SUPREME COURT OF INDIA

Deputy Commissioner of Commercial Taxes

Vs.

H. R. Sri Ramulu

C.A.Nos.145-146 of 1972

(H. R. Khanna, P. K. Goswami and P. S. Kailasam, JJ.)

11.01.1977

JUDGEMENT

KHANNA, J.:-

1. These two appeals by special leave are against the common judgment of the Mysore High Court whereby the High Court in two petitions under Art. 226 of the Constitution of India quashed two orders made by the Deputy Commissioner of Commercial Taxes appellant under Section 21 of the Mysore Sales Tax Act, 1957 (hereinafter referred to as the Act).

2. The respondent is an excise contractor. He was assessed under the Act for the assessment years 1959-60 and 1960-61 as per orders dated March 21, 1963 made by the Commercial Tax Officer Raichur. Under those orders the taxable turnover of the respondent for the two years in question was determined after deducting the shop rent and the trees tax. For the assessment year 1959-60, a sum of Rs. 2,10,542 was deducted and the net taxable turnover was determined to be Rs. 25,989. For the year 1960-61 a sum of Rs. 3,99,350 was deducted and the net taxable turnover was determined to be Rs. 26,657.

3. The Commercial Tax Officer initiated proceedings under Section 12-A of the Act in respect of the aforesaid years because he was of the view that some items of turnover had escaped assessment. As per orders dated June 8, 1966 he made assessment by including in the turnover of the respondent certain amounts which had escaped assessment under the original assessment orders dated March 21, 1963. The deduction in respect of shop rent and tree tax was, however, allowed to the respondent in orders dated June 8, 1966 as it had been allowed in initial orders dated March 21, 1963.

4. On June 28, 1967 the appellant, i.e. the Deputy Commissioner of Commercial Taxes, made two orders revising the orders dated June 8, 1966. In the said orders the appellant disallowed the deduction which had been allowed to the respondent in respect of the shop rent. The appellant in those orders referred to the decision of this Court in Shinde Brother v. Deputy Commr. Raichur, (1967) 1 SCR 548 = (AIR 1967 SC 1512) and held that the amount of shop rent being not excise duty should not be deducted in computing the turnover of the respondent for the two years in question. The taxable turnover of the respondent for the two years in question was accordingly enhanced.

5. The respondent made two applications for rectification of the orders of the appellant dated June 28, 1967. It was urged on behalf of the respondent that the revision of assessments was barred by limitation under Section 21 (3) of the Act and as such there was a mistake apparent on the record. The appellant rejected those applications. The respondent then preferred two appeals to the Sales Tax Appellate Tribunal. The Tribunal too rejected those appeals on the ground that they were not maintainable. The respondent thereafter filed two petitions in the High Court under Article 226 for the issuance of writs in the nature of certiorari for quashing the orders dated June 28, 1967. The High Court, as already mentioned, allowed both the petitions and quashed orders dated June 28, 1967. In the opinion of the High Court, orders dated June 28, 1967 made by the appellant were without jurisdiction since they had been made beyond the period of four years from the date of the assessment orders dated March 21, 1963.

6. Mr. Narayan Nettar, learned counsel for the appellant, has contended in appeal before us that the period of four years mentioned in Section 21 (3) of the Act should be computed from the order dated June 8, 1966 made under Section 12-A of the Act and not from the initial order of assessment dated March 21, 1963. The above stand has been controverted by Mr. Mehta, who argued the case amicus curiae as no one appeared on behalf of the respondent. After giving the matter our consideration, we are of the view that the contention advanced on behalf of the appellant is well-founded. Before, however, dealing with the matter, we consider it appropriate to reproduce the relevant provisions of the Act. Section 12-A of the Act relates to assessment of escaped turnover. Sub-section (1) of that section at the relevant time read as under :

"(1) Where for any reason the whole or any part of the turnover of a dealer has escaped assessment

to tax or licence fee or has been assessed at a lower rate than the rate at which it is assessable, the assessing authority may, subject to the provisions of sub-section (2), at any time within a period of five years from the expiry of the year to which the tax or licence fee relates, assess to the best of its judgment, the tax or licence fee payable on the turnover referred to after issuing a notice to the dealer and after making such enquiry as it considers necessary."

Section 21 of the Act deals, inter alia, with revisional powers of the Deputy Commissioner. Sub-sections (2) and (3) of that section read as under :

"(2) The Deputy Commissioner may of his own motion call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by a Commercial Tax Officer subordinate to him and against which no appeal has been preferred to him under Section 20, for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceeding and pass such order with respect thereto as he thinks fit.

(3) In relation to an order of assessment passed under this Act, the power under sub-sections (1) and (2) shall be exercisable only within a period of four years from the date on which the order was passed."

7. The short question which arises for determination in these appeals is that in the event of an order having been made under Section 12A of the Act, what is the starting point for computing the period of four years, mentioned in Section 21 (3), for the exercise of the powers under Section 21 (2). Is it the initial assessment order or is it the order made under Section 12A ? In the context of the present case, the question to be answered is as to whether the period of four years is to be calculated from March 21, 1963 when the initial assessment orders were made, or from June 8, 1966 when the orders under Section 12A of the Act were made. So far as this question is concerned, we are of the opinion that the period of four years should be calculated from June 8, 1966, i.e., the date on which orders under Section 12-A of the Act were made. The reason for that is that once an assessment is reopened, the initial order for assessment ceases to be operative. The effect of reopening the assessment is to vacate or set aside the initial order for assessment and to substitute in its place the order made on reassessment. The initial order for reassessment (assessment ?) cannot be said to survive, even partially, although the justification for reassessment arises because of turnover escaping assessment in a limited field or only with respect to a part of the matter covered by the initial assessment order. The result of reopening the assessment is that a fresh order for reassessment would have to be made including for those matters in respect of which there is no allegation of the turnover escaping assessment. As it is, we find that in the present case the assessment orders made under Section 12-A were comprehensive orders and were not confined merely to matters which had escaped assessment earlier. In the circumstances, the only orders which could be the subject-matter of revision by the appellant were the orders made under section 12-A of the Act and not the initial assessment orders.

8. In the case of J. Jaganmohan Rao v. Commr. of Income-tax and Excess Profits Tax, Andhra Pradesh, 75 ITR 373 = (AIR 1970 SC 300) this Court dealt with Section 34 of the Indian Income-tax Act, 1922 which relates to reassessment in the case of income escaping assessment. It was held by this Court that once assessment is reopened, the previous under-assessment is set aside and the whole proceedings start afresh. Ramaswami, J. speaking for the Court observed :

"Section 34 in terms states that once the Income-tax Officer decides to reopen the assessment he could do so within the period prescribed by serving on the person liable to pay tax a notice containing all or any of the requirements which may be included in a notice under Section 22 (2) and may proceed to assess or reassess such income, profits or gains. It is, therefore, manifest that once assessment is reopened by issuing a notice under sub-section (2) of S. 22 the previous under-assessment is set aside and the whole assessment proceedings start afresh. When once valid proceedings are started under Section 34 (1) (b) the Income-tax Officer had not only the jurisdiction but it was his duty to levy tax on the entire income that had escaped assessment during that year."

9. In the case of Commr. of Sales Tax, Madhya Pradesh v. H. M. Esufali H. M. Abdulali, 90 ITR 271 = (AIR 1973 SC 2266) this Court dealt with reassessment made under Section 19 of the Madhya Pradesh General Sales Tax Act, 1958. It was held that when reassessment is made, the former assessment is completely reopened and in its place fresh assessment is made. Hegde, J. speaking for the Court observed :

"What is true of the assessment must also be true of reassessment because reassessment is nothing but a fresh assessment. When reassessment is made under Section 19, the former assessment is completely reopened and in its place fresh assessment is made. While reassessing a dealer, the assessing authority does not merely assess him on the escaped turnover but it assesses him on his total estimated turnover. While making assessment under S. 19, if the assessing authority has no power to make best judgment assessment, all that the assessee need do to escape reassessment is to refuse to file a return or refuse to produce his account books. If contention taken on behalf of the assessee is correct, the assessee can escape his liability to be reassessed by adopting an obstructive attitude. It is difficult to conceive that such could be the position in law."

10. In International Cotton Corpn. (P) Ltd. v. Commercial Tax Officer, Hubli, (1975) 2 SCR 345 = (AIR 1975 SC 1604) this Court held that once an assessment order had been rectified and it was sought to make a further rectification of that order, the period of limitation for making such further rectification would commence not from the date of the original assessment order but from the date of the earlier rectification order. Alagiriswami, J. speaking for the court in this Context observed :

"The other attack that the rectification order is beyond the point of time provided in Rule 38 of the Mysore Sales Tax Rules is also without substance. What was sought to be rectified was the assessment order rectified as a consequence of this Court's decision in Yaddalam's case. After such rectification the original assessment order was no longer in force and that was not the order sought to be rectified. It is admitted that all the rectification orders would be within time calculated from

the original rectification order. Rule 38 itself speaks of 'any order' and there is no doubt that the rectified order is also 'any order' which can be rectified under Rule 38."

Although the above case related to an order which had been subsequently rectified, the principle laid down therein would, in our opinion, be also applicable in cases where re-assessment is made on the ground that certain amounts of turnover had escaped assessment.

11. Before we conclude, we may observe that according to Section 33-B of the Indian Income-tax Act, 1922 the Commissioner cannot revise an order of reassessment made under the provisions of Section 34 of the Act. Likewise, sub-section (2) of S. 263 of the Income-tax Act, 1961 expressly prohibits the revision by the Commissioner of Income-tax of an order of reassessment made under Section 147 of that Act. No such prohibition in the provisions of the Act with which we are concerned has, however, been brought to our notice.

12. We would, therefore, accept the appeals, set aside the judgment of the High Court and dismiss the petitions under Art. 226 filed by the respondent. Looking to all the facts, we leave the parties to bear their own costs in this Court as well as in the High Court.

Appeals allowed.