

(1979) 05 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petition No. 707 of 1969 and Reference No. 79 of 1968

Jaipur Udyog Ltd.

APPELLANT

Vs

Commercial Taxes Officer

RESPONDENT

Date of Decision : 11-05-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1979) 44 STC 456

Hon'ble Judges : Mahendra Bhushan, J; Dwarka Prasad, J

Bench : Division Bench

Advocate : K.K. Jain, J.N. Sharma and G.S. Bapna, for the Appellant; B.K. Pathak, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Dwarka Prasad, J.—The petitioner, M/s. Jaipur Udyog Ltd. (hereinafter referred to as "the company"), is carrying on business of manufacture and sale of cement, having its registered office at Sawai Madhopur in the State of Rajasthan. The company was registered as a dealer under the Rajasthan Sales Tax Act in respect of the assessment year 1955-56, relating to the period from 1st April, 1955, to 31st March, 1956. The company was assessed to tax and the Sales Tax Officer, Sawai Madhopur (hereinafter called "the assessing authority"), by his order dated 23rd February, 1957, held that a sum of Rs. 1,38,76,958-6-0, representing the price of the cement exported by the company outside the State of Rajasthan, should not be included in the taxable turnover of the company. He, therefore, excluded the aforesaid amount from the taxable turnover of the company.

2. On 24th February, 1959, the assessing authority issued a notice to the company u/s 12 of the Rajasthan Sales Tax Act, 1954, on the ground that the turnover of the company to the extent of Rs. 1,38,76,958-6-0 has escaped assessment to tax under the Act. The Sales Tax Officer, after hearing the representative of the company, proceeded to assess tax in respect of the aforesaid amount, which represented the sale price of the cement exported by

the company outside the State of Rajasthan. But, in his view, only that part of the aforesaid sales, which fell due between 1st April, 1955, and 10th November, 1955, was taxable in the hands of the company. He, therefore, imposed tax on the company in respect of the sum of Rs. 76,41,546-1-3 considering the same to be the escaped turnover of the company. The company preferred an appeal against the aforesaid order passed by the Sales Tax Officer before the Deputy Commissioner (Appeals), which was allowed by the order dated 22nd March, 1965, on the ground that no proper notice u/s 12 of the Act was served on the company. The Deputy Commissioner was of the view that the notice, which was served upon the company, was not in the prescribed form. But, while allowing the appeal preferred by the company before him, he remanded the case to the Sales Tax Officer for reassessment directing the assessing authority to ensure that a notice in proper form was issued to the company, as required u/s 12 of the Act and that proper opportunity of hearing was given to the company.

3. Both the parties filed revision petitions against the aforesaid order passed by the Deputy Commissioner, Commercial Taxes (Appeals), before the Board of Revenue for Rajasthan at Ajmer. One of the contentions of the company before the Board of Revenue was that the notice issued u/s 12 was not a valid notice and, as such, the proceedings were not properly initiated and were void. It was also urged that no notice could be issued then, as the period of eight years, being the limitation prescribed in Section 12 of the Act, had already expired. The learned Additional Government Advocate appearing for the State of Rajasthan, agreed before the Board that the notice issued to the company was not valid and that the Sales Tax Officer could assume jurisdiction only when a proper notice u/s 12 of the Act for reopening the assessment on the ground that part of the turnover of the assessee has escaped assessment was issued. The learned Members of the Board of Revenue, by their order dated 12th December, 1967, dismissed both the revision petitions holding that no valid notice was issued to the company and, as such, the very foundation of the reassessment proceedings u/s 12 of the Act was washed out and the proceedings before the Sales Tax Officer were invalid. It was also held by the Board that after setting aside the earlier assessment proceedings, the appellate court could not have proceeded to decide the other questions, which arose out of such invalid proceedings. However, the order of reassessment passed by the Deputy Commissioner (Appeals) was upheld. It appears that thereafter the State of Rajasthan filed an application before the Board of Revenue for rectifying their earlier order u/s 17 of the Act, but that application was also dismissed by the order of the Board dated 15th September, 1969. In the meanwhile, after the Deputy Commissioner (Appeals) had allowed the appeal of the company by his order dated 22nd March, 1965, on the ground that no valid notice was served upon the company u/s 12 of the Act, the Commercial Taxes Officer issued a fresh notice to the company on 6th May, 1965, u/s 12 of the Act. In the present writ petition, the company has challenged the validity of the fresh notice (annexure C) issued by the assessing authority on 6th May, 1965.

4. The only submission advanced by the Learned Counsel for the petitioner-company in this case before us is that, after the limitation prescribed for giving a notice u/s 12 of the Act had expired, the Commercial Taxes Officer was incompetent to issue such a notice to the company and the notice dated 6th May, 1965, was invalid on that ground alone. The submission of the Learned Counsel for the petitioner is that initially notice u/s 12 could be issued within three years of the expiry of the period to which the tax relates. But, after an amendment was made in Section 12, such a notice could be issued within a period of four years and thereafter within an extended period of eight years. According to the Learned Counsel, thus, the maximum period within which the notice u/s 12 of the Act could be issued at the relevant time was eight years from the expiry of the period to which the tax relates and that, in the present case, the period of eight years elapsed on 31st March, 1964. Thus, the notice (annexure C), which was issued by the Commercial Taxes Officer on 6th May, 1965, was far beyond the period of eight years prescribed in Section 12 and, as such, the same was invalid. It was also argued by the Learned Counsel for the petitioner that, once the period of four years had expired and the order of assessment became final, further proceedings for reassessment could not have taken place, even if the period for reassessment for issuing notice u/s 12 was subsequently enlarged to eight years and that too with retrospective effect. However, it is not necessary for us to deal with the last-mentioned submission of the Learned Counsel, as, in the present case, we find that the fresh notice issued u/s 12 of the Act on 6th May, 1965, was not issued even within the period of eight years from the expiry of the period to which the tax relates, which was provided for by the amended Section 12 of the Act.

Section 12 of the Act, as it stood at the relevant time, was as under:

12. Assessment of tax and levy of exemption fee or registration fees incorrectly assessed.--If for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to the tax, or if the registration fee or exemption fee has escaped levy or has been assessed at too low a rate in any year, the assessing authority at any time within a period of eight years next succeeding that to which the tax or the registration fee or the exemption fee relates, assess the tax payable on the turnover which has escaped assessment or levy the correct amount of registration fee, or exemption fee, after issuing a notice to the dealer and after making such inquiry as he considers necessary.

5. Under the aforesaid provision, if the business of a dealer has escaped assessment to tax for any reason, the assessing authority can serve upon the dealer a notice in the prescribed form at any time within a period of eight years next succeeding that to which the tax relates. As we have already mentioned above, the assessment in the present case related to the period from 1st April, 1955, to 31st March, 1956, and, as such, the period of eight years from the expiry of the relevant assessment year came to an end on 31st March, 1964. Thus, it cannot be contested and, in fact, it has not been contested before us

that the notice dated 6th May, 1965, was issued beyond the period of eight years of the expiry of the relevant assessment year. But, the argument of the learned Additional Government Advocate, appearing for the State of Rajasthan, is that the notice dated 6th May, 1965, was valid as the same was issued in pursuance of the order of the Deputy Commissioner (Appeals) dated 22nd March, 1965, and in continuation of the earlier notice for reassessment issued to the company on 24th February, 1959. We shall presently examine this aspect of the matter.

6. The Board of Revenue, while deciding the revision petition of the company, held that, as no valid notice was issued to the company, "the very foundation" of the proceedings was "washed out" and that the notice issued to the company on 24th February, 1959, was invalid. The aforesaid finding of the Board had become final and conclusive between the parties, as the application for rectification filed by the State of Rajasthan in respect thereof was dismissed by the Board of Revenue on 15th October, 1969, and the State of Rajasthan has not challenged the aforesaid order passed by the Board of Revenue either by means of an application for reference or otherwise. On these facts, it is difficult to appreciate the argument advanced by the learned Additional Government Advocate that the notice issued on 6th May, 1965, was in continuation of the earlier notice issued on 24th February, 1959. In Commissioner of Income Tax, New Delhi Vs. Rao Thakur Narayan Singh, it was held by their Lordships of the Supreme Court that when the order of the Appellate Tribunal became final, the finding of the Tribunal, even though by mistake, was binding on the Income Tax Officer and he could not open the reassessment over again. Their Lordships observed that it was not the intention of the legislature to enable the Income Tax Officer to re-open final decisions made against the revenue in respect of questions that directly arose for decision in the earlier proceedings, and, if it was not so, it would result in placing unrestricted power in the hands of the Income Tax Officer to go behind the findings given by a hierarchy of Tribunals and even those of the High Court and Supreme Court, with his changing moods. Thus, the aforesaid decision clearly shows that the finding arrived at by the Board of Revenue in the present case is binding on the Commercial Taxes Officer and he could not give a fresh notice on the basis of the earlier proceedings. It is settled law that the service of a valid notice is a condition precedent before jurisdiction can be assumed for reassessment u/s 12 of the Act. In Y. Narayana Chetty and Another Vs. The Income Tax Officer, Nellore and Others, their Lordships of the Supreme Court observed as under:

The argument is that the service of the requisite notice on the assessee is a condition precedent to the validity of any reassessment made u/s 34; and if a valid notice is not issued as required, proceedings taken by the Income Tax Officer in pursuance of an invalid notice and consequent orders of reassessment passed by him would be void and inoperative. In our opinion, this contention is well-founded. The notice prescribed by Section 34 cannot be regarded as a mere procedural requirement; it is only if the said notice is served on the assessee as required that the Income Tax Officer would be justified in taking proceedings

against him. If no notice is issued or if the notice issued is shown to be invalid, then the validity of the proceedings taken by the Income Tax Officer without a notice or in pursuance of an invalid notice would be illegal and void.

7. In Commissioner of Income Tax, Kerala Vs. Thayaballi Mulla Jeevaji Kapasi (Decd.) (by his Legal representatives), it was held by their Lordships of the Supreme Court that the service of a notice prescribed by Section 34 of the Indian Income Tax Act, 1922, for the purpose of commencing proceedings for reassessment is not merely a procedural formality. Their Lordships observed as under:

Service of notice prescribed by Section 34 of the Income Tax Act, for the purpose of commencing proceedings for reassessment is not a mere procedural requirement: it is a condition precedent to the initiation of proceedings for assessment u/s 34. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the Income Tax Officer, without a notice or in pursuance of an invalid notice, would be illegal and void.

8. It was also held in the aforesaid case that the service of notice within the period of limitation is a condition precedent to the exercise of jurisdiction, and if it is not proved that the notice was duly served upon the assessee within the prescribed time, the assessing authority cannot assume jurisdiction to reassess the income of the assessee.

9. The decision of their Lordships of the Supreme Court in the Y. Narayana Chetty and Another Vs. The Income Tax Officer, Nellore and Others, was followed by the Mysore High Court in C.N. Nataraj Vs. Fifth Income Tax Officer, City Circle II, Bangalore, and by a Full Bench of the Assam High Court in MESSRS. TANSUKHRAI BODULAL Vs. Income Tax OFFICER, NOWGONG, AND OTHERS., In the last-mentioned case, it was observed that the want of a valid notice affects the jurisdiction of the Income Tax Officer to proceed with reassessment and affects the validity of such proceedings. It was also held that if the difficulty of jurisdiction was apparent on the face of the record, the High Court will not refuse relief to the petitioner under Article 226 of the Constitution and the existence of an alternate remedy is not an absolute bar in such cases. In Braham Dutt v. Sales Tax Officer, Sikar (1968 II ITR 61 , a Division Bench of this Court, following the decision of their Lordships of the Supreme Court in the Y. Narayana Chetty and Another Vs. The Income Tax Officer, Nellore and Others, observed as under:

On a plain reading of Section 12, it is obvious that the Sales Tax Officer could only proceed to assess or reassess the escaped business of a dealer after serving him with a notice in the prescribed form under that section. If no such notice, as provided by Section 12, is given and served on the dealer, the taxing authority cannot proceed to assess or reassess him. The taxing authority acquires jurisdiction to take proceedings u/s 12 only when a valid notice, which lays the foundation for such action, is issued by it.

10. It was also held in the aforesaid case that the service of a valid notice u/s 12 in the prescribed form is not a mere procedural formality but is a condition precedent for the assumption of jurisdiction by the assessing authority and, if he fails to issue a notice which is valid in the eye of law, he cannot acquire jurisdiction to assess or reassess a dealer under the provisions of Section 12 of the Act. The same principle of law was also reiterated in *S.K. Manekia v. Commissioner of Sales Tax* [1977 39 S.T.C. 426, and it was observed that the reassessing authority would acquire jurisdiction only if a valid notice was issued and duly served upon the assessee. A defective notice would confer no jurisdiction upon the reassessing authority to initiate proceedings in pursuance of such a notice and to pass an order of reassessment in pursuance thereof.

11. In *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, their Lordships of the Supreme Court observed as follows:

The proceedings for assessment or reassessment u/s 34(1)(a) of the Income Tax Act start with the issue of a notice and it is only after the service of the notice that the assessee, whose income is sought to be assessed or reassessed, becomes a party to those proceedings.

12. Applying the aforesaid principles to the facts of the present case, we may observe that the earlier notice issued on 24th February, 1959, having been held to be invalid by the Board of Revenue, the entire proceedings taken in pursuance of such an invalid notice were vitiated and the latter notice issued by the Commercial Taxes Officer on 6th May, 1965, could not be said to have been issued in continuation of the earlier notice. The company cannot be held to have become a party to the proceedings which were initiated on the basis of an invalid notice dated 24th February, 1959. As such, the question which requires to be considered in this case is as to whether the fresh notice issued on 6th May, 1965, was a valid notice for initiating the proceedings for reassessment u/s 12 of the Act. As observed above, the aforesaid notice was clearly issued after the expiry of the period of eight years from the expiry of the relevant assessment year and as the said notice dated 6th May, 1965, was issued beyond the period of limitation prescribed u/s 12 of the Act, the said notice was clearly invalid.

13. The further question which deserves to be examined is as to whether such a fresh notice could be issued in pursuance of the direction given by the Deputy Commissioner (Appeals) in his order dated 22nd March, 1965, as argued by the learned Additional Government Advocate. We may refer in this connection to the decision of their Lordships of the Supreme Court in *Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur*, wherein their Lordships set aside the assessment made for the period beyond three years from the expiry of the assessment year. The aforesaid decision of their Lordships of the Supreme Court was followed by a Full Bench of the Punjab and Haryana High Court in *Assessing Authority, Amritsar v. Shri Om Parkash Seth* [1969 24 S.T.C. 282 F.B.), where the Additional Assistant Excise and Taxation Commissioner, Punjab, remanded the matter and the Assessing Authority, after the order of remand, issued a fresh

notice to the assessee for reassessment in respect of part of his turnover, which had escaped assessment. It was held by the Full Bench in the aforesaid case as under:

It was open to the Commissioner to redetermine the quantum of turnover liable to tax while exercising the revisional powers but once he decided to direct the Assessing Authority to make a reassessment in accordance with law, the proceedings for reassessment were fresh proceedings which were governed by the period of limitation prescribed in Section 11-A of the Act.

14. In Commissioner of Income Tax, Coimbatore Vs. Estate of Late Sri N. Veeraswami Chettiar, the Appellate Assistant Commissioner held that the notice for reassessment issued u/s 34 of the Indian Income Tax Act was improper and had no validity, but in pursuance of the direction given by the Appellate Assistant Commissioner in the appeal, the Income Tax Officer issued a fresh notice and passed an order of reassessment. The question which was raised in that case is identical to the one which arises before us, as to whether the commencement of the proceedings for reassessment after the expiry of the period of limitation for reassessment prescribed under the Act could be justified on the ground that the notice was issued in pursuance of the order of the Appellate Commissioner. It was held by a Division Bench of the Madras High Court in the aforesaid case [1963] Commissioner of Income Tax, Coimbatore Vs. Estate of Late Sri N. Veeraswami Chettiar, that if the earlier notice was improper and had no validity, the effect was as if no notice at all was issued by the department u/s 34 and the entire proceedings taken on the basis of such an invalid notice stood vitiated, as the issue and service of a valid notice is the very foundation of the proceedings for assessment or reassessment and service of such a valid notice confers jurisdiction on the Income Tax Officer for initiating proceedings for reassessment. The direction given by the Appellate Commissioner while passing an order of remand for making a fresh order of assessment, con-templates that the assessment proceedings themselves were validly initiated. It was further observed in that case as under:

But in a proceeding for reopening an assessment and making a reassessment u/s 34, the Income Tax Officer acquires jurisdiction in a particular manner and is it open to the appellate authority to make a direction which would have the effect of conferring jurisdiction in a case where such jurisdiction has not been properly acquired by the Income Tax Officer. From the words of the section itself, it is seen that no authority other than the Income Tax Officer has jurisdiction u/s 34 of the Act. If the present case had been one where the initiation of the proceedings had been validly launched, it would be open to the Appellate Assistant Commissioner in appeal before him, while setting aside the assessment, to issue directions. But it is unthinkable that a direction can be made in the exercise of the powers u/s 31 of the Act which goes to the extent of conferring jurisdiction upon the Income Tax Officer if he is not lawfully seized of jurisdiction. To our minds, the direction issued by the Appellate Assistant

Commissioner travels far beyond the scope of Section 31 of the Act in the circumstances of the case. If direction is neither lawful nor valid, it cannot come within the scope of the saving proviso and serve to remove the bar of limitation.

15. The aforesaid decision was followed in *N. Naganatha Iyer Vs. Commissioner of Income Tax, Madras*, and it was held that a direction cannot be given by the Appellate Assistant Commissioner which may go to the extent of conferring jurisdiction on the Income Tax Officer, where he is not lawfully seized of the jurisdiction. In that case also, the earlier notice issued u/s 34 was held to be invalid and when fresh proceedings for assessment were taken u/s 34 it was contended by the assessee that they were barred by time and invalid on that ground. It was held in that case that the direction given by the Appellate Assistant Commissioner, while setting aside the order of assessment passed by the Income Tax Officer, who invoked the provision of Section 34(1)(b), and the action of the Income Tax Officer in reassessing the income of the assessee was neither lawful nor valid. In *Commissioner of Income Tax, Gujarat II Vs. Nanalal Tribhovandas and Another*, the aforesaid two decisions of the Madras High Court were followed and it was held that when the Appellate Assistant Commissioner set aside the reassessment order passed by the Income Tax Officer on the ground that the proceedings for reassessment were bad in law and invalid and the Income Tax Officer was directed to make a fresh reassessment according to law after giving the assessee a reasonable opportunity of hearing, the subsequent proceedings for reassessment were wholly void and illegal if they were taken after the period of limitation had expired. It was observed by their Lordships of the Gujarat High Court in the aforesaid case [1975] *Commissioner of Income Tax, Gujarat II Vs. Nanalal Tribhovandas and Another*, as under:

The jurisdiction of the Income Tax Officer to initiate reassessment proceedings u/s 34 is a jurisdiction which he derives u/s 34 and not by virtue of any directions given to him by the Appellate Assistant Commissioner. Moreover, the Appellate Assistant Commissioner himself had no jurisdiction u/s 31 of the Act of 1922 to issue directions which went to the extent of conferring jurisdiction upon the Income Tax Officer when he was not lawfully seized of jurisdiction.

16. We are in respectful agreement with the aforesaid decisions of the Madras and Gujarat High Courts. We are definitely of the view that the appellate or revisional authority, while holding the notice of assessment or reassessment to be invalid, could not direct the assessing authority to take fresh proceedings for assessment or reassessment, if the same had already become time-barred. Moreover, even if such a direction is given by the appellate or revisional authority, it would not have the effect of conferring jurisdiction on the assessing authority to initiate fresh proceeding u/s 12 of the Act by issuing a notice for assessment or reassessment, if the period of limitation prescribed in the aforesaid section during which such notice can be validly issued has already expired. We may, however, observe that the provisions of Section 12 have again been amended by Rajasthan Act No. 13 of 1969, which came into force with

effect from 5th September, 1969, and we are not expressing any opinion in respect of the amended provisions of Section 12, as we are only concerned with the state of law as it existed on May, 1965, when the fresh notice for reassessment was issued in the present case.

17. Mr. Pathak, appearing for the State of Rajasthan, also tried to argue that the first notice issued on 24th February, 1959, was valid but we are unable to consider any such argument in view of the fact that a categorical finding was recorded by the Board of Revenue on this question in its order dated 12th December, 1967, which has become final and conclusive between the parties, so far as the Board has held that the notice issued on 24th February, 1959, was invalid and the very foundation of the case was washed out and that, in the absence of a valid notice, the proceedings before the Sales Tax Officer were itself invalid. Now, in the proceedings, which have been newly initiated by the Commercial Taxes Officer, by issuing a fresh notice dated 6th May, 1965, it is not possible to entertain an argument relating to the validity of the earlier notice issued on 24th February, 1959.

18. Then, it was argued by Mr. Pathak that the petitioner should have exhausted the remedies provided under the statute before coming to this Court in a writ petition. The petitioner in the present case has challenged the very foundation of the proceedings for reassessment u/s 12 of the Act, as the sole argument of the petitioner in this writ petition is that the notice dated 6th May, 1965, was invalid as it was issued beyond the period of limitation of eight years prescribed in Section 12 of the Act. We may refer in this connection to the well-known decision of the Supreme Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, wherein it was held:

It is well-settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well-settled, will issue appropriate orders or directions to prevent such consequences.

19. It was also observed by their Lordships of the Supreme Court in the aforesaid case that the existence of an alternative remedy is not always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action. The aforesaid case was followed by a Division Bench of this Court in *Karam Chand Thappar & Bros. v. Sales Tax Officer, Jaipur* 1961 R.L.W. 420, where Sarjoo Prosad, C.J., as he then was, observed as under:

The existence of an alternative remedy is no bar to a party who comes to this Court with an allegation that its fundamental right has been infringed without the authority of law. In an appropriate case, it may be the duty of the superior court

to issue a writ of certiorari to correct the errors of an inferior court or tribunal called upon to exercise judicial or quasi-judicial functions and not to relegate the petitioner to other legal remedies available to him. If it is held that the Sales Tax Act itself does not authorise any such imposition and the law is not applicable to the circumstances of the case, the provision of a remedy by way of appeal under the Act cannot stand as a plea in bar.

20. In *Tata Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another*, their Lordships of the Supreme Court again reiterated the view expressed by them in the *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, and observed as under:

The power and jurisdiction of the High Court under Article 226 of the Constitution has been the subject of exposition from this Court. That it is extra-ordinary and to be used sparingly goes without saying. In spite of the very wide terms in which this jurisdiction is conferred, the High Courts have rightly recognised certain limitations on this power. The jurisdiction is not appellate and it is obvious that it cannot be a substitute for the ordinary remedies at law. Nor is its exercise desirable if facts have to be found on evidence. The High Court, therefore, leaves the party aggrieved to take recourse to the remedies available under the ordinary law if they are equally efficacious and declines to assume jurisdiction to enable such remedies to be by-passed. To these there are certain exceptions. One such exception is where action is being taken under an invalid law or arbitrarily without the sanction of law. In such a case, the High Court may interfere to avoid hardship to a party which will be unavoidable if the quick and more efficacious remedy envisaged by Article 226 were not allowed to be invoked.

21. In the present case, we have found that it is beyond any doubt that the notice issued on 6th May, 1965, was per se invalid, having been issued beyond the period of limitation prescribed in Section 12 of the Act and, as such, the Commercial Taxes Officer would be clearly acting without jurisdiction, if he is allowed to continue with the proceedings for reassessment on the basis of such an invalid notice. In our view, it would be causing harassment to the petitioner, if, in such circumstances, he is left to avail of the ordinary remedy of appearing before the assessing authority and after the order of reassessment is passed by him, then, to take recourse to the remedies provided under the Act of filing appeal, revision and reference. We think that this is a proper case, where the assessing authority has assumed jurisdiction although he had none on 6th May, 1965, the date when the fresh notice for reassessment was issued by him, and adequate relief should be given to the petitioner in the proceedings under Article 226 of the Constitution. It may also be pointed out that the reference application which has been preferred by the company before this Court for seeking a direction to the Board of Revenue to state the case does not involve the question of the validity or invalidity of the notice of reassessment dated 6th May, 1965, and, as such, this question can neither be raised nor decided by this Court in

such proceedings, even if a case was to be stated by the Board of Revenue at our instance.

22. We, therefore, hold that the Commercial Taxes Officer acted wholly without jurisdiction in issuing a fresh notice of reassessment u/s 12 of the Act on 6th May, 1965, as the same was issued after the expiry of the prescribed period of limitation of eight years from the end of the relevant assessment year.

23. The last submission made by the learned Additional Government Advocate was that the writ petition was filed after a considerable delay. The petitioner has tried to explain the delay and it has been stated by the Learned Counsel for the petitioner that the Board of Revenue decided the revision petition filed by the company before it on 12th December, 1967, in which, while holding the earlier notice dated 24th February, 1959, to be invalid, the Board still upheld the order of remand passed by the Appellate Commissioner and the rectification application filed by the State in that matter was dismissed on 15th October, 1969. It was also brought to our notice that the Board of Revenue had stayed the proceedings for reassessment, initiated by the notice dated 6th May, 1965, during the pendency of the revision petition before it. Learned Counsel for the petitioner further submitted that, after the decision of the Board of Revenue, the respondent did not take any further action in the matter and did not restart the proceedings for reassessment u/s 12 of the Act, and that no proceedings have taken place since then in furtherance of the service of the notice dated 6th May, 1965. As the petitioner has prayed for a writ of prohibition on the ground that the Commercial Taxes Officer lacked jurisdiction to issue notice or take proceedings u/s 12 for reassessment, and as the proceedings for reassessment are yet to take place, we do not think that it would be proper to refuse relief to the petitioner in this case on the ground of delay. In our view, the petitioner has sufficiently explained the delay in this case, which has occurred in filing the writ petition.

24. As a result of the aforesaid discussion, we allow the writ petition and quash the notice (annexure C) dated 6th May, 1965, issued by the Commercial Taxes Officer u/s 12 of the Rajasthan Sales Tax Act, 1954, and prohibit the respondent from taking any action for reassessment in pursuance of the fresh notice issued on 6th May, 1965. In the circumstances of the case, the parties are left to bear their own costs.