
(1985) 03 AP CK 0006
In the Andhra Pradesh High Court
Case No : T.R.C. No. 3 of 1983

New Kailash Bangles Stores	Vs	APPELLANT
The State of Andhra Pradesh		RESPONDENT

Date of Decision : 13-03-1985

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14(4), 20(1), 20(3), 22
Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 34(1)

Citation : (1986) 63 STC 156

Hon'ble Judges : P.A. Choudary, J; K. Ramaswamy, J

Bench : Division Bench

Advocate : B. Subhashan Reddy, for the Appellant; A. Venkata Ramana, Government Pleader for Commercial Taxes Department, for the Respondent

Judgement

K. Ramaswamy, J.—The petitioner, a registered dealer under the Andhra Pradesh General Sales Tax Act (6 of 1957), for short, "the Act", is assailing in this revision filed u/s 22 of the Act, the legality of the revised assessment order dated 31st July, 1980, made u/s 14(4) of the Act by which exemption accorded in the assessment order for the year 1974-75 was set at naught.

2. The facts lie in a short compass and they are stated thus. The petitioner is a dealer in bangles. While submitting its returns of net turnover sought exemption of a turnover of Rs. 1,94,563.42 on the premise that it purchased bangles from M/s. Durga Bangles, Peddapalli, and M/s. Vijayalakshmi Bangles, Karimnagar, of the above value which had already suffered tax. Believing the statement, the Commercial Tax Officer, Nizamabad, accorded exemption and passed assessment order for the year 1974-75 on 22nd July, 1976, and was served on the petitioner on 11th August, 1976. The subsequent enquiry revealed that the aforesaid two firms did not conduct any business during that relevant period. As a result, the Commercial Tax Officer issued a notice dated 1st July, 1980, to show cause why the exemption accorded should not be withdrawn and the escaped turnover should not be assessed to correct tax. The petitioner was called upon to appear

before him on or before 28th July, 1980. Since the petitioner is stated to have refused to receive the notice, substituted service was effect. Through its clerk, by a written representation and a telegram dated 28th July, 1980, requested to adjourn till 25th August, 1980. The request was refused and order was passed withdrawing the exemption and assessed the exempted turnover at 6 1/2 per cent. on 31st July, 1980, and demand was sent for the payment thereof. An appeal has been filed before the Assistant Commission assailing the order on the plea of lack of jurisdiction to reopen the issue; bar of limitation and want of adequate opportunity. The Assistant Commissioner held that the order is within jurisdiction and limitation and remitted to the assessing authority to afford reasonable opportunity and to tax as general goods 4 per cent. The petitioner reiterated the disallowed points before the Appellate Tribunal, but proved unsuccessful. Thus this revision.

3. The contention of the petitioner all through is that u/s 14(4-A) of of the Act, preceding the Andhra Pradesh Amendment Act 14 of 1978, for short, "the Amendment Act", the period of limitation provided is four years from the date of the assessment year. It expired by 31st March, 1970. The Amendment Act came into force from 17th January, 1978, and it is only prospective. The notice to reopen the assessment was issued on 1st July, 1980, by which time for years period had already expired by efflux of time and the petitioner acquired vested right under the unamended section 14(4-A). Since the amendment is not retrospective in operation, the order passed on 31st July, 1980, is without jurisdiction and also is barred by limitation, In support thereof, the petitioner relied on Keshavlal Jethalal Shah Vs. Mohanlal Bhagwandas and Another, and New Shorrock Spg. and Manufacturing Co. Ltd. Vs. N.U. Raval, Income Tax Officer and Another, . Helen Rubber Industries Ltd., Kottayam Vs. Commissioner of Income Tax, Madras, , J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt, and Udiipi Vasanta Vihar Vs. The Deputy Commercial Tax Officer, . The learned Government Pleader resisted contending that u/s 20 of the Act, the revisional authority has jurisdiction to revise the wrongful deduction or exemption within four years from the date of service of the order; but the effect under the Amendment Act is that the assessment order becomes final only on expiry of four years from the date of service of the assessment order; admittedly it was served on 11th August, 1976, the notice was issued and the order passed are within four years from the date of service of the order; and the amendment was also made giving power to the assessing authority to reopen the assessment. Therefore, the assessment is within four years. Section 14(4-A) is procedural. It is retrospective in operation. It has to be construed liberally. In support thereof, he relied on union of india (UOI) Vs. Sukumar Pyne, , The State of U.P. and Another Vs. Shri Anand Swarup, , Maxwell's Interpretation of Statutes, 12th Edition, page 222, and Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others, .

4. The respective contentions give rise to two questions for adjudication, viz.,

whether the assessing authority has jurisdiction to reopen the assessment for the year 1974-75; and whether it is within limitation ?

5. To satisfactorily resolve the disputes, it is of necessity to extract, at the outset the relevant provisions. Section 14(4) empowered the assessing authority on occurrence of any one of the events, viz., where the whole or any part of the turnover of business of a dealer has escaped assessment to tax, he may after issuing notice to the dealer and after making such enquiry as he may consider necessary, may assess the correct amount of tax payable, setting out the grounds therefor. The grounds enumerated are (a) to (f) mentioned thereunder. They are not relevant to extract. Hence omitted. The assessing authority is empowered to revise the assessment under sub-section (4-A) of section 14 within the period which reads thus :

"(a) within a period of six years from the expiry of the year to which the tax, licence fee or registration fee relates, if the event that has occasioned such assessment or levy has occurred on account of the failure of the dealer to disclose the turnover or any of the particular correctly; and

(b) within a period of four years from the expiry of the year aforesaid, if such event has occurred due to any other causes."

6. u/s 14(4), the assessing authority has no power to reopen an assessment where any deduction or exemption has been wrongly allowed. The legislature while effecting amendments to the Act brought on statute initially, Andhra Pradesh General Sales Tax (Amendment) Ordinance, 1978, with effect from 17th January, 1978, which was replaced by Act 14 of 1978. The relevant amendment is as follows : Through section 4(1) of the Amendment Act, in sub-section (4), after clause (c), the following clause shall be inserted, viz.,

"(cc) assess the correct amount of tax payable, in a case where any deduction or exemption has been wrongly allowed."

Similarly, through sub-section (2) of section 4, sub-section (4-A) to section 14 has been substituted which reads thus :

"(4-A) Any assessment or levy under sub-section (4) shall be made within a period of four years from the date on which any order of assessment or levy was served on the dealer."

The Statement of Objects and Reasons to effect the above amendment is stated thus :

"Section 14 of the Act provides for assessment, reassessment, rectification in or revision of assessment of tax and period of limitation therefor. It is proposed to empower the assessing authority to reassess the correct amount of tax payable where any any deduction or exemption has been wrongly allowed, and to provide the period of limitation for exercise of powers under sub-section (4) of that section at four years uniformly as provided u/s 20."

7. u/s 20(1) of the Act, the Commissioner of Commercial Taxes and other prescribed authorities are empowered suo motu, to call for and examine the record or proceeding recorded by any authority, officer or person subordinate to it, under the provisions of the Act, including sub-section (2) thereof for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such proceeding and may pass such order in reference thereto as it thinks fit. Section 20(2) empowers some more officers. Sub-section (3) of section 20 prescribes period of limitation which reads thus :

"(3) In relation to an order of assessment passed under this Act, the powers conferred by sub-sections (1) and (2) shall be exercisable only within such period not exceeding four years from the date on which the order was served on the dealer, as may be prescribed."

8. From the conspectus of the above provisions, the following are the salient features. Under sub-section (4) of section 14, the assessing authority, preceding 17th January, 1978, has no power to revise or correct an assessment already made in respect of a deduction or exemption which has wrongly been allowed; the period of limitation under the unamended sub-section (4-A) in respect of matters falling under clause (a) thereof is six years and for any other causes, a period of four years has been provided under clause (b) and the terminus of the limitation is four years from the ending of the assessment year. But u/s 20(3) the period of four years expires from the date on which the assessment order was served on the dealer in the prescribed manner under the Rules. The amendment Act u/s 4(1) thereof, empowers the assessing authority itself to revise an assessment in the event of the deduction or exemption has wrongly been allowed. The period of limitation is now uniformly provided u/s 14(4-A) as well as section 20(3) of the Act, viz., four years from the date of service of the assessment order on the dealer.

9. An assessment made u/s 14(1) is subject to an appeal under sections 19 and 21 and revision u/s 22 of the Act at the instance of the dealer. Such an assessment order is final and conclusive between the dealer and the assessing authority. An unassailed order u/s 14(1) is still subject to revision suo motu u/s 14(4-A); section 20(1) and section 20(2) and the exercise thereof is within the prescribed period of limitation u/s 14(4-A) and section 20(3) of the Act. Only on the expiry of that period the dealer acquires a vested right therefore but not earlier.

10. u/s 14(4-A)(b) (unamended) the period of four years for the relevant assessment year 1974-75 expires by the assessment year 1978, i.e., 31st March, 1978. The Amendment Act came into force on 17th January, 1978. It is only prospective from that date. The contention of the petitioner is that the power is given to the assessing authority for the first time through section 4(1) of the Amendment Act to revise and reassess the correct amount of tax in respect of deduction or exemption which has wrongly been allowed, that power was exercise for the first time in July, 1980, by which time the four years period had

already expired. Therefore, the order of the assessing authority is not only without jurisdiction but also is beyond the prescribed period of limitation. The question is whether this contention is tenable. Section 5(1) of the Act obligates every dealer other than a casual trader or an agent of a non-resident dealer in a mandatory language to pay tax for each year when his total turnover for a year is not less than Rs. 25,000 at the rate of four paise on every rupee of his turnover. This obligation is absolute and it depends on no other factor. Section 14 provides the machinery to quantify the actual turnover on which the dealer shall be made liable to pay the actual amount on this total taxable turnover. As the tax is leviable on the total turnover, the extent thereof is determined by process of assessment in the prescribed manner u/s 14. When it is thus quantified, the assessee, subject to his right of appeals under sections 19 and 21 or a revision u/s 22, has to pay the same on pain of penalty and the recovery thereof is as if it is arrears of land revenue of prosecution. Thereby the assessment order merely quantifies the liability. When a deduction or exemption is found to have been wrongly allowed, proceeding the Amendment Act, the Commissioner of Commercial Taxes u/s 20(1) or the other specified officers u/s 20(2) are empowered to suo motu revise the assessment or to correct the legality, propriety of such order. By the Amendment Act, instead of the revising authority to take action, it empowered the assessing authority itself to revise on its becoming aware, as a result of the account books or chits or other material got filed or secured from the custody of the dealer or on their independent investigation and was prima facie of the opinion that the deduction or exemption has been wrongly allowed. Thereby the assessing authority is given power to revise the assessment. Therefore, the action taken and the order dated 31st July, 1980, are perfectly within jurisdiction of the assessing authority and the contention contra stems from pigment of imagination and the first limb of the argument is devoid of substance.

11. The next contention is that the impugned order is barred by limitation. The petitioner's contention is that he acquired a vested right after the assessment order has been made and that right cannot be taken away unless the Amendment Act is made with retrospective effect. Since the Amendment Act is prospective, the order is barred by limitation. To give satisfactory solution to this plea, it is necessary to decide what is meant by vested right. Whether the petitioner acquired vested right ? And if so, when ? And whether the legislature has got power to take away the vested right ? Lastly, whether the Amendment Act has the effect of retrospective operation ?

12. Cooley in his Constitution Limitations, 8th Edition (1927), at page 745, posits that by vested right can be meant no more than those rights which under particular circumstances they will be protected from legislative interference. Sutherland in his Statutory Constitution, Volume 2, at page 566, in section 277, states that every right resting in perfect obligation is vested; and such a right being conferred by statute, renders it no more sacred than if it were sanctioned merely by law of nature, or the common law. Every statute, which takes away or

impairs vested rights acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the legislature, to be intended not to have a retrospective operation. Such statutes should be construed, if possible, as applying only to future cases. Retrospective legislations are apt to operate harshly and have a tendency to be unjust and oppressive. Therefore retrospective legislation is looked upon as a general rule with disfavour. There is no vested right to a procedure. Statutes of limitation are procedural and called "Statutes of repose". When we construe a statute, we must look to the general scope, purpose and purview of the statute; the remedy sought to be applied and to consider what was the former state of the law and what remedy or defect the statute contemplated to achieve. Lord Blansburgh, in AIR 1927 242 (Privy Council) speaking for the Board held that while provisions dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Their Lordships have no doubt that the provisions which if applied retrospectively, would deprive of their existing finality of orders which, when the statute came into force were final, are provisions which touch existing rights. Crawford in his Statutory Construction, in section 295, at page 597, states that rights acquired before its amendment are not affected unless the amending statute expressly or by necessary implication so provides. Sutherland in his Statutory Construction, Volume 2, in section 2205, at pages 122-123, has stated that there is no vested right in a particular remedy There is no vested right in statutory privilege or exemptions. Neglect of a taxing officer cannot give rise to a vested right to immunity from taxation. At page 130, in section 2210, the learned author further states that statutes of limitation are generally held to relate to remedies than rights. Crawford in his Statutory Construction, in section 279, at page 569, states that a statute of limitations, strictly so-called, operates on the remedy directly. In his Statutory Construction, in section 2210, at page 129, Sutherland has stated that the legislature may control remedies by enacting laws curing defects in previous statutes, supplying omissions and legalising past acts. Craies on Statute Law, Seventh Edition, at page 396, states that if a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right. At page 387, the learned author further states thus : "A statute is not properly called a retrospective statute because a part of the requires for its action is drawn from a time antecedent to its passing." In Sundaram's Law of Income Tax [Golden Jubilee (11th) Edition], Volume 3, at page 2527, under note 44, the learned author says that the question of limitation within which proceedings should be started or finished in respect of additional assessment would, however, be general by the law at the time the proceedings are started or finished. Lord Dunedin in *Whitney v. Commissioners of Inland Revenue* [1926] AC 37 has propounded the effect of

the taxing statute and its procedure thus :

"There are three stages in the imposition of a tax : there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesis, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

13. In *India United Mills Ltd. Vs. Commissioner of Excess Profits Tax, Bombay*, their Lordship of the Supreme Court considering section 15 of the Exceed Profits Tax Act, held thus :

"That section is, it should be emphasised, not a charging section, but a machinery section. And a machinery section should be so construed as to effectuate the charging sections."

14. In *Commissioner of Income Tax, Bombay City II Vs. Associated Commercial Corporation*, it was held that the rule of retrospective operation though applies to taxing statutes, has no application to all the provisions in taxing statute. If the provision merely lays down the machinery for its collection or procedure for its collection such a machinery for assessment has to be construed by the ordinary rule of construction, that is to say, in accordance with the clear intention of the legislature which is to make a charge levied effective.

15. In *Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others*, , Venkataramiah, J., speaking per majority held that it is the duty of the court while interpreting the machinery provision of taxing statute to give its effect to its manifest purpose having a full view of it. Wherever the intention to impose the liability is clear the courts ought to have no hesitation in giving a common sense interpretation to the machinery sections so that charge does not fail.

16. The pragmatic illumination thus shed affords us to have full view of the effect of the Amendment Act as to whether it tends to divest retrospectively the petitioner of its vested rights if any. It is of necessity to recapitulate that section 5(1) of the Act creates an absolute liability to pay sales tax on the total turnover in excess of Rs. 25,000 at four paise per rupee. The machinery provisions u/s 14 designed to quantify taxable turnover and to determine exact liability a dealer is charged to pay. The assessment thereby merely quantifies the total liability. Yet it is subject to the other provisions of the Act as detailed earlier. The authorities u/s 20 of the Act, i.e., Commissioner and other specified officers, are invested with power to suo motu revise the assessment within the limitation prescribed under sub-section (3) thereof, i.e., four years from the date of service of the order. Till the period prescribed thereunder expired, a dealer can by no stretch of imagination claim that the vested right. Thereafter, the order cannot be interfered with except by alteration of law retrospectively. The finality is given only to see that the innocent assessee is not subject to persistent harassment at

the whim of the assessing or revising authority bringing home in his mind that his exercise of power is hedged with the time-limit and is binding on him. The liability created under the charging section would continue to subsist though it cannot be revised or enforced after the expiry of the limitation. But before its expiry, the legislature has plenary power to alter the law and remove any disability and declare that the liability which otherwise became unenforceable becomes enforceable. Even vested rights can be taken away by express retrospective operation by employing usual language "the amendment would have effect and would be deemed always to have had effect as if it had been part of the Act from its inception" or by necessary inference.

17. It is now well-settled by catena of decisions of the Supreme Court, Privy Council and this Court that a right of action barred by limitation at the time when the new Act or amendment came into force, cannot be revived by the subsequent change in the law prospectively brought about [vide J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt,]. In Mangapathi Naidu Vs. M.K. Krishnaswami Naidu and Others, , Viswanadha Sastri, J., has held that in the absence of anything contrary, if the claim is within limitation according to old Act on the day when the new Act came into force and a proceeding is commenced after coming into force of the new Act, it is the new Act which would govern all the decisions on the point of limitation. In Km. Kr. Ramanathan Chettiar Vs. N.M. Kandappa Goundan (died) and Others, , Rajamannar, C.J., speaking for the Bench followed the above view and held that the law of limitation is procedural law, its provisions operate retrospectively in the sense that they apply to causes of action which arose before their enactment. If the right to sue has become barred by the provisions of the Limitation Act then in force on the date of the coming into force of a later enactment, then such a barred right is not revived by the application of the new enactment. This principle was followed by another Bench in Mohammed Ravooth v. Deputy Commercial Tax Officer [1958] 9 STC 1 (Mad.); AIR 1958 Mad. 176 consisting of Rajagopalan, J., and Rajagopalan Ayyangar, J. (as he then was). The facts therein were that under rule 17(1) of the Madras General Sales Tax Rules, 1939, a limitation of two years from the close of assessment year was prescribed. The order expires by 31st March, 1955. Rule 17(1) was amended on 11th March, 1953, enlarging the limitation to three years. Escaped turnover was reassessed on 20th March, 1956, before expiry of three years. That order was assailed contending that the new Act cannot be made applicable and the Act has the effect of retrospective operation and therefore the order was barred by limitation. While repelling that contention it was held that the law of limitation being procedural law, its provisions operate retrospectively in the sense that they apply to the cause of action which arose by their enactment and upheld the action of the revising authority. In Munaga Peraiah v. State of Andhra Pradesh [1962] 13 STC 26 a Division Bench of this Court consisting of Chandra Reddy, C.J., and Jaganmohan Reddy, J. (as he then was), considered a similar contention raised before us, under the following circumstances : Sales tax was

assessed for the assessment year 1954-55. Notice for additional assessment was given on 31st October, 1958. Rule 17(1) prescribes three years from the assessment year. It expired by 31st March, 1958. Section 14(4) was introduced by way of amendment enlarging the period of limitation to four years and it came into force from 15th March, 1958. It was contended that the assessing authority had no jurisdiction. The order became final, the moment it was passed and he acquired right. Repelling that contention, the Division Bench held that the assessment cannot be said to have been final the moment it has been made. It becomes final only after the period prescribed for the filing of appeal or revision or for making additional assessment has expired. Till then the assessment cannot be deemed to have become final. In T.K. Khadar Mohiuddin Vs. State of Andhra Pradesh, another Division Bench consisting of Jaganmohan Reddy, C.J. (as he then was), and Kumarayya, J. (as he then was), was to consider the question whether the Amendment Act would apply to the assessments concluded earlier to the Amendment Act. The facts therein were that for the assessment years 1955-56, 1956-57 and 1957-58, additional assessments were made u/s 14(4) of the Act in May, 1959. It was objected on the ground that in respect of the transactions under the Madras General Sales Tax Act, 1939, for the assessment year 1955-56, it was barred by limitation under rule 17 of the Madras General Sales Tax Rules, 1939, and that, therefore, the amendment introducing section 14(4-A) cannot be made avail of by the assessing authority. While repelling that contention and upholding that the authorities have jurisdiction and it is within limitation, Kumarayya, J., speaking for the Bench held thus :

"Whereas rule 17(1) of the Madras General Sales Tax Rules provided that reassessment could be made within three years, the new Act has fixed a larger period in section 14(4-A). It is further obvious that the old period of three years in these cases had not expired when this section, i.e., section 14(4-A) came into force. That being the case, it follows the extended period of limitation would apply."

18. We respectfully agree with and follow the ratio and the necessary conclusion is that before the expiry of the period of limitation if the statute provides uniform period of limitation for the cause of action arose under the old Act, but before the order reached finality, the altered period of limitation would apply and the new provision would get attracted to the cause of action arose under the old law. The assessment order was served on 11th August, 1976. Therefore, till 10th August, 1980, the Commissioner or the officers specified under sub-section (2) of section 20 have power to revise the orders of the assessing authority, but before the expiry thereof, the Amendment Act was made engrafting uniform limitation for actions under sections 14(4) and 20 of the Act alike. The assessing authority also is given power, no doubt, for the first time in respect of deduction or exemption wrongly allowed and authorised to assess correct amount of tax in respect thereof. By amendment, what the revising authorities could do u/s 20, the assessing authority itself is authorised to do. Therefore, the orders of the revising authorities are co-terminous with that of the assessing authority within

the same period of limitation. Thus by alteration of law, the legislature empowered the assessing authority to reassess the correct rate of tax of the turnover wrongly deducted or exemption was allowed within four years from the date of service of the assessment order. It is thereby not a case of applying the amended Act retrospectively but an application by the assessing authority after new law the existing period of limitation to the causes of action arose due to wrong deduction or exemption wrongly allowed. Therefore it is a misconception to contend that the amended law is applied retrospectively. When we thus broached, it not merely advances the curative effect but also effectuates the object of the Amendment Act. Angulated from this perspective, we have no hesitation to hold that the reassessment is within limitation.

19. In *Commissioner of Income Tax, Patiala Vs. The Ambala Flour Mills and Others*, , similar question arose and Shah, J., speaking for the court held that where the Income Tax Officer assessed the income of an association of persons u/s 31(3)(b) the Appellate Assistant Commissioner was competent to set aside the assessment and to direct the Income Tax Officer to assess the members individually The Appellate Assistant Commissioner had, under the Act, plenary powers in disposing of an appeal, the scope of his powers being conterminous with that of the Income Tax Officer, he can do what the Income Tax Officer can do and can also direct the Income Tax Officer to do what he has failed to do.

20. In *J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt*, the facts that the assessment order for the year 1947-48 was made on 31st January, 1952. On getting information that the assessee did not fully disclose the correct particulars, with the approval of the Commissioner, the Income Tax Officer issued a notice on 27th March, 1956, under the amended section 34(1)(a) of the Income Tax Act, 1922. It was objected to but yet an order dated 29th March, 1959, was made. It was assailed in a writ petition contending that the notice was barred by limitation. The High Court took the view that the Amendment Act does not empower to reopen the assessment when the right to reopen was barred under the old Act at the time when the new Act came into force. On appeal, their Lordships of the Supreme Court held that by the time the Amendment Act has come into force, the limitation prescribed under the old Act has been barred and therefore the new Act does not revive unless the Act is made with retrospective effect. The ratio therein has no application to the facts in this case, for the reasons already stated.

21. In *Udipi Vasanta Vihar Vs. The Deputy Commercial Tax Officer*, the facts were that for the assessment year 1959-60 the petitioner was assessed to tax. But subsequent investigation revealed that the assessee suppressed the real turnover. u/s 14(4) of the Act, the assessment was proposed to be revised. Then he filed a writ petition under article 226 of the Constitution contending that the assessment order is without jurisdiction. In support thereof it was stated that section 14(4), as it stood before the Amendment Act 16 of 1963, did not enable

the authority to make best judgment assessment. The legislature conferred that power for the first time under the Amendment Act 16 of 1963, which gives power to reopen the completed assessment long before the Amendment Act came into force. In the light of those facts, it was held that the amendment is not a provision merely affecting procedure, but it gives power for the first time to make best judgment assessment on the escaped turnover. The very quantum is different from the one already made without applying the amended section 14(4); thereby it affects substantive rights of the party, namely, the tax payable by the assessee. In those circumstances it was held that the section affects vested right, but not merely a matter of procedure. In the light of the facts in this case, the ratio therein is inapplicable.

22. The ratio laid down in *Keshavlal Jethalal Shah Vs. Mohanlal Bhagwandas and Another*, is also not applicable to the facts in this case. Therein jurisdiction to set aside the order passed u/s 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. By operation of this amendment, the revisional orders passed u/s 115, C.P.C., which became final cannot be held to be reopened. The facts of that case are entirely different from the facts in this case. In *New Shorrock Spg. and Manufacturing Co. Ltd. Vs. N.U. Raval, Income Tax Officer and Another*, the facts were that for the assessment year 1950-51, the Income Tax Officer passed an order on 18th January, 1951, as per the law in force. He was allowed a rebate. Similarly for the assessment years 1951-52, 1952-53 and 1953-54 assessments have been made. In March, 1958, the petitioner was called upon to show cause why action should not be taken u/s 35(1) of the Act to revise the assessment for the earlier years giving rebate for the years 1950-51 to 1952-53. That was assailed in a writ petition. While upholding the power in view of the amendment made to section 35(1) the Division Bench has pointed out the effect of retrospective operation. In fact the learned Judges have upheld the action. In view of the discussion of the legal position, the general discussion therein is of little assistance to the petitioner. Equally the ratio in *Helen Rubber Industries Ltd., Kottayam Vs. Commissioner of Income Tax, Madras*, is also not directly applicable to the facts in this case. Even the decisions cited by the learned Government Pleader are of little assistance to the point in issue and therefore they need not be discussed, except *Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others*, which was already considered and followed.

23. In view of the above discussion, the necessary conclusion is that the impugned order is within the jurisdiction of the assessing authority and is not barred by limitation and therefore the authorities below have rightly repelled the contentions. The revision is accordingly dismissed with costs. Advocate's fee Rs. 200.

24. Petition dismissed.