

(1974) 09 BOM CK 0023

In the Bombay High Court

Case No : Special Civil Application No. 883 of 1974

K. Jayaraja Ballal

APPELLANT

Vs

The Commissioner of Bombay Division

RESPONDENT

Date of Decision : 12-09-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1976) 78 BOMLR 689

Hon'ble Judges : Sawant, J;Malvankar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Malvankar, J.—The petitioner is a contract carriage operator on the Man-galore-Bombay route both ways. He had submitted returns in Form No. II prescribed under the Bombay Motor Vehicles (Taxation of Passengers) Rules, 1958 (hereinafter called "the Rules") framed u/s 22 of the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 (hereinafter called "the Act"), because he was running contract carriage services under contract carriage permits issued by the Transport Authority in the State of Karnataka. These returns were submitted by him u/s 4 of the Act. On receipt of these returns, respondent No. 2-the Tax Officer issued notice to the petitioner calling upon him to establish the correctness and completeness of the returns submitted by him u/s 6(b) of the Act. It is alleged by the petitioner that on receipt of this notice, he produced accounts maintained by him. But respondent No. 2-the Tax Officer refused to accept them and proceeded to assess the tax for the years 1969-70, 1970-71 and 1971-72, and passed the order, exh. A, on July 24, 1973. The petitioner, aggrieved by the order, went in appeal to the Commissioner, Bombay Division, respondent No. 1, u/s 11 of the Act. In appeal, the petitioner contended firstly that the Tax Officer ought to have assessed the tax for each month or a portion thereof, and inasmuch as in the instant case, the tax was assessed on yearly basis, the assessment was not in accordance with the provisions of the Act. He

also contended before the Commissioner that inasmuch as the order passed by respondent No. 2 was beyond the period of limitation of one year provided for u/s 7 of the Act, the assessment was barred by limitation. The Commissioner-respondent No. 1, however, negating both these contentions, dismissed the appeal, subject to the modification only in one respect and that was that he found that so far as the assessment of tax for the month of April 1971 was concerned, it was barred by limitation. The order passed by the Commissioner is at exh. B. Being aggrieved by this order, the petitioner has come to this Court under Articles 226 and 227 of the Constitution of India. It may be stated here that admittedly, though against the order of dismissal of appeal by the Commissioner, the petitioner had a remedy of revision u/s 11A of the Act, he did not pursue this remedy and straightway came to this Court under Articles 226 and 227 of the Constitution of India.

2. Before we proceed to deal with the points raised before us, it may be worthwhile to refer to a few facts which are not in dispute. The passenger tax, which the petitioner is alleged to be liable to pay, is in respect of motor vehicles Nos. MYX. 6277, 6357, 6677, 6737, 6797, 6887, 6927, 7097, 7247; MYX. 7517-, 7547, 7637, 7647, 7847, 7897, 8037, 8367, 8387 for the financial year 1969-70 and 1970-71 and in respect of motor vehicles Nos. MYX. 7247, 7547, -7847, 7857, 7887, 7897, 8037, MYX. 8367, 8387, for the period from April 1, 1971 to January 31, 1972. The petitioner had submitted his returns u/s 4 of the Act in Forms II and IV prescribed under the Rules framed under the Act. After these returns were received, it appears that the Tax Officer found that these returns were neither correct nor complete and, therefore, he issued notices Nos. 1759/TPA/THR/11-3-1970, 6879/TPA/THR/ 7-12-1970, 8003/TPA/THR/30-11-1971, and 3198/TPA/THR/15-5-72. Thereafter, the order, exh. A, shows that the petitioner was called upon to attend the office of respondent No. 2 on March 26, 1970, April 28, 1970, December 21, 1970, first week of April 1971, December 20, 1971 and June 7, 1972 with his accounts, so that he should represent his case either in person or through his representative and establish that the returns submitted by him were both correct and complete. However, according to respondent No. 2, the petitioner failed to produce accounts for the period from April 1, 1969 to March 31, 1970 and from April 1, 1970 to March 31, 1971. He, however, produced ledger-books and four receipt-books pertaining to the period from April 1, 1971 to March 31, 1972, on June 7, 1972. It further appears from the order that the petitioner was also asked to produce certain other documents, books etc, which he did not produce. Respondent No. 2-the Tax Officer, therefore, passed the following order:

In view of above facts, I (Tax Officer and R.T.O., Thana), in exercise of the powers vested in me under the provisions of Section 6 of the B.M.V. (Taxation of Passengers) Act, 1958, to the best of knowledge and belief, hereby assess tax on passengers payable by you for the period from 1.4.69 to 31.3.70, 1.4.70 to 31.3.71, and 1.4.71 to 31.1.72 as shown in the Appendix A, B and C attached below.

For any details, if required in respect of this assessment, you are requested to call at this Office on any working day before 3.00 p-m.

You are, therefore, hereby requested to please remit difference in passenger tax shown at column No. 5 of the Appendix A, B and C within 15 days from the date of receipt of this, failing which I will be constrained "to levy penalty in addition to P/tax and also to take further legal action.

Please note that assessment order for the previous period i.e. for the year 66-67, 67-68, 68-69 is being issued shortly.

Then, we have the Appendices, A, B and C attached to this order, in which against each vehicle we find the assessment tax determined, amount paid and the difference payable by the petitioner for the years 1969-70 (Appendix A), 1970-71 (Appendix B) and 1971-72 (Appendix C). It is not disputed before us that this assessment of tax was done by respondent No. 2 under Section 6(&) of the Act.

3. Now, the learned Additional Government Pleader representing the respondents has raised a preliminary objection. He has contended that inasmuch as admittedly the petitioner did not pursue his remedy of revision u/s 11A of the Act, the present petition is not maintainable under Articles 226 and 227 of the Constitution of India, the remedy of revision being equally adequate and efficacious remedy; while the learned Counsel Mr. Hegde, appearing on behalf of the petitioner, has argued that in the circumstances of this case, the remedy by way of revision could not be said to be equally adequate and efficacious. In support of his argument, he has firstly pointed out that the point which he is going to urge in this petition being a pure question of law regarding the interpretation of Sections 6 and 7 of the Act and there being already a decision of this Court in *The Canara Public Conveyance Co. Ltd. v. V.G. More* (1973) Special Civil Application No. 2209 of 1972, decided by Vaidya and Dudhia JJ., on June 14, 1973 (Unrep.) which according to him, is not correct, no useful purpose would have been served by filing a revision u/s 11A of the Act, because in such a case, the State Government would have been bound by the decision of this Court and his revision application would have been thrown out. Secondly, he has argued that the proposition of law, which he wants to urge before us, is that Section 6 of the Act must be read with Section 7 incorporated in it, in which case the present assessment would be barred by limitation prescribed by Section 7 of the Act and, therefore, inasmuch as respondent No. 2, while passing the order of assessment of tax at exh. A, determined the sum due u/s 6 of the Act after the period of limitation of one year prescribed by Section 7 of the Act expired, he had no jurisdiction to pass such an order. In these circumstances, pursuit of a remedy by way of revision provided by Section 11A of the Act would have been a futile effort. In support of his argument, he has relied upon the observations of their Lordships of the Supreme Court in *Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another*, These observations run thus (p. 494):

...But there is no inflexible rule that this Court will never entertain an appeal and numerous instances have occurred in this Court where such appeals have been admitted. It would have been futile in this case for the assesses to have gone to the court of revision which was bound by the ruling of the Allahabad High Court reported in *Swastika Tannery of Jajmau v. Commr. of Sales Tax* (1963) 14 S.T.C. 518 and it would have been equally futile to have gone to the High Court on a reference.

The learned Counsel, therefore, argues that if he had approached the State Government in revision u/s 11A of the Act, the unreported decision of this Court cited above would have come in his way, and the only way to get that decision corrected is to persuade this Court by filing the present petition straightway instead of approaching the State Government, u/s 11A of the Act. He has also drawn our attention to two other decisions, one of which is of this Court reported in *Raghunath Laxman Parkale Vs. The State*, In that case, this Court has observed that no tribunal and no officer can confer jurisdiction or authority or competence upon itself or himself by misconstruing a section. It is inarguable that an authority could claim to exercise jurisdiction by construing a section erroneously and thereby contending that the section so wrongly construed gives him the necessary power. In such a case, if the section has been wrongly construed, it would be a clear case of absence of jurisdiction apparent on the face of the record because the Court has got to look at the section and to decide whether the officer construing the section was in the right or in the wrong. The other decision is reported in *J.K. Manufacturers Ltd. (Formerly J.K. Cotton Manufacturers Ltd.) Vs. The Sales Tax Officer, Sector II, Kanpur and Others*, and the learned Counsel has relied upon the observations made by the Allahabad High Court in para. 29 at page 369. In that case also, a preliminary objection was raised on the ground that there being an alternative remedy -available, the petition was not maintainable, and the reply to the preliminary objection was that certain provisions having been held to be valid in a decision given by a single Judge of that High Court which was binding upon the Assistant Commissioner, the petitioner could only get an adjudication within a reasonable time on the question raised by it upon a petition under Article 226 of the Constitution. The preliminary objection, therefore was overruled and though alternative remedy was available, the petition was held maintainable.

4. The learned Additional Government Pleader, however, has drawn our attention to a decision of the Supreme Court reported in *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, in which their Lordships of the Supreme Court have held that when an alternative and equally efficacious remedy is open to a, litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. However, they have also held that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs, and where such a remedy exists, it would be a

sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self-imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may, therefore, in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted. The real question, therefore, is whether the present case is such an exceptional case in which even though the petitioner has not pursued his alternative remedy of revision u/s 11A of the Act the present petition should be entertained under Articles 226 and 227 of the Constitution of India. In this connection, the learned Counsel Mr. Hegde for the petitioner has urged before us that the proposition he wants to canvass in this petition is regarding the interpretation of Sections 6 and 7 of the Act. The proposition is that if the assessment of tax is one u/s 6 of the Act, the bar of limitation provided for by Section 7 is read in Section 6, and secondly, if Section 7 is read in Section 6 of the Act, on the interpretation of Section 7, the assessment made u/s 6 must be not only initiated within one year from the expiry of the month for which tax leviable has escaped assessment, but it must also be completed and sum determined within one year. Surely, whatever our ultimate decision regarding the proposition placed before us for our consideration by the learned Counsel may be, the State Government, under the powers conferred on it u/s 11A of the Act, would not have been a proper forum for correctly interpreting Sections 6 and 7 of the Act, particularly when as the learned Counsel has pointed out to us, there are certain observations made by this Court in the unreported decision in *The Canara Public Conveyance Co. Ltd. v. V.G. More*, which go against the interpretation which he seeks to put on Sections 6 and 7 of the Act. In such a case, the pursuit of a remedy of revision u/s 11A of the Act would have been a futile exercise. In this connection, we may also point out that when the petitioner filed the present petition, the remedy by way of revision u/s 11A of the Act was within limitation, and even then he approached this Court under Articles 226 and 227 of the Constitution of India. It is not as if that he has come to this Court under extraordinary jurisdiction because the remedy by way of revision u/s 11A of the Act was barred by limitation on the day he filed the present petition. "We are, therefore, of the opinion that this is one of those cases where the alternative remedy by way of revision u/s 11A of the Act would certainly not have been equally adequate and efficacious remedy. We therefore, proceed to consider this petition on merits.

5. Turning to the merits of the case, the first question that is raised before us by the learned Counsel Mr. Hedge for the petitioner is that under the Act and the Rules framed thereunder, the basis of assessment being month or a portion thereof, the assessment made in the present case by the Tax Officer being on yearly basis, is illegal. It is not necessary in this case to refer in detail to the provisions of Sections 3 and 4 of the Act and Rule 4 of the Rules framed thereunder with Forms II and IV prescribed under the Rules, which definitely

disclose that the basis of assessment is month or a portion thereof and not year. The learned Additional Government Pleader Mr. Kadam does not dispute this position. The real question, therefore, for consideration is whether in fact in this case assessment is done by the Tax Officer on yearly basis or on monthly basis. The learned Counsel Mr. Hedge in this connection has placed reliance on the order of the Tax Officer at exh. A, particularly the Appendices A, B and C attached to it. A reference to these Appendices would show that the Tax Officer has entered the actual fares collected from the passengers during the year against each of the vehicles separately, the amount paid towards passenger tax and the difference due and payable from the petitioner. These Appendices nowhere indicate that the assessment was done by the Tax Officer on monthly basis. However, the last but three paragraphs of the order, which we have already quoted above, in our opinion, shows what these Appendices are intended to convey. In our opinion, what these Appendices show is the passenger tax, payable by the petitioner for different periods mentioned in the order and the Appendices, as assessed by the Tax Officer. They are certainly not intended to convey to the petitioner that the assessment is made on the basis of year and not on the basis of month. The learned Counsel Mr. Hedge, however, has drawn our attention to para. 5 of the judgment of the Commissioner, exh. B, which runs thus:

The representative of the R.T.O., Thana, stated that the respondent has given his remarks separately and that the tax had to be assessed on yearly basis as the appellant failed to produce the account books etc., in spite of opportunities given, to him from time to time and that if Section 7 is read with Section 6 of the said Act, it will be seen that the tax assessed by the respondent is within the limitation period allowed under the provisions of the Act.

Relying on this paragraph of the judgment of the Commissioner, Mr. Hegde submits that the Commissioner has recorded a finding of fact that the assessment in this case was made by the Tax Officer on yearly basis and not on monthly basis. We cannot agree. The remarks of the representative of the respondent referred to by the Commissioner in this paragraph are the replies given by him to the memorandum of appeal filed by the petitioner before the Commissioner. In other words, the Commissioner only refers to what the respondent has said in reply to the memorandum of appeal filed by the petitioner before him. It is, therefore, extremely difficult to hold on the basis of this paragraph that the Commissioner has actually recorded a finding of fact that the assessment in this case was made on yearly basis. Apart from it, we have ourselves verified from the registers on the record in which the actual assessment made by the Tax Officer is recorded, and we are satisfied that the actual assessment was done by the Tax Officer on monthly basis and not on yearly basis. Moreover, respondent No. 2 in the present petition has filed his return on affidavit, in which he has made a clear statement that the assessment in this case was done on monthly basis, and there is no affidavit filed by the petitioner in reply challenging the statement of respondent No. 2 made by him in

his affidavit. We may also notice here that it is not the case of the petitioner that because the assessment in this case has been made by the Tax Officer on yearly basis, the amount of tax is more than what it would have been if the assessment was done on monthly basis. In fact, the Commissioner has observed in para. 6 of his judgment that the petitioner did not raise any dispute before him regarding the amount of tax assessed by the Tax Officer and demanded by respondent No. 2 in the notice of demand dated July 24, 1973. We are, therefore, satisfied that in the present case, the assessment was done by the Tax Officer on monthly basis as required by law and not on yearly basis as contended by the petitioner.

6. The learned Counsel Mr. Hegde then argued that the order of the Tax Officer at exh. A does not indicate whether the assessment was done on monthly basis and, therefore, he could not challenge the order on the ground that the assessment being made on yearly basis, the same was illegal. It is no doubt true that we do not find any indication in the order, exh. A, passed by the Tax Officer that the assessment was made by him on monthly basis. It also may be true that therefore the petitioner could not raise any dispute regarding the illegality or otherwise of the basis of assessment before the Commissioner. But we may point out that the Tax Officer in his order, exh. A, has stated thus in the last but two paragraphs:

For any details, if required in respect of this assessment, you are requested to call at this office on any working day before 3.00 p.m.

Obviously, therefore, if the order passed by the Tax Officer did not indicate anything about the basis of assessment, the petitioner could have called at the office of respondent No. 2 and could have obtained details with regard to the basis of assessment, in which case he would have certainly been in a position to challenge, if he so desired, the basis of the assessment. Admittedly, after the order was passed by the Tax Officer, the petitioner did not make any attempts to obtain these details from the Office of the Tax Officer. Then again, notice of demand was issued to the petitioner u/s 9(1) of the Act read with Rule 9 of the Rules in Form VI prescribed under the Rules. This Form, so far as it is relevant here, is in these words:

You are hereby required to take notice that a sum of Rs... as tax and a penalty of Rs... have become due and recoverable from you under section... of the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958, full details of which can be had from my office (*italics ours*) and that they have remained unpaid and that unless they are paid within fifteen days from the date on which this notice is served on you, compulsory proceedings will be taken according to law for the recovery of the whole of the amounts due by you.

Evidently, therefore, even the notice of demand served in this case on the petitioner says that if full details of the demand made under the notice were required by the petitioner, they could be had from the office of the Tax Officer. Here again, admittedly the petitioner, even after the receipt of this notice of

demand, did not approach the Tax Officer for full details of the demand. If he had done so, he would have been able to ascertain the basis of the present assessment and would have been able to ascertain whether the basis was monthly or yearly. It would be seen that the provisions of the Act and the Rules as they stand today, cast no obligation on respondent No. 2 to supply any details to an assessee-operator regarding the basis of assessment or any other details. It is true that public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing, and for that purpose it would be but fair that necessary details are supplied to an assessee-operator along with the notice of demand if he desires to file an appeal which is provided by the Act u/s 11 only against the notice of demand. However, in view of the facts and circumstances of this case, we have no hesitation in coming to the conclusion that in fact the assessment in this case was done by the Tax Officer on monthly basis and not on yearly basis and, therefore, it is perfectly legal and valid under the Act.

7. The next question that is agitated before us by the learned Counsel Mr. Hegde for the petitioner is regarding the interpretation of Sections 6 and 7 of the Act. The point raised by him is that Section 7 of the Act which provides for fares escaping assessment and lays down bar of limitation of one year, must also be read in Section 6 of the Act which provides for procedure, where no returns are submitted or the returns submitted by an operator are either incorrect or incomplete. Otherwise, his argument is that the Tax Officer would be permitted to do indirectly what he is prohibited from doing directly. Before we proceed to deal with this question, it would be necessary to refer to certain relevant provisions including Sections 6 and 7 of the Act and the Rules framed thereunder. Section 3 of the Act is a charging section and Sub-section (7) says that there shall be levied and paid to the State Government a tax on all passengers carried by road in stage carriages at such rate as would yield an amount equal to twenty-two per cent, of the inclusive amount of fares payable to the operator of a stage carriage. Section 4 provides for submission of returns. It says that in respect of the stage carriage or stage carriages held by an operator, he shall deliver or cause to be delivered to the Tax Officer or to such prescribed officer as the Tax Officer may specify a return in the prescribed form and manner either daily or at such intervals as may be prescribed. When any return is received by a prescribed officer, he is to forward it to the Tax Officer within the prescribed period and in the prescribed manner. Section 5 speaks about the tax to be paid every month into Government treasury and it says that the tax payable during any month in accordance with the returns submitted u/s 4 shall be paid into a Government treasury by the operator and the receipt evidencing such payment forwarded to the Tax Officer, on or before such date or dates of the month immediately succeeding as may be prescribed in the case of fleet-owners and other operators. Then comes Section 6 of the Act which provides for procedure where no returns are submitted and the returns submitted are incorrect or incomplete. It runs

thus:

6. In the following cases, that is to say,-

(a) where no returns have been submitted by the operator in respect of any stage carriage for any month or portion thereof, or

(b) where the returns submitted by the operator in respect of any stage carriage for any month or portion thereof appear to the Tax Officer to be incorrect or incomplete.

the Tax Officer shall, at any time after giving the operator a reasonable opportunity, in case (a) of making his representation, if any, and in case (b) of establishing the correctness and completeness of the returns submitted by him, determine the Sum payable to the State Government by the operator by way of tax during such month or portion thereof:

Provided that the sum so determined shall not exceed the maximum tax which would have been payable to the State Government if the stage carriage had carried its full complement of passengers during such month or portion thereof.

Section 7 of the Act provides for fares escaping assessment. It reads thus:

7. If, for any reason, the whole or any portion of the tax leviable under this Act for any month has escaped assessment, the Tax Officer may, at any time within, but not beyond one year from the expiry of that month, assess the tax which has escaped assessment, after issuing a notice to the operator and making such inquiry as the officer may consider necessary.

8. Turning to the Rules framed under the Act, Rule 4 provides for submission of returns and says that daily returns are to be submitted in Form II, weekly returns in Form III and monthly returns in Form IV. Rule 5 speaks of the manner of delivery of returns. Rule 6 lays down the time for delivery of returns. Sub-rule (1) says that every monthly return in Form I shall be delivered or cause to be delivered before the end of the month immediately succeeding the month to which the return relates. Sub-rule (2) says that every daily return in Form II shall be delivered or cause to be delivered on the day immediately following the day to which the return relates. Sub-rule (3) says that every weekly return in Form III shall be delivered or cause to be delivered within two days of the expiry of the week to which the return relates, and Sub-rule (4) provides that every monthly return in Form IV shall be delivered or cause to be delivered not later than the seventh day of the month immediately following the month to which the return relates. It would thus be seen that Rule 6 provides for speedy submission of returns to the Tax Officer. "We have already seen that u/s 5 of the Act, tax is required to be paid every month in accordance with the returns and, therefore, Rule 7 provides for submission of receipt evidencing payment of tax. Rule 8 provides for notice in case referred to in Section 6 of the Act. It says that before determining the sum payable to the State Government in the cases referred to in Section 6, the Tax Officer shall serve a notice in Form V on the operator and shall

fix a date (not being earlier than seven days, from the date of receipt of such notice) for the production of such accounts and documents as the Tax Officer may require and for considering the objections, if any, of the operator to the demand.

9. It would thus be seen that the scheme of the Act and the Rules framed thereunder appears to be that an operator is to submit his returns daily, weekly and monthly and as soon as these returns are submitted to the Tax Officer, he is to scrutinise them and if he finds that the returns submitted are correct- and the tax due and payable according; to the returns is paid, he is not required to do anything. If, however, he finds that any operator has not submitted his returns or if returns submitted by him are either incomplete or incorrect, then he is to proceed u/s 6 of the Act after giving: the required notice. If, however, he finds that any fares have escaped assessment, then he is to proceed u/s 7 of the Act, again, after issuing a notice to the operator and making such inquiry as he may consider necessary. "When he decides to proceed u/s 6 either because no returns have been submitted by the operator in respect of any stage carriage for any month or portion thereof or because the returns submitted by him in respect of any stage carriage for any month or portion thereof appear to him to be incorrect or incomplete, then after giving the operator a reasonable opportunity of making his representation in the case where no returns are submitted and of establishing the correctness and completeness of the returns where returns submitted by him are either incorrect or incomplete, he is to determine the sum payable to the State Government by the operator by way of tax during the month or portion thereof at any time after giving him a reasonable opportunity of being heard. Obviously, therefore, Section 6 itself does not disclose any limitation imposed on the Tax Officer for assessing the tax in cases where no returns are submitted or the returns submitted are either incorrect or incomplete. All that he is required to do u/s 6 is to issue a notice in Form V as prescribed by Rule 8 and thereafter to determine the sum payable at any time; whether he is to issue the notice before the expiry of the period of one year or he can issue this notice at any time he chooses and even after the expiry of the period of one year from the expiry of the month in respect of which the returns are not submitted or the returns submitted are either incomplete or incorrect it does not say. If, therefore, Section 6 of the Act is read in isolation without reference to Section 7, it is possible to contend that when a Tax Officer proceeds u/s 6, he can issue notice under Rule 8 at any time even after the expiry of the period of one year from the expiry of the month of assessment and determine the sum payable by the operator at any time thereafter. Turning to Section 7 of the Act, it says that if for any reason the whole or any portion of the tax leviable under the Act for any month has escaped assessment, the Tax Officer may, at any time within one year, but not beyond, from the expiry of that month, assess the tax which has escaped assessment, after issuing a notice to the operator and making such inquiry as he may consider necessary. It is, therefore, clear that so far as the cases of escaped assessment are concerned, Section 7 imposes a bar of limitation of one year and

says that the Tax Officer may assess the tax which has escaped assessment, after issuing a notice to the operator and making an inquiry, if necessary, but he must do so within a period of one year from the expiry of the month of assessment and not beyond. When, therefore, we compare Section 7 with Section 6 of the Act, we find that whereas Section 6 imposes no bar of limitation for issuing a notice and making inquiries under that section, Section 7 does impose such a bar in respect of escaped assessment.

10. Now, the learned Counsel Mr. Hegde for the petitioner has argued that though Section 6 itself does not disclose any bar of limitation, Section 7 must be read in Section 6 for the purpose of limitation, in which case not only the Tax Officer would be required to issue notice under Rule 8 within one year from the month of assessment, but he will have also to hold an inquiry and determine the same payable by the operator within the period of one year. In support of his argument that the bar of limitation provided for by Section 7 must also be read in Section 6, he has relied upon two decisions of this Court, one reported in Commissioner of Income Tax, Bombay City-I, Bombay Vs. Narsee Nagsee and Co., and the other in Bissesar House Vs. State of Bombay and Others, The view taken by this Court in I.-T. Commr. v. N. Nagsee & Co. is also confirmed by the Supreme Court in The Commissioner of Income Tax, Bombay City I, Bombay Vs. Narsee Nagsee and Co., Bombay, N. Nagsee & Co.'s case arose under Business Profits; Tax Act, 1947, and Sections 11 and 14 of that Act came for consideration before this Court in that case. It would be useful to refer to Section 11(1) and Section 14 of Business Profits Tax Act 1947, so far as they are relevant here. Section 11(1) reads thus:

The Income Tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay business profits tax, to furnish within such period, not being less than forty-five days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice, the profits, taxable profits of the business or the amount of deficiency, if any, available for relief u/s 6:

Section 14 of the Business Profits Tax Act, 1947, reads thus:

14. Profits escaping assessment.-If, in consequence of definite information which has come into his possession, the Income Tax Officer discovers that profits of any chargeable accounting period chargeable to business profits tax have escaped assessment, or have been under-assessed, or have been the subject of excessive relief, he may at any time within four years of the end of the chargeable accounting period in question serve on the person liable to Such tax a notice containing all or any of the requirements which may be included in a notice u/s 11, and may proceed to assess or reassess the amount of such profits liable to

business profits tax, and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.

Now, the argument advanced in that case was that the Legislature had not provided any limitation of time with regard to the issue of notice u/s 11 and, therefore, the notice under that section could be issued with regard to any chargeable accounting period and at any time. The contention of the other side was that Section 14 which provides for limitation for four years must be read with Section 11 and, therefore, even for the purpose of issuing a notice u/s 11, it cannot be issued after the expiry of the period of four years. This Court held that Section 14 made it clear that the Legislature did not intend to put an assessee to the peril of an indefinite apprehension with regard to the payment to tax in respect of profits made under the Business Profits Tax Act. The intention of the Legislature was clear that after four years of the end of the chargeable accounting period, the assessee should not be proceeded against even if profits had escaped assessment or his profits had been under-assessed or had obtained a relief to which he was not entitled. In as much as Section 11 did not indicate any period of time with regard to the issuing of a notice, it would be right for the Court to import into Section 11 the consideration which led the Legislature to fix a limitation of time for the purpose of issuing a notice u/s 14. Therefore, a notice issued four years after the close of the chargeable accounting period, being beyond the time mentioned in Section 14, was not valid u/s 11. In this connection, the learned Judges have observed thus in paras. 3 and 7 of the judgment:

Every Act must be construed as a whole and the duty of the Court must be as far as possible to reconcile the various provisions of a statute. This obligation is all the greater in the case of a taxing statute. The Business Profits Tax Act being a taxing statute, if the Court can reconcile Section 11 and Section 14 and reconcile it in a manner which is beneficial to the subject, then it is its duty to do so.

There is also another aspect to which the learned Judges of this Court have referred in their judgment and that aspect is that a power conferred on an officer for the purpose of assessment must be exercised reasonably, and looking to the provisions of Section 14 of the Business Profits Tax Act, 1947, it could not be said that when the officer issued a notice four years after the close of the chargeable accounting period, he was exercising his statutory authority in a reasonable manner. It would thus be seen that in the Business Profits Tax Act, 1947, when similar situation arose, this Court reconciled the provisions of Section 11 and those of Section 14 of that Act and held that the bar of limitation imposed by Section 14 of that Act must be read in Section 11 for the purpose of issuing notice. Mr. Hegde, therefore, has argued that similarly, in the instant case, though Section 6 of the Act is silent regarding the period of limitation, considering the various provisions of the Act to which we have already made a reference, the bar of limitation imposed by Section 7 must be read in Section 6 of the Act, with the result that even for the purpose of Section 6 no notice can be

issued after the expiry of the period of one year from the month of assessment. Now, it is clear from Section 7 of the Act that the Legislature did not intend to put an assessee to the peril of an indefinite apprehension with regard to the payment of tax in respect of passengers fares assessed under the Act. The intention of the Legislature is clear that after one year of the end of the month under assessment, the operator should not be proceeded against even if fares had escaped assessment for any reason. Inasmuch as Section 6 does not indicate any period of time with regard to the issuing of a notice, would it be right for us to say that therefore for the purpose of Section 6, notice could be issued even after the expiry of one year from the end of the month of assessment, though this would amount to putting the operator to the peril of an indefinite apprehension with regard to the payment of tax on passenger fares? If we are not to construe Section 6 of the Act in a way which would put the operator-assesses to an indefinite apprehension with regard to the payment of tax on passenger fares, we must certainly read Section 6 along with Section 7 and read the period of limitation provided for by Section 7 also in Section 6 of the Act. Otherwise, the result would be that the Legislature, while saving the subject from harassment of proceedings with regard to escaped assessment, permitted the same kind of harassment with regard to the initiation of proceedings u/s 6 of the Act even after the lapse of one year. We, therefore, think that there is a good deal of force in the point raised before us by the learned Counsel Mr. Hegde for the petitioner.

11. We may point out here that the view taken by this Court in *N. Nagsee & Co.*'s case cited above was confirmed by their Lordships of the Supreme Court in the same case *I.-T. Commr. v. Narsee Nagsee & Co.* Their Lordships have held that Section 14 of the Business Profits Tax Act, 1947, must be read with Section 11 of that Act, though Section 11 does not provide for any period of limitation.

12. Our attention is also drawn by Mr. Hegde to a Pull Bench decision of this Court in *Bisesar House v. State of Bombay*, mentioned above. That was a case under the Central Provinces and Berar Sales Tax Act, 1947. Section 11(5) of that Act is similar to Section 6 of the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958, and Section 11A of that Act is also similar to Section 7 of our Act. In that case, this Court held that Section 11A must be read along with Section 11(5) of the Central Provinces and Berar Sales Tax Act, 1947, and if so read, the proceedings u/s 11(5) of that Act cannot be initiated after the lapse of the period of three years provided for by Section 11A of that Act. In other words, the rule laid down by this Court in *N. Nagsee & Co.*'s case and approved by Supreme Court was applied to a similar case arising under the Central Provinces and Berar Sales Tax Act, 1947.

13. The learned Additional Government Pleader for the respondents has, however, relied upon an unreported decision of this Court in *The Canara Public Conveyance Co, Ltd. v. V.G. More*. That was also a case under the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958. However, the question raised before

this Court in that case was: "In so far as the notices of demand covered the period after the expiry of one year from the month in which the tax became payable, the claim made by the Tax Officer was barred by Section 7 of the Act." While dealing with this question, the learned Judges have observed thus:

There is no substance in the second contention. Section 6 and 7 are procedural sections. Section 6 empowers the Tax Officer to assess tax after perusal of the returns, if any, filed by the operators of the bus, or to take action regarding assessment when returns are not filed. Section 7 comes into operation only when assessment has been done u/s 6 and when it is later discovered that there is an omission to collect tax. It is well settled rule of construction of Statutes that the Legislature never intends to enact any surplus words, and various sections of the enactment must be read so as to harmonize them. Mr. Desai submitted that Section 7 applies in every case where tax has escaped assessment, whether there was or there was not any assessment or determination, of tax u/s 6. Such an interpretation would render Section 6 nugatory, which empowers the Tax Officer at any time to determine the tax when it is found that no return was filed or when the returns filed are incomplete or incorrect.

It is true that if the assessment itself is not made within a year after the end of the month in which the tax is payable, Section 7 will bar the recovery of any tax escaped in such belated assessment, but it is reasonable to suppose that the Legislature intended to empower the Tax Officer to peruse the returns and determine the tax payable u/s 6 as early as possible as they wanted to provide for escaped tax by laying down in Section 7 that escaped tax could also be recovered, simultaneously protecting the operators from harassment by laying down the period of one year so that there would be no uncertainty after a year in the minds of the tax payers. It is therefore natural that the Legislature intended that Section 7 would apply only after the assessment is made u/s 6 and when some tax escaped assessment. The respondents are, therefore, right in contending that Section 7 has no application to the facts of the present case inasmuch as no assessment was made by the Tax Officer in respect of the Returns filed by the petitioners till May 27, 1968 when for the first time he issued notice u/s 6(b) of the Act.

In that case, the period for which the tax was assessed and notice of demand was issued was from September 15, 1966 ending with May 1, 1968. This Court took the view that Section 7 had no application to the facts of the case, inasmuch as no assessment was made by the Tax Officer in respect of the returns filed by the petitioners till May 27, 1968, when, for the first time, he issued notice u/s 6(b) of the Act. It appears, therefore, that that was a case of a proceeding started u/s 6(b) of the Act. Though the period under assessment was from September 15, 1966 ending with May 1, 1968, notice u/s 6(b) of the Act was issued on May 27, 1968. Though, therefore, notice u/s 6(b) was issued in that case long after the expiry of the period of one year, the assessment was held valid because, according to the learned Judges, Section 7 had no application

to the facts of such a case, inasmuch as Section 7 applies only to escaped assessment. In arriving at this decision, this Court has observed that "Section 7 comes into operation only when assessment has been done u/s 6 and when it is later discovered that there is an omission to collect tax." In other words, according to the view taken by this Court in that decision, Sections 6 and 7 cannot be read together and, therefore, so far as the proceedings u/s 6 of the Act are concerned, the bar of limitation provided for by Section 7 of the Act cannot apply.

14. Now, it is needless to say that there can be a case of escaped assessment under the Act when fares have escaped assessment because the process of assessment has not been initiated with regard to the taxing of fares. The liability arises by reason of Section 3 which is a charging section, and the next stage under the Act is to assess the tax on the fares shown in the returns, and if for any reason no tax is assessed on such passenger fares disclosed in the returns, then also those fares must be said to have escaped assessment. (Vide I.-T. Commr. v. N. Nagsee & Co., at page 2, para. 4). Likewise, fares may escape assessment in a case where fares have resulted in no assessment after the completion of the process of assessment. (Vide I.-T. Commr. v. Narsee Nagsee & Co., para. 5). Similarly, there can be a case of escaped assessment where for one reason or the other after the scrutiny of the returns, the Tax Officer has taxed only part of the fares, and fares for some months have escaped his attention. In such a case, the fares for the month which have remained to be taxed for one reason or the other, must be said to have escaped assessment. Coming to Section 6 of the Act, in a case where no returns have been submitted by the "operator for any month or portion thereof for more than one year from the end of the month of the assessment, surely the Tax Officer cannot initiate proceedings for the assessment of the tax in such a case u/s 6(a) of the Act because of the bar of limitation of one year provided by Section 7 of the Act. He can initiate proceedings for the assessment in such a case only within the period of one year provided for by Section 7 of the Act. Similarly, in a case where returns are received by him but he does not initiate any proceedings for assessment in respect of those returns for one reason or the other for more than one year, he would not be able to issue notice u/s 6(b) of the Act after the lapse of one year. It must be remembered that in either case there is not only no assessment completed but not even initiated. Can it be, therefore, said that in both these cases because the assessment is not done, the bar provided for by Section 7 cannot apply? In our opinion, in both these cases, even though the assessment is not initiated, much less completed, no notice can be issued by the Tax Officer after the lapse of one year from the period of assessment. Same is the position regarding the proceedings u/s 6(b) of the Act. After the returns are submitted by an operator, if the Tax Officer, after the lapse of one year from the period of assessment, finds that the returns are incomplete or incorrect, can he issue notice u/s 6(b) of the Act even though this is not a case of completed assessment? In our opinion, for the reasons we have already discussed, whether

the assessment is made or not made u/s 6 of the Act after the lapse of one year from the period of assessment, no notice can be issued u/s 6 in view of the bar of limitation imposed by Section 7, whether or not the Tax Officer has made or completed the assessment. The observations, therefore, of this Court in the aforesaid decision viz. Section 7 comes into operation only when assessment has been done u/s 6 and when it is later discovered that there is an omission to collect tax", with great respect, are not correct. In our view, the bar imposed by Section 7 of the Act applies even to the cases coming u/s 6 of the Act whether or not assessment is done and even u/s 6 of the Act no notice can be issued after the lapse of one year from the month or period of assessment. It appears from the aforesaid observations of the learned Judges that "such an interpretation would render Section 6 nugatory, which empowers the Tax Officer at any time to determine the tax when it is found that no return was filed or when the returns filed are incomplete or incorrect." Here again, with great respect, we are unable to agree with these observations. What Section 6 provides is that after notice is issued to the operator, the Tax Officer shall at any time determine the sum payable to the State Government by the operator. In other words, once the notice is issued within the period of one year provided for by Section 7, the Tax Officer can determine the sum payable to the State Government by the operator at any time thereafter. There is no bar of limitation for determining the sum payable. The bar of limitation is for initiation of proceedings by giving notice to the operator. If that is so, there is no question of Section 6 being rendered nugatory if the bar of limitation provided for by Section 7 is read in Section 6 of the Act. Further, our attention is drawn by the learned Additional Government Pleader to the observations of the learned Judges viz.:

...but it is reasonable to suppose that the Legislature intended to empower the Tax Officer to peruse the returns and determine the tax payable u/s 6 as early as possible as they wanted to provide for escaped tax by laying down in Section 7 that escaped tax could also be recovered, simultaneously protecting the operators from harassment by laying down the period of one year so that there would be no uncertainty after a year in the minds of the tax payers.

We agree with these observations. But we do not think, for the "reasons we have already discussed, that therefore the Legislature intended that Section 7 would apply only after the assessment is made u/s 6 of the Act. In fact, so far as the reading of only the bar of limitation of one year provided for by Section 7 in Section 6 of the Act is concerned, it does not help the petitioner in this case, because admittedly notices were issued in this case u/s 6 of the Act by the Tax Officer within the period of one year as already indicated by us above. We have, however, discussed this point raised before us because Mr. Hegde for the petitioner has contended that the whole of Section 7 must be read as incorporated in Section 6 of the Act, so that not only the assessment must be initiated by issuing a notice to the operator u/s 6 before the expiry of the period of one year from the month of assessment, but the Tax Officer must also determine the sum payable by him to the State Government within one year. In

the instant case, admittedly the sum was determined by the Tax Officer u/s 6 of the Act on July 24, 1973 long after the expiry of one year from the period of assessment. Unless, therefore, the petitioner succeeds in showing that the whole of Section 7 must be incorporated in Section 6 of the Act, his petition would fail. We have, however, so far come to the conclusion that Section 6 must be read with Section 7 of the Act, and if so read, the bar of limitation of one year would apply even to the initiation of proceedings for assessment u/s 6 of the Act. The learned Additional Government Pleader has not been able to show to us any authority in support of his contention that Section 7 cannot be read along with Section 6 for the purposes of applying the bar of limitation to the initiation of proceedings u/s 6 of the Act.

15. Turning to the next question that not only assessment of tax must be initiated u/s 6 of the Act within one year but it must also be completed and sum determined within one year, the argument of Mr. Hegde for the petitioner is that Section 7, if properly construed, definitely shows that in cases of escaped assessment the Tax Officer is required to assess the tax which has escaped assessment within one year, but not beyond one year, after issuing a notice to the operator and making such inquiry as the officer may consider necessary. In other words, his argument is that even the sum payable by the operator to the State Government on the assessment must be determined within one year. Secondly, his submission is that even for the purpose of proceedings u/s 6 of the Act, Section 7 must be read as incorporated in Section 6 as a whole, with the result that not only the assessment must be initiated within one year u/s 6, but the sum payable to the State Government by the operator must also be determined within the period of one year. We first propose to examine whether Section 7 of the Act can bear the interpretation sought to be put by Mr. Hegde for the petitioner.

16. It is no doubt true that the expression "assess the tax" used in Section 7 of the Act means "to settle, determine or fix the amount of taxation to be paid by a person" (vide The Oxford English Dictionary, vol. I, p. 506, col. 3) and, therefore, it may appear that the words "the Tax Officer may, at any time within, but not beyond one year from the expiry of that month, assess the tax which has escaped assessment" used in Section 7 mean that the Tax Officer may determine the sum payable by the operator to the State Government at any time within the period of one year and not beyond one year. But we are unable to accept this interpretation attempted by Mr. Hegde. In the first place, in our opinion, the intention of the Legislature in enacting the provisions of Section 7 is that the Tax Officer is to issue notice contemplated by Section 7 within, but not beyond, one year from the expiry of the month of assessment, and thereafter after making such inquiry as the officer may consider necessary, he may assess the tax at any time. That intention would become absolutely clear if we read Section 7 to run thus:

If, for any reason, the whole or any portion of the tax leviable under this Act for

any month has escaped assessment, the Tax Officer may, after issuing a notice to the operator: within, but not beyond one year from the expiry of that month, and making such inquiry as the Officer may consider necessary, at any time assess the tax which has escaped assessment.

In this connection, it must be borne in mind that if the interpretation of the petitioner is accepted, the words "at any time" would become redundant and would almost be rendered nugatory, because if the tax is to be assessed within one year and not beyond, it is not necessary to say that the tax may be assessed at any time within that year. Even if the words "at any time" are not there, the Tax Officer must assess the tax at any time within that year and not beyond. If, on the other hand, the words "at any time" are read qualifying the verb "assess", they would mean that provided notice is issued within one year and not beyond, the Tax Officer may, at any time, assess the tax which has escaped assessment. Such an interpretation would also be in consonance with the provisions of Section 6 read with Section 7 of the Act, because in that case, as we have already pointed out, the Tax Officer would be required to issue notice u/s 6 within one year from the expiry of the month of assessment and thereafter he may determine the sum payable by the operator to the State Government at any time. Thirdly, it is also difficult to believe that the Legislature intended that not only notice is to be issued within one year but the sum payable by the operator to the State Government must be determined within one year and not beyond, because it is possible to conceive cases where for various valid reasons beyond the control of the Tax Officer or even operator, the Tax Officer may not be able to complete the assessment and determine the sum payable by the operator within one year after he has issued notice. We are, therefore, of the opinion that Section 7 of the Act cannot bear the interpretation sought to be put on it by the learned Counsel for the petitioner. In our opinion, in cases of escaped assessment u/s 7, all that is necessary for the Tax Officer to do is to issue notice within one year and thereafter he may assess the tax, that is to say, determine the sum payable by the operator to the State Government at any time. In such an event, we do not see any harassment to the operators-assesseees.

17. In the view we have taken regarding the interpretation of Section 7 of the Act, it is unnecessary to go into the question as to whether or not the whole of Section 7 must be read incorporated in Section 6 of the Act. We may, however, point out that if the interpretation attempted by Mr. Hegde for the petitioner, of Section 7 is accepted and with that interpretation Section 7 is incorporated in Section 6, then it would hardly fit in Section 6, because we have already indicated that Section 6 requires in clear terms that the Tax Officer shall at any time determine the sum payable to the State Government by the operator by way of tax during the month or portion thereof after giving the operator a reasonable opportunity of making his representation when it is a case where no returns are submitted, and of establishing the correctness and completeness of the returns in a case where the returns submitted are either incorrect or incomplete. Looking to the structure of Section 6 and the place of the words "at

any time" in that section, it is impossible to read Section 7 in Section 6 and hold that even in cases of proceedings u/s 6 of the Act, the Tax Officer must determine the sum payable to the State Government by the operator within one year.

18. We, therefore, hold that Section 7 cannot bear the interpretation attempted by Mr. Hegde for the petitioner, and assuming it does, it is impossible to read Section 7 in Section 6 of the Act with that interpretation. We, however, hold that the bar of limitation imposed by Section 7 for the cases of escaped assessment also applies to the proceedings u/s 6 of the Act and, therefore, Section 7 and Section 6 have got to be read together. In the result, the assessment made by the Tax Officer in the instant case after issuing notices u/s 6 of the Act -within the period of limitation of one year is perfectly valid in law, though the sum payable by the operator to the State Government is determined long after the expiry of one year.

19. The petition, therefore, fails and the rule is discharged with costs.