(1986) 03 RAJ CK 0029

In the Rajasthan High Court

Case No : Sales Tax Reference No. 14 of 1977

Commercial Taxes Officer APPELLANT

Vs

Keshavsingh Sheoji Singh RESPONDENT

Date of Decision : 10-03-1986

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 12

Citation : (1987) 64 STC 36 : (1987) 1 WLN 65

Hon'ble Judges : S.N. Bhargava, J;S.K. Mal Lodha, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant; M.M. Vyas, for the Respondent

Judgement

S.K. Mal Lodha, J.—The Commercial Taxes Officer, Special Circle, Jodhpur, determined the tax liability of the assessee-non-petitioner u/s 10 of the Rajasthan Sales Tax Act, 1954 (No. 29 of 1954) (for short "the Act"), in respect of the assessment years 1961-62, 1962-63, 1963-64, 1964-65 and 1965-66 by the assessment orders dated August 13, 1963, May 28, 1963, August 11, 1966, March 6, 1967 and April 14, 1967, respectively. This is borne out from the following tabular statement :

___ Assessment year Gross turnover Taxable Total amount turnover due _______

1961-62 (October to Rs. 10,93,533 Rs. 4,19,614 Rs. 19,321.86 September, 1961) 1962-63 (1-10-1961 to Rs. 14,57,492 Rs. 6,88,621 Rs. 34,436.05 30-9-1962) 1963-64 (1-10-1962 to Rs. 19,08,525.22 Rs. 8,29,154.96 Rs. 41,009.93 30-9-1963) 1964-65 (1-10-1963 to Rs. 19,85,195.45 Rs. 8,30,420.21 Rs. 36,210.60 30-9-1964) 1965-66 (1-10-1964 to Rs. 21,10,705.71 Rs. 9,04,270.61 Rs. 42,599.11 30-9-1965) ________________________________

2. The books of accounts of the assessee were seized by the Commercial Taxes

Officer and on the basis of examination of the seized record and after hearing the assessee, the assessing authority determined u/s 12 of the Act to the best of his judgment, the turnover of the assessee-non-petitioner for the aforesaid years, said to have escaped assessment in the earlier assessment proceedings. The determination made by the assessing authority u/s 12 of the Act is as follows :

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________ Assessment year Actual evaded Estimated Additional Penalty turnover evaded tax imposed turnover under Section 16(1)(e) ______________________ ____ 1961-62 (October to Rs. 523 Rs. 2,000 Rs. 100 Rs. 200 September, 1961) 1962-63 (1-10-1961 to Rs. 84 Rs. 500 Rs. 25 Rs. 50 30-9-1962) 1963-64 (1-10-1962 to Rs. 1,709 Rs. 5,000 Rs. 300 Rs. 600 30-9-1963) 1964-65 (1-10-1963 to Rs. 829 Rs. 829 Rs. 49.74 Rs. 90 30-9-1964) 1965-66 (1-10-1964 to Rs. 678 Rs. 6,000 Rs. 300 Rs. 600 30-9-1965) _______________________________________ ______________________________________

3. The assessee-non-petitioner preferred appeals before the Deputy Commissioner (Appeals), Commercial Taxes, Jodhpur, against all the five assessment orders. The Deputy Commissioner (Appeals) by a common order dated August 8, 1969, accepted the appeals and found that the assessee-non-petitioner was a dealer with annual turnovers running into several lacs of rupees and could not have indulged in evasion of petty amounts of tax; He concluded that the enhancement of the actual escaped turnover was unwarranted on the facts. He further opined that such enhancement could not have been made u/s 12 of the Act as it was then in force at that time. He, therefore, set aside the enhanced turnover which was estimated to have escaped assessment and also set aside the penalties imposed u/s 16(1)(e) of the Act regarding the five reassessment orders. The assessing authority filed five revisions before the Board of Revenue for Rajasthan, Ajmer ("the Board" herein), challenging the order of the Deputy Commissioner (Appeals). The single Member of the Board dismissed the revisions vide his order dated December 8, 1972. He held that the reassessments were without reasonable basis and capricious. He agreed with the finding of the Deputy Commissioner (Appeals) that the assessee could not have any guilty intention of concealing such petty amounts of his turnovers. Being dissatisfied, the assessing authority filed special appeals u/s 14(4A) of the Act against the order of the single Member in all the five revisions. The Division Bench of the Board dismissed the appeals by its order dated November 30, 1973. It held that it was not permissible for the assessing authority to make an assessment to the best of his judgment prior to the insertion of the explanation below Sub-section (1) of Section 12 of the Act by the Rajasthan Act No. 11 of 1969 w.e.f. May 2, 1969. Their attention was drawn to Commissioner of Sales Tax, M.P. v. H.M. Esufali H.M. Abdulali [1973] 32 STC 77 (SC). According to the Division Bench of the Board, that decision was not applicable to the facts of the case before them. The Division Bench of the Board was also of the opinion that the turnovers were extremely small in comparison to the annual turnovers. It,

therefore, held that the penalties u/s 16(1)(e) of the Act were not justified. The assessing authority filed applications u/s 15(1) of the Act on May 16, 1974, for referring the questions of law arising out of its order dated November 30, 1973. The applications were dismissed by order dated July 29, 1974. The assessing authority filed applications u/s 15(2) of the Act requesting this Court to direct the Board to refer the questions of law arising out of its order dated November 30,1973. This Court in D.B. Civil Sales Tax Cases Nos. 21 of 1975 to 25 of 1975, by its order dated September 16, 1975, directed the Board to state the case and refer the following questions arising out of its order dated November 30, 1973 :-

(1) Whether on the facts and circumstances of the case, the best judgment assessment can be made u/s 12 of the Rajasthan Sales Tax Act for a period prior to its amendment by Act No. 11 of 1969 w.e.f. 2nd May, 1969 ?

(2) Whether on the facts and circumstances of the case penalties can be imposed u/s 16(1)(e) of the Act ?

4. This reference was pending when the Rajasthan Sales Tax (Amendment) Act, 1984 (Act No. 20 of 1984) (for short "the Amendment Act"), came into force. It came into force on May 1, 1985. According to Section 13(11) of the Amendment Act, the reference, which was pending on May 1, 1985, is deemed to be an application for revision u/s 15 of the Act, as substituted by the Amendment Act. We have" heard this reference as a revision and dispose it of accordingly.

5. In this revision two questions arise for our determination : (1) Whether the reassessment could be made regarding the five assessment years from 1961-62 to 1965-66. (sic) Section 12 of the Act deals with assessment of tax and levy of exemption fee or registration fees incorrectly assessed. An explanation was inserted in Sub-section (1) of Section 12 by Section 9 of Act No. 11 of 1969 w.e.f. May 2, 1969. This explanation is as follows:-

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

6. The assessment years in question relate to a period prior to the adding of the aforesaid explanation. The reassessment orders were passed on December 30, 1967, in respect of the aforesaid five assessment years 1961-62 to 1965-66. It is, thus, clear that the reassessments to the best of judgment were made prior to the insertion of the explanation. The explanation to Sub-section (1) of Section 12 of the Act came up for consideration before the larger Bench of the Board of Revenue in State of Rajasthan v. Tarachand Gupta 1973 RRD 357. The question referred to the larger Bench was : What is the effect of the explanation added to Section 12 of the Act by Act No. 11 of 1969 ? Would it be permissible under the law for the assessing authority to make a best judgment assessment in cases falling u/s 12 ? Will such best judgment assessment be permissible even in respect of cases relating to the period prior to Act No. 11 of 1969 ? It was held in respect of the last part of the question referred that such best judgment assessment cannot have retrospective operation, i.e., such assessment or

reassessment will not be permissible in respect of cases prior to the date when Act No. 11 of 1969 came into force whereby such explanation was added to Sub-section (1) of Section 12 of the Act. Before the Board, in the special appeals, reference was made to Commissioner of Sales Tax''s case [1973] 32 STC 77 (SC). It was held by the Board that in view of the decision of the larger Bench in State of Rajasthan''s case 1973 RRD 357, the best judgment, reassessment could not be made u/s 12 in respect of the cases prior to the insertion of the explanation to Sub-section (1) of Section 12 of the Act. In other words, the best judgment assessment/reassessment according to the Board could not be made in cases prior to May 2, 1969. It, therefore, followed its own decision in State of Rajasthan''s case 1973 RRD 357 opining that the Commissioner of Sales Tax''s case [1973] 32 STC 77 (SC) is not applicable.

7. When the applications u/s 15(2) of the Act were being considered by this Court, it was observed that when there is a decision of the Supreme Court, the Board could not have disregarded it merely because a Full Bench of the Board had taken contrary view. The explanation to Sub-section (1) of Section 12 of the Act is, in our view, merely explanatory. In Commissioner of Sales Tax''s case [1973] 32 STC 77 (SC), Section 19(1) of the M. P. General Sales Tax Act, 1958 and Rule 33(1) and (2) of the M. P. General Sales Tax Rules, 1959, came up for consideration. The reassessments were made u/s 19(1) of the M. P. General Sales Tax Act by the Sales Tax Officer. The reassessments were best judgment assessments. In that connection, it was observed as under :

What is true of the assessment must also be true of reassessment because reassessment is nothing but a fresh assessment. When reassessment is made u/s 19, the former assessment is completely reopened and in its place fresh assessment is made. While reassessing a dealer, the assessing authority does not merely assess him on the escaped turnover but it assesses him on his total estimated turnover. While making reassessment u/s 19, if the assessing authority has no power to make best judgment assessment, all that the assessee need do to escape reassessment is to refuse to file a return or refuse to produce his account books. If the contention taken on behalf of the assessee is correct, the assessee can escape his liability to be reassessed by adopting an obstructive attitude. It is difficult to conceive that such could be the position in law.

8. The reassessments made on best judgment assessments were held to be valid. The law laid down by their Lordships of the Supreme Court is applicable to the case on hand and the learned counsel appearing for the assessee-non-petitioner was quite fair in not supporting the stand taken by the Board that Commissioner of Sales Tax''s case [1973] 32 STC 77 (SC) is not applicable. The precise question that arise before their Lordships of the Supreme Court in Commissioner of Sales Tax''s case [1973] 32 STC 77 (SC) was whether reassessment *Here italicised. could be made on best judgment assessment. There was no explanation like the present appended to Sub-section (1) of Section 12 with effect from May 2, 1969, in Section 19(1) of the M. P. General

Sales Tax Act, 1958, still the reassessment, as stated above, were made on best judgment assessment and the question of validity arose and it was ruled that what is true of assessment must also be true of reassessment because reassessment is nothing but fresh assessment and so when assessment can be made on best judgment, there is no reason why reassessment should not be made. This is the law declared by their Lordships of the Supreme Court in Commissioner of Sales Tdx''s case [1973] 32 STC 77 (SC). While making reassessment u/s 12 of the Act, if the assessing authority has no power to make, best judgment assessment, then the assessee can escape reassessment by not filing the return or refuse to produce his account books. The contrary view taken in State of Rajasthan''s case 1973 RRD 357 is contrary to the law laid down in Commissioner of Sales Tax''s case [1973] 32 STC 77 (SC). We have no hesitation to say that larger Bench of the Board did not decide State of Rajasthan''s case 1973 RRD 357 correctly and it should not have been followed in the case of reassessment of the assessee-non-petitioner in respect of the assessment years 1961-62 to 1965-66. Respectfully following Commissioner of Sales Tax''s case [1973] 32 STC 77 (SC) we are of the opinion that in respect of assessment years 1961-62 to 1965-66, the reassessment could be made on the best judgment assessment though explanation was appended to Sub-section (1) of Section 12 of the Act w.e.f. May 2, 1969. The view taken by the Board in the special appeals was wrong. We hold that u/s 12 of the Act, the reassessment can be made on the assessee-non-petitioner in respect of the five assessment years in question regarding which it had already been assessed by the assessing authority on various dates mentioned hereinabove.

9. In the special appeals, the Division Bench of the Board upheld the deletion of penalties. The reason as is apparent from the order is that the best judgment reassessment could not have been made in the case of the assessee-non-petitioner regarding the assessment years in question because according to it, in the absence of the explanation to Sub-section (1) of Section 12, best judgment assessment was not permissible. In disagreement with the Deputy Commissioner (Appeals) and the Board, we have come to the conclusion that even prior to the insertion of the explanation with effect from May 2, 1969, the best judgment assessment could be made u/s 12 of the Act. The question of imposition of penalty is dependent on the question of the quantum of escaped turn-over which is to be found out on the basis of the best judgment assessment. In this view no categorical finding can be recorded at this stage whether penalties can be imposed u/s 16(1)(e) of the Act. It is for the assessing authority concerned after making the best judgment assessment to consider whether the penalties should be imposed u/s 16(1)(e) of the Act. We do not express any opinion on this aspect of the matter.

10. This reference which has been heard as a revision is disposed of as under :

(1) the common order dated November 30, 1973, of the Division Bench of the Board passed in the special appeals u/s 14(4A) of the Amendment Act is set

aside ;

(2) the Sales Tax Tribunal constituted u/s 2A of the Act shall dispose of the cases in accordance with the law keeping in view the observations made hereinabove ;

(3) it will be for the Sales Tax Tribunal to consider whether penalty u/s 16(1)(e) of the Act should be imposed and if so, how much in respect of the assessment years 1961-62 to 1965-66.

11. It is, however, made clear that on fulfilment of the conditions laid down u/s 12, it will be open to the Sales Tax Tribunal to make best judgment assessment of the assessee-non-petitioner in respect of the assessment years 1961-62 to 1965-66.

12. In the circumstances of the case, we leave the parties to bear their own costs of this court.

