

(1973) 11 AHC CK 0004
In the Allahabad High Court
Case No : Sales Tax Reference No. 682 of 1970

Agarwal and Brothers

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 29-11-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 12, 136, 226
Criminal Procedure Code, 1898 (CrPC) — Section 195
Evidence Act, 1872 — Section 3
Income Tax Act, 1961 — Section 33, 37, 54, 66, 67
Limitation Act, 1963 — Section 14
Penal Code, 1860 (IPC) — Section 20

Citation : (1974) 34 STC 53

Hon'ble Judges : Hari Swarup, J; H.N. Seth, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; Standing Counsel, for the Respondent

Judgement

H.N. Seth, J.—At the instance of the assessee, this Court required the Additional Revising Authority, Sales Tax, Varanasi, to state the case and to refer the following question for its opinion :

Whether the assessment order for the year 1952-53 was barred by limitation?

2. The assessee was a partnership-firm, which in the year 1952-53, dealt in bullion and ornaments. Its assessment for that year was completed by the Sales Tax Officer, Varanasi, on 23rd June, 1962. According to Section 21(2) of the U.P. Sales Tax Act, as it stood at the relevant time, no assessment order under the Act, in respect of a particular year, could be made after the expiry of four years from the end of that year. However, the explanation added to that sub-section provided that in computing the period of limitation provided for making the assessment, the period during which the assessment proceedings relating to the dealer remained stayed under the order of any civil or other competent court had

to be excluded. As assessment for the year 1952-53 was completed by the Sales Tax Officer long after the expiry of four years after the end of that year, the assessee filed an appeal before the appellate authority, inter alia, on the ground that the assessment order was barred by time.

3. It appears that during the pendency of the assessment proceedings, which had been initiated within time, the assessee filed a petition under Article 226 of the Constitution before the High Court and on 22nd July, 1954, obtained an order staying the assessment proceedings. That stay order remained in force up to 30th April, 1959. Accordingly, in view of the explanation to Section 21(2) of the U.P. Sales Tax Act, after excluding the period during which the assessment proceedings remained stayed under the orders of the High Court, the assessment order could be made by 3rd February, 1962. However, the assessee again obtained an order from the Judge (Revisions), Sales Tax, on 16th December, 1960, staying further assessment proceedings pending against him. That order was ultimately vacated on 23rd January, 1961. The order vacating the stay order was communicated to the Sales Tax Officer on 7th May, 1961. The Judge (Appeals) held that, according to the explanation to Sub-section (2) to Section 21, the period between 16th December, 1960, and 7th May, 1961, had also to be excluded in computing the period of four years within which the assessment could be made. Accordingly, the assessment could be completed by 27th June, 1962. The assessment having been finalised on 23rd June, 1962, was within limitation.

4. In revision, the additional revising authority affirmed the view taken by the appellate authority and upheld the assessment order made by the Sales Tax Officer. At the instance of the assessee, and under the directions of this Court, the revising authority has stated the case and referred the aforesaid question for the opinion of this Court.

5. Learned Counsel for the assessee urged that while computing the limitation for making the assessment, as provided u/s 21, only the period during which the proceedings before the assessing authority remained stayed under the orders of the civil or other competent court could be excluded. According to him, the Judge (Revisions) appointed under the U.P. Sales Tax Act, under whose orders the proceedings were stayed on 16th December, 1960, was not a civil or other competent court within the meaning of the explanation. Accordingly, in computing the period of limitation provided by Section 21 of the Act, (sic) was not entitled to exclude any period during which the assessment proceedings remained stayed as a result of the orders passed by the Judge (Revisions). The assessment made on 23rd June, 1962, i.e., subsequent to 3rd February, 1962, was therefore barred by time. Learned Counsel further contended that even if it be taken that the Judge (Revisions), Sales Tax, is a court within the meaning of that expression as used in the explanation to Section 21(2), the stay order dated 16th December, 1960, having been vacated on 23rd January, 1961, the period between 16th December, 1960, and 23rd January, 1961 (38 days), alone could

be excluded in computing the period of limitation. Hence the assessment in this case could not be completed after 13th April, 1962. Assessment made on 23rd June, 1962, was, therefore, in any case barred by limitation.

6. Learned standing counsel appearing for the department, on the other hand, contended that while computing the limitation provided u/s 21, the entire period between 16th December, 1960, to 7th May, 1961, and that between 16th December, 1960, to the date on which the order dated 23rd January, 1961, vacating the stay order passed by the Judge (Revisions), i.e., 5 months and 24 days, was communicated to the Sales Tax Officer, had to be excluded. The assessment, therefore, could be made up to 27th June, 1962. Thus the assessment made on 23rd June, 1962, was within limitation.

7. As stated earlier, according to the explanation to Section 21(2), as it stood at the relevant time, where the assessment proceedings relating to any dealer remained stayed under the orders of any civil or competent court, the period during which the proceedings remained stayed has to be excluded in computing the period of limitation for assessment provided therein. The period during which the proceedings were stayed under the order dated 23rd January, 1961, passed by the Judge (Revisions), Sales Tax, can be excluded only if it is held that the Judge (Revisions), Sales Tax, is a civil or other competent court within the meaning of the explanation to that section.

8. The U.P. Sales Tax Act, 1948, enables the State Government to appoint assessing authority for making assessment under the Act and for performing certain other duties. Section 9 then enables a dealer objecting to any order other than an order mentioned in Section 10A, passed by an assessing authority, to file an appeal before an authority prescribed under the Act within 30 days of service of the copy of the order. It also provides that in an appeal against orders of assessment or penalty, the appellate authority may either confirm, enhance or annul the same. Thereafter, Section 10 authorises the State Government to appoint revising and additional revising authorities from amongst persons who are qualified to be appointed as Judges of a High Court, authorising them to call for and examine the relevant records for satisfying themselves as to the legality or propriety of an order made by an assessing or appellate authority. It also provides for the nature of the orders which a revising authority can make after calling for and examining the record. Learned standing counsel contended that the scheme of the Sales Tax Act and the Rules framed thereunder indicates that after the Sales Tax Officer has passed an assessment order, an appeal against his order lies to the appellate authority [Assistant Commissioner (Judicial)]. According to rules 65 to 68, such appeals are to be decided after hearing the appellants and the Sales Tax Officer. Section 10 provides for a revision against the appellate order. Such revisions are filed before the revising authority, i.e., the Judge (Revisions). Rule 69 regulates the procedure for the entertainment and disposal of revisions. Rule 75 lays down that the Sales Tax Officer, the Assistant Commissioner (Judicial) and the Judge (Revisions) as well as some other

authorities appointed under the Sales Tax Act shall have the same powers as are vested in a court trying a suit under the Code of Civil Procedure, inter alia, in respect of examining any person on oath or affirmation. Aforesaid scheme of the Act and the Rules framed thereunder, indicate that the Judge (Revisions) is required to decide the cases coming up before him in a judicial manner. So far as disputes between the Sales Tax Officer and the assessee, relating to assessment proceedings are concerned, the Judge (Revisions) makes a final decision which is binding on both the parties. In the circumstances, it cannot be disputed that while performing his duties under the Act the Judge (Revisions) acts judicially and makes an order which determines the rights of the parties. Accordingly, the revising authority appointed under the U.P. Sales Tax Act can be regarded as a court. Learned standing counsel further pointed out that the expression "court" has been defined in the Evidence Act as including all Judges and Magistrates and all persons except arbitrators, legally authorised to take evidence, and contended that a Judge (Revisions) appointed under the U.P. Sales Tax Act is legally authorised to take evidence and, as such, he is a court within the meaning of that expression. In support of this submission the learned Counsel relied upon the following observations appearing in the judgment of Mahajan, J., in the case of *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, :

As pointed in Halsbury's Laws of England, the word "court" originally meant the King's palace but subsequently acquired the meaning of (1) a place where justice was administered, and (2) the person or persons who administer it. In the Evidence Act, it is defined as including all Judges and Magistrates and all persons except arbitrators legally authorised to take evidence. This definition is by no means exhaustive and has been framed only for the purposes of the Act. There can be no doubt that to be a court, the person or persons who constitute it must be entrusted with judicial functions, i.e., of deciding litigated questions according to law. However, by agreement between the parties, arbitrators may be called upon to exercise judicial powers and to decide a dispute according to law. That would not make the arbitrators a court. It appears to me that before a person or persons can be said to constitute a court, it must be held that they derive their powers from the State and are exercising the judicial powers of the State.

9. Learned Counsel further relied upon the following observations made in the case of *Cooper v. Wilson* [1937] 2 K.B. 309, wherein an attempt had been made to define the words "judicial" and "quasi-judicial":

A true judicial decision presupposes an existing dispute between two or more parties, and this involves four requisites : (1) The presentation (not necessarily oral) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the facts by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal arguments by the parties; and (4) a

decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law. A quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2), but does not necessarily involve (3) and never involves (4). The place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice

and contended that according to the Sales Tax Act and the Rules framed thereunder, the parties are required to present their respective cases before the Judge (Revisions), who has to ascertain questions of fact on the basis of evidence produced in the case. He has also to resolve the dispute on questions of law after hearing the arguments on behalf of the parties. Further, the decision given by him disposes of the whole matter on findings upon the disputed facts and application of the law of the land to the facts so found. Accordingly, the proceedings before the Judge (Revisions), Sales Tax, fulfil the four tests laid down in Cooper's case [1937] 2 K.B. 309, and they are judicial proceedings. Since the proceedings before the Judge (Revisions) are judicial proceedings as distinguished from quasi-judicial proceedings, he should be considered to be a court and not a tribunal.

10. We are unable to accept the submission that merely because the proceedings before the Judge (Revisions) can be said to be judicial proceedings, he becomes a court properly so called. In *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, the question which the learned Judges of the Supreme Court were required to consider was whether an Industrial Tribunal constituted under the Industrial Disputes Act was a court or tribunal within the meaning of Article 136 of the Constitution which enables the Supreme Court to grant special leave to appeal from any judgment, decree, determination or order in any case or matter, passed or made by any court or tribunal. After considering the nature of an Industrial Tribunal constituted under the Industrial Disputes Act, at page 197, Mahajan, J., observed as follows :

In my opinion, therefore, the Industrial Tribunal has all the necessary attributes of a court of justice. It has no other function except that of adjudicating on a dispute. It is no doubt true that by reason of the nature of the dispute that they have to adjudicate, the law gives them wider powers than possessed by ordinary courts of law. Powers of such a nature do not affect the question that they are exercising judicial power. Statutes like the Relief of Indebtedness Act or the Encumbered Estates Act have conferred powers on the court which are not ordinarily known to law and which affects contractual rights. That circumstance does not make them anything else but tribunals exercising judicial power of the States, though in a degree different from the ordinary courts and to an extent which is also different from that enjoyed by any ordinary court of law. They may rightly be described as quasi-judicial because they are out of the hierarchy of

ordinary judicial system. But that circumstance cannot affect the question of their being within the ambit of Article 136.

11. It will thus be seen that even after coming to the conclusion that the Industrial Tribunal has all the necessary attributes of a court of justice, the learned Judges of the Supreme Court held it to be a tribunal and not a court. They held that an appeal against its order lies not because it is a court, but because it is a tribunal within the meaning of Article 136 of the Constitution.

12. Learned Counsel for the State relied upon the following observations made by Venkatarama Ayyar, J., in the case of Shri Virindar Kumar Satyawadi Vs. The State of Punjab, :

It may be stated broadly that what distinguishes a court or a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a court

and urged that the Judge (Revisions) determines the rights of parties by a definitive judgment and that the parties are entitled as of right to be heard in support of their claim and to adduce evidence in proof of it. He is therefore a court as explained by Venkatarama Ayyar, J. He suggests that the view expressed by Mahajan, J., on this point in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, stands modified. Aforementioned observations made by Venkatarama Ayyar, J., are preceded by the observations that there has been considerable discussion in the courts in England and Australia as to what are the essential characteristics of a court as distinguished from a tribunal exercising quasi-judicial functions, vide *Shell Co. of Australia v. Federal Commissioner of Taxation* [1931] A.C. 275, *R. v. London County Council* [1931] 2 K.B. 215, *Cooper v. Wilson* [1937] 2 K.B. 309, *Huddart Parker and Co. v. Moorhead* (1909) 8 C.L.R. 355 and *Rola Company v. The Commonwealth* (1944) 69 C.L.R. 185, and also that the question had been considered in some fullness in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, . Accordingly, it was unnecessary for him to traverse the same ground once again. The observations, preceding the observations relied upon by the learned standing counsel, indicate that in that case on the question as to what distinguishes a court from a tribunal, the Supreme Court did not, in any way, take a view different from that expressed by it in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, . The observations relied upon by

the learned standing counsel, therefore, have to be read in the context in which they have been made. The context in which these observations were made indicate that the distinction between a court and a tribunal had been brought out in a broad and general manner and that the court did not intend to lay down a proposition different from that laid down in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, .

13. In the case of *Jagannath Prasad Vs. The State of Uttar Pradesh*, , the Supreme Court had an occasion to consider the question whether in view of the provisions contained in the U.P. Sales Tax Act, the Sales Tax Officer could be considered to be a court within the meaning of Section 195 of the Criminal Procedure Code. The Supreme Court pointed out that the Sales Tax Officers are the instrumentalities of the State for collection of certain taxes under the Act and the Rules made thereunder. Certain officers are appointed as Sales Tax Officers and the duty to impose and collect certain taxes is assigned to them and, in the process, they have to perform many quasi-judicial and administrative functions. Merely because certain instrumentalities of the State employed for the purposes of taxation have, in the discharge of their duties, to perform certain quasi-judicial functions, they do not get converted into courts thereby. Learned Judges of the Supreme Court further pointed out that in the case of *Smt. Ujjam Bai v. State of U.P.* AIR 1962 S.C. 1621, all the opinions were unanimous on the point that taxing authorities are not courts even though they perform quasi-judicial functions, and that the following observations made by Lord Sankey, L.C., in *Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation* [1931] A.C. 275 at 283, had been quoted with approval:

The authorities are clear to show that there are tribunals with many of the trappings of a court which, nevertheless, are not courts in the strict sense of exercising judicial powers.

Learned Judges further approved the following negative proposition enunciated by Lord Sankey at page 297 in *Shell Company's case* [1931] A.C. 275 at 283:

In that connection it may be useful to enumerate some negative propositions on the subject: (1) A tribunal is not necessarily a court in the strict sense because it gives a final decision. (2) Nor because it hears witnesses on oath. (3) Nor because two or more contending parties appear before it between whom it has to decide. (4) Nor because it gives decision which affects rights of subjects. (5) Nor because there is an appeal to a court. (6) Nor because it is a body to which a matter is referred by another body.

Similarly in *Smt. Ujjam Bai's case* AIR 1962 S.C. 1621, Hidayatullah, J., described the sales tax authorities thus :

The taxing authorities are instrumentalities of the State. They are not a part of the Legislature; nor are they a part of judiciary. Their functions are the assessment and collection of taxes, and in the process of assessing taxes they

follow a pattern of action, which is considered judicial. They are not thereby converted into courts of civil judicature and still remain the instrumentalities of the State and are within the definition of "State" in Article 12.

14. Considering the functions of the assessing authority, the appellate authority and the revisional authority, appointed under the Sales Tax Act, it becomes obvious that the Sales Tax Officers are appointed by the State Government for the purposes of determining the amount of tax payable by an assessee. The appellate and the revisional authorities see that the assessments made by the Sales Tax Officers are in order. Accordingly, these authorities are instrumentalities of the State whose function is to supervise the function of the assessing authority in connection with the assessment and collection of taxes. If, as pointed out by the Supreme Court, the function of collection and assessment of tax, though required to be performed in a quasi-judicial manner, is not the judicial function of the State, it is difficult to construe the exercise of an appellate or revisional power in connection with such function, though required to be performed precisely in the same manner in which a court is required to act, as judicial function of the State or that such appellate or revising authority functions as a court.

15. Learned standing counsel placed reliance on the following observations of the Supreme Court in the case of *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, a :

The Registrar exercising powers u/s 48 of the Bihar and Orissa Co-operative Societies Act must be held to discharge the duties which should otherwise have fallen on the ordinary civil and revenue courts of the land. In many respects he had been given the same powers as are given to ordinary civil courts of the land by the CPC including the power to summon and examine witnesses on oath, the power to order inspection of document, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of courts mentioned in Section 151 of the Code of Civil Procedure. In adjudicating upon a dispute referred u/s 48 of the Act, the Registrar is to all intents and purposes a court discharging the same functions and duties in the same manner as a court of law is expected to do. Therefore, an Assistant Registrar discharging the function of Registrar u/s 48 read with Section 6(2) of the Bihar and Orissa Co-operative Societies Act, is a court

and urged that as the Judge (Revisions) appointed under the U.P. Sales Tax Act performs his functions in the same manner, he should also be considered to be a court. It is significant to note that the Supreme Court held the Registrar exercising powers u/s 48 of the Bihar and Orissa Co-operative Societies Act to be a court not merely because he was to perform his duties in the same manner in which civil court performs its functions, but also because under the Act he was required to discharge the duties and functions which would otherwise have fallen on ordinary civil and revenue courts of the land. The function of the appellate and the revisional authorities appointed under the U.P. Sales Tax Act, on the

other hand, is to check the action of the assessing authority in connection with the assessment and collection of sales tax which is not the ordinary judicial power of the State. It follows that the Judge (Revisions) or the Appellate Tribunal have not been appointed to discharge the duties which would otherwise have fallen on the ordinary civil and revenue courts of the land. Subsequently, the Supreme Court considered its decision in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, a , in the case of *Rama Rao and Another Vs. Narayan and Another*, , and ruled that considering the functions of a Registrar appointed u/s 95 of the Maharashtra Co-operative Societies Act he was not a court. It pointed out that a mere duty to act judicially, either expressly imposed or arising by necessary implication, or the nature of the duties required to be performed did not by itself make a tribunal judicial or quasi-judicial, a court within the meaning of Section 195 of the Criminal Procedure Code, and that the definition of the "court" u/s 3 of the Evidence Act or that of "court of justice" u/s 20 of the Penal Code, did not apply to that expression as used in the Criminal Procedure Code.

16. In the case of *R.M. Seshadri Vs. Second Addl. Income Tax Officer, Salaries Circle, Madras and Another*, , a question, whether the Appellate Tribunal constituted u/s 33 of the Income Tax Act was a court or not, came up for consideration before the Madras High Court. The learned Judges concluded that the Appellate Tribunal constituted u/s 33 of the Income Tax Act could not be considered to be a court, and observed as follows :

The proceedings of the Income Tax Appellate Tribunal are not public vide Section 54. It has no doubt to decide about the legality or otherwise of the determination of the assessments made by the Income Tax department. But in that event as an appeal is merely continuation of the original proceedings it does not acquire any higher judicial status to equate it to a court notwithstanding the fact that it is a tribunal independent of the Commissioner of Income Tax. It is no doubt true that the Income Tax Officer and the Tribunal are empowered to examine the witnesses on oath and that u/s 37 some of the powers exercisable by a court but they are not bound to conduct the enquiry before them in the same manner as is done in a court. Neither the finality of the decision of the Tribunal subject to the provisions of Section 66 of the Act, nor the immunity granted by Section 67 could make the tribunal a court as it is commonly understood....

It was often a very difficult task to draw the line and distinguish a court from an administrative tribunal exercising quasi-judicial functions. Merely because the administrative tribunals have the trappings of a court they are not court in the sense of exercising judicial power. The tribunal is not necessarily a court in the strict sense because it gives a final decision nor because it hears the witnesses on oath, nor because two or more contending parties appear before it between whom it has to decide, nor because it gives decision which affects the right of subjects, nor because there is appeal to a court, nor because it is a body to which a matter is referred by another body....Unless judicial power is vested a

tribunal does not become a judicial tribunal or court, and that by the mere fact that a tribunal is clothed with some of the judicial functions, it does not attain the status of a court. The decisions of courts are arrived at usually by the application of objective standards which are fixed, i. e., in accordance with the principles of procedure and the mode of taking evidence in the manner laid down in the case of administrative authorities and very often they are not bound to observe the judicial procedure, though on the principles of natural justice they must conform to a certain extent to the norms of judicial procedure. It is very often a difficult question to decide whether an administrative tribunal or authority is acting quasi-judicially or merely discharging its functions in its administrative capacity.

17. We find ourselves in complete agreement with the aforesaid observations made by the learned Judges of the Madras High Court. As already observed by us, it cannot be said that the Judge (Revisions), Sales Tax, performs any judicial function of the State. Accordingly, he cannot be considered to be a court notwithstanding the fact that while performing his duties he has to adhere to norms similar to that of a court.

18. Learned Counsel for the State then drew our attention to the following observations made by Dwivedi, J., in the Full Bench case of Commissioner of Sales Tax, U.P. v. Parson Tools and Plants, Kanpur 1970 A.L.J. 163 :

Counsel for the respondent points out that it will appear from these provisions of the Act and the Rules that the appellate authority as well as the revising authority function in a judicial manner. That is, no doubt, true. They are tribunals constituted under the Act. Then he draws our attention to the definition of the word "court" in the Evidence Act and submits that they are a court according to that definition. That is also true for they are empowered to examine persons on oath or affirmation. So they are a court in the wider sense of the term. But there is no doubt that they are not a court in the strict sense of the term. So it is necessary to ascertain whether the word "court" is used in Sub-section (2) of Section 14, Limitation Act, in its wider sense or in its strict sense.

19. He contends that as held by Dwivedi, J., the Judge (Revisions) appointed under the U.P. Sales Tax Act is a court in the wider sense of the word. There is absolutely no reason why the expression "court" in Section 21 of the U.P. Sales Tax Act should not be interpreted in a similar manner. We are unable to accept this submission. Dwivedi, J., very clearly stated that the revising authority appointed under the Sales Tax Act is a tribunal constituted under the Act and thereafter went on to observe that strictly speaking such an authority could not be described as a court, but then in a wider sense it may be termed as a court. What Dwivedi, J., laid down in this case is that strictly speaking the expression "court" does not cover the authorities like the Judge (Revisions) appointed under the U.P. Sales Tax Act and that such authorities are in fact tribunals which are expected to perform their functions in a quasi-judicial manner. It may be that sometimes the expression court is loosely used so as to cover tribunals expected

to act in a quasi-judicial manner. His observations cannot be interpreted to mean that, properly speaking, a quasi-judicial tribunal which does not perform any judicial functions of the State can be equated with "court" properly so called.

20. Learned standing counsel then contended that the observation of Dwivedi, J., clearly indicates that even though a tribunal is not strictly covered by the expression "court", but it is possible that in some statutes the expression "court" is used in a wider sense so as to include within its ambit not only the authorities which are strictly courts but also tribunals which are expected to function in the same manner in which courts function. According to him, the ambit of the expression "court", as used in a particular enactment, will depend upon the context in which it has been used. He urged that in Section 21 of the U.P. Sales Tax Act a provision has been made for extension of period of limitation for making assessment in a case where assessment proceedings are stayed in consequence of or as a result of stay orders obtained by an assessee. The object underlying this provision seems to be that an assessee may not, by obtaining stay orders, derive an undue advantage by cutting short the effective period within which an assessment can be made. Viewed in this light, there is no reason why the orders passed by a tribunal should be placed on a footing different from that which are passed by courts strictly so called. Effect of the stay of assessment proceedings passed by a duly constituted judicial tribunal or that passed by a court is just the same. Accordingly, the expression "court" as used in Section 21 should be interpreted widely so as to include within its ambit "a judicial tribunal" which at the instance of an assessee is competent to direct the stay of assessment proceedings.

21. We have given our careful consideration to this submission made by the learned standing counsel, but find ourselves unable to accept the same. According to Sections 9 and 10 of the U.P. Sales Tax Act, the appellate and the revisional powers are to be exercised by the persons who have been described as the appellate and revisional authorities. The Legislature has deliberately described these functionaries as "authorities" as distinguished from the "court", the expression which has been used in the explanation to Section 21(2) of the Act. Further, in Section 8(1 A), while making an assessee liable for payment of interest on the tax payable by an assessee, it has been provided that where as a result of appellate, revisional or any other order of a competent court or authority, the amount of tax is varied, the interest shall be recalculated accordingly. This shows that the Legislature has been quite conscious of the differences between a "court" and an "authority", which is not a court. It follows that in the Sales Tax Act the expressions "court" and "authority" have been used in different senses. Accordingly, it is not possible to interpret the expression "court" as including within its ambit an authority which has been appointed to supervise the action of the Sales Tax Officer in connection with the assessment and collection of tax. If what the learned standing counsel states was the real intention of the Legislature, the explanation to Section 21 would have read something like "where the assessment proceedings relating to any dealer

remained stayed under the order of any competent court or authority", an expression similar to that which is found in the proviso to Section 8(1A). We are, accordingly, not prepared to interpret the expression "court" in a manner so as to include within its ambit a judicial tribunal which is not a "court," properly so-called.

22. In view of the aforesaid discussion, it is not possible for the department to claim an extension of period of limitation for making the assessment under the Sales Tax Act, because of the stay orders passed by the Judge (Revisions), Sales Tax. The period, during which the proceedings remained stayed under the orders of the Judge (Revisions), Sales Tax, dated 16th December, 1960, therefore, cannot be taken into consideration in computing the period of limitation for making the assessment. Accordingly, the assessment made after 3rd February, 1962, was barred by time. In this view of the matter, it is not necessary for us to go into the further question whether in computing the period of limitation for making the assessment, the entire period between 16th December, 1960, and 7th May, 1961, when the Sales Tax Officer came to know about the order dated 23rd January, 1961, or that the period between 23rd January, 1961, and 7th May, 1961, alone can be taken into consideration.

23. In the result, we answer the question referred to us in the affirmative and in favour of the assessee who will be entitled to his costs, which we assess at Rs. 100.

24. Pronounced under Chapter VII, Rule 1, of the Rules of Court.