

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 5788 OF 2000

The Commercial Taxes Officer, Jodhpur

Appellant (s)

Versus

Derby Textiles Ltd.

Respondent (s)

(with office report)

With

CA No. 6661/2000 (with office report)

SLP(C) No. 13166/2002 (with appl(s) for c/delay in filing SLP and with office report)

CA No. 8138/2003 (with office report)

Date: 01/12/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE C.K. THAKKER

For Appellant(s)

Mr. Sushil Kumar Jain, Adv.

Mr. A.P.Dhamija, Adv.

Mr. Ram Niwas, Adv.

Mr.H.D.Thanvi, Adv.

Mr. Sarad Singhanian, Adv.

Mr. Aruneshwar Gupta, Adv.

Mr. Naveen Kumar Singh, Adv.

For Respondent(s)

RR Ex parte

UPON hearing the counsel the Court made the following
O R D E R

CIVIL APPEAL NO. 5788 OF 2000

Appeal stands allowed in terms of the signed order. No costs.

CA No. 6661/2000, SLP(C) No. 13166/2002 and CA No. 8138/2003

To come up on Tuesday (6.12.2005).

(J.S. Rawat)
Court Master

(Kanwal Singh)
Court Master

[Signed order is placed on the file].

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5788 OF 2000

The Commercial Taxes Officer, Jodhpur

Appellant (s)

Versus

Derby Textiles Ltd.

Respondent (s)

O R D E R

This appeal is directed against the judgment and order dated 27th January, 2000 passed by the High Court of Rajasthan at Jodhpur in S.B. Sales Tax Revision No.1051 of 1999 whereby the High Court has quashed the assessment on the ground that the Assessing Officer had exercised its jurisdiction for initiating the re-assessment after the expiry of the limitation for exercising such power.

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The assessment for the period from 1.1.1988 to 31.12.1988 was finalised on 7th of October, 1991. On 15th March, 1995 notice was issued under Section 12 of the Rajasthan Sales Tax, 1954. By the said notice the Assessing Authority sought to re-open the assessment on the ground that certain sales had escaped assessment. Vide Rajasthan Sales Tax

Amendment Act, 1991 the period within which the Assessing Officer could exercise his jurisdiction to re-initiate the assessment proceedings in respect of any assessment year was restricted to five years from the last date of the relevant assessment year.

Against the order of re-assessment framed by the Assessing Authority, the respondent filed an appeal before the Deputy Commissioner (Appeals). The appeal was dismissed, against which the respondent preferred an appeal before the Rajasthan Tax Board, Ajmer. The Board allowed the second appeal and set aside the assessment order. Aggrieved against the order of the Board, the appellant approached the High Court in revision.

:3:

None appears for the respondent-assessee.

Heard the counsel for the appellant.

The High Court came to the conclusion that the period of limitation for initiating assessment proceeding in respect of the assessment year 1988-1989 (whereas it should have been the assessment year 1989-1990) expired on 31st March, 1994. The revision was dismissed against which the present appeal is before us.

Counsel for the appellant relying upon a decision of this Court

dated 20th April, 2001 in C.A. No.2943/2001 - Commercial Taxes

Officer vs. Derby Textiles Ltd. under the similar set of facts contends that

the High Court has erred in concluding that the notices issued to the assessee were beyond the period of limitation.

After perusing the aforesaid judgment, we concur with the submissions made by the counsel for the appellant wherein this Court

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observes thus:

"It is evident that the High Court has erred in coming to the conclusion that the assessment year in question was 1988-89. The documents on record clearly show that the accounting year of the respondent was the calendar year, namely, 1st January, 1988 to 31st December, 1988. The 'previous year' has been defined in Section 2(m) which reads as under:

''previous year' means the twelve months ending on the 31st day of March, next preceding the assessment year, or, if the accounts of a dealer have been made upto a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then, at the option of the dealer, the year ending on the date upto which his accounts have so been made up;"

The assessment year in respect of the calendar year 1988, which was the accounting year of the respondent, can only be the year which commences on the 1st day of April after the end of the accounting year. This being so, the assessment year in respect of the calendar year 1988 could only be 1989-90 and, therefore, the notice

for re-assessment issued on 15th March, 1995 was within
the period of limitation."

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The present case is squarely covered by the aforesaid decision.

Respectfully following the same, the impugned order of the High Court is set
aside and the appeal accepted. Appeal allowed. No costs.

.J.

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(ASHOK BHAN)

New Delhi;
..J.
December 01, 2005.

.....
(C.K. THAKKER)