

(1975) 03 KL CK 0018
In the High Court Of Kerala
Case No : T.R.C. No. 4 of 1973

Central Automobiles

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 04-03-1975

Acts Referred:

Income Tax Act, 1961 — Section 13

Citation : (1975) 35 STC 478

Hon'ble Judges : P. Govindan Nair, C.J;V. Khalid, J

Bench : Division Bench

Advocate : S.A. Nagendran and D.A. Kamath, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Khalid, J.—The questions of law raised before us in this tax revision case are:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in reversing the order of the Appellate Assistant Commissioner cancelling the rejection of accounts and deleting the addition of 25 per cent made by the Sales Tax Officer ?

(2) Whether the rejection of accounts is proper ?

(3) Whether the addition made is sustainable ?

2. The petitioner returned a total and taxable turnover of Rs. 37,894.07 and Rs. 37,592.71 respectively, for the year 1969-70. The assessee, a partnership firm-M/s. Central Automobiles, Pazhavangadi, Tri-vandrum-are dealers in automobiles. Their accounts were called for, and on scrutiny, the following defects were noted :

(1) There was neither an opening stock list nor a closing stock list.

(2) The sales turnover reported for 1969-70 was very low.

(3) No satisfactory explanation was given for the steep fall in the purchases as well as in the sales of the previous year.

(4) Separate accounts were not maintained for the purchases and sales of 3 per cent and 12 per cent taxable goods during the year 1969-70, and

(5) The net loss of Rs. 748.85 conceded for 1969-70 cannot be accepted as true.

Notice u/s 17(3) of the Kerala General Sales Tax Act was issued to the assessee. Explanation was submitted. The explanation given by the assessee was not accepted and, therefore, the assessment was completed to the best of judgment of the officer by adding 25 per cent to the taxable turnover. The matter was taken in appeal by the assessee to the Appellate Assistant Commissioner, who held that the non-maintenance of the day-to-day stock register alone cannot be a ground for resorting to best judgment assessment and, therefore, the rejection of the accounts and the addition of 25 per cent to the taxable turnover made by the assessing authority were held to be unsustainable. The department took the matter in appeal before the Sales Tax Appellate Tribunal, Trivandrum, against the order of the Appellate Assistant Commissioner. The Appellate Tribunal reversed the decision of the Appellate Assistant Commissioner and restored the order of the assessing authority on the ground that the assessee did not maintain an inventory for the opening and closing stocks for the year.

The Tribunal observed as follows :

The Sales Tax Officer found that the assessee did not maintain an inventory for the opening and closing stocks for the year. It therefore followed that the figures furnished by the assessee as opening and closing stocks were only imaginary and that the accounts produced before him were defective to that extent. Further a scrutiny of the purchases and sales based on the stocks as on 1st April, 1969, and 31st March, 1970, could not be made by him. We feel that this is a very serious defect which renders the accounts unacceptable for the sales tax assessment purposes. We also feel that the Appellate Assistant Commissioner should have considered this defect along with the other defects pointed out by the assessing authority and found that the accounts of the assessee are unreliable. In the circumstances, we reverse the findings of the Appellate Assistant Commissioner and uphold the rejection of the accounts. The addition made by the officer to the turnover conceded by the assessee appears to be quite reasonable and we therefore restore the assessment made by the officer on the assessee for the year in question.

3. It is contended before us that the ground for rejection of the accounts is not a ground which can be said to be valid or sustainable. For this position, the counsel for the petitioner relied upon a decision reported in *S. Veeraiah Reddiar Vs. Commissioner of Income Tax, Travancore-Cochin, Bangalore*, , where a Division Bench of this Court held that if the assessee has been regularly employing a method of accounting and if his income, profits and gains can properly be computed therefrom, the assessment has to be made in accordance with that

method of accounting. An assessment under the proviso to Section 13 of the Income Tax Act can be made only if either no method of accounting has been regularly employed by him or the method of accounting, in the opinion of the Income Tax Officer, is such that the income, profits and gains cannot be properly deduced from his method of accounting if he has been regularly employing a method of accounting. It was contended by the counsel for the petitioner relying upon the decision referred to above that the assessee had never followed the practice of maintaining a stock register at all and therefore the accounts cannot be rejected on the sole ground that a stock register had not been maintained. It was contended that from the very beginning they were not maintaining stock register, that they started the business before sales tax was introduced and that it was impossible for them to maintain a stock register of all these antiquated automobile parts.

4. Reliance was also placed upon a decision reported in *M. Durai Raj Vs. Commissioner of Income Tax, Ernakulam*, to which one of us was a party. Isaac, J., speaking for the Bench, considered among others the decision, referred to above, and held that the absence of a stock register by itself is not a ground to reject the accounts and where the accounts of the assessee are maintained according to the method regularly employed by him, and where they are correct and complete, they have to be accepted. The learned Judge observed thus :

What is relevant to consider in such cases is whether the assessee's accounts are maintained according to the method regularly employed by him, whether they are correct and complete, and whether the income can be properly computed from the accounts. Absence of a stock register is not by itself a ground to reject the accounts....

Whether the accounts of the assessee are maintained according to the method regularly employed by him, whether they are correct and complete, and whether the income can be properly computed from the accounts are all pure questions of fact. The Appellate Tribunal's finding on these matters are not liable to attack for want of sufficiency of materials. But if the findings are not supported by any materials or if the materials relied on are irrelevant or they are such that no Tribunal can reasonably come to such findings on the said materials, then a question of law would arise, and the High Court would be justified in holding that the findings cannot be sustained on any materials. In the instant case, the Appellate Tribunal has found that the profits disclosed by the assessee were low when compared to other similar traders. The assessee gave an explanation for the same. The Tribunal has not found that the explanation was not true ; and all that it held was that its correctness could not be verified. Regarding the non-maintenance of stock register, the assessee's case is that he buys rice in terms of the number of bags and also sells it in the same manner, and that the stock register is, therefore, maintained in terms of the number of bags purchased and the number of bags sold. This case has been apparently accepted by the Appellate Tribunal and the subordinate authorities. There is no case that the

assessee has for the purpose of sale repacked the bags and increased their number by reducing their contents. In a wholesale business like that of the assessee, who buys and sells in terms of the number of bags, maintenance of a stock register in terms of weight is a very laborious process...the assessee has admittedly maintained his accounts according to the method regularly employed by him, and the profits and gains of the business can be properly computed from his accounts. The only question is whether the accounts are correct and complete. There is no finding that the purchases have been exaggerated or the sales have been suppressed, or that any transaction has not come into the accounts. In these circumstances, the grounds stated by the Appellate Tribunal are neither valid nor relevant in rejecting the accounts of the assessee.

The principles laid down in these two decisions can legitimately apply to the facts of those two cases only. What is held in *Veeriah Reddiar v. Commissioner of Income Tax* [1960] 38 ITR 162 was that from the accounts maintained by the assessee, adopting his particular method of accounting, if his gains, income and profits can be properly deduced, then non-maintenance of stock register alone cannot be made a ground for rejecting the accounts. To that extent, we are in respectful agreement. In the second case also, it could be seen that the assessee buys rice in terms of number of bags and also sells it in the same manner and that the stock register is, therefore, maintained in terms of number of bags purchased and number of bags sold. When those materials were available from the records, the non-maintenance of the stock register, it was held, could not be made the sole basis to reject the accounts.

5. The Supreme Court had to consider a similar question in *S.N. Namasivayam Chettiar Vs. The Commissioner of Income Tax, Madras*, . In that case, the Appellate Tribunal held that the correct profits of the assessee could not be deduced from the books produced by him. The reasons it gave were (1) vouchers for several purchases made in Colombo had not been produced and for purchases of over 3 lakhs of rupees no vouchers were forthcoming and without the vouchers the entries in the account books could not be verified; (2) there was no quantitative tally for the grains and for other materials purchased by the assessee and it was not possible to accept the books of account, where the turnover was as large as 17 lakhs of rupees without a quantitative tally ; (3) a fairly big sum of money was alleged to have been paid towards purchasing of licences for export from India ; and Rs. 19,000 worth of purchases were made in Tuticorin when only a small sum of money in cash was shown in the assessee's accounts; (4) several outsiders' cheques had been entered in the accounts of the assessee without any proof as to why those cheques were paid to the assessee; and (5) a fairly big sum of money had been invested in India in the purchase of property without money being received from Colombo. Discussing the above irregularities the Supreme Court held that in cases such as the instant case, the keeping of a stock register was of great importance because that was a means of verifying the assessee's accounts by having a "quantitative tally". If, after taking into account all the materials including the want of a stock register, it was found

that from the method of accounting the correct profits of the business were not deductible, the operation of the proviso to Section 13 of the Income Tax Act would be attracted. The Income Tax Officer, even if he accepted the assessee's method of accounting, was not bound by the figure of profits shown in the accounts. It was for the Income Tax authorities to consider the materials placed before them and, if in any case, after taking into account the absence of a stock register coupled with other materials, they were of the opinion that the correct profits and gains could not be deducted, then they would be justified in applying the proviso to Section 13.

6. The ratio of the Supreme Court decision is more apposite to the case on hand since from the materials available along with the absence of a stock register it cannot be safely said what exactly was the turnover of the assessee and what the profits are. The explanation given by the assessee is far from satisfactory and from the materials on record it cannot be seen that he had a particular method of maintaining his accounts, which would entitle him to urge that the non-maintenance of the stock register would not be a material circumstance to disbelieve the accounts.

7. In addition to the above facts, it has to be noted that under Rule 32(2) of the Kerala General Sales Tax Rules, it is necessary for the assessee to maintain separately under separate heads the turnover of goods which carry different percentage of sales tax. There is no explanation from the assessee why this has not been done. The turnover includes purchases and sales of 3 per cent and 12 per cent taxable goods. The non-maintenance of these accounts is also one of the circumstances which should be taken along with the absence of a stock register to reject the accounts. Therefore, the rejection of the books of account by the Appellate Tribunal, according to us, is correct.

In the result, the tax revision case is dismissed. There will be no order as to costs.