IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. LPA no. 425 of 2016 (O&M)

M/s Dev Raj Amrit Lal

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

2. LPA no. 450 of 2016 (O&M)

M/s Dhanna Mal Mulkh Raj

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

3. LPA no. 568 of 2016 (O&M)

M/s Ram Sarup Goyal

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

4. LPA no. 570 of 2016 (O&M)

M/s Purshottam Lal Goyal & Company

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

5. LPA no. 571 of 2016 (O&M)

M/s Ram Sarup Mohinder Pal

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

6. LPA no. 572 of 2016 (O&M)

M/s Durga Trading Company

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

7. LPA no. 573 of 2016 (O&M)

M/s Lal Chand Amritsaria Ram

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

8. LPA no. 577 of 2016 (O&M)

M/s Laxmi Trading Company

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

9. LPA no. 578 of 2016 (O&M)

M/s Radhey Krishna Rice and General Mills

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

10.LPA no. 579 of 2016 (O&M)

M/s Vishnu Rice & General Mills

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

11.LPA no. 580 of 2016 (O&M)

Jai Mata Trading Company

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

12.LPA no. 581 of 2016 (O&M)

M/s Khet Pal & Company

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

13.LPA no. 583 of 2016 (O&M)

M/s Harbans Lal Khet Pal

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

14.LPA no. 584 of 2016 (O&M)

M/s Ganpat Mal Tirath Ram

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

15.LPA no. 587 of 2016 (O&M)

M/s Ram Swaroop Mohinder Pal

....Appellant(s)

Versus

The Secretary to Govt. of Punjab and others

...Respondent(s)

Date of Decision : 28.08.2017

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE RAJ SHEKHAR ATTRI

Present : Mr.Piyush Kant Jain, Advocate for the appellant(s)

Mr. Sumit Jain, Advocate for respondent

<u>MAHESH GROVER, J.(ORAL)</u>

By this order we will dispose of 15 Letters Patent Appeals bearing nos. 425, 450, 568, 570 to 573, 577 to 581, 583, 584 and 587 of 2016 as they involve the common questions of law and facts.

Facts are taken from LPA no. 425 of 2016.

Briefly stated the facts would indicate that the appellants purchased wheat from the FCI in an open market sales scheme in the year 1997 on 25.1.1997 at Sangrur. The release orders were issued between 13.1.1997 to 3.2.1997. The appellants at that point took the price of the wheat alongwith other local taxes such as fee of the market committee as also the Rural Development Fund (RFD). Thereafter the sale was effected in Jagraon. Consequent whereupon notices were issued by the Market Committee Jagraon on 11.11.1997 seeking deposit of market fee on account of the transaction in the market unit at Jagraon. This was followed by another notice on 15.5.1998. The appellants responded by submitting their reply and took up the plea that no transaction has taken place at Jagraon to attract market fee. Besides, the fee had already been paid at the time of the original sales transaction at Sangrur alongwith RFD.

The respondents thereafter did not follow up with an assessment for as long as 3 years and then on 25.9.2002 they once again wrote a letter with the similar demand to which a reply was submitted on October, 2002 with reiteration of the earlier objections taken in the year 1997. A plea of the demand being hit by limitation was also raised.

Despite the above, assessment was made leading to appeal where the appellate authority remanded the matter back resulting in a fresh assessment order on 3.5.2005 pursuant to which the writ proceedings were initiated resulting in the impugned orders where the learned counsel for the appellants apart from the other issues contends that the matter is squarely covered by the ratio of law laid down in case titled as **M/s Tara Chand Sham Lal, New Grain Market, Sangrur vs. State of Punjab and others** reported as 2009 SCC P&H 8653, wherein the Division Bench of this Court had observed as follows:-

> "The period of limitation in respect of various causes has been provided by the Limitation Act, 1963. As per Article 113 of the Schedule appended to the Act in cases where no period of limitation is provided the maximum period of limitation postulated is three years. The question then is whether for framing assessment the period of three years could be the maximum period. A perusal of the various provisions of the Act and the Rules would show that no period for framing assessment has been provided. It cannot be concluded that the Punjab Agricultural Produce Market Act, 1961 is a self contained code for the purposes of engrafting period of limitation. Thus a reasonable period for framing of assessment has to be carved out. A similar situation had arisen before the Hon'ble Supreme court in the case of State of Punjab v. Bhatinda District Cooperative Milk Producers Union (2007) 11 SCC 363. In that case no period of limitation for exercise of jurisdiction by the revisional authority was provided. Accordingly, Hon'ble the Supreme Court implied the period of limitation to be three years by keeping in view the provisions for framing the assessment under Section 11(1),(2) and (3) of the Punjab General Sales Tax Act, 1948. In paras 18 and 19 of the

judgement it has been observed as under:

> "18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.
>
> 19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section(6) of Section 11 of the Act is five years."

The question of limitation is a jurisdictional question and goes to the root of the whole matter. Therefore, we are of the view that the assessment could not have been framed after a lapse of three years. The fixation of period of three years would be advisable because even under the provisions of Section 11(1),(2) and (3) of the Punjab General Sales Tax Act,1948 the period for framing assessment is three years. Likewise under Sections 26 and 27 of the Punjab Value Added Tax Act read with Rule 36of the VAT Rules, the return is required to be filed by every taxable person quarterly within a period of 30 days from the date of expiry of each quarter. The period under the VAT Act is far shorter than the one prescribed under Sales Tax Act. We are further of the view that the sale and purchase of agricultural produce is a seasonal business which is heavily transacted during the Kharif and Rabi season of a year. Therefore, maximum period for assessment of market fee could reasonably be fixed at three years.

When the facts of the present case are examined in the light of the aforesaid transaction it emerges that period of three years had expired either in 1999 or the maximum in the year 2000. Therefore, no assessment could have been framed on 26.11.2001 (P.3). Moreover, the assessment has been framed on vague and incomplete facts. It does not mention the date of transaction but it merely mentions the year 1996-97. Therefore, the writ petition deserves to be allowed on this ground also. In all other connected petitions also, the order of assessment would be time barred as it has been passed after a period of more than four nay five years."

The aforesaid observations of the Division Bench when applied to the facts of the instant cases leave no manner of doubt that the assessment framed by the respondents was clearly beyond the period of limitation prescribed. After having initiated the process in 1997, the respondents kept quiet for more than 4 years to reignite the demand in the year 2002. Therefore, we are of the opinion that such a course was clearly hit by limitation attracting the observations of the aforesaid judgment in Tara Chand's case (supra).

Learned counsel for the respondent has been unable to draw any meaningful distinction from the facts of the present case as the ones noticed in the Tara Chand's case (supra). Therefore, without touching any other issues raised before us, instant appeals are accepted on the strength of the aforesaid judgment.

(Mahesh Grover)
Judge

28.08.2017 **(Raj Shekhar Attri)**
rekha **Judge**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No