
(1973) 03 OHC CK 0008

In the Orissa High Court

Case No : Special Jurisdiction Case No"s. 1 to 5 of 1970

State of Orissa

APPELLANT

Vs

Sri Sanatan Pathal

RESPONDENT

Date of Decision : 08-03-1973

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(5), 12(8)

Citation : (1973) 31 STC 632

Hon'ble Judges : G.K. Misra, C.J.;S. Acharya, J

Bench : Division Bench

Advocate : Standing Counsel Sales Tax, for the Appellant; K.C.J. Ray, for the Respondent

Judgement

G.K. Misra, C.J.—Sri Sanatan Pathal (respondent) was assessed u/s 12(8) of the Orissa Sales Tax Act, 1947 (Act 14 of 1947) (hereinafter to be referred to as "the Act"), for five quarters ending 31st March, 1959, to 31st March, 1960. He was alleged to have been carrying on business in timber and firewood. The Member, Additional Sales Tax Tribunal, Orissa, by his order dated 12th November, 1968, did not interfere with the assessment u/s 12(8) though he allowed the appeal by reducing the quantum of turnover. The assessee filed an application for review. The ground that was urged in support of the review was that unless an assessment had been previously made u/s 12(5) of the Act, subsequent assessment u/s 12(8) was without jurisdiction.

2. The learned Tribunal accepted this contention and allowed the review application on 8th February, 1969. Against this order the State of Orissa asked for reference u/s 24(1) of the Act. The reference was made on 16th December, 1969 and the following two questions were referred to the High Court for answer:

(1) Whether on the facts and in the circumstances of the case, the Additional Sales Tax Tribunal was right in passing an order dated 8th February, 1969, under Rule 83 of the Orissa Sales Tax Rules, 1947 ?

(2) Whether the Tribunal was right in holding that assessment u/s 12(8) is not maintainable where there has been earlier no notice and no assessment u/s 12(5) of the Orissa Sales Tax Act ?

3. The factual basis of the first question may be noticed in short as appears from the appellate order of the Tribunal. Counsel for the assessee had contended that the assessment for the first five quarters, that is to say, the impugned quarters, u/s 12(8) was not correct as the assessee was never assessed u/s 12(5) of the Act.

On behalf of the State, it has been contended that the dealer (respondent) had been previously assessed for the first quarter u/s 12(5).

The Tribunal observed that the records did not show that the dealer was assessed u/s 12(5) earlier. Though the Tribunal said that there were no records to come to the conclusion that the respondent was assessed u/s 12(5), it did not carry the matter to its logical conclusion and did not give any relief to the dealer on this score.

4. The review application was filed under Rule 83 of the Orissa Sales Tax Rules, 1947, which runs thus :

83. The Commissioner of Sales Tax, Additional Commissioner of Sales Tax, the Deputy Commissioner of Sales Tax, the Assistant Commissioner of Sales Tax, the Sales Tax Officer, the Assistant Sales Tax Officer or the Tribunal may at any time correct any arithmetical or clerical mistakes or any error apparent on the face of the record arising or occurring from accidental slip or omission in an order passed by him, or it.

Referring to this rule, the learned Tribunal allowed the application and annulled the assessment for the first five quarters, that is, quarters ending 31st March, 1959, to 31st March, 1960.

The language of Rule 83 is plain and is not capable of any wide construction and it is not open to any of the taxing authorities to enter into the merits of the matter and correct their errors of law or fact committed in the earlier judgment. The correction is only confined to any arithmetical or clerical mistakes or any other error apparent on the face of the record and where no lengthy argument is necessary to find out accidental slip or omission in an order.

This rule itself came up for consideration before the Supreme Court in *Master Construction Co. (P) Ltd. Vs. State of Orissa and Another*, and at page 364 their Lordships observed:

But, however wide the said expressions are construed, they cannot countenance a re-argument on merits on questions of fact or law, or permit a party to raise new arguments which he has not advanced at the first instance.

The learned Tribunal, therefore, acted illegally in exercise of his jurisdiction in entertaining the review application and by examining whether the records

justified the dealer's stand that there was no earlier assessment u/s 12(5) of the Act.

5. On the aforesaid analysis, we would answer this question in the negative by saying that the Tribunal was not right in passing the order dated 8th February, 1969, under Rule 83 of the Orissa Sales Tax Rules, 1947.

6. On the second question also the Tribunal's view is equally erroneous in law. Doubtless, this aspect of law did not strike him, nor was it placed before him. He accordingly came to a bald conclusion without carefully examining the legal position that if there had been no earlier assessment u/s 12(5), there cannot be a later assessment u/s 12(8). Section 12(8), so far as relevant, runs thus:

If for any reason the turnover of a dealer for any period to which the Act applies has escaped assessment or has been under-assessed... 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....

The question for consideration is whether the words "escaped assessment" would carry any restricted meaning.

Law is well-settled by series of decisions that it is capable of widest construction. The word "escaped" is not qualified by any expression indicating the manner of escape. If the turnover escapes assessment in any manner whatsoever, it is open to the authorities to assess the same under "escaped assessment".

The matter is no longer *res Integra* and is concluded by *Anandji Haridas and Co. (P.) Ltd. Vs. S.P. Kushare, S.T.O. Nagpur and Others*, where the Supreme Court after reviewing the corresponding provision of the Income Tax Act and other taxing statutes came to the following conclusion :

We, therefore, hold that the expression "escaped assessment" in Section 11A of the Act includes that turnover which has not been assessed at all, because for one reason or other no assessment proceedings were initiated and therefore no assessment was made in respect thereof.

We are, therefore, satisfied that even if no notice had been issued to the dealer u/s 12(5) or no assessment had been made, yet it is open to the taxing authority to proceed u/s 12(8).

7. The State has taken the stand that in fact notice u/s 12(5) had been issued and the assessment had been made, though it is said to have been annulled. We express no view on this factual aspect as it is not necessary for answering the questions referred to us. Even on the assumption that there was no such notice, still the turnover could be assessed u/s 12(8).

8. We, therefore, answer the second question also in the negative by saying that the assessment u/s 12(8) is maintainable even if no notice had been issued or no

assessment had been made u/s 12(5).

In the result, the references are accepted with costs.

Hearing fee rupees two hundred.

S. Acharya, J.

I agree.