

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.13144 of 2009
and
M.P.Nos.1 and 2 of 2009

Techno Consultancy Services,
Rep. by Proprietor,
834, Anna Salai, Chennai-2. ... Petitioner

Vs.

- 1.The Appellate Deputy Commissioner CT,
IV Chennai.
- 2.The Commercial Tax Officer,
Ice House, Asst. Circle, Chennai. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent herein in A.P.23/08 dated 16.10.2008 and to quash the same as illegal, unlawful and unconstitutional.

For Petitioner : Mr.R.Ganesh Kanna

For Respondents : Mr.Shaffiq,
Special Government Pleader (Tax)

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O R D E R

The petitioner challenges an order dated 16.10.2008 passed by the Appellate Deputy Commissioner in terms of the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act'). The sole ground raised and argued before this Court is the bar of limitation.

2.According to learned counsel, the period of assessment being 2001-2002, the law applicable for the purpose of revision of assessments would be as per the erstwhile provisions of Section 16(1)(a), in force till 30th June, 2002. The provisions of Section 16(1)(a) as it stood then, are extracted hereunder:

'16.[(I) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (2), at any time within a period of five years from the expiry of the year to which the tax relates, determine to the best of its judgment the

turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.'

3.The provisions of Section 16(1)(a) stood amended with effect from 01.07.2002, and according to the revenue, it is the the amended provision, and the limitation provided thereunder, extracted below, that would be applicable:

16.[(I) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (2), at any time within a period of five years from the [date of order of the final assessment by the assessing authority] determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment."

4.Pre-amendment, the statutory provision provided for a limitation of five years from end of the relevant assessment period for completion of an order of re-assessment. Post-amendment, the provision provides for a limitation of five years from date of completion of original assessment for completion of re-assessment.

5.In the present case, the date of original assessment is 12.12.2002, date of pre-revision notices are 31.07.2007 and 07.08.2007 and the date of re-assessment/revision of assessment is 16.10.2008. According to the petitioner, the period of limitation would run only till 31.03.2007, i.e. five (5) years from end of assessment period in question, whereas the impugned order of assessment has been passed on 16.10.2008, beyond time.

6. The issue that arises for decision in this case is as to whether the limitation for revision of assessment/re-assessment would be as per the pre-amended provision or the law post amendment. To clarify, the stand of the revenue is that it is the limitation as per amended provision that would be applicable in this case, since the time for revision/re-assessment as per the original limitation provided, had not expired at time when the amendment came into force, that is, on 01.07.2002.

7. The law on this issue has long been settled by three judgments of the Division Bench of this Court in Janaba Muhamad Hussain Nachiar Ammal v. Commissioner of Income-Tax, Madras (29 ITR 848), N.K.C. Syed Mohammed Ravoothar v. The Deputy Commercial Tax Officer, Tirukoilur (9 STC 1) and Ramanathan Chettiar v. Kandappa Gounder (1950 2 MLJ 624).

8. In Janaba Munhamad Hussain Nachiar ammal (supra), a Division Bench of this Court held as follows:

.....

Even at the outset we must make it clear that we are concerned only with a case of liability to assessment under section 34 of the Act of an assessee who had failed to submit the return in the relevant assessment year. The effect of section 1(2) of the Amending Act XLVIII of 1948 was that the amended section 34 was deemed to have been part of the Act on 30th March, 1948. The contention of the learned counsel for the assessee was, that, since one of the main amendments of section 34 altered the rule of limitation from four years to eight years, the amended rule of limitation would not apply to a case, where even before 30th March, 1948, the prescribed period of limitation of four years had run out by efflux of time. Mr. Rama Rao Sahib, the learned counsel for the Department, urged that the language of the amended section 34 was clear enough, and that whatever might have been the period of limitation under the unamended section 34, it was the new period of limitation under the amended section 34 that would apply under the express language of the amended section 34. Both the learned counsel relied on the observations of Chakravartti, C.J., in Income-tax Officer v. Calcutta Discount Co. Ltd.

....

(At page 855) It is on this basis that we have to decide the question, whether the amended section 34, either by express terms or by necessary intendment, provided that, even in cases where the period of limitation in force before 30th March, 1948, had expired, the effect of the amended section 34 is to confer jurisdiction on the assessing authority to reassess the income of a year which could not have been reassessed at any point of time anterior to 30th March, 1948. It should be remembered that the amended section 34 did not prescribe a period of limitation for the first time. It amended the existing law prescribing a period of limitation. Under such circumstances, what is the effect of the amendment is the question, and that question has to be decided on the basis of the well settled principle of law, that if the exercise of a right had become barred by the provisions of the Act then in force, such a right is not revived by the application of a new enactment. In the present case, the right to reopen the assessment in the case of the assessee under the old section 34 expired on 31st March, 1947. Between 31st March, 1947, and 30th March, 1948, when the amended section 34 came into force, the Department could not have taken any valid proceedings to assess or reassess the assessee on the income she was deemed to have received during the year of account ending with 31st March, 1942, with

the corresponding assessment year ending 31st March, 1943.

We are unable to accept the contention of Mr. Rama Rao Sahib, that the learned Chief Justice held in the Calcutta Discount Co. Ltd. Case that the amended section 34 should be construed and applied, completely ignoring any amendment in the rule of limitation that would apply to a given case. Once again we should point out this factor the learned Chief Justice himself was fully alive to that in the case of Calcutta Discount Co. Ltd., there was no change in the rule of limitation; it was eight years under the old section and continued to be eight years under the amended section.

In our opinion, the contention of the learned counsel for the assessee is well founded, that the new rule of limitation of eight years prescribed by the amended section 34 would not apply to the case of the assessee before us, whose was an instance of a failure to submit a return, when the period of limitation of four years had run out long before 30th March, 1948, when the amended section 34 came into force as part of the Income-tax Act with effect from that date, 30th March, 1948.

The learned counsel for the Department next referred to section 31 of Act XXV of 1953 in support of his contention that the notice issued on 25th July, 1949, was valid. The learned counsel himself had to realise that section 31 of Act XXV of 1953 did not enlarge the scope of the amended section 34; nor did it purport to amend it. The validity of the notice dated 25th July, 1949, will still have to be decided with reference to the provisions of the amended section 34. Section 31 of Act XXV of 1953 does not therefore affect the question at issue, whether the extended period of limitation of eight years would apply to the assessee when the period of limitation applicable to the assessee had expired before the amended section 34 came into force on 30th March, 1948.'

9. In N.K.C. Syed Mohammed Ravoothar (supra), it has been held as follows:

'In Muhamad Hussain Nachiar v. Commissioner of Income-tax, Madras, we pointed out that the principle to apply in such cases was the one laid down by another Division Bench of this Court in Ramanathan Chettiar v. Kandappa Gounder, where the learned Chief Justice observed:

'It is well settled that the law of limitation being procedural law its provisions operate retrospectively in the sense that they apply to causes of action which arose before their enactment and that it is equally well established that if a right to sue had become barred by the provisions of the Act then in force on the date of coming into force of a later enactment, then such a barred right is not revived by the application of the new enactment."

In this case, before the right of the assessing authority was barred, the period of limitation prescribed by law was enlarged, and it was the amended law that determined the liability of the petitioner. As we pointed out earlier, before the two year period of limitation expired on 31st March, 1955, the rule was amended on 11th June, 1953, providing a three year period of limitation. The learned counsel for the petitioner referred to the decision of Ramaswami, J., in East Asiatic Co. v. State, a decision rendered on 5th May, 1954, that is, before our decision in Muhamad Hussain Nachiar v. Commissioner of Income-tax, Madras. The attention of the learned Judge does not seem to have been drawn to the earlier decision in Ramanathan Chettiar's case, where as we pointed out, the learned Chief Justice referred to the principle of law as a well settled one. With all respect to Ramaswami, J., we are unable to accept as correct the basis of his conclusion on this point: "But the right which had accrued to the assessee, namely, that the escaped assessment of tax cannot be reopened beyond the period of one year cannot be described as a matter relating to procedure only and it was a matter which was more than one relating to procedure, that is to say, it touched a right in existence". In Ramanathan Chettiar's case, the learned Chief Justice pointed out that it was well settled that the law of limitation was procedural law. It should, however be noted that in East Asiatic Co. v. State, the relevant assessment years were 1945-46 and 1946-47, the notices issued to him under rule 17 were dated 24th February, 1950, and were received by the assessee on 4th March, 1950; the order of revision was dated 31st March, 1950.

Since neither of the contentions put forwarded by the learned counsel for the petitioner commends itself to us, we direct that the rule be discharged and the petition be dismissed. There will however be no order as to costs."

(Emphasis, in bold, mine)

Hanumayamma v. Venkatanarasimharao (C.R.P.No.148 of 1947, dated 11th November, 1949), Appaswami Odayar v. Subramania Odayar (1888 L.R. 15 I.A. 167), Mohesh Narain Munshi v. Taruck Nath Moitra (1892 L.R. 20 I.A. 30), Khunnilal v. Gobind Krishna Narain (1911 21 M.L.J. 645), Sachindra Nath Roy v. Maharaj Bahadur Singh (1921 L.R. 48 I.A. 335), Ramayya v. Lakshmayya (1942 2 M.L.J. 249), Soniram v. Kanhayalal (1913 25 M.L.J. 131), Jagadish v. Saligram (1945 I.L.R. 24 Pat. 391), Baleswar v. Latafat (1943 I.L.R. 24 Pat. 249), Pitambar v. Lakshmidhar (A.I.R. 1949 Orissa 64), Mahesh Lal v. Busunt Kunwaree (1880 I.L.R. 6 Cal. 340), Valia Tamburatti v. Vira Rayan (1877 I.L.R. 1 Mad. 228), Teagaraya Mudali v. Mariappa Pillai (1877 I.L.R. 1 Mad. 264), the Bench in Ramanathan Chettiars' case (supra) refers to the observations of Malik, J. in Pearylal v. Solu Gir (I.L.R. (1945) All. 896) to the following effect:

'It is clear, therefore, that, in the absence of anything to the contrary, if a claim is within the limitation according to the old Act, on the date when the new Act comes into force and a proceeding is commenced, after the coming into force of the new Act, it is the new Act, which would govern all decisions on the point of limitation. If, however, the right to sue or the right to apply had already been barred by the provisions of the Limitation Act then in force, then unless there was something in the latter Act which could be deemed to apply retrospectively to revive claims which had already become barred the new Act could not be availed of for the purpose of saving limitation.'

Thereafter, the Bench goes on to state as follows:

We respectfully agree with this statement of the law. We are compelled to dissent from the decisions which express a contrary view, namely Baleswar v. Latafat, Jagadish v. Saligram, Pitambar v. Lakshmidar and Maheshlal v. Basant Kunwaree.

Mr. Sivaramakrishna Aiyar raised two other contentions, but we consider that there is no substance in either of them. He argued that the proviso to section 20, sub-section (1) was allowed to remain as it was before even after the amending Act of 1942, and, therefore, it must be presumed that Legislature contemplated the application of the new amendment to transactions prior to the date of the commencement of the amending Act. This may be so, but we fail to see how this has any bearing on the question to be decided by us. The other contention of his was that as by the amending Act section 20(1), a new section was substituted for the old sub-section, the new provision must be deemed to be retrospective in operation. No authority was cited for this extraordinary position. If it was the intention of the

Legislature to say that not only that the law should be in future as embodied in the amendment but that the law should be deemed to have always been as laid down by the amendment, then appropriate language would have been used as in other statutes in which such an intention is apparent, e.g., the recent amendment to section 28 of the Provincial Insolvency Act.'

11.The ratio decidendi, as culled from the above decisions is thus that the limitation prescribed by an amended provision would govern a particular assessment subject to the assessment itself being open to revision at the time of the amendment.

12. In Universal Abrasives v. Commercial Tax Officer, Manali Assessment Circle, Chennai (68 VST 386) the aforesaid three decisions of Divisions Benches of this Court have, unfortunately, not been brought to the attention of the Bench.

13.In the present case, the amendment has come into effect on 01.07.2002 when the time for re-assessment is still current/available, till 31.03.2007. In such circumstances, it is the amended law that will be applicable, stretching from date of original order of assessment i.e. from 12.12.2007 for a period of five (5) years. The revised order of assessment in this case is dated 16.10.2008, well within limitation.

14.This writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1.The Appellate Deputy Commissioner CT,
IV Chennai.

2.The Commercial Tax Officer,
Ice House, Asst. Circle, Chennai.

+1cc to the Government Pleader Sr.78089

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