

# PATNA HIGH COURT

Gajo Ram Basant Ram

Vs

State of Bihar

Misc. Judi. Cases Nos. 211 and 291 of 1951

(Das, C.J. and Kanhaiya Singh, J.)

21.10.1955

## JUDGMENT

### Das, C.J.

1. These two references under the Bihar Sales Tax Act have been heard one after the other. The facts of the two cases are different, though the question which we have to answer in the two cases relates to the true scope and effect of the proviso to Sub-Section (6) of Section 10, Bihar Sales Tax Act, 1944. It will, I think, be convenient if the two cases are dealt with separately, because they have been separately argued and the facts in the two cases are different, though the question to be answered in one case is similar to the question in the other.

2. I take up first Miscellaneous Judicial Case No. 211 of 1951. The question to be answered in this case is the following :

"Whether in the circumstances of the case, the order of the Commissioner, dated 23-9-1948, sanctioning review of assessment on the petitioner for the five quarters commencing from 1-10-1944, and ending on 31-12-1945, is bad in law. inasmuch as it contravenes the provisions of the proviso to Section 10(6), Bihar Sales Tax Act, 1944 ?" The facts are the following. Messrs. Gajo Ram Basant Ram are bullion merchants of Gaya. On 21-5-1945, they were assessed to a certain amount of tax by the Sales Tax Officer, Gaya, for the last quarter of 1944, that is, the quarter ending on 31-12-1944. By an order dated the 20th or 28th of December, 1945, the Deputy Commissioner, on appeal, set aside the order of assessment and remanded the case for further enquiry.

On 12-12-1946, the Sales Tax Officer reduced the assessment to a particular amount, the amount being irrelevant for our purpose. On the same day, namely, 12-12-1946, three other assessments were made against the said firm for the quarters ending 31-3-1945, 30-6-1945 and 30-9-1945. Another assessment was made on 22-12-1947, in respect of the Quarter ending on 31-12-1945. All told the firm was assessed to a tax for five quarters, namely, the last quarter of 1944 and four quarters of 1945. Some time in July, 1948, the Deputy Commissioner of Commercial Taxes,

Bihar, sought the sanction of the Commissioner for reviewing the aforesaid orders of assessment. This was done in accordance with R. 61 of the rules made under the Bihar Sales Tax Act, 1944. Rule 61 is in these terms

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"61. (1) When the Commissioner or any other officer reviews any order under Sub-Section (4) of Section 20, he shall record his reasons in writing for doing so.

(2) Save with the previous sanction of the Commissioner an order not passed by the Commissioner shall not be reviewed more than three months after the passing of the order which is sought to be reviewed."

As more than three months had passed since the orders of assessment, the Deputy Commissioner of Commercial Taxes asked for the sanction of the Commissioner under Rule 61(2) quoted above. The Commissioner gave his sanction on 23-9-1948. The assessee firm then filed an application for review against the order of the Commissioner sanctioning a review. This application was rejected. The assessee firm then moved the Board of Revenue for quashing the order of the Commissioner dated 23-9-1948, sanctioning a review. This application was also rejected by the Board of Revenue. The assessee firm then moved the Board for a reference to the High Court. This application was also rejected. In the meantime on 24-6-1949, the assessment orders were reviewed and the assessee firm was taxed to a higher amount of tax.

The assessee firm then moved this Court by an application dated 16-7-1951 and on this application this Court directed the Board of Revenue to state a case with regard to the question which I have already set out at the beginning of this judgment. In short, the question is the true scope and effect of the proviso to Sub-Section (6) of Section 10. Bihar Sales Tax Act, 1944. I should make it quite clear at the very outset that the question we have to answer has to be answered with reference to the provisions of the Bihar Sales Tax Act, 1944 and not the Bihar Sales Tax Act, 1947. The Act of 1947 contains different provisions, which provisions do not fall for consideration in the present case.

3. I must first read Sub-Section (6) of Section 10 and the proviso appended thereto. Sub-section (6) of Section 10, Bihar Sales Tax Act of 1944 is in these terms :

"10. (6) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under this Act :

Provided that no order assessing the amount of tax due from a dealer in respect of any period shall be passed later than 24 months from the expiry of such period."

I may state here that Section 10 contains five other sub-sections which deal with the different modes in which assessment can be made. The section dealing with appeal, revision and review is Section 20, Bihar Sales Tax Act, 1944. Sub-section (4) of that section is relevant for our purpose. That sub-section is in these terms :

"20. (4) Subject to such rules as may be prescribed, any order passed under this Act or the rules made thereunder by any person appointed under Section 3 may be reviewed by the person passing it."

There is a safeguard in Sub-Section (5) of Section 20 which states that before any order is passed which is likely to affect any person adversely, such person shall be given a reasonable opportunity of being heard.

4. Now the question before us is if the period of limitation mentioned in the proviso to Sub-Section (6) of Section 10 applies to and controls the power of review given by Sub-Section (4) of Section 20. The argument of learned Counsel for the assessee is that the limitation mentioned in the proviso to Sub-Section (6) of Section 10 should be read in Sub-Section (4) of Section 20 as well; in other words, the limitation prescribed by the said proviso also controls the power of review given by Sub-Section (4) of Section 20. In support of his contention learned Counsel for the assessee has placed reliance on certain provisions of the Indian Income-tax Act (before the amendments of 1939) and the provisions of the Bihar Agricultural Income-tax Act, 1933, and on certain decisions relating to those provisions. In Bihar Agricultural Income-tax Act, 1938, Section 24 deals with the power of revision. Sub-Section (2) of that section says 'inter alia' that on receipt of the record, the superior authority may make such enquiry, or cause such enquiry to be made, and subject to the provisions of the Act, may pass such orders thereon as he thinks fit. Sections 26 and 27 deal with income escaping assessment and rectification of mistake. In both these sections there is a limitation. The limitation in Section 26 is one year of the end of the financial year in which the agricultural income has escaped assessment. The limitation in Section 27 is one year from the date of the order on appeal or revision or one year from the date of any demand made upon an assessee. In - *'Province of Bihar v. Khetro Mohan Kumar'*, it was held that in view of Section 26, Bihar Agricultural Income-tax Act, 1938, the Bihar Board of Agricultural Income-tax was not competent under Section 24 to set aside, over a year after the end of the financial year from which tax had been assessed, an order passed on appeal by the Commissioner reducing an assessment and to restore the original assessment. It was held that the exercise of the power of revision by the Board under Section 24 was subject to the limitation provided in Sections 26 and 27. Similarly, the Indian Income-tax Act (before the amendments of 1939 and thereafter) gave the Commissioner a power of review under Section 33 of the Act. Section 33 did not provide any limitation of time. Sections 34 and 35 dealt with (1) income escaping assessment, and (2) rectification of mistake. Both those provisions contained a period of limitation of time. In - *'Commr, of Income-tax, Bombay Presidency and Aden v. Khemchand Ramdas'*, it was held that the provisions of Sections 34 and 35 of the Act were exhaustive and prescribed the only circumstances in which and the only time in which fresh assessments could be made, and the power of the Commissioner under Section 33 was subject to the provisions of Sections 34 and 35. The same view was also expressed in - *'Commissioner of Income Tax, Madras v. Abdul Kadir Maracayar and Co'*, where it was pointed out that even though no limitation of time was prescribed for interference by way of revision under Section 33, the Court would almost always incline in favor of taking the view that such exercise of power should be within a reasonable time of the proceedings sought to be revised, reasonable time being computed by the Court having regard to all the other provisions of the Act. Learned Counsel for the assessee has submitted before us that the same principle should govern the present case and the limitation of time laid down in the proviso to Sub-Section (6) of Section 10 should apply to the power of review given under Sub-Section (4) of Section 20.

5. In my opinion this argument fails to take note of several important distinctions which exist between the provisions of Bihar Agricultural Income-tax Act, 1938, and the Indian Income-tax

Act on the one hand and the provisions in the Bihar Sales Tax Act, 1944 on the other. First of all, Section 24, Bihar Agricultural Income-tax Act, 1938, says in clear terms that the power of revision given by Sub-Section (2) of that section is "subject to the provisions of this Act". Therefore in express terms Section 24 is made subject to the provisions of Sections 26 and 27. The position is the same with regard to the Indian Income-tax Act. Sub-section (2) of Section 33, Indian Income-tax Act (before the amendments of 1939 and thereafter) stated in express terms that the power of review given to the Commissioner was "subject to the provisions of this Act". Therefore, Section 33 was subject to the provisions of Sections 34 and 35. The Bihar Sales Tax Act, 1944, however, contains no provisions similar to the provisions of Sections 26 and 27, Bihar Agricultural Income-tax Act, 1938; nor does it contain provisions similar to the provisions of Sections 34 and 35, Indian Income-tax Act. Moreover Sub-Section (4) of Section 20, Bihar Sales Tax Act states that the power of review is "subject to such rules as may be prescribed". The power is not subject to the "other provisions of the Act" so as to attract the operation of the proviso to Sub-Section (6) of Section 10. Then there is another very important distinction. The general rule is that the operation of a proviso should be confined to that clause or portion of the statute which directly precedes it. The position has been thus explained in - '*Clay Center State Bank v. McKelvie*', (D). (I am quoting from Crawford on the Construction of Statutes (1940 Edn.) p. 606) :

"Its grammatical and legal scope is confined to the subject-matter of the principal clause..... While it is sometimes used to introduce independent legislation, the presumption is that it is used in accordance with its primary purpose and refers only to the provision to which it is attached."

It is true that the aforesaid general rule is not always applicable, and all the provisions of the statute must be construed in such a way as to avoid any repugnancy or absurdity. I agree that the placing of the proviso to Sub-Section (6) of Section 10, Bihar Sales Tax Act, 1944, is somewhat unhappy. I take it that the proviso relates to an original order of assessment made under Section 10. In other words, the proviso in its true meaning and effect lays down that no original order assessing the amount of tax due from a dealer in respect of any period shall be passed later than 24 months from the expiry of such period. I do not agree, however, that the proviso should be read as controlling all the other provisions of the statute. Take, for example, Section 20. Under Sub-Section (2) of Section 20, the appellate authority in disposing of an appeal may confirm, reduce, enhance or annul the assessment or penalty, if any, or both, or the appellate authority may set aside the assessment or penalty, if any, or both, and direct the assessing authority to pass a fresh order after such further enquiry as may be directed. Now, it may so happen that by the time the appellate authority passes its order the period mentioned in the proviso to Sub-Section (6) of Section 10

is already over. In the second case to which I shall presently refer, that is what actually happened. If the proviso to Sub-Section (6) of Section 10 controls the provisions of Section 20, then the appellate authority would not be competent to pass any order in respect of an assessment except perhaps confirming, reducing, enhancing or annulling the assessment, when the period of two years had passed from the expiry of the period of assessment. In other words, there will be a conflict or repugnancy between the two provisions. The proviso to Sub-Section (6) of Section 10 will render nugatory the powers given to the appellate authority under clause (b) of Sub-Section (2) of Section 20. I do not think that this could have been the intention of the Legislature. Such a

construction will result in an absurdity; and after the period mentioned in the proviso to Sub-Section (6) of Section 10 is over, it would not be possible for the appellate authority or revisional authority to pass the orders which under Section 20 it would be competent to pass. I think that a distinction must be drawn between an original order of assessment under Section 10, which is subject to the proviso to Sub-Section (6) of that section, and a fresh order of assessment directed by an appellate or revisional authority as mentioned in Sub-Sections (2) and (3) of Section 20, Bihar Sales Tax Act, 1944. I am aware that the only section dealing with assessment of tax is Section 10, Bihar Sales Tax Act, 1944, and a fresh order of assessment will also proceed on the principles laid down in Section 10. That does not, however, mean that a distinction between an original order of assessment under Section 10 and a fresh order of assessment directed by the appellate or revisional authority cannot be made. In my opinion, such a distinction can and ought to be made in order to avoid absurdity and repugnancy between the different provisions of the Bihar Sales Tax Act, 1944.

6. For these reasons, I do not think that the principle laid down with regard to the provisions of Sections 24, 26 and 27, Bihar Agricultural Income-tax Act, 1938, and Sections 33, 34 and 35, Indian Income-tax Act can be applied with regard to the provisions contained in the proviso to Sub-Section (6) of Section 10 and Section 20, Bihar Sales Tax Act, 1944.

7. I would accordingly answer the question in Miscellaneous Judicial Case No. 211 of 1951 against the assessee. My answer is that the order of the Commissioner dated 23-9-1948 sanctioning a review of assessment on the petitioner for the five quarters in question does not contravene the provisions of the proviso to Sub-Section (6) of Section 10, Bihar Sales Tax Act, 1944, that proviso being restricted in its operation to an original order of assessment made under Section 10 of the said Act

8. I now proceed to a consideration of the second case, namely, Miscellaneous Judicial Case No. 291 of 1951. The facts are the following. The assessee is one Bishwanath Dokania. He was not registered as a dealer. As a result of a raid certain papers of the dealer were seized on 5-12-1947. On 30-12-1947, an assessment was made under the provisions of Sub-Section (5) of Section 10, Bihar Sales Tax Act, 1944, and a penalty was also imposed. The assessment was for the quarter ending on 31-12-1945. On 24-3-1948, a second assessment was made for the period commencing on 1-1-1946, and ending on 31-12-1947, on 18-5-1943, the Commissioner set aside the first assessment on an appeal preferred by the assessee.

The Commissioner remanded the case on the ground that the dealer had not been given a full opportunity to rebut the facts and circumstances appearing against him as a result of the raid and on the basis of which the assessment order was passed. On 9-7-1948, the Commissioner set aside the second assessment also and directed a fresh assessment. On 21-7-1949, the Assistant Commissioner dealt with the two assessments together and assessed the assessee to a certain amount of tax plus a penalty as well. It is worthy of note that on the date, 21-7-1949, on which the Assistant Commissioner made the fresh assessment, the period of two years mentioned in the proviso to Sub-Section (6) of Section 10, Bihar Sales Tax Act, 1944, had already expired with regard to the period covered by the first assessment and part of the period of the second assessment. On 27-4-1950, the Commissioner partially modified the order of the Assistant Commissioner he did not interfere with the order of the Sales Tax Officer in respect of the quarter from 1-10-1945 to 31-12-1945; but he reduced the assessment from 40 lakhs to Rs. 24 lakhs for the period from 1-1-1948 to 31-12-1947. The assessee then moved the Board, and by

its order dated 16-4-1951, the Board set aside the consolidated assessment and directed a fresh assessment separately - under the 1944 Act for the period up to 30-6-1947, and under the 1947 Act for the rest of the period. The assessee then moved the Board for a reference to the High Court. The Board refused to make a reference. The assessee then moved this Court and the Board was directed to state a case on the following question :

"Whether the assessment for the period prior to 1-7-1947, was barred under the proviso to Section 10. Bihar Sales Tax Act, 1944 ?"

9. This is the question which falls for decision in the second case. I have already stated earlier in my judgment that in my view the proviso to Sub-Section (6) of Section 10 is restricted in Its operation to an original order of assessment made under Section 10, Bihar Sales Tax Act, 1944. This second case furnishes an example of the absurdity which may result if the view canvassed for by learned counsel for the assessee is accepted namely, that the period of limitation laid down in the proviso to Sub-Section (6) of Section 10 also applies to the appellate or revisional authority when that authority is dealing with an appeal or revision. In this second case, the appellate authority set aside the first assessment on 18-5-1948. This the appellate authority did at the instance of the assessee himself. On 18-5-1948, the period of two years laid down by the proviso to Sub-Section (6) of Section 10 had already expired with regard to the first period, the period from 1-10-1945 to 31-12-1945. If the view canvassed for by learned Counsel Sac the assessee is correct, then on the 13-5-1948, it was not open to the Commissioner to set aside the first assessment and direct a fresh assessment; in other words, it was not open to the Commissioner to do what he was authorized to do under Section 20 of the Act. On 21-7-1949, also, when the Assistant Commissioner consolidated both the assessments, the period of two years had already passed with regard to the period prior to 1-7-1947. Therefore, on 27-4-1950, the Commissioner had no authority, on the argument of learned Counsel for the assessee, to interfere with the assessment. Neither had the Board power to interfere with the assessment on 16-4-1951, with regard to the assessment for the period prior to 1-7-1947. In other words, having got from the Commissioner and the Board of Revenue certain orders in his favour, the assessee now seeks to make out that those orders were really without jurisdiction and that no assessment could be made for the period prior to 1-7-1947.

10. In my opinion, the whole result will be absurd in the extreme if the view of learned Counsel for the assessee is accepted. I do not wish to repeat the reasons which I have given in dealing with Miscellaneous Judicial Case No. 211 of 1951. For those very reasons, I would hold that proviso, to Sub-Section (6) of Section 10 is restricted to original order of assessment and does not apply to a fresh order of assessment directed by the appellate or the revisional authority. Learned Counsel for the assessee has relied on the decision in '*Ranchhodas Karsondas v. Commissioner of Income-tax, Bombay City*'<sup>5</sup>, The facts of that case are entirely and the principle laid down in that decision has no application to the facts of the present case. That was a decision with reference to the period of limitation laid down in Section 34(3), Income-tax Act.

11. I would accordingly answer the question formulated in this case against the assessee. My answer is that the assessment for the period prior 1-7-1947, is not barred under the proviso to Sub-section (6) of Section 10, Bihar Sales Tax Act, 1944.

12. The result, therefore, is that both the references are answered against the assessee and the opposite party are entitled to their costs. We assess the hearing fee at Rs. 150/- in each of the two cases.

**Kanhaiya Singh, J.**

13. I agree.

Answers accordingly.

Cases Referred.

<sup>1</sup> AIR 1949 Pat 418

<sup>2</sup> AIR 1938 PC 175

<sup>3</sup> AIR 1928 Mad 257

<sup>4</sup> 19 Fed (2) 308

<sup>5</sup> AIR 1954 Bom 543