

(1959) 12 AP CK 0005

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 9 of 1958

Dewan Hanuman Manmohan

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 22-12-1959

Acts Referred:

Hyderabad General Sales Tax Act, 1950 — Section 12(3)
Hyderabad General Sales Tax Rules, 1950 — Rule 13

Citation : (1960) 1 AnWR 371 : (1960) 11 STC 473

Hon'ble Judges : Satyanarayana Raju, J; Anantanarayana Ayyar, J

Bench : Division Bench

Advocate : C. Mallikarjuna Rao, for the Appellant; D.V. Sastri, for The Second Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Anantanarayana Ayyar, J.—The petitioner is a registered dealer in cloth. He feels aggrieved with the order passed by the Sales Tax Appellate Tribunal, Andhra Pradesh, dated 23rd December, 1957, in T.A. No. 479 of 1957. The petitioner has filed this petition raising the following questions of law for decision by this Court:-

1. Whether in the circumstances of the case, the assessment to the best judgment is bad in that no material is disclosed to the assessee and no effective opportunity of hearing was given to him.

2. Whether in the circumstances of the case, the assessment, being arbitrary and a pure conjecture and based on no material on record, is bad and liable to be set aside.

2. The relevant facts of the case are as follows :-

For the assessment year 1955-56, the assessing officer fixed a provisional assessment of Rs. 6,600. The petitioner accordingly paid that sum. He failed to submit the annual return, Form A, for final assessment of that year 1955-56. The Sales Tax Officer repeatedly called on the petitioner to "produce his accounts or

appear before him and posted the case to various different dates, 19th December, 1956, 5th January, 1957 and 15th February, 1957. The party did not appear or produce his accounts before the Sales Tax Officer. The latter thereupon treated the assessee as ex parte and proceeded to pass an assessment order in which he has stated as follows :-

I made such enquiries as I consider necessary. I, therefore, make ex parte assessment u/s 12(3) of the Hyderabad General Sales Tax Act determining the following turnover for final 1955-56 (Diwali) to the best of my knowledge and judgment.

Gross turnover ... Rs. 4,00,000 Exempted turnover ... Rs. 9,000 Taxable turnover at 9 pies ... Rs. 3,00,000 Rs. 14,062 8 0 Do. do. at 6 pies ... Rs. 46,000 Rs. 1,437 8 0 Do. do. at 3 pies ... Rs. 45,000 Rs. 703 2 0 _____ Total tax ... Rs. 16,203 2 0

3. The assessee took the matter on appeal to the Deputy Commissioner of Sales Tax (Appellate), Hyderabad, urging among other things as follows:-

Your petitioner submits that he is not given sufficient opportunity to produce the books before the Sales Tax Officer and requests that he may be given an opportunity for the same. The estimation made by the Sales Tax Officer is very high and quite arbitrary.

4. The Deputy Commissioner dismissed the appeal. The petitioner filed an appeal before the Sales Tax Appellate Tribunal. The latter also dismissed the appeal.

5. We are dealing below with the grounds actually urged by the petitioner before us.

6. Though the petitioner urged before the Deputy Commissioner and the Sales Tax Appellate Tribunal that he ought to have been given one more opportunity for filing accounts, in this Court no such plea was put forward. Learned Advocate for the petitioner frankly stated that he was not taking any such ground in this Court. He admitted that the refusal of the adjournment by the Sales Tax Officer on 15th February, 1957, may be treated as a good basis for an ex parte assessment but contended that the assessment order suffered from the defects that no material is disclosed in it as the basis of the assessment and that no opportunity was given to him to represent as regards the quantum of turnover and tax which the officer fixed.

7. Rule 13 of the Hyderabad General Sales Tax Rules runs as follows :-

13. If no return is submitted by the dealer as required by Rule 11 or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, such authority shall, after making such enquiry as he considers necessary, determine the turnover of the dealer to the best of his judgment and fix provisionally the annual tax or taxes payable at the rate or rates specified in Section 3, Section 4, Section 6, or notified under Sub (1) of Section 7 as the case

may be.

14. Where any return submitted by a dealer appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, before taking action under Rule 13 issue a notice to the dealer calling upon him to produce his accounts and prove the correctness and completeness of his return at a time and place to be specified in the notice.

16(3). If no return is submitted or if the return submitted appears to the assessing authority to be incorrect or incomplete, the assessing authority shall follow the procedure prescribed in Rules 13 and 14 and may finally assess the tax according to the best of his judgment.

8. The *ex parte* assessment was obviously done under Rule 16(3) read with Rule 13. The learned Advocate for the petitioner contends that even under Rule 13, the officer has to make "such enquiry as he considers necessary" and then only determine the turnover of the dealer to the best of his judgment and that the order of the officer should disclose what enquiry he has made and what material he gathered and made the basis of his judgment. The learned Advocate for the department contends that, under Rule 13, no notice was necessary. It is a fact that Rule 13 does not mention any notice at all. In *Poliseti Subbaraidu and Co. v. Commissioner of Income Tax Hyderabad* (1958) 2 AWR. 412, it was held by this Court as follows :-

The proviso to Section 13 of the Income Tax Act empowers the Income Tax Officer to assess the profits on such basis and in such manner as he thinks proper where he comes to the conclusion that the income and profits could not be properly deduced from the accounts of the assessee. But the power of the Income Tax Officer under this proviso is not an arbitrary power. He must exercise his discretion and judgment judicially and reasonably.... If the Income Tax Officer proposes to use against the assessee the result of any private enquiry made by him, he should put the assessee in possession of the full particulars and give him an opportunity to meet the same.... The Income Tax Officer cannot be said to make an assessment to the best of his judgment if he is not guided by the dictates of justice and fairplay. Natural justice demands that he should draw the attention of the assessee to the particular cases, the authority had in view. The Income Tax Authority is not competent to make a random assessment based on his private enquiries which may not be revealed to the assessee.... If the Income Tax Officer proposes to act upon information collected by him independently on private enquiries, he should disclose to the assessee the nature of that information to rebut it. There ought to be an opportunity to the assessee to displace the taxing officer's estimate by adducing evidence.

9. In *Raghubar Mandal Harihar Mandal v. State of Bihar* [1957] 8 S.T.C. 770, the Supreme Court held as follows :-

The provisions of Section 10(2) (b) of the Bihar Sales Tax Act, 1944 and Section 23(3) of the Indian Income Tax Act, 1922, are substantially the same and impose

on the assessing authority a duty to assess the tax after hearing such evidence as the dealer may produce and such other evidence as the assessing authority may require on specified points. In making an assessment u/s 10(2) (b) the Sales Tax Officer is not fettered by technical rules of evidence and pleadings and he is entitled to act on material which may not be accepted as evidence in a court of law; but he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment. When the returns and the books of account are rejected, the assessing officer must make an estimate and to that extent he must make a guess; but the estimate must be related to some evidence or material and it must be something more than mere suspicion. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he must take into consideration such materials as the assessing officer has before him, including the assessee's circumstances, knowledge of previous returns and all other matters which the assessing officer thinks will assist him in arriving at a fair and proper estimate.

10. The case of *Polisetti Subbaraiudu and Co. v. Commissioner of Income Tax, Hyderabad* (1958) 2 AWR. 412, related to an assessment under the Income Tax Act. But the general principle enunciated therein is based on natural justice and would apply to best judgment assessment made u/s 16(3) of the Sales Tax Act as well. The assessment order should contain a clear indication of the material on which the turnover is fixed, rates are adopted and amount of tax is determined so that the assessee may know that fact and make his representation, if any, on those matters. Only if it contains such material can a court be satisfied that the estimate is made on reasonable grounds and substantial material and is not made arbitrarily by mere guess-work, conjecture and speculation. The figures as given in the assessment and the figures as given by the appellant (petitioner) in his appeal are as follows :-

S.	Items	As estimated	Figure put for-	Remarks.	No.	in the asses ward by the
	assessment for as per 1955- 1956 his accounts.					by the assessee Sales Tax Officer.
(1)	(2)	(3)	(4)	(5)	Rs.	Rs.
(1)	Goods turnover.	4,00,000	3,87,160-2-0			
(2)	Exempted turn-	9,000	18,936-4-6	over.		
(3)	Taxable turn-	3,00,000	1,29,965-7-6	over at 0-0-9	per rupee.	
(4)	Taxable turn-	46,000	72,395-10-3	over at 0-0-6	per rupee.	
(5)	Taxable turn-	45,000	1,67,312-11-9	over at 0-0-3	per rupee.	

11. From the above material on record, it would appear that the gross turnover as fixed by the Sales Tax Officer in his assessment order is very nearly the same as the gross turnover which the petitioner has shown as per his accounts; the margin of difference is only about 4 per cent. This suggests that the enquiry which the officer has made was probably a reasonable enquiry which yielded particularly accurate results. The learned Advocate for the Department has shown us with reference to figures available, that the tax of Rs. 16,230-2-0 fixed by the Sales Tax Officer is not much different from the figure which would be

arrived at proportionate for the turnover of 4 lakhs if calculated at the same rate (in the same proportion) as the rate of tax which was assessed and paid by the assessee in the previous year 1954-55 on the turnover of 1954-55. It is quite likely that the Sales Tax Officer made a reasonable and sufficient enquiry and arrived at fairly accurate figures regarding gross turnover and that he assessed the tax on such turnover on a proportionate basis with reference to the figures of the previous year. It would have been reasonable if the tax had been really based on the figures of the same assessee for the previous year of assessment. For, it was held in *Commissioner of Income Tax v. Laxminarain Badridas* [1937] 5 ITR 170 by the Privy Council that in making a best judgment assessment, the assessing officer would be justified in using "his own knowledge of the previous returns by and assessments of, the assessee". But, we cannot go any further and say that the officer did fix the tax with reference to the previous year's assessment. For, we would not be justified in indulging in guess-work in deciding the question before us which is whether the assessing officer indulged in guess-work in making his assessment. We do feel that the order of the officer suffers from failure to indicate on what basis he assessed the turnover and debited the tax. The learned Advocate for the respondent also in a way concedes that this is a defect in the order.

12. Till the assessee came with his petition to this Court, the main contention of the assessee before the Assessment Authority, the Deputy Commissioner and the Tribunal has been on the basis that he ought to have been given one more opportunity. But there is a ground urged in the memorandum of appeal before the Tribunal as follows :-

The estimation made by the Sales Tax Officer is very high and quite arbitrary without any basis on the records.

13. And a similar ground has been urged in the appeal before the Deputy Commissioner of Sales Tax. We consequently hold that the plea urged in this Court before us cannot be said to be entirely new and not thought of in the earlier stages by the assessee. So, we hold as follows :-

Point No. 1 :--The assessment by best judgment is bad in that no material is disclosed to the assessee as the basis of the assessment and that no effective opportunity has been given to him in fixing that quantum.

Point No. 2 :-In view of our finding on question No. 1, the assessment is bad and liable to be set aside.

14. In accordance with our finding on the two points of law, we set aside the assessment which has already been made on the petitioner and direct that fresh assessment be made according to the rules.

15. The revision petition is allowed with costs. Advocate's fee Rs. 100.