
(1973) 04 OHC CK 0020

In the Orissa High Court

Case No : Special Jurisdiction Case No. 66 of 1971

State of Orissa

APPELLANT

Vs

Chandra Kanta Moda

RESPONDENT

Date of Decision : 12-04-1973

Acts Referred:

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

Citation : (1974) 33 STC 573

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

Bench : Division Bench

Advocate : L. Rath, for the Respondent

Judgement

R.N. Misra, J.—This is a reference made by the Member, Sales Tax Tribunal, u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the Act), of the following questions for our determination:

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that it was incumbent on the department to specify the escapement in order to justify a proceeding u/s 12(8) of the Orissa Sales Tax Act?

(ii) Whether, on the facts and in the circumstances of the case, onus is not on the opponent to prove that undated entries in the seized books of account relate to a particular period and not to another period?

2. These are the relevant facts appearing on the record: The assessee is a registered dealer bearing registration No. CUI 3537 and started its business during the assessment year 1965-66 in aluminium utensils. It was assessed to sales tax for the year 1965-66. The assessment was reopened on the allegation that a part of its turnover had escaped assessment. The assessing officer rejected the books of account for defects indicated in his order and completed the assessment according to his best judgment. As a result thereof, an additional tax demand of Rs. 475.45 was raised.

Before the Assistant Commissioner of Sales Tax, the first appeal was dismissed because he was of the view that enhancement of turnover by 10 per cent while completing the assessment according to the best of judgment would not be taken to be arbitrary. The assessee came up in appeal before the Tribunal and the learned Member held:

The appellant's accounts were rejected on the ground of duplicate set of accounts seized from his shop premises and consequently the turnover was enhanced by Rs. 10,000. The books seized related to cement expenses, household expenses and a khata containing goods given for approval. The first appellate authority accepted the books of account and house expenses to be irrelevant. As for the khata containing goods given for approval, the first appellate authority held that the 10 per cent enhancement over his turnover is not high but this being a 12(8) proceeding it was incumbent on the department to say specifically what was the escapement. That not having been done, nor any specific amount having been alleged as escaped turnover, this 12(8) proceeding cannot stand. Besides, the books of account of the appellant all through thereafter have been accepted and it is the beginning of his business. As he started business in 1965-66 this book embodying goods given "on approval" was found to be somewhat not complete. But all the same that does not contain any date so as to link it with the period of assessment. In that view of the matter this 12(8) proceeding cannot stand and the appeal is allowed and the assessment is annulled.

From this appellate decision the aforesaid two questions of law are said to arise.

3. The Tribunal has not come to find that the books of account of the assessee were not liable to be rejected. If the accounts are rejected, a best judgment assessment is bound to follow. In S.J.C. No. 65 of 1971 (State of Orissa represented by Commissioner of Sales Tax, Orissa, Cuttack v. Durga-dutta Moda [1973] 32 S.T.C. 98 (Ori)) disposed of by us on 10th April, 1973 we have held that Section 12(8) of the Act does not require the assessment to be confined to the exact suppression or escapement. Section 12(8) of the Act prescribes that the reassessment is to be made in accordance with Section 12(5) of the Act. Therefore, there can be a best judgment assessment. It is inherent in the scheme of a best judgment assessment that such an assessment is not the result of mere calculation but it is based upon estimate. Therefore, every part of the assessed turnover cannot be supported by an account and the law does not require the assessing officer to correlate his estimate to the books of account, which upon being discarded, he takes to the method of best judgment assessment. As we have already indicated in the said case a best judgment assessment cannot be capricious or arbitrary and it has got to be based upon some sort of material which would justify the estimate. The Tribunal appears to have laboured under a misconception of law that in a proceeding u/s 12(8) of the Act it is only the escaped turnover which can be brought into the net of taxation.

If the Tribunal had kept the legal position in view and come to hold that

suppression had not been established that would have been a finding of fact. It is true, in the order of assessment the assessing officer has not indicated any clear instance of suppression or escapement though he has indicated reasons for discarding the books of account. Our answer to the first question is:

On the facts and in the circumstances of the case, the Tribunal was not right in holding that it was incumbent on the department to specify the escapement in order to justify a proceeding u/s 12(8) of the Orissa Sales Tax Act.

4. The next question does not indeed arise in the facts and circumstances of the case. The Tribunal found as a fact in its appellate order that the business was commenced during the assessment year in question. The Inspector of the department visited the shop in February, 1966, that is, in the course of the very first year. Therefore, there was no room for doubt that the seized accounts did relate to the assessment year in question. It is true that in a case u/s 12(8) of the Act the initial burden would lie on the revenue to establish that the seized books of account relate to a particular period because, until such correlation is established, the said accounts cannot be utilised as the basis for a finding -- even prima facie --for holding that there has been a suppression or escapement. It would always be open to the assessee to dispute the prima facie view of the assessing officer by establishing that the seized books of account do not appertain to the period indicated by the assessing officer. In the present case, however, there is no room to raise such a question of law. We accordingly decline to answer the second question as it does not arise out of the appellate order and in the facts and circumstances of the case.

5. Once the questions are answered our advisory jurisdiction ends and we are not entitled to give any directions to the Tribunal as to how the further proceeding is to be disposed of. u/s 24(5) of the Act, a copy of our judgment is to be sent to the Tribunal and the Tribunal is required to dispose of the case accordingly. We are, therefore, not in a position to accept the contention of Mr. Rath for the assessee that we should direct the Tribunal to rehear the appeal. In view, however, of the fact that the Tribunal proceeded on the footing that it was for the department to establish the quantum of the suppression, he appears not to have examined the other aspects of the matter. It would be for the Tribunal now to dispose of the appeal in an appropriate way in accordance with law. We make no order as to costs.

B.K. Ray, J.

I agree.