
(1997) 08 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Special Appeal No. 597 of 1995

Kailash Talkies

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Rajasthan Entertainments and Advertisements Tax Act, 1957 — Section 18
Rajasthan Entertainments and Advertisements Tax Rules, 1957 — Rule 29

Citation : AIR 1998 Raj 1

Hon'ble Judges : B.R. Arora, J; Amaresh Ku. Singh, J

Bench : Division Bench

Advocate : Anjay Kothari, for the Appellant; Sanjeev Johari, for the Respondent

Final Decision : Dismissed

Judgement

Amaresh Ku. Singh, J.—Heard the learned counsel for the parties.

2. This Civil Special Appeal is directed against the judgment dated 6th February, 1995 passed by the learned single Judge in S.B. Civil Writ Petition No. 6684/92, M/s. Kailash Talkies v. State of Rajasthan, whereby the writ petition filed by the appellant (petitioner) was dismissed on the ground that there was no error apparent on the face of the record in the impugned order Annexure-8 passed by the Additional Commissioner, Commercial Taxes, Rajasthan, Jaipur. The facts of the case may be briefly summarised as below :-

3. The appellant is the owner of a Picture Hall known as Kailash Talkies situated in Kapasan, District Chittorgarh. On 30th August, 1988 at 7-45 p.m. the Commercial Taxes Officer Shri Samrath Lal Panwar made an inspection of Kailash Talkies in presence of Shri Jagdish Prasad Borgama, brother of one of the partners and found that at that time, the picture "Parwana" was being exhibited. It was also found by the Inspecting Officer that the tickets issued to the spectators were not issued from the authenticated ticket books and the tickets were issued to various persons from the ticket books bearing serial numbers,

which had different from the ticket books authenticated by the department. A show cause notice was issued to the appellant by the Assessing Authority. In reply to the show cause notice, the appellant submitted its reply stating therein that the ticket books used on 30th August, 1988 were from the ticket books used up to 31st December, 1987 duly authenticated and that they were used on that day because the current ticket books were lying in a locked cup-board and the key was with the partner, who was out of station. Another reason for using the ticket books, which were used up to 31 st December, 1987 was that the new ticket books bearing new rates were not got printed by that time. It was also stated in the explanation submitted by the appellant that a remark to this effect was duly noted by the Booking Clerk on the said series being used on that day.

4. The explanation submitted by the appellant was not accepted by the Assessing Authority, therefore, he framed best judgment assessment for five months from April, 1988 to August, 1988 and created demand of entertainment tax, interest and penalty thereon by separate assessment orders for all these five months vide Annexures-1 to 5, attached with the writ petition.

5. Being aggrieved by the aforesaid order of assessment, interest and penalty imposed by the Assessing Authority, the petitioner preferred an appeal before the Deputy Commissioner (Appeals), Commercial Taxes Department, Udaipur, which was partly allowed holding that there was no evasion of tax. The Appellate Authority set aside the levy of tax and imposition of penalty, however, the levy of interest was maintained. On the delayed payment of tax, further penalty u/s 10(3)(b)(iii) for not getting the forms authenticated, was maintained. The Commercial Taxes Officer, Chittorgarh filed a revision petition under Rule 29 of the Rules framed under Act No. 24 of 1957 against the order dated 1st December, 1989 (Annex.6) passed by the Appellate Authority. The revisional authority recorded a categorical finding to the effect that the order of the Appellate Authority (Annex. 6) to the writ petition was erroneous and not justified. The revisional authority gave reasons for reversing the order passed by the Deputy Commissioner (Appeals), Taxes Department, Udaipur. The revisional authority after taking into consideration the rival contentions and the facts and circumstances of the case came to the conclusion that the authentication of ticket books is done with the, object of prevention of tax evasion and if non-use of authenticated ticket books leniently viewed the object of prevention of tax evasion, would be frustrated.

6. Being aggrieved by the order passed by the revisional authority, the appellant filed the writ petition, which was decided by the learned single Judge vide order dated 6th February, 1995. It was urged before the learned single Judge that under Rule 29 of the Rajasthan Entertainments and Advertisements Tax Rules, 1957 (hereinafter referred to as "the Rules of 1957"), the revisional authority was not given such jurisdiction as to set aside the order passed by the Appellate Authority in exercise of its appellate powers given under Rule 27 of the aforesaid Rules. The appellant (petitioner) relied on a judgment given in S.B. Civil Writ

Petition No. 309/1985, Haridit Singh v. State of Rajasthan and three others, decided on 24th November, 1994. It was also submitted on behalf of the appellant (petitioner) that the only provisions of Sub-rules (2) to (6) of Rule 27 of the Rules framed under the Act No. 24 of 1957 mutatis mutandis are made applicable for every application in exercise of revisional jurisdiction, but Sub-rule (8) of Rule 27 is not made applicable, and therefore, the revisional court has no jurisdiction to confirm, reduce, enhance or annul the assessment or penalty in exercise of his revisional powers under Rule 29 of the aforesaid Rules and as such, the revisional authority was not empowered to set aside the order passed by the Appellate Authority.

7. The third submission made by the counsel for the appellant (petitioner) before the learned single Judge was that the revisional Court had no jurisdiction to enhance the assessment tax and penalty assessed by the Assessing Authority, which was legally and rightly reduced by the Appellate Authority in exercise of his appellate powers under Rule 27 of the aforesaid Rules without issuing show cause notice of enhancement of tax to the petitioner.

8. The fourth submission made before the learned single Judge was that the best judgment assessment made vide orders Annexures-1 to 5 by the Assessing Authority was the worsed judgment assessment.

9. The respondents (non-petitioners) refuted the aforesaid submissions advanced on behalf of the appellant (petitioner) and submitted that the order Annexure-8 passed by the revisional authority (respondent No. 1) was just and proper and did not require any interference by this Court, in exercise of equitable and extraordinary jurisdiction under Article 226 of the Constitution.

10. The learned single Judge considered the contentions raised before him by the parties regarding the jurisdiction of the revisional authority under Rule 29 of the Rules of 1957 and held that the close scrutiny of Rule 29 of the aforesaid Rules leads towards an irresistible conclusion that the revisional authority on his own motion or on application made to him within 120 days of the order, call for record of any proceedings, which are pending before or have been disposed of by any other "authority subordinate to him under the Act for the purpose of satisfying himself as to the legality or propriety of such proceedings of any order made therein and may pass such orders in relation thereto as he thinks fit. The learned single Judge, therefore, took the view that the revisional authority acting on Rule 29 of the Rules of 1957 had the jurisdiction to satisfy itself about the legality or propriety of the proceedings or of any order referred to in Rule 29, and therefore, had the jurisdiction to enter into the factual controversy between the parties and he could in exercise of the jurisdiction conferred by Rule 29 of the Rules of 1957 set aside the order passed by the Appellate Authority, if the revisional authority was of the opinion that the finding of fact arrived at by the Appellate Authority was either perverse or erroneous or based on no evidence on record. The learned single Judge also came to the conclusion after taking into consideration the orders passed by the Appellate Authority and the revisional authority that the

findings of the revisional authority, which were to the effect that the findings of Appellate Authority were erroneous and unjustified, were justified in the facts and circumstances of the case, and that the ratio of Haridit Singh (supra) was not applicable to the present case. The contention that under Rule 29 of the Rules of 1957, the revisional authority had no jurisdiction to confirm, reduce, enhance or annul the assessment or penalty and has also no jurisdiction to set aside the order passed by the Appellate Authority, did not find favour by the learned single Judge. In view of the provisions contained in Rule 29 of the Rules of 1957 the learned single Judge held that the words "as he thinks fit" in Rule 29 are wide enough to confer the jurisdiction on the revisional authority to vary, to differ or to cancel any proceedings or order passed by any subordinate authority, after satisfying himself about the legality and propriety of such proceedings or of any order made therein. Non-inclusion of Sub-rule (8) of Rule 27 under Sub-rule (3) of Rule 29, was held to be of no such consequence as was alleged by the learned counsel for the appellant (petitioner). Regarding the next submission that before enhancing the assessment and penalties, the revisional authority was under legal obligation to issue notice to the petitioner (appellant), the learned single Judge held that such notice was not necessary, because the revisional authority did not impose assessment, tax and penalty more than assessed by the Assessing Authority and what the revisional authority actually did was that it set aside the order passed by the Appellate Authority and restored the orders Annexures-1 to 5 passed by the Assessing Authority, and, therefore, it was not a case of enhancement of assessment tax and penalty and therefore, no notice was necessary. The learned single Judge further held that under Article 226 of the Constitution, the Court could not enter into the factual controversy involved between the parties. It was further held by the learned single Judge that the finding of the revisional authority that the petitioner (appellant) was issuing tickets from two series with the object of evading tax, and the explanation given by the petitioner (appellant) was neither logical nor worth credence, and this finding does not suffer from any error apparent on the face of the record and did not call for any interference under Article 226 of the Constitution.

11. The learned counsel for the appellant has submitted that the Assessing Authority was not authorised to make best judgment assessment so long entries in the assessment books account were not held to be wrong and untrustworthy. Reliance has been placed on the judgment given in *The State of Madras Vs. S.G. Jayaraj Nadar and Sons*,

12. In the case of *S. G. Jayaraj Nadar* the assessee was a dealer in motor cars, trucks, scooters, motor spare parts and certain other goods. He returned a turnover of Rs. 42,09,912.12 for the assessment year 1961-62. The Commercial Tax Officer on scrutiny of accounts determined the turnover at Rs. 68,06,331.49, During the assessment proceedings it was found that the assessee had not included in the monthly return in Form A-2, three items of turnover. The first was a sum of Rs. 1,95,311.21 relating to delivery charges which the assessee had paid to certain Calcutta dealers from whom he had purchases of cars, trucks,

scooters etc. The second item was of Rs. 2,21,247.97 which related to the sales of motor parts. The third item was of Rs. 1,56,539.25 being the aggregate of the sale proceeds of firewood. The assessing authority served a notice on the assessee to show cause why these items should not be brought to tax. The assessee filed objections which were rejected. The assessing authority found that the delivery charges paid by the assessee were included in the cost price when the cars, trucks, scooters etc. were sold by it and sales tax at 7 per cent had been collected by the assessee on the delivery charges. As regards the second item it was held that the assessee had failed to maintain separate accounts contrary to the rules in respect of the first sales of parts and as it was not possible to separate the first sales from the general entries in the account books it was necessary to make assessment on best judgment. The assessment was completed but certain penalty was levied on the assessee. The assessee appealed to the Appellate Assistant Commissioner who took the view that the failure of the assessee to disclose the taxable turnover in the monthly returns was due to a bona fide impression on the assessee's part that it would be sufficient if correct figures were furnished at the time of the final assessment. He, therefore, imposed a nominal penalty. The Board of Revenue in exercise of its power u/s 34 of the Act set aside the order of the Appellate Assistant Commissioner. According to the Board's findings the failure of the assessee to disclose the turnover in question was deliberate and called for no lenient treatment. An appeal was filed against the order of the Board of Revenue to the Madras High Court. The High Court allowed the appeal so far as the first and third items were concerned. As regards the second item, the High Court decided against the assessee. The question raised before the Hon'ble Supreme Court was whether penalty can be levied while making the assessment under Sub-section (2) of Section 12(2) of the Act merely because an incorrect return has been filed. But, High Court had taken the view that it is only if the assessment has to be made to the best of the judgment of the assessing authority that penalty can be levied. The aforesaid view taken by the High Court was upheld by the Hon'ble Supreme Court. Regarding the power to make best judgment assessment, the Hon'ble Supreme Court observed that Sub-section (2) empowers the assessing authority to assess the dealer to the best of its judgment in two events : (i) if no return has been submitted by the dealer under Sub-section (1) within the prescribed period, and (ii) if the return submitted by him appears to be incomplete or incorrect. Sub-section (3) empowers the assessing authority to levy the penalty only when it makes an assessment under Sub-section (2). The Hon'ble Supreme Court held that when the assessing authority has made the assessment to the best of its judgment, it can levy a penalty and that the best judgment assessment has to be made on an estimate which the assessing authority has to make not capriciously but on settled and recognised principles of justice. An element of guess-work is bound to be present in best judgment assessment, but it must have a reasonable nexus to the available material and the circumstances of each case.

13. A perusal of the judgment given in the case of S. G. Jayaraj Nadar (supra) shows that in that case the High court had held that the turnover involved in the first and the third items were not determined on the basis of any estimate or best judgment and that the quantum of turnovers of both these items were based on the assessee's account books, and therefore, the assessment of first and third items could not be regarded as basis of best judgment.

14. The facts of that case were different.

15. In the case of the appellant, when the inspection of M/s. Kailash Talkies was made on 30th August, 1988 at 7.45 p.m., it was found that the persons who had been admitted to the Picture Hall for viewing the show of the picture "Parwana" had been issued tickets from the ticket books, which had been used up to 31 st December, 1987. In other words, the ticket books, which had been closed on 31st December, 1987 had been issued for the purpose of issuing tickets on 31st August, 1988. The explanation given by the appellant (petitioner) was that the authenticated ticket books (meant for use on 30th August, 1988) were not available as the same were kept under lock and the key was with another partner of the firm and the new rates had not been printed on that tickets up to that time. Both these explanations were rejected by the Assessing Authority as well as by the revisional authority. The learned single Judge has held that the finding oi" revisional authority regarding these two explanations is not unreasonable and that the revisional authority was within its jurisdiction under Rule 29 to arrive at such a finding. The assessment, which was made by the Assessing Authority vide Annexures-1 to 5 was not made on the basis of the entries of the account books. It was made in view of the fact that on 30th August, 1988 the appellant (petitioner) was found to have issued tickets from the ticket books, which were closed on 31 st December, 1987.

16. The explanation given by the appellant (petitioner) for using the ticket books which had been closed on 31st December, 1987 was not of such a nature as could not be rejected by the Assessing Authority and the revisional authority. If the authenticated ticket books meant for use on 30th August, 1988, were kept under lock and the key was not available, the petitioner (appellant) could have easily got the lock opened either by means of second key or by breaking open the lock and there was no reason why the petitioner (appellant) could not have adopted either of these two courses for the purpose of taking out the current ticket books for issuing tickets on 30th August, 1988. We, therefore, hold that the finding of the revisional authority that the aforesaid explanation is not acceptable, cannot be said to be unreasonable or perverse. The second explanation given by the appellant (petitioner) was obviously irrational and unreasonable, because the old ticket books (which were used up to 31st December, 1987) were obviously not containing the new rates. If the current tickets books and the old ticket books (which were used up to 31 st December, 1987), both did not contain the new rates, nothing will justify the petitioner (appellant) to give up the use of the new ticket books and make use of the ticket

books which were used up to 31st December, 1987. In these circumstances, the view taken by the Assessing Authority and the revisional authority cannot be said to be unreasonable or perverse. The assessment made vide Annexures-1 to 5 was in fact the best judgment assessment.

17. For the reasons mentioned above, we do not find any force in this appeal. The judgment delivered by the learned single Judge does not call for any interference by us. The appeal deserves to be rejected and is hereby rejected.