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(1988) 11 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 329 of 1988

Vishnu Traders — APPELLANT

Vs

Rajasthan Sales Tax Tribunal and Others — RESPONDENT

Date of Decision : 03-11-1988

Acts Referred:
Constitution of India, 1950 — Article 226
Rajasthan Sales Tax Act, 1954 — Section 16(1), 7B

Citation : (1990) 77 STC 10

Hon'ble Judges : M.B. Sharma, J;I.S. Israni, J

Bench : Division Bench

Advocate : S.M. Mehta, for the Appellant; G.S. Bapna, for the Respondent

Final Decision : Allowed

Judgement

M.B. Sharma, J.—Looking to the nature of the controversy involved -in this case, we are of the opinion that the writ petition should be disposed of at the admission stage. The petitioner has challenged the order dated October 17, 1987, of the Rajasthan Sales Tax Tribunal, made on the application filed by the petitioner seeking rectification of the order of the Tribunal, dated August 13, 1987. Under the aforesaid order the Tribunal had allowed the appeal of the State against the order of the Deputy Commissioner (Appeals-I), quashing the penalty of Rs. 90,000 imposed u/s 16(1)(e) of the Rajasthan Sales Tax Act, 1954 (for short "the Act").

2. The petitioner submitted its monthly returns for the assessment year 1984-85. In the monthly return for the month of July, 1984 (from July 1, 1984 to July 31, 1984) the petitioner had correctly shown the sale of taxable tins of edible oil but it was by accounting mistake that the sales of 3,730 taxable tins of edible oil was wrongly posted in the ledger as tax-paid. No sooner the petitioner came to know of this mistake and discovered it, he filed revised return for the month of July, 1984, on September 11, 1984, showing the correct position of the sales of taxable tins of edible oil. It was thereafter that some time on September 17,

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1984, the non-petitioner No. 3, the Commercial Taxes Officer, Special Circle 5, Jaipur, conducted the survey of the business premises of the petitioner and even at that time the position regarding the submission of the original return and the revised return was brought to his notice, still he was of the view that the submission of the original return was not proper and it amounted to attraction of the provisions of Section 16(1)(e) of the Act and he framed a provisional assessment order u/s 7B of the Act for the period commencing from March 1, 1984 to September 17, 1984, creating a tax liability of Rs. 46,625 and further imposed a penalty amounting to Rs. 90,000 u/s 16(1)(e) of the Act vide its order dated December 31, 1984. The petitioner preferred an appeal before the Deputy Commissioner (Appeals-I), who came to a categorical finding that the entire purchase and sale are mentioned in the account books and it was simply on account of the erroneous posting of the entries, which was later on corrected by filing the revised returns even before the survey of the business premises made by the non-petitioner No. 3 on September 17, 1984. The appellate authority further observed that the petitioner has neither made any purchase or sale outside the account books nor he has intentionally submitted wrong returns and it was simply an error in the posting of entries. No offence u/s 16(1)(e) of the Act was made out. Consequently, the appeal was accepted and the imposing of the penalty was set aside. However, the levy of tax was maintained, though according to the petitioner he had deposited the said tax.

3. Aggrieved against the aforesaid order of the Deputy Commissioner, the Revenue filed an appeal before the Tribunal and the Tribunal under its order dated August 13, 1987, allowed the appeal and restored the penalty imposed by the Commercial Taxes Officer. A rectification application was filed and that too was dismissed.

4. A preliminary objection has been raised by Mr. Bapna that a revision lies against the order dated August 13, 1987, if not against the order of rectification dated October 17, 1987 and the revision having been not preferred and the time having since expired this Court should not invoke extraordinary jurisdiction under Article 226 of the Constitution of India. We may state that the existence of an alternative remedy is not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution of India and the fact that there is alternative remedy and that the same has been availed or not availed is a circumstance to be taken into consideration and despite it in the facts and circumstances of the particular case and more so when the finding is perverse and is against the provisions of law, this Court may consider it proper to invoke its powers under Article 226 of the Constitution. In the instant case it will be seen that the finding of the Tribunal that the petitioner had concealed any particulars in his return for the aforesaid period and had deliberately concealed the particulars is perverse. The learned Tribunal has not taken note of the facts of the case and even otherwise has not properly appreciated them. It appears that the Tribunal is mainly governed by the fact that the petitioner had not deposited the tax and he came to deposit the tax liability in respect of the disputed sales only after the

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assessment order was made. We are of the opinion that these circumstances are hardly relevant to come to a conclusion that it was a case of concealment of any particulars from the return or furnishing any wrong particulars. The Tribunal in para 7 of its order dated August 13, 1987, has said that "in the present case, of course, no evasion had been detected in the sense of a turnover altogether unaccounted for by conducting sales off the record". We are of the opinion that the mere fact that the amount of tax had not been deposited in time cannot lead to the inference that it was a case of concealment. The case of the petitioner was that it was due to wrong posting of the sales of 3,730 taxable tins of edible oil in the ledger of tax-paid, an accounting mistake crept in the return, those sales were shown as tax-paid sales. The plea raised by the petitioner cannot be said to be such, which could not inspire confidence. The mere fact that on September 11, 1984, seven days prior to the survey of premises, a revised return was filed by the petitioner wherein the sales of 3,730 edible oil tins were shown as not tax-paid, goes to show that there was no concealment of the above sales at the time of filing the original return. This Court had the occasion to deal with the case of Murarilal Ahuja and Sons v. Board of Revenue [1986] 61 STC 393, which case does not stand on a better footing. A revised return was only furnished when a notice by the assessing authority was issued to the assessee or an opportunity for producing the account books was given. Even then the court held that there was no conscious concealment and there should be deliberate furnishing of inadequate returns. In the instant case, the Deputy Commissioner had taken a view that there was no deliberate concealment or deliberate furnishing of inadequate return. We are of the opinion that one circumstance that on September 11, 1984, revised returns were furnished much before the assessment order came to be made, much before the survey of the premises, clinches the issue and the finding of the Tribunal that Section 16(1)(e) of the Act has been attracted and there has been concealment of aforesaid edible oil tins and there has been deliberate inadequate particulars, is perverse.

5. Consequently, we allow the writ petition, quash the order of the Tribunal and restore that of the Deputy Commissioner (Appeals-I) so far as the penalty is concerned.

6. Cost made easy.

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