

# SUPREME COURT OF INDIA

Commissioner of Sales Tax

Vs.

R.P. Dixit Saghidar

(B.N. Kirpal and S.S. Mohammed Quadri JJ.)

03.03.2000

## ORDER

1. Special leave granted.

2. An ex-parte assessment was made by an Assessing Officer and in the appeal which was filed, it was contended on behalf of the Respondent that the ex-parte assessment had been made because no notice before passing the assessment order was issued. It was contended that the said assessment should be set aside. The submission was accepted and the Assistant Commissioner, Sales Tax, Kanpur, while allowing the appeal set aside the assessment order and directed the officer to decide the case again on merits.

3. In an appeal, the Tribunal, inter alia, has held as under:

Besides this when learned Assistant Commissioner (Judicial) had quashed order under Section 8-A(1-C) thereafter the view expressed by him that the officer is at liberty to do the proceedings as necessary on merits after giving adequate opportunity is against law as held in the aforesaid decisions. Accordingly all the four appeals are liable to be allowed.

4. Aggrieved by this order a revision was filed and the High Court, five years after the filing of the petition, by a cryptic order, held that no substantial question of law arose and that the Tribunal's decision involved a finding of fact and could not be interfered with.

5. We are unable to subscribe to the view of the High Court. The afore-mentioned passage quoted from the Tribunal's order shows that the Tribunal was of the view that once the order is quashed by the Assistant Commissioner, he could not in law remand the case for a decision afresh. As has been noted, before the Assistant Commissioner the Counsel for the Respondent had contended that the ex-parte order should have been set aside because no notice had been received. When principles of natural justice are stated to have been violated it is open to the appellate authority, in appropriate cases, to set aside the order and require the Assessing Officer to decide the cases de novo. This is precisely what was directed by the Assistant Commissioner and the Tribunal, in our opinion, was clearly in error in taking a contrary view.

6. For the aforesaid reasons these appeals are allowed, the order of the High Court as well as that of the Tribunal are set aside and the decision of the Assistant Commissioner is restored, the effect of which would be that the Assessing Officer will now decide the cases de novo. No costs.

