

(1984) 03 P&H CK 0093

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 10 of 1977

Punjab Gun House

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 20-03-1984

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10

Citation : (1984) 2 ILR (P&H) 381 : (1985) 58 STC 299

Hon'ble Judges : Rajendra Nath Mittal, J; M.M. Punchhi, J

Bench : Division Bench

Advocate : Arun Jain, for the Appellant; D.S. Brar, Additional Advocate-General, for the Respondent

Judgement

M.M. Punchhi, J.—The Sales Tax Tribunal, Punjab has referred to us the following question of law for our opinion :

Whether on the basis of the alleged sale of Rs. 6,200 noted in the exercise books addition of Rs. 20,000 in the gross turnover is warranted under law ?

2. The facts as found by the Sales Tax Tribunal are thus :

The assessee is a registered dealer dealing in arms and ammunitions. It filed its return for the assessment year 1971-72 indicating gross turnover of Rs. 2,08,076.02. It claimed certain deductions and paid the tax voluntarily. The business premises of the assessee were surprisingly inspected on 19th January, 1972 by the Excise and Taxation Officer (Enforcement) and it was found that the dealer had not made any entry in the cash book after 16th September, 1971 and cash balances had also not been struck after 19th July, 1971. The said officer impounded bill books, one diary and one exercise book. On examination of the books, it was revealed that sales transactions amounting to Rs. 6,200 were entered therein but no sale bill was issued. There were other discrepancies as well with which we are presently not concerned. The dealer was confronted with the aforesaid discrepancy but it rendered the explanation that the entry of Rs.

6,200 did not relate to its sales but represented the sales made by its customers between themselves with its aid. The explanation offered by the assessee was considered as unsatisfactory and it was rejected by the Assessing Authority. Keeping in view the existence of the discrepancies detected from the books, the Assessing Authority on 22nd May, 1972 made an addition of Rs. 20,000 in the gross turnover and also imposed penalties of Rs. 50 u/s 10(6) and Rs. 1,500 u/s 10(7) of the Punjab General Sales Tax Act, 1948. The assessee's appeal to the Deputy Excise and Taxation Commissioner on that score was an exercise in futility. So was his effort in second appeal before the Sales Tax Tribunal. The Tribunal in that regard observed as follows :

This is clearly purchase and sale of arms by the dealer, otherwise there was no need for the dealer to maintain entries of the sales which were taking place between one customer and another customer without the dealer making any profit. The explanation of the dealer is most unconvincing. I think the learned Assessing Authority was right in rejecting this explanation and making an addition of Rs. 20,000 to the gross turnover. In the circumstances of this case, the addition is reasonable and fair.

3. The learned counsel for the assessee urged that in making the "best judgment" assessment, the Assessing Authority had arbitrarily made an addition of Rs. 20,000 to the gross turnover when the alleged concealed sales were determinably up to Rs. 6,200. He maintained that at best, addition should have been made to the tune of Rs. 6 200 and possibly around that figure and not in any case to the tune of Rs. 20,000. Reliance was placed by him on *Tara Chand Hari Ram v. Sales Tax Tribunal, Haryana* [1972] 30 STC 342. It was held therein by this Court that a best judgment assessment cannot be arbitrary and whatever be the extent of speculative element in a best judgment assessment, it has at the same time to be based on some reasonable objective data, and further it cannot be based on suspicions without there being any material on which the Assessing Authority could rely. Reliance was also placed on *Delhi Iron Syndicate v. Commissioner of Sales Tax, U. P.* [1979] 44 STC 228, in which an Honourable single Judge of the Allahabad High Court has ruled that a best judgment assessment connotes exercise of care and caution and a decision which would be reasonable in the circumstances of the case and not an arbitrary or capricious assessment based on no relevant material.

4. On the other hand, learned counsel for the Revenue placed reliance on *The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore*, in which the Supreme Court observed as follows :

The task of the assessing authority in finding out the escaped turnover was by no means easy. In estimating any escaped turnover, it is inevitable that there is some guess-work. The assessing authority while making the "best judgment" assessment, no doubt, should arrive at its conclusion without any bias and on rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on

a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his "best judgment" and not of anyone else. The High Court could not substitute its "best judgment" for that of the assessing authority...the next question that arises for consideration is whether the basis adopted in estimating the turnover has a reasonable nexus with the estimate made. If the basis adopted is held to be a relevant basis even though the courts may think that it is not the most appropriate basis, the estimate made by the assessing authority cannot be disturbed. In the present case, there is no dispute that the assessee's accounts were rightly discarded. We do not agree with the High Court that it is the duty of the assessing authority to adduce proof in support of its estimate. The basis adopted by the Sales Tax Officer was a relevant one whether it was the most appropriate or not.

5. In the case before the Supreme Court, the assessee's accounts had been rejected. There was an escaped turnover of a period of 19 days to the value of Rs. 31,171.28. Under the State law the taxable turnover was enhanced on the basis of the escaped turnover to Rs. 2,50,000 and under the Central law to Rs. 1,00,000. The Madhya Pradesh High Court on answering questions on reference held that since the escaped turnover proved in the case was Rs. 31,171.28, the assessee was liable to be assessed under both the laws only on the taxable turnover comprised in the escaped turnover of Rs. 31,171.28. It is in that background, their Lordships of the Supreme Court ruled :

It is obvious that he was maintaining false accounts to evade payment of sales tax. In such a situation, it was not possible for the Sales Tax Officer to find out precisely the turnover suppressed. He could only make an estimate of the suppressed turnover on the basis of the material before him. So long as the estimate made by him is not arbitrary and has nexus with facts discovered, the same cannot be questioned. In the very nature of things the estimate made may be an over-estimate or an under-estimate. But that is no ground for interfering with his "best judgment". It is true that the basis adopted by the officer should be relevant to the estimate made. The High Court was wrong in assuming that the assessing authority must have material before it to prove the exact turnover suppressed....

6. Reliance was also placed by the learned counsel on A.V.K. Marimuthu Nadar and Bros. v. State of Tamil Nadu [1981] 47 STC 314 in which the Madras High Court applied a multiplier of 16 times the suppressed income disclosed in the incriminating slips of papers which covered a period of 15 days. The said case, however, is not applicable to the facts of the present case, as no multiplier had been invoiced.

7. We have considered the respective contentions of the learned counsel. In view of the authoritative pronouncement of their Lordships of the Supreme Court afore extracted; there is no escape from the conclusion that the suppressed turnover of Rs. 6,200 during the assessment year provided the basis to be

adopted in estimating the turnover and that undoubtedly was a relevant basis. The Assessing Authority having adopted it as such, its view cannot be disturbed by us in view of the suppressed turnover of Rs. 6,200. As is plain, the suppression was not confined to "specified dates" but was related to the assessment period. The detection was made on 19th January, 1972. It is on the strength thereof the Assessing Authority made an estimate and made additions to the gross turnover. That undoubtedly was within its domain. The Assessing Authority cannot be called upon to prove conclusively what turnover had the assessee suppressed since it was the duty of the assessee to place all the facts truthfully before the Assessing Authority as those were within his personal knowledge. The explanation rendered by the assessee was rejected. The Assessing Authority had thus inevitably to indulge in guess-work. It could not be said that the conclusion arrived by it was with any bias, or was irrational, vindictive or capricious. The view expressed by the Assessing Authority, which was affirmed by the Tribunal, fully satisfies the tests as laid down by the Supreme Court in the aforequoted case. This is our considered opinion.

8. For the foregoing reasons, the question referred to us for opinion is answered in the affirmative, that is, in favour of the Revenue and against the assessee. There shall, however, be no order as to costs.

Rajendra Nath Mittal, J.

9. I agree.