
(1969) 01 AHC CK 0003
In the Allahabad High Court
Case No : Sales Tax Reference No. 248 of 1966

Chittarmal Narain Dass

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 03-01-1969

Acts Referred:

Income Tax Act, 1961 — Section 23B

Citation : (1969) 24 STC 451

Hon'ble Judges : R.S. Pathak, J; R.L. Gulati, J

Bench : Division Bench

Advocate : R.R. Agarwal and K.N. Saxena, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.S. Pathak, J.—The assessee, which is a partnership firm, deals in foodgrains and oil-seeds. On January 30, 1957, it made an application under Rule 20-B of the U.P. Sales Tax Rules for exemption from sales tax of the turnover of foodgrains for the assessment year 1956-57. On November 25, 1958, an order of exemption under Rule 20-B was made by the Sales Tax Officer, and the exemption fee was determined at Rs. 3,000. Upon revision application by the assessee, the Judge (Revisions) Sales Tax accepted the plea that the quantum of turnover on which the fee should have been computed was much less, and he reduced the exemption fee to Rs. 1,500 by his order dated February 27, 1961.

2. Meanwhile, the Sales Tax Officer took assessment proceedings under the U.P. Sales Tax Act in respect of other turnover, and on October 28, 1958, an assessment order was made for the assessment year 1956-57. The assessee had realised Rs. 2,341 as sales tax on the sale of foodgrains made on behalf of U.P. principals, and in the view that it was not due as sales tax the assessment order included a direction that the amount should be deposited u/s 8-A(4) of the Act. The assessee appealed. The only point in dispute before the Judge (Appeals) Sales Tax related to the calculation of tax in respect of various items. There was no dispute as to the quantum of the turnover, The Judge (Appeals) set aside the

assessment order and remanded the case for fresh assessment. The appellate order may usefully be reproduced:

This is an appeal against an assessment order passed by Sri H. M. Farooqui, S.T.O., Jhansi, for the year 1956-57. The book version in this case has been accepted. The only point under dispute is that tax on various items has been wrongly calculated. The amount due according to the figures furnished is Rs. 2,842-12-0. It has further been mentioned in the assessment order that some sales tax was realised on foodgrains on behalf of U.P. principals and it appears that this was also added to tax assessed u/s 8-A(4). There appears to be some dispute about the actual amount realised which needs further verification from the books of accounts.

The assessment order is set aside and the case is remanded back for fresh assessment after rechecking the calculations and examining the tax actually collected and realised u/s 8-A(4) from the U.P. principals.

3. Upon remand the Sales Tax Officer commenced proceedings for reassessing the turnover of the assessee. He came into possession of information received from the Superintendent, Model Jail, Lucknow, that the assessee had supplied goods worth Rs. 3,27,935 to the Model Jail. The Sales Tax Officer noticed that during the original assessment a statement had been filed mentioning that sarson of the value of Rs. 2,90,975-6-6 and foodgrains worth Rs. 1,93,314-4-6 had been supplied to the Model Jail. The supplies were entered under the head "joint venture". The Sales Tax Officer called upon the assessee to explain and to produce the relevant account books. Neither being forthcoming, the Sales Tax Officer came to the conclusion that a certain amount of turnover had escaped assessment during the original assessment proceeding. On May 18, 1960, he made an assessment order, in which he added by estimate Rs. 3,40,000 as the escaped turnover of oil-seeds and Rs. 2,10,000 as the escaped turnover of foodgrains, and calculated the total taxable turnover of the assessee at Rs. 6,59,639-7-0. As a result of reassessment, he found that the assessee was liable to deposit a further sum of Rs. 2,341 u/s 8-A(4), being the amount realised by it on the sale of foodgrains effected on behalf of U.P. principals. The assessee preferred an appeal. The Judge (Appeals) held by his order dated October 6, 1962, that it was not open to the Sales Tax Officer to assess the escaped turnover in the reassessment proceeding as his jurisdiction was limited by the terms of the remand order, which did not envisage such assessment. He expressed the view that to assess the escaped turnover it was necessary for the Sales Tax Officer to have recourse to proceedings u/s 21 of the Act. Accordingly, he deleted the addition of the escaped turnover. Aggrieved, the Commissioner of Sales Tax filed a revision application. The Additional Judge (Revisions) allowed the revision application, set aside the appellate and assessment orders and remanded the case to the Sales Tax Officer for reassessment. He held that the Sales Tax Officer was competent to assess the escaped turnover in the reassessment proceeding and it was not necessary for him to have recourse to

Section 21 of the Act, and observed that it was difficult to contemplate a proceeding u/s 21 when a proceeding u/s 7 for fresh assessment was already pending and in which it was open to the Sales Tax Officer to take into account all the taxable turnover of the assessee. But holding that the assessee was entitled to a further opportunity to meet the material against it, he remanded the case.

4. This reference has now been made on the following question :-

Whether in the circumstances of the case stated above the Sales Tax Officer in reassessment proceedings was competent to examine the case afresh, de novo and to assess on enhanced turnover in the same order, or separate proceedings u/s 21 were required to be taken ?

5. We think that the Additional Judge (Revisions) has erred. In the reassessment proceeding taken upon remand the Sales Tax Officer was bound by the terms of the remand order made by the Judge (Appeals). The jurisdiction exercised by the Sales Tax Officer was not the uninhibited jurisdiction contemplated in an original assessment proceeding. It was controlled by the directions contained in the remand order.

6. Upon the making of the original assessment order, the jurisdiction of the Sales Tax Officer comes to an end. To reopen the assessment he is compelled to have recourse either to Section 21 for assessing escaped turnover or to Section 22 for rectifying the original assessment order or to Section 30 for setting aside an ex parte assessment order. Apart from these provisions, he has no jurisdiction to touch an assessment already completed. If the case does not fall within any of those provisions and for some reason he considers it necessary to reopen the assessment there is nothing he can do about it. The only other case where the assessment can be reopened is upon the direction of a superior authority in an order of remand made in a duly constituted proceeding before that authority. An order remanding the case to the Sales Tax Officer has the effect of reopening the proceeding, and in the re-opened proceeding the Sales Tax Officer is reinvested with jurisdiction. But the limits of that jurisdiction are controlled by the curbs, if any, imposed by the remand order. If the remand order merely orders a fresh assessment and contains no restrictions subject to which the fresh assessment is to be made, the Sales Tax Officer can exercise all the jurisdiction available to him as if it were an original assessment proceeding. But where the remand order indicates the specific area to which the fresh assessment is to be confined, the jurisdiction of the Sales Tax Officer is limited accordingly. These are fundamental principles governing all proceedings taken on remand.

7. In *M.L. Das and Sons Vs. Sampatmull Bothra*, . 103 it was observed by the Calcutta High Court:

When, however, the matter went back to the Rent Controller, he, after proceeding for sometime in terms of the above direction of this court, eventually passed an order that as that decision in the present case was apparently overruled by a subsequent Bench decision given in another case, the parties

must take appropriate directions from this court once again before the Rent Controller could proceed with the matter.

It is impossible to find any provision of law under which this order of the Rent Controller can be justified. The court had given him a definite direction in this very case to proceed in a particular manner... The Rent Controller had no jurisdiction and, indeed, he had no business, to go behind that direction. His duty was clear and he had to standardise the rent in accordance with the direction given in this very case by this court...the Rent Controller would have done well to confine himself within the limits of his jurisdiction and to follow up the direction given to him by this court....

8. And in *Budhilal Deviprasad and Another Vs. Jagannathdas Bajrangdar*, . 344 the Madhya Pradesh High Court said:

The powers and jurisdiction of the lower court to deal with the suit, after remand, depended on the specifications of the remand order. Because, but for the order of remand, it had ceased to have any session of the case and the jurisdiction conferred on it to re-deal with it was circumscribed by the terms of the order in which the remand was made. We are, therefore, of opinion that where the order of remand lays down any limits for the enquiry to be made by the lower court, that court has no jurisdiction to enter into any question which falls outside those limits.

In the instant case, the order of remand by the High Court, dated 30th December, 1952, specifically directed the lower court to determine if-and, if so, how far-the plaintiff was successful in making out the case of an antecedent agreement which he had set out in the pleadings. The question whether he could be non-suited on any other ground was foreign to the suit at that stage, and consequently the lower court could not have, suo motu or otherwise, entertained the plea that the plaintiff's right to claim possession of the suit land had come to an end by the coming into force of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950.

9. We have been referred to *Jugal Kishore Baldeo Sahai Vs. The Income Tax Officer and Others*, An assessment order made by the Income Tax Officer was set aside in appeal and the case was remanded to him to make a fresh assessment. While the proceedings for fresh assessment were pending the Income Tax Officer made a provisional assessment u/s 23B of the Indian Income Tax Act. The assessee contended that an assessment order having already been made it was not open to the Income Tax Officer to make a provisional assessment, because under the terms of Section 23B it was a proceeding to be taken before an assessment order was made. Repelling the contention, this court pointed out:

When an assessment order is set aside by the appellate officer and the case is remanded to the Income Tax Officer for reassessment, the position is the same as if no assessment had been made and in such a case under the powers vested in the Income Tax Officer by virtue of Section 23B he can make a provisional

assessment on the basis of the returns furnished by the assessee before he makes a regular assessment as directed by the appellate officer.

10. It is clear that when the original assessment order had been set aside in appeal and the case remanded for reassessment, there was no concluded assessment proceeding and it was open to the Income Tax Officer to make a provisional assessment u/s 23B.

11. Reliance has also been placed on J. K. COTTON SPINNING and WEAVING MILLS CO. LTD. Vs. COMMISSIONER OF INCOME TAX U. P., where it was observed :

When an Income Tax Officer makes a fresh assessment in compliance with the Appellate Assistant Commissioner's directions, he is of course bound by the directions, but, subject to them, he has the same powers as he had originally when making an assessment u/s 23. The reassessment is nothing but a second assessment in substitution of the assessment made previously and set aside by the Appellate Assistant Commissioner on appeal. There are no restrictions at all on the powers of the Income Tax Officer when he proceeds to reassess the income; subject to the directions given in the Appellate Assistant Commissioner's order, he has to proceed as if he were making an assessment u/s 23 at the time when he proceeds to reassess. He is not bound or restricted by anything that had happened either when he made the original assessment or when the appeal was heard by the Appellate Assistant Commissioner; he is governed only by the findings of the Appellate Assistant Commissioner. He is not bound by his own findings arrived at in the original assessment; they do not operate as *res judicata* and undoubtedly have not the force of an order. The findings arrived at by the Appellate Assistant Commissioner and the directions given by him are binding on him, not as *res judicata*, but as orders to which he is subject. He is free to take into consideration any relevant material that came into existence for the first time after the original assessment order was made by him. Consequently, the Income Tax Officer in the instant case was competent, when reassessing the income of the assessee, to consider the orders passed by him u/s 23A and to treat the assessee as having derived larger income from the dividends than that shown by it in its returns and accepted as correct in the original assessment orders. He was free to take into account the materials which existed on the date of the reassessment and was not confined to those materials which existed on the date of the original assessment orders. His finding arrived at in the original assessment proceedings that the income from the dividends shown in the return was correct might have been correct but fell with the assessment order itself and was neither operative nor binding in the reassessment proceeding. By the time he came to reassess the assessee he had the Section 23A orders before him under which the assessee was deemed to have received larger income from the dividends.

12. It is necessary to point out that the order of the Appellate Assistant Commissioner setting aside the original assessment and remanding the case had

specifically taken into account the orders made u/s 23A and had given a clear direction to the Income Tax Officer to consider the assessee's explanation for not being assessed on the larger dividend income which was to be deemed to have been received by it, and, as the court observed :

...Thus, apart from his own powers, the direction of the Appellate Assistant Commissioner itself conferred jurisdiction upon him to assess the assessee on the basis of the larger income.

13. In the aforesaid case the remand order did not confine the Income Tax Officer to any specific item of income or limit his jurisdiction otherwise when making a fresh assessment. By the observations set out above the court emphasised that not only had the Income Tax Officer the jurisdiction to take into account the orders made u/s 23A but was in fact specifically directed by the Appellate Assistant Commissioner to do so.

14. Learned counsel for the Commissioner also places reliance upon D.S. Bist & Sons v. Commissioner of Sales Tax Sales Tax Reference No. 134 of 1964 decided by S.C. Manchanda and M.H. Beg, JJ., on October 7, 1966. There, the Sales Tax Officer made an assessment order including the turnover of timber at Rs. 26,00,000. In appeal, the turnover was reduced to Rs. 23,00,000. Thereafter, upon revision application by the assessee the Judge (Revisions) set aside the assessment and remanded the case directing that the turnover of timber sleepers be redetermined. In the reassessment proceedings upon remand, the Sales Tax Officer took into account a return filed by the assessee with the Income Tax department disclosing certain sales of timber and determined the turnover at Rs. 44,00,000.

15. The Judge (Appeals) accepted the submission of the assessee that the Sales Tax Officer was confined to the original material on the record relating to the sale of timber sleepers and was not competent to take into consideration the Income Tax return discovered subsequently. But upon a revision application filed by the Commissioner the Judge (Revisions) held that the Sales Tax Officer was entitled to take into account the additional information gathered from the Income Tax return and to determine the turnover accordingly. Upon reference to this court, it was pointed out by the Bench disposing of the reference:

It is no doubt true that the Judge (Revisions), when he made the order of remand, had only in mind the precise point which was argued before him and that was whether there was any material to hold that the sales of timber valued at Rs. 3,44,000 were sales within U.P. or ex-U.P. The direction, no doubt, was that this aspect should be investigated. The Judge (Revisions), however, did not remand the matter for determination of that specific issue or the specific point but went on to direct that a fresh assessment shall be made. In other words, he set aside the remand which had already been made. Once the remand made was set aside and a fresh assessment had to be made then all the powers which the Sales Tax Officer had u/s 7 or Rule 41(5) at the time when he made the original

assessment would again be available to him....

16. It is manifest that the court interpreted the order of the Judge (Revisions) as directing a fresh assessment without restriction or limitation on the jurisdiction of the Sales Tax Officer when making the reassessment. It was on this view of the matter that the court further held that the provisions of Section 21 were not available. The learned Judges, we say with respect, were plainly right because when it was open to the Sales Tax Officer to make a fresh assessment and in doing so encompass the entire turnover of the assessee, there was no occasion for holding that turnover had escaped assessment and that, therefore, Section 21 was attracted.

17. There is also the case of *Suwa Lal Pooran Mal v. Commissioner of Sales Tax* [1963] 14 S.T.C. 456 where it was pointed out that :

...when in appeal the decision of a lower court is set aside and the case is remanded by the higher court for decision in accordance with the directions given by that court, the lower court is restored to its original jurisdiction and it can only pass such orders as it was originally competent to pass. A remand order containing directions cannot be said to confer upon a lower court any new jurisdiction or special jurisdiction.

18. These observations were provoked by the submission that the jurisdiction exercised by an assessing authority upon remand of the case by the appellate authority is not its original jurisdiction but one conferred upon it by the appellate authority. Nothing said here militates against the view which was found favour with us. It is true that upon remand the Sales Tax Officer exercises his original jurisdiction but the area of that jurisdiction must be limited by the terms of the remand order.

19. In our opinion, none of the cases, on which learned counsel for the Commissioner has relied, are authority for the proposition that once an assessment is set aside and a remand order made directing fresh assessment then even though the order of the remanding authority confines the jurisdiction of the Sales Tax Officer to a specific field of enquiry it is open to the Sales Tax Officer to proceed beyond that field and traverse the entire range of jurisdiction as if it were an original assessment proceeding.

20. Now, turning to the appellate order before us which remanded the case, we find that the only point in dispute before the Judge (Appeals) related to the calculation of tax in respect of various items and the redetermination of all the amounts appropriated u/s 8-A(4). In that context, the Judge (Appeals) set aside the assessment order and remanded the case for fresh assessment "after rechecking the calculations and examining the tax actually collected and realised u/s 8-A(4) from the U.P. principals". Here it cannot be said that the remand order directed the Sales Tax Officer to make a fresh assessment and left it open to him to redetermine the entire turnover of the assessee. The terms of the remand order disclose that the Sales Tax Officer was intended to recheck the calculation

and examine what was the amount of tax actually collected and realised u/s 8-A(4). It was an enquiry restricted to a specific area, and it was not open to the Sales Tax Officer to proceed to determine the entire turnover of the assessee. If any turnover had escaped assessment by reason of having been omitted from the original assessment proceeding the remedy lay in taking proceedings u/s 21. For taking those proceedings it was necessary for the Sales Tax Officer to comply with the conditions embodied in Section 21, He had to have reasonable belief that turnover had escaped assessment and before taking the assessment proceeding he was bound to issue a notice to the assessee.

21. We answer the question accordingly. The assessee is entitled to his costs which we assess at Rs. 100. Counsel's fee is assessed in the same figure.