

(2001) 03 AP CK 0053
In the Andhra Pradesh High Court
Case No : TRC No. 44 of 1993

Dwarkadas Damodarlal Hedg, Hyderabad	APPELLANT
Vs	
State of Andhra Pradesh	RESPONDENT

Date of Decision : 31-03-2001

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14
Constitution of India, 1950 — Article 226, 227

Citation : (2001) 3 ALD 415 : (2001) 6 ALT 219

Hon'ble Judges : S. Ananda Reddy, J; Bilal Nazki, J

Bench : Division Bench

Advocate : Mr. K. Raji Reddy, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Judgement

S. Ananda Reddy, J.

1. This tax revision case is at the instance of the assessee-dealer directed against the order of the Sales Tax Appellant Tribunal in TA No, 975 of 1988, dated 28-9-1992.

2. The facts of the case in brief are as follows :

The petitioner is a dealer in pulses, sugar etc., and registered under the Andhra Pradesh General Sales Tax Act (hereinafter referred to as "the Act") on the roles of the Commercial Tax Officer, Maharajgunj Circle, Hyderabad. For the assessment year 1984-85, the assessee filed its A2 returns disclosing the following turnovers:-

Gross turnover Rs. 2,38,60,876-66 ps.

Exempted turnover Rs. 79,68,926-16 ps.

Net turnover Rs. 1,58,91,950-50 ps.

3. The Commercial Tax Officer, while framing the assessment, verified the books

of accounts and arrived the following turnovers for the final assessment:-

Purchase turnover of Moong dall Rs.3,62,647-84 ps.

Sales turnover of gram dall Rs.1,75,83,054-24 ps.

4. The Commercial Tax Officer found that the dealer did not maintain separate sales accounts for the taxable and exempted turnovers of pulses and therefore he took into account the purchase price of dall both local and outside and arrived the turnover by adding 10% gross profit to the purchase price. The petitioner-dealer reported the sales of gram dall Rs.1,44,53,414-71 paise, toor dall Rs.26,69,950-10 ps. and Masoor dall Rs.2,04,967-44 paise against their respective purchases of gram dall of Rs.1,59,84,594-75 paise, Toor dall of Rs.26,88,870-87 ps. and Masoor dall Rs.2,03,569-28 paise. The method adopted for arriving the total turnover by the assessing officer had resulted in an addition of Rs.31,29,641/- relates to the gram dall, Rs.18,958-00 relates to the Masoor dall and Rs.87,807-00 relates to Toor dall. In addition, the assessing officer also made an addition of Rs.1,26,580/- relates to the sale of gram dall, which was said to have been purchased from a local dealer by name Sri Venkateswara Traders. The assessment was accordingly completed by the Commercial Tax Officer.

5. The said assessment was assailed before the first appellate authority. The first appellate authority, though recorded in his order all the objections that are raised by the petitioner-dealer, dismissed the appeal making the following observations:-

"The assessing authority has carefully examined the reply filed by the dealer and found that the reply do not contain valid reasons.

As the assessing authority considered all the issues raised by the dealer as such the order is in order. The appeal is dismissed."

6. The said order was assailed before the Sales Tax Appellate Tribunal. Though the Tribunal granted partial relief by deleting the addition of Rs.1,26,580/- insofar as the balance addition to the turnover of Rs.32,36,406/- was sustained and the order is as under:-

"It is to be seen from a perusal of the assessment order that the assessing authority added gross profit at 10% not only on the outside purchase value but also on the local purchase value and arrived at the taxable turnovers relating to all the three items of goods. The assessing authority chose to adopt such method or estimating the first sale value on the ground that the Appellant failed to maintain separate sale and purchase account relating to taxable and non-taxable goods. In the absence of such accounts, the assessing authority was quite justified in adopting the above said method to arrive at the taxable turnover. It is further to be seen that during the assessment year 1983-84, which is the previous year gross profit was added at the same rate of 10% to arrive at the taxable turnover and no objection -was evidently raised for the same by the Appellant. Therefore, in view of these circumstances, the disputed turnover to a

tune of Rs.32,36,406/- relating to the first sales of gram dall, masoor dall and toor dall were rightly subjected to tax by the assessing authority and no interference need be made regarding the said turnovers."

7. The said order of the Sales Tax Appellate Tribunal is assailed before this Court.

8. The learned Counsel for the petitioner-dealer contended that the assessing officer was not justified in resorting to the estimated addition to the turnover by adding 10% of the gross profit to the purchase of value of both the purchases from local as well as from outside. The learned Counsel contended that there is no dispute with reference to the maintenance of the books of accounts, which reflect the purchases as well as the sales. Merely because the petitioner-dealer failed to maintain separate accounts with reference to the purchases made locally and outside, the same would not vitiate the results declared by the dealer in its returns. It is also contended that the authorities did not reject the books of accounts or the return filed by the dealer, but only made an estimated addition to the turnover, for which there is absolutely no justification and there is no provision also in the Act. Therefore, the addition to the turnover is illegal and unjustified. The learned Counsel also contended that the assessing officer did not find any defects either in the sale value or purchase value of any of the items. Merely because the sales turnover is less than the purchase turnover, it is not open to the assessing officer to estimate the sales turnover by adding 10% to the gross profit. In order to resort to any estimation, the assessing officer has to reject the books of accounts, by recording valid reasons. In the absence of any such reasons recorded by the assessing officer, The method adopted by the assessing officer, which was confirmed by the appellate authority, is clearly contrary to the provisions of the Act and the same is also without jurisdiction. The learned Counsel also contended that though the petitioner-dealer did not maintain separate books of accounts for the local sales as well as the sale of the dall purchased from outside the State, still they are identifiable, which fact was accepted by the assessing authority as well as the by the appellate authorities. Therefore, the non-maintenance of separate accounts is not a ground to resort for estimation of the turnover without rejecting the books of accounts or without giving any finding that the returns filed by the petitioner-dealer is incorrect or incomplete.

9. The learned Counsel relied upon the following judgments:

Bhagwandas Khandelwal Vs. The Commissioner of Sales Tax and Others, , Ramalinga Mudaliar and Company v. State, 86 STC 474, and J. Gopal Rao Vs. State of Orissa, .

10. The learned Government Pleader, on the other hand, supported the order of the Tribunal. It is stated that under the relevant rules framed under the Act, the dealers are obliged to maintain separate accounts with reference to the taxable turnover as well as exempted turnover. When the petitioner failed to do so, it is open to the assessing officer to resort for estimation and further as 10%

estimation on the gross profit was accepted for the earlier assessment year, the assessing officer has adopted the same 10 per cent gross profit for arriving at the total turnover of sales, basing on the admitted purchases made by the petitioner. The method adopted by the assessing officer is just and proper and therefore there is no error in the order of the appellate Tribunal warranting interference.

11. From the above rival contentions, the issue that falls for consideration is whether the non-maintenance of separate accounts would permit the assessing officer to resort for estimation of turnover.

12. The dispute relates to the sales turnover of gram dall, masoor dall and toor dall. No doubt, the dealer declared the sales turnover, which is lower than the purchase turnover in respect of gram dall, though he declared a marginal higher turnover of sale in respect of the other two items. The assessing officer did not reject either the books of accounts or the value of the purchases, but only resorted to the estimation of sales turnover. Even with reference to the identification of sales made in respect of the items purchased locally as well as outside, there is no dispute as the assessing authority has granted exemption in respect of the local purchases of dall, basing on the figures furnished by the petitioner-dealer. The reason that was recorded by the assessing officer for resorting to the estimated sales turnover was only that the petitioner did not maintain separate books of accounts with reference to the taxable and exempted turnover of the dalls. No doubt, the said omission on the part of the dealer may be an omission, but such omission would not empower the assessing officer to resort to the estimation of the sales turnover. Insofar as the identification of the turnovers relating to the purchases made from local and outside, there is absolutely no dispute, even in the absence of separate accounts that were being maintained by the dealer. When once the purchases made locally and outside are identifiable, even in the absence of separate accounts, there is absolutely no justification for the assessing officer to resort to the estimation of sales turnover.

13. There is no dispute that the items in question are subject to tax/exemption either under Item 130 of the I Schedule or Item 14, or 15 of the III Schedule, which are as under:

S.No.	& Schedule	Description of Goods	Point of tax	Rate of tax	Effective from
130	of First Schedule	Pulses other than those falling under items 14 and 15 of the Third Schedule	At the point of first sale in the State	4 paise in the rupee/ 8 paise in the rupee	1-3-1974/ 1-4-1995
14	of Third Schedule	Pulses, that is to say - (3014)	At the point of the first purchase in the State	4 paise in the rupee -	
		(i) moong or green gram;			
		(ii) urad or blak gram			

15 of Third Schedule Pulses, that is to say, - (3015) At the point of first sale in the State -do- -

(i) gram or gulab gram;

(ii) tur or arhar

(iii) masur lentil

(iv) moth

(v) lakh or khesari

14. Further, Section 14 empowers the assessing officer to assess to best of his judgment when the return filed by the dealer is incorrect or incomplete or when a dealer fails to produce accounts, registers and other documents. In the present case, though the assessing officer did not refer to the addition of estimated turnover to the gross turnover of sales as a best of his judgment, but still it amounts to the same, which is not provided u/s 14 of the Act. The assessing officer did not record that the return filed by the petitioner-dealer is incorrect or incomplete or gave a finding that the petitioner failed to produce the records. Except recording a finding that the petitioner failed to maintain separate books of account with reference to exempted and taxable turnover, there is absolutely no adverse finding with reference to the books of accounts maintained and produced by the dealer before the assessing officer. There is no provision under the Act empowering the assessing officer to resort to estimation of gross turnover on the premise that the turnover declared by the petitioner is low or it results in a loss or declaring a low gross profit. In fact, even the assessing officer did not record any of the above findings also. In the absence of recording any finding, which empowers the assessing officer to assess to the best of his judgment, the assessment in question made by the assessing officer is vitiated. The purchase turnover is accepted by the assessing officer and also the bifurcation of the purchase turnover with reference to the local as well as outside was also accepted as exemption was granted with reference to the turnover relating to the local purchases. The purpose of maintaining separate registers as to the taxable and exempted turnover is only for the purpose of identification of the purchases, which are taxable and exempted. In the present case, there is no dispute as to the taxable and exempted turnovers are concerned. But, however, the assessing officer estimated the sales turnover by taking the purchases made both in the local and from outside by adding 10% of the gross profit to the purchase value and thereafter deducted the exempted turnover from the total turnover and assessed the tax. The method adopted by the assessing officer is not proper and just. Though the said issue was contested before the 1st appellate authority, the 1st appellate authority merely stamped the addition made by the assessing officer without considering the contentions or the objections made by the dealer. The Tribunal also simply accepted the estimated addition to the sales tax turnover on the premise that the petitioner did not maintain separate accounts, but did not go into the issue what was the effect of

non-maintenance of the separate accounts when the taxable as well as exempted turnovers are identifiable.

15. The learned Counsel for the dealer relied upon the following judgments:

The first one is the case of Bhagwandas Khandelwal (*supra*). In this case, the Madhya Pradesh High Court considered the validity of best judgment assessment. In this case, the petitioner firm was assessed u/s 18(6) of the M.P. General Sales Tax Act by a best judgment assessment for the three quarters from 25th October, 1965 to 16th August 1966. The assessing officer served a notice on 22nd August, 1996 on the assessee, directing him to produce his accounts on 23rd November, 1996. On that the petitioner did not appear. His Counsel had sent an application for postponement of the date. But the assessing officer did not take notice of that application, as it had not been filed by a properly authorised agent. He accordingly fixed the case for ex parte assessment on the next day. On 24th November 1966, a best judgment assessment order was passed by him, by which he estimated the total sales at Rs.3,60,000/-. Out of this, an amount of Rs. 1,20,000/- was deducted on account of inter-State sales and the balance was divided into three portions -Rs.60,000/- to be assessed at 7 per cent, Rs.60,000/- at 2 per cent and Rs.1,20,000/- at 1 per cent. Accordingly, he assessed a sum of Rs.6,600/- as tax payable and also levied penalty of Rs.1,000/- for not filing the returns. In this assessment order, the only basis on which the estimate is said to have been done is the previous year's assessment. In the previous year's assessment, the total turnover assessed was Rs.4,03,247/-. Out of this, a sum of Rs.52,326/- was found out as liable to payment of tax. This was then divided into four portions; an amount of Rs. 16,122/- was assessed at 1 per cent, Rs.28,546/- was assessed at 2 per cent, Rs. 1,000/- was assessed at 5 per cent and Rs.5,758/- was assessed at 7 per cent. In this way a total tax of Rs.1,230-20 was imposed upon the petitioner. The said assessment order was assailed in revision before the Divisional Deputy Commissioner of Sales Tax, who has confirmed the assessment. On a writ petition filed under Articles 226 and 227 of the Constitution of India, the Madhya Pradesh High Court while setting aside the order observed as under:

"We are unable to see how the record of the previous year was taken as a yardstick for the present assessment order or how that assessment could be a substitute for information regarding the increase in assessment by the impugned order. The matter has been most carelessly dealt with by the sales tax authorities. It has been repeatedly said that even a best judgment assessment must be a bona fide assessment and must be based on some material which could reasonably lead to the conclusion arrived at."

Saying so the orders under question were set aside.

16. The next decision is in the case of J. Gopal Rao (*supra*). In this case, also the High Court of Orissa considered the best judgment assessment. It was held that material relating to one year cannot, without sufficient additional material, be

utilised for estimating sales of another year. The admission of the petitioner that his daily sales ranged between Rs.100 and Rs.125 in February, 1982 was based to determine the sales for the assessment year 1979-80 at Rs.80 and 100 respectively and the same was held not sustainable.

17. The next decision is in the case of Ramalinga Mudaliar and Company (supra). This judgment rendered by the Madras High Court was also dealing with the best judgment assessment and the conditions that are required to resort to it. As the facts of this case are a little near to the present case, it will be proper to consider the judgment elaborately. The assessees in this case were dealers in glass-sheets and mirrors. They reported a total and taxable turnover of Rs. 15,10,088-95 and Rs.7,61,739-49 paise for the assessment year 1979-80. The assessing authority checked their accounts in support of the returns and discovered that the total and taxable turnover for the year 1979-80 worked out to Rs. 15,31,088-91 and Rs. 7,61,739-49 respectively. The sale of glass sheets and mirrors are for an amount of Rs.7,48,3 49-42. The assessing authority found that the accounts disclosed gross loss in trade during the year while the gross profit in respect of second sales of glass was worked out at 41 per cent. The assessing authority also found that the assessee did not maintain any separate accounts for the local and inter-State purchase of goods during the year under assessment though they had purchased goods from dealers outside the State as well as locally. On the best of judgment, the assessing authority determined the total turnover taxable at 10 per cent at Rs.11,84,080/- by adding 30 per cent towards gross profit in respect of inter-State purchase value of glassware. Thus, the addition of Rs.4,22,341 to the taxable book turnover was the consequential result. Final orders were passed determining the total and taxable turnover at Rs.20,23,523/- and Rs.11,84,040/-respectively. This was assailed before the Appellate Assistant Commissioner, who gave a partial relief on a different account, but confirmed the estimated addition of turnover. The Appellate Assistant Commissioner found that the defects pointed by the assessing authority, viz., (a) that the dealers did not maintain stock register and were not in a position to give details of the source of the purchases of the goods sold in other States, and (b) that the gross profit for second sales was huge and gross loss had been shown in the trade justified the assessing authority resorting to best of judgment assessment. The assessees went to the second appeal to the Sales Tax Appellate Tribunal. The second appellate authority also agreed with the best of judgment assessment made by the assessing officer, but however, felt that the estimated gross profit at 30 per cent was excessive and therefore granted a partial relief on reduction at Rs.60,000/- to the taxable turnover. The assessee thereafter preferred revision to the Madras High Court. The Madras High Court, after considering the provisions of Section 12(2) of the Tamil Nadu General Sales Tax Act, under which a best judgment assessment can be made by the assessing officer held that the best judgment assessment is not sustainable when the assessing officer failed to record that the return filed by the assessee is either incomplete or incorrect. Further, without rejecting the accounts and return, the assessing authority

cannot take recourse to best of judgment assessment. The High Court also observed that no finding has been recorded by the assessing authority as to which particular transaction had not been explained plausibly by the assessee. The addition to the turnover made by the assessing authority is not on any basis whatsoever but on his whims. Therefore, allowed the revision.

18. A perusal of the above judgments, especially the judgment of the Madras High Court supports the contention of the petitioner-dealer. The contention of the petitioner is that there is absolutely no basis for the assessing officer to resort to the estimated addition to the sales turnover. Here also no doubt there is a finding that the petitioner did not maintain separate books of accounts for the taxable and exempted turnover. But nothing turns on it, as there is no dispute with reference to the exempted and taxable turnover. The assessing officer had resorted to the estimation of the sales turnover by adding 10 per cent gross profit both to the purchases made locally as well as outside and after ascertaining the total sales turnover deducted the exempted turnover and levied the tax. The result has the effect of rejecting the book results of the assessee or making an addition to the declared turnover on estimated basis, for which no reasons have been assigned, except the failure to maintain separate books of accounts. We are unable to sustain the order of assessment, which was confirmed by the 1st appellate authority with a cryptic order and even the appellate Tribunal also did not consider the contentions of the petitioner in the proper perspective. For the earlier assessment year the gross profit might have been estimated at 10 per cent, may be for the reasons recorded in that assessment. But in the present case, the books of accounts were not rejected and no defects have been pointed out in any of the transactions, except stating that the petitioner failed to maintain separate books of accounts for the taxable and exempted turnovers.

19. On consideration of the entire material on record, we are of the opinion that the estimated sales turnover made by the assessing officer and sustained by the appellate authority is illegal and unsustainable. Accordingly, we delete the estimated addition to the sales turnover.

20. The tax revision case is accordingly allowed. No costs.