(2014) 06 TP CK 0027

In the Tripura High Court

Case No : W.P. (C) Nos. 442 and 443 of 2006

Tara Bhusan Saha VsState of Tripura

Date of Decision : 30-06-2014

Acts Referred:

Income Tax Act, 1961 — Section 10
Tripura Sales Tax Act, 1976 — Section 9(4)

Citation : (2014) 5 GLT 41 : (2014) 73 VST 211

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : S.M. Chakraborty, Senior Advocate and P. Sen, Advocate for the Appellant; J. Majumder, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Deepak Gupta, C.J.—Both these writ petitions are being disposed of by a common judgment since identical questions of law arise. Two writ petitions have been filed in respect of two separate assessment years. In W.P. (C) No. 442 of 2006, the assessment year is 2003-04 whereas in W.P. (C) No. 443 of 2006, the assessment year is 2002-03. The undisputed facts are that the petitioner is a registered dealer under the Tripura Purchase Tax Act, 1990 (hereinafter referred to as "the Act"). The petitioner purchases raw rubber goods and rubber scrap from the growers. The petitioner also maintains books of account. The petitioner had paid purchase tax as per these books of account. The assessing officer did not rely upon the books of account and the reason given by the assessing officer is as follows:

"On consultation prevailing market rates whose are dealing same nature of goods, it appears the dealer has shown purchase rate/transfer rate of R.R. sheets and R.R. scrap much lower during the assessment years 2002-03 and 2003-04."

2. Therefore, the assessing authority did not accept the accounts of the dealer and assessed the purchase price of raw rubber at higher rates. The petitioner in his accounts had shown the average rate of raw rubber sheets at Rs. 25 per kilogram for the years 2002-03 and 2003-04 and Rs. 56 per kilogram for the

year 2004-05. The scrap rate was shown at Rs. 12 per kilogram for the years 2002-03 and 2003-04 and Rs. 30 per kilogram for the year 2004-05. The assessing officer did not accept the rates for the years 2002-03 and 2003-04 but accepted the rates given for the year 2003-04. For the year 2002-03, the assessing officer assessed the rate of rubber sheets at Rs. 36 per kilogram and rubber scrap at Rs. 17 per kilogram. For the assessment year 2003-04, the rate of rubber sheet was assessed at Rs. 50 per kilogram and the rate of rubber scrap at Rs. 20 per kilogram.

3. The assessee filed an appeal before the Assistant Commissioner of Taxes who not only rejected the appeal of the assessee but without giving any notice to the assessee directed that the highest rate of purchase of raw rubber sheet shown by the dealer at Rs. 56 per kilogram and the highest rate of rubber scrap shown by the dealer at Rs. 30 per kilogram in the year 2004-05 be also taken to be the rate for the assessment years 2002-03 and 2003-04. The appellate authority also held;

"It is apparent that the purchase rates shown by the dealer were under-invoiced in comparison with TFDPC rates which resulted in loss of revenue."

4. Thereafter, the petitioner filed revision petition which has been rejected by the Commissioner of Taxes on the ground that since the Tripura Forest Development and Plantation Corporation (TFDPC) is a non-profit organization working for welfare of rubber producer, their rate for rubber product was relevant and directed that the sale price be determined by the assessing officer on set norms. The relevant portion of the order reads as follows:

"On consideration of the oral presentation as well as available records, I am of the opinion that TFDPC being a non-profit organization working for welfare of rubber producer, their rate of rubber is very much relevant in regard to instant case. Hence, the sale price determined by the assessing officer is found to be based on set norms and acceptable."

5. At the outset, we may notice that as far as the appellate authority is concerned, the order shows total lack of knowledge of the basic principles of law. In an appeal filed by the assessee against an order determining the rate of rubber, the appellate authority increased the rate of rubber to an even higher rate than assessed by the assessing authority. We are unable to understand how he could have done so when there was no appeal or revision by the Department. No suo motu action was taken by him. The action of the appellate authority in raising the rate of rubber to an even higher level than the rate determined by the assessing officer is totally illegal and cannot be sustained under any circumstances.

6. The next issue is as to in what manner are the books of account to be rejected or accepted. The mere ipse dixit of the assessing officer cannot be accepted. No doubt, the assessing officer has the power not to accept the books of account filed by the assessee. However, if he wants to reject the books of account, he

must give cogent reasons and should also inform the assessee about the material which he (the assessing officer) wants to rely upon before rejecting the books of account. As far as the assessing officer is concerned, he only states that he consulted prevailing market rates of other people dealing in the same nature of goods and came to the conclusion that the rates reflected by the assessee were much lower than the market rate. The assessing officer may have jurisdiction to do so, but then he should have clearly pointed out who were the dealers whose rates he was relying upon. Those rates should have been brought to the notice of the assessee and the assessee given an opportunity to answer the same. Goods like rubber may fall in different categories. There may be very reasonable and valid grounds for different rates in different parts of the State. To given an example, the rate for rubber of the same quality may be lower in Sab-room and much higher in Dharmanagar because the cost of transporting rubber outside the State from Dharmanagar would be much less than Sab-room.

7. Another ground is the quality of the rubber. A trader will pay the rate which is suitable as per the quality of rubber. In case, the State has the power it may fix a minimum price and then the dealer will have to pay tax at least on that minimum price, but if minimum price is not fixed, then merely because one dealer has paid a higher price is no ground to say that all dealers should pay the same price.

8. As far as the appellate and revisional authorities are concerned, they have relied on the rates of the TFDPC but those rates are not reflected in the orders. What were the rates at which the TFDPC purchased rubber in plantations from the same area should have been clearly placed on record. This has not been done. Furthermore, Government organization like the TFDPC will normally pay a higher price since it is a non-profit organization. The TFDPC has been created for the welfare of the grower and may therefore pay a higher price. A dealer works for profit and a private dealer bargains much more than the Government organization.

9. Various taxation statutes empower the assessing authorities to make assessment on best judgment basis after rejecting the books of account of the assessee. The law is well-settled that the books of account of the asses-see cannot be rejected merely on the whims and fancy of the assessing officer.

10. Section 8(3) of the Tripura Purchase Tax Act, 1990 reads as follows:

"8. (3) On the day specified in the notice, under sub-section (2) or as soon afterwards as may be, the Commissioner after hearing such evidence as the dealer may produce and such other evidence as the Commissioner may require, shall, by an order in writing, assess the dealer and determine the tax payable by him on the basis of such assessment."

11. This section is substantially similar to the provisions of the income tax Act containing section 10 of the income tax Act and section 9(4) of the Tripura Sales Tax Act. The apex court dealing with section 10 of the income tax Act held that the law requires the assessing officer to assess the tax after hearing such

evidence as the dealer may produce and such other evidence as the assessing authority may require on specified grounds. The dealer has produced his books of account. If the assessing officer does not want to accept the books of account of the assessee, he must give some cogent and valid reasons for not accepting the books of account. Even if the books of account are not accepted, the assessing authority must assess the tax not on pure guess work but his assessment must be made with reference to some evidence and cogent material. No such evidence has been reflected in the order of the assessing officer or the appellate authority or even the revisional authority.

12. In fact, this issue is no longer res integra. A Division Bench of the Gauhati High Court in Sankar Trading Vs. The State of Tripura and Others, dealt with provisions of section 9(4) of the Tripura Sales Tax Act. In that case, the petitioner had shown in his record that tea was sold at the rates of Rs. 15, 16 and 17 per kilogram. The Superintendent of Taxes felt that the sale prices reflected in the books were lower than the prevailing market rates. He, therefore, enhanced the price of tea. The Division Bench held as follows (pages 23 and 24 in 82 STC):

"4. We have considered the submissions of the learned counsel. No counter has been filed by the Revenue. From the assessment orders as well as the appellate or revision order it does not appear that any material or evidence on the basis of which the accounts and documents of the petitioner were rejected and the higher sale price of tea was adopted for estimation of the turnover, was pointed out to the petitioner. In that view of the matter as observed in Dwijendra Kumar Bhattacharjee Vs. Superintendent of Taxes, Government of Tripura and Others, the assessee was denied the opportunity of meeting the case which was made out in the assessment orders. We may refer to para. 10 of the said decision where it has been held:

The assessing officer cannot rely on any evidence or any fact in arriving at his conclusion without first pointing out the same to the assessee and giving him a reasonable opportunity of meeting the case which is sought to be made out in the assessment order. In other words, though the assessing officer can make such inquiries he considers necessary he must give an opportunity of being heard to the assessee in respect of any materials proposed to be used for the purpose of assessment. Even in cases where the assessing officer gets informations from private sources and does not want to disclose the source of information to the assessee, he shall have to communicate to the assessee the substance of such information if he proposes to use the result of such inquiry against the assessee. It is necessary in order to put the assessee in possession of full particulars of the case he is expected to meet. The assessee must be given full opportunity to meet objections raised by the assessing officer. If an assessment is based on materials which were not disclosed to the assessee, the order of assessment would be vitiated''."

13. The aforesaid decision is applicable to the facts of the present case also. The assessing officer did not inform the petitioner-assessee about the materials

which he proposed to rely upon nor did he furnish the necessary information to the assessee with regard to the market rate of rubber prevailing at the particular time to enable the assessee to submit his explanation in that regard. That having not been done, the impugned orders of the assessment are vitiated and cannot be sustained.

14. In this view of the matter, the assessment orders are set aside and the assessing authority is directed to reassess the income on the basis of the account books of the petitioner. If he does not want to rely upon the account books, he must give cogent reasons for the same and must also supply necessary information to the petitioner on which he wants to rely and after giving reasonable opportunity he may pass a fresh order. This reassessment be done latest by October 31, 2014. Any amount refundable to the assessee be refunded to him positively by December 31, 2014 along with statutory interest, failing which the State shall be liable to pay interest at 12 per cent, per annum. The writ petitions are disposed of in the aforesaid terms. No order as to costs.

