(1960) 10 KL CK 0029

In the High Court Of Kerala

Case No : O.P. No''s. 532 and 533 of 1960

Balakrishna and Sons APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 25-10-1960

Acts Referred:

Citation : (1961) 5 KLJ 230 : (1961) 12 STC 272

Hon'ble Judges : M.A. Ansari, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : T.L. Viswanatha Iyer, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.A. Ansari, C.J.—These two writ petitions seek to vacate assessments made in absence of any materials furnished by the dealer. The assessment challenged in O.P. 533/60 is for 1957-58 ; and that in O.P. 532 for 1959-60. The turnover determined in the earlier assessment is Rs. 17,00,000 and in the later year Rs. 20,00,000. The assessment order for each year is very brief; and states the several dates on which the dealer had been asked to furnish the accounts and his persistent failures. The order then says that the officer has determined the net turnover to the best of his judgment; and, thereafter, amount for the tax is mentioned. We are convinced about the petitioner''s conducts in both the cases not being satisfactory ; and, therefore, we would not allow costs for these writ petitions. But it is clear that the taxing authorities when making assessment discharge quasi-judicial functions and the order must not be capricious, arbitrary or punitive. The order by the taxing authority must also disclose the basis for the best judgment assessment, so that the higher authorities may know the grounds, on which the assessment has been based. As regards the first duty, we need only quote the following passage in Commissioner of Income Tax v. Laxminarain Badridas [1937] 5 ITR 170 at p. 180:

The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose, he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee''s circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guess-work in the matter, it must be honest guesswork. In that sense too, the assessment must be to some extent arbitrary.

2. This being the duty, the order must show the authority having discharged it, and, in the cases before us, we are satisfied that the two orders do not show that to have been done. They are vitiated because they do not give the basis for the best judgment assessments, and appear to be arbitrary. It may be that the officer has his reasons, but then the order does not disclose any reason. Therefore, there is error apparent on the face of the record to justify our interfering in these two petitions by vacating the assessments and directing the officer to make fresh assessments according to law. The writ petitioners can submit their accounts for the relevant years, which, we are informed, have now been returned from Maharashtra State, and could not be furnished earlier because they had been sent there for some litigation. The petitions are accordingly allowed with direction for fresh assessments with reasons for the orders, but the petitioners must bear their costs because of failure to submit the returns.

