(2001) 08 KL CK 0036

In the High Court Of Kerala

Case No : T.R.C. No. 8 of 2001

Alukas Jewelleries APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 07-08-2001

Acts Referred:

Income Tax Act, 1961 — Section 245C(1)
Kerala General Sales Tax Act, 1963 — Section 35, 35(2A)

Citation : (2001) 3 ILR (Ker) 309

Hon'ble Judges : S. Sankarasubban, J;S. Marimuthu, J

Bench : Division Bench

Advocate : Jose Joseph, for the Appellant; C.K. Abdul Rahim, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—Assessee is the revision petitioner. The assessment year is 1992-93. The assessee firm started business in gold in August, 1992. The business place of the assessee was inspected by the Intelligence Squad, Calicut on 28th November 1992 and notice certain stock difference. The assessee conceded sales turnover of Rs. 1,53,28,289 for the year 1992-93. But the books of accounts were rejected and assessment for the year 1992-93 was completed as per proceedings, dated 30th November 1996 fixing the taxable turnover at Rs. 1,84,89,480 inferring suppression of purchase and sales on the basis of the irregularities notice at the time of inspection. Accordingly, assessment Order was passed.

2. Against the assessment Order, the assessee preferred appeal before the Deputy Commissioner (Appeals) disputing the addition made to the taxable turnover on the basis of alleged suppression of purchase and sales apart from certain other points. The Deputy Commissioner modified the assessment Order directing the Assessing Authority to limit the addition by Rs. 1,50,000 as per Order, dated 10th February, 1997. That order is produced as Annexure B.

Consequently, the Assessing Authority passed revised Order, dated 14th March 1997 giving effect to Annexure B Order, copy of which is produced as Annexure C. Thus, suppression of purchase and sales turnover detected at the time of inspection of the business place of the assessee on 28th November 1992 was specifically considered by the Assessing Authority at the time of completion of the original assessment.

3. The Deputy Commissioner issued notice u/s 53 of the Kerala General Sales Tax Act. In the notice, it is stated thus: "You have admitted an additional income of Rs. 1,50,000 from the unaccounted business for the year 1993-94. Subsequently you have filed an application u/s 245C(1) of the Income Tax Act on 19th January 1995 before the settlement commission. In the application you have admitted that there had been suppression of income for the year 1993-94 by not fully accounting the purchases and sales of gold ornaments. You have offered additional income of Rs. 1,50,000/- for the Income Tax assessment year 1993-94, ie., financial year 1992-93. This shows that you have been practising unaccounted purchases and sales during the above period." The assessee objected to this. But the objections were rejected. The assessment was cancelled and ti was remanded to the Assessing Authority. The petition''s appeal to the Tribunal was dismissed.

4. The question before us was whether Annexure B issued u/s 35 of the Kerala General Sales Tax Act is valid or not. Learned Counsel for the assessee submitted that his client had informed the Income Tax people about the additional income of Rs. 1,50,000 during the assessment year 1993-94 corresponding to the previous year 1992-93 on the basis of inspection of the business place by the Intelligence Officer on 28th November, 1992.

5. Leaned counsel for the assessee brought to our notice a decision of this Court reported in S. Unnikrishnan Vs. State of Kerala, wherein this Court held that mere loss of Revenue should to be sole consideration for invoking powers of revision. It was further held that an Order in order to be prejudicial to the interests of the revenue should be erroneous and prejudicial to the Revenue administration. It is not a mere loss of revenue that should be the sole consideration for invoking the power of revision. In mattes fixing the estimate, there may be difference of opinion. But this deference of opinion cannot be equated with an erroneous view in law. Hence, it was found that the power exercised by the Deputy Commissioner was illegal. In this case also, the same question arises. Since already this has been considered by the Assessing Authority and the Appellate Authority, we are of the view that it was not proper on the part of the Deputy Commissioner to invoke his power u/s 35(2A) of the kerala General Sales Tax Act.

6. In the above view of the matter, we are of the view that the question of suppression was considered on the basis of the inspection that was conducted on 28th November, 1992. The Commissioner cannot reopen the proceedings on the basis that in the Income Tax proceedings the assessee had disclosed a profit of

Rs. 1,50,000. The assessee has only disclosed only on the basis of the inspection that was held on 28th November 1992. Hence, we are of the view that it was not right on the part of the Deputy Commissioner to interfere. Hence, the impugned orders are set aside.

T.R.C. is allowed.

