

(1973) 04 OHC CK 0033
In the Orissa High Court
Case No : S.J.C. No's. 20 to 23 of 1971

State	Vs	APPELLANT
Kanhiyalal Jain		RESPONDENT

Date of Decision : 09-04-1973

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(8), 24(1)

Citation : (1973) 32 STC 21

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : None, for the Respondent

Judgement

R.N. Misra, J.—These are four references made u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as "the Act"), by the Additional Member, Orissa Sales Tax Tribunal, of the following questions for decision of this court:

(1) Whether the expression "period" in Section 12(8) can be construed in a restricted manner meaning a quarter or whether it means the relevant year for which the accounts are maintained by the assessee.

(2) Whether in the facts and circumstances of the case, in view of the suppression detected during the quarter ending March, 1962, it is permissible to hold that there was an escapement of the turnover during that quarter only and not during other quarters covered by the relevant accounting year.

2. A resume of the facts relevant for determination of the questions referred to us as appearing from the statement of facts may now be given. The assessee is a registered dealer under the Orissa Sales Tax Act. It had been assessed to sales tax for the quarters ending December, 1961, to December, 1962. The assessing officer reopened the assessment u/s 12(8) of the Act for these quarters. The suppression which was ultimately found to have been established was with regard to a transaction of Rs. 323-12-0 appearing in a third party's account on 29th January, 1962, on the basis of which the suppression was found out and the

allegation was sustained.

The dealer maintained account from Dewali to Dewali. The suppression thus related to the accounting period of 1961-62 and related to five quarters, namely, ending December, 1961, to ending December, 1962. The assessing officer completed the assessments u/s 12(8) of the Act according to the best of judgment for all these five quarters on the basis of the aforesaid lone suppression. In appeal the assessments were sustained. In second appeal before the Tribunal, however, assessment for the quarter ending 31st March, 1962, was maintained on the finding that the suppression related* to that quarter and assessments u/s 12(8) of the Act for the remaining four quarters were set aside. The State thereafter applied for these references to be made to this court in respect of the four quarters where the Tribunal interfered.

3. In Section 12(8) of the Act provision has been made for reopening assessments if for any period there has been escapement of assessment or under-assessment of the turnover of a dealer.

Under the Act the unit of assessment during the relevant period was the quarter as defined in Section 2(1) of the Act. Use of the word "period" in Section 12(8) of the Act is clearly with reference to a part of the year. In fact while dealing with the period of limitation for making assessments under that Sub-section it has been stated:

The Commissioner may at any time within thirty-six months from the expiry of the year to which that period relates?.

The word "period" as used in Section 12(8) of the Act, however, cannot be equated with "quarter" because the two expressions "period" and "quarter" have been used in the Act. Besides, escapement of assessment and under-assessment may relate to a duration of time beyond a quarter. Advisedly the Legislature has, therefore, used the word "period". In common parlance the meaning of the word "period" would be a duration of time. Our answer to the first question, therefore, shall be that the expression "period" in Section 12(8) of the Act is not used as synonymous to "quarter" or "year".

4. The next question has been long answered by this court in *Silla Krishna Murty v. Commissioner of Sales Tax* [1961] 12 S.T.C. 584 and *Jami Biswanath Prusthy v. Commissioner of Sales Tax* [1961] 12 S.T.C. 606. It has been held by this court :

Rule 20 of the Orissa Sales Tax Rules provides for the filing of the return for each quarter of a year. Thus, it was argued that the unit of assessment is each quarter, the assessment of which must be completed separately and if any defect is found with regard to the accounting in respect of a particular quarter, the accounts for that quarter is liable to be rejected and not for the whole year. I am afraid, I cannot accept this argument. Doubtless, quarterly returns are to be submitted under the law. The assessee in this case submitted his quarterly

returns but maintained the accounts for the financial year. Sub-section (1) of Section 11 enjoins upon the dealer to file returns for the quarter and under Sub-section (1) of Section 12 if the Commissioner is satisfied without requiring the presence of the 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. Under Clause (a) of Sub-section (2), if the Commissioner is not satisfied without requiring the presence of a registered dealer who furnished the return 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. Thereafter under Clause (b) he would proceed to hear the case and make the assessment. Clause (j) of Section 2 defines "year". "Year" means the financial year. The assessee submitted his accounts for the financial year. Rule 26-A of the Orissa Sales Tax Rules, 1947, prescribes the procedure for maintenance of account of moneys realised as sales tax. It reads as follows :

(1) 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.

(2) 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 3 years thereafter.

Thus, the intention of the Legislature seems to be clear that the books of account are to be maintained on annual basis. Section 15 of the Act directs a dealer to maintain correct and complete accounts. Therein, of course, it does not specify the period for which accounts are to be maintained. But the State Government have been empowered to make rules in that behalf and accordingly the above Rule 26-A was framed by the State Government. It is fairly clear that the intention is that the books of account are to be maintained on annual basis.

From the aforesaid decision it is clear that where books of account are maintained on annual basis as in this case and if a mistake is found in such books justifying rejection, the entire book has to be rejected, that is, accounts of the year are liable for rejection. In that view of the matter, the Tribunal was not right in interfering with the estimates for the other four quarters and in sustaining the enhancement on the basis of estimates for the quarter ending March, 1962, to which period the suppression related.

From the fact that the Tribunal sustained the assessment for that quarter it follows that the books were liable to be rejected and a best judgment assessment was available to be completed. Once that is so, best judgment

assessments could be completed for all the five quarters to which the accounts related.

5. In view of what we have said above, our answers to the two questions referred to us are :

(1) The expression "period" in Section 12(8) cannot be construed as restricted to a quarter nor can it be said to relate to the whole year for which accounts are maintained by the assessee.

(2) In view of the suppression detected on a date relating to the quarter ending March, 1962, it was permissible to complete best judgment assessments in respect of the quarters which the books of account related and the effect of suppression could not be confined or limited to that quarter only.

6. We are sorry to find that the Tribunal had taken a view contrary to a reported decision of this court which was binding on it.

7. As the assessee has not chosen to appear before us we think it appropriate to make no order as to costs.

B.K. Ray, J.

8. I agree.