

(1980) 01 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 10 of 1975

Kapur Weaving Factory

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 11, 22

Citation : (1980) 46 STC 494

Hon'ble Judges : M.R. Sharma, J;B.S. Dhillon, J

Bench : Division Bench

Advocate : B.K. Jhingan, for the Appellant; D.N. Rampal, for the Advocate-General, for the Respondent

Judgement

M.R. Sharma, J.—The Sales Tax Tribunal, Punjab, has referred the following question of law to us for our opinion u/s 22(1) of the Punjab General Sales Tax Act, 1948 (hereinafter called the Act):

Whether, on the facts and circumstances of the case, the ex parte assessment framed by the Assessing Authority on best of judgment basis was legally valid ? If so, was the Assessing Authority legally bound to disclose the material collected by the department to the assessee before framing this assessment ?

2. M/s. Kapur Weaving Factory, outside Chattiwind Gate, Amritsar, is a registered assessee under the Act. For the assessment year 1964-65, a notice u/s 11(2) of the Act in form S. T. XIV was issued against the assessee calling upon it to appear before the Excise and Taxation Officer, Amritsar, on 21st August, 1965. This notice could not be served upon the assessee. On 22nd November, 1965, another notice was issued against the assessee for appearance before the Excise and Taxation Officer on 13th December, 1965. On that date Shri R. N. Kapur, Advocate, put in appearance on behalf of the assessee and succeeded in getting the case adjourned to 24th January, 1966, for placing on record his power of attorney. The learned Advocate raised a controversy that the assessee had not been properly served whereupon the Assessing Authority served by substitution

the statutory notice in form S. T. XIV on some of the partners of the assessee-firm and adjourned the case to 29th July, 1969.

3. A day earlier, the learned counsel for the assessee tried to inspect the record and this fact is apparent from the following observations made by the Assessing Authority:

A day earlier, on 28th July, 1969, Shri P. N. Sharma, I. T. P., put in his power of attorney for each of the years 1963-64 onwards for which the assessment had been fixed up for 29th July, 1969. He also put in an application for inspection of the "file for the years 1963-64 and 1964-65 comprising of all parts other than those treated as confidential". Inspection was allowed. After he had inspected the records, the counsel left the following note on the application itself:

(i) Only order sheet and copy of S. T. XIV for 29th July, 1969, made available for examination for the year 1963-64.

(ii) Only order sheet for 1964-65 and a copy of S. T. XIV made available for inspection.

4. On 29th July, 1969, the learned counsel for the assessee again sought an adjournment which was declined. The Assessing Authority then framed the best judgment assessment after taking into consideration some information which had been privately collected by it.

5. The assessee filed an appeal against the assessment order which was dismissed by the Deputy Excise and Taxation Commissioner on 3rd March, 1971.

6. The second appeal filed by the assessee met the same fate.

7. It was observed by the learned Tribunal in paragraph 3 of its order that the assessee challenged the assessment on the ground that principles of natural justice had been violated and the basis for making the best judgment assessment had not been indicated to the assessee. The learned Tribunal negated these contentions on the ground that the assessee had been given ample opportunity of appearing before the Assessing Authority and even then it did not avail of this opportunity. At the request of the assessee, the Tribunal has referred this case to us. We might add at this place that the assessee had also made a prayer to the Tribunal that the question regarding limitation for best judgment assessment should also be referred to us, but this prayer was declined by the learned Tribunal and the petition filed by the assessee against that order was dismissed by this Court. This implies that even if we answer the question of law in favour of the assessee, the matter would have to go back to the authorities concerned for a fresh decision in the light of the answer given by us to the aforementioned question.

8. So far as the jurisdiction of the Assessing Authority to frame the best judgment assessment is concerned, the position of law is well-settled. The authority has to act honestly and to give its decision on the basis of some

evidence which has been brought to the notice of the assessee in accordance with the principles of natural justice. In *Atul Glass Industries, Faridabad v. State of Haryana* [1971] 28 STC 148 a similar matter came up for consideration before a Division Bench of this Court. R. S. Narula, J. (as the learned Chief Justice then was), after considering earlier judgments of the Supreme Court came to the conclusion that the material available to the department in respect of the dealings of the assessee could not be utilised by the Assessing Authority unless and until the same had been disclosed to the assessee. C. G. Suri, J., who was the other member of the Bench took a contrary view. The matter was then placed before Harbans Singh, C. J., who came to the conclusion that since there was no evidence whatsoever with the Assessing Authority on which best judgment assessment could be framed, the matter was decided against the revenue and in favour of the assessee. The fact, however, remains that Narula, J. (as the learned Chief Justice then was), did give a firm finding that before the material collected behind the back of the assessee is utilised for framing a best judgment assessment, the same should be brought to the notice of the assessee.

9. In *S. Sant Singh v. Assessing Authority, Amritsar* [1971] 28 STC 567 BR. Tuli, J., had to consider a similar matter, when the learned Judge observed as under:

This petition deserves to succeed on the short ground that the material collected by the Assessing Authority by local enquiries was never brought to the notice of the petitioner. If he was of the opinion that the petitioner was withholding his books of account and not co-operating in the making of the assessment order, he should have at least placed before him all the material that he had collected on the basis of which he wanted to make the best judgment assessment or this material could have been conveyed to him in the notice asking him to rebut the same if he could. It has been well-settled by their Lordships of the Supreme Court that even for the purposes of making a best judgment assessment the material and the basis of that assessment should be disclosed to the assessee who should be afforded an opportunity to rebut the same, if he can. This is the requirement of the principles of natural justice and before a party is burdened with any amount of tax a fair opportunity has to be afforded to him to dispel the doubts or the information that has been gathered at his back. The Assessing Authority evidently ignored these basic principles although they have been reiterated from time to time by all the courts. I am, therefore, of the opinion that the order of the Assessing Authority passed on 2nd November, 1966, a copy of which is annexure A to the writ petition, deserves to be quashed.

10. The aforementioned view taken by R. S. Narula, J. (as the learned Chief Justice then was), and Tuli, J., is in accord with the principles of law enunciated by their Lordships of the Supreme Court in *Government of Andhra Pradesh Vs. Guntur Tobaccos Ltd.*, , *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon v. Travancore Rubber and Tea Co.* [1967] 20 STC 520 (SC) and *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon v. Midland Rubber and Produce Co. Ltd.* [1970] 25 STC 57 (SC) We are in respectful

agreement with this view.

11. The learned counsel for the revenue has vehemently asserted that since the assessee did not co-operate with the authorities and was indulging in dilatory tactics we should not show any indulgence to it. We are not impressed with this submission. If the view taken by Tuli, J., is accepted, as we have done, nothing stopped the Assessing Authority from conveying the information privately collected by it, in the form of a notice, to the assessee so that it could not subsequently challenge the assessment proceedings on a ground like the one which has now been raised before us.

12. For reasons aforementioned, we answer the question of law referred to us in the negative, i.e., in favour of the assessee and against the revenue. There shall however be no order as to costs. The case shall now go back to the learned Tribunal for being forwarded to the Assessing Authority for a fresh decision in accordance with law and in the light of the observations made by us. We might add at the cost of repetition that since the notice to the assessee had been issued within the period prescribed by Section 11 of the Act, it shall not be open to the assessee to raise the question of limitation.

13. The parties through their learned counsel are directed to appear before the learned Tribunal on 22nd September, 1980. If they so do, the learned Tribunal shall fix a date for their appearance before the Assessing Authority. In case the assessee fails to appear before the learned Tribunal on that date, it shall be open to the learned Tribunal to affirm the orders already passed against the assessee in ex parte proceedings.

B.S. Dhillon, J.

14. I agree.