
(1977) 05 KL CK 0005
In the High Court Of Kerala
Case No : T.R.C. No. 6 of 1975

M.O. John

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 23-05-1977

Acts Referred:

Citation : (1977) 40 STC 134

Hon'ble Judges : V. Balakrishna Eradi, J;T. Kochu Thommen, J

Bench : Division Bench

Advocate : Chacko George and Charles George, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T. Kochu Thommen, J.—The question arising for our consideration in this tax revision case is:

Whether, on the facts and in the circumstances of the case, the addition of Rs. 93,333 to the turnover in foodgrains is legally correct ?

2. The assessee is a dealer in foodgrains and other articles. He returned a taxable turnover of Rs. 98,638.77 for the assessment year 1967-68. The Sales Tax Officer rejected his accounts in view of an unexplained investment of Rs. 10,000 and a credit of Rs. 4,000 which stood in the name of his deceased mother. These sums had been treated by the Income Tax Officer as income falling under the head "other sources" in the assessment proceedings under the Central Income Tax Act for the relevant assessment year. The total sum of Rs. 14,000 was treated by the Sales Tax Officer as profit from undisclosed transactions and the turnover of such transactions was estimated at Rs. 93,333. Adding this amount to the declared turnover, the officer determined the taxable turnover for the year at Rs. 1,91,972. The order was confirmed by the Appellate Assistant Commissioner, Trichur. On further appeal, the Kerala Sales Tax Appellate Tribunal, by a majority, held that the Sales Tax Officer was perfectly

justified in treating the aforesaid amount of Rs. 14,000 as profit arising from business dealings which had not been accounted for. Accordingly, the appeal was dismissed. The Tribunal in arriving at this conclusion, followed a decision of the Madhya Pradesh High Court in *Girdhari Lal Nannelal v. Sales Tax Commissioner*, M. P. [1971] 27 S.T.C. 316. It is significant to note that there is no evidence whatsoever to connect the sum of Rs. 14,000 with any business transaction which is exigible to tax under the Kerala General Sales Tax Act, 1963. Neither the Sales Tax Officer nor the appellate authorities could point out any nexus between this sum and a business transaction which is liable to sales tax. The Sales Tax Officer stated in his assessment order dated 5th February, 1969, that there was no direct evidence to show that the income was received from trade in foodgrains. He, however, pointed out :

But from the circumstances of the case it can safely be assumed that it could only be from foodgrains as the transactions are unverifiable and as the assessee could not openly do business in foodgrains on a large scale.

This, in our view, is at best a surmise for which there is no basis. Similarly, the Appellate Assistant Commissioner stated :

The appellant is a dealer in foodgrains and provisions and the only source from which he could have obtained income is from clandestine dealings in foodgrains during the period of control and there is nothing wrong in holding that the appellant would have suppressed his sales of foodgrains. In any case, the appellant has not succeeded in establishing that the income is not from dealings in foodgrains.

The Appellate Assistant Commissioner has thus come to a finding without any evidence and has wrongly placed the burden of proof upon the assessee.

3. The decision of the Madhya Pradesh High Court, which was followed by the Chairman of the Tribunal, was considered in appeal by the Supreme Court: see *Girdhari Lal Nannelal v. Sales Tax Commissioner*, M. P.[1977] 39 STC 33 (S.C.) In allowing the appeal, the Supreme Court stated:

In order to impose liability upon the appellant-firm for payment of sales tax by treating that amount as profits arising out of the undisclosed sales of the appellant, two things had to be established, (i) the amount of Rs. 10,000 was the income of the appellant-firm and not of Kanji Deosi or his wife and (ii) that the said amount represented profits from income realised as a result of transactions liable to sales tax and not from other sources. The onus to prove the above two ingredients was upon the department.

The Supreme Court has thus categorically laid down that the burden is upon the department to show that an unexplained credit entry represented profits from income realised as a result of transactions liable to sales tax. The court further pointed out that the approach of the Sales Tax Officer in regard to such unexplained amounts ought not to be the same as that of the Income Tax Officer.

The court said :

The approach which may be permissible for imposing liability for payment of Income Tax in respect of the unexplained acquisition of money may not hold good in sales tax cases. For the purpose of Income Tax it may in appropriate cases be permissible to treat unexplained acquisition of money by the assessee to be the assessee's income from undisclosed sources and assess him as such. As against that, for the purpose of levy of sales tax it would be necessary not only to show that the source of money has not been explained but also to show the existence of some material to indicate that the acquisition of money by the assessee has resulted from transactions liable to sales tax and not from other sources.

The burden of proving this, as pointed out earlier, is not on the assessee but on the department.

4. In the present case, there is no evidence whatever to connect the sum of Rs. 14,000 with a business transaction that is liable to sales tax. The Sales Tax Officer and the appellate authorities were, in our view, not justified in coming to the conclusion that the assessee had derived this amount from sale transactions which are liable to sales tax. Their conclusions are not supported by any evidence whatsoever and are, therefore, unsustainable in law. In the circumstances, we are of the view that the addition of Rs. 93,333 to the turnover in foodgrains in the assessee's business for the relevant assessment year is incorrect. Accordingly, the order of the Tribunal under revision is set aside and the tax revision case is allowed with costs. Counsel's fee Rs. 150.