
(1968) 10 PAT CK 0008
In the Patna High Court
Case No : Tax Case No. 10 of 1967

Mittal and Company

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 30-10-1968

Acts Referred:

Bihar Sales Tax Act, 1959 — Section 16, 18(1), 33(1)

Citation : (1969) 17 BLJR 445 : (1969) PLJR 202 : (1968) 24 STC 418

Hon'ble Judges : U.N. Sinha, J;B.N. Jha, J

Bench : Division Bench

Advocate : Kanhaiya Prasad Verma No. 2 and Kamla Kant Prasad, for the Appellant; S. Sarwar Ali and K.P. Verma, for the Respondent

Judgement

U.N. Sinha, J.—This reference has been made u/s 33(1) of the Bihar Sales Tax Act, 1959, by the Commercial Taxes Tribunal, Bihar, Patna, at the instance of a dealer named Messrs Mittal and Company at Patna. The two questions of law arising out of an order passed by the Tribunal on the 18th December, 1965, in Revision Case No. T/50 of 1965, in the matter of an assessment of sales tax for the period 1962-63, have been framed as follows :-

(1) Whether the remand assessment order u/s 18(1) read with Section 16 of the Bihar Sales Tax Act, 1959, after the order passed by the Deputy Commissioner of Commercial Taxes on 30th May, 1964, in respect of the year 1962-63 is legally valid ?

(2) Whether the provisions of Section 18(1) of the Act include power to assess the escaped turnover to the best of judgment ?

2. During the relevant period, Messrs Mittal and Co. was a dealer in glass bangles. By an assessment order dated the 4th July, 1963, the dealer was assessed to sales tax for the assessment year 1962-63, by which the dealer's general turnover was increased by the assessing authority by a sum of Rs. 29,455. The dealer had, in due course, appealed against this order and it

appears that during the pendency of the appeal, there was a surprise inspection of the business premises of the dealer on the 30th September, 1963. Five books of account were seized for the purpose of detailed verification and on verification, the assessing authority came to the conclusion that two of these books contained clandestine transactions, resulting in tax evasion for the same assessment year and as assessment had already been completed, the assessing authority came to the conclusion that reasonable grounds existed for believing that the turnover for the assessment year 1962-63 had escaped assessment. A proceeding u/s 18(1) was commenced and the dealer was noticed. An objection was raised by the dealer on the ground that the notice issued u/s 18(1) was illegal and that the seized books did not contain any material in respect of the period 1962-63. The objection was overruled by the assessing authority by an order passed on the 29th November, 1963. The dealer was ordered to produce its complete account books for the year 1962-63 for examination. Being dissatisfied with this order the dealer went up in revision and the revision was dismissed on the 16th January, 1964, by the Appellate Assistant Commissioner. Thereafter, on the 30th May, 1964, the appeal from the original assessment order was disposed of by the Deputy Commissioner of Commercial Taxes. The relevant portion of this order runs as follows :-

I have perused the order passed by the Sales Tax Officer. The order recorded by the Sales Tax Officer does not show that there was any specific evidence of suppression of the turnover. The Sales Tax Officer has pointed out some delay in the posting of some entries but this delay cannot be taken to be any good piece of indication of any suppression of turnover. The Sales Tax Officer also seems to have suspected that the assessee might have maintained some fabricated or cooked up cash memos. But this suspicion does not seem to be well supported by any satisfactory evidence. In the circumstances I direct that the assessee's book figures should be accepted for the purpose of assessment. The order of assessment should be modified accordingly.

In due course, a fresh assessment order was passed by the assessing authority. The assessing authority enhanced the gross turnover as revealed by the books of account by 150 per cent. After making certain deductions the total tax payable and the penalty were calculated. The dealer appealed against this assessment order and the appellate authority dismissed the appeal, with slight modifications. The book figures were enhanced by 100 per cent. instead of 150 per cent., as was done by the assessing authority. Thereafter the dealer went up to the Tribunal in revision and by order dated the 18th December, 1965, the revision was allowed in p]

3. The points which have arisen at this stage were agitated before the Tribunal thus : It was contended that after the order of remand made by the Deputy Commissioner on the 30th May, 1964, the assessing authority was bound to pass assessment order on the turnover found in the books of account and it was not justified in reopening the matter and proceeding to assess on a higher turnover.

The Tribunal held that the assessing authority was justified, in the circumstances of the case, in taking action u/s 18(1) of the Bihar Sales Tax Act, 1959. It was held that the earlier appellate order of the year 1964 was no bar to the assessing authority to reopen the assessment, when it was satisfied that reasonable grounds existed for believing that the turnover of a registered dealer in respect of any period had, for any reason, escaped assessment. The second contention raised was that the assessing authority and the appellate authority had acted illegally in overlooking that Section 18(1) of the Act contemplated assessment in respect of the actual amount discovered as suppressed or having escaped assessment. It was urged that the provision of Section 18 of the Act did not clothe the assessing authority with jurisdiction to make best of judgment assessment. The Tribunal rejected this contention holding that when a proceeding was initiated u/s 18(1) of the Act, Section 16(2)(b) read with Sub-section (3) of that Section provided a machinery for completing the assessment after issue of, notice u/s 16(2)(a) of the Act. In these circumstances, the two questions, quoted above, have been referred to this court.

4. Sri Kanhaiya Prasad Verma No. 2 has contended, in respect of question No. (1), that, when the Deputy Commissioner of Commercial Taxes had passed his order dated the 30th May, 1964, the relevant portion of which has been quoted above, the assessing authority had no jurisdiction to pass the assessment order after remand on the 20th August, 1964, except on the book figures of the assessee's books. It is contended that unless the order of the Deputy Commissioner dated the 30th May, 1964, was varied by an appropriate authority, the directions given by that order had to be complied with and no other course was open for reassessment. I do not think that there is any validity in this contention. As stated above, certain books of account were seized after the original order of assessment was passed on the 4th July, 1963, and, therefore, the assessing authority was justified in taking action u/s 18(1) of the Act. The prescribed authority was satisfied that reasonable ground existed for concluding that the turnover in respect of the period 1962-63 had escaped assessment and, therefore, there was no bar in taking recourse to Section 18 of the Bihar Sales Tax Act, 1959. The answer to the first question referred by the Tribunal must be against the assessee. That is to say, the remand assessment order was legal and valid.

5. In connection with the second question referred to this court, learned counsel for the assessee has contended that, even if it was open to the assessing authority to take recourse to Section 18 of the Act, in the circumstances of the case, the said authority had no power to reassess the turnover of the said period, to the best of his judgment, within the meaning of Section 16(3) of the Act. It is urged that the assessing authority could assess the tax due, only on the turnover which had escaped assessment u/s 16(3) at the most. According to the learned counsel, only that part of the turnover which could be ascertained from the seized books could have been assessed to tax on the principle of escaped assessment. On this point, Sri Sarwar Ali appearing for the State of Bihar has

contended that the assessing authority was right in taking recourse to Section 16 of the Act, in proceeding to reassess the turnover of the period 1962-63 u/s 18 of the Act. Learned counsel for the parties have referred to certain decisions of which a Full Bench decision of the Madras High Court in the case of P.S. Subramaniam Chettiar and Sons v. Joint Commercial Tax Officer III, Dindigul [1966] 18 S.T.C. 357 is the latest and it has dealt with some earlier decisions mentioned therein. Sri Verma has relied upon this decision on behalf of the assessee, whereas Sri Sarwar Ali has made an attempt to distinguish the case from the instant case. According to Sri Sarwar Ali the view expressed in the decisions not followed by the Full Bench of the Madras High Court lays down the true test in any event. In my opinion, the Full Bench decision of the Madras High Court is clearly distinguishable, apart from the fact that the decision was based on the legislative history of the law on this matter in the State of Madras. The following observations of the learned Judges of the Madras High Court will illustrate the point:

Evidently the framers of Section 16, as it stands today, intended that such a power need not be given to the assessing authority and that is why, as we are inclined to think, the words in Tax Rule 17 under Act 1939, which, as we said, is the predecessor of Section 16, namely "determine the turnover by best judgment", have been omitted in Section 16(1).

It seems that the Bihar Act of 1959 includes "best of judgment" assessment in a proceeding u/s 18 of the Act. According to that Section the prescribed authority has to serve on the dealer a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 16 and proceed to assess or reassess the amount of tax due from the dealer in respect of a turnover which is believed to have escaped assessment. According to Section 18 itself, in a proceeding under that Section the provisions of the Act shall, so far as may be, apply accordingly as if a notice u/s 18(1) was a notice u/s 16(2), and if for assessment or reassessment of an escaped turnover all the provisions of the Act apply so far as may be, then there is no reason why Section 16(3) will not be attracted to the assessment or reassessment. The corresponding Section mentioned in the Full Bench decision of the Madras High Court with respect to assessment of escaped turnover is quite different from Section 18 of the Bihar Sales Tax Act, 1959. In Section 16 of the Madras Act, mentioned in the judgment, there is no reference to any notice u/s 12 of the Act, which appears to be the Section for arriving at "best of judgment" assessment. On the other hand, Section 18 of the Bihar Act states that the turnover of a registered dealer in respect of any period, escaping assessment, may be assessed or reassessed by the prescribed authority, after giving the assessee a notice containing the requirements mentioned in Section 16(2) of the Act. For comparison, the relevant provisions of the Bihar Sales Tax Act (No. 19 of 1959) are quoted at this stage.

Section 16. "Assessment of tax.-(1) If the prescribed authority is satisfied

without requiring the presence of, or the production of accounts and other evidence by, the registered dealer, that the returns furnished by such dealer in respect of any period are correct and complete, the prescribed authority shall assess the amount of tax due from the dealer on the basis of such returns.

(2) (a) If the prescribed authority is not satisfied, without requiring the presence of, or the production of accounts and other evidence by, the registered dealer that the returns furnished by such dealer in respect of any period are correct and complete, the prescribed authority shall serve on such dealer a notice in the prescribed manner requiring him on a date and a time and place to be specified therein, either to attend in person or through an authorised representative or to produce or to cause to be produced any accounts and other evidence on which such dealer may rely in support of such returns.

(b) On the day specified in the notice or as soon thereafter as may be, the prescribed authority shall, after examining the accounts and other evidence produced by the dealer and such other evidence as the prescribed authority may, by notice in writing, require on specified points, assess the amount of tax due from the dealer.

(3) If a registered dealer, having furnished returns in respect of a period, fails to comply with all the terms of the notice under Sub-section (2) or if the accounts and other evidence produced by him are, in the opinion of the prescribed authority, incorrect, incomplete or unreliable, either wholly or partly, the said authority shall assess, to the best of its judgment, the amount of tax due from the dealer.

Section 18. "Turnover of registered dealer escaping assessment.-(1) If upon information which has come into his possession, the prescribed authority is satisfied that reasonable grounds exist to believe that any turnover of a registered dealer in respect of any period has, for any reason, escaped assessment or any turnover of any such dealer or a dealer assessed under Sub-section (5) of Section 16 has been under-assessed or assessed at a rate lower than that which was correctly applicable or any deductions therefrom have been wrongly made, the prescribed authority may, subject to such rules as may be made by the State Government under this Act, and

(a) within eight years of the expiry of such period, where the said authority has reasons to believe that the dealer has concealed, omitted or failed to disclose fully the particulars of such turnover or has furnished incorrect particulars of such turnover and thereby returned figures below the real amount,

(b) within six years of the expiry of such period in any other case, serve on the dealer a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 16 and proceed to assess or reassess, the amount of tax due from the dealer in respect of such turnover ; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice under this Sub-section was a notice under Sub-section (2) of Section 16 :

Provided that the amount of tax shall be assessed or reassessed after allowing such deductions as were permissible during the said period and at rates at which it would have been assessed had the turnover not escaped assessment or full assessment, as the case may be.

Explanation.-Production before the prescribed authority of accounts, registers or documents from which material facts could, with due diligence, have been discovered by the said authority, will not necessarily amount to full disclosure within the meaning of this Section.

In my opinion, it-is implicit in Section 18 of the Bihar Act that, recourse to Section 16(3) can be taken by the prescribed authority in making assessment or reassessment. It may be remembered that the original assessment made by the assessment order on the 4th July, 1963, had been obliterated by the appellate order passed on the 30th May, 1964, and the case had been remanded for fresh assessment and, therefore, in my opinion, there was no bar to a fresh assessment for the assessment year 1962-63, as a whole. It must follow that the answer to the second question referred to this court must also be against the assessee. That is to say, the provisions of Section 18(1) of the Act include power to assess escaped turnover to the best of judgment.

6. The two questions, quoted above, are answered accordingly. There will be no order as to costs.

B.N. Jha, J.

7. I agree.