
(1989) 02 MP CK 0033
In the Madhya Pradesh High Court
Case No : M.C.C. No. 95 of 1985

Central Motors

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 18-02-1989

Acts Referred:

Sales of Goods Act, 1930 — Section 4
Madhya Pradesh General Sales Tax Act, 1958 — Section 2

Citation : (1991) 81 STC 242

Hon'ble Judges : G.G.Sohani, Acting C.J.;K.M. Agrawal, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; R.K. Thakur, for the Respondent

Judgement

K.M. Agarwal, J.—This is a reference u/s 44 of the Madhya Pradesh General Sales Tax Act, 1958, on the basis of cross applications for reference made by the assessee and the Revenue against the Tribunal's common order dated March 18, 1981, in Appeal Nos. 252, 253, 254, 349, 350, 351, 267, 269 and 270-PBR/78, relating to assessment years 1958-59, 1959-60, 1960-61, 1965-66, 1966-67, 1967-68, 1968-69, 1969-70 and 1970-71. The Tribunal has referred the following four questions of law for our decision :

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that in computation of sale price, interest for late payment to the extent of half the period of repayment should be added to the basic price and the depreciation should be calculated thereon in determining the sale price despite the contention that the extra charges recovered were not as interest but as hire-charges ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the rate of interest may be taken on the same basis which has been adopted during these years by the assessing authority without making an enquiry as to actual rate of interest in the market?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing that :

(a) the initial payment should be included in the amount on which depreciation is to be allowed ? and

(b) the registration fee and insurance charges should not be included in the basic price for calculation of taxable turnover ?

(iv) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in interpreting the decision of the Honourable Supreme Court in the case of K.L. Johar [1965] 16 STC 213 in holding that the sale price in respect of hire-purchase transactions on the maturity of the transactions would be the original price/basic price plus interest thereon for half the period of delayed payment ?

2. The assessee, Central Motors, Khandwa, is an undertaking of Motor and General Finance Ltd., New Delhi, and has been engaged in the business of selling motor vehicles, as also in financing motor vehicles and machinery sold on hire-purchase basis. During the assessment periods 1958-59 and 1959-60, the assessee paid with its returns Rs. 1,36,694 and Rs. 2,35,846, respectively, but the assessments resulted in refunds of Rs. 1,34,622 and Rs. 1,28,669 in the light of the Supreme Court decision in Johar and Co. v. Deputy Commercial Tax Officer [1965] 16 STC 213. The assessing authority determined the sale price of the vehicles sold on hire-purchase basis by allowing deductions in respect of hire-charges, but disallowing claim for depreciation. On the same lines the assessment was made for the period 1960-61. The assessee preferred appeals against rejection of its claim for deduction of depreciation on the basis of the said decision of the Supreme Court. The first appellate authority rejected the claim by holding that the assessments were made by following the alternative method of finding the sale price suggested by the Supreme Court in such cases of sale on hire-purchase basis. On further appeals to the Tribunal, the assessee's contention for allowing depreciation was rejected, but the cases were remanded to the assessing authority for making fresh assessments after enquiry into the prevailing hire-charges in the market and the charges added by the assessee at the time of executing the hire-purchase agreement and then to split-up into two parts the charges recovered by the assessee in accordance with the decision of the Supreme Court.

3. After remand, the assessing authority came to the conclusion that it was not possible to find out the hire-charges of Tata diesel vehicles from the market and the only way to determine the hire-charges was to estimate them from the terms and conditions of the agreement and from the analogy of other lines of business, where hire-charges for particular commodities were charged, i.e., furniture. He was of the view that the following factors need be considered for determining the hire money :

(i) interest on investment at 15 per cent ;

- (ii) reasonable profit on investment, say 10 per cent ;
- (iii) penalty u/s 10A of the Central Sales Tax Act, 1956, which the assessee would be required to pay if the hire-purchases were annulled and the sale did not materialise ; and
- (iv) the legal charges in the event of default of payment in instalment which could be estimated at Rs. 1,000.

Accordingly he worked out the price at Rs. 21,268 and made the fresh assessments. This estimated price was less than the original price of the vehicle, i.e., Rs. 25,500, but more than the price of Rs. 14,750 worked out after allowing depreciation. The assessee preferred appeals before the Deputy Commissioner of Sales Tax, who partly accepted the assessee's contention by holding that the registration and insurance charges and other expenses should be included in the original price and thereafter the initial payment should be deducted, finance charges should then be added and on the total amount thus worked out, depreciation should be deducted. Thereafter initial payment should be added to get the sale price at the time of maturity of sale. Accordingly the assessments were modified.

4. As regards assessment years 1965-66 and 1966-67, the assessing authority worked out the sale price by deducting hire money from the total price which included basic price and finance charges. Hire money was worked out on the basis of interest at 9 per cent per annum, profit 10 per cent and maximum penalty payable under the Central Act and the legal charges at Rs. 1,000 per vehicle. For the years 1967-68 to 1970-71, the basis followed was the same as for the years 1958-59 to 1960-61. The appeals preferred before the Deputy Commissioner of Sales Tax were disposed of by him in accordance with his earlier order dated March 30, 1978, on appeals against the fresh assessments after remand. The assessee preferred further appeals before the Tribunal. The Revenue also filed applications for enhancement u/s 38(5) of the State Act. It was contended on behalf of the Revenue that the transactions ought to have been treated as transactions of sale and not those of hire-purchase agreements, because the assessee only financed the prospective purchasers of vehicles. This argument of the department was rejected by the Tribunal by holding that the assessing and the first appellate authorities had carefully examined the transactions and had returned a finding that those were hire-purchase transactions. It was also observed that the Tribunal had also held the transactions to be hire-purchase transactions in respect of earlier years of assessments of 1958-59 and 1960-61.

5. In assessee's appeals, it was contended that depreciation was rightly allowed by the Deputy Commissioner of Sales Tax in working out the sale price, but he committed mistake in adding registration fee, insurance charges and other expenses to the basic price for determination of gross sale price and in adding the finance charges to this gross price in order to determine the amount of

depreciation. The assessee's contention was that the depreciation should have been allowed in the basic price. Reliance was also placed in the case of Johar and Co. [1965] 16 STC 213 (SC). The department supported the appellate orders of the Deputy Commissioner of Sales Tax by placing reliance on State of Gujarat v. Premraj Ganpatram [1974] 33 STC 159 (Guj).

6. The Tribunal enunciated the principles laid down by the Supreme Court in Johar's case [1965] 16 STC 213, and held that the tenor of Johar's case [1965] 16 STC 213 (SC), was that the total hire-purchase charges under the hire-purchase agreement had an element of hire price as also an element of sale price, which required separation in order to determine the sale price with reference to the date on which option to purchase was exercised. It was further held that the depreciation value on the date of sale should be deducted from the dealer's price with interest on account of late payment. Having regard to the difficulty in calculating the interest, it was directed that the interest should be calculated on the principal amount for half the period of payment on the basis of rate of interest adopted by the assessing authority during the assessment years. With these directions, the cases were remanded to the assessing authority. Being aggrieved, the assessee and the Revenue simultaneously applied for making references u/s 44 of the State Act and this is how the aforesaid questions of law were referred to this Court by the Tribunal.

7. Shri B.L. Nema, the learned counsel for the assessee, submitted that the Tribunal misconstrued the decision of the Supreme Court in Johar's case [1965] 16 STC 213 and consequently came to wrong conclusions by holding that the depreciation value of the vehicle on the date of sale should be deducted from the dealer's price with interest on account of late payment. It was urged that in Premraj Ganpatram [1974] 33 STC 159, the Gujarat High Court also committed similar mistake and did not lay down good law. In order to explain his submission in a better way, he filed a specimen of the dealer's transaction sheet, separately showing the price of motor vehicle, initial payment by the purchaser, hire-purchase charges at 16 per cent per annum and the total outstanding as follows :

Price of motor vehicle ...	Rs. 29,818	Initial payment ...	Rs. 13,818	Balance due ...	Rs. 16,000	Hire-purchase charges at 16% per annum ...	Rs. 2,560	Total outstanding ...	Rs. 18,560
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According to the learned counsel, applying the ratio of the Supreme Court's decision in the said case, the sale price of the vehicle would be Rs. 29,818 less its depreciation in the following manner :

Total outstanding

...

Rs. 18,560

Less Hire-purchase charges

... Rs. 2,560

Rs. 16,000

Plus Initial payment

... Rs. 13,818

Rs. 29,818

Minus Depreciation value

...

Sale price

....

8. In Johar's case [1965] 16 STC 213, the Supreme Court pointed out that "a hire-purchase agreement has two elements : (i) element of bailment, and (ii) element of sale, in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired. When this sale takes place it will be liable to sales tax under the Act for the taxable event under the Act is the taking place of the sale, the Act providing for a multi-point sales tax at the relevant time. Where, however, option is not exercised or cannot be exercised because of the inability of the intending purchaser to fulfil the terms of the agreement, there is no sale at all. As the taxable event is the sale of goods, the tax can only be levied when the option is exercised after fulfilling all the terms of the hire-purchase agreement". It then suggested two ways to decide the value of the vehicle on the date the option to purchase is exercised and the property passes to the hirer :

"The sales tax authorities may split-up the hire into two parts, namely, the amount paid as consideration for the use of the vehicle so long as it was the property of the owner, and the payment for the option on a future date to purchase the vehicle at a nominal price. If the first part is determined the rest would be towards the payment of price. The first part may be determined after finding out the proper amount to be paid as Ohire in the market for a vehicle of the type concerned, or in such other way as may be available to the sales tax authorities. The second method may be to take the original price fixed in the hire-purchase agreement and to calculate the depreciation and all other factors that may be relevant in arriving at the price when the second sale takes place to the hirer including the condition of the vehicle at the time of the second sale."

In the present case, the Tribunal adopted the second method suggested by the Supreme Court. It appears that while adopting the second method suggested by the Supreme Court, the Tribunal took interest for late payment, besides depreciation as a relevant factor for arriving at the price when the second sales

took place. We are of the view that the Tribunal was not right in considering interest on account of late payment as a relevant factor for arriving at the price when the second sale took place. The reason is furnished in the typical nature of hire-purchase agreement as distinct from a sale in which the price is to be paid later by instalment. "In the case of a sale in which the price is to be paid by instalments, the property passes as soon as the sale is made, even though the price has not been fully paid and may later be paid in instalments. This follows from the definition of "sale" in Section 4 of the Indian Sale of Goods Act (as distinguished from an agreement to sell) which requires that the seller transfers the property in the goods to the buyer for a price. The essence of a sale is that the property is transferred from the seller to the buyer for a price, whether paid at once or paid later in instalments. On the other hand, a hire-purchase agreement, as its very name implies, has two aspects. There is first an aspect of bailment of the goods subjected to the hire-purchase agreement, and there is next an element of sale which fructifies when the option to purchase, which is usually a term of hire-purchase agreements, is exercised by the intending purchaser. Thus the intending purchaser is known as the hirer so long as the option to purchase is not exercised, and the essence of a hire-purchase agreement properly so-called is that the property in the goods does not pass at the time of the agreement but remains in the intending seller, and only passes later when the option is exercised by the intending purchaser. The distinguished feature of a typical hire-purchase agreement, therefore, is that the property does not pass when the agreement is made but only passes when the option is finally exercised after complying with all the terms of the agreement". [Reproduced from Johar's case [1965] 16 STC 213 (SC)]. If a transaction has not ripened into a sale and there is no stipulation for payment of price by instalments, no question of late payment or interest on account of late payment of price arises. Accordingly there could be no justification in adding interest for late payment in the initial sale price and then in deducting the amount of depreciation.

9. In Premraj Ganpatram [1974] 33 STC 159, the Gujarat High Court held that "for purposes of determining sale price, the deduction on account of depreciation should be made from the entire hire price agreed upon between the parties under the hire-purchase agreement and not from the original price of the vehicle at which the financing agency or the hirer had agreed to purchase the vehicle from the original dealer". It further held that "the Tribunal was justified in determining the sale price in the case of hire-purchase transactions, as the hire-purchase value, which is composed of the real price of the vehicle and the amounts of interest on that price, finance service commission and extra interest for late payment of hire-purchase instalments". With due respect, we find ourselves unable to agree with the conclusions of the Gujarat High Court. For the reasons stated earlier, we are of the view that besides the real price of the vehicle, hire-purchase value of it cannot consist of the amounts of interest on real price, finance service commission and extra interest for late payment of hire-purchase instalments. Similarly the deduction on account of depreciation cannot

be made from the entire hire price agreed upon between the parties under the hire-purchase agreement. It must be from the original price of the vehicle at which the hirer had agreed to purchase the vehicle.

10. In the light of the view we are taking, we are of the view that question No. (ii) referred to us by the Tribunal does not require any answer and accordingly we decline to answer it. So far as the other questions are concerned, they are decided in favour of the assessee and against the Revenue in the following manner :

(i) On the facts and in the circumstances of the case, the Tribunal was not justified in holding that in computation of sale price, interest for late payment to the extent of half the period of repayment should be added to the basic price and the depreciation should be calculated thereon in determining the sale price and in overruling the contention that the extra charges recovered were not as interest but as hire charges.

(ii) Answer declined to be given.

(iii) On the facts and in the circumstances of the case, the Tribunal was justified in directing that,

(a) the initial payment should be included in the amount on which depreciation is to be allowed, and

(b) the registration fee and insurance charges should not be included in the basic price for calculation of taxable turnover.

(iv) On the facts and in the circumstances of the case, the Tribunal was not justified in interpreting the decision of the Honourable Supreme Court in the case of K.L. Johar [1965] 16 STC 213, in holding that the sale price in respect of hire-purchase transactions on the maturity of the transactions would be the original price/basic price plus interest thereon for half the period of delayed payment.

11. In the circumstances of the case, we make no order as to costs of this reference.