Law must prove it and if he failed to do so, then the rule of decision must be personal law of the parties. The Hindu Succession Act came into force from June 17, 1956, and its section 4 abrogated any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act with respect to any matters for which provision is made in this Act. By virtue of this section 4, the Punjab agricultural custom so far as it was applicable to

Hindus in matters of succession has been completely abrogated and now no Hindu is governed by rules of customary law in matters of succession to property. After the passing of the Hindu Succession Act, all the Hindus, as defined in section 2 of that Act, in matters of succession are governed by Hindu law and the provisions of the Hindu Succession Act, 1956. The Hindu Succession Act has not abolished joint Hindu family and the joint Hindu family property and it does not interfere with the special rights of those who are members of a Mitakshara coparcenary, except in the manner and to the extent mentioned in sections 6 and 30 of the Act. After the coming into force of this Act, all Hindus who were previously governed by rules of customary law in matters of succession, like the other Hindus, form joint and undivided Hindu families including Mitakshara coparcenary, and the sons, grand-sons and great grand-sons of the holder of the joint or coparcenary property for the time being, acquire interest therein by birth.

(30) Mr. D. N. Awasthy, the learned counsel for the respondent, argued that agricultural tribes, such as Jats, Gujars, Rajputs, Sainis, Ahirs etc., were governed by agricultural custom and the mere fact that the custom was abolished would not go to show that they are governed by Hindu Law. He also argued that the concept of coparcenary is not known to custom and that custom could not be given up by mere declaration to that effect by any person concerned. In support of this contention, he cited certain decisions. None of the decisions quoted by him is relevant to the point in issue. The decisions quoted by him *Gujar* v. *Sham Dass and another* (13), *Jowala* v. *Hira Singh and others* (14), *Roda, Hira and others* v. *Harnam and others,* (15) and *Karnail Singh and another* v. *Naunihal Singh and others* (16) deal with powers of alienation of property by a sonless proprietor and *Sunder* v. *Saligram and others* (17) deals with the powers of alienation of a widow governed by customary law. The decision in *Joginder Singh and another* v. *Kehar Singh and others* (18) is also irrelevant as it deals with powers of alienation of a

(13) 110 Punjab Records 1887 (Full Bench).
(14) 55 Punjab Records 1903 (Full Bench).
(15) 18 Punjab Records 1895 (Full Bench).
(16) A.I.R. 1945 Lahore 188 (Full Bench).
(17) 26 Punjab Records 1911 (Full Bench).
(18) A.I.R. 1965 Punjab 407 (Full Bench).

person governed by customary law and section 14 of the Hindu Succession Act. No decision relating to the point in issue was cited by the counsel for the respondent. The contention of the counsel for the respondent that because once upon a time agricultural tribes in the State of Punjab were governed by custom, therefore, they could not be governed by Hindu law is absolutely wrong and is rejected. Even before the passing of the Hindu Succession Act the law was that the members of the agricultural tribes, who gave up agriculture and started living in cities and joined service or started business were held to be governed by their personal law instead of custom. In this respect reference may be made to *Raghbir Singh Sandhawalia* v. *The Commissioner of Income Tax*, (19), *Dr. Sardar Bahadur Sir Sunder Singh* v. *Commissioner of Income-tax* (20) and *Sirdar Bahadur Sirdar Indra Singh* v. *Commissioner of Income-tax* (21). By section 4 of the Hindu Succession Act, custom in matters of succession has been abolished as held above. Section 4 of the Hindu Marriage Act, which is also in the same terms as section 4 of the Hindu Succession Act, also abolished custom in matters of marriage, betrothal, divorce and bastardy. Section 4 of the Hindu Adoption and Maintenance Act abolished custom in matters of adoption and maintenance and family relations. Section 5 of the Minority and Guardianship Act, 1956, abolished custom in matters of guardianship, minority and family relations.

(31) For the reasons given above, it is held that the deceased Gurbachan Singh and his family were governed by Mitakshara school of Hindu law, which is prevalent in the Punjab and the Hindu Succession Act, 1956, and he was not governed by customary law in matters of succession at the time of his death.

(32) Mr. Gopi Chand, the learned counsel for the appellant, contended that the judgment in *Harbans Singh's case* (*supra*) on the basis of which the impugned notice, Annexure P. 2, wsa issued did not lay down the correct law, that it did not tantamount to information within the meaning of clause (b) of section 59 of the Estate Duty Act, 1953, and, therefore, the notice is liable to be quashed. In support of this contention, he relied on *Calcutta Discount Co. Ltd.* v. *Income-tax Officers* (22), wherein it was held as under:—

> "To confer jurisdiction under section 34 (of the Income-tax Act, 1922) to issue notice in respect of assessments beyond

(19) A.I.R. 1958 Punjab 250.
(20) A.I.R. 1942 Privy Council 57.
(21) A.I.R. 1943 Patna 169.
(22) A.I.R. 1961 S.C. 372.

> the period of four years but within a period of eight years from the end of the relevant year the Income-tax Officer must have reason to believe that income, profits or gains chargeable to income-tax have been under-assessed and he must have also reason to believe that such 'under assessment' has occured by reason of either (i) omission or failure on the part of an assessee to make a return of his income under section 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these conditions are conditions precedent.
>
> "It is the duty of the assessee who wants the court to hold that jurisdiction was lacking, to establish that the Income-tax Officer had no material at all before him for believing that there had been such non-disclosure."

Similar was the law laid down by the Supreme Court in *Commissioner of Income-tax Gujrat* v. *Bhanji Lavji* (23). Both these decisions are not relevant. Section 34(1) (a) of the Indian Income-tax Act, 1922 dealt with cases of omission to disclose fully and truly all material facts necessary. This clause (a) of section 34(1) of that Act corresponds to clause (a) of section 59 of the Estate Duty Act, 1953 . The present case falls under clause (b) of section 59 which has been reproduced above in the earlier part of the judgment. The question for decision in this case is whether the judgment in *Harbans Singh's case supra* (1) is 'information' within the meaning of clause (b) of section 59 of the Act.

(33) Mr. Gopi Chand then relied on *Income-tax Officer, Hyderabad* v. *Barkat Ali* (24) wherein it was held by the Supreme Court as under :—

> "Non-production of the documents at the time of the original assessments cannot be regarded as non-disclosure of any material facts necessary for the assessment of the respondent for the relevant assessment years, where such

(23) (1971) 79 I.T.R. 582 (S.C.).
(24) 1975 Taxation Law Reports 290.

documents conform to the documents filed by the assessee in material particulars. Having second thoughts on the same material does not warrant the initiation of a proceeding under section 147."

(34) In *Commissioner of Income-tax West Bengal* v. *Dinesh Chandra H. Shah and others* (25), it was held by the Supreme Court as under :—

"Mere change of opinion cannot be a valid ground for reopening an assessment under section 34(1) (b) of the Income-tax Act, 1922.

The assessee, who was assessed at Calcutta, had disclosed in his return for the assessment year 1955-56, his share in the income of a firm at Madras. The profit allocation report of his share of profits from that firm was received by the Income-tax Officer at Calcutta in September, 1955, and this was recorded in the order sheet. In completing the assessment in November, 1958, the Income-tax Officer failed to include the assessee's share of profits from that firm. Thereafter, a successor to the Income-tax Officer issued a notice under section 34(1) (b) of the Income-tax Act, 1922, to include the share of profits from that firm which had escaped assessment, the only reason given for such action being that he had changed his opinion.

The fact that the successor of the Income-tax Officer who had made the original assessment had changed his opinion did not furnish a justifiable reason for taking action under section 34(1) (b)."

These decisions are distinguishable. In none of these two cases the question whether the information on a point of law is 'information' within the meaning of section 34(1) (b) of the Income-tax Act was involved.

(35) As against this Mr. D. N. Awasthy, the learned counsel for the respondent relied on *Maharaj Kumar Kamal Singh* v. *Commissioner of Income-tax, Bihar and Orissa* (26) in support of his contention that the decision in *Harbans Singh's case* (supra) was a

(25) (1971) 82 I.T.R. 367.

(26) (1959) 35 I.T.R. 1.

decision on a point of law and it was 'information' within the meaning of section 59 of the Act. The facts of this case were that the Income-tax Officer omitted to bring to assessment for the year 1945-46, the sum of Rs. 93,604 representing interest on arrears of rent due to the assessee in respect of agricultural land on the ground that the amount was agricultural income. Subsequently, the Privy Council, on appeal from that decision, held that interest on arrears of rent payable in respect of agricultural land was not agricultural income, and, as a result of this decision, the Income-tax Officer initiated re-assessment proceedings under section 34(1) (b) of the Income-tax Act and brought the amount of Rs. 93,604 to tax. On these facts it was held as under :—

"(i) that the word 'information' in section 34(1) (b) included information as to the true and correct state of the law, and so would cover information as to relevant judicial decisions;

(ii) that 'escape' in section 34(1) (b) was not confined to cases where no return had been submitted by the assessee or where income had not been assessed owing to inadvertence or oversight or other lacuna attributable to the assessing authorities; even in a case where a return had been submitted, if the Income-tax Officer had erroneously failed to tax a part of the assessable income, it was a case where that part of the income had escaped assessment;

(iii) that, therefore, the decision of the Privy Council was 'information' within the meaning of section 34(1) (b) and that their decision justified the belief of the Income-tax Officer that part of the appellant's income had escaped assessment for the relevant year.

(36) Two conditions must be satisfied before the Income-tax Officer can act under section 34(1) (b); he must have information which comes into his possession subsequent to the making of the original assessment order, and that information must lead to his belief that income chargeable to tax has escaped assessment, has been under assessed or assessed at too low a rate, or has been made the subject of excessive relief."

To the same effect was the law laid down in *R. S. Bansi Lal Amirchand Firm* v. *Commissioner of Income-tax, M.P.* (27). It was observed in this case that the correct conclusion was brought to the notice of the Income-tax Officer by the decision of the Tribunal and the High Court and that was information as a consequence of which he came to believe that the provisions of section 34(1) (b) were attracted and the Income-tax Officer had, therefore, jurisdiction to issue the notice under section 34(1) (b) of the Income-tax Act, 1922. Similar was also the law laid down in *Commissioner of Income-tax, Gujrat* v. *A. Raman and Co.*, (28) *and Sarla Devi* v. *The Controller of Estate Duty, U.P.* (29).

(37) In *Assistant Controller of Estate Duty, Hyderabad* v. *Nawab Sir Mir Osman Ali Khan Bahadur* (30), the Supreme Court held that the opinion of the Central Board of Revenue regarding the correct valuation of securities for purposes of estate duty expressed in an appeal preferred by the accountable person is "information" within the meaning of section 59 of the Estate Duty, Act, 1953, on the basis of which the Controller can entertain a reasonable belief that property assessed to estate duty has been undervalued. To the same effect was the law laid down by the Delhi High Court in *Vashist Bhargava* v. *Income-tax Officer, Salary Circle, New Delhi* (31) and by the Gujrat High Court in *Sakarlal Balabhai* v. *Income-tax Officer, Gujrat* (32).

(38) The legal position, therefore, is that the word, "information" in section 59(b) of the Estate Duty Act, 1953, includes information as to the true and correct state of the law and would cover information as to relevant judicial decisions. However, two conditions must be satisfied before the Assistant Controller of Estate Duty can act under section 59(b) of the Act; firstly he must have information which comes into his possession subsequent to the passing of the original assessment order, and secondly, that information must lead to his belief that property chargeable to estate duty has escaped assessment or has been under-assessed or has been assessed at too low rate.

(27) (1968) 70 I.T.R. 74.
(28) (1968) 67 I.T.R. 11 (S.C.).
(29) 1975 Taxation Law Reports 825.
(30) (1969) 72 I.T.R. 376.
(31) (1975) 99 I.T.R. 148.
(32) (1975) 100 I.T.R. 97

(39) There is no dispute regarding the law laid down in these authorities. All these decisions either pertain to section 34(1) (b) of the Indian Income-tax Act, 1922, or section 147 (b) of the Indian Income-tax Act, 1961. According to these decisions, the word 'information' in these sections 34(1) (b) and 147(b) includes 'information' as to the true and correct state of law and so would cover the information as to relevant judicial decisions relating to a matter bearing on the assessment of income-tax. In the instant case, it has been held above that the decision in *Harbans Singh's case* (supra) is not correct. As a matter of fact no decision was given and according to the statements made at the bar by the counsel for the parties the case was remanded to the Tribunal for redecision of the appeal of the assessee. It has also been held that the directions given in that decision to the Tribunal are also not correct. Consequently, this decision, which did not lay down any correct law, cannot be said to be information within the meaning of clause (b) of section 59 of the Estate Duty Act. Therefore, there was no justification for the respondent to issue the impugned notice which must be quashed. In the instant case, the petitioner in his return dated March 13, 1972, in response to the notice issued to him under section 55 of the Estate Duty Act, had alleged that the deceased Gurbachan Singh constituted joint Hindu family with his two sons, namely, Pritam Singh petitioner and his brother, that the property mentioned in the return was joint Hindu family property and that the deceased had one-third share in it. These facts were admitted to be correct and the assessment order, copy whereof is Annexure P. 1 to the petition, was passed by the Assistant Controller of Estate Duty on May 1, 1973. The judgment in *Harbans Singh's case* (supra) did not constitute any information as to the correct law governing the deceased and his family and, therefore, the impugned notice is invalid and must be quashed.

(40) As a result, this writ petition is accepted and the impugned notice, copy whereof is Annexure P-2 to the writ petition, is quashed, and it is held that the assessment order, Annexure P-1 to the writ petition, was made in accordance with the provisions of law and it is valid and legal. In view of the point of law involved, there will be no order as to costs.

B.S.G.

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