rent by the plaintiffs would not by itself operate as waiver.

As regards the last point, we have in fact dealt with it already. What was contended was that the notice of April 11, 1959 was not a valid notice with reference to both the laws, that is, the Transfer of Property Act and the Accommodation Act. We have pointed out that though the notice could be construed to be composite notice it was ineffective in so far as it purports to be under s. 106 of the Transfer of Property Act. It was not suggested that in so far as it was a notice under the Accommodation Act it was invalid. There is, therefore, nothing more to be said about it.

For the foregoing reasons we uphold the decree of the High Court and dismiss the appeal with costs.

Appeal dismissed.

THE STATE OF ORISSA
v.
DABAKI DEVI AND OTHERS
(And connected appeals)

(A.K. SARKAR, K.C. DAS GUPTA AND N. RAJAGOPALA AYYANGAR JJ.)

Sales Tax—Revision against order of assessment—Time limit—Orissa Sales Tax Act, 1947 (*Orissa* 14 *of* 1947), *ss.* 12, 23.

The respondents were assessed to sales tax under the provisions of the Orissa Sales Tax Act, 1947, by the Sales Tax Officer, who rejected their claim to certain deductions from their taxable turnover, but, on appeal, the Assistant Collector allowed the claim. The Collector of Sales Tax, however, acting under s. 23(3) of the Act revised the orders of the Assistant Collector by raising the taxable turnover allowed by him to be deducted. The respondents moved the High Court of Orissa under Art. 226 of the Constitution of India to quash the orders of the Collector on the ground that they were illegal under the Act as they had been made more than thirty six months after the expiry of the quarters in respect of which the assessments had originally been made. The High Court took the view that the orders in revision were really reassessments under sub-s. (7) of s. 12 of the Act of turnover which had escaped assessment or been under assessed and as such they were barred by limitation.

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Held: (*i*) The view taken by the High Court that the impugned orders were really reassessments under s. 12(7) of the Orissa Sales Tax Act, 1947, was erroneous.

(*ii*) (*per* Das Gupta and Rajagopala Ayyangar, JJ., Sarkar, J. *dissenting*). Orders of assessment made by the revising authority must be considered to be orders passed under s. 12 as well as under s. 23 of the Act and, therefore, the period of limitation prescribed in the second proviso to s. 12 (6) became applicable.

Gajo Ram v. *State of Bihar*, (1955) 7 S.T.C. 248, disapproved.

per Sarkar, J.—(i) The time-limit of thirty-six months prescribed in s. 12(7) was only for calling for a return and not for making the order of reassessment in respect of escaped or under-assessed turnover.

(ii) An order made in revision under s. 23(3) was not an order of assessment and the period of limitation in the second proviso to s. 12(6) was not applicable.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 454 to 465 of 1962.

Appeals by special leave from the judgment and order dated July 8, 1958 of the Orissa High Court in O.J.S. Nos. 289, 296 and 300 of 1956.

K.N. Rajagopal Sastri and *R.N. Sachthey*, for the appellant (In all the Appeals).

Santosh Chatterjee and *B. Kishore*, for respondent No. 2 (In C.A. Nos. 454 to 460 of 1962) and the Respondents (In C.A. Nos. 461 to 465 of 1962.)

The Judgment of K.C. Das Gupta and N. Rajagopala Ayyangar JJ., was delivered by Das Gupta J. A.K. Sarkar J. delivered a dissenting opinion.

Sarkar J.

SARKAR J.—These appeals raise the question whether the Orissa Sales Tax Act, 1947, sets a time-limit for making an order under s. 23(3) of the Act revising an order of assessment. The question depends on the interpretation of some of the provisions of the Act to which reference will be made in due course.

The facts are these. The respondents had been assessed to sales tax under the Act in respect of various quarters by a Sales Tax Officer. They appealed to the Assistant Collector of Sales Tax against the

assessments contending that the Sales Tax Officer had wrongly rejected their claim to certain deductions from their taxable turnover. The appeals were allowed. Subsequently the Orissa High Court delivered a judgment in another case from which it appeared that the Assistant Collector was wrong in allowing the deductions. Thereupon the Collector of Sales Tax acting under s. 23(3) of the Act which provided that "the Collector may, upon application or of his own motion, revise any order passed under this Act.....by a person appointed under s. 3 to assist him" revised the orders of the Assistant Collector by raising the taxable turnover allowed by him to be deducted.

The respondents moved the High Court of Orissa under Art. 226 of the Constitution to quash the orders of the Collector in revision on the ground that they were illegal under the Act as they had been made more than thirty-six months after the expiry of the quarters in respect of which the assessments had originally been made. This contention was accepted by the High Court. Hence these appeals.

The High Court held that the orders in revision were illegal as they were really reassessments of turnover which had escaped assessment or been under-assessed and under sub-sec. (7) of s. 12 of the Act, such reassessment could not be made in respect of any quarter after thirty-six months from its expiry. It is not in dispute that many of the orders in revision had been made after the expiry of the said period of thirty-six months. It seems to me that the High Court was clearly in error in basing itself on sub-sec. (7) of s. 12. The material part of the sub-section is in these terms: "If .....the turnover of a dealer for any period.....has escaped assessment or has been under-assessed, the Collector may at any time within thirty-six months of the end of that period call for a return.....and may proceed to assess ....." The time-limit of thirty-six months prescribed here is only for calling for a return. The sub-section prescribes no time-limit for making the

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order of reassessment in respect of escaped or under-assessed turnover. Consequently this provision does not make the orders with which these appeals are concerned, in any way illegal.

We were then referred to the second proviso in sub-sec. (6) of s. 12 of the Act as specifying a time limit of thirty-six months for these orders. The sub-section is in these terms:

> "Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under this Act:
>
> Provided that when the Collector has imposed a penalty in addition to the amount assessed under this section, no further proceedings either revenue or criminal shall be taken against the dealer.
>
> Provided further that no order assessing the amount of tax due from a dealer in respect of any period shall be passed later than thirty-six months from the expiry of such period."

The sub-section would no doubt apply if the orders made in this case were orders "assessing the amount of tax due" contemplated by it. The question therefore is what do the words "order assessing the amount of the tax due" in the proviso mean. Of course, the whole of s. 12 has to be considered for deciding the meaning of these words and I will presently do so. In the meantime however I may observe that though s. 12 talks of assessment by a Collector it includes assessment by other officers appointed under the Act to assist the Collector for under s. 17 the Collector can delegate his powers to such officers, who are subordinate to him.

I now turn to s. 12. It has seven sub-sections each of which except sub-sec. (6) deals with assessment in a specified case. Each of them expressly provides for an order of assessment being made. The first sub-section deals with a case where the assessing officer is satisfied without hearing the dealer or taking evidence that the return is correct. The

second sub-section covers a case where he is not so satisfied and provides for the assessment being made after hearing evidence. The third sub-section concerns a case where the dealer fails to attend or produce evidence when called upon to do so under the preceding sub-section. Sub-section (4) provides for a case when a dealer does not furnish returns which he is required by the Act to do. The fifth sub-section relates to a case where a dealer wrongfully fails to apply for registration. The sixth sub-section has earlier been set out. The last and seventh sub-section as already seen, deals with assessment of turnover which had escaped assessment or was under-assessed.

Now it does not seem to me that an order made under s. 23(3) can properly be called an order "assessing the amount of tax due" as contemplated by the Act at all. I first observe that the only section which expressly provides for assessment of tax is s. 12. No other section refers to an order of assessment. It would follow that an order is not an order of assessment of tax due unless it is made under this section. Then I find that an order made under s. 23(3) is not described as an order of assessment. Indeed that sub-section deals with an order revising an order passed under the Act and, therefore, revising an order of assessment made under s. 12. This also supports the view that the Act does not consider such an order as an order of assessment. Again the same conclusion is also suggested by sub-sec. (2) of s. 23 which says that, "The appellate authority in disposing of any appeal.....may—(a) confirm reduce, enhance or annual the assessment." Obviously it is not considered that an appellate authority makes an assessment when it confirms, enhances or reduces an assessment. If an appellate order enhancing the assessment is not considered as an assessment order, neither can a similar order passed in revision be so considered. In my view, the Act does not contemplate an order which is not made under s. 12 as an order assessing the amount of tax due.

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Then again I think it is clear from what I have set out above that sub-secs.(1) to (5) and (7) of s. 12 deal with original orders of assessment as distinguished from orders made in appeals from or by way of revision of such original orders or by way of review of them. Now the first part of sub-sec. (6) and the first proviso to it deal expressly with orders made under the section. Therefore they do not apply to appellate or revisional orders. The second proviso with which this case is concerned no doubt contains no express reference to assessment under the section but it would be strange if that proviso was intended to apply to orders of assessment made in appeals or by way of revision, assuming that such orders could properly be called orders of assessment. If it was intended to provide a period of limitation for an order in appeal or by way of revision then the provision containing it would not have been put in s. 12 nor would the order have been described as an "order assessing the amount of tax due." It may be that the time limit specified in the second proviso does not apply to an order of assessment under sub-sec. (7). That would not however affect the question. A recent amendment to s. 12 has expressly provided that the time limit in the second proviso does not apply to an order under sub-sec. (7).

Lastly, it seems to me that if the second proviso in s. 12(6) fixes a period of thirty-six months from the end of a period within which an order can be made under s. 23(3) revising an order of assessment in respect of that period, the consequence would be so disastrous for the tax-payer that it could not have been intended. It would then be open to the Collector to make the application for revision preferred by a dealer against an assessment order made on him or against an appellate order, infructuous by the simple expedient of allowing the thirty-six months' time to pass. It is important to observe that there is no provision anywhere in the Act requiring the revising authority to dispose of an application in

revision filed before him within any particular period of time and the original order of assessment can be made at any time within the period of thirty-six months. Further a dealer has no remedy against any delay in making an assessment so long as it is made within the period of thirty-six months. Therefore it is not unlikely that in many cases there may not be much time left between the filing of an application in revision by a dealer and the expiry of the period of thirty-six months. If the time limit specified in the second proviso applied to an order under s. 23(3), it would be open to the authorities to deprive a taxpayer of his right to apply under s. 23(3). An interpretation leading to such a result cannot be accepted.

This aspect of the matter is made clearer by s. 23(1) which gives a dealer the right to file an appeal within thirty days of the receipt of the order of assessment. Obviously, if an order in revision can be an assessment order, so can an appellate order be. The appellate order would then have to be made within the period of thrity-six months. Now suppose the period of thirty-six months expires within the thirty days mentioned in s. 23(1), as it well may since the order of assessment can be made at any time within the thirty-six months. In such a case on the interpretation for which the respondent dealers contend, the right to file the appeal within the thirty days mentioned in s. 23(1) would venish; there would be a conflict between s. 23(1) and the second proviso to s. 12(6). An interpretation leading to such a result cannot be correct. The position would be the same in the case of an application for revision for the Act provides no time-limit for making such an application and therefore contemplates the making of it at any time. An interpretation of a provision in the Act which imposes, not expressly but practically, a time limit on the right to apply in revision given by another provision must be of doubtful validity. I am not prepared to accept that interpretation as it is neither the only interpretation nor an interpretation which is clearly supported by the language used.

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It is true that if an order in appeal or revision can be made at any time, the case may be kept hanging over the head of the dealer for a very long time at the option of the authority concerned. This consideration however does not lead me to accept the view advanced by the respondents. The calamity and the anomaly resulting from it to which I have earlier referred, seems to me to be much more serious than the inconvenience that it avoids. Further the inconvenience imagined seems to me to be more fanciful than real. It is not likely that the authorities would deliberately keep an appeal or a revision application pending for no reason at all as that would not give them any advantage whatever.

I would for these reasons allow the appeals.

Das Gupta J.

DAS GUPTA J.—These twelve appeals by the State of Orissa are in respect of twelve separate orders of assessment of sales tax that were made by the Collector of Sales Tax, Orissa, in exercise of his powers of revision under s. 23 of the Orissa Sales Tax Act. The several dealers who are the respondents in the appeals moved the Orissa High Court under Art. 226 of the Constitution for the issue of appropriate writes directing the State of Orissa not to collect the amounts which were said to have been illegally assessed. These several petitions have been allowed by the High Court and the orders of assessment made by the Collector have been quashed. The State of Orissa has filed the present appeals against the High Court's orders on special leave granted by this Court.

All the orders made by the Collector were passed later than 36 months from the expiry of the period in respect of which the assessment was made. The common question of law which arises in these appeals is whether the High Court was right in holding that these orders are bad in law on the ground that they contravene the provisions of the second proviso to sub-s. 6 of s. 12 of the Orissa Sales Tax Act.

Section 4 of the Act is the charging section and declares the incidence of taxation on sales. Section 5 deals with the rate of tax. It is unnecessary for

our present purpose to examine the provisions of ss. 6 to 10 which deal with the power of State Government to declare certain goods as tax free goods, to exempt certain dealers from tax, the power of the State Government to prescribe points at which the goods may be taxed, the registration of dealers, the publication of the list of registered dealers and the matters of collection of tax by dealers. Section 11 lays down that such dealer as may be required to do so by the Collector 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. Section 12 of the Act, with which we are primarily concerned, deals with the question of assessment of tax. In the first five sub-sections of this section the legislature has laid down the different modes in which assessment of tax may be made. Under the first sub-section the Collector shall assess the amount on the basis of the return furnished if he is satisfied, without requiring the presence of a registered dealer or the production by him of any evidence that they are correct and complete. The second and third sub-sections deal with the case where he is not so satisfied. In such cases the Collector shall assess the amount after hearing such evidence as the dealer may produce in support of the returns after the issue of a notice and such other evidence as the Collector may require on specified points (sub-s. 2); if the registered dealer fails to comply with the terms of the notice issued the Collector shall assess the amount of tax to the best of his judgment (sub-s.3). Sub-section 4 deals with the case where the registered dealer does not furnish returns by the prescribed date. In such a case also the Collector shall also assess the tax to the best of his judgment after giving the registered dealer a reasonable opportunity of being heard. Sub-section 5 provides for assessment by the Collector of taxes due from a dealer about whom he is satisfied that he has been liable to pay tax under the Act in respect of any period and has nevertheless failed to apply for registration. Then comes sub-section 6 which runs thus :—

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"(6) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under this Act:

Provided that when the Collector has imposed a penalty in addition to the amount assessed under this section, no further proceedings either revenue or criminal shall be taken against the order:

Provided further that no order assessing the amount of tax due from a dealer in respect of any period shall be passed later than thirty-six months from the expiry of such period".

Sub-section 7 provides that if for any reason the turnover of a dealer has escaped assessment or has been under-assessed the Collector may call for a return within 36 months of the end of the period in question and may proceed to assess the amount of tax in the manner laid down in sub-s. 5.

After the assessment order has been made under s. 12 a dealer may appeal to the prescribed authority against such order. This is provided by s. 23, sub-s. (1). Then follows provisions dealing with the orders which an appellate authority might pass and with revisions which we shall set out:

"Subject to such rules or procedure as may be prescribed, the appellate authority, in disposing of any appeal under sub-section (1), may—

(*a*) confirm, reduce, enhance or annul the assessment or penalty, if any, or both or

(*b*) set aside the assessment or penalty, if any or both and direct the assessing authority to pass a fresh order after such further inquiry as may be directed.

(3) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Collector may upon application, or of his own

motion, revise any order passed under this Act or the rules thereunder by a person appointed under s. 3 to assist him, and, subject as aforesaid, the Revenue Commissioner may, in like manner, revise any order passed by the Collector."

While nothing as regards the period within which such revisional powers may be exercised is stated in the Act itself, the power is in terms made subject "to such rules as may be prescribed". Rule 54 of the Rules made by the State Government under s. 29 of the Act lays down that the Collector may of his own motion exercise such powers of revision within one year from the date of the passing of the order made while the Revenue Commissioner may exercise his powers of revision within one year from the date of the passing of any order by the Collector.

Though in all these cases the impugned orders were made by the Collector of Sales Tax in purported exercise of powers of revision under s. 23(3), the petitioners in the several petitions claim that the orders were in substance made under s. 12(7) of the Act. The High Court was of opinion that s. 12(7) includes also the order of assessment made by the revising authority under s. 23(3) and in that view held that the orders of assessment passed beyond thirty-six months from the end of the period in question were barred by limitation.

The first contention urged on behalf of the State of Orissa is that the High Court is wrong in holding that an order of assessment of revising authority is necessarily one made under s. 12(7). The power of revision granted by s. 23(3) is clearly a distinct and separate power from the power to assess after calling for a return in case of under-assessment or escaped assessment. The mere fact that in a particular case the revising authority has by a fresh order of assessment made the dealer liable for tax in respect of which he can be said to have been under-assessed or to have escaped assessment does not make the two powers one and the same. We therefore find it

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difficult to agree with the High Court that s. 12(7) includes also the re-assessment made by the revising authority under s. 23(3).

The question however still remains whether accepting the position that the orders made by the Collector in the present case were not orders under s. 12(7) they were still orders of assessment to which limitation prescribed by the second proviso to s. 12 (6) applied. On behalf of the appellant it is urged that the limitation prescribed in this proviso applies only to orders of assessment made under s. 12 and that the impugned orders were made not under s. 12 but under s. 23 and so the limitation prescribed in this proviso does not apply to the impugned orders. It is worth noticing first of all that what appears as the second 'proviso' in s. 12 (6) has no connection with the legislative provision in the first part of the sub-section. That provision which has already been set out is that assessment made under s. 12 shall be without prejudice to any prosecution instituted for an offence under the Act. The first proviso is undoubtedly connected with the main provision. The second proviso however contains nothing by way of saving or exception to that main provision. It has nothing to do with the question of any prosecution. If we look at the substance of the matter, as we must, it appears clear that the provision of a period of limitation of 36 months for the passing of an order of assessment of tax is really an independent legislative provision of the Act and though it has been inserted by the draftsmen in the form of 'a proviso' in s. 12(6), it is in substance not a real 'proviso' to the main provision. That independent legislative provision lays down that no order "assessing the amount of tax shall be passed after the lapse of 36 months from the expiry of the period" for which the assessment is made. The provision is not in terms limited only to orders of assessment made under s. 12 but on its language applies to and governs any order assessing the amount of tax which would manifestly include an assessment under any provision of the

Act basides s. 12. The consequence is that even if an order of assessment made in exercise of powers of revision under section 23 be held to be not an order made under s. 12 this limitation of 36 months from the expiry of the period for which the assessment is made will still be applicable.

Mr. Sastri however submitted that as the provision under consideration actually appears as a 'proviso' in s. 12(6) the intention of the legislature was to make it applicable to only those orders of assessment to which the main provision which uses the words "Any assessment made under this section" related. As the main provision expressly relates only to orders of assessment under s. 12 it was argued that the period of limitation in the second proviso was intended to govern only orders of assessment made under s. 12.

We have already set out the reasons for which we think that this provision of limitation though it appears as a proviso in s. 12(6) is in reality an independent legislative provision, as its subject-matter has nothing whatever to do with the main provision in s. 12(6), or the proviso to sub-s. 6 which precedes it. If therefore it is in truth an independent provision, unrelated to s. 12(6) we do not see any logic or reason for importing into it the construction that its operation must be confined to an assessment under s. 12, for read by itself on any reasonable construction it would appear to be a limitation imposed on any order of assessment made under the Act, *i.e.*, under any provision of the Act. Assuming, however, for argument's sake that it applies only to orders of assessment under s. 12, that construction is of no help to the appellant unless it can be said that the impugned orders of assessment were not made under s. 12. We find it difficult to see how that can be said. It is true, no doubt, that the orders were made by virtue of powers conferred by s. 23. But s. 23 itself does not clothe the appellate or revising authority with any independent powers of assessing the tax due under the Act, independent of the powers under s. 12.

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A close examination of the terms of s. 23 would make this position clear. Let us first take the case of the powers of the appellate authority under s. 23(2). Among the orders he might pass in disposing of an appeal are "(b) set aside the assessment..... and *direct the assessing authority to pass a fresh order* after such further enquiry as may be directed." Mr. Sastri did not dispute the position that if the appellate authority exercised the power underlined the "assessing authority" can proceed to carry out the fresh assessment only under s. 12 and that in that event, his right to proceed further in the way of assessment would be subject to the limitation of 3 years prescribed by the second proviso to s. 12(6). The result would thus be that the appellate authority could pass an order setting aside the assessment at any time but the assessing authority cannot give effect to the order to make a fresh assessment if by that date three year period is past. This would virtually mean that if on the date the appeal was disposed of the 3 year period was over or nearly over, the powers which the appellate authority could exercise would be restricted to those set out in cl. (a) of s. 23(2), a result which would never have been contemplated. In other words, if the construction suggested by the appellant were accepted, we would have the anomalous situation that if the appellate authority set aside the assessment and remanded it for fresh orders, no fresh assessment can be done, but that if instead of so doing, he himself effected the same reassessment, there would be no bar of limitation. On such a construction therefore it would be at the option of the appellate authority, depending on the precise order he passed to decide, whether the period of limitation which the statute had prescribed should be attracted to an assessment or not. That should be sufficient to reject the appellant's argument that s. 23(2) was itself the source of power to effect an assessment. We need hardly add that what applies to an appeal under s. 23(2) applies to a revision under s. 23(3), as the powers of the revising authority and the orders it might pass are not conceived of as differ-

ing in any manner from those of the appellate authority. We have, therefore, no hesitation in holding that even when an appellate or revisional authority is effecting a fresh assessment by enhancing it, it is exercising the power which is conferred by s. 12, and so to speak, doing the duty which an assessing authority would or ought to have performed. Any order of assessment made by the appellate authority or as in the present appeals by the revising authority must therefore be held to be orders passed under s. 12 as well as under s. 23. Consequently, the period of limitation prescribed in the second proviso in S. 12(6) will in terms become applicable.

But, says Mr. Sastri, look at the anomalous position that will arise if this period of limitation of 36 months be held to apply to appellate or revisional orders of assessment. In many cases, he rightly points out, it may happen that the original order of assessment will be made either on the last date of the 36 months' period or only shortly before that. In all such cases no appellate order or revisional order of assessment can possibly be made within this period of 36 months. Mr. Sastri has tried to persuade us that such a result could not have been intended by the legislature. So, he says, the legislature should be held to have intended that this period of limitation applies only to the original orders of assessment. The obvious answer to this argument is that if that was the intention of the legislature nothing could have been easier than to say so. It is pertinent also to point out in this connection that except for this provision in the second proviso to s. 12(6) the Act itself contains no provision as regards limitation for orders of assessment. If Mr. Sastri is right, the position in law would be that once an original order of assessment has been made within this period of 36 months the appellate authority or the revising authority may make his order of assessment after any amount of delay. We find it difficult to believe that the legislature while prescribing a period of limitation about original orders of assess-

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ment would refrain from prescribing any such period of limitation in respect of appellate or revisional orders of assessment. It is true that the rule-making authority has itself prescribed in Rule 54 the period of one year from the date of the passing of the order as the time within which the Collector or the Revenue Commissioner may of his own motion revise the order. But this prescription of a period within which the power may be exercised might not have been made at all or may at any time be deleted. Even the rule-making authority has not prescribed any period of limitation within which an appellate order of assessment can be made or the time within which the Collector or the revising authority when exercising revisional jurisdiction on an application by the dealer must pass the order. The important point is that so far as the legislature is concerned no special rule for limitation as regards any revisional order or appellate order had been made. The fact that no period of limitation has been prescribed by the legislature itself for the passing of any order of assessment by the appellate authority or the revising authority is a further reason for thinking that the legislature intended that the period of limitation prescribed in s. 12(6) should apply to all orders of assessment irrespective of whether they were original orders, or appellate orders or revisional orders.

The difficulty pointed out by Mr. Sastri may really arise in certain cases. It is reasonable to expect that in the large majority of cases such a difficulty will not arise if the original order of assessment is made expeditiously so that it will be possible for the appellate authority or the revising authority to act within this period of 36 months. If in certain cases the difficulty does arise that is not, in our opinion, a sufficient reason, in view of the several considerations mentioned above, to think that the legislature intended, without saying so, that the period of limitation prescribed applied only to original orders of assessment.

Mr. Sastri drew our attention to a decision of the Patna High Court in *Gajo Ram* v. *State of Bihar*[1] where construing a some what similar proviso in s. 10(6) of the Bihar Sales Tax Act, 1944 that Court held that the 24 months' period of limitation prescribed there applied only to original orders of assessment. The learned Judges appear to have been impressed by the argument that absurdity will result if the period of limitation for the original orders of assessment and orders of assessment made by the appellate or revisional authority be the same. For the reasons we have already mentioned, that argument does not appear to us to be convincing.

We have therefore reached the conclusion that the impugned orders of assessment were barred by limitation, having been made more than 36 months after the expiry of the period for which the tax was assessed. We hold therefore that the High Court was right in quashing the several orders of assessment.

The appeals are dismissed with costs. There will be one set of hearing fee for all the appeals.

ORDER

In accordance with the opinion of the majority, the appeals are dismissed with costs. One set of hearing fee for all the appeals.

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(1) 7 Sales Tax Cases 248.