(1990) 05 GAU CK 0010

In the Gauhati High Court

Case No : Civil Rule No. 202 of 1982

Bhagabati Bhandar APPELLANT

Vs

The State of Tripura and Others RESPONDENT

Date of Decision : 21-05-1990

Acts Referred:
Tripura Sales Tax Act, 1976 — Section 9(3)

Citation : (1990) 2 GLR 88

Hon'ble Judges : H.K. Sema, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S. Deb, for the Appellant; M. Nath, for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—By the present writ petition the Petitioner challenges three orders of assessment passed by the Superintendent of Taxes. Charge-3 Government of Tripura for the quarters ending 31.3.77, 31.3.78 and 31.3.79. The assessments have been made u/s 9(3) of the Tripura Sales Tax Act, 1976 (hereinafter referred to a "the Act"). The Superintendent of Taxes in all the three assessments rejected the books of account produced by the Petitioner and estimated the turnover.

2. The grievance of the Petitioner is that the estimation made by the Superintendent of Taxes is most arbitrary. It is contended that there is no evidence or materials on record to support the same

3. Heard Mr. S. Deb, learned Counsel for the Petitioner. Also hear Mr. M. Nath, learned Government Advocate appearing for the Revenue.

4. We have gone through the assessment order and we do no find any material in support of the estimation of the turnover at the enhanced figures. No such material is available on records also. It is stated by Mr. Section Deb, learned Counsel for the Petitioner, that this case covered by a decision of this Court in Dwijendra Bhattacharjee v. Superintendent of Taxes (1989) 2 G.L.R. 468. Mr.

Deb relies on the following passage in para 13 of the said judgment which reads:

The assessing officer, after making all inquiries and giving reasonable opportunity of hearing to the Assessee, can definitely arrive at his own conclusion, However, the assessment made must have reference to some evidence or material on record. Having rejected the books of account or the evidence produced by the Assessee the assessing authorities cannot act arbitrarily and on pure guess and make an assessment without reference to any evidence or any material at all. No hard and fast rule can be laid down to define the sort of material on which the assessing officer can base his assessment. It will depend on the facts of each case. In any event, the assessment order must disclose not only the reasons for rejecting the return and accounts but also the basis on which the assessment is made.

5. We have considered the submission and in our opinion the present case is clearly covered by the aforesaid decision. In this case also, as in Dwijendra Bhattacharjee''s case (Supra) after noting down the defects in the accounts (sic, the assessing authority) made the estimate of turnover without any reference to any evidence or materials on which the foresaid estimation was based.

6. Accordingly, the assessment is set aside. The assessing authority is directed to make a fresh assessment in the light of the decision of this Court in Dwijendra Bhittacharja (Supra) after giving proper opportunity of bearing to the Petitioner.

7. In the result, the writ petition is allowed. No order as to cost.