

(2003) 04 JH CK 0023

In the Jharkhand High Court

Case No : Writ Petition (T) No. 4572 of 2002

Man Singh, partnership firm

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Bihar Finance Act, 1981 — Section 46, 48
Bihar Sales Tax Rules, 1983 — Rule 13A
Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 333 : (2006) 143 STC 6

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : S.D. Sanjay, for the Appellant; G.A., for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, an assessee under the Bihar Sales Tax Act, challenges the order of assessment in respect of a contract entered into by him with the Tata Iron and Steel Company Ltd. The concerned assessment year is 1991-92. The assessee is a works contractor. The assessment was completed by the Sales Tax Officer by Annexure-1, whereby he treated a sum of Rs. 52,83,340.03, out of the total sales turnover of Rs. 1,20,57,701.96, as a taxable turnover. In other words, he deducted a sum of Rs. 62,44,622.02 as not taxable in terms of the decision of the Supreme Court in Builders' Association of India v. State of Karnataka 88 STC 248. The assessee filed an appeal before the Appellate Authority by contending that a sum of Rs. 96,08,876.42 should have been deducted as amount of labour and other charges out of the total turnover and the assessing authority was in error in considering the matter under Rule 13 A of the Bihar Sales Tax Rules, 1983. The Appellate Authority held that the assessee had not been able to make out a case that the assessment was on the basis of Rule 13 A of the Bihar Sales Tax Rules and that this was a case where the assessee had produced its books of accounts and the authority had assessed based on the same. The Appellate Authority found that full opportunity was afforded to the assessee and on the

basis of the documents filed by him, the order was passed by the Assessing Authority and that there was no error in the order justifying interference. The argument of the assessee that the statement filed by him before the Income Tax Authority should have, been accepted, was rejected on the ground that all entries in the books of accounts of the assessee supported by relevant materials had been accepted and there was no error in assessing the turnover which is taxable in the works contract. The appeal was dismissed. Feeling aggrieved by the dismissal of the appeal, the assessee filed a revision before the Commercial Taxes Tribunal, Jharkhand u/s 46 of the Bihar Finance Act. It was again argued before the Revisional Authority that the Assessing Authority had erred in proceeding on the basis of Rule 13 A of the Bihar Sales Tax Rules, 1983 and the Assessing Authority had erred in not accepting the claim for deduction of other expenses incurred by the assessee" and to that extent the order of assessment was unsustainable. The Revisional Authority, on a scrutiny of the relevant materials, came to the conclusion that the assessing authority had properly proceeded to complete the assessment in the light of the relevant decisions on the question and that the turnover In respect of labour charges and other expenses supported by the relevant materials had been fully excluded while determining "the taxable turnover and in that view of the matter, there was no reason to interfere with the order of the Appellate Authority. Accordingly the revision was dismissed. The assessee did not seek a reference In terms of Section 48 of the Bihar Finance Act. But, rather, it has filed this writ petition under Article 226 of the Constitution of India, challenging the decision of the Revisional Authority.

2. Learned counsel for the assessee writ petitioner, referred to the decision of the Supreme Court passed in Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, and read out the passages at pages 233 and 234 in support of his case to point out the scope of an assessment relating to a works contract like the present one. Counsel submitted that the assessing authority ought to have accepted the claim of the assessee for exclusion of the entire amount of Rs. 96,08,876.42 on the ground of labour charges and other expenses permissible to be deducted while completing an assessment of a works contract. Counsel argued that the assessing authority had decided the case on the basis of Rule 13 A of the Bihar Sales Tax Rules, 1983 in this case. Even an attempt was made to challenge the validity of Rule 13 A of the Bihar Sales Tax Rules, 1983. Learned counsel for the department submitted that the assessment had been properly completed by the Assessing Authority based on the statement made by the assessee itself. Counsel pointed out that the entire amount claimed in Annexure-B statement filed by the asses-see has been excluded from the total turnover. He also pointed out that Annexure-C and C/1 the work orders issued by the respective principals also clearly show that the service component of the contract was 30% and the material component of the contract was 70% and this also clearly supported the assessment and the assessing authority has not erred in completing the assessment. Counsel further submitted that the petitioner

should have sought a reference in terms of Section 48 of the Bihar Finance Act and where such an alternative remedy was available, it is not proper for this Court to exercise its jurisdiction under Article 226 of the Constitution of India in this case.

3. The case of the assessee that the assessment has been completed in this case based on Rule 13 A of the Bihar Sales Tax Rules cannot be accepted. The assessee had produced its accounts and filed a statement and the taxable turnover was determined after deducting the turnover which related to labour charges and other expenses, have to be deducted in terms of the decisions in Cannon Dunkerley and Jamshedpur Contractors Association v. State of Bihar 75 STC 132. In that context, the Assessing Authority held that only a sum of Rs. 62,44,622.02, was liable to be deducted towards labour charges and other expenses and the whole of that amount was liable to be deducted. In that light of Annexure-B statement supported by Annexure-C and C /1, it cannot be said that the Assessing Authority had committed any gross error in the matter of completing the assessment on the basis that the turnover liable to be excluded was of Rs. 62,44,622.02. Counsel for the assessee sought to argue before us that Annexure- B statement related only to labour charges including loading and unloading and other charges and it did not reflect all the amounts liable to be deducted in the light of Cannon Dunkerley case. Counsel also sought support from Annexure-5 statement filed before the Authority under the Income Tax Act to support this part of his argument. Though in Annexure-B the heading is statement of claim on account of labour (bill wise), on going through the said statement it is not possible to say that the Assessing Authority was in error in holding that it took in the labour and other charges liable to be deducted. On considering Annexure-B, we are inclined to agree with the submission of learned counsel for the department that the said statement included claims, not only based on labour charges but also on other charges, liable to be excluded while completing an assessment on a works contract. Annexure-5 also does not mutilate against the stand adopted by learned counsel for the department. Suffice it to say, while exercising jurisdiction under Article 226 of the Constitution of India, we are certainly not in a position to say that any error apparent on the face of the record has been committed by the authorities under the Act, while completing the assessment.

4. Learned counsel for the assessee finally submitted that the assessee may be given another opportunity to produce relevant supporting material to show that the whole of the amount as claimed by the assessee was liable to be deducted. There is no case for the assessee that the assessee did not have adequate opportunity, either in the appeal or in the revision before the Revisional Authority. In this situation, we are not satisfied that the request for further remand is Justified.

5. We see no reason to interfere. We dismiss the writ petition.