
(1976) 07 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Appeal No. 406 of 1975

Newfields Advertising Pvt. Ltd.

APPELLANT

Vs

Assistant Sales Tax Officer

RESPONDENT

Date of Decision : 15-07-1976

Acts Referred:

Citation : (1977) ILR Delhi 49

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : G.C. Sharma, D.K. Jain, H.S. Dhir and W. Singh, for the Appellant;

Judgement

H.L. Anand, J.

(1) By this petition under Article 226 of the Constitution of India, the petitioner, M/s. Newfields Advertising Private Ltd., carrying on the business of advertising consultants, claims a declaration that it is not a "dealer" within the meaning of The Bengal Finance (Sales-tax) Act, 1941, as extended to the Union Territory of Delhi, hereinafter to be referred as "the Local Act" or the Central Sales-tax Act, 1956, hereinafter to be referred as "the Central Act", and seeks to quash the assessment order in respect of the year 1969-70, to restrain the respondents, the sales-tax authorities, from making any assessment under the Local Act in respect of the assessment years 1962-63 to 1968-69 or "under the Central Act in respect of the assessment years 1963-64 to 1968-69, to quash the notices issued in respect of the assessment years 1962-63 to 1968-69 under the Local Act as well as in respect of assessment years 1963-64 to 1968-69 under the Central Act, to quash notices in respect of assessment years 1970-71 to 1973-74 and to prohibit the respondents from passing any assessment orders in respect thereto.

(2) According to the petitioner, it has been carrying on the business of advertising consultants which consists of rendering various services to the advertisers in the form of advice, assistance and guidance for effectively advertising and publicising their products, wares, merchandise and service with the view to promote their

sales and to propagate their ideas through suitable advertisement media like newspapers, periodicals, magazines, calendars, posters, hoardings, brochures, slides etc. The expert assistance which the petitioner claims to render to the advertiser is said to consist of suggesting suitable advertisements and publicity material, designs, write-ups and literature and by reserving advertisements space in the newspapers, periodicals etc. The petitioner claims that for the service so rendered, the petitioner charges the advertisers a fee for designing the material or advertisements which covers the services of staff as well expenditure in relation to photo-graphs, drawings etc. Besides this, the advertisers entrust to the petitioner the task of procuring advertisement or printing material on the approval of the advertiser and the various printers, engravers, newspapers etc. through whom the material is procured, allow to the petitioner, in the usual course of their business, commission. Where, however, the various advertising media or those from whom the material is procured, do not pay any commission to the petitioner, the petitioner charges the advertisers 15 per cent on the gross amount. In the course of the business of the petitioner, the petitioner makes arrangements with newspapers and other news media on behalf of the advertisers, prepares lay-outs and designs and also gets blocks prepared through block-makers and engravers by placing order on their behalf and after the approval of the advertisers. It is claimed that in rendering the various services to the advertisers, including the procurement for them of material, as well as completion of arrangements for their fabrication, the petitioner does not either sell or buy any material or goods on its own account and merely places order on behalf of the advertisers, who are solely responsible for payment. According to the petitioner, it is thus, in relation to the material and services other than the advertiser's services of its own, merely in the position of a buying agent of the advertisers and does not involve itself either in the purchase or sale of any material or article on its own so as to be a "dealer" within the meaning either of the Central Act or of the Local Act. It is claimed that at no stage does any property in the finished material or articles either vest in the petitioner nor such property at any stage is transferred by the petitioner to the advertisers. It is claimed that for this reason even though the petitioner has been carrying on the business it did not get itself registered as a "dealer" u/s 7 of the Local Act and was never called upon earlier by the sales-tax authorities either to pay any sales-tax or to seek registration.

(3) According to the petitioner, for the first time, the petitioner received a memorandum of 12/09/1967 (Annexure B) from Assistant Sales-tax Officer, Ward No. 14 (respondent No. 1) asking the petitioner to appear before him on 16/09/1967. When the petitioner appeared pursuant to the aforesaid notice, the said respondent claimed that the petitioner was a "dealer" and as such was liable to register and "to pay sales-tax under the Sales-tax Law on its turnover. The petitioner filed an affidavit of Shri S. R. Gupta, its Managing Director (Annexure A), inter alia, contending that for the reasons set out above, the petitioner could not be regarded as a dealer within the meaning of the Local or

the Central Acts. Along with the affidavit, the petitioner also enclosed the form in which the petitioner prepared the bills for the advertisers and the vouchers issued by the various suppliers in respect of the material and services procured by the petitioner from them from time to time on account of the advertisers. On 6/05/1968, the petitioner received notice dated 30/04/1968 in form No. S.T. Xiv in respect of the assessment years 1962-63 to 1967-68 (Annexure C) from the assessing authority under the Local Act. Subsequently, the proceedings continued until January, 1969 when the petitioner started receiving notices from Sales-Tax Officer (SIB) in form S. T. Xiv dated 22/02/1969 in respect of the period 1st April, 1968/02/1969. On 6/08/1969, the said Sales-Tax Officer issued a further notice in the aforesaid form in respect of the assessment years 1963-64 to 1968-69. Further notices were issued in respect of the assessment years 1965-66 to 1967-68 and for the period from April, 1968/02/1969 under the Central Act. On 16/08/1969, notices were also issued in respect of the assessment years 1963-64, 1964-65 and 1968-69 under the Central Act (Annexure D). By an assessment order of 17/12/1969, the Sales-Tax Officer (SIB) imposed on the petitioner sales tax including penalty to the extent of Rs. 2,42,750 under the Local Act for the assessment years 1962-63 to 1968-69 and Rs. 1,44,000 on account of the tax and penalty in respect of the assessment years 1963-64 to 1968-69 under the Central Act. The details of the statement of demand created by virtue of the said order are set out in Annexure E to the petition. On appeal, the Assistant Commissioner, Sales-tax, by an order made on 30/05/1971 (Annexure F) upheld the conclusion of the Sales-Tax Officer that the petitioner was a dealer but remanded the cases back to the assessing authority for re-examination and for fresh orders with a direction that the assessing authority of the appellate company with a view to decide as to the quantum and value of business that would be liable to tax, having regard to the fact that it has already been held that the appellate company is a dealer as defined under the Local Act". On revision before the revisional authority, the petitioner raised the further contention that the assessment order passed by the Sales-Tax Officer (SIB) was without jurisdiction. The revisional authority by an order made on 17/05/1972 (Annexure G), held that in the absence of a proper order for transfer of the cases of the petitioner from the Sales-Tax Officer, Ward No. 14 to Sales Tax Officer (SIB) under Rule 88 of the Delhi Sales-tax Rule, 1951, the assessments were without jurisdiction. The assessment order was, therefore, set aside and the cases were remanded to Sales-Tax Officer, Ward No. 14 "to pass fresh orders in accordance with law". On receipt of the record, the Sales-tax Officer, Ward No. 14 (respondent No. 1) issued fresh notices to the petitioner for the assessment of tax in respect of the various assessment years both under the Local and the Central Act. In response to the notices, the petitioner by their communication of 7/02/1975 (Annexure H), inter alia, contended that the notices under form S.T. Xiv in respect of the assessment years 1962-63 to 1964-65 under the Local Act and 1963-64 and 1964-65 under the Central Act were beyond time inasmuch as the original assessment orders passed by the Sales-Tax Officer (SIB) were void, ab initio and without jurisdiction. No orders in respect of any of the aforesaid

assessment orders except the year 1968-69 could be validly passed as the assessments have not been completed within the statutory period of six years. It was further contended "that all notices issued under the Central Act by the Sales-Tax Officer (SIB) had been issued without jurisdiction and as such no assessment for any of these years could be made. The contention that the petitioner was not a dealer was reiterated. By his letter No. 6130 of 21/03/1975 (Annexure J), respondent No. 1 informed the petitioner that the objections raised by the petitioner have been considered and "rejected". The petitioner was accordingly required to produce the books of account. The communication does not recount either the contentions raised or the reasons by which they were "not found tenable". By their communication of 20/02/1975, the petitioner also raised various objections (Annexure K) in respect of the proposed assessment for assessment year 1969-70 and by an order of 21/02/1975 (Annexure LI), respondent No. 1 made the assessment order in respect of the assessment year 1969-70 holding that the petitioner was a dealer within the Act. The order does not deal with any of the contentions raised by the petitioner nor does it contain any express finding on the question if the petitioner was a dealer or not and as to the reasons for which the petitioner was a dealer within the meaning of the said Acts. By the impugned order, the assessing authority has raised a demand of Rs. 23,117.40 on account of sales-tax and penalty for the assessment year 1969-70.

(4) Apprehending that the liability of the petitioner to sales-tax would be assessed by the assessing authority in respect of the various other assessment years referred to above and in respect of assessment years subsequent to 1969-70 as well on the basis of the order of 21/02/1975 and the implied conclusion that the petitioner was a dealer, the petitioner filed the present petition in March, 1975 praying that the aforesaid assessment order, as indeed, the various notices in respect of the various assessment years referred to above be quashed and the respondents be restrained from treating the petitioner as a dealer under the Act.

(5) The petitioner contends that having regard to the nature and the pattern of the business of the petitioner as advertising consultants, it merely renders services to the advertisers and the purchase by the petitioner in the course and for the purpose of rendering effective services on account of and with the approval of the advertisers of various articles and material, do not constitute any transaction of purchase by the petitioner on its own account nor does the supply of the finished advertising material to the advertisers constitute any transfer of property in the goods by the petitioner to the advertisers or be said to constitute any transaction of sale in respect of goods so as to bring the operations of the petitioner within the Sales-tax Law. The petitioner, Therefore, contends that the petitioner could not be legitimately treated as a dealer or be required to pay any sales-tax. It is further contended by the petitioner that various notices in respect of the assessment years 1962-63 to 1964-65 under the Local Act and 1963-64 and 1964-65 under the Central Act were barred by time. It is further urged that the original assessment orders passed by the Sales-Tax Officer (SIB) being

without jurisdiction ab initio and, Therefore, ab initio void, no assessment orders in respect of any of the assessment year, except the assessment year 1968-69, could have been made u/s 11(2a) of the Local Act as the assessments have not been completed within the statutory period of six years. It is further claimed that all notices issued under the Central Act for the assessment years 1963-64 to 1968-69 and under the Local Act for the assessment years 1963-64 to 1968-69 by the Sales-Tax Officer (SIB) having been issued without jurisdiction, they could not form basis of any valid assessment order. With regard to the assessment order for the assessment year 1969-70, it is urged that it is bad in law in as much as it does not deal with any of the contentions raised by the petitioner and does not set out the conclusion of the authority on any of the questions raised by the petitioner and gives no reasons for its conclusion. In particular, it is urged that it does not contain any finding, expressed or implied, that the petitioner was a dealer within the meaning of the Act or the reasons why the petitioner could be treated as such.

(6) The petition is opposed. In the course of an affidavit of the Assistant Sales-tax Officer, Ward No. 14, filed by way of return of the Rule by the respondents, it is, inter alia, urged, by way of preliminary objections, that the petition raises disputed questions of fact which could not be determined in the present proceedings and that the question as to whether, having regard to the nature and pattern of the business of the petitioner, it was a dealer or not was primarily a question of fact which could be and has been determined on the basis of the material on record by competent assessing authority and upheld on appeal by the appellate authority and that the petitioner had another equally efficacious remedy by appeal or revision or review, under Sections 20 and 21 of the local Act which the petitioner has failed to invoke thereby disentitling the petitioner to seek relief in the present proceedings. On the merits, it is contended that the petitioner has been carrying on the business of selling goods during the last many years without registration as a dealer and was detected only on a surprise visit in 1967 where on a scrutiny of the record of the petitioner, it was found that it was prima facie a dealer. It is further alleged that the enquiry was consistently obstructed by the petitioner by its persistent refusal to produce its records. It is contended that the Sales-Tax Officer concerned had considered all the relevant material on the record and the various contentions urged by the petitioner and had passed a detailed order of assessment for the assessment years 1962-63, 1963-64, 1964-65, 1965-66, 1966-67, 1967-68 and 1968-69 under the Local Act and from 1963-64 to 1968-69 under the Central Act (Annexure X to the affidavit) and had raised the demand, details of which are set out in the statement of demand (Annexure E to the petition). It is contended that the aforesaid order is based on an elaborate examination of the nature and pattern of the business of the petitioner and the assessing authority had come to the conclusion on the basis of the record that the petitioner had been carrying on the business of selling goods such as novelties, diaries, calendars, hoardings, invitation cards, keyrings, folders, cinema slides etc. and that the aforesaid finding of fact was

upheld by the Assistant Commissioner, Sales-Tax by his appellate order (Annexure F). It is claimed that on remand, the assessing authority was entitled by virtue of the provision of Sub-section (2a) of Section 11 of the Local Act to complete the assessment within a period of six years from the date of the revisional order and that the proceedings on remand including the assessment order are competent. It is denied that any of the assessment proceedings are barred by time. It is contended that by virtue of the proviso to Section 11 (2a) of the Local Act, in case the assessment is to be made in consequence of or to give effect to an order of the appellate or revisional authority, the assessment has to be completed within a period of six years from the date of the aforesaid order. The validity of the impugned assessment order (Annexure L) was defended on the ground that although the order did not give reasons, such an exercise was unnecessary because the question whether the petitioner was a dealer or not had already been "considered in detail and rejected by the proceeding Assessing (Notified Authorities) and the finding that the petitioner is a dealer liable to pay tax under the Local and Central Acts was also upheld by the appellate authority". It was, therefore, urged that it was unnecessary for respondent No. 1 "to reiterate the same in the assessment order". It was further contended that the assessment had been made on the basis of figures stated at items 7, 8, 9 and 10 of Annexure Y to the affidavit which had been submitted by the petitioner itself setting out the different types of transactions undertaken by the petitioner. It was alleged that no tax was levied on transactions not involving sale such as the other items in the annexure but the demand has been raised on the basis of publicity production jobs, procuring of blocks, procuring of remembrance advertising material and procuring of cinema slides which clearly involves sale of goods. It is denied that the Sales-Tax Officer (SIB) had no jurisdiction to issue notices or that the proceedings based on the aforesaid notices are without jurisdiction. It was not disputed that no notices were issued by respondent No. 1 under the Central Act for the years 1962-63 to 1968-69 and the same were issued by the Sales-Tax Officer (SIB). It is claimed that the assessment proceedings were initiated by the ward office and the same were pending "when the Sales-Tax Officer (SIB) Shri H. D. Birdi was specifically vested with jurisdiction to frame the assessment by the Asstt. Commissioner, Sales-tax vide his order dated 22/02/1969". A copy of the letter was enclosed as Annexure Z to the affidavit. At the hearing, a copy of the order made by the Commissioner of Sales tax dated 17/07/1968 was placed on record whereby four sales tax officers including Shri H. D. Birdi were appointed "as assessing authorities in respect of the entire Union Territory of Delhi (Ward No. 1 to XXIX)".

(7) The first contention that Mr. G. C. Sharma, learned counsel for the petitioner urges is that the Assistant Sales-tax Officer, Ward No. 14 (respondent No. 1) was the proper authority to initiate proceedings and the said officer having initiated proceedings and dealt with the same until January, 1969 the subsequent assumption of jurisdiction and seizen of the proceedings by the Sales-Tax Officer (SIB) and the issue of notices in respect of the various assessment years

by him was without jurisdiction and ab initio, void and having been held to be so by the revisional authority, the resumption of proceedings on the basis of the aforesaid notices by respondent No. 1 on remand was without jurisdiction. Mr. Sharma urges that there could be no duplicity of Sales-Tax Officers in relation to any territory and that the Sales-Tax Officer (SIB) could not have taken seizure of proceedings or to have issued fresh notices unless the cases had been transferred by a competent authority to the said Sales-Tax Officer. He further urges that it is the initial notice that gives jurisdiction to the Sales-Tax Officer and if there was no jurisdiction to issue a notice such as an officer was not competent to take seizure of the matter and if the proceedings were without jurisdiction and notices had been issued by an incompetent authority, the order of the revisional authority remanding the proceedings to respondent No. 1 could not legitimise the same or be capable of conferring jurisdiction which could otherwise be not conferred on the basis of the aforesaid notices. On the other hand, Shri Wazir Singh, who appears for the Revenue, contends that the Sales-Tax Officer (SIB) had been duly appointed as an authority under the Local Act in relation to the entire area comprising the Union Territory of Delhi irrespective of the various sub-division of it and was, Therefore, competent to take seizure of the proceedings pending before respondent No. 1 and to initiate further proceedings without any order of transfer. It was urged that the power to take proceedings was inherent in the appointment of the officer as a Sales Tax Officer without the limitation of any area and a notice to the assessed was neither a condition precedent to the assumption of jurisdiction nor dependent on it. It was argued that notices to the assesseds did not precede but followed the assumption of jurisdiction and was, Therefore, a part of the exercise of jurisdiction. It was urged that the revisional authority being fully seized of the revision petition filed by the petitioner himself was competent to remand the case for further examination and that even without the remand order, the Sales-Tax Officer, Ward No. 14 (respondent No. 1) was competent, on remand, to resume the proceedings and complete the assessment in accordance with law. The learned counsel admitted that there was no order transferring the proceedings from Sales-Tax Officer, Ward No. 14 to the Sales-Tax Officer (SIB) but relied on an order of 17/07/1968 made by the Commissioner of Sales-tax, Delhi appointing four Sales-Tax Officers including Shri H. D. Birdi as assessing authorities "in respect of the entire Union Territory of Delhi (Ward No. 1 to XXIX)".

(8) After hearing learned counsel for the parties, it appears to me that this contention of the petitioner cannot be sustained. u/s 3(1) of the Local Act, for carrying out the purposes of this Act, the Chief Commissioner may appoint a person to be Commissioner of Sales Tax, together with such other persons to "assist him" as the Chief Commissioner thinks fit. Rule 2(f) of the Delhi Sales-Tax Rules, 1951, defines the expression "Sales-Tax Officer" as the person appointed by that designation by the Chief Commissioner u/s 3 of the Act to assist the Commissioner. Under Rule 88 of the said Rules, the power of superintendence over the administration and the collection of the sales-tax livable under the Act is

vested in the Chief Commissioner and subject to his general control and superintendence "the Commissioner shall control all officers empowered under the Act". The appointment, Therefore, of any officer as Sales-Tax Officer by the Chief Commissioner u/s 3 of the Act does not confer by its own force jurisdiction on such an officer to initiate or conduct proceedings under the Act because the appointment by the Chief Commissioner has to be in terms "to assist the Commissioner". It merely enables such an officer to exercise jurisdiction in relation to the Act either with reference to the territory or with reference to the class of work which may be specifically entrusted to him by the Commissioner both by virtue of fact that he had been appointed to assist him and also because subject to the general control and superintendence of the Chief Commissioner, the area within or in relation to which the Sales-Tax Officer has to exercise jurisdiction must, Therefore, depend on the direction that may be made by the Commissioner from time to time. It is true that for the purpose of administration of the Act the Union Territory of Delhi has been divided into various wards and ordinarily there is one Sales-Tax Officer, who is empowered to exercise jurisdiction by the Commissioner pursuant to his appointment by the Chief Commissioner to exercise jurisdiction in relation to it or to a class of cases that may either be entrusted to him. It is also true that by virtue of the power of control and superintendence exercised by the Commissioner any Sales-Tax Officer could be empowered to take cognizance and deal with cases relating to areas other than their own or of class of cases other than those being dealt with by him. Such a power is implicit in the power of control and superintendence of the Commissioner. There is, however, nothing in the Act or the Rules which may derogate from the authority of the Commissioner to empower any Sales-Tax Officer to exercise jurisdiction either in relation to the whole or in part of the Union Territory of Delhi or in relation to the various or some of the classes of dealers. Such an object may be achieved by the Commissioner by transferring a case or class of cases from one Sales-Tax Officer to another but there is nothing to prevent the Commissioner from empowering any Sales-Tax Officer, duly appointed as such by the Chief Commissioner, to exercise jurisdiction in respect of the entire Union Territory of Delhi or in respect of a particular class of dealers or particular class of cases". The order of the Commissioner of Sales-Tax made on, 17/07/1968 by which certain Sales-Tax Officers, including Shri H. D. Birdi, were appointed as assessing authority in respect of the entire Union Territory of Delhi, was made in exercise of undoubted authority of the Commissioner and, Therefore, conferred ample power on him to take seizure of any case or class of cases in respect of any ward or wards in which the Union Territory has been divided for giving effect to the provision of the Act. In this view of the matter, neither an order of transfer nor any order of delegation was necessary to enable Shri H. D. Birdi to take seizure of the matters, which were previously being dealt with by the Sales-Tax Officer, Ward No. 14. It is true that by an order of 17/05/1972 (Annexure G), the revisional authority set aside the various assessment orders made by Shri H. D. Birdi and remanded the cases to the assessing authority, Ward No. 14 on the ground that no proper order for the

transfer of the cases from the file of the Sales-Tax Officer, Ward No. 14 to the file of the Sales-Tax Officer (SIB) for taking up proceedings under both the Acts was issued by the Commissioner under Rule 88 of the said Rules. It is equally true that the revisional authority was persuaded to hold that for that reason, the various assessment orders were without jurisdiction. It is not denied that on remand the proceedings were taken by assessing authority. Ward No. 14, and the order of the revisional authority holding that Sales-Tax Officer (SIB) had no jurisdiction to deal with these cases for want of an order of transfer from the Commissioner, was never challenged by the Revenues and has, Therefore, become final. However, the contention that in the face of this, the respondents are not entitled to urge that Shri H. D. Birdi had nevertheless been duly appointed by the Commissioner of Sales-tax as a Sales-Tax Officer for the entire Union Territory of Delhi cannot be accepted. The Revenue is not challenging the correctness of the aforesaid order nor is it seeking to have it set aside. A question has been raised by the petitioner that the proceedings taken by the Sales-Tax Officer (SIB) and the notice issued by him were without jurisdiction. The assumption of jurisdiction by the officer is, however, sought to be justified on the ground that the officer had been duly empowered by a specific order to exercise jurisdiction in relation to the entire Union Territory of Delhi. No question of a proper transfer of proceedings has been raised nor is the assuming of jurisdiction sought to be justified on the ground that there was an order of transfer of proceedings. There is, Therefore, no conflict between the contention of the respondents and the decision of the revisional authority. Unfortunately, however, the revisional authority did not devote any attention to the question if there was an authorisation which entitled the Sales-Tax Officer (SIB) to take seizure of cases irrespective of the ward to which they pertained, probably because the question was never raised. The approach of the revisional authority is clearly erroneous in that it assumes without any legal justification as if an order of transfer alone was capable of empowering Sales-Tax Officer (SIB) to take seizure of cases relating to Ward No 14. I am, Therefore, entitled to examine the legal position with a view to determine if the subsequent proceedings were vitiated because the notices have been issued by Sales-Tax Officer (SIB). There is no substance in the other contention that assumption of jurisdiction is dependent on issue of a valid notice although in the way, I have looked at the competence of the Sales-Tax Officer (SIB), such a contention does not really survive. It must be pointed out that there is no statutory requirement of a notice nor is the assumption of jurisdiction dependent on the notice. The assumption of jurisdiction clearly precedes and does not follow the issue of a notice. Issue of notices is a part of the proceedings and is a necessary condition for making a valid order of assessment. This contention must, Therefore, be rejected.

(9) It is next urged that the proceedings for the assessment of sales-tax in respect of assessment years 1962-63 to 1967-68 having become barred by time by virtue of the provisions of Section 11-A of the Local Act the notices initiating these proceedings and the proceedings threatened to be taken pursuant to these

must be quashed. According to the petitioner Section 11-A of the Local Act empowers the assessing authorities to initiate assessments and/or reassessment proceedings, if satisfied that the turnover of the business of a dealer had escaped assessment but such initiation can take place only if the assessing officer sends a notice "within the period of three years following the close of the year for which the turnover is proposed to be assessed or reassessed". It is, therefore, urged that when the proceedings were resumed by the Sales-Tax Officer, Ward No. 14, pursuant to the revisional order which was made on 17/05/1972, the statutory period of three years for sending notice for fresh proceedings in respect of the assessment years 1962-63 to 1967-68 had already expired. It was further contended that even otherwise u/s 11(2a) of the Local Act, no order in respect of any of the aforesaid assessment years, except the assessment year 1968-69, could have been passed as the said provision lays down that even if properly initiated the proceedings for assessment must be completed within the statutory period of six years from the end of the year in respect of which or part of which the assessment is made. On the other hand, it was urged on behalf of the Revenues that the various proceedings had been initiated within the time allowed by law and the same could be legitimately completed within six years from the end of the year in respect of which or part of which the assessment is made and that as the assessments were to be made in consequence of or to give effect to an order of the revisional authority the period of six years has to be computed from the date of the said order as provided in the proviso to sub-section (2a) of Section 11 of the Local Act and that construed in this way the proceedings could be legitimately completed within the said period as the revisional order, as a consequence of which the proceedings were resumed, was made on 17/05/1972.

(10) Section 11 of the Local Act provides for assessment of tax. Sub-section (2) of this Section provides that if, on information, the authority is satisfied that any dealer, who is "liable to pay tax" has "failed to get himself registered" the authority may proceed against such a person. Sub-section (2a) of this Section provides for the period of limitation for completing the assessment. Proviso to Subsection (2a), which was added in 1959, extends the period in case the assessment has to be made in consequence of or to give effect to any order of an appellate or revisional order. The proviso to the Sub-section runs thus :-

"PROVIDED that where such assessment is made in consequence of or to give effect to any order of an appellate or revisional authority or of a court, the period of four years or six years, as the case may be, shall be reckoned from the date of such order."

Section 11-A deals with assessment and re-assessment of tax and provides that if, from information, the authority is satisfied that the "turnover of the business of a dealer has escaped assessment or has been under-assessed in any year", the authority may "at any time within the period of three years following the close of the year for which the turnover is proposed to be assessed or reassessed", send

notice to the dealer and make the assessment according to law. On a plain reading of these provisions it is obvious that no assessment under Sub-section (2a) of Section 11 can be made "after the expiry of six years from the end of the year in respect of which or part of which" the assessment is made. Thus far there is no difficulty and if the benefit of the proviso is not available to the Revenues in the present case it necessarily follows that except the assessment in respect of the assessment year 1969-70 none of the earlier assessments could have been made at the material time because in all these six years from the end of the year in respect of which the assessments were to be made had admittedly expired. If, however, the benefit of the proviso was to be available to the Revenues in this case then obviously the period is considerably extended because then the period of six years has to be computed in terms of the proviso not from the end of the year in respect of which the assessment is to be made but "from the date of the appellate or revisional order" and the condition for the application of the proviso is that "such assessment is made in consequence of or to give effect to any order of an appellate or revisional authority or of a Court". It is also obvious that Section 11-A of the Local Act does not apply to a case which is specifically provided for in sub-section 2 of the Section 11, i.e. where a dealer, who is liable to pay taxes, "has failed to get himself registered". The provision of Section 11-A is apparently applicable to cases of registered dealers in respect of whom assessment has either escaped notice or whose turnover has been under assessed in respect of a particular assessment year. The position that, therefore, emerges is that if the benefit of the proviso is not available to the Revenues in the present case assessments in respect of the period before 1968-69 are barred by time and obviously could not proceed. If, however, the benefit of the proviso is available then obviously, subject to the decision on the other questions, there would be no legal infirmity in the assessment proceedings being completed so long as they can be completed within six years from the date of the order of the revisional authority, which was made in 1972. The real question in controversy is, therefore, as to the correct meaning and true scope of the proviso and in particular whether, on the facts and circumstances of this case, it could be said that the assessment sought to be made in respect of the relevant years would be "in consequence of or to give effect to any order of an appellate or revisional authority or of a court".

(11) In order to determine the true meaning and the scope of the aforesaid expressions it is necessary to examine the powers of the appellate and the revisional authority under the Local Act. Section 20 provides for appeal, revision and review and runs thus :-

"20. Any dealer may in the prescribed manner appeal to the prescribed authority against any assessment within sixty days or such further period as may be allowed by the Commissioner for cause shown to his satisfaction from the receipt of a notice issued under sub-section (3) of Section 11 in respect thereof:"

* * * * * (2) Subject to such rules of procedure as may be prescribed, the

appellate authority in disposing of any appeal undersub-section (I), may -(a) confirm, reduce, enhance or annul the assessment, or ;(b) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed."

(3) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner upon application or of his own motion may revise any assessment made or order passed under this Act or the rules there under by a person appointed u/s 3 to assist him, and subject as aforesaid, the Chief Commissioner may, in like manner, revise any order passed by the Commissioner ..."

According to sub-section (2b) of the Section the appellate authority may set aside the assessment and direct the assessing authority "to make a fresh assessment after such further enquiry as may be directed". According to sub-section 3 of the Section the Commissioner has the power to "revise any assessment made or order passed under this Act. The specific power conferred on the appellate authority to direct the assessing authority to make a fresh assessment after further enquiry has apparently not been expressly conferred on the revisional authority by the Act. This raises two questions, namely, (1) whether the revisional authority has an implied power to direct fresh assessment after further enquiry, a power that is expressly conferred on the appellate authority by Section 20(2b) of the Act and (2) if so, whether any proceedings taken by the assessing authority pursuant to the direction of the revisional authority for fresh assessment could be said to be "in consequence of or to give effect to any order" of the revisional authority within the meaning of the proviso to sub-section (2a) of Section 11.

(12) As far as the power of the revisional authority under Section 20(3) it is fairly well settled that a revising authority would necessarily have the power to make such orders as in its opinion the case calls for once it is satisfied that it is an appropriate case for interference in revision and the absence of some expressed provision authorising the authority to pass such order, as it thinks fit, would not in any manner limit such powers. This is so because on principle whenever a power is conferred on an authority to revise an order the authority would be entitled to examine the correctness, legality and propriety of an order and to pass such suitable order as the authority may think fit in the circumstances of a particular case including an order setting aside the order and remanding the proceedings for fresh decision according to law. The only limitation on the power of the revising authority would be that it "should not trench upon the powers which are expressly reserved by the Act or the Rules to other authorities and should not ignore the limitation inherent in the exercise of those powers". Reference may be made to the decision of the Supreme Court in the cases *The Swastik Oil Mills Ltd.*, 1968 (21) S.T.C. 383(1) and *The State of Kerala*, 1965 (16) S.T.C. 875. The case relied upon on behalf of the petitioner does not appear to me to support their contention. The observations of the High Court of Kerala in the case of *O. Kassim Kaimu*, 1970 (26) S.T.C. 530, which were relied upon on behalf of the petitioner,

for the proposition that the power of the revisional authority was limited, do not appear to me to be relevant. In that case a nil assessment was sought to be revised to which the petitioner objected. The objection was over-ruled. The assessment was set aside and the Sales-Tax Officer concerned was directed to make further investigation with a view to assess the escaped turnover. The contention was that the power of the revisional authority could not be used to direct the assessment of escaped turnover for which a specific power is conferred on the assessing authority under a different provision under the Kerala Act and that the revisional power cannot be used to achieve the result contemplated by the use of the specific provision. The observations were made in that context and must be understood in the context in which they were made. There is nothing in this authority which may justify the conclusion that once a revisional authority is duly seized of a matter it cannot remand a case for fresh enquiry and proper order in accordance with law. I have, therefore, no hesitation in holding that the revisional authority had the power not only to set aside the assessment but to direct the assessing authority to make a fresh assessment after such further enquiry as may be directed by it.

(13) Whether the resumption of proceedings after the revisional order could be said to be in "consequence of" or "to give effect" to the order of the revisional authority, so as to detract the benefit of the proviso to Sub-section (2a) of Section 11, is the next question that must be examined. After hearing learned counsel for the parties, it appears to me to be obvious that the resumption of proceedings and the assessment that is to be made on the basis thereof would be in consequence of or to give effect to the order of the revisional authority, which while setting aside the assessment, remanded the cases "back to the appropriate assessing/notified authority of ward No. 14 with the direction that he will pass fresh orders in accordance with law." The assessing authority was, therefore, clearly under a legal obligation to comply with the direction of the revisional authority. The proceedings resumed by it are obviously in consequence of, as indeed, to give effect to the direction made by the assessing authority, learned counsel for the petitioner is quite justified in his contention that even if the revisional authority had merely set aside the assessment order and had refrained from making a remand order or a direction that the assessing authority would make fresh order in accordance with law, the assessing authority would nevertheless be entitled, as indeed, bound, subject to the question of limitation, to resume the assessment proceedings because what was set aside by the revising authority was the assessment order i.e. the adjudication by the assessing authority of the liability of the petitioner and the proceedings of which cognizance had been taken by the assessing authority had been left untouched. That, to my mind, would not make any difference because even if the revising authority had merely set aside the assessment order, the resumed proceedings for completing assessment would still be a consequence of the revisional order. Could there be a fresh assessment order if the revising authority had not set aside the earlier one. The question must obviously be answered in the negative. The

fresh proceedings are, Therefore, a direct result of the order by the revising authority and in fact any fresh proceedings for assessment of tax liability in respect of the assessment order would have been incompetent if the earlier assessment order in respect of that year had subsisted in law. It is the revisional order which caused a vacuum that necessitated that the assessment proceedings, which had been left untouched, should be taken to their logical conclusion by a proper assessment order in accordance with law. To hold to the contrary would be to permit an assessed to challenge an assessment in successive proceedings by way of appeal, revision or review involving the revenue in litigation, get the stay of recovery meanwhile and when the proceedings prove abortive to turn round and say that the fresh proceedings have nothing whatever to do with the appellate, revisional or other proceedings in Court and had, Therefore, become barred by time. This would clearly frustrate the object of the proviso and enable the assessed to take undue advantage of raising shallow controversies at different levels. This contention must, Therefore, fail and it must be held that the resumption of proceedings in the present case naturally flowed from the order of the revisional authority setting aside the assessment.

(14) It is next contended that the assessment order made by the assessing authority on 21/02/1975 in respect of the assessment year 1969-70 must be set aside in that it neither deals with the various contentions raised by the petitioner nor gives reasons for which the petitioner has been held to be a dealer and be liable, to be registered as such and to pay sales-tax on the turnover. It was not disputed that before the assessing authority the petitioner had raised various contentions with regard to limitation, jurisdiction as also on the merits whether, having regard to the nature of the petitioner's business, it could be said that it was carrying on the business of selling goods or that the various transactions entered into between the petitioner and the advertisers could be said to be transactions of sale so as to render the petitioner liable to be registered and to pay sales-tax. It was also not disputed that the impugned order does not mention, much less discuss) any of these contentions save an observation that he had "considered" that reply and "reject the contention that he is not a dealer carrying on the business". It was, therefore, not disputed that in any event no expressed reasons had been given in the order on the basis of which the petitioner was held to be a dealer and it is difficult to imply any reason from the terms of that order. A faint attempt was, however, made on behalf of the Revenue to justify the order on two grounds. In the first instance, it was contended that the assessing authority had been discharged from the obligation to give reasons because detailed reasons for the finding that the petitioner was a dealer had been set out by Shri H. D. Birdi, Sales-Tax Officer (SIB) in his order of 17/12/1969, a copy of which was enclosed Annexure X to the return, filed on behalf of the respondents. Now, there is no doubt that this is an elaborate order, and deals with the questions if the petitioner could be legitimately treated as a dealer, having regard to the nature of its business, but there is, however, a fallacy in the argument, and the learned counsel for the respondent was not unaware of it, in that this order

had eventually been set aside in revision on the ground that the assessing authority had no jurisdiction to make the assessment. That being so, there is nothing in this order which survived for the respondent to rely upon. Of course, it was open to the assessing authority, which made the order of 21/02/1965, to have either incorporated the reasons on which the order of Birdi was based in its own or to have at least stated that the contention that the petitioner was not a dealer was rejected on the ground on which he was held to be a dealer in an earlier order even though it ceased to exist, assuming that such an exercise could save the present order. But there is nothing in the order which may indicate the reasons on which the conclusion purports to be based. The requirement that a judicial or quasi-judicial order must give reasons is not a requirement of the form of an order but is based on the principle that the incorporation of reasons for a conclusion in such proceedings would not only indicate that the authority called upon to decide a list had applied its mind to it and disclose the reasons which impelled it to look at the matter in the way it did so that a further judicial review of such orders can be a meaningful exercise. Secondly, an attempt was made to justify the impugned order on the ground that in the absence of reasons the order did not suffer from any statutory infirmity which may be capable of vitiating it by its own force inasmuch as Rule 37 of the Delhi Sales Tax Rules, 1951 saves an order if it suffers only from the infirmity that it fails to state the reasons. This argument, to my mind, is based on a complete misapprehension as to the true meaning and scope of Rule 37. Rule 37 reads thus:-

"EVERY order of assessment shall be recorded in writing and where the Assessing Authority determines the turnover of a dealer at a figure different from that shown in the return submitted under the provisions of these rules, the order shall state briefly the reasons. Therefore, but a failure to state reasons shall not affect the validity of the assessment order. A copy of such order shall be supplied to the dealer free of costs."

It enjoins the assessing authority to record the order of assessment in writing and to state briefly the reasons. Therefore if the assessing authority determines the turnover "at a figure different from that shown in the return". It contains a saving provision to the effect that "a failure to state reasons shall not affect the validity of the assessment order". It is true that the Rule postulates that the order should be "in writing" and the mandatory requirement to give reasons has relation to a quantification of the turnover if it differs from the turnover claimed by the dealer and the failure to state reasons does not affect the validity of the assessment order. The Rule is, however, confined to the treatment of the question of quantum and cannot be read as discharging the assessing authority from the obligation of recording reasons for the various conclusions that it arrives at with regard to the various questions raised before it particularly those that have reference to the very jurisdiction of the authority to make an assessment, as for example the question if a particular person was a dealer or not. A case may involve other questions such as the territorial jurisdiction of the authority of the bar of

limitation. In all such cases the assessing authority is bound to draw up a speaking order dealing with such contentions and incorporate in the order the reasons on which it may be based. There is, therefore, no escape from the conclusion that the impugned order does not conform to the legal requirement of a quasi-judicial order, which renders it liable to be quashed.

(15) That brings me to the last contention on which there was considerable controversy between the parties. According to the petitioner, it was carrying on the business as advertising consultant and in that capacity, Therefore, rendering certain expert services to the advertisers as to the mode, form and pattern of publicity and projection. It is the case of the petitioner that in the course of that business the petitioner has to and does procure various articles and material, as indeed, other services from outside such as block making, printing, preparation of slides, hoarding, manufacturing of calendars, diaries etc. on account of and on behalf of the advertisers. The petitioner contends that the petitioner gets its commission from the various persons from whom such material and articles are procured or who constitute the media of publicity such as newspapers, cinema houses etc. and that the petitioner charges from the advertisers only for the services that the petitioner renders to them in preparing designs etc. or in drawing up right-ups and if commission is not allowed to the petitioner by the various suppliers of articles and materials. It is, therefore, the contention of the petitioner that it is merely selling its expert services and merely because as a result of those services new products are procured for the advertisers through various sources, it could not be said that the petitioner is selling those articles or material or the finished goods, out of which they are made, to the advertiser even though the petitioner admittedly buys the articles and material of which the finished goods are ultimately composed of but only as an agent of the advertisers. The petitioner further contends that the property in the finished goods or article at no stage passes either to the petitioner or is passed from the petitioner to the advertiser because the payments for the material and articles, as indeed, the services procured for the advertiser through the petitioner are paid for by the advertiser and the petitioner does not charge any margin of his own besides the charges for its services. The petitioner, Therefore, contends that it could not be said that the petitioner was selling any goods or was carrying on the business of selling of goods within the meaning of the Local and the Central Acts so as to attract liability to registration as a dealer or to sales-tax on any part of its turnover. On these allegations, the petitioner invites this Court to examine the nature of the petitioner's business, the pattern in which it is carried on, the normal practice obtaining in that behalf in the advertising agency profession, the system of maintenance of accounts indicating that the material and articles are purchased by the petitioner on behalf of the advertiser and paid for on their behalf and to hold that the petitioner could not be said to be carrying on any business of selling goods for even buying goods on his own account and that the petitioner would, Therefore, not be liable to be registered as a dealer in relation to the turnover of the petitioner in its advertising consultant business. On the other

hand, the learned counsel for the Revenues contends that the question whether the petitioner was carrying on the business of selling goods or had during the assessment year concerned in fact produced and sold goods and articles to the advertisers even while selling their services to the advertisers was not and could not be of abstract question of law which could be decided by this Court without proper material. It is further contended that such a question could not be decided in the abstract in relation to the practice that may be prevailing in the advertising consultancy profession generally as it was to involve essential questions of facts to be decided in each case with reference to each year on the material being placed by the petitioner even though in the context of the overall practice followed in the profession of publicity consultancy. It is, Therefore, urged on behalf of the Revenues that the broad proposition as to when was a person liable to be registered as a dealer and what constitutes the business of selling goods are fairly well settled and the decision in individual cases, on an application of established principles, is best left to the statutory authorities under the Act, who are both competent and fully equipped to decide these questions. Learned counsel for the parties marshalled principles as well as a large number of precedents in support of their rival contentions as to the test to be applied in such cases to determine if a particular profession or business was a business of selling of goods and the way various courts have looked at the questions, inter alia, in the context of advertising consultancy business.

(16) After hearing the learned counsel for the parties it appears to me that in view of my conclusion that the proceedings for the assessment of the petitioner including the determination of the question If the petitioner was a dealer or not are not barred by time and are otherwise competent and in view of further of my conclusion that the assessment order of 21/02/1975 is liable to be quashed, both the questions of law as well as of fact which would be involved in the determination of the question if the petitioner could be said to be a dealer and be liable to be registered and to be dealt with on that basis could be more appropriately dealt with in the first instance by the special authorities constituted under the Act particularly because the only order in which the question was considered and decided was held to be honest by the revisional authority, even though, to my mind, quite erroneously and there is, Therefore, no reasoned order in relation to any of the assessment year in questions in which the question may have been considered and decided. Such a question could also be more appropriately dealt with by the authorities under the Act because it involves not only a question of law in the abstract but also an investigation into the true nature of the transactions on the basis of the material that would be placed before the authorities, an exercise which obviously would not be possible within the limited compass of the present proceedings. Having regard to the fact that elaborate arguments were addressed on the question as to the practice prevalent in the profession of publicity consultant and as to the true construction and scope of the expression "dealer" and of "sale of goods" I was tempted to examine abstract question laying down the broad test to be applied in determining the

liability to registration or to assessment of a turnover in a particular case. I am, however, inclined to resist the temptation because even on the questions of law the authorities under the Act are entitled, as indeed, competent to hear both sides and arrive at their own conclusion in the light of a large number of decisions of various courts in India touching the question and any observation that may be made by me is likely to prejudice a fair trial of the question by the authorities.

(17) For all these reasons I would quash the order of the assessing authority dated 21/02/1975, in respect of the assessment year 1969-70, and direct that the assessing authority would resume proceedings in respect of the various assessment years and decide the various questions in controversy after hearing the petitioner and considering the material that may be placed on the record, by an appropriate speaking order, which may facilitate further judicial scrutiny. In the way I have dealt with the assessment order for the assessment year 1969-70, the appeal filed against it subsequent to the rule, would become infructuous and would be dealt with accordingly. The petitioner would also have his costs. Counsel's fee is assessed at Rs. 750.