

(1984) 04 PAT CK 0009

In the Patna High Court

Case No : Tax Case No's. 57, 58 and 59 of 1973

Usha Sales (Pvt.) Limited

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 06-04-1984

Acts Referred:

Income Tax Act, 1961 — Section 139, 147, 148, 149, 150

Citation : (1984) PLJR 664 : (1985) 58 STC 217

Hon'ble Judges : Sushil Kumar Jha, J; Ashwini Kumar Sinha, J

Bench : Division Bench

Advocate : Kashi Nath Jain and G.C. Bharuka, for the Appellant;

Judgement

Ashwini Kumar Sinha, J.—These three taxation cases relate to the reassessment orders for the periods 1960-61, 1961-62 and 1962-63. In pursuance of this Court's orders in the aforesaid taxation cases, the Commercial Tax Tribunal, Bihar, Patna, has submitted a consolidated statement of case and has referred the following questions for the opinion of this Court u/s 33(3) of the Bihar Sales Tax Act, 1959 :

(1) Whether memo No. 3115 dated 25th October, 1965 which reads "please refer to your sales tax cases for the period from 1st July, 1959 to 31st March, 1963. You are, hereby, requested to produce your books of accounts for the above periods on 13th December, 1965", is a notice as required u/s 18(1) of the Bihar Sales Tax Act, 1959 ?

(2) If the answer to question No. 1 be in the negative, is the assessment order passed in pursuance of the said memo legal and valid ?

2. As these questions are common in all the three taxation cases, they are answered by this common judgment.

3. The assessee, M/s. Usha Sales (Pvt.) Ltd., was assessed to pay tax under the Bihar Sales Tax Act, 1959 (hereinafter called as the Act), for the periods 1960-61

to 1964-65 vide different assessment orders. We are not concerned with the assessment orders relating to 1963-64 and 1964-65. The assessee (dealer) preferred an appeal before the Deputy Commissioner of Commercial Taxes (Appeals), Tirhut Division, for the assessment period 1963-64 only (with which we are not concerned, as stated above). The Deputy Commissioner of Commercial Taxes (Appeals) remanded the case for re-examination and assessment in the light of the observations made by him in his order dated 25th July, 1967. Thereafter the assessee (dealer) was assessed by a revised assessment order dated 9th February, 1968.

4. In respect of the original assessment made for the periods in question, i.e., 1960-61, 1961-62 and 1962-63, the assessing officer considered that the dealer had escaped assessment on certain turnover and as such he issued a notice in the form of memo No. 3115 dated 25th October, 1965 (as quoted above) to the dealer. The dealer in response to the notice produced his account books and was reassessed for the said periods by a separate assessment orders dated 15th January, 1968 u/s 18(1) of the Act.

5. The assessee (dealer) as against the reassessment orders for the periods in question, preferred separate appeals before the Deputy Commissioner (Appeals); in other words, the assessee (dealer) preferred appeals against the reassessment orders as well as against orders for the periods with which we are not concerned. All the five appeals were made analogous and heard together. The Deputy Commissioner (Appeals), by order dated 22nd December, 1971 dismissed all the appeals with some modifications.

6. Aggrieved by the appellate order as just mentioned above, the assessee (dealer) filed revisional applications before the Tribunal. The dealer made two grievances. The first grievance related to the common point in all the assessments orders, i.e., 1960-61 to 1964-65, and this grievance was with regard to the percentage of depreciation to be allowed by the assessing officer and the appellate authority on the original price of the articles to arrive at a sale price on the date of hire purchase transaction fructified into sale.

7. In the present taxation cases, we are not concerned with this grievance of the assessee (dealer).

8. The second grievance related to the reassessment of the alleged escaped turnover u/s 18(1) of the Act for which the memo as quoted above was issued. In that memo the mention of Section 18 was not there and the grievance was that the Assessing Officer had no jurisdiction to sit over reassessment because of lack of jurisdiction and hence the order was bad in law.

9. The Tribunal held that the aforesaid memo which was, in the opinion of the Tribunal, a notice was legally valid and hence the Tribunal dismissed the revisional applications. The Tribunal also held that "the above letter was issued when the Superintendent had suspicion while scrutinising the return for 1963-64 in which hire purchase sales had not been included that such sales must have

escaped assessment for earlier years" (the word "suspicion" has been under lined by me for emphasis). It is pertinent to state here that both the grievances were not accepted by the Tribunal. (It has already been stated above that we are not concerned with grievance No. 1 in the present taxation cases).

10. The dealer (assessee) then filed an application before the Tribunal u/s 33(1) of the Act and prayed for questions being referred to this Court. By an order the Tribunal refused to refer the questions to this Court. Thereafter, the dealer (assessee) moved this Court u/s 33(2) of the Act and a reference was called for by this Court u/s 33(3) of the Act, as already stated above.

11. It is also pertinent to state here that the dealer (assessee) did not question the jurisdiction of the assessing officer to reassess him for its escaped turnover. It was for the first time before the Deputy Commissioner (Appeals) that the question about the invalidity of the notice was raised by the dealer (assessee) and the Deputy Commissioner (Appeals) held that in absence of the objection before the assessing officer, it amounted to a waiver on the part of the dealer (assessee).

12. The Tribunal on the basis of a few cases held that if at all there was any defect in memo (notice), it was only an irregularity in the issuance of the notice which was not enough to affect the legal validity of the notice. The submission of the dealer (assessee) was also rejected on the ground that the dealer (assessee) had not objected before the assessing officer and the appellants were merely trying to take advantage of the mistakes that had crept into the notice. On these grounds, the Tribunal rejected the submission advanced on behalf of the dealer (assessee).

13. The learned counsel appearing for the assessee (dealer) has submitted that Section 18(1) of the Bihar Sales Tax Act, 1959, was in pan materia with Section 147 of the Income Tax Act, 1961 and has submitted that the prerequisites for the issuance of notice not being satisfied in the instant cases, there was inherent lack of jurisdiction with the assessing officer and hence, the initiation of the proceeding for reassessment was without jurisdiction. The learned counsel for the dealer (assessee) further submitted that even though the objection was not taken before the assessing authority, there was no estoppel against the statute.

14. In order to appreciate the submissions advanced by the learned counsel for the dealer (assessee), it is pertinent to quote Section 18(1) of the Act and Section 147 of the Income Tax Act, 1961 :

18. (1) Turnover of registered dealer escaping assessment.-(1) If upon information which has come into his possession, the prescribed authority is satisfied that reasonable grounds exist to believe that any turnover of a registered dealer in respect of any period has, for any reason, escaped assessment or any turnover of any such dealer or a dealer assessed under Sub-section (5) of Section 16 has been under-assessed or assessed at a rate lower than that which was correctly applicable or any deductions therefrom have been

wrongly made, the prescribed authority may, subject to such rules as may be made by the State Government...reasonable grounds exists to believe."

Section 147 of the Income Tax Act, 1961: "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 order 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 provisions to 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 (hereinafter in Sections 148-153 referred to as the relevant assessment year).

15. It is desirable to state here that the present Section 147 of the Income Tax Act of 1961 is the same as Section 34 of the old Income Tax Act. On a perusal of the aforesaid two statutory provisions mentioned above, it is clear that there is no difference at all. Section 18(1) of the Act uses the words "reasonable grounds" and Section 147 of the Income Tax Act, 1961 uses the words "has reason to believe".

16. The notice prescribed u/s 18(1) of the Act for the purpose of initiating reassessment proceeding is not a mere procedural requirement. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken over without a notice or in pursuance of invalid notice stand on the same footing and would be illegal and invalid. The words "reasonable grounds" in Section 18 of the Act mean only this that it must be reason or in other words it must be based on reasons which are relevant and material. The belief entertained by the assessing authority must not be arbitrary or irrational. It must be subjected to objective test. It is true that the Court, of course, would not investigate into the adequacy or sufficiency of the reasons which have weighed with the assessing authority in coming to the belief but, the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice u/s t8(1) of the Act. If there is no rational or intelligible nexus between the reasons and the belief (so that on such reasons, no one properly instructed on fact and law could reasonably entertain the belief) the conclusion would be inescapable that the assessing authority could not have reason to believe that any part of the income of the assessee (dealer) had escaped assessment and that such escapement was by reason of the omission or failure on the part of the assessee (dealer) to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid.

17. This being the position in law, it has to be seen whether the memo in

question, referred to above, taken to be a notice u/s 18 of the Act was a notice in the eye of law ? The Tribunal's finding is already quoted above and the Tribunal has held that the aforesaid memo was issued merely on suspicion. In other words, the prerequisites, as referred to above, are completely lacking in the instant cases. Suspicion cannot take place of the "reasonable ground". That being the position, I hold that the prerequisites for the issuance of notice u/s 18 of the Act are completely lacking in the instant cases and therefore, the assessing officer had no jurisdiction to initiate proceedings for reassessment for the periods in question. Prerequisites for the issuance of notice u/s 18 of the Act being lacking, there was complete lack of jurisdiction with the assessing officer.

18. It is true that the assessee (dealer) did not object to the lack of jurisdiction with the assessing authority initially and as already stated above, the Tribunal held that it amounted to waiver on the part of the assessee (dealer). No amount of concession could vest the authority with the jurisdiction to initiate the present proceeding and to pass the order. There is no estoppel against the statute. Absence of objection before the assessing authority could not vest jurisdiction upon him, if he had gone on the facts of the instant cases. In the instant cases, it could not amount to waiver as the assessing authority lacked in jurisdiction itself to initiate the proceedings in the absence of prerequisites being satisfied before the issuance of memo (notice) in the instant cases.

19. In the result, therefore, the question No. (1) referred to us for our opinion is answered against the revenue and in favour of the dealer (assessee). As a necessary corollary question No. (2) is answered in favour of the assessee (dealer) and against the revenue. However, there shall be no order as to costs.

S.K. Jha, J.

I agree, I entirely agree with my learned brother. In view of the wide implications of the questions involved, I wish to add a few words of my own. The Courts below have forgotten the distinction between a complete lack of jurisdiction and defect in procedural technicalities. So far as the procedural technicalities are concerned, I shall be the first person to throw them into the legal dust-bin, and in such matters the principle of waiver and estoppel can be invoked. But, when there is a complete lack of jurisdiction, there can be no question of waiver or estoppel. Section 18(1) of the Act is a mandatory provision not with regard to any procedural law but, with regard to a substantive right. Any infirmity or invalidity in the notice u/s 18 of the Act as u/s 147 read with Section 148 of the Income Tax Act, 1961 goes to the root of jurisdiction of the assessing authority, as my learned brother has already held with which I have agreed, the memo in question does not amount to a valid notice u/s 18 of the Act. The assessing authority, therefore, had no jurisdiction to reopen the assessment proceedings on a mere ground of suspicion, which does not amount to a "reasonable ground" to believe that the assessee concealed his income or escaped a turnover which was liable to tax. The primary facts were before the assessing authorities and the principle laid down by the Supreme Court in the case of Calcutta Discount

Company Limited Vs. Income Tax Officer, Companies District, I and Another, shall squarely cover these things.