

(1973) 01 MAD CK 0008

In the Madras High Court

Case No : Tax Case No's. 54 and 55 of 1969 (Revision No's. 54 and 55 of 1969)

Kalyani Oil Mills

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 30-01-1973

Acts Referred:

Citation : (1973) 32 STC 542

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : C. Venkataraman of C.S. Chandrasekhara Sastri, C. Venkataraman, C. Natarajan and D. Srinivasan, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Judgement

Ramanujam, J.—The assessee in this case is a manufacturer and dealer in groundnut oil. For the assessment years 1963-64 and 1964-65,

he was assessed on a taxable turnover of Rs. 5,19,349.92 and Rs. 4,98,647.59 respectively by the assessing authority. In making those

assessments, the assessing authority made certain additions towards suppression of sales of groundnut oil and also the purchases of groundnuts to

the turnover returned by the assessee in respect of both the years. The assessee was aggrieved against the additions made to the taxable turnover

returned by him in respect of both the years and went in appeal before the Appellate Assistant Commissioner. Having failed in the appeals, he

approached the Tribunal by filing the further appeals. The Tribunal also sustained the additions made by the assessing authority to the taxable

turnover returned by the assessee in respect of the years in question. In these revisions, the orders of the Tribunal in respect of both the assessment

years are challenged by the assessee.

2. On behalf of the assessee, it is contended that the additions came to be made by the assessing authority are quite arbitrary and there was no justification for making the additions in both the years. According to the learned counsel, the assessing authority has proceeded to make the additions only on the basis of the consumption of electricity without any other material to doubt the correctness of the accounts produced by the assessee, or the returns filed by him. The learned counsel refers to the decisions in *St. Teresa's Oil Mills v. State of Kerala* [1970] 25 S.T.C. 497, *Mahabir Prasad Jagdish Prasad v. Commissioner of Sales Tax* [1971] 27 S.T.C. 337 and *Mahashakti Oil Mill v. Commissioner of Sales Tax* [1972] 30 S.T.C. 390 in support of his contention that the electricity consumption cannot be adopted as the sole basis for rejecting the accounts of the assessee and for making an estimate of the taxable turnover of the assessee. In *St. Teresa's Oil Mills v. State of Kerala* [1970] 25 S.T.C. 497, the only circumstance relied on by the assessing authority for the rejection of the accounts was that there was wide disparity in the consumption of electricity. Dealing with this question, the court said:

In our opinion, this factor by itself without any other supporting circumstances does not justify the rejection of the accounts. Such variation in the consumption of electricity can be due to various factors outside the control of the assessee. It is unsafe to categorically say that because there is variation in the consumption of electricity the accounts are incorrect or unreliable. It sometimes happens that current supply falls far below the usual voltage and on such occasions the output will necessarily be much lower than the normal rate. The efficiency of the crushing machines and also the moisture content in the copra would also be relevant factors to be taken into account in arriving at the output. It is, therefore, unsafe to uphold the rejection of the accounts purely on the ground that there has been divergence in the consumption of electricity.

3. In *Mahabir Prasad Jagdish Prasad v. Commissioner of Sales Tax* [1971] 27 S.T.C. 337 also, a similar question was considered. There also, the assessing authority did not find any material to show that the account books maintained by the assessee were not reliable. But the account books were rejected only on the ground that the consumption of electricity showed that the assessee would have suppressed his production. In dealing

with the question of estimate based on the electricity consumption without any reason for rejecting the assessee's accounts, the court stated that

the fact that there was sizable disparity between the electricity consumption shown by the assessee and the report by the expert merely led to a

suspicion that the entire production could not have been brought into the books. But suspicion, however strong it may be, cannot take the place of

positive material and, therefore, unless the assessing authority was able to detect at least one instance where the assessee might have understated

its sales, he would not be justified in rejecting the accounts and making an estimate of the escaped turnover, only on the basis of the consumption

of electricity. This decision was followed by the same High Court in *Mahashakti Oil Mill v. Commissioner of Sales Tax* [1972] 30 S.T.C 390.

4. When we analyse the facts relevant to the assessment year 1963-64, it is seen that the assessing authority had no reason to doubt the

correctness of the account books produced by the assessee. The only reason set out by the assessing authority in its order is that the assessee had

not furnished the monthly particulars in respect of decortivating kernel and grinding of oil-cakes. It is not as if that the account books do not give

the particulars of crushing, decortivating and the grinding operations in the entire year. Merely because the assessee has not furnished the monthly

particulars in respect of decortivating and grinding, the assessing authority cannot at once proceed to make a ""best judgment"" assessment ignoring

the account books produced. If the assessing authority had material to doubt the correctness or genuineness of the entries in the account books, he

can proceed to make the ""best judgment"" assessment, taking the electricity consumption as the basis for making an estimate. But in this case the

assessing authority has not proceeded to reject the account books on any ground whatever. We are, therefore, of the view that so far as the

assessment year 1963-64 is concerned, the assessing officer had no sufficient material to reject the accounts and proceed to make the assessment

on a ""best judgment"" basis, having regard only to the electricity consumption. Further, it is seen that though the assessing authority conducted a test

check so far as crushing of oil is concerned and found that the electricity consumption was 4 units per bag, no such test check was conducted in

relation to decortivating of kernel and grinding of the oil-cake. But without any actual test check, the assessing authority has assumed that the

electricity consumption will be 2 units per bag, both for decortication and for grinding. For this assumption we find no basis at all. The assessing authority has not referred to any comparable data from other similar oil mills. Therefore, the adoption of 2 units of electricity per bag so far as decortication and grinding appears to be somewhat arbitrary. Even assuming that the "best judgment" assessment is warranted in this case, the assessing authority was not justified in taking consumption of 2 units per bag for decortication of 1,800 bags and grinding of 1,050 bags without any basis. Therefore, the estimate based on the electricity consumption cannot be said to be a correct basis. We have to therefore set aside the enhancement made by the assessing authority so far as the assessment year 1963-64 is concerned.

5. As regards the assessment year 1964-65 is concerned, the position is slightly different. There, various defects have been pointed out in the

method of accounting as well as in the accounts produced. Of the various defects pointed out, one is the non-production of a sale bill in relation to

one tin of oil. Another defect pointed out is that there was an excess stock of oil of 169 tins worth about Rs. 6,000, when the business premises of

the assessee was inspected on 22nd October, 1964. On account of this unaccounted stock a penalty of Rs. 360 was also levied on the assessee.

The above defects are found by the Tribunal to be sufficient for making a "best judgment" assessment. We are also of the same view. Once a "best

judgment" is called for, the question is whether the assessing authority is justified in proceeding to make an assessment on the basis of the electricity

consumption. It cannot be disputed that the consumption of electricity is one of the methods to find out the work done in the oil mill. The learned

counsel for the assessee contends that the consumption of electricity in the mill cannot form a proper and accurate basis. That may be so. But in the

absence of any other method to find out the actual production of oil, etc., the calculation of the turnover on the basis of the consumption of

electricity can also be adopted. But the assessing authority had conducted a test check so far as the crushing of oil is concerned, but he did not, in

fact, conduct any check so far as decorticating and grinding of oil-cake is concerned. Without any test check he had adopted a rough and ready

basis of 2 units per bag so far as decortication and grinding is concerned. As already stated, the adoption of 2 units per bag without any test check

so far as decortication and grinding is concerned appears to be somewhat arbitrary and the "best judgment" assessment based on such an arbitrary figure cannot be accepted. We have to therefore reject the basis adopted by the assessing authority for making the addition in this case.

6. But having regard to the fact that the account books are somewhat defective in that one of the sale bills had not been produced and there was

admittedly an excess stock of 169 tins worth about Rs. 6,000 on a particular day, it can be assumed that the assessee had some clandestine

transactions which had not been accounted for in the regular account books. Though in the circumstances of this case, a "best judgment

assessment is actually called for, the assessing officer has not indicated any other alternate method of making the estimate of suppressions. Having

regard to the fact that the matter required a remand to the Tribunal resulting in some further delay, we suggested an addition to an extent of Rs.

50,000 to the taxable turnover returned by the assessee towards the sale value of the oil. In suggesting the said sum of Rs. 50,000, we had taken

into account the concrete instance of excess stock of 169 tins worth about Rs. 6,000 on one particular day in the course of the assessment year.

When this figure was suggested to the learned counsel for the assessee he also felt that, in the circumstances, that will be a fair estimate. We,

therefore, reduce the addition made by the assessing authority in this case to Rs. 50,000, which is taxable at 2 per cent being the sale value of the

oil. It is made clear that out of the three items disputed before the Tribunal, item 3 relating to exemption has not been disputed before us and the

challenge was only in relation to items 1 and 2. As already stated, in the place of additions of the two items, items 1 and 2, there will be a

consolidated addition of Rs. 50,000 taxable at 2 per cent.

7. Tax Case No. 55 of 1969 is allowed in full. Tax Case No. 54 of 1969 is allowed in part to the extent mentioned above. There will be no order

as to costs.