

(1963) 11 AHC CK 0005

In the Allahabad High Court

Case No : Income-tax Reference No. 340 of 1955

LOUDH SUGAR MILL

APPELLANT

Vs

THE STATE.

RESPONDENT

Date of Decision : 28-11-1963

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 24(2), 24(7)

Citation : (1964) 54 ITR 573

Hon'ble Judges : M. C. Desai, C.J

Bench : Division Bench

Judgement

M. C. DESAI C.J. - This is a case referred u/s 24(2) of the U.P. Agricultural Income Tax Act by Revision Board at the assessee's instance, the questions requiring this court's answer being :

"1. Whether in the circumstances of the case all or any of the applications in revision filed by the State should be dismissed as being barred by limitation on the ground that they had been filed beyond a reasonable time ?

2. Whether if the applications are not dismissed on that ground, the Board the power after the expiry of the period prescribed by section 25 or section 26 of altering the order of the assessing authority ?"

The facts as they appear from the statement are as follows : For the assessment year 1358 (i.e. July 1, 1950, to June 30, 1951), the assessing authority made the assessment order on September 29, 1951. The State Government on July 9, 1954, applied to the Revision Board to revise the assessment order u/s 22, which reads as follows :

"22, (1) The Revision Board may, on their own motion or on an application, call for the record of any proceeding.... and... may pass such orders as they think fit."

The existing sub-section (1A) laying down that an application under sub-section (1) must be within one year from the date of the service of the order complained

of, did not exist on the relevant dates and was enacted by Act No. 14 of 1956. The present case is not governed by that sub-section. The Board entertained the revision application filed by the State and on January 29, 1955, passed another assessment order enhancing the tax.

Coming to question No. 1 we find that there did not exist any law which compelled the Board to reject the States application on the ground that it was filed after the expiry of a certain period. As no period of limitation was prescribed for such an application no application was required to be dismissed on the mere ground the of the expiry of a certain period. Revisional Jurisdiction of the Board is discretionary : vide the word "may" used in sub-section (1) of section 22, and it was always open to the Board to refuse to entertain an application on the ground that it was unduly delayed. Laches is a ground for refusing to exercise revisional jurisdiction, though it is a matter of discretion and not of law. The practice of this court not to entertain an application for revision revision in a criminal case in a civil suit or for a writ after the expiry of 90 days is based on a rule of prudence and this court has no jurisdiction to impose this practice upon the Revision Board. There is no question of "reasonable period of limitation" : a period of limitation is always fixed by the legislature and is not to be implied by a court in the absence of a statutory provision. The principle of the law of contract that if time is not fixed for the doing of an act, the law implies reasonable time for the doing of it, has no application to an application to an application to be presented under a statutory provision to a court or another tribunal. If the legislature giving a party a right to make an application to a court or another tribunal does not prescribe the time within which it should be made, the law does not imply that it must be made within a reasonable time and does not require that if it is not made it must invariably be rejected. It can be rejected on the ground that it was not made within a reasonable time but this is in exercise of the discretion vesting in the court or tribunal and not in compliance with any law. No law compels a High Court or any other authority to refuse to exercise revisional jurisdiction on the ground of laches and if a High Court or any other authority refuses the jurisdiction on the ground of laches it does not arbitrarily or erroneously. Therefore the Board could, but was not obliged to, reject the States application on the ground of laches and our answer to question No. 1 is that the Board could in its ?discretion,, but was not bound by any law to, dismiss the States application on the ground that it was field after more than 2 years and 9 months. Since it was the contention of the assessee that the Board ought to have dismissed the application on this ground, the answer can be said to be against the assessee.

As regards question No. 2. we are not quite sure that it arises out of the order passed by the Board u/s 22. The Board wrote in the order :

"On behalf of the assessee the applications were contested only on the ground that they were beyond limitation.... no period of limitation was prescribed under the Act for a revision application... Relying on section 25 and 26 under which

application can be made within a period of one year, it was contended a revision application beyond a period of one year from the date of the order challenged should not be entertained on the ground of limitation."

This was the sole contention and the Board rejected it. No question about the assessment order having become final by lapse of time, so that it could not be revised by the Board, was raised at all and was, therefore, not even touched by the Board in its order. The Board did not discuss at all the question of its power to pass an order on an application made after considerable delay. It was for the first time in the application u/s 24(1) that the assessee raised the question of the assessment order having become final invulnerable after the lapse of two years, i.e. that "even if the Board was pleased to entertain it the Board could not in the exercise of its revisional powers reopen an assessment that had been made final by the Act by lapse of time." The Board had jurisdiction to refer to this court a question of law arising out of its order; if a question did not arise out of its order it could not be referred at all. In its order u/s 24(2) the Board justified the framing of the second question by stating that "it appears from the judgment given by the Board that the assessee had raised this plea on two grounds," (1) "That the application for revision should not be entertained beyond a reasonable period," and (2) "that once an assessment was made against an assessee by the assessing authority the only course open would be to assess the assessee again either u/s 25 of the Act.... or u/s 26.... in the case of both of these sections a period of one year had been prescribed". The Board took a clearly erroneous view of the order passed by it on January 29, 1955. The assessee had never contended in the proceedings u/s 22 that the only course open to the State was to apply u/s 25 or u/s 26 and within a period of one year. We may notice the fact that the members of the Board who have referred the case to us are different from the members of the Board who had passed the order u/s 22. As the matter is not absolutely free from doubt we shall proceed to answer the question.

The periods of limitation stated in sections 25 and 26 are only for the purposes of issuing a notice in respect of escaped income and an assessee applying for rectifying a mistake apparent on the face of the record. They have absolutely nothing to do with the question whether the Board can in exercise of its jurisdiction conferred by section 22 revise an order more than a year after it was made. Both the periods of limitation are for initiating or starting a proceedings and not for completing a proceeding. The period of limitation prescribed in section 26 applies when an assessee makes an application for rectification of a mistake and can have no application to an application made by the State. The reference to the periods in the question framed is irrelevant and meaningless. It is section 22 to which we have to refer for deciding what orders can be passed by the Board in the exercise of its jurisdiction and it contains absolutely no limitation in respect of the time within which alone it can exercise it, if at all. The jurisdiction being discretionary, it is always open to the Board to refuse to exercise it on the ground of laches and that explains why section 22 does not prescribe any period of limitation for an application invoking this jurisdiction. If it finds that the ends

of justice require its acting, it is fully competent to act regardless of the time that has passed. No limitation except what would affect its discretion is to be read in the words of section 22 and the periods of limitation stated in sections 25 and 26 are certainly not to be read in section 22.

The jurisdiction conferred by section 25 is on the assessing authority and is, therefore, absolutely different from the jurisdiction conferred by section 22 upon the Board. Neither of the jurisdiction is dependent upon the other and the argument that the Board u/s 22 if the assessing authority cannot act u/s 25 is without merit and misconceived. As was pointed out in *Kishan Lal Gopi Kishan v. Commissioner of Sales Tax*, no question of escape of income can arise when an assessment proceedings is pending or when the validity, correctness or propriety of an assessment order is pending before an appellate court or the Board in revision. When the Board revises an assessment order by enhancing the tax, it does not thereby enable assessee to escape income or exercise the jurisdiction conferred by section 25, it merely corrects the order by substituting the order that should have been made by the assessing authority or the appellate court. Similarly, the jurisdiction conferred by section 26 is upon the authority making the order; it is only that authority that is empowered to rectify a mistake apparent on the face of the record. Section 26 has no application whatsoever when another revises the order on appeal or revision.

The Board has not in this case directed fresh assessment to be made after issuing a notice and, therefore, the case is to be distinguished from *Raja Yadendra Datt v. State of U.P.* (Civil Miscellaneous Agricultural Income Tax Reference No. 16 of 1960) decided today. We may, however, refer to it for ascertaining the extent of the Board's powers u/s 22; its order must be in accordance with the law and it must not make an order which could not have been made by the assessing authority and subject to this implied restriction its jurisdiction is unlimited, i.e., had there been a provision in the Act to the effect that an assessment order must be passed within a certain time the Board might not after the expiry of the period direct a fresh assessment. As the agricultural Income Tax stands there is no period prescribed for passing an assessment order and the only limitation as regards period that exists is on the power to issue a notice for assessment is pending even in revision before the Board. There is, therefore, no limitation as regards time on the power of the Board to pass an order u/s 22.

In the result our answer to question No. 2 is in the affirmative.

A copy of this judgment shall be sent to the Revision Board under the seal of the court and the signature of the registrar as required by section 24(7) of the U.P. Agricultural Income Tax Act.

The State shall recover its costs of this reference from the assessee and we assess the costs of Rs. 100. Counsel's fee is assessed at Rs. 100.