(2009) 05 KAR CK 0001

In the Karnataka High Court

Case No : S.T.R.P. No. 139 of 2008

S.P. Nagaraj APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 27-05-2009

Acts Referred:

Citation : (2011) 40 VST 367

Hon'ble Judges : V. Gopalagowda, J;Ravi Malimath, J

Bench : Division Bench

Advocate : M.N. Shankare Gowda, for the Appellant; Geetha Menon, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

V. Gopalagowda, J.—There is a delay of 40 days in filing this petition. We have heard the learned Counsel for both parties on the application filed for condonation of delay in filing this petition. Accepting the reasons stated in the affidavit filed in support of application for delay, delay of 40 days is condoned and accordingly, the said application is allowed.

2 This sales tax revision petition is directed against the order dated April 29, 2008 passed by the Karnataka Appellate Tribunal (hereinafter referred to as, "the KAT") confirmed the order of the assessing authority dated January 5, 2006 vide order No. KST.AP 91/05-06 framing the following question of law for consideration of the court:

(1) In the fact and circumstances of the Petitioner''s case whether authorities below are right in coming to a conclusion that the Petitioner has purchased copra from APMC yard, Gubbi and suppressed the same while selling it?

(2) In the facts and circumstances of the Petitioner''s case whether authorities below and the Tribunal are right in accepting the purchase receipts of copra without verifying the signature of the Petitioner and without supplying those materials to the Petitioner ?

(3) In the facts and circumstances of the Petitioner''s case whether the Karnataka Appellate Tribunal is right in not considering the issue that at the hands of the Petitioner the alleged suppressed sale of copra is not taxable being a second sale ?

(4) In fact and circumstances of the Petitioner''s case whether the estimation of suppressed sales of copra and levying tax for the second time is permitted in law?

3. The learned Counsel Mr. M. N. Shankare Gowda for the Petitioner submits that the best judgment assessment order was passed by the assessing authority on the basis of Commercial Tax Officer (Intelligence) report that there is a suppression of total turnover amount of Rs. 7,37,500 and the same has been multiplied by three and taken as Rs. 24,33,750 for the purpose of levy of tax on total turnover for the assessment year 1999-2000. The same is not supported by any valid and cogent reasons and therefore the assessment order in so far as adding Rs. 24,33,750 to the total turnover of the Assessee as this amount suppressed turnover is vitiated. Therefore, it is contended by him that the same would give rise to substantial question of law No. (4) hence requested this Court to answer the same in favour of the Petitioner.

4. Further, in support of other substantial questions of law, learned Counsel contended that conclusion of the assessing authority was confirmed by the appellate authority by placing reliance upon the records of APMC yard that the Assessee purchased copra from APMC yard and paid market cess of Rs. 7,375 and suppressed the said transaction to the Department in not showing the turnover amount of the said transaction when he had submitted the returns to the assessing authority. Therefore the finding recorded in contentious issues that arose for consideration before the assessing authority and appellate authority are erroneous in law. Hence, he would submit that substantial question of law framed in Nos. (1), (2) and (3) in the revision petition would certainly arise for consideration of this Court as the Tribunal without application of mind to the facts of the case and evidence on record has accepted the finding of fact recorded by the assessing authority, who has stated that there is suppression of purchase of copra by the Assessee and the said amount has not been shown for the relevant assessment year.

5. The learned Additional Government Advocate has sought to justify the impugned order passed by the KAT, inter alia, contending that the appellate authority on the basis of the legal grounds urged in the appeal, applying its mind to the facts and circumstances of the case, perused the relevant record and after examining the correctness of the best judgment assessment order passed by the assessing authority, did not accept the case of the Petitioner and passed the impugned order. The learned Additional Government Advocate relied on the judgment of the Supreme Court in Commissioner of Sales Tax, Madhya Pradesh v. H. M. Esufali, H. M. Abdulali (1973) 32 STC 77, wherein the apex court has explained what is the scope of jurisdiction of assessing authority to pass the best judgment assessment order if there is escaped turnover by the Assessee. It is

submitted that from the order passed by the assessing authority, it cannot be said that it is vitiated on account of bias, prejudice and unreasonableness. The assessing authority having regard to the facts of the case, after examining the records, has taken the suppressed turnover as Rs. 24,33,750 by multiplying three times the suppressed turnover amount for the purchase made for the months of July, September and November 1999. Therefore, she submits that the Tribunal in exercise of the appellate power and jurisdiction, has confirmed the order passed by the assessment authority by recording valid and cogent reasons and therefore she submits that questions of law framed do not arise for consideration of the law.

6. With reference to the above rival legal contentions urged on behalf of the parties, we have carefully examined whether the substantial questions of law framed in this revision petition would arise for our consideration and the same required to be answered in this petition. Our answer to the aforesaid points are that none of the substantial questions would arise for consideration for the following reasons:

7. It is an undisputed fact that the Assessee has purchased copra during the months of July, September and November 1999 and he has paid market cess to the market yard in a sum of Rs. 7,375. Therefore, the Assessee has suppressed turnover estimated at Rs. 24,33,750 by multiplying three times to the suppressed turnover amount on the basis of the Commercial Tax Officer (Intelligence) report. Therefore, proposition notice to pass the best judgment and award was issued by the assessing authority and the same is served upon the Assessee. But he did not chose to file objections by producing relevant documents before the assessing authority. In the absence of statement of objections, on the basis of material available before the assessing authority, has passed best judgment assessment order by recording a finding that there is suppression of turnover to the tune of Rs. 7,37,500 which amount is multiplied by three and the same has been arrived in exercise of the discretionary power by the assessing authority at the time of passing best judgment. No doubt, elaborate reasons are not assigned by the assessing authority as to why he has taken three times of suppressed turnover amount to arrive at the above total turnover figure. The said finding of fact is concurrent with the findings of the appellate authority. We have examined the contention urged by counsel for the Petitioner that in the absence of reasons, computing the suppressed turnover of Rs. 24,33,750 of the Assessee may be contrary to the decision of the Supreme Court, upon which reliance is placed by learned Additional Government Advocate. Having regard to the facts and conduct of the Assessee in not choosing to file objections despite service of proposition notice and not filing no objections and producing any documents, the assessing officer considered and passed the best judgment assessment order and that cannot be said to be irrational or illegal. Having regard to the facts and circumstances of the case, the assessing authority has exercised discretionary power and quantified the amount of suppressed turnover to Rs. 24,33,750 and the same has been confirmed by the KAT and

therefore, the same cannot be termed as erroneous and in our view, none of the question raised would arise for our consideration in this case. We are in agreement with the impugned order passed by the KAT. Hence, revision petition fails and is accordingly dismissed.