
(1968) 07 GUJ CK 0009
In the Gujarat High Court
Case No : Sales Tax Reference No. 2 of 1967

Jayantilal Thakordas

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-07-1968

Acts Referred:

Citation : (1968) 9 GLR 886 : (1969) 23 STC 11

Hon'ble Judges : Mehta, J;B.J. Divan, J

Bench : Division Bench

Advocate : S.L. Mody, for the Appellant; J.M. Thakore, Advocate-General and H.V. Chhatrapati, instructed by Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

Divan, J.—In this reference u/s 34 of the Bombay Sales Tax Act, 1953 (hereinafter referred to as the Act), the following two questions have been referred to us by the Sales Tax Tribunal :-

"(1) Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the principles of natural justice were not violated by the Sales Tax Officer in not recording statements of A. Alibhai and Company and the Angadia and not giving opportunity to the applicant-firm of cross-examining them.

(2) Whether on the facts and in the circumstances of the case the Tribunal was justified in making an estimate of the turnover of sales higher than the detected suppression of sales."

2. The facts leading to this reference are as follows :

3. The applicant-firm, the assessee, is a partnership firm carrying on the business of manufacturing and dealing in art-silk ribbon. The said firm as assessed for two periods from 1st April, 1955, to 31st March, 1956, and 1st April, 1956, to 31st March, 1957, and the assessment orders were passed in

respect of those two separate periods of assessment. Later on, the Sales Tax Officer, Enforcement Branch, Bombay, seized certain account books of M/s. A. Alibhai & Co. of Bombay. Books Nos. 1 and 4 out of the seized books were uplak books containing certain transactions with different persons, the applicant-firm being one of them. These books were sent to the Sales Tax Officer, Surat, who also obtained extracts from the record of one Angadia through whom the applicant-firm is said to have despatched goods to A. Alibhai & Co. We may mention that an Angadia carries goods from one place to another for a consideration and usually carries these goods by railway trains. On scrutiny of the books of account of the assessee-firm in the light of the entries contained in the uplak books of A. Alibhai & Co. and the extracts from the record of the Angadia, the Sales Tax Officer came to the conclusion that the applicant-firm had suppressed sales of certain goods. The turnover of the assessee-firm as assessed previously was Rs. 83,350 in 1955-56. The suppression which was detected was to the extent of Rs. 7,712. The Sales Tax Officer came to the conclusion that the assessee has suppressed the sales to the extent of Rs. 8,335. So far as the assessment year 1956-57 was concerned, the turnover assessed at the time of the original assessment was Rs. 1,36,634. The suppression which was detected for the year 1956-57 was Rs. 761. The Sales Tax Officer estimated the suppressed sales for 1956-57 at Rs. 13,668. The turnover of escaped purchases was estimated at two-thirds of the turnover of the estimated suppressed sales. The escaped turnover was thus determined and assessment orders were passed accordingly.

4. Against the orders passed by the Sales Tax Officer, two appeals were preferred by the assessee-firm to the Assistant Commissioner of Sales Tax for the two separate periods of assessment but both the appeals failed. Thereafter the assessee-firm went in revision before the Deputy Commissioner. The Deputy Commissioner confirmed the order of the Assistant Commissioner for the assessment year 1955-56 so far as the suppressed sales were concerned. As regards the assessment year 1956-57, the Deputy Commissioner reduced the estimated suppressed sales from Rs. 13,668 to Rs. 3,000. Against the orders of the Deputy Commissioner regarding these two revision applications the assessee-firm filed two revision applications before the Sales Tax Tribunal. The Tribunal disposed of both the revision applications by a common judgment; and in its order the Tribunal observed that the assessee-firm had suppressed sales as disclosed from the uplak books. As regards the enhancement, the Tribunal held that there was no proportion in the ratio of enhancement for the two years, viz., 1955-56 and 1956-57. It held that the ratio of enhancement to the estimated suppressed sales was proper so far as assessment year 1955-56 was concerned and that the same ratio of enhancement should be applied for the year 1956-57 in order to arrive at the proper estimate of the suppressed sales. The Tribunal directed that the purchases for the year 1956-57 should be reduced in proportion to the ratio adopted by the Deputy Commissioner and thus the Tribunal confirmed the order passed by the Deputy Commissioner so far as the year

1955-56 was concerned, and so far as the year 1956-57 was concerned, the revision application of the assessee-firm was partially allowed and the suppressed sales for that year were estimated at Rs. 837. The estimates of suppressed purchases were also reduced in accordance with the ratio adopted by the Deputy Commissioner. Thereafter, at the instance of the assessee, the above two questions have been referred to us by the Tribunal.

5. It is common ground before us that at the time when the reassessment proceedings in pursuance of the notice issued in that behalf were going on, the materials were gathered from the uplak books of M/s. A. Alibhai & Co. and the statements were prepared from the materials placed before the Sales Tax Officer by the Angadia. The materials from both these sources were made available to the assessee-firm and thereafter the assessment proceedings were carried on before the Sales Tax Officer and other superior authorities. The Tribunal has observed that the uplak books were found at the time of search of A. Alibhai & Co. and these books contained khata of different persons including the assessee firm. The khata showed that Jayantilal had effected transactions of sale in favour of A. Alibhai & Co. The extracts from the record of the Angadia showed that the goods were despatched by Jayantilal to A. Alibhai & Co. The Tribunal pointed out that there were regular transactions between the assessee-firm and A. Alibhai & Co. in the course of which goods were despatched through the same Angadia as the Angadia from whose record the extract was taken out before the reassessment proceedings. These regular transactions were found to have been duly entered in the account books of the assessee-firm as well as in the regular account books of A. Alibhai & Co. The transactions entered in the uplak books of A. Alibhai & Co. were neither entered in the books of account of the assessee-firm nor in the regular account books of A. Alibhai & Co. Now, the extract of the khata of M/s. Jayantilal Thakordas & Bros. maintained by Angadia showed that certain amounts were received by the Angadia on particular dates from M/s. Jayantilal Thakordas & Bros. It was found at the time of the arguments before the Sales Tax Tribunal that some of the entries which were found in the khata of Jayantilal Thakordas & Co., as maintained by the Angadia, had corresponding debit entries in the account books of the assessee-firm as having been paid by the assessee-firm to the Angadia. According to the Tribunal these debit entries in the account books of the assessee-firm clearly established beyond reasonable doubt that the khata maintained by the Angadia in the name of Jayantilal Thakordas & Co. was the khata of the assessee-firm, viz., Jayantilal Thakordas & Bros. From that conclusion the Tribunal held that the goods shown in the extract of the Angadia account were despatched by the assessee-firm to A. Alibhai & Co. through this Angadia and payments for transport of goods were duly made by the assessee-firm to the Angadia in respect of those goods. Some of the sales in respect of the goods handed over to the Angadia were duly entered in the account books of the assessee-firm. The sales which were not entered in the account books of the assessee-firm were sales entered in the uplak books of A. Alibhai & Co. and regarding the uplak books of A. Alibhai & Co. and the extract

from the account of Jayantilal Thakordas & Co. in the record of the Angadia, the Tribunal came to the conclusion that the transactions of Jayantilal Thakordas & Co. were the transactions of sales effected by the assessee-firm carrying on the business in the name of Jayantilal Thakordas & Bros. These were the conclusions on questions of fact arrived at by the Tribunal on the materials before it.

6. It was urged before us, as had been urged before the Sales Tax Tribunal and other authorities, that no opportunity of cross-examining any person from the firm of Angadia or from the firm of A. Alibhai & Co. was given to the assessee-firm. It was contended before us that what was made available to the assessee was the extract from the uplak books of A. Alibhai & Co. and extract from the record of the Angadia. The assessee-firm also relied on the fact that a letter from A. Alibhai & Co. was produced by the assessee-firm before the Sales Tax Officer and the letter was to the effect that there were no dealings between A. Alibhai & Co. and the assessee-firm other than the transactions stated in the books of account of the assessee-firm. The Tribunal held that this statement of A. Alibhai & Co. did not give any explanation whatsoever regarding the uplak books and the transactions entered therein. According to the Tribunal, it was not possible to construe this statement of A. Alibhai & Co. in the form of a letter as meaning either that the uplak books did belong to A. Alibhai & Co. or that the transactions entered therein were not the transactions of the assessee-firm. Thus, the Tribunal also took into consideration the material which was brought on the record by the assessee at the time of the reassessment proceedings, and after weighing that piece of evidence in the light of the other materials before it, it decided not to place any reliance on that particular material, viz., the statement in the form of a letter produced by the assessee from A. Alibhai & Co.

7. In support of the contention that as part of the principles of natural justice, the assessee-firm should have been given an opportunity to cross-examine the representative of the firm of A. Alibhai & Co. and also the Angadia, so as to enable the assessee to bring out what was the correct nature of the transactions. Mr. Mody, on behalf of the assessee, relied upon a decision of the Kerala High Court in *M. Appukutty v. The State of Kerala* [1963] 14 S.T.C. 489. There Vaidialingam, J., sitting singly, has held that the fact that a third party maintaining some secret account books has made some entries in his accounts, which may connect the assessee, by itself will not give jurisdiction to the assessing authority to utilise that information, unless the assessee has been given ample opportunity in the presence of the person who has kept the secret accounts to effectively cross-examine him and elicit the necessary facts as to how exactly the relevant entries came to be made connecting the assessee with such books of account. Vaidialingam, J., also held that when the assessing authority is not prepared to act on the materials placed before him in support of the return, there is jurisdiction in fact to make an assessment on best judgment basis. But arbitrarily adding 25 per cent. on the turnover of a particular individual cannot be considered to be an assessment made on best judgment basis as that expression is understood in law. In that case, in the reassessment notice, the

assessing authority stated that from the secret account books detected from one Pattiari Panchukutty of Kozhikode, three purchases were stated to have been made by Panchukutty from Messrs Haridas Bros. The total of these three items came to Rs. 2,613.97. It was stated that the petitioner had omitted those sales in his accounts and, therefore, the accounts were incomplete and incorrect and could not be accepted; and the notice also stated that the assessment on the best judgment would be made; but there was no indication in the reassessment notice as to how the officer proposed to assess the turnover of the petitioner. In para. 5 of the judgment at page 491 of the report, Vaidialingam, J., has observed :

"As to how exactly any books of account : maintained by somebody else, and much less the secret account books, which according to the department were discovered from a third party, can straightaway and without proof be utilized as against persons like the petitioner, has not been even indicated in the order of assessment.

As to whether the petitioner had an opportunity to contest the correctness of the entries in those books, or as to whether the secret account books themselves have been proved by anybody appearing on behalf of Panchukutty, is not certainly clear from the assessment order. Therefore, the attack based on the order under attack, placing considerable reliance on the secret account books of Panchukutty, cannot certainly be said to be without any basis."

8. In para. 11 at page 492 of the report Vaidialingam, J., has observed :

"For all these reasons, the order under attack will have to be set aside. The assessing authority is directed to take fresh proceedings for passing an order of assessment for the year in question. The petitioner will be given another opportunity to sustain the return itself, by producing the necessary evidence, oral or documentary. If the assessing authority nevertheless proposes to utilize the information contained in some secret books of account of persons like Panchukutty. As against the petitioner, the assessing authority will have to produce not only those books of account but also the person from whom those books had been seized, for cross-examination at the hands of the petitioner. After completing all these formalities, if the assessing authority proposes to make an assessment on best judgment basis, there is an obligation on his part to place before the assessee the basis which he still proposes to adopt, and invite objections from him."

9. With utmost respect to Vaidialingam, J., we are unable to agree with the reasoning which he adopted in that case. He has proceeded on the footing that the evidence in the proceedings before the Sales Tax Authorities or other similar authorities must mean the evidence recorded in the best judgment assessment as understood in law and what is commonly referred to as legal evidence. On the other hand, it is well-settled that for purposes of departmental Tribunals, like the Sales Tax Tribunal, evidence means any material having probative value,

irrespective of the manner in which the material is produced or of the mode of proving that particular piece of material. There are decisions of the Supreme Court in connection with the Income Tax law and also in connection with the sales tax law laying down that so far as evidence in reassessment proceedings is concerned, the word "evidence" has to be understood in the sense of material having any probative value.

10. In *Raghubar Mandal Harihar Mandal v. State of Bihar* [1957] 8 STC 770, Supreme Court followed its earlier decision in *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal* [1954] 26 ITR 775. In *Raghubar Mandal's* case [1957] 8 S.T.C. 770, the Supreme Court was dealing with the provisions of section 10(2)(b) of the Bihar Sales Tax Act, 1944. The Supreme Court held that the provisions of section 10(2)(b) of the Bihar Sales Tax Act, 1944, and section 23(3) of the Indian Income Tax Act, 1922, are substantially the same and impose on the assessing authority a duty to assess the tax after hearing such evidence as the dealer may produce and such other evidence as the assessing authority may require on specified points. In making an assessment u/s 10(2)(b) the Sales Tax Officer is not fettered by technical rules of evidence and pleadings and he is entitled to act on material which may not be accepted as evidence in a court of law; but he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment. When the returns and the books of account are rejected, the assessing officer must make an estimate and to that extent he must make a guess; but the estimate must be related to some evidence or material and it must be something more than mere suspicion. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he must take into consideration such materials as the assessing officer has before him, including the assessee's circumstances, knowledge of previous returns and all other matters which the assessing officer thinks will assist him in arriving at a fair and proper estimate. Section 10(2)(b) of the Bihar Sales Tax Act provided as follows :

"On the day specified in the notice or as soon afterwards as may be, the Commissioner, after hearing such evidence as the dealer may produce, and such other evidence as the Commissioner may require on specified points, shall assess the amount of tax due from the dealer."

11. At page 775 of the report, S. K. Das, J., delivering the judgment of the Supreme Court, cited the following passage from its earlier decision in *Dhakeswari Cotton Mills Ltd.'s* case [1954] 26 ITR 775)

"As regards the second contention, we are in entire agreement with the learned Solicitor-General when he says that the Income Tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law, but there the agreement ends; because it is equally clear that in making the assessment under

sub-section (3) of section 23 of the Act, the Income Tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment u/s 23(3) (of the Indian Income Tax Act, 1922)."

12. At page 776 of the report, S. K. Das, J., has pointed out that it was clear that what the Sales Tax Officer and the Commissioner did was to hold, for certain reasons, that the returns made by the assessee and the books of account filed by it were incorrect and undependable. The Supreme Court accepted the finding of fact arrived at by the assessing authorities that the returns and the books of account were not dependable. The Supreme Court held that the different reasons cited by the assessing authorities for holding that the returns and the books of account were not dependable were correct and then the Supreme Court observed :

"Having rejected the returns and the books of account, the assessing authorities proceeded to estimate the gross turnover. In so estimating the gross turnover, they did not refer to any materials at all. On the contrary, they indulged in a pure guess and adopted a figure without reference to any evidence or any material at all If, in this case, the Sales Tax Authorities had based their estimate on some material before them, no objection could have been taken."

13. Therefore, this decision of the Supreme Court in Raghubar Mandal's case [1957] 8 S.T.C. 770 . clearly establishes that once the returns and the books of account are rejected as undependable for the reasons recorded by the assessing authority, then it is open to the authority to estimate the gross turnover but the authority has to base its conclusion on some material before it; and if there is no material before it, it is not open to the authority to resort to pure guess work. We may also point out that at page 779 of the report, the Supreme Court has pointed out that the decision of the Lahore High Court in (1944) 12 ITR 393 , was specifically approved by the Supreme Court in Dhakeswari Cotton Mills" case [1954] 26 ITR 775. The rules laid down in that decision were :

"(1) While proceeding under sub-section (3) of section 23 of the Income Tax Act, the Income Tax Officer is not bound to rely on such evidence produced by the assessee as he considers to be false;

(2) if he proposes to make an estimate in disregard of the evidence, oral or documentary, led by the assessee, he should in fairness disclose to the assessee the material on which he is going to found that estimate;

(3) he is not however debarred from relying on private sources of information, which sources he may not disclose to the assessee at all; and

(4) in case he proposes to use against the assessee the result of any private inquiries made by him, he must communicate to the assessee the substance of the information so proposed to be utilised to such an extent as to put the assessee in possession of full particulars of the case he is expected to meet and

should further give him ample opportunity to meet it, if possible."

14. Thus, in judging whether the order passed in the instant case is or is not in accordance with the principles of natural justice, we will have to examine the scheme of the sections under the 1953 Act and the Rules and the forms prescribed by the Rules, and find out whether the procedure laid down by these sections and the Rules required anything more than observance of the principles of natural justice and whether there was any obligation on the assessing authorities to do more than what they have done in the instant case.

15. Section 14 of the Bombay Sales Tax Act, 1953, as it stood at the relevant time was in these terms :

"14. (1) The amount of the tax due from a registered dealer shall be assessed separately for each year during which he is liable to pay the tax :

* * * * (3) (a) If the Collector is not satisfied without requiring the presence of a dealer who has furnished his returns or the production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at a place specified therein either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns or such other evidence as may be specified in such notice.

(b) On the date specified in the notice or as soon afterwards as may be, the Collector shall, after considering such evidence as the dealer may produce and such other evidence as the Collector may require on specified points, assess the amount of the tax due from the dealer.

(4) If a dealer having furnished returns in respect of a period fails to comply with the terms of the notice issued under sub-section (3), the Collector shall assess to the best of his judgment, the amount of the tax due from the dealer.

(5) If a dealer does not furnish returns in respect of any period by the prescribed date, the Collector shall, after giving the dealer a reasonable opportunity of being heard, assess to the best of his judgment, the amount of the tax, if any, due from the dealer.

(6) If upon information which has come into his possession, the Collector is satisfied that any dealer has been liable to pay the tax in respect of any period but has failed to apply for registration, the Collector shall, after giving the dealer a reasonable opportunity of being heard, assess to the best of his judgment, the amount of the tax, if any, due from the dealer in respect of such period and all subsequent periods."

16. Section 15 of the Act provided as follows :-

"15. (1) If in consequence of any information which has come into his possession the Collector is satisfied that any turnover in respect of sales or purchases of any goods chargeable to tax has escaped assessment in any year or has been under-

assessed or assessed at a lower rate or any deductions have been wrongly made therefrom, the Collector may, in any case where such turnover has escaped assessment or has been under-assessed or assessed at a lower rate for the reason that the provision of sub-section (1) of section 2 of the Bombay Sales Tax (Validating Provisions) Act, 1957, were not then enacted at any time, within eight years, and in any case there he has reason to believe that the dealer has concealed the particulars of such sales or purchases or has knowingly furnished incorrect returns, at any time within eight years, and in any other case, at any other time within five years of the end of that year, serve on the dealer liable to pay the tax in respect of such turnover a notice containing all or any of the requirements which may be included in a notice under sub-section (3) of section 14 and may proceed to assess or reassess the amount of the tax due from such dealer and the provisions of this Act shall apply accordingly as if the notice were a notice served under that sub-section."

17. The rest of the provisions of section 15 of the Act are not material for the purpose of this judgment.

18. Under the Bombay Sales Tax (Procedure) Rules, 1954, provision was made for assessment to tax and penalty u/s 14, and rule 15 provided that the notice required by sub-section (3) of section 14 should be in Form XIII and the date fixed for compliance with the notice should be not less than 10 days from the date of service thereof; and rule 17 provided that a notice u/s 15 should be in Form XIV and the date fixed for compliance with the notice should be not less than 15 days from the date of service thereof. When one turns to the form, one finds that the material portion of Form XIV states that whereas the Sales Tax Officer, who issued the notice was satisfied that the turnover of the assessee concerned in respect of sales and purchases for the periods mentioned in the notice had been under-assessed, or assessed at a lower rate or the deductions for the sales and purchases had been wrongly made from the turnover of the assessee for the period mentioned in the notice, the assessee was directed to attend in person or by a legal practitioner or by an agent authorised in writing at the time and place specified in the notice "to show cause as to why the amount of tax payable by you in respect of the said sales and purchases for the said period should not be assessed/reassessed and to produce or cause to be produced the following documents and accounts and to furnish the following information. You may also produce any other evidence for determining the correct amount of tax payable by you for the said period." Thus it is clear that so far as the sections and the Procedure Rules were concerned, ample opportunity was given to the assessee concerned, the applicant before us in the instant case, to show cause why the sales which had been suppressed should not be included in his turnover for the relevant periods in reassessment proceedings u/s 15 of the Act. There is nothing in the procedure laid down by section 14 so far as the assessment proceeding is concerned and section 15 so far as reassessment proceeding is concerned, which violated any of the principles of natural justice. After issuing the notice contemplated the respective sections, the assessing

authority was entitled to proceed to assess or reassess the amount of tax due from a particular dealer. It was open to the assessing authorities to treat the returns and the books of account of the assessee-firm as undependable and on the materials before them to come to their own conclusions regarding the sales which had been suppressed. In the instant case, on the materials which were forthcoming from the uplak books of A. Alibhai & Co. and the records of the Angadia at Surat, the assessing authorities came to the conclusion that for the year 1955-56 the sales to the extent of Rs. 7,712 had been suppressed and they were the suppressed sales detected from the materials available to the assessing authority; and for the year 1956-57, the suppressed sales which were detected from the materials before the assessing authority were to the extent of Rs. 775. It is on the basis of these materials which were available before him that the assessing authority and the Tribunal ultimately arrived at the conclusion that for 1955-56 from the detected suppressed sales the estimated suppressed sales came to Rs. 8,335 and by adopting the same ratio of suppressed sales to detected sales, the Tribunal came to the conclusion that for the year 1956-57, the suppressed sales were to the extent of Rs. 837. Bearing in mind the observations in Raghubar Mandal's case [1957] 8 S.T.C. 770, it is clear that in the instant case, unlike the case before the Supreme Court, there were materials before the assessing authorities on the basis of which those authorities could have formed an estimate regarding the suppressed sales in each of the years of assessment and that being the case, it cannot be said that there were no materials before the assessing authorities for arriving at the estimates of the suppressed sales, as they did in the instant case.

19. As regards the second question that has been referred to us by the Tribunal, it was contended in the alternative by Mr. Mody that in reassessment proceedings it was not open to the assessing authorities to assess on best judgment basis as they have done in the case of first assessment. In support of this proposition, he relied on the decision of the Andhra Pradesh High Court in *State of Andhra Pradesh v. Ravuri Narasimloo* ([1965] 16 S.T.C. 54). In that case, a Division Bench of the Andhra Pradesh High Court was dealing with section 14(1) and (3) of the Andhra Pradesh General Sales Tax Act, 1957; and it held that these two sub-sections deal with power to make best judgment assessment at the time of the original assessment; and sub-section (4) of that section concerns itself with bringing to tax turnover which has escaped assessment. According to the Andhra Pradesh High Court, the Legislature had confined the power of the department under the said sub-section to assessing such turnover as is shown to have escaped assessment and has not extended it to estimates depending upon inferences to be drawn by the department from certain circumstances; and that it does not clothe the department with power to make a best judgment assessment. Section 14(4) of the statute before the Andhra Pradesh High Court was in the following terms :

"Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, or has been under-assessed or assessed

at too low a rate, or where the licence fee or registration fee has escaped levy or has been levied at too low a rate, the assessing authority may, at any time within a period of four years from the expiry of the year to which the tax or the licence fee or registration fee relates, assess the tax payable on the turnover which has escaped assessment or levy the correct amount of licence fee or registration fee, after issuing a notice to the dealer and after making such inquiry as he considers necessary. Such authority may also direct the dealer to pay in addition to the tax so assessed, a penalty not exceeding one and half times the amount of that tax, if the turnover had escaped assessment or had been under assessed or assessed at too low a rate by reason of its not being disclosed by the dealer."

20. It is important to note while dealing with this judgment of the Andhra Pradesh High Court that section 15 of the Bombay Sales Tax Act, 1953, provides in connection with the reassessment proceedings that after the issue of the notice contemplated by section 15(1), the assessing authority may proceed to assess or reassess the amount of tax due from such dealer and the provisions of the Act are to apply accordingly as if the notice were a notice served u/s 14(3) in respect of the original assessment. By virtue of those words occurring at the end of sub-section (1) of section 15, the Bombay Legislature has provided that so far as all stages after the issue of the notice are concerned, the original assessment proceedings and the reassessment proceedings are to stand on the same footing and in both proceedings the authority concerned has to follow the same procedure. Therefore, the power of best judgment, which can be exercised in respect of original assessment can be exercised in respect of reassessment proceedings also. There was no similar clause in the Andhra Pradesh legislation and, therefore, the decision of the Andhra Pradesh High Court in *State of Andhra Pradesh v. Ravuri Narasimloo* [1956] 16 S.T.C. 54 can be easily distinguished.

21. On the same lines is the judgment of the Full Bench of the Madras High Court in *P. S. Subramaniam Chettiar & Sons v. Joint Commercial Tax Officer III* [1966] 18 S.T.C. 357. There it was held that section 16(1) of the Madras General Sales Tax Act, 1959, does not include the power to assess by best judgment escaped turnover. Under the section the power of the assessing authority is confined to the turnover actually proved by evidence to have escaped assessment. The legislative history of the sales tax provisions also supports this view. The Full Bench of the Madras High Court held :

"In a taxing statute like any other statute, there is no room for implication of a power which is not there expressly given.

In the taxation laws of this country, assessment by best judgment as a distinct category of power has come into practice and wherever the Legislature thought fit, it expressly conferred that power upon the Assessing Authority."

22. Section 16(1) of the Madras General Sales Tax Act as reproduced at page 361 of the report is in the following terms :

"16. (1) Where, for any reason, the whole or any part of the turnover of business

of a dealer has escaped assessment to tax or has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, subject to the provisions of sub-section (2), at any time within a period of five years from the expiry of the year to which the tax relates, assess the tax payable on such turnover after service of notice on the dealer and after making such enquiry as it may consider necessary."

23. Sub-section (2) of section 16 of the Madras Act provides for the levy of penalty under certain circumstances and that sub-section is not material for the purpose of this judgment. We need only point out at this stage section 16(1) of the Madras General Sales Tax Act in as much as there is no equalising of reassessment proceedings with the original assessment proceedings as is to be found in the Bombay legislation. On this ground, we distinguish this Full Bench decision of the Madras High Court.

24. It is also possible to take the view that the assessing authorities have come to the conclusion that the books of account of the assessee and the returns are not dependable as was found by the Supreme Court in Raghubar Mandal's case [1957] 8 S.T.C. 770; it is open to the assessing authority to form its own estimate of the gross turnover of the assessee and it appears that the Supreme Court has taken the view in Raghubar Mandal's case ([1957] 8 S.T.C. 770.) that forming the best judgment assessment in such circumstances is a part of the process of ordinary assessment but in view of the fact that the Madras legislation and Andhra Pradesh legislation are different from the Bombay legislation, it is possible for us to distinguish the two decisions of the said two High Courts on that ground also.

25. In *State of Kerala v. C. Velukutty* [1966] 17 S.T.C. 465 the Supreme Court held that where the best judgment assessment power has been conferred upon an assessing authority, the limits of the power are implicit in the expression "best of his judgment". Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a Judge but on settled and invariable principles of justice. Though there is an element of guess-work in a best judgment assessment, it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case. On the basis of this judgment of the Supreme Court, Mr. Mody contended before us that there was no reasonable nexus between the detected suppressed sales for the two years of assessment and the estimated suppressed sales as determined by the Sales Tax Tribunal. We are unable to accept this contention of Mr. Mody. In each case, the Tribunal has added a certain percentage of the detected sales in order to arrive at its estimate of total suppressed sales in each year of assessment and it cannot be said that there is no reasonable nexus whatsoever between the estimated suppressed sales and the detected suppressed sales. Under these circumstances, this decision of the Supreme Court in *C. Velukutty's* case ([1966] 17 S.T.C. 465.) cannot held the assessee.

26. In the light of the above discussion, we hold that the Tribunal was right in the

view that it took, viz., that the principles of natural justice were not violated by the Sales Tax Officer in not recording statements of A. Alibhai & Co. and the Angadia and not giving opportunity to the applicant-firm of cross-examining them.

27. In the result, we answer the question as follows :

Question No. Answer (1) In the affirmative. (2) In the affirmative.

28. The assessee will pay the costs of this reference to the State of Gujarat.

29. Reference answered accordingly.