

(1982) 02 GUJ CK 0004
In the Gujarat High Court
Case No : Sales Tax Reference No. 5 of 1981

Patel Tea Mart

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 23-02-1982

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 36(3), 61
Gujarat Sales Tax Act, 1969 — Section 69

Citation : (1982) 51 STC 14

Hon'ble Judges : D.H. Shukla, J;A.N. Surti, J

Bench : Division Bench

Advocate : R.D. Pathak, for the Appellant; R.P. Bhatt, Assistant Government Pleader for Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

Surti, J.—The following questions of law are referred to us by the Gujarat Sales Tax Tribunal, Ahmedabad :

"(1) Whether, on the facts and in the circumstances of these two cases, the Tribunal was right in law in holding that the business done by the abovenamed Chimanlal was really the business of the applicant and whether that finding was vitiated by taking into account irrelevant evidence and by ignoring the relevant evidence as alleged ?

(2) If yes, whether, on the facts and in the circumstances of these two cases, the Tribunal was right in law in confirming the levy of tax upon the applicant's turnover of sales as worked out from the purchases of Rs. 2,40,067 of M/s. Anil & Co. so far as Samvat Year 2024 was concerned and purchases of Rs. 1,37,824 of M/s. Anil & Co. so far as Samvat Year 2025 was concerned ?

(3) Whether, on the facts and in the circumstances of these two cases, the Tribunal was right in law in confirming the penalties imposed u/s 36(3A) of the Bombay Sales Tax Act, 1959, in respect of Samvat Years 2024 and 2025 ?"

2. When we read the aforesaid questions of law referred to us by the Sales Tax

Tribunal, it was not possible for us to agree that the Sales Tax Tribunal has referred to us a question of law, which is set out at point No. (1) hereinabove. From the very question as formulated by the Sales Tax Tribunal, it is clear to us that question No. (1) which is referred by the Tribunal to us, is not a question of law. The very question shows that the Tribunal did take into consideration irrelevant evidence on the record of the case and that the Tribunal did know the relevant evidence as alleged. Under the aforesaid circumstances, it is difficult for us to come to the conclusion that question No. (1) as formulated by the Tribunal is a question of law.

3. At this state, we may usefully refer to the reported decision of the Supreme Court in the case of *The Commissioner of Income Tax, Bihar and Orissa, Patna Vs. S.P. Jain*, . At page 381 of the judgment, the Supreme Court has observed as follows :

"In our view, the High Court and this Court have always the jurisdiction to intervene if it appears that either the Tribunal has misunderstood the statutory language, because the proper construction of the statutory language is a matter of law, or it has arrived at a finding based on no evidence or where the finding is inconsistent with the evidence or contradictory of it, or it has acted on material partly relevant and partly irrelevant or where the Tribunal draws upon its own imagination, imports facts and circumstances not apparent from the record, or bases its conclusions on mere conjectures or surmises, or where no person judicially acting and properly instructed as to the relevant law could have come to the determination reached. In all such cases the findings arrived at are vitiated."

4. In the case of *Dhirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay*, the Supreme Court in terms has accepted in principle that, "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".

5. In *G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax*, the Supreme Court has observed as follows :

"If, however, such a finding of fact is based on an inference drawn from primary evidentiary facts proved in the case, its correctness or validity is open to challenge in reference proceedings within narrow limits. The assessee or the revenue can contend that the inference has been drawn on considering inadmissible evidence or after excluding admissible and relevant evidence; and, if the High Court is satisfied that the inference is the result of improper admission or exclusion of evidence, it would be justified in examining the correctness of the conclusion. It may also be open to the party to challenge a conclusion of fact drawn by the Tribunal on the ground that it is not supported by any legal evidence; or that the impugned conclusion drawn from the relevant

facts is not rationally possible; and if such a plea is established, the court may consider whether the conclusion is not perverse and should not, therefore, be set aside. It is within these narrow limits that the conclusions of fact recorded by the Tribunal can be challenged Such conclusions can never be challenged on the ground that they are based on misappreciation of evidence. A conclusion reached by the Tribunal on the ground that it is a conclusion on a question of mixed law and fact, is no doubt based upon that primary evidentiary facts, but its ultimate form is determined by the application of relevant legal principles. The need to apply the relevant legal principles tends to confer upon the final conclusion its character of a legal conclusion. In dealing with findings on questions of mixed law and fact the High Court would no doubt have to accept the findings of the Tribunal on the primary questions of fact; but it is open to the High Court to examine whether the Tribunal had applied the relevant legal principles correctly or not; and in that sense, the scope of enquiry and the extent of the jurisdiction of the High Court in dealing with such points is the same as in dealing with pure points of law."

6. In *BAI VELBAI Vs. COMMISSIONER OF Income Tax, BOMBAY CITY.*, the Supreme Court has observed as follows :

"A finding of fact does not alter its character as one of fact merely because it is itself an inference from other basic facts; but a finding on a question of fact is open to attack u/s 66 of the Indian Income Tax Act, 1922, as erroneous in law when there is no evidence to support it or if it is perverse or has been reached without due consideration of the several matters relevant for such a determination."

7. From the aforesaid four decisions of the Supreme Court, it is clear to us that if the Tribunal has misunderstood any statutory language or if the finding is based on no evidence or if the finding is inconsistent with the evidence or contradictory of it, or if the Tribunal has acted on material partly relevant and partly irrelevant, or if the Tribunal draws and comes of its own conclusions on imaginations, surmises and conjectures, the High Court can certainly interfere while exercising its jurisdiction on it by law. It is equally clear to us that if the finding is recorded by the Tribunal as a result of non-application of its mind, this Court can certainly correct the said finding. It is equally clear to us that if the finding of the Tribunal is based on no evidence to support it, or if it is perverse or has been reached without due consideration of the several matters relevant for such a determination, this Court can certainly interfere. It is equally clear to us that if any document is capable of two interpretations or constructions, it is open to us to interfere with the finding of the Tribunal. It is equally clear to us that if there is improper exclusion of evidence, which should have been admitted on the record, this Court can certainly interfere. Suffice it to say that having regard to the aforesaid decisions of the Supreme Court, it is not possible for us to take the view that in the instant case, point No. (1), which is referred by the Tribunal as the first question of law for our determination can at all be treated as a question

of law. In the instant case, the very question clearly indicates that the Tribunal has taken into consideration all irrelevant evidence and has ignored relevant evidence. From this viewpoint, in order to find out irrelevant evidence and relevant evidence, we had an anxious look at the court compilation which contains only the statement of the case and a copy of the judgment and order delivered by the Tribunal in Second Appeals Nos. 54 to 58 of 1977 on 15th March, 1979.

8. We may mention at this stage that question No. (1), which is referred to us suffers from the vice of vagueness and uncertainty. We may also mention that it was an impossible task for us to find out what irrelevant evidence was considered by the Tribunal when it decided the case and it was equally impossible for us to find out what was the relevant evidence which the Tribunal should have considered.

9. With the aforesaid difficulty, we did peruse the judgment delivered by the Tribunal in Second Appeals Nos. 54 to 58 of 1977. At this stage, we may usefully refer to a few relevant facts.

10. The applicant-assessee was running a sole proprietary concern of one Shri Gordhanbhai Shivabhai Patel, which was registered as a dealer under the Bombay Sales Tax Act, 1959, during Samvat Years 2024 and 2025. The applicant-assessee was carrying on business to resell tea at Godhra in Panchamahals District, mostly on wholesale basis. The applicant's business premises are situated at Station Road in Godhra Town and in those premises one Chimanlal, who is the son of the applicant's sole proprietor Gordhanbhai Shivabhai Patel, also carried on his independent business in the name and style of M/s. Anil & Co. According to the applicant-assessee, it had no concern with the business of M/s. Anil & Co.

11. On 17th October, 1970, and 23rd April, 1971, the officers of the sales tax department had paid surprise visits to the applicant's business premises and had seized several account books at that time. The Sales Tax Officer scrutinised those accounts and the question relating to the ownership of business done by the said Chimanlal in the name and style of M/s. Anil & Co. had arisen in respect of Samvat Years 2024 and 2025. After the investigation of the relevant facts, the Sales Tax Officer held that the business done by the said Chimanlal in the name and style of M/s. Anil & Co. was in reality the business of the applicant-assessee and for reaching that conclusion, the Sales Tax Officer had relied upon various pieces of evidence which the Tribunal had set out in paragraph 1 of its judgment.

12. The Sales Tax Officer found M/s. Anil & Co. to have purchased goods worth Rs. 2,40,067 during Samvat Year 2024 and goods worth Rs. 1,37,824 during Samvat Year 2025 and had added the said turnover of purchases for Samvat Years 2024 and 2025 to the applicant's purchases recorded in the latter's account books relating to the two years. Over and above that, the Sales Tax Officer had enhanced the applicant's recorded turnover of business by 20 per

cent. He had estimated sales out of the aforesaid purchases by taking 7 per cent kharajat and 12.5 per cent gross profit so as to estimate the corresponding sales of the applicant for both the years. Under the aforesaid circumstances, he had levied penalties u/s 36(3A) of the Bombay Sales Tax Act, 1959 in respect of both the years and that way he finalised the applicant's assessment for two years.

13. The applicant-assessee filed two first appeals before the learned Assistant Commissioner of Sales Tax against the aforesaid two orders of assessment and penalty by the Sales Tax Officer for Samvat Years 2024 and 2025. The said appeals were dismissed by the learned Assistant Commissioner of Sales Tax.

14. Aggrieved by the decision of the learned Assistant Commissioner of Sales Tax, the applicant-assessee preferred second appeals before the Tribunal, but the Tribunal also dismissed the appeals filed by the applicant-assessee. It may be significantly noticed that even in the judgment delivered by the Tribunal in the second appeals, the Tribunal has taken into consideration the various circumstances and pieces of evidence referred by the Sales Tax Officer which is annexed at page 40 of the compilation. Suffice it to say that the Sales Tax Tribunal did take into consideration the following circumstances :

(1) Statement of the Manager of Savani Transport Company saying that the goods, namely, tea, transported from Cochin to Nadiad were taken delivery of at Nadiad by one Shri Chimanlal who happens to be the son of the proprietor, whose signature has been obtained on the office copy of money receipt given to Shri Chimanlal on payment of the amount of freight.

(2) Address of M/s. Anil & Co. as given is "Station Road, Godhra." The applicant-assessee's address is also the same is this.

(3) Transport receipts have been signed by Chimanlal who is the son of the proprietor of the applicant-assessee.

(4) Statement of Shri Mohanbhai working as a Postman that the post relating to four different concerns was being delivered at Modern Printing Press, which is a proprietary concern of Shri Chimanlal who also looked after the applicant-assessee's business.

(5) Letter dated 7th October, 1968, signed by one Shri Rameshchandra on behalf of M/s. Anil & Co. addressed to M/s. Mahavir Co. of Cochin giving instructions not to disclose the name M/s. Anil & Co. or its address or any information relating to its business with the address.

(6) Letter of the Manager of Dena Bank dated 27th May, 1968, saying that the payments in respect of the goods received in the name of M/s. Anil & Co. were received by the bank because the transport receipts were sent through bank. For making this payment in addition to the cash of Rs. 9,977 a cheque for an amount of Rs. 1,000 issued in the name of M/s. Patel Tea Mart was tendered by Shri Bipinchandra who has signed this cheque in token of having received this amount. Shri Bipinchandra happens to be the son of the proprietor of the

applicant-assessee.

15. Suffice it to say that it is clearly stated even in the statement of the case (vide paragraph 5) that the officers of the sales tax department had paid surprise visits to the applicant's business premises and had seized several account books at that time. The said account books were scrutinized by the Sales Tax Officer and the question relating to the ownership of the business done by the said Chimanlal in the name and style of M/s. Anil & Co. had arisen in respect of Samvat Years 2024 and 2025. In the very paragraph 5 of the statement of the case, it is also stated that after investigation of the relevant facts, the Sales Tax Officer held that the business done by the said Chimanlal in the name and style of M/s. Anil & Co. was in reality the business of the applicant-assessee and for reaching that conclusion the learned Sales Tax Officer had relied upon various pieces of evidence. Suffice it to emphasis at this stage once again that the Sales Tax Officer did scrutinise all the account books seized from the business premises of the applicant-assessee and having investigated all the relevant facts carefully, he came to the conclusion that the business done by the said Chimanlal in the name and style of M/s. Anil & Co. was in reality the business of the applicant-assessee.

16. We have stated in the earlier part of our judgment that the applicant-assessee was aggrieved by the order of assessment passed by the Sales Tax Officer on 30th March, 1972, and preferred two first appeals before the Assistant Commissioner of Sales Tax, but they were dismissed. It was under these circumstances that the necessary second appeals were filed before the Tribunal but the Tribunal, having considered the evidence to which its pointed attention was invited, dismissed the appeals of the applicant-assessee. It is under these circumstances that an application was made by the applicant-assessee that the aforesaid questions of law should be referred to this Court for its decision. We must at the very outset say that question No. (1) is not a question of law. What is the irrelevant evidence which was considered by the department or even the Tribunal ? Can it be conceived for a moment that when the Tribunal dismissed the two second appeals, it dismissed the same without considering relevant evidence ? Can it be considered for a moment that the Tribunal ignored the relevant evidence while deciding the said two second appeals, which were filed by the applicant-assessee ? It may be significantly noticed that we do not at all know what was the relevant evidence which was ignored by the Tribunal. It is equally impossible for us to take the view that the pieces of evidence considered by the Tribunal were irrelevant evidence.

17. In view of the very language employed for forming the first question of law, we must say that the very question indicates that when the question was formulated, it was possibly formulated without any application of mind as the question itself patently suffers from the vice of vagueness and uncertainty. We must say that when such questions are referred to us, they seem to us only devices adopted by the assessees to see that this Court exercises its jurisdiction,

which in fact, is not conferred on it by a statute. It is needless to emphasise that our jurisdiction u/s 69 of the Gujarat Sales Tax Act, 1969, or the relevant provision of the Bombay Sales Tax Act is statutorily circumscribed, and the plain statutory mandate is that we would decide questions of law and not questions of fact or even mixed questions of law and fact. In the earlier part of our judgment, not by way of an exhaustive list, but we have indicated what can be the points of law which this Court can decide. In the instant case, an impossible situation has arisen for us to answer the first question of law as formulated by the Tribunal. A compilation containing irrelevant evidence is not before us. A compilation containing relevant evidence is not before us. We do not know what the Tribunal ignored or what relevant evidence was ignored when it gave its judgment. We do not know what irrelevant evidence was at all considered by the Tribunal. When the assessee's case was represented and argued with ability before the Tribunal, it was not pointed out that a particular piece of evidence was a relevant piece of evidence, or that a particular piece of evidence was an irrelevant piece of evidence. Under the circumstances, when such a question of law is referred to us by the Tribunal, we are constrained to state that the same has given considerable pain to us, and while hearing the reference public time was considerably wasted.

18. But in any view of the matter, when the appeals were argued out before the Sales Tax Tribunal, was it not the duty of the assessee's Advocate to bring to the notice of the Tribunal in clear and categorical terms two sets of evidence - (1) irrelevant evidence, and (2) relevant evidence. From this point, we had an anxious look at the entire judgment delivered by the Sales Tax Tribunal in the appeals filed before it by the assessee, but we could not find two different sets of evidence, one being irrelevant set of evidence and second being relevant piece of evidence.

19. But it also appears from the judgment of the Sales Tax Tribunal delivered in the aforesaid appeals, being annexure A to the statement of the case, that the Tribunal did consider the various pieces of evidence and came to the conclusion that the applicant-assessee was liable to pay sales tax and also the amount of penalty as mentioned in the judgment delivered by the Sales Tax Tribunal and as stated even in the statement of the case submitted to this Court.

20. Under the aforesaid circumstances, it is impossible for us to take the view that question No. (1) as formulated by the Tribunal can at all be named and styled or seen as a question of law. In our view, as the decision on question No. (2) referred to us essentially depends on our decision on question No. (1) referred to us by the Tribunal, it is equally impossible for us to take the view that question No. (2) is a question of law. At this stage, we may say that in order to answer question No. (1), we must know two different and distinct sets of evidence, (1) a set of irrelevant evidence, and (2) a set of relevant evidence. Without having a look at such evidence, it is impossible for us to answer the question. We may also at this stage state that if we are to comply with the request of the Sales Tax Tribunal by answering the questions as formulated, we

will be converting this Court into a court of regular first appeal, and that is not permissible by the language employed in section 61 of the Bombay Sales Tax Act, 1959, which is practically on the same lines as provided in section 69 of the Gujarat Sales Tax Act, 1969. At this stage, we may usefully refer the relevant provisions of section 61 of the Bombay Sales Tax Act, 1959 (vide section 69 of the Gujarat Sales Tax Act, 1969). Section 61 of the Bombay Sales Tax Act; 1959, in so far material to the present reference is concerned, is in the following terms :

"61. (1) (2) (3) If the High Court is not satisfied that the statements in the case referred under this section are sufficient to enable it to determine the question raised thereby, it may refer the case back to the Tribunal to make such additions thereto or alterations therein, as the High Court may direct in that behalf.

(4) The High Court upon the hearing of any such case, shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Tribunal a copy of such judgment under the seal of the court and the signature of the Registrar, and the Tribunal shall dispose of the case accordingly."

21. On a plain reading of the aforesaid provisions of sub-sections (3) and (4) of section 61 of the Bombay Sales Tax Act, 1959, one position of law which clearly emerges is that the State has conferred on this Court jurisdiction to decide the questions of law referred to this Court by the Sales Tax Tribunal. This Court, while dealing with a sales tax reference, has no doubt jurisdiction to refer the case back to the Tribunal to make additions to the questions raised by the Tribunal or request the Tribunal to make alterations in the questions referred by the Tribunal and that while deciding questions of law we should deliver the judgment on questions of law containing the grounds on which our decision is founded.

22. Thus, from the aforesaid discussion, it is abundantly clear that our jurisdiction under sub-sections (3) and (4) of section 61 of the Bombay Sales Tax Act, 1959, is statutorily circumscribed and it is not open to us to consider any questions of fact. The moment we consider any questions of fact on a reference being made to us, we shall be travelling outside the narrow compass of our jurisdiction as envisaged by sub-sections (3) and (4) of section 61 of the Bombay Sales Tax Act, 1959.

23. Thus, respecting the statutory limitation imposed on us, it possible for us to answer the first question referred to us by the Tribunal ? Is it possible answer question No. (2) framed by the Tribunal, particularly when the decision on question No. (2) depends upon our answer on question No. (1) referred to us by the Tribunal ? Question No. (3) has also a direct bearing on questions Nos. (1) and (2). In this view of the matter, and for the several reasons indicated hereinabove, we are of the view that the questions referred to us by the Tribunal are not questions of law, or are questions of such a nature which would fall

within the ratio of any of the four Supreme Court cases referred to above.

24. But Mr. Pathak with his usual tenacity argued the matter for about a couple of days and made a desperate effort to persuade us to take the view that the questions framed by the Tribunal are questions of law. To our repeated requests made to Mr. Pathak to satisfy ourselves as to how the questions formulated by the Tribunal are questions of law, Mr. Pathak could not give to us any satisfactory answer.

25. Under the circumstances, we are of the view that the questions referred to us by the Tribunal are not questions of law, and hence we reject the reference as we decline to answer the questions formulated by the Tribunal as they are not questions of law. Suffice it to say that questions referred to us substantially can only be answered having regard to "evidence". Reference rejected. The applicant-assessee to pay to the State Government the costs of the reference.

26. Reference rejected.