(1974) 07 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No''s. 540 and 541 of 1973

S.G. Nadakattinavar — APPELLANT

Vs

Commercial Tax Officer, II Circle, Hubli — RESPONDENT

Date of Decision : 18-07-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Sales Tax Act, 1957 — Section 12 (3), 12 A, 12 A (1A)

Citation : (1975) 35 STC 484

Hon'ble Judges : E.S. Venkataramiah, J

Bench : Single Bench

Advocate : K. Srinivasan, for the Appellant; H.N. Narayan, High Court Government Pleader, for the Respondent

Judgement

Venkataramiah, J.—The petitioner is an assessee under the Karnataka Sales Tax Act. When the Deputy Commissioner of Commercial Taxes (Enforcement) paid a visit to the shop of the petitioner in his absence his clerk handed over certain books to the Deputy Commissioner. On looking into them, the Deputy Commissioner was of the view that certain turnovers of the petitioner had escaped assessment. He, therefore, issued a notice to the petitioner to show cause as to why penalty as required u/s 12-A(1-A) should not be levied. The petitioner filed his objections in response to the said notice and stated that the books and documents referred to by the Deputy Commissioner did not belong to him. After some correspondence between the sales tax authorities and the petitioner, the Commercial Tax Officer passed an order u/s 12-A of the Karnataka Sales Tax Act in respect of one year and u/s 12(3) in respect of another year. Aggrieved by the said orders of assessment, the petitioner has filed these two writ petitions.

2. Sri K. Srinivasan, the learned counsel for the petitioner, relying on a decision of a Division Bench of this Court in G. Basappa Son and Co. v. Commercial Tax Officer, Tumkur ([1975] 35 S.T.C. 483) (Writ Petitions Nos. 1452 to 1454 of 1970

decided on 10th December, 1970) argued that the orders of assessment passed on the basis of account books which had been handed over by the clerk of the petitioner which did not belong to the petitioner were void, because the petitioner was not given an opportunity to inspect the said account books before the orders of assessment were passed. The submission made by Sri K. Srinivasan overlooks one important distinction between the facts of these cases and the facts in G. Basappa Son and Co. v. Commercial Tax Officer, Tumkur ([1975] 35 S.T.C. 483), namely, that in these cases the contention of the petitioner is that the books and documents in question did not belong to him at all, whereas in G. Basappa Son and Co. v. Commercial Tax Officer, Tumkur ([1975] 35 S.T.C. 483), the contention of the petitioner was that he was not given an opportunity to inspect the books and documents and explain to the assessing authority the entries therein. In the present cases, the only thing which the petitioner had to do was to demonstrate that the books did not belong to him at all and in order to show it the detailed examination in the books may not have been necessary. It is no doubt true that in G. Basappa Son and Co. v. Commercial Tax Officer, Tumkur ([1975] 35 S.T.C. 483), this court has held that an order of assessment passed on certain books belonging to an assessee without affording a reasonable opportunity to explain the entries therein would be one opposed to natural justice. But, on going through the said decision I feel that the said decision was rendered having regard to the peculiar facts which were involved in those cases. It cannot be said that whenever books of account are seized from the custody of an assessee and then an order of assessment is passed on him, the order of assessment so passed would always be invalid only because the manner in which the books were seized was not in accordance with law. In each case, it is the duty of the court hearing the petition under article 226 of the Constitution to examine whether the petitioner has been really prejudiced by the seizure of account books or by the assessing officer declining to hand over the books to the custody of the petitioner whenever he wanted them. The question whether an assessee is really prejudiced in a given case is a question of fact which has to be decided on the facts of each case. I do not, therefore, agree with the submission made by Sri K. Srinivasan that the decision rendered in G. Basappa Son and Co. v. Commercial Tax Officer, Tumkur ([1975] 35 S.T.C. 483), lays down that at all events when books of account are not handed over to the assessee, an order of assessment should be set aside.

3. As already observed I am not satisfied that the petitioner has established in these two cases that the infraction of law on the part of the assessing authority leads to the conclusion that the orders of assessment are null and void.

4. The petitioner has a right of appeal. It is stated in the statement of objections filed on behalf of the respondent that the books of account in question have been handed back to the petitioner on 30th January, 1973. It is open to the petitioner to file appeals before the appellate authority and convince him that the decision of the Commercial Tax Officer based on the books of account in question was liable to be reversed. The petitioner has not filed appeals till now since he had

approached this court under article 226 of the Constitution. The petitioner is permitted now to file appeals against the impugned orders before the appellate authority within thirty days from today. If he files those appeals within thirty days, the appellate authority shall entertain them without reference to the question of limitation and dispose them of in accordance with law. These writ petitions are dismissed. No costs.

5. Petitions dismissed.

