(2010) 08 KAR CK 0041

In the Karnataka High Court

Case No : S.T.R.P. No. 43 of 2008 (Tax.)

Ingram Micro India Private Limited APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Citation : (2011) 42 VST 327

Hon'ble Judges : N. Kumar, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : K. Divakar Rao, for the Appellant; T.K. Vedamurthy, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The revision is by the assessee challenging the order passed by the Karnataka Appellate Tribunal dismissing the appeal affirming the orders passed by the lower authorities, which had imposed tax on the assessee.

2. The assessee is a private limited company trading in computers and computer peripherals. The assessee had declared the total and taxable turnovers at Rs. 1,19,36,87,583 and Rs. 2,54,25,418, respectively. The assessing officer has determined the same at Rs. 12,98,76,539 and Rs. 3,61,07,860, respectively. The assessing officer had made addition of Rs. 1,05,07,956 to the declared turnovers on the basis of the report of the ACCT (Int.)-2, South Zone, Bangalore, who had inspected the business premises of the assessee on January 28, 1998 and found that the assessee had supplied computer peripherals to the local dealers on the strength of delivery challans for the period from July 4, 1997 to January 6, 1998 and the total sale as per these delivery challans were arrived at Rs. 35,02,652 but these delivery challans are not supported by regular sale bills and not accounted in the books of account. The assessee has accepted the fact of suppression of sales turnover corresponding to the sales covered by delivery challans and has discharged the tax liability thereon besides compounding the offence departmentally. The assessment officer added three times the admitted

suppressed sales turnover and had completed the assessment order, which order has been confirmed by both the first and second appellate authorities. It is this order, which is challenged by the assessee in this revision.

3. The contention of the assessee is that, when once the assessee has paid tax on the suppressed sales turnover and also compounded the offence, the assessing authority was not justified in adding three times the admitted suppressed sales turnover into the total turnover and imposed the tax liability. In fact, the authorities in making such addition were relying on a judgment of the apex court in the case of The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore, wherein the apex court has held that, it is not possible for the officer to find out precisely the turnover suppressed and he could only make an estimate of the suppressed turnover on the basis of the material before him. So long as the estimate made by him was not arbitrary and had a reasonable nexus with the facts discovered, it could not be questioned. It was wrong to hold that the officer must have material before him to prove the exact turnover suppressed. In estimating any escaped turnover, it is inevitable that there is some guess-work. The assessing authority while making the best judgment, no doubt, should arrive at his conclusion without any bias and on a rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his best judgment and not anyone else. The High Court cannot substitute its best judgment for that of the assessing authority.

4. When the three authorities have arrived at a conclusion that the amount added represents the suppressed sales turnover is just probable and not capricious, it is not open to this court in this revisional jurisdiction to interfere with the concurrent findings of the lower authorities. We do not see any merit in this revision. Accordingly, the revision petition is dismissed.