
(1970) 02 MAD CK 0026

In the Madras High Court

Case No : Tax Case No. 253 of 1966 and Appeal No. 14 of 1966

M.K. Subramania Pillai

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 11-02-1970

Acts Referred:

Citation : (1971) 27 STC 260

Hon'ble Judges : Ramaprasada Rao, J;Ramanujam, J

Bench : Division Bench

Advocate : P. Veeraraghavan, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—This appeal is without any substance. One Subramania Pillai, who claims that he was an agriculturist owning about

nine acres of nanja lands, was assessed on the best of judgment formula on the ground that he was a dealer in foodgrains, and by the order of the

assessing authority, a turnover of rupees one lakh was brought to tax and the consequential penalty was imposed. In fact, the best judgment

assessment was invoked because of the recovery of certain incriminating slips from the assessee when he was in a third party's rice mill which was

being searched at or about that time. An appeal to the Appellate Assistant Commissioner by the assessee was successful; the Appellate Assistant

Commissioner without examining the incriminating material, but after hearing the representative of the assessee as also the Special Deputy

Commercial Tax Officer (Detection) who was responsible for the seizure of the slips and after discussing with the assessing authority, reversed the

order of assessment and cancelled it. The Board in exercise of its powers of revision, gave a notice dated 10th May, 1966, calling upon the assessee to present himself before it and to explain as to why the Appellate Assistant Commissioner's order referred to above be not set aside and the order of the assessing officer be restored. He was given an opportunity to file a written statement objecting to the proposal as made by the Board; and he was also given an opportunity of being heard in person or through his representative. The Board fixed a date for hearing and after giving the assessee an opportunity to examine the material seized from him, set aside the order of the Appellate Assistant Commissioner and restored the order of the assessing authority. Whilst doing so, they reduced the penalty to Rs. 985 from Rs. 1,500.

2. The case of the assessee before us is that the slips recovered from him do not disclose ex facie that he was a dealer in foodgrains and, if at all, it reflected his sporadic dealings with his own people and such a sale of paddy or rice as the case may be which was mostly occasional cannot be treated and characterised as a regular dealing of a businessman in the course of his normal business activity. His further contention is that the slips which were recovered were not effectively inspected by him prior to the date when the Board heard the revision petition and therefore there has been a failure of the principles of natural justice. The third contention which is mostly factual rests upon the investigation of the slips and the interpretation placed on them by the learned counsel for the assessee. He would say that the overall picture one gains from looking into those slips is that the slips are innocuous and they represent in the main, certain money dealings which the assessee had with others ; even otherwise, such slips could be explained by evidence aliunde to the effect that the bags referred to in such slips, whether referable to paddy or rice, belong to third parties and they came to be written in the slips by him because he was assisting his neighbouring agriculturists by marketing them, securing the moneys as a result of sale of such a produce and by entering such collections in the said slips.

3. So far as the second contention is concerned, we are not impressed that the appellant did not have any effective opportunity to put forward his present version of the slips. His case before the assessing authority as well as the Board of Revenue was that he was not a dealer in foodgrains. As

a matter of fact, from the record it is found that the assessing authority was prepared to furnish certified copies of the incriminating slips discovered, but the assessee did not avail of that opportunity. It is significant that the assessee never put forward the case that the slips dealt with concerned themselves with his money dealings or the other version that it reflected the casual social service undertaken by the assessee to his neighbouring agriculturists to market their produce, collect moneys therefore from third parties and transmit them in turn to the legitimate owner of the produce.

Such a theory is put forward for the first time orally by the learned counsel appearing before us. The other grievance of the assessee is that he was not given an effective opportunity to peruse the slips and explain them. We have already touched on this aspect when we referred to the show cause notice issued by the Board which called upon the assessee to file his objections and let in oral and documentary evidence in support of his objections, if any. The assessee, on the other hand, did not call for a special inspection of the slips as he desired before the assessing officer and did not even take certified copies of the same even though such a course was made available to him, but was satisfied with a perusal of such slips before the Board heard the revision petition. As a matter of fact, the impugned order of the Board discloses that the authorised representative was permitted during the hearing to peruse the slips and the accounts, and he was not able to challenge the correctness of these figures. We are not therefore satisfied that this is a case where the principles of natural justice, in any manner, were violated. An opportunity was given to the assessee to explain the slips either by inspecting them or by taking certified copies of such incriminating materials. He had the liberty to adduce oral and documentary evidence to contradict the conclusions which the assessing authority purported to make on a perusal of such slips. If really his case is true that a major portion of such slips dealt with his alleged money dealings with third parties and the other part was unconnected with the paddy raised on his own land, it would not have been difficult for the assessee to let in documentary evidence or at least oral evidence to substantiate the same either before the assessing officer or the Board of Revenue. On the other hand, in the statement which he gave to the enquiring officer in the first instance he never whispered about such money dealings with third parties or the assessee being the custodian of the produce raised by third

parties and which he was dealing on their behalf. We have no hesitation in rejecting the belated and unexplained explanation of the assessee

through his counsel before us, which apparently is pressed into service in order to secure another opportunity to explain his conduct.

4. Learned counsel for the assessee very strongly urges that this is a case in which he should be given an opportunity once more to enable him to

prove his case as spoken to by him before us, though it was not referred to in that way at any time before. We do not think that this is necessary or

called for while we exercise jurisdiction u/s 37 of the Madras General Sales Tax Act, 1959. Though this court is entitled to look into findings of

fact and correct them, if they are wrong, yet in a case like this where the assessee failed to assist the Tribunals below or indeed did not help

himself, this court in exercising its jurisdiction u/s 37, cannot be of any assistance so that the assessee could reopen the entire conduct of the case

throwing new light which was never thought of nor projected at any time before.

5. The Board rejected every one of the contentions of the assessee and found that having regard to the incriminating materials discovered from the

assessee himself, he should be considered and deemed to be a dealer in food-grains for the particular year in question and that he sold rice to

parties as is seen from the entries made in the slips recovered and that the estimated turnover was not in any way excessive. The Board also found

that the penalty could be reduced to Rs. 985. All such conclusions on the contentions raised do not raise any question of law and certainly do not

call for an interference. Even though they are findings on facts, they appear to be reasonable. The appeal is dismissed. There will be no order as to

costs.