(1969) 02 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 619, 637, 729 and 732 of 1964

N. Raja Pullaiah APPELLANT

Vs

Deputy Commercial Tax Officer and Another RESPONDENT

Date of Decision : 04-02-1969

Acts Referred:

Citation : AIR 1970 AP 125 : (1969) 1 APLJ 428 : (1969) 73 ITR 224 : (1969) 24 STC 90

Hon'ble Judges : Kumarayya, J;Kondaiah, J

Bench : Division Bench

Advocate : K. Venkataramaiah, for the Appellant; Principal Government Pleader, for the Respondent

Judgement

Kumarayya, J.—The common point for determination in all these writ petitions is whether the assessment made by the Deputy Commercial Tax Officer on the best judgment basis smacks of arbitrariness so that the assessment orders may be quashed.

2. It would appear that in all these cases provisional assessments were made for the year 1962-63 and the assessment amounts were also paid. At the time of final assessment, the Deputy Commercial Tax Officer, on a perusal of the account books submitted before him, came to the conclusion that they were not in order and could not be safely acted upon. He gave his reasons therefore which, according to the respondents, are cogent and valid. The account books being thus rejected, the only course left open to the taxing authority was to make assessment to the best of his judgment. Even this had to rest on some relevant dependable data and could not, in law, be arbitrary. The Deputy Commercial Tax Officer assessed the turnover on the basis of consumption of electricity. No test was conducted in that very mill to find out the rate of consumption of electricity for a definite quantity of seeds to be converted into oil. He rested his conclusion on the result of tests conducted in other mills. He determined the turnover on that basis and levied the tax thereon, of course, making allowance for defects in

mechanism, minor differences from rotary to rotary, quality of seeds and skill of the driver. These allowances were not made on actual proper checking or on reasonable calculative basis. As the resultant turnover had inflated the tax figure enormously, the petitioners went up in appeal. Under the provisions then in force the appeals could be heard and disposed of only on payment of the assessed tax. As the assessees were unable to pay the same, their appeals were dismissed for non-payment of taxes. Hence, they came to this court invoking writ jurisdiction.

3. The main complaint of the petitioners is that the method adopted by the taxing officer cannot afford a sure or reasonable basis for determination of the turnover. The consumption of electricity by itself cannot form a reliable test for determining the yield of oil. The yield depends upon various factors, viz., the quality of the seeds, the condition of the machine, the skill of the driver, the soundness of electric equipment, etc. There may be several other disturbing factors which affect the net yield of oil. The consumption of electricity itself is affected by various factors. That apart, the results of the tests carried on in other concerns or undertakings, which may not be similarly circumstanced for various reasons, cannot form a reasonable basis for determining the yield of the petitioners'' concerns. It is on these grounds that the assessments have been brought into question.

4. To our mind, there is force in the argument advanced by Mr. Venkataramaiah, learned counsel for the petitioners. There is no strong or valid reason why the authority did not carry out the test in the rotaries of the petitioners themselves. The fact that the meter is inconveniently placed is no ground against carrying on the experiment. It is pointed out to us that in like cases the Tribunal itself had set aside the assessments in view of the wide disparity in electricity consumption from mill to mill for the required quantity of oil yield. Be that what it may, it is plain knowing it for certain, that the turnover depends on various factors and circumstances peculiar to the rotaries concerned, the taxing authority rested their conclusions on the tests carried out in other rotaries. The basis furnished by tests conducted in other undertakings cannot be of much relevance for the purpose of these mills about which it cannot be said that they are similarly circumstanced in all respects. As the data relied upon by the assessing authorities, which is made the basis of best judgment assessment, thus smacks of arbitrariness, the best judgment assessment is liable to be set aside.

5. The orders are, therefore, quashed. It is, however, open to the authorities to proceed afresh in accordance with law.

6. In the result, these writ petitions are allowed. There will be no order as to costs.

