
(1969) 11 KL CK 0005
In the High Court Of Kerala
Case No : T.R.C. No. 31 of 1968

St. Teresa's Oil Mills

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-11-1969

Acts Referred:

Income Tax Act, 1922 — Section 23(4)

Citation : (1970) 76 ITR 365 : (1970) 25 STC 497

Hon'ble Judges : T.C. Raghavan, J;P. Unnikrishna Kurup, J

Bench : Division Bench

Advocate : T.L. Viswanatha Iyer and E.R. Venkateswaran, for the Appellant;
Government Pleader, for the Respondent

Judgement

Unnikrishna Kurup, J.—The petitioner in this tax revision case is the assessee, a firm registered under the Indian Partnership Act, 1932. Besides running an oil mill it is also engaged in the hulling of paddy for persons who bring it for conversion into rice. The accounts of the petitioner for the year 1964-65 were rejected by the Sales Tax Officer and the turnover was estimated to the best of judgment by making an addition of 10% to the disclosed turnover. The appeal preferred by the petitioner before the Appellate Assistant Commissioner was dismissed. In further appeal before the Sales Tax Appellate Tribunal, the action of the assessing authority in rejecting the accounts was upheld, but the Appellate Tribunal felt that the addition of 10% to the turnover as such could not be justified. It directed the assessment to be modified on the basis of the electric current consumption. According to the Tribunal, the current consumption indicated that the petitioner would have crushed 2,792 quintals of copra, whereas the petitioner had accounted only for 2,567 quintals. The Tribunal directed the addition of the sale value of oil and cake produced from 225 quintals of copra representing the difference.

2. The contention raised before us is that the authorities below were not legally justified in rejecting the accounts merely on the ground that the consumption of

electric current per quintal of copra crushed varied in certain months, that the alleged variation in the consumption of electrical energy could not lead to any inference of suppression of turnover and that the consumption of electricity depends upon various factors.

3. The Sales Tax Officer rejected the accounts on two grounds, firstly, that there was difference in the turnover as between the returned figure and that disclosed by the accounts, and, secondly, that there was variation in the consumption of electricity in different months. The petitioner explained the difference between the returned figure and that in the accounts as due to a clerical error. The turnover returned by the petitioner was Rs. 9,62,652-66, while as per the accounts it was Rs. 9,56,624.30. The difference being only about Rs. 6,000 and the returned figure being actually higher than the figure in the accounts, we fail to see how this circumstance could be relied on as indicative of the unreliability of the petitioner's accounts. The Tribunal, probably because of this circumstance, merely mentions in the order this circumstance without specifically indicating whether it disbelieved the explanation offered by the petitioner. We feel that the explanation should have been accepted. Or, at any rate, it appears to be too trivial to be made the basis for the rejection of the accounts. The Tribunal's order indicates that the real ground on which it justified the rejection of accounts is the variation in the consumption of electricity. Therefore, the question that arises for consideration is whether the variation in the consumption of electricity can by itself be taken as sufficient for discrediting the accounts.

4. The learned counsel for the petitioner brought to our notice the decision of the Andhra Pradesh High Court in N. Raja Pullaiah Vs. Deputy Commercial Tax Officer and Another, and contended that the consumption of electricity by itself cannot form a reliable test for determining the yield of oil, that the yield depends upon various factors like the condition of the machine, the quality of copra--whether it was dried or moist--the nature of the electric supply and other similar factors and that the consumption of electricity is affected by these and various other factors. It was also contended that no test-crushing had been done in this case and the department itself had accepted in other cases figures varying from 10 to 12 units per quintal of copra. In the petitioner's case, the average works out to 12 units per quintal. On behalf of the revenue it was urged that the rejection of the accounts was justified since there was very wide divergence in the consumption of electricity and that it was indicative of the unreliability of the petitioner's accounts. The proposition is well-settled that accounts regularly maintained in the course of business have to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. The department has to prove satisfactorily that the account books are unreliable, incorrect or incomplete before it can reject the accounts. The rejection of accounts is not a matter to be done light-heartedly, though it may not be possible to lay down in general terms the exact circumstances in which the accounts should be considered as unreliable or incorrect. The accounts could be rejected as unreliable if important transactions are omitted therefrom or if proper particulars and

vouchers are not forthcoming or if they do not include entries relating to one particular class of business. In this connection, it has to be pointed out that the rejection of accounts and assessment to the best of judgment are two distinct and separate processes and should not be confused as one, although there will be no overlapping in the materials used for applying both processes. The initial step of rejecting the accounts will be justified when the account books are found for valid reasons unreliable, incorrect or incomplete. The assessee at this stage has to be given reasonable opportunity for offering explanations regarding the defects in the accounts and on his failure to satisfactorily explain the defects, the department will be justified in rejecting the accounts. The subsequent step of assessment to the best of judgment, as has been uniformly recognised by the courts, involves some guess-work and necessarily has to be done on the materials available in each case. The Privy Council had occasion to consider the exact import of the expression "to the best of his judgment" occurring in Section 23(4) of the Indian Income Tax Act, 1922 (see *Commissioner of Income Tax v. Laxminarain Badridas* [1937] 5 ITR 170, 180 (P.C.)). The Privy Council made the following observation in that judgment:

"He (the assessing authority) must not act dishonestly or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guess-work in the matter, it must be honest guess-work."

5. In the case on hand, the only circumstance relied on by the authorities below for the rejection of the accounts is that there was wide disparity in the consumption of electricity. In our opinion, this factor by itself without any other supporting circumstance does not justify the rejection of the accounts. Such variation in the consumption of electricity can be due the various factors outside the control of the assessee. It is unsafe to categorically say that because there is variation in the consumption of electricity the accounts are incorrect or unreliable. It sometimes happens that current supply falls far below the usual voltage and on such occasions the output will necessarily be much lower than the normal rate. The efficiency of the crushing machine as also the moisture content in the copra would also be relevant factors to be taken into account in arriving at the output. It is, therefore, unsafe to uphold the rejection of the accounts purely on the ground that there has been divergence in the consumption of electricity. In this case, there is also the additional circumstance that the department itself has admitted variations ranging from 10 to 12 units per quintal; and the petitioner's consumption of electricity is 12 units per quintal, which cannot be said to be wide off the accepted consumption. We are of the opinion that in these circumstances the rejection of the accounts is not legally justified.

6. We accordingly set aside the order of the Tribunal and direct that the assessment be modified accepting the assessee's accounts. In the circumstances, however, there will be no order as to costs.