(1984) 02 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 412 of 1982

V.B. Gadkari APPELLANT

Vs

The Sales Tax Officer and Another RESPONDENT

Date of Decision : 02-02-1984

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1985) 59 STC 362

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : S. Bhargava, for the Appellant; G.S. Solanki, Deputy Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.G. Sohani, J.—This is a petition under Article 226 of the Constitution of India.

2. The material facts giving rise to this petition, briefly, are as follows : The petitioner carries on business of manufacture and sale of paints and varnish under the name and style, M/s. Indian Paints Industries, Indore. The petitioner is a registered dealer under the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter referred to as "the Act"). For the assessment year 1976-77, the petitioner filed a return disclosing a taxable turnover of Rs. 76,559 but respondent No. 1 rejected the books of account maintained by the petitioner and made a best judgment assessment by his order annexure A dated 17th November, 1980 estimating the taxable turnover at Rs. 1,05,000. Aggrieved by the order passed by respondent No. 1, the petitioner preferred a revision petition but that was dismissed. Hence the petitioner has filed this petition.

3. Though a number of grounds were raised in the petition, at the time of hearing of this petition the only contention pressed on behalf of the petitioner was that the best judgment assessment made by respondent No. 1 was arbitrary and the result of pure guess-work. It was contended that in the impugned orders

no basis was disclosed for arriving at the estimated taxable turnover of Rs. 1,05,000.

4. Having heard learned counsel for the parties, we have come to the conclusion that the contention advanced on behalf of the petitioner is well-founded. In this connection we may usefully refer to the following observations of the Supreme Court in The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore, .

In Raghubar Mandal Harihar Mandal Vs. The State of Bihar, a case arising under the Bihar Sales Tax Act, 1944 the law relating to ''best judgment'' assessment was examined at length by this Court. Therein S. K. Das, J., speaking for the Court, observed (at page 778):

No doubt it is true that when the returns and the books of account are rejected, the assessing officer must make an estimate, and to that extent he must make a guess; but the estimate (must) be related to some evidence or material and it must be something more than mere suspicion. To use the words of Lord Russell of Killowen again, "he must make what he honestly believes to be a fair estimate of the proper figure of assessment" and for this purpose he must take into consideration such materials as the assessing officer has before him, including the assessee''s circumstances, knowledge of previous returns and all other matters which the assessing officer thinks will assist him in arriving at a fair and proper estimate.

Proceeding further the learned Judge quoted with approval the observations of Din Mohammad, J., in Ganga Ram Balmokand v. Commissioner of Income Tax, Punjab AIR 1937 Lah 721 :

It cannot be denied that there must be some material before the Income Tax Officer on which to base his estimate, but no hard and fast rule can be laid down by the Court to define what sort of material is required on which his estimate can be founded.

After quoting those observations, the learned Judge proceeded to observe :

With that observation we generally agree. If, in this case, the sales tax authorities had based their estimate on some material before them, no objection could have been taken.''

5. Now in the instant case, after rejecting the books of account and the taxable turnover disclosed by the petitioner in the return, all that the assessing authority has stated in the order of assessment is that the taxable turnover is determined at Rs. 1,05,000. The order of assessment does not refer to any material whatsoever on which the estimate is based. It is thus clear that the assessing authority made an assessment based on pure guess without reference to any evidence or material at all. Under the circumstances the order of assessment passed by respondent No. 1 and the order dismissing the revision petition passed by respondent No. 2 are vitiated by an error apparent on the face of record and

deserve to be quashed.

6. For all these reasons this petition is allowed. The orders (annexures A and C) passed by respondents Nos. 1 and 2 respectively are quashed. Respondent No. 1 may proceed to make best judgment assessment afresh, in accordance with law after hearing the petitioner in that behalf. In the circumstances of the case, parties shall bear their own costs of this petition. The outstanding amount of security deposit, if any, be refunded to the petitioner.