

PETITIONER:
TAX OFFICER-CUM-REGIONAL TRANSPORT OFFICER & ORS.

Vs.

RESPONDENT:
DURG TRANSPORT COMPANY (PVT.) LTD. DURG

DATE OF JUDGMENT 30/07/1971

BENCH:
[K. S. HEGDE AND A. N. GROVER, JJ.]

ACT:
Madhya Pradesh Motor Vehicles (Taxation of Passengers) Act, 1959 ss. 6, 7 and 8-Assessee not filing return-Proceedings under s. 7 have to be taken within one year-Escaped assessment, meaning of.

HEADNOTE:
Where an assessee liable to pay passenger tax under the Madhya Pradesh Motor Vehicles (Taxation of Passengers) Act, 1959 submits no return as required by s. 5 nor makes the required deposit under s. 6 the assessee escapes assessment and proceedings under s. 7 will have to be taken within the period of one year mentioned in s. 8. [991A]
When the liability to tax is evaded by one method or the other there is an escaped assessment. The term escaped assessment includes both non. assessment as well as under assessment. [990G]

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2289 of 1968.
Appeal from the judgment and order dated August 18, 1967 of the Madhya Pradesh High Court in Misc. Petition No. 640 of 1966.
I. N. Shroff, for the appellants.
M. N. Phadke, and K. L. Hathi, for the respondent.
The Judgment of the Court was delivered by Hegde, J.-This is an appeal by certificate arising from the decision of the High Court of Madhya Pradesh in Miscellaneous Petition No. 640 of 1966 on its file. The assessee is a Transport Operator. It was liable to pay passenger tax under Madhya Pradesh Motor Vehicles (Taxation of Passengers) Act, 1959-hereinafter referred to as "the Act". It is said that it failed to pay the tax due from it for the period from October 1, 1961 to May 6, 1962. Admittedly it submitted no return as required by section 5 of the Act, nor did it make the required deposit under section 6 of that Act. No action appears to have been taken against it till November 6, 1963 on which date the Tax Officer issued to it a notice under section 7 of the Act. Thereafter he proceeded to assess it. The impugned assessment order was made on June 19, 1965. That order was challenged before the Madhya Pradesh

589

High Court by means of a writ petition under sections 226

and 227 of the Constitution. The High Court accepted that petition and quashed the impugned order.

The question before this Court is whether the order of the High Court is sustainable'. The only question that calls for decision in this appeal is whether the proceedings initiated by the Tax Officer by means of a notice under section 7 of the Act was beyond the time prescribed and therefore the proceedings taken were not maintainable against the assessee. In order to answer this question, we shall read sections 5, 6, 7 and 8 of the Act.

Section (5) Submission of returns.-(1) In respect of the stage carriage or stage carries held by him, the operator shall deliver or cause to be delivered to the Tax Officer or to such prescribed officer as the Tax Officer may specify a return in the prescribed form and manner, either daily or at such intervals as may be prescribed

Provided that different rules may be prescribed for the purpose of this sub-section in relation to fleet-owner from those in relation to other operators.

(2) When any return is received by a prescribed officer he shall forward it to the Tax Officer within the prescribed period and in the prescribed manner.

Section (6) Tax to be paid every month into Government Treasury.-The tax payable during any month in accordance with the returns submitted under section 5 shall be paid into a Government treasury by the operator and the receipt evidencing such payment forwarded to the Tax Officer, on or before such date or dates of the month immediately succeeding as may be prescribed in the case of fleet-owners and other operators.

Section (7) Procedure where no returns are submitted, etc.- In the following cases, that is to say-

- (a) Where no returns have been submitted, by the operator in respect of any stage carriage for any month or portion thereof, or
- (b) where the returns submitted by the operator in respect of any stage carriage for any month or portion thereof appear to the Tax Officer to be incorrect or incomplete;

the Tax Officer shall, after giving the operator a responsible op. opportunity, in case (a) of making his representation if any, and in case (b) of establishing the correctness and correctness of
990

the returns submitted by him, determine the sum payable to the State Government by the operator by way of tax during such month or portion thereof :

Provided that the sum so determined shall not exceed the maximum tax which would have been payable to the State Government if the stage carriage had carried its full complement of passengers during such month or portion thereof.

Section (8) Fares escaping assessment.-If, for any reason, the whole or any portion of the tax leviable under this Act, for any month has escaped assessment, the Tax Officer may, at any time within, but not beyond, one year from the expiry of that month, assess the tax which has escaped assessment, after issuing a notice to the operator and making such inquiry as the officer may consider necessary.

It may be noted that the expression "escaped assessment" has not been defined in the Act. Therefore we have to consider whether an assessment that was not made as a result of the assessee not submitting his return can be considered as an escaped assessment. According to Mr. Shroff, learned counsel for the State of Madhya Pradesh, "escaped

assessment" means an amount that had escaped from being included in the tax assessed. According to him no amount can be considered as "escaped assessment" unless there has been an assessment anterior to the finding out of the amount that had escaped from being included in the assessment made. He submitted that only such cases come within the scope of section 8. According to his submission when a return is not submitted as a consequence of which there was no assessment the tax thus evaded does not become escaped assessment. This contention does not appeal to us. In our opinion, when the liability to pay tax is evaded by one method or other there is an escapement of assessment. The term "escaped assessment" includes both non-assessment as well as under-assessment. When a person is not assessed to tax though he is liable to be taxed he escapes assessment.

We are unable to agree with Mr. Shroff that while the legislature fixed one year time within which a reassessment has to be made it fixed no time limit for making the assessment. This is a prima facie unacceptable argument. The provisions of the Act are somewhat similar to the Madhya Bharat Sales Tax Act, 1950. While considering the meaning to be given to the expression "escaped assessment" this Court in *Regional Assistant Commissioner of Sales Tax, Indore v. Malwa Vanaspati & Chemical*

991

Company Ltd.(1) held that where a dealer has not filed the prescribed return of his turnover at all, it would be a case of "escaped assessment" and the proceedings for assessment must be commenced in respect of that turnover within the period of three years prescribed by s. 10. We are of the opinion that the ratio of decision apply to the facts in the present case. Reading sections 6 to 8 together, we come to the conclusion that the proceedings under section 7 or section 8 will have to be taken within the period of one year mentioned in section 8.

For the reasons mentioned above, this appeal fails and the same is dismissed. Under the circumstances we make no order as to costs.

K. B. N.

Appeal

Dismissed.

(1) [1968]2 S.C.R. 431.

GIPN--S4-1 S. C. India/71-14-10-72-2500.