(1990) 07 OHC CK 0017

In the Orissa High Court

Case No : S.J.C. No. 45 of 1979

Ramachandra Sahoo APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 26-07-1990

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 12(5)

Citation : (1990) 79 STC 328

Hon'ble Judges : S.C. Mohapatra, J;J.M. Mahapatra, J

Bench : Division Bench

Advocate : A.C. Mohanty and R. Sharma, for the Appellant; A.B. Mishra, Standing Counsel (S.T.), for the Respondent

Judgement

S.C. Mohapatra, J.—The statement of case was called for u/s 24(3) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as "the Act"), on the following questions :

"(1) Whether, on the facts and in the circumstances of the case, the assessment proceeding is vitiated in view of the fact that the report of the Inspector was not confronted to the assessee ?

(2) Whether, on the facts and in the circumstances of the case, there is reasonable nexus between the amount assessed and the materials available on record ?"

2. Bairagi Sahoo, father of the dealer, was carrying on the business of sale in kora and khai in Bhubaneswar. He died leaving behind five sons of whom the dealer is the eldest. Other sons are carrying on their business at other places but the dealer carries on business of sale in kora and khai in the same place where his father was residing. He has given trade name of his business as "Baya Kora and Khai".

3. Getting information that all the brothers are residing together, business by them was treated as joint family business and notice was issued to the dealer

treating him as karta of the Hindu undivided family for assessment u/s 12(5) of the Act. However, the Sales Tax Officer being satisfied that business belonged to the dealer and not to the Hindu undivided family assessed him as individual.

4. As appears from the case stated to this Court, the dealer carries on business of sale in kora and khai at Badadanda, but has not been registered. The dealer inherited the business from his father after the latter''s death. The Inspector visited the business premises when dealer gave statement on July 28, 1972. The Sales Tax Officer relied upon the report of the Inspector and estimated the daily average of sale at Rs. 85 for the entire year 1973-74. Aggrieved by the same an appeal was filed where also the assessment was confirmed. In second appeal a ground was taken to the effect that opportunity was not given to the dealer by the Sales Tax Officer to explain the report of the Inspector. However, at the stage of argument, no such submission was made. Accordingly, the order of assessment was also confirmed in the second appeal.

5. When materials are used for making estimate in best judgment assessment, dealer is to be given opportunity to explain and rebut the same. In the orders of the Sales Tax Officer and appellate orders there is no finding that such opportunity was given.

6. For best judgment assessment there must be nexus. Where report of the Inspector was utilised as nexus without opportunity to the dealer to explain the same, estimate of turnover becomes arbitrary since such report was not brought to the notice of the dealer.

7. u/s 24(5) of the Act, the Tribunal is to pass an order on the basis of our answer. In the present case, while passing the order the Tribunal is required to hear the dealer in respect of the explanation to be offered and receive rebuttal material with regard to the report of the Inspector obtained in the year 1977. For this purpose, the matter is not required to be remitted back to the subordinate taxing authorities since the Tribunal is a fact-finding authority and the assessment is of the year 1973-74. After giving opportunity to dealer for obtaining explanation and rebuttal material if any, the Tribunal is to keep in mind the principle of best judgment assessment as laid down by the Supreme Court in [1957] 8 STC 770 (Raghubar Mandal Harihar Mandal v. State of Bihar) and other such decisions and determine the turnover and tax, if any. There shall be no order as to costs.

J.M. Mahapatra, J.

8. I agree.