
(1975) 03 KL CK 0020
In the High Court Of Kerala
Case No : T.R.C. No"s. 23 and 24 of 1973

K.T. Antony

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-03-1975

Acts Referred:

Citation : (1976) 37 STC 148

Hon'ble Judges : P. Govindan Nair, C.J.;V. Khalid, J

Bench : Division Bench

Advocate : T.L. Viswanatha Iyer and E.R. Venkiteswaran, for the Appellant;
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Govindan Nair, C.J.—These tax revision cases relate to the sales tax assessments of the revision-petitioner for the two years 1967-68 and 1969-70. The Sales Tax Appellate Tribunal dealt with the appeals relating to the assessments for the two years by a common order. We heard the case together and since the question arising for decision is the same in both the cases, we too propose to dispose of the revision cases by a common judgment.

2. The question raised has been the subject-matter of several decisions and relates to the circumstances under which and the manner in which an estimate of turnover should be made in the case of assessment to sales tax. The principles to be applied in such cases, it is not disputed, should be the same as that applied in assessing a person to Income Tax or agricultural Income Tax when estimate of the income had to be made and on this question of estimate of Income Tax the Judicial Committee had pronounced in Commissioner of Income Tax, Central and United Provinces v. Laxminarain Badridas [1937] 5 ITR 170 (P.C). If we may say so with great respect, there is a classical statement in the judgment which has not been improved upon till now by the numerous pronouncements on the subject. We said so in a recent Full Bench decision [1971] 27 S.T.C. 459 , of this Court after referring to the above decision as well as to the Full Bench decision of

the Lahore High Court in (1944) 12 ITR 393 . It is unnecessary to refer to all these decisions in detail again because it is only a few years back we dealt with these matters rather elaborately in the Full Bench decision of this Court in P.P. Varghese v. State of Kerala [1971] 27 S.T.C. 459 . We shall reiterate what can be done where an estimate has to be made. One has to remember in this connection that an estimate becomes necessary, even inevitable, as a result of the assessing authorities' difficulty in finding out the income or the turnover of the person to be assessed arising from no fault of the assessing authority. Any person who insists that an accurate and precise assessment ought to be made when the exact income or turnover is to be found out should keep correct and reliable accounts. Maintenance of such accounts is the basis on which he can rely and build up not only elaborate but sound arguments that the assessing authority should not deviate from the results reflected from such accounts, unless there are compelling reasons to establish that those accounts are unreliable, untrustworthy and not good enough for the purpose of determining the income or the turnover. When once the assessee has failed to furnish proof of his income or turnover in such a manner, the matter is, in a sense, at large, and a greater freedom is given to the assessing authority. The restraints on what he does, which has been repeatedly called an honest guess, are only that he should not act in an arbitrary, capricious or whimsical manner and further that there must be some relevant material forming the basis of his guess. Circumstances and material on which he can act may appear to be flimsy. The mere fact that the estimate is on the basis of a guess will not make the estimate liable to be set aside by a court as long as there is a nexus between the estimate made and the materials that were available before the assessing authority. It is unnecessary to refer to the numerous decisions on the subject. But we may extract a passage from the decision of the Supreme Court in The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore, . The Supreme Court observed:

So long as the estimate made by him is not arbitrary and has nexus with facts discovered, the same cannot be questioned. In the very nature of things the estimate made may be an over-estimate or an under-estimate. But that is no ground for interfering with his "best judgment".

3. Counsel for the assessee relied on the decision of this Court in P.P. Varghese v. State of Kerala [1971] 27 S.T.C. 459, and also the decision of the Madras High Court in Kalyani Oil Mills v. State of Madras [1973] 32 S.T.C. 542 at 546, as well as the decision of the Andhra Pradesh High Court in N. Raja Pullaiah v. Deputy Commercial Tax Officer, Kurnool [1969] 24 S.T.C. 90. This court in St. Teresa's Oil Mills v. State of Kerala [1970] 25 S.T.C. 497 only held that the current consumption by itself is no basis for rejecting the accounts of an assessee liable to be taxed under the Sales Tax Act. The decision is no authority for the proposition that the consumption of current can afford no material for making an estimate when the accounts were found to be unreliable. The Madras High Court in the decision in Kalyani Oil Mills v. State of Madras [1973] 32 S.T.C. 546

observed that current consumption can be a basis for making an estimate:

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.

4. No doubt the learned Judges proceeded to further state that a test check was conducted for crushing of oil and none had been conducted as regards decortication and grinding of oil-cake and the reliance on the basis of two units per bag without any test check as far as decorticating and grinding was concerned appeared to be somewhat arbitrary. If the passage meant that without a test check an assessing authority should not make an estimate of turnover on the basis of current consumption provided that there is some indication that the basis is relevant and material, with respect, we disagree. The Andhra Pradesh High Court in *N. Raja Pullaiah v. Deputy Commercial Tax Officer, Kurnool* [1969] 24 S.T.C. 90, seems to have taken such a view. With great respect we have to disagree with that view as well.

5. After all one has to remember as the Supreme Court observed in *The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore*, :

The assessee cannot be permitted to take advantage of his own illegal acts. It was his duty to place all facts truthfully before the assessing authority. If he fails to do his duty, he cannot be allowed to call upon the assessing authority to prove conclusively what turnover he had suppressed. That fact must be within his personal knowledge. Hence the burden of proving that fact is on him.

This important factor must always be borne in mind in interfering with the estimate made by the assessing authority.

6. On the basis of what we have stated above we will have to see whether there is any defect in the estimate that has been made. In the light of what the assessee himself stated before the assessing authorities, there can be little doubt that there was material before the assessing authority for taking the current consumption for crushing one quintal of copra at 10 units. In fact the assessee himself had made calculations on that basis and that can be seen from the statement he filed before the assessing authority. That statement is at page 23 of the paper book. The total consumption of electricity, which incidentally was accepted, was 21,187 units. Out of this, 11,600 units were consumed for crushing copra. 9,255 units were consumed for making wheat flour out of wheat and 50 units for crushing gingelly and the remaining 282 units for lighting purposes. He arrived at 11,600 units for crushing copra by calculating the current consumption at 10 units per quintal. It cannot be urged with any force that there was no material at all before the assessing authority for adopting 10 units as the current required for crushing one quintal of copra.

7. Even if the average consumption of electricity in similar establishments is taken into account, it cannot be argued that the basis adopted is not one which should not have been adopted. In any case a court would not be justified in setting aside the assessment made on that basis. It is true that there can be individual variations. That can always happen when an average is taken. But that by itself cannot be made a ground at the instance of an assessee who had not furnished information regarding matters, which he was bound to supply to the assessing authority and which were peculiarly within his knowledge. 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 current for crushing one quintal of copra has no basis other than the imagination of the assessing authority. Whatever that be, in this case the assessee himself had calculated on the basis of 10 units for crushing 1 quintal of copra.

8. We dismiss these tax revision cases with costs. Counsel's fee Rs. 150.