
(1998) 01 KAR CK 0061
In the Karnataka High Court
Case No : S.T.A. No. 5 of 1995

Jagadeesh Trading Company

APPELLANT

Vs

The Additional Commissioner

RESPONDENT

Date of Decision : 28-01-1998

Acts Referred:

Citation : (1998) ILR (Kar) 949

Hon'ble Judges : Y. Bhaskar Rao, J;S.R. Bannurmath, J

Bench : Division Bench

Advocate : S. Narayana, for the Appellant; S. Sujatha, for the Respondent

Final Decision : Allowed

Judgement

Y. Bhaskar Rao, J.—The assessee, who is the appellant filed this appeal assailing the order of the Additional Commissioner of Commercial Taxes.

2. The facts of the case are that the assessee is a registered dealer under the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the Act) dealing in fire works. The sale of the fire works is only a seasonal business during the period of Deepavali. The appellant's premises was inspected on 25.10.1991 and it was found that the appellant has not maintained the accounts on 24.10.1991 and on 25.10.1991 and found shortage of stock to the tune of Rs.61,178/- for which the assessee has not issued sale bills. A notice was issued and the offence was compounded and a sum of Rs. 2,000/ - was levied as the compounding fee. Thereafterwards, the assessee filed returns showing the turn over as Rs. 9,76,224.50. The Assessing Authority has found that the current accounts are not properly maintained and the accounts are supported by required bills. However added Rs. 30,600/- towards possible omissions on the ground that on inspection of the premises of the assessee by the A.C.T.O. Rs. 61,178/- was found as escaped turn over. Therefore, the accounts are not acceptable and passed the assessment order.

3. Assailing the said order, the assessee filed an appeal. The Appellate Authority

found that the assessee has filed the details of accounts in support of his returns along with the required goods and produced Cash Book, Ledger, Stock Book, Purchase Bills, Sale Bills etc., before the Assessing Authority. The Inspecting Authority as well as the Assessing Authority have not found any omission of non accounting of purchases or sales. The appellant has effected the major portion of the purchases in the course interstate trade. The books of accounts cannot be rejected on the only ground that the assessee did not maintain stock register as decided in the case of Kheera Shoe Co. reported in 35 STR 220. The appellant has maintained the Stock Register apart from other Books of Accounts and at the time of inspection on 25.10.1991, he has written the said register upto 23.10.1991. The estimation made by the assessing authority at Rs. 30,600/- is not based on proper evidence. The assessing authority has not recorded as to why he is enhancing Rs. 30,600/- and the basis thereof. The assessing authority has found the books of accounts in a verifiable manner and no omission in the same are noticed by him. The appellant represented that the inspection was conducted at the peak season of Deepavali and therefore they were busy in attending to the customers and therefore, the stock register was not posted for only one day. The mere non-issue of sale bills itself will not enable the assessing authority to enhance the turn over as made in the assessment order. In the absence of substantive evidence that the assessee has suppressed sales or purchases, the estimation made has to be considered is not sustainable in law. The appellate authority by giving the reasons allowed the appeal and modified the impugned assessment order by deleting the turn over of Rs. 30,600/- added by the assessing authority and also set aside the penalty of Rs. 1,000/- levied by the assessing authority. Against that, a revision is filed. The Revisional Authority has stated as follows:

"The contentions of the Respondents are examined. It is a fact that the Respondent has accounted the stock difference on 7.11.1991 vide Bill No. 79. But the inspection was conducted by the Department on 25.10.91 and but for this inspection, the entire stock of Rs. 61,000/- would have gone unaccounted. Considering this aspect, the Assessing Authority has made an estimation of Rs. 30,600/- only and the action of the First Appellate Authority in setting aside the same without considering all the aspects is not justifiable. However, I feel the proposed estimation at 5 times the stock difference is unwarranted and it would be more appropriate and justifiable if the additions made by the Assessing Authority are restored. Hence the following:

ORDER

In the circumstances explained above, the proposals made by this office for estimation of 5 times the stock difference are hereby dropped and the appeal order dated 10.8.93 passed by the Joint Commissioner of Commercial Taxes (appeals), Bangalore City Division-IV is hereby set aside and the Assistant Order dated 27.3.1993 passed by the Assistant Commissioner of Commercial Taxes, 9th Circle, Bangalore is hereby restored."

4. By a scrutiny of the order passed by the appellate authority and the order of the revisional authority, it is manifest that the appellate authority has given cogent and convincing reasons for allowing the appeal. The appellate authority found that the accounts maintained by the assessee are proper and they are supported by the relevant bills and account books and merely for non-issuing of sale bills for one day, it cannot be inferred that the accounts of the assessee cannot be accepted. The appellate authority has also accepted the explanation given by the assessee that because of Deepavali season they were busy in attending the customers and therefore, the stock register was not completed on that day. Thus proper reasons are given by the appellate authority. The revisional authority has not given any reasons except stating that on inspection it was found that an amount of Rs. 61,000/- has gone unaccounted and the sale bills were not produced. Except this, there is no allegation. Therefore, the order of the revisional authority is without giving proper reasons for reversing the order of the appellate authority. Merely because there is omission to maintain the accounts for one day, it cannot be inferred that the assessee is in the habit of making omissions in the stock register.

7. Learned Counsel for the respondent-Department contended that the assessing authority is competent to make best assessment by taking the facts and circumstances into consideration. There is no dispute regarding the power of the assessing authority to make a best judgment when the accounts are not accepted. In the present case, the appellate authority has found that there is nothing to reject the accounts maintained by the assessee and accepted the accounts. Once the accounts are accepted, the assessment must be made on the basis of that accounts and not on the basis of the best assessment principle.

8. Learned Counsel for the Respondent relied on the judgment of the Supreme Court reported in COMMISSIONER OF SALES TAX, MADHYA PRADESH v. H.M. ESUFALI H.M. ABDULALI. In that case, the assessee had dealings outside the accounts of the value of Rs. 31,171.28 for 19 days. In that, at the initial stage, the assessee denied that the bill book seized was his bill book and the entries therein related to his dealings. He asserted that he had nothing to do with the bill book in question and the entries therein do not relate to his dealings. But at a later stage, he conceded that the bill book was his and the entries therein related to his dealings. The assessee has neither pleaded nor established any justifiable reason for not entering in his accounts the dealings noted in the bill book seized. Therefore, they found that the assessee was maintaining false accounts to evade payment of sales tax. In such a situation, it was not possible for the Sales Tax Officer to find out precisely the turnover suppressed. Dealing with the situation, the Supreme Court held that in such cases, the sales tax authorities cannot be asked to prove what is the escaped turn over and can depend upon the "best judgment". Therefore, the facts of the case are quite different from the facts of the present case.

9. In the present case, on inspection it was found that stocks worth Rs. 61,178/-

was found shortage in the premises for which the assessee has not issued sale bills. For that a separate action was taken and penalty was imposed. Later the assessee filed a return including the said amount also in the turn over. The appellate authority has found that the account books are maintained well supported by required registers and relevant documents. It is relevant here to refer to the observations of the Supreme Court at Page 81 (Vol.XXXII STC 77).

"The distinction between a "best judgment" assessment and assessment based on the accounts submitted by an assessee must be borne in mind. Sometimes there may be innocent or trivial mistakes in the accounts maintained by the assessee. There may be even certain unintended or unimportant omissions in those accounts; but yet the accounts may be accepted as genuine and substantially correct. In such cases, the assessments are made on the basis of the accounts maintained even though the assessing officer may add back to the accounts price of items that might have been omitted to be included in the accounts. In such a case, the assessment made is not a "best judgment" assessment. It is primarily made on the basis of the accounts maintained by the assessee."

10. The above principle laid down by the Supreme Court makes it clear that where the accounts are acceptable, the assessment has to be made on the basis of the accounts and not on the "best judgment" assessment.

11. In the present case, the appellate authority has given cogent and convincing reasons for accepting the accounts. On the other hand, the original authority has not given the reasons.

12. Therefore, in view of the facts and circumstances of the case, the order of the revisional authority is set aside.