

(1953) 01 PAT CK 0017

In the Patna High Court

Case No : Misc. Judicial Case No. 233 of 1951

The State of Bihar

APPELLANT

Vs

Telu Ram Jain

RESPONDENT

Date of Decision : 15-01-1953

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 24(4), 25, 25(1)

Citation : AIR 1953 Patna 176 : (1953) 1 BLJR 208

Hon'ble Judges : Sarjoo Prosad, J; Ramaswami, J

Bench : Division Bench

Advocate : Gopal Prasad, for Advocate General, for the Appellant; N.L. Untwallia, for the Respondent

Judgement

1. This case is stated by the Board of Revenue u/s 25(1), Bihar Sales Tax Act, 1947 (Act 19 of 1947) at the instance of the assessee Telu Ram Jain.

2. While making certain enquiries u/s 13 (5), Bihar Sales Tax Act, the Sales Tax Officer, Dhanbad, discovered that the assessee, who was employed as a contractor at Sindri, had received in the year 1947-48 a sum of Rs. 4,94,000/- and odd on account of the execution of contracts from the Central Public Works Department. In spite of his being employed in the execution of contracts the assessee had not applied for registration; nor did he pay sales tax from 1-4-1948. After examining the accounts of the assessee the Sales Tax Officer made an assessment of sales tax to the extent of Rs. 14,000/- for the first three quarters of 1947-48. The assessment order was made on 31-3-1949. Aggrieved by this order of assessment Telu Ram Jain preferred two appeals to the Commissioner of Sales Tax. The appeals were dismissed on 8-10-1949. Thereafter, the assessee applied for revision before the Board of Revenue by two separate petitions. The Board of Revenue heard the parties on 1-3-1950, and rejected the petitions by an order dated 5-3-1950. The assessee then filed two applications to the Board of Revenue for making a reference to the High Court on certain questions of law mentioned therein. The applications were filed on

31-7-1950. The Board of Revenue heard lawyers of the parties on 7-4-1951, and made the present reference u/s 25(1) of the Act on 19-6-1951.

3. The following questions of law have been formulated in the statement of the case : "(1) whether a petition filed u/s 25 of the Act after the expiry of 90 days from the date of the passing of the orders by the Board can be admitted or not?

(2) whether in the circumstances of this case, and in consideration of the provisions of the Indian Partnership Act, the two firms should be treated as separate dealers or not, and whether Taluram Jain alone can be assessed to sales tax on the contracts obtained by him from the Central Public Works Department?

(3) whether the Amending Act, 6 of 1949, can be applied, as it appears to be the intention of the legislature to correct the 1947 Act, with effect from the date of its first publication, and whether the petitioners have been rightly assessed under the 1947 Act as amended by the 1949 Act? And

(4) whether the Amending Act, which was extended to Chota Nagpur on 22-3-49, would govern the proceedings which were commenced on 13-1-49?"

4. When the argument of the case commenced Mr. Gopal Prasad, who appears on behalf of the Advocate General, raised a preliminary objection that the application filed by the assessee u/s 25(1) of the Act was not maintainable on the ground that it was not made within 90 days of the passing of the order in revision by the Board of Revenue. It was submitted by the learned Counsel that if this preliminary question was decided in favour of the Department, it was not necessary for the High Court to examine or determine the other questions of law formulated in the statement of the case. The question of limitation is the first question of law which is formulated by the Board of Revenue and we propose to examine this question at the outset.

5. On behalf of the assessee Mr Untwallia addressed a careful argument in the course of which he cited a number of authorities bearing on the question of limitation. It was submitted by the learned Counsel that in this case the Board of Revenue heard the revision applications on 1-3-1950. The judgment was reserved on that date but the Board of Revenue after consideration pronounced judgment on 5-3-1950, dismissing the revision applications. It is alleged on behalf of the assessee that on 3-6-1950, a post-card was sent to the assessee from the office of the Board of Revenue intimating to the assessee that the applications had been dismissed. The post-card was actually received by the Assessee on 6-6-1950, through the Sales Tax Officer, Dhanbad. It was submitted by the learned Counsel that the period of 90 days should be computed in the present case not from 5-3-1950, when the order of the Board of Revenue dismissing the applications was actually passed but from 6-6-1950, when the order was actually communicated to the assessee. In this view of the matter it was contended by the learned Counsel that the applications for reference u/s 25(1) of the Act were made in time on behalf of the assessee, and the High Court was competent to determine the other questions of law raised in the

statement of the case. The question at issue depends upon the proper construction of Section 25(1), Bihar Sales Tax Act, 1947.

6. Section 25(1) states :

"within ninety days from the passing by the Board of Revenue of any order under Sub-section (4) of Section 24 affecting any liability of any dealer to pay tax under this Act, such dealer may, by application in writing accompanied by a fee of one hundred rupees, require the Board to refer to the High Court any question of law arising out of such order."

7. It is contended on behalf of the assessee that the words "within ninety days from the passing by the Board of Revenue of any order under Sub-section (4) of Section 24" should be construed to mean ninety days from the date of communication to the assessee of any order passed by the Board of Revenue under Sub-section (4) of Section 24. It is argued by the learned Counsel that any other interpretation of the section would work injustice. It was stated that the order of the Board of Revenue was not pronounced in the present case in the presence of the parties in open Court but judgment was reserved and on 5-3-1950, the Board of Revenue pronounced judgment in the absence of the assessee. It was urged that no notice was given by the Board of Revenue as regards the date on which the judgment was to be pronounced in the case, and in view of these circumstances it was contended that the "terminus a quo" for the period of limitation should commence on 6-6-1950, when the assessee was actually apprised of the order of the Board of Revenue on the revision applications.

On the question of construction Mr. Untwallia referred to a line of authorities commencing from --"Annamalai Chetti v. J. G. Cloete", 6 Mad 189(A), in which it was held by the Madras High Court that u/s 25 of Act 28 of 1860 (Madras Boundary Act), which limits the time within which a suit may be brought to set aside the decision of a Settlement Officer to two months from the date of the award, time will not begin to run until the date on which the decision is communicated to the parties. This case was followed in --"Seshama v. Sankara 12 Mad 1(B) and --"the Secy, of State v. Gopiseti "Narayanaswami 34 Mad 151 (C), in both of which the statute was construed to mean that the starting point of limitation will be the date on which the officer concerned pronounced his decision if he had given the parties sufficient notice of the day on which the decision would be pronounced to enable them if they choose, to be present and hear his decision; otherwise the starting point of limitation would be the date when the decision was actually communicated to the parties. There is another line of authorities in respect of Section 77, Registration Act, which states :

"where the Registrar refuses to order the document to be registered, u/s 72 or Section 76, any person claiming under such document,..... may, within thirty days after the making of the order of refusal, institute in the Civil Court,..... a suit for a decree directing the document to be registered in such office if it be

duly presented for registration within thirty days after the passing of such decree."

8. It was held by the Bombay High Court in --"Abdul Ali v. Mirja Khan 28 Bom 8(D), that the expression "making of the order", in Section 77, Registration Act (3 of 1877), means not merely recording the order of refusal in writing, but communicating it to the party concerned so as to bind him by it, and that a suit brought under the provisions of Section 77, Registration Act, for a decree directing a document to be registered, may be filed within thirty days of the date on which the order of refusal was communicated to the party concerned. To the same effect is the later decision in -- Swaminathan alias Chidambaram Pillai Vs. Lakshmanan Chettiar and Another, .

9. In our opinion, none of these authorities can afford much assistance to the assessee for the matter is concluded by the authority of a Division Bench of this High Court in -- Mohan Lal Hardeo Das Vs. Commr. of Income Tax, . One of the questions that arose for determination in that case was whether the period of limitation for an application u/s 66(2) was one month from the passing of the appellate order u/s 31 or Section 32 or whether the period of one month should be computed from the date on which the appellate order is communicated to the assessee. It was argued in that case on behalf of the assessee that the Assistant Commissioner of Income Tax fixed no time for passing the order in appeal and the order was in fact passed in the absence of the assessee. It was contended that in these circumstances it was only just that the period of limitation should be computed not from the date on which the order purports to have been recorded but from the date when the order was communicated to the assessee. It was also pointed out that, according to the prevailing practice, the officers of the Income Tax department do not insist on the presence of the party on the date on which the order is to be passed, and, as no date is fixed for the passing of the order, the order is always communicated to the party by post. It was urged that it may mean great hardship to the parties in certain cases because it is possible that the party may not know anything about the order until the period of limitation has expired. The argument was rejected by the Division Bench and it was held that the period of limitation for the application u/s 66(2), Income Tax Act, 1922, was one month and the date should be computed from the passing of the appellate order u/s 31 or Section 32 and not one month from the date on Which the date of the appellate order was communicated to the assessee. At page 177 Fazl Ali, J. (as he then was) states:

"Now, if the learned Advocate for the petitioners means to point out to us what should be the law, We would say that his argument deserves serious consideration. In the present case, however, our concern is not to lay down what should be the law, but to interpret the law as it stands. In doing so I have to say that I do not find anything in the language of the section to enable us to hold that the expression "passing of the order" should be interpreted as the communication of the order to the party. On the other hand it is noticeable that

while under Clause (2) of Section 66, time is to run from the passing of the order, it is to be computed under Clause (3) from the date on which the assessee is served with notice. Whether this distinction was deliberately made or whether at the time Clause (3) was being amended, the language used in Clause (2) was not noticed, is difficult to say, but it is clear that the plain language of the section does not support the contention of the petitioners. It is true that ordinarily the judgment of a Court, in order to be properly delivered, must be pronounced in Court, & in fact there is a specific provision to this effect in Section 33 and Order 20, Rule 1, Civil P. C. There is, however, no such clear provision in the Income Tax Act and I cannot hold without considerably straining the law, that the order passed by the Income Tax Commissioner can be ignored for the purpose of limitation, until it has been duly communicated by post to the assessee."

10. In the present case also the material facts are similar and there is the same contract between Section 24(2) and Section 25, Bihar Sales Tax Act. Section 25(1) states that the period of limitation would be 90 days from the passing by the Board of Revenue of any order under Sub-section (4) of Section 24. The language used in Section 24(2) is different. Section 24(2) provides that every appeal under this section shall be presented within forty-five days of receipt of the notice issued under Sub-section (4) of Section 14. In *Mohan Lal Hardeo Das Vs. Commr. of Income Tax*, "Fazl Ali, J. pointed out a similar distinction between the language of Section 66(2) and Section 66(3), Income Tax Act, 1922. In our opinion, the present case falls within the scope of the principle laid down by the Division Bench in *Mohan Lal Hardeo Das Vs. Commr. of Income Tax*, with which we are bound.

11. Our decision in -- *Doma Sao Kishun Lal Vs. State of Bihar*, is also relevant." In that case we held that the time prescribed by Section 21, Bihar Sales Tax Act, 1944, which corresponds to Section 25, Bihar Sales Tax Act, 1947, is an essential condition pre-requisite for making the reference & the omission to make the reference within the time prescribed is fatal to the validity of the reference. We further held in the circumstances of that case that the Board of Revenue improperly made the reference in violation of the provision of the Statute and the High Court was capable of entertaining objection to the statement of the case, and if it came to the conclusion that the case should never have been stated, the High Court was not compelled to express its opinion upon the questions of law referred.

12. For the reasons stated, we think that the first question of law raised in the statement of the case should be answered against the assessee and in favour of the Sales Tax Department. In this view of the matter, it is not necessary for us to express any opinion on the other three questions of law referred to in the statement of the case. The assessee must pay the costs of hearing. We fix the hearing fee at ten gold mohurs.