
(2016) 07 AHC CK 0016

In the Allahabad High Court

Case No : Uttar Pradesh Trade Tax Act, 1948 - Section 4-A

M/s. Kartikey Ispat Pvt. Ltd.

APPELLANT

Vs

Commissioner of Trade

RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Trade Tax Revision No. 1468 of 2005

Citation : (2017) 4 ADJ 814

Hon'ble Judges : Yashwant Varma, J.

Bench : Single Bench

Advocate : Ashok kumar, Advocate, for the Applicant; S.C, for the Respondent

Final Decision : Allowed

Judgement

Yashwant Varma, J.—This revision is directed against an order of the Tribunal dated 23 February 2005 which has proceeded to modify an order of assessment made against the revisionist in the course of proceedings taken and relating to the assessment year 200102.

2. The case of the revisionist was that it was engaged in the manufacture and sale of iron steel sheets and was duly exempted under section 4A of the U.P. Trade Tax Act 1948. The assessing authority pursuant to a survey of the premises of the revisionist found as many as eight documents which did not appear to have been accounted for in the books. During the course of assessment, assessing authority proceeded to accept the explanation of the revisionist in respect of the material so gathered except in relation to Exhibit 4. As is described in the order of assessment, Exhibit 4 is stated to evidence a sale of 72 tons during the period 1 June 2001 to 19 July 2001. This sale valued at Rs. 4,58,327/was found by the assessing authority to have not been accounted for. The assessing authority accordingly preceded to take the basis of the sales and purchases alleged to have been effected in this two month period and which had admittedly not been accounted for as a ground for rejection of the books of accounts. Taking these very undisclosed sales as the basis, the assessing

authority proceeded to employ the same figures for the months of April, May, June and July. It accordingly proceeded to undertake a best judgment assessment and estimated the purchase for these four months to be Rs. 23,00,000 and the sale in these four months to be Rs. 25,00,000. Not finding success before the first appellate authority, the revisionist preferred a second appeal before the Tribunal which has proceeded to reduce the value of undisclosed purchases to Rs. 12,50,000/and sales to Rs. 11,50,000/.

3. What this Court however, finds is that the Tribunal has recorded a categorical finding that the act of the assessing authority in proceeding to estimate undisclosed turnover of sales and purchases for four months to be wholly unjustifiable. It records that admittedly the undisclosed purchase and sales were restricted to a period of two months. It therefore, held that the assessing authority was unjustified in enhancing the turnover of purchases and sale for a period of four months. It further took note of the fact that the assessing authority had not found any material which may have tended to indicate an intention to evade tax in any period after the date when the survey was undertaken namely on 27 July 2001. On this score also, the Tribunal found that the order of the assessing authority and its estimation of escaped purchases and sales was unsustainable. Having arrived at this conclusion, the Tribunal however, proceeded to reduce the escaped turnover of purchases and sales to Rs. 12,50,000/and Rs. 11,50,000/The order of the Tribunal is totally silent on the basis of which this was arrived at. The principles applicable to an assessment taken to the best of judgment are no longer *res integra*. One may in this connection only note what the Supreme Court held in *State of Kerala v. C. Velukutty* (1966) 60 ITR 239,

9. What is the scope of Section 12(2)(b) of the Act? The expression "to the best of his judgment" in the said clause is presumably borrowed from Section 23(4) of the Income Tax Act. The said expression in the Income Tax Act was subject of judicial scrutiny. The Privy Council in *CIT v. Laxminarain Badridas* [1937 5 ITR 170, 180] has considered those words. Therein it observed:

"He (the assessing authority) 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, Their Lordships think, 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. In that sense, too, the assessment must be to some extent arbitrary."

The Privy Council, while recognizing that an assessment made by an officer to the best of his judgment involved some guess work, emphasised that he must exercise his judgment after taking into consideration the relevant material. The

view expressed by the Privy Council in the context of the Income Tax Act was followed when a similar question arose under the Sales Tax Act. A Division Bench of the Calcutta High Court in Jagadish Prosal Pannalal v. Member, Board of Revenue, West Bengal [1951 2 STC 27] confirmed the assessment made by the Sales Tax authorities, as in making the best judgment assessment the said authorities considered all the available materials and applied their mind and tried their best to come to a correct conclusion. So too, a Division Bench of the Patna High Court in Doma Sahu Kishun Lal Sao v. State of Bihar [1951 2 STC 37] refused to interfere with the best judgment assessment of a Sales Tax Officer as he took every relevant material into consideration, namely, the situation of the shop, the rush of the customers and the stock in the shop and also the estimate made by the Assistant Commissioners in the previous quarters.

10. Under Section 12(2)(b) of the Act, power is conferred on the assessing authority in the circumstances mentioned thereunder to assess the dealer to the best of his judgment. The limits of the power are implicit in the expression "best of his judgment". Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a Judge, but on settled and invariable principles of justice. Though there is an element of guess work in a "best judgment assessment", it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case. Though subsection (2) of Section 12 of the Act provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard for the available material.

4. The principles laid down find resonance in State of Orissa v. Maharaja Shri B.P. Singh Deo 2(1971) 3 SCC 52,

"4. Apart from coming to the conclusion that the materials placed before him by the assessee were not reliable, the Assistant Collector has given no reason for enhancing the assessment. His order does not disclose the basis on which he has enhanced the assessment. The mere fact that the material placed by the assessee before the assessing authorities is unreliable does not empower those authorities to make an arbitrary order. The power to levy assessment on the basis of best judgment is not an arbitrary power; it is an assessment on the basis of best judgment. In other words that assessment must be based on some relevant material. It is not a power that can be exercised under the sweetwill and pleasure of the concerned authorities. The scope of that power has been explained over and over again by this Court."

5. In the light of the law so laid down, it is clear that the order of the Tribunal is rendered unsustainable.

6. Accordingly, this revision shall stand allowed. The order of the Tribunal is hereby set aside and the matter is remanded to it for decision afresh and in light of the observations made herein above.