collection account". The amount was neither paid to the actual owner of the goods nor was it deposited with the State exchequer by the assessee. Position taken by the assessee was that the statutory provisions creating that liability upon it were not valid. In the cash memos issued by the assessee to the purchasers in the auction sales. On these facts, it was held by their lordships that the sum of Rs. 32,986 was the trading receipt in the hands of the assessee.

(17) We find ourselves in agreement with the view taken by the Andhra Pradesh High Court in *Chodavaram Cooperative Sugars Ltd's case* (supra) Karnataka High Court in *Mysore Sugar Co. Ltd's case* (supra) and Bombay High Court in *Seksaria Biswan Sugar Factory Pvt. Ltd.'s case* (supra). The difference of price in levy sugar realised by the assessee under the orders of the High Court was hedged by certain conditions. Assessee did not acquire an absolute right to the amount realised by it and it was liable to refund the same in the event of the writ petition being dismissed. The writ petition is still pending for final adjudication. Under the circumstances, the difference in price of the levy sugar realised by the assessee could not be treated as its income arising or accruing to it for the relevant assessment year 1975-76.

(18) For the reasons stated above, we answer the question referred to us in the affirmative, that is in favour of the assessee and against the revenue.

S.C.K.

Before Ashok Bhan and N.K. Agrawal, J.

DHAN KAUR,—*Petitioner*

versus

THE CONTROLLER OF ESTATE DUTY, PATIALA,—*Respondent*

Estate Duty Reference No. 2 of 1989

16th July, 1997

Estate Duty Act, 1953-Ss. 59(b) and 64(1)— Validity of reopening assessment—Deceased—Karta sole surviving male coparcener of his HUF consisting of widow and unmarried daughter—Duty paid on value of half share—On audit objection

case reopened by Assistant Controller—Reopening challenged—Held that audit note does not constitute information under section 59(b) of the Act.

Held, that as has been observed by the Supreme Court in Indian and Eastern Newspaper Society v. Commissioner of Income Tax, New Delhi, (1979)119 I.T.R. 996, the opinion of the internal audit party on a point of law cannot be regarded as 'information' for the purposes of reopening an assessment. In the light of this observation of the Supreme Court, the audit note in the present case, dose not constitute an 'information'. As has been seen earlier, the Assistant Controller had initially accepted the audit objection but, later on, he took the view that the objection was not acceptable. However, the Inspecting Assistant Commissioner insisted upon the reopening of the assessment and then the Assistant Controller proceeded to reopen the case. In these circumstances, the reopening of the assessment is found to be not based on noticing a provision of law but on an advice/instruction from the audit party/Inspecting Assistant Commissioner. The Assistant Controller had in the original assessment order, discussed the question of share of the deceased in the agricultural land. Thereafter one half share was treated to belong to the deceased and value of that share was brought under the levy of estate duty. Therefore, the Assistant Controller had taken notice of the right of the deceased in the HUF property and a change of opinion would not enable the Assistant Controller to reopen the Assessment. The audit-note, as already seen, points out to a mistake apparent from record, which was required to be rectified. Thus, the audit note did not constitute 'information' within the meaning of Section 59(b) of the Act.

(Para 23)

B.S. Gupta, Sr. Advocate with Sanjay Bansal, Advocate, *for the Petitioner.*

R.P. Sawhney, Sr. Advocate with S.K. Sharma, Advocate, *for the Respondent.*

JUDGMENT

N.K. Agrawal, J.

(1) The following question of law has been referred at the instance of the accountable person under section 64(1) of the Estate Duty Act, 1953 (for short, "the Act")

> "Whether, on the facts and in the circumstances of the case, the Tribunal was correct in rejecting the A.P.'s

contention that the reopening of the assessment proceedings was bad in law?"

(2) Joginder Singh died on 3rd November, 1981. His widow, Smt. Dhan Kaur, filed return under the Act, furnishing the account of the estate left by her late husband and showing the principal value of half property as assessable under the Act. Assessment of estate duty was made by the Assistant Controller of Estate Duty on 19th February, 1983 on one half of the net estate of the deceased, valued at Rs. 2,54,483. Thus, as intended by the accountable person, assessment was made on only half of the estate of the deceased. The late Joginder Singh was the *Karta* and sole surviving male coparcener of his Hindu Undivided Family (HUF). He was survived by his widow and a married daughter. He had left behind 19 acres of agricultural land valued at Rs. 3,12,645 and foodgrains, milch cattle, agricultural implements etc. valued at Rs. 10,000. Value of half share of the deceased in the agricultural land, milch cattle etc. was taken at Rs. 1,61,323 on the ground that the deceased was entitled to only half of the estate and was actually not an absolute owner of the property belonging to the HUF.

(3) The Assistant Controller of Estate Duty, on an audit objection, reopened the case subsequently by issuing a notice to the accountable person under section 59 of the Act. A view was taken that the deceased, being the sole surviving male coparcener, was competent to dispose of the entire HUF property in whatever manner he liked. The entire property thus belonged to him as an individual as well as *Karta* of the HUF. The Assistant Controller then proceeded to assess the entire value of the HUF property instead of its half value which had been assessed earlier.

(4) No fresh return was filed, in response to the notice issued under section 59 of the Act, by the accountable person though a reply was filed stating that the assessment had already been made correctly. The Assistant Controller, however, did not accept the plea put forward by the accountable person. Assessment was completed on the entire value of the HUF property left by the deceased.

(5) In appeal filed by the accountable person, reopening of the assessment was challenged on two grounds. First, that the assessment could not be reopened on the basis of the audit objection and, secondly, that the husband was entitled to only half share inasmuch as his wife, being a member of the HUF, was alive. The appellate Controller of Estate Duty accepted the appeal on the

ground that there were no new facts before the Assistant Controller for reopening the assessment and, therefore, the reopening was not justified.

(6) In the Department's appeal, the Tribunal, however, upheld the reopening of the assessment and also took the view that the entire interest in the property, belonging to the deceased, had passed on his death. That part of the order whereby the entire interest of the deceased was held to have passed on his death has, however, not been challenged before us. No opinion is, therefore, being expressed on that part of the order.

(7) Shri B.S. Gupta, Senior Counsel representing the accountable person, has argued that the reopening was bad in law in asmuchas it was based on an audit objection which did not constitute 'information' for the purposes of reopening the case under Section 59(b) of the Act. It has been argued by Shri Gupta that the audit report of the Comptroller and Auditor General of India (CAG) was not admissible as 'information' in the hands of the Assistant Controller. It is also pointed out by Shri Gupta that the Assistant Controller, on coming to know about the alleged mistake pointed out in the local audit, looked into the matter and accepted the audit objection initially. However, the Assistant Controller subsequently took the view that the objection was not acceptable. The Inspecting Assistant Commissioner, however insisted upon the reopening by the Assistant Controller. Shri Gupta has argued that, in such a situation, the Assistant Controller cannot be said to have any reason to believe, on the basis of the information, that any property chargeable to estate duty has escaped assessment.

(8) Since the validity of the audit note was under challenge, this Court directed the Department to produce the original order of assessment framed by the Assistant Controller on 19th February, 1983 and also the audit-note recorded by the CAG. An attested copy of the assessment framed by the Assistant Controller was thereupon placed on the record by the Department. Regarding the second, namely the audit-note recorded by the CAG, it was reported that the original audit-note was not available in the records of the office. However, the counsel for the Department placed on record an extract of the audit-note recorded by the CAG, which had been supplied to him by the Department from its file. Another opportunity was afforded to the Department to produce the original file from which the note of the CAG had been extracted for the

consideration of this Court. Original audit note was, however, not available.

(9) The copy of the extract of the audit-note recorded by the Comptroller and Auditor General of India, filed by the Department before this Court, reads as under :—

> "While framing assessment u/s 58(3) dated 10th February, 1983 total value of agricultural land at Rs. 3,22,645 (including foodgrains). The deceased left behind his widow and one married daughter. At the time of assessment, half share of Rs. 1,61,323 was assessed whereas the other half of the value of agricultural land was exempted being share of the widow in the HUF property in the form of agricultural land. The deceased was a sole surviving male coparcener in a HUF governed by Mitakshara School of Hindu law. As such, the whole of his property, including the coparcener property, passes on his death. Thus, Rs. 1,61,322 was not assessed. This is a mistake apparent from record and to be rectified."

(10) Shri B.S. Gupta, learned Sr. Counsel for the accountable person, has argued that the aforesaid audit-note did not constitute a valid and legal information which could be acted upon for reopening the case under section 59(b) of the Act. It was necessary that the Assistant Controller must have reason to believe that any property chargeable to estate duty had escaped assessment and such belief must have been entertained by him in consequence of an information.

(11) The expression 'information' was considered by the Andhra Pradesh High Court in *V.S.L. Narasimha Rao and another* v. *Assistant Controller of Estate Duty and another* (1), In that case, the assessing authority had assessed the estate of the deceased. Thereupon, the accountable person preferred appeals to the Appellate Assistant Commissioner of Estate Duty and thereafter to the Appellate Tribunal and obtained substantial relief. Subsequently, the assessing authority issued a notice to the accountable person with the observation that property chargeable to estate duty had been under-assessed. The notice was challenged by filing a writ petition before the High Court. It was held on the facts that the Controller had reopened the assessment under section

1. (1971) 80 I.T.R. 662

59(b) of the Act, relying on additional information that came on record at the appellate stage and, since that information was relevant for the purpose of forming a reasonable belief that some property chargeable to duty had escaped assessment, it was held that the basic requirements to assume jurisdiction for reassessment under section 59 were satisfied.

(12) A question about the validity of the reopening of assessment under section 147(b) of the Income-Tax Act, 1961, was examined by the Allahabad High Court in *Sterling Machine Tools* v. *Commissioner of Income-Tax* (2). In that case, the assessee had been assessed for the assessment year 1965-66. During the course of assessment for the next year, the Income-Tax Officer found that, on enquiry by the Vigilance Bureau and the Board of Experts, the actual cost of a centering machine was Rs. 7,331 whereas the assessee had claimed the same at Rs. 9,432. The partner of the firm was confronted with that report and, thereupon, the partner gave a note in writing to the Income-Tax Officer, stating that the cost was much more and that he was willing to have the income being worked out on that basis. It was held that the admission was the best evidence and did constitute 'information' within the meaning of section 147(b) of the Income-Tax Act, 1961.

(13) A question of reopening of assessment under section 59(b) of the Act was examined by the Madras High Court in v. *Pugalagiri* v. *Assistant Controller of Estate Duty, Madurai,*(3). Estate Duty assessment had been originally made. On receipt of an audit objection based on the valuation of the nursing home of the deceased in the wealth-tax assessment, notice under section 59(b) of the Act was issued for reopening the estate duty assesssment. It was held that the information that the value of the nursing home was higher in the wealth-tax assessment than what had been included in the estate duty assessment could not be treated as 'information' for the purposes of section 59(b), because it had not come to the knowledge of the Assistant Controller after the date of the original order of assessment but was within his knowledge at the time of assessment and was specifically referred to in the original order of assessment itself.

(14) The Bombay High Court has, in *Commissioner of Income-Tax, Bombay City-III* v. *H.D. Dennis and others* (4). taken the view

2. (1980) 122 I.T.R. 926
3. (1981) 132 I.T.R. 847
4. (1982) 135 I.T.R. 1

that a mere change of opinion, on the material already considered, by reappraisal of the same material is not information. The change must be supported by fresh information obtained from the records. The opinion expressed by the Department or by the Central Board of Direct Taxes is not law. Law is which is laid down either by the Legislature or judicial decisions and it is the change in such law which constitutes the fresh information.

(15) The same High Court had again an occasion to examine the question of reassessment under the Act. In *Union of India and another* v. *Arvind N. Mafatlal Trustee of Seth Hemant Bhaqubhai Trust and another* (5), the original estate duty assessment was made on the basis of the Central Board of Direct Taxes circular dated 26th March, 1968 which provided that the value of assets forming part of dutiable estate of a deceased individual should be taken at the same value as was determined for the purposes of wealth-tax. The Board revised its stand subsequently by its instructions dated 29th October, 1974 wherein it was directed that the earlier circular dated 26th March, 1968 did not apply to valuation of shares covered by section 37 of the Estate Duty Act, 1953. It was held that the subsequent instructions did not represent the decision of the Board on any appeal or other like proceedings but merely represented an opinion of the Central Board. There was, thus, no information on the basis of which a notice of re-assessment could be given under sectin 59(b) of the Act.

(16) The Madhya Pradesh High Court in *Arvind Kumar and another* v. *Income-Tax Officer, Dewas* (6), has also taken a view that the word 'information' meant not only facts or factual material but included 'information' as to the true and correct state of the law. The information as to law must be from a formal source, namely, a competent Legislature or a competent judicial or quasi-judicial authority.

(17) The Calcutta High Court in *Dey's Medical Stores Mfg. (P) Ltd.* v. *Commissioner of Income Tax* (7), has upheld the reopening of assessment proceedings under section 147(b) of the Income-Tax Act, 1961, where certain facts had not been brought to the notice of the Income-Tax Officer in the course of the assessment proceedings. The fact came into the knowledge of the Income-Tax Officer only in the course of the assessment for the subsequent year. It was not a case of reconsideration of the same material

5. (1986) 160 I.T.R. 420
6. (1986) 146 I.T.R. 437
7. (1986) 162 I.T.R. 630

already on record.

(18) The Patna High Court in *Commissioner of Income-Tax* v. *Soh Kisan Cold Storage* (8), has observed that 'information' need not necessarily spring from a source external or extraneous to the original record. However, having second thoughts or a mere change of opinion by the prescribed authority on the same set of facts and materials on the record would not constitute 'information'. In that case, the Income-Tax Officer had initiated the reassessment proceedings on the same set of facts which he had already taken note of while making the original assessment. It was held to be not permissible.

(19) This Court had also an occasion to examine a question of reopening in *Kulbushan and Brij Bhushan* v. *Controller of Estate, Duty, Patiala* (9). That was a case where the Assistant Controller had discovered that certain sections of the Act, which were applicable, had not been applied. It was held that the Assistant Controller was entitled to reopen the assessment.

(20) The Supreme Court has examined of the validity of re-assessment in *Commissioner of Income-Tax, Gujarat,* v. *A. Raman and Co.*, (10). That was a case where notice under section 147(b) of the Income-Tax Act, 1961, had been issued by the Income-Tax Officer in respect of three assessment years. It was observed that the expression 'information' in the context, in which it occurs, must mean instruction or knowledge derived from an external source concerning facts/or particulars, or as to law relating to a matter bearing on the assessment. In that case, the Income-Tax Officer was of the view that income, which could have been earned by the assessee, was not earned and a part of that income was earned by the Hindu Undivided Families. That, according to the Income-Tax Officer, was brought about by "a subterfuge or contrivance". It was held that, on the materials on the record, the Income-Tax Officer had no reason to believe that income chargeable to tax had escaped assessment for the three years in question.

(21) The Supreme Court had again an occasion to examine a question relating to 'information', in *Indian and Eastern Newspaper Society* v. *Commissioner of Income-Tax, New Delhi* (11). The assessee, in that case, owned a building in which a conference hall

8. (1994) 209 I.T.R. 700
9. (1973) 88 I.T.R. 65
10. (1968) 67 I.T.R. 11
11. (1979) 119 I.T.R. 996

and rooms were let out on rent to its members as well as to outsiders. Certain other services were also provided to the members. The income from that source was assessed to tax all along as income from business. In the course of auditing, the income-tax records pertaining to the assessee, the internal audit party expressed the view that the money realized by the assessee on account of the occupation of its conference hall and rooms should not have been assessed as income from business. It said that an assessment should have been made under the head "Income from property". The Income-Tax Officer treated the contents of the report as 'information' in his possession for the purpose of section 147(b) of the Income-Tax Act, 1961, and reassessed the income on that basis. It was held that the opinion of the audit party on a point of law could not be regarded as 'information' enabling the Income-Tax Officer to initiate reassessment proceedings under section 147(b). The Income-Tax Officer had, when he made the original assessment, considered the provisions of sections 9 and 10 of the Indian Income-Tax Act, 1922. Any different view taken by him afterwards on the application of those provisions would amount to a change of opinion on material already considered by him. It was further observed as under:—

> "But although an audit party does not possess the power to so pronounce on the law, it nevertheless may draw the attention of the ITO to it. Law is one thing, and its communication another. If the distinction between the source of the law and the communicator of the law is carefully maintained, the confusion which often results in applying s. 147(b) may be avoided. While the law may be enacted or laid down only by a person or body with authority in that behalf, the knowledge or awareness of the law may be communicated by anyone. No authority is required for the purpose."

(22) In *A.L.A. Firm* v. *Commissioner of Income-Tax* (12), the Supreme Court has upheld the reopening of assessment after noticing that the Income-Tax Officer, at the time of the original assessment, had looked at the facts and accepted the assessee's contention that the surplus was not taxable but, in doing so, he had obviously missed to take note of the law laid down in the case of *G.R. Ramachari and Co.* (13). It was also noticed that there was nothing to show that the case had been brought to the notice of the

12. (1991) 189 I.T.R. 285
13. (1961) 41 I.T.R. 142 (Madras)

Income-Tax Officer. When he, subsequently, became aware of the decision, he initiated proceedings under section 147(b). The material which constituted 'information' and on the basis of which, the assessment was reopened, was the decision in *G.R. Ramachari and Co.*, (1961) 41 I.T.R. 142 (Madras). This material was not considered at the time of the original assessment.

(23) Keeping in view the interpretation of the law on the subject of reopening of an assessment, the facts in the present case, appear to be not at all in favour of the Department. The audit-note recorded by the Comptroller and Auditor General of India did not refer to any judicial opinion or provisions of law. The audit-note spoke about the deceased being a sole surviving male coparcener and, on that basis, it was observed that a mistake apparent from record had occurred in the assessment and that was to be rectified. Since half of the coparcenary property had been assessed, it was treated to be a mistake. As has been observed by the Supreme Court in *Indian and Eastern Newspaper Society's case* (supra), the opinion of the internal audit party on a point of law cannot be regarded as 'information' for the purposes of reopening an assessment. The audit party did not possess the power on the law. It may only draw the attention of the Income-Tax Officer to it. That part alone of the note of an audit party which mentioned the law which escaped the notice of the Income-Tax Officer constituted 'information'. The part which embodies the opinion of the audit party in regard to the application of interpretation of the law cannot be taken into account by the Income-Tax Officer. In every case, the Income-Tax Officer must determine for himself what is the effect and consequence of the law mentioned in the audit note. In the light of this observation of the Supreme Court, the audit note in the present case, does not constitute an 'information'. As has been seen earlier, the Assistant Controller had initially accepted the audit objection but, later on, he took the view that the objection was not acceptable. However, the Inspecting Assistant Commissioner insisted upon the reopening of the assessment and then the Assistant Controller proceeded to reopen the case. In these circumstances, the reopening of the assessment is found to be not based on noticing a provision of law but on an advice/instruction from the audit party/Inspecting Assistant Commissioner. The Assistant Controller had, in the original assessment order, discussed the question of share of the deceased in the agricultural land. Thereafter, one half share was treated to belong to the deceased and value of that share was brought under the levy of estate duty. Therefore, the Assistant

Controller had taken notice of the right of the deceased in the HUF property and a change of opinion would not enable the Assistant Controller to reopen the assessment. The audit-note, as already seen, points out to a mistake apparent from record, which was required to be rectified. Thus the audit note did not constitute 'information' within the meaning of section 59(b) of the Act.

(24) The question of law, referred to this court, is, therefore, answered in the negative, i.e., in favour of the assessee and against the Department.

J.S.T.

Before H.S. Brar, K.S. Kumaran & Swatanter Kumar, JJ.

KAKA—*Petitioner*

versus

HASSAN BANO & ANOTHER,—*Respondents*

Crl. R. No. 45 OF 1992

21st October, 1997

Code of Criminal Procedure, 1973—SS.125 to 128—Muslim Women (Protection of Rights on Divorce) Act, 1986—Ss.5 & 6—The provisions of 1986 Act are not retrospective and cannot invalidate the judgments & orders of Courts of competent jurisdiction passed u/s 125 of the Code—The Act does not take away vested rights.

(Mohd. Yunus v. Bibi Phonkani@ Tasrun Nisa & another, 1987(2) Crimes 241, and, Mahaboob Khan@ Babu v. Parveen Banu & another (II) 1988 divorce and Matrimonial Cases 233)—dissented.

Held, that it will be difficult to interpret the Sections of Muslim Women (Protection of Rights on Divorce) Act, 1986 to hold that the Legislature intended to take away the same benefit which is given to an applicant by Court of competent jurisdiction, by the Act of 1986 which itself intends to provide such a protection to the same section. Thus, we cannot read the provisions of an Act to destroy the very purpose and object of the legislation. It is well settled canon of law of Interpretation of Statutes that the Court should adopt the construction to advance the policy of the legislation and to extend the benefit rather than curtailing such a benefit. There is nothing in the 1986 Act which could persuade the Courts to satisfy its judicial conscience to hold that a party who contests the case over a long period in courts is intended to be deprived of