
(1969) 01 AHC CK 0013

In the Allahabad High Court

Case No : Sales Tax Reference No. 277 of 1966

Bhagat Ram Jai Narain

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 16-01-1969

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 21(1)

Citation : (1969) 24 STC 287

Hon'ble Judges : R.S. Pathak, J; R.L. Gulati, J

Bench : Division Bench

Judgement

R.S. Pathak, J.—The assessee is a sarrafa dealer carrying on business at Kanpur. In proceedings for the assessment of sales tax under the U. P. Sales Tax Act for the assessment year 1957-58 his account books were accepted and on their basis a turnover was determined at Rs. 14,41,096-10-6. Subsequently, upon information received from a dismissed munim of the assessee that the assessee was in the habit of not recording all the transactions in the account books, the Sales Tax Officer initiated proceedings u/s 21 of the Act for reassessment of the turnover. He examined three parchas containing entries of sales made on 9th July, 1957, 15th November, 1957, and 29th March, 1958. Upon verification with the account books the Sales Tax Officer found that entries totalling Rs. 651 mentioned in the parcha for 9th July, 1957, and one entry of Rs. 154 in the parcha for 29th March, 1958, were not entered in the account books. He made a best judgment assessment and estimated the escaped turnover at Rs. 3,00,000. On appeal by the assessee, the Assistant Commissioner (Judicial) Sales Tax rejected the explanation of the assessee respecting the entries in the parchas and upheld the action of the Sales Tax Officer in resorting to a best judgment assessment ; but he reduced the quantum of the escaped turnover to Rs. 2,00,000. The assessee applied in revision and the Judge (Revisions) Sales Tax reduced the quantum further to Rs. 80,000. At the instance of the assessee the Judge (Revisions) has made this reference on the following question :

Whether a best judgment assessment is permissible in proceedings u/s 21 when the turnover escaped is only partial and not total, specially when a former regular assessment had already taken place?

2. Section 21(1) of the Sales Tax Act reads:

If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for any year, the assessing authority may, after issuing notice to the dealer, and making such enquiry as may be necessary, assess or reassess him to tax :

* * *

Explanation.-Nothing in this Sub-section shall be deemed to prevent the assessing authority from making an assessment to the best of his judgment.

3. Section 21(1) contemplates an assessment or reassessment proceeding against a dealer where the whole or part of the turnover has escaped assessment to tax. Where no assessment proceeding was taken so far, or it was taken and it was found that the dealer was not liable to assessment and subsequently the Sales Tax Officer discovers that turnover has escaped assessment, there is a case for assessing the dealer u/s 21. Where, however, an original assessment of the turnover was made and subsequently the Sales Tax Officer discovers that all the turnover had not been assessed but part only had been assessed, there is a case for reassessing the dealer u/s 21. Now, in case where the dealer has to be reassessed u/s 21, the question may arise whether the Sales Tax Officer is entitled to disturb the turnover already determined in the original assessment. That is a question which must be decided upon the facts of each case. In a case where the dealer has, let us say, two branches of business operating independently, and it is found that the turnover of one branch alone has been assessed while the turnover of the other branch has escaped assessment, the assessing authority is not entitled to disturb the turnover of the branch already assessed. This is so if for determining the turnover of an assessed branch it is not necessary to disturb the turnover assessed in respect of the other branch. The Sales Tax Officer must confine himself to assessing the escaped turnover and, that, in such a case, can be done without disturbing the turnover already assessed. But there may be a case, as is the one before us, where the original assessment has been made on the basis of the account books of the dealer and subsequently the Sales Tax Officer has reason to believe that the account books are not reliable and that the turnover has escaped assessment. In such a case, the entire foundation of the original assessment collapses and the determination of the turnover made on that basis loses its validity. When the Sales Tax Officer proceeds to reassess the turnover he is entitled to cover the entire range of turnover. In doing so, depending upon the circumstances, he may make a best judgment assessment. It would be, perhaps, a different story if the Sales Tax Officer had arrived at the original assessment itself to the best of his judgment. If in doing so he had considered all the sources of turnover and taken into

account the turnover from all of them, and then made a best judgment assessment, it might have been possible to say that the jurisdiction u/s 21(1) cannot be invoked for making a further best judgment assessment. That was the case in *Pooran Mal Kapoor Chand v. The Commissioner of Sales Tax S.T.R. No. 147 of 1957* decided by Desai, C.J., and K.B. Asthana, J., on 30th July, 1963, where no return was submitted by the dealer and the Sales Tax Officer assessed the turnover to the best of his judgment, and subsequently finding that the dealer had been under-assessed made a best judgment assessment again u/s 21. Desai, C.J., with whom K.B. Asthana, J., agreed, observed:

It was never contended before him [the Judge (Revisions)] that no proceeding u/s 21 could be started by the Sales Tax Officer if he had already estimated the entire turnover according to the best of his judgment. The best judgment assessment was of the entire turnover and unless he had expressly or specifically excluded from the turnover a particular amount on the ground that it was not turnover of the assessee or was not liable to be assessed, or unless he had employed a wrong principle in estimating the turnover it could not be said by him that the estimated turnover did not include the whole of the turnover of the assessee. The original estimate being according to the best of his judgment there could not be a better estimate than it.

4. Our attention has been drawn to the further observation of the learned Chief Justice that the assessment order u/s 21 must be confined to the escaped turnover and must not include the turnover on which the original assessment order was passed. He has also construed the explanation to Section 21(1) to apply only when the whole of the turnover has escaped assessment and not where part of the turnover has escaped assessment. It seems to us that the learned Chief Justice did not, at the time when he made these observations, have in mind the facts of a case such as the one before us. If the whole basis of the original assessment is unsound, and it is found that the turnover has escaped assessment, we see no reason why the Sales Tax Officer should not be entitled to reopen the original assessment and reassess the turnover. We do not see why the right to make an assessment to the best of his judgment should be denied to him in such a case. Otherwise we must hold that in proceedings u/s 21 although the basis upon which the dealer supports his return is false and the material adduced by him is unreliable, the Sales Tax Officer is powerless to make an assessment to the best of his judgment. The object of Section 21(1) is to empower the Sales Tax Officer to reassess the turnover of the dealer, and that object would be defeated if we give to the explanation the limited scope suggested. It is well settled that the language of a provision should be so construed that, if possible and without straining at the language, the object of the statute should be achieved. When the explanation refers to the power of the assessing authority to make an assessment to the best of his judgment, it refers to the power exercised in assessment proceeding, and it cannot be disputed that whether the Sales Tax Officer is assessing or reassessing a dealer the proceeding, in its essential nature, is an assessment. In our view the explanation

to Section 21(1) comes into play both when the turnover of a dealer is assessed and also when it is reassessed. As the observations in M/s. Pooran Mal Kapoor Chand S.T.R. No. 147 of 1957 decided by Desai, C.J., K.B. Asthana, J., on 30th July, 1963 are, upon the facts entirely distinguishable from the one before us, we do not consider it necessary to refer this case to a larger Bench.

5. The Sales Tax Officer came upon the parchas recording sales made on 9th July, 1957, 15th November, 1957, and 29th March, 1958. He came to the conclusion on the basis of some of the entries in the parchas of 9th July, 1957, and 29th, March, 1958, two widely separated points of time in the assessment year 1957-58, that all the transactions entered into by the assessee were not recorded in his account books and on that basis proceeded to make a best judgment assessment. His decision has been endorsed by the appellate and revising authorities, and upon the facts of the case we find ourselves in agreement with that decision.

6. We hold that upon the facts of the case, although an original assessment of the turnover for the assessment year 1957-58 had already been made the Sales Tax Officer was entitled to make a best judgment assessment of the assessee's turnover u/s 21(1) of the U.P. Sales Tax Act.

7. We answer the question accordingly.

8. The Commissioner of Sales Tax is entitled to his costs which we assess at Rs. 100. Counsel's fee is also assessed in the same figure.