
(1989) 02 AP CK 0036
In the Andhra Pradesh High Court
Case No : T.R.C. No. 272 of 1985

State of Andhra Pradesh

APPELLANT

Vs

Ratna Sree Box Makers

RESPONDENT

Date of Decision : 21-02-1989

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14, 14(4), 14(4C), 20, 20(1)

Citation : (1989) 75 STC 82

Hon'ble Judges : V. Neeladri Rao, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : The Government Pleader for Commercial Taxes, for the Appellant; K. Raji Reddy, Amicus Curiae, for the Respondent

Judgement

Neeladri Rao, J.—The respondent herein is a manufacturer and dealer in cardboard boxes. For the assessment year 1977-78, his total turnover was less than Rs. 25,000. The assessing authority, i.e., the Assistant Commercial Tax Officer, held that cardboard boxes were unclassified goods. During 1977-78, if the total turnover of unclassified goods was less than Rs. 25,000 it was not subjected to tax u/s 5(1) of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act") and hence exemption was granted for the entire turnover in regard to the sales of cardboard boxes in 1977-78.

2. During the course of audit conducted by the appropriate authority the assessing authority was informed that cardboard boxes come within the purview of item 19 of the First Schedule and hence they are liable to tax at the point of first sale at the rate of 4 per cent irrespective of the turnover. Thereupon, the assessing authority issued a show cause notice to the respondent herein to show as to why the turnover in regard to cardboard boxes should not be subjected to tax at the rate of 4 per cent. Though in the said notice the assessing authority referred to section 20 of the Act and rule 50(3) of the Rules framed under the Act, it can be held that it was a notice issued u/s 14(4) as the assessing authority is not the revisional authority who can revise u/s 20 of the Act. After

giving an opportunity to the respondent of being heard, the entire turnover was subjected to tax at the rate of 4 per cent by holding that the cardboard boxes would come within the ambit of item 19 of the First Schedule. The appeal thereon to the Commercial Tax Officer, No. 1, Rajahmundry, was dismissed. In the appeal to the Sales Tax Appellate Tribunal, it was held by relying upon the judgment of a Division Bench of this Court in Fatechand and Sons Vs. The Commercial Tax Officer, V Circle, Hyderabad, that a mere change of opinion cannot be the basis for exercising the power vested u/s 14(4) read with sub-clause (cc) and hence the appeal was allowed.

3. The learned Government Pleader contended that the power to reopen u/s 14(4) arises even on the basis of mere change of opinion in regard to classification of goods and that is the only point for consideration.

4. To appreciate the respective contentions the relevant provisions in the Act have to be read :

"Section 14. Assessment of tax. - (1) (1-A)
(2) (3) (4) In any of the following events, namely, where the whole or any part of the turnover of a business of a dealer has escaped assessment to tax, or has been under-assessed or assessed at a rate lower than the correct rate, or where the licence fee or registration fee has escaped levy or has been levied at a rate lower than the correct rate, the assessing authority may, after issuing a notice to the dealer, and after making such enquiry as he may consider necessary, by order, setting out the grounds therefore -

(a) determine to the best of his judgment the turnover that has escaped assessment and assess the turnover so determined;

(b) assess the correct amount of tax payable on the turnover that has been under-assessed;

(c) assess at the correct rate the turnover that has been assessed at a lower rate;

(cc) assess the correct amount of tax payable, in a case where any deduction or exemption has been wrongly allowed;

(d)

(e)

(f)

(4-A)

(4-B)

(4-C) The powers conferred by sub-section (4) on the assessing authority may, subject to the same conditions as are applicable in the case of that authority, be exercised also by any of the authorities higher than the assessing authority

including [the Assistant Commissioner (Intelligence), the Deputy Commissioner and the Joint Commissioner].

(5)

(6)

(7)

(8)

Section 20. Revision by Commissioner of Commercial Taxes and other prescribed authorities. - (1)

(2)

(2-A)

(3) In relation to an order of assessment passed under this Act, the powers conferred by sub-sections (1) and (2) shall be exercisable only within such periods not exceeding four years from the date on which the order was served on the dealer, as may be prescribed.

(4)

(5)

Rule 50. (1) Any assessing, licensing, appellate or revising authority may, at any time within four years from the date of any order passed by him rectify any clerical or arithmetical mistake apparent from the record :

Provided that no such rectification which has the effect of enhancing an assessment or any penalty or fee shall be made unless the assessing, appellate or revising authority has given notice to the dealer of his intention to do so and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessment, penalty or fee the assessing authority shall make any refund which may be due to the dealer.

(3) Where any such rectification has the effect of enhancing an assessment, penalty or fee, the assessing authority shall serve on the dealer a revised notice in form B-3 or B-6 as the case may be, and thereupon the provisions of the Act and these rules, shall apply as if such notice had been served in the first instance.

(4)

(5)"

5. It can be seen that while the power of revision u/s 20 of the Act is with the revisional authority, the power to reopen u/s 14(4) is conferred not only upon the assessing authority but also upon the revisional authority. Further, the period of limitation prescribed for reopening u/s 14(4) is different from the period of

limitation prescribed u/s 20 of the Act.

6. Rule 17 of the Madras General Sales Tax Rules, 1939 conferred power upon the assessing authority to reopen assessment in regard to cases of escaped turnover while rule 14(2) of the said Rules conferred power upon the Deputy Commissioner of Commercial Taxes and others to revise. Those two rules are as follows :

"Rule 14. (1)

(2) The Commercial Tax Officer may, in his discretion, at any time, either suo motu or on application, call for and examine the record of any order passed or any proceedings recorded under the Act by an Assistant or Deputy Commercial Tax Officer working under him, for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceedings and may pass such order in reference thereto as he thinks fit."

"Rule 17. (1) If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to the tax in any year or if the licence fee has escaped levy in any year, the assessing authority or licensing authority, as the case may be, may, at any time within the year or the next succeeding that to which the tax or licence fee relates, assess the tax payable on the turnover which has escaped assessment or levy the licence fee, after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary."

7. While dealing with the relative scope of those two provisions it was held by a Full Bench of the Madras High Court in *State of Madras v. Louis Dreyfus and Company Ltd*[1955] 6 STC 318 Mad that they are mutually exclusive. It was further held therein that "rule 14(2) deals with escaped assessments and rule 17(1) with escaped turnovers, notwithstanding that the latter also would mean that a lesser amount of tax has been levied. So understood the two provisions would be completely reconcilable and the two jurisdictions - to revise assessments and to reopen them - would each be assigned to the proper authority".

"The language of rule 17(1) is consistent with this construction. The "escape" that serves as the foundation of the jurisdiction to reopen an assessment is that of "turnover" and not, be it noted, an assessment. "Turnover" escapes when it is not noticed by the officer either because it is not before him by reason of an inadvertence, omission or deliberate concealment on the part of the assessee, or because of want of care on the part of the officer the turnover though in the books has not been taken notice of. This would be the natural and normal meaning of the expression "turnover which has escaped" in rule 17(1)."

8. It may be noted that rules 17(1) and 14(2) of the Madras General Sales Tax Rules, 1939 were so construed even when the revisional authority was not vested with the power to reopen in regard to escaped turnover.

9. Later, rule 17(3-A) of the Madras General Sales Tax Rules was incorporated conferring the power of reopening in regard to the escaped turnover on the revisional authority also.

10. While dealing with section 12(2) of the Madras General Sales Tax Act and rule 17(1) and rule 17(3-A) of the Madras General Sales Tax Rules, 1939, the Supreme Court held in *State of Kerala Vs. Shri M. Appukutty*, that "in exercising the revisional jurisdiction u/s 12(2), the Deputy Commissioner would be restricted to the examination of the record for determining whether the order of assessment was according to law. Rule 17 confers power to assess escaped turnover which may normally be exercised on matters de hors the record of assessment proceedings before the Deputy Commercial Tax Officer".

11. The same principle was reiterated by the Supreme Court in *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co.*, and *State of Kerala Vs. K.E. Nainan*, while dealing with similar provisions, i.e., section 15(1)(i) of the Kerala General Sales Tax Act (11 of 1125) and rule 33 of the Kerala General Sales Tax Rules, 1950.

12. Thus while referring to the above decisions of the Supreme Court, it was urged by Sri K. Raji Reddy appointed as amicus curiae that when the revisional authority is also conferred with the power of reopening in regard to escaped turnover then for the purpose of revision he can proceed only on the basis of assessment record, while for reopening he can exercise the power if there is material de hors the assessment record. It was further argued by him that a change of opinion of the assessing authority cannot be treated as a material de hors the assessment record, and hence assessment cannot be reopened u/s 14(4) on the basis of mere change of opinion in regard to classification of the goods.

13. But the learned Government Pleader urged as follows :

A reading of section 14 shows that whenever there is escapement of turnover the power to reopen can be exercised. If the said escapement is due to grant of wrong exemption or deduction, the tax properly due can be assessed u/s 14(4) (cc). There is nothing in section 14(4) to indicate that the power to reopen arises only when material de hors the assessment record is available.

14. To support his contention various decisions were referred to :

In *Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar*, the Supreme Court construed section 26 of the Bihar Agricultural Income Tax Act, 1938 which is as follows :

"If for any reason any agricultural income chargeable to agricultural Income Tax has escaped assessment for any financial year, or has been assessed at too low a rate, the Agricultural Income Tax Officer may, at any time within one year of the end of that financial year, serve on the person liable to pay agricultural Income Tax on such agricultural income or, in the case of a company, on the principal

officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 17, and may proceed to assess or reassess such income, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

....."

15. In that case, the High Court had not accepted the contention that restricted meaning had to be given to the word "escaped", i.e., only in cases where an item of income was not charged to tax due to a mistake or oversight on the part of the taxing authorities, that item could well come within the term "escaped" was not accepted. Therein it was held that in view of the words "any reason" and in view of the latter part of section "where income has been assessed at too low a rate" the phrase "escaped assessment" includes a case where there was a deliberate action. The said view of the High Court was approved by the Supreme Court in the above decision.

16. But, in the Bihar Agricultural Income Tax Act, there is no provision conferring power upon the assessing authority to reopen the assessment. Further, in State of Kerala Vs. Shri M. Appukutty, , Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co., and State of Kerala Vs. K.E. Nainan, the Supreme Court considered the relevant provisions of the Madras General Sales Tax Act and the Kerala General Sales Tax Act wherein the revisional authority was also vested with the power to reopen. It may be further noted that even the relevant provisions in the Kerala General Sales Tax Act and the Madras General Sales Tax Act dealing with, however, reopening in regard to escaped turnover contain the words "for any reason" just as in section 26 of the Bihar Agricultural Income Tax Act. Hence it cannot be held that the Supreme Court while construing section 26 of the Bihar Agricultural Income Tax Act in Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar, in giving wider meaning to the word "escaped" differed from its earlier view wherein the escaped turnover was given restricted meaning while considering the relevant provisions of the Madras General Sales Tax Act and the Kerala General Sales Tax Act. By reading the decisions in State of Kerala Vs. Shri M. Appukutty, , Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co., and State of Kerala Vs. K.E. Nainan, it has to be stated that wider meaning has to be given to the words "escaped turnover" if the revisional authority is also vested with the power to reopen in regard to escaped turnover, while restricted meaning has to be given to the same if the revisional authority is not conferred with the power to reopen with regard to escaped turnover.

17. In F.K. Hasheeb and Co. Vs. The State of Madras, while referring to section 32 of the Madras General Sales Tax Act, 1959 conferring power of revision on the Deputy Commissioner and section 16 of the said Act which confers power upon the assessing authority to reopen which are similar to sections 20(2) and 14(4)

of the Act, it was held that the power u/s 32 is a distinct and separate power and its exercise cannot be controlled by any power which may inhere in the assessing authority u/s 16. But it may be noted that the revisional authority under the Madras General Sales Tax Act had no power to reopen.

18. In *Yercaud Coffee Curing Works Ltd. v. State of Tamil Nadu* [1977] 40 STC 531 sc the Madras High Court while construing section 16 of the Tamil Nadu General Sales Tax Act, 1959 held that it is competent for the assessing authority in a reassessment proceeding to assess an item of turnover which had been omitted to be taxed earlier for any reason. The authority has, therefore, power to reassess a turnover even though in the return that turnover was included and the officer then thought that it was exempt.

19. The said decision is strongly relied upon for the department to contend that it is open to the assessing authority to reopen u/s 14(4) of the Act on the basis of mere change of opinion in regard to classification. But, the Madras High Court in the above judgment after referring to the decisions in *State of Kerala v. M. Appukutty* [1968] 14 STC 242 (SC), *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co.*, and *State of Kerala Vs. K.E. Nainan*, observed as follows :

"The Supreme Court considered the words "escaped turnover" in the context of the power given to the same authority to revise an assessment on the ground of illegality and impropriety and, therefore, their Lordships have restricted the scope of these words "escaped turnover". In the absence of such different provisions vesting the power on the same authority, we are of the view that a restricted meaning either for the words "escaped turnover" or for the words "illegality, impropriety or irregularity" is not warranted."

20. But, as under our Act also the revisional authority is also vested with the power to reopen an assessment u/s 14(4), restricted meaning has to be given to the words "escaped turnover" and wider meaning cannot be given for the said words as contended for the department.

21. Even in *Andhra Steel Corporation Ltd. v. Commercial Tax Officer* [1988] 68 STC 126 sc a Division Bench of this Court after referring to the decision in *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co.*, , held that the observations of the Supreme Court, while referring to section 15(1) of the Kerala General Sales Tax Act, show that the power under sub-clause (cc) of sub-section (4) of section 14 of the Act can be exercised de hors the record of the assessment proceedings before the assessing authority. Hence, the said decision does not support the contention for the department that even in a case where turnover was exempted after deliberation, the assessing authority by mere change of opinion can reopen u/s 14(4) of the Act.

22. In *Eastern Ore Corporation Vs. The Commercial Tax Officer*, a Full Bench of this Court while construing section 14(4) before it was amended by Act 16 of

1963, held that a power to reopen u/s 14(4) arises in the events mentioned therein, namely, (1) where the whole or any part of the turnover of a business of a dealer has escaped assessment to tax, (2) where a dealer has been under-assessed or (3) where he has been assessed at a rate lower than the correct rate or (4) where the licence fee or registration fee has escaped levy or (5) where fee has been levied at a rate lower than the correct rate. When any of the aforesaid events happen, the assessing authority, after making such enquiry as he considers necessary, can assess the correct amount of tax payable or levy a correct amount of licence fee or registration fee.

23. Section 14(4)(cc) of the Act is as follows :

"(cc) assess the correct amount of tax payable, in a case where any deduction or exemption has been wrongly allowed."

24. By relying upon the same, the learned Government Pleader urged as follows :

Whenever it is shown that deduction or exemption has been wrongly allowed then the assessing authority can assess the correct amount of tax payable u/s 14(4)(cc). When in view of mere change of opinion, the assessing authority felt that the exemption or deduction originally allowed has been wrongly allowed then he can have the power to reopen u/s 14(4)(cc) and there are no words in the above provision to whittle down the said power.

24. Under the scheme of our Act the revisional authority has also been given the power to reopen u/s 14(4) as can be seen from section 14(4-C) of the Act. While dealing with similar provisions of the Kerala General Sales Tax Act whereunder the revisional authority was also vested with the power to reopen in case of escaped turnover the Supreme Court held in Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co., and State of Kerala Vs. K.E. Nainan, that while the power of revision can be exercised by looking into assessment record only, the power of reopening has to be exercised on the basis of the material de hors the record.

25. The contention for the department that the power of reopening can be exercised even in regard to turnover which was already considered at the time of assessment, then there will not be any conceivable case which can be considered u/s 20 as observed in State of Madras v. Louis Dreyfus and Company Ltd. [1955] 6 STC 318 (Mad.) . Hence, on the basis of the decisions of the Supreme Court in State of Kerala Vs. Shri M. Appukutty, , Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co., and State of Kerala Vs. K.E. Nainan, wherein the Supreme Court considered the relevant scope of provisions in regard to the revision and reopening where the revisional authority is also vested with the power to reopen just as in our Act, it has to be held that the power of reopening u/s 14(4) can be exercised if and when there is a material de hors the assessment record to show that any turnover of the business of a dealer escaped assessment to tax or that it is under-assessed or that it is assessed at a rate lower than the correct rate.

26. So in order to exercise the power u/s 14(4), the concerned authority has to come across material de hors the assessment record. The said material has to show that the whole or any part of the turnover of the business of a dealer has escaped assessment to tax or has been under-assessed or assessed at a rate lower than the correct rate or there is escapement of levy in regard to licence fee or registration fee or that it has been levied at a rate lower than the correct rate. Then the assessing authority may determine to the best of his judgment the turnover that has escaped assessment and assess the turnover so determined or assess the correct amount of tax leviable on the turnover that has been under-assessed or assess at a correct rate the turnover that has been assessed at a lower rate or assess the correct amount of tax payable in a case where any deduction or exemption has been wrongly allowed.

27. Thus it can be seen that mere fact of wrong allowance of deduction or exemption does not give power to reopen the assessment. Only when material de hors the assessment record is available disclosing escaped turnover referred to in section 14(4), the power of reopening can be exercised u/s 14(4) of the Act. In this context, the situation dealt with by a Division Bench of this Court in *Sri Balaganesh Textiles Vs. Commercial Tax Officer*, can be referred to.

28. In that case, during the assessment proceedings of the purchasers from the assessee, it was noticed that the sales of cotton yarn by the assessee were last sales within the State and hence the said turnover was exigible to tax in his hands in view of the relevant provision and so it was held that the exemption was wrongly granted in regard to the said turnover. So it is a case of escapement of turnover due to the erroneous grant of exemption of turnover, which had come to the notice of the assessing authority on the basis of the material de hors the assessment record.

29. Thus it can be stated that if it can be held by a perusal of the assessment record itself that deduction or exemption has been wrongly granted, then it is for the revisional authority to correct it by exercising the power u/s 20 of the Act. But, if it is a case where it is found on the basis of the material de hors the assessment record that the exemption or deduction has been wrongly granted, the same has to be corrected u/s 14(4) by reopening the assessment.

30. In *Menta Narasimhaswamy and Company Vs. The State of Andhra Pradesh*, one of us (Jeevan Reddy, J.) held that the order of the Deputy Commissioner, which was not only one passed avowedly u/s 20 of the Act, but was also based on the same material and record upon which the assessment order was based, could not be treated as one u/s 14(4).

31. Thus, the said judgment is also to the effect that the revisional authority can exercise the power by basing only on the material in the assessment record while the power to reopen u/s 14(4) cannot be exercised merely on the basis of the material in the assessment record.

32. Hence, we agree with the view expressed by a Division Bench of this Court in

Fatechand and Sons v. Commercial Tax Officer [1983] 54 STC 166 sc wherein it was held that mere change of opinion cannot be a basis for reopening u/s 14(4) of the Act.

33. In this case, the assessing authority reopened the assessment on the basis of instructions of the audit party. In *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, the Supreme Court held that the opinion of an internal audit party on a point of law could not be regarded as "information" enabling the Income Tax Officer to initiate reassessment proceedings u/s 147(b) of the Income Tax Act, 1961. Hence, the opinion of the audit party cannot be treated as a material de hors the assessment record to enable reopening u/s 14(4) of the Act.

34. But, a question arises as to whether any decision of the Commissioner of Sales Tax, or the Sales Tax Appellate Tribunal, or the High Court or the Supreme Court on a question of law can be held as a material de hors the assessment record whereby the power of reopening can be exercised u/s 14(4).

35. We feel that the same can be treated as a material de hors the assessment record which can be held as a basis for reopening u/s 14(4) for, such a decision is binding upon all the lower authorities in this State.

36. But, as in this case, the assessing authority reopened the assessment as per instructions of the audit party which cannot be held as a material de hors the assessment record, it has to be held that the order of the assessing authority in reopening u/s 14(4) is without jurisdiction.

37. So, we find that the Appellate Tribunal rightly allowed the appeal and it does not warrant interference.

38. In the result, the tax revision petition is dismissed. No costs. Advocate's fee is Rs. 150.

Jeevan Reddy, J.

39. I agree with the order proposed by my learned brother, Neeladri Rao, J. However, having regard to the importance of the question involved, I wish to add a few words.

40. The question in this case is whether it is open to the assessing authority to reopen an assessment on a mere change of opinion. A Bench of this Court has opined, in *Fatechand and Sons v. Commercial Tax Officer* [1983] 54 STC 166 sap, that the Commercial Tax Officer cannot reopen the assessment on a mere change of opinion. This was held following the decision of the Gujarat High Court in *ARIVND BOARDS AND PAPER PRODUCTS LTD. Vs. M. T. KESHRUWALA*, Income Tax OFFICER, WARD A (REV.), NAVSARI,. Another Bench of this Court, comprising one of us (Jeevan Reddy, J.), in *Menta Narasimhaswamy & Company v. State of A.P.* [1983] 54 STC 6 sc, also expressed a somewhat similar opinion. It was held that the power under sub-section (4) of section 14 is invoked when,

on the basis of some fresh material or information not available at the time of making the assessment, it appears that certain turnover has escaped assessment, or that it has been under-assessed, or assessed at a lower rate. The said power, it was observed, cannot be exercised for reviewing an order on the same material. The learned Government Pleader for Commercial Taxes however contends that the language of sub-section (4) of section 14 is unqualified and unconditional, and that it empowers the assessing authority to reopen any assessment where he finds that the turnover of a business had escaped assessment to tax, whether wholly or partly, or has been under-assessed, or assessed at a rate lower than the correct rate, and pass appropriate orders. He says, the decisions rendered u/s 147 of the Income Tax Act must be understood in the light of the language employed in section 147, and cannot be ipso facto applied, or extended to the power u/s 14(4) of the A.P. General Sales Tax Act.

41. Sub-section (4) of section 14 reads as follows :

"(4) In any of the following events, namely, where the whole or any part of the turnover of a business of a dealer has escaped assessment to tax, or has been under-assessed or assessed at a rate lower than the correct rate, or where the licence fee or registration fee has escaped levy or has been levied at a rate lower than the correct rate, the assessing authority may, after issuing a notice to the dealer, and after making such enquiry as he may consider necessary, by order, setting out the grounds therefore -

(a) determine to the best of his judgment the turnover that has escaped assessment and assess the turnover so determined;

(b) assess the correct amount of tax payable on the turnover that has been under-assessed;

(c) assess at the correct rate the turnover that has been assessed at a lower rate;

(cc) assess the correct amount of tax payable, in a case where any deduction or exemption has been wrongly allowed;

(d) levy the licence fee after determining to the best of his judgment the turnover on which such fee is payable;

(e) levy the registration fee that has escaped levy;

(f) levy the correct amount of licence fee or registration fee in a case where such fee has been levied at a rate lower than the correct rate.

In addition to the tax assessed or fee levied under this sub-section, the assessing authority may also direct the dealer to pay a penalty as specified in sub-section (8)."

42. The learned Government Pleader is right that, construed literally, the power conferred by sub-section (4) of section 14 is absolute and unconditional. The only fact necessary to be established before the said power can be exercised is

that a certain turnover has escaped assessment to tax, or has been under-assessed, or assessed at a rate lower than the correct rate. There is no other condition. He is equally right in saying that the power to reopen an assessment conferred by section 147 of the Income Tax Act is a conditioned power. Section 147 reads as follows :

"147. Income escaping assessment. - If -

(a) the Income Tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return u/s 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,

he may, subject to the provisions of sections 148 - 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in sections 148 - 153 referred to as the relevant assessment year).

Explanation 1. - For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :-

(a) where income chargeable to tax has been under-assessed; or

(b) where such income has been assessed at too low a rate; or

(c) where such income has been made the subject of excessive relief under this Act or under the Indian Income Tax Act, 1922 (11 of 1922); or

(d) where excessive loss or depreciation allowance has been computed.

Explanation 2. - Production before the Income Tax Officer of account books or other evidence from which material evidence could, with due diligence, have been discovered by the Income Tax Officer will not necessarily amount to disclosure within the meaning of this section."

43. It is evident that the power to reopen an assessment u/s 147 of the Income Tax Act can be exercised only when either of the two requirements mentioned in clauses (a) and (b) is satisfied. In no other situation can the assessment be reopened. Now, clause (a) of section 147 contemplates a situation where the assessee omits or fails to submit a return, or omits or fails to fully and truly disclose all material facts necessary for his assessment for that year, as a result of which income chargeable to tax has escaped assessment for that year. Clause (b) says that even if there is no omission or failure as mentioned in clause (a) on

the part of the assessee, the assessment can still be reopened if the Income Tax Officer has, in consequence of information in his possession, reason to believe that income chargeable to tax has escaped assessment for any assessment year. It is in view of this language of section 147 that courts have held that an assessment cannot be reopened merely because the Income Tax Officer changes his opinion with respect to one or the other matters dealt with in the assessment order. In this sense, the learned Government Pleader is right that the decisions rendered u/s 147 of the Income Tax Act cannot be applied to a case arising under sub-section (4) of section 14 of the Andhra Pradesh General Sales Tax Act. The language of both the provisions is wholly distinct and dissimilar. Having said this, we must at the same time keep in mind the circumstance, the consideration, that there must be a finality to assessment proceedings once concluded, and that assessments should not be reopened lightly, or in a cavalier manner, but for good reasons alone. It is, therefore, necessary to construe the power u/s 14(4) in such a way as to ensure that tax legitimately due to the State is not evaded and, at the same time, the assessee is not put to harassment by repeated reopening of assessments. It is in this sense that the observations of this Court in *Fatechand and Sons v. Commercial Tax Officer* [1983] 54 STC 166 sc and *Menta Narasimhaswamy and Company Vs. The State of Andhra Pradesh*, must be understood. We proceed to elaborate. When an assessment order is made, it should be presumed that the assessing authority applies his mind to all the relevant facts and makes the assessment keeping in mind the principles of law applicable thereto. For example, take this very case. The assessing authority treated the cardboard boxes as "general goods" and exempted them from tax inasmuch as the total turnover of the assessee was below the prescribed limit of Rs. 25,000. Subsequently, the same officer, or his successor-in-office may feel differently. But on that ground alone, if he is permitted to reopen, it would seriously interfere with the principle of finality of assessment and may lead to harassment of assessee. It is not as if the Act has not provided remedies in such a situation. If an order of assessment is wrong, there is Deputy Commissioner to correct it under sub-section (2) of section 20. Sub-section (1) of section 20 empowers the Commissioner as well to exercise the similar power. Apart from this, there is another danger inherent in permitting the reopening of assessment on a mere change of opinion by the assessing authority. There may well be a situation where, on each occasion the same officer, or different officers on different occasions, may hold different views with respect to classification of certain goods. The exercise cannot be an endless one. However, we must qualify this principle by stating that if a decision is rendered either by the Supreme Court, or this Court, or by the Sales Tax Appellate Tribunal, or the Commissioner of Commercial Taxes, and if the assessing authority finds that an assessment already made by him ought to be reopened in the light of such decision, it is always open to him to do so. In such a case, it cannot be said that the assessment is reopened on a mere change of opinion of the assessing authority. This can be equated to a situation where an assessment is reopened on information, and even under the Income Tax Act, it has been held that decision

of the Supreme Court, or the High Court, constitutes information. Similarly, if there is a change in law with retrospective effect, it would be a good ground for reopening the assessment. While it is neither possible nor practicable to exhaustively lay down a situation in which the said power can be exercised, all we need to emphasize is that the assessing authority cannot reopen an assessment on a mere change of opinion on his own part. But, if there is a change in law as elucidated hereinabove, it shall always be open to him to reopen the assessment. In such a case, the assessee cannot complain that he is being harassed. The law must be given effect to - and all that the assessing authority is doing is to give effect to the law as laid down by the highest authorities in the State, or in the country, as the case may be.

44. I agree with the order proposed by my learned brother.

45. Petition dismissed.