(1999) 08 KAR CK 0028

In the Karnataka High Court

Case No : Sales Tax Appeal No. 1 of 1991

K. Rajendra Prasad APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12A

Citation : (1999) 47 KarLJ 450

Hon'ble Judges : T. N. Vallinayagam, J;V. K. Singhal, J

Judgement

V.K. Singhal, J.-In this appeal, the following questions have been raised:

"(a) Whether the Assessing Authority was right in law in passing an order under Section 12-A without considering the objections of the Assessee that the documents seized were maintained without the knowledge of the Assessee?

(b) Whether the Assessing Authority was right in law in passing a re-assessment order merely on the basis of II set of statements when there were no discrepancies found in the regular books maintained and in the absence of any slips or voucher or other incriminating material to support the II set of documents?

(c) Whether the Assessing Authority was right in passing an order estimating the alleged escaped turnover, on the mere II set of statements without establishing the nexus between the documents seized and the business carried by the firm.

(d) Whether the conclusion drawn by the Assessing Authority, on the basis of documents seized, without corroborating with sufficient evidence be enough ground to constitute nexus between the material seized and the business of the firm.

(e) Whether the Commissioner of Commercial Taxes was right in law in setting aside the order of the First Appellate Authority without showing the error committed by the First Appellate Authority in setting aside the order of the Assessing Authority by merely approving the reasons adopted in the Assessing

Authority and whether that is the function of revision?

(f) Whether the Commissioner of Commercial Taxes was right in law in setting aside the order of the First Appellate Authority without considering the First Appellate Authority''s observation and conclusions with regard to the failure on the part of the Assessing Authority to establish the nexus between the material seized and the business of the Assessee relying on the decision of the Supreme Court in Mathew''s case?

(g) Whether the Commissioner was right in law in issuing the notice under Section 22-A of the Act beyond the prescribed period of 4 years"?

2. Business premises of the firm M/s. Shashi Wine Centre, Kadur, was inspected on 28-5-1977 and certain incriminating documents were seized. There were two sets of balance sheet. The first set tallied with the books of accounts and the other set has not tallied and, therefore, the Assessing Authority initiated proceedings for re-assessment under Section 12-A of Karnataka Sales Tax Act. It was contended that the Accountant of the firm has written the accounts and balance sheet etc., in respect of the second set of balance sheet without the consent of any partner of the firm and even without their knowledge. The contention was not accepted. In appeal however, the order passed by the Assessing Authority was set aside on 29-6-1979. The decision given in the case of State of Kerala v M.M. Mathew and Another, AIR 1978 SC 1571, was also relied upon by the Appellate Authority. The Commissioner of Commercial Taxes initiated SMR proceedings and passed the order after taking into consideration the objections raised by the appellant. It was observed that the Appellate Authority overlooked the evidence of suppressed transaction pertaining to the assessee and it was not only double set of the trading account but also the other documents as mentioned in the order of the Assessing Authority. On the basis of the evidence, the Revising Authority came to the conclusion that the assessee has maintained double sets of accounts.

3. The various questions which have been raised in this appeal are purely questions of fact. The documents were seized from the business premises of the firm. It is also not in dispute that they were written by the Accountant of the firm. There is no evidence on record that any action was taken against the Accountant, for causing any loss to the firm or any partner thereof in preparing the double set of accounts. The manner in which the letter has been written by the Accountant could only be to save the liability. Even the contents were not found correct. H.B. Thyagaraj was not found Managing Partner and file was seized from premises of G.V. Manjunatha Swami, Managing Partner and hence full knowledge of unaccounted transaction was presumed. Monthly statements were signed by Accountant.

4. It was found that beside the balance sheet of Account Nos. 1 and 2, joint balance sheet No. 3 was also prepared by the said Accountant. For 1976-77 second set of accounts marked No. 2 was maintained. The closing stock of goods

as on 30th June, 1976 which was shown at Rs. 11,340/- was disclosed in the balance sheet at No. 2 account which was brought forward in the books for 1976-77. We need not go into all the aspects of the matter since, in respect of the documents which were seized from the business premises of the assessee, it was his burden to prove that the said documents of the transaction contained therein were not pertaining to his business. Mere assertion without any reliable proof that the documents so seized do not belong to him or that the said transaction was not carried by him will be of no use. The Appellate Authority has relied upon the judgment in the case of M.M. Mathew, supra. Firstly, those observations were in the context of a criminal charge and secondly, in respect of those documents which are found from the business premises of the assessee, the burden is on the assessee to prove that the seized documents do not belong to the firm. The other decisions relied have also no relevance. There were regular transaction in the second set of books of accounts and, therefore, the Assessing Authority was justified in coming to the conclusion that the Assessee had evaded the turnover. The Revising Authority has committed no illegality in setting aside the order of the Appellate Authority, which had wrongly considered the point of burden of proof on department and had not examined the evidence as discussed in the Assessment order. The order passed by the Appellate Authority was prejudicial to the interest of revenue. Sufficient correlation between the regular books of accounts and second set of books of accounts was established from which the evaded sales were effected.

5. The revisional proceedings can be taken within 4 years from the date of order sought to be revised. The order of the Appellate Authority was on 29-6-1979. The Revising Authority initiated proceedings on 12-5-1982 and, therefore, the objection regarding the time limit also cannot be raised.

6. The appeal having no force is dismissed.

