(1978) 03 AHC CK 0013

In the Allahabad High Court

Case No : Sales Tax Reference No. 30 of 1974

Commissioner, Sales Tax — APPELLANT

Vs

Ram Das Kesharwani — RESPONDENT

Date of Decision : 31-03-1978

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 7(3)
Uttar Pradesh Sales Tax Act, 1948 — Section 7(3)
Uttar Pradesh Sales Tax Act, 1948 — Section 7(3)

Citation : (1979) 43 STC 442

Hon'ble Judges : C.S.P. Singh, J;B.N. Sapru, J

Bench : Division Bench

Advocate : K.P. Sinha and N. Kumar, for the Respondent

Judgement

C.S.P. Singh, J.—The Additional Judge (Revisions), Sales Tax, Allahabad, has referred the following three questions for our opinion :

(1) Whether, on the facts and in the circumstances of the case, the ex parte assessment framed for the year 1964-65 on 25th March, 1969, was barred by limitation, as held by the learned additional revising authority on the ground that the notice of hearing was served on 2nd April, 1969, z. e., after the expiry of four years from the end of the year 1964-65 ?

(2) Whether service of notice is a condition precedent for an assessment u/s 7(3) of the U. P. Sales Tax Act ?

(3) If the answers to the above questions are in the negative, was the additional revising authority justified in upholding the annulment of the assessment for the year 1964-65?

2. The facts relevant to the question may be shortly stated. The assessment year in question is the year 1964-65. A notice was issued by the Income Tax Officer (sic) on 22nd March, 1969, fixing 26th March, 1969, for hearing. That notice was served on the assessee on 2nd April, 1969. The assessing authority, however,

finding that the assessee had not put in an appearance on 26th March, 1969, passed an ex parte assessment order. The appellate authority set aside the assessment on the ground that it had been made beyond time. This order was upheld by the Judge (Revisions), Sales Tax.

3. Section 21, Sub-section (2), of the Act lays down the period of limitation for making an assessment, and the relevant provision is to the following effect:

No order of assessment under Sub-section (1) or under any other provision of this Act shall be made for any assessment year after the expiry of four years from the end of such year.

4. There is a proviso to this sub-section which extends the period of limitation by one year in cases falling u/s 21. It, however, has no application to cases which do not arise u/s 21 of the Act, as is the case here, in which the assessment has been made u/s 7(3). We are unable to agree with the revising authority that the assessment was time-barred. The assessment year was the year 1964-65, which began from 1st April, 1964, and ended on 31st March, 1965. Four years from the end of that assessment year will extend the time for making the assessment up to 31st March, 1969. In the present case, the assessment order was passed on 26th March, 1969. It was well within four years. The fact that the notice was served on the assessee on 2nd April, 1969, is not relevant for the purpose of deciding the question of limitation, as Section 21(2) of the Act does not lay down that the notice should also be served within that period. It may be that if an assessment is made without service of notice on an assessee, it may be invalid on the ground of being against the principles of natural justice. But such an order would not be hit by the provisions of Section 21(2) of the Act. Thus, the additional revising authority was in error in holding that" the assessments were time-barred.

5. So far as the second question is concerned, that does not arise out of the order of the Judge (Revisions), Sales Tax. The Judge (Revisions), Sales Tax, considered the question of service of notice u/s 7(3) only in the context of the first proviso to Section 21(2) for the purpose of examining as to whether the limitation of four years stood extended by service of notice. As we have already indicated, the first proviso has application only to cases u/s 21(1) of the Act, and has nothing to do with assessment made under other sections of the Act. Thus, it was not relevant for the Judge (Revisions), Sales Tax, to have gone into this question at all. Before the revising authority, there was no controversy between the parties as regards the question as to whether service of notice u/s 7(3) is a condition precedent to the passing of a valid assessment order. It appears that the Judge (Revisions), Sales Tax, did not go into this question as he took the view that the assessment was time-barred. However, inasmuch as this question was neither canvassed before the Judge (Revisions), nor has been dealt by him, we decline to answer the question. In view of our conclusions on the first question, the revising authority was not justified in upholding the annulment of the assessment.

6. We, accordingly, answer the first question in the negative, in favour of the department and against the assessee, and decline to answer the second question. The third question is consequential and is answered by saying that the Judge (Revisions) was not justified in upholding the annulment of the assessment for the year 1964-65. The department is entitled to its costs which are assessed at Rs. 100. Counsel''s fee is assessed at Rs. 200.

