
(1974) 01 OHC CK 0010
In the Orissa High Court
Case No : S.J.C. No's. 264 and 265 of 1972

New Orissa Traders

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 18-01-1974

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(8), 24(1)

Citation : (1974) 40 CLT 614 : (1975) 35 STC 335

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : B. Agarwalla, for the Appellant; The Standing Counsel (S.T.), for the Respondent

Judgement

R.N. Misra, J.—At the instance of the assessee, the Member, Additional Sales Tax Tribunal, has stated the cases and referred the following questions u/s 24(1) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the "Act") for determination of this court :

(1) Whether the Sales Tax Officer, Intelligence Circle (Vigilance), has jurisdiction to assess the dealer of Sambalpur-I Circle without any order of transfer of files by the higher authorities and without any notice to the petitioner of such transfer of files ?

(2) Whether Notification No. 18109/CTB/52/62-F dated 27th April, 1962, confers territorial jurisdiction on the Sales Tax Officer, Intelligence Circle (Vigilance), to assess the petitioner, who is a registered dealer of another circle ?

(3) Whether, in an assessment u/s 12(8), the assessing officer is legally empowered to pass best judgment assessment and not to limit the enhancement to the quantum of escaped turnover only ?

(4) Whether, in the facts and circumstances of the case, there was violation of principles of natural justice in making the order of assessment ; if so, whether the Tribunal was justified to uphold the assessment ?

(5) Whether the bald enhancements of 20 per cent of the gross turnover in the year 1964-65, and 5 per cent for the year 1965-66, are not purely arbitrary, pure guess and illegal in the circumstances of the case and also discriminatory ?

2. The learned counsel for the assessee seeks leave of the court not to press questions Nos. (1), (2) and (4) saying that he reserves his right to challenge the assessments on those grounds by invoking the extraordinary jurisdiction of this court. In view of such prayer, we do not proceed to answer questions Nos. (1), (2) and (4). These references are according limited to questions Nos. (3) and (5) only.

3. These references relate to the assessments for the years 1964-65 and 1965-66. Assessment for the first year having already been made u/s 12(8) of the Act was reopened as the assessing officer found certain suppressions. Assessment for the second year was completed u/s 12(4) of the Act. The learned counsel for the assessee does not challenge the correctness of the finding relating to suppressions. According to him, however, the enhancement in the assessment u/s 12(8) of the Act was to be limited to the suppression detected and in this case the amount suppressed being only Rs. 500 during 1964-65, it was not open to the assessing officer to make any further additions. The next contention of the learned counsel is that the enhancement of 20 per cent of the gross turnover for the year 1964-65, as made by the assessing officer and ultimately upheld by the Additional Tribunal, and the initial enhancement of 20 per cent by the assessing officer, which was ultimately reduced to 5 per cent in second appeal for the year 1965-66, are arbitrary, vindictive and contrary to the accepted principles of best judgment assessment.

4. This court in several cases has already decided that there is no warrant in a best judgment assessment that the enhancement of the turnover has to be confined to the escaped turnover. The Supreme Court in a recent decision in the case of Commissioner of Sales Tax v. H. M. Esufali H. M. Abdulali [1973] 32 S.T.C. 77 has categorically ruled against the assessee's contention. Our answer to question No. (3) referred to above, therefore, shall be that

in an assessment u/s 12(8) of the Act, the assessing officer is not bound to limit the enhancement in the escaped turnover to the suppressions found.

5. Once the accounts are discarded, the assessing officer is obliged to complete the assessment according to the best of his judgment. In such an assessment, there is bound to be some amount of arbitrariness and guesswork. In a regular assessment, the accounts of the assessee provide the basis. But when for defects in accounts, the books are rejected, that foundation is no more available. The assessing officer has, therefore, to work out a reasonable estimate. As long as the estimate has a nexus to the suppression detected, it is fair and not capricious and there is no scope for interference. The Supreme Court has indicated in the case referred to above that the assessee cannot require the assessing officer to support his estimate by evidence. As rightly indicated in the said decision, if the

estimate is to be supported it ceases to be a best judgment assessment. In every best judgment assessment, there is bound to be some amount of arbitrariness and guess-work. But the assessing officer has the obligation to work out an honest estimate and in a manner which is not capricious, dishonest or vindictive. He has obviously to take the assessee's past records, local reputation, opportunities of making clandestine transactions, limitation of the business, nature of the business carried on, et cetera, into account. When a best judgment assessment is completed taking these aspects into consideration, and a nexus is maintained between the estimate and the escaped turnover, there is no scope for any interference. The estimate is required to be according to the best judgment of the assessing officer and the High Court in a reference would, therefore, have no jurisdiction to substitute its best judgment for that of the statutory authority. But, where there is caprice or arbitrariness in making the assessment according to the best of judgment, the same becomes vulnerable. A Bench of this Court in the case of *Allied Dealers v. State of Orissa* [1972] 29 S.T.C. 484, relying upon an earlier decision of the Supreme Court has indicated the limitations, which, in our view, are appropriate.

6. While reassessing for the year 1964-65, the assessing officer directed that there shall be an enhancement of 20 per cent both in the gross turnover as also the taxable turnover. Consequently, the estimated suppressed gross turnover has come to Rs. 11,44,237.52 and the taxable turnover has been determined at Rs. 2,86,794.45. From the transactions carried on by the dealer, it appears that about three-fourth of his turnover is not subjected to tax. That proportion has also been maintained at the stage of the assessment u/s 12(8) of the Act. The suppression found for the year is Rs. 500. The learned counsel for the assessee contends that there can be no nexus between the suppression detected and the estimated turnover when the total suppression during the year is Rs. 500 and the estimated gross turnover is fixed at about rupees eleven and half lakhs. In *Esufali's case* [1973] 82 S.T.C. 77 (S.C.), the Supreme Court found the estimate to be reasonable and not capricious because on the footing of the total suppression detected in respect of 19 days, the assessing officer had made an addition for the whole year by multiplying 1/19th of the suppressed turnover by 365 times. That seems to have provided the nexus. In the case before us, even if the daily suppression is taken at Rs. 500 and it is assumed that the dealer had made a suppression to that extent every day, the total gross turnover would not be in excess of Rs. 1,80,000. There may be business holidays, opportunity for suppression may not be there every day and, therefore, if allowances are made on these grounds, it may be reasonable to assume that such suppressions may have been on 300 days during the year. In that event, the suppressed gross turnover would be in the range of about rupees one and half lakhs. It may be reasonable to assume that suppressions have mostly been in respect of taxable transactions and, therefore, there may not be any warrant to hold that taxable turnover must be fixed at one-fourth of the said estimated gross turnover keeping the normal proportion in view. If the suppressed taxable turnover is

estimated at fifty per cent of the estimated gross turnover, it may not be unreasonable. These we have indicated only as guidelines because we do not intend to make an estimate ourselves. In the next year also a similar procedure is open to be followed.

7. Our answer to the second question, therefore, would be :

The enhancement of the gross and taxable turnovers by 20 per cent for the year 1964-65 and by 5 per cent for the year 1965-66 in the instant case seem to be arbitrary and unwarranted.

8. It is for the Tribunal now, keeping in view the facts and circumstances of the case, as also taking the law into consideration, to determine as to what should be the appropriate estimates of gross and taxable turnovers for the two years. We make no order as to costs.

B.K. Ray, J.

9. I agree.