

**(1952) 02 PAT CK 0003**

**In the Patna High Court**

**Case No :** Misc. Judicial Case No's. 69 to 71 of 1949

Kaniram Janki Das

APPELLANT

Vs

The State of Bihar

RESPONDENT

**Date of Decision :** 04-02-1952

**Acts Referred:**

Bihar Sales Tax Act, 1944 — Section 10(2), 10(3), 2, 5(2)  
Bihar Sales Tax Rules, 1944 — Rule 36

**Citation :** AIR 1953 Patna 10

**Hon'ble Judges :** Sarjoo Prosad, J; Ramaswami, J

**Bench :** Division Bench

**Advocate :** Baldeo Sahay and Ramanugrah Prasad, for the Appellant; Govt. Advocate and R. Prasad, for the Respondent

## Judgement

Sarjoo Prosad, J.—These Miscellaneous Judicial Cases arise out of references made by the Board of Revenue, Bihar, u/s 21(3) of the Bihar Sales Tax Act of 1944 (Act VI of 1944) in pursuance of an order of this Court dated the 22nd of April, 1949. The refer-ences relate to different periods of assessment though the assessee in each case is the same and the points involved are common.

2. There were four points formulated by this Court on which the Board was asked to state a case, but Mr. Baldeo Sahay, appearing on behalf of the assessee, has not pressed the first point. Therefore, it is unnecessary, to refer to it. The other three points are : (1) Whether in the circumstances of this case the assessment made u/s 10 (3) of the Act was legal and valid; (2) Whether in the circumstances of this case the Sales Tax Officer was justified in refusing the deduction claimed u/s 5 (2) (a) (i) of the Act; and (3) Whether the amount of sales-tax realised by the dealer can be added in order to arrive at a gross turnover for computing the taxable income.

(2a) It is not relevant, in my opinion, to refer to the different stages of the case, but I will deal with the relevant facts in so far as the points involved are concerned. I would dispose of first of all questions (1) and (3).

3. On the first question it is contended that the assessment made u/s 10(3) of the Act was illegal. It may be observed that in addition to lac and catechu, the assessee is a dealer in various other kinds of goods; for instance, oil seeds, ropes, gum, honey and bee-wax, etc. The Sales tax officer did not rely on the assessee's figures in regard to the sale of those goods during the periods of assessment. He also felt that the assessee had suppressed the amount of actual sale of those goods, and for these reasons the officer determined the turnover on account of the sale of those goods at a round figure of Rupees 5 lakhs which under the circumstances he considered to be quite reasonable. The Commissioner of Sales-tax agreed with that assessment and upheld the figure so assumed by the Sales Tax Officer; and the Board of Revenue also in revision held that on this point there was no ground for interference. The assessment on the face of the order appears to be u/s 10(3) of the Sales Tax Act. It is contended by the assessee that the question of assessment u/s 10 (3) of the Act only arises where there has been non-compliance with the terms of the notice u/s 10 (2) (a). In this case, according to the contention of the learned Counsel for the assessee, there was no non-compliance with the terms of the notice given to the assessee to produce his papers and books of accounts. It is pointed out that the relevant documents called for from the assessee, according to the terms of the notice, had been duly produced before the Sales Tax Authorities, and that being so, an assessment u/s 10 (3) of the Act was unwarranted. On the other hand, it is suggested that the correct procedure to adopt was to give a further opportunity to the assessee to prove his case, or to verify the evidence adduced by some other procedure to be adopted by the Sales Tax Officer before he could make any assessment. In doing so, it is argued, the Sales Tax Officer could rely upon any material that came to his knowledge but he could not proceed to act u/s 10 (3) of the Act when the terms of the notice had been fully complied with by the production of the relevant books and documents. Reliance has been placed upon a decision of this Court, in --"Raghu Nath Mahadeo v. Comr. of Income Tax, Bihar and Orissa", 6 Pat. L. T. 555.

The assessment in that case was under the Income Tax Act (XI of 1922). and the question which fell to be considered there was whether the assessment had been made u/s 23 (4) or u/s 23 (3) of the Act. Section 23 (2) of the Act provided that if the Income Tax Officer had reason to believe that the return made u/s 23 was incorrect or incomplete, he should serve on the person who made the return a notice requiring him, on the date therein specified, to produce any evidence on which such person relied in support of the return. The assessee, as the facts show appeared in that case and produced the evidence upon which he relied in support of this return. The Income Tax Officer, however, did not consider that evidence conclusive of the matters which he had to determine and wanted some more materials. Sub-section (3) of Section 23 provided that the officer, after hearing such evidence produced by the assessee in pursuance of the notice under Sub-section (2) of that section and such other evidence as the Income Tax Officer might require on specified points, should proceed to make an assessment

and determine the amount payable by him. There was nothing to show in that case that the Income Tax Officer did require any other evidence on specified points. He, however, proceeded to make an assessment. The Income Tax Officer himself purported to do so u/s 23 (3) of the Act. A notice of assessment sent by him to the assessee for payment of the amount assessed itself stated that the assessment was u/s 23 (3) of the Act. Yet the Commissioner of Income Tax thought that the books of accounts had not been relied upon by the Income Tax Officer, and, therefore, there was non-compliance with the notice served upon him u/s 23 (2) of the Act, and consequently the assessment was not u/s 23 (3) but u/s 23 (4) of the Act. This, it was pointed out by their Lordships, was an incorrect assumption on the part of the Commissioner. There are no doubt some general observations made in the judgment which encouraged the argument of the learned Counsel. It is to be noticed, however, that the Income Tax Officer had not in that case entirely disbelieved the books of accounts or the evidence adduced by the assessee in pursuance of the notice. The Income Tax Officer only thought that it was not conclusive on certain points, Therefore, it was not a case where there was a mere pretence of compliance with the terms of the notice by producing documents which were utterly unreliable.

In the present case the order of the Sales Tax Officer indicates that he did not consider the documents to be at all reliable in regard to the sale of the goods in question and he was compelled to assume a figure of his own. That being so, there was really no compliance with the terms of the notice required by Section 10 (2) (a) of the Sales Tax Act. It would be, therefore, not correct to deduce a general proposition from the decision cited above in support of the argument that although the books of accounts produced by the assessee in support of his return may be held to be unreliable, yet the taxing officer would not be entitled to make an assessment to the best of his judgment as provided by Sub-section (3) of Section 10 of the Act.

It has been also argued that the provisions of the Income Tax Act are not in "pari materia" with the relevant provisions of the Sales Tax Act; it is said : there is only one contingency contemplated by Section 10 (3) of the Act, namely, non-compliance with all the terms of a notice u/s 10(2)(a). That may be true, but then Section 23(4) of the Income Tax Act also speaks of best judgment assessment in case of non-compliance with the terms of a notice u/s 23 (2) of the Act; and the language of Section 23 (2) and (3) of the Income Tax Act is very much similar, "mutatis mutandis", to the language of Section 10 (2)(a) and (b) of the Sales Tax Act and so also is the language of Section 23 (4) of the Income Tax Act to the relevant provisions of Section 10(3) of the Sales Tax Act. The learned Counsel was unable to explain to me as to how the Sales Tax Officer was to make an assessment where he found that the evidence produced by the assessee was utterly unreliable. The obvious answer which suggests itself to me is that in such a circumstance he is to make an assessment to the best of his judgment, and the mere fact that unreliable documents were produced by the assessee in pursuance of a notice served by the officer, will not prevent the

officer from exercising his best judgment in the matter of making an assessment because he is left with no other alternative. I do realise that in some cases this may lead to vagaries on the part of a none-too-careful taxing officer; but vagaries of this kind will have to be corrected by the higher authorities to whom appeals or revisions lie against the order of the officer in question within the provisions of the law. It appears that in this very case the Commissioner on appeal has directed reconsideration of some of the books and materials produced by the assessee. I, therefore, hold that where books of accounts or documents produced by the assessee, in pursuance of a notice served by the taxing authorities u/s 10(2)(a) of the Act, are found to be quite unreliable so that the officer is unable to make an assessment on the basis of the documents produced, the taxing officer in such a case would be justified in making an assessment u/s 10(3) of the Act to the best of his judgment; because in substance the assessee has failed "to comply with all the terms of a notice issued under Subsection (2)" of the Sales Tax Act.

This view of mine is in consonance with an earlier view which this very Bench took in --"Doma Sahu v. State of Bihar", M. J. C. No. 4 of 1949, D/- 5-3-1951 (Pat.) in which case also the decision in 6 Pat. L. T. 555", cited above, was considered and distinguished. It would be useful in this context to advert to an important decision of the Judicial Committee of the Privy Council in -- AIR 1937 133 (Privy Council) where their Lordships pointed out :

"The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly, or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee. and all other matters which he thinks will assist him in arriving at a fair and proper estimate : and though there must necessarily be guess-work in the matter, it must be honest guess work. In that sense too the assessment must be to some extent arbitrary, Their Lordships think that the section places the officer in the position of a person whose decision as to amount is final and subject to no appeal; but whose decision if it can be shown to have been arrived at without an honest exercise of judgment, may be revised or reviewed by the Commissioner under the powers conferred upon that official by Section 33. Their Lordships can find no justification in the language of the Act for holding that an assessment made by an officer u/s 23 (4) without conducting a local inquiry and without recording the details and results of that inquiry cannot have been made to the best of his judgment within the meaning of the section."

From what I have discussed above, it would be quite clear that my decision on the point finds ample support from the principles stated above. In the

circumstances, the first question is answered in the affirmative and against the assessee.

4. The next question, whether the amount of sales tax realised by the dealer could be added in order to arrive at a gross turnover for computing the taxable income, appears to be fully answered by a Bench decision of the Calcutta High Court -- Ram Kumar Moskara Vs. Gopi Krishna Kanodia . The term "sale price" has been defined in Section 2(h) of the ACT. It means the amount payable to a dealer as valuable consideration" for the sale or supply of any goods, or for the carrying out of any contract less certain deductions mentioned therein which need no reference at present. Thus any amount charged or realised by a dealer as valuable consideration for the supply of goods would come under the definition of the "sale price" for the goods, though the dealer may himself choose to split up the amount and distribute it in the receipt under different heads. The valuable consideration, which moves from the purchaser to the dealer for the purchase of the goods, is the lump amount which he actually pays to the dealer in consideration of the goods sold to him; and except for the deductions permissible under the law, the whole of that amount can in law be regarded as the sale price for the goods. The aggregate amount of sale prices so received by the dealer during the taxable period would constitute his gross turnover during the period in question. Therefore, so long as the law does not place any burden on the purchaser for the sales-tax payable by the dealer or authorise the dealer to collect the same from the purchaser, it has to be assumed in the eye of law that the entire amount paid by the purchaser is the sale price of the goods supplied. It was, therefore, observed by Harries, C. J. in the decision referred to above that :

"what the seller receives as valuable consideration from the buyer for the article is the sale price. As I have said, the sellers now-a-days make out a bill showing what they describe as the price of the article and the amount of sales tax and the buyer has to pay the total amount. If the dealers were authorised to collect the sales tax from the purchasers, then the sale price would clearly be the amount paid less the sales tax; but the total amount paid by the buyer in the present case must be the sale price. It is the consideration payable in respect of the article sold. The total amount paid cannot be split up. As I have said the purchaser is not liable to pay the sales tax and the same cannot be levied upon him by the dealer. What actually happens is that the dealer in passing on his liability to the purchaser, increases the price of the article by the amount payable as tax on such a sale. He does not levy a tax on the purchaser or collect a tax from the purchaser. What he does is to increase the price of the article so as to ensure that he, the dealer, will not be the loser by having to pay the sales tax levied upon him by the Act."

Mr. Sahay contends that the word "sale price" should be understood in the popular sense, namely, the price which is actually ear-marked by the dealer towards the sale of the property and not the amount which he actually mentions

as having been paid towards the sales tax on the purchase. This contention may have had some force if the term "sale price" had not been defined in the Act itself; but in view of the definition one cannot but attach a precise meaning to the expression. The point may be illustrated thus : A purchaser may ask a dealer that a certain article should be sold to him. The dealer may tell the purchaser that it would be sold to him provided he pays him a lump sum of money, a part of which is towards the sale price of the article and a part of which is to be utilised to various charities to which the dealer intends to contribute. The dealer then sells the property to the purchaser on payment of the agreed amount and in the receipt which the dealer grants to the purchaser he specifies the amount received by him under different heads including the various charities to which he intends to contribute. Now, the amount so received towards the charities may be actually intended to be paid by the dealer or appropriated to those objects; yet, so far as the purchaser is concerned, the whole amount has been paid by him towards the sale of the property and in consideration thereof. The act of the dealer in splitting up the amount under different heads does not, therefore, really affect the position so long as the Sales Tax Act itself does not recognise those payments as permissible deductions in the eye of law from the sale price itself. I have, therefore, no doubt that the decision quoted above, with which I respectfully agree, fully governs the case, and the third question also must, therefore, be answered in the affirmative, namely, that the tax realised by the dealer should be added in arriving at the gross "turnover" for computing the taxable income of the dealer.

5. I will now take up the second question which alone remains to be answered. The short facts are that the assessee claimed deduction u/s 5(2)(a)(i) of the Act to the tune of Rs. 1,24,135-5-0 in respect of goods which were declared to be tax free under Section 6 of the Act. The Sales Tax Officer disallowed the deduction which he claimed because he held that the provisions of Rule 36(1) of the Bihar Sales Tax Rules, 1944, were not complied with. He pointed out certain irregularities in the receipts and the counter-foils as also the cash memos in regard to consecutive numbering : and mixing up of cash and credit; and failure to sign some of the cash memos; or the omission to mention the name of the firm, etc.; and from these irregularities he held that the relevant rule in regard to the maintenance of the documents had not been fully complied with. It is, however, significant that he did not actually disbelieve these papers or accounts saying that they were faked or fabricated by the assessee, and, therefore, were not at all reliable. The Commissioner on appeal thought that the irregularities set out by the assessing officer were too serious to be passed over but he held that as an act of grace a deduction of one-fourth of the amount claimed should be allowed to the assessee on the above account. The Board of Revenue affirmed the view of the Commissioner and in making a statement to this Court, the Board is of the opinion that the officers concerned had given reasons for their orders and had committed no illegality. It is true that assessees should not be encouraged in transgressing the rules framed for the purpose of keeping in order

the accounts of vouchers, counterfoils and receipts etc.; and irregularities in the keeping of accounts may justifiably lead an officer to infer that the books of accounts or relevant documents produced by the assessee are faked and fabricated; but, so long as the officer cannot find adequate reasons for holding that the irregularities complained of have affected the genuineness of the documents produced by the assessee, there is no reason to deprive him of the deductions to which the assessee may be entitled on the face of the accounts. The failure to maintain the accounts or papers as provided by Rule 36 may entail a penalty contemplated by the rules themselves, but that is no reason for discarding the accounts altogether. In the present case I have carefully examined the findings of the Sales Tax Officer, and I do not see anything in his judgment to suggest that the said papers were cooked for the purposes of assessment. The main and the only complaint of the officer is that the papers have not been kept in accordance with Rule 36, and there may be force in what he says on that ground; but there is nothing to show that he has disbelieved the accounts for that reason. In my opinion, therefore, the proper course should have been to examine these accounts carefully and to see to what extent the claim for deduction put forward by the assessee on account of tax-free goods was admissible. In my opinion, this question, therefore, must be answered in favour of the assessee. I hold that, in the circumstances of the case, the Sales Tax Officer was not justified in refusing the deduction claimed u/s 5(2)(a)(i) of the Act. The Commissioner in allowing the claim to the extent of one-fourth has acted on an arbitrary assumption. In my opinion, the accounts and the relevant papers must, therefore, be re-examined for coming to a definite conclusion on the point and allowance should be made to the assessee accordingly.

6. As the assessee has succeeded in respect of the answer on the last point, I consider that there should be no order for costs of these references, and the references are accordingly disposed of. The assessee, however, will not be entitled to a refund of the amount already de-posed by him in asking for these references.

Ramaswami, J.

7. I agree.