(1961) 11 OHC CK 0003

In the Orissa High Court

Case No : S.J.C. No. 85 of 1960

The State of Orissa — APPELLANT

Vs

Epilli Ananta Patra — RESPONDENT

Date of Decision : 27-11-1961

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 19(1), 19(2)

Citation : (1963) 14 STC 109

Hon'ble Judges : R.L. Narasimham, C.J;R.K. Das, J

Bench : Division Bench

Advocate : G.K. Misra, for the Appellant; R.N. Misra, for the Respondent

Final Decision : Allowed

Judgement

R.K. Das, J.—The following two questions of law were referred to the Court by the Member, Sales Tax Tribunal, Orissa, u/s 24(3) of the Orissa Sales Tax Act, 1947 (hereinafter called the Act):

(1) Whether under Sub-section (2) of Section 19 of the Orissa Sales Tax Act, 1947, in order that the liability of the transferee may ensue, the transferor should necessarily be a registered dealer.

(2) Whether in the facts and circumstances of the case, there was a transfer of business and whether the Tribunal has been right in holding that in case of lease of business premises and utensils there cannot be a complete transfer of business.

2. The facts relevant for the purpose of this case may be stated as follows : One Arakhit Sahu was carrying on a hotel business in a part of his residential house near the Khallikote Railway Station. He was assessed as an unregistered dealer u/s 12(5) for several quarters ending with 30th June, 1954. He continued to remain an unregistered dealer until 25th July, 1954, when he let out for a period of one year his hotel premises and some furniture and utensils etc. of his business to the present assessee Epilli Ananta Patra on terms and conditions

mentioned in a plain paper agreement (exhibit 1). Subsequently, however, endorsements of further renewals were made on exhibit 1 from year to year until 25th July, 1958. From exhibit 1 it would appear that the assessee was to pay a daily rent of Rs. 2 to Arakhit for the occupation of his premises and use of his furniture etc. Further a deposit of Rs. 50 was made with Arakhit so that he may recoup the price of any lost article from the said deposit and refund the balance to the assessee at the termination of the agreement. Some controversy arose as to whether the transaction under exhibit 1 amounted to a transfer, in its entirety, of the ownership of the business by Arakhit Sahu in favour of the assessee-opposite party, as contended by the department-petitioner, or was it a mere letting out of the hotel premises and the furniture etc. on rental basis, as contended by the assessee. According to the assessee, there was no transfer of the ownership of the hotel business by Arakhit and he is therefore not liable to pay tax from 25th July, 1954, i.e., from the date of the lease. The assessing officer, however, treated the transaction as one of complete transfer in favour of the assessee, and held the assessee liable to pay taxes from 25th July, 1954. Since the assessee did not apply for registration without sufficient cause, he assessed him u/s 12(5) of the Act and also imposed a penalty for non-registration for four quarters ending with 30th June, 1955. In appeal before the Assistant Commissioner of Sales Tax, the order of the assessing officer was upheld. The assessee being admittedly an unregistered dealer, both the assessing officer as well as the first appellate Court fixed the liability of the assessee on the basis of Section 19(2) of the Act. In second appeal before the Tribunal, the contention of the assessee, however, was upheld. While annulling the assessment, the Tribunal held that the transaction under exhibit 1 did not amount to a complete transfer of the ownership of the business and that the transferor Arakhit Sahu being an unregistered dealer, Sub-section (1) of Section 19 of the Act has no application as it applies to cases of transfers by registered dealers only. On this ground he also refused to apply the provisions of Sub-section (2) of Section 19 to this case, as he was of the opinion that Section 19(2) applies only to such transfers as contemplated u/s 19(1) and thus to fix the liability on the transferee on the basis of Sub-section (2) of Section 19, the transferor must necessarily be a registered dealer.

3. Against the aforesaid order of the Tribunal, the department made an application to the Tribunal u/s 24(1) to refer the aforesaid two questions of law to the High Court. The Tribunal having refused to do so, an application was made before this Court u/s 24(2) and this Court by its order dated 2nd August, 1961, called upon the Sales Tax Tribunal u/s 24(3) to state a case and refer the aforesaid two questions of law to this Court. Accordingly the Tribunal has referred the above two questions to this Court.

4. I will, however, take up the second question first. The admitted facts are that Arakhit Sahu was first running a hotel business in a part of his residential house. He, however, made over the hotel premises and the furniture and utensils etc. to the assessee on 25th July, 1954, on terms and conditions embodied in exhibit 1.

To determine the nature of the transaction it is necessary to refer to the terms mentioned in the agreement. Excepting stating broadly that Arakhit Sahu was carrying on a hotel business, there is nothing on record to show what exactly was the nature of his business. From the recitals in the document (exhibit 1) it appears that Arakhit let out a portion of his house and some furniture and utensils, a list of which was appended to that agreement, on a daily rental of Rs. 2. He also took a security deposit of Rs. 50 from the opposite party so that if any furniture or utensil is lost, its price will be deducted from the said deposit and the balance will be returned to the opposite party at the termination of the lease. It also appears from the body of the agreement that renewals have been endorsed from year to year until 25th July, 1958. Thus from the terms of the document it is absolutely clear that Arakhit only let out his house with some furniture and utensils to the opposite party on a rental basis. There is absolutely no reference to the hotel business nor any transfer of any such business contemplated in exhibit 1. In my opinion, therefore, the relationship between Arakhit and the opposite party is not that of a transferor and transferee of a business but of a lessor and lessee. The question of transfer of ownership-whether in part or in its entirety-therefore does not arise in this case. Agreeing, therefore, with the opinion of the learned Tribunal, I hold that in the facts and circumstances of the case, there was no transfer of business. The Tribunal was, therefore, right in holding that in case of a lease of business premises and utensils there could not be a complete transfer of business as contemplated u/s 19(1) of the Act.

5. Having answered question No. (2) in the affirmative, question No. (1) becomes purely academic and does not arise for consideration in this case. It is thus unnecessary to answer question No. (1). This, however, does not mean that we accept as correct the construction put by the Tribunal on Section 19(2) of the Act. The reference is disposed of accordingly. In the circumstances of the case, parties are to bear their own costs of this Court.

R.L. Narasimham, C.J.

6. I agree.

