(1966) 09 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No''s. 1122, 1159, 1160 and 1161 of 1965

Murali Trading Co. APPELLANT

Vs

Joint Commercial Tax Officer RESPONDENT

Date of Decision : 20-09-1966

Acts Referred:

Citation : (1967) 19 STC 221

Hon'ble Judges : Anantanarayanan, C.J;Ramakrishnan, J

Bench : Division Bench

Advocate : V.K. Thiruvenkatachari, for K.C. Jacob and S.K.L. Ratan, for the Appellant; R. Srinivasan and Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Anantanarayanan, C.J.—We have considered the scope of these writ proceedings, and the facts with reference to which they have been

instituted. We think it is sufficient for us to observe that, in all these cases, the assessment has been primarily based upon an inference of escaped

or suppressed transactions of sale of soaps, liable to be taxed, on the circumstantial evidence of a number of collection entries in the cash accounts,

and certain slips kept by the employee of the firm in charge of cash.

2. Very briefly stated, the crux of the argument of learned counsel for the concerned firm (Sri Thiruvenkatachari) is that these inferences are not

warranted by the circumstantial evidence referred to above. His claim is that his client (assessee) undertook to explain everyone of these items

relied on, as relating to and explicable in terms of other items in the cash accounts, and not as constituting any evidence, in any sense, of

suppressed sales. Learned counsel argues further that there is no contention that there is evidence about other concealed purchases of soaps from

the main manufacturing firm, from which this firm has admittedly derived its entire stock.

3. Had we been proceeding into this matter on the merits, a great deal more might have to be said ; but, in view of one outstanding fact, we think

that these proceedings can be disposed of within a very brief compass. This outstanding fact is that we are satisfied that the principle of natural

justice, audi alteram partem was not substantially observed. It is not in dispute that on the 29th January, an explanation in writing was submitted by

the assessee-firm, regarding the inferences sought to be based on these entries of collections and slips noting cash balances, and that the actual

order of assessment was issued on 30th January. We have carefully perused that order, and we find in it very little or no evidence that the

explanation sought to be offered by the assessee-firm with regard to each one of these items, claimed by the firm to be based on the internal

evidence of the account entries themselves, was seriously and comprehensively considered by the assessing officer. It appears from the record that

certain prior interviews with occasions for oral submissions, preceded the written explanation, but, as far as the affidavit, counter-affidavit and the

reply affidavit go, it is a case of denial by the assessee-firm that at these interviews there was an adequate opportunity to explain these items, or

that any such explanation was duly considered by the assessing officer.

4. We may here record that learned counsel for the Government, with commendable fairness, conceded that, as the record stands, there is no

evidence that the explanation sought to be put forward by the assessee-firm in the detailed terms of the accounts, with regard to everyone of the

items relied on, was actually put forward during the prior interviews, and considered by the assessing officer, before the order of assessment was

made. In effect, therefore, the rule of audi alteram partem was not substantially observed. We need not emphasise that, where the inference of

suppressed sales is based almost exclusively on collection entries and on slips of entries, there is virtually no hearing where these are not put to the

assessee-firm as circumstantial evidence of suppression, and the firm is given no adequate opportunity to explain. Even the explanation in writing of

the 29th January, leaving alone whatever was explained at prior interviews, hardly appears to have received consideration judging from the internal

evidence of the order of assessment. On this ground alone, and without any reference whatever to the merits of the assessment, we are of the view

that the relevant assessments in these proceedings ought to be struck down.

5. Those assessments are for 1962-63 in W.P. No. 1160 of 1965 with penalty thereon (W.P. No. 1161 of 1965), for 1963-64 in W. P. No.

1122 of 1965 and a provisional assessment for 1964-65 in W. P. No. 1159 of 1965. All these are linked in a chain as consequential assessments

on the basic assessment, and everyone of them will have to be investigated in the light of the detailed explanations sought to be furnished by the

assessee.

6. We, therefore, direct that the writs would issue striking down the assessments and that the detailed explanations of the assessee now

supplemented by further detailed statements, should be taken up and considered, and the assessment carried through again in due compliance with

the requirements of law, and the principles of natural justice. The concerned assessee is directed to withdraw the appeals pending before the Sales

Tax Appellate Tribunal, in view of the allowance of the writs. Parties will bear their own costs.