

(2006) 02 AHC CK 0211
In the Allahabad High Court
Case No : Trade Tax Revision No. 1361 of 1997

Radha Brick Field

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Finance Act, 1956 — Section 18
Income Tax (Amendment) Act, 1953 — Section 19, 34, 35, 35(1)
Income Tax Act, 1961 — Section 297(2)
Land Acquisition Act, 1894 — Section 18
Uttar Pradesh Sales Tax Act, 1948 — Section 21(4), 8
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 148, 149, 150(1), 21

Citation : (2006) 02 AHC CK 0211

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal and Piyush Agrawal, for the Appellant; V.K. Pandey and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 01.10.1997 relating to the assessment year 1989-90 under the U.P. Trade Tax Act arising from the proceeding u/s 21 of the Act.

2. For the assessment year 1989-90. the Assessing Authority passed assessment order u/s 7 read with Rule 41 on 27.3.1993. Thereafter, a notice u/s 21 of the Act was issued for the first time on 23.3.1995 and in pursuance thereof, an order was passed u/s 21 of the Act on 30.9.1995. Applicant filed appeal against the said order, which had been dismissed by the Deputy Commissioner (Appeals). Trade Tax. Agra vide order-dated 24.04.1997. Applicant further filed Second Appeal before the Trade Tax Tribunal, Agra, which has been allowed in part. Tribunal has sustained the initiations of proceeding u/s 21 of the Act but has reduced the estimate of turnover.

3. Heard learned Counsel for the parties.

4. Learned Counsel for the applicant submitted that the entire proceeding u/s 21 of the Act was barred by limitation. He submitted that u/s 21(2) of the Act as it stood at the relevant time, limitation for making reassessment order was four years from the end of the year in dispute, which in the present case, expired on 31.3.1994. He submitted that no notice was issued prior to 31.3.1994 and the entire proceedings had become barred by time on 31.3.1994. He submitted that the U.P. Ordinance No. 21 of 1994 was published on 28.9.1994, by which, an amendment was added to Section 21 which provided that the assessment or re-assessment for the assessment year 1989-90 may be made by March 31, 1995. The said Ordinance was repealed and U.P. Ordinance No. 16 of 1995 was promulgated on 14.3.1995, by which Section 32(a)(iii) (second proviso) was added with effect from 14.5.1994 which provided that the assessment or re-assessment for the assessment year 1989-90 may be made by 31.3.1995. The said Ordinance No. 16 of 1995 was also repealed by U.P. Act No. 31 of 1995, Section 32(a)(iii) (second proviso) of U.P. Act No. 31 amended the Section 21, by which, the same proviso had been made effective from 14.5.1994 and therefore, its retrospectivity cannot be beyond 14.5.1994. He submitted that the case of applicant is that the entire assessment proceeding was closed on 31.3.1994, therefore, the proviso does not apply to the applicant's case. In support of his contention, he relied upon the decision of Apex Court in the case of J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt, and S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company, and Ahmedabad Manufacturing and Calico Printing Co. Ltd. v. S.C. Mehta, Income Tax Officer and Anr. reported in 1963 Supp. (2) SCR 92. Learned Standing Counsel submitted that by proviso, the period of limitation for making assessment or re-assessment has been extended up to 31.3.1995. He submitted that it is applicable to those cases also, where the period of limitation had been expired prior to amendment. He submitted that the object of introducing the proviso was to extend limitation to enable the Officer to make assessment or reassessment within extended period. He submitted that if proviso is not made applicable to the closed assessment, where the limitation had already been expired in 31.3.1994 the very object of introducing the proviso would frustrate. In support of his contention, he relied upon the decisions in the case of Commissioner of Sales Tax v. S/S Bhagwan Finance Corporation Pvt. Ltd. reported in 1988 UPTC 1181, Commissioner of Sales Tax v. S/S Bhagwan Finance Corporation Pvt. Ltd. reported in 1993 UPTC 1293, Vijai Kumar Surendra Kumar v. Sales Tax Officer, Kanpur and Ors. reported in 1999 UPTC 368, Additional Commissioner (legal) and Anr. v. Jyoti Traders and Anr. reported in 1999 UPTC 45 and The Commercial Tax Officer and Ors. v. Biswanath Jhunjhunwala and Anr. reported in Jt. Today 1996 (7) SC 600.

5. Learned Counsel for the applicant in reply to the argument of learned Standing Counsel submitted that the decision in the case of Commissioner of Sales Tax v. S/S Bhagwan Finance Corporation (Pvt.) Ltd., Bareilly reported in

UPTC 1993 1293 1293, is not applicable because amendment was made with retrospective effect from 01.9.1978 the date when limitation was not expired. Similar is the position in the case of Vijai Kumar Surendra Kumar v. Sales Tax Officer, Kanpur and Ors. reported in 1999 UPTC 368. in which, assessment year involved was 1974-75 and limitation for four years was up to 31.3.1979 while the period of limitation has been extended by giving retrospective effect from 01.11.1978. He submitted that the decisions of Apex Court in the case of Additional Commissioner (legal) and Anr. v. Jyoti Traders and Anr. reported in 1999 UPTC 45 is also not applicable because it was in different context relating to the power given to the Commissioner to grant approval to reopen the case after the expiry of limitation. He submitted that the case of Commercial Tax Officer and Ors. v. Biswanath Jhunhunwala and Anr. reported in Jt. Today 1996 SC 600 is also not applicable because in that case also amendment was made with retrospective effect from 01.11.1971 the day on which, limitation could not expire.

6. I have given my anxious consideration to the submissions made by the learned Counsel for the parties and perused the order of Tribunal and the authorities below.

7. The facts of the present case is not in dispute namely that for the assessment year 1989-90 original assessment order u/s 7 read with Rule 41 was passed on 27.3.1993 and in accordance to Section 21(2) of the Act as it stood at the relevant time, limitation for making assessment or re-assessment order was four years from the end of such year which was expired on 31.3.1994. Question for consideration is whether the proviso which has been added by U.P. Act No. 31 of 1995 with effect from 14.5.1994 by which, the limitation for passing assessment or re-assessment order has been extended, applies to those cases where the limitation had already been expired on 31.3.1994 and no proceeding was pending on the date of amendment i. e. in the present case on 14.5.1994. There is no dispute that if the proviso which has been added in by U.P. Act No. 31 of 1995 is applicable to the present case, the assessment order passed u/s 21 is not barred by limitation.

8. It is relevant to refer Section 21(1), (2) and (3) of the Act as it stood at the relevant time:-

Section 21- Assessment of tax on the turnover not assessed during the year;

(1)- If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer or tax according to law:

Provided that the tax shall be charged at the rate of which, it would have been

charged and the turnover not escaped assessment, or full assessment as the case may be.

Explanation-

Nothing in this Sub-section shall be deemed to prevent the assessing authority from making an assessment or full assessment to the best of its judgment.

(2)- Except as otherwise provided in this section, no order of assessment or re-assessment under any provision of this Act for any assessment year shall be made after the expiration of four years from the end of such year:

Provided that the assessment or reassessment for the assessment year 1982-83 may be made by March, 1988.

Provided further that the assessment or reassessment for the assessment year 1987-88 may be made by March 31, 1993.

(3)- Where the notice under Sub-section (1) or any assessment year has been served within the period specified in Sub-section (2), the order of assessment or reassessment in pursuance thereof may be made within six months, after the expiration of such period:

Provided that where such notice has been served before April 1, 1978, such order may be made within one year after the expiration of the period of four years referred to in Sub-section (2):

9. By U.P. Ordinance No. 21 of 1994 published on 28th September, 1994 proviso was added to Section 21(2), which reads as follows:-

Amendment of Section 21- In Section 21 of the Principal Act-

(a) In Sub-section (2)

(i)...

(ii) after the second proviso, the following proviso shall be inserted namely;

Provided also that if the eligibility certificate granted u/s 4-A has been amended or cancelled by the Commissioner under Sub-section (3) of Section 4-A, the order of assessment or re-assessment may be made within one year from the date of receipt by the assessing authority of the copy of the order amending or canceling the aforesaid certificate by March 31, 1995, whichever is later:

Provided also that the assessment or reassessment for the assessment year 1989-90 may be made by March 31, 1995.

10. That U.P. Ordinance No. 21 of 1994 was repealed and U.P. Ordinance No. 16 of 1995 was promulgated on 14th March, 1995. Section 32(a)(iii) (second proviso), which was made effect from 14th May, 1994, provided as follows:-

32-Amendment of Section 21- In Section 21 of the Principal Act-

(a) in Sub-section (2)

(iii) after the second proviso, the following proviso shall be inserted, namely;

Provided also that the assessment or reassessment for the assessment year 1989-90 may be made by March 31, 1995.

11. Sub-section (2) of Section 2 of Ordinance No. 16 of 1995 provided that Sub-clause (iii) of Clause (a) of Section 32 shall come into force on 14th May, 1994.

12. That Ordinance No. 16 of 1995 was also repealed by U.P. Act No. 31 of 1995. Section 32(a)(iii) (second proviso) of U.P. Act No. 31 of 1995 amended Section 21 as follows-

32-Amendment of Section 21-In Section 21 of the Principal Act-

(a) in Sub-section (2)

(iii) after the second proviso, the following proviso shall be inserted namely;

Provided also that the assessment or re-reassessment for the assessment year 1989-90 may be made by March 31, 1995;

13. Sub-section (2) of Section 2 of U.P. Act No. 31 of 1995 specifically provided that sub, Clause (iii) of Clause (a) and Clause (b) of Section 32 by which Section 21 was amended shall come into force on 14th May, 1994

14. Validation Clause of U.P. Act No. 31 of 1995 reads as follows:-

39-Validation-(1) Notwithstanding anything in any judgment, decree or order of any court or authority, any notification issued or anything done or any action taken before the commencement of this section which conforms to the provisions of the principal Act as amended by this Act shall be deemed to be and always to have been valid and lawful as if the provisions of this Act were in force at all material times.

(2) Where before the commencement of this Section any authority or court, in any proceeding made any assessment, levy or collection of any tax or passed any order imposing any penalty or making any other den; ad under the principal Act, or passed any order modifying, setting aside or quashing (wholly or in part), such assessment, levy, collection, penalty or demand and such assessment or other order becomes inconsistent with the provisions of the principal Act as amended by this Act, then, subject to the provisions of Sub-section (3), any party to be proceeding or the Commissioner of Trade Tax may by September 30, 1995, make an application to such authority or Court for review of the assessment or order and thereupon such authority or Court may review the proceeding make such order, varying or revising the order previously made, as may be necessary to give effect to the provisions of the principal Act as amended by this Act.

(3) The assessing, appellate or revising authority, as the case may be, may

within the period of one year from the commencement of this Section or within the period specified in Section 22 of the principal Act, whichever expires later, make any rectification in any order passed by it where such rectification becomes necessary in consequence of the amendment of the principal Act.

Provided that no rectification which has the effect of enhancing the assessment, penalty or other dues, shall be made unless the authority concerned has given notice to the dealer or person concerned of his intention to do so and has allowed him a reasonable opportunity of being heard.

15. Let us examine the various cases cited by both the learned Counsel for the parties.

16. In the case of *S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company*, Apex Court held as follows:-

Section 18 of the Finance Act, 1956, is, it is common ground, not given retrospective operation before April 1, 1956. "The question then is, whether the Income Tax Officer may issue a notice of assessment to a person as an agent of a non resident party under the amended provision when the period prescribed for such a notice had before the amended Act came into force expired? Indisputably the period for serving a notice of re-assessment under the un-amended section had expired and there was in the Act as it then stood, no provision for extending the period beyond the end of one year from the year of assessment. The Income Tax Officer could therefore, commence a proceeding u/s 34 on March 27, 1957, only if the amended section applied and not otherwise. The Amending Act came into force after the period provided for the issue of a notice u/s 34 before it was amended had expired. It is true that there was no determinable point of time between the expiry of the prescribed time within which the notice could have been issued against the assessee u/s 34 proviso (iii) before it was amended. But there was no overlapping period either prima facie, on the expiry of the period prescribed by Section 34 as it originally stood there was no scope for issuing a notice unless the legislature expressly gave power to The income Tax Officer to issue notice under the amended section notwithstanding the expiry of the period under the un-amended provision or unless there was overlapping of the period within which notice could be issued under the old and the amended provision.

17. In *Ahmedabad Manufacturing and Printing Co. Ltd. v. S.C. Mehta, Income Tax Officer and Anr.*, 1963 Supp. (2) SCR 92, Apex Court held as follows;

Once a final assessment has been made, it can only be reopened to rectify a mistake apparent from the record (Section 35) or to reassess where there has been an escapement of assessment income for one reason or another (Section 34). Both these sections, which enable reopening of back assessments provide their own periods of time for action but all these periods of time, whether for the first assessment or for rectification, or for reassessment, merely create a bar when that time passed against the machinery set up by the Income Tax Act for the assessment and levy of the tax. They do not create an exemption in favour of

the assessee or grant an absolution on the expiry of the period. The liability is not enforceable but the tax may again become exigible if the bar is removed and the taxpayer is brought within the jurisdiction of the said machinery by reason of a new power. This is, if course, subject to the condition that the law must say that such is the jurisdiction, either expressly or by clear implication. If the language of the law has that clear meaning, it must be given that effect and where the language expressly so declares or clearly implies it, the retrospective operation is not controlled by the commencement clause.

18. The Apex court held that the legislature had given to Section 18 of the Finance Act, 1956, only a limited retrospective operation i. e. up to 1st April, 1956. That provision had to be read subject to the rule, that in the absence of an express provision or clear implication, the Legislature did not intend to attribute to the amending provision a greater retrospectivity than was expressly mentioned nor to authorize the Income Tax Officer to commence proceedings which, before the new Act came into force, had, by expiry of the period provided, become time barred."

19. In the case of J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt, the decision in the case of S.S. Gadgil was followed. It was contended on behalf of the Revenue that Section 297(2)(d)(ii) of the Income Tax Act, 1961 was wide in its sweep and it took in all assessment years after the year ending 31st March, 1940, irrespective of the question whether the right to reopen the assessment in respect of any such assessment years was barred or not under the 1922 Act when the 1961 Act came into force. The argument was found unacceptable because such construction was tantamount to giving retrospective operation to the provision which was not warranted either by its express language or by necessary implication. The provision did not disclose in express terms or by necessary implication that there was a revival of the right of Income Tax Officer to reopen an assessment which was already barred under 1922 Act."

20. In the case of Income Tax Officer, V Circle, Madras, and Another Vs. S.K. Habibullah, the Apex Court held that the Income Tax Officer sought to upon Section 35(5) which was incorporated by Section 19 of the Indian Income Tax (Amendment) Act, 1953, with effect from 1st April, 1952. Clause (5) was one of a group of clauses added by the Amendment Act, which dealt with the rectification of assessments. It dealt with inclusion of income or correction of the income of a partner in a firm consequent upon assessment or re-assessment of the firm of which he was a partner. The Legislature by a fiction had regarded the inclusion and correct as the rectification of a mistake apparent from the record and prescribed a special terminal reckoning for the period of four years within which the rectification had to be made. Under Clause (5) of the Amending Act inclusion of the shares in the assessment of the partners or the correction thereof was deemed to be a mistake apparent from the record within the meaning of the section and Sub-section (1) applied thereto accordingly the

period of four years being computed from the date of the final order passed in the case of the firm. The discrepancy disclosed as a result of the assessment or re-assessment of a firm between the share of a partner included in the individual assessment of that partner and his share disclosed in the assessment of the firm was not an error apparent from the record within the meaning of Section 35(1) and the Legislature enacted a fiction making the inclusion of the share in the assessment or correction thereof Such a mistake. If the inclusion of the share or correction of the assessment were an error apparent from the record and falling under Clause (12) of Section 35, the enactment of Clause (5) was unnecessary. The Legislature having deliberately enacted a fiction. of the nature set out in Clause (5) the court rejected the Contention raised by Counsel for the Revenue that the enactment of the fiction was *ex-abundanti cautela*. Rectification of the nature contemplated by Clause (5) could not have been effected under Clause (1). The Legislature declared that what was not a mistake should for the purpose of rectification of assessment be regarded as a mistake apparent from the record and provided a terminus for the computation of the period of four years. The question which fell to be considered was whether, relying upon Clause (5) of Section 35, an Income tax Officer could rectify the assessment of a person who was a partner in a firm when the assessment of the firm was completed before 1st April, 1952. The Legislature had given to Clause (5) a partial retrospective operation. The provision enacted by Clause (5) was not procedural in character It affected the vested rights of the assessee. Therefore, in the absence of compelling reasons, it would not be fied in giving a greater retrospectivity to the provision that was warranted by plain words used by the Legislature. If, by the law prevailing at the time when the assessment was made, no such result as was contemplated by the new Clause (5) arose, to give a larger retrospective operation than was directed was to ascribe to the Legislature an intention different from the one expressed and to make a larger inroad upon the finality of the assessment that was permitted by the Legislature.

21. In the case of Commissioner of Sales Tax v. S/S Bhagwan Finance Corporation Pvt. Ltd. reported in 1988 UPTC 1181 assessment years involved were 1971-72 and 1972-73. In this case, the case was remanded back to the Assessing Authority vide order dated 17.11.1978 In compliance thereof, ex-parte assessment orders were passed on 29.10.1979 At (he instance of the dealer. ex-parte assessment orders were set aside and the case was reopened on 16.11.1979 u/s 30 of the Act. Later on assessment orders were framed on 16.05.1980. Tribunal held that all the assessment orders were barred by limitation. This Court on the basis of amendment made in Section 21(4) by Amending Act held that the assessment orders were framed within time. Some of the relevant paragraphs are as follows:-

Having given my anxious consideration to the contention raised in this connection, I find considerable force in the argument advanced by the learned Standing Counsel. From a perusal of the statement of objects and reasons to U.P. Act No. 16 of 1983 it is clear that this Amending Act was brought by the

Legislature to extend the limitation till 31.12.1982 as mentioned u/s 21 of the said Act. Under the aforesaid Sub-clause (2) of Section 7, reproduced above, it is clear that the Legislature intended that in respect of the assessments contemplated by the provisions of Section 21(4) of the U.P. Sales Tax Act, limitation was to be extended up to 31.12.1982 irrespective of the fact as to whether such assessments have been completed or not. It is clear from the fiction which is available in Sub-section (2) above. It is a well known rule of interpretation of the status that while interpreting the provision of an Act, the Court has to take into consideration the legislative intent. In the present case the same has been expressly stated by the Legislature.

No doubt, the said principle will operate but the same shall be subject to any special fiction that is intended and expressly enacted by the legislature. In the present case, I find that there is a special fiction, which has been expressly intended by the legislature. That legislative mandate is that the said amendment will be deemed in force "at all material times". Therefore, in my opinion the said amendment will also apply to the assessment orders made in the present cases.

22. In the case of *Commissioner of Sales Tax v. S/S Bhagwan Finance Corporation Pvt. Ltd.* (supra) the issue involved was 1974-75, a first notice u/s 21 of the Act was issued and served on 24.3.1979. It was within four years before passing of the assessment order. The ex-parte assessment order u/s 21 of the Act was passed on 18.8.1979. This ex-parte assessment order was set aside on 14.11.1979 and a fresh assessment order was passed on 16.5.1980, whereby, a notice u/s 21 of the Act was vacated, thereafter, an order u/s 21 of the Act was passed on 27.3.1982 after issuing notice u/s 21 of the Act for 15.3.1982. Normal period during which, assessment or re-assessment order may be made was four years from the end of normal period prescribed u/s 21(2) expired on 31.3.1979 by U.P. Sales Tax (Amendment and Validation) Act, 1982. This period was extended up to 31.7.1982 by adding the following proviso of Section 21(2) "Provided for the assessment or re-assessment for the assessment years 1974-75 and 1975-76 may be made up to 31st December, 1982. In view of the aforesaid proviso, the proceeding has been held within time. Learned Counsel for the applicant stated that this decision does not apply because U.P. Sales Tax Act (Amendment and Validation) Act, 1982 by which, the said proviso has been added was made effective from 01.11.1978 the date on which, limitation could not expire.

23. In the case of *Vijai Kumar Surendra Kumar v. Sales Tax Officer, Kanpur and Ors.* (supra) the assessment year was 1974-75, original assessment order was passed on 09.09.1976, notice u/s 21 of the Act was issued and served on 21.11.1980 which was challenged on the ground that it "was barred by limitation. The Division Bench of this Court on the basis of proviso, which was inserted by Section 8 of U.P. Sales Tax (Amendment and Validation) Act, 1980 with effect from 01.11.1978 held that initiations of proceedings were within time. It has been held that the proviso has been added by Section 8 of U.P. Act No. 2 of 1980 with effect

from 01.11.1978 extending the period of limitation for passing the assessment order for the assessment years 1974-75 and 1975-76 up to 31.3.1981 and further by Section 16 of U.P. Act No. 4 of 1982 the said proviso has been substituted with effect from 01.11.1978 extending the period of limitation up to 31.3.1982. This Court held that on 01.11.1978 limitation for the assessment 1974-75 was not expired, therefore, the provision was applicable even to cases where the limitation has been expired

24. In the case of Commercial Tax Officer and Ors. v. Biswanath Jhunhunwala and Anr. (supra), the assessment for the assessment years Chaitra-Sudhi 2023-2024 were completed on 1.7.2.1996 and 16.3.1989. As per the Rule 80(5), assessment could have been reopened only within period of four years. By Section 26(1), which has been amended by Bengal (Finance Sales Tax) Act 3rd amendment, 1974, the State Government was given power to make rule with prospective or retrospective effect. In pursuance thereof, a notification was issued on 30.3.1974 with effect from 01.11.1971 and the limitation has been extended up to six years. On 7.11.1974, a notice for reopening was issued for both the assessment years, which was challenged on the ground, that under the un-amended provision before commencement of the amendment, limitation had been expired therefore, proceeding was barred by limitation. The Division Bench of Calcutta High Court allowed the writ petition and held the proceeding was barred by limitation. Matter went to the Apex Court. Apex Court allowed the appeal. Apex Court held as follows-

What, therefore, we have to seek is the clear meaning of the said Notification. If there be no doubt about the meaning, the amendment brought about by the said Notification must be given full effect. If the language expressly so states or clearly implies, retrospectivity must be given with effect from 1st November, 1971, so as to encompass all assessments made within the period of six years therefore, whether they have become final by reason of the expiry of the period of four years or not.

By reason of the said Notification, with effect from 1st November, 1971, Rule 18(5)(ii) has to be read as barring the Commissioner (or other authority to whom power in this behalf has been delegated by the Commissioner) from revising of his own motion an). assessment made or order passed under the Act or the rules if the assessment has been made or the order has been passed more than six years previous to 1st November, 1971. Put conversely, with effect from 1st November, 1971, Rule 18(5)(ii) permits the Commissioner (or other authority) to revise of his own motion any assessment made or order passed under the Act or the rules provided the assessment has not been made or the order passed more than six years previously. This being the plain meaning, the said Notification must be given full effect. Full effect can be given only if the said Notification is read as being applicable not only to assessments which were incomplete, but also to assessments which had reached finality by reason of the earlier prescribed period of four years having elapsed. Where language is

unambiguous as this is employed, it must be assumed that the Legislature intended the amended provision to apply even to assessments that had so become final; if the intention was otherwise, the Legislature would have so stated.

25. In the case of Additional Commissioner (Legal) and Anr. v. Traders (supra), the Hon"ble Supreme Court has considered the effect of the insertion of the proviso to Sub-section (2) of Section 21 by U.P. Sales Tax (Amendment and Validation) Act, 1991, which came into force w. e. f. 19th February, 1991. Sub-section (2) of Section 21 and the proviso inserted by the Amending Act of 1991 considered by the Supreme Court is reproduced below:-

(2)- Except as otherwise provided in this section no order of assessment or re-assessment under am provision of this Act for any assessment year shall be made after the expiration of four years from the end of such year;

Provided that if the Commissioner of Sales Tax, on being satisfied on the basis of reasons recorded by the Assessing Authority that it is just and expedient so to do authorizes the Assessing Authority in that behalf, such assessment or reassessment may be made after the expiration of the period aforesaid but not after the expiration of eight years from the end of such year notwithstanding that such assessment or re-assessment may involve a change of opinion.

26. The case of the respondents before the Hon"ble Supreme Court was that the amendment by which the proviso to Sub-section (2) has been inserted w. e. f. 19th February, 1991 would not have any retrospective operation and, therefore, it would not be applicable for the assessment year 1985-86 for which the period of assessment or re-assessment is four years and had expired on 31st March, 1990. The Hon"ble Supreme Court held that the proviso which amended the existing provision gave it retrospectivity. When the provision of law is explicit, it has to operate fully and there could not be any limit to its operation. The Hon"ble Supreme Court held as follows:-

Under Sub-section (1) of Section 21 of the Act before its amendment, the Assessing Authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer according to law. Sub-section (2) provided that except as otherwise provided in this Section no order for any assessment year shall be made after the expiry of four years from the end of such year. However, after the amendment, a proviso was added to Sub-section (2) under which Commissioner of Sales Tax Authorities, the Assessing Authority to make assessment or -re-assessment after the expiration of eight years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion. The proviso came into force w. e. f. 19th February, 1991. We do not think that Sub-section (2) and the proviso added to it leave anyone in doubt that as on the date when the proviso came into force, the Commissioner of Sales Tax could authorize making of assessment or re-assessment after the expiration of eight years from the end of the particular

assessment year. It is immaterial if a period for assessment or reassessment under Sub-section (2) of Section 21 before the addition of the said proviso had expired. Here, it is the completion of assessment or re-assessment u/s 21 which is to be done before the expiration of eight years of that particular assessment year. Read as it is, these provisions would mean that the assessment for the year 1985-86 could be reopened up to 31st March, 1994. Authorization by the Commissioner of Sales Tax and completion of assessment or re-assessment under Sub-section (1) of Section 21 have to be completed within eight years of the particular assessment year. Notice to the assessee follows the authorization by the Commissioner of Sales Tax, its service on the assessee is not a condition precedent to reopen the assessment. It is not disputed that a fiscal statute can have retrospective operation. If we accept the interpretation given by the respondents, the proviso added to Sub-section (2) of Section 21 of the Act becomes redundant. Commencement of Act can be different than the operation of the Act though sometimes both may be the same. Proviso now added to Sub-section (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen the assessment if period, as prescribed earlier, had expired before the proviso came into operation. One has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the Legislature in enacting such proviso. The date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation. Earlier the assessment/re-assessment could have been completed within four years of that particular assessment year and now by the amendment adding proviso to Section 21(2) of the Act, it is eight years. The only safeguard being that it is after satisfaction of the Commissioner of Sales Tax. The proviso is operative from 9th February, 1991, and a bare reading of the proviso shows that the operation of this proviso relates and encompasses back to previous eight assessment years. We need not refer to the provisions of Income Tax Act to interpret proviso to Section 21(2) language of which is clear and unambiguous and so is the intention of Legislature. We are, thus of the view that High Court was not right in quashing the sanction given by the Commissioner of Sales tax and notices issued by the Assessing Authority in pursuance thereto.

27. In the aforesaid case, the Hon'ble Supreme Court has considered the effect of the proviso to Sub-section (2) of Section 21 which was inserted by Amending Act of 1991 w. e. f. 19th February, 1991. The Hon'ble Supreme Court held that the proviso is retrospective in operation even though it had come into effect on 19, February, 1991, and applicable to the assessment year 1985-86 for which the period of limitation of making assessment had expired on 31st March, 1990, and action under the proviso can be taken by the Commissioner of Sales Tax.

28. In the case of K.M. Sharma v. Income Tax Officer reported in ITR 254 772 the Apex Court held as follows:-

The land of the appellant were acquired u/s 6 of the Land Acquisition Act and an

award was passed on December 2, 1967, by the Chief Commissioner of Delhi granting compensation in favour of the appellant. The Additional District Judge by judgment dated May 20, 1980, held the appellant entitled to 1/32 share of the compensation awarded under various awards and the appellant was granted total compensation in the sum of Rs. 1,18,810/- approximately in the year 1981.

On a reference u/s 18 of the Land Acquisition Act, the learned Additional District Judge, Delhi vide his judgment dated July 31, 1991, awarded a sum of Rs. 1,10,20,624. The amount was paid to the appellant between October 15, 1982 and May 26, 1993. The amounts paid represented principal sum of compensation of Rs. 41,96,496 and interest in the sum of Rs. 76,84,829 up to May 18, 1992. Before making the above payments, tax was deducted at source amounting to Rs. 8,60,701/-.

On March 31, 1994, the appellant was served with the impugned notices u/s 148 of the Act for 16 assessment years i. e. 1968-69 to 1971-72 and assessment years 1981-82 to 1992-93.

The appellant, in the High Court, assailed the notices issued u/s 148 of the Act for reassessment for the assessment years 1968-69 to 1971-72 and for the year 1982-83 on the ground that the proposed reassessment for those assessment years had already become barred by time u/s 149 of the Act, for which in the relevant periods a maximum period of for years or seven years limitation was prescribed depending upon the quantum of liability towards tax.

The High Court by the impugned judgment accepted the contention of the Department that the provisions of Section 150(1) of the Act, as amended with effect from April 1, 1989, could be resorted to for reassessment to levy tax on the increased amount of interest earned by the appellant in the relevant assessment years. It was held that the bar of limitation prescribed u/s 149 of the Act was not attracted by virtue of the provisions of Section 150(1) because notices for such reassessments are based on the awards passed in the land acquisition proceedings by the court of the Additional District Judge on a reference u/s 18 of the Land Acquisition Act.

A fiscal statute more particularly a provision such as the present one regulating period of limitation must receive strict construction. The law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigants for an indefinite period on future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment to Sub-section (1) of Section 150 is not expressed to be retrospective and, therefore, has to be held as out, prospective. The amendment made to Sub-section (1) of Section 150 which intends to lift the embargo of period of limitation u/s 149 to enable the authorities to reopen assessments not only on the basis of orders

passed in proceedings under the Income tax Act but also on the order of a court in any proceedings under any law has to be applied prospectively on or after April 1, 1989, when the said amendment was introduced to Sub-section (1). The provision in Sub-section (1) therefore can have only prospective operation to assessments, which have not become final due to expiry of the period of limitation prescribed for assessment u/s 149 of the Act.

To hold that the amendment to Sub-section (1) would enable the authorities to reopen assessments, which had already attained finality due to bar of limitation prescribed u/s 149 of the Act as applicable prior to April 1, 1989, would amount to giving Sub-section (1) a retrospective operation which is neither expressly nor impliedly intended by the amended Sub-section (1).

29. The Apex Court further held as follows-

We do not find the above reasoning of the High Court is sound. The plain language of Sub-section (2) of Section 150 clearly restricts the application of Sub-section (1) to enable the authority to reopen assessments which have not already become final on the expiry of the prescribed period of limitation u/s 149. As is sought to be done by the High Court, Sub-section (2) of Section 150 cannot be held applicable only to reassessments based on orders "in proceedings under the Act" and not to orders of Court "in proceedings under an other law". Such an interpretation would make the whole provision u/s 150 discriminatory in its application to assessments sought to be reopened on the basis of orders under the Income Tax Act and other assessments proposed to be reopened on the basis of orders under any other law. The interpretation, which creates such unjust and discriminatory situation, has to be avoided. We do not find that Sub-section (2) of Section 150 has that result, Sub-section (2) intends to insulate all proceedings of assessments, which have attained finality due to the then existing bar of limitation. To achieve the desired result it was not necessary to make any amendment in Sub-section (2) corresponding to Sub-section (1), as is the reasoning adopted by the High Court.

Sub-section (2) aims at putting an embargo on reopening assessments, which have attained finality on the expiry of the prescribed period of limitation. Sub-section (2) in putting such embargo refers to the whole of Sub-section (1) meaning thereby to insulate all assessments, which have become final and may have been found liable to reassessments or re-computation either on the basis of orders in proceedings under the Act or orders of Courts passed under any other law. The High Court, therefore, was in error in not reading the whole of the amended Sub-section (1) into Sub-section (2) and coming to the conclusion that the reassessment proposed on the basis of the order of the Court in proceedings under the Land Acquisition Act could be commenced even though the original assessments for the relevant years in question have attained finality on the expiry of the period of limitation u/s 149 of the Act. On a combined reading of Sub-section (1) as amended with effect from April 1, 1989, and Sub-section (2) of Section 150 as it stands, in our view, a fair and just interpretation would be

that the authority under the Act has been empowered only to reopen assessments, which have not already been dosed and attained finality due to the operation of the bar of limitation u/s 149.

On a proper construction of the provisions of Section 150(1) and the effect of its operation from April 1, 1989, we are clearly of the opinion that the provisions cannot be given retrospective effect prior to April 1, 1989, for assessments which have already become final due to the bar of limitation prior to April 1, 1989. The taxing provision imposing a liability is governed by the normal presumption that it is not retrospective and the settled principle of law is that the law to be applied is that which is in force in the assessment year unless otherwise provided expressly or by necessary implication. Even a procedural provision cannot in the absence of clear contrary intent expressed therein be given greater retrospectivity than is expressly mentioned so as to enable the authorities to effect the finality of tax assessments or to open up liabilities, which have become barred by lapse of time. Our conclusion, therefore, is that Sub-section (1) of Section 150, as amended with effect from April 1, 1989, does not enable the authorities to reopen assessments, which have become final due to bar of limitation prior to April 1, 1989, and this position is applicable equally to reassessments proposed on the basis of orders passed under the Act or under any other law.

30. The legislature has the competence to pass a declaratory law and such a legislation can be retroactive, though not strictly be retrospective. (Vide *Mithilesh Kumar and Another Vs. Prem Behari Khare*, Where the Statute and its intent partake the characteristic of a declaratory law, then it would be considered to have retrospective effect. (Vide *The Central Bank of India Vs. Their Workmen*,

31. Curative laws are by their nature intended to operate upon and affect past transactions and are wholly retrospective. (Vide *Pt. Ram Prakash v. Smt. Savitri Devi*. AIR 1958 Pun 87 ; *Amalgamated Coalfields Ltd. and Others Vs. State of Madhya Pradesh and Another*, and *Ramji Virji and Others Vs. Kadarbhai*,

32. The distinction between a Declaratory and Remedial Act may be very thin. A Declaratory Statute may be of various kinds, i. e. it may correct an error in a formal Statute and may be explanatory of a formal Statute. Where the legislature has a competence to make a valid law, it may provide not only for prospective operation of the material provisions to the said law but it can also provide for the retrospective operation of the said provisions. The legislative power in question includes the subsidiary and oscillatory powers to validate laws, which have been found to be invalid. It may direct contrary to the law in force that pending cases shall be disposed of in a particular manner, or that cases decided in one way shall be deemed to have been decided in another way For validating past Act, it is not always necessary to amend the law with retrospective effect with, a view to authorizing the doing of those acts at the time when they were actually done, even without such authority.

33. It is well settled that diverse methods are available to the legislature for effecting validation of past Acts, and no one of them is as efficient and sufficient "achieve the object as any other. The simple validation effected by employing appropriate enacting clause, without amending the law with retrospective effect, is one of the modes of bringing such legislation. The retrospective amendment is brought when the law is to be changed with back date (Vide The State of Mysore and Another Vs. D. Achiah Chetty, etc., , Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, , Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, , Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others,

34. Having gone through the various decisions cited by the learned Counsel for both the parties referred hereinabove, I am of the view that the issue involved in the present revision, is squarely covered by the law laid down by the Apex Court in the case of Addl. Commissioner (Legal) and Anr. v. Jyoti Traders and Anr. (supra). The Apex Court rules as follows:-

- (1) It is not disputed that a fiscal Statute can have retrospective operation,
- (2) If accepted the interpretation given by the dealer, the proviso added to Sub-section (2) of Section 21 of the Act be-nines redundant. Commencement of Act can be different than the operation of the Act though sometimes both may be the same.
- (3) The proviso now added to Sub-section (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen the assessment if period, as prescribed earlier, had expired before the proviso came into operation.
- (4) One has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the Legislature in enacting such proviso. The date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation.
- (5) Earlier the assessment/re-assessment could have been completed within four years of that particular assessment year and now by the amendment adding proviso to Section 21(2) of the Act, it is eight years.
- (6) The proviso is operative from 9th February, 1991, and a bare reading of the proviso shows that the operation of this proviso relates and encompasses back to previous eight assessment years.
- (7) We need not refer to the provisions of Income Tax Act to interpret proviso to Section 21(2) language of which is clear and unambiguous and so is the intention of Legislature.

35. In the present case, second proviso, though added with effect from 14.5.1994 was with the clear intention to extend the period of limitation for making assessment/re-assessment for the assessment year 1989-90 which

expired on 31.3.1994. The proviso now added to Sub-section (2) of Section 21 of the Act does not put any embargo on the power of Assessing Authority not to reopen the assessment if the period as prescribed earlier, had expired before the proviso came into operation. As held by the Apex Court, one has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the Legislature in enacting such proviso, but the date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation. In this view of the matter in my opinion, full effect to the second proviso which has been added now, can be given only if the said proviso is read to have been applicable not only to assessments which were incomplete, but also to the assessments which had reached to finality by reason of earlier prescribed period of four years being expired. The view, which I am taking, is also in consonance with the law laid down by the Apex Court in the case of Commercial Tax Officer and Ors. v. Biswanath Jhunjunwala and Anr. (supra). Further if the contention of the dealer is accepted, the very purpose of amendment will frustrate and will make the amendment redundant.

36. It may be mentioned here that in the present case, notice had been issued on 23.3.1995 and the assessment order was passed on 30.9.1995. Such proceedings also stand valid in view of the Validation Clause I of U.P. Act No. 31 of 1995 which provides nothing contained any thing in any judgment, decree, or order of any Court or authority, any Notification issued or any thing done or any account taken before the commencement of this Section which conforms to the provisions of the Principal Act as amended by this Act, shall be deemed to be and always to have been valid and lawful as if the provisions of this Act were enforced at all material time.

37. For the reasons stated above, it is held that the second proviso added to Section 21(2) extending the period of limitation for making the assessment/ reassessment for the assessment year 1989-90 is applicable to those case's where the assessment had reached to finality by reason of earlier prescribed period of four years being expired.

38. In the result, revision fails, and is, accordingly, dismissed.