(2015) 07 RAJ CK 0077

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2076 of 1999

Gajanand Gopikishan APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:
Income Tax Act, 1922 — Section 34(1)(a)

Citation : (2015) 07 RAJ CK 0077

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Vinay Kothari, for the Appellant; Falgun Buch for V.K. Mathur, Advocates for the Respondent

Judgement

Arun Bhansali, J—This writ petition has been filed by the petitioner aggrieved against reassessment notice dated 31.5.1994 issued under Section 12 of the Rajasthan Sales Tax Act, 1954 (''the Act'').

2. The petitioner carries on business as a dealer of Yarns at Bhilwara. The original assessment proceedings for assessment year 1989-90 were concluded by the assessing authority vide assessment order dated 5.9.1992.

3. While dealing with the issue pertaining to tax on sale of yarn by the petitioner, the assessing authority observed as under and accordingly assessed tax @ 2% under Notification dated 13.9.1989:--

4. By the impugned notice dated 31.5.1994, the assessing authority sought reassessment of the amount of tax determined vide order dated 5.9.1992; the notice indicated as under:--

5. It is submitted by learned counsel for the petitioner that the respondents were not justified in initiating proceedings under Section 12 of the Act, inasmuch as, the petitioner had disclosed all the facts necessary for assessment and the assessing authority after applying his mind, applied notification dated 13.9.1989 and assessed the petitioner vide assessment order dated 5.9.1992. The issuance

of notice is wholly without jurisdiction as Section 12 of the Act does not envisage reassessment only on account of change of opinion and therefore, the notice being wholly without jurisdiction deserves to be quashed and set-aside.

6. Reliance was placed on judgments in the case of Commercial Taxes Officer v. M/s. Prathvi Singh : D.B. Civil Writ Petition No. 3948/1999 - decided on 4.4.2014; Garden Silk Mills (P) Ltd. Vs. Deputy Commissioner of Income Tax, (1999) 151 CTR 533 : (1999) 237 ITR 668 : (1999) 106 TAXMAN 620 ; Associated Stone Industries (Kotah) Ltd. Vs. Commissioner of Income Tax, Jaipur, (1997) 224 ITR 560 : (1997) 2 JT 401 : (1997) 1 SCALE 763 : (1997) 3 SCC 323 ; C. Sathiraju and Sons Vs. State of Andhra Pradesh, (1998) 111 STC 703 ; Commissioner of Income Tax, Shillong Vs. Tarajan Tea Co. (P) Ltd., AIR 1999 SC 1034 : (1999) 152 CTR 1 : (1999) 236 ITR 477 : (1999) 1 JT 297 : (1999) 1 SCALE 319 : (1999) 2 SCC 455 : (1999) 1 SCR 396 : (1999) 102 TAXMAN 697 : (1999) AIRSCW 667 : (1999) 1 Supreme 332 .

7. Learned counsel for the respondents with reference to provisions of Section 12 of the Act submitted that provisions of Section 12 are applicable in its spirit and the assessing authority is empowered for initiating reassessment proceedings for ''any reason''. It was submitted that while passing the original assessment order, the assessing officer did not notice that the sale made by the petitioner was made to manufacturer of sales tax free goods and therefore, the assessing authority was well within its right to issue notice of reassessment and no exception can be taken to the same and the writ petition filed by the petitioner deserves to be dismissed.

8. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

9. The provisions of Section 12 of the Act though prescribe for reassessment in case of escaped assessment, or the assessee having been assessed at too low a rate in any year, the said provision cannot be applied in a case where the assessee has placed the entire material before the Assessing Authority and the Assessing Authority while passing the original assessment order had applied his mind and a particular notification, only on account of change of opinion, later on without there being any allegation of the petitioner not having disclosed material facts at the time of assessment, cannot empower the Assessing Officer to issue notice under Section 12 of the Act.

10. A bare look at the notice indicates that the reason indicated is that the Assessing Officer applied too low a rate of tax and that notification dated 22.6.1988 was applicable, as noticed herein-before the Assessing Officer while passing the original assessment had consciously applied the notification dated 13.9.1989 for assessing the petitioner.

11. The fact that a purportedly wrong notification for calculating rate of tax has been applied by the Assessing Authority while the original assessment, for which there are no allegation about suppression of facts by the assessee, cannot be a

ground for initiating the reassessment proceedings.

12. This Court in the case of M/s. Prithvi Singh (supra), while noticing several judgments has concluded as under:--

"15. In the present case, the assessee had declared the entire turnover, which was considered by the Assessing Authority and the assessment order was passed on 13.1.1992. Since the assessee has disclosed the entire turnover, which was assessed, there was no material to conclude that a substantial part of the turnover had escaped assessment. Thus, there was no sufficient reason with the Assessing Authority to re-open the assessment order and pass a fresh assessment order under sec. 12 of the Act."

13. Similarly, in the case of Associated Stone Industries Ltd. (supra), the Hon''ble Supreme Court in the context of Income Tax Act held and observed as under:--

"The duty of the assessee is only to disclose fully and truly all material facts necessary for his assessment for the relevant year. The expression "material facts" in section 34(1)(a) of the Indian Income Tax Act, 1922, refers only to primary facts and the duty of the assessee is to disclose such primary facts. There is no duty cast on the assessee to indicate or draw the attention of the Income-tax Officer to what factual or legal, or other inferences can be drawn from the primary facts disclosed."

14. In the case of Tarajan Tea Co. (P) Ltd. (supra), the Hon''ble Supreme Court on coming to the conclusion that there was no omission or failure on part of the assessee to make a return, held the reopening as unsustainable. The law laid down in various judgments as noticed herein-before, is clearly applicable to the facts and circumstances of the present case wherein as noticed herein-before, at the time of passing of the original assessment order, the petitioner had disclosed the relevant facts and was accordingly assessed, there is no allegation that the material facts were not disclosed and therefore, the issuance of notice under Section 12 of the Act cannot be sustained.

15. In view of the above discussion, the writ petition filed by the petitioner is allowed. The impugned notice dated 31.5.1994 (Annex. 7) is quashed and set-aside.

16. No order as to costs.

