

to the petitioner even an opportunity of being heard. Quite surprisingly, this was not done in the present case”.

(8) Consequently, we allow this petition, quash the impugned decision of the then Acting Chief Justice as communicated to the petitioner,—*vide* memorandum dated 22nd January, 1990, Annexure P.1, and restore the original order of the Chief Justice dated 24th April, 1989. Resultantly, the pay of the petitioner as originally fixed in pursuance of the order dated 24th April, 1989, shall continue to be in force, with necessary pay fixation as a result of grant of increments etc., and he shall be restored the entire monetary benefits to which he would have been entitled had the impugned order dated 22nd January, 1990, not been passed. As a necessary consequence, the arrears of salary, allowances, increments, etc. accruing to the petitioner on the basis of his revised pay fixation, shall be disbursed to him forthwith, including the amount recovered, if any, from the salary of the petitioner, with 12 per cent per annum interest thereon, within a period of three months. As the petitioner has not engaged any counsel and has appeared in person, there shall be no order as to costs.

(9) Regarding the other claim made by the petitioner for the grant of dearness allowance on personal pay or special pay, etc. the petitioner is at liberty to represent to the Chief Justice through the Registrar of the Court who will have the same examined in accordance with the rules and obtain orders of the Chief Justice on the administrative side, expeditiously, preferably within three months of the filing of the representation, if any.

R.N.R.

Before Hon'ble N. K. Sodhi, & M. R. Agnihotri, JJ.

INDERJIT SINGH & COMPANY,—*Petitioner.*

versus

STATE OF PUNJAB & OTHERS,—*Respondents.*

Civil Writ Petition No. 4562 of 1991

February 26, 1992

Punjab General Sales Tax Act, 1948—Ss. 5(2) (a) (ii), 11, 21 and 22—Constitution of India, 1950—Art. 226 and 227—Alternative remedy—New plea—Finding of fact—Claim for deductions under S. 5(2) (a) (ii) disallowed—Sales made to Registered Dealers—Purchasing dealers denying on affidavit that such sales made—Sales

found to be bogus by Assessing authority even though S.T. 22 forms submitted—Dealer filing writ petition without approaching Tribunal for reference u/s 22—Alternative remedy—Petition is liable to be dismissed on availability of alternative remedy—Sales whether genuine or otherwise is pure finding of fact which cannot be gone into by writ Court—Plea that assessment was time barred not taken before authorities below and raised for the first time in High Court—New plea cannot be advanced after a lapse of ten years.

Held, that the plea relating to time-barred assessment was not raised before any of the authorities below and has been advanced for the first time in the present writ petition after a lapse of ten years.

(Para 3)

Held, that whether these sales made in favour of purchasing dealer was genuine or not is a pure finding of fact arrived at by the authorities below on a consideration of the entire evidence and circumstances of the case and the petitioner cannot be allowed to challenge the same in proceedings under Article 226 of the Constitution. Even otherwise, if it had any grievance against the order passed by the Tribunal it was open to the petitioner to resort to the remedy available under section 22 of the Punjab General Sales Tax Act, 1948 and if a question of law arose from the order of the Tribunal, the same would have been referred to this Court for its opinion. The petitioner not having resorted to this procedure cannot be allowed to challenge the impugned order on merits in these proceedings. The writ petition is liable to be dismissed.

(Para 4)

Writ Petition under Articles 226/227 of the Constitution of India, praying that, as under :—

- (a) *That the records of the case may kindly be called for;*
- (b) *That after a perusal of the record and hearing upon the counsel for the parties this Hon'ble Court may be pleased to grant the following reliefs :*
 - (i) *issue an appropriate writ or order quashing the orders Annexures P. 1, P. 3, P. 4 and P. 5 passed by the respondents for the year 1974-75 under the Punjab General Sales Tax Act, 1948 by maintaining the order of the Appellate Authority Respondent No. 3 dated 7th January, 1982 ;*
 - (ii) *during the pendency of the writ petition respondents be restrained from recovering the amount on the basis of orders P. 1, P. 3, P. 4, P. 5 till the final decision of writ petition ;*

- (iii) that any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be issued ;
- (iv) that any other relief to which the petitioner may be found entitled in the facts and circumstances of the case may kindly be granted ;
- (v) that the requirement of filing the certified copies of annexures may kindly be dispensed with ;
- (vi) that the requirement of serving advance notices of this petition on the respondents herein may kindly be dispensed with ;
- (vii) that the costs of this petition may kindly be awarded in favour of the Petitioner and against the respondents herein.

V. Ram Swaroop, Advocate. for the Petitioner.

S. K. Bhatia, D.A.G. Punjab, for the Respondent.

JUDGMENT

N. K. Sodhi, J.

(1) The petitioner is a registered partnership firm and also a registered dealer under the Punjab General Sales Tax Act, 1948 (hereinafter called 'the Act'). For the assessment year 1974-75, the petitioner-assessee filed its returns showing a gross turnover of Rs. 18,60,769.03. A sum of Rs. 14,53,968 was claimed as a deduction under section 5(2) (a) (ii) of the Act on account of sales to registered dealers and ST-XXII Forms in support of the claim were also submitted. On scrutiny of this claim for deduction, it was found that amongst others, sales were shown to have been made by the petitioner to M/s Muni Lal & Sons, Amritsar to the tune of Rs. 4,77,587, who were said to be a registered dealer. The assessing authority recorded the statement of Muni Lal, representative of this dealer on January 6, 1981 and he denied having made any purchases from the petitioner assessee. It was also found that M/s Muni Lal & Sons were a petty Karyana merchant and could not have purchased hardware and surgical goods from the petitioner as was alleged by him. The assessing authority while disbelieving the sales allegedly made by the petitioner to M/s Muni Lal & Sons, thus, disallowed the claim for deduction to the extent of Rs. 4,77,587 as per its order dated 14th July, 1981 whereas the rest of the claim was allowed.

(2) Feeling arrrieved against the order of the assessing authority, the petitioner filed an appeal before the Deputy Excise and Taxation

Commissioner, Patiala. The appellate authority accepted the claim of the petitioner for deduction on account of sales made to M/s Muni Lal & Sons, Amritsar under section 5(2) (a) (ii) of the Act and allowed the appeal,—*vide* its order dated 7th January, 1982. The Excise & Taxation Commissioner, Patiala of his own motion sent for the records of this for the purpose of satisfying himself as to the legality and propriety of the order dated 7th January, 1982 passed by the appellate authority. After hearing the petitioner and also the representative of the department, the appellate order was set aside and that of the assessing authority was restored as per order dated 24th October, 1986 with the following observations :—

“In view of these findings, it is held that the sales of Rs. 4,77,587 never took place between the Ludhiana dealer and M/s Muni Lal & Sons, Amritsar whose business was not that of Hardware and Surgical goods and who never had the capacity to make any purchases and who admitted in affidavit that he never made purchases. The appellate order dated 7th January, 1982 passed by the Deputy Excise & Taxation Commissioner (A), Patiala Division, Patiala, is, therefore, set aside and assessment order passed by the Assessing Authority, Ludhiana dated 14th July, 1981 is restored in so far as it pertains to disallowance of this very deduction. Amount of tax due on account of this disallowance be recovered from the respondent-dealer under the provisions of law.”

The matter was further taken in revision before the Tribunal under section 21(3) of the Act. What was urged before the Tribunal was that the Commissioner had no jurisdiction to exercise his *suo motu* powers in the case and that it was only the assessing authority who could reopen the assessment u/s 11-A of the Act and support for this contention was sought from a Full Bench judgment of this Court in *M/s Hari Chand Rattan Chand & Co. v. Deputy Excise & Taxation Commissioner* (1), on merits, it was contended that the sales made to M/s Muni Lal & Sons were genuine and the same ought to have been accepted by the assessing authority. Both the contentions advanced on behalf of the petitioner were rejected by the Tribunal as well, who,—*vide* its order dated 14th November, 1990, dismissed the revision petition and upheld the order passed by the Commissioner. Instead of moving the Tribunal, requiring it to refer to this Court

any question of law arising out of its order, the petitioner filed the present writ petition challenging the orders dated July 14, 1981, October 24, 1986 and November 14, 1990 passed by the assessing authority, the Commissioner and the Tribunal, respectively.

(3) The main contention raised before us on behalf of the petitioner assessee is that the order of assessment dated 14th July, 1981 was illegal and without jurisdiction inasmuch as the assessment was completed beyond five years after the expiry of the period of assessment. It was contended that the assessment year in question was 1974-75 and the assessment could only be made within five years from 1st April, 1975 and, therefore, the order of assessment dated 14th July, 1981 was totally without jurisdiction and that it could be challenged by way of the present writ petition. We are unable to accept his contention. It is clear from a perusal of the impugned orders that the plea relating to time-barred assessment was not raised before any of the authorities below and has been advanced for the first time in the present writ petition after a lapse of ten years.

(4) The learned counsel for the petitioner then sought to challenge the impugned orders on merits by contending that the sales made in favour of M/s Muni Lal & Sons had been wrongly disallowed and that they were genuine. It was also urged that the petitioner had not been afforded reasonable opportunity to cross-examine the representative of this firm who denied having purchased the goods from the petitioner. We regret our inability to accept these contentions as well. Whether the sales made in favour of M/s Muni Lal & Sons were genuine or not is a pure finding of fact arrived at by the authorities below on a consideration of the entire evidence and circumstances of the case and the petitioner cannot be allowed to challenge the same in proceedings under Article 226 of the Constitution. Even otherwise, if it had any grievance against the order passed by the Tribunal it was open to the petitioner to resort to the remedy available under section 22 of the Act and if a question of law arose from the order of the Tribunal, the same would have been referred to this Court for its opinion. The petitioner not having resorted to this procedure cannot be allowed to challenge the impugned orders on merits in these proceedings.

(5) For the reasons recorded above, we find no merit in this writ petition and the same stands dismissed with no order as to costs.