

(1991) 01 KAR CK 0058
In the Karnataka High Court
Case No : STRP No. 4/1987

S. Mohammed

APPELLANT

Vs

Commissioner of Commercial Taxes

RESPONDENT

Date of Decision : 17-01-1991

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12(3)

Citation : (1991) 35 KarLJ 260

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Judgement

Shivashankar Bhat, J.-Petitioner is a dealer registered under the provisions of the Karnataka Sales Tax Act, 1957 ("the Act" for short). For the period 1-4-1982 to 31-3-1983, petitioner filed a return disclosing a turnover of Rs. 40,195.00. After examining the account books maintained by the petitioner, the assessing authority assessed the petitioner to the best of judgment, determining the sale turnover of bricks at Rs. 76,875/-, by estimating the sale price of bricks at Rs. 230/- per thousand, rejecting the price reflected in the bills of the petitioner. Petitioner contended that the country bricks manufactured by him were of inferior quality and hence price charged by him had to be at a low rate. The first appellate authority affirmed this order by giving a different reason, after observing that "assessing authority has not placed on record any report of enquiry or such other evidence on the basis of which he has fixed the rate of bricks at Rs. 230/-....." The estimate of turnover made by the assessing authority was affirmed by holding that, having regard to the opening stock, purchases, expenses incurred the turnover must be larger than disclosed by the petitioner; substantial payment towards loans taken earlier was another reason to infer a larger turnover. The first appellate authority, further observed:

"It is significant to note that the appellant has issued all the sales bills in the names of half a dozen parties and mentioning the same lorry numbers. Therefore the recording of sales by the appellant cannot be accepted. The turnovers determined by the assessing authority in respect of sales of bricks is therefore confirmed. Similarly the turnover of purchases assessed under Section 6 is also

confirmed and the appeals are rejected."

The appeal of the petitioner to the Appellate Tribunal, also failed. The Appellate Tribunal held that the petitioner failed to mention manufacturing accounts as prescribed under Rule 26 of the Sales Tax Rules, and the accounts should reflect the quantitative details of the various raw materials used for the manufacture and the quantitative details of the goods manufactured together with particulars of sales, deliveries, balance of stock etc.; the small note book produced by the petitioner did not satisfy this rule. The basis for the estimation of the price of bricks by the assessing authority was justified on the ground of the authority's experience gained while assessing other dealers. However, the Appellate Tribunal observed:

"It is true that in so many words the assessing authority has not placed all these materials on record but there are indications in the assessment order to find that the assessing authority has applied his mind and has considered all the above said points and has arrived at the just and reasonable conclusions."

A noticeable feature of this case, is the lack of unanimity amongst the assessing authority, first appellate authority and the Appellate Tribunal in the matter of reasons assigned for the best judgment assessment. Before the assessing authority, "day book-cum-ledger" and "sale books" were filed and perused by the assessing authority; he does not dispute the quantum of bricks actually sold by the petitioner (3, 34, 250 bricks, which, as per the bills were sold at Rs. 120/- per thousand). The first appellate authority, however, assumes that production must have been more than what was disclosed by the petitioner, having regard to the expenditure incurred and the loan repayments made by the petitioner; but the basis for the rate of Rs. 230/- per thousand was found to be not forthcoming. The Appellate Tribunal assumes that except a note book no other documents were filed and that the assessing authority was free to apply the rate of bricks by reference to the knowledge gathered by the assessing authority while assessing other dealers. The explanation of the petitioner regarding his turnover, as stated in his appeal to the Appellate Tribunal and the details furnished thereon regarding the purchases were not considered by the Appellate Tribunal. Regarding loans petitioner had explained:

"But the appellant's accounts show that he had borrowed from various ryots etc., in the year hand loans aggregating to Rs. 37,000/- and that he had repaid such hand loans to the extent of only Rs. 24,000/-. Hand-loans had to be borrowed to make the purchases and repayments in part and to incur the expenditure. The repayments were made out of the sale proceeds of the bricks as well as from further hand loans borrowed."

The petitioner had also pointed out that sale bills were not drawn in the names of only half dozen persons as stated by the first appellate authority and the said observation was factually incorrect. The petitioner stated,- "A perusal of the bill books maintained by the appellant shows that the bills have been issued in the

names of many different buyers and not in the names of only half a dozen parties as wrongly stated by the I appellate authority. A perusal of the sale bills also disprove the allegation of the I appellate authority that the same lorry Nos. have been mentioned in the sale bills. The above allegations are far from truth as disclosed by the carbon copies of the sale bills issued."

In addition to these, Mr. Indrakumar, the learned counsel for the petitioner also pointed out that many of the bills were subjected to scrutiny at the checkpoints and their genuineness cannot be doubted; if only the appellate authority or the Tribunal had examined these bills, the doubt cast on these bills would have been cleared.

The principle governing the best judgment assessment is now fairly well established. The local knowledge and repute in regard to the assessee's circumstances and the previous returns of the assessee if any could be considered. Though there must be guess work in the matter, it must be honest guess work, though element of arbitrariness in applying the guess cannot be ruled out. The word "Judgment" itself conveys that it should be the result of a consideration of relevant facts and circumstances, which necessarily should include the explanation and materials placed by the assessee. To avoid any mistake in the test applied, the assessing authority should disclose the material relied upon by to him to form his basis.

In *K. Baliah and Another v Commissioner of Income Tax, Mysore*, 56 ITR 182, K.S. Hegde, J., (as he then was) speaking for the Bench of this Court, observed at page 185:

"....if an assessing authority wants to make a best judgment assessment, on the basis of a comparable case, that case has to be put to the assessee and the assessee given an opportunity to give his explanation as regards the same".

The observations of the Supreme Court referred therein show that, estimate of gross rate of profit on sales cannot be based on "surmises, suspicious and conjunctures".

In *Rangappa Pandurang Kamath v State of Mysore*, 13 STC 714, again, K.S. Hegde, J., speaking for the Bench, observed, at p. 717:

"It may be noted from the foregoing that the accounts produced by the petitioner were rejected on the sole ground that the books and documents were not maintained according to the rules. The view of the Commercial Tax Officer on this point had commended itself to the Mysore Sales Tax Appellate Tribunal. We are told that most of the purchases made are supported by vouchers; similarly most of the sales are supported by bills. It was contended on behalf of the petitioner that in the very nature of things, it is not possible to maintain vouchers in respect of all purchases and bills in respect of all sales. It was also contended on behalf of the petitioner that in the past the taxing authorities had not insisted on the maintenance of vouchers or bills in respect of all transactions. The question

for decision is whether the Commercial Tax Officer was within his powers in rejecting the accounts submitted by the petitioner on the sole ground that the books and documents were not maintained in accordance with rules?".

Thereafter, the question was answered in the negative. The observations at p. 719 are quite apposite here:

"In the present case also the Commercial Tax Officer or his official superiors at no stage stated that the accounts produced by the petitioner are unreliable. We are conscious of the fact that the taxing authorities are the sole judges on the question whether the accounts produced are reliable or not. If they had come to the conclusion that the accounts are unreliable and had that decision been based on any relevant consideration, then it would not have been within our province to go into the correctness of their decision. This Court cannot reopen findings of fact so long as those findings are based on relevant considerations. But, this Court will and ought to safeguard the citizens against arbitrary decisions of quasi-judicial bodies. The larger the powers entrusted to an individual or a Tribunal, the greater should be the circumspection."

The books and the sale bills produced before the assessing authority were not noticed by the Appellate Tribunal. The Appellate Tribunal ignored other explanations of the petitioner on the ground that manufacturing account as per Rule 26 was not maintained by Turn. The basis of best judgment adopted by the assessing authority was not actually disclosed to the petitioner and the appellate authorities applied different tests to uphold the assessment order. The petitioner's explanation as to the quantity of the bricks manufactured by him was not referred to and considered by anyone. It was not established that bricks of very low quality would have fetched higher rate than the one charged by the petitioner. His bills were by-passed on the assumption that they were in the name of half a dozen persons only, ignoring the real facts showing that bills stood in the name of several persons. In these circumstances, we are of the view that the best judgment assessment, in the instant case, cannot be justified.

The revision petition is accordingly allowed. No costs.