

(1969) 08 PAT CK 0002
In the Patna High Court
Case No : Tax Case No. 22 of 1966

Manu Ram Babu Lal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-08-1969

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 13(4)
Bihar Sales Tax Act, 1959 — Section 16(3), 33(3)

Citation : (1969) PLJR 641 : (1970) 25 STC 129

Hon'ble Judges : S.C. Misra, C.J; S. Wasiuddin, J

Bench : Division Bench

Advocate : Rajeshwari Prasad, A.B.S. Sinha and Devendra Pd. Sinha, for the Appellant; Sarwar Ali, for the Respondent

Judgement

S. Wasiuddin, J.—This is a reference under Sub-section (3) of Section 33 of the Bihar Sales Tax Act, 1959 (Act 19 of 1959) (hereinafter referred to as "the Act"). It relates to the assessment of sales tax for the period from 1st April, 1960, to 31st March, 1961.

2. The relevant facts which have given rise to this present reference may be briefly stated as follows: The petitioner is a firm at Chaibassa carrying on business in kirana and edible oil. The dealer showed a G.T.O. (gross turnover) of Rs. 7,79,284 for the year 1960-61. He had been asked to produce his books of account before the assessing officer. The books of account were, however, disbelieved and, therefore, u/s 16(3) of the Act assessment was made to the best of his judgment by the Assistant Superintendent, Sales Tax, Chaibassa, on 7th August, 1961, on a G.T.O. of Rs. 10,13,284. The grounds on which the assessment was made on this turnover were : because it was found that the dealer had maintained duplicate sets of accounts; secondly, the dealer refused to allow his stock of goods to be examined by the Inspector and thirdly, the dealer had received consignments through rail and road which had not been duly accounted for. The dealer preferred an appeal against the order of the Assistant

Superintendent of Sales Tax which was heard by the Deputy Commissioner, Commercial Taxes, Chotanagpur Division, who dismissed his appeal on 30th September, 1963. The dealer then preferred an application in revision to the Board of Revenue, Bihar, and as by that time the Commercial Tax Tribunal had been constituted under the Act, so the revision was heard by the aforesaid Tribunal and it was rejected. The findings of the Tribunal were to the effect that the dealer was maintaining duplicate sets of accounts, that he prevented the Inspecting Officer of the department to inspect his stock of goods in the business place and that he had not accounted for certain goods received by him through rail and road.

3. The dealer thereafter filed an application before the Tribunal for referring the questions of law to the High Court. In the application which was submitted to the Tribunal as many as ten questions were framed, but at the time of the hearing three questions of law were only pressed on behalf of the dealer for being referred to the High Court. The Tribunal after having duly considered the submissions rejected the application for reference. The dealer then moved the High Court against this order. A Division Bench of this court by its order dated 24th August, 1966, directed the Tribunal to refer the following questions to the court and state a case accordingly :

(1) Whether, in the facts and circumstances of the case, the determination of the gross turnover at Rs. 10,13,284 by making an ad hoc increase of thirty per cent. to the gross turnover returned by the petitioner was justified.

(2) Whether, in the facts and circumstances of the case, the ad hoc increase of thirty per cent. to the gross turnover returned by the petitioner was legal and justified.

4. The Tribunal, therefore, in compliance with the order of the High Court has stated the case and has referred the aforesaid two questions to the High Court u/s 33 of the Act.

5. At the time of the hearing of this reference it was conceded by the learned counsel both for the petitioner and the State that both the questions mentioned above more or less overlap each other and they really relate to the quantum of assessment. The learned counsel for the petitioner has submitted that the assessment on a G.T.O. of Rs. 10,13,284 was not justified as it was not based on any evidence specially the findings relating to the receipt of consignments by rail. A question, therefore, arises whether this point can be raised because the finding whether certain consignments had or had not been received is really a finding of fact and not of law and as such no question of law arises, but the learned counsel for the petitioner has relied on the evidence adduced in the case as well as the findings specially of the Deputy Commissioner to show that there was no evidence and the findings are contrary to the evidence. He has also relied in this connection on a decision of this court in the case of *Bhimraj Nagarmal v. State of Bihar* [1954] 5 STC 312 Pat. In that case one of the points for consideration was

that the other firm with which the dealer in that case was connected was a bogus firm. It was contended on behalf of the dealer that there was no material upon which the authorities could come to a finding that the other firm was a bogus one and that even conceding that the question involved primarily a question of fact, but it became a question of law as there was no evidence to support the finding. In my opinion, a question of fact becomes a question of law if the finding is either without any evidence or if the finding is contrary to the evidence. I may in this connection refer to a decision of the Supreme Court in *Raghubar Mandal Harihar Mandal v. The State of Bihar* [1957] 8 STC 770 Pat and it was held that the jurisdiction of a High Court in the matter of Income Tax reference, which is similar to a reference under the Sales Tax Act, is an advisory jurisdiction, and the decision of the Tribunal on facts is final, unless it can be successfully assailed on the ground that there was no evidence for the conclusion on facts recorded by the Tribunal or the conclusion was such that no reasonable body of persons could have arrived at such a conclusion. In this view of the matter, it seems necessary to go into the evidence to see if there was really evidence about the receipt of consignments from rail and as to what the actual findings were in this connection. It may also be mentioned here that the learned counsel for the petitioner also referred to the findings with regard to the receipt of consignments by road, but I do not think that the finding in this respect was unjustified or it could be said that it was not based on materials which were available at that time.

6. Now with regard to the consignments received by rail, I may refer to page 3 of the paper book which is the order of the Assistant Superintendent of Sales Tax and he has given the particulars of the five consignments which are said to have been received by the dealer, but had not been accounted for. These are as follows :

-----	Sl.	No.	of
Invoice No.	From	Goods.	Date of To whom the report.
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12/23-4-60.	Grarr	110 bags.	1-5-60.
Gram 440	4-9-60.	do. bags.	(Dealer shows entry of 240 bags).
M.I/29-10-60	Der.	Flour 240	17-11-60.
D-15/25-8-60	WB.	3 bundles	17-9-60.
cases	1-7-60.	do.	motor
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The dealer at the time of the hearing of this appeal by the Deputy Commissioner, Commercial Taxes, filed two documents, one of which was a letter from the Station Master and the other was an affidavit sworn on behalf of the dealer. In the letter there was denial about the receipt of the consignments and the Station Master in his letter also stated about the consignments. The chart which I have given above would show that two of the consignments, viz., Nos. 17 and 23, related to motor parts. It was contended on behalf of the dealer that he was not

dealing in motor parts and secondly, that these motor parts had not been received by him. As regards the remaining three consignments also according to the dealer these had not been received by him. The Deputy Commissioner in his order dealt with these consignments and to appreciate the correct position of his findings, it will be better if I quote his findings in this respect:

From the assessment order I find that 5 items of railway receipts have also been mentioned which were not found incorporated in the appellant's account. In the course of hearing of this appeal, the appellant produced before me, a letter from the Station Master, Chaibassa, to show that 110 bags of gram as per first item of assessment order, was delivered to one Jawara Trading Co. and the invoice number and date is 13/23-4-60 instead of 12/23-4-60. This letter further shows that against invoice number M.1/ 29-10-60, 250 bags of flour were received instead of 240 bags and they were delivered to Lunkaran Das Manilal. So far the two transactions are concerned, I have no hesitation in accepting the appellant's contention on the basis of the Station Master's letter. The receipt of other three items were denied by the appellant. The last two items cover motor parts and it was stated that the appellant never dealt in these commodities. I fail to understand why the appellant could not get a certificate of non-receipt of these goods from the Station Master, Chaibassa, as in the case of the other two items. Moreover, the receipts of goods were again verified under orders of my predecessor and in two cases receipts were confirmed : vide Inspector's report attached on this record. Under these circumstances it is clear that these receipts have been suppressed from the appellant's accounts.

7. It will, therefore, appear from the findings quoted above that as two of the consignments mentioned above are concerned, the Deputy Commissioner accepted the contention of the dealer that these two consignments out of five consignments mentioned above had not been received by the dealer at all. The Tribunal also discussed the point regarding the receipt of the railway consignments and his findings in this respect are as follows :

The question of the railway consignments has been discussed in detail by the learned Deputy Commissioner of Commercial Taxes and we agree with his view that the dealer has failed to account for certain consignments received through railway. The applicant has filed an affidavit before the Deputy Commissioner of Commercial Taxes by one of his employees to the effect that the goods alleged to have been received through the railways did not belong to the applicant and delivery was not taken by him. For the reasons given by the learned Deputy Commissioner of Sales Tax we consider that the applicant has not been able to conclusively prove that he had nothing to do with these consignments. The Inspector who had verified these transactions from the railway records saw that the name of the applicant was mentioned in the remarks column of the relevant railway record. We see no reason to disbelieve this report even though it has been certified by the Station Master that the delivery of these consignments was given to somebody else. The conduct of the applicant shows that he had been

doing clandestine business and even if the delivery was not taken by him the possibility is not ruled out that he was connected with these consignments for otherwise there was no reason why the name of the applicant should appear in the remarks column of the railway records. We, therefore, agree with the learned Deputy Commissioner, Commercial Taxes, that the dealer had suppressed certain transactions from his accounts.

Those findings, therefore, also show that the Tribunal in the revision against the order of the learned Deputy Commissioner did not also specifically state that he did not agree with the findings of the Deputy Commissioner with regard to the two consignments mentioned above and rather the concluding portion of his findings quoted above shows that he accepted the findings about two of the consignments. The Tribunal accepted the findings with regard to the other consignments for the reasons given by him.

8. It may also be mentioned here that the returns of the subsequent years had also been filed in which higher G.T.O. had been shown by the dealer, but from this no positive inference can be drawn because no doubt, it can be said on the one hand and the returns in the subsequent years show that the authorities were justified in raising G.T.O. in question by thirty per cent., but it can also be said with equal force on behalf of the dealer that in the years in which there were larger G.T.Os., they have shown the same.

9. In the matter of assessment by best judgment it is not at all possible to lay down any scale or the precise manner in which the G.T.O. can be raised for the purpose of assessment. But, of course, it should not be on mere suspicion or in an arbitrary manner as held by the Supreme Court in the case of Raghubar Mandal Harihar Mandal Vs. The State of Bihar, . In making assessment the Sales Tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law, but he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. It has also been laid down in that case that there must be something more than bare suspicion to support the assessment, and that when the returns and the books of account are rejected, the assessing officer must make an estimate and to that extent he must make a guess, but the estimate must be related to some evidence or material and it must be something more than a mere suspicion. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must take into consideration such materials as the assessing officer has before him including the assessee's circumstances, knowledge of previous returns and all other matters where the assessing officer thinks it would assist him in arriving at a fair and proper estimate. By a Division Bench of this court in the case of Bhimraj Nagarmal v. State of Bihar [1954] 5 STC 312 SC also it was held that ex hypolhesi an assessment made u/s 13(4) of the Bihar Sales Tax Act, 1947 [which is now Section 16(3) of the Bihar Sales Tax Act of 1959] must be based on inadequate material; but that does not authorise

the Sales Tax Officer to make assessment capriciously or without any regard to available material. An assessment made u/s 13(4) is an assessment to the best of his judgment and the word "judgment" implies and connotes a fair and reasonable consideration of the materials which are available to the Sales Tax Officer. In the present case as already pointed out above, the assessment has been made on a G.T.O. of Rs. 10,13,284, thus raising the G.T.O. by thirty per cent. The materials which were available to the authorities, to which I have referred to above, no doubt, show that they had good grounds for rejection of the books of account and thus disbelieving the books of account and also raising the G.T.O. It has been urged that there was no justification for raising the G.T.O. to thirty per cent., but here of course this has always to be a matter of guess, but of course should not be on mere suspicion and should be based on some materials. One of the sets of materials was the receipt of the consignments from the railway and at least two of the consignments were held not to have been received by the dealer. True it is that there was an affidavit by an employee of the dealer with regard to all the consignments and it has been urged that there was no counter-affidavit, but the question whether the affidavit in the circumstances could or could not be believed by the authorities was a matter within their discretion and is just like an acceptance or rejection of an oral evidence. If the authorities have not believed the affidavit, then no question of law arises. In view, however, of the findings which I have quoted above of the Deputy Commissioner as well as of the Commercial Tax Tribunal, at least two of the consignments had not been received by the dealer, but it appears from their orders that in raising the gross turnover by thirty per cent. this aspect of the matter had not been taken into consideration, whether there should be a proportionate scaling down because these two consignments definitely on the evidence and the findings had not been received by the dealer. This would be a matter completely within the discretion of the authorities, but as this aspect of the matter was not considered, so these two questions can be answered only in this way that the increase of the G.T.O., in the circumstances, was quite justified by the authorities, but they failed to take into consideration the findings about the non-receipt of these two consignments and this was, therefore, not considered, whether in such circumstances there should be proportionate scaling down of the G.T.O. The question as to what should be the percentage of scaling down and what should be the quantum is a matter which has to be decided by the authorities concerned.

10. Having regard to all the facts and circumstances, these two questions are thus decided and this reference is disposed of. In the circumstances of the case, no order for costs is made, but the dealer will be entitled to a refund of the deposit.

S.C. Misra, C.J.

11. I agree.