(1951) 01 CAL CK 0036

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction Sales Tax Ref. No. 57 of 1950

Jagadish Prosad Pannalal APPELLANT

Vs

Member, Board of Revenue RESPONDENT

Date of Decision : 19-01-1951

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 11, 21(1)
Income Tax Act, 1922 — Section 23, 23(4), 66

Citation : AIR 1951 Cal 154 : 55 CWN 244 : (1952) 1 ILR (Cal) 277

Hon'ble Judges : Harries, C.J;Banerjee, J

Bench : Division Bench

Judgement

Banerjee, J.—This is a reference u/s 21 (1), Bengal Finance (Sales Tax.) Act, 1941. The section is analogous to Section 66, Income tax Act. The question formulated for our opinion is in these words.

"Whether on the facts of the case the respective assessments by the Assistant Commissioner of Commercial Taxes so far as the same has not been modified in appeal & by the Commissioner of Commercial Taxes in appeal after allowing the deduction have been made to the best of their respective judgments ?"

2. The applicants before us are registered dealers & are required to file returns quarterly. A registered dealer has to file a return u/s 10 of the Act. The applicants maintain their accounts according to the Marwari Dewali year. They did not file their returns for the two quarters ended Kartic Badi, 15, 2002 (corresponding with the period 13-4-1945 to 4-11-1945). The assessing authority, namely, the Assistant Commissioner of Commercial Taxes, Calcutta, (Central), issued a notice on 20-2-1946, directing the applicants to attend in person or by an agent at the office of the Commercial Tax Officer & there to produce, or cause there to be produced, at the time mentioned in the notice, the accounts & documents specified in the notice for the purpose of assessment, together with any objection which the applicants might wish to prefer & any evidence which they might wish to adduce in support thereof. The notice further

intimated to the applicants that in the event of their failure to comply with the notice, the Tax Officer would proceed to assess u/s 11 of Bengal Finance (Sales Tax) Act, 1941, to the best of his judgment without further reference to them.

3. On 15-4-1946, the applicants appeared before the Tax Officer through a lawyer & prayed for an adjournment. That adjournment was granted. It appears that adjournments were taken from time to time by the applicants till on 6-11-1947 they by their lawyer represented to the Tax Officer that they were not in a position to comply with the requirements of the notice, that their books of account had been looted & destroyed during the communal disturbances in Calcutta. The Assistant Commissioner of Commercial Taxes assessed the dealers to the test of his judgment by his order dated 15-4-1948. He estimated the gross turnover of the applicants at Rs. 20 lacs per quarter & the taxable turnover at ten per cent, of the gross turnover, & the final notice of assessment u/s 11 of the Act was served on the applicants.

4. Against this assessment order the applicants filed an appeal before the Commissioner of Commercial Taxes. They also filed two other appeals before the Commissioner against the assessment orders in respect of the four subsequent quarters. The Commissioner, by his order dated 28-10-1948, dealt with all the three appeals together & in exercise of his powers u/s 20 (2) of the Act reduced the assessment in respect of the two quarters in question (i. e. for the period from 13-4-1945 to 4-11-1945) by estimating the taxable turnover at 7.5 per cent, of the gross turnover instead of at ten per cent, as estimated by the Assistant Commissioner

5. Against this order of the Commissioner the applicants filed a petition before the Board of Revenue. The Commissioner''s orders in respect of this period were upheld by the order of the Board dated 2-5-1949. The petitioners'' case before the Board was that the taxable turnover held by the Commissioner was too high; but though the applicants were in the best position to help the authorities they did not say anywhere what the actual volume of business was nor produced any materials of a positive nature to enable the authorities to come to a finding. The applicants then filed a petition before the Board u/s 21 (1) of the Act asking the Board to refer to the High Court three questions which according to them arose out of the order. The Board after hearing the applicants by its order dated 24-1-1450, held that two questions were not fit to be referred & the only question which they thought should be referred was formulated as above.

6. At the desire of the applicants, a statement showing the figures of gross turnover & taxable turnover in respect of the three years previous to the periods of assessment has been enclosed. The applicants did not, however, refer to the figures for the years 5998-1999 at the hearing of the matter before the Commissioner of Commercial Taxes or before the Board of Revenue.

7. Learned Advocate appearing for the applicants has referred to the figure for the quarter ended Sawan Badi, 15, 2000 in which the approximate percentage of

the gross turnover is stated to be 7.5. He has also referred to three other figures, namely, for quarter ended Kartic Badi 15, 2000, quarter ended Sawan Badi 15, 2001, & quarter ended Kartic Badi 15, 2001, in which the percentage is stated to be 7.5, 2.4 & 3.4 respectively

8. Referring to these figures learned advocate said that the order made by the tax authorities was wrong. But it should be noted that the applicants did not in any way help the tax authorities to arrive at a correct figure. They did not produce any account books nor help them otherwise. Under these circumstances the authorities have to assess to the best of their judgment the amount of tax due from the dealer. What they have got to do in such cases has been laid down by the Privy Council in Commissioner of Income tax, U. P. & C. P. v. Badridas Ramrai Shop. Akola 64 I. A. 102. The relevant observations of their Lordships is pp. 114 15 set out below:

"There remains for consideration the point whether the assessment can be attacked on the ground that it was not made by the officer to the beat of his judgment within the meaning of Section 23, Sub-section (4). The Judicial Commissioners (Nagpur) hava laid down two rules which impose upon the officer the duty of (1) conducting some kind of local inquiry before making the assessment u/s 23, Sub-section (4). & (ii) recording a note of the details & results of such inquiry.

Their Lordships find it impossible to extract these requirements from the language of the Act, which after all is, in such matters the primary & safest guide. The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly, or vindictively or capriciously, because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, & for this purpose he must, their Lordships think, be able to take into consideration local knowledge & repute in regard to the assessee''s circumstances, & his own knowledge of previous returns by & assessments of the assessee, & all other matters which he thinks will assist him in arriving at a fair & proper estimate: & though there must necessarily be guess-work in the matter, it must be honest guess work. In that sense, too, the assessment must be to some extent arbitrary.... Their Lordships can find no justification in the language of the Act for holding that an assessment made by an officer u/s 23, Sub-section (4), without conducting a local Inquiry & without recording the details & results of that inquiry cannot have been made to the best of his judgment within the meaning of the section."

9. These observations fully apply to the case under consideration. In this case the best judgment (assessment?) was made u/s 11 of the Act. In this particular case the Assistant Commissioner made his best judgment assessment & the relevant observations from his findings are as follows:

"Thus in the absence of any reliable data, I have no other alternative but to proceed to assess the dealer to the best of my judgment. On the basis of the previous assessments, it is estimated that the gross turnover per quarter amounts approximately to Rs. 20,00,000 & the taxable turnover is estimated to be 10 per cent, of the gross turnover having due regard to the nature & volume of the business of the dealer.

According to previous returns & the applications for registration in Form 1A, the taxable turnover appears to amount to approximately 10 per cent, of the gross turnover. Possibility of underassessment is apprehended in such cases, specially because no books are produced & the assessment proceedings are completed on a best judgment basis."

10. The ten per cent, has been reduced as I have said already by the Board of Revenue to 7.5 per cent. The Tax authorities considered the materials fully & after giving their consideration to the case arrived at the figures.

11. The learned advocate referred us to Rule 54, Bengal Sales Tax Rules which says that in arriving at the best judgment assessment the authorities have to consider any objection made by the dealer & any evidence produced in support thereof & they are further to briefly record the reasons on which they base their orders.

12. Here there is no doubt that the applicants were given full opportunity to present their case before the authorities & the reasons on which the authorities have come to their findings have been given.

13. It may be--though I do not say that it is-- that the authorities were wrong as to the figure which they have come to. But that does not give us jurisdiction to revise their order. Advocate could not point out to us what materials the authorities should have considered which they did not consider. It appears to us that they considered all available materials & came to a conclusion. Learned advocate for the applicants did not say that the authorities made the assessment order dishonestly, or vindictively. He suggested that the order was made capriciously. But no evidence has been placed before us to enable us to accept the suggestion. It may be that the authorities were wrong, but that does not mean that they were capricious in the finding they made.

14. In this case on the facts before us we hold that the authorities did apply their mind & tried their best to come to a correct conclusion. Even if they were wrong the applicants cannot be helped in any way.

15. On these considerations we answer the question in the affirmative. The resp. is entitled to the costs of these proceedings. Certified for two counsel.

Harries, C.J.

16. I agree.

