1961

The State of Punjab v. *Nathu Ram*

Raghubar Dayal J.

connected appeals, viz., Civil Appeals Nos. 636 to 641 of 1957.

Appeal dismissed.

1961

May 2.

INSTALMENT SUPPLY (P.) LTD. AND ANOTHER

v.

THE UNION OF INDIA AND OTHERS

(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Sales Tax—Hire-purchase agreement—Transaction on such agreement, if liable to tax—Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi State, s. 2(g).

Section 2(g) of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi State, provided as follows,—

"'Sale' means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge.

Explanation 1....A transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale."

The hire-purchase agreement entered into by the petitioner company provided that after all the monthly instalments had been paid, "the hiring shall come to an end and the vehicle shall, at the option of the hirer, become his absolute property; but until such payments as aforesaid have been made, the vehicle shall remain the property of the owners. The hirer shall also have the option of purchasing the vehicle at any time during the currency of this agreement by paying in one lump sum the balance of all the hire hereinbefore mentioned and any other expenses incurred by the owners relating to the transaction." The question for determination was whether the agreement was a transaction of mere hiring or one of hire-purchase within the meaning of Explanation 1 to s. 2(g) of the Act.

Held, that the language of Explanation 1 to s. 2(g) of the Act was wide enough to include a mere transfer of goods without the transfer of the title thereto, if such transfer took place in the course of an agreement of hire-purchase or any other instalment system of payment.

As the Act did not define the term 'hire-purchase', it had to be construed in its ordinary Common Law sense, i.e., that it partook of the nature of a contract of bailment with an element of sale added to it.

Lee v. *Butler*, [1893] 2 Q. B. 318 and *Helby* v. *Matthews*, [1895] A. C. 471, referred to.

The *non obstante* clause in Explanation 1 to s. 2(g) of the Act did not govern the main clause of the said Explanation and its sole purpose was to emphasise the categorical statement of the law contained therein. Since the agreement in the instant case contained not merely a contract of bailment *simpliciter* but also an element of sale, the transaction had rightly been subjected to sales tax.

There could be no force in the contention that the Act in so far as it sought to extend the concept of sale to what in law was not a real sale, was unconstitutional.

Mithan Lal v. *State of Delhi*, [1959] S.C.R. 445, referred to.

Nor was there any substance in the contention that the extended definition of the word 'sale' in the Act infringed Art. 14 of the Constitution.

It is well settled that in matters of taxation there can be no question of *res judicata*.

Society of Medical Officers of Health v. *Hope (Valuation Officer)*, [1960] A. C. 551 and *Broken Hill Proprietary Company Ltd.* v. *Municipal Council of Broken Hill*, [1925] A. C. 94, referred to.

Instalment Supply Ltd., New Delhi v. *State of Delhi*, A.I.R. 1956 Punj. 177, considered.

ORIGINAL JURISDICTION: Petition No. 146 of 1958.

Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

Veda Vyasa, S. K. Kapur and *Ganpat Rai*, for the petitioners.

C. K. Daphtary, Solicitor-General of India, R. Gopalakrishnan and *D. Gupta*, for the respondents.

1961. May 2. The Judgment of the Court was delivered by

SINHA, C. J.—The petitioners have moved this Court under Art. 32 of the Constitution for a writ

Sinha C. J.

1961

Instalment Supply (P.) Ltd. v. Union of India

Sinha C. J.

or order in the nature of *mandamus* and/or prohibition and/or other suitable writ, order or direction to the respondents not to levy, charge or collect any sales tax on transactions of what the petitioners characterised as hire-purchase agreements, a typical example of which is contained in Annexure 'A' to the petition, to be hereinafter examined in detail.

The first petitioner is a private limited company incorporated under the Companies Act, with its registered office at Janpath, New Delhi. The second petitioner is the Managing Director and shareholder of that company and is directly interested in the result of this application, because it is claimed that his rights and property are directly involved. The company has been carrying on in Delhi the business of financing the purchase of new as well as second-hand motor cars and other kinds of motor vehicles. The system adopted by the Company for financing a purchase such as aforesaid is as follows. A person desiring to purchase a motor vehicle fixes a bargain with the owner and the petitioner Company would then advance the necessary finance on the terms and conditions appearing in a printed copy of the agreement, marked Annexure 'A' to the petition. According to that agreement, the Company charges the 'Hirer' an initial deposit by way of premium as a consideration for granting the lease of the vehicle, which deposit becomes the absolute property of the Company; the premium charged as aforesaid is a substantial amount, being usually 25% of the price in respect of new vehicles. The 'Hirer' undertakes to pay instalments and when all the instalments are paid, the vehicle becomes the property of the 'Hirer' at his option, on payment of rupee one to the Company, as a consideration for the option; until all the stipulated instalments have been paid and the option exercised as aforesaid, the vehicle remains the property of the Company as owners. The 'Hirer' is delivered possession of the vehicle and he remains responsible to the Company for damage or destruction or loss. The 'Hirer' has to pay interest at the rate of one per cent. per mensem on all sums overdue. Until the option of

purchase is exercised by the 'Hirer', he is at liberty to return the vehicle and to put an end to the Hiring Agreement, on certain terms. Thus, under the agreement, the 'Hirer' has the use of the vehicle, which is entrusted to him as the property of the Company, and it is open to the 'Hirer' to become the purchaser of the vehicle as aforesaid, but he is not bound to do so. The hire-money received by the Company, it is contended, is not a part of the price of the goods sold and is thus not liable to be taxed as sale-price. The Bengal Finance (Sales Tax) Act, 1941 (Bengal Act VI of 1941) was extended to the State of Delhi, which is now the Union Territory of Delhi. In pursuance of the provisions of that Act, the Sales Tax authorities started demanding and levying sales tax on all transactions of the nature aforesaid on the ground that the instalments paid by the hirers to the Company were sales-price and, therefore, liable to Sales Tax. The Company challenged the right of the Sales Tax authorities to levy any such tax on the ground that the law was beyond the competence of the legislature. Ultimately, the Company moved the Punjab High Court (Circuit Bench at Delhi) under Arts. 226 and 227 of the Constitution. In the Writ Petition, which was registered as Civil Writ Application No. 289-D of 1954, the Company prayed for a writ in the nature of prohibition and/or *mandamus* restraining the respondent from realising or levying any sales tax under the provisions of the Bengal Act, extended to Delhi. There was also a prayer for a writ of *certiorari* quashing certain orders passed by the Sales Tax authorities in 1953-54. The said application was heard by a Division Bench, which allowed the petition and issued a *mandamus* to the State to forbear from enforcing its notice for the realisation of the Sales Tax. It was held by the High Court that the State Legislature had not the power to enlarge the meaning of the words "Sale of Goods" by going beyond the meaning attached to it by the Sale of Goods Act. After the judgment aforesaid of the High Court of Punjab, it is further alleged, a settlement was arrived at between the companies carrying on hire-purchase

1961

Instalment Supply (P.) Ltd. v. Union of India

Sinha C. J.

business in Delhi and the Commissioner of Sales Tax, who issued a circular, being Circular No. 10 of 1956, containing the following decisions of the Department:—

"(i) Companies which are exclusively engaged in the hire purchase business will not be treated as dealers and their certificate of registration will be cancelled.

(ii) Companies which are partially engaged in the business of hire purchase will continue to be dealers as hithertofore and their hire purchase transactions will be appropriately examined in the light of the judgment of the Punjab High Court, and will be liable to Sales Tax at one stage.

(iii) As a result of (i) above, sales made to the above Companies by the dealers in vehicles would be liable to Sales Tax at the hands of the latter.

(iv) In respect of vehicles, and machineries, etc., for which tax has been paid, at the time of purchases thereon from the market, no Sales Tax would be payable in respect of hire monies collected on them by the hire purchase companies or on their re-sale or re-hire following repossession or on the exercise of the option of purchases by the hirer.

(v) In respect of second hand vehicles purchased by the companies from private individuals for purposes of hire purchase, the companies will not be liable to any sales tax either at the time of purchase or in respect of subsequent transaction thereon. The Companies will be as other non-registered dealers, in view of (i), their Registration Certificates in respect of Hire purchase business having been cancelled.

(vi) The assessment which are already made will not be re-opened except in the case of M/s. Instalment Supply Co. Ltd. for which there are specified orders of the High Court.

(vii) In their up-to-date assessment, the hire purchase Companies should take upon themselves the responsibility to pay tax which they have save by making tax free purchases either from dealers or from non-registered dealers. The assessment will, however, be made accordingly as before in the normal way."

Thereafter in the case of *Mithan Lal* v. *State of Delhi* (1) this Court examined the vires of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, and came to the conclusion that the law had been validly promulgated. According to that decision, the definition of 'sale' could be legally extended so as to make it permissible to tax sale of goods involving the supply of materials in pursuance of building contracts. As a result of the decision aforesaid of this Court, a press note was issued by the Commissioner of Sales Tax, Delhi, to the effect that provision regarding levy of tax on hire-purchase transactions was valid and that all hire-purchase dealers as come within the purview of ss. 4 and 7 of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, are liable to pay sales tax and to get themselves registered under the Act; that all such hire-purchase dealers as were formerly registered with the Sales Tax Department shall be deemed to be registered with effect from the first of April, 1958 for the purpose of the Act and that all hire-purchase dealers who had not got themselves registered so far should immediately have themselves so registered in order to avoid being penalised for contravention of the provisions of the Act. In pursuance of the aforesaid circular of the Department, the petitioner company was also called upon to comply with the requirements of the Act. The Company made representation to the Commissioner of Sales Tax that the Company and other such companies which deal in hire-purchase were not liable to pay sales tax, but the Commissioner of Sales Tax refused to accept the Company's contention and answered to the following effect:—

"1. The incidence of Sales Tax on such tranactions is to be governed by the provisions of Sections 3 and 4 of the Central Sales Tax Act, 1956. If however, the vehicles are purchased by a Company having its place of business in Delhi from a dealer outside Delhi on payment of Sales Tax of that State and the vehicle is hire-purchased to the party in that very State, neither Delhi Sales Tax

(1) [1959] S.C.R. 415.

1961

Instalment Supply (P.) Ltd.
v.
Union of India

Sinha C. J.

nor Central Sales Tax will be leviable on the Delhi firm irrespective of the fact that the Hire-purchase Agreement is entered into at Delhi.

If, however, vehicle is purchased in State 'A' but is hire-purchased to a party in State 'B', Central Sales Tax will be leviable in the State according to the rules in force in that State.

2. The hire-purchase transactions of secondhand vehicles, where the owner approaches the Hire Purchase Co. for finances against the vehicles, will be leviable to Sales Tax, because according to the Hire-purchase Agreement the property in the vehicle vests in the Hire Purchase Co. and this property is to be transferred to the so-called owner by virtue of the Hire-purchase transactions.

Secondhand vehicles purchased outside Delhi and hire-purchased to the parties outside Delhi or hire-purchase transactions conducted outside Delhi in which owner approaches the Hire-purchase Co. for finance will be governed by the clarification given in 1 above.

3. In the case of vehicles purchased by the Hire-purchase Companies from the local registered dealers, they will not be required to pay any Sales Tax because all Hire-purchase companies will be registered and will be entitled to make tax free purchases of such vehicles. It is, therefore, regretted that it is not possible to accede to the request made in this behalf.

4. Sales Tax will be payable on total amounts charged by the Hire-purchase Co. from the hirer and it is not possible to waive Sales Tax on the so-called incidental charges.

5. It is regretted that it is not possible to alter the date of liability of the Hire-purchase Co. which has already been fixed with effect from 1st of April, 1958, in pursuance of the Supreme Court Judgment. It is true that the Press Note was issued in the month of June and so Hire-purchase Companies have been making purchases of vehicles on payment of sales tax. The Hire-purchase companies are advised to approach the dealers for

refund of the Sales Tax paid by them on such purchases.

If, however, it is not possible for any Hire Purchase Co. to obtain refund of the Sales Tax so paid by them, the amounts so paid may be adjusted towards their liability on the hire purchase transactions."

On receipt of the answer of the Department, as set out in the previous paragraphs, the petitioners moved this Court under Art. 32 of the Constitution on the ground that the "threatened action of the respondents is illegal and unconstitutional as the petitioner company is not liable to pay sales tax on the transactions" described above.

In support of the petition, the learned counsel for the petitioners has raised the following contentions: (1) that the transactions in respect of which the petitioners are sought to be taxed are not covered by the explanation to s. 2(g) of the Bengal Finance (Sales Tax) Act, as extended to Delhi; (2) alternatively, that is to say, if it is held that the explanation covers the transactions of the nature aforesaid, then the explanation, extending the concept of 'sale' is unconstitutional; (3) That in any case it is unconstitutional as it infringes Art. 14 of the Constitution in so far as the State of Delhi has been selected for hostile discrimination; (4) that the judgment of the Punjab High Court in *Instalment Supply Ltd., New Delhi* v. *State of Delhi* (1) is final and conclusive as between the parties to that judgment; (5) that if it is held that the judgment of the Punjab High Court, referred to above, has been superseded by the judgment of this Court in *Mithan Lal's case* (2), that judgment cannot be given retrospective operation; and (6) lastly, that the settlement between the Department and the Companies transacting business in "Hire-purchase" is binding until the decision of this Court in *Mithan Lal's case* (2), aforesaid. We shall examine these arguments in the order in which they have been stated.

The most important question in this case is: What

(1) A.I.R. 1956 Punj. 177. (2) [1959] S.C.R. 445.

1961

Instalment Supply (P.) Ltd. v. Union of India

Sinha C. J.

is the true nature and character of the transaction which is the subject matter of the present controversy? Do the terms and conditions of the agreement typified by Annexure 'A' to the petition, as described above, constitute a mere agreement of hiring, as contended on behalf of the petitioners, or do they constitute a contract of hire-purchase, within the meaning of explanation (1) to the definition of 'sale' contained in the statute in question, as contended on behalf of the respondents? There is no doubt that the concept of 'sale', as it appears from the following words of the definition, along with explanation (1), is rather extended. In the definition of the term 'sale' for the purposes of the Act, the words are as follows:—

> " 'Sale' means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge.
>
> Explanation 1.—A transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale."

It is clear from the definition that it includes not only what may be compendiously described as a sale under the Sale of Goods Act, but also transactions, which, strictly speaking, are not sales, not even 'contracts of sale' but only contain an element of sale, that is the option to purchase, and that is the reason why the explanation ends with the words "be deemed to be a sale", thereby indicating that a legal fiction has been introduced into the concept of 'sale' as ordinarily understood. The explanation has included within its amplitude a mere transfer of goods without the transfer of title to the goods, if it is in the course of an agreement of the nature of "hire-purchase", or other instalment system of payment. A contract of hiring, under the Common Law, is one of the species of a contract of bailment and has, during the last 60-70

years, undergone a series of refinements as a result of modern industrial and commercial developments. The term 'hire-purchase' has not been defined in the Act. We have, therefore, to construe the expression in its ordinary Common Law sense, which may best be expressed in terms of the Dictionary of English Law by Earl Jowitt at pages 913-914, which runs as follows:

> "Hire-purchase—a system whereby the owner of goods lets them on hire for periodic payments by the hirer upon an agreement that when a certain number of payments have been completed, the absolute property in the goods will pass to the hirer, but so that the hirer may return the goods at any time without any obligation to pay any balance of rent accruing after return; until the conditions have been fulfilled, the property remains in the owner. The instrument by which the hire-purchase is effected does not ordinarily require registration as a bill of sale (Exp. Crawcour (1878) 9 Ch. D. 419); the hirer is 'reputed owner' within the Bankruptcy Act, 1914 (Exp. Brooks (1883) 23 Ch. D. 261); but the hirer does not 'agree to buy' within the Factors Act or the Sale of Goods Act, 1893, so as to be able to sell or pledge the goods as if he were a mercantile agent (Helby v. Matthews (1895) A. C. 471; Brooks v. Biernstein (1909) 1 K.B. 98). Such agreements are to be distinguished from agreements such as in Lee v. Butler (1893) 2 Q.B. 318, which are in fact a sale, the price being paid in instalments with the condition that the property passes when all the instalments have been paid; here there is a binding agreement for the party to purchase, where in a true hire-purchase agreement there is not."

In Halsbury's Laws of England, Third Edition, Volume 19, paragraph 823, at pages 510-511, the nature of a hire-purchase transaction is thus expressed:

> "The contract of hire purchase is one of the variations of the contract of bailment, but it is a modern development of commercial life, and the rules with regard to bailments, which were laid down before

1961

Instalment Supply (P.) Ltd. v. *Union of India*

Sinha C. J.

any contract of hire purchase was contemplated, cannot be applied *simpliciter*, because such a contract has in it not only the element of bailment but also the element of sale. At common law the term 'hire purchase' properly applies only to contracts of hire conferring an option to purchase, but it is often used to describe contracts which are in reality agreements to purchase chattels by instalments, subject to a condition that the property in them is not to pass until all instalments have been paid. The distinction between these two types of hire purchase contracts is, however, a most important one, because under the latter type of contract there is a binding obligation on the hirer to buy and the hirer can therefore pass a good title to a purchaser or pledgee dealing with him in good faith and without notice of the rights of the true owner, whereas in the case of a contract which merely confers an option to purchase there is no binding obligation on the hirer to buy, and a purchaser or pledgee can obtain no better title than the hirer had, except in the case of a sale in market overt, the contract not being an agreement to buy within the Factors Act, 1889, or the Sale of Goods Act, 1893."

The observations quoted above are based mostly on two leading cases which have come to be regarded as the *locus classicus* upon the subject, namely, *Lee* v. *Butler* (1) in which the transaction was described by Lord Esher, M.R., as "Hire and Purchase Agreements" and *Helby* v. *Matthews* (2) in which the House of Lords distinguished the former case on the ground that in that case there was a binding contract to buy and not merely an option to buy, without any obligation to buy. Both these cases were decided in terms of Factors Act of 1889 (52 & 53 Vict. c. 45, s. 9). Both the kinds of agreements exemplified by the two leading cases aforesaid would now be included in the definition of 'hire-purchase' as contained in s. 21 of the Hire Purchase Act, 1938 (1 & 2 Geo. 6, c. 53):—

"'Hire-purchase agreement' means an agreement for the bailment of goods under which the bailee

(1) [1893] 2 Q.B. 318. (2) [1895] A.C. 471.

may buy the goods or under which the property in the goods will or may pass to the bailee, and where by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee, the agreements shall be treated for the purposes of this Act as a single agreement made at the time when the last of the agreements was made."

It is clear that under the Law, as it now stands, which has now been crystallised into the section of the Hire Purchase Act, quoted above, the transaction partakes of the nature of a contract or bailment with an element of sale, as aforesaid, added to it. In such an agreement, the hirer may not be bound to purchase the thing hired; he may or may not be. But in either case, if there is an obligation to buy, or an option to buy, the goods delivered to the hirer by the owner on the terms that the hirer, on payment of a premium as also of a number of instalments, shall enjoy the use of the goods, which ultimately may become his property, the transaction amounts to one of hire-purchase, even though the title to the goods has remained with the owner and shall not pass to the hirer until a certain event has happened, namely, that all the stipulated instalments have been paid, or that the hirer has exercised his option to finalise the purchase on payment of a sum, nominal or otherwise.

But it has been contended on behalf of the petitioners that there is no binding agreement to purchase the goods and that title is retained by the owner not as a security for payment of the price but absolutely. According to third term of the agreement, on the hirer duly performing and observing the terms of the agreement, with particular reference to the payment of the monthly instalments, "the hiring shall come to an end and the vehicle shall, at the option of the hirer, become his absolute property; but until such payments as aforesaid have been made, the vehicle shall remain the property of the owners. The hirer shall also have the option of purchasing the vehicle at any

1961

Instalment Supply (P.) Ltd. v. Union of India

Sinha C. J.

time during the currency of this Agreement, by paying in one lump sum the balance of all the hire hereinbefore mentioned and any other expenses incurred by the owners relating to the transaction."

It is clear, therefore, that in addition to the contract of hiring an option has been given to the hirer to purchase or not to purchase. The more serious question on this part of the petitioners' contention is whether the *non obstante* clause in the explanation "notwithstanding that the seller retains a title to any goods as security for payment of the price" governs the main clause of the explanation. In our opinion, it does not. The *non obstante* clause has been added only to emphasise the categorical statement of the law contained in the main clause to the effect that a transfer of goods on hire-purchase, etc., shall be deemed to be a 'sale' even though there may be a stipulation to the effect that in spite of the transfer of goods to the hirer, the owner retains title to those goods until the happening of the ultimate event, namely, completion of title at the option of the hirer.

There is, thus, no doubt that the agreement in question does contain not only a contract of bailment *simpliciter* but also an element of sale, which element has been seized upon by the legislature for the purpose of subjecting a transaction like that to the Sales Tax.

This leads us to the second ground of attack raised by the petitioners, namely, that the explanation, if it has the effect of extending the concept of 'sale' to what, in law, is not a real sale, but only an incipient or inchoate sale, then in so far as the law has extended the definition of 'sale' it is unconstitutional. This contention has lost all its force, if ever it had any, in view of the decision of this Court in *Mithan Lal's case* (1).

But then it is argued that *Mithan Lal's case* (1) requires re-consideration and that, in any view of the matter, this Court did not consider the further attack based on Art. 14 of the Constitution. It is true that in *Mithan Lal's case* (1) the contention that the enactment in question had infringed Art. 14 of the

(1) [1959] S.C.R. 445.

Constitution had not been raised. This Court, therefore, had no occasion to pronounce on that aspect of the controversy We have, therefore, to consider the contention under head (3), namely, that though the Parliament may have had the power to tax something which was not strictly speaking a 'sale', the law is open to the attack that it discriminates against traders in Delhi inasmuch as, it is further contended, such a law has not been made applicable to the whole of India. In our opinion, there is no substance in this contention because no proper foundation was laid in the pleadings for supporting such a contention. It has not been averred that other Part 'C' States have not been similarly treated. On the other hand, it does appear that under the Central Sales Tax Act (LXXIV of 1956), the definition of 'Sale' contains the extended definition, without the *non obstante* clause, discussed above. Section 2(g) of the Central Sales Tax Act, 1956, has the following definition:

> " 'Sale' with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on the hire purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on goods."

It would, thus appear that hire-purchase transactions have been included within the definition of 'sale' for the purpose of Central Sales Tax, and this definition has become applicable throughout India, and it cannot, therefore, be said that the State of Delhi, and now the Union Territory of Delhi, has been selected for hostile discrimination. In our opinion, therefore, there is no substance in the contention that the extended definition of 'sale' in the main statute infringes Art. 14 of the Constitution.

Now, the remaining contentions raised on behalf of the petitioners may be disposed of by observing that what the Sales Tax Department does, or does not do, cannot change the law. The Department issued its

1961

Instalment Supply (P.) Ltd. v. Union of India

Sinha C. J.

instructions to the Sales Tax Officers, in conformity with the law as laid down in the judgment of the Punjab High Court in *Instalment Supply Ltd., New Delhi* v. *State of Delhi* (1). This Court later laid down the law more authoritatively in *Mithan Lal's case* (2) and the Department was bound to take notice of what this Court had laid down. It cannot, therefore, be argued that the Department had, in any sense estopped itself by issuing those instructions, or that this Court, by laying down the law in *Mithan Lal's case* (2) had laid down a new rule of law which has no application to pending proceedings for levy, assessment and realisation of sales tax, either in Delhi or elsewhere.

There is another answer to the point of *res judicata* raised on behalf of the petitioners, relying upon the decision of the Punjab High Court in *Instalment Supply Ltd., New Delhi* v. *State of Delhi* (1). It is well settled that in matters of taxation there is no question of *res judicata* because each year's assessment is final only for that year and does not govern later years, because it determines only the tax for a particular period. (See the decision in the House of Lords in *Society of Medical Officers of Health* v. *Hope* (*Valuation Officer*) (3) approving and following the decision of the Privy Council in *Broken Hill Proprietary Company Limited* v. *Municipal Council of Broken Hill* (4).

As all the contentions raised on behalf of the petitioners fail, this petition is dismissed with costs.

Petition dismissed.

(1) A I.R. 1956 Punj 177.
(2) [1959] S.C.R. 445.
(3) [1960] A.C. 551.
(4) [1925] A.C. 94.