
(1973) 07 OHC CK 0027

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 229 and 230 of 1970

Banwarilal Sitaram

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 20-07-1973

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(4), 24(1)

Citation : (1973) 39 CLT 968

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

Bench : Division Bench

Advocate : B. Chandgotia, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.N. Misra, J.—u/s 24(1) of the Orissa Sales Tax Act (briefly referred to as the "Act") the Member, Additional Sales Tax Tribunal, Orissa, has referred the following question for determination of this Court:

Whether in the facts and circumstances of the case the Tribunal was right in rejecting the prayer of the Applicant to summon the third-party for confrontation when reliance was placed on the accounts and also statement of the third party which was not recorded in the presence of the Applicant Assessee? Whether assessment made in such circumstances would be valid?

2. The manner in which the question posed to this Court for answer arose may now be recounted. The Assessee is a dealer carrying on business at Rourkela and was assessed to sales tax u/s 12(4) of the Act for the assessment years 1962-63 and 1963-64 by the Sales Tax Officer, Rourkela Circle at Uditnagar. During assessment proceedings from some seized books of account of Messrs Sitaram Jaiswal, some transactions were found to have been carried on between the Assessee and that firm. On cross-verification the following four transactions were found in the Assessee's accounts:

Serial Number	Date	Amount
---------------	------	--------

1 1-12-1962 Rs. 1,500/-

2 13-1-1963 Rs. 2,000/-

3 10-2-1963 Rs. 1,561/-

4 13-4-1963 Rs. 300/-

This fact was put to a partner of the Assessee's firm and the assessing officer was not satisfied with the explanation offered by him about the absence of the corresponding entries for these four transactions in the Assessee's accounts. The partner of the Assessee's firm had stated to the assessing officer that the transactions may have been with the firm of Messrs Panalal Banwarilal and not with the Assessee-firm which is known as "Banwarilal Sitaram". The Sales Tax Officer stated in his order:

...This contention of the dealer cannot be accepted in view of the fact that it has been ascertained from official sources that these financial transactions have been made with this firm in usual course of business. These payments have been received by them towards satisfaction of dues relating to their credit sales. In the face of this authentic evidence as available in the records I am not prepared to accept the contention of the agent of the dealer, when these transactions have not been noted in their books of accounts. So I reject the accounts of both the years.

As the Assessee was maintaining accounts according to the Rama Nabami year and the suppression related to both the accounting periods, the accounts of both the years were rejected and assessments were completed according to the Sales Tax Officer's best of judgment.

Before the first Appellate authority, the Assessee claimed to have the opportunity of cross-examining the representative of Messrs. Sitaram Jaiswal who had given a statement before the assessing officer. Admittedly the official source referred to in the order of the assessing officer (extracted above) related to the evidence collected from a representative of the firm of Messrs. Sitaram Jaiswal behind the back of the Assessee. The Assistant Commissioner of Sales Tax negated this claim of the Assessee by saying:

...In this connection it is pertinent to mention that it has been admitted by both Sitaram Jaiswal and the Appellant that they have regular business transactions with each other. Further Sitaram Jaiswal has categorically stated that by Banwari and Harikisan, he means Banwarilal Sitaram (the Appellant) of Old Station Road, Rourkela. In the face of such clear admission by Sitaram Jaiswal, the onus lies on the Appellant to prove that the transactions do not relate to him. Since he has failed to prove the stand taken by him the Sales Tax Officer has rightly held that the transactions in question related to the Appellant's business transactions with Sitaram Jaiswal. Again, when the Appellant did not press for confrontation of Sitaram Jaiswal at the assessment stage when the transactions were put to him, I am not inclined to concede to his request for summoning Sitaram Jaiswal for

the purpose of confrontation at my stage.

In second appeal before the Additional Sales Tax Tribunal, the Assessee pressed the same contention. The Assessee's claim was negated in second appeal by saying-

It is an admitted fact that Sitaram Jaiswal of Lahunipara had business transactions with the Assessee firm. In his statement before the Sales Tax Officer on 20-7-1965 Sitaram Jaiswal admitted that he had 7 transactions with the Assessee firm and he made payments as noted above. At the stage of assessment these transactions were confronted to the Assessee-Appellant and he denied to have any such transaction with Sitaram Jaiswal on the above dates. But at that stage the Assessee-Appellant did not ask for confrontation of Sitaram Jaiswal. The only plea taken by him was that these payments might relate to some other Banwarilal Agarwalla of Rourkela. But this plea contains no substance in view of the clear admission of Sitaram Jaiswal that by Banwarilal Harikishan he meant Banwarilal Sitaram, the Assessee-Appellant of Old Station Road, Rourkela. So, these transactions cannot relate to the business of the Assessee-Appellant and the Assessee firm suppressed these transactions from its books of account. Before the Assistant Commissioner of Sales Tax and also before the Tribunal the Assessee-Appellant had moved for summoning Sitaram Jaiswal for the purpose of confrontation. But no such step having been taken at the stage of assessment, I do not think it is desirable to allow the prayer of the Assessee-Appellant at this stage.

3. In the order of assessment the Sales Tax Officer nowhere stated that he had informed the Assessee at any stage before completing the assessment that he had collected a statement from Sitaram Jaiswal in relation to the impugned transactions. The assessment order only says that the Assessee was confronted with the entries in the books of account. As learned Standing Counsel contended before us that the Assessee must have notice of Sitaram Jaiswal's statement while accounts were being checked by the assessing officer, we requested him to produce the records of assessment and the records have been placed before us. Learned Standing Counsel on verification of the record has fairly conceded that there is no material on record to show that the Assessee had notice of such a statement having been recorded from Sitaram Jaiswal.

If the Sales Tax Officer never indicated to the Assessee that he had with him such a statement, the first time when the Assessee could press for confrontation was the first Appellate stage because he must have been aware of the utilisation of such a statement after seeing the order of assessment. The first Appellant authority was, therefore, not correct in rejecting the claim for confrontation by saying that at the appropriate stage it had not been pressed. When the first Appellate authority had improperly rejected the prayer on an untenable ground, the Additional Tribunal could not have taken the view:

I do not think it is desirable to allow the prayer of the Assessee Appellant at this

stage.

4. A lot of reliance has been placed on the statement of Sitaram Jaiswal by all the authorities. The ambiguity that existed regarding identity of the dealer with whom Sitaram Jaiswal had carried on the impugned transactions was said to have been removed beyond doubt on account of the unambiguous and clear evidence of Sitaram Jaiswal identifying the dealer with whom the transactions had taken place. If that oral evidence was not available, quite possibly, merely on the entries in the account books, the Sales Tax Officer may not have rejected the accounts of the Assessee by finding suppression. It is the evidence of correlation that has mattered. Thus, the statement of Sitaram Jaiswal is a very important piece of evidence, that is, this statement though the Sales Tax Officer was going to utilise against the Assessee was not disclosed to the Assessee and he did not have the opportunity of meeting the adverse material contained in such evidence. When the Assessee made a grievance of this situation before the first Appellate authority and having appealed before the second Appellate authority, they turned down the Assessee's request by saying that the claim for confrontation had not been made at the appropriate time.

6. Law is settled beyond doubt that the strict principles of the Evidence Act do not apply to an assessment proceeding. The assessing officer is entitled to collect materials behind the back of the Assessee and even not to disclose the source to the Assessee in all cases but he is bound to disclose to the Assessee any material adverse to the Assessee in his possession which he is going to utilise against the Assessee in the assessment. The Assessee is expected to meet such adverse materials and thereby save himself from any adverse assessment; see *Muralimohan Prabhudayal v. State of Orissa* (1970) 26 S.T.C. 22. This in fact is a well accepted rule of natural justice. The assessing officer as a quasi judicial Tribunal cannot act beyond such a principle.

6. Learned Standing Counsel contended before us that if the principle is that the assessing officer may not disclose the source, by allowing cross-examination the source is disclosed and the interest of revenue is bound to be prejudiced. In every case, the source cannot be withheld. In fact where the foundation for the assessment against the Assessee is received by direct evidence of some outside agency (as in this case) irreparable injustice is likely to result to the Assessee if relying on the principle that the assessing officer may withhold disclosing the source to the Assessee, an opportunity to the Assessee is denied of confronting the person giving the Information to the assessing officer. The case in hand is one of the type. We have no doubts in our mind that if in this case confrontation would be withheld, a material collected behind the back of the Assessee and never disclosed to him would form the basis of assessment That is the foundation for rejection of his accounts and for penalising him by entering an assessment according to the assessing officer's best of judgment.

7. Our answer to the question, therefore, shall be:

In the facts and circumstances of the case, the Tribunal was not right in rejecting the prayer of the Assessee to summon the third-party for confrontation when reliance was placed on the accounts and also the statement of the third-party which was not recorded in the presence of the Assessee. The assessment made in such circumstances would not be valid.

8. We direct that the Assessee shall have his costs of these references. Hearing fee rupees one hundred.

B.K. Ray, J.

9. I agree.