
(1964) 06 MAD CK 0008

In the Madras High Court

Case No : Tax Case No. 32 of 1963 (Revision No. 21)

D. Sreenivasappa

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 24-06-1964

Acts Referred:

Income Tax Act, 1922 — Section 12

Citation : (1965) ILR (Mad) 509 : (1964) 15 STC 784

Hon'ble Judges : Ramamurti, J; Ramakrishnan, J

Bench : Division Bench

Advocate : C. Venkataraman, for the Appellant; G. Venkataraman, for Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramakrishnan, J.—After the assessment was made on the dealer for the year 1958-59 an anamath account was recovered and it showed

entries between 22nd May, 1958, and 30th May, 1958, which led to the inference of their having existed turnover which was suppressed from the

regular accounts. Notice for assessment of escaped turnover u/s 16 was given by the Commercial Tax Officer who estimated the suppressions at

rupees five lakhs odd. The Appellate Assistant Commissioner reduced the quantum of suppression to rupees two lakhs odd. In appeal the lower

Appellate Tribunal made its own estimate of the suppression at rupees on lakh. The assessee now appearing in revision before us contended that

the assessment of escaped turnover in his case had been made not on the basis of the exact quantum of omitted turnover but on an estimate to the

best of the judgment. According to the submission of the petitioner-assessee, when a question of assessment of escaped turnover u/s 16 arises,

there is no scope for making an assessment to the best of judgment. He also points out that under the Sales Tax Act of 1939 in Rule 17(1) of the Madras General Sales Tax Rules, there is a provision for making an assessment of the escaped turnover to the best of judgment, but that provision is not found in the Act after its amendment in 1959 or in the rules framed thereunder. We are unable to accept this contention. It might happen that the anamath account showed unexplained transactions for a specific period. But the manner of the conduct of the transactions might also show a continuation of the process of suppression for a much longer period and some times for the entire assessment year. In the latter contingency an estimate of the turnover for the extended period or for the whole year has necessarily to be made and that estimate can be made only to the best of judgment. The question whether the escape was for a particular period or for the whole year is a question of fact, that has to be determined both from the anamath accounts, and also the circumstances of the case. Where a finding has been arrived at, that there was escape for the whole year and that no accounts have been maintained by the assessee from which an exact estimate of the turnover that has thus escaped is possible, the provision for making an estimate to the best of judgment is automatically attracted. The rule is no doubt stated precisely in Section 12 of the Act. But it is implicit also in Section 16, where the facts lead to a finding about turnover having escaped not only for a specific period but for the whole year of assessment. The lower Appellate Tribunal as well as the assessing authority have given adequate reasons for their conclusion about turnover having escaped for the prior year, without any corresponding entries in the accounts of the dealer, and this has necessitated resort to the best of judgment rule. Learned Government Pleader drawing our attention to similar provisions in the Indian Income Tax Act has referred to the rulings thereunder, making an assessment to the best of judgment permissible in such cases. We are inclined to accept this submission as correct.

2. Regarding the actual quantum of escaped turnover fixed by the lower Appellate Tribunal, we note that out of Rs. one lakh, Rs. 75,000 has been allotted to rice and Rs. 25,000 has been allotted to other commodities. The assessing authority has estimated the value of suppressions of vanaspati at about Rs. 11,000. It appears to be redundant to include the estimate of suppression of vanaspati which will come under commodities

other than rice twice over as has been done in this case. The proper procedure will be to make the assessment of suppressions once and for all.

From this point of view, it appears to us to be necessary to make a reduction corresponding to the addition already made by the assessing officer

for vanaspati suppression. Hence we restrict the addition made on account of escaped turnover to Rs. 75,000 for rice and Rs. 14,000 (Rs.

25,000 minus Rs. 11000) for other commodities, i.e., Rs. 89,000 in all. The revision is dismissed in other respects. There will be no order as to

costs.