

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.77 of 2017

M/s Tata Teleservices Limited, Having its registered office at Tower – 1, 10th Floor, Jeevan Bharti, 124, Connaught Circus, New Delhi – 110001 and Branch Office at Guru Ghasidas Plaza Complex, IInd and IIIrd Floor, G.E. Road, Amapara Chowk, Raipur – 492001 (C.G.), Through its Authorised Signatory & Manager Mr. Ravi Notwani.

---- Petitioner

Versus

1. State of Chhattisgarh through its Principal Secretary, Commercial Tax Department, Mantralaya, Raipur (C.G.)
2. Commissioner, Commercial Tax, Raipur (C.G.)
3. Commercial Tax Officer, Circle-5, Raipur (C.G.)

---- Respondents

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---- Respondents

AND

Writ Petition (T) No.79 of 2017

M/s Tata Teleservices Limited, Having its registered office at Tower – 1, 10th Floor, Jeevan Bharti, 124, Connaught Circus, New Delhi – 110001 and Branch Office at Guru Ghasidas Plaza Complex, IInd and IIIrd Floor, G.E. Road, Amapara Chowk, Raipur – 492001 (C.G.), Through its Authorised Signatory & Manager Mr. Ravi Notwani.

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Versus

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2. Commissioner, Commercial Tax, Raipur (C.G.)
3. Commercial Tax Officer, Circle-5, Raipur (C.G.)

---- Respondents

For Petitioner:	Mr. Sumit Nema, Senior Advocate with Mr. Ashish Surana, Advocate.
For Respondents:	Mr. Gary Mukhopadhyay, Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/03/2018

1. Since common question of fact and law is involved in these three writ petitions, they were heard together and are being disposed of by this common order.
2. M/s Tata Teleservices Limited, the petitioner herein, which is a public limited company incorporated under the provisions of the Indian Companies Act, 1956 involved in the activity of providing telecommunication services to the consumers under the license granted by the Department of Telecommunication, has invoked the jurisdiction of this Court under Article 226 of the Constitution of India calling in question the order of reassessment Annexure P-8 dated 26-12-2016 under Section 22(1) of the Chhattisgarh Valued Added Tax Act, 2005 (for short, 'the VAT Act').
3. The short question of law involved in the batch of writ petitions is, whether in absence of any assessment order passed in the original proceeding under Section 21(7) of the VAT Act, the assessing officer

has power and jurisdiction to reassess the said deemed reassessment by resorting to reassessment proceeding under Section 22(1) of the VAT Act and further the consequential question would be, whether in that case, the assessing officer is justified in levying penalty under Section 22(2) of the VAT Act.

4. To unlock the questions so posed for consideration, the essential facts need to be noticed herein.
5. The petitioner herein being the registered dealer under the VAT Act submitted its return for the years 2010-11, 2011-12 and 2012-13 in accordance with the provisions of the said Act and also submitted audit report and statutory compliances along with list of purchases as required. The original assessment proceedings were initiated by issuance of notice on 12-5-2014 and thereafter the matter was heard on 15-1-2015, 16-1-2015, 19-1-2015, 28-1-2015 and 18-2-2015. It is the case of the petitioner that no order of assessment was passed on the said original assessment proceedings in accordance with Section 21(7) of the VAT Act. It is the further case of the petitioner that in accordance with the instructions dated 5-7-2013, the Commercial Tax Officer (Enforcement) prepared report for the years 2010-11, 2011-12 and 2012-13 in case of the petitioner and proposed to levy tax of 4% of the materials treating them as “telecommunication cables and accessories” and accepting the report of the said officer, the assessing authority issued notices on 30-6-2016 to the petitioner for the period 2010-11, 2011-12 and 2012-13 for reassessment which was opposed by the petitioner by filing preliminary objection on 12-8-2016 that the reassessment proceeding initiated is barred by limitation, but no

cognizance of that objection was taken. The said objection was not considered and the order of reassessment Annexure P-8 was passed in all the three proceedings leading to filing of these writ petitions principally on the ground that no order of assessment was passed on the original assessment proceedings though the hearing concluded on 18-2-2015 and therefore that will be a case of deemed assessment under Section 21(2) of the VAT Act and deemed assessment can be reassessed only under the provisions contained in Section 21(3) of the VAT Act and Section 22(1) would not attract as there is no assessment order in force, therefore, the proceeding initiated and order of reassessment are without jurisdiction and without authority of law.

6. Return has been filed opposing the writ petitions and clearly stating that the order of reassessment passed by the assessing officer / Commercial Tax Officer is appealable under Section 48 of the VAT Act and to avoid the mandatory deposit required for appeal, the writ petitions have directly been filed which are not maintainable. Since no original assessment proceeding had taken place, there is deemed assessment by virtue of the operation of law under Section 21(2) of the VAT Act, therefore, that has rightly been reassessed under Section 22(1) and penalty has rightly been imposed.
7. Rejoinder has been filed controverting the averments/statements made in the return.
8. Mr. Sumit Nema, learned Senior Counsel appearing for the petitioner, while replying to the preliminary submission with regard to efficacious and alternative remedy, would submit that the petition challenging the order of reassessment at the very threshold is maintainable in view of

the judgment of the Supreme Court in the matter of **Calcutta Discount Co. Ltd. v. Income-Tax Officer, Companies District I, Calcutta**¹.

The order challenging final reassessment can also be challenged in a writ proceeding, as the order passed is without jurisdiction and without authority of law. On the merit of the matter, he would submit that there is no order of assessment passed in the original proceeding despite having been heard by the assessing officer and therefore there is deemed assessment under Section 21(2) of the VAT Act and that reassessment can be reopened only under Section 21(2). Resorting to reassessment proceeding under Section 22(1) is not permissible since the jurisdiction under Section 22(1) can be acquired by the assessing officer where an assessment or reassessment of dealer has been made and consequently the order imposing tax and penalty is vulnerable and deserves to be quashed.

9. Mr. Gary Mukhopadhyay, learned Government Advocate appearing for the State/respondents, would submit that the order being appealable, the petitioner be resorted to the remedy of appeal by making mandatory deposit. He would further submit that deemed assessment is also reassessable under Section 22(1) of the VAT Act.
10. I have heard learned counsel for the parties and considered their rival submissions and also went through the record carefully as well as critically.
11. The first issue for consideration would be whether the writ petitions challenging the order of reassessment under Section 22(1) of the VAT Act is maintainable in law.

¹ AIR 1961 SC 372

12. It was vehemently submitted on behalf of the respondents relying upon the decision of the Supreme Court in the matter of **Commissioner of Income Tax and others v. Chhabil Dass Agarwal**² that such writ petitions would not be maintainable, whereas the petitioner has relied upon the decision of the Supreme Court in **Calcutta Discount** (supra).
13. In **Calcutta Discount** (supra), Their Lordships of the Supreme Court have clearly and unmistakably held that the High Court in appropriate cases has power to issue an order prohibiting the Income Tax Officer from proceeding to reassess the income when the conditions precedent do not exist. K.C. Das Gupta, J, speaking for the Supreme Court and delivering the majority judgment held as under: -

“It is well-settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences

The High Court may, therefore, issue a high prerogative writ prohibiting the Income-tax Officer from proceeding with reassessment when it appears that the Income-tax Officer had no jurisdiction to commence proceeding”.

14. The principle of law laid down in **Calcutta Discount** (supra) has been followed with approval by the Supreme Court thereafter in the matter of **The Commissioner of Income-tax, Gujarat v. M/s. A. Raman and Co.**³ in which Their Lordships have held that the High Court exercising jurisdiction under Article 226 of the Constitution has power to set aside a notice issued under Section 147 of the Income Tax Act, 1961, if the

² (2014) 1 SCC 603

³ AIR 1968 SC 49

conditions precedent to the exercise of jurisdiction under Section 147 of the Act do not exist, and observed as under: -

“6. The High Court exercising jurisdiction under [Article 226](#) of the Constitution has power to set aside a notice issued under Section 147 of the [Income Tax Act](#), 1961, if the condition precedent to the exercise of the jurisdiction does not exist. The Court may, in exercise of its powers, ascertain whether the Income Tax Officer had in his possession any information: the Court may also determine whether from that information the Income Tax Officer may have reason to believe that income chargeable to tax had escaped assessment. But the jurisdiction of the Court extends no further. Whether on the information in his possession he should commence a proceeding for assessment or reassessment, must be decided by the Income Tax Officer and not by the High Court. The Income Tax Officer alone is entrusted with the power to administer the Act: if he has information from which it may be said, prima facie, that he had reason to believe that income chargeable to tax had escaped assessment, it is not open to the High Court, exercising powers under [Article 226](#) of the Constitution, to set aside or vacate the notice for reassessment on a re-appraisal of the evidence.”

15. The above-stated enunciation of law laid down in **Calcutta Discount** (supra) reiterated in **M/s. A. Raman and Co.'s** case (supra) by Their Lordships of the Supreme Court has further been followed very recently by the Supreme Court in the matter of **Jeans Knit Private Ltd. Bangalore v. Deputy Commissioner of Income Tax Bangalore**⁴ and it has been clearly held that writ petition filed by the assessee challenging the issuance of notice under Section 148 of the Act, 1961 and the reasons which were recorded by the Assessing Officer for reopening the assessment is maintainable, after noticing the earlier decision of the Supreme Court in **Chhabil Dass Agarwal's** case (supra) and observed as under: -

“2. We find that the High Courts in all these cases have dismissed the writ petitions preferred by the appellant/assessee herein challenging the issuance of notice

4 2016 SCC OnLine SC 1536

under Section 148 of the Income Tax Act, 1961 and the reasons which were recorded by the Assessing Officer for reopening the assessment. These writ petitions are dismissed by the High Courts as not maintainable. The aforesaid view taken is contrary to the law laid down by this Court in *Calcutta Discount Limited Company v. Income Tax Officer, Companies District I, Calcutta* [(1961) 41 ITR 191 (SC)]. We, thus, set aside the impugned judgments and remit the cases to the respective High Courts to decide the writ petitions on merits.

3. We may make it clear that this Court has not made any observations on the merits of the cases, i.e. the contentions which are raised by the appellant challenging the move of the Income Tax Authorities to re-open the assessment. Each case shall be examined on its own merits keeping in view the scope of judicial review while entertaining such matters, as laid down by this Court in various judgments.

4. We are conscious of the fact that the High Court has referred to the judgment of this Court in *Commissioner of Income Tax v. Chhabil Dass Agarwal*, [(2013) ITR 357 (SC)]. We find that the principle laid down in the said case does not apply to these cases.”

16. Thus, in light of the principle of law laid down in **Calcutta Discount** (supra) followed in **M/s. A. Raman and Co.'s** case (supra) and **Jeans Knit Private Ltd.** (supra) and considering the facts leading to challenge to the order of reassessment, I do not have any slightest doubt in my mind to hold that the writ petition is maintainable to challenge the order of reassessment under Section 22(1) of the VAT Act and accordingly, I overrule the first preliminary objection raised on behalf of the respondents in that regard.
17. This would bring me to the merit of the matter to consider the question framed, whether in absence of assessment order passed in original assessment proceeding and in case of deemed assessment under Section 21(2) of the VAT Act, the assessing officer has power and jurisdiction to reassess by invoking Section 22(1) of the VAT Act and levy penalty

under Section 22(2) of the VAT Act.

18. In order to answer the plea raised at the Bar, it would be appropriate to notice Sections 21(2) and 21(3) of the VAT Act which state as under: -

“Section 21 : Assessment of tax

(1) xxx xxx xxx

(2) Where a registered dealer other than the registered dealer referred to in the proviso to sub-section (1) has furnished,-

(i) all the returns for a year and/or;

(ii) revised return for any quarter or quarters of such year, in the prescribed manner and within the prescribed time or before the date on which the return for the first quarter of the subsequent year becomes due,

(iii) has paid the tax payable according to such returns or revised returns as also interest payable, if any, and

(iv) has furnished the statement under clause (b) of sub-section (1) of section 19, within the prescribed time,

the returns furnished or revised returns furnished by such dealer for that year shall be accepted and his assessment shall be deemed to have been made for the purpose of sub-section (1) :

Provided that the assessment under this sub-section of every such registered dealer who is required to furnish audit report under sub-section (2) of section 41 shall be deemed to have been made if such dealer has furnished the audit report along with the statement referred to in sub-clause (iv).

(3) Notwithstanding the provisions of sub-section (2), the commissioner shall select for re-assessment a number of such dealers as he deems fit whose assessment for a year is deemed to have been made under sub-section (1) in accordance with the provisions of sub-section (2) and such selection shall be made within one calendar year from the said year.”

19. A focused glance of the aforesaid provisions would show that sub-section (2) of Section 21 of the VAT Act provides for deemed assessment where the returns furnished or revised returns furnished by such dealer for a particular year, if no order of assessment has been

passed and that order of deemed assessment said to be passed under Section 21(2) of the VAT Act is reassessable under sub-section (3) of Section 21 and choice is conferred upon the Commissioner to select number of such dealers as it deems fit whose assessment for a year is deemed to have been made under sub-section (1) in accordance with the provisions of sub-section (2) and limitation has also been prescribed which shall be within one calendar year from the said year.

20. Thus, the deemed assessment made by virtue of Section 21(2) of the VAT Act for the purpose of Section 21(1) is reassessable at the instance of the Commissioner by selection within one calendar year. Thereafter, Section 22 of the VAT provides for assessment/reassessment of tax in certain circumstances which states as under: -

“Section 22 : Assessment/Re-assessment of tax in certain circumstances

(1) Where an assessment or re-assessment of a dealer has been made under this Act or the Act repealed by this Act and for any reason any sale or purchase of goods liable to tax under this Act or the Act repealed by this Act during any period,-

(a) has been under assessed or has escaped assessment,
or

(b) has been assessed at a lower rate, or

(c) any wrong deduction has been made while making the assessment, or

(d) a rebate of input tax has incorrectly been allowed while making the assessment, or

(e) is rendered erroneous and prejudicial to the interest of revenue consequent to or in the light of any judgment or order of any Court or Tribunal which has become final,

the commissioner may, at any time within a period of five calendar years from the date of order of assessment or from the date of judgment or order of any court or tribunal, proceed in such manner as may be prescribed, to assess or

re-assess, as the case may be the tax payable by such dealer after making such enquiry as he considers necessary, and assess or re-assess to tax.

(2) The commissioner shall, where the omission leading to assessment or reassessment made under sub-section (1) is attributable to the dealer, impose upon him a penalty not exceeding twice the amount of tax so assessed or re-assessed but shall not be less than the amount of tax assessed.

(3) The assessment or re-assessment under sub-section (1) shall be made within a period of two calendar years from the date of commencement of the proceedings under the said sub-section.”

21. Section 22(1) of the VAT Act mandates assessment and also mandates the same by express order in writing which can be gathered from the fact that it states that assessment or reassessment can be made on any of the grounds mentioned in clauses (a) to (e) of sub-section (1) of Section 22 at any time within a period of five calendar years “**from the date of order of assessment**”. Thus, existence of original assessment order which is sought to be reopened and reassessed is the jurisdictional fact and condition precedent for exercise of power under Section 22(1) of the VAT Act. The use of words “from the date of order of assessment” clearly indicates that the original assessment order has to be in existence prior to exercising the power of reassessment.

22. The word “order” employed in Section 22(1) of the VAT Act is important. The word “order” has not been defined in the VAT Act. The Code of Civil Procedure, 1908 is not applicable in the proceeding of the VAT Act, but aid can be taken from the said Code. Sub-section (14) of Section 2 of the Code of Civil Procedure, 1908 defines, “order” means the formal expression of any decision of a Civil Court which is not a decree”. Black's Law Dictionary (Eighth Edition) also defines “order” as under: -

“**order**, *n.* **1.** A command, direction, or instruction. See MANDATE (1). **2.** A written direction or command delivered by a court or judge. • The word generally embraces final decrees as well as interlocutory directions or commands. – Also termed *court order*; *judicial order*. See MANDAMUS. [Cases: Federal Civil Procedure 928; Motions 46, C.J.S. *Motions and Orders* §§ 1-3, 13, 50, 59.]

“An order is the mandate or determination of the court upon some subsidiary or collateral matter arising in an action, not disposing of the merits, but adjudicating a preliminary point or directing some step in the proceedings.” 1 Henry Campbell Black, *A Treatise on the Law of Judgments* § 1, at 5 (2d ed. 1902).

“While an order may under some circumstances amount to a judgment, they must be distinguished, owing to the different consequences flowing from them, not only in the matter of enforcement and appeal but in other respects, as, for instance, the time within which proceedings to annul them must be taken. Rulings on motions are ordinarily orders rather than judgments. The class of judgments and of decrees formerly called interlocutory is included in the definition given in [modern codes] of the word 'order.'

“ 1. A.C. Freeman, *A Treatise of the Law of Judgments* § 19, at 28 (Edward W. Tuttle ed., 5th ed. 1925).”

23. Thus, “order of assessment” employed in Section 22(1) of the VAT Act clearly denotes that there must be formal adjudication by the assessing officer after taking into account the return and statutory compliances and the documents furnished by the petitioner.
24. In order to attract Section 22(1) of the VAT Act, there must be order of assessment made by the assessing officer in contradistinction to Section 21(2) which is a deemed assessment and which in case of the petitioner, it has been done is a legal fiction.
25. The legislature is quite competent to create a legal fiction, in other words, to enact a deeming provision for the purpose of assuming existence of a fact which does not really exist. (See **J.K. Cotton**

Spinning & Weaving Mills Ltd. v. Union of India⁵.)

26. The Supreme Court in the matter of **Rishabh Agro Industries Ltd. v.**

PNB Capital Services Ltd.⁶ defined the word “deemed” with reference

to the provisions of the Companies Act as under:-

“The word “deemed” used in the section would thus mean, “supposed”, “considered”, “construed”, “thought”, “taken to be” or “Presumed”.

27. The Supreme Court in the matter of **Harish Tandon v. Additional**

District Magistrate, Allahabad⁷ has held that full effect has to be

given to the legal fiction created by statute and held as under:-

“13. The role of a provision in a statute creating legal fiction is by now well settled. When a statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the court has to examine and ascertain as to for what purpose and between what persons such a statutory fiction is to be resorted to. Thereafter full effect has to be given to such statutory fiction and it has to be carried to its logical conclusion. ...”

28. James, **L.J. in levy, In re, ex p Walton**⁸ speaks on deeming fiction as:

“... When a statute enacts that something shall be deemed to have been done, which in fact and [in] truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.”

29. In the matter of **Szoma v. Secy. of State for Work and Pensions**⁹ the

Court held:

“25. ... it would ... be quite wrong to carry this fiction beyond its originally intended purpose so as to deem a person in fact lawfully here not to be here at all. ‘the intention of a deeming provision, in laying down a hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further’”

5 AIR 1988 SC 191

6 (2000) 5 SCC 515

7 (1995) 1 SCC 537

8 (1881) 17 Ch D 746 : (1881-85) All ER Rep 548 (CA)

9 (2006) 1 AC 564 : (2005) 3 WLR 955 : (2006) 1 All ER 1 (HL)

30. The Supreme Court in the matter of **S. Gopal Reddy v. State of A.P.**¹⁰

held as under:-

“12. It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary.”

31. Their Lordships of the Supreme Court in the matter of **Jugalkishore**

Saraf v. Raw Cotton Co. Ltd.¹¹ stated as under:-

“6. ... The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation.”

32. The Supreme Court in **J.K. Cotton Spinning & Weaving Mills Ltd.**

(supra) held as under:-

“It is well settled that a deeming provision is an admission of the non-existence of the fact deemed. Therefore, in view of the deeming provisions under Explanations to Rules 9 and 49, although the goods which are produced or manufactured at an intermediate stage and, thereafter, consumed or utilized in the integrated process for the manufacture of another commodity is not actually removed shall be construed and regarded as removed. The Legislature is quite competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist.”

33. Further, Their Lordships of the Supreme Court in the matter of **M.**

Venugopal v. Divisional Manager, Life Insurance Corpn. of India¹²

after referring to the case of **East End Dwellings Co. Ltd. v. Finsbury**

Borough Council¹³ held that legislature can introduce a statutory

fiction and courts have to proceed on assumption that such state of

10 (1996) 4 SCC 596 : 1996 SCC (Cri) 792

11 AIR 1955 SC 376

12 (1994) 2 SCC 323

13 1952 AC 109 : (1951) 2 All ER 587

affairs exists on relevant date.

34. Thus, in sum and substance, in order to invoke jurisdiction under Section 22(1) of the VAT Act or to initiate proceedings for reassessment there must be an order of assessment duly passed by the assessing officer and it must be in existence as a condition precedent to invoke Section 22(1) and the limitation prescribed is five calendar years from the date of commencement of such proceedings, whereas the deemed assessment order under Section 21(2) is only reassessable under Section 21(3) of the VAT Act within one calendar year from such year. In case there is no order of assessment passed under Section 21(7) of the VAT Act, it cannot be subject to reassessment proceeding under Section 22(1) of the VAT Act.

35. In this regard, a decision of the Supreme Court may be noticed profitably and gainfully, herein. In the matter of **Commissioner of Sales Tax, Madhya Pradesh v. Filter Co.**¹⁴, Their Lordships of the Supreme Court have clearly held that where the assessment was not made under the provisions of the M.P. General Sales Tax Act, 1958, reassessment proceeding is unsustainable, and observed as under: -

“2. This Court, in Union of India Vs. Gujarat Woollen Felt Mills (1977) 2 SCC 870, came to the conclusion that felt such as that manufactured by the assessee was liable to exercise duty. Based upon the judgment, the Commissioner, on March 4, 1982, wrote to the assessee that the clarification given to it in the letter dated August 7, 1971 was cancelled. The assessments of the assessee for the assessment years 1971-72 to 1977-78 were then revised under the provisions of section 19(1) of the State Act and assessments of sales tax were made. The assessee challenged these assessments. The authority in statutory appeal upheld the assessments. The Board of Revenue, in second appeal, reversed the finding of the first appellate authority and the High Court upheld its view. The High Court analysed the provisions of

14 [1997] 107 STC 210 (SC)

section 19(1) and emphasised that the power of re-opening under that provision could be exercised only where an assessment had been made. No assessments for the relevant assessment years having been made, it held that the provisions of section 19 were inapplicable.

3. The notices and subsequent proceedings under section 19 are not on the record before us, but it is clear from what has been stated by the Board and by the High Court that the assessments that are under challenge were made upon the strength of the provisions of section 19 of the State Act. The relevant portion of section 19 reads thus:

“Where an assessment has been made under this Act or any Act repealed by section 52 and if for any reason any sale or purchase of goods chargeable to tax under this Act or any Act repealed by section 52 during any period has been under-assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom, the Commissioner may, at any time within five calendar years from the date of order of assessment, after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he considers necessary, proceed in such manner as may be prescribed to reassess ” -

4. It is crystal clear therefrom that it applies only if an assessment has already been made and there has been under-assessment or escaped assessment therein. In a case where there has been no assessment, as in the case before us for the assessment years in question, the provisions of section 19 do not apply and cannot be invoked.”

36. Reverting to the facts of the present case, after having noticed the judgment of the Supreme Court in **Filter Co.'s** case (supra), it is quite vivid that in the instant case, the matter was heard by the assessing officer up to 18-2-2015 after having issued notices on 12-5-2014, but no order of assessment was passed under Section 21(7) of the VAT Act, though original assessment proceedings were initiated by issuance of notice on 12-5-2014 and matter was heard time to time by the assessing officer resulting into deemed assessment by virtue of the provisions contained in Section 21(2) of the VAT Act which was reassessable under Section 21(3) of the VAT Act within a period of one calendar year at the

instance of the Commissioner on selection being made by him. Thus, the jurisdictional fact and condition precedent for invoking Section 22(1) of the VAT Act i.e. the order of assessment was not in existence on the date of issuing notice for reassessment under Section 22(1) of the VAT Act. Therefore, the learned assessing officer was jurisdiction-less to initiate proceeding for reassessment under Section 22(1) of the VAT Act and the order of reassessment ultimately passed is without jurisdiction and without authority of law and de hors the provisions contained in Section 22(1), as such, it deserves to be quashed.

37. This leads me to the next question as to whether the penalty imposed invoking Section 22(2) of the VAT Act is sustainable. Section 22(2) of the VAT Act provides that the commissioner shall, where the omission leading to assessment or reassessment made under sub-section (1) is attributable to the dealer, impose upon him a penalty not exceeding twice the amount of tax so assessed or re-assessed but shall not be less than the amount of tax assessed. The penalty is imposable leading to reassessment where the omission leading to assessment or reassessment under sub-section (1) is attributable to the dealer. In the instant case, it has already been held that there is no order of assessment as the assessing officer did not pass any assessment order and thus, there is failure on the part of the assessing officer to pass the original assessment order. For the reason that the order of reassessment is to be held without jurisdiction and without authority of law, therefore, the order imposing penalty passed upon reassessment cannot stand and accordingly, it deserves to be quashed.

38. As a fallout and consequence of the aforesaid discussion, the order of

reassessment followed by penalty in all the three cases vide Annexure P-8 are hereby quashed.

39. The writ petitions are allowed to the extent sketched herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma