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**(1974) 03 OHC CK 0019**  
**In the Orissa High Court**  
**Case No : O.J.C. No"s. 328 and 329 of 1972**

Balaram Das

APPELLANT

Vs

Assistant Commissioner of Sales Tax and Another

RESPONDENT

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**Date of Decision :** 11-03-1974

**Acts Referred:**

Income Tax Act, 1961 — Section 253, 263

**Citation :** (1975) 36 STC 332

**Hon'ble Judges :** R.N. Misra, J;B.K. Ray, J

**Bench :** Division Bench

**Advocate :** R. Mohanty, for the Appellant; The Standing Counsel (S.T.), for the Respondent

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## Judgement

R.N. Misra, J.—The petitioner is a registered dealer under the Orissa Sales Tax Act of 1947 (hereinafter referred to as the "Act"), carrying on business at Remuna in the district of Balasore. He was assessed to sales tax under the Act for the years 1968-69 and 1969-70 by the opposite party No. 1.

2. The assessing officer relied upon a fraud report of August, 1968, of the inspecting staff. He also found that sale of paper containers on several occasions had been shown though purchase of such containers had never been accounted for. Ten quintals of unaccounted paddy were also found in stock. The account books were found not to have been written up to date. On 24th February, 1969, it was noticed that the accounts had not been written after 1st April, 1968. There was also a shortage of kerosene oil and purchase vouchers of certain items were not available though asked for. Accordingly while completing the assessment u/s 12(2) of the Act for the two years, the assessing officer enhanced the turnover by Rs. 10,000 for the first year and Rs. 8,500 for the second year. Sometime thereafter, the assessing officer found discrepancy in the accounts relating to sales as also stock of agarbathi. Some unaccounted slips were found in the business premises of the petitioner. For boiled rice, paper bags, etc., accounts were not available. Shortage of 824 litres of kerosene oil was found in the stock

which was not explained. The assessing officer accordingly took action u/s 12(8) of the Act for the very two years and enhanced the turnover by Rs. 10,000 for each of the periods. Later, action was taken u/s 23(4) of the Act by the Assistant Commissioner of Sales Tax to revise the estimates and the Assistant Commissioner after giving a reasonable opportunity to the assessee of being heard enhanced the estimates of turnover for both the years. For the first year, the enhancement in the taxable turnover was Rs. 42,000 and for the second year it was Rs. 70,000. These two writ applications are filed assailing the action of the Assistant Commissioner and the petitioner has asked for a writ of certiorari to quash the consolidated revisional order dated 31st December, 1971, passed by the Assistant Commissioner.

3. In the writ application jurisdiction of the revisional authority to enhance the tax and penalty was seriously disputed. The exercise of the revisional power by the Assistant Commissioner was also disputed on the ground of want of necessary delegation. In view of the unanimous view expressed in several cases, Mr. Mohanty does not seriously press the jurisdiction of the revisional authority to enhance the tax and penalty. (See *The State of Orissa Vs. Dabaki Devi and Others*, , *State of Kerala Vs. K.M. Charia Abdullah and Co.*, , *Swastik Oil Mills Ltd. Vs. H.B. Munshi*, Deputy Commissioner of Sales Tax, Bombay, , *R. K. J. Ranjan Pal P. Ltd. v. Member, Board of Revenue* [1970] 26 S.T.C. 489, and *Swastik Oil Mills Ltd. Vs. H.B. Munshi*, Deputy Commissioner of Sales Tax, Bombay,

*The State of Orissa Vs. Dabaki Devi and Others*, went from this court. The majority of the learned Judges of the Supreme Court clearly indicated that the revisional authority could pass an order of assessment. The second case *State of Kerala Vs. K.M. Charia Abdullah and Co.*, directly raised the point. Interpreting Section 12(2) of the Madras General Sales Tax Act of 1939, the majority of the learned Judges stated that the revisional authority was not obliged to confine the exercise of the jurisdiction to materials already on record. He could make an enquiry as found necessary and rectify the defect appearing in the order. The result of such rectification could be enhancement.

In *Swastik Oil Mills Ltd. Vs. H.B. Munshi*, Deputy Commissioner of Sales Tax, Bombay, , the Supreme Court was examining the ambit of revisional jurisdiction and came to say that a revisional authority, even if he is not expressly authorised to pass such orders as he thinks fit, necessarily has the power to make such order as, in his opinion, the case calls for when he is satisfied that it is an appropriate case for interference in exercise of revisional powers. When a power is conferred on an authority to revise an order, the authority is entitled to examine the correctness, legality and propriety of the order and to pass such suitable orders as the authority may think fit in the circumstances of the particular case before it. When exercising such powers, there is no reason why the authority should not be entitled to hold an enquiry or direct an enquiry to be held and for that purpose admit additional material.

The two other cases (*R. K. J. Ranjan Pal P. Ltd. v. Member, Board of Revenue*

[1970] 26 S.T.C. 489 and *New Empire Hosiery Mills v. Board of Revenue* [1974] 33 S.T.C. 21), referred to above, are from the Calcutta High Court. In the first case, Mukharji, C. J., held that the power of revision was extensive enough to bring in escaped assessment and the revisional authority could, therefore, enhance the assessment. In the last of the cases (*New Empire Hosiery Mills* [1974] 33 S.T.C. 21) the same view has been reiterated by placing reliance on the earlier decision.

Law being settled this way, Mr. Mohanty fairly does not dispute any longer the jurisdiction of the revisional authority to make an enhancement. In view of the production of the notification delegating the Commissioner's powers to the Assistant Commissioner of entertaining revisions and exercising suo motu revisional jurisdiction, Mr. Mohanty also does not dispute the impugned orders on that footing.

4. The only point that remains to be considered is whether jurisdiction has been properly exercised in this case (conceding existence of jurisdiction). As already indicated the very first order of assessment for both the years was u/s 12(2) of the Act. On 11th January, 1971, the assessing officer passed a second set of assessment orders u/s 12(8) of the Act having found some concrete suppressions. The order of assessment (annexure 2) clearly shows that the suppressions related to both the years of assessment. He accordingly enhanced the turnover by a further sum of Rs. 10,000 for each of the years. The Assistant Commissioner took suo motu action because he was of the view that the estimates adopted u/s 12(8) of the Act were not appropriate. In paragraph 10 of the impugned order, he gave the particulars of suppressions and then stated :

11. Considering these irregularities and the discrepancies noticed with the dealer at different times and as already pointed out in the orders of the assessing officer on 11th January, 1971, I believe that these omissions, suppressions and discrepancies whether in tax-free goods or in taxable goods are only illustrative. Combined with the habit of the dealer to file returns on the basis of purchases only and his manner of keeping his accounts always back-dated, the extent to which the dealer must have suppressed the transactions during the two years would have been much more than that estimated by the assessing officer. I, therefore, feel that an enhancement to the extent of 25 per cent of the turnover returned by the dealer would be appropriate in the facts and circumstances of the case. Taking into consideration the enhancement already made in the course of assessments u/s 12(2) of the Orissa Sales Tax Act, 1947, I would determine the enhanced turnover u/s 12(8) of the O. S. T. Act, 1947, at Rs. 60,000 for the year 1968-69 and Rs. 1,00,000 for the year 1969-70, 30 per cent of the turnover is treated to be the sales of tax-free goods and the balance of 70 per cent is taken as the taxable turnover. Thus, the enhanced taxable turnover works out to Rs. 42,000 and Rs. 70,000 for the years 1968-69 and 1969-70 respectively....

Mr. Mohanty contends that these enhancements have been arbitrary and no foundation is laid as to why in the opinion of the revisional authority such a huge

enhancement was necessary. Undoubtedly it is not a case where new material has come to light and there has been any fresh investigation by the revisional authority. The learned standing counsel has clearly stated that it is on the very materials which were before the assessing officer at the reassessment stage that the revisional authority has enhanced the turnover. Undoubtedly, in the order of reassessment by the assessing officer himself, he took into account some of the features which had been taken into consideration while completing the assessment u/s 12(2) of the Act. In this case, the very first assessment was also on the basis of estimates. The reassessment by the assessing officer was on a re-estimate of the suppression and the revisional authority has on the same material taken a different view about the quantum of suppression. Ordinarily, it is not a matter where in exercise of our extraordinary jurisdiction we would at all interfere. But taking into consideration the special features and the three estimates adopted one after the other, we are prepared to reduce the ultimate estimates by deleting the addition by the Sales Tax Officer of the estimated addition while assessing u/s 12(2) of the Act. As a result, in place of enhancement of Rs. 60,000 for the first year, the enhancement shall be Rs. 50,000 and for the second year in place of Rs. 1,00,000, the enhancement shall be Rs. 91,500. The proportion of taxable and tax-free sales as indicated in the order of the Assistant Commissioner shall be sustained and we direct the authorities to take steps accordingly to compute the tax payable and raise the necessary demand.

5. We have exercised jurisdiction in this case because it has been shown to us that no appeal lies against the revisional order. u/s 23(4) of the Act, the power of revision was vested in the Commissioner. Under Sub-section (4) (d) of Section 23 of the Act the revisional jurisdiction is available to be exercised by a delegatee of the Commissioner. So that power has now been exercised by the Assistant Commissioner. Under the Act, no provision for appeal against the revisional order has been prescribed. In a similar situation under the Income Tax Act, the order of the Commissioner has been made appealable to the Tribunal (see Sections 253 and 263 of the Income Tax Act of 1961). We see no justification as to why the orders passed in exercise of revisional jurisdiction should not be subjected to appeal.

As indicated by the Supreme Court, the revisional jurisdiction can be exercised to make an assessment and when in exercise of that jurisdiction enhancement is made, it indeed partakes the character of assessment. It is appropriate that such jurisdiction should be subjected to appeal and reference in the same way as any assessment is ; otherwise the situation would tantamount to making assessments and raising demands without a right of appeal when the same may be challenged. Such a situation would yield scope to arbitrariness and since it is human experience that unbridled power runs the risk of being abused, an appellate forum should be prescribed. In a country governed by rule of law, a position leading to its antithesis cannot afford an acceptable condition.

We commend to Government to amend the Act by providing an appeal against exercise of revisional jurisdiction particularly in cases where revision of orders prejudicial to the revenue is involved.

6. The writ applications are accordingly allowed to the extent indicated above. No costs.

B.K. Ray, J.

7. I agree.