
(1972) 03 PAT CK 0006

In the Patna High Court

Case No : Tax Cases No's. 13 and 14 of 1967

Standard Mercantile Company

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-03-1972

Acts Referred:

Bihar Sales Tax Act, 1959 — Section 33(1), 33(3)

Citation : (1972) 29 STC 675

Hon'ble Judges : Shiveshwar Prasad Sinha, J; Shambhu Prasad Singh, J

Bench : Division Bench

Advocate : Ramanugrah Prasad, for the Appellant; Shreenath Singh, Standing Counsel No. 1, for the Respondent

Judgement

Shiveshwar Prasad Sinha, J.—This court called for the statement of the case u/s 33(3) of the Bihar Sales Tax Act, 1959, on the questions which are pari materia in respect of both the applications. The references have been heard together and, therefore, they are decided by a consolidated judgment.

The questions on which statement of the case was called, for different periods, are as under:

For the period 1961-62.—Whether the addition of Rs. 5,76,887.41 to the gross turnover on account of possible omission for the year 1961-62 is legal and valid in the facts and circumstances of the case ?

For the period 1st April, 1963, to 30th September, 1963.—Whether the addition of a sum of Rs. 2,85,471.37 to the gross turnover for the period from 1st April, 1963, to 30th September, 1963, on account of possible omission is legal and valid in the facts and circumstances of the case ?

2. The facts relevant are that the petitioner is a registered dealer carrying on business at Patna in the name and style of Messrs. Standard Mercantile Company. The business consists of sale of iron and pig iron, hardware pipes, sand and china clay and G.I. sheets. While the assessments for the years

1961-62 and 1962-63 were still pending, on the 16th September, 1963, the Superintendent of Commercial Taxes, Intelligence Branch, made a surprise inspection of the petitioner's business premises and seized in all twelve books of account. It is not necessary to mention all the books of account, which had been seized, except items Nos. 6 to 11 of the seizure list, which were the accounts maintained in respect of some clandestine business and which accounts were not intended to be produced for the purpose of assessment before the sales tax authorities. These six items were :

- (1) One cash book from 17th September, 1962, to 7th May, 1963.
- (2) One cash book from 8th May, 1963, to 5th July, 1963.
- (3) One cash book from 5th April, 1963, to 15th September, 1963.
- (4) One cash book from 1st July, 1963, to 16th September, 1963.
- (5) One ledger for 1962-63.
- (6) One cash book from 12th December, 1961, to 4th April, 1962.

I may mention that the period 1961-62 for which assessment had been made corresponds to 1st April, 1961, to 31st March, 1962, and for the other assessment the period has already been mentioned, namely, 1st April, 1963, to 30th September, 1963. Looking at the aforesaid seized accounts it will be seen that item No. 6 is relevant for the period 1961-62 and item No. 1 in part and items Nos. 2, 3 and 4 in full relate to the next assessment period. Be that as it may, returns as originally filed by the petitioner for the respective periods were Rs. 48,66,268.57 as gross turnover for the period 1961-62 and Rs. 15,43,934.63 as gross turnover for the period 1st April, 1963, to 30th September, 1963. The sales tax authorities found that the transactions contained in the above seized accounts were also part of the dealer's transactions and that, therefore, the dealer's turnover had to be estimated. In respect of the assessment period 1961-62 the sales tax authorities made the following three additions to determine the petitioner's gross turnover :

(i) Actual suppressed sales found from the seized books: Rs. 4,63,210.82 (ii) Estimated suppressed sales for the period for which the books corresponding to the seized books were not available : Rs. 6,90,564.00 (iii) Estimated suppression of sales for possible omission : Rs. 5,76,887.41 The total addition made to the disclosed turnover ----- thus worked out: Rs. 17,30,662.23

Similarly for the period 1st April, 1963, to 30th September, 1963, the following two additions were made to the disclosed turnover :

(i) Actual suppressed sales found from the seized books: Rs. 5,70,942.00 (ii) Estimated suppression of sales for possible omission: Rs. 2,85,471.00 ----- Rs. 8,56,413.00.

The petitioner having failed in its appeal before the sales tax authorities and also in revision before the Commercial Taxes Tribunal sought a reference on the question as to whether the addition of the aforesaid two amounts, namely, Rs. 5,76,887.41 and Rs. 2,85,471, for possible omission for transactions was valid in law. The claim for reference u/s 33(1) of the Sales Tax Act, 1959, having been rejected, this court called for a statement of the case on the question stated above.

3. Mr. Ramanugrah Prasad appearing for the petitioner submitted that although he had no grievance with regard to the additions made on the basis of the seized books of account, yet so far as the addition made for possible omission was concerned, that was based on no material and consequently, those additions could not be sustained. Referring to some of the case laws, which I will presently deal with, he submitted that even for the purpose of making a best judgment assessment the determination of the income must be based on some material and not on mere guesswork without having any means between the material and the turnover determined. Referring to the facts of the instant case, he submitted that the sales tax authorities had already made additions on the basis of the seized accounts and that, therefore, further addition by way of possible omission had no material whatsoever for its support. According to Mr. Prasad, therefore, the two amounts for the two respective periods as possible omissions were not sustainable in law;

4. Mr. Shreenath Singh appearing for the department submitted that no doubt even for the purpose of making a best judgment assessment the department should have materials before it to which estimate of the turnover could be related but, in the instant case, such material was not wanting. Books of account had been seized which indicated that the dealer had extra turnover but such a turnover was not put in the return for the purpose of taxation. That part of the turnover was not in the regular books of account maintained; rather they were noted in another set of books, which would not have seen the light of the day if they had not been seized by the surprise check. Having caught hold of those books, the department found that the turnover therein was taxable. But even these books, according to Mr. Singh, did not reflect all the transactions and, therefore, even they could not be relied upon for determining the entire turnover of the dealer. Necessarily, therefore, the department had to take recourse to estimate. Such estimate had as its basis the turnover found reflected in the seized books for the period of assessment 1961-62. The department first estimated the sales as per seized books of account. Since the account books seized did not cover the entire period of assessment of 1961-62, the department had to estimate further turnover for the period on the basis that similar amount of turnover must have been earned by the dealer and kept suppressed. These two estimates of turnover, according to Mr. Singh, were firstly on the basis of the seized books and secondly on the supposition that the dealer did maintain similar accounts for the prior period in which the proportionate turnover would have been so much as had been estimated. And, further, since the seized books were

unreliable, the department had still to find out the extent of the further undisclosed turnover and it was for that purpose that the department added a further turnover, over and above the two calculated amounts on the basis of the seized books of account, as possible omissions. Mr. Singh contended with great stress that for the purpose of determination of turnover by best judgment assessment method, it was not necessary that the determination must be based on certain materials. It was enough if the determination of the turnover was related to or was with reference to the materials on the record. He submitted that the additions to the turnover, as made in the instant case, being with reference to and related to the seized books of account, did not suffer from any infirmity and it is, therefore, legal.

5. Having heard the parties I am of opinion that the contention made on behalf of the petitioner is valid and must be accepted. It is no doubt true that the department, having found that the dealer was suppressing a part of his turnover and for which purpose he was maintaining a separate set of accounts, would be entitled in law to make an assessment by the best judgment method. But even for that purpose the determination of the gross turnover has got to have some relation with the materials on the record., If the determination of the turnover is without any material, it would be an erroneous determination of the. turnover in law and notwithstanding the fact that it was only a determination of the quantum of turnover which was normally a question of fact, it would still be open to attack as erroneous in law, being not supported by any evidence or being not related to any material. The manner in which best judgment assessments are required to be made has been the subject-matter of several decisions, one of the earliest being a decision of the Privy Council in the case of Commissioner of Income Tax, Central and United Provinces v. Laxminarain Badridas [1937] 5 ITR 170. One of the passages, which can be usefully read, is as under:

The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He 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....

This decision has been noticed with approval in the subsequent decision by the Supreme Court. In the case of Raghubar Mandal Harihar Mandal Vs. The State of Bihar, , their Lordships observed :

No doubt it is true that when the returns and the books of account are rejected, the assessing officer must make an estimate, and to that extent he must make a guess ; but the estimate must be related to some evidence or material and it

must be something more than mere suspicion.

Further in the same judgment their Lordships observed that in making an assessment u/s 10(2)(b), the Sales Tax Officer is not fettered by the technical rules of evidence and pleadings and he is entitled to act on the material which may not be accepted as evidence in a court of law ; but he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment. When the returns and the books of account are rejected, the assessing officer must make an estimate and to that extent he must make a guess ; but the estimate must be related to some evidence or material and it must be something more than mere suspicion. In the case of *State of Kerala Vs. C. Velukutty*, the Supreme Court once again reiterated its earlier view on the manner in which the best judgment assessment was to be made. It was observed :

Under section 12(2)(b) of the Act, power is conferred on the assessing authority in the circumstances mentioned thereunder to assess the dealer to the best of his judgment. The limits of the power are implicit in the expression "best of his judgment". Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a Judge, but on settled and invariable principles of justice. Though there is an element of guess-work in a "best judgment assessment", it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case. Though Sub-section (2) of Section 12 of the Act provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard for the available material.

6. On the basis of the case laws, which I have referred to above, the principle, which seems to have been laid down is that even for the purpose of making best judgment assessment the determination of the turnover for assessing sales tax must be on the basis of some material. It must have relation to the material available and not be a mere wild guess. The sales tax authorities even while making best judgment assessment are required to exercise their judicial discretion.

7. How this principle applies to the impugned assessment ? I find that the amounts of addition have been described as "possible omission". The expression "possible omission", as one would normally understand, means that there may or may not be an omission. In other words, the sales tax authorities were in some doubt as to whether after having already made additions as suppressed sales on the basis of the seized accounts, there was any further omission in the turnover which required to be added. I may observe that in matters concerning taxation the taxing authority has to be definite before inflicting a tax on the taxpayer. Where an element of doubt pervades the mind of the taxing authority, the benefit of doubt would go to the taxpayer. This is the established principle of law and it needs no repetition. Be that as it may, looking to the orders passed by the

sales tax authorities, I find that on the basis of the seized accounts they made full calculation of the turnover which required to be added to the disclosed turnover. In doing so for the period 1961-62, they first added the actual suppressed sales found from the seized books. Then they estimated the suppressed sales for the period for which such accounts were not made available or could not be seized. For the period 1st April, 1963, to 30th September, 1963, the seized books covered the entire period and, therefore, the sales tax authorities found actual suppressed sales from those books. The material, which was available for making additions to the turnover had by this method been fully exhausted. Not only the turnover, which was found from the seized books, was calculated and added to the disclosed turnover, but even further turnover was calculated for the period 1961-62 on the supposition that there must have been similar suppressed turnover. The petitioner has made no grievance in respect of this part of the assessment. After these additions had been made, there is no further material left before the department on which they could estimate further suppression of sales as further possible omissions. In my opinion, the orders do not show that the additions of the amounts of Rs. 5,76,887.41 for the period 1961-62 and Rs. 2,85,471.37 for the period 1st April, 1963, to 30th September, 1963, as possible omissions were made with reference to any evidence or material; on the contrary they show that having found the evidence of clandestine dealing, the sales tax authorities thought that they were now entitled to make any guess howsoever wild it may be. Having already determined and added the suppressed sales on the basis of the materials available, further addition towards suppressed sales as possible omission was anything but based on or having reference to any material on the record. In my opinion, therefore, the answer to the questions must be in the negative, namely, that the additions of Rs. 5,76,887.41 for the assessment year 1961-62 and Rs. 2,85,471.37 for the period 1st April, 1963, to 30th September, 1963, on account of possible omissions were not legal and valid. The references are answered accordingly. The department is to pay costs. Hearing fee Rs. 150.

Shambhu Prasad Singh, J.

I agree.