

(1952) 01 PAT CK 0021
In the Patna High Court
Case No : Misc. Judicial Case No. 152 of 1949

Banarsi Lal

APPELLANT

Vs

The Province of Bihar

RESPONDENT

Date of Decision : 23-01-1952

Acts Referred:

Citation : AIR 1952 Patna 291

Hon'ble Judges : Sarjoo Prosad, J; Ramaswami, J

Bench : Division Bench

Advocate : Ramanugrah Pd, for the Appellant; Government Advocate and R. Prasad, for the Respondent

Judgement

1. This case is stated by the Board of Revenue u/s 21(3) of the Bihar Sales-tax Act VI (6) of 1944 which corresponds to Section 25(3) of the Act of 1947.

2. The following questions have been referred :

(1) Whether, in view of the Board's finding that the assessee had not a taxable business up to 31st of March 1945, the assessment up-to the 30th June 1945 was legal; and (2) whether the refusal of the Board in its powers of revision to go into the questions of fact is legal, specially in view of the fact that the Board's powers of revision under the Act in question have not been defined specifically.

3. The assessee is a dealer in betel and sweatmeat and a resident of Mahalla Kadam Kuan, Patna. He was assessed to sales-tax on a taxable turnover of Rs. 13,230 for the period from 1st October 1944 to 31st March 1945 and on a taxable turnover of Rs. 26,460 for the period from 1st April 1945 to 31st March 1946 by the Sales-tax Officer, Patna Urban Circle, The assessee preferred appeals to the Assistant Commissioner of Sales-tax but the appeals were dismissed. In revision the Deputy Commissioner of Commercial Taxes remitted the penalties imposed on the assessee but otherwise upheld the assessments made by the Sales-tax Officer. The assessee then moved the Board of Revenue who after hearing the parties remitted the tax for the period from 1st October

1944 to 31st March 1945 but affirmed the assessment made for the period 1st April 1945 to 31st March 1946.

4. As regards the first question it was pointed out by Mr. Ramanugrah Prasad on behalf of the assessee that the assessment for the period from 1st October 1944 to 30th June 1945 was illegal upon the finding of the Board that the assessee had no taxable business upto 31st March 1945. Learned counsel founded his argument upon Section 4(1) and Section 4(2) of the Bihar Act VI (6) of 1944. Section 4(1) states:

"Subject to the provisions of Sections 5 and 6 and with effect from such date as the Provincial Government may, by notification in the Official Gazette, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded Rs. 5,000 shall be liable to pay tax under this Act on sales effected after the date so notified."

Section 4(2) enacts:

"Every dealer to whom Sub-section (1) does not apply shall be liable to pay tax under this Act with effect from three months after the commencement of the year immediately following that during which his gross turnover first exceeded Rs. 5,000."

It is undisputed in this case that Section 4(1) is not applicable. It follows that u/s 4(2), the assessee is not liable to pay tax with effect from three months after the commencement of the year immediately following that during which his gross turnover first exceeded Rs. 5,000. u/s 2(j), "year" means financial year. It is therefore manifest that the assessee is not liable to pay tax for the period 31st March 1945 to 30th June 1945. This question must be therefore answered in favour of the assessee.

5. As regards second question, the argument was stressed by Mr. Ramanugrah Prasad that the assessment was arbitrary and a betel shop could not sell articles to the extent of Rs. 150 per day. It was argued that the Board of Revenue had power in its revisional jurisdiction not only to examine questions of law but also questions of fact. Reference was made to Section 20, Clause (3) of the Act which provides that the Commissioner may upon application or of his own motion revise any order passed under the Act and subject to such rules as have been prescribed the Board of Revenue may in like manner revise any order passed by the Commissioner. It was pointed out by the learned counsel that the power of revision is expressed in wide terms and the Board of Revenue was entitled in exercise of its revisional jurisdiction to go into questions of fact. In our opinion the argument of the learned counsel is correct. There is no express limitation in the statute upon the powers of revision - conferred upon the Board of Revenue. It is obvious that in exercise of its revisional jurisdiction the Board of Revenue may examine not merely questions of law but also questions of fact. In the present case the Board of Revenue has rejected the contention of the assessee

as regards the quantum of business for the reason that there were concurrent findings of fact. Mr. Ramanugrah Prasad however pointed out that on this part of the case the Board of Revenue perhaps misdirected itself in holding that it could interfere only if questions of law were involved. In support of his contention learned counsel pointed out that the Board has said in its resolution dated 31st July 1948 "As regards the first point, it is a question of fact that in view of the concurrent findings I do not find it necessary to interfere in revision on grounds of law". This reasoning is rather ambiguous and it is difficult to gather from the resolution whether the Board rejected the contention of the assessee because there were concurrent findings of the two lower Courts or because there was no ground of law apparent. On behalf of the State of Bihar the Government Advocate pointed out that though the ambit of revisional jurisdiction was wide, it is a question of discretion in each case whether the Board would exercise its power of going into question of fact. There is truth in this argument which requires qualification only in this sense that the discretion vested in the Board must be exercised not arbitrary but in a judicial manner. Though the judgment of the Board in this case is defective the subsequent resolution dated 19th May 1949 makes it clear that the Board refused in its discretion to go into question of fact in view of the failure of the assessee to maintain books and to produce accounts and because of the concurrent findings of the two Courts as to the quantum of business. Upon the particular circumstances of this case it cannot be held that the refusal of the Board in its power of revision to go into questions of fact is illegal. The question referred must, therefore, be answered against the assessee.

6. We do not propose to make any order as to costs of this reference. The assessee is entitled to refund of the amount of Rule 100 in deposit since the first question has been answered in his favour.