
(1967) 05 AHC CK 0036
In the Allahabad High Court
Case No : Sales Tax Reference No. 609 of 1964

Commissioner, Sales Tax

APPELLANT

Vs

Ujjal Singh Autar Singh

RESPONDENT

Date of Decision : 19-05-1967

Acts Referred:

Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (1968) 22 STC 26

Hon'ble Judges : M.H. Beg, J; Jagdish Sahai, J

Bench : Division Bench

Advocate : O.N. Mehrotra, for the Respondent

Final Decision : Disposed Of

Judgement

Jagdish Sahai, J.—The Additional Judge (Revisions) Sales Tax, Meerut [hereinafter referred to as the Judge (Revisions)] has submitted a statement of the case and the following questions of law u/s 11 of the U.P. Sales Tax Act (hereinafter referred to as the Act) for the opinion of this Court:

(a) Whether on the facts and circumstances of the case the additional evidence collected by the department after the completion of assessment and appellate order can be treated as part of the record of such order for the purpose of Section 10(3) of the U.P. Sales Tax Act ?

(b) Whether evidence collected after the expiry of four years" period of limitation u/s 21 of the U.P. Sales Tax-Act could be admitted in revision even if it is held as a part of the record ?

2. M/s. Ujjal Singh Autar Singh (hereinafter referred to as the dealers) had a cloth business at Delhi and a branch at Bulandshahr. The Sales Tax Officer, Bulandshahr, started proceedings u/s 21 of the Act, against the dealers by issuing a notice to them under that provision. The dealers appeared before the Sales Tax Officer but did not produce any account books, their plea being that they were not "dealers" within the meaning of the Act and that they carried on

no business within the territorial limits of the State of Uttar Pradesh.

3. The Sales Tax Officer made an ex parte assessment on the basis of the turnover of Rs. 4,00,000 in respect of the two years for which proceedings had started u/s 21 of the Act. The dealers appealed to the Assistant Commissioner (Judicial) Sales Tax, who allowed the appeal on the finding that the dealers conducted no business within the territorial limits of Uttar Pradesh.

4. The Sales Tax Commissioner (hereinafter referred to as the Commissioner) filed two revision applications (one in respect of each of the two years) before the Judge (Revisions).

5. During the course of the hearing of the revision applications the departmental representative made applications for filing certain additional evidence which had been procured by the Sales Tax Officer, Special Investigation Branch, Agra. The Judge (Revisions) issued notice to the dealers. On behalf of the dealers it was strenuously contended before the Judge (Revisions) that he had no power to admit additional evidence. Relying upon certain cases the Judge (Revisions) upheld the objection of the dealers and refused to take the additional evidence sought to be produced by the departmental representative. He dismissed both the revision applications filed by the Commissioner but at the instance of the Commissioner made the instant reference.

6. I proceed to answer the two questions referred to us, seriatim.

(a) This question seems to have been inartistically framed. Mr. Raja Ram, the learned Junior Standing Counsel, contended that it should be reframed so as to bring into full prominence the real controversy between the parties. It is common ground that question (a) is intended to obtain an answer as to whether or not in the circumstances of the case giving rise to this reference the Judge (Revisions) had the power to admit additional evidence offered, by the departmental representative. Since the question framed is capable of eliciting an answer on that point it is not necessary to reframe that question even though it is inartistically framed.

7. There is no express provision in the Act or the Rules framed thereunder permitting the Judge (Revisions) to admit additional evidence in a revision application pending before him. Such a power has been expressly conferred on the Assistant Commissioner (Judicial) by Rule 68(1) of the Rules which reads :

68. (1) The Assistant Commissioner (Judicial) shall give notice of the date fixed for hearing of the appeal to the appellant and the Sales Tax Officer who passed the order appealed against.

* * * (8) Where the material on the record is insufficient to enable the Assistant Commissioner (Judicial) to pronounce his judgment he may call for such further material from either of the parties as he thinks fit. Such material shall form part of the record.

8. Admitting that there is no corresponding provision in respect of Judge (Revisions) Mr. Raja Ram placed reliance upon Rules 4 and 75 of the Rules which we reproduce below :

4. All assessing, appellate and revising authorities shall exercise the powers mentioned in Section 13 within their respective jurisdiction.

75. Power to summon witnesses.-The Sales Tax Officer, Assistant Commissioner (Executive), Deputy Commissioner, Additional Commissioner, Commissioner, Assistant Commissioner (Judicial) and Judge (Revisions) or the Additional Judge (Revisions) shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely :

(a) enforcing the attendance of any person and examining him on oath or affirmation ;

(b) compelling the production of documents ; and

(c) issuing commissions for the examination of witnesses ;

and any proceeding before any of the officers aforesaid shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.

9. Mr. Raja Ram submitted that this rule may be read along with Rule 76 which reads:

76. Form of summons for production of a document-Summons for the production of a document or the attendance of any person shall be issued in Form XVI.

10. Form XVI is reproduced below :

...

Whereas your attendance is necessary to give evidence
----- Whereas the
following documents (here describe the documents in sufficient detail to permit
of their identification with reasonable certainty) are required with reference to
an inquiry under the Uttar Pradesh Sales Tax Act, 1948,
----- (here enter briefly the subject
of the inquiry) now pending before me, you are hereby to appear in person
summoned----- to
produce, or cause to be produced, the said documents before me on the...day
of...19...at...o'clock at (place)... (and not to depart thence until permitted by
me). Given under my hand and seal this day...of ...19.

11. It is contended that by virtue of Rule 4 the Judge (Revisions) can also exercise the powers mentioned in Section 13 of the Act. Section 13 so far as relevant for our purposes reads :

13. (1) Any officer not below the rank of Assessing Authority empowered by the State Government in this behalf, may, for the purposes of this Act, require any dealer to produce before him any book, document or account relating to his business and may inspect, examine and copy the same and make such enquiries from the dealer relating to his business, as may be necessary :

Provided that books, documents and accounts of a period more than four years prior to the assessment year shall not be so required, unless in any special case for reasons to be recorded such officer considers necessary.

(2) All books, documents and accounts maintained by any dealer in the ordinary course of his business, the goods in his possession, and his office, shop, godown, vessel or vehicle shall be open to inspection at all reasonable times by such officers as may be authorised by the State Government in this behalf.

(3) If any officer authorised under Sub-section (2), not being an Assistant Sales Tax Officer or an officer below that rank, has reasonable grounds for believing that any dealer is trying to evade liability for tax or other dues under this Act, and that anything necessary for the purpose of an investigation into his liability may be found in any account, register or document, he may seize such account, register or document as may be necessary. The officer seizing the account, register or document shall forthwith grant a receipt for the same and shall be bound to return them to the dealer or the person from whose custody they were seized, within a period of ninety days from the date of such seizure, after having such copies or extracts taken therefrom as may be considered necessary....

12. I am unable to read anything in Section 13 as conferring on the Judge (Revisions) the power of accepting additional evidence or bringing on record fresh material. All that can be done under this provision is that the authorities mentioned under Rule 4 can require a dealer or any other person to produce the documents mentioned in that section before itself. This provision only confers on the Sales Tax Authorities the power to get before themselves documents mentioned in that section. Without this provision they might not have the authority to require the production of documents some of which may be belonging to private persons. Without there being an express provision to that effect no court or tribunal or administrative body would have the right to get produced before itself private or public documents. That power has now been conferred by this provision. But this is quite a different power from the one of taking additional evidence. In the CPC the power of summoning documents and witnesses is given in Order 16, CPC (See Rules 6, 7, 8, 9, 10) but the power to take fresh material is given in Order 41, Rule 27, Civil Procedure Code. Similarly in the Criminal Procedure Code the power to summon documents and witnesses is given in Sections 94 and 212 and 540, but the power to record additional evidence by the appellate court is given in Section 428, Criminal Procedure Code. To my mind, therefore, the purpose of Section 13 of the Act is to empower Sales Tax Authorities to require production of documents which power they would not otherwise have had. Section 13 does not, in my opinion, at all deal with the

question of accepting additional material. If it included that power, there was no necessity to frame Rule 68. Rule 75 only provides that a Judge (Revisions) would have the powers of a civil court for purposes of enforcing the attendance of any person and examining him on oath or affirmation and for the purpose of compelling the production of documents as also for the purpose of issuing commissions for the examination of witnesses. It is significant to note that the powers conferred on Judge (Revisions) under this rule are those conferred by the CPC on a court of law in respect of matters enumerated above. In the CPC the power to enforce attendance of a person and examining him on oath as also of compelling the production of documents or issuing commissions or examination of witnesses has been treated quite separately from the power of recording additional evidence (See Order 12, Order 16, Order 19 and Order 26, Civil Procedure Code). As already pointed out, the power with regard to additional evidence is contained in Order 41, Rule 27, Civil Procedure Code. I am emphasising this aspect of the matter to show that the CPC has maintained a strict and clear distinction between the powers of recording additional evidence and the powers to enforce the attendance of witnesses or to compel the production of documents or the issuing of commissions and for that purpose has made distinctly different provisions, in respect of each of these matters.

13. Rule 75 does not, either expressly or by necessary implication, confer on the Judge (Revisions) any power wider than what has been given to him under clauses (a) to (c) (both inclusive). In this connection I would like to emphasise the words "shall have the same powers as are vested in a court under the CPC when trying a suit in respect of the following matters, namely". The word "namely" makes the provisions of clauses (a) to (c) exhaustive and not merely illustrative. The word "namely" means the following and no more. Consequently it is not possible to read in Rule 75 anything beyond what has been expressly conferred by clauses (a) to (c) of that rule. I have already pointed out that the CPC has maintained a clear distinction between the powers enumerated in clauses (a) to (c) of Rule 75 and a power to record additional evidence by an appellate court. The rule is emphatic that the powers are those which a court would have under the CPC and in respect of the matters confined to clauses (a) to (c) of that rule. That being the position, I am unable to agree that we can read in Rule 75 the intention of conferring on the Judge (Revisions) the power of admitting additional evidence.

14. In this connection I would also like to point out that the rule-making authority has deliberately chosen not to frame a rule for the Judge (Revisions) which corresponds to Rule 68(8) of the Rules, already reproduced above.

15. The Judge (Revisions) is not an appellate authority but only a revising authority. Even in the CPC and the Code of Criminal Procedure the revising authority is given no power to take additional evidence. The reason is obvious, the same being that a revising authority decides on the material already on the record.

16. Section 10(3) of the Act clearly provides that the revising authority may exercise the powers of revision "for purposes of satisfying itself as to the legality or propriety of any order made by any appellate or assessing authority under this Act." This would show that the revising authority has to satisfy itself as to the legality or propriety of an order. The expression "any order" relates to order passed either by the assessing authority or by the appellate authority. Consequently, the revising authority will have to examine the order of the appellate or the assessing authority on the basis of the material that was before the appellate or assessing authority. If it records fresh evidence and holds a further enquiry and then comes to a different decision from that recorded by the appellate or the assessing authority it would not be the consideration of the legality or propriety of the order passed by the appellate or the assessing authority but would be a fresh decision on the basis of fresh material brought on the record by the revising authority. The revising authority must necessarily base its decision on the material already on the record. It is true that the revising authority has been vested with the power to order production of account books and of inspection in Section 13 of the Act. It has also the power of enforcing attendance on any person and to examine him on oath or affirmation as also to issue a commission for examination of witnesses under Rule 75 of the Rules.

17. Keeping in mind the limited functions of the revising authority and giving the various provisions a harmonious interpretation I am of the opinion that what is intended is that the revising authority has to confine itself to the record of the case as it was before the assessing or the appellate authority but in order to clarify evidence already on the record it would have" the power of procuring the attendance of the witnesses, issuing commissions, sending for books including account books and looking into any entry contained in any book or document. If the intention of the rule-making authority was to give the power of additional evidence in the sense it is contained in Order 41, Rule 21, Civil Procedure Code, Section 428 and Section 540, Criminal Procedure Code, as also Rule 68 of the Rules, the rule-making authority would have provided in clear terms a rule as Rule 68 of the Rules.

18. Mr. Raja Ram, learned Junior Standing Counsel, has placed reliance upon *The State of Kerala v. K.M. Cheria Abdulla and Company* [1965] 16 S.T.C. 875 and has emphasised the following passage in that judgment :

The Deputy Commissioner is thereby invested with power to satisfy himself about the legality or propriety of any order passed or proceeding recorded by any officer subordinate to him, or the regularity of any proceeding of such officer, and to pass such orders with respect thereto as he thinks fit. For exercising this power, he may suo motu or on application call for and examine the record of any proceeding or order. There is no doubt that the revising authority may only call for the record of the order or the proceeding, and the record alone may be scrutinized for ascertaining the legality or propriety of an order or regularity of the proceeding. But there is nothing in the Act that for passing an order in

exercise of his revisional jurisdiction, if the revising authority is satisfied that the subordinate officer has committed an illegality or impropriety in the order or irregularity in the proceeding he cannot make or direct any further enquiry. The words of Sub-section (2) of Section 12 that the Deputy Commissioner "may pass such order with respect thereto as he thinks fit" means such order as may in the circumstances of the case for rectifying the defect be regarded by him as just. Power to pass such order as the revising authority thinks fit may in some cases include power to make or direct such further enquiry as the Deputy Commissioner may find necessary for rectifying the illegality or impropriety of the order, or irregularity in the proceeding. It is, therefore, not right baldly to propound that in passing an order in the exercise of his revisional jurisdiction, the Deputy Commissioner must in all cases be restricted to the record maintained by the officer subordinate to him, and can never make enquiry outside that record.

19. In my judgment, this case is clearly distinguishable. Their Lordships had before them Rule 14-A which clearly provides that: "The appellate or revising authority shall, before passing orders, determine the correct amount of tax payable by the dealer after issuing a notice to the dealer and after making such enquiry as the appellate or revising authority considers necessary." In the Supreme Court case, referred to above, there was an express provision permitting the revising authority to have additional evidence. I have before me a similar rule with regard to the powers of the appellate authority [Rule 68(8)] but there is no such rule with regard to the revising authority. Inasmuch as it occurred to the rule-making authority to expressly provide a rule for the appellate authority, it must be taken that the non-existence of a similar rule in respect of revising authority, is deliberate. In *State of Kerala v. K.M. Cheria Abdulla and Co.* [1965] 16 S.T.C. 875 their Lordships have not laid down that even if there had been no Rule 14-A the revising authority would still have the power to record additional evidence. The question before their Lordships really was with regard to the vires of Rule 14-A which was challenged on the ground that the power of revisional must in all cases has to be exercised on the basis of the record maintained by the subordinate officer. Their Lordships, after examining the language of Section 12 which provided for revision and Section 19 which gave the rule-making power to the State Government, came to the conclusion that in view of those provisions Rule 14-A could not be considered to be ultra vires. In our case we have to consider the scope of Section 10 without having a rule similar to Rule 14-A and in the face of the special circumstance that Rule 68(8) has expressly conferred the power of additional evidence on the appellate authority but not on the revising authority. Under these circumstances, in my opinion, the case is distinguishable. Their Lordships have, in fact, stated that even the power conferred by Rule 14-A must be read subject to the scheme of the Act by observing as follows :

It would not invest the revising authority with power to launch upon enquiries at large so as either to trench upon the powers which are expressly reserved by the

Act or by the Rules to other authorities or to ignore the limitations inherent in the exercise of those powers. For instance, the power to reassess escaped turnover is primarily vested by Rule 17 in the assessing officer and is to be exercised subject to certain limitations, and the revising authority will not be competent to make an enquiry for reassessing a taxpayer. Similarly, the power to make a best judgment assessment is vested by Section 9(2)(b) in the assessing authority and has to be exercised in the manner provided. It would not be open to the revising authority to assume that power. The revisional power has to be exercised for ascertaining whether the order passed is illegal or improper or the proceeding recorded is irregular and it is in aid of that power that such orders may be passed as the authority may think fit. One of the enquiries in considering the legality or propriety of the order passed by the subordinate officer which the revising or the appellate authority may make is about the correctness of the tax levied and if after perusing the record the authority is prima facie satisfied about the illegality or impropriety of the order or about the irregularity of the proceeding, it may in passing its orders direct an additional enquiry. Neither Section 12 nor Rule 14-A authorizes the revising authority to enter generally upon enquiries which may properly be made by the assessing authorities and to reopen assessments."

...We have, however, thought it necessary to explain the restrictions inherent in the exercise of power u/s 12(2) read with Rule 14-A, because counsel for the respondents has urged before us that the enquiry made by the Deputy Commissioner is inconsistent with the scheme of the Act, in violation of the rules of natural justice, and in circumvention of the restrictions on the power to reassess. That is a matter which will demand investigation before the High Court. We desire only to impress that the view taken by us that Rule 14-A is not ultra vires is not sufficient to dispose of the revision application filed before the High Court.

20. It has been contended that the expression "may pass such order as it thinks fit" would clearly permit an order of remand made to the appellate authority or to the assessing authority in order to make further enquiry and inasmuch as those authorities are free to record additional evidence it must be held that it is explicit in Section 10 of the Act that the revising authority can record fresh evidence. I am unable to agree. The power to record additional evidence has been expressly conferred by Rule 68(8) upon the appellate authority. So far as the assessing authority is concerned it has already vast powers of sending for or recording such evidence as it considers necessary. Sub-section (2) of Section 7 of the Act confers on the assessing authority the power to hold "such enquiry as he considers necessary". Section 21 also confers on the assessing authority the power of "making such enquiry as may be necessary". Consequently, the appellate and the assessing authority, on a remand order passed by the assessing authority (sic), would have the power of making such enquiry as they thought fit which would include the power to record additional evidence. Such a power has not been expressly provided either by any provision of the Act or the

Rules. It is also significant to point out that by virtue of the provisions of Section 9(4) of the Act an order passed by the appellate authority is final and subject only to an order passed in revision. That order becomes final on the basis of the material before the appellate authority. In my opinion, it would be subversive of the scheme of the Act to hold that that finality can be destroyed not on the basis of the record before the appellate authority but on the basis of fresh evidence subsequently to be recorded by the revising authority.

21. Mr. Raja Ram next contended that even though the Legislature has used the word "revision" while dealing with the powers u/s 10 of the Act the powers conferred are really appellate because the revising authority can pass "such order as it may think fit". Only because the words "such orders as it thinks fit" are used does not mean that the revising authority has all the powers of appellate authority including that of recording evidence. It only means that it has the power of passing any such final order on the merits of the controversy as an appellate authority or an assessing authority may pass. An order for fresh evidence is not an order on the merits of the controversy. As I have said above, to me it appears that the words "to pass such order as it thinks fit" only mean that it can shape its final order disposing of a revision application in any of the recognized manner as it likes. The Legislature has deliberately used two words "the appellate authority" and "the revising authority". If the idea was that by Section 10 a right of appeal had been conferred the word "revision" would not have been used. It is well-known that an approach in a revision is different from the one of an appellate or original authority. In *Suraj Narain Anand v. The State of North-West Frontier Province* AIR 1942 F.C. 47 their Lordships pointed out that there is a difference in the approach of an appellate authority from that of the original authority. I am, therefore, unable to agree that in the shape of a revision an appeal has been provided u/s 10 of the Act.

22. Mr. Raja Ram in the end contended that even though there is no express rule conferring on the revisional authority the power to accept additional evidence the power of additional evidence being procedural should be considered not to have been withheld from the revising authority. I have already stated earlier that when the Act expressly confers upon the assessing authority the power of making such enquiry as it considers fit and on the appellate authority the power to accept additional evidence but no such power has been conferred upon the revising authority it becomes difficult to hold that such a power had been conferred upon it by implication.

23. The evidence now sought to be produced is completely a new one and would completely change the complexion of things. If it is allowed to be produced it would result in the period of limitation provided by Section 21 being violated. In *State of Kerala v. K.M. Cheria Abdulla and Co.* [1965] 16 S.T.C. 875 Shah, J., while delivering the majority judgment has clearly stated that "the power to reassess escaped turnover is primarily vested by Rule 17 in the assessing authority and has to be exercised subject to certain limitations, and the revising

authority will not be competent to make an enquiry for reassessing a taxpayer." If the additional evidence is brought on record now, the result would be that it would be starting an enquiry for reassessing the assessee even though the period of limitation for the same provided by Section 21 of the Act has expired. In that view of the matter also, in my opinion, the revising authority would not be justified in accepting fresh evidence.

24. For the reasons mentioned above, I would answer both the questions in the negative in favour of the assessee and against the department. I would direct the department to pay the assessee a sum of Rs. 100 by way of costs of this reference.

Beg, J.

25. The questions already set out by my learned brother in his judgment, which I have had the benefit of hearing delivered just now, are of some importance relating to the exercise of various kinds of jurisdiction under the U.P. Sales Tax Act. I would, therefore, like to add my own reasons, which are somewhat different from those of my learned brother, for reaching the same conclusion, on the facts of the present case, as that of my learned brother. I confess that I am, with great respect, unable to go so far as my learned brother has done in restricting the scope of the powers of the revising authority under the U.P. Sales Tax Act (hereinafter referred to as the Act).

26. The first question referred to us involves a consideration of the purposes of Section 10(3) of the Act. The admissibility of the additional evidence collected by the department has to be considered in the light of these purposes. The distinction between the revisional and appellate jurisdictions and the powers of review are well-known. It is true that the ambit of the revisional jurisdiction is often so wide, in enactments conferring various kinds of jurisdiction upon quasi-judicial tribunals, that the distinctions between powers to be exercised in revision and in appeal and what may be equivalent of review become blurred and difficult to draw. Nevertheless, not only the labels for these jurisdictions are different, and, therefore, the words used must imply distinctions in the nature of powers conferred by each type of jurisdiction but also an examination of the language conferring the different types of powers will justify differences in the contents of power. These differences do, in my opinion, follow a well established basic pattern.

27. The essence of a revisional jurisdiction, as contrasted with the appellate jurisdiction, is that the revisional jurisdiction is discretionery whereas the appellate jurisdiction has to be exercised on an appeal preferred as of right. A right is conferred upon parties to appeal and the appeal becomes a continuation of the original proceedings. In continuing the original proceedings it may become necessary for the appellate court to admit additional evidence. Nevertheless, we find that circumstances are provided under which additional evidence may or may not be led even in appellate courts. The power exercised by the revisional

court is not that of continuing the original proceedings but of examining what has already taken place with a view to determine whether what had already taken place suffers from any illegality or impropriety. In order to satisfy itself as to the legality or propriety of an order made by an appellate or assessing authority, Section 10(3)(i) of the Act does not expressly require or authorise the adduction of fresh evidence. Ordinarily, the record itself has to be perused in order to determine whether there is such an illegality or impropriety as to call for the exercise of the revisional jurisdiction. Upon examining the record the revising authority may find that the assessing or the appellate authority has committed some error in excluding some evidence. In that event, I do not think that the revising authority will be transgressing its ambit of powers in directing the appellate or the revising authority to take fresh evidence. It is, however, to be borne in mind that the revisional jurisdiction is not a continuation of the original proceedings. That is a basic distinction. I am, however, not inclined to take the extreme view that no additional evidence can be led in any circumstances whatsoever outside the record as it exists and is brought before the revisional authority. It is true that, as pointed out by their Lordships of the Supreme Court in *State of Kerala v. K. M. Cheria Abdulla and Co.* [1965] 16 S.T.C. 875 the additional evidence must be in aid of the revisional power and not for any extraneous purpose. Nevertheless, if a case does arise in which the purpose for which the revisional power exists requires adduction of additional evidence, it would fetter the revisional power, as found in the Sales Tax Act, too much to lay down that additional evidence cannot be taken. If for example the process of coming to the decision is vitiated by the existence of some bias or partiality on the part of assessing or appellate authority which is not apparent from the face of the record, the illegality and impropriety has, nevertheless, taken place in arriving at the decision given. Such an illegality or impropriety would not, in my opinion, be extraneous to the process of adjudication although it would not be apparent on the face of the record. I, therefore, think that such an illegality or impropriety may be proved by additional evidence. In the case before us no such impropriety or illegality has been brought to our notice which may vitiate the process of adjudication itself. What is contended is that the additional evidence would show that the conclusion arrived at by the appellate authority is erroneous. In other words, the erroneous decision is said to have resulted from a lack of evidence which the department could have collected. It is not the process of adjudication in the course of which any illegality or impropriety has taken place, but it is only an instance of the inability of the department to bring within the process of adjudication what it could have brought in if it had been more diligent. Such a purpose for the adduction of additional evidence appears to me to be outside the scope of the revisional power conferred upon the revising authority by Section 10 of the Act.

28. The distinction between the revisional and appellate powers on the one side and powers of review is also well established although, as I have already said, the manner in which this kind of jurisdiction is provided for quasi-judicial

authorities often conceals the difference. The revisional and appellate powers are always directed at correcting the errors of inferior authorities, but the power of review is directed towards a correction by an authority of its own error or some mistaken decision arising from reasons apart from its own error. The powers of review, for example, are exercisable under Order 41, Rule 1, Civil Procedure Code, not only on the errors apparent on the face of the record but also in cases where new evidence has been discovered by a party which has not been negligent. It appears to me that Section 21 of the Act confers a power which may be equated with what is known as a power of review under the CPC although the ambit of that power, known as power of reassessment in Section 21 of the Act, is much wider than the scope of the power of review under the Code of Civil Procedure. Nevertheless, the power is there and it is distinguishable from the power of revision as well as from the powers of an appellate court. The grounds upon which a reassessment may take place may not be identical with those on which an appellate court or a revisional court may order reassessment. Even the effect of the order of a revising authority or an appellate authority can be a reassessment. That would not, however, mean that the power of review or reassessment u/s 21 of the Act is being exercised. The powers of revision and of reassessment were distinguished by their Lordships of the Supreme Court in *State of Orissa v. Debaki Debi* [1964] 15 S.T.C. 153. Although their Lordships pointed out that the effect of the exercise of the two powers may be such that, in so far as the sphere of effect or consequence is concerned, the two would overlap. The distinction between the different purposes of the two was observed in this case also by their Lordships of the Supreme Court as also in the case of *State of Kerala v. K. M. Cheria Abdulla* [1965] 16 S.T.C. 875.

29. The question as to the extent to which the revising authorities can take additional evidence in the exercise of revisional jurisdiction has come up for consideration before various High Courts. The first of these which has been brought to our notice is *Louis Dreyfus and Company Limited v. The Province of Madras* [1952] 3 S.T.C. 19. Here, it was held that, under Rule 14(2) of the Madras General Sales Tax Rules, 1939, prior to the amendment in January, 1948, the Commercial Tax Officer had only revisional jurisdiction as it is commonly understood, that is to say, the power of examining the record of any order and deciding as to its legality and propriety. It was held there that it was not open to him to go beyond the order or the record and act upon further information or evidence placed before him so as to disturb the order originally passed and hold that it was not proper. Here also it was laid down that the ambit of the revisional jurisdiction and the exercise of the power to take fresh evidence is controlled by the purpose for which the revisional jurisdiction had been conferred. Apparently, the rule as it then stood did not authorise the Sales Tax Officer to take further evidence in any event whatsoever. If this is an authority for the proposition that merely from the fact that the jurisdiction is revisional the revising authority must be deemed not to have any power of taking additional evidence in any case whatsoever, I would, very respectfully, differ.

30. In *Manepalli Venkatanarayana and Ors. v. The State of Andhra Pradesh and Ors.* [1959] 10 S.T.C. 524 it was held that the power of the revising authority u/s 20 of the Andhra Pradesh General Sales Tax Act, which conferred those powers, was not so wide as to enable the revising authority to correct the assessment based on the information subsequently gathered. So far as the proposition that the revising authority cannot, in exercise of its revisional jurisdiction, undertake any enquiries it deems necessary or just, the view taken by their Lordships of the Supreme Court in the case of *K. M. Cheria Abdulla* [1965] 16 S.T.C. 875 fully supports it. It was, however, contended by Mr. Raja Ram Agarwala, appearing on behalf of the department, that in this case reliance was placed upon the case of *Louis Dreyfus and Company Ltd.* [1952] 3 S.T.C. 19 and upon the Full Bench decision of the Kerala High Court in *M. Appukutty Vs. The State*, . "But, the learned counsel contended that the decision of the Full Bench of the Kerala High Court in *Appukutty's* case [1958] 9 S.T.C. 70 having been reversed by the Supreme Court of India in *State of Kerala v. M. Appukutty* [1963] 14 S.T.C. 242 All the earlier case could not be relied upon on behalf of the assessee. I do not think that this contention is sound. The Supreme Court of India in *M. Appukutty's* case [1963] 14 S.T.C. 242 did not disapprove of everything which had been said in earlier cases. On the other hand, the Supreme Court distinguished, without dissenting from, what was laid down in the case of *Louis Dreyfus and Company Ltd.* [1952] 3 S.T.C. 19 and upset the view taken by the Full Bench of the Kerala High Court on the ground that Rule 17 of the Madras General Sales Tax Rules, 1939, was not beyond the rule-making power of the State Government contained in Section 19 of the Madras General Sales Tax Act. The Supreme Court held that "rule 17 deals with a separate and independent jurisdiction in regard to the determining and taxing the escaped turnovers." In other words, the Supreme Court distinguished between the jurisdiction to revise an order of an assessing or appellate authority and the jurisdiction for determining and taxing escaped turnover. All decisions cited before us, either of the Supreme Court or of a High Court, contained a clear statement of the principle that there are certain limits to the powers of a revisional authority to take additional evidence. Indeed, if there were no such limits, a revisional authority would be clothed with powers of extraordinary amplitude wider than those of the appellate and original assessing authorities.

31. The limits to the powers of the revising authority, acting u/s 10(3)(i) of the Act, have to be found the necessary implications of the language used for conferring the revisional powers. The exact words in which the powers are conferred upon the revising authority may be quoted here :

10. (3)(i) The revising authority or any additional revising authority may, for the purposes of satisfying itself as to the legality or propriety of any order made by any appellate or assessing authority under this Act, in its discretion, call for and examine, either on its own motion or on the application of the Commissioner of Sales Tax or the person aggrieved, the record of such order and pass such order as it may think fit:

...

32. There is no express statement of the set of conditions regulating the grounds on which or the procedure in accordance with which the discretion to call for and examine the record of a case may be exercised. It is not stated there that the discretion to call for the record and, after that, the discretionary power to pass "such order as it may think fit" will always be exercised without taking any matter or evidence into account which is not already found on the record as it exists. All that we can say from the language used is that it appears that ordinarily the record, as it exists, will be perused. The limit upon the discretionary power to send for the record and then to pass such order as the revising authority "may think fit" is to be found only in the purposes for which the revisional power itself is conferred. I do not think that it is either desirable or necessary or permissible for us to cut down the scope of the purposes so broadly stated, although it is both desirable and imperative not to extend those purposes so far as to impinge upon other powers conferred for somewhat different purposes. In my opinion, the limit is found when some power to take additional evidence is exercised for a purpose which more appropriately or properly falls within that of an appeal or reassessment. In other words, we have also to look at Section 9 of the Act, dealing with appeals as well as with Section 21 of the Act, dealing with powers and circumstances in which assessment or reassessment of escaped turnover may take place, in order to discover the true ambit of powers of the revising authority u/s 10 of the Act. If, upon a set of circumstances before the Sales Tax Authorities, it appears that the power invoked is, properly speaking, the power which only an appellate authority or reassessing authority can exercise, the additional evidence for purposes which would be deemed to be outside the scope of Section 10 of the Act should not be permitted. The whole object of providing different kinds of powers of interference for different purposes would be defeated if the same purpose would always be achieved by invoking any one of the powers of interference.

33. It is true that Rule 4 of the Act confers the power of taking evidence, contained in Section 13 of the Act, upon all assessing, appellate and revising authorities. The validity of Rule 4 of the Act has not been challenged within our knowledge so far in this Court. It certainly cannot be challenged before us. There is no room for doubt, in my mind, that, if it were so challenged, the challenge would fail in the light of the liberal conception of the ambit of the revisional powers of quasi-judicial Sales Tax Authorities taken by the Supreme Court of India in *State of Kerala v. M. Appukutty* [1963] 14 S.T.C. 242 and *State of Kerala v. K.M. Cheria Abdulla and Co.* [1965] 16 S.T.C. 875. Our attention has also been invited to the provisions of Rule 75 conferring the power to summon witnesses not only upon the Sales Tax Officers and the appellate authorities and upon the Commissioners, who hear appeals, but also upon the Judge (Revisions) who hears revisions. Those powers, it is pointed out, are co-extensive with the powers vested in the court under the CPC when trying suits for enforcing attendance of witnesses for examination on oath and affirmation and for

compelling the production of documents and for issuing commissions for the examination of witnesses. Rule 76 prescribes a form of summons for production of documents and such a summons can no doubt be issued by a Judge (Revisions) in appropriate cases. It is, therefore, impossible for us to take an unduly restrictive view of the powers of the revising authority to take evidence relating to matters which may not be apparent from the record itself.

34. On behalf of the assessed our attention was invited to Rule 68 of the Rules under the U.P. Sales Tax Act. This rule deals with the procedure for the disposal of an appeal. It provides, inter alia, in Sub-rule (8), for the taking of further material in cases where the record is insufficient to enable an Assistant Commissioner (Judicial) to pronounce his judgment. In other words, it provides for supplementing the material already on the record or clarifying it in those cases in which the Assistant Commissioner (Judicial) who hears the appeals considers the existing evidence insufficient for pronouncing his judgment. It is pointed out that in Rule 69, containing the corresponding procedure for the disposal of a revision by a Judge (Revisions), there is no corresponding power of the Judge (Revisions) mentioned. Reference to these rules was made in order to convince us that the Judge (Revisions) has no power whatsoever of taking any additional evidence and bringing fresh material upon the record under any circumstances. Speaking for myself, I am unable to arrive at such a conclusion merely because Rule 69 does not contain or mention any power corresponding to that mentioned in Rule 68(8) of the Rules. This omission from Rule 69 may be due to the fact that ordinarily the revising authority is not expected to take evidence. The omission has to be considered in the light of the specific provisions of Rules 4 and 75 and 76, read with Section 13 of the Act, already mentioned above. Moreover, in order to judge the ambit of power conferred upon the revising authority, we cannot forget the source of such power which is Section 10 of the Act. The rules merely lay down the procedure intended to operate in aid of the power as pointed out by their Lordships of the Supreme Court in *K.M. Cheria Abdulla & Co.'s case* [1965]16 S.T.C. 875. In other words, the rules lay down the procedure and do not confer substantive powers. The procedure to be adopted for functioning within the scope of the power conferred must, in the absence of any express rule framed to regulate the power, be determined by the authority which has the power to act. To be more precise, I consider that there is an implied power in the revising authority even to take evidence outside the record provided it does not, in exercise of such power, contravene the purposes mentioned in Section 10 of the Act. The principle upon which such implied power to adopt suitable procedure, such as taking of additional evidence in aid of and for the more effective exercise of the power, is thus stated in *Maxwell's Interpretation of Statutes* :

Where an Act confers a jurisdiction it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution.

35. I consider the power to take additional evidence to be a matter of adjectival

or procedural law which need not be always specifically provided for. Such a power can be inferred and implied in those cases where it is necessary for the exercise of a jurisdiction. The mere failure of the rule-making authority to make a specific rule to regulate a matter falling within the scope of implied powers cannot, in my opinion, exclude the existence of such a power. I must, however, repeat that the power must, in every case, be restricted to the purpose for which the revising authority can interfere and not go beyond it. This principle was applied by the Supreme Court even in K. M. Cheria Abdulla's case [1965] 16 S.T.C. 875 when pronouncing upon the validity of Rule 14-A made under the Madras General Sales Tax Act, 1939.

36. We have to examine the facts and circumstances of the case before us in order to determine whether they fall properly within the ambit and scope of revisional power or fall within the ambit of powers of reassessment for which fresh proceedings u/s 21 have to be taken. I find, from the facts of the case before us, that the matter which came up before the revising authority arose out of a proceeding u/s 21 of the Act. Those proceedings, relating to the assessment years 1955-56 and 1956-57, succeeded before the Sales Tax Officer, but the appellate authority considered the evidence insufficient to maintain the assessment orders of the Sales Tax Officer. Subsequently, after the expiry of a period of four years from the passing of the assessment order fresh evidence came into existence in the shape of the statement of the dealer in the light of which the orders of the appellate authority became erroneous. The orders of the appellate authority were legal and proper upon the evidence on the record. If, however, fresh evidence, which came into existence afterwards, had been before the appellate authority it would have probably itself decided differently. There is, however, no provision under the Sales Tax Act expressly for the exercise of a power of review by the appellate authority. The only power for getting the whole matter reconsidered in the light of fresh material is the power of reassessment of an escaped turnover contained in Section 21 of the Act. The facts of the case, therefore, brought it within the scope of Section 21 of the Act. There is, however, the four years period of limitation which came in the way of the department. It is evident that the department, faced with this difficulty, invoked the powers of the revising authority u/s 10(3) of the Act. In other words, the revisional powers were being invoked in order to get round the period of limitation prescribed by Section 21(2) of the Act. I do not think that such a recourse to the revisional powers, in order to circumvent the obstacle placed by Section 21(2), is justifiable at all. The additional evidence was sought to be brought on the record only for the purpose of enabling the department to get over an obstacle to reassessment. In my opinion, such a purpose would be extraneous to the objects of Section 10 of the Act. Therefore, the additional evidence sought to be brought upon the record cannot be admitted.

37. Mr. R. R. Agarwala, appearing for the department, argued that the second proviso to Section 21(2) of the Act would remove the obstacle placed by Section 21(2). This proviso reads as follows :

Provided further that nothing contained in this section limiting the time within which any assessment or reassessment may be made shall apply to an assessment or reassessment made in consequence of, or to give effect to, any finding or direction contained in an order u/s 9, 10 or 11.

38. The argument put forward by the learned counsel presupposes that there has been some direction given u/s 10 to reassess. If no such direction has been given or can be given no question of applying the proviso would arise. It is only when a direction has actually been given that the situation contemplated by the proviso would come into existence. I, therefore, do not consider this contention to be of assistance to the department in meeting the objection that the revisional powers were being invoked for the purpose of circumventing the obstacle imposed by Section 21(2) of the Act.

39. In the result, I concur with my learned brother that the answer to the first question must be in the negative and against the department. Upon this view of the matter there is no need to answer the second question which is so framed that we need answer it only if the additional evidence sought to be made part of the record is held to be part of the record. If a direction could be given validly, after bringing some additional material upon the record, the second proviso to Section 21(2) would certainly remove the bar of limitation. I, therefore, prefer not to answer the second question upon a purely hypothetical basis. I also concur with my learned brother in the order proposed as to costs.

Order of the Court

40. The questions are answered in favour of the assessee and against the department. We direct the department to pay the assessee a sum of Rs. 100 by way of costs of this reference.