
(1995) 09 MAD CK 0080

In the Madras High Court

Case No : Tax Case (Revision) No. 2015 of 1984

A. Ramar Nainar

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 20-09-1995

Acts Referred:

Citation : (1995) 09 MAD CK 0080

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The assessee is the petitioner. For the assessment year 1978-79 the assessee reported a turnover of Rs. 22,050. The assessing officer, after gathering various materials, determined the taxable turnover at Rs. 2,68,521. The assessee is not maintaining accounts. On appeal, the Appellate Assistant Commissioner redetermined the taxable turnover at Rs. 1,03,964. The assessee filed an appeal before the Appellate Tribunal and the department filed an enhancement petition. The Appellate Tribunal, again redetermined the taxable turnover at rupees two lakhs. It is against that order, the assessee is in revision before this Court.

2. The learned counsel appearing for the petitioner submitted that the Tribunal was not correct in making addition by three times of the total turnover and the purchase turnover found in the bank's statement. It was submitted that the estimate of the turnover as done by the Tribunal is on the high side. According to the learned counsel, the turnovers as shown by the assessee before the Tribunal for the month of April, 1978 at Rs. 36,060 would include the sum of Rs. 22,050 reported as turnover in the assessment year under consideration. Therefore, this should be deducted from Rs. 67,457. In any event, it was submitted that the determination of the turnover on the basis of the estimate done by the department and the Tribunal is excessive. On the other hand, the learned Additional Government Pleader (Taxes) while sporting the order passed by the Tribunal, contended that inasmuch as the assessee failed to maintain proper

account and the assessee was unable to explain as to the absence of turnover for some months in the assessment year under consideration, the estimate of turnover determined by the Tribunal at rupees two lakhs itself is on the low side. Therefore, according to the learned Additional Government Pleader (Taxes), no further deduction need be done in the case of the assessee.

3. We have heard the rival submissions. The fact remain that the assessee reported a turnover of Rs. 22,050, which according to the assessee related to the month of April, 1978. It is the case of the assessee that for the rest of the months, there was no business. But on verification of bank accounts, the department found that cashewnuts were sold to the tune of Rs. 70,830.05. Out of the said sum the department deducted 15 per cent gross profit and arrived at the purchase value of the cashew kernel at Rs. 67,457. By adding Rs. 22,050 along with Rs. 67,457, a sum of Rs. 89,507 was arrived at. This was multiplied by three times and a sum of Rs. 2,68,521 was arrived at. From this, the Tribunal redetermined the taxable turnover for the assessment year under consideration at a round sum figure of Rupees two lakhs.

4. It is no doubt true that the assessee has not produced accounts in spite of the fact that notices were sent by the assessing officer several times. Rupees 22,050 even according to the assessee relates to the turnover for the month of April, 1978. Only from the bank account, the department came to know that there was a sale turnover of Rs. 70,830.05. The assessee has also produced an account showing a turnover of Rs. 59,845 for the months of April, May, June and July, 1978. The sum of Rs. 70,830.05 found in the bank account also does not relate to the entire period of the assessment year under consideration. In fact, it related to only two month in the assessment year under consideration. Taking into consideration the arguments advanced by the learned counsel appearing for the assessee as well as the learned Additional Government Pleader (Taxes) and considering the overall factual position, we are of the opinion that multiplying Rs. 89,507 by three times appears to be on the high side. If we multiply Rs. 89,507 by two times, it would come to Rs. 1,79,014. Taking into consideration the submissions made by the learned counsel appearing for the assessee that it is not always possible to do the business of this nature in all the months in the assessment year under consideration, we would redetermined the total and taxable turnover at Rs. 1,50,000 instead of rupees two lakhs as determined by the tribunal. Accordingly, this tax case (revision) filed by the assessee is allowed to the abovesaid extent. No costs.

5. Petition allowed.