
(1973) 05 OHC CK 0018

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 102, 103 and 104 of 1972

State of Orissa

APPELLANT

Vs

Kundanlal Juala Prasad

RESPONDENT

Date of Decision : 02-05-1973

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 11A, 12(8), 24(1)

Citation : (1974) 34 STC 501

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

Bench : Division Bench

Advocate : Jhunjhunwala, B.P. Chandgotia, S.R. Das and M.R. Panda, for the Respondent

Judgement

R.N. Misra, J.—The learned Member, Sales Tax Tribunal, Orissa, has referred u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the Act), the following two questions for determination of this court:

(1) Whether, on the facts and in the circumstances of the case, the expression "period" in Section 12(8) of the Orissa Sales Tax Act can be considered in a restricted manner meaning a "quarter" or whether it means "a relevant year for which the accounts are maintained" by the assessee?

(2) Whether, on the facts and in the circumstances of the case, and in view of the suppression detected and established during the quarter ending 31st December, 1960, it is permissible to hold that there was an escapement of turnover during that quarter only and not during the other quarters covered by the relevant accounting year?

2. The short facts relevant for our purpose are these: The assessee is a registered dealer carrying on business in rice, paddy, etc. He had been assessed in due course under the Act for the quarters ending 30th June, 1960, to 31st March, 1961. Suppression of transaction on 24th November, 1960, to the tune of 200 bags of paddy was found whereafter action was taken u/s 12(8) of the Act.

For the aforesaid four quarters, the assessments were reopened and accounts having been discarded, suppressions were estimated.

The first appellate authority upheld the assessments whereupon the assessee appealed to the Tribunal. The Tribunal was of the view that the suppression having been detected in respect of a single transaction on 24th November, 1960, which comes within the quarter ending 31st December, 1960, earlier assessment of that quarter could be reopened and a fresh assessment made u/s 12(8) of the Act. In regard to the other three quarters, there was no justification for reassessment. This exactly is what the Tribunal stated:

"As I find, the detection is only on a date that comes under the quarter ending December, 1960. There is, therefore, no justification for enhancing the turnover of the other three quarters of the year as is done in a regular assessment. In the result, therefore, I would maintain the enhancement for the quarter ending December, 1960, i.e., Rs. 15,000 and scrap the enhancement of the other three quarters. Thus the total enhancement of Rs. 40,000 is reduced to Rs. 15,000,....

3. The learned standing counsel for the revenue contends that, admittedly, the assessee was maintaining accounts according to the Diwali year. In view of the suppression noticed, the accounts which formed the basis of the earlier assessment became liable to be rejected. Since the earlier assessment had been made on the basis of the accounts for all the four quarters and the accounts turn out to be not genuine and are, therefore, liable to be rejected, the rejection has to relate to the full year for which accounts were maintained. The accounts cannot be rejected for one quarter and be accepted for the remaining 3 quarters.

On the other hand, the assessee's counsel contends that Section 12(8) of the Act authorises reopening of the assessment for the period during which there is escapement or under-assessment. There is no reason as to why, counsel contends, the expression "period" should be equated with a "year".

4. Section 12(8) of the Act provides:

If for any reason the turnover of a dealer for any period to which this Act applies has escaped assessment or has been under-assessed or where tax has been compounded when composition is not permissible under this Act and the Rules made thereunder, the Commissioner may at any time within thirty-six months from the expiry of the year to which that period relates call for a return under Sub-section (1) of Section 11 and may proceed to assess the amount of tax due from the dealer in the manner laid down in Sub-section (5) of this section and may also direct, in cases where such escapement or under-assessment or composition is due to the dealer having concealed the particulars of his turnover or having without sufficient cause has furnished incorrect particulars thereof, that the dealer shall pay, by way of penalty, in addition to the tax assessed under this sub-section, a sum not exceeding one and a half times of the said tax so assessed.

The expression "period" has no statutory definition while u/s 2(1) and (k), the words "quarter" and "year" have respectively been defined. According to the Shorter Oxford English Dictionary, that word means "a course or extent of time, a span of time". "Period", therefore, cannot be equated either with "quarter" or with "year". Depending upon facts of each case, it might mean "a span of time less than a quarter or even more than a year". There is nothing in the Act which would lead to the conclusion that "period" as indicated in Section 12(8) of the Act refers even to the unit of assessment, that is, a "quarter" or a "year".

5. The assessee's counsel relies upon a decision of their Lordships of the Supreme Court in the case of Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, Their Lordships were dealing with the corresponding provision of Section 12(8) in the Act of the C. P. and Berar Sales Tax Act. The provision in that Act is almost similar to the relevant provision in the Orissa Act. Their Lordships were mainly concerned with the meaning of the words "escaped assessment". It is true, their Lordships have observed:

...Under Section 11-A of the Act the period of 3 years has to be calculated from the expiry of the period in regard where to any turnover has escaped assessment. As the unit of assessment is a quarter, the period in Section 11-A can only mean a quarter and it cannot be further split up into months, weeks and days. The said period is the fourth quarter and it expired on October 31, 1951. If so, it follows that the Commissioner has to assess the turnover in respect of the entire fourth quarter as the notice was issued within three years from the expiry of the said quarter.

The final direction given in the majority judgment clearly goes against the assessee's contention. After setting aside the assessments on account of defects, their Lordships directed:

...We would, therefore, set aside the assessments in both the appeals giving liberty to the respondent to make the assessment separately for the periods not barred u/s 11-A of the Act either because return was filed, as in the first case, or because the last quarter was within the period of three years, as in the second case.

A similar question was referred to us sometime back and by our decision in S. J. C. Nos. 20 to 23 of 1971, disposed of on 9th April, 1973 Since reported as State v. Kanhiyalal Jain [1973] 32 S.T.C. 21, we came to hold that where accounts were maintained annually, for example, from Diwali to Diwali, and escapement of turnover was noticed during the part of that financial year, the reassessment could relate to the entire accounting year. After hearing the counsel for the assessee, we do not find any justification to differ from the view taken by us then. Our answer to the first question, therefore, shall be:

On the facts and in the circumstances of the case, the expression "period" in Section 12(8) of the Act cannot be considered in a restricted manner to mean a "quarter". On the other hand, it is referable to the period for which the accounts

are maintained by the assessee.

6. Escapement has admittedly been detected for the quarter ending December, 1960. The question for consideration is as to whether on the basis of the escapement, noticed, the assessments for all the four quarters relating to the accounting period can be reopened. For the reasons which we have given above, it would follow that, once the accounts are liable to be discarded, the proper view to be taken would be that the assessments for all the relevant quarters may be reopened on the basis of escapement or suppression found during that quarter within the accounting period. Our answer to the second question, therefore, shall be:

On the facts and in the circumstances of the case, it was permissible to reassess all the quarters covered by the relevant accounting year.

We direct parties to bear their own costs of these references.

B.K. Ray, J.

I agree.