

(1971) 02 AP CK 0024

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 9 of 1968

The State of Andhra Pradesh

APPELLANT

Vs

Tripuranthakam Basappa and Sons

RESPONDENT

Date of Decision : 19-02-1971

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14(7)

Citation : (1974) 34 STC 206

Hon'ble Judges : Venkateswara Rao, J;Obul Reddi, J

Bench : Division Bench

Advocate : Government Pleader for Sales Tax Cases, for the Appellant; T. Ramam, for N. Rama Mohana Rao, for the Respondent

Final Decision : Dismissed

Judgement

Obul Reddi, J.—The State has preferred this revision against the order of the Tribunal expressing the view that the scope of Sub-section (7) of Section 14 of the Andhra Pradesh General Sales Tax Act (hereinafter referred to as the Act) is limited only to the extent of excluding the period between the date of assessment and the date on which it has been set aside by the tribunal or court for purposes of computing the period of limitation and that it does not speak of excluding the period from the date of assessment till the date of service of the appellate order, as sought to be made out on behalf of the department.

2. There is no dispute about the facts. The year of assessment was 1957-58 and the respondents, dealers in kirana goods at Hindupur, were finally assessed to tax for the assessment year 1957-58 on 10th February, 1959, on a net turnover of Rs. 4,56,774-1-9 inclusive of the estimated turnover. The respondents, aggrieved by the order of assessment, preferred unsuccessfully an appeal to the Deputy Commissioner of Commercial Taxes, Anantapur, who was then the first appellate authority, disputing the assessment on the estimated turnover of Rs. 1,05,196. The Tribunal, on further appeal, set aside the order of assessment and remitted the matter to the assessing authority for fresh disposal according to

law, by its order dated 12th January, 1961. The order of the Tribunal was received by the assessing authority on 24th February, 1961, and, thereafter, the assessing authority issued notice to the respondents for production of accounts. For some reason or other, the reassessment in conformity with the directions given by the Tribunal in its remand order could not be completed by 31st March, 1964. The reassessment should have been completed within a period of four years after the close of the assessment year, i. e., on or before 31st March, 1962; but the reassessment was completed only on 31st March, 1964, assessing the respondents on a turnover of Rs. 4,56,774-1-9, which was the same turnover on which the original assessment was made. This led to the respondents preferring an appeal once again disputing the turnover of Rs. 1,05,196 added as suppressed turnover and the Assistant Commissioner partly allowed the appeal by reducing the suppressed turnover to Rs. 36,979.84 by his order dated 13th May, 1965. On further appeal to the Tribunal, the Tribunal did not find any necessity to go into the merits of the case relating to the suppressed turnover, but decided the appeal agreeing with the respondents' contention on the point of limitation, viz., that the assessment had not been completed as required under Sub-section (7) of Section 14 and, in that view, allowed the appeal.

3. The stand of the Government Pleader is that the order of the Tribunal was received by the assessing authority though made by the Tribunal on 12th January, 1961, only on 24th February, 1961, and, therefore, the period between 10th February, 1959, when the original assessment was made and 24th February, 1961, when the order of the Tribunal was received by the assessing authority, should be excluded u/s 14(7) of the Act for the purpose of computing the period of limitation. We are unable to agree with the Government Pleader that, for the purpose of computing the period of limitation, it is the date on which the assessing authority or a party receives an order made by the Tribunal should be the date, for that is not the scope of Sub-section (7) of Section 14 of the Act, which is in these terms:

(7) Where an assessment made under this section has been set aside by any court or other competent authority under this Act for any reason, the period between the date of such assessment and the date on which it has been set aside shall be excluded in computing the period of four years, or six years, as the case may be, specified in this section for the purpose of making any fresh assessment.

4. Sub-section (7) clearly refers to the date of assessment and the date on which it has been set aside by the tribunal or court.

5. There is nothing in this provision which is capable of being construed that the expression "the date on which it has been set aside" is of wide amplitude so as to take within its range the date on which the order has been served after it was set aside by a court or appellate authority. The language of Sub-section (7) of Section 14 of the Act is clear and unambiguous and we are unable to interpret the words "as the date on which it has been set aside" to take in within its

meaning the date on which the order setting aside the assessment has been communicated to the party. If that was the intention, the legislature would have provided in the manner as has been done in the case of appeals under Sections 19 and 21. Section 19 of the Act clearly provides an appeal being preferred to an Assistant Commissioner within 30 days from the date on which the order or proceeding was served on him. Similarly, Section 21 of the Act also provides that a dealer objecting to an order passed or proceeding recorded by any authority on appeal u/s 19 or by a Deputy Commissioner under Sub-section (4-c) of Section 14 or under Sub-section (2) of Section 20 may appeal to the Appellate Tribunal within 60 days from the date on which the order or proceeding was served on him. Similarly, Section 20 of the Act providing for revisional powers to be exercised by the Board of Revenue or by a Deputy Commissioner prescribes a limitation of four years from the date on which the order was served on the dealer.

6. Therefore, it is clear from the language of Sub-section (7) of Section 14 that it was not the intention of the legislature, where an assessment order made u/s 14 has been set aside by the Appellate Tribunal or a court, to exclude the time taken for communicating the Appellate Tribunal's or court's order, as the case may be, for the purpose of computing the period of limitation.

7. We, therefore, uphold the order of the Tribunal and dismiss the revision with costs. Advocate's fee Rs. 100.