(1963) 10 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 113 of 1963

Gulabchand Laxminarayan APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 08-10-1963

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 44

Citation : (1964) 15 STC 618

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : Dharmadhikari, for the Respondent

Judgement

P.V. Dixit, C.J.—In this reference u/s 44 of the Madhya Pradesh General Sales Tax Act, 1958, at the instance of the assessee the two questions which we are asked to answer are :-

(1) Whether in the facts and circumstances of the case, the rejec tion of the applicant''s prayer for adjournment on 8th March, 1958, was justified ?

(2) Whether the estimate of the turnover and of the deductions in each case was arbitrary and without basis ?

2. The material facts are that the Sales Tax Officer, Bilaspur, made three best judgment assessment orders against the assessee, Gulabchand Laxminarayan of Pendra, in April and May, 1958, for the periods from 19th October, 1952, to 6th October, 1953; from 7th November, 1953, to 26th October, 1954; and from 27th October, 1954, to 14th November, 1955. The assessee''s first appeals were dismissed. His three second appeals before the Board of Revenue were also disallowed so far as the assessment of tax was concerned. In those appeals the assessee con tended that the best judgment assessments should not have been made against him when he had already applied for an adjournment of the hearing of the case which was fixed for 8th March, 1958, and that the best judgment assessments for the years 1953-54 and 1954-55 were imaginary

inasmuch as they were arrived at on the basis of the average turnover of the previous three years and the average thus arrived at included the best judgment estimate made for one year in the case of turnover determined for the year 1953-54 and for two years in the case of turnover determined for the year 1954-55. Both these contentions were rejected by the Board of Revenue.

3. In our judgment, this reference should not have been made at all, by the Board of Revenue for the reason that the questions pro pounded do not at all relate to any question of law arising out of the Board of Revenue''s order. The question whether the Sales Tax Officer was justified in rejecting the assessee''s prayer for adjournment on 8th March, 1958, is plainly not a question of law. Shri Dharmadhikari, learned counsel appearing for the assessee, did not dispute this. He, however, contended that the second question, namely, with regard to the estimate of the turnover and of the deductions for the years 1953-54 and 1954-55 being arbitrary and without basis, was a question of law. We fail to see how the second question could be said to be a question of law when Section 11 (4) of the Central Provinces and Berar Sales Tax Act, 1947, does not prescribe any particular method or pro cess which the Sales Tax Officer is required to follow in making a best judgment assessment.

4. It was said that the Sales Tax Officer should have held an enquiry for arriving at an estimate of the turnover for the years 1953-54 and 1954-55 and that the estimate for those years was unreal inasmuch as it was based on best judgment estimate for the previous years. The language of Section 11(4) does not lend support to the conten tion that the Sales Tax Officer cannot make a best judgment assessment u/s 11 (4) without holding a local enquiry and investigation into the turnover of the assessee. It has been pointed out by the Privy Council in Commr. of Income Tax. U. P. and C. P. v Badridas Ramrai shop Akola and by the Supreme Court in numerous cases that the taxing officer in making a best judgment assessment must not act dishonestly, vindictively or capriciously ; but he must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must be able to take into consideration local know ledge and repute in regard to the assessee''s circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and that the best judgment assessment must necessarily be a guesswork and to some extent arbitrary, but it must be an honest guesswork. The Sales Tax Officer was, therefore, not precluded from forming an estimate of the turnover for the two years in question on the basis of the turnover of the previous three years. It is fallacious to say that for the years 1953-54 and 1954-55 the estimate of the turnover made was unreal for the reason that the estimate took into account the best judgment estimate of the turnover arrived at for one year in one case and for two years in another case. The best judgment estimate of the turnover made for the year 1952-53 could not be said to be unreal as it was arrived at on the basis of the average of the turnover for the three years previous to it and these turnovers were not best

judgment estimates but were those actually found. If the best judgment estimate for the year 1952-53 was real, then it follows that the estimate of the turnover made for the two subsequent years, which took into account the estimate of the turnover for the year 1952-53, was also real and not arbitrary.

5. For these reasons, our answer to the first question, which is purely a question of fact, is in the affirmative. Our answer to the second question is that the estimate of the turnover and the deductions for the two years in question were neither arbitrary nor without any basis. The assessee shall pay costs of this reference. Counsel''s fee is fixed at Rs. 100.

