
(2010) 01 MAD CK 0125

In the Madras High Court

Case No : Tax Case (Revision) No. 2083 of 2006

Trichy Cafe

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 07-01-2010

Acts Referred:

Citation : (2010) 30 VST 461

Hon'ble Judges : P.P.S. Janarthana Raja, J;D. Murugesan, J

Bench : Division Bench

Advocate : S. Sivanandam, for the Appellant; Haja Nazirudeen, Special Government Pleader (Taxes), for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—This tax case revision is at the instance of the assessee. The assessee is conducting a vegetarian hotel and the total taxable turnover up to a sum of Rs. 18,25,000 is exempted from tax liability. The assessee disclosed a total taxable turnover of Rs. 11,35,566 for the assessment year 1991-92. While the accounts were called for and checked as well as the business places were inspected on January 27, 1993, it was noticed that,

(1) day book was found written for January 25, 1993, but the entries were incomplete;

(2) purchase of coffee powder for Rs. 124.00 and paper cover for Rs. 55.00 on January 26, 1993 were not entered into accounts;

(3) bulk order for marriages and for other special functions are undertaken. But the sales turnover for such supplies is not entered into accounts; and

(4) certain records relating to the business as found in "D7" slips were recovered for further verification with the regular accounts.

2. A further inspection was also conducted on February 2, 1993 and March 23, 1993 and the records were verified with regular accounts on March 30, 1993 and

March 31, 1993 relating to the assessment year 1991-92 and 1992-93. It was found that the assessee has not disclosed certain taxable turnover relating to the purchase of fuel, payment of wages to the workers, etc. Hence, notice was issued to the assessee calling for objections, but the assessee did not file any objections. Hence, finally, by the assessment order dated June 6, 1994, the total taxable turnover was arrived at Rs. 27,53,863.

3. On an appeal filed by the assessee before the Appellate Assistant Commissioner (CT), Erode, the total taxable turnover was fixed at Rs. 20,08,716. On a further appeal to the Sales Tax Appellate Tribunal, it was fixed at Rs. 18,84,962. The said re-fix of levy and re-determination of taxable turnover was made by adopting the following formula:

Purchase turnover as per accounts Rs. 7,50,415.00 Purchase suppression taxable and non-taxable goods go to the preparation of goods as inputs:

Rs. 27,219.00 Rs. 1,49,573.00 ----- Rs. 1,76,792.00

Add: 1 1/2 times addition Rs. 2,65,188.00 Rs. 4,41,980.00 -----

Add: Fuel suppression estimated Rs. 50,000.00

Add: Wages paid as per accounts Rs. 84,564.00 ----- Rs.
13,26,959.00 Add: 40% Gross profit Rs. 27,219.00 ----- Rs.
18,84,962.00

4. Mr. S. Sivanandam, the learned Counsel appearing for the petitioner, would submit that there is absolutely no material for addition of fuel suppression estimated as well as the addition of wages paid to the workers. Though he would also argue in respect of the addition of VA times to the purchase suppression, we are not inclined to go into that question, in view of our consideration in respect of other two additions. The learned Counsel would submit that in the event these amounts added towards fuel suppression and wages paid are excluded, the total taxable turnover would come down below Rs. 18,25,000 and in that event, the petitioner is not liable to pay tax.

5. Mr. Haja Naziruddin, learned Special Government Pleader, would, however, submit that both the above additions relating to fuel suppression and wages paid were made on the basis of books of account and therefore, they cannot be deleted from the total taxable turnover. He would submit that whenever there is estimation of any escaped turnover, it is inevitable that there is some guess-work at the level of the officer. The court must consider only as to whether there was any bias and there was no rationale behind such guess-work. On the given facts and circumstances of the case, the above two additions were made on the basis of books of account and therefore, it cannot be said that such additions are on the basis of the conclusion of the assessing officer, which was either biased or without any rational basis.

6. We have considered the above submissions. As far as the submission of the learned Special Government Pleader is concerned, the judgment of the Supreme

Court in Commissioner of Sales Tax v. H.M. Esufali H.M. Abdulali [1973] 32 STC 77 is referable. Of course, in that judgment, the apex court has held that in estimating any escaped turnover, it is inevitable that there is some guess-work. The assessing authority while making the best judgment assessment, no doubt, should arrive at his conclusion without any bias and on a rational basis. That authority should not be vindictive and capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial.

7. The facts of this case should be considered in the light of the above observations of the Supreme Court. For arriving at a best judgment, the assessing officer must have at least some material worth consideration so as to term such conclusion as "unbiased and having some rational basis". We have carefully perused the assessment order. The entire discussion in the assessment order relates to purchase suppression of the taxable and non-taxable goods. There is not even a reference either as to fuel suppression or wages paid. There are no materials for the assessing officer to make additions of fuel suppression and wages paid. Though the learned Special Government Pleader would rely upon the above judgment to sustain the case of the Revenue, we are of the considered view that in fact the said judgment could be applied only in favour of the assessee on the given facts and circumstances of the case. Only in the event some materials are available, the best judgment could be termed to be without any bias and having a rational basis and it may not be otherwise. Though the learned Special Government Pleader would make an attempt to persuade that these two additions were made on the basis of the entries made in the accounts, even to support the said submission, nothing is made available before us.

8. In view of the above and in view of want of any material for those two additions, the best judgment assessment arrived at by the assessing authority has no rational basis. If those two additions, viz., a sum of Rs. 50,000 towards fuel suppression and Rs. 84,564 towards wages paid, are deleted, the total taxable turnover would come less than Rs. 18,25,000 and in that event, the assessee is not liable to pay any tax. Accordingly, those two additions are deleted, the orders impugned in this revision are set aside. The tax case revision is allowed. No costs.