

PATNA HIGH COURT

Commissioner of Commercial Taxes

Vs

Sheodutta Prasad Chandeshwar

(S.C. Misra, C.J.S Wasiuddin, J.)

23.09.1969

JUDGMENT

S.C. Misra, C.J.

1. This is a reference under Section 25(1) of the Bihar Sales Tax Act, 1947, arising out of the order dated the 18th August, 1965, of the Commercial Taxes Tribunal, Bihar, in the matter of assessment of sales tax on the dealer M/s. Sheodutta Prasad Chandeshwar Singh, in the following circumstances. The dealer was assessed to sales tax for the year 1955-56 on a turnover of Rs. 72,189-12-3 by assessment order dated the 31st July, 1957 (exhibit A). On the 24th of October, 1959, however, certain books of account of the dealer's firm were seized by the officers of the department on the ground that the dealer suppressed certain sales from their books of account. On the 18th of October, 1960, the assessing officer issued a notice to the dealer for producing his books of account for review of the previous assessment order. On examination of the books of account, a fresh order of assessment was passed on the 25th April, 1961, in which the dealer was assessed to tax on the basis of a turnover of Rs. 7,33,774. The dealer's appeal was dismissed. He filed thereafter an application in revision before the Board of Revenue which, on constitution of the Tribunal under the Sales Tax Act, heard and disposed of the application. The Tribunal accepted the contention of the assessee that the reassessment proceeding was initiated on the 18th of October, 1960, which was more than four years from the end of the year 1955-56 and, therefore, the proceeding was barred by limitation under the proviso to Section 13(6) of the Act.

2. Being aggrieved by the order of the Tribunal, the department filed an application before the Tribunal for stating a case to the High Court claiming that the following question should be referred to the High Court:-Whether in the facts and circumstances of the case the proceeding initiated under Section 24(5) of the Bihar Sales Tax Act, 1947, on 18th October, 1960, for review of the assessment order dated 31st July, 1957, for the year 1955-56 was barred by limitation?

The question has accordingly been referred to this court by the Tribunal under Section 25(1) of the Bihar Sales Tax Act, 1947, with slight modification and it reads thus :-

Whether the proceeding initiated on 18th October, 1960, for review of the assessment order dated 31st July, 1957, for the year 1955-56 and reassessment was barred by limitation in view of the proviso to Section 13(6) of the Act?

3. Reliance was placed before the Tribunal on the decision of the Supreme Court in the case of *The State of Orissa v. Debaki Debi*¹ wherein it was held that the limitation provided in the Orissa Act was not only to the original assessment but also to a reassessment. Since, however, it was urged on behalf of the department that the provisions of the Orissa Act were different from those of the Bihar Act, and the facts of the Orissa case in the Supreme Court were also different materially from the facts of the present case, what applies to assessment cannot be held applicable to reassessment. The review proceeding was initiated on 18th October, 1960. The limitation prescribed in the first part of the proviso to Sub-Section (6) of Section 13 of the Bihar Sales Tax Act, 1947, according to which a proceeding for assessment must be initiated not later than four years from the expiry of the period of assessment, would not be attracted to the reassessment proceeding in the present case which would be governed by Section 24(5) of the Act read with Rule 9 of the Bihar Sales Tax Rules, 1949, and, therefore, the proceeding was not hit by the proviso to Section 13(6) of the Act and there was no question of limitation in initiating such a proceeding.

4. Before, however, dealing with the case law, therefore, it is necessary to refer to Section 13(6) of the Bihar Sales Tax Act, 1947. Section 13 deals with the procedure of assessment and Sub-section (6) of Section 13 provides for limitation of four years. Sub-section (6) reads thus :Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under this Act :Provided that no proceeding for assessment of the tax due from a dealer in respect of any period shall be initiated later than four years from the expiry of such period or later than two years from the date of disposal of the appeal, revision, review or reference directing fresh assessment.If the section were in terms applicable then, undoubtedly, the present proceeding for reassessment which was initiated more than four years from the period in respect of which the first proceeding for assessment was initiated, being 1955-56, would be barred by limitation. Section 24, however, deals with appeal, revision and review and Sub-section (5) of it provides thus :

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 or by his successor-in-office.This section, however, is a general section referring to the power of

review vested in either the authority under Section 3 itself or by a person which means the Commissioner of Sales Tax or such other person under any prescribed designation to assist him as the State Government thinks fit. Rule 39 also refers to review and reads thus :

39. Review.-(1) When the Commissioner or any other officer reviews any order under Sub-section (5) of Section 24, he shall record his reason 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 twelve months after passing of the order which is sought to be reviewed.

(3) No officer below the rank of Commissioner shall review any order which has been passed by any of his predecessors-in-office except with the previous sanction of the Commissioner. Prima facie, therefore, neither Section 24(5) nor Rule 39 has got any reference to any additional power vested in the authorities to start a reassessment proceeding. It is true, no doubt, that proceeding in this case for reassessment was started under Sub-Rules (2) and (3) of Rule 39 after obtaining sanction of the Commissioner, but I am not able to see how this makes any difference on merit with regard to the question of limitation which is governed by Section 13(6), part one, itself. Reliance was placed before the Tribunal on behalf of the State on a decision of this court in *Gajo Ram Basant Ram v. The State of Bihar*² The provision of law applicable to that case was the Bihar Sales Tax Act, 1944. Apart from the difference in the provisions of the two Acts, this court took the view that in that case fresh assessment was not barred by limitation as it had been ordered by an appellate authority and it was not an original assessment to which alone the limitation in the proviso to Section 13(6) was applicable. In this case no such order has been passed by any appellate authority and as such it must be treated as an original proceeding, although it is a proceeding in reassessment and is governed by Section 13(6) itself. In my opinion, the Tribunal was right in holding that the assessment for this one year 1955-56 was barred by limitation. The answer to the question formulated, therefore, must be in favour of the assessee that the assessment for this year was barred.

5. Learned counsel for the State has also referred to the following decisions:-*The State of Orissa v. Debaki Debi*³ *The Swastik Oil Mills Ltd. v. H. B. Munshi, Deputy Commissioner of Sales Tax, Bombay*⁴. None of these cases is really applicable. *Swastik Oil Mills* [1968] 21 S.T.C. 383 (SUPRA) was a case where, under the Acts of 1946 and 1953, there was no limitation whatsoever for exercising the power of revision and the case was governed by the Bombay Sales Tax Act of 1946. The position under the Bihar Act is quite the other way. In fact, reference was made in this very judgment to *The State of Orissa v. Debaki Debi* [1964] 15 S.T.C. 153 (Supra) which contained a provision of limitation like the Bihar Act. Mr. Ramanugrah Prasad for the

opposite party, however, has referred to the following decisions :-

*Premchand Satramdas v. State of Bihar*⁵ *Sir Sobha Singh & Company v. Commissioner of Sales Tax, Delhi*⁶ *Hare Krishna Singh v. State of Bihar*⁷ The decision of this court in *Hare Krishna Singh v. State of Bihar* 1964 B.L.J.R. 786 is relevant in so far as it refers to assessment of super-tax under the Agricultural Income-tax Act. It has been held that where super-tax was not assessed at the original assessment proceeding, it could be done under Section 29, but subject to limitation of time provided in the section itself. Under that section, the assessment of escaped tax must be made within three years from the end of the accounting year and, therefore, the last date for assessment of the escaped tax in that case was 31st March, 1956. The principle of that decision is applicable to the present case as well and it supports the view adopted by the Tribunal in holding that assessment for 1954-55 was barred by limitation. In *Province of Bihar v. Khetra Mohan Kunar* A.I.R. 1949 Pat. 418, a similar view has been adopted.

6. The reference is accordingly answered in favour of the assessee that the assessment for the year 1955-56 was barred by limitation.

S. Wasiuddin, J.

7. I agree.

Cases Referred.

1[1964] 15 S.T.C. 153

2[1956] 7 S.T.C. 248

3[1964] 15 S.T.C. 153

4[1968] 21 S.T.C. 383

5A.I.R. 1951 S.C. 14

6[1966] 18 S.T.C. 416