(1990) 07 OHC CK 0043

In the Orissa High Court

Case No : S.J.C. No''s. 8, 9 and 10 of 1981

Commercial Enterprisers APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 31-07-1990

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 12(2), 12(4), 19A, 24(5)

Citation : (1991) 81 STC 84

Hon'ble Judges : S.C. Mohapatra, J;J.M. Mahapatra, J

Bench : Division Bench

Advocate : R. Chimanka, S.M. Agarwalla, A.C. Jena and D.P. Kanungo, for the Appellant; A.B. Misra, Standing Counsel (S.T.), for the Respondent

Judgement

S.C. Mohapatra, J.—Rameswar Das Bajaj was a dealer registered under the Orissa Sales Tax Act, 1947 (hereinafter referred to as "the Act"), to carry on business of sale and purchase of goods in the trade name of Commercial Enterprisers. In the month of December, 1973, Rameswar Das died leaving behind Sankarlal, his son to continue the business. In respect of the years 1971-72, the Sales Tax Officer initiated a proceeding u/s 12(8) of the Act. In respect of the years 1972-73 and 1973-74, regular assessments were made u/s 12(4) of the Act As required u/s 12(2)(a) of the Act, notices were required to be served on the dealer. By the time the notices were issued, Rameswar Das had already expired in December, 1973. The Tribunal set aside the orders of assessment and directed the Sales Tax Officer to assess afresh. Grievance of Sankarlal is that assessment proceeding ought to have been annulled. Since the Tribunal refused to state a case, this Court called upon the Tribunal to state a case on the following question of law in respect of all the three years :

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in setting aside the assessment or he should have annulled the same in view of the death of the dealer ?"

2. Annulment of an assessment is permissible where the taxing authority would

have no jurisdiction to assess. In all other cases, where there is jurisdiction to assess, the assessment order may be set aside if there is any error, which requires further enquiry to be conducted by the appellate authority.

3. Whether the Sales Tax Officer had jurisdiction on the date the order of assessment for these three years was passed, would depend upon the date of service of notice and date of death and liability of legal representative under other provisions of the Act. If no notice had been served by the time the dealer was alive the question of assessment of his legal representative would arise under Sections 19 and 19-A of the Act. If the dealer is Hindu undivided family the question may arise as to the continuance of the assessment in the name of the Karta after the erstwhile Karta expired since on death of Karta the office does not remain vacant and automatically is filled up. These aspects of the matter have not been taken into consideration by the Tribunal. Accordingly, the real question of law involved in the second appeal is whether the Tribunal decided the second appeal considering the correct principle of law.

4. On perusal of the orders in second appeals, we are satisfied that facts material for the purpose of decision for considering the validity of assessments having not been considered by the Tribunal, orders are vitiated.

5. If we call for further facts on real question involved, it would take a long time and the Tribunal shall have to make further enquiry. Accordingly, we accept the facts as available in the second appellate order as further statement of fact and answer the real question by stating that the Tribunal is not correct in law in deciding second appeal without taking into consideration the materials which are required to be given due weight.

6. u/s 24(5) of the Act, on receipt of the answer from this Court, the Tribunal is required to pass an order. In the present case, rehearing the second appeal would be the only order. While rehearing the second appeal, both Sankarlal and the Revenue are to be given opportunity to produce materials. In case, Tribunal feels that further enquiry is necessary to be made, it shall keep the second appeal pending with it and shall direct either the Assistant Commissioner or the Sales Tax Officer as the case may be, to make enquiry and supply the facts which would be relevant for the purpose of deciding the second appeals. There shall be no order as to costs.

J.M. Mahapatra, J.

7. I agree.

