
(1970) 02 OHC CK 0010
In the Orissa High Court
Case No : S.J.C. No. 6 of 1966

Ramchandra Ramnivas

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 03-02-1970

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 147(b), 24(1)

Citation : (1970) 25 STC 501

Hon'ble Judges : G.K. Misra, C.J.; S. Acharya, J

Bench : Division Bench

Advocate : Ranjit Mohanty, for the Appellant; Standing Counsel, for the Respondent

Judgement

G.K. Misra, C.J.—The question referred to this court u/s 24(1) of the Orissa Sales Tax Act runs thus:-

Whether the Tribunal is justified in rejecting the books of account merely on the ground of low percentage of profit when the accounts otherwise have no defects ?

The account books were rejected by the Assistant Commissioner of Sales Tax on three grounds :-

(i) The dealer was never consistent in figures given in the returns and he had filed revised returns.

(ii) Most of the purchases were not vouched for.

(iii) The margin of profit shown in the account books was low compared with the purchase figures.

The Sales Tax Tribunal rejected the first ground. It held that the mistakes in the returns were due to carelessness and the accounts were properly maintained. It also rejected the second ground. It however held that the account books were not genuine inasmuch as the margin of profit was rather low; it comes to less than 2 per cent.

2. Mr. Mohanty for the dealer contends that the view taken by the Tribunal is contrary to law and the account books cannot be declared to be not genuine merely because the margin of profit is low.

3. The view taken by the Tribunal is shocking to commonsense. When account books are produced, it is for the taxing authority to give valid reasons for declaring them to be either false or to be not maintained properly. Whether the margin of profit is high or low would depend on very many circumstances. It may be that there are many competitors in the market and the dealer wants to retain the market by keeping a low margin of profit for himself. Cases are not unknown in the economic field when traders on particular occasions undergo loss, to retrieve the business when the opportunity comes. Earning low profits, therefore, by itself, without a combination of other factors, cannot be a ground for holding that the account books are not properly maintained. No direct decision on this point is available. But some observations in Pandit Bros. Vs. Commr. of Income Tax, , lend weight to our conclusion. There, a Bench of the Punjab High Court held thus :

In my view the fact that the profits are low is merely a warning to him (the assessing authority) to look into the accounts more carefully and see whether there is material to lead him to the conclusion that there is something false in the account books.

We respectfully agree with the aforesaid observation.

4. The matter would be clear if we keep in view the observations of the Supreme Court in Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, In that case, their Lordships expressed their views as to whether an assessee can resort to evasion of tax by a contrivance or subterfuge. They observed thus :

But the law does not oblige a trader to make the maximum profit that he can out of his trading transactions. The income which accrues to a trader is taxable in his hands : income which he could have, but has not earned, is not made taxable as income accrued to him. By adopting a device, if it is made to appear that income which belonged to the assessee had been earned by some other person, that income may be brought to tax in the hands of the assessee, and if the income has escaped tax in a previous assessment a case for commencing a proceeding for reassessment u/s 147(b) may be made out. Avoidance of tax liability by so arranging commercial affairs that charge of tax is distributed is not prohibited. A taxpayer may resort to a device to divert the income before it accrues or arises to him. Effectiveness of the device depends not upon considerations of morality, but on the operation of the Income Tax Act. Legislative injunction in taxing statutes may not, except on peril of penalty, be violated, but it may lawfully be circumvented.

The aforesaid passage throws no light directly on the question in issue, but the juristic principle underlying this dictum would be a guide to come to a conclusion whether accrual of low profits, by itself, would enable the taxing authorities to

declare the books of account as not being properly maintained.

5. In our opinion, the learned Tribunal took the wrong view in rejecting the books of account merely on the ground that the rate of profits as shown therein was low.

6. We accordingly answer the question in the negative. In the circumstances, there will be no order as to costs. The reference fee deposited be refunded to the petitioner.

S. Acharya, J.

7. I agree.