

PUNJAB AND HARYANA HIGH COURT

Firm Jagat Ram Om Prakash

Vs

Excise and Taxation Office

(D Falshaw, C.J.S Capoor and A Grover, JJ. I Dua and D Mahajan, JJ.)

09.10.1964

JUDGMENT

Dua, J.

(1) This writ petition and come up for hearing before me in March, 1963, when I was told that the question raised had been referred to a Full Bench in another case, with the result that I directed this case to be set down for hearing after the summer vacation.

(2) The question relates to the true ratio of the decision of the Supreme Court in Madan Lal Arora v. Excise and Taxation Officer, Amritsar AIR 1961 SC 1565. The Full Bench decision is since reported a Rameshware Lal Sarup Chand v. U. S. Naurath, 1963-65 Pun LR 768: (AIR 1964 Punj 1) (FB). In that case D. K. Mahajan J., took the view that a best judgment assessment under S. 11 of the East Punjab General Sales Tax Act must be completed within the period of limitation prescribed under sub-section (4), (5) and (6) and that the period of limitation in these sub-section has also to be imported into sub-section (3). The order of assessment beyond three years must, according to this view be quashed on the ground of its being without jurisdiction. Capoor J., without going further merely held that the impugned assessments being on best judgment basis had to be made within three years. Pandit J. gave a dissenting judgment holding that there was no need of importing limitation of three years for completing the assessment under sub-section (3) of S. 11 from sub-sections(4), (5) and (6); according to him all that section 11(4) requires is that the assessment authority must proceed to asses within three years mentioned therein and it is not necessary that final order should actually be passed within a period of three years. It may be mentioned that this reference had been necessitated because of conflicting Bench decisions on the true scope of the ration of the decision in Madan Lal Arora's case, AIR 1961 SC 1565. The two Bench decisions mentioned by the Full Bench which took divergent views are Nathu Ram Nohar Chand v. State of Punjab 1962 Cur LJ (Punj) 325 and Avtar Singh Rajnit Singh v. Assessing Authority (Excise and Taxation Officer) Ludhiana, 1963-65 Pun LR

422. I may mention that in another case *Khem Chand Vijay Kumar v. J. S. Malhotra*, AIR 1963 Punj 385 Pandit J., and myself without deciding did not feel unimpressed by the contention that the Supreme Court in *Madan Lal Arora's case*. AIR 1961 SC 1565 did not lay down that to be valid the assessments under section 11(4) of the East Punjab General Sales Tax Act must be completed within a period of three years: the term 'assessment' it was felt had variable import: *Jitwan Singh and Sons v. Excise and Taxation Officer*, 1960 Pun LR 562 was also cited before us.

(3) It appears that on 6-8-1963 in *Ghanshyam Das v. Regional Assistant Commissioner of Sales Tax Nagpur*, (1963) 14 STC 976: (AIR 1964 SC 766) a Bench of five Judges of the Supreme Court construed S. 11 (1) to (4) and S. 11A of the Central Provinces and Bearer Sales Tax Act, 1947, and in the majority judgment it was observed that proceeding duly initiated in time can be completed without time-limit. On the authority of these observations a Bench of this Court (Hon'ble C. J. and Harbans Singh J.) in *Khushi Ram Behari Lal and Co. v. Assessing Authority*, Civil Writ No. 413 of 1926 dated 31-12-1963 (Punj) appears to have upheld the contention that if proceedings are once initiated then no subsequent event can alter the liability of the dealer to be assessed or the authority the department to make assessment. *Khanna J.*, and myself *Madan Mohan Kot v. District Excise and Taxation Officer*, Civil Writ No. 1934 of 1963 dated 27-1-1964 (Punj) followed this decision.

In *Murli Mal Ram Nath v. Shri Darvyo Singh*, Assessing Authority, Civil Writ No. 186 of 1963 dated 17-12-1963 (Punj) *Shamsher Bahadur J.*, had occasion to notice both the Supreme Court decisions in *Madan Lal Arora's case* AIR 1961 SC 1565 and *Ghanshyam Dass's case* 1963-14 STC 976 : (AIR 1964 SC 766) and in his view, the statutory bar of three years laid in sub-section (4) of section 11 relating to 'best judgment assessments' did not obtain in case of ex parte orders of assessment where the assessee had failed to turn up in response to the notice. In that case, as the order shows, the assessment order disclosed that there return filed by the assessee had been accepted on the question of gross turnover and it was only the deductions which were not accepted and the entire field was considered to be open to the Assessing Authority to compute the figures of turnover on the basis of own estimate. The respondent's learned counsel has laid great stress on this judgment and has submitted that this is practically on all fours with the case before me and I should follow it, leaving it to the petitioner to go up on appeal. On the other hand, the petitioner's learned Counsel has also drawn my attention to another recent Bench decision of this Court decided on 19-2-1964 by *Bedi and Shamsher Bahadur JJ.*, in *Rattan Di Hatti v. Excise and Taxation Officer, Ludhiana*, 1964-66 Pun LR 626, where the head not in the Supreme Court Judgment as reported in *Ghanshyam Das's case* 1963-14 STC 976: (AIR 1964 SC 766) has been held to be somewhat misleading and the ratio of the Full Bench decision in

Rameshwar Lal Sarup Chand's case, 1963-65 Pun LR 768: (AIR 1964 Punj 1) (FB) followed. It, however, appears that the attention of the Bench was not drawn to the earlier Bench decision in the case of Khushi Ram Behari Lal and Co., Civil Writ No. 413 of 1962 dated 31-12-1963 (Punj) nor to the Single Bench Decision in the case of Murli Mal Ram Nath Civil Writ No. 186 of 1963 dated 17-12-1963 (Punj). In fairness to the petitioner's learned counsel, I may note that he has not attempted to support the view taken in the case of Rattan Di Hatti, 1964-66 Pun LR 626, the decision having been cited only to bring out the uncertainty of legal position on this important point in face of the maize of conflicting pronouncements.

(4) The foregoing discussion clearly shows that the legal position on the point raised is far from settled or certain in this Court. In matters of taxation, I feel that uncertainty in the legal position should be removed as soon as reasonably possible so that the tax-payer and the revenue do not remain in reasonable doubt about the law and realisation of tax is not unduly delayed. In view of the conflict of judicial opinion noted above, it is exceedingly desirable that this petition be disposed of by a larger Bench, preferably by a Bench of five Judges because the question of the effect of the latest Supreme Court on the ratio of the earlier Full Bench decision by three Judges may have to be considered. The papers may accordingly be placed before my Lord the Chief Justice for suitable orders. Since this petition is already more than two years' old the necessary orders may be obtained with due promptitude so that it is finally disposed of in September 1964.

OPINION OF FULL BENCH I.D. Dua, J.

(5) This writ petition initially came up before me sitting in Single Bench on 23rd March, 1962, when it was pointed out that the question whether the best judgment assessment under Punjab General Sales Tax Act should be finalised within three years and also whether this Court should interfere with assessments on writ side without the aggrieved party utilizing the remedies provided by the statute had been referred to a larger Bench with the result that I passed an order that this writ petition should await the decision of the Full Bench. The case to which reference had been made was later on decided by a Bench of three Judges and has since been reported as 1963-65 Pun LR 768: (AIR 1964 Punj 1) (FB). This writ petition was again placed before me disposal in August, 1964, and my attention was drawn to conflicting decisions of this Court on the ratio of the Supreme Court's decision in AIR 1961 SC 1565 thereby tending to shake to some extent the binding authority of the majority view of the Full Bench in Rameshwar Lal Sarup Chand's case, 1963-65 Pun LR 768: (AIR 1964 Punj 1) observations in a later decision of the Supreme Court in Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, since reported as AIR 1964 SC 766. It was in these circumstances that on 21st August 1964, I considered it desirable that the conflict be settled by a larger Bench.

(6) The facts so far as relevant for our present purpose are briefly stated as follows: The petitioner partnership firm of Amristar registered under the Indian Partnership Act, claims to be a registered dealer under the Central Sales Tax Act No. 74 of 1956 (hereinafter called the Central Act). For the year 1957-58 ending 31st March, 1958, the firm filed returns in respect of inter-state trade in accordance with the Central Act for the two quarters beginning from 1st July, 1957, to 31st September 1957 and beginning from 1st October 1957 to 31st December 1957, relating to the textile goods sold by the petitioner outside the State of Punjab. It may be pointed out that the Central sales Tax had become payable only from 1st July, 1957, by virtue of a notification issued under S. 6 of the Central Act. as from 14th December, 1957, the incidence of the Central Act on woollen and cotton textiles was abolished with the result that in the second quarter the sales effected up to 13th December, 1957, were included. The petitioner paid tax due for these two quarters at the time of the filing of he returns in accordance with section 10 of the Punjab General Sales Tax Act (hereinafter called the Punjab Act). On 17th October, 1961, the Excise and Taxation Officer, described to be the Assessing Authority for Amristsar, respondent in these proceedings, sent a notice requiring the petitioner firm to appear on 20th October, 1961, with the account books of the concern for the purpose of assessment.

It may be pointed out that in accordance with section 9(3) of the Central Act, the authorities for the time being empowered to assess, collect and enforce payment of tax under the Punjab Act are also empowered to assess, collect and enforce payment of the central tax and the provisions of the Punjab tax law are made application for purposes of assessment etc. to the same extent as if the Central tax is assessable under the Punjab Act. The Provision relating to returns, appeals, reviews and revision in the Punjab Act are also made applicable. On receipt of the notice dated 17th October, 1961, the petitioner on 20th October, 1961, raised the objection of limitation urging that the proceedings so initiated were without jurisdiction being beyond three years from the end of the respective periods of returns. The Assessing Authority, however, proceeded with the assessment and calculated the amount of tax payable by the petitioner firm at Rs.20,101.06 and after allowing the sum of Rs. 6,809.02 already deposited in accordance with the returns created a liability of Rs. 13,292.04. No deductions on account of sales of goods claimed to have been made to registered dealers were allowed for the reason that the 'C' forms had not been produced by the petitioner firm at the time of the assessment, Against the order of assessment an appeal was preferred by the petitioner firm before the Deputy Excise and Taxation Commissioner. Julundur, the Appellate Authority. under S. 20 of the Punjab Act, but since the tax assessed has to be paid before the hearing of the appeals this remedy has been described by the petitioner to be illusory. It is on these allegations that this Court has been approached under Act. 226 and 227 of the Constitution and the only question raised in these proceeding is whether the impugned assessment could be made after the expiry of three year from the end of the

respective periods of submitting the returns.

(7) In the respondent's return in opposition, it has been pleaded that as the proceeding for assessment had been initiated well in time, it was within the jurisdiction of the Assessing Authority to frame assessment under S 9(3) of the Central Act read with section 11(3) of the Punjab Act on the basis of the returns, furnished by the dealer. The notice issued on 13-10-1961 has also been pleaded to be in continuation of the previous ones and, therefore, not hit by any provision as to limitation. Here, it may be pointed out that it is not denied by the petitioner's counsel that initially a notice in Form S. T. XIV had been issued to the petitioner firm on 6-6-1958. The petitioner had appeared but the case was adjourned. Thereafter, the petitioner did not hear anything from the Assessing Authority till the receipt of what he describes to be a notice dated 17-10-1961.

(8) The question which falls for determination relates to the scope and effect of S. 11 of the Punjab Act. This section, so far as material for our purpose, reads as follows:

"11. Assessment of tax--(1) If the Assessing Authority is satisfied dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns.

(2) If the Assessing Authority is not satisfied without requiring the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at place specified therein either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.

(3) On the day specified in the notice or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, assess the amount of tax due from the dealer.

(4) If registered dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (2), the Assessing Authority shall within three years after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax due from the dealer.

(5) If a registered dealer does not furnish returns, in respect of any period by the prescribed date, the Assessing Authority shall within three years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the

amount of tax, if any, due from the dealer.

(6) If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under the Act in respect of any period but has failed to apply to registration, the Assessing Authority shall within three years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in cases where such dealer has wilfully failed to apply for registration the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount of assessed, a sum not exceeding one and a half times that amount.

Form S. T.. XIV which is the prescribed form mentioned in sub-section (2) may also. so far as materiel be reproduced at this stage:

"Form S. T. XIV.

Notice under Sections 11 and 14 of the Punjab General Sales Tax Act, 1948.

(See Rules 31 and 38 of the Punjab General Sales Tax Rules, 1949) Office of the Assessing Authority

-----District To,

Whereas

(a) You a dealer registered under Certificate No.-----of-----District have not furnished return for the year/quarter /Month ending the-----day of-----19.

(b) I am not satisfied that the return filed by you for a month/quarter/year ending the day of-----is correct and complete, and it appears to me to be necessary to make an assessment under sub-section (3) of section 11 of the Punjab General Sales Tax Act, 1948, in respect of the above mentioned period.

I am satisfied on information which has come into my possession that you have been liable to pay tax under Punjab General Sales Tax Act, 1948, in respect of the period commencing on-----

-----and ending with-----but that you have wilfully failed to apply for registration under section 7 of the said Act, and it appears to me to be necessary to make an assessment under sub-section (6) of section 11 of the said Act in respect of above mentioned period and all subsequent periods.

You are hereby directed to attend in person or by an agent at (place)-----on (dated)-----at(time)-----and there to produce, at the said time and place the accounts and documents specified below for the purpose of such assessment, together with any objections which you may wish to adduce in support thereof and to show cause on that to be assessed on you a penalty not exceeding one and half time the amount should be impose upon you under section 11(6) of the said Act.

In the event of your failure to comply with the notice, I shall proceed to assess under S. 11 of the Punjab General Sales Tax Act, 1948, to the best of my judgment without futher reference to you."

Before proceeding to consider the points canvassed at the bar, it may be made clear that the learned counsel for the petitioner dealer has not contended that the best judgment assessment must be finalised within a period of three years after the expiry of the period in respect of which the returns have been furnished. Indeed, he has expressly conceded before us that in face of the decision of the Supreme Court in Ghanshayam Das's case, AIR 1964 SC 766 such a contention is no longer open to him. The result, therefore, is that both sides agreed on this point and we are not called upon to express our considered opinion on this question.

(9)The sole contention pressed before us by the petitioner's learned counsel is that if the Assessing Authority desires to make the best judgment assessment he must proceed to assess to the best of his judgment within three years after expiry of the period of the returns furnished by the registered dealer. For the argument he has relied on the language of S. 11(4) of the Punjab Act which, according to the counsel, is clears unambiguous, admitting of no other construction. According his contention, whenever a question is raised as to whether or not the Assessing Authority has proceeded within the prescribed time to assess to the best of his judgment the onus would be on the authority to establish it by reference to the record.

(10) On behalf of the Assessing Authority on the other hand, it has been strenuously argued that once assessment proceedings begin, there is not time-limit fixed by the law within which the assessment must be concluded. Support for the submission has been sought form the observations in the judgment of Supreme Court in Ghanshyandas's case AIR 1964 SC 766 where it is observed that proceedings duly initiated in time are to be considered to be pending as soon as

it is commenced and until it is concluded. The respondent's learned counsel has emphasised that notice in Form S. T. XIV is of a comprehensive nature which contemplates best judgment assessment in the event of non-compliance with what is required of the dealer. Annexure 'A' attached to the writ petition, it is pointed out, is only and intimation of the next date in the proceedings and is not the starting point of best judgment process. According to this submission which once a notice in Form S. T. XIV is given, then the assessment proceeding must be deemed to have commenced and there is no time limit within which the assessment is to conclude, even if the Assessing Authority chooses to assess to the best of his judgment; in other words the Assessing Authority can proceed to assess to the best of his judgment whenever he like without any limitation in regard to time.

(11) This broad contention clearly overlooks the important word in sections 11(4) of the Punjab Act which expressly fixed a period of return furnished by the registered dealer within which the Assessing Authority has to proceed to assess to the best of his judgment. I, therefore, unhesitatingly decline to assent to the submission that after the initial notice in Form S. T. XIV it is open to the Assessing Authority to proceed to make a best judgment assessment without any limitation in point of time.

(12) The question, however, arises as to when can an Assessing Authority be considered to proceed to assess to the best of his judgment. As already observed, the parties are agreed, and in fact it is their common case before us, that this expression does not connote the actual framing of the final assessment order. This common ground is thus the start in point from which we are asked to proceed to consider the question in issue. The parties are also agreed that as to when the Assessing Authority proceeds to make the best judgment assessment must depend on the facts of each case, but, according to the petitioner, in the case in hand, the respondent has not yet proceeded to so assess the dealer. It has, however, not been specified by the learned counsel as to what kind of step or act by the Assessing Authority would in law suggest that from that precise point of time he should be taken to proceed to make the best judgment assessment. The submission most seriously pressed on behalf of the petitioner is that it is for the Assessing Authority to show affirmatively from the record that he did actually proceed to so assess within the period provided by the statute.

(13) The respondent has in reply submitted that law does not prescribe any particular form of notice or even information to be given to the registered dealer by the Assessing Authority for proceeding to assess to the best of his judgment and it is a matter for the authority alone to determine as to when he makes up his mind that on account of failure on the part of the registered dealer he should proceed to assess to the best of his judgment. The statute, it is pointed out, gives no guidance in this respect and it is a matter for determination in each case as to at

what precise point of time the Assessing Authority in fact proceeds to so assess. It has been urged that it is common with the dealers to secure frequent adjournments and in certain cases to secure stay of proceedings from courts and after thus delaying finalization of assessment proceedings to raise the plea of time bar; it has, therefore, been emphasised that the Assessing Authority should be deemed to proceed to assess to the best of his judgment when he feels that the dealer has failed to comply with the terms of the notice under S. 11(2) of the Punjab Act. It has been submitted by the respondent's counsel that even in the case in hand, a larger number of adjournments were secured by the dealer on various pretexts and in February, 1960, an adjournment was sought on the plea that the dealer wanted to move the High Court in the matter. Indeed, it is pointed out that on 15-2-1960, the Assessing Authority when granting an adjournment up to 25-2-1960 observed that no further extension would be allowed and the statements already asked for should be submitted "otherwise assessment on the basis of best judgment should be resorted to ". It has been suggested that this observation might well be construed to mark the starting point of the process of best judgment assessment.

(14) In my opinion, whenever a question arises as to whether or not an Assessing Authority has proceeded to assess to the best of his judgment, it is for the authority to show that it has so proceeded within the period prescribed by the statute. As to at what point of time, he did actually proceed to so assess would have to be determined on the facts and circumstances of each case in its own setting as it is not possible to lay down any definite and clear cut test applicable to all cases. There must, however, be some definite act or step taken from which it can be clearly ascertained that from that point of time the Assessing Authority has proceeded to assess to the best of his judgment and the starting point of this process must be within the period of three years as provided in S. 11(4) of the Punjab Act.

(15) The legal position having been clarified, the question as to when, if at all, in the case in hand the Assessing Authority proceeded to assess to the best of his judgment would have to be determined on its own facts. This case should, therefore, go back to the Single Bench for disposal of the writ petition in accordance with law and in the light of the observations made above. Costs of the hearing before the Full Bench would be costs in the cause.

D. Falshaw, C.J.

(16) I agree S.B. Capoor, J.

(17) : I agree.

A.N. Grover, J.

(18) I also agree.

D.K. Mahajan, J.

(19) I agree.

20. Question answered.