(1981) 10 OHC CK 0020

In the Orissa High Court

Case No : S.J.C. No. 62 of 1977

Suresh Chandra Jatnia APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 20-10-1981

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 12(2), 12(4), 24(1)

Citation : (1982) 53 CLT 110 : (1982) 50 STC 372

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

Bench : Division Bench

Advocate : S.C. Mohapatra and D.K. Mohapatra, for the Appellant; Standing Counsel (ST), for the Respondent

Judgement

R.N. Misra, C.J.—The Member, Additional Sales Tax Tribunal, has stated this case and referred the following three questions for opinion of the court u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the "Act"):

(1) Whether, on the facts and in the circumstances of the case, the interpretation of the seized documents from the premises of Balaram Das showing clandestine transactions with the assessee''s business is justified ?

(2) Whether, on the facts and in the circumstances of the case, the assessing authorities are correct in law in enhancing the turnover beyond the amount actually found to be out of accounts while assessing u/s 12(2) ?

(3) Whether, on the facts and in the circumstances of the case, best judgment assessment is arbitrary and has no connection with the nexus found ?

2. We are concerned with the assessment for 1973-74. The dealer has, as a fact, been assessed u/s 12(2) of the Act. From the facts stated in the statement of the case it appears that there was seizure of certain papers on 1st May, 1973, and that fact was utilised by the assessing officer to enhance the returned figure. Notwithstanding the fact that the assessing officer made an enhancement of 10 per cent of the returned figure for making the assessment, he did not discard the

accounts, nor did he proceed to make an assessment according to the best of his judgment, in which event the assessment would have been u/s 12(4) of the Act, but he completed the assessment u/s 12(2) of the Act. Law is fairly settled that where the accounts are accepted and a lapse is found, the assessing officer is entitled to make the assessment u/s 12(2) of the Act by accepting the accounts subject to such modification as the assessee''s records show. This seems to be a case where the assessing officer proceeded to complete the assessment u/s 12(2) of the Act following that pattern. Since the assessing officer did not discard the accounts and did not proceed to make a best judgment assessment by completing the assessment under the other provisions of Section 12 of the Act, it must follow that the assessing officer was entitled to proceed on the returned figure and take into account the other figure which he found to have been left out of the accounts. This would necessarily justify addition of the actually left out portion of the turnover to the returned figure. There was no occasion for the estimate. We would accordingly answer the second question by saying that, on the facts and in the circumstances of the case, the assessing officer was not correct in enhancing the turnover beyond the amount actually found to be out of the accounts as indicated in the return. Otherwise stated, it was open to the assessing officer to add the amount which he found to have been left out.

3. In view of what we have stated above, questions Nos. (1) and (3) appear to be irrelevant and need not be answered. No costs.

B.K. Behera, J.

4. I agree.

