

(1964) 08 MAD CK 0016
In the Madras High Court
Case No : Tax Case No. 26 of 1963

A.M. Safiulla and Co.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 27-08-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 96
Income Tax Act, 1961 — Section 23, 29, 33, 33A, 33B
Land Acquisition Act, 1894 — Section 18
Registration Act, 1908 — Section 77

Citation : (1965) ILR (Mad) 197 : (1966) 17 STC 79

Hon'ble Judges : Ramamurti, J; Ramakrishnan, J

Bench : Division Bench

Advocate : C. Venkataraman, for the Appellant; K. Venkatasami, for A. Alagiriswami, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramamurti, J.—The main and the substantial point raised on behalf of the assessee, the petitioner in this revision petition, relates to the

question as to whether the Deputy Commissioner exercising the powers of revision u/s 32 of the Madras General Sales Tax Act of 1959 (referred

to as the Act in this judgment), is entitled to revise the order of the assessing authority where the latter has not communicated the order of

assessment to the assessee.

2. The assessee, Messrs A. M. Safiulla & Co., are dealers in hides and skins. In respect of the year of assessment 1954-55, the Assessment

Commercial Tax Officer by his order dated 12th October, 1959, held that in view of the decision of the Madras High Court in Noor

Mohammed's case [1956] 7 S.T.C. 792 no portion of the turnover was liable to

assessment to sales tax, as the petitioner was a non-licensee. As the order of assessment did not result in any tax liability, consequent upon the net turnover being determined as nil, this order of the Assessment Commercial Tax Officer was not communicated to the assessee and no demand u/s 8(B)(2) or 3(2) of the Act of 1939 was issued to the assessee.

After the decision of the Supreme Court in *The State of Madras and Another Vs. M.A. Noor Mohammed and Co.*, reversing the decision of the Madras High Court referred to above, the Deputy Commissioner of Commercial Taxes, after complying with the necessary formalities and after issue of notice to the assessee exercised his powers of revision u/s 32 of the Act. By his order, dated 13th July, 1961, he held that the assessee was liable to pay sales tax on a net turnover of Rs. 15,62,076-15-4 at 3 pies per rupee for the assessment year 1954-55. The assessee preferred an appeal to the Sales Tax Appellate Tribunal but without any success.

3. Even though several points were urged before the Tribunal, learned counsel confined himself to the question of the jurisdiction of the Deputy Commissioner while acting u/s 32 of the Act. Arguments before us both on behalf of the assessee, as well as on behalf of the State were addressed on the footing that the provisions of the Act of 1959 would govern the instant case. We are also of the opinion that that is the correct position in view of the fact that the order of assessment itself was passed on 12th October, 1959, after the Madras Act I of 1959 (Madras General Sales Tax Act of 1959) had come into force and further the Deputy Commissioner exercised his powers of revision in July, 1961.

4. Section 32 of the Act runs as follows :-

32. Special powers of the Deputy Commissioner.-(1) The Deputy Commissioner may, of his own motion, call for and examine an order passed or proceeding recorded by the appropriate authority u/s 12, Section 14, Section 15, or Sub-sections (1) and (2) of Section 16 and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon as he thinks fit.

(2) The Deputy Commissioner shall not pass any order under Sub-section (1), if-

(a) the time for appeal against the order has not expired;

(b) the order has been made the subject of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal, or of a revision in the

High Court; or

(c) more than four years have expired after the passing of the order.

(3) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

5. The relevant portion of Section 31, relating to the right of appeal of the assessee runs as follows:-

31. Appeal to the Appellate Assistant Commissioner.-(1) Any person objecting to an order passed by the appropriate authority u/s 12, Section

14, Section 15, Sub-sections (1) and (2) of Section 16, Section 18, Section 23, Section 27, Sub-section (4) of Section 41, or Sub-section (3) of

Section 42, may, within a period of thirty days from the date on which the order was served on him in the manner prescribed, appeal against such

order to the Appellate Assistant Commissioner having jurisdiction :

Provided that the Appellate Assistant Commissioner may admit an appeal presented after the expiration of the said period if he is satisfied that the

appellant has sufficient cause for not presenting the appeal within the said period :

Provided further that in the case of an order u/s 12, Section 14, Section 15, or Sub-sections (1) and (2) of Section 16 no appeal shall be

entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by" the appellant to be due or

of such instalments thereof as might have become payable, as the case may be....

6. It may be relevant to set out the corresponding provisions of the Act of 1939 regarding the right of appeal and powers of revision. Section 11 of

the Act of 1939 (relevant portion) is as follows :-

11. Any assessee objecting to an assessment made on him u/s 9, Sub-section (2) may within thirty days from the date on which he was served with

notice of the assessment, appeal to such authority as may be prescribed ;

Provided that the appellate authority may admit an appeal preferred after the period of thirty days aforesaid, if the authority is satisfied that the

assessee had sufficient cause for not preferring the appeal within that period ;

Provided further that no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax

admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be....

7. Section 12(2) of the Act of 1939 runs thus :

12. (2) The Deputy Commissioner may (i) suo motu, or (ii) in respect of any order passed or proceeding recorded by the Commercial Tax Officer

under Sub-section (1) or any other provision of this Act and against which no appeal has been preferred to the Appellate Tribunal u/s 12-A, on

application, call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer

subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and

may pass such order with respect thereto as he thinks fit....

8. Learned counsel for the petitioner urged the following points: (i) Before the Deputy Commissioner could exercise his powers of revision u/s 32

there should be a legal valid order of assessment of the assessing authority, and that in this case there is no such order of assessment, as the

assessing authority has not communicated his order of assessment to the assessee. The communication of the order of assessment to the assessee

is a necessary foundation for the exercise of revisional jurisdiction by the Deputy Commissioner, (ii) The condition provided u/s 32(2) has not been

satisfied as the time for the assessee to prefer an appeal against the order of assessment has not expired. u/s 31 of the Act the assessee has got a

right to prefer an appeal to the Appellate Assistant Commissioner having jurisdiction within a period of 30 days from the date on which the order in

question was served on him. In this case as the order had not been communicated, the time for preferring an appeal had not commenced to run at

all and a fortiori the time for preferring an appeal against the order had not expired. In other words, if the right of appeal to the assessee is still

subsisting and available to him, there is a prohibition, as it were, against the Deputy Commissioner in exercising his revisional jurisdiction.

9. On behalf of the State, the learned Government Pleader urged the following contentions : (a) For an order of assessment to be valid and

operative, it is not necessary that the same should have been communicated to the assessee, that the Act and the rules do not contemplate any

service of the order of assessment upon the assessee, and that the provisions

merely required a service upon the assessee, a demand notice mentioning the particulars of the tax due from and payable by the assessee. In any event, no communication is necessary in the case of an order of assessment which determines the turnover as nil, resulting in no tax liability. When the order does not affect the rights of the assessee and when it is completely in his favour there is no need to communicate to him; (b) The assessee cannot claim to be aggrieved by an order of nil assessment and he has no right of appeal against such an order and so the condition specified in Section 32(2)(a), the time for appeal against the order has not expired, has no application with the result that the bar in Section 32(2)(b) does not apply and the Deputy Commissioner can exercise his powers of revision. When there is no right of appeal to the assessee in a particular situation, there can conceivably be no question of the time for preferring an appeal against the order not having expired, (c) If the order of the assessing authority has not been communicated to the assessee, it would only be a proceeding recorded by the assessing authority, and the Deputy Commissioner can well exercise his powers of revision. The condition that the time for appeal against the order should not have expired would not apply to such a situation as the matter is only in the stage of a proceeding recorded and could not be viewed as an order of assessment passed by the assessing authority, so long as it is not communicated to the assessee. In other words, the consequence of accepting the argument of the assessee, that the necessary condition of a valid order of assessment is its communication to the assessee, is that there might be no order of assessment but nevertheless it will be a proceeding recorded by the assessing authority, which can be revised by the Deputy Commissioner u/s 32.

10. In the course of his arguments he relied upon the decision of a Bench of this Court in *Periasami v. State of Madras* ILR [1962] Mad. 667 a decision rendered u/s 12(1), (4) and (5) of the Act of 1939.

11. The question as to whether an assessee has got a right of appeal in the case of a nil assessment may be considered first, as it has got an important bearing upon the other points urged by counsel on both sides. Section 31, amongst other things, confers a right of appeal upon any person objecting to an order passed by the appropriate authority u/s 12. Section 31 does not speak of an order of assessment, but the language

employed is general, namely, an order passed by the appropriate authority u/s 12. Section 11 of the Act of 1939 provided that an assessee

objecting to an assessment made on him u/s 9, Sub-section (2), may prefer an appeal within thirty days from the date of the service of the notice of

the assessment. Taking the plain language of Section 31, there is no reason why the right of appeal should be restricted only to orders of

assessment resulting in tax liability.

12. If the assessee can reasonably feel aggrieved or prejudiced by any portion of an order passed by the assessing authority u/s 12, he will be

entitled to prefer an appeal u/s 31. In such cases the test would be to find out whether the assessee has been adversely affected by the order of the

assessing authority.

13. The principle of the decisions rendered u/s 96, Civil Procedure Code, that where the formal adjudication, namely, the decree, is in favour of a

particular party such a party will have no right of appeal u/s 96 cannot be applied to decisions of assessing authorities or other quasi judicial

tribunals as the right of appeal u/s 96, Civil Procedure Code, is intimately connected with the question of res judicata arising u/s 11. Even u/s 96, in

some cases, the view has been taken that under particular circumstances of the case a party may have a right of appeal even though the formal

adjudication, i. e., the decree is in his favour, if it can be postulated that he would be adversely affected by the judgment. The important question is

always whether the party can be said to be adversely affected and so aggrieved by the decision in question. In *Ebrahim Aboobakar and Another*

Vs. Custodian General of Evacuee Property, , a case arising under the Administration of the Evacuee Property Act, the question arose whether a

party is entitled to prefer an appeal u/s 7 from the order of the Custodian, and the Supreme Court held that when a person is given a right to raise a

contest in certain matter and his contention is negatived then he is certainly a person aggrieved by the order disallowing his contention.

14. In dealing with a return submitted by the assessee, the assessing authority may have to consider various aspects, and the decision by the

assessing authority may prejudicially affect the assessee either for that very year of assessment or for assessment in future. The assessee may be

interested in establishing in his favour the incidents of a particular transaction (a)

as merely amounting to an agency transaction, the assessee acting merely as a buying agent; (b) a transaction is either in the course of import or export or an inter-State transaction ; (c) the assessee may claim certain deductions ; (d) the assessee may claim that a particular article comes under a particular serial number of the Schedule or either he is liable to sales tax at a particular rate or at a particular point of transaction of sale or purchase ; (e) the assessee's accounts may have been rejected as spurious or the determination of the gross turnover as having a bearing upon the computation of the licence fee. It is unnecessary to multiply instances of the variety of circumstances, as under the scheme of the assessment of sales tax, an assessee can well claim to be adversely affected or prejudiced by an order of the assessing authority even though the order is one of a nil assessment. The right of appeal which is a valuable right should not be restricted or curtailed unless the language of the section clearly warrants such a restricted view. In a recent judgment in *Mohamed Sulaiman & Co v. Deputy Commissioner of Commercial Taxes* ILR [1964] 1 Mad. 438 *Veeraswami, J.*, took the view that in certain conceivable cases the assessee may have a right of appeal as a person aggrieved by the order of the assessing authority fixing the turnover at a certain figure even though the ultimate order of the assessing authority resulted in no tax liability. In our opinion, with respect, that is the correct view of the scope of Section 31, and we are not inclined to accept the general argument in the abstract, that whatever may be the contents, findings, or the reasonings of the assessing authority, the assessee will have no right of appeal if the order is a nil assessment.

15. In this connection the difference in language between Section 11 of the Act of 1939 and Section 31 of the Act of 1959 which confers a right of appeal should be noticed. u/s 11 of the old Act a right of appeal was confined only to an order u/s 9 of the old Act. But under the present Act a right of appeal is conferred in respect of orders of assessment and miscellaneous orders like an order for production of account books u/s 41, or establishment of check posts or barrier and inspection of goods while in transit u/s 42 of the Act. A perusal of the several sections referred to in Section 31 shows that under the scheme of the Act of 1959 a right of appeal is given to the dealer or the assessee whenever he is adversely .

affected or prejudiced by any proceedings or action taken by the assessing authority.

16. The question next arises whether it is obligatory upon the assessing authority to communicate the order to the assessee and what legal

consequences flow if it is not so communicated. Once the principle is accepted that the assessee has a right of appeal whether or not the order of

the assessing authority results in a tax liability, considerations which apply to an order resulting in a tax liability regarding the necessity for the

communication of the order would equally apply to the case of a nil assessment. The recognition of a right of appeal to the assessee necessarily

carries with it a right to the decision of the assessing authority being communicated. The period of thirty days for filing an appeal by an assessee

commences to run only from the date on which the order is served upon him. This shows that it is obligatory on the department to serve the order

upon the assessee. The relevant rules which deal with the machinery for the assessment under the assessment Rules of 1939 do not expressly

provide for the communication of the original order of assessment. Vide Rule 11, Sub-rules (2) and (3), and Rule 13, Sub-rule (6) of 1939. Sub-

rule (7) of Rule 13 only provides for the net result of the tax liability being communicated to the assessee. In the case of an appeal and revision

however there is specific provision for communication of the order passed in appeal or revision. Vide Rule 15.

17. Provisions substantially of the same pattern are contained in Rule 15, Sub-rule (5), Rule 16 and Rule 18, Sub-rule (7), of the Madras General

Sales Tax Rules of 1959. Here again there is no specific provision for communication of the order of assessment. But there is only provision for

communication of the determination of the tax liability. Rule 19 contains a specific provision that if the assessing authority determines the turnover at

a figure different from that-shown in the return, he shall record his reasons briefly in writing and furnish to the assessee a copy of such record. From

these provisions it does not necessarily follow that the communication of the order of assessment is not necessary and that a service of a demand

as per form No. B alone is sufficient. If the order of the assessing authority is not communicated to the assessee, it is impossible to conceive how

he can exercise the right of appeal because he can show cause against the order of assessment only when he knows what it contains. The same

considerations apply to the power of revision u/s 33. It stands to common sense that the assessee cannot show cause against the proposed revision

unless he knows what the original order of assessment is and how the revising authority proposes to revise the order. This necessarily postulates

that the assessee must know as completely as possible all the details of the order of assessment, and that only then he can have an effective and

adequate opportunity of showing cause against the revision.

18. Even though to facilitate collection of tax provisional assessments are made the exact tax liability which is due and payable by the assessee gets

determined only after the assessment is complete. Even though there is no limit of time within which the assessments should be completed, once it is

completed, the liability of the assessee would arise only when the order is communicated to him. An order of assessment though completed and

signed by the assessing authority, if not communicated to the assessee, does not exist in the eye of law, so far as the assessee is concerned. In our

opinion, the process of assessment under the Sales Tax Act which would result in an enforceable tax liability is complete only when the order of

assessment is communicated to the assessee. But this does not mean that so far as the assessing authorities are concerned they can ignore every

action taken because the order of assessment had not been communicated.

19. While determining the true scope of the appellate powers of the appellate authorities u/s 31 and the revisional powers of the Deputy

Commissioner and the Board of Revenue under Sections 32, 33 and 34, it is important to bear in mind that those authorities cannot indirectly

exercise such powers when they cannot directly do so. Again it must not be overlooked that under the scheme of the Act once the assessing officer

has passed a final order on the return of the assessee, and determined the assessable net turnover after applying his mind to the details and the

particulars contained in the return, and has also signed the order, from the point of view of the assessee, a finality has been secured and there can

be no variation or revision of that order except to the limited extent permitted by the Act and in accordance with the basic principles of natural

justice. In *Commissioner of Income Tax, Bombay v. Khemchand Ramdas* [1938] 6 ITR 414, dealing with the valuable right accruing to the

assessee out of the finality of an order of assessment u/s 23(4) of the Income

Tax Act, the Privy Council put the matter thus (at pages 498-499):-

It had been argued on behalf of the appellant that the Act nowhere imposes any limit of time within which an assessment under the provisions of

Sections 23 and 29 is to be made, and that the service of the notice of demand can, therefore, be made at any time. This is true. It had, in effect,

been so determined by this Board in the case of *Rajendra Nath Mukerjee v. Income Tax Commissioner* ILR 61 Cal 285 But it is not true that after

a final assessment under those sections has been made, the Income Tax Officer can go on making fresh computations and issuing fresh notices of

demand to the end of all time.

It is possible that the final assessment may not be made until some years after the close of the fiscal year. Questions of difficulty may arise and

cause considerable delay. Proceedings may be taken by way of appeal and cause further delay. Until all such questions are determined and all such

proceedings have come to an end, there can be no final assessment. But when once a final assessment is arrived at, it cannot in their Lordships'

opinion, be reopened except in the circumstances detailed in Sections 34 and 35 of the Act (to which reference is made hereafter) and within the

time limited by those sections. In the present case the liability of the respondents both for Income Tax and for super-tax was determined by the

Income Tax Officer on 17th January, 1927. In the order made by him on that date he assessed the respondents to Income Tax at the maximum

rate, but as the respondents were at that time a registered firm he held, as he was bound to hold, that no super-tax was to be levied. On some date

before the end of March, 1927, he served on the respondents a notice of demand for the tax that he had determined was properly leviable. The

assessment having been made u/s 23(4) no appeal lay in respect of it. The assessment of the respondents was therefore final both in respect of

Income Tax and super-tax. Their liability in respect of both taxes had been finally determined and none the less because the question of their

liability to super-tax had been determined in their favour. It was, indeed, contended before their Lordships that the assessment could not be

regarded as having been determined inasmuch as the Commissioner might at any time, and apparently after any lapse of time, however long, cancel

the registration of the respondents as a registered firm and so subject the

respondents to liability to pay super-tax. Their Lordships would, in any case, hesitate long before acceding to a contention that would lead to so extravagant results. In their opinion, however, the contention cannot prevail. The Commissioner's powers u/s 33 can only be exercised subject to the provisions of the Act, of which the provisions in Sections 34 and 35 are in this respect of the greatest importance.

20. With a view to prevent unnecessary harassment and hardship that would arise in protracted and delayed assessment proceedings the

Legislature has made special provisions prescribing definite periods of time within which the officers administering taxation laws should take action

against the assessee in determining the tax liability. If the statute specifies a particular time within which the power of revision can be exercised,

after the passing of the original order the time cannot be indefinitely enlarged by communicating the order to the assessee at any time the

department likes. If it should be held that from the point of view of the department also the same rule should apply and that time for exercising the

powers of revision would commence to run only from the date of communication of the order it will lead to the startling and curious result that by

not communicating the order to the assessee, the department will have unlimited period of time to exercise the powers of revision. Such a view is

not only opposed to the scheme of the Act but violates all principles of justice. In such cases the maxim *Actus Curiae Neminem Gravabit* (that an

act of Court shall prejudice no man) (*Broom's Legal Maxims*, tenth edition, page 73) which is founded on justice and good sense will be clearly

applicable. As observed by the Supreme Court in a recent judgment there is no principle of law which is more well settled for the guidance of the

Court than the one that no act of Court could harm a litigant or a party and it is the bounden duty of the Court to see that if a person is harmed by

a mistake or omission of a Court the party should be restored to the position he would have occupied but for the mistake or omission of the Court.

Applying this maxim it should be held that from the point of view of the assessee as against the department the order should be deemed to have

been communicated and the power of revision would come to an end after the expiry of the time limit.

21. The assessee should not be prejudiced by the delay of the department in

communicating the order ; after the lapse of the prescribed time limit

the power of revision would come to an end even though the order had not been communicated to the assessee.

22. To sum up, in the case of an assessment completed and signed by the officer, but not communicated to the assessee, our conclusions are as

follows :-

(a) The order of assessment can be communicated to the assessee without any time limit but no liability would arise till communication ; (b) The

limitation for the assessee to prefer either an appeal or a revision would commence to run only after the order is communicated to him ; (c) So far

as the department is concerned, it would become final and effective as if communicated to the assessee and the order can be revised or varied only

subject to the provisions of the Act ; (d) The time for exercising powers of revision would commence to run from the date of the order itself and

there cannot be an enlarged period of limitation merely because the department takes its own time to communicate the order.

23. The important changes effected in the relevant provisions in the Act of 1959 also clearly confirm this view. u/s 12 of the old Act as regards the

commencement of the period of limitation there was no difference between a right of appeal or revision exercised by the assessee, and the powers

of revision exercisable by the Deputy Commissioner or the Board of Revenue. In all cases, under Sections 12(4) and (5), limitation would

commence to run from the date when the order was communicated to the assessee. But under the Act of 1959 time would commence to run in the

case of an appeal or a revision filed by an assessee only from the date when the order in question is communicated to him. Vide Sections 31 and

33. But in the case of powers of revision time would commence to run from the date of the passing of the order. Vide Section 32(2)(c) and

Section 34(2)(c). This difference is made for the obvious reason that so far as the department is concerned the revisional authority can always call

for the records of the assessing authority and exercise powers of revision. It should be noticed that even this difference is only for the purpose of

limitation. But so far as the jurisdiction to exercise the powers of revision is concerned, the condition for the communication of the order should

always be satisfied. In other words, the powers of revision cannot be exercised

unless the order is communicated but the maximum limit of time

within which the powers of revision can be exercised is four years from the date of the order. Both the conditions must be concurrently satisfied :

(a) the original order of assessment must have been communicated to the assesseees ; and (b) the powers of revision should be exercised within the time limit of four years.

24. On this portion of the case the learned Government Pleader placed considerable reliance upon the Bench decision of this Court in *Periasami v.*

State of Madras ILR 1962 Mad. 667. In our view that decision and the reasonings contained therein will have no application to the instant case

which is governed by the provisions of the Act of 1959. With great respect to the learned Judges we have some doubts about the correctness of

some of the observations which were obiter contained in that decision. In that case the Assistant Commercial Tax Officer passed the order of

assessment on 28th December, 1954, but did not communicate the order to the assessee as it was a case of a nil assessment resulting in no tax

liability. The Commercial Tax Officer exercising his powers of revision u/s 12, revised the assessment and fixed the turnover at Rs. 54,029-15-6

by his order, dated 18th September, 1958. On behalf of the assessee it was contended that after the expiry of the time limit of three years

prescribed u/s 12(4)(a) the Commercial Tax Officer had no authority to exercise his powers of revision. Jagadisan, J., delivering the judgment on

behalf of the Bench rejected this plea holding that time would commence to run only from the date of the communication of the order, and as

admittedly there was no such communication the Commercial Tax Officer could not be said to have acted in transgression of the time limit

prescribed by Section 12(4). In rejecting the assessee's contention, the learned Judge compared the provisions of the Sales Tax Act with the

provisions of the Indian Income Tax Act and held that under the scheme of the Income Tax Act time would begin to run from the date of the order

even though there was no communication but that under the Sales Tax Act the scheme was different. The learned judge put the matter thus : (at

page 670).

It is interesting to note that the provisions of Sections 12(4) and 12(5) of the Madras General Sales Tax Act are sharply in contrast with the

provisions of Section 33-A and Section 33-B of the Indian Income Tax Act, which provide a revisional jurisdiction to the Commissioner of

Income Tax. Section 33-A, quoting the relevant words prescribing limitation, is as follows :-

Provided that the Commissioner shall not revise any order under this sub-section if...(c) the order has been made more than one year previously.

Section 33-B which empowers the Commissioner to revise the order of the Income Tax Officer prescribes the period of limitation in the following

way : "No order shall be made under Sub-section (1)... after the expiry of two years from the date of the order sought to be revised."

25. This view based upon the analogous provisions of the Income Tax Act may not be quite correct. Perhaps the attention of the learned Judges

was not drawn to the recent judgment of the Supreme Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and

Another, in which the Bench decision of this Court in O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax, was referred to with complete

approval.

26. In O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax, the question arose u/s 33-A(2) of the Income Tax Act. In that case the

Income Tax Officer passed his order of assessment on 4th February, 1948, and the assessee filed an application for revision before the

Commissioner of Income Tax u/s 33-A(2) on 18th February, 1949, which was rejected in limine by the Commissioner on the ground that it was

filed more than one year after the date of the order. The assessee's contention was that he was served with the order of assessment only on 24th

February, 1948, and the period of limitation would, therefore, commence to run only from"" that date, The Bench took the view that even though

Section 33-A(2) required the assessee to file the application for revision within one year from the date, the provision should be understood as

giving a period of one year to the assessee from the date of communication of the order. In other words, the Bench held that the words date of the

order should be understood as the date of the communication of the order.

27. In taking this view the Bench followed an earlier decision of this Court in Swaminathan v. Letchmanan I.L.R.[1929] Mad 491 in which the

question arose u/s 77 of the Indian Registration Act, under which any person

claiming the registration of a document may institute a suit in the Civil Court within thirty days after the Sub-Registrar had passed the order refusing to register the document. There the suit was filed more than thirty days after the date of the Sub-Registrar refusing registration but within thirty days from the date of service of that order upon the plaintiff. The Bench held that limitation would commence to run only from the date of the communication of the order. Venkatasubba Rao, J., took the view that there can be no valid order unless it is made after notice to the parties affected by it or it is communicated to them and that a contrary view would be opposed to reason and principle. It was also held that if the order is made without previous notice and communication, it would not be operative. The other learned Judge, Madhavan Nair, J., concurred in that view and held that the words making an order in Section 77 meant not merely the recording of the order of refusal in writing but communicating it to the party concerned, so as to bind him by it. Rajamannar, C. J., delivering the judgment in *Muthiah Chettiar v. Commissioner of Income Tax, Madras* ILR [1951] Mad 815 explained the position thus at page 818 :

The only question that we have to decide is whether there is anything in the reasoning of the learned Judges in *Secretary of State for India in Council v. Gopisetti Narayanasami Naidu* I.L.R.[1911] Mad 151 and *Swaminathan v. Letchmanan* I.L.R.[1929]Mad 491 which makes the application of the rule laid down by them dependent on the provisions of a particular statute. We think there is none. On the other hand, we consider that the rule laid down by the learned Judges in the above two decisions--and we are taking the same view---is based upon a salutary and just principle, namely, that if a person is given a right to resort to the remedy to get rid of an adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore, must be presumed to have had knowledge of the order.

28. In this connection it may also be mentioned that the argument based upon difference in the language in Section 33-A(2) and Section 33-A(1) was not accepted on the ground that when the Commissioner exercises his powers of revision he acts on his own motion and there was no

question of the aggrieved party invoking his jurisdiction. The learned Judge took the view that the Commissioner's power to call for the record

would cease with the lapse of one year from the date of the order by the subordinate authority but in a case falling u/s 33-A(2) the party aggrieved

who has to take the matter to the revisional authority will have one year from the date when the order is communicated to him.

29. In the decision in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, the view of the Madras High Court

has been completely approved by the Supreme Court. u/s 18(2)(b) of the Land Acquisition Act the party aggrieved will be entitled to file an

application in the Court within six weeks from the date of the Collector's award. The question arose whether limitation would commence to run

from the date of the award or from the date of the communication of the award. The Supreme Court held that the date of the award should be

understood as the date of the communication of the award of the Collector, on the ground that the relevant clause should not be construed in a

literal or mechanical sense. The matter was put thus at page 683 :

Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of

the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is

pronounced in the presence of the party whose rights are affected by it, it can be said to be made when pronounced. If the date for the

pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced, the award is said to

be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the

date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the

party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural

justice the expression the date of the award used in the proviso must mean the date when the award is either communicated to the party or is

known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words from the date of the

Collector's award used in the proviso to Section 18 in a literal or mechanical way.

30. While emphasising the duty of the Collector to communicate the award to the party concerned the Supreme Court observed that it would be a very curious result that the failure of the Collector to discharge his obligation to communicate the order should directly tend to make ineffective the right of the party to make an application u/s 18. The conclusion of the Court was stated in these terms at page 687 :

These decisions show that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned.

31. In view of the foregoing discussion it must be held that it is only the communication of the order which would start the running of time. Further, we are also of the opinion that the observation in *Periasami v. State of Madras* ILR [1962] Mad. 667 will not help the case of the State as that decision arose under the Act of 1939 which did not contain the provision that the Deputy Commissioner shall not exercise his powers of revision if the time for appeal against the order of the assessing authority had not expired. There can be no doubt whatsoever that if Section 12 of the Act of 1939 contained a corresponding provision the Bench would have held that so long as the order was not communicated the power of revision could not be exercised.

32. Lastly, learned Government Pleader contended, again placing reliance upon the observations at page 673 in *Periasami v. State of Madras* ILR [1962] Mad. 667 that if the order of the assessing authority is not communicated to the assessee, it would only amount to a proceeding recorded and that the bar in Section 32(2)(a) would not apply as an appeal would lie u/s 31 only in respect of an order passed by the assessing authority and not in respect of mere recording of a proceeding. These observations relied upon by the learned Government Pleader are only by way of obiter dicta as the main ground of the decision was based upon the scope of Section 12, Sub-sections (4) and (5). Even otherwise the scope of these observations should be understood with reference to the provisions of Section 12 and cannot govern the instant case arising u/s 32 of the

new Act. So far as the assessing authority is concerned the order is complete as soon as he has signed the same and the delay or omission on the part of the department to communicate the same cannot be taken advantage of by the department. The obligation to communicate the order cannot be circumvented or evaded by the department and a power of revision exercised in contravention of Section 32(2)(a). The assessee's right of appeal which would operate as a bar to the exercise of the powers of revision cannot be defeated by the negligence or the omission on the part of the department to communicate the order of assessment. The contention put forward by the learned Government Pleader would place the assessee completely at the mercy and caprice of the department. We have no hesitation in rejecting this argument as of no substance, and it is directly contrary to the scheme of Section 32. The words proceeding recorded cannot possibly be equated to an order of assessment not communicated.

33. For all these reasons we allow the revision petition, setting aside the order of the Appellate Tribunal. No costs.