

M/s Hari Chand Rattan Chand & Co. v. The Deputy Excise & Taxation Commissioner (Additional), Punjab (Tuli, J.)

has put-fourth an argument that since the original assessment order was passed on best judgment the nature of the proceedings after remand remained the same. Even if that be so, the same period of limitation is provided in sub-sections (4), (5) and (6) of section 11 which govern the orders of assessment based on best judgment.

(7) For the reasons given above there is no merit in this appeal which is dismissed with costs.

SHAMSHER BAHADUR, J.—I agree.

R. S. NARULA, J.—I also agree.

K. S. K.

FULL BENCH.

Before Shamsher Bahadur, R. S. Narula, and Bal Raj Tuli, JJ.

M/S. HARI CHAND-RATTAN CHAND & CO.,—Petitioners.

versus

THE DEPUTY EXCISE & TAXATION COMMISSIONER (ADDITIONAL),
PUNJAB,—Respondent.

Civil Writ No. 1232 of 1965.

May 22, 1969.

Punjab General Sales Tax Act (XLVI of 1948)—Ss. 11-A and 21(1)—Respective scope of—Jurisdiction of the Commissioner under section 21(1)—Whether subject to period of limitation prescribed in section 11-A—Assessment Order made by an assessing authority—Whether becomes final if no appeal filed against it.

Held, that section 11-A of Punjab General Sales Tax Act, 1948, empowers the assessing authority to reassess a dealer in respect of any turnover which had escaped assessment or which had been under-assessed in consequence of any definite information which comes into his possession after the original order of assessment was made. This power cannot be exercised either by the appellate authority or the revisional authority. The revisional authority under section 21(1) of the Act is entitled to call for the record of any case decided by the assessing authority or any appellate authority in order to see whether the order passed is proper or legal. Similarly he can

call for the record of any proceeding pending before any assessing authority or appellate authority in order to determine the legality or propriety of the proceedings. But, before, he decides to exercise this power, he must come to the conclusion that the order or the proceedings suffer from the vice of impropriety or illegality and for this conclusion he has to confine himself to the record which is called by him and which was before the lower authority as the lower authority can be presumed to have applied his mind only to that record. He cannot take into consideration and fresh material in order to come to this conclusion. After having come to that conclusion, he will be entitled to scrutinise the proceedings and the order passed in order to determine the correct turnover which should have been assessed to tax on the basis of that record. He cannot, however, bring to tax, in the purported exercise of revisional powers, any turnover which had not been disclosed to the assessing authority by the dealer or which was not discovered by him during the course of assessment and which has come to the notice of the revising authority after the expiry of three years (now five years Editor) following the close of the year to which the turnover proposed to be taxed relates. That is the function of the assessing authority under section 11-A of the Act and cannot be exercised by the revising authority. But, if any enquiry is to be made or some evidence has to be examined in respect of the turnover which was the subject-matter of the proceedings before the assessing authority or the appellate authority, the revising authority will be at liberty to make such further enquiry or to take such further evidence as he considers fit to determine the legality or propriety of the order already passed. Such further enquiry or evidence must be germane to the turnover already on the record and not to the turnover which is sought to be brought in for the first time as a result of some information obtained from somewhere. That can be done by the revising authority only if on the date of hearing before him the period of limitation prescribed in section 11-A has not expired. This is so because the revising authority has the power of calling the record of the original proceedings also and deciding the same. He can call for the record of a proceeding pending before an assessing authority and pass such order in respect thereof as he thinks fit according to section 21(1) of the Act. In exercise of that power he can also rely upon the information in his possession and enhance the assessment after giving notice to the dealer provided the period of limitation prescribed in section 11-A of the Act has not expired. There is no period of limitation prescribed in the Act or the Rules framed under the Act within which alone the revising authority can exercise its power of *suo motu* revision under section 21(1) of the Act on the basis of the record called by him nor can any such period of limitation be implied on the basis of section 11-A of the Act. Hence the jurisdiction of the Commissioner, under section 21(1) of the Act is not subject to the period of limitation prescribed in section 11-A of the Act.

(Para 7)

Held, that the assessment order made by the assessing authority does not become final merely because no appeal has been filed against it. It remains final only so long as it is not revised. Once it is revised, it loses its finality and the order passed in revision takes its place which order may be termed as final so far as the Act is concerned, but even that order is liable

M/s Hari Chand Rattan Chand & Co. v. The Deputy Excise & Taxation Commissioner (Additional), Punjab (Tuli, J.)

to be set aside or modified on a reference to the High Court under section 23 of the Act or on a petition under Article 32 or 136 or 226 of the Constitution made to the appropriate Court. (Para 6)

Case referred by the Hon'ble Mr. Justice Ranjit Singh Sarkaria on April 1, 1963, to a Full Bench for decision of an important question of law involved in the case.. The Full Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur, the Hon'ble Mr. Justice R. S. Narula, and the Hon'ble Mr. Justice Bal Raj Tuli, returned the case on 22nd May, 1969, to the learned Single Judge, after deciding the question referred to, for decision of the case on merits in accordance with law.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, prohibition or any other appropriate writ, order or direction be issued quashing the notice dated nil, issued by the respondent and served upon the petitioner on 4th May, 1965.

BHAGIRATH DASS WITH S. K. HIRAJI AND B. K. JHINGAN, ADVOCATES, for the Petitioner.

B. S. DHILLON, ADVOCATE-GENERAL, PUNJAB, WITH B. S. SHANT, AND RATTAN SINGH, ADVOCATES, for the Respondents

ORDER OF THE FULL BENCH.

TULI, J.—These four writ petitions (C.W. 1232 of 1965 *Messrs Hari Chand-Rattan Chand & Co. v. The Deputy Excise and Taxation Commissioner*, C.W. 1686 of 1965 *Messrs Kashmiri Lal-Kasturi Lal & Co. v. The Deputy Excise and Taxation Commissioner*, C.W. 539 of 1966 *Messrs Raj Brothers v. The Assistant Excise and Taxation Commissioner* and C.W. 1819 of 1966 *Messrs Highway Motors v. The Chief Enforcement Officer, Punjab, Patiala*) came up for hearing before my learned brother Sarkaria, J., on April 1, 1968, and it was urged that a common question of law had arisen as to whether the Excise and Taxation Commissioner is competent under section 21 (1) of the Punjab General Sales Tax Act, 1948, hereinafter called the Act, to reopen an assessment order after the expiry of the period prescribed in sub-section (6) of section 11 of that Act. It was pointed out to the learned Judge that this very question arose in *National Rayon Corporation Limited v. The Additional Assistant Excise and Taxation Commissioner, Punjab* (1) and the view taken by the Division Bench in that case was that the Legislature did not

(1) 15 S.T.C. 746.

intend to fetter the power of the Commissioner under section 21 by any rule of limitation and, therefore, left it to the Commissioner's discretion to exercise his power at any time. The correctness of this decision was doubted in view of the decision of their Lordships of the Supreme Court in *State of Orissa v. Debaki Debi and others* (2), and it was pleaded that the Division Bench judgment of this Court required reconsideration. In view of the joint submission of the learned counsel for both the parties, the learned Judge directed that the papers in all these four cases be placed before my Lord the Chief Justice for constituting a larger Bench to reconsider the aforesaid Division Bench judgment and to determine the question : "Whether the jurisdiction of the Commissioner under section 21(1) of the Punjab General Sales Tax Act, 1948, is subject to the period of limitation prescribed in sub-section (6) of section 11 of the Act". It is admitted by both the learned counsel that instead of sub-section (6) of section 11 it should be section 11-A so that the question referred will read as under :—

"Whether the jurisdiction of the Commissioner under section 21(1) of the Punjab General Sales Tax Act, 1948, is subject to the period of limitation prescribed in section 11-A of the Act."

This is how these cases have been placed before us for deciding the point of law referred.

(2) This precise point had arisen in an earlier Division Bench judgment of this Court in *Narain Singh Mohinder Singh v. The State of Punjab and another* (3). The judgment in that case was delivered by Mehar Singh, J. (as my Lord the Chief Justice then was) with which my learned brother Shamsheer Bahadur, J., agreed and it was held as under :—

"In so far as the first question is concerned it is obvious that the provisions of section 11-A of the Act have no bearing on the revisional powers of the Commissioner under sub-section (1) of section 21 of the Act for what the Commissioner does in exercising revisional powers is to satisfy himself as to the legality or propriety of the record of any proceedings before or disposed of by the Assessing

(2) 15 S.T.C. 153.

(3) 14 S.T.C. 610.

M/s Hari Chand Rattan Chand & Co. v. The Deputy Excise & Taxation Commissioner (Additional), Punjab (Tuli, J.)

Authority or the Appellate Authority as the case may be, and he does not take proceedings for reassessment. Apart from this, section 11-A applies only to an Assessing Authority and not to a Commissioner. Consequently section 11-A of the Act has no bearing so far as the revisional powers of the Commissioner under section 21(1) of the Act are concerned and it follows that section 11-A cannot possibly limit the revisional powers of the Commissioner under section 21(1). The obvious answer to the question is that the Commissioner is not bound to take into consideration the provisions of section 11-A when exercising his revisional powers under section 21(1) of the Act."

This decision was delivered on July 17, 1962, and when this point of law was argued before the other Division Bench deciding the case of *National Rayon Corporation Limited* (supra) (1), on July 16, 1964, this judgment does not seem to have been brought to the notice of the learned Judges by the learned counsel for either of the parties. The judgment in that case was delivered by Dulat, J., with whom Pandit, J., agreed and it was held as under :—

"It is obvious that if the Legislature intended to limit the power of the Commissioner under section 21 to a period of three years after the close of an assessment year or even after the disposal of the proceedings by an Assessing Authority, it could, and in the circumstances almost certainly would, have said so in section 21, for the Legislature was aware that a period of limitation had for purposes of reassessment by an Assessing Authority been fixed in section 11-A. The conclusion, in my opinion, must be that the Legislature did not intend to fetter the power of the Commissioner under section 21 by any rule of limitation and, therefore, left it to the Commissioner's discretion to exercise his power at any time. Mr. Bhagirath Dass, says that it is improbable that such power unlimited in time could have been entrusted to the Commissioner, but I can find nothing improbable about it, and the argument that the Commissioner may decide to reopen a matter settled twenty or thirty years previously, does not lead anywhere. The power of revision mentioned in section 21 is altogether separate from and unconnected

with the power of reassessment by an Assessing Authority under section 11-A of the East Punjab General Sales Tax Act. In my opinion, therefore, the learned single Judge was right in holding that the Additional Assistant Excise and Taxation Commissioner had authority to revise the previous orders made by the Assessing Authority in the present cases."

(3) It is thus obvious that the two Division Benches of this Court had independently come to the same conclusion on the question of law argued before them. It is now to be considered whether the correctness of this decision has been, in any way, impaired by the decisions of their Lordships of the Supreme Court in *State of Orissa v. Debaki and others* (supra) (2), and *The Swastik Oil Mills Ltd. v. H. B. Munshi, Deputy Commissioner of Sales Tax, Bombay* (4).

(4) Before proceeding to discuss the arguments of the learned counsel, I prefer to notice the relevant provisions of the Act as it applied to the cases in hand which relate to the years of assessment 1957-58, 1958-59 and 1959-60. The sales tax is levied under section 4 of the Act. The rate of tax and the exemptions to be allowed are provided in section 5 and tax-free goods are mentioned in section 6. Section 10 provides for the filing of returns by the dealers with a view to enable the Assessing Authority to determine the sales tax payable. Section 11 deals with the assessment of tax and provides the period of limitation for making the assessment in certain cases. After a dealer furnishes the returns in respect of the periods of assessment and the Assessing Authority is satisfied with the same, he can assess the amount of tax due from the dealer on the basis of such returns and there is no period of limitation prescribed therefor. If the Assessing Authority is not satisfied with the returns filed by the dealer, he shall call upon the dealer to attend in person or to produce or cause to be produced any evidence in respect of any returns. The Assessing Authority, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, shall assess the amount of tax due from the dealer. For such an assessment also there is no period of limitation provided, but, if a dealer does not comply with the terms of notice to produce the evidence, the Assessing Authority

(4) 21 S.T.C. 383.

M/s Hari Chand Rattan Chand & Co. v. The Deputy Excise & Taxation Commissioner (Additional), Punjab (Tuli, J.)

has the right to proceed to assess, to the best of his judgment, the amount of tax due from the dealer within three years of the expiry of the period to which it relates. If no returns are filed and the Assessing Authority proceeds to make the assessment on best judgment, he must do so within three years of the expiry of the period for which return has not been filed. Similarly if the Assessing Authority is satisfied from any information in his possession that any dealer who was liable to pay tax under the Act in respect of any period but had failed to apply for registration, the Assessing Authority can proceed to assess to the best of his judgment the amount of tax from such dealer, after giving a notice, within three years of the expiry of such period. Section 11-A of the Act provides the period of limitation of three years for re-assessing the turnover of business of a dealer which had been under-assessed or escaped assessment in any year and is as under :—

“11-A(1) If in consequence of definite information which has come into his possession, the Assessing Authority discovers that the turnover of the business of a dealer has been underassessed, or escaped assessment in any year, the Assessing Authority may, at any time, within three years following the close of the year for which the turnover is proposed to be reassessed, and after giving the dealer a reasonable opportunity, in the prescribed manner of being heard, proceed to reassess the tax payable on the turnover which has been underassessed or has escaped assessment.

(2) An Assessing Authority or any such authority as may be prescribed, may, at any time, within one year from the date of any order passed by him and subject to such conditions as may be prescribed, rectify and clerical or arithmetical mistake apparent from the record.”

(5) The period of three years provided in sub-sections (4), (5) and (6) of section 11 and section 11-A of the Act was extended to four years, with effect from January 10, 1963, and to 5 years, with effect from April 1, 1966. The provision for an appeal is made in section 20 of the Act and section 21(1) provides for the power of revision of the Commissioner in the following words:—

“20. (1) The Commissioner may, of his own motion or on application made to him, call for the record of any

proceedings which are pending before, or have been disposed of by, any assessing or appellate authority appointed under this Act, for the purposes of satisfying himself as to the legality or propriety of such proceedings or of any order made therein and may pass such orders in relation thereto as he may think fit :

Provided that the application shall be made within a period of 180 days of the date of taking of the proceedings or of passing of the order, as the case may be."

(6) The precise argument of the learned counsel for the petitioners is that in exercise of his revisional powers, the Commissioner cannot bring to tax the turnover which had escaped assessment or had been underassessed as that is the function exclusively assigned to the assessing authority by the Legislature under section 11-A of the Act and if he does so, he shall be trenching upon the powers which have been expressly reserved to the assessing authority. If he is held competent to do so, he should be held bound by the same fetter as to the period of limitation to which the assessing authority is subject under section 11-A of the Act. Since the effect of the order of the revising authority under section 21(1) of the Act, in case it goes against the dealer will be to increase his taxable turnover, it will amount to reassessment of the turnover which had either escaped assessment or had been underassessed by the assessing authority and the power of revision enabling the revising authority to do so must be held to be exercisable within three years following the close of the year to which it relates, as is provided in section 11-A of the Act. It will also amount to reopening of a final assessment which cannot be done except by reassessment in the manner provided in section 11-A of the Act. This argument did not find favour with the learned Judges of the Division Benches who decided the earlier two cases referred to above nor has it appealed to us. The assessment order made by the assessing authority does not become final merely because no appeal has been filed against it. It remains final only so long as it is not revised. Once it is revised it loses its finality and the order passed in revision takes its place which order may be termed as final so far as the Act is concerned, but even that order is liable to be set aside or modified on a reference to the High Court under section 22 of the Act or on a petition under Article 32 or 136 or 226 of the Constitution made to the appropriate Court.

M/s Hari Chand Rattan Chand & Co. v. The Deputy Excise & Taxation Commissioner (Additional), Punjab (Tuli, J.)

(7) In order to decide the point of law referred to us, in the context of the argument of the learned counsel, it is necessary to determine the respective scope of sections 11-A and 21(1) of the Act. Section 11-A empowers the assessing authority to reassess a dealer in respect of any turnover which had escaped assessment or which had been underassessed consequence of any definite information which comes into his possession after the original order of assessment was made. This power cannot be exercised either by the appellate authority or the revisional authority. The revisional authority is entitled to call for the record of any case decided by the assessing authority or any appellate authority in order to see whether the order passed is proper or legal. Similarly he can call for the record of any proceeding pending before any assessing authority or appellate authority in order to determine the legality or propriety of the proceedings. But, before he decides to exercise this power, he must come to the conclusion that the order or the proceedings suffer from the vice of impropriety or illegality and for this conclusion he has to confine himself to the record which is called by him and which was before the lower authority as the lower authority can be presumed to have applied his mind only to that record. He cannot take into consideration any fresh material in order to come to this conclusion. After having come to that conclusion, he will be entitled to scrutinise the proceedings and the order passed in order to determine the correct turnover which should have been assessed to tax on the basis of that record. He cannot, however, bring to tax, in the purported exercise of revisional powers, any turnover which had not been disclosed to the assessing authority by the dealer or which was not discovered by him during the course of assessment and which has come to the notice of the revising authority after the expiry of three years following the close of the year to which the turnover proposed to be taxed relates. That is the function of the assessing authority under section 11-A of the Act and cannot be exercised by the revising authority. But, if any enquiry is to be made or some evidence has to be examined in respect of the turnover which was the subject-matter of the proceedings before the assessing authority or the appellate authority, the revising authority will be at liberty to make such further enquiry or to take such further evidence as he considers fit to determine the legality or propriety of the order already passed. For example, and not meaning it to

be exhaustive, he can determine whether the deductions or exemptions were correctly allowed or the tax was levied at the rate prescribed. The bogus nature or the falsity of the deductions or exemptions allowed can also be gone into. To emphasize, such further enquiry or evidence must be germane to the turnover already on the record and not to the turnover which is sought to be brought in for the first time as a result of some information obtained from somewhere. That can be done by the revising authority only if on the date of hearing before him the period of limitation prescribed in section 11-A has not expired. This is so because the revising authority has the power of calling the record of the original proceedings also and deciding the same. He can call for the record of a proceeding pending before an assessing authority and pass such order in respect thereof as he thinks fit according to section 21(1) of the Act. In exercise of that power he can also rely upon the information in his possession and enhance the assessment after giving notice to the dealer provided the period of limitation prescribed in section 11-A of the Act has not expired. There is no period of limitation prescribed in the Act or the Rules framed under the Act within which alone the revising authority can exercise its power of *suo motu* revision under section 21(1) of the Act on the basis of the record called by him nor can any such period of limitation be implied on the basis of section 11-A of the Act. I am, thus, in respectful agreement with the decisions of the two Division Benches of this Court noted above.

(8) For coming to the above conclusion I have mainly drawn on the judgment of their Lordships of the Supreme Court in the State of Kerala v. K. M. Cheria Abdulla and company (5), wherein their Lordships defined the scope of revision under section 12(2) of the Madras General Sales Tax Act, 1939, which is in identical terms as section 21(1) of the Act. In that case, rule 14-A had been framed providing as under :—

“Where the tax as determined by the initial assessing authority appears to the appellate authority under section 11 or revising authority under section 12 to be less than the correct amount of the tax payable by the dealer, the appellate or revising authority shall, before passing orders, determine the correct amount of the tax payable

(5) 16 S.T.C. 875.

M/s Hari Chand Rattan Chand & Co. v. The Deputy Excise & Taxation Commissioner (Additional), Punjab (Tuli, J.)

by the dealer, after issuing a notice to the dealer and after making such enquiry as such appellate or revising authority considers necessary”.

(9) This rule had been declared *ultra vires* by the High Court of Kerala and the correctness of that decision was being examined by their Lordships of the Supreme Court. Their Lordships held the rule to be *intra vires* for the reason that the provision made in the rule to determine the correct amount of tax after issuing a notice to the dealer and after making such enquiry as the authority considers necessary was not contrary to any provision of the Act. Their Lordships observed that “it is usual in a taxing statute to confer such power on the appellate or revising authority” and that “investment of powers to make such enquiry as the appellate or the revising authority considers necessary can manifestly be made by clauses (k) and (1) of section 19, sub-section (2), and if such power is invested, the rule authorising the making of enquiry is not *ultra vires*”. In this judgment, their Lordships determined the scope of the revising authority in these terms :—

“Turning then to the jurisdiction which the revising authority may exercise under section 12(2), attention must first be directed to the phraseology used by the Legislature. The Deputy Commissioner is thereby invested with power to satisfy himself about the legality or propriety of any order passed or proceeding recorded by any officer subordinate to him, or the regularity of any proceeding of such officer, and to pass such orders with respect thereto as he thinks fit. For exercising this power, he may *suo motu* or on application call for and examine the record of any proceeding or order. There is no doubt that the revising authority may only call for the record of the order or the proceeding, and the record alone may be scrutinised for ascertaining the legality or propriety of an order or regularity of the proceeding. But there is nothing in the Act that for passing an order in exercise of his revisional jurisdiction, if the revising authority is satisfied that the subordinate officer has committed an illegality or impropriety in the order or irregularity in the proceeding, he cannot make

or direct any further enquiry. The words of sub-section (2) of section 12 that the Deputy Commissioner "may pass such order with respect thereto as he thinks fit" mean such order as may, in the circumstances of the case for rectifying the defect, be regarded by him as just. Power to pass such order as the revising authority thinks fit may in some cases include power to make or direct such further enquiry as the Deputy Commissioner may find necessary for rectifying the illegality or impropriety of the order, or irregularity in the proceeding. It is, therefore, not right badly to propounded that in passing an order in the exercise of his revisional jurisdiction, the Deputy Commissioner must in all cases be restricted to the record maintained by the officer subordinate to him, "and can never make enquiry outside that record".

(10) It will be noticed that the power to hold further enquiry was conferred by rule 14-A on the revising authority and it was held by their Lordships that—

"But the power conferred by rule 14-A by the use of the expression "making such enquiry as such appellate or revising authority considers necessary" must be read subject to the scheme of the Act. It would not invest the revising authority with power to launch upon enquiries at large so as either to trench upon the powers which are expressly reserved by the Act or by the Rules to other authorities or to ignore the limitations inherent in the exercise of those powers. For instance, the power to reassess escaped turnover is primarily vested in rule 17 in the assessing officer and is to be exercised subject to certain limitations, and the revising authority will not be competent to make an enquiry for reassessing a taxpayer. Similarly the power to make a best judgment assessment is vested by section 9(2)(b) in the assessing authority and has to be exercised in the manner provided. It would not be open to the revising authority to assume that power. The revisional power has to be exercised for ascertaining whether the order passed is illegal or improper or the proceeding recorded is irregular and it is in aid of that power that such orders may be passed as the authority may think fit. One of the inquiries in considering the

M/s Hari Chand Rattan Chand & Co. v. The Deputy Excise & Taxation
Commissioner (Additional), Punjab (Tuli, J.)

legality or propriety of the orders passed by the subordinate officer which the revising or the appellate authority may make is about the correctness of the tax levied and if, after perusing the record, the authority is *prima facie* satisfied about the illegality or impropriety of the order or about the irregularity of the proceeding, it may in passing its order direct an additional enquiry. Neither section 12 nor rule 14-A authorises the revising authority to enter generally upon enquiries which may properly be made by the assessing authorities and to reopen assessments."

(11) I now proceed to consider the judgment of their Lordships of the Supreme Court in *The State of Orissa v. Debki Debi and others (supra)* (2) which related to the Orissa Sales Tax Act 14 of 1947. Section 12(6) of that Act runs thus:—

"12. (6) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under this Act:

Provided that when the Collector has imposed a penalty in addition to the amount assessed under this section, no further proceedings, either revenue or criminal, shall be taken against the dealer :

Provided further that no order assessing the amount of tax due from a dealer in respect of any period shall be passed later than thirty-six months from the expiry of such period."

(12) Sub-section (7) of section 12 provided that if for any reason the turnover of a dealer has escaped assessment or has been under-assessed, the Collector may call for a return within thirty-six months of the end of the period in question and may proceed to assess the amount of tax in the manner laid down in sub-section (5)". It is thus evident that sub-section (7) of section 12 of the Orissa Act corresponds to section 11-A of the Act. Section 23(3) of the Orissa Act gives the power of revision to the Collector and the Revenue Commissioner in the following terms :—

"23(3) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Collector may, upon

application, or of his own motion, revise any order passed under this Act or the rules thereunder by a person appointed under section 3 to assist him, and, subject as aforesaid, the Revenue Commissioner may, in like manner, revise any order passed by the Collector."

(13) Their Lordships of the Supreme Court held that proviso to sub-section (6) of section 12 prescribed a period of limitation which was applicable to all orders of assessment, whether made by the assessing authority or the appellate authority or the revisional authority. For this reason it was held that the revisional powers could not be exercised after the period of thirty-six months prescribed in that proviso. It is admitted by the learned counsel for the parties before us that there is no provision in the Act prescribing the period of limitation for the exercise of revisional powers. The proviso to sub-section (1) of section 21 of the Act prescribed a period of limitation of 180 days for the exercise of revisional powers on an application but there is no period of limitation prescribed for the exercise of revisional powers *suo motu*. It is, therefore, evident that this judgment of their Lordships does not, in any way, affect the correctness of the Bench decisions of this Court notice above.

(14) The judgment of their Lordships of the Supreme Court in *The Swastik Oil Mills Ltd. v. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay* (supra) (4) also does not go counter to the decisions of this Court referred to above. In my opinion this judgment positively supports those decisions, as I shall presently show. In that case the Sales Tax Officer had rejected the claims of the dealer for exemption from tax in respect of the turnover representing the despatches or transfer of goods from its head office in Bombay to its various depots or branches in other States in India and the sales which were alleged to have taken place in the course of inter-State trade after 26th January, 1950. The assessments related to the periods 1st April, 1948, to 31st March, 1950, and 1st April, 1950, to 31st March, 1951. The order was made by the Sales Tax Officer on 2nd January, 1954. The dealer went up in appeal before the Assistant Collector of Sales Tax, who, by his appellate order dated 29th October, 1956, accepted the claim of the dealer in respect of despatches to its various depots or branches in other States of India and disallowed it in respect of the alleged inter-State sales. While the revisions filed by the dealer against the rejection of its claim in respect of inter-State claims

M/s Hari Chand Rattan Chand & Co. v. The Deputy Excise & Taxation
Commissioner (Additional), Punjab (Tuli, J.)

were still pending, the Deputy Commissioner of Sales Tax issued a notice on January 7, 1963, under section 31 of the Bombay Sales Tax Act, 1953, intimating that he proposed to revise *suo motu* the appellate order passed by the Assistant Collector, Sales Tax, in so far as he allowed deductions in respect of the entire goods despatched to its branches in other States outside Maharashtra, because, in so doing, he had overlooked the provisions contained in proviso (b) to sub-clause (ii) of rule 1 under sub-section (3) of section 6 of the Bombay Sales Tax Act of 1946 as amended by the Bombay Act 48 of 1949. The dealer filed a petition under Article 226 of the Constitution in the High Court of Bombay challenging that notice with the prayer that the notice be quashed and the respondent be restrained from taking any action against the dealer in pursuance thereof. The petition was dismissed by the High Court and the dealer filed an appeal in the Supreme Court on a certificate granted by the High Court. It was submitted before their Lordships that the notice could not be issued by the Deputy Commissioner of Sales Tax, Bombay, after the expiry of 5 years as was provided in section 57 of the 1959 Act which was in force at the time the notice was issued in 1963. Reliance was also placed on the judgment of their Lordships in *State of Orissa v. Debaki Debi and others* (supra) (2). Dealing with that case, their Lordships observed that it had no relevance at all, because, in the Orissa Sales Tax Act there was a proviso in general terms laying down that "no order assessing the amount of tax shall be passed after the lapse of 36 months from the expiry of the period", and it was held that "this provision was in substance not a real proviso to the section in which it was placed, but was, in fact, a period of limitation prescribed for all orders of assessment made under any other provision of the Act. In the Bombay Sales Tax Acts, 1946, and 1953, there is no such general provision prescribing the period of limitation for making an assessment and, even though the effect of the order of the Deputy Commissioner passed in revision may be to bring about an assessment to tax of a turnover which was set aside by the Assistant Collector in appeal, such an assessment does not come under any provision relating to limitation." Their Lordships also referred to *K. M. Cheria Abdulla & Company's case* (supra) (5) and observed :—

"The case before us relates to exercise of revisional powers and does not deal with the question of the first assessment to be

made when the return is initially filed by an assessee. In fact, when a revisional power is to be exercised, we think that the only limitations, to which that power is subject, are those indicated by this Court in *K. M. Cheria Abdulla & Co. case* (5). These limitations are that the revising authority should not trench upon the powers which are expressly reserved by the Act or by the Rules to other authorities and should not ignore the limitations inherent in the exercise of those powers. In the present case, the Deputy Commissioner, when seeking to exercise his revisional powers, is clearly not encroaching upon the powers reserved to other authorities. Under the Act of 1946 the first assessment is made by the Sales Tax Officer under section 11. If information comes into his possession that any turnover in respect of sales or supplies of any goods chargeable to tax has escaped assessment in any year or has been under-assessed or assessed at a lower rate or any deductions have been wrongly made therefrom, proceedings can be taken afresh under section 11-A. On the face of it, if a first assessment order is made under section 11 and any turnover escapes assessment, the appropriate provision, under which action is to be taken for assessing that turnover to tax, is section 11-A. There is, however, no provision under which the power now sought to be exercised by the Deputy Commissioner in the case before us could have been exercised by any other authority. In this case, as we have indicated earlier, the first assessment of tax was made by the Sales Tax Officer, and the turnover now in question was assessed to tax by him. Having once assessed that turnover to tax, he could not initiate a fresh proceeding in respect of it under section 11-A. The assessment by him was set aside in appeal by the Assistant Collector and it is this order of the Assistant Collector which is sought to be revised by the Deputy Commissioner. This is, therefore, not a case where the powers are being exercised for the purpose of assessing or reassessing an escaped turnover. The case is one where the revisional powers are sought to be exercised to correct what appears to be an incorrect order passed in appeal by the Assistant Collector, and, for such a purpose, proceedings could not possibly have been taken under section 11-A. In exercising his revisional powers, therefore, the Deputy

M/s Hari Chand Rattan Chand & Co. v. The Deputy Excise & Taxation
Commissioner (Additional), Punjab (Tuli, J.)

Commissioner is not encroaching upon the jurisdiction of any other authority specially entrusted with taking such proceedings."

(15) After referring to some other case, their Lordships gave the opinion that "the ultimate decision in that case was perfectly correct, but we are unable to affirm the view that the revisional power is governed by any period of limitation laid down in section 11-A for proceedings for reassessment of escaped turnover."

(16) The judgment of their Lordships of the Supreme Court in *The State of Madras v. Madurai Mills Co., Ltd.* (6) relied upon by the learned counsel for the petitioners, is clearly distinguishable and does not help the learned counsel for the petitioners. In section 12(4) of the Madras General Sales Tax Act, 1939, a period of four years from the date on which the order, sought to be revised, was communicated to the assessee was provided for a revision. On the basis of that provision it was held that the order passed by the Board of Revenue on August 25, 1958, revising the order of the Deputy Commercial Tax Officer, dated November 28, 1952, was invalid. Their Lordships expressly held that "it follows that the order of the Board of Revenue was made beyond the limit of four years prescribed by section 12(4) (b) of the Act and it is, therefore, invalid."

(17) In the light of the above discussion and the judgments of their Lordships of the Supreme Court I have no hesitation in holding that the two Bench decisions of this Court, referred to above, were correctly decided. Consequently my answer to the question of law referred to us for decision is in the negative, that is, the jurisdiction of the Commissioner under section 121(1) of the Act is not subject to the period of limitation prescribed in section 11-A of the Act. The cases will now be placed before a learned Single Judge for decision on merits in accordance with law. In the circumstances I make no order as to costs of this reference.

SHAMSHER BAHADUR, J.—I concur with the answer proposed to be given to the reference by my learned brother, Tuli, J. It seems

clear to me that the provisions of the Punjab General Sales Tax Act, 1948, as amended up-to-date (hereinafter called the Act) are capable of no other construction but the one placed on these by the two Division Benches of this Court in *Narain Singh-Mohinder Singh v. The State of Punjab and another* (3), (Meher Singh, J., and myself) and *National Rayon Corporation Ltd. v. The Additional Assistant Excise and Taration Commissioner, Punjab* (1) (Dulat and Pandit, JJ.). The seemingly contrary decision of the Supreme Court in *The State of Orissa v. Debaki Debi and others* (2), was given on its own facts relating to the Orissa Sales Tax Act of 1947.

(19) Section 11 of the Act deals with the various situations which may arise for the "Assessing Authority" which is defined to mean "any person authorised by State Government to make any assessment under this Act". If the registered dealer has filed a return in response to the statutory notice, to the satisfaction of the Assessing Authority, the amount of tax may be computed on its basis under sub-section (1). Should the Assessing Authority so desire, evidence may be called from the dealer by issuing a notice to this effect under sub-section (2). Now, if a dealer either fails to file a return altogether or does not comply with the requirement of producing further evidence in consequence of the notice under sub-section (2), the Assessing Authority may proceed to make a "best judgment assessment" under sub-sections (4) and (5), respectively and in both cases within three years (now five) of the expiry of the assessment period. The same fetter of limitation of three years (now five) is placed under sub-section (6) in respect of assessment as a result of "information" which has come into possession of the Assessing Authority about liability for payment of a dealer who has "failed to apply for registration". The constraint of limitation for each of the three contingencies envisaged under sub-sections (4), (5) and (6) of section 11 in respect of the assessment years in the reference before us, is prescribed by statute to be three years (now five years by Punjab Amendment Act No. 28 of 1965).

Precisely the same period of three years (now five) is provided as limitation for orders made again by the Assessing Authorities under section 11-A of the Act pertaining to assessments made "in consequence of definite information" leading to the discovery by the Assessing Authority that the dealer has been underassessed or has escaped assessment altogether.

M/s Hari Chand Rattan Chand & Co. v. The Deputy Excise & Taxation Commissioner (Additional), Punjab (Tuli, J.)

(21) Sections 11 and 11-A exhaust the possibilities of assessments made by the Assessing Authorities and the action to be taken under these provisions of law within the time of limitation expressly provided in the statutory provisions, to which reference has been made.

(22) The powers under section 21 of the Act of the Commissioner which are separate and distinguishable from those of the Assessing Authorities, are not cabined and confined by the impediment of limitation period. The powers of the revising authority under section 21 do not trench upon the powers which are expressly reserved by the Act under sections 11 and 11-A of the Act for the Assessing Authorities alone, and indeed the essential and the only limitation on the revising powers of the Commissioner is expressly laid down in sub-section (1) of section 21 of the Act, this being "the purpose of satisfying himself as to the legality or propriety of such proceedings" which are "pending before, or have been disposed of by" any assessing or appellate authority appointed under this Act. It is not that the powers which are to be exercised without regard to the period of limitation are concurrent with those specified in sections 11 and 11-A of the Act. It is only the record of pending or disposed of proceedings which can be enquired into at any time. The scope of such an enquiry under section 21 has been amplified by Mr. Justice Shah, who delivered the Supreme Court judgment in the *State of Kerala v. K. M. Cheria Abdulla and Company* (5). His Lordship was no doubt dealing with the Madras Act but the principle enunciated in the judgment is fully applicable to the facts of the cases relating to the Punjab Act. As observed at page 883 by the learned Judge :—

"..... There is no doubt that the revising authority may only call for the record of the order or the proceeding, and the record alone may be scrutinised for ascertaining the legality or propriety of an order or regularity of the proceeding. But there is nothing in the Act that for passing an order in exercise of his revisional jurisdiction, if the revising authority is satisfied that the subordinate officer has committed an illegality or impropriety in the order or irregularity in the proceeding he cannot make or direct any further enquiry..... It is, therefore, not right baldly to propound

that in passing an order in the exercise of his revisional jurisdiction, the Deputy Commissioner must in all cases be restricted to the record maintained by the officer subordinate to him, and can never make enquiry outside that record."

Section 21 of the Act, like the Madras Act, authorises the Commissioner either *suo motu* or on an application made to him, to call for the record of any proceedings, and in the proviso the time-limit for an application is 180 days of the date of taking the proceedings or the passing of an order. For action taken of his motion, the Commissioner is not circumscribed by any limitation whatsoever.

(23) I am, therefore, in complete agreement with the view so elaborately propounded by Tuli, J., that the validity and integrity of the Division Bench authorities of this Court in *Narain Singh-Mohinder Singh v. The State of Punjab* (3), and *National Rayon Corporation Ltd. v. The Additional Assistant Excise and Taxation Commissioner, Punjab* (1), is not affected in any manner by the decision of the Supreme Court in *The State of Orissa v. Debaki Debi, and others* (2). Reference should, therefore, be answered as proposed.

NARULA, J.—I also agree with the answer proposed to be given by my Lord Tuli, J., to the question referred to us.

K. S. K.