(1975) 08 KL CK 0004

In the High Court Of Kerala

Case No : T.R.C. No. 68 of 1973

K.S. Joseph	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 13-08-1975

Acts Referred:

Citation : (1976) 37 STC 152

Hon'ble Judges : P. Govindan Nair, C.J;T. Kochu Thommen, J

Bench : Division Bench

Advocate : C.T. Peter, T.C. Karunakaran, V.M. Kurian, A.I. Mohamed Basheer and K.K. Gangadharan, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T. Kochu Thommen, J.—This tax revision case arises from an order of the Sales Tax Appellate Tribunal, Trivandrum. The Tribunal partly allowed the order of the Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax, Kottayam. The Assistant Commissioner had confirmed, subject to certain modifications, the order of the Sales Tax Officer, Palai, in respect of the assessment year 1969-70. The questions which are raised for our consideration are the following:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal had material to estimate the current consumed for sawing timber ? and

(2) Whether, on the facts and in the circumstances of the case, was the Tribunal justified in relying on the current consumption for estimating the turnover in the oil mill ?

2. The petitioner is a dealer registered under the Sales Tax Act. He has an oil mill where copra is crushed. The petitioner also undertakes sawing of timber. He has only a common meter in the mill for recording the current consumption. In respect of the assessment year 1969-70 the Sales Tax

3. Officer rejected the accounts submitted by the petitioner and estimated the turnover in the oil mill on the basis of consumption of current. Admittedly, the total current consumed by the petitioner is 35,755 units for the relevant period. Out of this 7,600 units had been taken by the officer as the current consumed for sawing purposes on the basis that 12 units of current were required for sawing one candy of timber. The balance energy of 28,155 units was taken by the officer as the current consumed for the purpose of crushing copra. The officer found that 8 to 9 units of current were required for crushing one quintal of copra. On this basis the quantity of copra crushed and its value were arrived at. As regards the current consumption in respect of timber, the Sales Tax Officer says in his order (annexure C) that "it is understood from enquiries that 10 to 12 units of electric energy are required for sawing one candy of timber. At the rate of 12 units per candy the quantity of electric energy required for sawing comes to 7,600 units". It is on this basis that the officer separated the quantity of electric energy consumed in respect of timber from that which was used for the purpose of copra. On appeal by the assessee, the Appellate Assistant Commissioner upheld the finding of the Sales Tax Officer as regards the current consumption for timber. In regard to the consumption of energy for crushing copra, the Appellate Assistant Commissioner thought that 8 to 9 units of current per quintal of copra, as found by the officer, was too low. He held :

I will, therefore, in the interest of justice allow a quantity of 11 units of electrical energy in this case to crush one quintal of copra.

4. On further appeal by the assessee before the Tribunal, it was held that the finding of the officer in regard to the rate applied for the consumption of current in respect of timber was correct. The Tribunal thus held that 12 units of current were required for sawing one candy of timber in the instant case. The Tribunal further upheld the finding of the Appellate Assistant Commissioner that 11 units of current were required for crushing one quintal of copra in the instant case.

5. The assessee contends before us that the Tribunal did not have sufficient material to estimate the current consumed for sawing timber, and that the Tribunal was not justified in relying on consumption of current for estimating the turnover in the oil mill.

6. The findings of the Sales Tax Officer as modified by the Appellate Assistant Commissioner and confirmed by the Tribunal on the quantity of current consumed are pure questions of fact which cannot be disturbed by this court in a revision case, unless it appears that there was no evidence for the authorities to come to their findings or unless the findings were arbitrary or perverse. This court will not lightly interfere with the findings on facts. (See SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS., .

7. In our view, the Sales Tax Officer has had sufficient materials for coming to a finding as regards the consumption of current for timber, and the Tribunal was, therefore, perfectly justified in upholding that finding.

8. Counsel for the assessee submitted that the assessee had, in his reply to the pre-assessment notice, requested the Income Tax Officer to supply him with the particulars of the enquiry conducted by the officer regarding the current required for sawing one candy of timber. The assessee wanted to disprove the data gathered by the officer. The assessee had, in fact, urged such a ground before the Appellate Assistant Commissioner. This is what he stated:

The assessing authority should have given particulars of enquiry regarding the alleged enquiry and given an opportunity to give the petitioner''s explanation.

9. However, this ground was not urged by him before the Tribunal. It cannot, therefore, be contended that the Tribunal has either decided erroneously or failed to decide any question of law in upholding the finding of the Sales Tax Officer as regards consumption of current for sawing timber.

10. In the absence of correct and proper accounts, it is not possible for the Sales Tax Officer to find out precisely the suppressed turnover. He could only make an estimate of the suppressed turnover on the basis of materials available to him. This court will not question the estimate made by him unless it is arbitrary and has no nexus with the facts discovered. As the Supreme Court has held in The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore, :

...In the very nature of things the estimate made may be an overestimate or an under-estimate. But that is no ground for interfering with his ''best judgment''. It is true that the basis adopted by the officer should be relevant to the estimate made....

11. This court observes in K.T. Antony v. State of Kerala T.R.C. Nos. 23 and 24 of 1973:

This court has dealt with several cases of estimates made on the basis of current consumption. A consumption rate of 9 units to 11 units had been upheld by this Court in several tax revision cases. This has been the practice for over a decade now and in the light of these decisions of this Court and the practice followed, it will be difficult to say that 10 units of current for crushing one quintal of copra has no basis other than the imagination of the assessing authority.

12. In the light of what is stated above, we are of opinion that the Tribunal had sufficient materials to estimate the current consumed for sawing timber, and that the Tribunal was justified in relying on the current consumption for estimating the turnover in the oil mill. We, therefore, dismiss the tax revision case with costs. Counsel''s fee Rs. 150.