**(1982) 11 P&H CK 0003**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 4401 of 1975

Auto and Metal Engineers APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 23-11-1982

**Acts Referred:**
Constitution of India, 1950 — Article 226, 227

**Citation :** (1983) 15 TAXMAN 140

**Hon'ble Judges :** A.S. Bains, J

**Bench :** Single Bench

**Advocate :** Laxmi Grover and H.S. Sawhney, for the Appellant; Ashok Brian and Ajay Mittal, for the Respondent

**Final Decision :** Dismissed

## Judgement

A.S Bains, J.—Auto and Metal Engineers, Faridabad through Smt. Sunanda Rani, its partner, have challenged the impugned notices (Annexures P-1, P-2, P-6, P-7, P-9, P-11, P-12, P-16 and P-17), by way of this writ petition under article 226/227 of the Constitution of India. Mr. Grover, the learned counsel for the petitioner, canvassed that the ITO could not proceed to levy tax against the petitioner for the assessment year 1971-72 as the same is time-barred.

2. Mr. Ashok Bhan, the learned counsel for the respondent (revenue), raised a preliminary objection that the question whether the notice is barred by time or not cannot be gone into in these writ proceedings and could only be decided by the ITO in view of the law laid down by their Lordships of the Supreme Court in the case of Lalji Haridas Vs. R.H. Bhatt and Another, wherein it was observed as under: The jurisdiction conferred on the High Court under article 226 of the Constitution of India is not intended to supersede the jurisdiction and authority of the income tax Officers to deal with the merits of all the contentions that the assessees may raise before them, and so, it would be entirely inappropriate to permit an assessee to move the High Court under article 226 and contend that a notice issued against him is barred by time. That is a matter which the income

tax authorities must consider on the merits in the light of the relevant evidence.

The point that for the transaction in question other persons have already been taxed and that the order of assessment passed against the assessee being in the nature of a protective assessment should be set aside, ought to be raised before the income tax Officer and cannot be allowed to be urged before the High Court in a petition under article 226." (p. 415)

Mr. Grover could not show me any authority taking a contrary view. Since the question whether the notice issued to the petitioner is barred by time cannot be determined by the High Court in these writ proceedings, the writ petition is dismissed with costs. Counsel''s fee Rs. 500. However, it is directed that the ITO (Respondent No. 3) shall go into all the questions including the question of limitation raised by the petitioner in this petition and decide the matter in accordance with law. The parties are directed to appear before the ITO on 20-12-1982, at Faridabad.