

(1991) 02 DEL CK 0051

In the Delhi High Court

Case No : S.T. Reference No. 50 of 1977

Commissioner of Sales Tax

APPELLANT

Vs

Janta Wire Works.

RESPONDENT

Date of Decision : 18-02-1991

Acts Referred:

Citation : (1991) RLR 249 : (1991) 81 STC 250

Hon'ble Judges : S. Duggal, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : S.P. Shringi, for the Appellant;

Judgement

B.N. Kirpal, J.—In respect of the assessment year 1968-69, the Financial Commissioner has referred the following question of law to this Court :

"Whether, on the facts and in the circumstances of the case, the learned Financial Commissioner was justified in holding that it was a case of under-assessment and was thus covered u/s 11-A and that it was not a case in which revisional powers could be exercised by the learned Assistant Commissioner u/s 20(3) of the Bengal Finance (Sales Tax) Act, 1941 ?"

2. The facts as set out in the statement of the case briefly are that the assessment for the year 1968-69 was framed by the assessing authority, Ward No. 7, vide his order dated 5th March, 1970. It appears that prior to this date, the business premises of the dealer had been visited by the Sales Tax Inspector (Special Investigation Branch) on 29th April, 1968, and one page of a diary on which amounts of Rs. 400 and Rs. 4,765.33 and the name of M. L. Aggarwal written thereon was found. Statement of the partner of the dealer was recorded and the said partner had admitted that these amounts had been spent on making purchases. The report of the Inspector was not received by the assessing authority till 31st July, 1972. When the report was received in Ward No. 32 the assessment of the dealer had already been completed.

3. When the aforesaid information was received, reassessment proceedings u/s

11-A could not be initiated as they had become time-barred. The assessing authority then sent the papers and documents to the Assistant Commissioner with a request that the assessment should be revised suo motu u/s 20(3) of the Bengal Finance (Sales Tax) Act.

4. A show cause notice dated 9th March, 1973, was issued by the Assistant Commissioner and after hearing the dealer, the turnover of the dealer was enhanced by Rs. 50,000 per quarter and an additional demand of Rs. 10,000 was created.

5. A revision petition was filed against the aforesaid order of the Assistant Commissioner. The Financial Commissioner vide his order dated 30th November, 1974, came to the conclusion that an action could not have been taken for revision u/s 20(3) as this was a case for reassessment u/s 11-A of the Act. The revisional order was accordingly set aside but the aforesaid question has been referred to this Court.

6. In order to consider the merits of the case, it will be necessary to refer to the relevant provisions of the Bengal Finance (Sales Tax) Act. Section 11-A of the Act reads as under :

"Assessment and reassessment of tax. - If in consequence of definite information which has come into his possession the Commissioner is satisfied that the turnover of the business of a dealer has escaped assessment or has been under-assessed in any year, the Commissioner may, at any time within the period of three years following the close of the year for which the turnover is proposed to be assessed or reassessed, as the case may be, send a notice to the dealer, and after hearing him and making such inquiry as he considers necessary may proceed to assess or reassess, as the case may be, the tax payable on the turnover which has escaped assessment or has been under-assessed, and all the provisions of this Act, and the rules made there under shall, so far as may be, apply accordingly for the purpose of the assessment or reassessment of the tax, as the case may be."

7. Sub-section (3) of section 20 of the Act, which deals with the revision, is as under :

"(3) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner upon application or of his own motion may revise any assessment made or order passed under this Act or the rules there under, by a person appointed u/s 3 to assist him, and subject as aforesaid, the Chief Commissioner may, in like manner, revise any order passed by the Commissioner :

Provided that before rejecting any application for the revision of any such order, the Commissioner or the Chief Commissioner, as the case may be, shall consider it and shall record reasons for such rejection :

Provided further that no application for revision shall lie to the Commissioner in

respect of any assessment if an appeal lies under sub-section (1) to the Commissioner in respect of such assessment."

8. It is clear from the reading of the aforesaid provisions that the powers of revision u/s 20(3) are not similar to the powers of reassessment. The Financial Commissioner has referred to cases of State of Kerala Vs. Shri M. Appukutty, , State of Kerala Vs. K.M. Charia Abdullah and Co., , Swastik Oil Mills Ltd. Vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay, , Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co., and State of Kerala Vs. K.E. Nainan, and has come to the conclusion that in exercising revisional power, the records are called for and if on perusing the same it is found that the assessing officer has not carried out the investigation properly, then the jurisdiction of revision is exercised. In other cases where there has been under-assessment or the assessment has escaped tax, resort can be had to reassessment proceedings.

9. It appears to us that the reasoning of the Financial Commissioner is correct. To put it differently, powers of revision can be exercised to correct a wrong committed by the assessing officer. This means that if the assessing officer, at the time of making the assessment, could pass a correct order but he has failed to do so, then that error or mistake can be corrected by the revisional authority. If what the assessing officer could or should have assessed but he has not assessed on the basis of the material available on record before him, then the mistake of the assessing officer can be corrected by exercising revisional jurisdiction. But if the assessing authority did not have information or material which had led to under-assessment or escaped assessment, then in such a case power cannot be exercised for revising of the assessment order u/s 20(3), but resort can only be had to section 11-A and the escaped turnover reassessed.

10. The matter may be looked into from another point of view. In exercising jurisdiction u/s 11-A there is period of limitation which is prescribed. Section 20(3), however, does not specify any limitation period for the exercise of revisional jurisdiction. It cannot be that in the garb of revising the order of the subordinate authority, namely, the assessing authority, the turnover which has escaped the assessment, can be taxed after a number of years even though the period of limitation u/s 11-A may be expired. It appears to us, Therefore, that the decision of the Financial Commissioner to the effect that in the present case jurisdiction could only have been exercised u/s 11-A and not u/s 20(3) was correct. He, Therefore, rightly came to the conclusion that the Assistant Commissioner could not have exercised any powers u/s 20(3) of the Act.

11. In view of the aforesaid, the question of law referred to us is answered in the affirmative and against the department.

12. The petition stands disposed of accordingly.

13. Question answered in the affirmative.