

(1996) 04 AP CK 0070

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4149 of 1987

Mir Barkat Ali Khan Bahadur

APPELLANT

Vs

Assistant Controller of Estate Duty

RESPONDENT

Date of Decision : 03-04-1996

Acts Referred:

Estate Duty Act, 1953 — Section 59, 73A

Citation : (1996) 135 CTR 89 : (1996) 222 ITR 672

Hon'ble Judges : Y.V. Narayana, J; S.S. Mohammed Quadri, J

Bench : Division Bench

Advocate : Y. Ratnakar, for the Appellant; S.R. Ashok, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—The petitioner challenges the validity of the notice bearing No. GIR No. 0-10/67-68 dt. 20th Feb., 1987 and any assessment made pursuant to notice dt. 10th Jan., 1975 issued under s. 59 of the ED Act, 1953 (for short "the Act") as illegal and prays for a declaration to that effect.

2. The petitioner is a legal representative of the late Nizam VII Sir Mir Osman Ali Khan Bahadur, the erstwhile ruler of Hyderabad, and is an accountable person under the Act. The late Nizam died on 24th Feb., 1967. The petitioner filed an account of the estate of the late Nizam declaring the net estate passing on the death of the said late Nizam at Rs. 1,73,14,235. On 25th Jan., 1973 the respondent completed the assessment under the Act by order passed under s. 58(3) of the Act determining the net principal value of the estate at Rs. 3,68,77,715 and assessing the duty thereon at Rs. 3,03,18,056. The petitioner appealed against the said order of assessment before the Appellate CED on 20th Feb., 1973. During the pendency of the appeal the respondent issued notice under s. 59 of the Act on the ground that he had reason to believe that the property chargeable to estate duty has escaped assessment. That notice was issued on 10th Jan., 1975. The petitioner made a representation to the Addl. Asstt. CED against the said notice and also demanded reasons for reopening the assessment by further letter dt. 27th Feb., 1975. On 28th Feb., 1975 the

respondent communicated the reason, namely, to charge the value of King Koti in the ED assessment of the late Nizam. During the appeal proceedings it was brought to the notice of the Appellate CED that on examination of the issue under s. 10 of the Act, with regard to the grant of exemption to the King Koti Palace, as the palace was being used by the late Nizam for his residential purpose at the time of his death or till his death, exemption under s. 33(1)(i) of the Act was granted; but later it was noticed that the exemption was wrongly granted and accordingly the respondent requested the appellate authority for enhancement of the principal value of the estate so as to include the value of the King Koti Palace. The Appellate CED accepted the contention of the respondent, enhanced the original assessment by including the value of the palace at Rs. 76,60,000 holding that the exemption under s. 33(1)(i) was wrongly allowed. The petitioner says that in view of the order of the appellate authority the purpose of issuing the notice under s. 59 of the Act dt. 10th Jan., 1975 as clarified in the letter of the respondent dt. 28th Feb., 1975, has been achieved. The petitioner further submits that aggrieved by the order of the Appellate CED dt. 2nd June, 1975 he filed an appeal before the Tribunal, Hyderabad. On 9th March, 1976 the Tribunal opined that exemption under s. 33(1)(i) of the Act was allowable and thus disposed of the appeal. A reference was made to the High Court under ED Act in RC No. 148/78. By its order dt. 20th Aug., 1984 the High Court confirmed the order of the Tribunal. The respondent then issued another letter on 16th July, 1986 stating that information furnished by him on 28th Feb., 1975 was incomplete and stated that the assessment was reopened on some other grounds one of them being that the exemption was wrongly granted in the original assessment in respect of heirloom jewellery. After six months thereafter another letter was issued asking the petitioner to file a return on or before 16th March, 1987 and communicating therein that in default of showing cause ex parte orders would be made under s. 58(4) of the Act. It is the validity of these letters that is assailed in this writ petition.

3. In the counter-affidavit it is admitted that the petitioner rendered the accounts of the estate of the late Nizam and the assessment was completed on 25th Jan., 1973. It is also admitted that the respondent issued notice on 10th Jan., 1975 under s. 59 of the Act on the ground that the estate of the deceased chargeable to duty has escaped assessment and there was also under-assessment. It is, however, denied that reassessment proceedings were initiated only with reference to King Koti Palace and it is asserted that the proceedings were initiated not only on the ground of escapement of assessment but also on the ground of under-assessment. It is added that merely because the Asstt. CED chose to specify that the assessment was reopened to charge the value of King Koti in his letter dt. 28th Feb., 1975, it was not open to the petitioner to conclude that the reassessment proceedings initiated were only confined to the King Koti Palace. As there was no obligation in law on the respondent to disclose the reasons, the said letter is of no consequence, as such the proceedings in appeal and the judgment of the High Court in reference have no relevance to the issue

in question. With regard to the application for abandonment of the proceedings it is stated that there was no reason why the petitioner should have drawn such a conclusion. With regard to the notice issued on 16th July, 1986 it is submitted that it is not mala fide but as the petitioner has not complied with the statutory notice issued by the respondent a fresh notice was issued on 28th Feb., 1987 to comply with the said earlier notice. It is asserted that as initiation of reassessment proceedings is valid the petitioner cannot seek a direction to restrain the respondent from completing the same in accordance with law on the ground that time had elapsed since the death of the deceased and that most of the delay is caused in finalising the assessment proceedings due to the conduct of the petitioner in setting in motion avoidable litigation. It is, however, submitted that it is open to the petitioner to comply with the statutory requirement of rendering the account in pursuance of the impugned notice and in the event of any adverse order being passed, it is still open to him to challenge it in appeal before the Appellate CED against whose order a further appeal is provided to the Tribunal and also a reference to the High Court. The petitioner cannot invoke the jurisdiction of the High Court under Art. 226 of the Constitution.

4. Reply affidavit is filed by the petitioner reiterating the facts stated in the writ affidavit.

5. Sri Ratnakar, the learned counsel for the petitioner, urged the following contentions before us. Since notice under s. 59 of the Act, reopening the assessment, was made for the purpose of bringing to charge the value of King Koti Palace as clarified in the letter of the respondent, having regard to the orders passed by the Appellate CED in including the value of the King Koti Palace, that purpose would be deemed to have been achieved and the proceedings initiated under s. 59 of the Act should either be treated as terminated or abandoned in view of not taking any action for twelve years from 1975 to 1987. Alternatively, it is submitted that if the notice issued on 16th July, 1986 is treated as a fresh notice independent of notice issued in January, 1975, then the assessment cannot be reopened in view of s. 73A of the Act. It is also contended that though s. 73A relates to reopening of the assessment and there is no time limit for completion of the assessment, the reassessment proceedings should be finalised in a reasonable period and the inaction for long period of twelve years and more vitiates the proceedings.

Sri S. R. Ashok, the learned standing counsel for the respondent, submits that the reason given by the respondent for reopening the assessment in February, 1975 was not the sole reason and that once the assessment is reopened it is open to the assessing authority to reassess on grounds available to it in law, therefore, the ground mentioned in the letter of February, 1975 does not bar the respondent from making reassessment on grounds other than the one mentioned in the said letter of February, 1975. Abandonment of proceedings, submits the learned standing counsel, has to be a positive act of the respondent and

inference of the petitioner with regard to abandonment is without any basis; the petitioner ought to have filed the return pursuant to the notice and his failure to do so has resulted in delay. The subsequent notice issued in July, 1986 and 1987, are only in continuation of notice issued in 1975 and are not fresh notices under s. 59 of the Act, therefore, s. 73A of the Act is not attracted. With regard to delay, whether the delay in a case is a reasonable delay is a question which has to be determined by the authority and on that ground the petitioner cannot challenge the notices.

6. On the above submissions of the learned counsel, the questions that arise for consideration are :

(1) Whether in view of the clarification issued by the respondent with reference to notice under s. 59 of the Act dt. 10th Jan., 1975, the purpose of the notice for reassessment, has been achieved on the appellate authority including the value of King Koti in the net estate of the deceased;

(2) Whether the impugned notices issued by the respondent are fresh notices under s. 59 or a continuation of the first notice and whether the proceedings are barred under s. 73A of the Act; and

(3) If the answer to the second limb of the second question is in the negative, whether it is open to the respondent to pass order of reassessment after over twelve years.

The first point

7. Insofar as the first point is concerned, it would be appropriate to extract notice under s. 59 of the Act issued by the respondent which is in the following terms :

"Notice under s. 59 of the ED Act, 1953 (34 of 1953)

Office of the Asstt. CED, Circle I, Hyderabad

No. GIR/701/0/ Dt. 10th Jan., 1975 To,

Nb. Mir Barkat Ali Khan Bahadur, LR of Late Nb. Mir Osman Alikhan Bahadur, Hyderabad

In the matter of the estate of late Nb. Mir Osman Ali Khan Bahadur, H. E. H. Nizam of Hyderabad

Whereas I have reason to believe that property chargeable to estate duty has -

(a) escaped assessment

(b) been under-assessed;

(c) been assessed at too low rate.

You are requested to deliver to me not later than 31st Jan., 1975 an account of all property in respect of which estate duty is payable.

Sd/..... Asstt. CED, Hyderabad."

A plain reading of the above notice shows that on the ground that the property chargeable to the estate duty has been under-assessed the notice under s. 59 of the Act was issued on 10th Jan., 1975. On 31st Jan., 1975 the petitioner addressed the respondent stating that he was trying to exercise colourable jurisdiction under s. 59 of the Act without any valid reason for issuing notice under s. 59 of the Act and requested him to furnish reasons for issuing such a notice. On 5th Feb., 1975 the respondent stated that there was no provision in the ED Act requiring the disclosure of reasons for reopening of the ED assessment under s. 59 and assuring completion of the assessment only after giving adequate opportunity of being heard. The petitioner again made a further representation on 27th Feb., 1975 requesting the respondent to disclose the reasons so as to enable him to file fresh return after seeking necessary advice. In reply to the said request the respondent sent the following letter :

"Office of the ITO, "A" Ward, Special Circle-I, Hyderabad,

GIR No. 701-0 Dt. 28th Feb., 1975 Sri Mohd. Asadullah Khan, GPA to Nawab Mir Barkat Ali Khan, King Koti, Hyderabad.

Sir,

Sub : Estate duty Assessment proceedings of late HEH the Nizam of Hyderabad
Nawab Mir Osman Ali Khan Bahadur

Ref. : Your letter dated 27th Feb., 1975

The assessment was reopened to bring to charge the value of King Koti in the estate duty assessment of Nawab Mir Osman Ali Khan Bahadur.

2. Though I am not bound, in law, to disclose the reasons for reopening the assessment, the same are intimated to you, at your request, to facilitate to your filing of return and completion of the assessment as early as possible.

Yours faithfully, Sd/- G. Ramdas,

Addl. Asstt. CED, Special Circle I, Hyderabad."

A plain reading of the above letter makes it clear that the assessment was reopened to bring to charge the value of King Kothi in assessment of late Nizam. It was, however, made clear by the respondent that though he was not bound in law to disclose the reasons for reopening the assessment the same were intimated to him at his request to facilitate him to file return and complete the assessment as early as possible. At the time when the reason was communicated to the petitioner, the appeal filed by him against the order of assessment made by the respondent on 25th Jan., 1973, was pending. The question of under-assessment was brought to the notice of the Appellate CED who withdrew the exemption with regard to King Koti Palace by his order dt. 2nd June, 1975. But on further appeal by the petitioner-assessee to the Tribunal the exemption

granted by the assessing authority was upheld by allowing the appeal on 9th March, 1978. That order of the Tribunal was confirmed by the High Court in RC No. 148/78 dt. 20th Aug., 1984. Consequent to the order of the High Court the respondent had issued modified order of assessment in proceedings No. GIR No. 0-10/67-68 dt. 19th Sept., 1985.

The impugned letter of the respondent dt. 16th July, 1986, however, states that that was issued in continuation of the letter dt. 28th Feb., 1975 under which reasons were communicated to the petitioner; in that letter it is stated that the proceedings reopened were still pending finalisation as on that date and that it was earlier informed that the assessment was reopened to bring to tax the value of King Kothi property of the late HEH the Nizam of Hyderabad but that information was not complete and it was added that the assessment was reopened on some other grounds one of them being that exemption was wrongly granted in the original assessment in respect of heirloom jewellery of late Nizam of Hyderabad since part of the heirloom jewellery was sold away and, therefore, that asset was not eligible for exemption under the Act and that information was furnished with a view to set the record right. The petitioner replied to the said notice taking exception to sending that letter after eleven years adding clarification to suit the convenience of the Department. The petitioner also stated that it was not fair on the part of the Department to prolong the ED assessment of the late Nizam which was concluded about ten years back on the basis of notice issued in January, 1975 under s. 59 of the Act and that the proceedings had merged with the order of the Appellate CED as the very basis of issuing the notice under s. 59 was not upheld by the Tribunal as also by the High Court in reference. It was alleged that the information furnished by the Department was patently erroneous. While so, a further notice was issued to the petitioner on 28th Feb., 1987 calling upon the petitioner to file return pursuant to notice dt. 10th Jan., 1975 under s. 59 of the Act. It was at that stage that the petitioner filed this writ petition.

8. From the above discussion of the facts, it is apparent that the purpose of issuing the said notice under s. 59 of the Act of 19th Jan., 1975, read in the light of the clarification letter dt. 28th Feb., 1975, was to set right the under-assessment by withdrawing the exemption granted in respect of King Kothi Palace under the provisions of the ED Act. The order of the Appellate CED, dt. 2nd June, 1975, discloses that the stand of the Revenue with regard to withdrawal of exemption granted in respect of King Kothi Palace which was the basis for issuance of the notice under s. 59 of the Act in January, 1975, was accepted by the Appellate CED and the value of the Palace was directed to be included in the net wealth of late Nizam. The question of grant of exemption in respect of King Kothi Palace was dealt with by the Tribunal on further appeal by the petitioner-assessee and the order of the Appellate CED was set aside taking the view that the petitioner-appellant was entitled to exemption of the King Kothi Palace. The Tribunal thus allowed the appeal of the petitioner-assessee on 9th March, 1978. The view taken by the Tribunal in the said order dt. 9th March,

1978, was upheld by the High Court by its order dt. 20th Aug., 1984 in RC No. 148/78. The abovesaid order of the High Court was given effect to by the Asstt. CED by issuing the proceedings in GIR No. 0-10/67-68 dt. 19th Sept., 1985. The said proceedings of the Asstt. CED read as under :

"Proceedings of the Asstt. CED, B-Ward, Hyderabad

Sri V. Narasimha Rao, Asstt. CED, A-Ward, Hyderabad.

GIR No. 0-10/67-68 Dated 19th Sept., 1985 Sub : Estate Duty - Estate of late Sri Mir Osman Ali Khan, Hyderabad - Prince Shahmat Ali Khan Trust - Hyderabad - Modification order - Issue of - Regarding.

Order :

Consequent on the orders passed by the High Court of Judicature, Andhra Pradesh, Hyderabad in (*) R. C. No. 158/78, dt. 28th Dec., 1984, the ED assessment is modified as under :

(*) It appears the number of the case and the date of disposal are wrongly noted in the above proceedings. The correct number is RC 148/78 and the date is 20th Aug., 1984.

Rs. Net principal value as per modification order dt. 12th Oct., 1984 2,94,57,522
Add : Value of corpus of Prince Shahmat Ali Khan Trust included in the net principal value of the estate of the deceased as computed in the original assessment and deleted in the modification order issued consequent to the orders of the Tribunal, Hyderabad (restored in appeal by High Court's order dt. 28th Dec., 1984) 12,88,169 ----- Net principal value of estate 3,07,45,721 ----- Duty thereon 2,51,05,862 Less : Estate duty already paid 1,55,87,863 ----- 95,17,999 Less : Rs. Paid on 30th March, 1979 2,00,000 Paid on 6th Oct., 1979 4,95,561 Paid on 8th Feb., 1980 43,035 Collected through cheque the compensation towards Koti Asafin 30,19,257 Less : Payment made by Mukharram Jah Trust as per ITO's letter dt. 16th March, 1979 (filed in recovery file Vol. VI) 3,18,922 Paid on 28th Nov., 1977 (Challan filed in recovery file Vol. VI - Challan No. 050898) 3,10,000 "Estate Duty paid through Ch. No. 70000 (sic) 70,000 44,56,775 ----- Balance payable 50,61,224 ----- This should be paid as per the challan enclosed.

Sd/- V. Narasimha Rao, Asstt. CED, A-Ward, Hyderabad.

Copy to the Accountable person."

From a reading of the above consequential proceedings and the orders that led to its issuance, there is absolutely no hesitation in concluding that the purpose of the notice for reassessment issued by the Asstt. CED under s. 59 of the Act on 10th Jan., 1975, has been achieved and the Revenue-respondent being a party to the abovesaid proceedings is bound by the determination of that question. We accordingly find the first point in favour of the petitioner-assessee.

The second and the third points

9. We shall now consider the second and the third questions together. Here it will be apt to refer to s. 73A of the Act which reads thus :

"73A. Limitation for commencing proceedings for assessment or reassessment. - No proceedings for the levy of any estate duty under this Act shall be commenced -

(a) in the case of a first assessment, after the expiration of five years from the date of death of the deceased in respect of whose property estate duty became payable; and

(b) in the case of a reassessment, after the expiration of three years from the date of assessment of such property to estate duty under this Act."

Admittedly it is not a case of the first assessment, so clause (b) will be the relevant provision. Clause (b) of s. 73A provides that no proceeding for the levy of any estate duty under the Act shall be commenced in the case of a reassessment, after the expiration of three years from the date of assessment of such property to estate duty under the Act. As the estate of late Nizam was assessed to estate duty by the respondent on 25th Jan., 1973, initiation of any proceedings to reopen the assessment in 1987, would be beyond three years period and would be clearly barred. But from the above narration of facts which we need not reiterate, it is clear that the impugned notices issued by the respondent on 20th Feb., 1987 and 28th Feb., 1987, though after thought, the flash having come after about 12 years, are not independent notices under s. 59 of the Act but are purported to be issued in continuation of the first notice dt. 10th Jan., 1975, the bar of limitation contained under clause (b) of s. 73A would not apply and notices in the proceedings would not be vitiated for that reason.

10. The plea of abandonment of the proceedings, it is submitted, is taken in the context of background that the reason given for reopening the assessment on 28th Feb., 1975 in wrongly granting exemption for King Kothi Palace, has been achieved after the same was included in the assessment by the Appellate CED. Thereafter there remained nothing for the respondent to complete the reassessment pursuant to the notice under s. 59 of the Act dt. 10th Jan., 1975. We have already referred to this aspect above and held that in view of the order of the Appellate CED dt. 2nd June, 1975, the order of the Tribunal dt. 9th March, 1978 and the order of this Court in RC No. 148/78 dt. 20th Aug., 1984, and the consequent order of the Asstt. CED dt. 19th Sept., 1985, the notice under s. 59 of the Act dt. 10th Jan., 1975 has worked out itself. Not a single paper has been placed before us to show as to what prompted the Revenue to issue the impugned notices after completing the assessment on 2nd June, 1975 and after passing the consequential order on 19th Sept., 1985.

11. Indeed we ourselves wanted to verify from the record the reasons which impelled the respondent to issue the notice under s. 59 of the Act on 10th Jan.,

1975 as also the impugned notices. The records were not produced inspite of granting several adjournments. However, on 15th Feb., 1996 the respondent filed an affidavit stating that he assumed the charge of the office of the Asstt. CED, Hyderabad, on 5th June, 1995 and that from the letter addressed by the then Asstt. CED to the then Dy. CED, Hyderabad on 28th Feb., 1989 it appears that the ED assessment records of late Nizam were sent to the Supreme Court of India in connection with the appeal filed by one of the Trusts through the Asstt. Registrar, High Court of Andhra Pradesh, on 18th July, 1986. The learned counsel made a representation that efforts were being made to trace the records and the same would be produced shortly. We adjourned the hearing of the case from time to time to enable the respondent to produce the records. On 15th March, 1996 another affidavit was filed by the respondent stating that inspite of thorough search in the High Court, the records could not be traced and that the office of the Chief CIT addressed a letter dt. 20th Feb., 1996 to the CBDT requesting to secure the records from the Supreme Court so that the records could be produced in this Court. It is also stated that the Board has addressed a letter dt. 26th March, 1996 to the Central Law Agency requesting to take action to send back the records and it was in these circumstances that the records were not produced.

From the above facts including the averments in the affidavits, it is very clear that till the issuance of the consequential order dt. 19th Sept., 1985 and further letter by the respondent on 16th July, 1986 the records were available in the office of the respondent and that on 18th July, 1986 they were sent to the Hon'ble Supreme Court through the Asstt. Registrar, High Court in connection with an appeal filed by one of the trustees. If that be so, it is not explained as to on what basis after about seven months of non-availability of the records the letter dt. 20th Feb., 1987 was addressed by the respondent to the assessee calling upon him to file a revised account and stating that failure to do so would result in finalising the assessment "on the basis of the material available on record under s. 58(4) of the ED Act". So also it is not clear as to on what basis the letter dt. 28th Feb., 1987 was addressed by the respondent. Be that as it may, even assuming that the records were sent to the Supreme Court on 18th July, 1986, the fact remains that from January, 1975 till July, 1986, for 12-1/2 years, no action was taken by the respondent to finalise the reassessment and no explanation is offered for such inordinate delay except making vague allegation without any supporting material.

12. It is true that there is no provision in the Act requiring the completion of reassessment within a specified period. Section 73A applies only to reopening of assessment but it is well settled that where no period of limitation is prescribed for exercising any statutory power, the authority in whom the power vests should exercise the same within a reasonable time. What is the reasonable time would depend on the facts and circumstances of each case and no general principle can be laid down prescribing any time limit by a judicial pronouncement. The question which then arises is, whether on the facts and in the circumstances of

this case, not completing the reassessment proceedings in 12-1/2 years from the date of issuing s. 59 notice on 10th Jan., 1975 till 20th Feb., 1987, is reasonable and whether the respondent can be allowed to pursue the matter by issuing the impugned letters.

In *The State of Gujarat Vs. Patil Raghav Natha and Others*, the question before the Supreme Court was whether the Commr. of Land Revenue can exercise the revisional power under s. 211 of the Bombay Land Revenue Code, 1879, for short the "Code", after a year of passing of the order under revision, in the absence of any prescribed period of limitation. The question arose in the following circumstances. On 20th Oct., 1958 the petitioner applied to the Collector of Rajkot District for permission to convert the agricultural land to non-agricultural use for construction of building under s. 65 of the Code. The proceedings went through several vicissitudes and ultimately overruling the objections of the Municipal Committee of Rajkot, the Collector granted permission on 2nd July, 1960. A consequential order granting "Sanad" was also issued on 27th July, 1960. The Municipal Committee approached the Commissioner invoking the revisional power under s. 211 of the Code. The Commissioner set aside the order of the Collector on 12th Oct., 1961. The order of the Commissioner was challenged before a learned Single Judge of the High Court of Gujarat. The learned Single Judge quashed the order of the Commissioner and allowed the writ petition. The order of the learned Single Judge was questioned before the Supreme Court. Having noted s. 65 of the Code which provided that if the Collector did not inform the decision on the application within a period of three months, the permission applied for should be deemed to have been granted, the Supreme Court observed that although there was no period of limitation prescribed under s. 211, the power of the Commissioner to revise the order complained against, must be exercised within a reasonable time which must be determined by the facts of the case and the nature of the order which was being revised and held that the Commissioner must exercise his revisional power within a few months of the order of the Collector and that was reasonable time because after the grant of the permission for building purposes the occupant was likely to spend money on starting building operations at least within a few months from the date of the permission. The Supreme Court observed as follows :

"The question arises whether the Commissioner can revise an order made under s. 65 at any time. It is true that there is no period of limitation prescribed under s. 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

It seems to us that s. 65 itself indicates the length of the reasonable time within which the Commissioner must act under s. 211. Under s. 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been

granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading ss. 211 and 65 together it seems to us 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. In this case the Commissioner set aside the order of the Collector on 12th Oct., 1961, i.e., more than a year after the order and it seems to us that this order was passed too late."

In CIT vs. Harinagar Sugar Mills Ltd. (1989) 176 ITR 289, the question before the Division Bench of the Bombay High Court was, where no time limit was prescribed for reopening the assessment under the Excess Profits Tax Act, 1940, whether inordinate delay in reassessment which was not satisfactorily explained, would vitiate the proceedings. There the question arose on reference under the said Act. The Division Bench held that though no period of limitation was fixed by the statute for reopening the assessment under the Act, the unexplained delay of 13 to 14 years rendered the reassessment invalid.

A similar view was taken by a Division Bench of the Kerala High Court in Iswara Bhat Vs. Commissioner of Agricultural Income Tax, . The Bench which dealt with that case, held that even in the absence of a time limit prescribed by a state (statute), the repository of the power should initiate the proceedings within a reasonable time; by the same token, even for the completion of the proceedings the same logic should apply and the final order should be passed within a reasonable time even in the absence of a time limit in the statute concerned. It was laid down that if suo motu revisional proceedings could be invoked only within a reasonable time, by the same logic the proceedings should be rendered or passed within a reasonable time and that meant "Damocles" sword should not hang endlessly at the caprice of any statutory authority. This view of the Kerala High Court was upheld by the Supreme Court in Commr. of Agrl. IT vs. Iswara Bhat (1992) 197 ITR 408 - SLP (Civil) Nos. 11040-11041 of 1992 dt. 17th Sept., 1992.

A Division Bench of our High Court in P. Narasimha Reddy vs. State of AP 1989 (2) ALT 700 to which one of us (viz., Syed Shah Mohammed Quadri, J.) was also a member, held that the expression "at any time" used in sub-s. (4) of s. 50B of the AP (Telangana Area) Tenancy & Agricultural Act, 1950 conferring suo motu power of revision on the Joint Collector, meant that the power must be exercised within a reasonable time and that the expression did not clothe the authorities to exercise the power "at any time" they like even after the expiry of long period and that what could be the reasonable time was a question of fact which had to be decided on the facts and circumstances of each case. In that case as the power was exercised only within two and half years, it was held that the exercise

of the power was reasonable. Applying that principle, one of us (Syed Shah Mohammed Quadri, J.) held in *B. Pedda Jangaiah vs. Joint Collector* 1993 (2) APLJ 82 that exercise of suo motu power of revision under sub-s. (4) of s. 50B of the said Act after 13-14 years, was unreasonable and arbitrary.

However, reliance is placed by the learned standing counsel for the IT Department on the judgment of the Supreme Court in *Bharat Steel Tubes Ltd. and Another Vs. State of Haryana and Another*, to contend that as in that case the Supreme Court dismissed the writ petition and allowed the best judgment assessment to be completed so also we should permit the respondent to proceed with the reassessment pursuant to notice issued in January, 1975. The short question that fell for examination in that case is : "whether the order of assessment under sub-s. (3) of s. 11 of Punjab General Sales-tax Act, 1948 or s. 28(3) of Haryana General Sales-tax Act, 1973 can now be completed or would it be barred by limitation". It was observed that undoubtedly the assessment proceedings had been very delayed and that the material placed before the Supreme Court indicated that the assessee had gone to different Courts from time to time to ask for injunction against the completion of assessment but that trial appeared to have started in December, 1980. There a suit was filed and injunction was obtained restraining the authority from completing the assessment. Their Lordships after reiterating the principle that in the absence of any prescribed period of limitation the assessment has to be completed within a reasonable period and that what should be the reasonable time would depend upon the facts of each case, observed that one view could be that it should be a period not exceeding three years as the legislature had fixed the limitation of five years for completing the assessment in the case of escaped turn over. But on the facts of that case they expressed the view that they were not inclined to extend, in a situation like the one in that case, a period of limitation for completion of assessment under s. 11(3) or s. 28(3) of the respective Acts. It was pointed out that on the facts of that case no prejudice would be caused to the assessee if the assessing authority was permitted to complete the assessment then and that if on the other hand no assessment was made an anomalous situation might arise and even though the assessee had collected the sales-tax on its sale turn over, it might raise a claim for refund of it in the absence of an assessment and that their Lordships did not propose to create such a situation.

From the above discussion it is clear that the principle noted above, viz., that where no period of limitation is prescribed the assessment or reassessment should be completed within a reasonable time and what is the reasonable time, would depend upon the facts and circumstances of the case but having regard to the facts and circumstances of that case, which we have referred to above, their Lordships allowed the assessment to be completed. In the present case it is not pleaded by the respondent that by virtue of any order of the Court he was prevented from completing the reassessment. What is contended is that the petitioner filed this writ petition so reassessment could not be completed. This is somewhat misconceived. As the respondent issued the impugned notices in 1987

after about 12 years to proceed with the reassessment pursuant to notice issued in 1975, this petition is filed; this reason may afford a ground for not completing reassessment after filing of the writ petition but certainly it cannot account for the delay in not completing the reassessment for 12 years from 1975 till 1987. That case, therefore, does not advance the case of the respondent.

There remains one more case to be considered, i.e., *Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others*, . That case arose under the Medicinal & Toilet Preparations (Excise Duties) Act. No period of limitation was fixed for recovery of excise duty either under that Act or the Rules made thereunder. In that case the CTO issued notices to the respondents therein under r. 12 of the Medicinal & Toilet Preparations (Excise Duties) Rules, 1956 to pay duty on all medicinal preparations manufactured by them after 1st June, 1961. Those notices were questioned before the High Court of Madras on the ground that the said rule was ultra vires the Act. The High Court declared the rule as ultra vires on the ground that the Act was silent on the question of levy of duty on escaped turn over and that the said r. 12 which authorises recovery of excise duty was outside the purview and scope of the Act. On appeal the Supreme Court held that the rule was intra vires the Act. Negating the contention that r. 12 was unreasonable and violative of Art. 14 as it did not prescribe any period of limitation within which recovery of any duty as contemplated by the rule was to be made, it was held that that by itself did not render the rule unreasonable or violative of Art. 14 of the Constitution and that in the absence of any period of limitation it was settled that every authority was to exercise that power within a reasonable period and that whenever a question regarding inordinate delay in issuance of the notice of demand was raised it would be open to the assessee to contend that it was bad on the ground of delay and that it would be for the officer concerned to consider the question on the facts and circumstances of the case. In our view, the above decision does not lay down that wherever on question of delay any notice is questioned the High Court cannot interfere and that the reasonableness or otherwise of the delay has to be decided by the authority issuing the notice.

13. Having regard to the ratio laid down in the cases referred to above, we are inclined to hold that where the period of limitation for reopening the assessment is prescribed as three years (under s. 73A of the Act) not completing the reassessment for over a period of 12 years could be nothing but unreasonable and issuance of the impugned notices after 12 years for completing reassessment would amount to arbitrary exercise of power and that cannot be permitted to be done.

Where there is no provision in any Act or Rules made under the Act as in the ED Act, requiring completion of the assessment/reassessment proceedings within a particular period, for the purpose of determining the question of reasonableness, it would be appropriate to look to the provisions in the sister enactments to determine the question of reasonableness as one of the relevant factors. In the

IT Act, time limit has been prescribed for completion of the assessment and reassessment in s. 153. Sub-s. (2) of s. 153 says that no order of assessment or reassessment or recomputation shall be made under s. 147 after expiry of two years from the end of the financial year in which the notice under s. 148 was served but this is subject to one provision, that is, where notice under s. 148 was served on or before 31st March, 1987 such assessment, reassessment or recomputation may be made at any time upto the 31st March, 1990, i.e., within a period of three years. From this angle also not completing reassessment proceedings for over a period of 12 years cannot but be held to be unreasonable and attempt made to proceed with the reassessment proceedings after the said period of 12 years is, in our view, a glaring example of arbitrary exercise of power.

14. For all the above reasons we hold that the impugned letters are arbitrary and illegal and that the respondent cannot be allowed to pursue the matter of reassessment by issuing the impugned letters dt. 20th Feb., 1987 and 16th March, 1987 in respect of assessment which was opened by issuing notice under s. 59 on 10th Jan., 1975.

15. The writ petition is accordingly allowed with costs.