

(2010) 01 P&H CK 0103

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 4 of 2000

Om Parkash Krishan Lal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 31

Citation : (2010) 4 RCR(Criminal) 350

Hon'ble Judges : Mehinder Singh Sullar, J and Ashutosh Mohunta, J

Judgement

ASHUTOSH MOHUNTA, J.

1 The Sales Tax Tribunal, Haryana, vide order dated 27.12.1999 has referred the following questions of law for consideration and opinion of this court:

i) Whether on the facts and circumstances of the case the tribunal was right in law in upholding the rejection of books of accounts and consequent best judgment assessment in reassessment proceedings under Sec.31 of the Haryana General Sales Tax Act, 1973 ?

ii) Whether declaration of income before the Income Tax authorities under the Income Tax Act, constituted "definite information" for the purpose of reassessment under the Haryana General Sales Tax Act, 1973 ?

iii) Whether reassessment framed by the assessing Authority was within the period of limitation provided under Section 31 of the Haryana General Sales Tax Act, 1973 ?

2 Brief facts of the case are that the business premises of the appellant were inspected by the Income Tax authority, both at Jagadhri and delhi on 28.1.1987. During the course of inspection, the income tax authorities impounded certain documents containing incriminating material. On the basis of the material contained in those documents namely "chetan Note Book", the Income tax Officer came to the conclusion that the appellant has suppressed sales amounting to Rs.6,18,54,925/. Accordingly, the assessee firm was brought to

income tax on the basis of average gross profit for the past three years, both in respect of head office at Jagadari and branch office at Delhi.

3 Upon receipt of this information relating to suppression of sales by the assessee firm from the income tax authorities, the Assessing Authority reopened the case for assessment for the year 1985-86 under Sec.31 of the Haryana General Sales Tax Act, 1956. Thus, an additional demand of Rs.46,39,165/- was raised which was challenged in appeal before the Appellate authority, who vide its order dated 12.10.1990 remanded the case with clear observations that the Assessing Authority should take fresh decision after making proper enquiries and confronting the appellant with the incriminating material in accordance with law. Accordingly, the Assessing Authority after giving the assessee a reasonable opportunity of being heard considered the case afresh on merits and reduced the quantum of additional demand to Rs.33,93,618/- by an order dated 21.9.1992. Against the order dated 21.9.1992 passed by the Assessing Authority under the reassessment proceedings, the assessee preferred an appeal before the Joint Excise and Taxation Commissioner (A) who vide order dated 26.3.1993 dismissed the same on merits. Still aggrieved, the assessee filed an appeal against the order dated 26.3.1993 before the learned Tribunal, which was dismissed, vide its order dated 17.8.1994. The assessee then filed an application for review of the order dated 17.8.1994 passed by the Member Sales Tax Tribunal Haryana which too failed on the ground of maintainability, vide an order dated 8.2.1995. It is pertinent to mention here that the appeals filed by the assessee were primarily dismissed on the ground that the firm never approached the courts with clean hands and it failed to produce the photocopies of account books despite various opportunities and therefore, the judgments cited by the assessee firm could not be relied upon.

4 Shri K. L. Goel, learned counsel for the assessee, argued that once the assessment proceedings were set aside by the first appellate authority by the Joint Excise and Taxation Commissioner (A) vide order dated 12.10.1990 thereby remanding the case back for fresh determination, the Assessing authority could not reopen the proceedings and reassess the tax liability of the appellant pertaining to the year 1985-86, since the limitation period of more than three years had lapsed. According to the learned counsel for the assessee, this was so because remand of the case was done after setting aside the earlier order of assessment and the same would amount to institution of fresh assessment proceedings and could not be said to be proceedings held in continuation of the earlier assessment orders. The other arguments raised by the learned counsel for the appellant was that the chetan Note Books seized by the income tax authorities at the residence of one of the partners of the appellant firm could not be linked or attributed to the business of the appellant at Jagadari Head Office. At best, the incriminating note books could have been attributed to the Delhi Branch office and not to the head Office at Jagadari. The learned counsel for the appellant relied on *Girdhari Lal Nannelal Vs. The Sales Tax Commissioner M. P.* decided by the Hon'ble Apex Court. In this judgment, it was held by their

Lordships of the supreme Court that, ". . . The approach which may be permission for imposing liability for payment of incometax in respect of the unexplained acquisition of money may not hold good in sales tax cases. For the purpose of income tax it may in appropriate cases be permissible to treat unexplained acquisition of money by the assessee to be the assessee's income from undisclosed sources and assess him as such. As against that, for the purpose of levy of sales tax it would be necessary not only to show that the source of money has not been explained but also to show the existence of some material to indicate that the acquisition of money by the assessee has resulted from transactions liable to sales tax and not from other sources. Further, whereas in a case like the present a credit entry in respect of Rs.10,000/ stands in the name of the wife of the partner, no presumption arises that the said amount represents the income of the firm and not of the partner or his wife. The fact that neither the assessee firm nor its partner or his wife adduced satisfactory material to show the source of that money would not, in the absence of anything more, lead to the inference that the said sum represents the income of the firm accruing from undisclosed sale transactions. It was, in our opinion, necessary to produce more material in order to connect the amount of Rs.10,000/ with the income of the assessee firm as a result of sales. In the absence of such material, the mere absence of explanation regarding the source of Rs.10,000/ would not justify the conclusion that the sum in dispute represents profits of the firm derived from undisclosed sales. "

5 This judgment rather helps the cause of the State since the seized "chetan Note Books" clearly indicated that there was a material "suppression of sales" pertaining to the business transactions of the assessee. Not only this, the assessee in its confessional statement clearly confessed before the Income Tax Authorities that there was a "suppression of sales" pertaining to its business transactions. The Courts below have also consistently held that the assessee firm did not approach the Courts with clean hands.

6 Learned counsel also relied on P. C. Ittymathew and Sons Vs. Deputy commissioner of Sales Tax (Law) Sales Tax Cases, Volume 121 of 2001. In this case it has been held by the Hon"ble Apex Court that,

". . . His conclusion was sustained by the first appellate authority but set aside by the Tribunal. The tribunal relied upon this Court's decision in Girdhari Lal Nannelal V/s. Sales tax Commissioner, Madhya Pradesh (1977) 39 STC 30, wherein it was held that it was for the sales tax authorities to show the existence of material to indicate that the acquisition of money by the assessee had come from transactions liable to sales tax and not from other sources. The Tribunal found that the sales tax authorities in the present case had not established that the income disclosed by the assessee had been derived from business transactions liable to sales tax. The presumption of the assessing authority in this behalf was belied by the fact that the incometax authorities had accepted the sales turnover declared by the assessee. "

7 But this judgment does not apply to the present case, since the income tax authorities seized the "chetan Note Books" which revealed business transactions of the appellant firm pertaining to business, both at Jagadari head Office as well as Branch Office at Delhi. Further more, it has been noticed by the Assessing Authority at page 4 of the reassessment order in the reassessment proceedings that the appellant suffered a confessional statement admitting the suppression of sales before the income tax authorities. Learned counsel has also placed reliance on State of Kerala Vs. C. Velukutty 1966 Sales tax Cases, Vol. XVII, page 465. In this judgment it has been held by the hon"ble Apex Court as under:

". . . Be that as it may, the maintenance of secret accounts in the branch office cannot be assumed in the circumstances of the case. That apart, the maintenance of secret accounts in the branch office might lead to an inference that the accounts disclosed did not comprehend all the transactions of the branch office. But that does not establish or even probabilise the finding that 135 per cent or 200 per cent or 500 per cent of the disclosed turnover was suppressed. That could have been ascertained from other materials. The branch office had dealings with other customers. Their names were disclosed in the accounts. The accounts of those customers or their statements could have afforded a basis for the best judgment assessment. There must also have been other surrounding circumstances, such as those mentioned in the Privy Council's decision cited supra. But in this case there was no material before the assessing authority relevant to the assessment and the impugned assessments were arbitrarily made by applying a ratio between disclosed and concealed turnover in one shop to another shop of the assessee. it was only a capricious surmise unsupported by any relevant material. The High court, therefore, rightly set aside the orders of the Tribunal. Nor can we accede to the request of the learned counsel for the State to remand the matter to the Tribunal for fresh disposal. The Sales Tax Authority had every opportunity to base its judgment on relevant material; but it did not do so. The Department persisted all through the hierarchy of tribunals to sustain the impugned assessments. The High Court, having regard to the circumstances of the case, refused to give the Department another opportunity. We do not think we are justified to take a different view. "

8 This case is also not applicable due to the fact that the seized "chetan Note Books" were not secret accounts but rather the appellant suffered a confessional statement as per the finding of the reassessing authority. In fact, it is a settled law that he who seeks equity must do equity and in this case the assessee deliberately failed to produce the copies of account books despite availing several opportunities. Learned counsel also cited the judgment in Satyanarayana Murthy and Sons and another Vs. State of A. P. 57 STC 274. In this case it has also been held by the Hon"ble high Court of Andhra Pradesh at Hyderabad that,

". . . The said disclosure in order to attract the sales tax, the department is obligated to establish by evidence that it pertains to the sales of the goods purchased and that too during that assessment year. None of these two has been

established, and therefore, it would not be within the purview of the Revenue to add this item to the total turnover of the assessee. "

9 This case too does not cover the case of the appellant, since the incriminating material was put to the appellant by the Assessing Authority for adducing any evidence/defence but the appellant failed to do so. In fact, the appellant has suffered a confessional statement admitting suppression of the sales turnover for the year 198586. Reliance has been placed on the judgment in Om Industries, Charkhi Dadri, Bhiwani Vs. State of Haryana (2005) 25 PHT 451 (Pandh).

10 In this case it was held by the Hon"ble Punjab and Haryana High court in para 13 as follows:

". . . In these circumstances, we do not find any justification for the Revisional Authority for having exercised its revisional powers for setting aside the order dated 30.5.1987, as a matter of fact, the observation contained in revisional order dated 26.9.1991 are totally contrary to the pleas raised by the dealerfirm which had been duly accepted by the Appellate Authority while passing order dated 14.2.1986. It is not in dispute that the aforesaid appellate order dated 14.2.1986 has never been challenged by the department and as such had attained finality. While examining the correctness of order dated 30.5.1987 it was not open to the revisional authority to question the validity of the aforesaid order dated 14.2.1986. "

This case too does not apply to the facts of the present case as the order of the Assessing Authority or the first appellate authority had not attained the finality but rather was in continuation of its earlier orders and the appeals were filed within the prescribed period of limitation which is a consistent finding of fact arrived at by the Courts below. Lastly, reliance was placed on commissioner of Income Tax (Central) Calcutta Vs. Daulat Ram Rawatmull 87 itr, 1973 (S. C.) page 439.

11 In this case it has also been held by the Hon"ble Supreme Court as under:

" (vii) That both as regards the source as well as the destination of the amount, the material on record gave no support to the claim of the department. There should be some direct nexus between the conclusion of fact arrived at by the authority concerned and the primary facts upon which that conclusion is based. The use of extraneous and irrelevant material in arriving at that conclusion would vitiate the conclusion of fact because it is difficult to predicate as to what extent the extraneous and irrelevant material has influenced the authority in arriving at the conclusion of fact. Findings on questions of pure fact arrived at by the Tribunal are not to be disturbed by the High Court on a reference unless it appears that there was no evidence before the Tribunal upon which they, as reasonable men, could come to the conclusion to which they have come; and this is so even though the High Court would on the evidence have come to a conclusion entirely different from that of the Tribunal. In other words, such a finding can be reviewed only on the ground that there is no evidence to support

it or that it is perverse. Further, when a conclusion has been reached on an appreciation of a number of facts, whether that is sound or not must be determined, not by considering the weight to be attached to each single fact in isolation, but by assessing the cumulative effect of all the facts in their setting as a whole. When a court of fact acts on material partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises. Likewise, if the court of fact bases its decision partly on conjecture, surmises and suspicious and partly on evidence, in such a situation an issue of law arises. "

12 The present judgment rather goes against the appellant, since the evidence relied upon by the Sale Tax authorities for holding the appellant liable to pay tax due to suppression of sales turnover was based on the seizure of the Chetan Note Books which belong to the appellant firm and were found in their possession. In fact, the appellant himself suffered a confessional statement admitting suppression of sales pertaining to business transactions of the assessment year 1985-86.

13 On the other hand, the learned counsel for the state argued that the High Court while considering the questions for determination on reference must limit its scope to the issues raised before it in the reference. Findings of fact cannot be reopened under the reference jurisdiction and that the High Court must confine itself to decide the referred questions only. Failure to do so would amount to converting the reference into an appeal which is not permissible as per law. It was argued that since the main thrust of the counsel for the appellant was on the issue pertaining to the period of limitation under Sec.31 of the Haryana General Sales Tax Act, 1973, the same has already been decided in favour of the respondent State and is a finding of fact arrived at by all the Courts below including the Tribunal. The Tribunal has categorically held that the reassessment proceedings were in continuation of the earlier order of assessment and are, therefore, not barred by section 31 (supra). With regard to the arguments of the counsel for the appellant that there is no evidence to link the seized Chetan Note Books to the business transactions of the appellant at Jagadari Head Office, the same are not tenable, since the appellant itself suffered a confessional statement as observed in the order dated 21.9.1992 passed by the Assessing Authority in the reassessment proceedings. The Ld. counsel for the State argued that in fact, the reassessment order had reduced the tax liability of the appellant from Rs.46,39,165/- to Rs.33,93,618/- which itself shows that the Assessing Authority upon remand had applied its mind and, therefore, there is no infirmity in the orders so passed. The appellant was given several opportunities to produce the said books during the assessment proceedings before the Assessing Authority but the same were never produced and, therefore, an adverse inference was correctly drawn against the assessee. It is a settled principle of law that account books have to be attributed to the place where the business is situated and

under these circumstances, the burden of proof squarely lied upon the appellant to prove his case which he failed to do so.

14 The learned State counsel further relied upon the judgment in case titled as M/s Joharmal Murlidhar and Co. Vs. Agricultural Income Tax Officer, assam and others 1970 (3) SCC 331, wherein it has been held that the Assessing officer must give proper reasons for his conclusion and that even a best judgment assessment has to be made on some rational basis. It was argued that in view of the ratio of the aforesaid judgments, the burden was on the assessee to produce all documents/evidence available in his defence after issuance of notice in the reassessment proceedings. It was only after issuance of notice to the assessee and after giving several opportunities to produce evidence/documents in their defence that the case was finally adjudicated. Since the same was not done, a best judgment assessment made on the basis of the evidence available on record i. e. "chetan Note Books" was rightly relied upon by the Incometax Authorities especially when the contents of the seized material were not denied by the assessee firm. The learned counsel for the state submitted a judgment in the case titled as "the Incometax Officer, I ward, District VI, Calcutta and others Vs. Lakhmani Mewal Das" 1976 (3) SCC 757, wherein it has been held by the Hon"ble Apex Court that, "as stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Incometax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Incometax Officer on the point as to whether action should be initiated for reopening assessment. It was argued that the best judgment assessment was correctly arrived at and that the Court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Assessing Officer on the point as to whether action should be initiated for reopening assessment. It was further argued that the seized "chetan Note Books" were sufficient to form "definite information" for the purposes of re assessment under the Haryana General Sales Tax Act, 1973 as has been raised in query No. (ii) of the reference for consideration and decision before this Court. For this purpose, the learned counsel for the State submitted a Constitution Bench Judgment of the Hon"ble Supreme Court in case titled as A. N. Lakshman Shenoy Vs. ITO, Ernakulam and another reported as 1959 scr 751 : AIR 1958 SC 795 : (1958) 34 ITR 275. The relevant portion of para 9 of the said judgment reads as under:

". . . It is to be remembered that there is a distinction between receipt of definite information as a consequence of which a discovery is made and a notice is issued, and the final determination as to the liability or extent of liability for escaped assessment etc. We accept as correct the view expressed in Firm Jitanram Nirmalram V/s. CIT that the phase "definite information" cannot be

construed in a universal sense and its meaning must depend on and vary with the circumstances of each case. There is no doubt, however, that the information must be definite, that is, more than mere guess, gossip or rumour. There must also be a casual connexion between the information and the discovery; but "discovery" in the context of the section does not mean a conclusion of certainty at the stage of notice. What is necessary at that stage is that the Income Tax Officer should have formed an honest belief upon materials which reasonably support such belief. . . "

We have heard the rival contentions of both the parties and gone through the relevant case law on the subject and are of the considered opinion that the primary contentions of the learned counsel for the assessee with regard to the question of limitation have no force, since the same was dismissed by the learned Tribunal by holding that the notice in the re assessment proceedings was issued within a period of three years. This is a finding of fact which was arrived at by the learned tribunal. Even otherwise, it is an admitted position of the learned counsel for the assessee that notice for reassessment proceedings under Sec.31 of the Haryana General Sales Tax Act was issued within a period of three years from the date of the original assessment order dated 18.8.1986, since the notice for reassessment was issued on 26.7.1989. As far as query No. (ii) of the reference is concerned, it is observed that the ordinary dictionary meaning of the word "definite" means something which is conclusive and certain. In view of the confessional statement suffered by the assessee before the Income tax authorities as observed by the Assessing Authority in the re assessment proceedings, it is clear that the seized "Chetan Note Books" did pertain to the business transactions of the assessee firm for the assessment year 1985-86. That being so, it makes no material difference as to whether the suppression of income was made before the Income tax Authorities, since the same pertains to the business transactions of the assessee firm which is also liable to be assessed under the Haryana General Sales Tax Act, 1973 to the limited extent of "suppressed sales". We are, therefore, constrained to hold that the declaration of income before the income tax authorities under the Income Tax Act did constitute "definite information" for the purpose of reassessment under the Haryana General Sales Tax Act, 1973 and this reference is answered accordingly and as such this reference issue is decided in the affirmative. As far as the reference query No. (i) is concerned, from a bare reading of Sec.31 of the Haryana General Sales Act, 1973, it transpires that in the present case there was "definite information" which came into the possession of the Assessing Authority on account of suppression of material sales which amounts to "escaped assessment" pertaining to the assessing year 1985-86, as has been admitted by the assessee firm in their own confessional statement. Thus, there has been "escapement of income" as is rightly assessed by the Assessing Authorities.

15 In view of the above, all the three issues are answered in the affirmative and against the assessee. This reference is disposed of accordingly.