
(1976) 08 AP CK 0003

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 1 of 1976

Khetmal Parekh and Company

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 03-08-1976

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 149

Citation : (1976) 38 STC 531

Hon'ble Judges : B.J. Divan, C.J.;Muktadar, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Final Decision : Allowed

Judgement

B.J. Divan, C.J.—The only point which has been urged on behalf of the assessee is regarding limitation. No other point has been urged before us at the time of the hearing of this case. The Assistant Commissioner of Sales Tax passed his order on 12th December, 1966, allowing an appeal and setting aside the assessment made by the Commercial Tax Officer in respect of certain sales tax dues from the present assessee. This order of the Assistant Commissioner was served on the assessee on 14th December, 1966. The Deputy Commissioner in exercise of the powers of revision served a notice upon the petitioner on 1st December, 1970, calling upon the assessee to show cause why the order of the Assistant Commissioner should not be revised. It may be pointed out that the Commercial Tax Officer had passed the order on 30th September, 1964. Against that order, the matter was taken up in appeal by the assessee to the Assistant Commissioner, Ananta-pur, and the order dated 12th December, 1966, was passed by the Assistant Commissioner as stated above. In reply to the show cause notice, the assessee filed his objections by his reply dated 4th December, 1970. The show cause notice had called upon the assessee to show cause and to put forward his objections within seven days from the date of service of the

notice. Since the notice was served upon the assessee on 1st December, 1970, the objections filed on 4th December, 1970, were within the time indicated in the show cause notice. By his order dated 11th December, 1970, the Deputy Commissioner revised the order passed by the Assistant Commissioner under the provisions of Section 20 of the Andhra Pradesh General Sales Tax Act, 1957. Though the Deputy Commissioner purported to have passed the order on 11th December, 1970, the order passed by him was not served upon the assessee till 25th April, 1972. One of the questions which was argued before the Sales Tax Appellate Tribunal was whether this order of the Deputy Commissioner could be said to be legal and valid, in view of the delay, which had taken place in serving the order, namely, the delay from 11th December, 1970, to 25th April, 1972. In the penultimate paragraph of its order the Tribunal dealt with this question. It observed:

We have perused the draft order as well as the fair order of the Deputy Commissioner and it is doubtless that it was passed on 11th December, 1970, as the said date finds place even under the signatures of the Deputy Commissioner. The records would appear to have been lying in the office of the Deputy Commissioner and they came to be despatched to the assessing authority only on 17th April, 1972, and were received by the assessing authority on 18th April, 1972. The revisional order came to be served on the appellants within a week thereof.

2. The Tribunal held that merely because the order of the Deputy Commissioner came to be served on the appellant on 25th April, 1972, it was too much to hold, without anything more, that the Deputy Commissioner did not pass the order on 11th December, 1970, and the Tribunal pointed out that it was not the case of the assessee in the grounds of appeal that the order was not passed by the Deputy Commissioner on 11th December, 1970. This plea about the delay in serving the order was taken up for the first time when the arguments were addressed to the Tribunal and the Tribunal felt that it could not be entertained and even if it was to be entertained it was devoid of any merit.

3. In the final paragraph of its order, the Tribunal observed:

Before parting with this case, we may observe that the slackness, lethargy and gross indifference displayed in the office of the Deputy Commissioner, Warangal, in keeping the records lying in the office for more than one year is lamentable. It is high time that the authorities concerned should find out effective ways and means to put a halt to such acts.

4. Mr. Dasaratharama Reddi, the learned Advocate for the assessee, has urged before us that u/s 20(3) of the Andhra Pradesh General Sales Tax Act, in relation to an order of assessment passed, under this Act, the powers conferred by Sub-sections (1) and (2) are exercisable only within such period not exceeding four years from the date on which the order was served on the assessee, as may be prescribed. It has been prescribed that the powers of revision are to be exercised

by the Deputy Commissioner within four years from the date of the service of the order upon the assessee. It is, therefore, clear that the whole question is as to the exercis-ability of the powers of revision by the Deputy Commissioner so far as the provisions of Section 20(3) are concerned. Mr. Dasaratharama Reddi relied upon the decision of the Gujarat High Court in Shanabhai P. Patel Vs. R.K. Upadhyaya, Income Tax Officer, Ahmedabad, He urged that in view of this decision of the Gujarat High Court to which I was a party and in view of the fact that the earlier decision of the Supreme Court in Banarasi Devi Vs. Income Tax Officer, Calcutta, , and of the Gujarat High Court in Induprasad Devshanker Bhatt Vs. J.P. Jani and Another, were followed in Shanabhai P. Patel Vs. R.K. Upadhyaya, Income Tax Officer, Ahmedabad, we must hold that the date of service of the notice is the material date and not the date on which the Deputy Commissioner purports to have passed his order u/s 20. We are unable to accept this contention of Mr. Dasaratharama Reddi, in the course of which, he relied upon the decision of the Gujarat High Court in Shanabhai P. Patel Vs. R.K. Upadhyaya, Income Tax Officer, Ahmedabad, That case arose in connection with a notice to reopen the assessment and was a notice issued u/s 147 read with Section 148 of the Income Tax Act, 1961. It was held by the Division Bench of the Gujarat High Court that the words "service of notice" and "issuance of notice" in the context of Sections 147, 148 and 149 of the Income Tax Act, 1961, were interchangeable words and, therefore, the period of limitation prescribed in Section 149 must be counted not from the date of the issuance of the notice but from the date when the notice was served upon the assessee concerned. The decision in Shanabhai P. Patel Vs. R.K. Upadhyaya, Income Tax Officer, Ahmedabad, as well as the earlier decision in Banarsi Debi's case [1954] 53 I.T.R. 100, turn upon the specific language of the Income Tax Act, which deal with the words "issuance of the notice", and it must be borne in mind that the decision in Banarasi Devi Vs. Income Tax Officer, Calcutta, was governed by the fact that an Income Tax assessment which was otherwise complete was sought to be reopened by the notice and unless the provisions of law regarding the issuance of the notice and regarding the reopening of the assessment were strictly complied with, prejudice would be caused to the parties. That is not the position so far as the provision of law before us is concerned and, in view of the clear language, namely, that the powers of revision are exercisable within a period of four years, there cannot be any question that the order passed by the Deputy Commissioner on 11th December, 1970, that is within four years from Nth December, 1966, when the order of the Assistant Commissioner was served upon the assessee, was within the time prescribed by Section 20(3), since the Deputy Commissioner was exercising the powers of jurisdiction within the period of four years. Thus, the first contention and the major contention of Sri Dasaratharama Reddi must, therefore, be rejected.

5. The alternative argument of Mr. Dasaratharama Reddi was that even if the order passed by the Deputy Commissioner was within the period prescribed for the exercise of the revisional powers by the Deputy Commissioner, in view of the

fact that the order of the Deputy Commissioner would take effect only from the date on which it was served upon the assessee, it was incumbent upon the Deputy Commissioner to see that the order was served upon the assessee within a reasonable time from the date of the issuance of the order, that is, a reasonable time from 11th December, 1970, which, for the purposes of this case, is the crucial date. Though the Deputy Commissioner was within the period of limitation in passing the order of revision, he did not take care to see that the order was served within a reasonable time. It is a well-settled principle that when a system is governed by the rule of law, as they are in India, all other things must be done by administrative officers reasonably and if the order of the Deputy Commissioner is not served upon the assessee within a reasonable time, he cannot be said to have acted reasonably. It must be borne in mind that until the order of the Deputy Commissioner was served upon him the assessee was entitled to proceed upon the footing that the Assistant Commissioner's order was correct order. It is quite likely that the assessee was conducting his affairs on the footing that the Assistant Commissioner's order was correct. If the Deputy Commissioner, in exercise of his power of revision, set aside the order of the Assistant Commissioner, then it would mean that at the earliest moment of time from 11th December, 1970, the assessee should rearrange his affairs thereafter, so that he may not once again come within the mischief of the legal position as laid down by the Deputy Commissioner. The concept that where there is no period of limitation prescribed, the Government machinery must function within a reasonable time, has been accepted by the Supreme Court in *The State of Gujarat Vs. Patil Raghav Natha and Others*, In that case, the Supreme Court was concerned with the exercise of the power of revision by the Commissioner functioning under the Bombay Land Revenue Code and the decision of the Supreme Court was that although there was no period of limitation prescribed u/s 211 of the Code, the power of the Commissioner to revise the order passed u/s 65 must be exercised within a reasonable time and must be determined by the facts of the case and the nature of the order which was being revised. According to the Supreme Court, Section 65 itself indicated the length of the reasonable time within which the Commissioner must act u/s 211. u/s 65, if the Collector did not inform the applicant of his decision within a period of three months, the permission applied for must be deemed to have been granted. According to the Supreme Court, Section 65 showed that a period of three months was considered ample for the Collector to make up his mind, and beyond that the legislature thought that the matter was so urgent that permission should be deemed to have been granted. "Reading Sections 211 and 65 together, it is clear that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes, the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. Further, the Commissioner should indicate his reasons."

6. The same principle was again reiterated by the Supreme Court in *S.B.*

Gurbaksh Singh Vs. Union of India (UOI) and Others, There the Supreme Court observed:

Although no limitation has been provided for the exercise of the suo motu power of revision by the Commissioner u/s 20(3) of the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case.

7. On the facts of that particular case, the Supreme Court found that the Commissioner had not made any undue or unreasonable delay in exercising his revisional powers.

8. In view of these two decisions of the Supreme Court and, particularly, in the light of the decision in The State of Gujarat Vs. Patil Raghav Natha and Others, , it is obvious that all executive authorities whenever they exercise their powers and whenever they take action must act reasonably, that is, within a reasonable time. Here, the rights of the assessee were going to be effected by the order passed by the Deputy Commissioner in revision and, as we have pointed out above, the assessee was likely to continue to conduct his affairs relying upon the decision of the Assistant Commissioner passed as far back as December, 1966. In order to see that no further prejudice would be caused to the assessee it was incumbent upon the Deputy Commissioner to see that the order in revision passed by him was served upon the assessee concerned within a reasonable time. It is true that the period of limitation for filing an appeal begins to run from the date on which the order of the Deputy Commissioner was served on the assessee. Similarly, no notice of demand can be served upon the assessee till the order is served on him. But we are not concerned in this case with any limitation about the right of appeal or the issuance of the notice of demand so that proper effect could be given to the order passed by the Deputy Commissioner in revision. What we are concerned with is whether the inordinate delay of one year, five months and eleven days in communicating the order of the Deputy Commissioner to the assessee has any effect on the assessee's position. It cannot be said that the order passed by the Deputy Commissioner was barred by limitation. It cannot be said that the order was illegal or invalid on the ground that it was beyond the jurisdiction of the Deputy Commissioner. But, in our opinion, in view of the inordinate delay in communicating the order of the Deputy Commissioner to the assessee, it would be in the fitness of things and under the principles of the rule of law, that the order should be held to be not binding on the assessee.

9. We are constrained to decide in this manner because of the finding that the Deputy Commissioner, as has been observed by the Sales Tax Appellate Tribunal, has been guilty of inordinate delay, slackness, lethargy and gross indifference in communicating the order to the assessee. This inordinate delay, slackness, lethargy and gross indifference are likely to have caused prejudice to the

assessee, as we have pointed out earlier. Under these circumstances, though we do not wish to lay down any hard and fast rule as to what is the reasonable period for communicating the order of the Deputy Commissioner to the assessee concerned, on the facts of this case, at least, we can say that the delay was grossly unreasonable, and, on that ground alone, we must hold that the order is not binding upon the assessee. To hold otherwise would be encouraging this sort of indifference, slackness and lethargy in the organisation dealing with assessment, levy and collection of sales tax. Under these circumstances, this revision is allowed and the order of the Sales Tax Appellate Tribunal is set aside only on this ground.

10. Mr. Sastry, the learned Government Pleader, urged that the right of the Government to recover the tax assessed in pursuance of the order passed by the Deputy Commissioner would be restricted and curtailed if the argument advanced on behalf of the assessee regarding the inordinate delay in serving the order of the Deputy Commissioner upon the assessee, is upheld. It is because of this plea of inordinate delay that the Government's right to recover the tax is being affected, and it is obvious that until the order of the Deputy Commissioner is served on the assessee, no notice of demand in pursuance of that order can be issued and until that is done no tax can be collected. It is this gross indifference and inordinate delay in the office of the Deputy Commissioner, that would result ultimately in the delay in collecting the taxes levied on the assessee. Therefore, this argument that the right of the Government to collect the tax from the assessee would be affected if the contention of the assessee is upheld on this point is of no avail. The Government must organise its machinery carefully and efficiently.

11. Since this point, which has succeeded before us, was not urged before the Sales Tax Appellate Tribunal, there will be no order as to costs. Advocate's fee Rs. 250.