
(1990) 06 GAU CK 0028
In the Gauhati High Court
Case No : Civil Rule No's. 49 and 159 of 1980

Sri Pankaj Kumar Dasgupta	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 29-06-1990

Acts Referred:

Tripura Sales Tax Act, 1976 — Section 12, 12(1), 9(1)

Citation : (1990) 79 STC 409

Hon'ble Judges : J.M. Srivastava, J;B.P. Saraf, J

Bench : Division Bench

Advocate : B. Das, T.K. Dey and S. Chakraborty, for the Appellant; M. Nath, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Saraf, J.—The petitioner is a partner of a firm, namely, S. Das & Company, Agartala. The said firm (hereinafter referred to as "the petitioner") carries on the business of sale and supply of motor parts, tyres, etc. It is registered as a dealer under the Tripura Sales Tax Act, 1976 (hereinafter referred to as "the Act"), with effect from June 9, 1976. The petitioner failed to submit the returns u/s 8 of the Act for the three quarters covering the period from July 1, 1976 to March 31, 1977. Notices were issued to the petitioner by the Superintendent of Taxes from time to time in that regard. The petitioner did not comply with the same. Opportunity was also given in terms of the proviso to Section 9(4) of the Act. The last date was fixed on May 27, 1977. The petitioner did not avail of the same. Under the circumstances, the Superintendent of Taxes made his own enquiries for the purpose of making summary assessment. He sent his Inspector to visit the business premises of the petitioner to examine the books of account. The Inspector visited on more than one occasion but the accounts were not made available to him by the petitioner on one plea or the other. The Superintendent of Taxes, therefore, estimated the turnover of the petitioner on the basis of the materials available to him and made the assessment to the best of his judgment

u/s 9(4) of the Act. By a common order of assessment he estimated the turnover of the petitioner for the two quarters covering the period from July 1, 1976 to December 31, 1976 and determined the tax payable at Rs. 31,500 and interest at Rs. 900. The total demand was Rs. 32,400. By another order of assessment, the turnover for the quarter ending March 31, 1977, was estimated. The tax payable for this quarter was determined at Rs. 17,500 and interest at Rs. 200, the total demand amounted to Rs. 17,700. Demand notices were duly served on the petitioner for the aforesaid two amounts. The petitioner did not prefer any appeal or revision against the said orders of assessment, nor did he file any petition u/s 10 of the Act for cancellation of the best judgment assessment. He deposited a sum of Rs. 26,813.40 out of the demand for Rs. 32,400 for the two quarters ending December 31, 1976 and a sum of Rs. 11,500 out of the demand for Rs. 17,700 for the quarter ending March 31, 1977. Two sums of Rs. 5,586.40 and Rs. 6,200 remained outstanding against the petitioner.

2. Thereafter on December 13, 1978, the petitioner filed petitions before the Superintendent of Taxes u/s 12(1) of the Act for rectification of mistake in the orders of assessment on the ground that the assessments made by him were arbitrary and not based on material. A prayer was made that the petitioner should be assessed as per the particulars furnished in the rectification petitions. The Superintendent of Taxes by his order dated March 30, 1979, rejected the petitions on the ground that there was no mistake apparent on the face of the record. Against the said orders the petitioner moved revision petitions before the Commissioner of Taxes. The Commissioner of Taxes by a common order dated March 3, 1980, rejected the revision petitions on the ground that what was sought for in the rectification petition was redetermination of the turnover of the petitioner and not rectification of any mistake apparent from the records. The Commissioner of Taxes, therefore, held that the case of the petitioner did not fall within the scope of Section 12(1) of the Act and, accordingly, dismissed the revision petitions. Against the aforesaid order passed by the Commissioner these two writ petitions have been filed. The sole contention of the petitioner is that the best judgment assessment made by the Superintendent of Taxes by his orders of assessment dated June 13, 1977, u/s 9(4) of the Act is not based on any evidence on record and, as such, the assessment itself is a "mistake apparent from the records".

3. We have heard Mr. B. Das, the learned counsel for the petitioner. Also heard Mr. M. Nath, the learned Government Advocate. Mr. Das submitted that if assessment made by the assessing authority is not based on sufficient materials or evidence on record, it is a case of apparent mistake which can be rectified in exercise of power u/s 12(1) of the Act by setting aside the assessment and directing fresh assessment. The submission of Mr. Nath, the learned counsel for the Revenue, is that the scope and ambit of Section 12(1) is limited only to rectification of mistakes apparent from the records of the case. The case of the petitioner, on the face of it does not fall u/s 12(1) of the Act.

4. For proper appreciation of the rival submissions, it will be expedient to refer to Section 12 of the Act, which, so far as relevant, reads as follows:

"12. Rectification of orders.--(1) The authority which made an assessment or passed an order on appeal or revision in respect thereof may, at any time within three years from the date of such assessment or order and of its own motion, rectify any mistake apparent from the records of the case, and shall, within the like period, rectify any such mistake as has been brought to its notice by a dealer :"

5. From a plain reading of Section 12 itself, it is clear that the power under this section is limited to rectification of mistakes which are apparent from the records of the case. What needs our consideration is the true meaning and scope of the expression "mistake apparent from the records of the case". It appears that identical expression used in Section 35 of the Indian Income Tax Act, 1922 and Section 154 of the Income Tax Act, 1961, had come up for interpretation before the Supreme Court in a number of cases. In *Maharana Mills (Private) Ltd. Vs. Income Tax Officer, Porbandar*, it was held by the Supreme Court :

"A mistake contemplated by this section (Section 35 of the Indian Income Tax Act, 1922) is not one which is to be discovered as a result of an argument but it is open to the Income Tax Officer to examine the record including the evidence and if he discovers any mistake he is entitled to rectify the error....."

In *The Income Tax Officer, Alwaye Vs. The Asok Textiles Ltd., Alwaye*, it was observed :

"The Income Tax Officer can, u/s 35 of the Act, examine the record and if he discovers that he has made a mistake, he can rectify the error and the error which can be corrected may be an error of fact or of law."

Earlier in *M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.*, also the Supreme Court held that a glaring and obvious mistake of law can be rectified u/s 35 as much as mistake of fact apparent from the records.

6. In *T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay*, the Supreme Court dealing with the power of rectification u/s 154 of the Income Tax Act, 1961, declared the law in the following words :

"A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions."

It was, therefore, held that a decision on a debatable point of law is not a mistake apparent from the record.

7. From the aforesaid decisions of the Supreme Court, it is clear that "a mistake apparent from the record" u/s 12(1) of the Act means a mistake which is obvious, patent and self-evident from the records of the case. It does not cover any mistake that may be discovered by a complicated process of investigation,

argument or proof. Similarly, a mistake on which conceivably there can be two opinions, cannot also be rectified by virtue of this section. A decision on a debatable point of law or failure to apply the law to a set of facts which remains to be investigated cannot also be corrected by way of rectification. It should not be a mistake which calls for detailed investigation of facts or law or elaborate argument to establish it.

8. Besides, the mistake must be apparent from the "record of the case". The "record" contemplated by this section does not mean only the order which is sought to be rectified. It comprises all proceedings on which the order in question is based. The authority concerned for the purpose of exercising the power under this section may look into the entire evidence and documents on record to ascertain whether any mistake had been committed by him in passing the impugned order. It cannot, however, go beyond the records and look into fresh evidence or material which had not been on record at the time the order was passed.

9. Considering the facts and circumstances of the case in the light of the law stated above, we do not find any mistake in the orders of assessment passed by the Superintendent of Taxes not to speak of "mistake apparent from the record". The learned counsel for the petitioner also could not point out to us any such mistake. The petitioner is really aggrieved in this case with the estimation of the turnover made by the Superintendent of Taxes to the best of his judgment, which according to him is a little higher than his actual turnover. What is sought by him by the rectification petition is in fact a review of the order of assessment and re-estimation of the turnover taking into account the fresh information furnished by him along with his rectification petition. Such a relief, as is evident from the aforesaid discussion, cannot be granted by the assessing authority in exercise of the power of rectification u/s 12 of the Act. We are, therefore, of the opinion that the petition for rectification was rightly rejected by the Superintendent of Taxes and the Commissioner was also justified in refusing to interfere with the order of the Superintendent of Taxes.

10. The two writ petitions, therefore, have no merit and are accordingly, dismissed. No order as to costs.