

(1972) 07 AHC CK 0026

In the Allahabad High Court

Case No : C. Miscellaneous Writ No. 5956 of 1971

Mohammad Yakub and Sons

APPELLANT

Vs

The Sales Tax Officer

RESPONDENT

Date of Decision : 14-07-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147, 148

Citation : (1973) 30 STC 406

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. This is a petition under Article 226 of the Constitution. It seeks to quash two notices u/s 21 of the U.P. Sales Tax Act issued by the Sales Tax Officer for the assessment year 1966-67.

2. For this assessment year, the petitioner was assessed in respect of its turnover under the Central Sales Tax Act by an assessment order, a copy whereof is annexure A to the petition. By a separate order, the petitioner was also assessed to sales tax under the U.P. Sales Tax Act (annexure B). Subsequently, on 20th March, 1971, the petitioner received two notices dated 18th March, 1971, u/s 21 of the U.P. Sales Tax Act, seeking to reopen both the assessments, and requiring the petitioner to appear before the Sales Tax Officer on 30th March, 1971, with its books of account. It was stated in the notices that the Sales Tax Officer had reason to believe that some turnover liable to tax had escaped assessment.

3. The petitioner challenged the validity of these proceedings. He inspected the record, and found that the Sales Tax Officer had on the file recorded that from the Income Tax department, it had been orally learnt that in the enquiry conducted by that department, it was found that the petitioner had in that year

suppressed sales and purchases in a large measure, and so notices u/s 21 be issued against him.

4. The assessee has come to this court on the ground that the statement in the order does not constitute any valid material on the basis of which the Sales Tax Officer could have reason to believe in terms of Section 21 of the Act. Section 21 provides :

If the assessing authority has reason to believe that the whole or any part of the turnover of the dealer has, for any reason, escaped assessment to tax for any year, the assessing authority may, after issuing notice to the dealer, and making such enquiry, as may be necessary, assess or reassess him to tax.

5. Section 34 of the Income Tax Act, 1922, provided for a similar situation. Sub-section (1A) thereof authorised the Income Tax Officer to issue a similar notice if he had reason to believe that income, profits or gains chargeable to tax had escaped assessment. Dealing with Section 34(1 A), the Supreme Court in Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, , held that "there can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, guessing or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that, the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the court".

6. In that case, the reasons for the belief recorded by the Income Tax Officer were:

(1) The assessee who is or was at the relevant time a managing director in about a dozen limited companies along with "Oberois" is believed to have made some secret profits which were not offered for assessment.

(2) The assessee is believed to have received a sum of Rs. 22 lacs from "Oberois" and this sum or at least part of which represents income which has escaped assessment.

7. Dealing with these reasons, the Supreme Court observed:

There is no material or fact which has been stated in the reasons for starting proceedings in the present case on which any belief could be founded of the nature contemplated by Section 34(1 A). The so-called reasons are stated to be beliefs thus leading to an obvious self-contradiction.

8. This case is applicable on facts. In the present case, the Sales Tax Officer obtained some information from the Income Tax department that in the course of proceedings in that department, it came to light that the assessee had

suppressed some turnover. The Sales Tax Officer thus had in his possession only the belief or opinion of the Income Tax department. It has not been recorded in the order-sheet, nor has it been stated in the counter-affidavit that, till the time when the notices were issued by the Sales Tax Officer, any definite finding had been recorded even by the Income Tax department, that the assessee had suppressed turnover of any particular kind for this year. In the counter-affidavit, reliance has been placed upon the assessment order passed by the Income Tax Officer, which admittedly came into existence on 24th March, 1971. The Sales Tax Officer could possibly have no knowledge of that order on 18th March, 1971, when he issued the notices. Similarly, the statement in the counter-affidavit that a survey of the business premises of the company had been made by the Income Tax Inspector and he had found that the company had suppressed sales and purchases, seems to be an after-thought. No mention of these incidents was made in the order-sheet or the notices. It appears that this information was gathered from the assessment order passed subsequently. The things that the Sales Tax Officer knew prior to the issuance of the notices were, in our opinion, neither facts nor material. They were the opinion of the Income Tax department. Thus, the condition precedent, upon which the Sales Tax Officer could have initiated proceedings, was not in existence.

9. In *Chhugamal Rajpal Vs. S.P. Chaliha and Others*, , the position was that the Income Tax Officer recorded that certain creditors of the assessee were name-lenders and the loan transactions were bogus and, therefore, a proper investigation regarding the loans was necessary. The court observed that the Income Tax Officer had not set out any reason for coming to the conclusion that he had reason to believe of the kind mentioned in Section 148 of the Income Tax Act, 1961. The material that he had before him for issuing notice had not been mentioned. The facts contained in the communications, which had been received, were only vaguely referred to, and all that was said was that from those communications, it appeared that those creditors were name-lenders and the loan transactions were bogus. It was held that from the report of the Income Tax Officer, it was clear that he could not have any reason to believe that on account of the assessee's omission to disclose fully and truly all material facts, income chargeable to tax had escaped assessment. These observations are apposite and applicable to the facts of the present case.

10. Learned counsel appearing for the respondent relied upon *Allahabad, Milling Co. Pvt. Ltd. v. Sales Tax Officer* 1965 A.L.J. 1150. "There, it was observed that the phrase "has reason to believe" means that there is belief and that it is not arbitrary or capricious but based on or justified by facts. In that case, the Sales Tax Officer had received a detailed report from the Special Investigation Branch containing all the details of facts relating to suppression. Obviously, that report had facts and particulars, upon which the Sales Tax Officer could have reason to believe. This case is not applicable.

11. Reliance was also placed upon the decision of a Bench of this court in

Mahabir Prasad Jagdish Prasad v. Commissioner of Sales Tax [1971] 27 S.T.C. 337 . In that case, the Sales Tax Officer was informed by an expert that the consumption of electrical energy for the manufacture of oil by the assessee was disproportionately high. The question was whether upon its basis, the assessment could be reopened. The Bench sub-divided the question into two parts, firstly, whether the proceedings could validly be initiated u/s 21, and, secondly, whether this report constituted sufficient material for rejecting the assessee's account books. On the second question, the Bench held that this report could at best raise a strong suspicion, but suspicion, however strong it might be, could not take the place of positive material, on the basis of which the assessee's account books could be rejected. Having said that, it was really unnecessary for the Bench to have gone further to examine the question whether the proceedings were validly initiated. The observations on the first question are, in our opinion, obiter. Moreover, they are in a way contradictory to the finding that this report could form a strong suspicion but could not be a positive material. This decision is not helpful.

12. For the department, reliance was also placed upon Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, That was a case u/s 147 of the Income Tax Act, 1961. The Income Tax Officer informed the assessee that he was convinced from a perusal of the assessment record of the assessee, their partners and their individual Hindu undivided families, that the partners of the assessee had contrived to divert profits of the assessee to their respective Hindu undivided families and had tried to evade proper taxation; and, on that ground, he initiated proceedings for reopening the assessment. The Supreme Court held that this statement did not satisfy the requirement that the officer must have reason to believe that income chargeable to tax has escaped assessment. The proceedings were held to have been rightly quashed. This decision, in our opinion, helps the assessee rather than the department.

13. In our opinion, the Sales Tax Officer had no reason to believe that the whole or any part of the turnover of the dealer for the assessment year in question had escaped assessment. The notices issued by him are without jurisdiction.

14. The petition succeeds and is allowed with costs. The impugned notices are quashed.