

(1993) 03 KAR CK 0028
In the Karnataka High Court
Case No : S.T.R.P. No. 37 of 1991

Mahaboob Ali Mohammed Yakub and Sons

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

Date of Decision : 18-03-1993

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 21, 21 (2)

Citation : (1993) 90 STC 276

Hon'ble Judges : R.V. Raveendran, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : K.S. Ramabhadran and S. Parthasarathy, for the Appellant; H.L. Dattu, Government Advocate, for the Respondent

Judgement

K. Shivashankar Bhat, J.—The assessee has filed this revision petition in respect of an order of assessment made for the period, October 1, 1983 to September 30, 1984. The assessee is a dealer in hardware, paints, iron and steel and other items. The assessee deals both on retail and wholesale basis.

2. For the period in question the assessee filed a return. However, the assessing authority proceeded to make an order to the best of his judgment after issuing a proposition notice. The assessing authority proposed to reclassify the turnover of the sale of goods and exempted goods in the books maintained, though the assessee asserts that there was already such classification. After reclassifying the turnover of the respective turnovers as against the classified commodities the total taxable turnover came to Rs. 3,88,500. Subsequently, the Deputy Commissioner issued a notice u/s 21(2) of the Karnataka Sales Tax Act, 1957, proposing to revise the order of the assessment. The main basis of the proposal was that in the absence of classified. trade in account and opening and closing of the stock of each commodity the assessing authority should have determined the sales turnover of these goods by adding normal loss or profit of 15 per cent over the purchases. The assessee objected to the proposal and pointed out that in the particular line of business engaged by the assessee, the gross profit did not

exceed 5 per cent. It was however pointed out that the trade account of the assessee revealed a gross profit of about 10 per cent and this has been accepted by the Income Tax department. It is unnecessary to refer other details in the reply.

3. The Deputy Commissioner did not accept the explanation of the assessee. In his order made u/s 21 of the Act the Deputy Commissioner states that "considering the nature of business, the proposed adopting of gross profit at 15 per cent is reasonable and justifiable". Consequently he proceeded to affirm the proposition notice by estimating the gross profit at 15 per cent.

4. This order was affirmed by the Karnataka Appellate Tribunal. Before us Mr. K. S. Ramabhadran, learned counsel for the petitioner contended that it is not open to the revisional authority to substitute his best judgment in the place of the best judgment made by the assessing authority. The learned counsel referred to section 21 of the Act, whereunder the exercise of the revisional power is to satisfy as to the legality or propriety of the order made by the subordinate authority or as to the regularity of such proceeding in so far as it is prejudicial to the interest of the Revenue. It is submitted that there is no illegality or impropriety in the order made by the assessing authority who had practically accepted the gross profit at 10 per cent and this estimate cannot be substituted by another figure of 15 per cent in the absence of any specific material. The learned High Court Government Advocate on the other hand contended that on the face of it, the gross profit at 10 per cent cannot be accepted and no businessman would engage himself in such a line of business unless he is able to get 15 per cent gross profit.

5. Section 21 empowers the revisional authority to call for and examine the records of any order passed or proceedings recorded under the provisions of the Act by a subordinate officer. This examination is for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceeding. It is for the revisional authority to show that the order sought to be revised was illegal or improper or the proceedings of the subordinate officer were irregular which was prejudicial to the interests of the Revenue. When two views are possible and the assessing authority thought to accept a particular view, it cannot be said that the existence of such a view is an illegality or impropriety. In the case of a best judgment assessment made by the assessing authority, unless it is shown as arbitrary or capricious, it cannot be termed as illegal or improper. If the assessing authority fails to consider any relevant principle or relevant fact, certainly the revisional authority is entitled to revise the order u/s 21 of the Act. In the instant case, it is not shown that the gross profit in this line of business would always be at least 15 per cent. The proposition notice nowhere states that the rate of profit in this line of business would normally be 15 per cent. In fact the proposition notice issued by the Deputy Commissioner does not even say that in similar business the normal gross profit would be 15 per cent. If such an assertion had been made by the Deputy Commissioner, probably, the assessee

could have placed proper material to disprove the assertion. The revisional authority has just stated that the assessing authority should have determined the sales turnover by adding normal profit of 15 per cent over the purchase. The basis of such assertion also is not forthcoming in the notice. In such a situation, it cannot be said that the Deputy Commissioner acted within the scope of section 21 of the Act.

6. For the reasons stated above, the order of the Deputy Commissioner as well as that of the Karnataka Appellate Tribunal are set aside. Revision petition is allowed accordingly.

7. Petition allowed.