(1961) 03 OHC CK 0007

In the Orissa High Court

Case No : Special Jurisdiction Case No. 12 of 1959

Silla Krishna Murty — APPELLANT

Vs

Commissioner of Sales Tax — RESPONDENT

Date of Decision : 28-03-1961

Acts Referred:
Income Tax Act, 1961 — Section 13

Citation : (1961) 12 STC 584

Hon'ble Judges : R.K. Das, J;G.C. Das, J

Bench : Division Bench

Advocate : Asok Das, for the Appellant; G.K. Misra, for the Respondent

Judgement

G.C. Das, J.—The following question of law has been referred to this Court by the Member, Sales Tax Tribunal, Orissa, under Sub-section (1) of Section 24 of the Orissa Sales Tax Act. (Orissa Act XIV of 1947), (hereinafter referred to as "the Act") :

Whether best, of judgment assessment can be made in a case where the assessee is called upon to produce evidence and he produces some evidence which is found to be unreliable.

2. The proposed question arises under the following circumstances: The dealer-assessee (hereinafter referred to as "the assessee") is a registered dealer bearing registration No. SA 266 and was carrying on business at Berhampur in grocery and various other goods. The assessments in question relate to the quarters ending on 30th June, 1952 to 31st March, 1954, that is, financial years 1952-53 and 1953-54. Pursuant to a notice u/s 12(2) of the Act the assessee produced certain books of accounts to substantiate his returns. It was found out that the books of accounts did not mention several items of transactions made by the assessee. These transactions related to dates 22nd January, 1953, 8th April, 1953, 22nd May, 1953, and 23rd March, 1953. The assessing authorities received certain confidential reports that the assessee was in the habit of

suppressing some of his transactions with a view to escape true and proper assessment. As a result, an inspector of the department paid a surprise visit to the shop of the assessee on 23rd March, 1953. On verification of the accounts and some of the stock, a shortage of 105 tins of Dalda containing 10 lbs. in each tin was detected. Before the Sales Tax Officer, this item of suppression was supported by the evidence of one Kalyanpuri Raghunath Chaudhury and K. Kamaraju, driver of truck No. ORG. 515. These two persons made statements before the inspecting officer. On these materials the Sales Tax Officer rejected the books of accounts as also the gross turnover. Accordingly, he made a best judgment assessment by enhancing the gross turnover returned by the assessee for the four quarters of the fiancial year 1952-53 by Rs. 15,000 and for the four quarters of the year 1953-54 by Rs. 25,000. On appeal the statements made by the above two witnesses were challenged before the Assistant Collector of Sales Tax. Accordingly the first appellate Court re-examined them. They, however, resiled from their earlier statements. But the Assistant Collector disbelieved the statements made before him and relying upon their earlier statements, confirmed the assessments. In second appeals before the Tribunal it was contended that the Assistant Collector was wrong in preferring earlier statements to the sworn statements of the two witnesses, that at any rate the estimate should have been limited to the quarters in which suppression of the transactions was found, and that the estimates were excessive and arbitrary. The Tribunal held the books of accounts to have been rightly rejected. Since the books of accounts have been maintained on annual basis and as a single instance of substantial item of incorrectness in the books of accounts was found, it justified the rejection of the entire books of accounts. Thus, it held that the assessing officer was right in rejecting the books of accounts for both the years. After the rejection of the books of accounts, since there were materials on record to support, the estimate and as the enhancement worked to a minor proportion in the gross turnovers returned by the assessee, the Tribunal held that there was no excessiveness or arbitrariness in the estimate. Thus, eventually he confirmed the assessments.

3. Under the Indian Income Tax Act there are decisions to support the proposition that if a single substantial omission from the books of accounts is detected that itself is sufficient for the rejection of the entire account: (vide Baijnath v. Commissioner of income tax) AIR 1926 Lah. 233. There is no direct authority under the Sales Tax Act. The scheme underlying the two Acts appears to be similar, the only difference being that under the Indian Income Tax Act, the annual income is the unit of taxation whereas under the Sales Tax Act the unit of taxation is a quarter. Section 15 of the Act lays down the manner in which the accounts are to be maintained. Under that section every registered dealer or other dealer on whom a notice has been served to furnish returns under Sub-section (1) of Section 11, shall keep a true account of the value of goods bought and sold by him. There is provision under the Act empowering the State Government to make rules in this respect. It would be relevant to refer to Rule

26-A of the Orissa Sales Tax Rules, 1947. This rule provides for the maintenance of accounts of moneys realised as sales tax and lays down that in the account books maintained for the business a separate page shall be set apart and the collections on account of sales tax made every day shall be shown therein as also the payment out of the above into the Government Treasury. Sub-rule (2) lays down that every registered dealer shall maintain the books of account, registers and other documents including bills, credit and cash memoranda, invoices and vouchers relating to the business of any year for at least three years thereafter. The intention of the Legislature seems to be clear that the books of account are to be maintained on annual basis. In fact the books of account of the assessee were maintained on annual basis. The Tribunal in his order u/s 23(3) of the Act observed : "The appellant denied that he suppressed as above (the suppression of Dalda tins). He could not explain away the shortage of Dalda." Thus, the books of account for the two financial years have been rightly rejected by the Revenue. The question, thereafter, arises whether there was material on record to support the best judgment assessment as made by the Department. The materials on which the Revenue has relied are : (1) the suppression of several items of transactions in the books of account; (2) confidential reports received by the assessing authorities that the assessee in question was in the habit of suppressing some of his transactions with a view to escape payment of sales tax; (3) the Inspector''s finding shortage on surprise visit, and (4) the habit and the conduct of the assessee.

4. Mr. Asok Das, learned counsel on behalf of the assessee argued that when an enquiry was launched u/s 12(2) of the Act the Sales Tax Officer, if dissatisfied, should have called upon the assessee to produce other evidence before proceeding u/s 12(3). The real question to be decided in this case is whether the assessment u/s 12(3) is legal or not. Mr. Das sought to rely upon a decision of this Court in Fagumani Khuntia Vs. Commissioner of Income Tax, . What was decided in that case was : Section 13 of the Income Tax Act does not justify a bald estimate of the income by the Income Tax Officer without any evidence or other material on record. The Income Tax Officer is equally not entitled to make a guess without any evidence. Where accounts have been produced and the case is not dealt with u/s 23(4) the "basis" and "manner" of computing the profits under proviso to Section 13 have to be legal and judicial. The Court will not interfere with the action of the Income Tax Authorities under the proviso to Section 13 unless their action is arbitrary, capricious and unreasonable. Having regard to the fact that there were certain materials before the Sales Tax Authorities to make the best judgment assessment, this decision is of no help to the contention of the assessee. Mr. Das sought to rely upon certain other cases decided under the Indian Income Tax Act. It is unnecessary to refer to them. There is, however, a case decided by the Patna High Court which is directly against the contentions of Mr. Das. (Kaniram Janki Das v. The State of Bihar [1952] 3 S.T.C. 230). That was a case u/s 10(2) (a) of the Bihar Sales Tax Act which is similar to Section 12(2) (a) of the Orissa Sales Tax Act, What was

decided in that case was that where books of accounts or documents produced by an assessee in pursuance of a notice served by the taxing authorities u/s 10(2)(a) of the Bihar Sales Tax Act, 1944, are found to be quite unreliable so that the officer is unable to make an assessment on the basis of the documents produced, the taxing officer would be justified in making an assessment u/s 10(3) to the best of his judgment because in substance the assessee has failed "to comply with all the terms of a notice issued under Sub-section (2)" of Section 10 of the Act. I may mention here that Section 10(3) (a) is similar to Section 12(3) (a) of the Orissa Act. Section 12 deals with the assessments. Under Sub-section (1) if the Commissioner is satisfied, without requiring the'' presence of a registered dealer or the production by him of any evidence, that the returns furnished in respect of any period are correct and complete he shall assess the amount of tax due from the dealer on the basis of such returns. Clause (a) of Sub-section (2) states that if the Commissioner is not satisfied without requiring the presence of a registered dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him on a date and at a place to be specified therein, either to attend in person or to produce or to cause to be produced there any evidence on which such dealer may rely in support of such returns. It is admitted that the notice under Clause (a) of Sub-section (2) of Section 12 was served on the assessee. Mr. Das''s whole contention was that when some evidence has been given by the assessee and if the Commissioner is not. satisfied, he should call for further evidence from the assessee before proceeding under Sub-section (3) of Section 12. There is nothing in the section requiring the assessing authority to give a second notice. The provision in Sub-section (3) is quite clear. According to this sub-section, if a registered dealer having furnished returns in respect of a period, fails to comply with all the terms of a notice issued under Sub-section (2), the Commissioner shall assess, to the best of his judgment the amount of tax due from the dealer. The notice was issued under Sub-section (2) in Form VIII. Form VIII prescribes :

In order to enable me to satisfy myself whether the return filed by you u/s 11 of the Orissa Sales Tax Act, 1947, for the quarter ending...is correct and complete.

Whereas you, a registered dealer under (he Orissa Sales Tax Act, 1947, have not furnished a return u/s 11 of the Act for the quarter ending by the due (date).

You are hereby directed to attend in person or by agent at my office at (place.) on (date) ... at ... and there to produce or cause to be produced the accounts and documents specified on the reverse relating to your turnover for the aforesaid period (and any other evidence on which you may rely in support of the said return).

In the event of your failure, to comply with all the terms of this notice I shall proceed to assess you u/s 12 of the Orissa Sales Tax Act, 1947, to the best of my judgment.

There is no denying of the fact that the notice in Form VIII had been served on the assessee. As has been held in Kaniram Janki Das''s case [1952] 3 S.T.C. 230 the assessing authority can proceed to make the best judgment assessment if the assessee fails "to comply with all the terms of a notice issued under Sub-section (2)." Therefore when the Commissioner is not satisfied, a notice is issued under Clause (a) of Sub-section (2) of Section 12 of the Act and thereafter he proceeds to hear the assessee under Clause (b) of Sub-section ((2). It is open to the assessing authority either to accept or not to accept the evidence as produced by the assessee. Thereafter if he finds that the assessee has failed "to comply with all the terms of a notice issued under Sub-section (2)" he proceeds to make the best judgment assessment under Sub-section (3). That is what has been done in this case and as I had stated earlier there are materials on record to support the best judgment assessment. A similar view was taken by this Court in the case of Khubram Asram v. Commissioner, of Sales Tax, Orissa 26 C.L.T. 599. I was also a party to that decision. What was decided in that case was where a discrepancy was found in the accounts furnished by the assessee and he was called upon to explain the same or to furnish better return and he expressed his inability to do so and the assessing authority is not prepared to condone the irregularity, it had jurisdiction to assess him to the best of its judgment u/s 12(3) of the Act. I may also refer to a decision of the Supreme Court in the case of Raghubar Mandal Harihar Mandal Vs. The State of Bihar, . That was also a case under the Bihar Sales Tax Act. The principle that has been laid down in that case is that when the returns and the books of account are rejected, the assessing officer must make an estimate and if there are materials before him, he can proceed to make the best judgment assessment. There is no doubt that the assessing authorities in the present case have proceeded to make the assessment in question in accordance with law. We would, therefore, answer the questoin in the affirmative.

The petitioner must pay the costs of the Commissioner which is assessed at rupees one hundred.

R.K. Das, J.

5. I agree.

