

(1992) 07 MAD CK 0051

In the Madras High Court

Case No : T.C. No. 594 of 1983 (Appeal No. 85 of 1983)

V. Ramasamy and Brothers

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 22-07-1992

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 31, 31(3), 34, 37

Citation : (1992) 07 MAD CK 0051

Hon'ble Judges : Raju, J;K.S. Bakthavatsalam, J

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader, for the Respondent

Judgement

Bakthavatsalam, J.—The appellant before us reported a total and taxable turnover of Rs. 4,83,264.18 and Rs. 4,83,264.18 respectively for the year 1979-80. Before the accounts were called for and checked, the place of business of the assessee was inspected on November 8, 1979, by the officer of the Enforcement Wing, Salem and certain defects were noticed. The defects noted were that the day-book was written up to September 24, 1979 only and no transactions were noted in stock book for the month of October 1979. When the accounts were called for and checked up, they disclosed a total turnover of Rs. 4,85,264.18 against Rs. 4,83,264.18 shown by the assessee in A2 returns. The assessing officer rejected the accounts and the returns produced by the assessee as incorrect and incomplete and determined the assessment to the best of judgment. The assessing officer arrived at the total taxable turnover as follows :

A penalty u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959 [hereinafter referred to as "the Act"] was also levied. The assessee filed an appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner, after going through each and every slip and arrived at the total sales suppression as per records recovered by the department had been arrived at Rs. 49,400 and added the turnover with regard to the sales of thippi suppressed at Rs. 2,270

and thereby the total suppression is arrived at Rs. 51,670 as per the entries found in the records. This is against the suppression to be recovered arrived at by the assessing officer to the extent of Rs. 1,73,994. The first appellate authority added equal amount as addition for suppression in the same way as the assessing authority has done. But the total suppression arrived at by the Appellate Assistant Commissioner is Rs. 1,03,340 as against Rs. 3,47,988 arrived at by the assessing officer. The Appellate Assistant Commissioner has made 5 per cent addition to the book turnover as done by the assessing officer. The first appellate authority levied penalty, of course reducing it proportionately. The Joint Commissioner took suo motu proceedings u/s 34 of the Tamil Nadu General Sales Tax Act, 1959 and sought to revise the order of the Appellate Assistant Commissioner and issued notice. After noting the objections of the assessee, the Joint Commissioner passed a cryptic order in the revision which is in the following terms :

"..... The fact remains that several slips containing purchases and sales, etc., were discovered at the time of inspection and that they were not accounted for. Even at the time of hearing, the assesseees were not able to prove that they were all accounted for in the books of accounts produced before the department although opportunity was given to the assesseees to prove their case. I, therefore, find that the stand taken by the assessing officer was in order. Accordingly the objection was overruled and the proposal set forth in the notice is confirmed"

The assessee is before us in the tax case appeal.

2. We have heard Mr. N. Inbarajan, the learned counsel appearing for the assessee, who took us through the order of the first appellate authority in extenso and demonstrated before us that the first appellate authority has gone into the records seized and the slips recovered and came to the correct conclusion with regard to suppression. The learned counsel further argues that there is no justification for the Joint Commissioner to exercise powers u/s 34 of the Tamil Nadu General Sales Tax Act, 1959, on the facts and circumstances of the case. He further argues that this is a case where the revisional authority has just exercised the revisional jurisdiction automatically without application of mind.

3. Mrs. Chitra Venkataraman, the learned Additional Government Pleader (Taxes), sought to support the order of the Joint Commissioner passed on the reasoning given by the Joint Commissioner in his order. According to the Additional Government Pleader (Taxes) the account books were not brought up to date on the date of inspection and when the accounts were submitted by the assessee conveniently, the assessee filled up the gaps and produced the account books and the Appellate Assistant Commissioner who was satisfied only with those accounts interfered with the order of the assessing officer and as such the revisional authority is right in holding that the assessee was not able to prove that they were all accounted for in the books of accounts produced before the department.

4. Considering the arguments of the learned counsel on both sides we are of the view that this is a typical case where the Joint Commissioner has exercised the power of revision in a casual manner. It is settled law that this Court u/s 37 of the Tamil Nadu General Sales Tax Act exercises wide powers in the appellate jurisdiction against an order passed by the Joint Commissioner u/s 34 of the Act, exercising its suo motu revisional jurisdiction. The assessee/appellant before us is against the order of the Joint Commissioner. When we have gone through the order of the Joint Commissioner carefully, we could see that the Appellate Assistant Commissioner has passed an order meticulously trying to bring down suppression which has been put at a higher figure by the assessing officer without any norms. When the Appellate Assistant Commissioner has passed a well-considered order u/s 31 of the Tamil Nadu General Sales Tax Act, 1959, the Joint Commissioner has exercised his powers u/s 34 of the Act, as we have stated, very casually. This Court, while explaining the power of suo motu revision in such cases, in *Avon Plastics v. State of Tamil Nadu* [1982] 49 STC 268 has held as follows :

"..... The power of suo motu revision by the Board of Revenue u/s 34 of the Tamil Nadu General Sales Tax Act, 1959, is not intended to be exercised in a routine or casual manner but only on special occasions. Therefore, unless it is found in any particular case that the discretion to exercise the appellate powers vested with the Appellate Assistant Commissioner u/s 31(3)(a) of the Act has been wrongly exercised, it would not be proper for the Board to interfere with the order of the Appellate Assistant Commissioner"

Again in *Kuppuswamy & Sons v. State of Tamil Nadu* [1982] 51 STC 143 this Court has held that the Board of Revenue in arriving at a turnover is not to act mechanically but to act in a judicial manner, while exercising as it does, its power of revision, which is a judicial power. This Court has further held that it is an elementary requirement that they must have appropriate data to support any estimate that they make. Holding so, the Division Bench of this Court has further held as follows (at page 146) :

"..... In exercising the powers of revision, the Board is expected to concentrate its attention on the order which it seeks to revise. The order that is sought to be revised in the present case was that of the Appellate Assistant Commissioner. If there was any wrong reasoning in the said order, it is, of course, open to the Board of Revenue to rectify the error in reasoning by taking appropriate action. But in the present case the order of the Board of Revenue says very little about any wrong reasoning in the order of the Appellate Assistant Commissioner except to mention that the Appellate Assistant Commissioner had proceeded erroneously on the basis that the turnover in oilcakes was only a seasonal one. We have shown earlier that on the present facts the Appellate Assistant Commissioner's conclusion regarding the nature of the activity of the assessee being seasonal cannot be found fault with. We have also shown that the estimate made by the Deputy Commercial Tax Officer could not have been proper in view of the fact

that a part of the turnover which was taken as suppressed has been accounted for. The function of the Board of Revenue is to find out whether the order of the Appellate Assistant Commissioner is reasonable and not to exercise its power of revision by presuming that what the assessing authority had done was proper and also that the Appellate Assistant Commissioner had, in giving any reduction, not acted properly."

We are of the opinion that the reasonableness would depend upon the facts of each case. Having regard to the features pointed out by us, we consider that the Appellate Assistant Commissioner's order could not have been properly interfered with on the facts of the case and therefore we hold that the Joint Commissioner had no material to restore the assessment as made by the assessing authority. In our view, the order of the Appellate Assistant Commissioner should have been left at that. On the facts and circumstances of the case, no material is placed before us to show that the first appellate authority has committed an error in refixing the turnover. The view we take, the order of the Joint Commissioner is set aside, the order of the Appellate Assistant Commissioner shall stand restored. The tax case appeal is allowed. No costs.

5. Appeal allowed.