Ramji Dass
*v.*
Roshan Lal

Falshaw, C.J.

the first proviso in section 5 would become meaningless. The words 'and it shall not be chargeable until such addition, improvement or alteration has been completed' can only possibly refer to improvements or alterations carried out after the determination of fair rent under section 4. I thus consider there is no ground for interfering with the order of the learned Appellate Authority and dismiss the revision petition, but leave the parties to bear their own costs.

*B.R.T.*

FULL BENCH

*Before S. B. Capoor, Daya Krishan Mahajan and Prem Chand Pandit, JJ.*

M/S. RAMESHWAR LAL SARUP CHAND,—*Petitioner.*

*versus*

U. S. NAURATH AND ANOTHER,—*Respondents.*

**Civil Writ No. 798 of 1962**

1963

May, 29th.

*East Punjab General Sales Tax Act (XLVI of 1948)—S. 11—Assessment to sales-tax under various sub-sections—Whether to be completed within three years—"Proceed to assess"—Meaning of—When are the proceedings to assess said to be taken—Constitution of India (1950)—Article 226—Alternative remedy—When not a bar to granting of writs—Interpretation of statutes—Taxing statutes—Interpretation of, when to be in favour of assessee and when in favour of Revenue.*

*Held,* by majority (S. B. Capoor and D. K. Mahajan, JJ., Pandit, J., Contra)—

(1) That under sub-sections (4), (5) and (6) of section 11 of the Act the assessment must be completed within three years from the expiry of the period within which the return had to be filed; it is not enough that initiation of proceedings by issue of notice has taken place within the prescribed period of three years.

*Held*, by D. K. Mahajan, J.—

(1) That there is no time limit within which the Assessing Authority can complete the assessment under section 11(1) of the Act.

(2) That the assessment under section 11(3) of the Act must be completed within three years from the last date on which the return could be filed under the Act.

(3) That it is evident from the language of section 11(4) of the Act that the proceedings for assessment can only be started when the registered dealer fails to comply with the terms of notice issued under sub-section (2) of section 11. The notice under sub-section (2) merely requires the dealer to attend on a date and place specified in the notice in person or to produce or cause to be produced any evidence on which the dealer may rely in support of such return. Similarly, in section 11(5) where the dealer does not furnish a return the Assessing Authority before proceeding to assess has to grant to him an opportunity of being heard. In both the cases, the notice under section 11(2) and an opportunity of being heard has to be granted before proceedings for assessment can commence. In other words, they are the conditions precedent and surely it cannot be said that a condition precedent becomes a step in what is to follow, namely, the assessment. It is only when the condition precedent is satisfied that the proceedings to assess can start. Therefore, the fulfilment of a condition precedent cannot be a step in the process of assessment.

(4) Where action is taken under an *ultra vires* statute, or where the statute is *intra vires* but the action taken is without jurisdiction or where the action taken is procedurally *ultra vires*, the existence of an alternative remedy is no bar to the exercise of powers under Article 226 of the Constitution. The bar of limitation is a bar

affecting jurisdiction, for no authority has jurisdiction to proceed with the matter if the bar of limitation intervenes.

(5) A taxing statute must be strictly construed and in case of doubt it must be construed against the taxing authorities and the doubt resolved in favour of the tax-payer. The consideration that the assessee is evading tax will be of no consequence because it is a fundamental rule that all taxes can be lawfully evaded. It is only where the evasion is unlawful that this will not be applied. Where the evasion is because of the bar of limitation, it cannot be said to be unlawful. The argument that the assessee adopted dilatory tactics and, therefore, the assessment could not be made within limitation, is meaningless. The law gives ample power to the Assessing Authorities and if they are either negligent or inactive or careless in the exercise of their powers, they cannot take shelter behind the dilatory tactics adopted by the assessee. It is they who are responsible for these tactics becoming effective.

*Held*, by P. C. Pandit, J.—

(1) That the use of word "assess" in sub-sections (1) and (3) of section 11 and the words "proceed to assess" in sub-sections (4), (5) and (6) of section 11 shows that under sub-sections (1) and (3) the entire assessment has to be completed, whereas in sub-sections (4), (5) and (6) the Assessing Authority is only bound to "proceed to assess", that is, to initiate the assessment proceedings within the prescribed period of three years and it is then left to him to complete the same afterwards as the circumstances of each case may require. It is not necessary that he should actually pass the final order of assessment within this period. It cannot be said that words "proceed to assess" are equivalent to the word "assess". A statute is never supposed to use words without a meaning. If possible, meaning should be given to every word. It is a well known rule of interpretation

of statutes that 'such a sense is to be made upon the whole as that no clause, sentence or words, shall prove superfluous, void or insignificant, if by any other construction they may all be made useful and pertinent.

(2) That the Assessing Authority can be said to have proceeded to assess to the best of his judgment under sub-section (4) of section 11 of the Act, when a notice is issued to the registered dealer under sub-section (2) and he does not comply with the terms thereof. It is then that the Assessing Authority would naturally make up his mind to proceed to assess to the best of his judgment and would make a note to this effect on the file. Whether a registered dealer has or has not failed to comply with the terms of a notice issued under sub-section (2) and the case is covered by sub-section (3) or sub-section (4) of section 11 of the Act, will depend on the facts of each case.

(3) Sub-section (5) of section 11 of the Act deals with the case of a registered dealer, who has not furnished the returns in respect of any period by the prescribed date. In his case, the Assessing Authority shall, within three years after the expiry of such period, after giving him a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax, if any due from him. For this purpose, the Assessing Authority would send a notice to him to appear on a particular date, on which the authority proposes to proceed to assess to the best of his judgment. If the notice is served, then on that day, whether the dealer appears or not, the Assessing Authority would, in law, be deemed to have proceeded to assess to the best of his judgment.

(4) Sub-section (6) of section 11 of the Act deals with a case, in which the information has been received by the Assessing Authority that a dealer was liable to pay the tax under the Act, but had failed to apply for registration. In that case the Assessing Authority would proceed to assess to

the best of his judgment within three years after the expiry of the period, mentioned in this sub-section, after giving him a reasonable opportunity of being heard. In a case, where it is found that he had wilfully failed to apply for registration, then in addition to the amount so assessed, a penalty, as provided in this sub-section, could also be imposed.

*Case referred by the Hon'ble Mr. Justice D. K. Mahajan on 28th February, 1963, to a Full Bench for decision owing to the importance of the question of law involved in the case. The case was finally decided by a Full Bench consisting of the Hon'ble Mr. Justice Capoor, the Hon'ble Mr. Justice Mahajan and the Hon'ble Mr. Justice P. C. Pandit, on 29th May, 1963.*

*Petition under Article 226 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction be issued quashing the order passed by respondent No. 1, dated the 15th March, 1962.*

H. L. SIBAL. G. C. MITAL. & SATISH SIBAL, ADVOCATES, for the Petitioner.

CHETAN DASS, DEPUTY ADVOCATE-GENERAL, BHAGIRATH DASS, ADVOCATE WITH B. K. JHINGAN, ADVOCATE, as Intervener, for the Respondents.

ORDER

Mahajan, J. MAHAJAN, J.—This order will dispose of Civil Writs Nos. 798 and 1042 of 1962.

The principal question that requires determination in these petitions is one of jurisdiction. The question is whether under section 11 of the Punjab General Sales Tax Act, 1948 (No. 46 of 1948)—hereinafter referred to as the Punjab Act—the Assessment of sales-tax excepting the assessment under section 11(1) of the Punjab Act has to be completed

within a period of three years from the last date on which the return had to be filed. This limitation of three years is provided for in sub-sections (4), (5) and (6) of section 11 of the Punjab Act. There is no such limitation provided for in sub-sections (1) and (3). This question is common to both the petitions and, in fact, this is the real question that requires determination inasmuch as the contention of the assessees is that the period of three years within which the assessment of sales-tax can be made having elapsed, the authorities under the Act had no jurisdiction to assess the petitioners to sales-tax.

The other questions are really subsidiary to the main question and would be indicated and discussed at their appropriate places.

These questions came up, in the first instance, before me sitting in Single Bench. In view of the two Division Bench decisions of this Court in *Messrs Nathu Ram Nohar Chand* v. *The State of Punjab* (1), and *Messrs Avtar Singh Ranjit Singh* v. *The Assessing Authority (Excise and Taxation Officer), Ludhiana* (2), which took divergent views with regard to the applicability of the Supreme Court decision in *Madan Lal Arora* v. *Excise and Taxation Officer, Amritsar* (3), on similar facts, I thought it desirable to get this matter settled by a larger Bench. In pursuance of my referring order, the matter has been placed before us. My learned brother Pandit, J., was a party to one of the conflicting Bench decisions, namely, *Avtar Singh's case*.

Before dealing with the respective contentions of the parties, it will be proper to set out the respective stands taken up by the petitioners and the State in

(1) 1962 Ct. L.J. Punj. 325.
(2) 1963 P.L.R. 422.
(3) A.I.R. 1961 S.C. 1565.

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

these petitions. Both these petitions are directed against the assessment orders passed by the Assessing Authorities on the 15th March. 1962, and the 18th June, 1962, respectively. The prayer in these petitions is that these orders should be quashed as they are wholly without jurisdiction. The relevant facts giving rise to these petitions are as follows:

*Civil Writ No.* 798 *of* 1962.

The petitioners are Messrs Rameshwar Lal-Sarup Chand. The firm is a registered dealer within the meaning of the Central Sales Tax Act, 1956, (74 of 1956)—hereinafter referred to as the Central Act. The firm is engaged in the business of Shawls and also works as commission agents of cloth. The present controversy relates to the assessment year 1957-58 and the liability to tax arises both under the Central Act and the Punjab Act. The firm did not file any quarterly returns and consequently did not deposit sales-tax as required by law. However, the Assessing Authority sent a notice in form ST-XIV—a form prescribed under the Punjab General Sales Tax Rules, 1949—hereinafter referred to as the Rules—made under the Punjab Act. This notice was sent on the 21st July, 1958, calling upon the petitioner-firm to appear before the Assessing Authority and to produce accounts and documents specified in the notice itself. It was also stated in the notice that in case the petitioner did not comply with it, the Assessing Authority would proceed to assess the petitioner to the best of his judgment. The proceedings thus initiated kept pending for quite a while before the petitioner's authorised agent filed an abstract statement of accounts, Annexures 'B' and 'B-1' to the petition. The total turnover on which the Central Sales-tax was payable at the rate of rupee one per cent was shown as Rs 7,23,728.93 nP. The amount of tax due under the Punjab Act as set out in this abstract was

almost negligible. It amounted to Rs 2.28 nP., and it had been paid. The authorised agent of the petitioner, however, did not comply with the notice issued to the petitioner though he appeared from time to time, inasmuch as accounts and documents required to be produced were not produced with the result that the petitioner was assessed to sales-tax under the Punjab Act on the 15th March, 1962. His claim that he was liable to tax under the Central Act at the rate of rupee one per cent was rejected as declarations in form 'C' had not been furnished. The tax so assessed has not been deposited by the petitioner. It is this order of assessment which is being challenged as without jurisdiction on the ground that it had been passed after the period of limitation prescribed in section 11 of the Punjab Act.

It is common ground that the petitioner was required to furnish quarterly returns. The first quarter was to start from the 1st April and the last quarter was to end on the 31st March. The returns have to be filed within 30 days of the end of each quarter and, therefore, the last return had to be filed for the relevant year by the 30th April, 1958.

The relevant part of the assessment order runs as under:—

> "The case was finally adjourned to 10th November, 1961, and the counsel was directed to file declaration 'C' form, if any, on that date. Shri Davesar, the counsel, applied for adjournment on this date which was not accepted. The case was kept pending for consideration. For purpose of assessment, I accept the sale figure as disclosed by Shri S. C. Davesar legally appointed agent of the dealer as per consolidated returns filed by him. I am left with no

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

option but to assess them at the flat rate of Rs. 3.12 per cent *in absence of declaration 'C' form.*"

The stand taken up by the State in its return, so far as relevant for the purposes of this decision, is as follows:—

"*** the petitioner filed through his authorised counsel a consolidated return dated the 19th January, 1959, for the year 1957-58, during the course of proceedings of assessment. * * * * the said abstract of the statement of accounts was no other document but a return of turnover of the dealer. This return contained all the information required by the Department for purposes of assessment. *** the petitioner had been given about three dozen opportunities to show his accounts by the Assessing Authority, Amritsar, but he did not comply with the notice deliberately. *** the assessment order of the Assessing Authority is not barred by time as the proceedings in the case had been started as early as 26th June, 1958. Further, it is not a case of best judgment assessment under section 11(4) of the Punjab General Sales Tax Act, 1948, as the Assessing Authority has accepted the returned figures as disclosed by the dealer, and ** in the absence of declarations in form 'C', the Assessing Authority had no alternative but to assess the petitioner at the rate of Rs. 3.12 nP. per cent. This action of the Assessing Authority does not amount to non-acceptance of the returned turnover by the petitioner."

It is also pleaded that this petition should be dismissed as the petitioner had not exhausted his remedies by way of appeal, etc., under the Act.

*Civil Writ No.* 1042 *of* 1962.

The petitioner in this case is Messrs Tara Chand Lajpat Rai, Saban Bazar, Ludhiana. They carry on the business of vegetable ghee on wholesale basis and also the business of sugar and some other commodities. This firm is registered under the Punjab Act. The assessment in dispute pertains to the assessment year 1958-59. The petitioner is required to submit monthly returns. These returns were submitted by the petitioner. The gross turnover shown was Rs. 15,19,154-8-3. This gross turnover consisted of certain sales of tax-free goods as well as of sales made to registered dealers. The proceedings were started on the 21st June, 1961, when the statutory notice in form ST-XIV was issued and was served on the petitioner on the 30th June, 1961. Various hearings took place and ultimately the Assessing Authority rejected the accounts of the petitioner and decided to base the assessment on best judgment basis. The assessment order was ultimately passed on the 18th June, 1962, and this order has been challenged on the ground that it is without jurisdiction as having been passed more than three years of the prescribed period under section 11 of the Act.

The relevant part of the order is quoted below:—

> "The assessment proceedings in this case were instituted on 21st June, 1961, and the statutory notice in form ST-XIV was duly served on the assessee on the 30th June, 1961. **** A doubt arose in the mind of the Assessing Authority and accordingly the dealer was directed to produce some cogent *evidence to prove the genuineness

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

of such sales as pointed out to the assessee. He was also directed to furnish copies of the trading account and profit and loss account."

After reciting that various opportunities were given to the dealer for the purpose of satisfying the Assessing Authority as to the genuineness of the sales, the order proceeds thus:—

"The merits of the case were discussed in detail and as no evidence was produced by the dealer in respect of sales of suspected nature, there was no alternative left with me but to proceed to assess the dealer on best judgment basis. The account books produced on that date were examined threadbare and whatever evidence the dealer had otherwise adduced was placed on the file. Taking into consideration all the facts, the judgment was reserved to be delivered at a later date after considering all the merits of the case and making necessary enquiries. *** In this case necessary enquiries were made which reveal that either the alleged purchasers did not exist or they did not make any purchases from this firm as they had no business dealings at all with the assessee. The declaration of the alleged purchasers are, therefore, forged ones and cannot be considered. The goods involved in these cases have been misappropriated with the obvious motive of evading the legitimate sales-tax."

The stand taken up by the State in its return, so far as it is relevant for the purposes of this decision, is as follows:—

"***in spite of opportunities given to the petitioner (in pursuance of the notice issued in

form ST-XIV on the 21st June, 1961) he failed to give satisfactory evidence in support of his claim for the satisfaction of the Assessing Authority. The assessment of the petitioner was ultimately framed by the Assessing Authority under section 11(3) of the Punjab General Sales Tax Act, 1948.

As the petitioner could not prove to the satisfaction of the Assessing Authority that sales to the extent of Rs. 7,39,495-11-3 were actually made to the alleged registered dealers, the Assessing Authority was right in inferring on good grounds that the goods were sold underground to non-registered dealers or consumers in order to evade payment of tax and in rejecting the claim of the petitioner on this account. ** ** **.

The Assessing Authority issued notice in form ST-XIV on the 21st June, 1961, and its service was accepted by the petitioner for appearance before the Assessing Authority on the 30th June, 1961. The case of the petitioner was adjourned from time to time and it was last heard on the 19th March, 1962. The judgment was, however, reserved for decision on merits. The order was pronounced on the 18th June, 1962, framing assessment under section 11(3) of the Act which does not provide any limitation of period particularly when the petitioner had appeared before the Assessing Authority in compliance with the notice issued under sub-section (2) of section 11 of the Act. Limitation of period stands provided under section 11(4) *ibid* which is not relevant in the present case. Even if this subsection is considered applicable to the case

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

of petitioner, the proceedings for assessment for the year 1958-59 (from the 1st July, 1958 to the 31st March, 1959) were started by the Assessing Authority within the prescribed period of three years as provided thereunder."

The plea that the present petition is not competent because alternative remedy by way of appeal, etc., is available has also been raised in the return.

Before the respective contentions of the learned counsel for the parties are set out, it will be proper to state on what they are agreed. The assessments in both the cases have been made more than three years after the period prescribed for filing returns. If the assessment has to be completed within three years, then the assessment orders having been made beyond the period of three years would be wholly without jurisdiction. If the period of limitation is merely prescribed to start some proceedings in connection with the assessment and the notices referred to earlier are such proceedings, the petitions must fail as the notices are within the period of three years.

The contentions raised on behalf of the petitioners by Mr. Sibal are:—

(i) that excepting when the assessment is made under section 11(1) of the Punjab Act, the assessment must be completed within a period of three years;

(ii) that though no period of limitation is prescribed in section 11(3), the limitation of three years provided in section 11(4), (5) and (6) must be imported into section 11 (3) of the Punjab Act and assessment completed within three years; and

(iii) that even if it be assumed for the sake of argument that section 11(4), (5) and (6) provide the period of three years only for taking some step towards an assessment, no such step was taken in the assessments under dispute within that period.

Mr. Bhagirath Dass intervened on the ground that there were a number of petitions filed by him wherein the same questions arise and, therefore, he be afforded an opportunity to address us on the matter. We allowed him the opportunity. He started by saying that he in a large measure adopted the arguments of Mr. Sibal, learned counsel for the petitioners, but he went on to justify his concession made in *Messrs Jiwan Singh and Sons* v. *The Excise and Taxation Officer (Assessing Authority), Jullundur District* (4). At page 564, in paragraph 5 of the report, the learned Judge proceeds—

> "It is, however, conceded by Mr. Bhagirath Dass and, in our opinion, rightly, that if the proceedings to assess to the best of the assessing authority's judgment began within three years, as contemplated by sub-section (4) of section 11, then it is not necessary that the final assessment should also take place within the said period of three years."

The learned counsel's intervention was merely to justify his concession in *Jiwan Singh's case* and in support thereof relied upon the decisions *In the matter of Kedar nath Kesriwal* (5), *Commissioner of Income-tax, Punjab and N.W.F.P.* v. *Nawal Kishore Kharaiti Lal* (6), *Seth Gurmakh Singh* v. *Commissioner of Income-tax,*

(4) 1960 P.L.R. 562.
(5) A.I.R. 1931 Cal. 209.
(6) 1938 I.T.R. 61.

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

*Punjab*, (7), *Harakchand Makanji and Co.* v. *Commissioner of Income-tax, Bombay City* (8), *Dhakeswari Cotton Mills, Ltd., v. Commissioner of Income-tax, West Bengal* (9), and *Jaipuria Brothers Limited* v. *The Sales Tax Officer* (10).

Mr. Chetan Das, who appeared for the respondents on the other hand, contended that the present cases are not cases where the best judgment assessment had been resorted to. The assessments had proceeded on the basis of the returns filed by the respective assessees, and their claims to be assessed at a lower rate had not been accepted. Therefore, the cases of those assessees fell under section 11(3) of the Punjab Act. There is no period of limitation provided for the completion of the assessment under this provision and there could be no question of the assessments being without jurisdiction as having been effected beyond limitation. He further contended that the use of the word 'assess' in section 11(1) and 11(3) had a different meaning than the phrase 'proceed to assess' occurring in sub-sections (4), (5) and (6) of section 11. He did not dispute that where the word 'assess' occurs in section 11 without being preceded by the words 'proceed to' it means actual assessment, but where the word 'assess' is preceded by the words 'proceed to', it merely means to take some step towards assessment and not the actual assessment. Reliance is sought to be placed on various amendments, which have been made from time to time, in section 11 of the Punjab Act.

Before these various contentions are examined, it will be proper to examine the scheme of the Punjab Act and to set out the relevant provisions of the same and the Rules made thereunder so far as they are necessary for the present purpose.

(7) 1944 I.T.R. 393.
(8) 1948 I.T.R. 119.
(9) A.I.R. 1955 S.C. 65.
(10) 7 S.T.C. 64.

The Act, as its preamble denotes, was enacted to provide for the levy of a general tax on the sale or purchase of goods in Punjab. Section 5 is the charging section. Section 7 provides for registration of dealers. Section 10 provides for payment of tax and returns and is in these terms:—

"10. (1) Tax payable under this Act shall be paid in the manner hereinafter provided at such intervals as may be prescribed.

(2) The Commissioner may, in such circumstances and subject to such conditions as may be prescribed, accept from any dealer, in lieu of the amount of the general tax payable during any period a lump sum by way of composition determined in the prescribed manner.

(3) Such dealers as may be required so to do by the assessing authority by notice served in the prescribed manner and every registered dealer shall furnish such returns by such dates and to such authority as may be prescribed:

Provided that, if any dealer establishes to the satisfaction of the Assessing authority that his average taxable turnover does not exceed ten per centum of his average gross turnover, the returns to be furnished by such dealer under this sub-section shall be annual returns.

(4) Before any registered dealer furnishes the returns required by sub-section (2), he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India the full amount of tax due from him under this Act according to such

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

returns and shall furnish along with the returns receipt from such Treasury or Bank showing the payment of such amount.

(5) If any dealer discovers any omission or other error in any return furnished by him, he may at any time before the date prescribed for the furnishing of the next return by him furnish a revised return and if the revised return shows a greater amount of tax to be due than was shown in the original return, it shall be accompanied by a receipt showing payment in the manner provided in sub-section (3) of the extra amount.

(6) If a dealer fails without sufficient cause to comply with the requirements of the provisions of sub-section (3) or sub-section (4), the Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, after giving such dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum not exceeding one and a half times of the amount of tax which may be assessed on him under section 11 in addition to the amount of tax assessed, and where no tax is payable a sum not exceeding one hundred rupees.'

Section 11 is the section on the construction of whic' the principal dispute in these petitions has centre.. Originally section 11(1), which is the counterpart of section 11, stood in these terms:—

"11. (1) If no returns are furnished by a registered dealer in respect of any period by the

prescribed date, or if the assessing authority is not satisfied that the returns furnished are correct and complete, the assessing authority shall, within twelve months after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, *proceed* in such manner as may be prescribed *to assess* to the best of his judgment the amount of tax due from the dealer."

This section was amended by section 7 of the East Punjab General Sales Tax (Amendment) Act, 1952 (No. 6 of 1952) and the phrase 'proceed to assess' was substituted by the word 'assess'. Otherwise, in most respects the amended section 11 is almost *pari materia* with the present section 11. In the year 1955, this section was again amended by section 3 of the East Punjab General Sales Tax (Amendment) Act (4 of 1955) and that is how section 11 stands at present. The only departure made from the 1952 amendment is that in sub-sections (1) and (3), the word 'assess' has been retained while in sub-sections (4), (5) and (6) it has been substituted by the phrase 'proceed to assess'. Section 11 as amended by Act No. 4 of 1955 has undergone no change so far as the first six sub-sections are concerned. The relevant part of section 11 is in these terms:—

"11. (1) If the Assessing Authority is satisfied without requiring the presence of registered dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns.

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

(2) If the Assessing Authority is not satisfied without requiring the presence of registered dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at the place specified therein either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.

(3) On the day specified in the notice or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points assess the amounts of tax due from the dealer.

(4) If a registered dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (2), the Assessing Authority shall within three years after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax due from the dealer.

(5) If a registered dealer does not furnish returns in respect of any period by the prescribed date, the Assessing Authority shall within three years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax, if any, due from the dealer.

(6) If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the Assessing Authority shall, within three years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in cases where such dealer has wilfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.

(7) * * * * * * *.

(8) * * * * * * *.

(9) * * * * * * *."

Section 11-A of the Punjab Act is on the same lines as section 34 of the Indian Income-tax Act, 1922, and is in these terms:—

"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 under-assessed, 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 re-assessed, and after giving the dealer a

M/s. Rameshwar Lal-Sarup Chand
v.
U. S. Naurath and another

Mahajan, J.

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) * * * * * * * *."

Section 27 is the rule-making section. The rules which are relevant for our purposes are rules 17 to 20 and 24, and are in these terms:—

"17. During the first three years after the commencement of the Act, every registered dealer, whose taxable turnover, in the opinion of the appropriate Assessing Authority, is not likely to exceed 10 per cent of his gross turnover, shall furnish a return in form ST VIII annually within thirty days from the expiry of each year.

18. After the expiry of three years from the commencement of the Act, every registered dealer whose taxable turnover does not exceed 10 per cent of this gross turnover calculated over the latest three years may, after intimation in writing to the appropriate Assessing Authority furnish returns in form ST VIII or ST VIII-A or ST XXIII, as the case may be, annually within 30 days from the expiry of each year.

19. When the taxable turnover of any registered dealer referred to in rule 18 exceeds in any year 10 per cent of the average gross turnover calculated in the manner provided in the said rule, the appropriate Assessing Authority may fix fresh return periods

for such dealer, but ordinarily the authority shall not reduce the return period unless he is satisfied that the excess over 10 per cent is likely to continue.

20. Every registered, dealer, other than those referred to in rules 17, 18, and 19 shall furnish returns in form S.T. VIII or S.T. VIII-A or S.T. XXIII, as the case may be, quarterly within thirty days from the expiry of each quarter.

"24. A registered dealer, for whom monthly return period has been fixed by the appropriate Assessing Authority, shall furnish a return in form S.T. VIII or S.T. VIII-A, or S.T. XXIII as the case may be, for each month by such date within the following month as may be specified in his certificate of registration."

Form S.T. XIV is reproduced below:—

"*Form S. T. XIV.*

Notice under sections 11 and 14 of the Punjab General Sales Tax Act, 1948. (See Rules 31 and 33 of the Punjab General Sales Tax Rules, 1949).

Office of the Assessing Authority.

————————District.

To

————————,

————————.

Whereas—

(a) You, a dealer registered under Certificate No. ————, of ————, District, have

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

not furnished return for the year/quarter/month ending the ———— day of ————, 19 .

(b) I am not satisfied that the return filed by you for the month/quarter/year ending the ———— day of ————, is correct and complete and it appears to me to be necessary to make an assessment under sub-section (3) of section 11 of the Punjab General Sales Tax Act, 1948, in respect of the above-mentioned period.

I am satisfied on information which has come into my possession that you have been liable to pay tax under Punjab General Sales Tax Act, 1948, in respect of the period commencing on ———— and ending with ————, but that you have wilfully failed to apply for registration under section 7 of the said Act and it appears to me to be necessary to make an assessment under sub-section (6) of section 11 of the said Act in respect of the above-mentioned period and all subsequent periods.

You are hereby directed to attend in person or by an agent at (place) ———— on (date) ———— at (time) ———— and there to produce or cause there to be produced, at the said time and place the accounts and documents specified below for the purpose of such assessment together with any objection, which you may wish to prefer and any evidence you may wish to adduce in support thereof and to show cause on that date and at that time why in addition to the tax to be assessed

on you a penalty not exceeding one and a half times the amount should not be imposed upon you under section 11(6) of the said Act.

In the event of your failure to comply with this notice, I shall proceed to assess under section 11 of the Punjab General Sales Tax Act, 1948, to the best of my judgment without further reference to you.

Signature————————
Assessing Authority,
————————District.

(Seal of the Assessing Authority).

Dated.....

(Failure without sufficient cause to submit a return as required by sub-section (2) and (3) of section 10 or submission of a false return renders a dealer liable to prosecution under section 23 of the Act).

(Particulars of accounts and documents required)."

The scheme of sections 10 and 11 of the Punjab Act seems to be this. A registered dealer is obliged to file the return and that return has to be accompanied by a Treasury or Bank receipt showing that the amount of tax due on the basis of the return has been deposited in the Government Treasury or the State Bank of India. Sub-section (1) of section 11 provides that the Assessing Authority may accept this return. It need not ask the dealer to give any evidence in support thereof and once the authority decides to accept the return, all that it has to do is to assess the tax due from the dealer on the basis of

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

such return. In other words, the function of the Assessing Authority is merely formal and only a formal order of assessment has to be passed. Sub-section (2) provides for a contingency where the Assessing Authority is not satisfied with the return. In that event, the authority is required to serve a notice on the dealer in the prescribed manner, and that manner is the form ST-XIV, calling upon him to attend in person or to produce or to cause to be produced any evidence on which the dealer relies in support of the return. Sub-section (3) provides for the hearing in consequence of the notice under sub-section (2) and after the requirements of sub-section (3) are complied with, the Assessing Authority assesses the tax due from the dealer. Sub-section (4) provides for a contingency where a dealer to whom notice under sub-section (2) has been issued fails to comply with the terms of that notice. In that case, the Assessing Authority has to proceed to assess to the best of his judgment the amount of tax due from the dealer within three years from the period within which the return could be filed, that is, the last date prescribed for the filling of the return. Sub-section (5) provides for the eventuality where the dealer does not furnish a return in respect of any period by the prescribed date. We are not concerned with sub-section (6) in these cases, though the phrase 'proceed to assess' does occur in the same.

So far as the question as to what is the period within which the Assessing Authority has to proceed to assess is concerned, the matter is settled beyond doubt by the decision of the Supreme Court in *Madan Lal Arora's case*. At page 1566 of the report, in paragraph 4, their Lordships of the Supreme Court posed the question: How to compute the three years? and that is how they answered the same:—

> "The sub-section says 'within three years after the expiry of such period'. So the three

years have to be counted from the expiry of the period mentioned. What then is that period? The words are 'such period'. The period referred therefore is the period mentioned earlier in the sub-section, and that is the period in respect of which returns had been furnished by the dealer. This is also made clear by sub-section (1) of section 11. That deals with a case where the returns are accepted. Both sub-sections (1) and (4) deal with returns for the same period. Now section 10(3) provides that 'every registered dealer shall furnish such returns by such dates and to such authority as may be prescribed'. 'Prescribed' means prescribed by rules framed under the Act. Under rule 20 of these rules, a registered dealer like the petitioner, had to furnish returns quarterly. The rules define 'return period' as 'the period for which returns are prescribed to be furnished by a dealer'. It would, therefore, appear that when sub-section (4) of section 11 talks of 'returns in respect of a period' that refers in the case of the petitioner to the quarters in respect of which he submitted the returns. We then come to this that the three years within which the authority could proceed to make the best judgment assessment had to be counted from the end of each quarter in respect of which returns had been filed."

The question that has been debated before us is that the phrase 'proceed to assess' as opposed to the word 'assess' indicates that some step towards assessment has to be taken within three years and it is not necessary that the assessment should be completed

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

within the said period. If it were the intention of the Legislature that the assessment had to be completed within three years they would have used the word 'assess' instead of the phrase 'proceed to assess'. Stress is laid on the argument that the word 'proceed' is not used as a surplusage and it is the rule of interpretation that whenever words are used in a statute they are used for a purpose and have to be given a meaning. It is pointed out that when section 11 as amended by 1952 Act stood, the word 'assess' figured in sub-sections (4) and (5) as against the phrase 'proceed to assess'. After section 11 was amended in 1955, the word 'assess' was substituted by the phrase 'proceed to assess' and, therefore, it must be assumed that the departure was deliberate and for a purpose, as observed by Dua J., in *Avtar Singh's case*. In my humble opinion, the matter stands concluded by the decision of the Supreme Court in *Madan Lal Arora's case*. While dealing with section 11(4) of the Punjab Act, in paragraph 3, their Lordships of the Supreme Court observed as under:—

> "Sub-section (4) of section 11 deals with the case of a dealer who has furnished returns in respect of a period and has thereafter been asked to produce evidence to support the returns but has failed to do so. The sub-section provides that in such a case the assessing authority may proceed to make an assessment which to the best of his judgment should be made irrespective of the returns. The reason for this provision is that the correctness of the returns having been doubted by the assessing authority, the dealer has not availed himself of the opportunity afforded to him to remove these doubts. The sub-section, however, provides that the power can be exercised within the three years mentioned in it.

Quite plainly the power cannot be exercised after these three years have gone by."

and their conclusions are to be found in paragraph 5 of the report which is in these terms:—

"Now the last of the quarters in respect of which the petitioner filed his returns ended on March 31, 1956. So the assessing authority could not proceed to make a best judgment assessment in respect of this quarter after March 31, 1959. In the case of the earlier quarters, of course, the three years had expired even prior to this date. It is not in dispute that the assessing officer had not proceeded to make any assessment on the petitioner at the date of any of the notices. In the present case, therefore, the notices given on August 18, 1959, that best judgment assessments would be made in respect of the quarters constituting the financial years 1955 and 1956, the last of which expired on March 31, 1956, were futile. No such assessments could be made in respect of any of these quarters after March 31, 1959."

In the case before the Supreme Court, two notices were within three years and the third notice was beyond three years and their Lordships hold that the third notice being beyond three years, the Assessing Authority had no jurisdiction to make the assessment. If the phrase 'proceed to assess' bears the meaning which the learned counsel for the State contends for, namely, that only a step towards assessment has to be taken and the assessment can be made at any time after the period of three years, their Lordships would, on the basis of the two notices within the period of limitation, have come to a different conclusion and that is not what has been done. As a matter of fact,

M/s. Rameshwar Lal-Sarup Chand
v.
U. S. Naurath and another

Mahajan, J.

the following lines in paragraph 5 of their judgment—

> "It is not in dispute that the assessing officer had not proceeded to make any assessment on the petitioner at the date of any of the notices. * * * * * No such assessments could be made in respect of any of these quarters after 31st March, 1959."

clearly indicate that the assessment had to be completed within three years from the period within which the return had to be filed, otherwise the two notices which were issued within three years would have been held to have saved the bar of limitation. This view also finds support from the Full Bench decision of the Bombay High Court in *Messrs Bissesar House* v. *State of Bombay* (11). In that case the provisions of sections 11(5) and 11-A of the C.P. and Berar Sales Tax Act (21 of 1947)—hereinafter referred to as the Berar Act—fell for consideration. This authority supports the contention that the assessment must be completed within three years and the only exception to this rule is section 11(1). I am in respectful agreement with the decision of the learned Chief Justice who delivered the judgment of the Full Bench. The learned Chief Justice, in paragraphs 6 and 7 of the judgment, specifically observed that the assessment has to be completed within three years. As a matter of fact while holding that no period of limitation was provided in section 11(1) and none could be read into it, the learned Chief Justice went on to observe that it would be advisable to complete the assessment within three years and expressed the hope that the Assessing Authorities will do so. This interpretation was put after considering sections

(11) A.I.R. 1959 Bom. 130.

11-A and 11(5) of the Berar Act. Sections 11(5) and 11-A of the Berar Act are in these terms:—

"11. (5) If upon information which has come into his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless wilfully failed to apply for registration, the Commissioner shall, at any time within three calendar years from the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and all subsequent periods; and the Commissioner may direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed a sum not exceeding one and a half times that amount."

"11-A. (1) If in consequence of any information which has come into his possession, the Commissioner is satisfied that any turnover of a dealer during any period has been underassessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom, the Commissioner may, at any time within three calendar years from the expiry of such period, after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he considers necessary, proceed in such manner as may be prescribed to re-assess or assess, as the case may be, the tax payable on any

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

such turnover; and the Commissioner may direct that the dealer shall pay, by way of penalty in addition to the amount of tax so assessed, a sum not exceeding that amount."

It will be apparent from both these provisions that under section 11(5) of the Berar Act, the period of three years is prescribed and the phrase used is 'proceed to assess' as is the case in sub-sections (4), (5) and (6) of section 11 of the Punjab Act. It may be mentioned that in section 11(4) of the Berar Act the word 'assess' as opposed to the phrase 'proceed to assess' is used and so also in section 11(3). Sub-sections (2) and (3) of section 11 of the Berar Act are almost *pari materia* with sub-sections (2) and (3) of section 11 of the Punjab Act. While construing these provisions it was held by the Full Bench of the Bombay High Court that the assessment must be completed within three years of the last date of the filing of the return and no distinction was drawn from the use of the word 'assess' in sub-sections (3) and (4) of section 11 and the use of the phrase 'proceed to assess' in sub-section (5) of section 11, and section 11-A of the Berar Act on the ground that 'proceed to assess' did connote something different from the word 'assess'. The rule laid down was that the assessment must be completed within three years and the proceedings for assessment cannot dangle over the head of the assessee for a period beyond three years. That is how I understand the decision. If there were any substance in the contention that 'proceed to assess' and 'assess' have a different meaning, this matter would have been put in the forefront in that case. I am also not prepared to accept that this aspect of the matter was not present to the mind of the learned Chief Justice. No reason has been advanced beyond the mere difference in the expression as to why

'assess' and 'proceed to assess' should have a different connotation in section 11. Assessment, as will be apparent from the decision of the Privy Council in *Commissioner of Income-tax, Bombay Presidency & Aden* v. *Messrs. Khemchand-Ramdas* (12), is—

> "used as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the tax-payer,"

and it is always in the context, where this term is used, that one has to determine what it actually signifies. As I have already said, Mr. Chetan Das conceded that assessment under sub-sections (1) and (3) of section 11 of the Punjab Act connotes a completed assessment. I see no reason why the use of the phrase 'proceed to assess' would connote something else. The same steps have to be taken by the Assessing Authority under sub-section (3), or to put it more artistically, the same mental process has to be undergone in the case of proceedings under sub-section (3) of section 11 which the Assessing Authority has to undergo in the case of proceedings under sub-sections (4) or (5) or (6) of section 11, and, therefore, there being no additional factor coming into play in sub-section (4), (5) and (6) of section 11, how can, from the mere use of the words 'proceed to' which are prefixed to 'assess', it be said that the expression 'proceed to assess' would have a totally different meaning from the word 'assess' as used in sub-sections (1) and (3) of section 11. The view I have taken was also taken by Mehar Singh and P. D. Sharma, JJ., in *Nathu Ram's case.*

This brings me to the consideration of the decision of Dua and Pandit, JJ., in *Avtar Singh's case.*

(12) A.I.R. 1938 P.C. 175.

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

The learned Judges besides merely setting out the respective contentions of the counsel for the parties and indirectly pointing out that the decision of the Supreme Court in *Madan Lal Arora's case* could not be held to have ruled that the assessment had to be completed within three years under sub-sections (4), (5), and (6) of section 11, as the same merely provide that some step has to be taken to proceed with the assessment within the period of three years, proceeded to dismiss the petitions on the ground that there was an equally adequate and effective remedy available under the Act, and, therefore, the High Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution. It was observed by the learned Judges that the amendment of section 11 of the Punjab Act in 1955 had made all the difference and for that purpose, objects and reasons leading to the amendment were noticed. I have referred to the said objects and reasons and am constrained to observe that the same do not disclose why the phrase 'proceed to assess' was substituted for the word 'assess' in sub-sections (4), (5) and (6) of section 11. If the object of the amendment was that the period of limitation was prescribed merely for the purpose of initiating a step towards assessment, the object could have been achieved in a much better manner by using a more appropriate expression than the one used. It is a settled rule of law that objects and reasons cannot be referred to for the purpose of construing a statute. See in this connection the decisions of the Supreme Court in *Aswini Kumar Ghose* v. *Arabinda Bose* (13), and *M. K. Ranganathan* v. *Government of Madras* (14). It is for this reason and for the reason that the said objects and reasons do not furnish any clue in solving the problem facing us, that no reliance on the same has

(13) A.I.R. 1952 S.C. 369.
(14) A.I.R. 1955 S.C. 604.

been placed. In my humble opinion, with due deference and utmost respect to the learned Judges, a reference to the said objects and reasons was not apposite.

It is conceded by Mr. Chetan Das Dewan, who appears for the State, that if we come to the conclusion that the assessment has to be completed within three years from the last date on which the return has to be filed, the argument of alternative remedy will have no meaning. This concession is justified in view of the decisions of the Supreme Court in *Smt. Ujjam Bai* v. *State of Uttar Pradesh* (15), and *the State Trading Corporation of India Limited* v. *The State of Mysore* (16). *Ujjam Bai's case* is a full Court judgment of the Supreme Court and it has been laid down that "where action is taken under an *ultra vires* statute, or where the statute is *intra vires* but the action taken is without jurisdiction or where the action taken is procedurally *ultra vires* the existence of an alternative remedy is no bar to the exercise of powers under Article 32," or to add under Article 226 of the Constitution. To the same effect is the decision in the *State Trading Corporation of India Limited's case*. It cannot be disputed that the bar of limitation is a bar affecting jurisdiction, for no authority has jurisdiction to proceed with the matter if bar of limitation intervenes. If any authority is needed for this proposition, reference may be made to the decision of the Privy Council in *Joy Chand Lal Babu* v. *Kamalaksha Chaudhury* (17). To the same effect is the decision of the Supreme Court in *Keshardeo Chamria* v. *Radha Kissen Chamria* (18), wherein the observations of the Privy Council in *Joy Chand Lal Babu's case* were adopted by their Lordships of the Supreme Court.

(15) A.I.R. 1962 S.C. 1621.
(16) 1963 S.T.C. 188.
(17) A.I.R. 1949 P.C. 239.
(18) A.I.R. 1953 S.C. 23.

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

Before the learned Judges in *Avtar Singh's case* it was also stressed that where the assessee is trying to evade tax the rule that a taxing statute must be interpreted in favour of the subject and against the State cannot be applied. In this connection, reliance was placed on a decision of the Supreme Court in *C. A. Abraham* v. *Income-tax Officer, Kottayam* (19). This authority on facts does not support the contention and the observations in that case must be confined to the facts of the same. The general rule is to be found in the decision of the Supreme Court in the *Central India Spinning and Weaving and Manufacturing Company, Limited* v. *The Municipal Committee, Wardha* (20). At page 347 of the report, it was observed that "a taxing statute must be strictly construed and in case of doubt it must be construed against the taxing authorities and the doubt resolved in favour of the tax-payer." The consideration that the assessee is evading tax will be of no consequence because it is a fundamental rule that all taxes can be lawfully evaded. It is only where the evasion is unlawful that the rule laid down in *C. A. Abraham's case* will come into play. Where the evasion is because of the bar of limitation, it cannot be said to be unlawful. The argument that the assessee adopted dilatory tactics and, therefore, the assessment could not be made within limitation, is meaningless. The law gives ample power to the Assessing Authorities and if they are either negligent or inactive or careless in the exercise of their powers they cannot take shelter behind the dilatory tactics adopted by the assessee. It is they who are responsible for these tactics becoming effctive. Therefore, in my view the decision in *Avtar Singh's case* does not militate against the view that I have taken of the provisions of sub-sections (4), (5) and (6) of section 11 of the Punjab Act. In my view the assessment must be

(19) A.I.R. 1961 S.C. 609.
(20) A.I.R. 1958 S.C. 341.

completed within a period of limitation prescribed therein. The Supreme Court decision in *Madan Lal Arora's case*, the Bombay decision in *Bissesar House's case* and the decision of this Court in *Nathu Ram's case* fully support my conclusions.

This brings me to the consideration of the question whether the period of limitation in sub-sections (4), (5) and (6) of section 11 of the Punjab Act has to be imported into sub-section (3) of the same section. It would be pedantic for me to give my reasons for the view that the period of limitation should be imported into section 11(3) particularly when this very matter has been fully and ably discussed in *Bissesar House's case*, where interpreting a similar provision in the Berar Act it was held that all assessments under section 11, excepting the one under section 11(1), should be completed within three years. The learned Chief Justice has given very cogent and weighty reasons in support of his decision and I am in respectful agreement with the same. The decision of the learned Chief Justice also finds support from the Supreme Court decision in *Commissioner of Income-tax* v. *Narsee Nagsee Co.* (21). Therefore, I am of the view that the assessment under section 11(3) of the Act must be completed within three years from the last date on which the return could be filed under the Punjab Act.

In view of what has been stated above the contention of Mr. Bhagirath Das that he made a right concession in *Jiwan Singh's case* that the assessment need not be completed within three years if some step towards it has been taken within that period is not justified. Consequently the expression of opinion by the Bench in that case that the concession was correct must also be held to be wrong. The cases on which Mr. Bhagirath Dass relied and which have been detailed in the earlier part of this judgment, have no

(21) (1960) 40 I.T.R. 307.

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

bearing on the real question which we have to decide. They were more or less concerned with the interpretation of section 34 of the Indian Income-tax Act and the language of section 34, though apparently similar, has, in fact, no real similarity with the language employed in section 11(4), (5), and (6) of the Punjab Act. While dealing with a similar provision in *Jaipuria Brothers Limited* v. *The Sales Tax Officer* (10), Chaturvedi J., at page 68 of the report made the following observations:—

> "A reading of the section clearly shows that the Assessing Authority has been given a right at any time within three years from the expiry of the year of assessment to make an assessment on turnover of a dealer that has escaped assessment. The period of three years provided in the section is the period for making the assessment, and what it means is that the assessment itself should be made within the period mentioned above. The period of limitation provided here is unlike the period of limitation provided in section 34 of the Income-tax Act or the different Articles in the Limitation Act. Under section 34 of the Income-tax Act, the period provided is for giving a notice and, if a notice has been issued within the period provided in the section, there is then no limitation "for passing the order of assessment. If a notice is issued within the time, the assessment can be made at any time after that. Similarly, in the different Articles of the Limitation Act the period provided is the period for bringing a suit. In section 21 of the Sales Tax Act, the Legislature has not adopted this method of providing for a limitation and what it has done

is that it has provided a time limit for making the assessment. The assessment can be made only within a period of three years from the date of the expiry of the last date of the year or years of assessment, and a reading of the section shows that the Sales Tax Officer has no jurisdiction to make any assessment after the expiry of three years under the provisions of that section."

This clearly brings out the distinction between the two provisions. Under section 34, the limitation is provided for the issue of the notice and not for the final assessment, whereas under section 11(4), (5) and (6) the limitation is provided for the final assessment and the issuance of a notice or an opportunity to show cause are merely conditions precedent for assessment under these provisions.

At this stage, it will be proper to discuss the alternative argument of Mr. Sibal, who contends that even if it be assumed for the sake of argument that the period of limitation under sub-sections (4) (5) and (6) of section 11 is provided for taking a step towards assessment, there is no indication on the record whatever that any step within the period of limitation was taken by the Department. It is common ground that the issuance of a notice calling upon the dealer to produce accounts or to be present for hearing or to satisfy the Assessing Authority as to the correctness of the return are no steps towards assessment. This concession is made in view of the Supreme Court decision in *Madan Lal Arora's case*. Therefore, we have to see what actually the Department did before arriving at the final assessment within three years which can be said to be a step in the proceedings for assessment. It will be evident from the language of section 11(4) of the Act that the proceedings for assessment can only be started when the registered dealer fails to

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

comply with the terms of notice issued under sub-section (2) of section 11. The notice under sub-section (2) merely requires the dealer to attend on a date and place specified in the notice in person or to produce or cause to be produced any evidence on which the dealer may rely in support of such return. Similarly, in section 11(5) where the dealer does not furnish a return the Assessing Authority before proceeding to assess has to grant him an opportunity of being heard. In both the cases, the notice under section 11(2) and an opportunity of being heard has to be granted before proceedings for assessment can commence. In other words, they are the conditions precedent and surely it cannot be said that a condition precedent becomes a step in what is to follow, namely, the assessment. It is only when the condition precedent is satisfied that the proceedings to assess can start. Therefore, the fulfilment of a condition precedent cannot be a step in the process of assessment. Therefore, we have to see whether what the Department did in these cases was merely done to satisfy the condition precedent or something more. I have already set out, in detail, what has happened in these cases and I have not been able to discover any step which the Department took towards the process of assessment. I put a question to Mr. Chetan Das if he could indicate any step towards assessment within three years which has been taken by the Department when it proceeded to assess the petitioners. He was unable to point out any. Whatever steps he pointed out are all steps towards the satisfaction of the condition precedent. In this view of the matter also, it must be held that there being no steps taken within three years of the assessments the assessments which are being made after that period are wholly without jurisdiction.

Mr. Chetan Dass contended that none of the cases before us is a case of best judgment assessment. His

contention is that so far as Civil Writ No. 798 of 1962 is concerned, the assessment is sought to be made on the return filed by the assessee and the mere fact that one rate is being applied instead of the other would be no ground to hold that it is a best judgment assessment. According to the the learned counsel the assessment is being made according to the procedure laid down in sub-sections (2) and (3) of section 11. I am, however, unable to agree with this contention. No return as required by sub-section (1) was filed within the prescribed time. There is no question of an extension of time for filing the return under rule 72 of the Rules framed under this Act. No application for extension of time was made and there is no order granting the extension. Exen if it is accepted for the sake of argument that the time for making the extension was enlarged after notice under section 11(2) of the Punjab Act, the assessment can only be made under sub-section (3) of section 11. As I have already held, the period of limitation provided in sub-sections (4), (5) and (6) of section 11 is equally applicable to sub-section (3) of section 11; and the order of assessment being beyond three years must be quashed on the ground that it is without jurisdiction for the same reasons as have been recorded while dealing with the period of limitation for an assessment made beyond three years under sub-sections (4), (5) and (6) of section 11. If, as I have already said, the petitions and the written statements, which have already been set out in detail so far as they are relevant are read together, no manner of doubt is left that the assessment in these cases was the best judgment assessment. In one case the assessment, in the nature of things, would be under sub-section (4) and in the other under sub-section (5) of section 11, and, therefore, the argument that the assessment is being made under section 11(3) is pointless, and even if it is to be accepted that it was made under section 11(3), it will make no difference.

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Mahajan, J.

For the reasons given above, I am clearly of the view that both these petitions should be allowed and the impugned assessment orders quashed on the ground that they were passed beyond the period of limitation prescribed in section 11 of the Punjab Act. I order accordingly.

In view of the difficult nature of the question involved, it will be proper to leave the parties to bear their own costs.

Capoor, J.

CAPOOR, J.—I have had the advantage of reading the judgment proposed to be delivered by my learned brother D. K. Mahajan J. and I am in respectful agreement with his interpretation of the judgment of their Lordships of the Supreme Court in *Madan Lal Arora* v. *Excise and Taxation Officer, Amritsar* (3), in relation to sub-sections (4), (5) and (6) of section 11 of the Punjab General Sales Tax Act, 1948 (Act No. 46 of 1948). I also concur in his view that the assessments inpugned in these two writ petitions are "best judgement assessments" and not, as urged on behalf of the State, assessments made according to the procedure laid down in sub-sections (2) and (3) of section 11. On that conclusion, it is, in my view, unnecessary to consider whether the time limit of three years as given in sub-sections (4), (5) and (6) should also be imported in sub-section (3) of the same section. Despite this qualification, the result would be the same, that is, that the impugned assessment orders be quashed on the ground that they were passed beyond the period of limitation prescribed in sub-sections (4) and (5) of section 11 of the Act. I also agree that the parties be left to bear their own costs in both these writ petitions.

Pandit, J.

PANDIT, J.—The controversy in the present case relates to the interpretation of sub-sections (1) to (6) of section 11 of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act).

The returns are filed by the dealers under section 10 of the Act. According to sub-section (1) of section 11, if the Assessing Authority is satisfied with the returns filed by the registered dealer and comes to the conclusion that it is not necessary to send for him or to direct him to produce any evidence in support of the returns, then the Assessing Authority would assess the amount of tax due from the dealer on the basis of those returns. This sub-section does not prescribe any limitation within which the Assessing Authority has to make this assessment. If, on the other hand, the Assessing Authority is not satisfied with the returns filed by the registered dealer, then he would serve a notice on the dealer in the prescribed manner, asking him either to attend in person or to produce or cause to be produced any evidence on which he might rely in support of the returns on a specified date and place. Now, rules have been framed under this Act, which are called the Punjab General Sales Tax Rules, 1949. Rule 33 of these Rules mentions that the notice under section 11 would be issued in form S.T. XIV. It may be mentioned that this notice covers all the contingencies as contempleted in section 11 of the Act and the Assessing Authority strikes off the portions of this notice, which are not applicable i na particular case.

Sub-Section (3) provides that on the day specified in the notice, the Assessing Authority shall, after hearing the evidence produced by the dealer and such other evidence as the Assessing Authority himself might require on specified points, assess the amount of tax due from the dealer. In this sub-section also, no specified period of limitation for making the assessment is prescribed. It may, however, be mentioned that this assessment has to be made either on the day specified in the notice or as soon afterwards as may be. This means that if the Assessing Authority is satisfied with the evidence produced by the dealer, he

M/s. Rameshwar Lal-Sarup Chand
v.
U. S. Naurath and another

Pandit, J.

shall make the assessment on that very day, but if he is not so satisfied and requires some more evidence, then he can make the assessment later on. It would, therefore, depend on the facts of each case as to when that particular assessment would be made.

The argument that a limitation of three years for making the assessment under this sub-section should be imported because otherwise, it would come in conflict with the provisions of section 11-A of the Act, in my opinion, is not sound. Section 11-A deals with the cases where the turnover of a dealer has been under-assessed or escaped assessment and it is laid down that the Assessing Authority must proceed to re-assess the tax payable on such a turnover within the period of three years following the close of the year for which the turnover is proposed to be re-assessed and that too after giving the dealer a reasonable opportunity of being heard. The words 'proceed to re-assess' occurring in this section indicate that these provisions would come into play only where the assessment order has already been passed and then the Assessing Authority discovers that some turnover has escaped assessment or has been under-assessed. It does not cover those cases where the assessment order has not yet been passed. Where the Legislature intended that those cases, where no assessment orders had yet been made, be also covered by such provisions, then it has specifically stated so and the words used there are 'may proceed to assess or re-assess,' e.g., section 14 of the Business Profits Tax Act, 1947. If in a case, where the assessment order has been passed within three years under sub-section (3), undoubtedly further action can be taken under section 11-A. On the other hand, if no order has yet been made under this sub-section, then the Assessing Authority need not resort to the provisions of section 11-A, because the 'definite information which had come into his possession' and which he

wanted to utilise under section 11-A, can conveniently be made use of by him while making the assessment under sub-section (3). There is, thus, no need of importing the limitation of three years for completing the assessment under sub-section (3), which the Legislature in its own wisdom perhaps did not think it proper to incorporate in the statute.

Then we come to sub-section (4), in which it is laid down that if a registered dealer, who had furnished the returns in respect of a period and to whom a notice under sub-section (2) of this section has been issued, fails to comply with the terms of that notice, then 'the assessing authority shall within three years after the expiry of such period proceed to assess to the best of his judgment the amount of the tax from the dealer.' Now the words used in this sub-section are 'proceed to assess to the best of his judgment' as distinct from the word 'assess' in sub-sections (1) and (3). The question arises whether the words 'proceed to assess' are equivalent to the word 'assess' and is the Assessing Authority bound to complete the assessment under sub-section (4) in respect of a return relating to a particular period within three years after the expiry of such period? In my view, that is not so. The Legislature had purposely used the words 'proceed to assess' in contradistinction to the word 'assess' in the preceding two sub-sections of this very section. The idea was that in sub-sections (1) and (3) the entire assessment had to be completed, whereas in sub-section (4) the Assessing Authority was only bound to 'proceed to assess', that is, to initiate the assessment proceedings within the prescribed period of three years and it was then left to him to complete the same afterwards as the circumstances of each case might require. It is pertinent to mention that sub-sections (4), (5) and (6) were for the first time, introduced by the East

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Pandit, J.

Punjab General Sales Tax (Amendment) Act, 1952 (Act No. 6 of 1952), and the word used therein was 'assess' in all these sub-sections. Later on, by the East Punjab General Sales Tax (Amendment) Act, 1955 (Act No. 4 of 1955), the words 'proceed to assess' were substituted for the word 'assess' in all these sub-sections, while in sub-sections (1) and (3) the word 'assess' was left intact. No other amendment of any kind was made in sub-sections (4) to (6). This amendment is significant and as such it cannot be said that the words 'proceed to assess' are equivalent to the word 'assess'. In case that were so, there was no need for making this amendment in 1955. A statute is never supposed to use words without a meaning. If possible, meaning should be given to every word. It is a well known rule of interpretation of statutes that 'such a sense is to be made upon the whole as that no clause, sentence or word, shall prove superfluous, void or insignificant, if by any other construction they may all be made useful and pertinent' [see in this coonection *R.* v. *Berchet* (22)].

In *Madan Lal Arora's case*, the petitioner, who was a registered dealer, had filed the returns. Three notices had been issued to him. Two were admittedly within time and the third one was beyond limitation. In this notice it was stated that on failure to produce the documents and other evidence mentioned, the case would be decided on best judgment assessment basis. The petitioner had not complied with any of the notices but had presented a petition under Article 32 of the Constitution in the Supreme Court challenging the right of the authorities to make a best judgment assessment on the ground that on the day of the last mentioned notice, the sales tax authorities had no right *to proceed to make* any best judgment assessment, as the three years within which only such

(22) (1688) I Show. 108.

an assessment could be made had expired before then. The case was, undoubtedly, covered by the provisions of sub-section (4) of section 11 of the Act and if the Assessing Authority did not *proceed to assess* to the best of his judgement, within three years, as prescribed in this sub-section, then no assessment could be made afterwards. In his case, it was conceded that the Assessing Authority *had not, as a matter of fact, proceeded to make any assessment* on the petitioner at the date of any of the notices. The last notice, in which the Assessing Authority had mentioned that on the failure of the dealer to comply with its terms the case would be decided on best judgment basis, was admittedly, beyond three years and was, thus, futile. It was under these circumstances, that their Lordships of the Supreme Court held that no best judgment assessment could be made in that case. This case, therefore, is no authority for the proposition that the expression 'proceed to assess' means the passing of the final order of assessment. It may be mentioned that this decision was interpreted by a Division Bench of this Court in *Messrs Nathu Ram Nohar Chand* v. *The State of Punjab* (1), to mean that under section 11(4) of the Act, the final order of assessment had to be made within three years of the period prescribed in that sub-section. With great respect, this, in my view, for the reasons given above, is not the correct interpretation of the decision in *Madan Lal Arora's case*. All that this sub-section requires is that the Assessing Authority must proceed to assess within a period of three years mentioned in this sub-section and it is not necessary that he should actually pass the final order of assessment within this period.

In *Messrs. Bissesar House* v. *State of Bombay and others* (11), a Full Bench of the Bombay High Court was dealing with a case under the C.P. and

M/s. Rameshwar Lal-Sarup Chand
v.
U. S. Naurath and another

Pandit, J.

Berar Sales Tax Act, 1947 (No. 21 of 1947). While interpreting sub-sections (1), (2) and (3) of section 11 of that Act, the provisions of which are almost similar to those of the Punjab General Sales Tax Act, all that was held was that the notice under sub-section (2) should not be issued beyond three years after the expiry of the period for which it was proposed to make the assessment because, otherwise, it would infrings the provisions of section 11-A of that Act, which deal with the assessment and re-assessment of the escaped or under-assessed turn-over. This authority nowhere lays down that the assessment under sub-section (3) should be completed within three years of the last date of the filing of the return. Whatever the learned Judges of the Bombay High Court wanted to import in section 11(2), has been done by the Legislature in the Punjab Act, because if the notice under sub-section (2) was not to be issued within three years, then the Assessing Authority could not proceed to assess to the best of his judgment under the provisions of sub-section (4) of section 11, since he must do so, after the registered dealer had failed to comply with the terms of the notice issued under sub-section (2) and that too within three years after the expiry of the period for which it was proposed to make the assessment. By laying down that the notice under sub-section (2) of that Act must be issued within three years, it cannot be said that the learned Judges had held that the assessment under sub-section (3) should be completed within three years. Similarly, in the Supreme Court decision in *Commissioner of Income-tax, Bombay City* v. *Narsee-Nagsee and Co.* (21), all that was decided was that although section 11 of the Business Profits Tax Act, 1947, did not prescribe any period within which the notice had to be issued, yet the period of four years prescribed for an escaped assessment under section 14 of that Act must be read into section 11 and

that no notice could, therefore, be issued beyond a period of four years. Consequently, no assessment could be made on the basis of a notice which had been issued four years after the close of the chargeable accounting period. It was nowhere laid down in this authority also that the assessment should be completed within the period of four years.

A Division Bench of this Court in *Messrs Jiwan Singh and Sons* v. *The Excise and Taxation Officer (Assessing Authority), Jullundur District* (4), while dealing with the words 'proceed to assess' occurring in section 11(4) of the Act held that if proceedings to assess to the best of the Assessing Authority's judgment began within three years, as contemplated by sub-section (4), then it was not necessary that the final assessment should also take place within the said period of three years.

The words 'proceed to assess' occurred in section 34 of the Indian Income-tax Act, 1922. While interpreting these words, their Lordships of the Privy Council in *Commissioner of Income-tax Punjab, and N.W.F.P.* v. *Nawal Kishore-Kharaiti Lal* (6), had held that proceedings, if began in time, were not by the Act required to be completed within any time limit.

*In the matter of Kidar Nath Kesriwal* (5), before a Full Bench of the Calcutta High Court a contention was raised that if one turned to section 34 of the Indian Income-tax Act, 1922 one would find that not merely the notice parallel to notice under section 22(2) of that Act must be given within the time there limited, but the whole proceedings down to assessment on the alleged additional income must be completed within that time. This contention was repelled by Rankin, C.J., in the following words:—

> "In my judgment, the wording of the section is reasonably clear to the contrary. The wording is:

M/s. Rameshwar Lal-Sarup Chand
v.
U. S. Naurath and another

Pandit, J.

'The Income-tax Officer may at any time within one year of the end of that year serve on the person liable to pay tax on such income, profits or gains a notice containing all or any of the requirements which may be included in a notice under sub-section (2), section 22, and may proceed to assess or re-assess such income, profits or gains and the provisions of this Act shall so far as may be apply accordingly as if the notice were a notice issued under that sub-section.' In my judgment, the limitation in point of time is a limitation which applies only to the notice and if a notice calling upon the assessee to file a return of the additional income is given within the time therein limited the rest of the proceedings is not further limited as to time."

It is noteworthy that the words used in section 34 of the Indian Income-tax Act were 'proceed to assess'. An objection was afterwards taken that when the initiation of the proceedings had taken place within the period prescribed in that section, the Income-Tax authorities could pass the final order of assessment at any time later on. In order to meet this objection, amendment was made in that Act and limitation was fixed for finalising the proceedings by the Income-Tax authorities within a particular period, though only in a certain type of cases. If the Legislature finds that a similar amendment is needed in the Punjab Sales Tax Act, 1948, it can suitably amend this Act.

Under these circumstances, the intention of the Legislature by making this amendment was that the Assessing Authority was bound to initiate the assessment proceedings within three years, as mentioned

above. This limitation, however, did not apply to the final order of assessment, which could be made at any time later on depending on the circumstances of each case, as stated above.

The next point arises as to when the Assessing Authority could be said to have proceeded to assess to the best of his judgment under sub-section (4). In my opinion, when a notice is issued to the registered dealer under sub-section (2) and he does not comply with the terms thereof, then the Assessing Authority would naturally make up his mind to proceed to assess to the best of his judgment and would make a note to this effect on the file. That would be the stage when it could be said that the Assessing Authority had proceeded so. I must make it clear that no further notice is necessary to be given to the registered dealer by the Assessing Authority before proceeding to assess to the best of his judgment because a notice had already been given to him under sub-section (2) of this section.

It may be mentioned that the question whether a registered dealer has or has not failed to comply with the terms of a notice issued under sub-section (2) and the case is covered by sub-section (3) or sub-section (4) of section 11 of the Act, will depend on the facts of each case.

Next, we come to sub-section (5). This deals with a case of a registered dealer, who has not furnished the returns in respect of any period by the prescribed date. In his case, the Assessing Authority shall, within three years after the expiry of such period, after giving him a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax, if any due from him. It will be seen taht since no notice under sub-section (2)

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Pandit, J.

has been given to this registered dealer, therefore, the statute lays down that the dealer will be given a reasonable opportunity of being heard before the Assessing Authority proceeds to assess to the best of his judgment. It is clear that the initiation of the assessment proceedings must commence within three years after the expiry of the period mentioned in this sub-section. The condition precedent, however, is that the dealer must be given a reasonable opportunity of being heard. It, therefore, follows that first of all the dealer would be given such an opportunity and then the Assessing Authority will proceed to assess to the best of his judgmeant. For this purpose, the Assessing Authority would send a notice to him to appear on a particular date, on which the authority proposes to proceed to assess to the best of his judgment. If the notice is served, then on that day, whether the dealer appears or not, the Assessing Authority, would, in law, be deemed to have proceeded to assess to the best of his judgment.

Sub-section (6) deals with a case, in which the information has been received by the Assessing Authority that a dealer was liable to pay the tax under the Act, but had failed to apply for registration. In that case the Assessing Authority would proceed to assess to the best of his judgment within three years after the expiry of the period, mentioned in this sub-section, after giving him a reasonable opportunity of being heard. In a case, where it is found that he had wilfully failed to apply for registration, then in addition to the amount so assessed, a penalty, as provided in this sub-section could also be imposed.

Let us now apply the principles of law enunciated above to the cases before us.

In Civil Writ No. 798 of 1962 (*Rameshwar Lal-Sarup Chand* v. *The Assessing Authority, Amritsar*), the petitioner was a registered dealer and he had not

filed any quarterly returns as prescribed by law. These returns related to the period 1st April, 1957 to 31st March, 1958. Notice in Form S.T. XIV had been given to him on 21st July, 1958, asking him to appear before the Assessing Authority on 2nd August, 1958. The assessment order was passed on 15th March, 1962. These facts clearly show that the case is covered by the provisions of sub-section (5) of section 11 of the Act. The petitioner was given an opportunity to appear before the Assessing Authority on 2nd August, 1958, on which date the Assessing Authority proceeded to assess to the best of his judgment. This date is, admittedly, within three years as prescribed in this sub-section and it was not necessary to pass the final order of assessment within the period of three years. All that was necessary was that the proceedings to assess should commence within three years, and that having been done, the order of assessment is perfectly legal.

In Civil Writ No. 1042 of 1962 (*Messrs. Tara Chand Lajpat Rai* v. *Excise and Taxation Officer, Ludhiana*), the petitioner was a registered dealer, who had filed his monthly returns. The assessment related to the year 1958-59. On 21st June, 1961, the statutory notice in form S.T. XIV was issued to him by the Assessing Authority. Various hearings took place in the case and the petitioner had been appearing on a number of them. The dealer was asked to produce some cogent evidence to prove the genuineness of the sales relied upon by him and this he failed to do. The case remained adjourned from time to time for one reason or the other. Ultimately, on 19th March, 1962, the dealer along with his counsel appeared before the Assessing Authority, when the merits of the case were discussed, but the evidence required by the Assessing Authority was not produced by him. Whatever evidence the petitioner had produced on

M/s. Rameshwar Lal-Sarup Chand
*v.*
U. S. Naurath and another

Pandit, J.

that day, was placed on the file and the account books produced by him were also examined. The judgment was kept reserved to be declared at a later date and the final order of assessment was passed on 18th June, 1962. The question arises as to whether the case falls under the provisions of sub-section (3) or sub-section (4) of section 11 of the Act. This, as already mentioned above, would depend on the point whether or not the petitioner had failed to comply with the terms of the notice issued under sub-section (2) of section 11 of the Act. In my view, the present case is covered by the provisions of sub-section (3) of section 11 of the Act. Admittedly, the notice under sub-section (2) was issued to the petitioner. In compliance with the same, he appeared before the Assessing Authority and asked for adjournment, which was granted. Later on, he has been appearing before the Assessing Authority from time to time. If ultimately he does not turn up or co-operate, then it cannot be said that there has been *non-compliance with the terms of the notice issued under sub-section* (2) *of section* 11 of the Act. The Assessing Authority could, therefore, make the assessment even after three years. In this view of the matter, the assessment order in the present case also is within limitation and is quite valid.

The result is that these petitions fail and are dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs.

## COURT'S ORDER

The writ petitions (Civil Writs Nos. 798 and 1042 of 1962) are allowed and the impugned assessment orders quashed in view of the majority judgment. The parties are left to bear their own costs.

*B.R.T.*

21911HC—1,000 5-9-63—C., P. & S., Pb., Chandigarh