

(1980) 01 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : G.S. Tax Reference No. 11 of 1975

Munshi Ram Kheru Ram

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Punjab General Sales Tax Act, 1948 — Section 10, 11, 11A, 22

Citation : (1980) 01 P&H CK 0065

Hon'ble Judges : M.R. Sharma, J;B.S. Dhillon, J

Bench : Division Bench

Advocate : Bhagirath Dass, S.K. Hirajee and B.K. Gupta, for the Appellant; D.N. Rampal, for Advocate-General, for the Respondent

Judgement

M.R. Sharma, J.—The Sales Tax Tribunal, Punjab, Chandigarh, has referred the following two questions of law to us for opinion u/s 22(1) of the Punjab General Sales Tax Act, 1948 (hereinafter called the Act):

(1) Whether, on the facts and circumstances of the case, service of notice in form S. T. XIV on the assessee on 23rd December, 1969, after the expiry of limitation for first and part of second quarters and in framing the best judgment assessment for the year 1964-65 on 26th March, 1970, is legally valid ?

(2) Whether, on the facts and circumstances of the case, the conclusion of the Tribunal that objection regarding limitation not having been raised before the Assessing Authority could not be raised before it is legally valid and whether the Tribunal was justified-in invoking the provisions of Section 11A of the Act ?

2. The facts giving rise to-this case may briefly be stated as under: The assessee is a karyana dealer registered under the Punjab General Sales Tax Act. For the assessment year 1964-65, the assessee filed two quarterly returns u/s 10(4) of the Act. It appears that no return was filed for the first as well as the last quarter relating to that year. The Assessing Authority served a notice in form S. T. XIV on

the assessee in response to which the assessee appeared through an Advocate before it on 31st December, 1969, who applied for the adjournment of the case on the ground of illness of his senior counsel. It appears that the assessee took up the position with the Assessing Authority that all the relevant returns had been filed but it failed to adduce any satisfactory evidence in support of this averment. The case was adjourned to 26th March, 1970, when no one appeared on behalf of the assessee and the Assessing Authority framed an assessment determining the gross turnover for the first quarter at Rs. 2,00,000.00 and for the fourth quarter at Rs. 1,00,000.00.

3. The assessee filed an appeal before the Deputy Excise and Taxation Commissioner, Ludhiana, which was dismissed. It appears that before the first appellate authority it was not argued that proceedings regarding the best judgment assessment qua the first quarter of the relevant assessment year had become barred by time.

4. The assessee filed a second appeal before the learned Sales Tax Tribunal, Punjab, and at this stage the plea of limitation was for the first time raised which was disposed of by the learned Tribunal with these observations :

The Assessing Authority did not proceed to make a separate assessment for each of the four quarters of the year 1964-65. A single notice in form S. T. XIV was issued for making the assessment for the entire year.. This notice relates to the framing of the assessment under Sub-sections (4), (5) and (6) of Section 11 of the Punjab General Sales Tax Act, 1948. The appellants did not raise any objection before the Assessing Authority to the effect that assessment proceedings for any of the quarters had become time-barred. This objection was not taken up in the grounds of appeal before the Deputy Excise and Taxation Commissioner. If an objection to this effect had been taken before the Assessing Authority, it would have been possible for the said authority to go into the merits of the objections now raised by the appellants. The Deputy Excise and Taxation Commissioner was also justified in not going into the point since it was not raised in the memorandum of appeal.

5. At the request of the assessee, the Tribunal has made this reference to us.

6. After hearing the learned counsel for the parties, we are of the view that both the questions deserve to be answered in favour of the assessee. In *Madan Lal Arora Vs. Excise and Taxation Officer, Amritsar*, , their Lordships of the Supreme Court observed as under :

Now the last of the quarters in respect of which the petitioner filed his returns ended on March 31, 1956. So the Assessing Authority could not proceed to make a best judgment assessment in respect of this quarter after March 31, 1959. In the case of the earlier quarters, of course, the three years had expired even prior to this date. It is not in dispute that the assessing officer had not proceeded to make any assessment on the petitioner at the date of any of the notices. In the present case therefore the notices given on August 18, 1959, that best judgment

assessments would be made in respect of the quarters constituting the financial years 1955 and 1956, the last of which expired on March 31, 1956, were futile. No such assessments could be made in respect of any of these quarters after March 31, 1959.

7. Since the assessment year was 1964-65, the first quarterly return relating to that year had to be filed within 30 days of 30th June, 1964. It is conceded by the learned counsel for the State that notice in form S.T. XIV was served on the assessee on 23rd December, 1969, and it appeared before the Assessing Authority on 31st December, 1969. In other words, the aforementioned notice was served beyond a period of five years which is the period of limitation fixed by Section 11(4) of the Act for making the best judgment assessment. We, therefore, partially answer question No. (1) in favour of the assessee and hold that proceedings relating to the first quarter ending on 30th June, 1964, were barred by time.

8. It is no doubt true that the question of limitation was not raised by the assessee either before the Assessing Authority or before the Deputy Excise and Taxation Commissioner, who heard the first appeal, but it is well-settled that question of limitation is a mixed question of law and fact. If there are necessary facts from which the inference can be drawn that a particular cause has been instituted beyond the period of limitation, then it becomes the duty of the court to apply the law regardless of the fact that whether such a question has been specifically put forth or not by a party in its pleas. The frame of question No. (1) shows that the notice in form S.T. XIV was served on the assessee on 23rd December, 1969. The statement of the case was prepared by the Tribunal after notice to both the parties. When a question of law forming part of such a statement happens to contain an express or an implied admission by either of the parties to the cause, unless some very strong grounds are shown, such a party is not allowed to wriggle out of that admission. In an earlier part of this judgment, we have mentioned that the notice in form S.T. XIV has been served on the assessee on 23rd December, 1969. The learned counsel for the revenue is not in a position to assert that the date of service of this notice on the assessee as mentioned in question No. (1) was incorrect. We, therefore, hold that the plea of limitation raised on behalf of the assessee stands established on the basis of the admitted facts.

9. Once it is so held, the rest of the matter which calls for determination offers no difficulty. It is settled law that a question of limitation goes to the root of the jurisdiction of court to determine the cause. Even if it gives a wrong decision on such a point and clutches at jurisdiction not vested in it by law, it would be open to the revisional court to correct its error. In AIR 1949 239 (Privy Council) , Sir John Beaumont, speaking for the Board, observed as under :

There have been a very large number of decisions of Indian High Courts on Section 115, to many of which their Lordships have referred. Some of such decisions prompt the observation that High Courts have not always appreciated

that although error in a decision of a subordinate court does not by itself involve that the subordinate court has acted illegally or with material irregularity so as to justify interference in revision under Sub-section (c), nevertheless, if the erroneous decision results in the subordinate court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under Sub-section (a) or Sub-section (b) and Sub-section (c) can be ignored. The cases of Babu Ram v. Munna Lal ILR (1927) All 454 and Hari Bhikaji v. Naro Vishvanath may be mentioned as cases in which subordinate court by its own erroneous decision (erroneous that is in the view of the High Court), in the one case on a point of limitation and in the other on a question of resjudicata, invested itself with a jurisdiction which in law it did not possess, and the High Court held, wrongly their Lordships think, that it had no power to interfere in revision to prevent such a result. In the present case their Lordships are of opinion that the High Court, upon the view which it took that the loan was not a commercial loan, had power to interfere in revision under Sub-section (b) of Section 115.

10. Now if the question of limitation can be taken notice of by a revisional court, we fail to see any ground to hold that a court of appeal or of second appeal is debarred from doing so. It hardly needs emphasising that an appeal under normal circumstances and second appeal within the bounds of the statute creating it, constitutes a rehearing of the cause and the appellate courts can exercise all the powers which vest in the trial court. We are, therefore, of the view that even if the question of limitation was not raised by the assessee either before the Assessing Authority or before the first appellate court, it was entitled to raise the same for the first time before the learned Sales Tax Tribunal. The learned Tribunal while declining to entertain this objection committed an error of jurisdiction. We, therefore, answer the second question also in the negative, i.e., against the revenue and in favour of the assessee. The case shall now go back to the Tribunal for decision in the light of the opinion given by us. There shall, however, be no order as to costs.

B.S. Dhillon, J.

11. I agree.