
(1957) 02 GAU CK 0004
In the Gauhati High Court
Case No : Sales Tax Ref. No. 2 of 1956

Paresh Chandra Paul

APPELLANT

Vs

The Commissioner of Taxes

RESPONDENT

Date of Decision : 08-02-1957

Acts Referred:

Citation : (1957) 02 GAU CK 0004

Hon'ble Judges : Sarjoo Prosad, C.J.;Deka, J

Bench : Division Bench

Advocate : P. Choudhury and J.P. Bhattacharjee, for the Appellant; D.N. Mehdi, Sr. Govt. Advocate and R.K. Goswami, Jr. Govt. Advocate, for the Respondent

Judgement

Sarjoo Prosad, C.J.—This is a reference made by the Board of Sales Tax, Assam, u/s 32 of the Assam Sales Tax Act, 1947 (Assam. Act XVII of 1947), (hereinafter called the Act). The reference is at the instance of the Assessee. The facts stated are that ttje. Petitioner Paresh Chandra Paul, Proprietor of Mahesh Bhandar, Silchar, was liable to payment of .tax under the Act with effect from the 1st February, 1948, the date notified by the Assam Government under S- 3 of the Act for commence-igejat of liability of the dealers under the Act. " The Petitioner, it appears, in spite , of this liability did not apply for registration as required toy. Section 9 of the Act. A notice was, therefore, issued to him u/s 10 of the Act by the Superintendent of Taxes in March 1952, to get himself registered as a dealer. The Petitioner then filed an application oh the 31st March, 1952, for registration, wherein he states his gross turnover for twelve months ending 1947-48 as Rs. 56,171-5-6.

He was duly registered on the 17th of April, 195,"i; but no return was submitted by him as required by S. 16 (1) of the Act. The Superintendent of Taxes then served notices u/s 17 (4) of the Act calling upon the Petitioner to submit his return for the periods ending on the 30th September, 1949 to 31st March, 1952. These notices were served on the 12th June, 1952.

2. The notice's thus covered six half-yearly periods. In compliance with these notices, the Petitioner submitted his return on the 7th July, 1952. The Superintendent of Taxes apparently not being satisfied with the returns filed, issued notices on the Petitioner u/s 17 (2) of the Act for production of evidence in support thereof and then made the assessments u/s 17 (3) of the Act, which are now impugned.

This was on the 18th of December, 1952, and covered the relevant return periods, as stated above. The assessments were challenged before the Commissioner of Taxes, Assam, by revision petitions dated the 17th March, 1952, u/s 31 of the Act, on the grounds, inter alia, that the assessments for the return periods ending on the 30th September, 1949 and the 31st March 1950, i.e., for three half-yearly periods, were barred by limitation and that the Petitioner was not liable for any tax on sales prior to registration. „." . The Commissioner rejected these objections by his order dated the 29th January, 1954. Thereafter, the Petitioner presented an application for reference to this Court on the 20th April, 1954. This was initially rejected on the ground that it was incomplete and incompetent. The Petitioner subsequently moved this Court u/s 32 (5) of the Act.

This Court set aside the order of the Commissioner and directed that his application for reference should be disposed of according to law. It ts as a result of this order that the reference has "been submitted by the Board of Sales Tax. r"" (2) There were various questions raised by the as-gesse"e on"- which he asked for a reference; but the Jjoard has; referred only one of those questions as be-

ing a question of law for our adjudication. The question as formulated by the Board is:

Whether on the facts and in the circumstances of the case, the assessments for the return periods ended on 30th September, 1949 to 31st March, 1952 made pursuant to notices u/s 17 (4) of the Assam Sales Tax Act, 1947 issued on. 12th June, 1952, without the aid and operation of notices u/s 19 of Assam Sales Tax Act, 1947 Stand void ab initio?"" As the question formulated was somewhat obscure and failed to bring out clearly the points for ad-. judication, we thought it right on hearing learned" counsel for either side to recast the question involved in this form:

Whether, on the facts and circumstances of the case, there has been sufficient compliance with tlhe provisions of Sections 19 and 19A of the Act; and if not, whether the assessments in question are-voide.

It would be clear from the question as now formulated that the Petitioner assails the assessments mainly on the ground that there were no notices issued u/s 19 or 19A of the Act and as such the Superintendent of Taxes had no jurisdiction without such notices to make the assessments in question. Section 19A was added by S. 5 of Amending Act IV of 1951.

The Assessee points out that if the Commissioner or the Superintendent of Taxes was satisfied that any turnover in respect of sales of goods chargeable to tax under the law had escaped assessment during any return period, it was open to the Officer at any time within three years of the aforesaid period to serve on the Petitioner a notice u/s 19A of the Act.

Compliance with S. 19A of the Act was an essential condition prior to the assumption of jurisdiction by the Officer to assess in regard to turnovers during periods which had escaped assessment; otherwise, the assessment is wholly without authority. The Board concedes that notice u/s 19A was necessary in the circumstances of the case; but it is of the view that the issue of notices u/s 17 (4) of the Act was a mere irregularity and the Petitioner having submitted his returns and having raised no objection to the notices in question, he should be deemed to have waived this right to insist upon issue of notices u/s 19A of the Act.

It was, therefore, not open to him to challenge the assessment on that ground. The Board¹ opined that the irregular procedure followed by the Superintendent of Taxes did not vitiate the proceedings.

3. Shortly put, therefore, the question is whether the assessments are vitiated for want of notice u/s 19A of the Act. To appreciate the contention of the parties, it is necessary to examine some of the provisions of the Act, which are material to the discussion. Section 16 (1) of the Act read with Rr. 20 and 21 of the Assam-Sales Tax Rules, 1947, requires that every registered dealer should furnish returns half-yearly and within 30 days of the completion of the half-year in respect of which the returns are to be filed.

Clause (2) of the section refers to any other dealer, whose total turnover is, in the opinion of the Commissioner, of such amount as to render him liable to pay tax under the Act for any year or part thereof. In that case, the Commissioner may serve in that year a notice in the prescribed form requiring such dealer to furnish a return of his total turnover. Under S. 17 (1), if the Commissioner is satisfied that a return furnished by a dealer under S.

16 in respect of any period is correct and complete, he may proceed to assess the dealer and determine the tax payable by him on the basis of his return. If he is not satisfied about the correctness of the return he may under Sub-section (2) of S.

17 serve upon the dealer a notice requiring the dealer on a specified date and hour to produce evidence before him in support of his return and then under Sub-section (3), the Commissioner may proceed to assess the dealer and determine the tax payable after hearing such evidence as produced by the dealer or such other evidence as the Commissioner may require.

Where the dealer fails to make a return as required by Sub-sections (1) and (2) of S. 16 or to comply with all the terms of the notice issued under sub. (2) of S.

17, the Commissioner can assess the dealer to the best of his judgment under Sub-section (4) of S. 17 after giving such further time to the dealer as he thinks fit to make the return or to comply with the terms of the notice.

The assessment proceedings, therefore, start against the registered dealer on the submission of his return as prescribed by sub-s.. (1) of S. 16 or on the issue of a notice under Sub-section (2) of the section in the case of any other dealer. In the former case, the return is to be submitted within 30 days of the completion of the half-year to which the return relates; in the latter case, the notice has to be served by the Commissioner on the dealer concerned in the course of the year for which he is considered liable to pay the tax.

In case of failure to comply with the above provisions, steps could be taken against the dealer u/s 17(4) of the Act. In the present case, the Assessee had not submitted his return u/s 16 (1) of the Act. Indeed he was not bound to do so, because he had not been registered as a dealer till 17-4-1952. Of course, there was nothing to prevent him from submitting his return, as any honest dealer would do, notwithstanding the fact that he had not been registered under the Act or even in the absence of any notice on him to submit a return under Sub-section (2) of S. 16. In fact the fact remains that the dealer did not do so and S. 16 (1) of the Act had no application to him. Therefore, the other course open to the assessing officer was to issue a notice on him under Sub-section (2) of Section 16. Admittedly, this also was not done and the period for the issue of such notice had also expired.

Indeed, no action appears to have been taken against the Assessee until 12-6-1952 when for the first time notices were sent to him u/s 17 (4) of the Act. It is obvious that Sub-section (4) of Section 17 was not attracted to the case at all, as none of the contingencies to which the Sub-section relates and under which alone action could be taken against the Assessee arose in this case.

It is apparent that during the periods in question the Assessee had escaped assessment; and at that stage, initially it was not open to the Department to take any action either under Sub-section (2) of Section 16 or under Sub-section (4) of S. 17 of the Act. It has not been seriously contended on behalf of the Department nor could it be reasonably contended that Sub-section (4) of Section 17 was attracted because of the failure of the dealer to submit his return for the periods in question under Sub-section (1) of Section 16.

I have already shown that Sub-section (1) of Section 16 had No. application to the dealer and therefore, the penal consequences or the drastic step of making a. best judgment assessment under Sub-section (4) of Section 17). in consequence of any default, as contemplate by the law, did not arise. If at all, it was the? fault of the Department in not taking appropriate-action against the dealer in time as provided by Sub-section (2) of Section 16 and then in case of default, following it up with a proceeding under Sub-section (4) of Section 17.

4. Then the question is whether there is any other provision in the law to meet

such contingencies. The department has to fall back upon the-only other provision under which the taxing Officer is able to tax such cases where turnovers have-escaped assessment under the law. Section 19A runs-thus:

If, upon information which has come into his possession, the Commissioner is satisfied that any turnover in respect of sales of any goods chargeable to tax under this Act has escaped assessment during any return period or has been under assessed or assessed at a lower rate or any deduction. has been wrongly made therefrom, he may, at any > time within three years of the aforesaid period serve on the dealer liable to pay the tax in respect of such turnover a notice containing all or -any of the requirements which may be included in a notice under Sub-section (2) of Section 16 or Sub-section (2)-of Section 17 and may proceed to assess or reassess the dealer in respect of such period and the provisions¹ of this Act shall apply accordingly as if the notice, were a notice served under the aforesaid Sub-section:

Provided that the tax shall be charged at the" rate at which it would have been ordinarily chargeable.

Section 19 may be left out of consideration, because it applies mutatis mutandis to non-registered dealers, with this difference that the period" during which the Commissioner or Superintendent of Sales Taxes can serve notice is within two" years of the end of the relevant period. We may recall that S. 19A was introduced in the Act by an" amendment in 1951.

Therefore, prior to registration of the dealer the Taxing Officer could act even u/s 19 of the Act. At any rate, at the time when action was taken, Section 19A was on the statute and the dealer had been already registered. Therefore, the section relevant for the present is Section 19A and" it is contended by the learned Counsel for the, Department that there has been sufficient compliance with this provision, though not in terms at, least in substance.

It is not disputed that in order to give juris¹" diction to the Taxing Officer to tax in such cases it is necessary that proceedings should be initiated under this section. At the same time, it cannot be doubted that if the Assessee voluntarily files a return after the expiry of the assessment year and prays for assessment, the Taxing Officer may proceed to tax him accordingly.

It has also been held that the jurisdiction to" assess does not necessarily depend upon the validity of the notice issued under a particular section. Even if there is some defect in the notice, the jurisdiction of the Officer to assess will not be-necessarily affected. The learned Counsel for the Department, therefore, argues that these procedural sections should be so construed as to make the working of the Act effective.

If, therefore, the circumstances mentioned in-the section, which would confer jurisdiction on" the Sales Tax Officer to assess, do exist, the jurisdiction will not be lost merely because of some irregularity in the procedure adopted by the

Offices"

Six making the assessment. It is contended that there was substantial compliance in the present case, because a notice in effect had been given to, the Assessee to file his returns, though labelled as -a notice u/s 17 (4) of the Act; and the Assessee in pursuance thereof had filed his returns for the periods in question without any protest whatsoever.

Section 19A inter alia requires the existence of three essential factors: (1) Upon information received the Commissioner must be satisfied that: any turnover has escaped assessment during any return period; (2) the Commissioner must serve on the dealer liable to pay the tax a notice containing all or any of the requirements included in a notice under Sub-section (2) of Section 18 or Sub-section (2) of Section 17; and (3) the notice in question must be served within three years of the period.

Here it is obvious that the outturns during the relevant return periods had escaped assessment and the assessing officer was satisfied about it before he took action. It is also undoubted that the notices sent u/s 17. (4) on 12-6-1952 were sent within the requisite period of limitation at least in regard to some of the periods. But the only question is whether the issue of notices, described as notices under Section 17 (4) of the Act should be taken to comply with the requirements of S. 19A of the Act.

.. It is pointed out that though the notice is in form a notice u/s 17 (4) of the Act, the effect of the notice was the same if a notice u/s 19A were issued calling upon the dealer to submit his returns according to Sections 10 (2) or 17 (2); and the dealer in fact in compliance with the notices submitted his returns for the periods in question without any protest or objection.

That being so, the learned Counsel for the Department submits that there has been sufficient compliance with Section 19A of the Act and the defect in the form of the notices did not affect the jurisdiction of the Officer to assess. In any case, it is urged that by submitting his returns without any objection, the Assessee waived his right to object to the initiation of assessment proceedings which, in view of the dealer's liability to pay under the Act, could not be regarded as without jurisdiction.

5. In my opinion, there is much substance in the above contentions. In case of escaped assessments, the law gives the Sales Tax Commissioner the right to initiate proceedings only under the circumstances existing under Sections 19 and 19A of the Act. The first essential is that the Commissioner must be satisfied in his mind upon information received that a dealer or his turnover in respect of sales during any return period has escaped assessment.

It is not necessary for him when initiating proceedings under these sections to hear the dealer in the matter or to state in the notice sent to the dealer that he has such information. It is enough if he is satisfied in the matter, before issuing

notice on the dealer within the terms of Section 16 (2) or 17 (2) of the Act.

On the facts stated there is no doubt that the Superintendent of Sales Tax was so satisfied in the present case. The notice sent to the dealer should also state the periods for which he is liable to be assessed or the turnovers in respect of which the returns are needed. Then again, the notice must be issued within the relevant periods specified in the section.

There is no complaint that these conditions do not substantially exist. Then the only point, "which matters, is whether the label of the notices issued u/s 17 (4) would be such as to vitiate the whole proceeding. The form of the notice will not matter so long as in substance it fulfils all the purpose which a notice u/s 19A would have done.

In this case, even if the notices had been correctly labelled u/s 19A of the Act, the result would have been exactly the same, namely to call upon the Assessee to submit returns as required by Section 16 (2) or Section 17 (2) of the Act. If jurisdiction to act exists under the law, the jurisdiction will not be affected merely because the Officer under some misconception of the law adopted a procedure, which was somewhat irregular, but did not even prejudicially affect the Assessee.

Of course, in a taxing statute, the tax has to be realised in accordance with the terms of the statute, but unless any particular procedure adopted by the Officer is wholly without the authority of the law, the assessment proceeding will not be vitiated merely because of some irregularities in the procedure.

6. There is no direct case cited at the bar " with reference to the point under investigation, but " our attention has been drawn to several cases bearing on the interpretation of Sections 34 and the analogous provisions of the Indian Income Tax Act and the Bengal Agricultural Income Tax Act, to which I shall presently refer. The language of Section 84 of the Indian Income Tax Act corresponds in material particulars with the language of Sections 19 and 19A of the Assam Sales Tax Act.

The Privy Council observed in (1940) 8 ITR 442 (Privy Council) with reference to Sections 34 of the Income Tax Act that although it was a part of the taxing Act, it imposed no charge on the subject and dealt merely with the machinery of assessment; and. in interpreting provisions of this kind, the rule is that that construction should be preferred which makes the machinery workable. Of course, the point raised in that case was different.

It was argued in that case that a quasi-judicial enquiry had to be held before the powers under the section could be put into operation. This argument was rejected by the Privy Council; but in doing so, their Lordships considered the scope and application of S. 34 and observed as stated earlier. Again, the decision of the Federal Court in - "Chatturam v. Commr., of Income Tax, Bihar, AIR 1947 FC 32 (B), illustrates the same point of view. Kania J., as he then was, held thus with reference to notices u/s 22 (1) and (2) of the Income Tax Act.

The Income Tax assessment proceedings commence with the issue of a notice. The issue or receipt of a notice is not, however, the foundation of the jurisdiction of the Income Tax Officer to make the assessment or of the liability of the assessee to pay the tax. It may be urged that the issue and service of a notice u/s 22 (1) or (2) may affect the liability under the penal clauses which provide for failure to act as required by the notice. The jurisdiction to assess and the liability to pay the tax, however, are not conditional on the validity of the notice.

The learned Judge also quoted with approval the dictum of Lord Duncdin in - "Whitney v. Commrs.

of Inland Revenue 1926 App Cas 37 (C) .

My Lords, I shall now permit myself a general observation. Once that it is fixed that there is liability, it is antecedently highly improbable that the statute should not go on to make that liability effective. A statute is designed to -toe workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that enrtunattainable.

Now, 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 hypothesi, 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.

I agree that the methods of recovery may be at times as important and vital as the liability for the tax itself; and if in recovering; the tax the Officer does not follow a, procedure sanctioned by the law, his authority to recover may be validly questioned. I consider it unnecessary to refer to the details of the facts in the Federal Court case, because it is of no help to us at present.

The principles adumbrated above were followed in - Firm Jitanram Nirmalram Vs. Commissioner of Income Tax, a judgment to which I happened to be a party. In that case, the assessment was challenged on the ground that the notice u/s 34 was defective. We held on merits that it was not; but it was further pointed out that even if the notice u/s 34 was defective, it could not be held that the proceedings were illegal or that the assessment was null and void.

Section 34 imposed no charge on the subject, but was merely a part of the machinery of assessment. The liability to pay the tax was founded on Sections 3 and 4 of the Income Tax Act, which were the charging sections. The jurisdiction to assess and the liability to pay the tax cannot on principle" depend upon the validity of the notice. Mr. Choudhury for the Assessee has tried to distinguish the case on the ground that there a notice u/s 34 had in fact been issued, though it was challenged on the ground of being defective and premature; whereas in the present case, there was, according to him, no such notice issued at all.

I am unable to uphold this contention, because, as I have said, the issue of a

notice u/s 17 (4) of the Act was in substance a notice u/s 19A of the Sales Tax Act and as such, the defect in the form of the notice was a mere irregularity on the facts of the present case, which caused no prejudice to the Assessee and did not vitiate the assessment proceedings.

In holding as above, I do not ignore the fact that there is a separate prescribed form of notice u/s 19A of the Act.

7. Mr. Choudhury has strongly relied upon the decision COMMISSIONER OF AGRICULTURAL Income Tax Vs. SULTAN ALI GHARAMI., . The case arose with reference to S. 38 of the Bengal Agricultural Income Tax Act (Act IV of 1944). Mr. Choudhury is right in contending that S. 38 of the said Act is substantially identical with S. 19A of present Act or S. 34 of the Income Tax Act, as it stood prior to the amendment of .1948.

Some of the return and assessment sections in the said Act are" also similar in material particulars to the corresponding sections of the present Act or the Income Tax Act. The decision, therefore, is very relevant to the point under consideration. In the case in question, a general notice was issued on 8th February, 1945 u/s 24 (1) of the Bengal Act calling for returns of agricultural income of the "previous year" 1944-45.

The" assessec did not file any return in compliance with that notice and no individual notice u/s 24 (2) was served upon him at .any time during the assessment year. About three years later in March, 1943, he received a notice u/ s 24 (2), requiring him to file a return for the said assessment year 1944-45, He complied with that notice and filed a return on 15th June, 1948, showing a non-assessable income. The Income Tax Officer was not satisfied with the correctness thereof and he served further notices on the Assessee u/s 24 (4) and (5) of the Act asking for production of accounts and evidence. The Assessee did not comply with either of the notices or participate in the proceedings and the Income Tax Officer made a best judgment assessment.

It was held in these circumstances that the best judgment assessment was quite illegal. It is quite clear that in this case there was no initiation of proceedings u/s 38 of the Bengal Act; and the Assessee, though he filed a return in pursuance of the invalid notice u/s 24 (2) of the Act, showing a non-assessable income he did not any further submit to the proceedings which had not been validly initiated so as to give " jurisdiction to the Income Tax Officer to make a best judgment assessment.

There was no question of treating the return filed by the Assessee as a return u/s 24 (1) of the Act and any such contention was rightly rejected. If he had submitted a return of an assessable income and taken part in the proceedings initiated against him, it is doubtful whether the decision might not have been otherwise. I agree that if no return is filed by the Assessee in pursuance of; any general notice and if no individual notice is also issued on the Assessee within the period required by the law, there can be no assessment at all and no penal

consequences would follow.

But there is nothing to prevent the Assessee even after the expiry of the period to submit a return of his income or outturn, even in pursuance of an invalid notice, and participate in the assessment proceedings thereby giving jurisdiction to the Officer to assess by waiver or acquiescence. He might well have ignored the notices, which was not in due form and "refused to take part in the proceedings; but if he did not, and not only allowed the proceedings to go on, but actively participated therein without any protest, he could not turn round and challenge the jurisdiction" of the Officer to assess, as in the case before us, merely because the Officer refused to give him certain deductions claimed.

Chakravarty, C. J., who delivered the judgment in the Calcutta case recognised that, under the Income Tax law, it has been held that if the assessee filed a return after the expiry of the assessment year, although during that year no notice u/s 22(2) was served on him. assessment proceedings could be started on that return even without any notice u/s 34 of the Income Tax Act.

Will it make much difference in law if the Assessee submits his return in pursuance of a notice in some irregular form, but raises no protest on that score and files his return of an assessable income and otherwise takes part in the proceedings? If the assessment is legal in the earlier case, there is no good reason why it should not be legal and intra vires in the latter case also.

If there was a liability on the Assessee to pay the tax due and if the proceedings were initiated within the time contemplated by S. 34 of the Act, it could not be said that by the issue of a notice in an irregular form, the Assessee was trapped into filing a return, which he otherwise would not have filed.

8. The other case to which I need refer is "The decision of Chief Justice Chagla in - Commissioner of Income Tax, Bombay City Vs. Ramsukh Motilal, . This case had a bearing also on the application of S. 34 of the Income Tax Act. In that case, a notice u/s 34" had been issued on 19-3-1949 and under the notice in question, the Assessee was required to make a return by 25-3-1949. The Assessee made a return and he was assessed.

It was urged by the Assessee that the notice u/s 34 was invalid and the Court held that S. 34 incorporates by reference the requirements of a notice contained in Sub-section (2) of Section 22. It is true that the notice need not contain all the requirements, which are mentioned in Section 22(2).

But one of the material requirements of the section was that the Income Tax Officer should serve a notice upon a person requiring him to furnish within such period not less than 30 days as may be specified in the notice, a return in the prescribed form along with such other particulars as may be provided in the notice. So the notice, in order to be a valid notice, had to give the Assessee a period of not less than 30 days to furnish the return. The period given by the notice in the case in question was only six days to the Assessee to make a return

u/s 34. It was held in the circumstances that the notice was quite illegal and as such the Income Tax Officer had no jurisdiction to assess.

Their Lordships pointed out that the absence of a notice u/s 34 as required by the law was not merely a procedural defect, but a failure to comply with the conditions precedent to the assumption of jurisdiction. At the same time, the learned Chief Justice further went on to observe that no consent by the Assessee or waiver on his part could confer jurisdiction upon the Income Tax Officer to make an assessment, which he does not possess.

In making these observations their Lordships seemed to doubt the correctness of the decision given by Chief Justice Chakravarty in the Calcutta case discussed earlier. While I respectfully agree that the initiation of proceedings u/s 34 was a condition precedent to the assumption of jurisdiction by the Income Tax Officer to assess where an income has escaped assessment in any particular year, I find it difficult to accept the broad proposition that in no case of this kind there could be waiver or acquiescence on the part of the Assessee so as to confer jurisdiction upon the Income Tax Officer to proceed to assess.

A procedural provision, which is meant for the benefit of the Assessee, can in some circumstances be waived. If the Officer of his own accord proceeds to assess on the ground that some income or turnover has escaped assessment after the expiry of the due date under which he should have taken steps to proceed in the normal course under the general provisions of the law for the purpose of making an assessment, he must comply with the provisions of S. 34, under the Income Tax law or for that matter u/s 10A of the present Act.

The conditions mentioned in the section must exist to enable the Officer to take action. But, where there is some irregularity in the form of the notice issued on the Assessee, that irregularity could be waived by the Assessee in submitting his return showing an assessable income and otherwise taking part in the proceedings without any protest as to the form of the notice.

In such a case, the jurisdiction of the Officer will not be ousted. But, if the Assessee refuses to submit any return or submits a return showing a non-assessable outturn and does not otherwise take part in the proceedings, the Officer will have no jurisdiction to assess him or to proceed to deal with him under the other penal sections of the Act.

9. I, therefore, hold that on the facts and circumstances of the case there has been sufficient compliance with Section 19A of the Act and the assessment proceedings in respect of periods which are within time from 12th June, 1952, as contemplated by the section are not void. The assessments may be modified accordingly.

As the whole confusion in the case has arisen on account of the failure of the Taxing Officer to pay due attention to the provisions of the law, the Department is not entitled to the costs at this reference. The reference is answered

accordingly.

DEKA J.

10. I agree.