

(1994) 09 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No's. 16495 and 16496 of 1990

Steel Strips Ltd.

APPELLANT

Vs

Assistant Commissioner of
Income TaxRESPONDENT

Date of Decision: Sept. 23, 1994**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 12(4), 147, 2(14)(ii), 275

Citation: (1995) 81 TAXMAN 369**Hon'ble Judges:** N.K. Kapoor, J; Amrit Lal Bahri, J**Bench:** Division Bench**Advocate:** A.K. Mittal and G.S. Sandhawalia, for the Appellant; R.P. Sawhney and Ms. Aradhna Sawhney, for the Respondent**Final Decision:** Dismissed

Judgement

A.L. Bahri, J.

Vide this order two Writ Petitions Nos. 16495 and 16496 of 1990 are being disposed of as a common question of law arises therein. In both cases, the parties are the same. Civil Writ Petition No. 16496 of 1990 relates to the assessment year 1981-82 and the other writ petition relates to the assessment year 1982-83. Issuing of notices u/s 147 of the income tax Act, 1961 ("the Act") gave rise to the aforesaid writ petitions. The assessments (Annexure "P-1") were finalised on 23-3-1984 and 28-3-1985, respectively, and the notices aforesaid were issued on 19-11-1990 (Annexure "P-2"). The challenge to the notices aforesaid is on the ground of limitation. As per law prevalent, on 1-4-1981, notices could be issued within eight years of conclusion of the assessment year after obtaining necessary sanctions. However, the Act was amended with effect from 1-4-1989, and the period of eight years was extended to ten years. Thus, the short question for consideration in these writ petitions is about the applicability of the amendment made in the year 1989 to

the assessments made for the assessment years 1981-82 and 1982-83. According to the petitioner, assessments for the assessment years aforesaid were to be framed as per law prevalent on April 1, of the respective assessment years and the notices issued in the present cases having been issued without obtaining prior sanction are without jurisdiction. On notice of motion, written statements have been filed by the revenue, contesting the petitions, inter alia, raising a preliminary objection that since alternative remedy under the Act is available, the petitioner could not invoke the jurisdiction of this Court under article 226 of the Constitution. On the merits, it is asserted that the amendment made with effect from 1-4-1989, merely extended the period of limitation, which had not by then expired and by application of the amending Act, the notices issued were valid and no sanction is now required under the amending Act.

2. The learned counsel Shri R.P. Sawhney, senior advocate, appearing on behalf of the revenue, has argued that the present writ petitions should be dismissed and the petitioner should be relegated to the remedy available under the Act, i.e., he should file reply (return) in response to the notices and raise all questions of fact and law and the authorities under the Act would be competent to adjudicate such questions. Reliance has been placed, in support of this contention, upon the decision of the Supreme Court in [Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others](#), . That was a case under the Orissa Sales-tax Act, 1947. While making the assessment u/s 12(4), treating the gross turnover of inside sales as returned by the assessee as their taxable turnover, the assessee's claim for deduction of sales to registered dealers was disallowed. The assessee filed a writ petition in the High Court challenging the assessments on the ground that the Sales-tax Officer had acted in flagrant violation of the rules of natural justice, as proper opportunity was not afforded to the assessee. The High Court dismissed the petition on the ground that the assessee had a right of appeal and this was not a case of inherent lack of jurisdiction. The assessee approached the Supreme Court by a special leave petition. The Supreme Court dismissed the petition holding that the assessee had an equally efficacious alternative remedy by way of appeal and second appeal. It was further observed that the Act provided a complete machinery to challenge orders of assessment and the same could be challenged in the mode prescribed by the Act and not by a petition under article 226. The other decision relied upon is of this Court in [M.M. Mahajan Vs. Gift Tax Officer](#), , wherein a similar view was taken. The Assam and Nagaland High Court in [Seth Kirorimal Adwani and Others Vs. Income Tax Officer, "E" Ward and Others](#), also took the same view. Lastly, reference be made to the decision of this Court in [State Bank of Patiala Vs. Central Board of Direct Taxes and Others](#), In this case, after making reference to the case law on the subject, it was observed as under:

Normally, the parties should approach the authorities under the statute for settlement of disputes. The High Court in the exercise of jurisdiction under article 226 of the Constitution is not expected to act as an appellate authority or a

revisional authority on the orders passed by the authorities under the statute. When orders are challenged having been passed without jurisdiction that the resort can be had to the provisions of article 226 of the Constitution. This broad proposition is of course subject to the condition that if the facts on the basis of which the jurisdiction of the authority taking action under the statute is questioned are disputed, it would not be appropriate to interfere in the exercise of the powers under article 226 of the Constitution. The parties should be relegated to the remedy available under the statute to raise disputed questions of fact on the merits as well as on the question of jurisdiction." (p. 199)

3. The ratio of the decisions aforesaid cannot be applied to the cases in hand. No doubt, the question of limitation could be taken up by the petitioner in response to the notices issued, however, such a question is not dependent upon proof of any facts. In the present cases, there is no dispute regarding the facts and the only question involved is about the applicability of the amending Act; in other words, as to whether notices have been issued within the period of limitation prescribed or not. If it is held that the amending provision, by which limitation has been extended from eight years to ten years, would not apply, the notices issued would obviously be held to be without jurisdiction. It is in this view of the matter that the writ petitions have been entertained by this Court and it is considered appropriate to decide the question of law raised.

4. At the outset, it may be stated that the period of eight years from the conclusion of the assessment years 1981-82 and 1982-83 had not expired when the amending Act came into force with effect from 1-4-1989, which extended the period of eight years to ten years. This would show that the amending Act extended the period of limitation before the orders became final, i.e., the maximum period for reopening the matter had not expired. The learned counsel for the petitioner, Shri A.K. Mittal, referred to the decision of the Supreme Court in [Karimtharuvi Tea Estate Ltd. Vs. State of Kerala](#), wherein it was held (headnote):

...that the income tax Act, as it stands amended on the first day of April of any financial year must apply to the assessment of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force.

5. That was a case under the Kerala Surcharge on Taxes Act. By amendment, surcharge was imposed and since the amendment was made after first day of April of the financial year, it was held that the same would not apply for finalising of the assessment for the assessment year. To the same effect, reference has been made to the decision of this Court in [L. Rajeshwar Pershad Vs. Commissioner of Income Tax](#), wherein the decision of the Supreme Court in *Karimtharuvi Tea Estate Ltd.*'s case (supra) was relied upon. That was a case of amendment of section 2(14)(ii) of the Act, which came into force with effect from 1-4-1973, which was held applicable

to the capital gains of sale of jewellery/ornaments taxable for the assessment year 1973-74.

6. The aforesaid decisions are not helpful in deciding the question of law raised in the present cases. In both the cases referred to above, amendment was made in the charging section and obviously amendments of such provisions imposing liability were to be made applicable to the assessment years following first of April and not to the previous assessment years. The cases in hand are fully covered by the Full Bench decision of the Andhra Pradesh High Court in Addl. [The Additional Commissioner of Income Tax, Andhra Pradesh, Hyderabad Vs. Watan Mechanical and Turning Works, Hyderabad](#), Section 275 of the Act prior to its amendment in 1970 provided that penalty could be levied within two years from the date of completion of the proceedings in the course of which the proceedings for imposition of penalty were commenced. The amended section 275 provides for levy of penalty within two years from the end of the financial year in the course of which proceedings for levy of penalty were initiated. The notices proposing levy of penalty were issued on 25-2-1970, in respect of the assessment years 1965-66 to 1967-68 and orders imposing penalty were passed on 25-3-1972. The AAC confirmed the orders of the ITO. The Tribunal held that the Taxation Laws (Amendment) Act, 1970, had no application to the assessment years in question and the orders passed u/s 275 (as unamended) were barred by limitation. On a reference, the matter came up before the Full Bench and it was held as under (headnote):

The liability for tax or penalty would always remain on the assessee; but if the time prescribed under the Act expires, the liability cannot be imposed by the authorities, the reason being that the assessee should not be subjected to unending hardship. However, before the limitation prescribed expires, if the same is enlarged, the limitation being a procedural one, the extended period of limitation will apply to such proceedings.

7. Reliance was placed on the decision of the Supreme Court in [Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. D'costa Brothers](#), and the following passage therefrom was relied upon (See 107 ITR at p. 747):

On the expiry of the period the assessments, if any, may also become final and conclusive but only so long as the law is not altered retrospectively. Under the scheme of the income tax Act, a liability to pay tax is incurred when according to the Finance Act in force the amount of income, profits or gains is above the exempted limit. That liability to the State is independent of any consideration of time and, in the absence of any provision restricting action by a time-limit, it can be enforced at any time. What the law does is to prevent harassment of assessee to the end of time by prescribing a limit of time for its own officers to take action. This limit of time is binding upon the officers, but the liability under the charging section can only be said to be unenforceable after the expiry of the period under the law as it stands. In other words, though the liability to pay tax remains, it cannot be enforced

by the officers administering the tax laws. If the disability is removed or according to a new law, a new time-limit is created retrospectively, there is no reason why the liability should not be treated as still enforceable. The law does not deal with concluded claims or their revival but with the enforcement of a liability to the State which though existing remained to be enforced.

8. The Allahabad High Court, after making reference to S.C. Prashar's case (supra), observed as under (sic) :

...If, before the period of limitation expired, by a statute the period of limitation is extended, then according to the observations of the Supreme Court, it would be competent to the officer to pass the order of penalty.

On the facts of that case, the Full Bench decided the question in favour of the revenue. The Orissa High Court also considered the question of amendment of section 275 in [Commissioner of Income Tax Vs. Soubhagya Manjari Devi](#), Regarding the period during which a penalty could be imposed, such a provision was held to be procedural. So far as the quantum is concerned, there was no question of retrospective operation of the amending provisions. However, with regard to the procedural aspect, it was held that the law was clear that when there was any change in law, pending proceedings were to be governed by new law. On behalf of the petitioner, reliance has also been placed on the Division Bench judgment of this Court in [Commissioner of Wealth-tax Vs. Hira Lal Mehra](#), . Amendment of rule 1BB which subsequently came into force on 1-4-1979, as provided under rule 2 of the Amending Rules though procedural, was held not to apply retrospectively to cases pending with regard to the assessment cases prior to 1-4-1979. It may be observed that the ratio of this decision cannot be applied to the cases in hand as the aforesaid amendment remained in force from 1-4-1979 to 31-3-1989, and it was held that during that period the said rule remained in force. The present cases are fully covered by the ratio of the decision of the Supreme Court in S.C. Prashar's case (supra), and the Full Bench decision of the Andhra Pradesh High Court in Watan Mechanical & Turning Works" case (supra). That being the position, the amending Act having come into force before expiry of the period prescribed under the old Act, the notices issued could not be challenged as being time-barred and without jurisdiction. Holding as above, the writ petitions are dismissed with liberty to the petitioners to take up any other point available to them while complying with the notices issued u/s 147.