(1965) 03 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1931 of 1964

Messrs Sandhu Roadways (P.) Ltd. APPELLANT

Vs

The Assessing Authority and Another RESPONDENT

Date of Decision : 02-03-1965

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1965) 03 P&H CK 0003

Hon'ble Judges : Grover, J;Dulat, J

Bench : Division Bench

Advocate : Bhagirath Dass with Mr. Balkishan Jhinghan, for the Appellant; L.D. Kaushal with Mr. P.R. Jain, for the Respondent

Final Decision : Allowed

Judgement

Grover, J.—This is a petition under Articles 226 and 227 of the Constitution of Messrs Sandhu Roadways (P.), Limited (hereinafter to be referred to as the company), a company registered un-the Indian Companies Act, with its registered office at Amritsar. The company is engaged in the business of transport and holds a total number of 10 stage carriage permits for various routes detailed in paragraph 2 of the petition. It maintains a fleet of 10 buses and the number of trips which has been sanctioned by the Regional Transport Authority on the various routes is given in paragraph 3 of the petition. The company is registered u/s 9 of the Punjab Passengers & Goods Taxation Act, 1952 (to be called the Act) and the dispute in the present case relates to the liability of tax under the Act for the period 1st April, 1963 to 31st October, 1963.

2. It has been alleged in paragraph 4 of the petition that the tax was paid by the company by stamping the tickets issued to the passengers in accordance with the scale laid down under the Act which was one-fourth of the value of the fare vide the Punjab Passengers & Goods Taxation (Amendment and Miscellaneous Provisions) Act, 1963. The procedure prescribed under the aforesaid Act and the rules framed there under is that the stamps are obtained by depositing the

amount in the Treasury and at the close of every month a return has to be filed in form P.T.T. 7-A which indicates the opening of the stamp value each month and the number of tickets which have been issued during the period thus giving the resultant figure of the stamps which were in possession of the company. It has been alleged in paragraph 4 that return in form P.T.T. 7-A which had been filed each month indicated the value of the stamps consumed which represented the amount of tax paid during the particular month. The value of the stamps purchased during the period of assessment (1st April, 1963 to 31st October, 1963) is stated to be Rs. 27,393 and it is claimed that the entire stamps which had been purchased were consumed during this period and thus the total amount of tax, which was payable, was actually paid. In paragraph 4 of the return filed by the respondents it has been denied that the company filed any return inform P.T.T. 7-A and it has further been stated that on every occasion the company refused to show the register to the Assessing Authority or its representatives. As regards the collection of tax, the procedure is indicated in paragraph 5 of the petition. The method of levy was that no passenger was allowed to travel by the bus of the company unless he was given a ticket in the prescribed form for the journey denoting that the tax have been paid. The amount of tax represented by the value of the stamps affixed on each individual ticket issued to the passenger. In the return no dispute about the procedure has been raised but it has been stated that the company on several occasions obstructed the prescribed authority from inspecting its buses by not stopping them in spite of the signal being given to stop. If ever the buses were stopped, it was found that the company was indulging in large scale evasion of passenger tax by not affixing the adhesive stamps on tickets issued to passengers. If any stamps were found affixed to tickets, their value was less than that required under the law.

3. The assessing authority issued a notice to the company in form P. T. T. 10 on 30th October, 1963 for appearance on 7th November, 1963. According to the company this notice was never served but in the return it is stated that this notice was received back from the postal authorities with the remarks that the company had refused to accept it. According to the return, a second notice was issued on 7th November, 1963 for appearance on 7th November, 1963 which was refused by the company and service had to be effected by posting the notice on its business premises. As no one appeared on 7th November 1963, another notice was issued to the company for appearance on the 13th November, 1963. This notice was delivered to Shri Hazara Singh, Managing Director of the company who refused to acknowledge its receipt. In the petition the sending of the notices has been admitted but it has been said that these notices were not served on the company. It is common ground, however, that the Managing Director appeared before the Asses sing Authority on 13th November, 1963 along with his counsel, Mr. I. S. Jolly. On that date he filed an application saying that the account-books were with the auditors of the company and could not be produced at the hearing and the same could be produced at the next hearing. This prayer was not granted by the Assessing Authority who kept the case for

finalization of the assessment and made a final assessment on 27th November, 1963 by which a tax liability of Rs. 76,250/- was created for the period in question. The company filed an appeal u/s 15 of the Act together with an application for exemption from payment of the amount of tax which was the condition precedent to the appeal being entertained. The Deputy Excise and Taxation Commissioner rejected the appeal as also the application for exemption on the ground that the financial condition of the company was sufficiently sound to enable it to deposit the amount of tax. It may be mentioned that in the return it is stated that only the application for exemption from payment of the amount of tax was rejected but the appeal is still pending. However, the appeal is bound to be dismissed if it has not already been dismissed as the condition precedent to its being entertained has not been fulfilled. The present petition has been filed impugning the legality and validity of the order made by the Assessing Authority creating the aforesaid liability with regard to payment of tax.

4. The first contention of Mr. Bhagirath Dass, the learned counsel for the company, is based on what is stated in paragraph 7 of the petition. It is urged that an ex-parte best judgment assessment has been made and the tax has been calculated on a gross income of Rs. 1,85,000 on the basis of the income of the Punjab Roadways which is operating the buses on 50:50 scheme on the routes being plied by the company as also by eight other transport companies. It is said that the total income of the Punjab Roadways has been taken into account whereas the company was only plying approximately one-fifth of the number of the trips which were being plied by the Punjab Roadways. There are about 103 trips on all the routes out of which 53 trips are being plied by the Punjab Roadways and the balance of 50 trips are being plied by all other ten companies. It is pointed out that curiously enough the entire income of the Punjab Roadways had been taken into account while making an assessment for the relevant period. An amount of Rs. 1,80,339. 28 nP. has been adopted as the figure and to this amount a sum of Rs. 5,000 has been added at randum on account of fairs, festivals and special permits for marriages etc. To this sum, another amount of Rs. 15,000/- has been added on account of irregularities for failing to stop the buses on various occasions mentioned in the order and the passengers being found without tickets or with unstamped tickets. Still another sum of Rs. 15,000/- had been added as tax for the non-maintenance of registers and for using tickets which had not been stamped. Out of this, a sum of Rs. 10,000/- had been allowed on account of the total stamps consumed out of the stamps valued at Rs. 27,393 which had admittedly been purchased by the company. In the return in paragraph 7, the reply is that the passenger tax had been calculated on a gross income of Rs. 1,85,000/- on the basis of the income yield by each bus of the Punjab Roadways per trip on the routes followed by the company as detailed in the assessment order. Apart from denial about the other matters, nothing else is stated in the return in reply to paragraph 7 of the petition.

5. A careful perusal of the order of the Assessing Authority shows that as regards

the amount of Rs. 1,85,000/- being the estimated income earned by the Punjab Roadways for plying their buses on all the routes during the period of assessment, the Assessing Authority took into con- side ration the number of trips for which journeys were undertaken and it is quite clear that this figure did not represent the entire income of the Punjab Roadways from all the trips made by its transport buses on the various routes for which the company holds the permits. There seems to be little doubt that the Assessing Authority in order to form an estimate of the income which could have been earned by the Company plying their buses on the routes for which they hold the permits according to sanctioned trips, took figures from the income earned by the Punjab Roadways for the same routes and for the same number of trips which could have been made by the bases run by the company under the permits held by it. It was also quite legitimate to add a figure of Rs 5,000/-to this estimated income for the reasons given in the order, viz. that the company obtained a very large number of special passes from the licensing authority on important fairs and festivals and, therefore, it must have earned an additional income of Rs. 5,000/-. This estimate had to be made by the Assessing Authority because the company did not produced the relevant books and documents and in spite of several notices having been served, the only appearance which was put in on its behalf by the Managing Director was on 13th November 1963 when he wanted a further adjournment for production of books but his prayer was declined. The reasons for declining that request are given in the order of the Assessing Authority and may be reproduced-

On the date fixed for hearing of the case i. e. on the 13th November, 1963, S. Hazara Singh, Managing Director of Company appeared along with his counsel Shri I. S. Jolly, Advocate, and put in an application for adjournment. Due to their indulgence in evasion of tax in an unabated manner and always trying, either to issue tickets without affixation of transport Tax Stamps thereon or to issue such tickets under-stamped or indulging in evasion of tax for not allowing the staff to have a proper checking, as provided u/s 13 (1) of the Punjab Passengers and Goods Taxation Act, 1952, or not producing the register in form P. T. T. 7, which contains a daily account of the "Transport Tax Stamps or not maintaining it properly and also failing to produce the register in form P. T. T. 21 and thus committing a day light robbery of Government revenue, therefore, the Managing Director was informed that no adjournment could be allowed and the case was kept pending for finalizing the assessment, as account books were not produced on that date. Assessment was, however, finalized on the 27th November, 1963.

As stated before, an estimate had to be made by the Assessing Authority of the income which in all likelihood the Company must have earned. It was based on solid material to the extent of Rs. 1,85,000/- by taking into consideration the amount of income earned by the Punjab Roadways, as mentioned before. Mr. Bhagirath Dass has not been able to assail this part of the order of the Assessing Authority or show any such error which would justify interference on this point.

6. As regards the addition made by the Assessing Authority of two items of Rs. 15,000/- each by way of what is called additional tax, it has been pointed out by Mr. Bhagirath Dass that even on the findings given by the Assessing Authority, these amounts could not be imposed. In the order a list is given of the cases in which unstamped tickets were detected from the passengers found traveling in the buses run by the company as also details were given of the occasions on which the company failed to stop its buses for proper checking. A list ''also is to be found of the passengers who were allowed to travel without tickets in contravention of the provisions of section 5 (1) of the Act. The Assessing Authority says-

* * * the management scrapped the provisions of the Act ibid and cared little for the. rules and regulations. Failure to stop the buses and not allowing proper checking as discussed in paragraph 4, are very serious offences and tantamount to indulging in naked evasion of tax, a large number of persons, as stated above, were also allowed to travel without tickets in contravention of the provisions of section 5(1) of the Act. In view of these serious irregularities committed by the management and in order to avoid any loss of revenue to Government and to be just and reasonable, I add an additional tax of Rs. 15,000/- only, besides the tax, which is alleged to have been paid by the company.

Furthermore, the company failed to maintain a register in form P. T. T. 7 as provided by rule 16 of the rules framed under the Act. The details of irregularities committed and the discrepancies found in the register have been set out in the order. It has also been stated that during surprise checking it was noticed that the company was issuing tickets without affixation of transport tax stamps. The counterfoils of the tickets during the surprise raids were taken into possession and it was noticed that the tickets were either totally unstamped or under-stamped in certain cases. The Assessing Authority, therefore, said-

In view of the instances given above, it is all the more certain that in other cases as well, the company must have evaded payment of tax due to the Government. These cases also reveal a sorry state of affairs and an unheard thing where tickets have been issued without affixation of Transport Tax Stamps in such large numbers. Therefore, in order to avoid any loss of revenue to Government, I impose an additional tax of Rs. 15.000/- in addition to the tax, which is alleged to have already been paid to the Government.

The contention of Mr. Bhagirath Dass is that there is no provision in the Act under which the aforesaid amounts could be imposed by way of tax. He has invited attention to section 17 which provides for criminal prosecution if an assessed fails to pay the tax due from him within the prescribed period or fraudulently evades the payment of any tax, or allows any passenger to travel in a motor vehicle without a ticket as required by section 5(1), or willfully fails to apply for registration or to pay tax, or fails to furnish information u/s 9(5) and 9(6), or obstructs any officer from making "entry and inspection, or contravenes any other provision of the Act or the rules made there under. Mr. L.D. Kaushal does not contend that the amount of Rs. 15,000/- each relating to two items on account of the reasons given in the order could be levied by way of tax under the Act. According to him, the Assessing Authority had to make an estimate of the tax which was really payable by the company but which had not been fully paid in the form of stamps and while doing so, it was legitimate to take into consideration the various matters mentioned in the order from which the conclusion was inevitable that the company had been plying more trips than were sanctioned or was carrying passengers far beyond the capacity of the buses. No such findings have been given by the Assessing Authority and the reasons which have been stated in the order might have justified criminal prosecution but it is not possible to see how there was any basis for including such large additional amounts in the estimate once the highest possible income which could have accrued had been determined with reference to the figure of the earnings of the Punjab Roadways, the total amount being about Rs. 1,85,000/-. We can find no legal warrant for the addition of the aforesaid amounts of Rs. 15,000/- each which meant that the estimate of the income was increased by Rs. 60,000/- under each head. The order of the Assessing Authority cannot be sustained on this point.

7. Mr. Bhagirath Dass has also challenged the concluding portion of the order of the Assessing Authority by which a deduction in the sum of Rs. 10,000/- only was allowed with regard to the stamps which admittedly had been purchased of the value of Rs. 27,393/-. The following portion of the order may be reproduced relating to this matter-

It transpired that the company purchased Transport Stamps worth Rs. 27,393/- during the period under report. But counterfoils of the tickets which could actually show that the tax had been levied, charged and paid by affixation of Transport Tax Stamps, as provided under rule 9(1) of the Rules read with section 5(1) of the Act, were not produced. Therefore, deduction worth Rs. 10,000/- only is allowed." According to Mr. Bhagirath Dass, once it had been proved that the stamps worth Rs. 27,393 had been purchased during the relevant period it should have been presumed that they had been utilised by affixation on the tickets. The company, however, failed to produce the necessary evidence in this behalf and there was every justification, therefore, for the Assessing Authority to find that deduction of only Rs. 10,000 should be allowed with regard to these stamps. Moreover, this is not a matter on which there can be any interference in these proceedings, particularly when the order of the Assessing Authority is based on good and substantial reasons.

8. It is now necessary to deal with a submission made by Mr. Bhagirath Dass which raises a larger question as to the procedure which must be followed by the Assessing Authority when making an assessment under rule 29 of the Punjab Passengers and Goods Taxation Rules, 1952. That rule is in the following terms-

If, in consequence of definite information which has come into his possession, the appropriate Assessing Authority discovers that an owner has been under-assessed or has escaped assessment for any year, of tax less than the amount of tax due has been levied in the form of stamps through inadvertence, error or mis-construction or otherwise, the Assessing Authority may, at any time, within a period of three years following the close of the financial year to which it pertains, send a notice to the owner in form P.T.T. 10/P.T.T. 12 and after hearing him and making such enquiry as he considers necessary, may proceed to assess or reassess, as the case my be, and recover the tax payable by him.

Mr. Bhagirath Dass says that there was no proper hearing by the Assessing Authority because on 13th November, 1933, when the Managing Director of the company appeared before it and asked for an adjournment on the ground that the account-books were with the auditors and could be produced at the next hearing and when the adjournment was declined, the Assessing Authority never informed or indicated the material which it had in its possession and on which it later on based the impugned order. If the representative of the company had been told that it was proposed to take into account the figures of the income or earnings of the Punjab Roadways, he would have endeavored to satisfy the Assessing Authority that those figures were either not correct or they related to a much larger number of trips which were sanctioned in favour of the Punjab Roadways as compared with the much smaller number of trips on the same routes sanctioned in favour of the company. A great deal of prejudice has, therefore, resulted by the Assessing Authority not disclosing the material in its possession on which it later, on based the order. In this connection reliance has been placed on two decisions of the Supreme Court Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax A. I.R. 1955 S.C. 63 and Raghubar Mandal Harihar Mandal Vs. The State of Bihar, , in which the law laid down by a Full Bench of the Lahore High Court in AIR 1944 353 (Lahore) with reference to section 23(3) of the income tax Act. 1922, was approved. In Dhakeswari Cotton Mills case(supra), Mahajan C. J. has said that the income 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 in making the assessment u/s 23(3) he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material. The following observations in this judgment are noteworthy:

In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the Assessed what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company to rebut the material furnished to it by him, and lastly, it declined to take all the material that the assesses wanted to produce in support of its case. The result is that the assessee had not had a fair hearing. The estimate of the gross rate of profit on sales, both by the income tax Officer and the Tribunal seems to be based on surmises, suspicions and conjectures. It is somewhat surprising that the tribunal took from the representative of the department a statement of gross profit rates of other cotton mills without showing that statement to the assessee and without giving him an opportunity to show that that statement had no relevancy whatsoever to the case of the mill in question. It is not known whether the mills which had disclosed these rates were situate in Bengal or elsewhere, and whether these mills were similarly situated and circumstanced. Not only did the Tribunal not show the information given by the representative of the department to the appellant, but it refused even to look at the trunk load of books and papers which Mr. Banerjee produced before the Accountant-Member in his chamber. No harm would have been done if after notice to the department the trunk had been opened and some time devoted to see what it contained.

The assessment in this case and in the connected appeal, we are told, was above the figure of Rs. 55 lakhs and it was meet and proper when dealing with a matter of this magnitude not to employ unnecessary haste and show impatience particularly when it was known to the department that the books of the assessee were in the custody of the Sub-Divisional Officer, Narayanganj. We think that both the income tax Officer and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure guess and suspicion. It is thus a fit case for the exercise of our power under Article 136.

In that case the Appellate Tribunal had taken from the representative of the department a statement of the gross profit rates of other cotton mills. Without showing that statement to the assessee and without giving him an opportunity to show that the statement had no relevancy whatsoever to the case the estimate of the gross rate of profit on sales had been made. In the second decision (M/s. Raghubar Mandal Harihar Mandal v. State of Bihar(supra)), the question arose about the power of the Assessing authorities u/s 10 (2) (b) of the Bihar Sales Tax Act. 1944, to proceed to estimate the gross turnover and make an assessment. According to that provision, on the date specified in the notice or as soon afterwards as may be, the Commissioner, after hearing such evidence as the dealer may produce, and such other evidence as the Commissioner may require on specified points, can assess the amount of tax due from the dealer. In their Lordships'' opinion, this (sic)was analogous to section 23 (3) of the Income Tax Act. After (sic)previous decision in Dhakeswari Cotton Mills case(supra) it was (sic)ment was made without reference to any evide-(sic)ing rejected the books of account of the assess-(sic)had acted on pure guess. A distinction was drawn by S.K. Das J. who delivered the judgment of the Court between cases u/s 23 (4) of the Income Tax Act which may for facility of expression be called best judgment assessments and those decided u/s 23(3} of the Income Tax Act. The High Court had relied on those decisions but it was observed:

Then, the High Court proceeded to consider certain decisions relating to the interpretation of sub-sections (3) and (4) of section 23 of the Indian income tax Act, and held that there was no difference between an assessment under sub-section (3) and an assessment under sub-section (4) of section 23. The High Court applied the same analogy and on that footing held that there being no difference between an assessment under clause (b) of sub-section (2) and an assessment under sub-section (4) of section 10 of the Act, the answer to the question must, be in the affirmative. In our view, the approach of the High Court to the question referred to it was erroneous and the answer given to the question by it solely on the basis of sub-section (4) of section 10 of the Act was vitiated by that wrong approach. It was not sub-section (4) of section 10 of the Act which the High Court had to consider; it had to consider the true scope and effect of clause (b) of sub-section (2) of section 10 of the Act.

Mr. Bhagirath Dass has submitted that the concluding part of rule 29, which provides for hearing to be given to the assesseee, must be regarded as having been framed in the light of all the aforesaid principles that in order to afford a proper hearing to the assessee he must be informed of the material which the Assessing Authority may have collected in his absence and by means of local enquiries. Unless that material is disclosed the assessee will have no opportunity of representing it or explaining it away and thus the hearing given in the present case cannot be regarded as any hearing at all. He says that even if the powers conferred by rule 29 on the Assessing Authority are equated with the powers to make a best judgment assessment u/s 23 (4) of the Income Tax Act, the aforesaid rule of disclosing such material as may be in the possession of the Assessing Authority of which the assessee is not aware or has not been informed, would be applicable. In this connection he has relied on NARAYAN CHANDRA BAIDYA Vs. COMMISSIONER OF Income Tax., , Swamy Bros. v. Commissioner of income tax (1853) 34 I. T. R. 127, Dewan Hanuman Manmohan v. The State of Andhra Pradesh (1960), 11 S. T. C 473 and Bhagwanjibhai Jairambhai v. Commissioner of Sales Tax (1961) 12 S. T.C. in which the rule of natural justice was applied to cases where the Income Tax Officer made an assessment to the best of his judgment u/s 23 (4) of the Income Tax Act. Mr. Bhagirath Dass contends that although there is no specific provision in section 23 (4) about giving any hearing to an assessee before making an assessment to the best of judgment, yet this principle or rule was accepted as being applicable and, therefore, when an assessment is being made under rule 29, there is a much greater reason for following that rule and applying it because of the requirement of a hearing being given to the assessee. It is unnecessary to examine in detail or decide the correctness of the decisions relating to the true scope of and the powers conferred by section 23(4) of the Income Tax Act which have been canvassed by Mr. L.D. Kaushal on behalf of the respondents. He has relied on a Full Bench decision in Muhammad Hayat-Haji Muhammad Sardar v. Commissioner of income tax, Punjab A. I. R. The observations made by the Prices Council in AIR 1937 133 (Privy Council) , with regard to assessments made u/s 23(4) of the Income Tax Act may be noticed. According to their Lordships, the Officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. The officer must not act dishonestly, or vindictively or capriciously, because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must be able to take into consideration local knowledge and repute in regard to the assessee''s circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guess-work in the matter, it must be honest guess-work. Mr. Kaushal points out that the same view was expressed by the Full Bench in the Lahore case and the law, therefore, with regard to section 23(4) is not the same as in respect of section 23(3) of the Income Tax Act. As regards rule 29, Mr. Kaushal has strongly relied on the words which follow the requirement of hearing the assessee. These words are "and making such enquiry as he considers necessary". According to Mr. Kaushal, the Assessing Authority must hear the assessee in the sense that the assessee may be called upon to produce such evidence as he desires to produce in response to the notice issued to him in form P. T. T. 10/P. T. T. 12 and if the assessee does not produce satisfactory evidence or fails to produce any evidence, then it is open to the Assessing, Authority to make such enquiry as it considers necessary and proceed to make the assessment or re-assessment. The juxtaposition of the words "after hearing him and making such enquiry as he considers necessary" does lend support in some measure to what Mr. Kaushal says, but then such a view would militate against the well settled principle that a hearing would be redundant and would be almost a farce if the Assessing Authority can make private enquiries after giving a formal hearing to the assessee and act on the result of such enquiries without disclosing the same to him. In my view, the language employed in rule 29 is unhappy and needs a proper amendment by the rule making authority to clarify its intention. In a proper case it will become necessary to determine whether the rule applied by their Lordships in the two Supreme Court decisions referred to before should be followed while making an assessment under rule 29 but in the present case I do not consider that any final opinion or view need be expressed in the matter for the reasons which I shall now proceed to state.

9. In the petition there is no clear allegation as to what transpired between the representative of the company on 13th November, 1963 and the Assessing Authority after the application for adjournment had been rejected. It is not stated that the Assessing Authority declined to hear the representative of the company with regard to his case even in the absence of the books, nor is it clear that the aforesaid representative made any enquiry from the Assessing Authority as to the information which had come into its possession on which the notice under rule 29 had been issued. Even as regards the non-disclosure of the material in the possession of the Assessing Authority, no such averment was made in the statement of facts contained in the petition and it is only in the grounds contained in paragraph 9 that clause (g) was inserted to the following effect:

That the material mentioned in the order of assessment has never been confronted to the petitioner company, nor has it been given any opportunity to prove its case.

In the return it was stated in reply to clause (g) of paragraph 9-

Denied. As stated against paragraph 6 above, the petitioner company failed to avail itself of the opportunities afforded to it.

In paragraph 6 of the return, all the notices which had been sent to the company were mentioned and it was stated that they had been refused and it was only in response to the last notice that Shri Hazara Singh, Managing Director, appeared on 13th November, 1963 when he asked for adjournment which was rejected. The company had deliberately refused to produce the account-books. It is stated that the Assessing Authority had no alternative except to frame the assessment on the best of its judgment on the basis of the material collected by it.

10. Now, apart from the absence of precise allegations in the petition, the company had filed an appeal but it did not fulfill the condition precedent with regard to the deposit of the amount of tax which had been assessed and which it was found the company was in a position to pay. In the appeal the company could have placed all the material before the appellate authority and invited a decision with regard to the prejudice which had been caused to it by non-disclosure of the material collected by the assessing Authority on which the assessment was finally made. In these circumstances I do not think that this Court should show any indulgence in the present petition to the company and entertain its complaint even if that complaint is legitimate under rule 29 that it was not apprised of the material on which the Assessing Authority based the assessment which has been impugned.

11. Before concluding it may be mentioned that Mr. Bhagirath Dass has challenged the validity and vires of rule 29 but since that matter stands concluded by a Bench decision, to which I was a party, in M/S Mansa Roadways (P) Ltd. v. The Assessing Authority. Passengers and Goods Taxation, (Civil Writ No. 1028 of 1963 decided on 22nd October 1964), no question arises of examining that contention since no fresh grounds have been furnished for re-examining the correctness of the previous decision.

12. In the result, this petition succeeds in part. The order of the Assessing Authority cannot be sustained with regard to the imposition of tax in the sum of Rs. 15,000/- each aggregating a sum of Rs. 30,000/-and it is hereby quashed to that extent. In all other respects the petition is dismissed. In the entire circumstances of the case the parties are left to bear their own costs.

Dulat, J.

13. I agree.

