(1987) 08 OHC CK 0040

In the Orissa High Court

Case No : Special Jurisdiction Case No. 19 of 1981

Shree Ram Dadka — APPELLANT

Vs

State of Orissa — RESPONDENT

Date of Decision : 19-08-1987

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 24(1)

Citation : (1988) 69 STC 56

Hon'ble Judges : H.L. Agrawal, C.J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : A. Pasayat and S.M. Agarwala, for the Appellant; Standing Counsel (S.T.), for the Respondent

Final Decision : Dismissed

Judgement

H.L. Agrawal, C.J.—At the instance of the assessee, the Additional Sales Tax Tribunal, Orissa, has stated a case u/s 24(1) of the Orissa Sales Tax Act, 1947 and referred the following two questions to this Court :

(i) Whether, on the facts and in the circumstances of the case, the learned Member, Additional Sales Tax Tribunal, was justified to hold that the transaction in question relates to the applicant-firm and consequently there is suppression of purchase account ?

(ii) Whether, on the facts and in the circumstances of the case, the learned Member, Additional Sales Tax Tribunal, is justified in enhancing the gross turnover and taxable turnover returned resulting in extra demand of tax ? Answer to the second question would depend upon the answer of the first question.

2. Let us examine the first question. Apparently, the question appears to be a question of fact. But it was submitted that there was no positive material to prove the disputed transaction relating to the applicant-firm. In other words, the submission is that the alleged suppression of purchase account was based on

assessment of materials on record and therefore, it will be a question of fact.

3. Assessee is a registered dealer who is carrying on business at Dhadrak town. On 7th June, 1973 some officers of the Sales Tax Department visited the business premises of M/s Mannalal Prabhudayal and found amongst others a chit where there was an entry dated 18th May, 1973 which was in the name of the proprietor of the assessee-business concern, namely, Sri Ram Dadka. The partner of M/s. Mannalal Prabhudayal stated to the Inspector that the entry relates to the assessee. When the entry was confronted, the assessee admitted part of the , transaction relating to the debit side but denied the other part of the entry relating to the credit side. The assessing authorities however, disbelieved the explanation and held that the transaction on the credit side of the receipt also related to the purchases made by the applicant-firm which was suppressed and he was asked for enhancing the gross turnover and taxable turnover by Rs. 60,000. The dealer failed at all stages including the second appellate stage but has succeeded in getting a reference made to this Court. In the second appellate order, the question has been discussed at great length in paragraph 4 and positive finding has been recorded against the dealer.

4. It was submitted by Mr. A. Pasayat, the learned counsel appearing for the dealer, that the taxing authorities have erred in law in rejecting the explanation of the dealer and it has also not been established that the transaction even if accepted related to purchase of goods by the dealer. In course of his contention, he relied on a decision of the Supreme Court reported in [1977] 39 STC 30 (Girdhari Lal Nannelal v. Sales Tax Commissioner, M.P.). On scrutiny of the said decision, we do not find any application of the said decision to the present case. The finding of the Tribunal and subordinate authorities is an inference of fact derived from facts found. It does not give rise to any question of law. The Member in the order of reference has made some observation in favour of the dealer but it appears to be wrongly appreciated and therefore, the first question under reference being wholly unjustified, the reference in that regard must be held to be misconceived.

5. Once the finding of fact that the assessee suppressed purchases from the accounts is accepted, the determination of the turnovers by enhancing the same cannot be said to be unjustified and no question of law arises out of the order.

6. The reference is accordingly discharged and the application is dismissed without any order for costs.

