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**(1974) 04 AHC CK 0006**

**In the Allahabad High Court**

**Case No : Civil Miscellaneous Writ No. 1452 of 1973**

Kailash Nath Kashi Nath

APPELLANT

Vs

The Sales Tax Officer

RESPONDENT

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**Date of Decision : 19-04-1974**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (1974) 34 STC 359**

**Hon'ble Judges : Satish Chandra, J;H.N. Seth, J**

**Bench : Division Bench**

**Advocate : J.C. Bhardwaj, for the Appellant; Standing Counsel, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

H.N. Seth, J.—This petition under Article 226 of the Constitution is directed against the two assessment orders for the years 1969-70 and 1970-71 made on 10th January, 1973. The petitioner's assessment for the year 1969-70 was reopened u/s 21 of the U. P. Sales Tax Act and by order dated 10th January, 1973, it was assessed on a turnover of Rs. 35,00,000. Its assessment for the year 1970-71 was also completed on 10th January, 1973, under Rule 41(5) of the Sales Tax Rules, on a turnover of Rs. 41,00,000. The petitioner impugnes the validity of the two assessment orders, inter alia, on the following grounds:

(1) The Sales Tax Officer had no reason to believe that any part of the petitioner's turnover had escaped assessment. He had therefore no jurisdiction to reopen its assessment for the year 1969-70 u/s 21 of the Sales Tax Act.

(2) The Sales Tax Officer erred in making best judgment assessment for both the years, after rejecting the account books of the petitioner, and

(3) The Sales Tax Officer determined the petitioner's turnovers at Rs. 35,00,000 and Rs. 41,00,000 arbitrarily and without any basis.

2. Originally by an order dated 20th May, 1970, the Sales Tax Officer assessed the petitioner for the year 1969-70 on a turnover of Rs. 3,97,462.37. It appears that on 25th July, 1970, the Sales Tax Officer, S. I. B., searched the business premises of the petitioner and seized certain papers and account books which also related to the year 1969-70. After examining those papers and books with the assistance of the petitioner and making out copies there from, the Sales Tax Officer, S. I. B., sent a confidential demi-official letter giving details of the account books and documents seized and examined by him along with their copies and extracts to the Sales Tax Officer who was dealing with the petitioner's assessment. On examining those documents, the Sales Tax Officer came to the conclusion that the petitioner had recorded its suppressed turnover for the year 1969-70 on loose sheets of paper and that, as admitted by him before the Sales Tax Officer (S. I. B.), some of the transactions mentioned in those loose sheets of paper had not been incorporated in his books produced at the time of regular assessment proceedings. Certain material seized by the Sales Tax Officer, S. I. B., also indicated that the petitioner had maintained double sets of accounts. In these circumstances, the Sales Tax Officer, being of the opinion that a part of the assessee's turnover had escaped assessment, issued a notice to the petitioner for reopening the assessment. It is obvious that the petitioner's assessment was reopened on the basis of certain information conveyed by the Sales Tax Officer, S. I. B., which he had gathered as a result of search made by him on 25th July, 1970. This material, in our opinion, could provide sufficient reason for the Sales Tax Officer to think and believe that a part of the assessee's turnover for the year 1969-70 had escaped assessment. He could, therefore, reopen the proceedings after issuing notice to the petitioner. In our opinion, there is no force in the petitioner's submission that there was absolutely no material on the basis of which the Sales Tax Officer could have initiated proceedings for reopening of the assessment u/s 21 of the Sales Tax Act.

3. Next contention raised on behalf of the petitioner is that, while making the assessment u/s 21 of the U. P. Sales Tax Act, the Sales Tax Officer violated the principles of natural justice inasmuch as he did not supply to the petitioner a certified copy of the report said to have been made by the Sales Tax Officer, S. I. B., on the basis of which the assessment proceedings had been reopened and which formed the basis for making best judgment assessment after rejecting the petitioner's accounts.

4. In the counter-affidavit filed by the Sales Tax Officer, it has been stated that the petitioner made an application for obtaining copies of three documents, viz., (1) survey report dated 25th July, 1970, (2) report of the Sales Tax Officer, S. T. B., relating to survey dated 25th July, 1970, sent to the Sales Tax Officer, Bareilly, and (3) statement of Sri Kailash Nath dated 4th November, 1970. No vakalatnama of the Advocate who applied for the copies of the documents was filed nor were separate applications for copies of documents made. However, the copies of survey report dated 25th July, 1970, and the statement on oath of Sri Kailash Nath dated 4th November, 1970, were issued to the petitioner on 10th

January, 1973. As the report of the Special Investigation Branch was simply a letter and a part of correspondence, its copy could not be issued and the petitioner was informed accordingly. The main material on the basis of which the assessment of the petitioner had been completed was contained in the copies of survey report dated 25th July, 1970, and the statement on oath made by Sri Kailash Nath dated 4th November, 1970. A perusal of the assessment order shows that, while making assessment, no reliance as such was placed on the report of the Sales Tax Officer, S. I. B. In the circumstances, we do not think that any principle of natural justice has been violated merely because the report of S. I. B., which was simply a letter and a part of the correspondence addressed to the Sales Tax Officer, was not given to the petitioner.

5. Next contention of the petitioner is that the Sales Tax Officer was not justified in rejecting the petitioner's account books. As stated earlier the survey made by the Sales Tax Officer revealed that the assessee had maintained double sets of account and that several transactions which were entered into by him in loose sheets of paper had not been brought in his account books. This material, in our opinion, afforded sufficient justification for the Sales Tax Officer to make the best judgment assessment.

6. Last submission made by the petitioner is that even if it be taken that the Sales Tax Officer could reopen the proceedings and make the best judgment assessment he could not arbitrarily determine the petitioner's turnover. According to him, the quantification of the assessee's turnovers at Rs. 35,00,000 and Rs. 41,00,000 for the two years is absolutely arbitrary and without there being any material on the record to support the same. We are unable to accept that the Sales Tax Officer has determined the petitioner's taxable turnovers for the two years arbitrarily and that there was no material on the record which could support that determination. The assessment proceedings for the year 1969-70 indicate that the loose sheets of paper seized from the assessee's possession disclosed that the petitioner had concealed purchases made by him during a part of the year 1969-70 amounting to Rs. 10,60,000. Acting upon this basis the Sales Tax Officer determined the petitioner's taxable turnover for the entire year at a figure of Rs. 35,00,000. Similarly, for a part of the year 1970-71 the Sales Tax Officer found that the petitioner had concealed purchases and sales amounting to Rs. 18,00,000. On this basis he estimated the petitioner's taxable turnover for the entire year as Rs. 41,00,000. This, in our opinion, was a relevant matter on the basis of which the Sales Tax Officer could estimate the petitioner's turnover for the entire year. We are, therefore, not satisfied that the Sales Tax Officer has determined the petitioner's taxable turnover for either of the two years in an arbitrary manner. In this connection, the learned counsel for the assessee relied upon the case of H.M. Esufali H.M. Abdulali v. Commissioner of Sales Tax 1969 24 S.T.C. 1. In that case a Division Bench of the Madhya Pradesh High Court found that the estimate of escaped turnover under the local and the Central Acts for the entire period 1st November, 1959, to 20th October, 1960, made by the Sales Tax Officer was based on mere guess-work and was without

any proper basis. It held that as the escaped turnover proved was only Rs. 31,171.28, the assessee was liable to be assessed under both the Acts only on the taxable turnover comprised in the escaped turnover of Rs. 31,171.28. Learned counsel for the petitioner contended that in the present case also as the escaped turnovers for the two years actually found by the Sales Tax Officer were Rs. 10,60,000 and Rs. 18,00,000, he could not arbitrarily and purely on guess-work determine the petitioner's taxable turnovers at Rs. 35,00,000 and Rs. 41,00,000. We find that the decision of the Madhya Pradesh High Court, in the aforesaid case, has since been overruled by the Supreme Court in the case of *The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore*, wherein it has been held that in estimating any escaped turnover it is inevitable that there will be some guess-work though it must have a rational basis without bias, caprice or vindictiveness. The basis adopted in estimating the turnover must have reasonable nexus with the estimate made. If the basis adopted is held to be a relevant basis, the estimate made by the assessing authority should not be disturbed even though courts may think that it is not the most appropriate basis.

7. In this case we find that at the time of search certain documents were recovered which indicated that for part of the assessment years in question the assessee had concealed its purchases and sales over Rs. 10,60,000 and Rs. 18,00,000. Acting upon this basis the Sales Tax Officer estimated the petitioner's taxable turnovers for the entire year at Rs. 35,00,000 and Rs. 41,00,000 respectively. In the circumstances, we do not think that the basis adopted for estimating the turnover had no reasonable nexus with the estimate made by the Sales Tax Officer. Moreover, there is nothing on the record to indicate that the basis adopted was not rational or that the Sales Tax Officer was actuated by any bias, caprice or vindictiveness. In the circumstances, it is not possible to interfere with the turnover estimated for each of the two years by the Sales Tax Officer. In our opinion, the orders passed by the Sales Tax Officer are not vitiated for any of the reasons urged on behalf of the petitioner.

8. The Petition, therefore, fails and is dismissed with costs.