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**(1970) 06 CAL CK 0024**

**In the Calcutta High Court**

**Case No :** Sales Tax Reference No's. 395 of 1965 and 521 of 1967

Ram Kanai Jamini Ranjan Pal Private Ltd.

APPELLANT

Vs

Member, Board of Revenue

RESPONDENT

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**Date of Decision :** 11-06-1970

**Acts Referred:**

Bengal Finance (Sales Tax) Act, 1941 — Section 20(3)

**Citation :** (1970) 26 STC 489

**Hon'ble Judges :** P.B. Mukharji, C.J.;T.K. Basu, J

**Bench :** Division Bench

**Advocate :** N.C. Chakraborty, S. Bose, B.P. Banerjee and D.L. Naskar, for the Appellant;D. Pal and S. Bhattacharjee, for the Respondent

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## **Judgement**

P.B. Mukharji, C.J.—These two Sales Tax References Nos. 395 of 1965 and 521 of 1967 relate to the same facts and the same parties. For the sake of convenience and also on the submission of the learned counsel in these matters, we are disposing of the questions raised by one judgment.

The two questions raised in these references for decision are as follows :-

(1) Whether on the facts and in the circumstances of the case, in exercise of his powers u/s 20(3) of the Bengal Finance (Sales Tax) Act, 1941, the Additional Commissioner was competent to reassess the gross turnover of the petitioner by taking into consideration additional material which had not been made available to the Assessing officer ?

(2) Whether on the facts admitted or found by the Tribunals below, the Additional Commissioner of Commercial Taxes was vested with the authority or jurisdiction, under Sub-section (3) of Section 20 of the Bengal Finance (Sales Tax) Act, 1941, read with Rule 80 A of the Rules framed thereunder to admit or rely on the purported report dated 27th December, 1960, of the Commercial Tax Officer of the Central Section, pursuant to the enquiry under Sub-section (1) of Section 14 of the said Act, initiated long before the filing of the revision petition in question

by the petitioner before the Commissioner of Commercial Taxes, West Bengal ?

2. The Board of Revenue referred question (1) by its order dated 24th August, 1965, while this court by its order dated 27th September, 1966, directed the Board to refer question (2).

3. The facts relevant for the purposes of these references are as follows : Messrs Ram Kanai Jamini Ranjan Pal Private Ltd. is a dealer registered under the Bengal Finance (Sales Tax) Act, 1941. The dealer's assessment under that Act is for the period of 4 quarters ending with the last date of Chaitra, 1364 B.S. The Commercial Tax Officer, Raja Katra Charge, assessed the dealer by his order dated 7th December, 1959. The Commercial Tax Officer for reasons stated in his order enhanced the gross turnover by Rs. 50,000 over the admitted figure of Rs. 35,93,402.84 and also imposed a penalty of Rs. 1,000 u/s 11(1) of the Act. Against that assessment order, the dealer filed an appeal before the Assistant Commissioner, Commercial Taxes, Burrabazar Circle. The Assistant Commissioner in appeal reduced the amount so enhanced to the sum of Rs. 25,000 and the penalty to Rs. 500 by his order dated 10th September, 1960. The dealer thereafter moved the Commissioner of Commercial Taxes, West Bengal, in revision. The Additional Commissioner, Commercial Taxes, West Bengal, dealt with the revision case. While the revision petition was pending before him, he received a report of investigation dated 27th December, 1960, made by the Commercial Tax Officer (Central Section). In this report it was observed inter alia that two original cash memos. issued by the dealer bearing serial No. 30727-26 dated 24th January (year not mentioned) for Rs. 69.50 and No. 31310-37 dated 25th December, 1966, for Rs. 62.20 were not properly recorded in the dealer's books of accounts. It was also stated in that report that 2,000 cash memo. books containing 1,00,000 of cash memos. were printed and supplied by Messrs Blackwoods India Ltd. to the dealer twice. It was alleged that on the last occasion these were printed under verbal orders from the dealer who made the payment in cash. The Additional Commissioner of Commercial Taxes forwarded a copy of this report to the dealer under his Memo. No. 16685-C.T. dated 20th September, 1961, for preferring objections, if any, against the findings of the Investigating Officer as it might lead to further enhancement of the gross turnover at the revisional stage. In response, the dealer did file a written statement on 4th December, 1961, and also appeared before the Additional Commissioner of Commercial Taxes who for reasons stated in his order dated 9th December, 1961, enhanced the dealer's turnover by Rs. 20,00,000. The dealer thereafter filed a revision petition before the Board of Revenue on or about 8th February, 1962. The Board of Revenue by its order dated 31st July, 1964, rejected the revision petition and upheld the order of the Additional Commissioner of Commercial Taxes, West Bengal. On those facts, the two questions have been raised in these references.

4. We shall take up the question which the Board of Revenue referred to us, namely, "whether on the facts and in the circumstances of the case, in exercise

of his powers u/s 20(3) of the Bengal Finance (Sales Tax) Act, 1941, the Additional Commissioner was competent to reassess the gross turnover of the petitioner by taking into consideration additional material which had not been made available to the assessing officer ?" The two relevant decisions of the Supreme Court on this point must first be noticed. One is the State of Kerala Vs. K.M. Charia Abdullah and Co., . This decision was concerned with the Madras General Sales Tax Act and its Rules. Mr. Chakraborty for the assessee relied on the observations of Subba Rao, J., drawing the distinction between an appeal and a revision at page 879 of the report. The observations on which Mr. Chakraborty relied are as follows :

There is an essential distinction between an appeal and a revision. The distinction is based on differences implicit in the said two expressions. An appeal is a continuation of the proceedings; in effect the entire proceedings are before the appellate authority and it has power to review the evidence subject to the statutory limitations prescribed. But in the case of a revision, whatever powers the revisional authority may or may not have, it has not the power to review the evidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision...Even so the revisional authority's jurisdiction is confined to the question of legality or propriety of the order or the regularity of the proceedings. The further limitation on that jurisdiction is that it can only exercise the same on the examination of the record of any order passed or proceedings taken by any authority. The section, therefore, not only limits the scope of its jurisdiction but also defines the material on the basis of which the said jurisdiction is exercised. The general expression that the authority "may pass such order as he thinks fit" must necessarily be confined to the scope of the jurisdiction. The revisional authority, therefore, cannot travel beyond the order passed or proceedings recorded by the inferior authority and make fresh enquiry and pass orders on merits on the basis of the said enquiry.

5. Naturally Mr. Chakraborty for the assessee relied on these observations to emphasise his argument on this question that the Commissioner was not competent to take into consideration any additional material but should have confined himself to what was before the assessing officer. But Mr. Chakraborty's difficulty is that this principle enunciated by Subba Rao, j., appears in the dissenting judgment of Subba Rao, J., who was in the minority. The majority judgment of the Supreme Court in that decision did not approve of that view. It is, therefore, necessary for us to refer to the majority judgment which binds us. The majority judgment was delivered by Shah, J., who observed as follows at pages 883-84 of that report :

Turning then to the jurisdiction which the revising authority may exercise u/s "12(2), attention must first be directed to the phraseology used by the Legislature. The Deputy Commissioner is, therefore, invested with power to satisfy himself about the legality or propriety of any order passed or proceedings recorded by any officer subordinate to him, or the regularity of any proceeding of

such officer, and to pass such orders with respect thereto as he thinks fit. For exercising this power, he may suo motu or on application call for and examine the record of any proceeding or order. There is no doubt that the revising authority may only call for the record of the order or the proceeding, and the record alone may be scrutinised for ascertaining the legality or propriety of an order or regularity of the proceeding. But there is nothing in the Act that for passing an order in exercise of his revisional jurisdiction, if the revising authority is satisfied that the subordinate officer has committed an illegality or impropriety in the order or irregularity in the proceeding he cannot make or direct any further enquiry. The words of Sub-section (2) of Section 12 that the Deputy Commissioner "may pass such order with respect thereto as he thinks fit" means such order as may in the circumstances of the case for rectifying the defect be regarded by him as just. Power to pass such order as the revising authority thinks fit may in some cases include power to make or direct such further enquiry as the Deputy Commissioner may find necessary for rectifying the illegality or impropriety of the order, or irregularity in the proceeding. It is therefore not right baldly to propound that in passing an order in the exercise of his revisional jurisdiction, the Deputy Commissioner must in all cases be restricted to the records maintained by the officer subordinate to him, and can never make enquiry outside that record.

6. These observations clearly indicate the answer to this question and supports the view of the Board of Revenue that it can take into consideration material outside the record. Therefore the consideration by the Additional Commissioner of Commercial Taxes of the report of the Commercial Tax Officer mentioned above does not vitiate the order of the Additional Commissioner. It is necessary also to refer to the further observations of Shah, J., delivering the majority judgment in the State of Kerala Vs. K.M. Charia Abdullah and Co., which are as follows :

It cannot therefore be said that a provision which confers upon the appellate or revising authority power to make such enquiry as such appellate or revising authority considers necessary in itself amounts to enlarging the revisional or appellate jurisdiction. The only difference between the Income Tax Acts and the Madras General Sales Tax Act is that whereas the power to entertain the appeal or revision application and to make orders for further enquiry in the hearing of the appeal or revision is wholly dealt with by the provisions of the Income Tax Acts, under the Madras General Sales Tax Act the revisional jurisdiction and appellate jurisdiction are conferred by the Act, but the power of the appropriate authority in the exercise of the jurisdiction when it appears to the appellate or revising authority that the correct amount of tax payable by the dealer has not been paid to make a further enquiry as the authority considers necessary is conferred by the Rules. But that is no ground for regarding the conferment of power to travel outside the record of the subordinate taxing authorities as unauthorised. Investment of powers to make such enquiry as the appellate or the revising authority considers necessary can manifestly be invested by clauses

(k) and (1) of Section 19, Sub-section (2), and if such power is invested the rule authorising the making of enquiry is not ultra vires.

7. Shah, J., in his Lordship's majority judgment proceeded thereafter to point out the Madras High Court decision in the State of Madras v. The Madura Knitting Co. Ltd. [1959] 10 S.T.C. 155 SC, holding that the powers given to the revising authority u/s 12(2) were not confined to errors patent on the face of the record but would extend to probing further into the records like calling for despatch registers and Ors. evidence. Thereafter Shah, J., proceeds to make the following further observations at page 886 which are material for our purpose :

The power to hold an enquiry to take additional evidence is a procedural power in aid of the exercise of the revisional jurisdiction and if the revisional jurisdiction is not restricted only to cases of arithmetical errors or as the Tribunal called it "arithmetic aspect", there is no reason to assume that the power Under Rule 14A to make such enquiry as the appellate or the revising authority considers it just to order or to make would be so restricted. But the power conferred by Rule 14A by the use of the expression "making such enquiry as such appellate or revising authority considers necessary" must be read subject to the scheme of the Act. It would not invest the revising authority with power to launch upon enquiries at large so as either to trench upon the powers which are expressly reserved by the Act or by the Rules to other authorities or to ignore the limitations inherent in the exercise of those powers.

8. In a subsequent and later decision of the Supreme Court in Swastik Oil Mills Ltd. Vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay, , the above view and principle were followed and approved. Bhargava, J., rejected the principle of the decision of the Andhra Pradesh High Court in The State of Andhra Pradesh v. T.G. Lakshmaiah Setty & Sons [1961] 12 S.T.C. 663 SC, which purported to lay down the principle that in revisional jurisdiction there is no jurisdiction to travel beyond the record that is available to the assessing authority and that the basis should be found on the record already in existence. The observations of Bhargava, J., delivering the Supreme Court judgment at pages 395-96 are as follows:

We are unable to accept this principle laid down by that High Court as correct. Whenever a power is conferred on an authority to revise an order, the authority is entitled to examine the correctness, legality and propriety of the order and to pass such suitable orders as the authority may think fit in the circumstances of the particular case before it. When exercising such powers, there is no reason why the authority should not be entitled to hold an enquiry or direct an enquiry to be held and, for that purpose, admit additional material. The proceedings for revision, if started suo motu, must not, of course, be based on mere conjecture and there should be some ground for invoking the revisional powers. Once those powers are invoked, the actual interference must be based on sufficient grounds, and, if it is considered necessary that some additional enquiry should be made to arrive at a proper and just decision, there can be no bar to the revising authority

holding a further enquiry or directing such an enquiry to be held by some other appropriate authority. This principle has been clearly recognised by this court in the State of Kerala Vs. K.M. Charia Abdullah and Co., .

9. We shall now examine a little more closely the contention involved in this question and in the light of the Bengal Act and the Rules made thereunder. The assessee contends that it was not competent for the Additional Commissioner to reassess the gross turnover by taking into consideration the additional material which had not been made available to the assessing officer. Now, what is this additional material about which this complaint is being made by the assessee ? By a notice dated 25th October, 1960, the Commercial Tax Officer u/s 14(1) of the Bengal Finance (Sales Tax) Act, 1941, gave the following direction to the assessee :-

You are hereby directed to furnish the undersigned with the Serial Nos. of the cash memos. printed by you in 1363 B.S., 1364 B.S., 1365 B.S., 1366 B.S. and 1367 B.S. The names of the suppliers of these memos., relevant bills Nos. and dates, amount, dates of payment and modes of payment also are to be indicated.

10. The information may be supplied to the undersigned on 31st October, 1960, at 4 p.m. positively.

11. Pursuant to this notice, the assessee appeared before the Commercial Tax Officer. The finding is recorded by the Commercial Tax Officer:-

In course of examination it was found that the dealer did not show on their cash memos. the year of issue. Only the dates and months are shown. On a prima facie examination also, the date of the cash memo. No. 31310-37 appears to have been tampered by a subsequent insertion of the numerals "66" after the date of issue. The actual date appears therefore to be 25-12 of some other year other than 1366.

12. The assessee was asked to explain and the Commercial Tax Officer records the following facts :-

Asked to explain the discrepancies of the original cash memos. with the copies; the dealer could not give any explanation whatsoever except that the discrepancies might be due to some of the employees writing one thing in the copy and Anr. thing in the original. But for want of anything to prove the contention and improbability of such a malpractice without a collusion amongst the salesman, memo, writer, cashier and supervisor, the explanation cannot be accepted.

13. The whole report of the Commercial Tax Officer shows that every opportunity was given to the dealer or the assessee to explain these cash memos. The Commercial Tax Officer on his examination u/s 14 of the Bengal Act came to the conclusion that the assessee did not record sales to the extent of Rs. 30,00,000 which, in the absence of any information or evidence to the contrary, appear to be entirely taxable. He, therefore, made a report or rather a finding embodying

the results of his investigation and information on the subject u/s 14 of the Bengal Act. This finding is dated 27th December, 1960, and the relevant portion of that finding is as follows :-

But as the above assessment and appeal thereafter was made on books of accounts which did not record sales to the extent of Rs. 30,00,000 which in the absence of any information or evidence to the contrary appear to be entirely taxable, the assessments made appear to have been underestimated and require to be revised.

Submitted to the Assistant Commissioner of Commercial Taxes, Central Section, West Bengal, for information and necessary action.

14. It is also noted in the post-script: P.S. : "That the dealer is in the habit of printing duplicate sets of cash memos., will be evident from the annexure enclosed.

15. Now, this is the material which is now impugned by the assessee as additional material and the assessee's contention is that the Additional Commissioner was not competent to take this material into consideration to reassess the gross turnover.

16. It will be appropriate at this stage to have a look first at Section 14 of the Bengal Finance (Sales Tax) Act, 1941, which inter alia reads as follows :

(1) The Commissioner may, subject to such conditions as may be prescribed, require any dealer-

(a) to produce before him any accounts, registers or documents,

(b) to furnish any information relating to the stock of goods of, or purchases, sales or deliveries of goods by, the dealer or relating to any other matter,

as may be deemed necessary for the purposes of this Act.

(2)(a) All accounts, registers and documents relating to the stocks of goods of, or purchases, sales and deliveries of goods by, any dealer ; and

(b) all goods kept in any place of business of any dealer, shall at all reasonable times be open to inspection by the Commissioner.

(3) If the Commissioner has reason to suspect that any dealer is attempting to evade payment of any tax under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as may be necessary, and shall grant a receipt for the same, and shall retain the same only for so long as may be necessary for examination thereof or for a prosecution,

17. A glance at these sub-sections shows that this Section (Section 14) gives the power to the Commissioner for the production and inspection of accounts and documents. This was what was done by the notice set out above under this section by the Commercial Tax Officer dated 25th October, 1960.

18. Obviously, this step is expressly authorised by the statute. It expressly recognises the principle that the Commissioner can call for the production and inspection of these accounts and documents. Incidentally, it may be recorded here that the Commissioner has the power of delegation and his power was delegated in this case to the Commercial Tax Officer who gave the notice u/s 14(1) of the Bengal Act. It follows irresistibly that this power of production and inspection of accounts and documents has to be used for "the purposes of this Act". One of the recognised and express purposes of the Act is revision of assessment u/s 20 of the Act which provides inter alia that any dealer may in the prescribed manner appeal to the prescribed authority against any assessment within a particular period mentioned therein. In Sub-section (3) of Section 20 of the Act, it is expressly provided:

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

Provided that before rejecting any application for the revision of any such order the Commissioner or the Board of Revenue, as the case may be, shall consider it and shall record reasons for such rejection:

Provided further that no application for revision shall lie to the Commissioner in respect of any assessment if an appeal lies under Subsection (1) to the Commissioner in respect of such assessment.

19. Finally, it is also provided by Section 20(5) that before any order is passed under this section which is likely to affect any person adversely, such person shall be given reasonable opportunity of being heard.

20. Therefore, reading Section 14 and Section 20 of the Bengal Act, it follows that the steps taken u/s 14 had to be used "for the purposes of the Act" and as the "purposes of the Act" include revision of any order of assessment, the materials found u/s 14 can be used for revision. There is the safeguard, however, that before any order is passed u/s 20, which is likely to affect any person adversely, and in this case the assessee, such person shall be given reasonable opportunity of being heard. The assessee has been given every reasonable opportunity of being heard. Any other view would lead to this conclusion that the materials obtained u/s 14 of the Bengal Act could not be used in any proceeding and that would be a useless paraphernalia.

21. At this point, some argument is advanced about the dates. It would be recalled that the notice u/s 14(1) of the Bengal Act was dated 25th October, 1960. At that point of time the revision petition had not been filed. The revision petition was filed on 10th November, 1960. Therefore, it is said that this notice, which came u/s 14(1), came at a time when there was no actual revision petition

by the assessee. The answer to this is that no doubt the revision petition was filed on 10th November, 1960, but it was during the pendency of the revision petition that this report of the investigation and examination by the Commercial Tax Officer came in and was duly forwarded to the Additional Commissioner of Commercial Taxes. It is difficult to see what is wrong in this procedure. This report was before the assessee who had every opportunity to answer it and produce any evidence to the contrary before the Commercial Tax Officer. This was not a case where any principle of natural justice was violated. On 20th September, 1961, the assessee-company in connection with its revision petition dated 10th November, 1960, was expressly informed about this report dated 27th December, 1960, to be considered at the time of hearing of the revision petition and even the whole copy of the report was supplied to the assessee. The assessee also on the 4th December, 1961, submitted a written reply to this letter of the 20th September sending the assessee the copy of this report. We are, therefore, satisfied that u/s 20(3) of the Bengal Finance (Sales Tax) Act, 1941, the Additional Commissioner was competent to take into consideration this material and to revise and reassess the gross turnover of the dealer. It is needless to emphasise that the language of Section 20(3) of the Bengal Act says that the Commissioner may revise on the application of the dealer or even on his own motion any assessment made or order passed. That language is clear and express in the statute. This deals with the Commissioner's power to revise. Section 14 gives the power to the Commissioner to call for accounts and documents. He himself during the revision proceedings therefore could have called for these documents and asked the assessee to explain. Instead of doing so, what has happened is that the Commercial Tax Officer under statutory delegation has made this investigation and sent his report to the Additional Commissioner and the assessee had full opportunity to deal with that report.

22. Mr. Chakraborty for the assessee in his argument analysed before us the different sales tax statutes in the different States in India and the different rules made thereunder. The object of his analysis was to submit that there are specific provisions in other States either in their statutes or in their rules for roping in escaped assessments but, according to him, no such provision is there under the Bengal Act or the Rules made thereunder. It will not be proper for us to express any opinion about the provisions of the sales tax statutes of other States and make any information of them or their rules in this reference. We shall, however, assume for the sake of argument that Mr. Chakraborty is right in his submission. But even then we do not consider that it helps the assessee. This reference must be governed by the Bengal Act and the Rules made thereunder. The language of the statute here and the rules here are the governing factors. Section 20(3) of the Bengal Act makes it clear that the Commissioner in revision can revise any assessment or order passed. There will be no justification to qualify this power by saying that he cannot revise to bring in escaped assessment. This will be more than a very logical conclusion specially in the context of the Bengal Sales Tax Act because under this Act no right of appeal or revision is given to the

revenue but such rights are given only to the dealer or the assessee. The language of Section 20 saying "any dealer may in the prescribed manner appeal to the prescribed authority" etc. makes it plain. Even u/s 21 of the Bengal Act the revenue cannot call for a reference either. What happens then where obviously an assessment or an order has been made which is prejudicial to the revenue ? Who can correct it ? The compelling answer is, the power of revision is in the Commissioner u/s 20(3) to revise any assessment made or order made. The Madras High Court in *East Asiatic Co. (India) Ltd. v. The State of Madras* [1956] 7 S.T.C. 299 SC, although on the Madras Act and the Madras Rules, noticed a similar argument and Ramaswami, J., at pages 314-5 of that report made the following observations:

The purposes of this Act are twofold, viz, the levy of a general tax on the sale of goods to supplement the lost revenues and for promoting the general public good ; and secondly, to see that this is done under the provisions of the Act and not by carrying out in a capricious or arbitrary manner. Therefore, a revisional authority has to be created. What is revision ? The essence of revisional jurisdiction lies in the duty of the superior tribunal or officer entrusted with such jurisdiction to see that the subordinate tribunals or officers keep themselves within the bounds prescribed by law and that they do what their duty requires them to do and that they do it in a legal manner. This jurisdiction being one of superintendence and correction in appropriate cases, it is exercisable even suo motu as is clear from the numerous statutory provisions relating to revision found in various Acts and Regulations such as the Civil Procedure Code, Criminal Procedure Code, Income Tax Act etc. The jurisdiction of suo motu revision is not cribbed and cabined or confined by conditions and qualifications. The purpose of such an amplitude being given suo motu revisions appears to be as much to safeguard the interests of the exchequer as in the interests of the assessee. The State can never be the appellant and if there is an order against the State to its prejudice, and naturally the assessee in whose favour the order is passed does not prefer an appeal, the State would suffer unless its interests are safeguarded by the exercise of such supervisory jurisdiction as the one given to the authorities abovementioned. So, when this revisional jurisdiction has been conferred upon the Board of Revenue u/s 12 and when extensive rule-making powers have been granted to the Government u/s 19 and when as a result of the practical working, of the Act the Government have found that to safeguard the interests of the exchequer as well as the interests of the assessee, Rule 14(2) should be enacted in order to make good the want of sufficient provision in the Act for giving effect to the purpose of this Act, it cannot be said that this is not intra vires of the rule-making powers conferred by Section 19 of the Act.

23. In that view of the matter it will not be necessary to discuss in detail two other cases on which Mr. Chakraborty for the assessee relied. We shall make however a brief reference to them. One is the *State of Kerala Vs. Shri M. Appukutty*, , a decision of the Supreme Court. That was a case on the Madras General Sales Tax Act and its Rules. There Kapur, J., made the observation at

page 246 in delivering the judgment of the Supreme Court in these terms :

But the power to assess escaped turnover does not arise out of the revisional jurisdiction. In exercising revisional jurisdiction the Deputy Commissioner would be restricted to the examination of the record for determining whether the order of assessment was according to law.

24. Truly, from the context, that observation appears to lend support to the argument of Mr. Chakraborty for the assessee. It is not clear however at all from the report whether the learned Judge was noticing the argument made or whether it was an observation enunciating the law. It is further clear from the observations at page 247 that there was a specific Rule 17 in that case for escaped assessments. Therefore, there was no question of examining the implications of revisional jurisdiction when such a provision was not appearing expressly in a rule. The second answer is that the Supreme Court in the subsequent decision in the State of Kerala Vs. K.M. Charia Abdullah and Co., , which came subsequent to this decision, settles and clarifies the particular point that we have before us in this reference. We need only add here that the language of the Bengal Act to our mind is clear on the point. Section 20(3) of the Bengal Act does not put any limitation to suggest that escaped assessment cannot be brought under revision by the Commissioner. Provisions u/s 14, for instance, Sub-section (3) thereof, clearly use the language "attempting to evade payment of any tax under this Act". The other case on which Mr. Chakraborty for the assessee relied is State of Kerala Vs. K.M. Charia Abdullah and Co., , another decision of the Supreme Court and the observations made by Grover, J., at page 495 which read as follows :

Now Section 15 of the Act empowers the Deputy Commissioner to call for and examine the record of any case suo motu or on application for the purpose of satisfying himself as to the legality or propriety of an order made by the subordinate authority or as to the regularity of the proceedings. He is further empowered to pass any order with respect thereto as he thinks fit. This jurisdiction is quite distinct and separate from the one created by Rule 33 which obviously has been framed under clause (f) of Section 24(2). That rule enables the assessing authority within the prescribed period to determine to the best of its judgment the turnover of a "dealer" which has escaped assessment. Section 15(1) is meant for interference when there is some illegality or impropriety or irregularity in the order of the assessing authority which has to be set right. It can hardly be said to cover those cases in which the turnover has escaped assessment.

25. Thereafter Grover, J., noticed the decision of the Supreme Court in the State of Kerala Vs. Shri M. Appukutty, These observations cannot be of any help to Mr. Chakraborty here under the Bengal Act. Section 15 of the Kerala General Sales Tax Act which the learned Judge was construing in that case expressly used the words "legality", "propriety" of the order and "regularity of such proceeding". Section 15 of that statute is set out at page 493 of that report. Section 20(3) of

the Bengal Act does not limit or qualify the power of revision of the Commissioner in this manner by use of such expressions as "legality" or "propriety" of the order or "regularity of such proceeding". There also Under Rule 33 as expressly observed by the learned Judge there was an express provision made for escaped assessment, and perhaps, that Rule 33 had to expressly say so because the revision u/s 15 of the Kerala General Sales Tax Act was there so limited unlike the revision u/s 20(3) of the Bengal Act.

26. It was submitted on behalf of the assessee that the Commissioner in revision under the Bengal Act could not enhance the assessment. In support of that submission Mr. Chakraborty for the assessee relied on Section 20(2) of the Bengal Act dealing with appeals and where express provision was made there u/s 20(2)(a) as "confirm, reduce, enhance or annul the assessment". Taking a leaf out of this expression in Section 20(2) for appeal Mr. Chakraborty urges that no express power to enhance is given to revision under Sub-section (3) of Section 20. The answer is that it was not necessary to do so because Sub-section (3) of Section 20 as already quoted gives a much wider power in revision to the Commissioner to "revise any assessment made or order passed under this Act" and revision in circumstances mentioned u/s 14 would include enhancement and this view is supported by the fact also of the express language in Sub-section (5) of Section 20 on the subject that where in case of a revision a person is going to be affected "adversely" he should be given a reasonable opportunity of being heard, a provision which would be wholly unnecessary and useless if in revision the Commissioner could not enhance the assessment for that was the only way the order could act adversely to the assessee.

27. For the reasons stated above, we answer this question in the affirmative in favour of the revenue. We hold that the Additional Commissioner was competent to assess the gross turnover of the assessee-dealer by taking (1) State of Kerala Vs. Shri M. Appukutty, into consideration the additional material in the facts and circumstances of this case.

28. We now come to the next question which reads as follows :-

Whether on the facts admitted or found by the Tribunals below, the Additional Commissioner of Commercial Taxes was vested with the authority or jurisdiction, under Sub-Section (3) of Section 20 of the Bengal Finance (Sales Tax) Act, 1941, read with Rule 80A of the Rules framed thereunder to admit or rely on the purported report, dated 27th December, 1960, of the Commercial Tax Officer of the Central Section, pursuant to the enquiry, under Sub-section (1) of Section 14 of the said Act, initiated long before the filing of the revision petition in question by the petitioner before the Commissioner of Commercial Taxes, West Bengal ?

29. The answer to this question follows from the answer to the first question. It needs to be recorded that the time element in this question, namely, the fact that the enquiry u/s 14(1) of the Bengal Act was initiated before the filing of the revision petition was not argued by the assessee before the Board or before the

other taxing authorities. This fact is recorded in the order of the Member, Board of Revenue, dated the 24th August, 1965, at page 48 of the paper-book where the Board of Revenue records :-

It was an enquiry not Under Rule 80A of the Bengal Sales Tax Rules, but one u/s 14(1) of the Bengal Finance (Sales Tax) Act and particularly for that reason the learned Additional Commissioner was not competent to take into consideration the results of the enquiry. This specific point does not, however, appear to have been raised before the Board.

That is the reason why he refused to state that point before this court and therefore was directed to do so by an order from this court.

Now we shall discuss the arguments that have been advanced on this point and specially Under Rule 80A of the Bengal Sales Tax Rules.

The rule-making power under the Bengal Act is contained in Section 26. Section 26 of the Bengal Finance (Sales Tax) Act provides inter alia that subject to the conditions of previous publication, the State Government has power to make rules for carrying out "the purposes of this Act". Sub-section (2) of Section 26 of the Act thereafter goes on to specify different subjects on which rules could be made without prejudice to the generality of the power conferred by Sub-section (1). Among other specific subjects, sub-clauses (o) and (p) include the subject of the manner in which and the authority to which appeals against assessments may be preferred u/s 20 and the procedure for and other matters (including fees) incidental to the disposal of appeals and applications for revisions and reviews u/s 20. Also, there is a general power under Sub-clause (t) stating "any other matter required to be prescribed."

30. The Bengal Sales Tax Rules are divided under different headings. One heading is "Appeals, Revision and Review". These rules start from Rule 74 and continue up to Rule 83. In that heading appears Rule 80A which reads as follows :

The appellate or revisional authority may, before finally disposing of the matter, make such enquiry or cause such enquiry to be made by such officer as it may think fit.

31. This particular question expressly refers to Rule 80A. The question is whether Section 20(3) of the Bengal Finance (Sales Tax) Act, 1941, read with this Rule 80A, permits the Additional Commissioner to admit or rely on a report pursuant to an enquiry u/s 14(1) of the Bengal Act initiated before the filing of the revision petition. Analysing Rule 80 as quoted above, it expressly gives power to the revisional authority, which in this case was the Additional Commissioner, to make such enquiry or cause such enquiry to be made by such officer as it thinks fit before finally disposing of the revision.

32. The first point taken by Mr. Chakraborty for the assessee is that in this case the notice u/s 14(1) of the Bengal Act and the resulting report could not be regarded as an enquiry by the Additional Commissioner or the enquiry caused to

be made by the Additional Commissioner through the Commercial Tax Officer. Technically he is right. This particular "notice u/s 14(1) of the Bengal Act and the report that followed were not directed by the Additional Commissioner. But there is a fallacy in this argument. The language of Rule 80A is "make such enquiry as the revisional authority may think fit". The question is that if there is a report u/s 14(1)(b) and that report comes to the knowledge of the Commissioner or Additional Commissioner, as in this case, then if he takes notice of that proceeding u/s 14(1) then from the time he takes notice of such proceeding he is making an "enquiry" within the meaning of Rule 80A. He could certainly have made the enquiry himself which he did not do in this case. He could also have caused an enquiry to be made by such officer as he thought fit, which he did not do in this case. But that does not exhaust the limits of his enquiry. The language of Rule 80A shorn of its details expressly empowers the revisional authority to make such enquiry as it may think fit. Therefore, the Additional Commissioner in this case thought it fit, after it came to his knowledge that a proceeding or a report u/s 14 had been made and that he should enquire on that report and proceeding and see the result of it. That is within the meaning of the word "enquiry" of Rule 80A. The only limitation upon this naturally would be the well-settled rule of natural justice that if he acts really on such an enquiry, the assessee must have all reasonable opportunity to be informed about the result of the enquiry and to be heard in respect of that enquiry. That opportunity was given by the Additional Commissioner in this case. Nothing could be clearer than the notice which the Additional Commissioner of Taxes gave on 19th September, 1961, which stated inter alia as follows:--

On discovery of fresh materials, as reported by the Commercial Tax Officer, Central Section, in his report dated 27th December, 1960 (copy enclosed), it appears that you have suppressed sales estimated to be Rs. 30,00,000 in respect of the assessment of four quarters ending Chaitra 1364 B.S. The above revision petition which has been filed before me is against the appellate order in respect of the assessment for the said period...It also appears that sales to the extent of Rs. 30,00,000 (estimated) escaped taxation from the original assessment and consequently from the Assistant Commissioner's appellate order. The above revision petition will be heard by me on 5th October, 1961, at 11.30 a.m. and the report dated 27th December, 1960, submitted by the Commercial Tax Officer, Central Section, will be considered at the time of hearing of the revision petition. You should, therefore, appear before me on that date at the hour fixed either in person or by a duly instructed agent to represent your case, failing which the matter will be decided ex parte without any further reference to you.

33. This shows that in the facts of this case, the requirements of natural justice were amply satisfied. The assessee was given notice of the discovery of the materials. The assessee was also given notice about the report. The assessee was also given a copy of the whole report of the Commercial Tax Officer. The assessee was told about the gist of the finding of the Commercial Tax Officer. The assessee was formally asked to represent his case. This certainly comes within

the meaning of enquiry Under Rule 80A of the Benga Sales Tax Rules.

34. If an assessment was made without disclosing to the assessee the information supplied and without giving any opportunity to the assessee to rebut such information, then certainly there would be clear violation of the principles of natural justice, as was explained by the well-known decision of the Supreme Court in *Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income Tax, West Bengal*, . It was also clearly pointed out by the Supreme Court in *C. Vasantlal and Co. Vs. Commissioner of Income Tax, Bombay City*, , that "the Income Tax Officer is not bound by any technical rules of the law of evidence and it is open to him to collect materials to facilitate assessment even by private enquiry. But if he desires to use the materials so collected, the assessee must be informed of the material and must be given an adequate opportunity of explaining it." On the facts of this case, we are satisfied beyond any doubt that the material used in this case against the assessee has been rightly used without violation of any principle of natural justice and the assessee was informed of the material and he was given adequate opportunity of explaining it.

35. We only need to observe that as at present advised, we are unable to associate ourselves with the view expressed by the decision of the Madhya Pradesh High Court in *Commissioner of Sales Tax Vs. Caltex (India) Ltd.*, , specially the observations appearing at page 194 in paragraph 6 of that report without a more detailed analysis of the C.P. and Berar Sales Tax Act, the M.P. General Sales Tax Act and the V.P. Sales Tax Rules, and in any event we are of the opinion that the decision in this reference must be governed by the language of the Bengal Finance (Sales Tax) Act and the Bengal Rules made thereunder.

36. The other part of this question relates to the time element. But we have already discussed and expressed our view on that question. We are of the opinion that the fact that the enquiry u/s 14(1) of the Bengal Act was initiated before the filing of the revision petition does not affect its consideration by the Additional Commissioner in the facts and circumstances of this case as explained elsewhere in our judgment.

37. For these reasons we answer this question also in the affirmative in favour of the revenue. We hold that the Commissioner, in this case the Additional Commissioner of Commercial Taxes, has authority and jurisdiction u/s 20(3) of the Bengal Finance (Sales Tax) Act, 1941, read with Rule 80A to admit or rely on the report of the Commercial Tax Officer pursuant to an enquiry u/s 14(1) of the Act even though it was initiated before the filing of the revision petition but was considered along with the revision petition with reasonable opportunity to the assessee.

38. In the result both the questions are answered in the affirmative and in favour of the revenue. Having regard to the facts of this case the assessee shall pay one set of costs for these two references.

39. Both these references are disposed of accordingly by this one judgment.

T.K. Basu, J.

40. I agree.