

**(1981) 01 BOM CK 0001****Bombay High Court****Case No:** Sales Tax Reference No. 108 of 1976

Commissioner of Sales Tax,  
Maharashtra State, Bombay

**APPELLANT**

Vs

Indian Tube Company Ltd.

**RESPONDENT****Date of Decision:** Jan. 12, 1981**Acts Referred:**

- Bombay Sales Tax Act, 1959 - Section 20, 35, 57, 61(1), 62

**Hon'ble Judges:** Sujata V. Manohar, J; D.P. Madon, J**Bench:** Division Bench**Judgement**

Madon, J.

The question which has been referred to us by the Maharashtra Sales Tax Tribunal u/s 61(1) of the Bombay Sales Tax Act, 1959, at the instance of the Commissioner of Sales Tax is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in coming to the conclusion, that the suo motu revision order passed by the Assistant Commissioner of Sales Tax on 23rd October, 1969, u/s 57 of the Bombay Sales Tax Act, 1959, was without jurisdiction ?"

2. The facts which are necessary to be set out for the purposes of this reference are very few. The assessees are registered as dealers under the said Act. In respect of the assessment year 1963-64 they were assessed by the Sales Tax Officer (F Ward), Bombay, on 30th December, 1967. Thereafter on perusing the assessment order and the record of the assessment proceedings, the Assistant Commissioner of Sales Tax (Adm.), B.C. Division, Range X, Bombay, noticed that sales aggregating to Rs. 66,866 were not included in the turnover by the Sales Tax Officer. Thereupon the Assistant Commissioner, in pursuance of the powers of the Commissioner delegated to him u/s 20 of the said Act, issued a notice u/s 57 calling upon the respondents to show cause why the order of the Sales Tax Officer should not be revised so as to

include in it the said turnover of Rs. 66,866. Pursuant to this notice the respondents appeared before the Assistant Commissioner. They did not contend that these sales were liable to be taxed (sic). In fact, it was throughout the admitted position that the turnover of these sales was taxable. What they, however, contended was that the Assistant Commissioner had no jurisdiction to proceed to revise the assessment order suo motu u/s 57 but these sales should be brought to tax as escaped turnover u/s 35 of the said Act. This contention was negatived by the Assistant Commissioner and the order of assessment revised as proposed in the said show cause notice. The respondents then filed an appeal before the Deputy Commissioner. Before the Deputy Commissioner the stand taken was that this was a case of a mistake apparent from the record and, therefore, the only remedy of the department was to proceed u/s 62 of the said Act to rectify the said mistake and that, therefore, the Assistant Commissioner had no jurisdiction to proceed by way of suo motu revision. This contention was negatived and the respondents' appeal dismissed. The respondents then went in second appeal to the Tribunal. The Tribunal held that this was a case of either reopening the assessment u/s 35 or of rectifying a mistake apparent from the record u/s 62, but it was not a case in which revisional powers u/s 57 could be invoked. The Tribunal allowed the respondents' appeal. It is against this judgment and order of the Tribunal that the present reference is made.

3. When and in what circumstances the three different jurisdictions, namely, under sections 35, 57 and 62, can be invoked have been the subject-matter of frequent debates in courts and it presents, at times, considerable difficulty to determine in a given case whether the proper remedy of the department is u/s 35 or 57 or 62. The present case, however, poses no such difficulty. The fact that the turnover of these sales was liable to be taxed and, therefore, to be included in the taxable turnover, was not in dispute. The Sales Tax Officer himself had noted the fact. However, in not including it in the taxable turnover the Sales Tax Officer acted with impropriety and irregularity in the assessment proceedings, if not also with illegality. In the case of Swastik Oil Mills Ltd. Vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay, the Supreme Court held :

"Whenever a power is conferred on an authority to revise an order, the authority is entitled to examine the correctness, legality and propriety of the order and to pass such suitable orders as the authority may think fit in the circumstances of the particular case before it."

4. All that the Assistant Commissioner had done in this case was to examine the correctness, legality and propriety of the order in question and this was, therefore, a case in which the jurisdiction u/s 57 was properly exercised.

5. In the result, we answer the question submitted to us in the negative, that is, in favour of the department and against the assessee.

6. The respondents will pay to the applicant the costs of this reference fixed at Rs. 300.

7. Reference answered in the negative.