(2013) 07 AP CK 0037

In the Andhra Pradesh High Court

Case No : T.R.E.V.C. No''s. 25, 29 and 32 of 2013

State of Andhra Pradesh APPELLANT

Vs

Raghavendra Agencies RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 22(1)

Citation : (2013) 57 APSTJ 106

Hon'ble Judges : G. Rohini, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : B. Venkatadri, for the Appellant; G. Narendra Chetty, for the Respondent

Judgement

Challa Kodanda Ram, J.—Since the question of law involved in all these appeals is one and the same, they are heard together and are being disposed of by this common judgment. These Tax Revision Cases are filed by the State (petitioner-respondent) u/s 22(1) of Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act") read with Rule 39 of Andhra Pradesh General Sales Tax Rules, 1957, against the orders of the Sales Tax Appellate Tribunal (for short "the Tribunal") dated 31.10.2012, 07.11.2012, 07.11.2012 in T.A. Nos. 302 of 2012, 146 of 2012, 145 of 2012, raising the following common question of law:--

Whether the STAT erred in holding that the ADC had conclusively decided the issues presented before him for his adjudication?

2. The assessee was a dealer on the file of Commercial Tax Officer, Proddatur Town, Kadapa District dealing in pulses, cakes and oils. The assessee has closed his business with effect from 15.11.2006. The Assistant Commissioner (CT), Kadapa Division, Kadapa passed assessment orders on 05.03.2010 for the years 2006-2007 and 2007-2008 and directed to pay penalties of Rs. 26,39,612/- and Rs. 15,47,829/- respectively, and further passed another assessment Order dated 31.10.2008 for the year 2006-2007 and directed to pay tax of Rs. 26,39,612/-. Aggrieved by the same the respondent-appellant filed appeals

before the Appellate Deputy Commissioner (CT), Kurnool, who recorded as follows:

that he has perused the material records forwarded by the Enforcement wing O/o the Commissioner of Commercial Taxes, Hyderabad examined the facts and issues involved and rendered a clear finding, that the assessing authority failed to establish the appellants connection with M/s. Ranganatha Trading Company with that of two said tankers, and also failed to establish the appellants connection with Avvaru Sreenivasulu from whom slips were recovered, the goods that were moved from Proddatur to Chennai were recorded as consignment sales from Madhya Pradesh to Chennai were based on presumptions without a valid evidence, the opening of Bank Account and withdrawing the amounts are made only against M/s. Ranganatha Trading Company and not against the appellant, the collusion by the appellant with the oil tankers for transporting the goods with M/s. Ranganatha Trading company was based on suspicion and predetermined conclusion and the assessment ought have passed against M/s. Ranganatha Trading Company but not on the appellant, and further observed show cause notice was also issued proposing tax against him. These facts and categorical findings clearly indicates the estimation of turnover or suppression of turnover was assessed against the appellant was based on assumptions and presumptions without any evidence on record. The material and record examined by the Appellate Deputy commissioner was not certain, definite and not proximately connected to the appellant.

3. In spite of finding, as a matter of fact that the respondent had nothing to do with the business and there was no credible material on record to attribute the transactions alleged to have been taken place in the assessment orders, the Appellate Deputy Commissioner, chose to remand the case of the respondent to the assessing authority for doing a de novo assessment under C.S.T. Act and Rules, 1956. The respondent filed appeals before the Tribunal mainly contending that having recorded the finding that the assessee had nothing to do with the transactions mentioned in the assessment order, the remand of the case was totally unwarranted and prayed for setting aside the same. The Tribunal found after referring to the facts on record and has finally recorded as under:

In the impugned remand order, neither the dealer nor the State requested for further enquiry on any fact. The Appellate Authority also has not indicated in the order if any further enquiry is required and the point on which enquiry is required. The remand order can be justified only if something is very necessary for deciding the case and for some further investigation is necessary in that behalf but that has not been done so. Having rendered clear findings after perusing the entire material available on record by the first appellate authority, we find there was absolutely no necessity to remand the matter back to the assessing authority to pass orders and he ought to have allowed the appeal.

4. In arriving at conclusion that the remand was totally unwarranted and unnecessary, the Tribunal relied on the judgments reported in Soft Foam

Industries (P) Ltd., Hyderabad v. State of A.P. (2004) 39 APSTJ 192 and Kanyakaparameswari Trading Company and Others Vs. The State of Andhra Pradesh, . Finally, the Tribunal had set aside the orders of the Appellate Deputy Commissioner (CT), Kurnool.

5. It may also be useful to extract the relevant portion of the judgment of the Supreme Court reported in Hero Vinoth (minor) Vs. Seshammal, though arising under Income Tax Act with regard to revisional powers of the High Court.

(iii) The general rule is that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to ''decision based on no evidence'', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

A finding of fact may give rise to a substantial question of law, inter alia, in the event the findings are based on no evidence and/or while arriving at the said finding, relevant admissible evidence has not been taken into consideration or inadmissible evidence has been taken into consideration or legal principles have not been applied in appreciating the evidence, or when the evidence has been misread.

6. In the light of the findings recorded by the Tribunal and in the absence of any material to take contra view, the question of law purported to have arisen from the orders of the Tribunal is liable to be rejected as the orders of the Tribunal are based purely on appreciation of the facts on record and there is no challenge to the same raising specific ground with supporting material that there is a perversity in finding of the facts as recorded by the Tribunal. It is well settled that the Tribunal is the last finding authority and unless a specific question setting out the perversity of fact is raised this Court in exercise of its jurisdiction u/s 22 of the Act, should not and cannot re-appreciate the facts and in that view of the matter, the tax revision case is liable to be dismissed. Accordingly, all these Tax Revision Cases are dismissed. No order as to costs.

